

For Private Circulation: Educational Purposes only [P- 962]

NATIONAL JUDICIAL ACADEMY



SEMINAR ON THE ROLE OF GUARDIAN JUSTICES

18TH – 20TH DECEMBER, 2015

VERBATIM REPORT

Authored & Edited by

Sumit Bhattacharya

Research Fellow

National Judicial Academy

Contents

SESSION-I.....	1
Standardization of Roles & Responsibilities of Guardian Judges: Uniformity Approach	1
Speakers: Justice V. Gopala Gawda & Justice Navin Sinha	1
SESSION II.....	24
Challenges faced by Guardian Judges	24
Speaker: Justice Navin Sinha.....	24
SESSION-III.....	42
Developing Standards for Evaluation of Judgments.....	42
Speakers: Justice S.J. Mukhopadhaya & Justice Navin Sinha.....	42
SESSION-IV.....	61
Meaning & Scope of “Character Roll”	61
Speakers: Justice S.J. Mukhopadhaya & Justice Navin Sinha.....	61
SESSION V	85
Evaluating the Utility of ACR: How Effective Grading System Is?	85
Speakers: Justice Aftab Alam, Justice Manmohan Sarin & Justice Sunil Ambwani	85
SESSION VI.....	117
Effective Inspection of Courts: An Assessment	117
Speakers: Justice Aftab Alam, Justice Manmohan Sarin & Justice Sunil Ambwani	117
SESSION VII.....	146
Evaluation of Performance & Increasing Strength of Judges: Time and Acceptability Issues	146
Speakers: Justice Manmohan Sarin & Justice Sunil Ambwani	146
SESSION VIII	159
Relying on Opinion of Bar: Credibility Issues	159

Speakers: Justice Sunil Ambwani & Justice Manmohan Sarin	159
SESSION IX	178
Persona of a Guardian Judge: Demeanor, Behaviour etc.	178
Speaker: Professor (Dr.) Amitabh Deo Kodwani	178
Session X	205
Transparency in Performance Assessment	205
Speaker: Professor (Dr.) Amitabh Deo Kodwani	205

SESSION-I

Standardization of Roles & Responsibilities of Guardian Judges: Uniformity Approach

Speakers: Justice V. Gopala Gawda & Justice Navin Sinha

Prof. Geeta Oberoi: Very Good Morning to all of you, i just thought before Sir, comes and we start the Session, I just thought that aaaaa, the twin objectives of this conference actually, when we design, and aaaa, one was of course to collect information on "Roles and Responsibilities" performed by High Court Justices when they they are acting as either as a portfolio judges or inspecting judges or guardian judges, or administrative judges or somewhere they are also called judge-in-charge to supervise trial courts, this all information we have collected aaaa, our program coordinator Sumit he is just gone to receive Justice aaa

Participants: We don't supervise trial courts, we supervise lower judiciary. There's a difference.

Prof. Oberoi: yeah! actually now there people, there are people who are objecting, don't use word "lower" and "subordinate", they started creating this kind of issues for us. So, we thought what, you know what kind of nomenclature to come so that no one is hurt, everyone feels alright. So, therefore we came out with this subject called trial courts. But, yes subject to correction, if you. Yeah District Courts Yeah!

Participant: that is, aaaa, that is what the Constitution refers to.

Prof. Oberoi: District Judiciary, No the Constitution also refers to Subordinate Courts.

Participant: No one can have an objection to the Constitution.

Prof. Oberoi: Yes, Yes..

Participant: that is the nomenclature used also for the ...in the hierarchy of the subordinate judiciary, "Higher Judicial Service", "Subordinate Judicial Services". No one can have an objection to that.

Prof. Oberoi: Okay! So, one thing that we collected all the Rules we, aaa wrote letters to Registrar Generals and they have been kind enough and they have sent us at least 12 Courts have sent their Rules and Regulations, which are in this aaaadomain, of how administrative judge, how they are appointed, or what they should do? Some Courts have very aaaaa, you know elaborate Rules, some have just one page guideline kind of thing. We also learnt that it was aaaaa, Lahore..... (Hon'ble Mr. Justice V. Gopala Gawda arrives).....

Prof. Oberoi : Yes Exact time, Sir I was just thinking, aaaa about the objective of the conference, so we are collecting this aaaa, Rules and Regulations and one of the objective is that can we suggest some standardization in aaa the supervisory role, second objective is of course to collect "Best Practices", and formulate a model format for supervision. This Seminar actually is very important because, aamm, supervising trial courts is now not that easy job, its becoming more and more complicated, and aaaa, one of the complication that I saw, I mean its a recent aaaa recent complication is sexual harassment aaaaaa case that is going on against administrative judge, of very State we are sitting here, Madhya Pradesh, High Court. Rajya Sabha has instituted enquiry committee, which is now further investigating these charges. now therefore it becomes very important that, when we are sitting and we also look into this contemporary problems, and formulated to do and certain not to do things which can be laid down so that, there are we avoid this charges of being biased, a rational subjective, we have prejudices, exploiting people who are working under us.

we have assembled here so that we can formulate ascent of best practices of course which can be keyboard not only through reading Rules and literature that has been given to us by all the high courts, which are Rules, Guidelines, Circulars, but also through your individual experiences in complex cities evolving supervision work. So we will also have from you inputs like, as to how you dealt with aaaaa as your partner has been an administrative judge or Guardian judge or a portfolio judges, how you dealt with situation and the situation can be analysed and best practices models can be developed. for this we have assembled here for 4 days and we hope that everything turns out to be a very productive and fruitful at the end of the seminar.

With this I will give it 2 on Rebel justice V. S. Gopala Gowda, Sir....an honorable chief justice Naveen Sinha is also here with us, well prepared for the seminar.

Hon'ble Justice Gopala Gowda: ha ha ha hahaha, I'll add..you will be having rich experience of the, district bar of the district judiciary.

Prof. Oberoi: formulated just now the Rules of Chhattisgarh and those Rules are also there can you reading material.

Hon'ble Justice Navin Sinha: See, pardon me if I anything which is not palatable, because I don't mean anything I'm talking to brother judges I will try to be as frank and aaaa as open as I can, and the things that I have observed, brother Navneeti Yes he was Elevated in 2006, I was eliminated in 2004 so I know how many years of experience he has a judge I know him pretty well, I met you I know you brother. Now, as far as others brother judges are concerned, and I am asking this question purposely there is a reason behind it, how many of you have had more than 5 years of High Court judge? See that makes a difference I asked that question purposely. when I was celebrated in 2004 February, I came here in September 2011, The Academy has just started in the year 2002, and the first evening we were having dinner professor Madhav Menon was the director, and I told him and that is how he still remember me, first things I told him was that my reaction is that before being asked to sit as a judge I need to be trained. So, he said you are the first person I am hearing talk like this and look at it today! and this topic which the Academy has designed, before I got this invitation in Chhattisgarh we have already designed of special program for the High Court Judges, because we starting we also didn't have a system. just went for one day and came back. and everything was Justin by the District Judge, so we are calling of course brother Navneet it will be very happy hearing that will be calling staff from Patna, retired staff from Patna who did inspections. we are falling retired judges I will not say from where to, and I spoke to my brother judges and I told them that look even I, when I went for the first time, when I went for inspection I didn't know what is to be done. so, I am very glad that the Academy has organised this training program and one more thing this is not complete, the material that the Academy has given you they were not able to trace down that Himaachal has also frame Rules. and Punjab has one of the oldest rules. in fact Patna High Court basically draws from Punjab and based on its own experiences that has changed. Aaaaaa, therefore I think I will be going back as a wiser person today when I hold my program in January for my judges, with regard to How inspecting judge is supposed to carry out the inspections what all is required to be done. and there has been certain problems in inspections also even the Supreme Court also to take note of it. will

come to that there is a judgement on it. this is a very old judgement of 1999 as to how is pixels are to be conducted and then there is a judgement if my memory is correct it is 2006 or 2008 as to what mistakes the inspecting judge made when he went for inspection.

Participant: but that's not there I think India book.

Hon'ble Justice Navin Sinha: no no I have brought it I have it with me I brought those judgements, this judgement but not here look that's what I said it's a collective effort we have to exchange Ideas, views and as I said, justice Gowda will permit be to say that, I think I will go back wiser from here. As I said Karma for the training program for my judges in January and my judges a very enthusiastic about it.

when I told them that you have to go there and stay for 3 days at least, you can't go and come back in one day and the Supreme Court has laid down guidelines also what is the minimum number of days required what are the do's and don'ts if you can only build up on it and the rest when you go there we all learn on the job, job is such that we all, am I right Sir? we all learn we have to be aaaa what do I say? mistakes will be made there's no reason to I have never felt kind of mistakes I have admitted my mistakes and I have learnt from my mistakes now aaaa, first of all tell me how you people would react to this because I have my own views so therefore aaa, and with justice Gowda here will have completely different perspective from a different point of view because I'll be see him as a neutral person with regard to all the high courts. standardization of now this talks of standardization of the roles and responsibilities of the guardian judges uniformity of approach. given our country, given our States having there own problems, their was difficulty, their own issues. how far do you think we can have a standard rule I was just thinking about last night how far do you think it will be advisable, to consider framing of standard rules for inspection? because, one suggestion coming to my mind, I will be right, I may be wrong, aaaaa, we can respect the National Judicial Academy to frame standard rules for inspection, how would you react to that?

Participant: there can't be rules, it has to be guidelines. since it is a federal structure no authority can issue instructions to the high courts so what is to be done I was about to say that, the national judicial Academy should collect, material from different high courts with regard to rule of High Court Judges as inspecting judge with different nomenclature comma and then from that, cull out, the best practices and have a model paper circulated to every judge, of this country.

Hon'ble Justice Navin Sinha: can I add one thing to that, if I am permitted to? if I would suggest without disagree with you if I were to suggest, that we call it, aaaaa, draft rules of draft guidelines?

Participant: model rules draft guidelines ...model code of conduct, ...

Hon'ble Justice Navin Sinha: no no no navniti there is going to be a difference you see the moment you give the name of rules, I'll tell you what exactly, because my High Court opted.

cross talks.

Hon'ble Justice Navin Sinha: no no the reason I'm saying is this, again based on my experience, aaaa b a n Old High Court I'm sorry if I keep on Repeating Patna because we all take a decision based on experiences. so I'll be comparing on the basis of my experiences as a judge of 10 years in Patna and saying what my experiences now are. Now as I said Chandigarh has no Rules nothing for inspection no procedure no guideline nothing. absolutely zero nothing we had nothing on paper. I believe in olden days there used to be some system, probably in Madhya Pradesh also, anyone of you from Madhya Pradesh? he will bare me out. I believe they had a system, it was a separate post. they moved from district to district for inspection. am I correct?...no no earlier earlier haha earlier earlier. so therefore in Chhattisgarh the judges have no experience at all. So, when I drew the Rules, the collected Rules from Punjab, I got the guidelines from Patna, we got it from Himachal we got it from Gujarat we collect all the Rules. then I give it to A committee of judges as brother Navaniti said, to cull out the best from all.and then we have framed our Rules. now after I framed the rules look at the problems that come. after I framed the Rules, nothing much happening, then we have to work out, that is why I was talking about standard procedure, then we have to and had to insist to the registry that you drop a tentative schedule for inspections for the next year. then I had a problem that look if I start fixing the dates, I may offend a brother judge. how is the chief justice deciding what I do when? so I said, you're right at the top draft tentative dates according to the date, the date can change according to common that it may change according to the convenience of the Honorable judge right, and that is how we have framed it. so that is why I was suggesting do you think what brother Navaniti Says I am in 100% agreement with him, that we cant have, it can't go as Rules from the National Judicial Academy. what do you suggest we agree that we should think in terms of, the rest will be for the Academy. The Academy can say no tomorrow also.

Participant: no that there is very objective.

Hon'ble Justice Navin Sinha: No no that was more on the light hearted way. Nobody has said that they are going to say no. do you think that we should be having modern rules, because rules, when you use the word Rules it brings a little bit of pressure that is a that is required also what do you say Sir.

Cross talks, i would not worry about that, you can always persuade that.

Hon'ble Justice Navin Sinha: no no I know that I am purposely asking for the response of the present judges.

Participant: model norms model norms!

Hon'ble Justice Navin Sinha: because this will necessarily require adjustments according to local situation. Right.

....

Cross talks amongst the participants.

Hon'ble Justice Navin Sinha: why can't we have a uniform approach inspection as far as inspection of Court buildings as far as inspection of judgement aaaaa, may be to all things like this as far as the judicial side is concerned. when we go for inspection there is going to be various aspects the bar the administration. judicial work, conduct of judges, infrastructure, alot of things. so, it's definite that we cannot frame a standard guidelines for for everything.

Participant: it will be suggested inspection norms. it is to the left option of the concerned high chords to adopted or not.

Hon'ble Justice Navin Sinha: no for example, alright let's make a beginning when we talk of standardization of the roles and responsibilities, as far as judicial work is concerned, why can't there be standard norms? what ever be the state?

Participant: bare minimum can be...

Hon'ble Justice Navin Sinha: ha, so there can be handled norms for judicial works. then, why can't this Be standard norms, with regard to aaaa, what should we say aaa assessment of judgements?

Participant: yes!, I'll just give an example last week only, we were discussing here itself, example you will be aware that the practice in High Court is to ask the subordinate judges 2005 judgements. now what was suggested was probably from Punjab, most probably at that time from

Punjab, give a list of cases they have decided in the last 4 years. and you select at random because otherwise they will give the five best best judgements.

Hon'ble Justice Navin Sinha: that they have always done, ha ha ha ha, that they have always done.

Participant: we also experience we get 5 from civil side 5 from criminal side, what I suggested, that why don't you pick up certain judgments and then find there is a symmetry of there is? because other things are really not...

Participant: all they have to get his 5 ghost writers, they get 5 Ghost writers to write and keep placing again and again. now that there was another thing we discussed that at random from subordinate Courts to the High Court, let some of them be listed before the inspecting judge at random. so the Inspector gadget becomes familiar with his offices at random without notice to them. for example bail applications from the District Judge 5 of them at random not as a matter of rule that all the judgments, just 5 in a month.

Hon'ble Justice Navin Sinha:brother navniti, I have a question to ask you, aaa you just said this, aaa bail application... now do you think, the assessment of judicial work should be done on basis of the judgements or bail orders? look we are all brother judges, everybody knows.

Participant: just one aspect that was just illustrative.you see we are having a terrible problem at Patna [00:20:11] where 56000 applications we have dealt this year on bail applications.High Court so any court in this world has that the reason is we were just having video conferencing with judges individually, the district judges,in last 3 years did not find a single case in which anticipatory or regular bail could be granted. that shows his Incompetence.

Hon'ble Justice Navin Sinha: no that is a separate issue, it's a different issue what I was trying to discuss was that's as far as judgement are concerned I think every where we should have a system of examining only actual judgments is civil or criminal matters.

Participant: that shows is bent of mind, because he has to take a decision immediately now what is he applying how is it going, because judgement you see, lawyer assist they argue case law are cited. written arguments are given.

Hon'ble Justice Gowda:... with the respective judge what role we can play, motivate the judges, the district judiciary, dealing with the bail applications..... anticipatory bail and bail reaching to Supreme Court today. Supreme Court today,please not kindly that this is a fact this is a practical

problem..... this is a fact, in Orissa when I was a CJ 1000s of cases in a day you may believe, may not believe, one judge used to dispose of 300 to 400 cases, now 2 judges are..... so now today the fear psychosis has entered into the minds of judges, because if he grants the bail, one not grant bail second, and if you granted bail media, so all these things are operating, blocking the mindset of the judges not that simple not only, no no I am telling you please, I am telling you how to tackle to this, now now you have to give your valuable suggestion of your experience, with your experience how to tackle this problem. Now, inspecting judge or a portfolio judge, or the judge in charge, whatever may be the name, how you can still confidence dealing with this kind of mattress? how to standardize it? what role the National Judicial Academy can play? with all your experience, the suggestion you will be putting to the NJA formulate a guideline or whatever may say that is the mechanism with all our efforts together, and take the assistance of the academicians can only be, tell the theory. you are required to deal with practical problem how, what best the inspecting judge, In a respective district assist the chief justice to deal with this kind of problem. this is the main bane of the Indian Judiciary today, even in the apex court we are discussing in till 1 a.m. in the morning how sensational cases, now, not like earlier three decades back, we are dealing with the political corruption cases. we are also dealing with the double, triple murder cases decriminalization of politics, decriminalization of the bar, so all these things are how tactical you must be, how diplomatic you must be, how you must be tough in dealing with this, district Judiciary members installing confidence is the main positive in us now.....

Hon'ble Justice Navin Sinha: Sir with your permission sir, I'll tell you one example here in this Academy, when I was a judge in Patna, as a resource person I have come I was everything district judges were there, additional district judges, I give them a small example look, you are sitting at home in the evening, and this is very relevant, for those of you who have not even completed 5 years, because I quoted a language from the judgement of the supreme court with regard to the role of portfolio judges, how serious and responsible it is and this relates to Bihar itself. I asked the judges that in the evening you are sitting at home watching TV, and you know the entire locality, prime news coming at 7:30 the whole locality in your area is watching, and they show that there has been a sensational murder in the town, and police claims we have caught one person, and he is brought, and as usually happens his case is not covered nothing, and the TV camera fellow putting his mike and saying *ki achchaa maarte samay aap ko kaisa lagaa thaa?* [00:25:32] Right, and the next day, next day, you are hearing that fellows bail application.,

right and his lawyer says, look I have been framed. This video clipping is from the police station, look there's a policeman standing behind me, he had a gun at my waist, what else could I say except to say *ki haaan hum khoon kiye hain*. Now what will you do as a judge?

Justice Gowda was 100% correct, every officer present said, Sir, I will not give bail. Let the High Court give bail, I said why? They said Sir, if I will give bail, the High Court will give me a show cause notice. That is the crisis of confidence, that is what Justice Gowda....

Hon'ble Justice Gowda: the other register to, dissect the bonafide action or the malafide or the cruelty....haa hahhaa.....

Hon'ble Justice Navin Sinha: Sir, no no the last line the officer said, I said ki why are you distrusting the High Court so much, then the judges said leave the High Court, everybody in my locality is going to say ki he is a dishonest fellow, he takes money and gives bail. so, its a very difficult situation and what justice Gowda said, let me tell you, one more thing from my experience, 2004 when I became a judge, I was just telling the in-charge Director last night, there was this Eastern Regional Judicial Conference in Patna, CJI was Justice Balakrishnan, one of our senior most judges who went on to become a Supreme Court judge and retired , Justice Aftab Alam, he was the Chairman of the Academy, aaahh, State Judicial Academy, and he said look till the High Court Judges don't gain the confidence of the subordinate judiciary, nothing is going to change. Now, I leave it for you to decide. We are 11 years down the line, I leave it for you to decide. See, this is what the Supreme court Said this is unfortunately I didn't take out the citation, I took it out from Indian Kanoon, it is *Biswanath Prasad Singh v. State of Bihar...*

Participant: We have it in the book here.

Hon'ble Justice Navin Sinha: *hai us me?... achchaaa*. It says I'll just mark the important language, Article 235 of the Constitution vests administrative and disciplinary control over the district judiciary including the subordinate judiciary in the High Court immunizing them from the executive control of the State Government so as to protect judicial independence. Control over subordinate courts vested in the High Court is a trust and confidence reposed by the founding fathers of the Constitution in a high institution like the High Court. The trust has to be discharged with a great sense of responsibility. Right, This we will deal more with the second phase where we deal with the challenges faced by the Guardian judges, but, tell me one thing why, can't we have we just, aaaa there seems to be some kind of agreement that yes we can have some

standardized norms, for inspection with freedom to each State to modulate it according to its own requirements. then we said we can have a standardized procedure for assessment of judgments. What about Code of Conduct? What about Code of Conduct for the subordinate judiciary? I want to know your experiences.

Participant: first we will have to decide code of conduct for the inspecting judges.

Hon'ble Justice Navin Sinha: Absolutely! I'll come to that later, I would like to deal with....The judgement I sent you by mail, it is here, it is here

Participant: This incidence is from Punjab, because it went to the Supreme Court...

Hon'ble Justice Navin Sinha: Navaniti you are absolutely correct, it is *Jasbir Singh v. State of Punjab*, (2006) 8 SCC 294. Anyway *isko next phase me aayenge*.

Participant: Now, the second is something that happened and the judgment was delivered by a judge of Patna High Court just on the 30th of November, where the inspecting judge and the JD-II got together to go after a Class IV employee who was having a dispute with his brother with regard to some property, the brother happened to be advocate, a lawyer, and a disciplinary proceeding initiated against him, I have given the copy of the judgment. And its ridiculous to see how they....therefore the code of conduct for the inspecting judges....

Hon'ble Justice Navin Sinha: Nahi lets ...aaaaa may I make one request?...

Hon'ble Justice Gowda: Its very very important...

Hon'ble Justice Navin Sinha: Sir, I just had a point....

Hon'ble Justice Gowda: uh haa ha..

Hon'ble Justice Navin Sinha: may I please make one request brother Navniti, look aaaa, I would suggest that, when we are holding this discussion, let us not name the High Court, Let us not name anymake it hypothetical and present it. Don't aaaaa well that's my request.

Hon'ble Justice Gowda: otherwise they may,

Hon'ble Justice Navin Sinha: Sir, it doesn't looks nice.

Hon'ble Justice Gowda: Yes!

Hon'ble Justice Navin Sinha: let us present it hypothetically, please don't misunderstand me, as I said earlier, I may say something which you will not like...but then we are all brother judges and

we have to discuss it openly, Because to tomorrow we all go back wiser from here, and I will certainly. I am making my notes. I have to run a High court. I want more ideas. So, I'll be noting down everything.

Aaahhh, no, code of conduct, yes what brother Navniti said we'll come to that also, that is challenges faced by the Guardian Judges, we'll come to that. No, but at the moment, can't we have whether, it is Kerala, whether it is Kashmir, whether it is Punjab whether it is Assam; Assam nahi, Manipur, Manipur, Manipur, Manipur,aaaa I would like to believe based on my experience, Patna & Chattisgarh, there are certain problems with the subordinate judiciary which are common and which emanates more from the Indian Psyche rather than the State...

Participant:judge-in charge can take these matter as a *suo moto* ...

Hon'ble Justice Navin Sinha: I, I, I, I, I, you, your, your topic, your point is very correct, its a different, topic, but then for a moment I pause here. I would I would like to add, no no you are very correct but I would like to have Justice Gowda's reaction, that as Justice Gowda just said that even bail applications are reaching the Supreme Court in bulk. Now in the High Courts in the High Courts even if we were to agree with you, how far is it practically going to be possible for the High Courts picking up revisions? random, random, random...haa you dont know when his unfortunate turn will come. His judgment gets picked up.

Participant: In that Biswanath Prasad's Case te Supreme Court has laid down, that if you disagree with the manner in which he has conducted himself judicially, you take action judicially, i.e. exercise *suo moto* powers, cancel bails, but don't proceed against him administratively because that would have, because it was the discretion he had, it will demoralize that person.

Hon'ble Justice Navin Sinha: I'll come to that, there are, n number of cases, we'll come to that, at the moment what I am trying to ask your suggestions is, about the code of conduct, it will it may include judicial conduct also, I am not saying it will not, but code of conduct means a much more than judicial conduct. This is moving a serious problem and a problem that I am facing in Chattisgarh, was a problem I faced in Bihar also. Now, how would you react if the these, these these model norms like the manner in which the inspection is done is for the subordinate judiciary, because it will make our work of inspection much easier, if the National Judicial Academy, Chief Justices Conference, way back in 1993 and time and again, the Supreme Court has passed resolutions with regards to code of conduct for us. Now, that strictly does not apply to subordinate

judiciary, according to me because they they are at the base level public is interacting. We don't interact with the public. So, do you think that we can have some standard code of conduct for judges the reason I am saying this is when I was doing a little bit of research on this I read an article on the internet, about a subordinate US Court judge, I was telling the incharge Director last night only. See, he says, his article was there was some restrictions imposed on going to a pub etc. So, he wrote his article, there standard of thinking and freedom and every thing is different. He said that what the bloody hell, if I become a High Court judge, aaa, sorry if I become a judge, don't I remain an American citizen? How can you curtail from going to a pub, just because I have become a judge. Now, we cant do that here, so, therefore what I am trying to say is we have our own difficulties like that, do you think that we can have some standardized uniform approach?

Participant: We can have a bare minimum. A bare minimum which is expected of any one irrespective of the State barriers.

Hon'ble Justice Navin Sinha: Of course, because if that is laid down I would like to believe that for a inspecting judge, a lot of things will get smoothed out with, plus with all due respect and without meaning any disrespect to anybody it aaa can also be aaaa as brother Navniti was saying that where a portfolio judges or the inspecting judges overstep, perhaps it may help in aaaaa what should I say in a aaa obviating those kind of situation where a portfolio judge may be overstepping his aaa, so what do you say?

....

Hon'ble Justice Navin Sinha: Yeah, just one minute, what did you say?

Participant: broadly standardize,, quantitative assessment

Hon'ble Justice Navin Sinha: Just a minute inspection, ...what does that mean?

Participant: work done, quantitative assessment, qualitative assessment, ACRs, Code of Conduct, and leave the niceties to each High Court. depending upon the environment, because in our State, District judges and senior colleges inspect subordinate courts, senior civil courts and junior civil courts. High Courts inspects all ...

Hon'ble Justice Navin Sinha: Which State?

Participant: Andhra Pradesh & Telangana States my lord, so inspecting judge only, the High Court inspects the District Courts and leaves it there. But in some Districts..

Hon'ble Justice Navin Sinha: No can you please elaborate, can you please elaborate.

Participant: A District judge and his senior college including senior civil judges inspect junior civil courts. district judges and Additional district Judges inspect senior civil courts. then the High Court only inspects the, Administrative judges inspects District Courts and Additional District courts.

Hon'ble Justice Navin Sinha: This is what the old MP system was.

Participant: But in one district we have 23-25 District Courts, the time for the High court Court judge to devote the slotted time, to inspect all these Courts in a year.

Hon'ble Justice Gowda: You said a mechanism is required.

Participant: Mechanism is required, that is why we can broadly outline, that's why what we do Sir, just one minute Sir,....

Hon'ble Justice Gowda: No, I wanted to tell, the experience of a Administrative Judge in Karnataka State, CJ, in Orissa. This is very very important topic, which is chosen by the National Judicial Academy. But the National Judicial Academy should have discussed this important topic in the presence of the Chief Justices and the Supreme Court judges. It is the Chief Justice, who nominates, the portfolio judge or the in charge judge. The object of appointment or nomination by a Chief Justice of that High Court, the High court means the full court, it is not the Chief Justice nor the Committee. It is what is said by a Constitutional Bench in *Shamsher Singh Case* way back in 1974. So, this is point for the in-charge Director. This should be thread bare in one full day Session in the presence of the Chief Justices and the Administrative one or two Administrative Committee Judges to be involved. If it is not possible in the national level, it should be in the level of Region-wise. Eastern region, Western region, South Region, that will be more effective for our effective functioning of the Indian judiciary today. The Indian Judiciary is being subject matter of attack, for no fault of ours they are tarnished in the Constitutional Institution which is very very vibrant. Which we have seen for the last two months its not stopped, its not going to stop it, because the cases which we are handling, in the trial court, in the High Court, in the Supreme Court is such a situation today, all political and bureaucrats are in the helm of the affairs where the larger issue of public review, the 1000s of crores of rupees are squandered so this is the magnitude of the problem. This kind of problem we are confronted now. So, therefore, in all the States the streamlining, strengthening the District judiciary is very very very important. For that standardization not good old methods, not conservative methods not the method which is not

thought of at all, we have to apply our mind together, our soul together, for the purpose of taking this institution to achieve the laudable object of the Constituent Assembly and the strong vibrant independent judiciary for the purpose of maintaining the Rule of Law in this country is very very important. These are the center points, center theme which we are required to discuss and debate and resolve and implement it by letter and spirit. For that purpose research is important, Madam, you have to deploy the eminent researchers what has happened over a period of 66 years of the republic India and governance by the India judiciary. The governance is not the exclusive domain of the executive, legislature, governance is also the judiciary. very very important today. So, 234 Article and 235 of the Constitution is very very important, the Indian judiciary, 97% of the judges are being from the District Judiciary. we are only peripheral issues we are tackling today. Unless we streamline and strengthen the District judiciary for evolving the standards and ourselves introspect, our removing our mindset, our removing our psyche, about our ...in district judiciary. Navniti is very very correct in telling, first of all we must have a code of conduct, our mindset and psyche today in the Indian judiciary in the High Courts and Constitutional courts and Supreme Court including me I am not excluding, the moment that we are elevated as a Constitutional judge, Supreme Court says, High Court is subordinate, wrong, we are thoroughly wrong, Constitutional Court is a Constitutional Court, constitutional Judge is a constitutional judge. The High Court judges have the power in Article 226, the Supreme Court has the power in Article 32 and 136, and 142 you have got 226 and 227, so each High Court is a constitutional court in the federal feature of the constitution we must understand first, if we don't understand[00:44:35] we intervene and we all small things in exercise of power we will be destroying our institution and demoralizing our judges. and High Courts are very very unreasonably without following the code of conduct and aaa erratically rating the entries. I'll come to that point ... there are 3 broad categories we are required to classify: the judges portfolio, nominated judges or what ever the judge name you call, for effective functioning of judicial work administrative work in the district is also very very important. very very important, the administrative work, judicial functioning and the infrastructure. These 3 broad classifications in the absence of a written code, we have been functioning in a conservative method, by issuing a circular instructions to all the districts, how to conduct inspection? The inspection means not audit inspection, Inspection means not financial inspection, inspection means how many, cases of the world which are pending there. How many cases you could able to dispose off? How many? the money which is deposited in the debarkation?

How many the crores of rupees which is collected from the traffic magistrate? In Bengaluru, when I was a judge, a clerk cash clerk receiving money per day 35 lakhs, the penalty, for deviation of the traffic rules, which is being collected, he has eaten away lakhs of rupees, he put theto the building the whole building. I was in the house I rushed there. So, these are the things that we are required to set right our home to have the moral courage to stand before the public or the executive that we are very strong enough mentally physically and our clean record. If our record is very clean, if our record is not clean, we will not get the moral courage, so therefore, that inspection, internal audit, thereafter the audit by the audit department. So, audit department from the Central, the State Government, coming there, your judges allowing them if any mal practice is there, taking care of them, you are not doing good. So, therefore, we have to clean our administrative work. Clean our record. For that purpose, we have to pickup a model court where this kind of things have gone on over a period of aqaa the at least 10 years take it as a illustration. Tell the people where we are erring, for that purpose we must apply our mind. For this purpose, the administration is not a simple job. Administration requires skill. Administration requires diplomacy, administration requires the vast knowledge of human resource control. For that the District Judge or a ...sub division sub-judge, or a senior judge he must be entrusted with the work of monitoring side by side your judicial work. He must review; not coming to the Court 10 o'clock to 5 o'clock, writing the hearing, writing judgment, lengthy judgement he don't get time and Saturday, Sunday Legal services work or Monday or Monthly once or two months once aaaaaa Regional Judicial Academy, or State Judicial Academy, he don't get time is no answer. You have to fix responsibilities to the District judge you have to fix the responsibilities to the nominated judge, the Chief Justice must have interactions with all your portfolio judges at least once in a month, only monthly once. If it is not possible you can ask him, your private secretary to give your review reports. There must be a cell in the CJ for this purpose, evaluation, that cell must function and go through the Report and present to the CJ and or the first committee judges what is going on you are saying which district prominent, predominantly cases is more? What type of cases are there? What type of economic cases are there? What type of the cases which are concerning the women, the abuse of the sex is there? What type of the corruption cases are there? What type of the property cases are there? Different classification must be made and the report must be given in that connection work must be entrusted, review reports must be submitted, review reports must be evaluated, deficiencies must be found out and all these things must be put to those respective judges for correction,

correctional purpose. If correction is made, is not possible, corrections within overnight. You must give some time and further what corrections you have made review. So, this kind of constant the standardization and responsibility of a guardian judge, the word very excellent word you have used, the phrase. Navniti is correct, I have heard and I became what is meant by guardian? You are a guardian of that minor, you all must be a guardian of your District Judiciary. Instead of that, what we are doing we are doing nonsense things, sorry to tell this. You must be modern. You must show our concern to our judges , we are guardians to you. What do you mean by guardian? You must make enquiry about their problems. Make enquiry with regard to the deficiency of the providing sufficient staff and sufficient staff is not there how to provide it, take up the matter with the CJ, so that CJ may take up the matter with the Government. Stenographers are not there, if stenographers are not there why it will not 56,000, it will be lakhs of cases will be the mounting so, staff must be regularly recruited. For that purpose administrative work and stenographer must be provided to the judge for judicial discharge of work, efficient the head munshi must be there, efficient clerk must be there, all these things must be studied and increase of work, increase of the cadre strength in the administrative side also must be studied. That should be taken up, side by side. So, this is with regard to the administrative judge a a a guardian judge must be like a father or manager or a karta of the family. Not a exercising your power that I am your boss, sorry! They are very very sorry affairs are going on in our Indian judiciary, worst than the bureaucracy I have heard, where one caste person, a dalit man is not allowed inside the house of a judge. Is it a guardianship? I am not naming the persons I am not naming the State, this is going on non-sense. So, you must take the confidence of the judges. Every State, I have got lot of experience I am telling you, because I have heard the the the I , people are coming and approaching me over phone even in Supreme Court, they are talking to me from the Orissa and my State. I am talking to them, I am hearing their grievances, I am addressing their grievances. That kind of approach as a guardian must be there when you are heading. If you forget that, you are a Constitutional function all these people are subordinate, forgetting the liberty the concept of dignity, we are all judges must understand the Constitution, the liberty is the facet of the dignity of a person including a class IV man working in your house. You forget it, your bossism and I am coming you must come receive me, I 'll reach there 5 o'clock from there I have to travel 80 kms bring in a flask good coffee 5 o'clock,ha ha ha ...

Participant: you will recall how are we trying to get over the subordinate judiciary standing on the high way. Ha ha ha ...

Hon'ble Justice Gowda: With a suit and a tie...

Hon'ble Justice Navin Sinha: No No I'll tell you a very interesting story...this is both the judges have retired, but still I'll not name them. One of them you is a very very respected judge of the State, he has been an author of many books also.When the judge went for inspection and he reached the railway station ...he reached by road, he was received with the regular paraphernalia ...a small band also, music, so this judge gentleman a very senior judge very respected judge, first time he went, before a district in the railway station he sawso the joke was *Band bajao chahe nahi bajaao band baj jaaega*. Ha ha ha ha ha ha...

Hon'ble Justice Gowda: I have another 5 mins I have to go to the Srilanka conference. So, what I am trying to tell you is you must conduct yourself as a guardian or a karta of the family or a fatherly figure of the District judiciary to instill the confidence that those people can come and repose confidence in you , come and tell all their problems freely. If you are not allowing them you are creating a fear psychosis in their mind of that person, how can he tell to you? So, the first of therefore, we all must strongly believe, understand that we are all human beings, that character we must acquire if we do not have. If you are not a human being, your constitutional judgeship is only for 10 years or 15 years 20 years, there afterwards no body will care you I am telling you. Nobody will care you! even the dog, one former judge who was the speaker from my State he used to tell he is retired Supreme Court judge, and Lokayukta, after your retirement dog if you are going, that barks the other people it will not bark on you. this will be the position, but dog will create interest, if you are, ...even a dog he will..have develop a...I have got a story for that, my father, I'll tell you but no time, dog will develop the affection, do you know? in Delhi, i don't want to name, it did not, when he is a master was in jail, she did not take the food for a one week, you know Mr. ha ha ha haour brother knows that..the story latest story, so, I am only in the point you must conduct ourselves as a guardian judges and fatherly figure and you must have the aaa they are becoming very sorry state of affair, they will acquire the acquaintance with the family members, they become the agents, what is this?

So, therefore Sir, another 3 mins time is there for me, we wanted to tackle this issue and the judicial side we can do a great lot. But, you must have the commitment. Commitment alone is not

sufficient, along with that you must have the love and affection towards your brother judges. Brother sister judges, I have had that experience, i have got the result, I'll show you. Orissa I got it, almost all 10 District i was the administrative judge, major Districts. The bar has got that love and affection, I used to tackle the vibrant bar in Orissa, you ask Mr. Rath, he will tell you. Every day after day boycott starts in East India. But, I have regulated it and controlled because of the love and affection and redressing their grievances, be to be more closer to them. So, therefore you must acquire the love and affection, you must hear their personal grievances, you must also take them into confidence after recruitment and Academy giving lecture, sending them who are inexperienced persons, not dealt with the kind of cases of conducting ...handle the cases of a declaration suit or a partition suit, with outr clarity of law he has no, except the knowledge of writing the examination and passing out and taking the marks and recruitment selection and getting appointed he doesn't have,.. even Supreme Court judge, I can tell you number of judge, aaa number of judgement I can point out, there is a the in Supreme Court Judges there is a Constitutional Benches i can point out half a dozen cases where comedy of errors...so don't expect that he is a master and he knows everything. You must get the confidence and take him into confidence and tell him what are your problems in dealing with the cases. What are your problems in dealing with the bar. What are your problems to deal with the pend ency of the cases. Such kind of judges instead of identifying and rating the ACRs of Below Average, and giving that doesn't help us. We have recruited them, they are settled in the life identify those persons ask the District judge every, monthly or weekly. Talk to him over phone, judicial academy is there, ask him what is your problem in the criminal jurisprudence, what is your problem in the civil jurisprudence? What is the problem in the consumer jurisprudence? What is the problem in bail granting? How to apply your law? How to apply a common law? how to acquire the knowledge? how to be tactful? how to have the court management? How to have the case management stud? All these things, you can be closer to them and study that, and give more importance to those people. We can't throw a illiterate man to Arabian Sea. He is illiterate in the sense that the mind is not comprehension, he cannot study the physics, understand the physics, he can't understand the jurisprudence. So, he is good in agriculture, he is good in carpentry, he is good in art, fine art, you have to differentiate. Therefore you have to study the persons and that is called, that standardization is required to measure his optimum level and find out where the lacuna, how to enter into that area, who is the person can be put there? What Academy must aaaa chalk out the program for those people. Put the

people and instill confidence in them to prepare as a good judge, to make to understand the clarity of law stamina must be given to them intellectually and try them you are 56 no, 1 lakh, 3 crores all cases can be dealt with, there is no problem at all. So, the problem is with us. Problem is not with the judiciary aaaaa District judiciary, 97% people we are forgetting we are talking and Constitutionalism and hearing months together, years together they are writing constitutional bench, what is the use? it must percolate, the Rule of Law is in the rural area. Access to justice to the common man, common man has all the confidence today, common man in not in a position to reach and come to the door steps of the judiciary today. The apex court Supreme court, High Court, so common man problem here is persons who are in jail, common man problem is here is if you do this the whole public will be rallying behind you, you will be a house hold talk. I was a house hold talk, Rath will tell you after the Session in a coffee, I was a house talk in Orissa. I was a house hold talk in Karnataka, why? You must have that kind of mindset to people. You must be nearer to the people, nearer to the harts of the people. Nearer to the problem of the judge, nearer to the problem of that administration, nearer to the of the bar, bar people will come and tell Sir, we don't have the chairs, you can't say it is your concern, you are not concerned means what? They will not co-operate. Why it is not our concern, it is our concern, so if a judge does not have a fan will you not be providing him a fan? We must provide fan. If the, we say, that lawyers are also the part of the judiciary, without we can not function. Why should we not ask PWD people to provide the accommodation? Provide the furniture? Provide computers, provide everything, In Orissa I could able to do it. I could able to get 1000 Crores. You must have that kind of the mechanism, that kind of the working mood, put the person on the job. Put the person depends upon the critical very difficult districts, that person there and person who is right work, right person there and tough person who can handle you must identify and put there. Not because this man is not listening to me in recruitment, put him to the labour court. Put him to the industrial tribunal that man you must take him into confidence put him under make him to work under the correct team. Instead of that what we are doing, it is not say people various circumstances, our brothers we can't blame, they will tell how did you get the promotion. how did you become very close to this judge, see why what is this? this we should not. you must get the feeling, you must be equanimity. magnanimity Eqanimity & magnanimity must clear create that impression, if you don't create that impression how is the judges going to come and closer to you? closer to you for not yourself work, closer to you from the viewpoint of discharging your functions effectively. the confidence if I can talk with

the judge, I think you must take permission from registrar so you have to apply to the registrar general, so, why permission. If any difficulty our senior most superintendent district judge is there our computer is there, if you click, my law clerk will tell me, I will ask, I have collected information, with all my busy schedule in this Sri Lanka, everything that information. you must take such kind of assistance, interns are good wonderful people are there Hindi law colleges, office no work at all, this this kind of small room 5 interns of working from different parts of the country Calcutta, Delhi, people, repeaters are there, why are you coming? SIR, we are gaining more confidence. so I am also getting their more help, therefore I am permitting them. So, this kind of outsourcing, not Outsourcing contract work, like Supreme Court the... people are all outsourcing 309, we are violating Supreme Court is violating the fundamental rights high courts are violating the fundamental rights contract basis so this must be stopped so, for this purpose Oberoi you get this the chief justices if you the Supreme Court wants me you invite me, I'll tell , I'll give proper inputs for better work standardization of Roles Responsibilities of Guardian Judges, uniformity approach, if you apply this your pendency will not be there. You must, a work culture must inculcated. They are working 8 hours they are working 10 hours they are working, no result why? conservative method, they are working very mechanically not they are working scientifically, we are not working with clarity. That is why long judgments, that is why long hearing, that is why we are the entangled in the problems, And dishonesty in ourselves is a problem. And equanimity treatment is not there, problem. So, unless we or the institution separate our district judiciary which constitutes 97% of the judges I'll tell you it is not possible. Like this we have to standardize our district judiciary a vibrant judiciary for avoiding and finding out the solution, aaaaa, resolution of the old cases, number of pendency cases, number of pendency cases, more number of cases will come, then the police station resolution will be stopped all those people will be under our control and Rule of Law will be there. If one day judiciary does not function, the Rule of Law and anarchism in the society you will see. So, therefore if one judgement Lokayukta is not appointed within a week or two weeks we will appoint, we will intervene. There is no Article 50 is not not division of separation of power, if you fail we will step in. One must have the courage and the conviction at the same time one must have the love and affection. One must have equanimity, one must have the clear vision, one must have the clear thinking, one must have the intellectual not dishonesty, intellectual acquisition of property and control and that intellectual the weapon we can handle, you can improve, you can take the country forward. All this good

governance all this if you handle, ...will stop all the policies the money will go if you handle the persons who are squandering, put them behind the bars and send them to the jail, for that you must have the courage and conviction, for the constitutional functions in your seat and give that massage, you are all my brother and sister judges, we have got full confidence in you, be honest, do your work honestly, don't get influenced from any extraneous considerations, are your gene including your gene, you must suppress your gene functioning to saycharacter, nothing will do except the work work work, honesty, honesty, honesty, integrity, integrity, integrity and commitment, commitment and Rule of Law. This should be the mantra of the Constitution. I think...suggestions some some suggestions.

Hon'ble Justice Navin Sinha: I think we have reached a few conclusions:

1. What Justice Gowda said, my personal view is I agree with 100% to the aspect that yes there must be a meeting of Portfolio Judges to discuss Inspections etc. But perhaps the Conference of CJs with some Portfolio Judges there, because ultimately, the CJs, and I am saying this being a CJ my self that it may prove a little more useful the Academy can think about it it can be done by video conferencing, you can have it here, of course face to face will be much better. That will help a lot.
2. the other one is, I think that we all agreed that some kind of model norms by the Academy, if a High court does not want to follow it , its the High Court's privileged....but some thing aaaa for example there is one committee which is being constituted in the last CJs Conference and I am one of the members also, aaaa we are drawing up standard benefits to the given two judges High Court Judges, Supreme Court Judges after retirement and it is going to be in the form of recommendations only. So, that all over the country today we have different arrangements in every State. We have held a few meetings they are drawing up a uniform. So, similarly I don't know the academy can consider this that we can have any model norms for the :

1. judicial work
2. Assessment of judgments
3. Code of Conduct
4. I would like to go to the infrastructure also, because of course this would be at the State level again. because what we did was we had designed standard court rooms for the District courts at district level at the sub-divisional level and residential

quarters according to the designation of the judge. So, now what happens, all you need is an administrative approval from the High Court, there is no *jhamela* about what is going to be the budget approval of budgets, costs, every thing is uniform.

so there are lot of things with which we can come in. And one more thing I would like to ask suggest to the Academy, can we add, what Justice Gowda was saying, can we have a system in the norms where there is a separate column for identification of problem issues in that District. The record, ...today also it is there, it is not that, I have also held inspections, when we give our reports we dobut then it is a part of the report and a part of the compilation. So, if you have a separate identification, of the problem issues in that district it can be the bar, it can be the infrastructure it can be electricity, it can be computers, it can be man power, it can be stationary, it can be anything. So, therefore let us hope that the NJA thinks about it.

Hon'ble Justice Gowda: The evaluation of the work is concerned yes!, 5 criminal court judgments, civil 5 on that basis you can't evaluate the performance of a judge. I tell you. the major districts which I was the administrative judge, my predecessors, 3 predecessors did not write 1000 ACRs before my elevation as a CJ I wrote and completed all those things while deploying a mechanism each judicial officer wise my district judges the senior most judges persons who worked under me, persons who are at an access with me while travelling across the State morning, evening after my Court hour, 4:45 - 5:00 to 8:30 I used to ask my member secretary of the legal service authority and my private secretaries like this, 2 months I sat in my chambers I wrt each one persons work after getting the knowledge from different sources I wrote the ACR. ACRs are written very mechanically by the District Judges also. About there the sub ordinate judges in the District, various columns are there those columns they don't study they don't understand with great respect including the High Court, the portfolio judge. Very very important, that will have a serious civil consequences in so far as those judges are concerned, they will get demoralized. We should not allow our judges to get demoralized. That is another bane the junior most persons is promoted senior for no fault that happened in Orissa, Senior most person, was denied the promotion, he is excellent, one sitting judge now, when I went there I noticed that 2-3 persons the other 2 persons were junior to him became very close to the 2 one & two, the whole full court was against me, but I stood firmly, in their favor, usual side I wrote the judgment, got implemented, judgment which was wrote not implemented Full Court, they were not giving out side very difficult but I was very

very firm. So, evaluation of work injustices is another bane where the people are desperate, dejected in life is one more reason. These are all things must be, this is a cancerous disease for our brother and sister judges who are in the helm of affairs. It CJs responsibility to see that every thing must be harmonizedly allowed to function. He must ascertain, he must take to play a role, what is the difference between yourself and another brother judge in the High Court? What is the difference between that judge and this judge? You must inculcate a a a a a culture that a the brotherly feeling will simply , mechanically we can't whether you like it or not my brother, my sister, but stabbing behind, for nothing at all. This is another the sad story which is prevalent in the Indian Judiciary from top to bottom, top to bottom. This is my experience I am telling, I am very very forthright in my views I am candid. From top to bottom the the the story today. This is so, so much even...that's why person who is heading the institution, persons who are the heading the Districts, must play very very, very very important role in a impartial way, in a fearless manner and you must have, give so much of love and affection to them, under same time you must be a tough task master, tell them I am very kind and soft, I am very hard you must do work. I mean business, so this is possible, and even ...work today is another, of course, you can't say i don't have time , yesterday in my preparing thisOberoi did not tell me for this purpose, of course I preparation is experience, i am with experience I am telling and I was preparing for Sri Lanka judges I wrote 5 ACRs which were pending and cleared it and send it to the Supreme Court Registry. What is the difficulty you can work, see you must know, how to do your work methodically, and with the Science and technology so much developed it is advantage for us. So many persons and so many infrastructure is available now, every thing is in the internet, everything is in this internet, any topic for that matter, either music or health or culture or anything so we have to change your attitude, we have to develop our mindset. We must change our mindset, you must change your attitude you must have the aaaaa that, the urge to learn, learn and transmit, transmit, earn love and work for the nation, that kind of zeal is there, everything we can zero degree Jammu Kashmir our warriors are protecting us what is the difficulty for us to protect our people by addressing the issues.

SESSION II

Challenges faced by Guardian Judges

Speaker: Justice Navin Sinha

Prof. Oberoi: Actually flowing from the what last Session had discussion, Sir I had 1 or 2 questions before you begin, this is relating to challenges faced by guardian judges.

Hon'ble Justice Navin Sinha: Don't worry they will say a lot of things about that. Even I have to say a lot of things about that.

Prof. Oberoi: I know, but I have one question, when about this bail, when they are scared and therefore they shift the responsibility to High Court judges, that you grant the bail, when you gave that example, Sir but isn't it aaa when they take oath, whether Magistrate, whenever they join they take oath, that they will exercise....

Participant: They don't take oath...

Hon'ble Justice Gowda: They don't take oath?....that's all

Participant: There is a formal oath, they take, Magistrates on joining...there is a formal oath

Hon'ble Justice Navin Sinha: *Nahi woh to*, that is not relay an oath, that is some kind of a program organised by the State Judicial Academy.

Hon'ble Justice Gowda: But then, being a judge, the definition of a judge, what ever level you are, isn't it the definition being, without acting without fear and favor?

Hon'ble Justice Navin Sinha: Madam, you are touching a very raw topic, aaaa we are organizing a conference next month, we have called Justice Patnaik and I have issued instructions that it is mandatory for each and every Judicial Officer of the State to be present unless he is specifically exempted in writing by the Chairman of the State Judicial Academy. And the topic we have framed is "morality, ethics and discipline of being a judge and a judicial officer". See, as long as they think, Number 1. *ki humko naukri mil gayee, aur humko promotion to milegaa hi hum, ho sakta*

haiI, some of them see visins ki hum High Court judge ban jaaenge otherwise they know ki nobody can touch me now, hum District Judge banke to retire hongee hee. Number 2. That we are all brother judges here, I don't want to say anything more, than that their fears and apprehensions are not totally wrong.

Participant: You are correct, absolutely correct!

Hon'ble Justice Navin Sinha: I don't want to say anything more, I have been a judge a High Court judge for 10 years, I don't want to say anything more..... No no forget cases, all of us have gone through experiences, I have also, been a part of the ...No, no Navniti that is a totally different thing, ...aaa we'll go a little deeper into that, we are all brother judges here, aaaa there can be difference of opinions, there can be disagreements, but I think we are here for a healthy debate, so that aaa, according to me the whole purpose of the Academy, I also came here as a, aa I used to come here regularly as a Resource Person, I started coming again, aaaa, according to me the whole purpose of training, if I were to use the language of aaaa, American Business Man, called Tom Hopkins, the whole purpose of training is to ignite your brain to think, what ever is told in a training is not something to be gone and practiced, that is what I believed in. Its just information, on which you get a platform to start thinking and then you find your own solutions, right. So, therefore when we are talking about problems, challenges faced by guardian judges, *Hum ek kahaani se shuru karte hain, Patna me inspecting Judge the Iek particular District se a judicial officer came.* I am sorry if any one of you have difficulty in following Hindi, please pardon me and just raise you hand the moment I start speaking in Hindi. I will understand thatno if you have any difficulty, just give a sign from your hand, I'll understand, I'm making a mistake...No if anybody has any difficulty, you slightly, you don't even have to do that just raise your hand I'll understand I'm making a mistake. See, this judge came to me and he said, that Sir, 4 of my judgement of criminal appeals have been affirmed by the High Court, and I had been denied promotion? So, my answer to him was look a judge like me will promote a person whose 4 judgement I have to upset. When I have to clash my mind with his, he is not wrong, totally wrong, but he is not absolutely correct. So, when I'll have to clash my brains with his to set aside his judgment, I will give him promotion. Rather than a judge whose conclusions are correct minus the reasons, right, so, now, as far as problems faced by Guardian Judges are concerned, *humses poocheeye cJ banne ke baad kya kya problem aata hai? Abhi lunch ke pehele, tea ke cofee ke pehle baat ho rahi thi, about a aa sexual*

harrasment ka baat hua I'll tell you I am telling you honestly, I refused to meet lady judicial officers at home, i don't call them home, any lady judicial officer wants to meet the CJ, she has to come in the High Court, and when my Registrar Vigilance is a lady, now I keep the Registrar Vigilance and the Registrar General both present in my chamber, when I am talking to her. So, those are problems which you'll all have to find out solutions but, problems faced by Guardian Judges me what brother Navniti said some of them I think we need to do introspection, or *ek judgment hai, itna jo aaj discussion ho raha hai*, so, much of discussions that is taking place, if you just read there is a judgment in (1999) 4 SCC 579, *haan Justice Wadhva wala*, This is at paragraph 33 of the judgment, and there is another page paragraph 33, then there is another one this is (1999) 4 SCC 579, particularly for Portfolio Judges, this begins at 579, *achcha it is there in your reading material achcha*. So, it is there, which page is it, no this *Ishwar Chand Jain, para 33 is at which page? Paragraph 33* is crucial if you permit can I read it out? I'll come to that also. This say:

This is a judgement by Justice Wadwa, *aur ye 26th of April, 1999 ka hai., hum log 2015 me hain*, today we are still debating the same things. So, there is something seriously wrong. Right! and atleast now it has attracted the attention of the Judicial Academy *aaa, 2004 se Academy se interact kar rahen hain*, in one form or the other, *yeh topic kabhi nahi aaya thaa. kabhi nahi aaya kabhi discuss bhee nahi kiyaa. This says:*

Since late this Court is watching the specter of either judicial officers or the High Courts coming to this Court when there is an order pre-maturely retiring a judicial officer. Under Article 235 of the Constitution High Court exercises complete control over subordinate courts which include District Courts. Inspection of the subordinate courts is one of the most important functions which High Court performs for control over the subordinate courts. 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 root 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 judicial officer is made or marred. Inspection of subordinate court is thus of vital importance. It has to 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 harms than good. As noticed in the case of *R. Rajiah* : AIR1988SC1388 there could be ill conceived or motivated complaints. Rumour mongering is to be avoided at all costs as it seriously jeopardizes the efficient working of the subordinate courts.

33. Time has come that a proper and uniform system of inspection of subordinate courts should be devised by the High Courts....

(It doesn't say High Court, it says High Courts it was coming from Punjab. So, in 1999 this was being discussed.)...

In fact the whole system of inspection need rationalization.

Then *uske aage utna zaroori nahi hai*. Now there's another judgment of (2000) 2 SCC 339. Is it also there in your material? This is *High Court of Allahabad Sarnam Singh*...it is there. Paragraph 26 and 33. So, therefore this is slightly lengthy, this *hum log chor denge parne k liye, but ek cheej khalee isme point out karenge* again with reference to challenges. Here what the inspecting judge did was he went incognito to the District Court, right, and he wrote in his report, i had gone incognito, i spoke to the lawyers, i spoke to some of the litigants and I spoke to the people in the Court, this man is corrupt and he put it in the ACR. We just read that the Supreme Court said that the careers get marred. Now, I'll leave it to your imagination, whether I am talking about Patna or I am talking about Chandigarh, aa Chattisgarh ?But I was faced with a similar situation, and I will leave it for you to think whether I am talking as a Chief Justice or I am talking as a Inspecting Judge. I will not go into that. But I was faced with a similar situation, because of judge having gone incognito, made inquiries, and aaa gathered information in this manner. When I made my inquiries, I was given a counter version, right, now that poor fellow, he lost his chance for elevation to the High Court. He was material for the High Court, he lost his chance. Now what I am time to

suggest is that now I would like to have responses, *aap log se, challenges me to pehle duniya me sabse*, the most difficult thing in the world is to look inside ones own self, it is very easy for us to find fault with the other person. But it is very difficult, that is what I believe in, it is very difficult for any one of us to look into ourselves and acknowledge that these are my weaknesses. I need to handle myself here. Now, can we have a discussion here only for this purpose, *recording wecording nahi naa kar rahen hain?* only for this purpose that we jot down certain points, which comes out from the Academy because I think this is what the Academy was created for right and these Judicial Officers that I am talking about, that when I used to come here as a Resource Person in 2007 and 08, aaaa, they used to speak, I had difficulty but I weighed them speak, they would speak, and then *aisehi lunch karte samay, etc. jab unse poonchte the ki how many of you speak in your own High Court?* In your own Judicial Academy? all of them were quiet, no no there we don't speak. And I'll tell you one more thing, at that time the aaa people who were here they said, Sir, they are speaking in front of you they don't speak here also. So, whatever Justice Gowda was saying, *ki humko, confidence buildup karna padega...*

Participant: ... one is that the inspection being a fact finding mechanism not a fault finding mechanism.

Hon'ble Justice Navin Sinha: Just a minute,...fact finding mechanism,....

Participant: All these inspection notes in an question and answer form, it will be followed by every Court, in some High Courts there are only reports , in some High Courts there are only inspection notes.

Hon'ble Justice Navin Sinha: Means that while going back to what you are talking the Rules which we have here, I have got, Chattisgarh we have framed Rules just now, I have got the guidelines of Patna, I have got Rules of Himachal, I have got Rules of Punjab, and I have got Rules of Orissa. Right! there they are framed Rules, they have this what you are talking about.

Participant: Inspection question and answersnotes with us. The question will be for example like this: Cheques being received from insurance companies, whether they are being deposited in a civil court set up, from thehaving...If there are any instances of cheques...like that there will be a question, question will be answered....like that there will be so many questions...

Hon'ble Justice Navin Sinha: I'll add to it, how long does it take a file to travel from the ground floor Court Room to the 1st Floor Court Room?

ha ha ha ha ha....

Allahabad has 98 pages of questions.

Participant: now, what had happened was, in the e-committee, we were just going through the National Data Grid, that was opened, inaugurated that day, and the NIC people were trying to show, how versatile it is? , and how deep you can go into each judges working. In January we had a meeting at the Supreme Court, e-committee, and that is the day when the National Data Grid was inaugurated, and they were trying to show us, how versatile the system is that you can monitor each judges performance and you can go deep into his list, and it just so happened Justice Madan Lokur said, that lets see Patna, I said yes yes, lets go ahead, and the first thing, nic had it ready, I came to know later, the first thing they said *ki* there is one miscellaneous appeal, pending before the ADJ for last 15 years. I said it shouldn't be he says see the reason, because they have to record the reason and that goes in the National Data Grid, the reason was awaiting lower court records. I noted it I came back, I rang up the District Judge, I said what is this? Then I said where is this lower court? Which lower Court does he means? He says the ADJ is on the top floor, the immediately below is the Magistrate, its only the roof of the floor that separates them. 15 years

Hon'ble Justice Navin Sinha: I request all of you to very seriously consider, the National Judicial Data Grid, as Portfolio Judges, i'm going to talk of it straightly from the point of view of challenges and as a whole as a portfolio judge. The National Judicial Data Grid, *zyaadaa deep nahi jaaenge...* you speak to him what ever flaws are there they can all be addressed. The officers have to be pushed, but I'll give you a small example, I was the chairman of the computer committee in Patna, where Justice Navniti Singh is from. I received a mail from Justice Lokur, he had forwarded there was a stinking mail from the US by a person *jiska koi property dispute Patna me chal rahaa thaa....*my case is not progressing I am not getting any data no information the last data is of this date I rangup the District Judge and I gave the details to the District judge and I said I will forward you the e-mail. The District Judge rang me back in half an hour, he said *ki haan Sir kiuch galati huee hai, ek ghante me theek kar denge,ek ghante me theek ho gaya, theek ho karke usee raat I replyied the mail to Justice Lokur.* 2 days later I got another mail, from Justice Lokur forwarding a mail of that fellow from America, it was a 1 line mail. Oh I didn't know, people still work over there. now what I am trying to say is *ki aapka as a Portfolio judge moniter karne k liye, as a portfolio judge who manage and monitor every thing , please use the National Judicial Database.*

All said, you'll have to get after your aaaa District judge and tell the District Judge each Presiding Officer is responsible for his own entries. *Wo karega hee nahi, entry hee nahi karega....*

Participant: Now once again the entries, unfortunately NIC is not disseminating that information of ...use it, now let us say, aaa if you an inspecting judge for Buland Shehar, all you have to do is logon to the National Data Grid, check-in Buland shehar, you have a list of all the judges there, one -by-one, one-by-one, each judge, and it will give you the entire cable, which are the cases which are pending for more than 5 years, which are the cases pending for 10 years? Why they are pending? the total ...lets say he has got a lets say, aaa lets say 200 cases, it will divide the table 30% is 5 year old, 10% is 10 year old, more than data, ...than you have, of each individual judges. Now, unfortunately NIC is not training us to get into this, otherwise its so simple you don't even have to ask the District Judges to give the reportevery thing is there.

Hon'ble Justice Navin Sinha: Navniti, this is not the topic here, with due respect I don't totally agree with you, yes I partly, agree with you, with a little effort by the High Court judges, the portfolio judges, aaaa, there is enough material available, you can start monitoring your judgeship from your chamber. Now talking about challenges faced by guardian judges, aaa, I would like to have your responses, don't talk about, the the judicial officer, I would like first, to all of you ...to share your views about where we are going wrong? We doesn't mean that I am talking about Justice Navniti going out, or I am talking about any other brother going wrong, its just a general identification based on our own experiences where, mark my words we are going wrong. Where do you think the problem lie?

Hon'ble Justice Navin Sinha: He is promoted from the services so he has seen both sides of the coin.

Participant: yes Sir! blue eyed boys and girls, I don't say more than that. Supposing a inspecting judge comes, an officer performed excellently well, he will pickup a case, which is pending since a long time in that court and banks him and makes him sleep. Another judge who is poor everybody in the District judiciary knows that he is a poor performer, he will be elevated by taking something which is good in his report, then he is given a pat in the back.

Hon'ble Justice Navin Sinha: So therefore shall we put it like this, they are identifying personal prejudices and idiosyncrasies and a little lack of fairness. He is not wrong, he is not wrong!

Participant: No it happens many a times,...

Participant: Sitting in Division Bench, Presiding Criminal Appeal, I suddenly came up these are old hearing, I came up issue notice to the trial Court on the question of Sentence, I said issue notice to Trial Court, I have seen issue notice to the aaaa party, then we went 302 conviction, and the Session Judge, District Session Judge, he was the Trial Court taking a sympathetic view of his conduct and his age, 5 years rigorous imprisonment. So, the notice was issued by the High court to the judge, 302 and 5 years, there's no discretion at all, and he was a District Judge mind you, the reply came that this was my 1st Sessions Trial, which was a blatant lie because , District Judge, it can't be his 1st Sessions Trial because he had to come through ADJ and we said ki where is this fellow? He had been elevated to the High Court and he had retired.

Hon'ble Justice Navin Sinha: My answer is last time I was here as a Resource Person, *Srilanka se High Court Judges the, District Judges the, wo net se yaha kuch judgments pad ke aaye the , unke yahaan, 10 saal hai, life impresonment, there were judgments that matter was referred to Supreme Court that aaa, and the judgment was, that if the Courts are legislatively forced, to prescribe the minimum, to follow the minimum standards laid down in the law, it takes away the exercise of the judicial discretion by the judge. on 376 me 10 saal se gira karke 2 saal kar diya, kyonki wo larka jo hai, the girl was a minor, kyonki wo larka apnaa naam dediyaa us bachche ko, and was looking after the upbringing of that person* so therefore it was considered a mitigating situation. So different system at to what brother Naavniti is saying aaa, I theek hai, ...no but that is one, now challenges faced by brother judges I would what brother judge said, that aaa, this is a fault on our part.

Participant: Yes!, because aaa, our High Court is new, new High Courts have bigger problem, that is exactly that's why I just wanted to share also, I have this peculiar problem, because we have to also recommend from the subordinate judges also, apparently what we have seen from the ACRs is the (I am from Manipur High Court, recently 2013 all of us there are 4 sanctioned aaa posts 3 of us CJ obviously from outside and also from the Bar; 2 of us from the bar, 1 is due from the Bench, I am in subordinate court). When we looked at the ACRs all very good, very good, very good, very good, about 10 officers, CJ I wont name him,said recommend them, Sir how can I recommend him I know these persons, and this is not the 1,2,3 not even fit for being a High Court judge, but there is nothing in the record, then Sir, I will not be recommending, you can proceed but I'll not put my signatures, So, there was stalemate, he said okay forget it. But these things cannot go on, because we have to recommend we cant deprive that from the subordinate judiciary, so therefore the

problem which I face is, that there are only so far we are discussing about these verifiable factors, whether he comes in time, how many cases he has disposed, what is the quality? What is the quantity? Whether he has got the records from the lower or upper? these are all verifiable, but when it comes to integrity no body will come forward, this lawyer will come, saying Sir, how can you when he does so I also no from my own information from my own knowledge, but nothing on record. now, if I mention there obviously, because the judge my chief also writes correct it, if it is a an verified you say you are spoiling his career I said but that doesn't mean that I am going to recommend because there is nothing adverse, for being appointed to High Court it is not a promotion I don't consider it to be a promotion, yes will look into the seniority but then this is a very important integrity I am not satisfied, I know, only thing is that new lawyer will come forward with. for example, bail application, NDPS Act. 2 FIRs, one container Contraband prohibited non prohibited, totally ignoring, I mentioned in my judgement, of course I didn't ask for any because without any proof. I have got all information Bank near station so and so, so I cost him, I asked for cancellation of bail but that's it. So, therefore I am just trying to find out from others like my seniors also, most of you are more senior in in bench, so, how do big deal with this Peculiar problem? as it is unverifiable.

Hon'ble Justice Navin Sinha: agreed to hundred percent, and add my experiences as chief justiceI am hundred percent in agreement with him and I have something in my mind but I will not speak as I want all of you to speak I will come out with my suggestion bus but I personally feel that these are biggest problems possibly we are facing but as an administrative Judge Judge I can't approve it. basically they want their coccus over there. Kannada problem was also sometimes ...cross talks amongst the participants.

In the beginning you don't know any thing *maalkhana kya hai?, nazarat kyaa hai? jo High Court bar se aata hai basically they*what I agree that in 3 or 4 months a District Judge should visit the District. It is a sort of fear you know, their job is to protect them also and guide them also,

Hon'ble Justice Navin Sinha: Shall we put it this way, you believe that there should be more regular interaction between the portfolio judge and the subordinate judiciary. The regular interaction leave for the judge to decide how he will work it out. Whether he does it on video conferencing, whether he goes physically, whether he calls them.

Participant: *hota kyaa hai, saal me ek baar gaye, phir jo hai ek...poori team jo hain jaati hai inspection karne lagti hai jaake, jo bhi karti hai, half day Bar Association chale jaate hain, Bar Association me you will deliver your speeches and all, raat me dinner ho gayaa, do din aise beet gaye wapas chale aaye jo, staff ne jo bhi banaya, report weport banayee aapne dekha signature kar diya.* This is what actually happens. Personal interaction...*Bar ka bhi pull & pressure rahata hai, ...*These are practice things which I am telling.

Participant: Justice Koteswar's question was different, he is right how, do we ascertain, because, you know it is a fact corruption is not something or questionable character is not something which is in the form of a written document right? We know, we all know and we all understand what is known as "spoken integrity" its a very well used expression you know, but the problem which arises there is that when you know the man is questionable, all his ACRs will show fine, because it is based on the judicial work, which is also good, let us also presume, how to dive down to such a thing is a problem, I don't know how to most Courts we don't know how to travel with it because the record, because a minute, you see, you can't drive down doubtful integrity 2 any because he can be immediately question it and rightly so even in a judicial proceeding. how can you write this without any proof and he is right. Though you know absolutely that his integrity is in doubt, but you have nothing to support it, you cannot write the south comma spoken integrity is the word which is only used in formal usage.

Hon'ble Justice Navin Sinha: I think what brother said was correct key hum ko kya pata Lage ga, one day I go for 2 days I enjoy the dinner and come back this is what actually happens.

Participant: Even if the record if everything is fine and we know his doubtful character how to beat, how to we approach that topic? ...

Hon'ble Justice Navin Sinha: ...that particular breed about which we are talking, it will be very difficult to catch them on their orders.

Participant: now we have been grappling with a similar program aaa problem, now in one case I raised an issue, this judge he just can't consider even for district judge, Park him as a family judge. So, another judge says why? I said just seen, aaaa, 16 navigation, serious allegations were there, enquiries were ordered to departmental proceedings were ordered, all of them consigned. so there's nothing, his record is absolutely clean. Technically he is correct, his record is clean. but the very fact that there are so many allegations including very serious allegations, does speak

something. when you come to his performance, excellent, excellent, excellent, outstanding, so he said, now the previous inspecting judges, ,integrity beyond doubt, everthing, we have to find the judgment. the supreme court in one case has said, that general reputation, now you have to note, the inspecting judge if you notes, is General reputation is questionable,note that cannot be questioned.coming from a High Court judge, I am not ben, because its, general reputation you cannot bring about a proof.

Hon'ble Justice Navin Sinha: I will try to use better English language that's all.cross takls, still have something in my mind but anybody else? we have identified one issue this is a very crucial issue.

again we are talking about the personal prejudices and idiosyncrasiesthere are interference between administrative matters and judicial matters, ...cross talks, No but tell us what is the solution to this? human prejudices of coming in, human feelings are coming in.we're following you very collective correctly you are basically talking about human feelings inspecting judge personal prejudices of the inspecting judge should not be there. we can only.... this is something which we can recognize... last 3 years.... no no that's alright we're not disputing that, we are not disputing that the inspecting judge, his open may be motivated, we are talking of a problem, where that the officer has a integrity, but on paper nothing is coming, everyone no everybody knows. now how to tackle that?

Hon'ble Justice Navin Sinha: Just a minute, no no you are right we are discussing that but what he is pointing it out is equally important, now he is pointing out is that there is also a need for a self introspection and accepting the fact that there is a need for us to improve also, am I correct?

Participant: Sir, if "X" & "Y" are excluded judge who is interested...get elevated.

Hon'ble Justice Navin Sinha: Brother I have been a judge for 10 years I have seen that happening, how people are ready to jump ques! I have seen that happen. You don't have to exercise that. No but, what was just discussed...anybody else has a suggestion.

Participant: The person who is the most popular at the out line station, I am not asking about the person who is posted at the District level and in the District Head Quarters. The person who is sitting and posted at an out lying station of the District, there is sub-division or Blocks, and the most corrupt judge is most popular in the out lined District, because he is relief oriented judge.Whenever you go and interact with the bar, then bar will say he is a very good judge posted

in our town, because without any study without any debate they are getting the relief from such court. Only something is going on somewhere, that is not on the record...and whenever we go, suppose as a portfolio judge to visit the District, once in a year, there is no sufficient time with the portfolio judge to go and inspect on every month and every fortnight or weekly, but whenever we visit at that time, what is the tradition, I think aaaa your area also the tradition is the same, the ACR of all the subordinate courts or higher judicial officers are prepared by the District Judge, and only the ACR of the District Judge is prepared by the Portfolio Judge everywhere. In such situation, if suppose the ACRs are prepared by the District judge, he is visiting every month, he is taking a meeting of the subordinate judges in every month end preparing all the data and sending all the data. But the portfolio judge is visiting only once, in one day he can't see anything as your Lordship has stated as I interacted right now. These are in a position to go to outline station in the District Head Quarter, more than once in a year....

Hon'ble Justice Navin Sinha: *Hum ek cheez suggest karen, ...asI Patna ke inspecting judge I did it very sincerely. I am doing it in Chattisgarh as a Chief Justice, so here I am able to do it in a better manner. Freez one day in a week, one day in 2 weeks, 1 day in a month, what ever you want. Ask the entire judiciary of the district to be present in the conference room, aur ek ek karke video conferencing pe baat kariye. Try kariye, 1 ghanta lag jaata hai, dekiye kitna cheez pata lagta hai.*

Participant: But there you must spare such time, the CJ has to accommodate in that...

Hon'ble Justice Navin Sinha: No why the CJ only, you are the inspecting judges....

Participant: Because the time is not, the time is a very limited. 5 days you are working in the judicial side in Court, and there are Lok Adalat, there are different programs.

Hon'ble Justice Navin Sinha: *usi me nikalna padega...usi me...*

Participant: No now you see we can take out time I can speak for my self, the CJ and my self we are sitting every week every Wednesday, we are fixed from 4:30 to 6:30 we are in video conferencing every week. we pick up one District and for 3 hours we are on that. t is having effect but then, the problem which I have said,....

Hon'ble Justice Navin Sinha: *lucknow me legal services ka anual function thaa, without going into the details of it, humne kuch suggest kiyaa, to mere bagal me, doosre Executive Chairman baithe hue the, jo ki Punjab ke Acting Chief Justice hain, wo pakar ke mera coat kheenchna shuru kiye,*

hum bol rahen hain, while I am speaking he is pulling my Coat, So, was just looking at him and I kept speaking....*bahar jab nikle*, he said what are you saying, One District Judicial Officer a backward district Judge is not been able to go to the dentist, there is so much of work pressure....no but what was being discussed, supposing I would suggest, number 1. as he was very rightly said, as far as inspecting judge is concerned, we have no choice, what would depend to a great extent on the District Judge, he is the eyes and ears of the inspecting judge or the portfolio judge. If the District Judge is letting you down, you have to speak to your CJ to replace the District Judge, right! aa aa I was taught by my seniors as an inspecting judge, that look you can't possibly find out every thing about the District yourself, you need information, and your District judge is the man on the spot, you have no option but to depend on him, and if you start doubting the District Judge you must have very good grounds to do it. Because you are careful about selecting a District Judge. The presumption is District Judge *ka post hold kar raha hai*, in the olden days District Judge was very...

Participant: ...can you please elaborate about the video conferencing?

Hon'ble Justice Navin Sinha:...Now, if I were to say, *abhi jo baat ho rahi thee*, what Justice Navniti said by the words about what the Supreme Court said about the "General reputation" I think most of you will agree with me that more than our conduct, it is the perception or the perception that goes from our conduct, which decides our reputation....cross talks.

.....(not understandable)

Hon'ble Justice Navin Sinha: There brother my answer would be, that, if a Full Court the ...of all the Hon'ble Judges sitting together arrive at a consensus, I think that by itself should be sufficient.

Participant: It is the Supreme Court which says that the Full Court has taken a decision, it is not open to the High Court of the judicial side,...(cross talks and arguments retaining to the process of particularly compulsory retirement)...the problem arises that the corruption matters that I am trying to raise is that how do you pin him down? If you take it to the Full Court, there may not be unanimity, there will be a group of people who will say that there is nothing on record...like I gave you the illustration we were discussion about a judge, 17-18 serious allegation, 2 disciplinary proceedings all dropped, see they are all dropped its a clean chit, no there is nothing against him, for God's sake why is it, so when it comes to Full Court you may not have a unanimity, there will. (lots of cross talks not clearly comprehensible).

Participant: Justice Kotishwar's main question is How do you ensure that something which cannot come on record, because there is no record of that, how to stop such an officer?

Participant: now, suppose, a liberal judge, he may have the reputation, a person who is very strict, (cross talks and voice heckling) therefore what I say is that you will have to find out what exactly is the reason for that...

Hon'ble Justice Navin Sinha: I'll add to what you are saying, I'll add to what you are saying, a judge as was suggested, that a judge has an outline station, he is a very popular judge, nobody is controlling him there, he is giving relief. All of you will agree with me specially those who had experience, that those judges who are doing that, there will rarely be any complaints against them. The complaints will come against the judge who.....

Participant: Let me share one experience what has happened, what Justice Koteswar said, aaa the same thing happened, the judicial officer was, considered before the collegium of judges for recommending the name to be elevated as a judge of a High Court. The Full Court, all the judges know, knew, that the particular judicial officer is, has a doubt in the integrity, but there was, all the records were so clean, that nobody can say anything about him, then the collegium said that this is the position, if the records are so clean I can't I can't deny that particular gentleman the right to recommend, the name was recommended, it went, but thanks God some good sense prevailed at the higher level, it was not got through, it came back rejected, but this is really a problem that there was no other option to the collegium but to refer the name because the records were so clean. Though everybody knew that it is....

Participant: See, brothers why I am interrupting is , we are not talking of case, whether inspecting judge's integrity may be doubtful? We are assuming, that inspecting Judge is alright, we are assuming that the judicial officer is, no no inspecting judge he is above doubt, we are assuming and the officer about whom he is considering, he is corrupt with a clean record. Now, how do we deal with that?

Participant: The previous 3-4 inspecting judges are also above board they got the integrity, they have written well, suddenly everything goes wrong, whether the information received is correct or not?....

Participant: no no again, again, no no no no again you are going back to the inspecting judge, I am saying forget the inspecting judge he is above integrity, we do have an officer here, now you are

assuming, that every judicial officer, unless proven to be dishonest has to be assumed to be honest, now that is where we are differing, that no, we know that he is dishonest, but nothing, he works very well.

Hon'ble Justice Navin Sinha: Navniti, just a minute, what brother is saying is different, both are important.

Participant: No no that's there....but that is not the question that we are answering just now. We are not concerned with that fact situation. (cross talks, loud and not clear)

Participant: I am questioning the source of information....yes exactly!

Hon'ble Justice Navin Sinha: Please let us try and understand one thing aaaa, he has come from the Service he has seen things from another perspective...

Participant: Justice Sinha what we are saying is, when we go to his problem,here first of all the problem is different...

Participant: Yes! we are not doubting that even for a moment,we have a peculiar fact situation, we have a peculiar, we want an answer to that.

Hon'ble Justice Navin Sinha: We have already identified, what you are trying to tell, we have already identified that issue, and there is a problem with regard to personal prejudices idiosyncrasies and a little bit of lack of fairness inside ourselves, we have acknowledged that, now what we are discussing is that here is a person, who everybody knows, but there is nothing on record, what do we do?

Participant: I can I suggest something which is also a much larger question, I'll put it to the house. You know, during the days this NJAC judgment was to come, the 2nd part, the 2nd Chapter, you know lots of talks were going on, one thing which was suggested was that, that, the the, they were talking about the eligibility criterion, right! some suggestion was that, please don't restrict elevation whether from the High Court to the Supreme Court, or from the District Judiciary to the High Court by this , by this I think the the hugely negative word which has now become seniority is, take total of 3 batches together, take a total of 3 batches together whether on the District Courts, or whether High Court, because you see some people have better resources, some people are appointed earlier, some people are appointed later, no plus minus takes place, so that the seniority concept is not totally taken away, and so that there is no arbitration that you will pick up

somewhere right from the bottom. Take let us say 3 batches or let us say 3 years appointments together, from those 3 years appointments, add to that factor that the judge who is of the highest age in that group, that judge who is otherwise is Constitutionally qualified or 5 years add that to that bracket and from them then select. Then this issue, this is a much larger issue which I am telling you, it will also take care of the issues that if you want to avoid someone on that ground of integrity, right, you can say, that look out of this pool we are able to take this particular. Its a very Its a very, I will aaa concept which people may not easily agree with right, but if we are going to, if if, some sort of, is adopted that lets not go by batches, let us pick the number of batches, and then add to that batch the, from that batch who is the, in the agewise the maximum than other age group people from that Court be taken together, and possibly, I think that's my personal view, the integrity, the seniority concept which is destroying our institution which everyone agrees, right, because we all know, as human beings there are better judges there are not so better judges, I mean I give a simple example which was given by brothers the other day, from last year when Supreme Court has started that how many cases, you know give your judgments, now see how wide variance is there amongst all High Courts, in some of our judges, they are giving orders of consent disposals as a contested judgment, they are putting that on the website. There are judgments by which a person is withdrawing case because of settlement before the Delhi High Court Mediation and Conciliation Center, they are putting that as a consent judgment. What I am trying to say is that the seniority issue is effectively debilitating our institution, if this system comes into force, without going right in the bottle, alright 2-3 batches are considered together, right! and out of that it is focused picked, even this issue of people of doubtful integrity will also be taken care of. But, are we ready for it? Are we ready for this concept which is a very drastic concept? But, it will be one of the best remedies which as an institution, why pardon me to say one thing I am saying, there are judges who do work equivalent to atleast 5 other judges of the same court, at least 5 other, and you can make it out, because some judges will pickup the easiest the cream, minus small easiest cases, dispose them off. Yeah that is also a disposal. Are we ready for this drastic concept? if we are ready there are lots of problems which you can solve by this.

Participant: You were saying about 1 judge doing the work of 5 judges...(not audible)

Participant: Yes! its a fact, they will never touch complicated cases, they will never touch difficult cases, and even if they don't want to, they don't even do easy work also...

Hon'ble Justice Navin Sinha: So, therefore we have identified:

1. that the purpose of inspection as was suggested was - Don't go with a mind set to find faults, go with the mindset to find solutions.
2. There are personal prejudices, idiosyncrasies is an issues with regard to guardian judges, which needs to be, what should we say?...no no I don't want to write..ha ha ha ha ha...needs to be addressed. then most important which emerged was
3. The question of integrity as far as subordinate judiciary is concerned, a serious handicap with regard to you know everything, you have nothing, what do you do? right, now that i think we have debated sufficiently, and I think the only thing that comes out is, as you said as the Supreme Court judgment has said "General Reputation", what I told you what my seniors told me, that you have to depend on the District Judge he is your eyes & ears. and the final what I was suggesting is that,
4. If a high Court judge writes in the ACR (I am just asking, I never wrote it, I never had that occasion to write, but suppose if I were to write) that I can't aaa, I have nothing positive in my hand to say so, but having spoken to the aaaa, to the concerned, to the stake holders, there is a general perception of ...

Participant: but very dangerous, sorry your name I Sitaraman, Justice SitaRama, this is very dangerous because, ...fact we know a particular judge has not made a portfolio judge happy, see Delhi we don't have a problem, I told to my brothers, Delhi we simply have, a committee of inspecting judges for judges, each different District, are like 3judges committee 25 judges, 5 each from each District or 3 each from each District. So, the problem of 1 person being a King or 2 person being never arises.

Participant: ...Some concrete material should be some concrete material should be there, before giving any such adverse report ...cross-talks not comprehensible.

Hon'ble Justice Navin Sinha: *Delhi ka naa to whether original hai, na log original hai, saare Hindustan se aate hain, naa politics original hai, fusion music hai, Delhi ki baat alag hai...ha hah ha ..truly cosmopolitan court.*

Participant: Your material may be collected and gathered from the writ petitions or the proceedings come before the High Court under Article 227 because under Article 227 whenever an interlocutory order of the subordinate court or the trial court is challenged, and then the order you may see you may consider the potentiality of that our judge, whether he is going on right side or he is going to the wrong side.

Hon'ble Justice Navin Sinha: Sir, again the same problem, we will be breaking now, tell us something *jo issue hum log discuss kar rahen hain*, about the in conduct or misconduct of an intelligent judge who doesn't leave any foot prints on the sand, right now, *aap jo keh rahen hain...*

Participant: nahi under old days when section 115 of CPC was in existence and every interlocutory order was challenged by way of revision, in civil side at that time every CJ was sitting in a single bench for 1 hrs or 2 hrs at every bench of our State and he was observing the subordinate Court through that civil revision.

Hon'ble Justice Navin Sinha: Sir, Sir, Sir, I beg to differ with you what you are talking about is easy situations to identify, what he is talking about is trying to climb Mount Everest from the other side. ...

Participant: cross talks...

Hon'ble Justice Navin Sinha: we are winding up for lunch, what I am saying is these issues which have been identified this is for according to me this is what the purpose for which this Academy has been created. To do some thinking its for the Academy now to

Participant: how to resolve it ha ha ha ..

Hon'ble Justice Navin Sinha: Not resolve, I would like to use the word....suggestions to make the guideline.lots of cross talks ...

Prof. Oberoi: We will come back at quarter to 2.

SESSION-III

Developing Standards for Evaluation of Judgments

Speakers: Justice S.J. Mukhopadhaya & Justice Navin Sinha

Hon'ble Justice S J. Mukhopadhaya: So, good after noon to all of you brothers. I was not here in the 1st Session, the first part of the 3, 2 Sessions or 3 Sessions whatever they are, 2 Sessions. But, the topic I find is very interesting. You are talking is and aaa if you get the children who do not understand what is judgeship? Then what is your problem? You know you are the guardian, and your children if they do not understand what is judgeship, so what will be the problem? Therefore my intention is to practically merge the two Sessions 3rd and 4th together. Because Character Role this developing the standard for evaluation of judgment is part of the Character Role. For the purpose of Character Role we will look into this apart from those who are in the collegium they have a separate role to play. Therefore we will be just going first initially on Character role in nutshell. And sometime I cut joke, because some people say ACR "Annual Confidential Report" and when they write, they say Character Role is good or bad, not Annual Confidential Report. So, I used to think what is Character Role? Then I could realize from cinemas, the Character Role artists, you know "Pran" is always playing the role of a villain or whenever we find "Amitabh Bachan" means role of a hero, another character role somebody is a mother, somebody is police inspector or police officer "Iftekar" So, is the role played by him is reflected from his character. So when we evaluate the character role so evaluation of the character role generally we find out what is the character of the judge? So, different items are written (this is in the next Session actually) but one of the item is evaluation of judgments. Now evaluation of the judgement, it varies from judges to judges, it will be varying from Court to Court. A judgment delivered by a 1st Appellate Court will be different than the judgement delivered by any trial judge in criminal case. It will be different in CBI court where the trial goes on, and after long long time a judgment is delivered, 200 pages - 300 pages, lengthy judgments. So, it varies. generally we look into 2 - 3 aspects, i.e. narrative portion how the marshaling of fact is there, then how the argument of the parties have been noticed, the judge they express their opinion and come to a conclusion and for that we look into the clarity of expression, we look into the logical reasoning given by them, we look into the application of law on the fact of the case. These are all there and known to all of us because the all High Courts, all of us were or are (you people are) the Administrative judge, or

Judge-in-charge or Protocol judge or Portfolio Judge or Whatever the nomenclature is there is the guardian Judge. Now many High Courts, I had been occasion to visit, to be there in 4 High Courts. 4 high Courts which includes Patna High Court, Jharkhand High Court, Madras and Gujarat. In 4 High Courts I have seen 2 different ways, apart from looking into the judgments, we used to watch in Patna High court and Jharkhand, during the inspection we used to sit with the judge. A judge is holding the Court in one side I'll be having my chair, watch the proceeding, generally they know that the judge will be coming so, they will be asking the lawyer to be ready, so it is all got-up still, watching the proceeding, what type of questions are put by him inside the court, what reply is given? what is he noting down in his paper book? or if the evidence is taken, whether he is taking the evidence or somebody else is taking the evidence? So, all these practical aspects we used to watch. For forming an opinion, before looking into the judgment, that for type of judge in the matter of... but, when I went to Madras, and thereafter in Gujarat, I find that there is no such procedure, so practical knowledge of watching the performance of a judge even in a dramatic manner, so, somebody is fine asking the question, somebody is very aaaa, you know, they want to know that i know everything, so they are asking questions, so that we used to watch. But, in Madras I find, Character Role it will come, evaluation of the judgment it will come, the judgment will not come. But Character Roll is written. Now, how many courts are calling for judgment for evaluation, before writing the Character role, this is one part. The second part is, you know the judge, while you are sitting in appeal before the, in the High Court. So, judgment of the judges are coming, so if it is your jurisdiction where it is there, so you may be more vigilant, that I am the incharge judge or the judge-in-charge, or the guardian judge of District "A" and this comes from district "A", so I'll be more vigilant in that judgement, what is the mistake etc. etc. Now, should I ask a question now to you? Starting from your side, what is the procedure followed for evaluation of judgment? Yes! High Court? which High Court? Do you call for the judgment before writing the Character Roll?

Participant: We call 5 judgments...

Hon'ble Justice S J. Mukhopadhaya: you call for judgments alright. Next you are from?

Participant: Orrissa High Court, call for 5 judgment

Hon'ble Justice S J. Mukhopadhaya: you call for judgments alright. Next you are from which High court?

Participant: Andhra Pradesh and Telangana State Sir, we call for the judgment, we select, random selection also....

Hon'ble Justice S J. Mukhopadhaya: alright! you are from?

Participant: Kerala, same we call for the judgment.

Hon'ble Justice S J. Mukhopadhaya: You are from?

Participant: Madhya Pradesh, call for the judgment

Hon'ble Justice S J. Mukhopadhaya: you are from?

Participant: Allahabad High court, call and select random judgments.

Hon'ble Justice S J. Mukhopadhaya: Patna, followed vijay, you call for the judgment,

...so all the High Courts almost are calling for the judgments. Not Madras. not Gujarat, I see both the High Courts are not here. Then the next question is have you, anybody anyone of you have called for the order sheet? to find out what type of order sheet is dictated?

Participant: I have called for the records also.

Hon'ble Justice S J. Mukhopadhaya: Record, only the judgment or the record of the case.

Participant: Sometimes if we feel we call for the records also.

Hon'ble Justice S J. Mukhopadhaya: If you feel, otherwise in normal course?....So, if that is not seen then court craft, you know there are various columns,....therer are High courts were the visiting the Districts is there.

Which are the High courts where before writing a character roll or evaluation of the answer sheet no visit is required. All High courts the judges are required to visit the court before evaluation of thecross talks

Participant: Not mandatory but....

[00:10:08]

Hon'ble Justice Navin Sinha: that is different, but I think all of us we carry out inspection and in the same process...

Hon'ble Justice S J. Mukhopadhaya: So, inspection you visit, at that time you go through the Order Sheets also? Because Order Sheet is also important, not only, evaluation of the judgment, because short orders are, you know there are courts who are passing short orders, which are interim orders etc. that reflects on the nature of the judge. You know judge who is rejecting all the applications, a judge who is allowing all sorts of applications. What I have seen as a Supreme Court judge aaa, period undergone 2 days alright, 3 years period undergone 2 days alright, period undergone half a day alright, so he only writes period undergone. I am talking of a High Court judge of one of the High Courts. I do not know what type of judgments are being written by different judges, therefore will you deliberate on the issue and suggest, how you suggest about evaluation of the judgment and as we are saying order sheet? What generally it should be done? And you note down so that it can be communicated by the National Judicial Academy can take up the matter on the basis of the suggestion of the Hon'ble Judges with the CJ of different States so we need some suggestion, opinion. No what has to be done in addition to you know, that these will know guideline for all High Courts with regard to evaluation, is the personal perception, you know, the , in which cases, the expression of the judge, clarity of the judgment, which portion of the clarity is to be seen? What type of clarity? opinion, then forming of opinion, then coming to a conclusion etc. You think that it is required to be aa codified a little bit like that, or order sheets with regard to the similar matter, what type of orders were passed?

Participant: If you codify it you will be killing ingenuity.

Hon'ble Justice S J. Mukhopadhaya: No Not codified in that sense, that means which can be intimated, I am giving you, a person has given hearing, he has adjourned, today he has given hearing after 2 months again hearing, after 2 months again hearing, reserving the judgment, delivering the judgment after 2 months. So, 6 months he has taken. I do not know what he heard on the 1st day, I do not know what he has heard after 2 months, what he has heard in the 3rd day after 2 months, and delivering the judgment after 2 months. May be 6 weeks within the period, if there is a pray, period prescribed. Whether anything to do with that qua the standard of judgment? Therefore, some suggestions are required from your experience. Those suggestions can be, you know they can note down, and it can be exchanged between the High Courts, all High Courts, so that there should be some common type, now how many judges are here? 13-14-15? How many High Court judges are there? How they will come to know that what is the deliberation that has taken place? Your brother judges should also understand that you have applied your minds at something. And if you say that you do it, they will be not happy, everybody has their own impression, own way of dealing the matter. So, you cannot impose your impression. But, certainly we can circulate through the National Judicial Academy to the CJI for further circulation to the CJs, who may just for the purpose of knowledge of the judges, may circulate it, that these are the things which is to be looked into. So, can you just explain that? Order Sheets are required or not? to be seen.

Hon'ble Justice Navin Sinha: Nahi Sir, one thing that Justice Mukhopadhyay said, I have practiced it and very successfully, i can give you 5 instances right now, but I don't find any one of you responding to it. What he just said was, there are cases, aaa, which are heard for 3 days, adjourned, heard 3 months later, again heard for 3 days, adjourned for 4 months, *matlab short break diyaa for* 1 reason or the other it kept getting adjourned it is taken up after 4 months. So, 7 months have already gone, and the judgment is coming in the 9th month.

Hon'ble Justice S J. Mukhopadhaya: And what is the effect on the judgment? you know we only look into the judgment...

Hon'ble Justice Navin Sinha: and if I may add one more word Sir, in that situation the person who is going to loose he is going to say that *9 mahine ke baad kyaa judgment likhayaa hoga?*

Hon'ble Justice S J. Mukhopadhaya: therefore,

Hon'ble Justice Navin Sinha: No there is a solution, no there is a solution to this,

Hon'ble Justice S J. Mukhopadhaya: that is the reason we have assembled here because, we have come here for deliberations, you know, for exchanging our opinions only. You have the vast experience on your side so from your opinion if you suggest, in this colloquium of the judges that suggestion can be used, you know we can not impose our opinion. Opinion is opinion, by way of suggestion the opinion expressed by the judges in the colloquium in National Judicial Academy. And if that is intimated I think some sort of guideline that can be circulated to all the judges. Or even they can take out the names of the judges of one or other High Court and simply communicate from National Judicial Academy, that this is the national judicial Academy in deliberation by the judges.

Hon'ble Justice Navin Sinha: *Bas bas*, there is there is no need to name Sir, just deliberation.

Hon'ble Justice S J. Mukhopadhaya: Deliberation by the judges.

Participant: Otherwise the...

Hon'ble Justice S J. Mukhopadhaya: No no no no no, that cannot be given, you know I know, they vanity of the judges, I am not talking of ego.

Hon'ble Justice Navin Sinha: *Reverse osmosis bhi ho sakta hai*.

Hon'ble Justice S J. Mukhopadhaya: No when I take you know, 1 of the doctors who is very close and known to me, at Patna, he was very unhappy with his case. The judges were hearing the cases in Division bench, He was very unhappy, he said when judges were hearing they said this Doctor they don't work they, you know dereliction of duty, this this this. He said why he was commenting like this? Why the judge was commenting like this he does not know that what type of doctor I am? he said so, So I said, doctor don't mind we as a judge we have some ego, in the front in the back, we are the sandwich in between. Just a minute, then he said, Sir, it is not ego, this is vanity, I said what you are saying? What is the difference? Sir, a person who has a knowledge, he may have ego, the person who has no knowledge, and he is thinking that I know everything about

doctors, it is a vanity. So, there are vanity of the District judges also, ha ha ha ha..you know why I am saying this things. When assessment of the character which is Character Roll which is there, in connection with that these are the things.

Hon'ble Justice Navin Sinha: Sir, what about, when the lawyer comes out of the Court Room and says the judge is a fool he doesn't understand me. That problem also,

Hon'ble Justice S J. Mukhopadhaya: For example marshaling the facts, has it noted down simply you know you can find out that from the plaint here, just note it down. You have heard 6 months back, forgotten everything, marshaling of the fact. Then clarity in the expression, then legal reasoning, if they are citing case law which has relevancy with the case or not? Many times they cite some High Court has said this. Which case? even the reference is not there given. Even which portion it has stated, High Court has said this, and you may find 10 page judgment and one may be unhappy, which 2 page judgment which has more clarity. Therefore, what is to be given weight-age? we are here for that purpose, to express our some sort of opinion to record that. I'll be requesting all of you please give 1 after another, you better note down this. About marshaling of the fact, i.e. narrative portion, any suggestion? yes!

Participant: There is a suggestions, point wise,...

Hon'ble Justice S J. Mukhopadhaya: Hun! there in the book, in the book....

Participant: at page 129....

Hon'ble Justice S J. Mukhopadhaya: 129 that is there, I have looked into it, "Model Opinion Review Criteria" Clarity of Expression: But here:

- Are the facts necessary to decide the case clearly and understandably presented?
- Is the ruling readily understandable (No facts, what they have stated we do not know beyond that)
- Is there minimal legalese so that a layperson can make sense of it?

- Could a layperson understand the reasons for the court's ruling?
- Is the ruling clear and concise?

Hon'ble Justice Navin Sinha: You know, what Justice Mukhopadhyay is perhaps asking if I had followed his Lordship correctly, that when a person sits down to read a judgment and we are talking about marshaling the facts by the trial court judge, what is the 1st thing which should be clear? When a judge is marshaling the facts, what, probably, what Justice Mukhopadhyay is asking is what should be the readers impression?

Participant: If the symmetry is formed that that he is really going in a symmetrical manner, there is a change, of the sequences which he is writing down, at least it may give some idea...

Hon'ble Justice S J. Mukhopadhaya: So, so so clarity of expression with regard to facts, facts to be expressed in a clari, there should be a clarity of expression.

Hon'ble Justice Navin Sinha: May I, may I add one more...

Participant: Logic and language, logic and language.

Hon'ble Justice S J. Mukhopadhaya: No no logic, language we will be going later on.

Hon'ble Justice Navin Sinha: If I were to add, that if I ma picking up a judgment and I am reading the judgment, and I am on the facts portion, do you think it is relevant that the person who is reading must be satisfied that the person who has written, has fully understood what he is writing.

Participant: ...the communication. Communication is what, communication means that it is a bridge between two minds. From one mind to another mind, when I am saying something, another should understand that thing, and for that purpose, logic and language.

Hon'ble Justice S J. Mukhopadhaya: No that is general.

Hon'ble Justice Navin Sinha: There should be a flow, there should be a flow

Hon'ble Justice S J. Mukhopadhaya: flow, i am talking of a fact, I am giving example.

Participant: I think that Sir, while writing the fact, the issues must also be

Hon'ble Justice S J. Mukhopadhaya: Issue is the next one. After the fact. Now, what I have seen in a trial case, that this matter relate to so and so he starts with his practical expression with regards to this is a double murder case. He starts with that, and then he said one night this happened and that, and then he is narrating about the FIR and then he says that, what witness has stated, and then again PW has stated, PW has stated. So, here also what witness has stated? there also PW has stated and then while expressing the opinion PW so and so has stated, so 3 places PW has stated andthe judgment.

Participant: at the cost of repetition, too much of repetition should not be there.

Hon'ble Justice Navin Sinha: There was, what Justice Mukhopadhyay is saying *abhi recently criminal appeal me judgment thaa*, exactly what his Lordship is saying, and it was in a 171 pages criminal appeal. Trial court judgment of a criminal trial, *wo hi reason thaa*. repetition was the reason.

Hon'ble Justice S J. Mukhopadhaya: So, what is to be done in those cases? You know, when...

Participant: In a judgment: the first sentence that its a double murder case shows his mindset that he is going to convict him.

.... cross talks not able to understand.

Hon'ble Justice S J. Mukhopadhaya: We are not talking of High Court Judges, we can't say anything about the High Court Judges....no I have seen trial Court judgments, I am talking of judgments, and judgments that they start with this, they are far judges, trial court judges, may not be in your State.

Participant: But, Sir the question we had also is because the judgment is written after it is decided, so what is wrong.

Hon'ble Justice S J. Mukhopadhaya: I am not talking about wrong! repetition of the fact, you know first of all some judges, they will write, the incident as reported in the FIR, so this is how the

incidence has taken place, and then on such & such date they the person came lodged a complaint etc. etc. and then one way of writing the judgment. Another is starting with that. I am not talking of the High court or the Supreme court, so when we talk of marshaling of the facts or expression and clarity on the factual aspect, what should be, in nut shell what should be eliminated? in that portion we can say that this should be eliminated only facts should be there.

Hon'ble Justice S J. Mukhopadhaya: Statement of witnesses should not be taken into consideration in the marshaling of the original facts, that we can say, that can be eliminated? Can we say so? While marshaling the initial facts for example in a civil case also, the witness will come later on, therefore let us write like this, there will be marshaling of facts, and clarity of expression of that, because clarity of expression will be every where, marshaling of fact it will be both in civil and criminal cases even in the first appellate case by the District Judge. Then there are statement of witnesses, issues (where it is a civil case then issues) then witnesses, just note down we will be just asking for the opinion of the judges, what should be there after another?

- So first will be the FACT(marshaling of the fact), followed by
- ISSUE (in a civil case) or no no I am not saying, but in appeal also, they notice the issue, i am talking of trial court, we will be segregating in appeal, we'll be segregating in appeal...cross talks...no no the issue question we are talking you know, make it otherwise in two portions, criminal case & civil case...when we go for issue then an issue becomes under Order 14. No no we will civil side you make it separate, criminal side let us confine to criminal first:
- FACT of the Case (Marshaling of the facts)you know as stated by the informant and then, as found during investigation, summary of investigation, after summary of investigation, ... no the the
- CHARGES, charges, and then
- STATEMENT Of THE WITNESSES, then
- STATEMENT OF DEFENCE, then,
- APPRECIATION OF EVIDENCE

Participant: it will become lengthy, now once the point of determination has been prepared, report has to ...

Hon'ble Justice S J. Mukhopadhaya: All right, alright, alright!!!...

- STATEMENT OF WITNESS & DEFENCE WITNESS and its APPRECIATION,(simultaneous appreciation), and then,
- REASONING for CONCLUSION (the reasoning for conclusion), I think we can go like that? Yes, in between you can write, before reasoning the Argument of the Parties.
- Participant: Argument will come every where,
- Hon'ble Justice S J. Mukhopadhaya: You can write, WRITING OF EVIDENCE, APPRECIATION OF THE EVIDENCE, & THE ARGUMENTS OF THE PARTIES (Simultaneously). and then
- REASONING FOR COMING TO A CONCLUSION. and then
- IF CONVICTED then SENTENCE.

(this is in the Trial Court).

Participant: Mention of case law...

Hon'ble Justice S J. Mukhopadhaya: that will case law alright,

Participant: *Argument me aaa jayenge*

Hon'ble Justice S J. Mukhopadhaya: You argument supported by the ARGUMENT you just note down there if case law cited on such question, then whether that case law has relevancy with the evidence?

....

Hon'ble Justice S J. Mukhopadhaya: That we have , while appreciating the evidence etc. simultaneously they can notice the arguments of the parties also, because not to make it repetitive, because we said in the very beginning, huh briefly, briefly, any any more suggestion? you prepare it ...

Then CIVIL MATTERS:

Participant: In this matter we have to bring some other things also, suppose we the guideline is given to the judges...

Hon'ble Justice S J. Mukhopadhaya: Not guideline.

Participant: It is guideline if it was to be decided in such a fashion the judgement to be written by Sub-ordinate Court.

Hon'ble Justice S J. Mukhopadhaya: No no no, no no, for our appreciation value, it is not for them, they will write in their own way, we are not training them, let the National Judicial Academy train them, for the purpose of our appreciation of the judgments, we....suggestions for appreciation of the judgment by us. Look if these parameters are followed A+, a little bit .. then A, then B+ basic requirements for appreciation of the judgment, only for that purpose. We are evaluating, not for them, it is not meant for them, because people may write their judgement according to their choice.

CIVIL MATTERS (If you can say like that again): CIVIL TRAIL MATTERS:

- MATERIAL PLEADING IN THE PLAINT & WRITTEN STATEMENT.
- ISSUES, then
- EVIDENCE, APPRECIATION OF EVIDENCE, ARGUMENTS, SIMILARITIES,
- ISSUE-WISE FINDINGS, Issue -wise Reasoning etc.

In APPEAL: (No in civil generally, civil appeal) How you start with?

- GIST OF THE CASE (Cross talks)...(I do not know what is there but after the judgment is delivered in many of the Courts Decree is prepared by the office, no signed by the presiding officer, they do not...practically it is the ministerial job which is being done and here we are talking about the evaluation of the judgment only, why you are not going on, you know, we are making a distinction)
- Participant: My Lord that is a part of the judgment. when you are going to pass you will...in which manner it has been passed, then when he is going to pass the final decree, in which manner...

- Hon'ble Justice S J. Mukhopadhaya: Alright you note down the DECREE
- Hon'ble Justice Navin Sinha: No in a civil matter, shouldn't it be, when we are talking of marshaling of facts, aaaa, it will become very important, I'll come to why I said that, should not it be first Plaintiff case, then defense case, then issues,
- Hon'ble Justice S J. Mukhopadhaya: that we have done, case of the plaintiff in the plaint and the defendants in the written Statements, then the Issue,

Hon'ble Justice S J. Mukhopadhaya: Just a rough sketch we are giving for the purpose of our evaluation, the DECREE you can write it, though DECREE we cannot blame the judge. that is the only part that, aaa, because any,.....that is the reason we cannot blame the judge. No no...the there is a Decree Department, Decree Department prepares and the judge signs, therefore we do not rely on them.

Cross talks....

Appeal, APPEAL, CIVIL APPAEAL:

- GIST of the case (Participant: In first appeal.) Hon'ble Justice S J. Mukhopadhaya: natuarally there cannot be a second appeal there cannot be. Hon'ble Justice Navin Sinha: would not it be first briefly the judge will have to develop that art, the 1st appellate court, 1st paragraph, is what the fight was for, first gist of the case then a brief discussion, and brief gist of the judgment.cross talks
- PLAINTIFFS CASE
- DEFENDANTS CASE
- GIST OF THE JUDGMENT, then
- GROUNDS OF THE APPEAL, then
- POINT FOR DETERMINATION, with the REASONING etc,....

Hon'ble Justice S J. Mukhopadhaya: Any thing more in this side? and What do you suggest about the Order Sheet? Can we say something about the Order Sheet? Can we say that the Order sheet should also be evaluated?....cross talks. Doctors prescription...It will be in telegraphic language.

Hon'ble Justice Navin Sinha: I think what we can do there is , today aaaa...

Hon'ble Justice S J. Mukhopadhaya: In a bail matter please will you consider it, because some judges may only be dealing with bail matters etc. Chief Judicial Magistrate, major time is dealing with the bail matters. In Bail matters what do you look into? In bail matters?

Participant:in normal course.

Hon'ble Justice S J. Mukhopadhaya: No you also evaluate or not? They come for evaluation or not?

Participant: For the purpose of granting the bail or refusing the bail there must be some...

Hon'ble Justice S J. Mukhopadhaya: In the Character Roll when we call for the judgment, whether the bail orders are communicated or not? for the purpose of evaluation of the you know....Normally not. Can't we look into that?, should we look into that or not? Normally we do not do...

Participant: In subordinate Court there is a stationary matters, sometimes no merits are required besides the bail applications, if suppose any speaking order is passed in the bail matter at the initial stage then the matter is at the investigation, ya charge sheet has been filed, trial is yet to be held and before that if something is determined ...because of this logic, this is the case....

Hon'ble Justice S J. Mukhopadhaya: Sometimes we have seen, ...why I am telling you, in many courts it has been seen, which I have seen, practically a judgment is delivered, holding not guilty and then granting bail. ha ha ha ha have you seen that type of judgment or not?

Participant: that is a tentative opinion...

Hon'ble Justice Navin Sinha: No but that should not be there.....

Hon'ble Justice S J. Mukhopadhaya: No no not tentative opinion, he holds, he holds,...

Participant: Because sometimes the Supreme Court says no reasons are given, sometimes they are saying we have given reasons...

Hon'ble Justice S J. Mukhopadhaya: Generally, generally, generally, I have seen the clever judges, they put in the mouth of the prosecution or the defense and on that basis they grant or do not grant. As per the defense this is the thing, this is theprosecution and therefore we grant. So, reasoning

is there. In any case so you say that its not necessary to call for theno no speaking order is not required. All right

Cross talks amongst the participants.

Hon'ble Justice S J. Mukhopadhaya: No no why I am asking you you know we are not in the question of appeal sitting in the appeal. I am looking from an angle of writing of the Character Roll. You know some judges, who are expert in granting bail, for the reasons best known to you out side the Court, and you cannot write while evaluating the ...

Participant: Some judges are used to grant bail in one crime before 3 days application of one accused was refused, after 3 days another accused situated in the similar circumstances has been allowed, after 3 days the first accused whose application was rejected was...

Hon'ble Justice S J. Mukhopadhaya: We will be, next Session we will be entering into the Character Roll. ha ha ha... and this role of the character of this type of ...

Participant: In such a situation if one judge has written 2-3 orders then it requires for the evaluation of the orders.

Hon'ble Justice S J. Mukhopadhaya: But, but but, if you don't go through it how you will come to know? that is the reason I am asking question because next Session will come when the Character will come with regard to integrity, integrity yes! Character Roll part of it is evaluation of judgments. I am telling you when we will come to the character Roll, that talks of his behaviour in the court. is behaviour outside the court, his behaviour with the lawyers, behaviour with the superior offices, his behaviour with the subordinate offices. Assessment of the evolution of the judgement, these are the 3 things clarity etc. etc. integrity very very difficult task. integrity good integrity very good, integrity excellent I do not understand this. how integrity can be good, very good, excellent?i can understand that the integrity is beyond any doubt. integrity beyond any doubt or integrity is doubtful. there cannot be a grading, should we say so or not in the next Session will be there we should say when we will be writing integrity, should we go on grading good, bad, very good and should we say that is integrity is beyond any doubt? for integrity is doubtful. So, there are two types of classes, XXX that we will be discussing because now 2:30 XXX

according to brother Sinha I have not allowed him to talk, who is the speaker, our time is over in this session.

Hon'ble Justice Navin Sinha: no just, we have got 15 minutes as we started at quarter to 2.

Hon'ble Justice S J. Mukhopadhaya: no no brother but we have to end in the proper time. *aap add ki jiyee naa, challenge naa uske baad.*

Hon'ble Justice Navin Sinha: what is the justice Mukhopadhyay has said I will request you to kindly consider two or three things. whatever has been discussed that is the basic. I just want to go a little higher than that. I was reading a book by, US *kis State ka thaa yaad nahi hai, State Supreme Court ka Judge* Richard Posner, the name of the book was "How Judges Think" and when I read it I found search great similarities that my reaction was that I think judges all over the world think the same. all the issues which he has mentioned, I felt that every day as a judge myself. the first issue which justice Mukhopadhyay has said where the judgment is delivered after 9 months, I said in the morning that we all go by experiences. I have done this in Patna, I have done this in Chattisgarh and and I am doing is very successfully, 64 pages ka judgment 74 paragraphs in a criminal appeal, I sent it to my brothers just exactly, after the 7th day of the hearing. and even in Chhattisgarh a 69 pages judgement, I sent it to my brother just within 5 days. All I was doing was, we are getting Technology, day before yesterday, I want somebody to challenge it. I have told the family judge to use Technology. I have given directions in my order sheet. online 4:15 got down from the court whatever notes I prepared that day in the courtroom when the lawyer was arguing I wrote it ask for a cup of tea common emitter steno sit with me, dictated with clarity the argument made on that date and save this in the computer. Did nothing just saved the arguments. because everything was fresh, I had just heard and at 4:15 I had just come down. so, there you are, so, nobody said this. nobody said this, there you are! so therefore, that closes the discussion. next, I have a view, my view is, that, when I am evaluating a judgment invariably define marshalling of facts excellent, discussion of evidence correct commerce appreciation of evidence correct conclusion hundred percent correct, the body of the judgement is missing. the adjudication, the application of mind that is missing in trial Court judgements. Then, the other thing is, marshalling of facts is there, the arguments are there, evidence is the body of the judgement, the discussion by the judge, showing judicial application

of mind, to the facts and the evidence, reasoning, reasoning Sir, reasoning, *judicial order me to reasoning rahana chahiye naa*, according to me reasoning is very important from one point of view. A man who win the case,

I have always believed in, a man who win a case, he is not interested in knowing the reasons why did has won, he Run To The Hanuman Mandir *Tu Chadahoo laddu* that I have won the case it is.... I am starting from the base which justice Mukhopadhyay has laid, so now I am talking about a person who has won a case. he has no grievances with the judgement. The fellow who has lost, he will sit down to read, he wants to understand, did the judge understand my case first. no sir aap marshalling of facts Jo Bole he wants to understand did the judge understand my case? why husband just said this, why has the judge did not send that? which means otherwise according to me, the judge otherwise should write a judgment which should be as transparent as a Glass while reading it, giving an Insight of the mind of the judge, by the reader. what was passing in his mind? why did he say this why didn't he say that? he may not say I said this I did not agree with that, he's just sayin this, but is the reason displays why he is saying this, and why it is not talk of that. another issue which I found \is I will give two examples, 1) divorce case, this book that I was talking about personal producers of a judge. what happens is at times you will observe in a judgment, it is the judges personal thinking, personal social his personal social beliefs, the society that he has grown up in, IT controls his thinking. there was a divorce case, and the boy and the girl who knew each other, before they got married both working, *shaadi ho gayee* now the question arose who will give up the job? the boys said to the girl, you give up your job and come. The girl said, I am earning more than you, you give up your job and come. then finally they tried a compromise, the girl will ask for a transfer, she couldn't get get a transfer, so she could not join her husband and husband applied for divorce on the grounds of desertion and the reasoning given by the family judge to grant divorce was,that we are in Indian society. mail comma he did not use the word dominate, I am forgetting the word, conclusion was that, I am unable to remember the language but it displayed his personal prejudice. according to him, because they were Indians, it was the Indian society,it is a girl given off the job and joined her husband. job was not important, living with her husband was important, and therefore desertion divorce justified. so what I'm trying to say is this kind of a judgement speak volumes about the mindset of the judge. Likewise in 376 matters, now if a judge is aquitting and he is talking about the loose morals of the girl in his

judgement, these are the things which need to be avoided. things which should, should not these be important factors to evaluate the judge? how do I evaluate a judge?

Hon'ble Justice S J. Mukhopadhaya: actually win when we are reading into the Exclusive portion we cannot write it, and it should be excluded, it should be excluded. marshalling of the fact, that means, for me at a glance comma without looking to the facts, can I see clarity if it is there or not? I understand from the from the very beginning of the fact I understand what is this case. reasoning, clarity should be there. again, to understand what the reason is. so if the reasoning is wrong, then your opinion will be accordingly you will be forming your opinion. so that will vary from judges to judge.

Hon'ble Justice Navin Sinha: Sir you have to adopt some standardized procedures.

Hon'ble Justice S J. Mukhopadhaya: you see, we cannot go into the mind of the judges for the purpose of forming opinion, about the expression of a particular judgement. that will have to leave it on the judge.

Hon'ble Justice Navin Sinha: absolutely, absolutely, but at the same time don't you think, that the judgement should be able to communicate with the reader?

Hon'ble Justice S J. Mukhopadhaya: yes, yes! that is the reason why we're talking of clarity. already said.

....cross talks

Hon'ble Justice Navin Sinha: Business School matter one of the High Court judge wrote, that this is happening that has happened, Supreme Court said, judges can't decide cases based on their personal prejudices, and experiences in life.

Hon'ble Justice S J. Mukhopadhaya: no there is a story, just I will be telling your story open magistrate. the magistrate went to his boss, a district judge, he said Sir, I need 13 days leave, so why, the wife of, the husband of my wife is dead. wife is dead exclamation, what foolish are you talking? yes sir, how many husband does she have? one who is the husband? Sir I am the husband. how do you say that you are dead? Sir, the telegram has come, husband of so and so and so is dead Rush soon! you know, your personal opinion you know that you are alive so throw it at the back seat. Sir, but you have thought that we have to go into the evidence. evidence I am

dead. ha ha hah ha. appreciation of evidence, sometime personal opinion should be also there should not be read in such a fashion, logically common sense should be applied.

....cross talks

So let us take a break, login me always unequal, that is the reason why....no but as a judge you can't afford it, no no no you cannot. With all due respect you know, the Nobel Laureate Rabindranath Tagore would have been there and if he writes about law I'll not be accepting it. noise different, I ask a question to some of the students, why there are father in law mother in law brother in law sister in law, why there is no husband in law and and wife in law? ha ha ha ha ...

Sumit Bhattacharya: Sir, there is a small announcement sir, biharwap film show that is "12 angry men" uska Hindi version is "*ek ruka hua faisla*".

SESSION-IV

Meaning & Scope of “Character Roll”

Speakers: Justice S.J. Mukhopadhaya & Justice Navin Sinha

Hon'ble Justice S J. Mukhopadhaya: Now this is a Session we are going to the Character Role, this is a practically continuity of the earlier one, in the earlier Session we want to add something, anybody wants to add something? We had left you with regard to the you know, just you can note down, with regard to family court judge and labor court judge, almost like the civil court they will have to...family court and the civil court judge.

Participant: Sir, there was one issue we, probably in the earlier session also I had mentioned, in Patna you will be aware of the practice we ask the judges to send 5 judgments. In some of the High Courts it is other way round. They are supposed to give the list of judgments given by them, or orders passed by them...huh on what subject they, and then the High Court at random, the Inspecting Judge will take send these files, because otherwise what happens is, he knows *ki judgment is saal dena hai, so 5 good* he will ghost author or otherwise keep ready.

Hon'ble Justice Navin Sinha: but tell me one thing, I agree with you 100%, I think most of us will agree with him.

Participant: You may tell another advantage to this, you see if a judge will deliver judgment if he has 5 or odd subject matters he will deliver only on one. It means he is not delivering on the others you know, or nominal judgement or the other, so that 80% of the 70% of the judgment are on a particular subject book.

Hon'ble Justice Navin Sinha: No but if I give a suggestion, what he is saying we are all in agreement with that, everybody said in the first half *ki yes woh to chin ke bhejte hai* they select what they want to send, now. What we were discussing in the morning are please consider it, I am asking you to think, you can do it in your own chamber. If you have any difficulty call the NIC people call your CPC, *National Judicial Data Grid se kholiye, uske orders uploaded hain, at random select kijiye aur boliye k file bhejiye* instead of what Justice Navniti Singh is saying is ki, cross talks....*nahi nahi sab ka aa raha hai*....

Hon'ble Justice S J. Mukhopadhaya: You see, whether,....no no, they may think that these are my best of the judgment, if they send it you know you look from those judgment, whether the quality

og judgment, why you go through random? because, letleave it on the High Court, I'll be asking only one question in the matter of this character roll when you are entering, whether we require any self evaluation by the judges? in assessing their character roll, how they assess them, ...self assessment like the income tax,

Hon'ble Justice Navin Sinha: It is already there...

Participant: Its Part-1, part-1 of the ...

Hon'ble Justice S J. Mukhopadhaya: In how many... the "self assessment" is there?

Hon'ble Justice Navin Sinha: + Participant: *sab me hai Sir*, Haan they have to certify ki what are , reporting their shorcommings and how they can improve... *achcha not all the High courts...*

Hon'ble Justice S J. Mukhopadhaya: I am talking of all the High Courts, self assessment whether that should be there or not? Now self-assessment on which court? which are the items or the heads, for which they can send their self-assessment? *nahi kyaa kyaa hai dekh lijiye, kisi bhi ek High Court Ka? Is me nahi hai.*

Hon'ble Justice Navin Sinha: No I can have it given to you people tomorrow morning. Justice Navniti Singh can get it from Patna also. we have got a standard formats.

Participant: Your format is here...haan

Hon'ble Justice Navin Sinha: *Usme hai?*

Participant: Jharkhand & Yours (Chattisgarh) is there so its virtually the same.

Hon'ble Justice S J. Mukhopadhaya: Which page?

Participant: it starts from page 215, i.e. Jharkhand & Chattisgarh is on 227.

Hon'ble Justice S J. Mukhopadhaya: Let us see one.

Cross talks....

Hon'ble Justice S J. Mukhopadhaya: Now look into Jharkhand one, for example, now there are 2 things and with regard to which there is no column. Whether a person is suspended during the calendar year, whether you are suspended, whether any departmental proceeding initiated? Whether it ended with any punishment inflicted? Whether that is also essential or not? page 216. This is why? ...no no Superior Judicial Service,they are superior judicial service this is not there

for the inferior judicial service ...achchaa, Part-II to be filled up by the officer. So there they have given 1 f)...huh it is there

1 f) Any stricture, adverse comments communicated or any penalty imposed in the current year?

Participant: pendency of proceeding is not mentioned here...

Hon'ble Justice S J. Mukhopadhaya: I am saying ACRs are looked into in the matter of promotions also. When you write a character roll, aaaa if these columns are there they are also looked into, otherwise what will happen, that the office, you will have to depend on office to give a note separately. And if you depend on office, then in some cases they may high light very, that he has been punished, this, this this, in some some case he was taken but now, no action has been taken. Inadvertence also, therefore whether that should be there or not, by the assessing officer, that should be there, that with regard to suspended in this year or proceeding initiated, pending or not.

Hon'ble Justice Navin Sinha: Show-cause, show-cause....

Hon'ble Justice S J. Mukhopadhaya: Proceeding, not show- cause, only departmental proceeding initiated or not? Because in that case one may keep it abeyance, seal cover, all those things confidential reports when seen, thereafter. because you require at the time of promotion, you require at the time of removing them from services. That is aaaa, "Dead Wood Theory" otherwise it is not required (Confidential Report). So, you can add to it, prepare like this Proforma, add to this 1 e), f), g), h) any other additional sources of income before that,page 215, 216, you can just lift it from the Jharkhand and add it.

Participant: 1 f)?

Hon'ble Justice Navin Sinha: Hun...1f) should be added.

Hon'ble Justice S J. Mukhopadhaya: just for the purpose of a circulation, then whether High Court will accept or not-accept, should be left on the High Court. No, we cannot say, but if self assessment, is done I thing you know, the officer can, the number of cases, no. of cases in the Sessions Case Suits etc. etc. every thing total, is to be given. And then, no. of cases pending in the date of joining, how many cases, 5 years old, 10 years old, achieved any so, all these things are there. i this can be circulated to all High Court, for information only. Then, about the assessment: When you assess, the officer, how you will assess about the behavior inside the court, and behavior outside the courts? Patna, i am not asking. Patna they go and they, see, they ask. So, do you assess

this during the period, all High Courts assess, make the character roll they write after an inspection of the subordinate court. So, should we suggest, that before writing of the character roll, atleast a month or 2 months before writing of the character roll, there should be an inspection by the judge who'll be writing the character roll.

can we say so?

Participant: It will be depending....

Hon'ble Justice S J. Mukhopadhaya: Yes, that is then what is the fun of my writing the character roll? If I depend on him?

Participant: No that is public knowledge also, because, you get complaints from the advocates, associations, anonymous, ..

Hon'ble Justice S J. Mukhopadhaya: No no behaviour inside the court which subordinate, outside....

Hon'ble Justice Navin Sinha: Yes, Sir, may I say with your permission, you have had much wider experience as chief justice, I have just started, what I am trying to say is, if we come from outside, and we are able to, develop sources of information and we start getting information and we are able to differ sometimes with the Portfolio Judge the opinion that he has given about a judicial officer, I will ask all of you to think as brother Navniti said, all it requires is, a little more attention and ear towards the District to which I am the Portfolio Judge.

Hon'ble Justice S J. Mukhopadhaya: I have 1 experience. good and bad experience I am telling you. The bad experience is, that majority of the courts they depend on their Registrar Vigilance (RV). and RV what happens he will give many complaints against one, he will not give many complaints against the other. While giving the note he will high light these are the complaints, another case he will not be highlighting. And what happens ultimately if the RV is there for 3 years they become "Boss of the Bosses". Even their Boss they come to their chamber, and then say they will offer, you come there and if he goes to the District Court, RV then he is like an inspector in a

Hon'ble Justice Navin Sinha: *Nahi Sir*, I did not mean that. what I meant was,correct it is a difficult job..

Hon'ble Justice S J. Mukhopadhaya: It is difficult, to rely on lawyers. Relying on lawyers I have seen again from my experience, that a good judge, whenever posted in a particular District the lawyers are not happy, they will write complain, if corrupt judge are posted, no complaints.

Hon'ble Justice Navin Sinha: That is what we were discussing in the morning....cross talks

Hon'ble Justice S J. Mukhopadhaya: I am Tamil Nadu, in one of the Districts if you post good judges, 100s of complaints, if you post a corrupt judge, there will be no complaints. Because compromise, therefore, getting an information from these sources, why we will not suggest, that the judge, he is a incharge-judge. He has a right to go to the judge, so whenever he visits , atleast before writing the character Roll he should visit at least 3 months or within 3 months ahead of writing the character roll. So, that he can collect the information from different sources, staff is there, lawyer is there, judges are there, others are there,he can also come in interaction with the judges, to know the nature of judges. Can we suggest this or not? Because all of you said that you visit. None of you have said it that we do not visit the....then if I am to write the character roll in the month of April, then in between Jan, Feb, March I should visit atleast once in a year.

Hon'ble Justice Navin Sinha: May I add one more thing Sir, based on one experience, I'll ask you to think about it. About this character roll part of the...aaaaa, if I were to suggest, that when ever we start hearing anything about the judge, in the District court, do you people think? (I'll tell you my experience later, I want your reaction, because ultimately you will decide whether I am talking sense or I am..doesn't need consideration at all) do you think it makes a difference if you talk to that concerned judge yourself alone in a room, to assess him?

Hon'ble Justice S J. Mukhopadhaya: Yes! I have talked. I used to meet the judges personally, I used to meet the staffs, I used to know from the staffs what is their opinion? I used to meet the lawyer. For example, whenever we used to visit the aaaa, particular judgeship the lawyers will invide in their chamber, they will offer tea coffee and talk very high of this and then raise demand subsequently. They will say Sir, I did this, this, this for Bar.So, in one of the District at Jharkhand, Dhanbad, I had been there, so they offered tea, coffee etc. gave thanks to me and after after giving that a demand was there. One of the demand was to remove one officer, because he is corrupt.Why he is corrupt? no, some, he he is not writing judgments, some lawyer are writing judgment. no. 2. he is taking bribe also, I give my reply when I was saying, I said alright, he they wanted that he should be suspended and removed, I said you have given the bribe, and then he has taken the bribe.

So, first you suspend your lawyer, from your roll, I'll suspend my judge. You remove your lawyer from your bar council list, that he will not be a member, I'll remove him. This reply I have given, but actually I called him, he was writing judgment in English. I called him in the evening, I said you know, you write an application asking for leave, in English. he was not in a position to write even two sentences of English and his judgments were in English, I have shown you how you are delivering the judgments in English, when you are not in a position to write the judgment. So, we had taken action. So, first hand knowledge, sometimes,

Hon'ble Justice Navin Sinha: *Ek experience aap logo se share karna chahenge* there was this district charge at Bihar, this happens some years ago before we came into double digit that is before 2010 he did something wrong. chief justice was so determined that the officer had to be dismissed. the district judge has learnt this that he deserves to be dismissed. I was the portfolio judge. and, the the the, additional district judge who told, with whom the district judge has behaved in that manner, he has also sent a complaint. and there were complaints from other sources also for the same incident I was asked to go there by the Chief Justice, and the chief justice was absolutely determined, that I am sending you a formality comma I told him let me find out once. the chief justice said that, I am sending you as a formality I want this man removed. and then of course, I pretended that I have come to meet on the judges, and I spoke to all of them one by one and then this just came to have made the complaint with whom the District Judge was stated to have not legal.... and I spoke to him over a cup of coffee for half an hour, I told him that you tell me this man is going to be dismissed tomorrow morning, the chief justice is determined to dismiss him. one word from you and he is going to be dismissed. but I believe that this officer has made a mistake. he is not that kind of a person. something went wrong with him. after half an hour that judicial officer said, sir Sahi bol rahi hai. he is not a man like this. humko bhi nahi samajh mein aa raha hai why did he deserved this. now, this happened only because of one to one interaction. the whole thing got settled.

Hon'ble Justice S J. Mukhopadhaya: within 2 months of the preceding assessment year, so maybe from January to January to December or maybe in April to 31st March. within 2 months, the ACR should be written by the inspecting judge. before writing the ACR 3 months prior to that, he should visit the district and inspect the judgeship, direct knowledge about officers and staff, maintenance of record, cleanliness, requirements of the judgeship including building structure, furniture etc. what they should find out. this is just generally ever written, you can

suggest if you agree, New Delhi tomorrow he will be showing you, then you can give it a shape, you can make a suggestion that this can be followed. yes one should...

Hon'ble Justice Navin Sinha: I want all of you to think about it, I don't know if all the other states have it or not? How much interest is the judge taking in the legal services matter? you're given extra points.

Hon'ble Justice S J. Mukhopadhaya: that is assigned work, they are assigned works.

Hon'ble Justice Navin Sinha: they are not assigned work as such, that is Secretary legal services, district judges when they given work on weekends to go and do some legal camps. those were given how much interest they take?

Hon'ble Justice S J. Mukhopadhaya: all is not given? then others will not be getting any points for that. Not in all Courts.

Hon'ble Justice Navin Sinha: alright, where it is, number 2 we are introducing now Hindi ACR separate column with regard to computer proficiency.

Hon'ble Justice S J. Mukhopadhaya: yes, computer proficiency one can write. In self assessment you will write.

Hon'ble Justice Navin Sinha: now, another thing that we are adding is, because in Chhattisgarhi have this as a big problem, I have a big problem, I am an Indian but still *Aisa Hindi likhta hai key Bina dictionary ke samajh nahi aata hai*.so, Industries justices conference records and legal glossary, prepared by the law department, so I took extra copies of it and I have given it to all my judges to keep it in the courtroom. now, we are coming out this time that a minimum number of judgments in a year in English language, you will give them extra points, extra units.

Participant: that may fall foul with the State ...

Hon'ble Justice S J. Mukhopadhaya: it will not be followed in Tamilnadu.

Hon'ble Justice Navin Sinha: look look, Navaniti, it is just the topic for discussion, nothing else,

Hon'ble Justice S J. Mukhopadhaya: No, no, you know with the chance of elevation to the High Court, start writing judgments in English. otherwise meaning of the states they have their instructions to write the judgement in their local language.

Hon'ble Justice Navin Sinha: no but just tell me that you have your peculiar problems, now, times are changing

Participant: example in Allahabad, in UP, district judges of district courts can't write in English.

Hon'ble Justice S J. Mukhopadhaya: Tamilnadu, they found to write...

Hon'ble Justice Navin Sinha: alright just a minute, just a minute I have issued another circular, because times are changing think of two things now, crime is becoming very complex, a judge, rights of very good judgement in Hindi,...

Hon'ble Justice S J. Mukhopadhaya: may I, me I, me I'll tell you one thing, the constitutional provision, says that there will be a language, High Court and Supreme Court will be in English language, provided other languages can be used so I am so so and so, but that is not there with regard to subordinate judiciary and therefore we should not force them, ...even additional marks.

Participant: we just conducted the aaa

Hon'ble Justice S J. Mukhopadhaya: A judge may be very good in writing a judgment in Hindi, but maybe bad in writing judgment in English. standard of judgement maybe deteriorating if a judgment in English. so how we can assess, the judgment? Therefore,....

Hon'ble Justice Navin Sinha: sir please look at the converse side, we are having practical problems. what is happening is, a judge has written a beautiful judgment in Hindi. it is translated into English by another person.

Hon'ble Justice S J. Mukhopadhaya: brother, we're getting in Supreme Court from all the states in different languages, they are translated, and you don't understand you don't understand the head and tail of it. But we deliver judgments.

Hon'ble Justice Navin Sinha: Abhi Sir, they have said, NJA has sent a letter, they want Registrar General came to me with that letter. They want 5 judgments from each POCSO judge in English, now my RG said Sir, where do I send it from?.

Hon'ble Justice S J. Mukhopadhaya: No.2 What i have, even in Supreme Court, Supreme Court, they don't have translators, now, so different language translators are not available So, different language translators are not available in most of the High Courts. No English, to ...no Bengali to so and so Hindi...Urdu, English, Hindi and other mother tongues, like Bengali, Tamil, Telegu and lawyers are asked to translate. And you understand the lawyers translation means the worst lawyer,

who has no work, he will be making the translation, or they have a translator who does not know how to translate. But, that is going on even in the Highest Court. I do not know how this correction..., but with regards to Character Roll, we do not want to commit same mistake, because the judge will write in Hindi, then he will translate in English, you know, many speak in...aaa. I was not a student from aaaa, English speaking school. So, eventually when we start to talk in English, we used to think in Hindi, then think in translating in English, then to speak like that. Now, they will be writing judgments like that. That is a reality...Yes you are not expressing any opinion as an independent person.

Participant: I'll just give 3 small things, we just conducted the, there they work in English, they have no problem in Delhi.

Hon'ble Justice S J. Mukhopadhaya: They translate the worst translators.

Participant: No, high Court, high Court works in English there.

Participant: 99% of the problems which are faced by the State High Courts we don't have it. 99%!

Hon'ble Justice S J. Mukhopadhaya: Why?

Participant: None what so ever, no problem of finances, no problem of stenographers, no problem of English, no problem of Districts, no problem of Portfolio Judge..

Hon'ble Justice S J. Mukhopadhaya: You you you are talking of District Courts?

Participant: Yes, Yes, High Court.

Hon'ble Justice S J. Mukhopadhaya: I, I'm not talking of High Court, I am talking of District Court.

Participant: I am talking of District court only, every thing is in English, A to Z. A to Z.

Hon'ble Justice S J. Mukhopadhaya: It may be because it is a Japani State....not a State within the meaning of the Constitution of India...It is not the State within the meaning of Constitution of India.

Participant: National Capital Territory of Delhi. Ha ha ha

Participant: No options they have to write the judgment in English, and English.

Hon'ble Justice S J. Mukhopadhaya: Why?

Participant: In the High Court it is the State language.

Participant: But, all judgments, all judgments, ...

Participant: No, no High Court yes, lower court? ...cross talks...

Hon'ble Justice S J. Mukhopadhaya: Brother may may may I tell you, brother may I may i may I cross talks....brother may may I tell you one thing, my experience from Tamilnadu, Do you think TamilNadu will accept anything which you suggest from North? Ha ha ha ha...If you suggest from North, it will be never accepted,English they are asking High Court, they are agitating, every day that you start your proceeding in High Court in Tamil. You know, throw away this English from the High Court and only Tamil should beso we should not impose something which will not be accepted by one or other High Courts.

Hon'ble Justice Navin Sinha: Sir, I would like to go into the discussions of the Academy, let the academy....

Participant: Now, I'll just give 3 illustrations we consulted the...cross talks...

Hon'ble Justice S J. Mukhopadhaya: what is Directive Principle? that State should encourage Hindi, not English, nor Regional language...

Participant: Iam just going to give 3 illustrations, ...now, we conducted the ADj,....the first writ application was filed, that the question paper was in English.

Hon'ble Justice S J. Mukhopadhaya: *Dijiye, hamey bhee ek Kitaab Dijiye Constitution Ka..*

Participant: So, I told chief what is the problem in deciding this? If they can't read the question paper in English then How do they read Supreme Court judgments? or the High Court judgments? no, we do have a book which is published in Hindi and English version of the High Court judgment. it is a private publication, they had translated, that.s not a authentic translation,but its there.

Hon'ble Justice Navin Sinha: Navniti Sigh that is all that we also read at the Law School also. translations of English and Hindi translations.he he he he...now, the 2nd objection that came....

Participant: there is a department a translation department a certain person has got employed. So, there was a Gujarati document, and the document was translated in English, by a Gujarati person, what he has done Sir, he is a very young one, he has simply what was written in Gujarati just spelled in English and the entire document was certified. i said who is going to attest it?

Participant: Correct very correct.

Hon'ble Justice S J. Mukhopadhaya: oh!

Participant: I must tell you Gujarati script and Hindi script are 95% similar, Marathi Also, Marathi also, I am not sure about it but, Gujarati I know. no Gujarati like *la is not there Chh* is not there. I said 90% they are similar.

Participant: Now, this 2nd objection which i was grappling is yesterday when I was coming to the airport, I got a report one of the papers that fellow has written in *Maithali* ADJ Exam, he has written it in *Maithali* and he was asked, *usme noting hai, he said, Mathili is a Constitutional language and* I have got a right to write in Maithili. you can debar me...In Bihar it is not notified as an official language.....that's a very funny situation, its a Constitutional language but not notified as an official language for State of Bihar where it is.... he has written the whole paper in Maithili.

Hon'ble Justice S J. Mukhopadhaya: You part A part 17, ...just we are reading you know, Part 17 of the Constitution, page 343, ...cross talks...

Hon'ble Justice Navin Sinha: Article 343 of the Constitution dealing with official language, which is somewhat similar to the provision for reservation which was suppose to be there for 10 years, that has got extended, this has not been extended.

Hon'ble Justice S J. Mukhopadhaya: No no, extended, extended

Hon'ble Justice Navin Sinha: *Kahan likha hai Sir?*

Hon'ble Justice S J. Mukhopadhaya: *Isme nahi likhne ka jaroorat hai*, that is why a separate Presidential notification they are extended. *Isme bhee kiya hai. read it full, full, 343...*

Hon'ble Justice Navin Sinha: —**343. Official language of the Union.**(1) The official language of the Union shall be Hindi in Devanagari script. The form of numerals to be used for the official purposes of the Union shall be the international form of Indian numerals. (2) Notwithstanding anything in clause (1), for a period of fifteen years from the commencement of this Constitution, the English language shall continue to be used for all the official purposes of the Union for which it was being used immediately before such commencement: Provided that the President may, during the said period, by order authorise the use of the Hindi language in addition to the English language and of the Devanagari form of numerals in addition to the international form of Indian numerals for any of the official purposes of the Union. (3) Notwithstanding anything in this article, Parliament may by law provide for the use, after the said period of fifteen years, of— (a) the

English language, or (b) the Devanagari form of numerals, for such purposes as may be specified in the law....*kiya hai, kiya hai, Union of India me isliye abhi bhi English version aa rahaa hai. hindi version, English Version, this is continuing.*

Then if you come to the State language, regional Language, 345

345. Official language or languages of a State.—Subject to the provisions of articles 346 and 347, the Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State: Provided that, until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used immediately before the commencement of this Constitution.

Then come to the High Court & Supreme Court is 348, but there is no provision for the Subordinate Court. it is the official language of the State they follow, that is 346,aaa 345.

348. Language to be used in the Supreme Court and in the High Courts and for Acts, Bills, etc.

Hon'ble Justice Navin Sinha: 351 makes it more difficult.

Hon'ble Justice S J. Mukhopadhaya: That I was saying the Directive, now you see the Directive

351. Directive for development of the Hindi language.—It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule, and by drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages.

Participant: Have a look at 348(2) that's interesting.

348(2) and many High Courts are not following this. 348(2).

(2) Notwithstanding anything in sub-clause (a) of clause (1), the Governor of a State may, with the previous consent of the President, authorise the use of the Hindi language, or any other language used for any official purposes of the State, in proceedings in the High Court having its principal

seat in that State: Provided that nothing in this clause shall apply to any judgment, decree or order passed or made by such High Court.

Therefore the High Court judgments can only be in English.

Hon'ble Justice S J. Mukhopadhaya: Yes, Yes!!

Participant: But Allahabad High Court passes judgments in Hindi.

Hon'ble Justice S J. Mukhopadhaya: No, no no, the Presidential ...(cross talks and speaking over each other) they can't override the aaa 348(2) Proviso. Presidential Order can't override that. It can't be in Hindi.

Hon'ble Justice Navin Sinha: Bihar me notification hai Governor ka.

Participant: No no proceedings you can, but not the judgments Order. ...no no

cross talks,...for example you have Justice S.K.Jha, Justice B.L.Yadav, they were delivering judgments in Sanskrit....

Hon'ble Justice S J. Mukhopadhaya: Then (3) what is there in (3).

Participant: (3) is for the State.

Hon'ble Justice S J. Mukhopadhaya: Yes, so we cannot go for English because in view of the Constitutional Provisions, let us drop that. Now any thing to be added in the Character Roll what are the prime things, with regards to this can we suggest, that for the purpose of writing the integrity, there should not be any grading of integrity.

Hon'ble Justice Navin Sinha: Sir, with every bodies permission with your experience, can i put one question to you?

Hon'ble Justice S J. Mukhopadhaya: If you put a question to me, I'll be very difficult to answer, I am not a good student.

Hon'ble Justice Navin Sinha: Your thoughts Sir, your thoughts about it, sorry that is wrong word, there was a lot of discussion and debate in the morning that, as far as a , ...and this is directly relevant to the ACR, and *integrity jo aap keh rahen hain* There is a general Reputation about an officer, "Not good", there is nothing in writing. We know everything about the officer, right, and if something is written against him he will say, what is there against me please show me? He will represent....

Hon'ble Justice S J. Mukhopadhaya: Not, aa, you see it is your opinion, you know "Character Roll" is an assessment by you, you are assessing, no proof is required for the purpose of integrity, if you say integrity is doubtful, that means you are doubting, if you make a charge, then he will say proceeding, you can't make a charge, there is a difference from a charge sheet. I have a doubt. Because, when you are talking of dishonesty, which is a part of the integrity, has a direct relationship, this dishonesty, is not, I am just telling you, my opinion, dishonesty has nothing to do with on the taking bribe or giving bribe. The mental corruption, those who are mentally corrupt are more dishonest. There are judges who are mentally corrupt, who are ready to dismiss or allow a case on face value. so, those who are mentally corrupt are worse than those who take bribe. A person who is taking bribe will be taking it equality before law, who ever will give, I am for him. ha ha ha ha ..95% cases he will be independent. A man who is mentally...therefore, when you talk of integrity, integrity doesnot amount to related to honesty (1st). Honesty which includes honest way of dealing the matter, honest way of hearing a case, honest way of writing a judgment, honest in the thinking process. So, he should not be mentally corrupt, so that is another part. So, when you are talking of integrity, I think various factors and therefore I say you can't write A,B,C,D or A+,B+,C+,D+

Participant: *Haa, wo integrity method nahi hai...*

Hon'ble Justice S J. Mukhopadhaya: You can only write that "Doubtful" or "Beyond Doubt". So that should be the suggestion that it should not be put in any category, very good integrity, excellent integrity, very poor integrity. no incidence is required your opinion. Your assessment.

Participant: But invariably it will be struck down, *ki* nothing to substantiate its a wild allegation.

Hon'ble Justice S J. Mukhopadhaya: You see, please, please Character Roll, about the integrity, there is a difference than the honesty. It may have a direct bearing with the integrity has a different bearing. It is your assessment. If you put a charge in it, then a Departmental proceeding, then there is nothing like integrity. Departmental Proceeding a charge sheet and a finding, holding him guilty, is different from your assessment about the integrity. One must make a difference between charge sheet, punishment and the integrity which is your individual assessment.

....cross talks and voice heckling and laughter.

Participant: I believe there is a 3rd thought also on this "Doubtful" and "Beyond Doubt", I have seen some of them are writting, they are saying "No Adverse Report".

nothing heard adverse,haa but that is not a bad certificate. its not a good certificate but that's not a bad certificate.... cross talks...

Hon'ble Justice S J. Mukhopadhaya: No Please, please, adverse , it is adverse remarks, this is an adverse remark by you. ACR what is communicated, communicate is the adverse remark is communicated, so it is a remark by you. It is not a finding by you, your remark is that his integrity is "Doubtful" or "Beyond all Doubts".

Participant: Sir, can this be questioned? "general perception, and reputation in regard to integrity bad", or just "general reputation".

Hon'ble Justice S J. Mukhopadhaya: Please please please, it is a way of writing. You can say reputation is bad, if you say reputation is bad so, that means you are doubting the integrity? Anything you say there that is you are doubting, it is not beyond the doubt. You write anything A, B, C is an explanation. But it cannot be,....the moment you talk of reputation, then he will say that from where you have got this reputation? There is no complaint against him and the person may be a person who has been posted in a district where there will be no complaint, because everybody wants to take give and take. Therefore, reputation is one thing, and integrity will be another thing. Reputation may be very good, reputation may be good, but integrity cannot be very good and good. Reputation is different than integrity. It can be only doubtful or beyond all reasonable doubt. only black & white. ...That is my way of argument, that reputation is different, reputation means you are talking of 10 people, and then it requires a proof. And the moment there is a proof the Departmental Proceedings. Departmental proceeding means charge sheet. Charge Sheet means punishment, then if he is punished then where is the question of writing integrity etc. very difficult to punish and if you do not write, spade a spade, then actually honest officers suffer. Dishonest seniors get a preference in the matter of elevation or promotion, and then High Court suffers, everybody knows. Now, what happens in the High Court collegium? Brother was in the collegium. Now he will be coming in the collegium, then may be some other judges who are in the collegium. Its a simply an opinion expressed, ..no no his reputation, his integrity, this is how they discuss, but they cannot write. reputation is different from integrity brother.

Hon'ble Justice Navin Sinha: what justice Navneeti Singh, this is the judgement again of Patna, this is of 2011 Supreme Court judgement, to find out the potentiality of a judicial officers,

.... the entire record of service, character rolls, quality of judgement, and other relevant circumstances that, life in general reputation, integrity, efficiency, performance, conduct.

Hon'ble Justice S J. Mukhopadhaya: general reputation has been kept in a separate compartment. general reputation is always, you know that is the reason, a reputation is that a person always quarrels with the senior. where are you there are high courts in which in which reputation, relationships, a reputation is that he is a quarrelsome person, but he is honest. integrity is not doubtful. therefore when we talk of integrity, at different from honesty, dishonesty, and either doubtful or not doubtful, you cannot have definite opinion. there cannot be a proof with regard to integrity.

...

you you know dead wood theory potentiality is different than the reputation. you know a wood which is dead, chop it out. should not grow because it will not give you Green Leaves anything, so that is a deadwood Theory. I am saying that reputation is completely different compartment, than the other factors integrity is another compartment honestly, honesty integrity, reputation, there may be 3 compartments. his behavior with superior is bad that is one of the reputation. ... his behavior with the lawyer is bad, with the wife is bad.....

Hon'ble Justice Navin Sinha: the Supreme Court has said that's if a high court bonafide forms an opinion, that the integrity of a particular judicial officer is doubtful, the correctness off the opinion can not be challenged before the court. no material required.

giving this ruling justice j n Panchal and GM Gokhale said: when such a constitutional function is exercised on the administrative side of the High Court, any Judicial review there on, shall we meet with great care and circumspection and must be confined strictly to the parameters set by this court, in several decisions. when the appropriate authority form bonafide opinion

Cross talks...[00:50:10]

Hon'ble Justice Navin Sinha continues: When even verbal repeated complaints are received against a judicial officer or on enquiries, discreet or otherwise, the general impression created in the minds of those making inquiries or the Full Court is that concerned judicial officer does not carry good reputation, such discreet inquiry and or verbal repeated complaints would constitute material on the basis of which ACR indicating that the integrity of the officer is doubtful can be recorded.

While undertaking judicial review, the Court in an appropriate case may still quash the decision of the Full Court on administrative side if it is found that there is No. basis or material on which the ACR of the judicial officer was recorded, but while undertaking this exercise of judicial review and trying to find out whether there is any material on record or not, it is the duty of the Court to keep in mind the nature of function being discharged by the judicial officer, the delicate nature of the exercise to be performed by the High Court on administrative side while recording the ACR and the mechanism/system adopted in recording such ACR

as Justice Navniti said, it should be reflected in their overall reputation.

....cross talks...

Hon'ble Justice S J. Mukhopadhaya: May I suggest one thing, all judges in all High Courts, are appraised judges, upright judges, why they should bother whether that we will be set aside by the Court or not. Let me write, let me express my opinion, let the you know corrupt be said corrupt and I am upright, let Supreme court wash it..If the High Court judge express their opinion being upright judge, then I think there is nothing to be doubted.

Participant: what was the citation of the judgement which you have cited? Name of the case is not there? 2011 volume 10 or 2010 volume 11 something like that.

Hon'ble Justice Navin Sinha: No no this is not concentrated research, this is random research *nikal gaya...*

Hon'ble Justice S J. Mukhopadhaya: *sabse badi baat hai* you will be writing it. the judges will be writing it matter ends. What will happen...you know whenever you write a judgment you think that what will happen in the Appellate Court? Why will you be bothered about writing a character roll? its my personal view...

cross talks....

Tomorrow you have evaluation and utility of ACR, you can continue with this subject even tomorrow. It is part of tomorrows 1st Session, because 2nd Session also, effective inspection of Courts an assessment, that assessment, inspection should precede the writing the character roll. So, all are connected, tomorrow we have a very experienced Resource Person, Aftab Alam is there, Ambwani is there, Manmohan Sarin is there.

Hon'ble Justice Navin Sinha: *Manmohan Sarin ko to nahi jaante hain, lekin Justice Ambwani is a store house of information.*

Hon'ble Justice S J. Mukhopadhaya: Aftab Alam, great experience.

Hon'ble Justice Navin Sinha: Aftab Alam ka to apna alag hi experience hai, 20 years. What I said in the morning , what he said in 2006 is relevant even today.

Participant: Sir, problem actually arises, the standing committee after the ACR the matter comes up, and he questions ki what is the basis for writing this?

Hon'ble Justice S J. Mukhopadhaya: Brother, brother, may I tell you one thing, we should not bother standing committee. There are various factors in different courts, in Standing Committee and Full Court.

Participant: No no thats why I am saying, now in Standing Committee, large number of them we have to strike it out because we know....

Hon'ble Justice S J. Mukhopadhaya: Let them strike out, I I think the judge should do his job. When you have been asked to assess, then you should say, that let the 6 judges, be the assessing judges of that judge, you can't assess. How standing committee can review your character roll, till the character roll remains, they can't say how you have done, they are not sitting in Appeal, there is no appellate forum, except moving before a Court of law, by either the Standing committee or the Full Court.

Hon'ble Justice Navin Sinha: Sir, what Justice Navniti Singh is talking about is changing times, ha hah ahahaha..

Hon'ble Justice S J. Mukhopadhaya: your character roll....you are the last judge to write the character roll.

Participant: Alright I'll be more specific....No both ways, see probably you will also know, a particular type of *Dahi* was not served in the inspection, and therefore the judge is dishonest.

Hon'ble Justice S J. Mukhopadhaya: I, AM I I aam , brother i am giving you, a judge was very corrupt in the subordinate court, a judge was very corrupt in the subordinate court, and for his elevation, the collegium judge should have been there, the collegium, I was a collegium judge in one of the High Court, out of 3, when I went to Patna, knowing full well that I will oppose, the collegium was called for, and on the ground that 2 majority decisions his is never

recommended, and he was elevated as a High Court judge. SO, we should not go, on factual aspect, I had written, that integrity doubtful, I had heard a complaint of taking bribe but there is no evidence. I have heard a complaint about that but there is no evidence, but, they decided, i never bothered for that and I have, just I am giving you as a story I have nothing against anybody, this is a part of life. Standing committee cannot sit in appeal, as a sitting committee. you can straight away say you don't have jurisdiction..to sit in appeal over my assessment. Brother sometimes you will have to be straight. You may not be liked by your colleagues.

Participant: No, no Sir, actually Standing committee does review, because for confirmation , two things at 2 stages, it comes.

Hon'ble Justice S J. Mukhopadhaya: please please Standing Committee, it may ignore but they can't review it.

Participant: No, confirmation, they can refuse to confirm it...its as good as...

Hon'ble Justice S J. Mukhopadhaya: I am not saying that, ...inspite of your writing they may confirm him, ignoring the character roll, that is another thing, but they cannot review it,

Participant: No no they have to....if you see the form, after the inspecting judge, enters the ACR it goes to the Standing Committee for final approval, because it is the High Court that has to evaluate so, the Standing Committee has to approve it.

Hon'ble Justice S J. Mukhopadhaya: No, under which Rule?

Participant: Its given in the form itself. Its the High Court, it goes to confirmation,

Hon'ble Justice S J. Mukhopadhaya: where, where, where, where, is that? where is that?

Hon'ble Justice Navin Sinha: You see I was just reading that (2011)10 SCC1, Rajendra Singh Verma (Dead) through L.Rs v. Lt. Governor of NCT of Delhi, paragraph 81, very good language,...

Hon'ble Justice S J. Mukhopadhaya: Just read the gist.

Hon'ble Justice Navin Sinha: Yes Sir, I'll just readout the relevant portion, integrity, haa uchchaa, wo wala, haan,

Their honesty and integrity is expected to be beyond doubt. It should be reflected in their overall reputation. There is No. manner of doubt that the nature of judicial service is such that it cannot afford to suffer continuance in service of persons of doubtful integrity or who have lost their utility.

Hon'ble Justice S J. Mukhopadhaya: Therefore two language is used, "beyond doubt" and "Doubtful integrity".

Participant: Sir, if you may come to page 219 (of the Reading Material),cross talks,

Assessment of Hon'ble so and so are accepted approved by Standing Committee.

Hon'ble Justice S J. Mukhopadhaya: This is Jharkhand?

Participant: This is all in all the High Courts.

Participant: No no here we have to amke...cross talks....

Participant: No no that is one, then if the Standing committee normally we cant deffer with the ...

Hon'ble Justice S J. Mukhopadhaya: brother, brother, I'll be saying do your job. Let the judges do their job.

Hon'ble Justice Navin Sinha: (Continues to read the judgment):

Writing the confidential report is primarily and essentially an administrative function. Normally tribunals/Courts are loath to interfere in cases of complaints against adverse remarks and to substitute their own judgment for that of the reporting or reviewing officers. It is because these officers alone are best suited to judge the qualities of officials working under them and about their competence in the performance of official duties entrusted to them. Despite fear of abuse of power by prejudiced superior officers in certain cases, the service record contained in the confidential reports, by and large, reflects the real personality of the officer.

So, therefore Section 114 of the Evidence Act is coming in...is correct.

Hon'ble Justice S J. Mukhopadhaya: to to today, that is the reason I said in the very beginning, that character roll in cinema it reflects the personality of the officer. he is honest, dishonest, coward, he is fighting with the lawyers, so all these things the character is reflected.

Participant: It is like he is just like a God and he doesnt commit any faults...

Hon'ble Justice S J. Mukhopadhaya: Why should we think that High court judge will be biased?

Hon'ble Justice Navin Sinha: Sir, ek minute, *abhi jitnaa hum log discuss kar rahen hain*, (Continues to read the judgment):

Normally and contextually word 'material' means substance, matter, stuff, something, materiality, medium, data, facts, information, figures, notes etc. When this Court is examining as to whether

there was any 'material' before the High Court on the basis of which adverse remarks were recorded in the confidential reports of the Appellants, this 'material' relates to substance, matter, data, information etc. While considering the case of a judicial officer it is not necessary to limit the 'material' only to written complaints or 'tangible' evidence pointing finger at the integrity of the judicial officer. Such an evidence may not be forthcoming in such cases.

And then comes that paragraph 191:

general reputation of an employee is not good, though there may not be any tangible material against him, he may be given compulsory retirement in public interest and judicial review of such order is permissible only on limited grounds. The reputation of being corrupt would gather thick and unchaseable clouds around the conduct of an officer and gain notoriety much faster than the smoke. Sometimes there may not be concrete or material evidence to make it part of the record. It would, therefore, be impracticable for the reporting officer or the competent controlling officer writing the confidential report to give specific instances of shortfalls, supported by evidence.

Hon'ble Justice S J. Mukhopadhaya: so it is not required...

Participant: Preponderance of probability,...

Hon'ble Justice Navin Sinha: *ye theory bhi lagaaya gaya hai...*

Participant: No no Preponderance of probability, will come with the material, in the absence of material where is the question of Preponderance of probability?

cross talks.....

Hon'ble Justice S J. Mukhopadhaya: May, may, may I request only one thing, please we cannot make a law within the four corners in this regards. In your opinion how will we be forming it is your discretion. And the whether you will be hearing, you think that anybody will be complaining and you will hear it, is different thing, therefore we suggested, that let there be a visit, prior to writing of the character roll atleast within last 3 months and thereafter you form an opinion, we should leave it on the judges, because we will always think that all High Court judges are not biased.

cross talks....

Hon'ble Justice S J. Mukhopadhaya: who says so, brother? brother, brother we had 39 judges in the Patna High Court, with 1400 judicial officers, when I was in the Jharkhand High Court, we were 5 judges with 700 Judicial Officers and I was knowing mostly all judges by face or name.

Hon'ble Justice Navin Sinha: *Hum jor de?* we are 8 judges, exclude me, we are 8 judges and 325 Judicial officers, and ultimately it comes before me also, as the Chief Justice, *samay to nikalna hai, ...*

Hon'ble Justice S J. Mukhopadhaya: in a judgeship there are 30 judges, 40 judges, one will have to give, 2,3,4 days time to meet all the judges. If necessary, to sit in the Court to see the function, see how the judges is behaving? and also get some sort of information from different corners for coming to making any sort of opinion. Opinion, at Report, Confidential report cannot be like a parrot one, like what ever my District Judge has written, I'll report, repeat it.

Participant: Sir, my real report is available at that place where, he has been posted...

Hon'ble Justice S J. Mukhopadhaya: Yes! Yes may be, may be!!

Participant: Earlier place from where he has been transferred, such place should be visited.

Hon'ble Justice S J. Mukhopadhaya: No no you visit or do not visit there are people who will be giving you there are judges in the High Court, before whom a large number of Judicial Officers sometimes make a little bit tangent comment, *Saab achcha aadmi to rah jaata hai, aur wo corrupt bhi to jaata hai...Kaun hai wo? Wo phalaana ko to promotion ho gayaa,*

Hon'ble Justice Navin Sinha: Plus , you people must have had experience also, my experience tells me, what I do is, *jiske khilaaf complaint aayaa, usko to dhyaan de hi rahen hain, lekin jiske khilaaf complaint hai, usko pata lag gayaa ki mera complaint pahunch gayaa CJ ke wahaan.usko bhee bulaa lo Sir,. There was one officer against whom there were lot of complaints, now I wo aayaa mere paas bolne lagaa mere peeche pare hue hain,* this that I was listening everything, then the moment he started doing drama, *ki aankh se aasuu aane lagaa hai...*

Hon'ble Justice S J. Mukhopadhaya: There are good officers whom you know. And the good officers in a sense that they will not open their mouth. Tea you ask, of their own they will not open, sometime, you may casually ask and they say Sir, *humko nahi bolne k liye. Sir dont ask me about him, and Sir, its enough!* Otherwise he will say (he is a good officer) but, if he says Sir, I don't know, don't ask me, no comments, I don't know Sir, so you can doubt. These are the various ways

the judge knows their tricks, you know we are not going to discuss all the things because experimentation is the judgeship. In your judgeship, you develop a quality, somebody was asking me what you are doing after retirement? I said the day, I was telling, talking with you people also, the day I was elevated as a judge, I was a lawyer prior to that, not that the day i became a judge I became a judge. Judgeship is a quality, which took time to develop. And I have developed it, in the fag end of my career after retirement suddenly I will not forget the quality, And I'll become.

Hon'ble Justice Navin Sinha: With your permission Sir, when he became a judge he did not have the privilege of having this woman discussion to lean. he learned on the job. Hum bhi jab judge bane, I wish I was this fortunate.

Hon'ble Justice S J. Mukhopadhaya: and I am telling you another character of me, brother never used to meet anybody. and my character is to meet everybody. if class 4 employees will come I will be meeting him, if lawyer will come I will be meeting him, if a judge will come I will meet him, and used to offers cup of tea 2 everybody, even to a corrupt officer, even to a honest officer because my mind was clear. I want it to, in Supreme Court I said one day, I was asked by one of the judge of Patna High Court, I said let me see and find out, I said in the supreme court also, why do you fear the people, let me see who is there, who can purchase me? You know the capacity to purchase me or to have me that should be there with somebody, if you live with different types of people, in the society you will know,....a bank officer is talking *tumhara to wo officer ka bada badnaam hai...* a bank officer is saying *ki saab tumhara district ka wo officer ka to bada kahraab hai*, I came to know as a Supreme Court judge, about one of the District, Devghar, *wo officer jo hai*, that officer is not taking you know, whatever the lawyer is asking and he is writing same thing, the witness is telling something & the lawyer is interpreting in English a different thing and he is writing that, he is in connivance with the lawyer. *to ye bahar ka aadmi keh rahaa hai*. not a lawyer....

Cross talks....

And I am telling you all colleagues know who is who? You know about your High Court, I had a knowledge but now I have forgotten about Supreme Court and High Courts.

Participant: Sir unfortunately at times the knowledge has different definitions, the knowledge has different definitions...

Hon'ble Justice S J. Mukhopadhaya: yes yes you know, a person said so and so is corrupt and he had been appointed as Lokayukt, I said he has the maximum knowledge of corruption so, ha ha ha ha... So, thank you very much we have exceeded your time allowed me to talk all non-sense.

SESSION V

Evaluating the Utility of ACR: How Effective Grading System Is?

Speakers: Justice Aftab Alam, Justice Manmohan Sarin & Justice Sunil Ambwani

Prof. Geeta Oberoi: Very good morning to all of you. We have yesterday, discussion, a lot of questions also brought up, there are two sides of the coin to almost every issue, hope we found actually why this ACR session is there, when we call judicial officers on deputation, we have some post like some post, for research fellow and assistant professor, professor, registrar, these post we call judicial officers on deputation and along with that, ACR are also called up, then we send to Supreme Court and we found going through those ACRs, that every jurisdiction has, almost different ways of writing ACRs, some have two page ACR and some have like forty pages, for just one officer. so we thought that, lets seek through these ACRs this whole system of weeding system, yesterday also this question, very important questions brought up that, suppose in ACR every time, the officer is given out standing, that is one side of the coin, and still, that the officer is not up to mark, what can be done and there is another way like this different side of the coin that officer is given out standing and is good and then just because, when he is in the zone of elevation and those three years becomes very vulnerable all sorts of attacks so that decides and we all are going to deal with all these question that, no easy solutions but, lets still think about that something can be worked out one of the way that was suggested by.....yesterday by Chief Justice, Navin Sinha was that, video conferencing, if that could be used to talk to every judicial officer, that is one solution emerged, but then we don't know, whether video conferencing.....this is one issue, I mean is this better way of doing on your judicial officers to administrative judge also there are some news like Madras High Court Rules yesterday sent to us and that, it is written that in a year you will not spend, these are rules for inspecting judges and guardian judges that you will not spend more than five days in a year on going out for inspection and second you will never use any working day for inspection, so how, just for Saturday, Sunday, we you have other works, because administrative judges mostly in all High Court jurisdiction are senior judges so how are they going to then, the time for inspection in a year, and write this ACRs and even if not in a year, even signed, putting your signature also means that you have read and gone through. These are all issues troubling everyone over here, so with this I will, we have three hon'ble Justices, justice Aftab

Alam, judge Supreme Court of India, he has been chief justices of various High Courts, we have Justice Manmohan Sareen, chief justice of Jammu Kashmir and other High Courts.....great I correct myself, I am sorry.....actually yaa.....o.k.....alright.....then justice Sunil Ambwani of course, we have.....very recently retired chief justice of Rajasthan High Court, so.....may be come up today with our solutions, we have problems like.....let us see that they have solutions.....so first of all we will like to have justice....hear justice Aftab Alam about his experience with administrative judges and his own experience about ACR and grading system, sir.....

Justice Aftab Alam: Brother judges as Director said, I wish to speak only from experience, I put my words in the form of a, these are exclusively based on my experience, they did not, there is no theory, no doctrine, and these are very broad brush kind of a things, form the, form your deliberations it appears that, you are dealing with the absolute integrity of administration how to write ACR, how to evaluate, what are the rules for inspection, how many days one should go for inspection all that, you will not find any details in this. As I said very broad brush kind of things, something you may agree with something you may not agree with, you may find some material to criticise, you may find some material to debate and discussion. even if these are very generalised and broad observations if anything helps you I will be very happy, if.....if it provides any material for further debate or discussion that also, it serves the useful purpose you may have to suffer me for twenty, twenty five minutes if you finds its too much, tell me I will, I promise I will stop. Now, it's.....its coincidence that Madam Director also started the talk with ACRs let me begin by sharing few of my current and very real dilemma, it is about writing the ACR, of the staff of the TD in TDs at the office staff is taking from the government departments and in matters like loyalty to the institution commitment and dedication to work, the sense of responsibility and then the competence they are not bad, at least I feel that, they are not the patch on the court staff, as a matter of fact after coming to the tribunal, I remember with a good deal of nostalgia, my court master, my private secretary and my Principal private secretary in the High Court and the Supreme Court, now just before coming to Bhopal, that DDs at office put up before me a long pro-forma for writing the ACR of the personal secretary attached to me, and I promised to you, it is not made up, it actually happen, it happen lastly. very objectively I have given overall score of six or maximum seven out of ten, but before committing myself on paper I, ask for the ACRs of the previous two years, I came to learn that in the previous two years he had gone on deputation to some other government

department and ACR for those two years were written by the officers there, those were placed before me and I found that, in all that thirteen parameters, he was uniformly given 9.5 out of ten, by the same officer, in both the years, 9.5 in commitment to work, 9.5 in confidentiality, 9.5 in punctuality, 9.5 in curtsy and manners, and 9.5 in all other considerations. It is apparent that the ACR was written without any application of mind and without any consideration for the office efficiency, then I asked for the ACRs of the other private secretaries in the Tribunal attached with the two members and other officers of the Tribunal, I found that every private secretary had overall score over 9.5 or minimum 9 out of ten, I again tell you that, this is.....this actually happened only last week to one of the member I lightly said that, perhaps the present one is the best private secretary, he had never had a service carrier and he is present year outstanding in every way, the member did not understand me, but I told him that in the ACR he had given nine point out of ten, with some embarrassment he said, sir what to do, everyone get that kind of the score, if I rate him objectively he will feel unjustly punished and curse me for the rest of my life. so the.....I quite confounded in this situation, what will be the correct course for me, if you have answer to my problem, please let me know, actually the whole idea of ACR is frustrated, I have seen the manuals of DOPT, department of personal training they have done

good deal of work on that and they say that ACR should be they give the analogy of the "Bell Curve", the the the the area at the top of the Bell is very limited and then the curve expands and then the bottom has the largest area. According to the manual the staff in an office should occupy the "Bell Curve" a few who are the best should should be at the top then the middle and then at the bottom. So studies have been done, procedures have been laid down, but it is we who make everything non-sensicle. My little problem illustrates only a very small part of the difficulties of overseeing the work of your subordinates. Evaluating a judicial officer is many times more difficult than evaluating a clerk or a PS. In some of the Sessions in this program the High Court judge is described as the "Guardian Judge", in relation to the officers of the lower judiciary. The word "Guardian" neatly sums up the relation between the High Court and the lower judiciary in terms of Art. 235 of the Constitution. Being a Guardian is an onerous responsibility. It puts the High Court Judge under the obligation to look after and tend the officers under him in a way to bring the best out of them. To help them develop their good points and to curb their weaknesses. To

evaluate them not only fairly and objectively, but also relatively amongst his peers. In short to be the role model for them. I do not consider myself an expert in administration, and I propose to speak to you from my limited experience. I am also aware that the condition of the lower judiciary and the issues concerning them are vastly different in different parts of the country. The problem of the lower judiciary in Bihar, Jharkhand, Rajasthan, Uttar Pradesh or Madhya Pradesh are not the same as in Maharashtra, Delhi or Kerala. But, I'll speak to you from my experience in Bihar and then try to find out some common denominators, that may apply to the judicial services generally, what is called the "Inductive Method". Let me first try to briefly put the matter in historical perspective. How, the character of the Judicial system itself changed and underwent the process of democratization. Until the 1960, the judiciary in Bihar used to be relatively small, exclusively male, and if I may use the word elites. There were all together, 17 Districts, and naturally as many i.e 17 DJs. The number of Judicial Officers in each district was equally small. At the level of Munsif .e. Civil Judge Junior Division the selection was made by the Public Service Commission on the basis of competitive examination. But, one third of the officers of the higher rank were appointed directly by the High Court on the basis of interview. The selection was confined to the High Court Bar. No, no no lawyer practicing at the District Court could hope for selection, he didn't stand a chance. The selection was confined to the High Court Bar, the Senior High Court Judges would spot up-coming lawyers in a certain age group and following the formality of interview, they would be inducted in the Superior Judicial Service of the State and in due course almost all of them would come to the High Court Bench. The judicial administration rested in the hands of 3 persons. The administration of the High Court was and continues to be in the exclusive domain of the Chief Justice. the administration of the Civil Court was controlled primarily by the Senior most Judge after the Chief Justice, he was called the "judge administration 1" JAD-1. Some matters relatively of less importance went to the judge next in seniority the Judge AD-2. The Annual Transfers and promotions were made by the Standing Committee consisting of the Chief Justice and the two JADs. Matters relating to disciplinary proceedings against the judicial officers were also dealt with by the Standing Committee. The system operated essentially on a feudal basis the judicial officers mostly came from the upper class, the so called upper castes and 3 or 4 urban centers in the State. They would be socially known to the High Court judges either personally or through their family the judicial administration was run rather like a *Zamindaari Sarista* it was not perfect but it ran smoothly. There were instances when some judicial officer failed to make it to

the High Court, because the CJ or the JAD preferred someone else, not always on grounds of merit. There would be mild murmurs, but all within the judicial fraternity, the matter would not be discussed outside the judicial circles. Absolutely never in the media. This was the position until the 1960s. With passage of time judicial service greatly increased in size. the number of districts increased from 17 to 29 in 1972 and to 52 before the division of the State in 2000 with the same increase in the number of District Judges. Number of additional posts under the DJs were created under different Acts that were not there earlier. The number of Judicial Officers at the District also greatly increased. More importantly the composition of not only the judicial service but the High court itself got materially transformed. More and more young men and women came in the Service as also in the High Court Bench from semi-urban and rural background and from economically and socially weaker sections. The judiciary, slowly but irreversibly shed its urban-male-elitist character....the increase in size coupled with the change in the character and composition of the Service completely snapped the social links between the High Court judges and the officers of the State Judicial Service. The *Zamindaari Sarista* was no longer a viable means of administration. Now how did the judicial administration respond to meet the demand in the vastly changed circumstances? This is what happened in Patna. In the 1970s the members of the Standing Committee were increased from 3 to 5. So, simply increasing the number of the members of the Standing Committee. And in mid 1980s from 5 to 7. with atleast one member being a judge elevated from the Service. The more important development however was that, each judge of the High Court was given administrative charge of one or more Districts. The judges were dubbed as inspecting judges of their Districts. Their responsibility was to make annual inspection of the Courts in the District, get acquainted with the problems in the District and act as the first authority to resolve the problems. Make evaluations of the work of the judicial officers, recommend disciplinary action against any wrong doer. To sum it up being the Guardian judge for the officers in the districts under their inspections. this is the position that continues till today.

Has the system met the challenges of the judicial administration? Has the system successfully met the challenges of the judicial administration? If you ask me, it has failed. Looking in hind side I think that the method of inspecting judge was introduced not so much to strengthen the judicial administration, but to placket the individual judges who demanded a share in the power and all the petty glamour that comes with it. No one ever thought of making an empirical study to see that

whether the method of inspecting judges have improved the judicial administration or it has created more problems. I am of the view, that there is no system of judicial administration. System, a system is composed of different components which act in harmony. I don't see any system. I am of the view that there is no system of judicial administration, there are series of adhoc decisions by a set of people, more often than not influenced by subjective prejudices and biases. The result is there for everyone to see. The State Judicial Services, the State Judicial Service works far below its optimum level of efficiency. To an extent that questions are raised regarding its relevance to the social needs. More regrettably, corruption and caste considerations have made serious inroads in the service. I can say this in closed hall before before you, I may not say this outside, but this is a fact we have to face the facts. More regrettably, corruption and caste considerations have made serious inroads in the service. Here I may say that earlier though I have called the judicial service of the past elitist, corruption was not an issue there. The reasons for this state of affairs are well known. I am not saying anything new you all know this, you are all dealing with this. The reasons for this state of affairs are well known and too many to be recounted here. Chief Justices are sent to High Courts for a few months. I went to J&K for 5 months or even few weeks, Bilal Naski went to Orissa for 2-3 days. he reasons for this state of affairs are well known and too many to be recounted here. Chief Justices are sent to High Courts for a few months. I went to J&K for 5 months or even few weeks. Chief Justices who even have a longer tenure in a High Court have different institutional and more importantly sometimes, different personal priorities. Judges appointed freshly do not have any administrative experience. There is no harmony among the judges. The situation is further vitiated on account of affiliations based on language, region, religion, caste and even social class. Merit has long ceased to be the sole or even the main criterion for evaluation of an officer of the subordinate judiciary. There are many reasons for the very poor state of judicial administration, but if you ask me to identify one single factor, I would say this: the individual judges mostly take the issue of supervision of the officers of the subordinate judiciary as personal power and not as a solemn responsibility. And this power is grossly abused, there would be huge vacancies in Class-3 & Class-4 posts, but no DJ would initiate the process for making appointments. I will not say why? Before I left Patna High Court in June 2007, I remember saying in a meeting of the Standing Committee, much to the annoyance of the then Chief Justice, that our achievement under the Article 235 is two folds, a small minority of the corrupt officers in the subordinate judiciary were becoming more and more fearless, and the majority of the officers

who by nature have no inclination towards corruption, have simply stopped working. this was all that we achieved under Article 235. There was no restraint, no prohibition on the corrupt officer, every day the they became more and more fearless and those who by nature and by temperament were honest, just stopped working. They grant bail today, 3 years later they may be facing a judicial proceeding for that, disciplinary proceeding for that. I do not think that the conditions have completely changed in the past 8 years, believe me the situation is not too good. I have presented before you a rather gloomy picture, and you can legitimately ask what solutions do I suggest? That's a difficult questions. But let me try to answer it. My 1st answer I know would not be acceptable to you. what I am going to tell you I know, that perhaps you will not accept it, you will reject it out rightly. There would be no or very few takers for what I consider to be the right way of judicial administration. But it is an in-house discussion, and if I can't share my views with you, where else would I express them? I think the individual High Court judges should voluntarily, give up the power and the responsibility of supervision of the subordinate courts. The judges should focus on achieving judicial excellence. Your chosen field is law, and your chosen vocation is judicial work, not administration. You must strive to excel in your chosen field and vocation. There is no presumption that a good judge would also be a good administrator. Any such presumption would be unfounded, and contrary to reality. Judges are trained in law and adjudication, not administration. In my 23 years as High Court and a Supreme Court Judge, I have come across many brilliant judges, very good judges, but I can count on finger only 2 or 3 people who were both good judges and good administrators. many good judges I know were quite poor administrators. Speaking for my self, I confess, as a judge perhaps, I am not too bad, but I know I am not a good administrator. All my working time is consumed by my judicial work, and I don't inclined to give sufficient time and attention to the administrative works. I tell you honestly preparing a case, reading a brief for judgment, writing judges, that is such a whole time work and that its all , if if if even if I am not physically involved, its all the time in the mind, so where do I get the time for....I don't have the inclination, I don't have the that aptitude, therefore I know for my self, that as I said, all of us are trained as as as as lawyers you were trained in ...to bring out a legal point into argue it out as a judge we are trained for adjudicators, administration is a very specialized and a very skillfull job. As I said you belong to law and judicial work, you must make a mark there. In the recent past India has not produced any jurists Judge or judges of International standing, you must aspire to fill up that slot. Administration and specially administration of court

is a specified field that needs highly developed skills by deep study and training. And to my mind the court administration should be left in the hands of a specialists. All over the world, highly reputed teaching institutions are not administered by teachers. You take any Harvard, Oxford , Yale, Cambridge, the administrations are not done by Professors. All over the world, highly reputed teaching institutions are not administered by teachers. The teachers are left free to teach and the administration of the schools or Universities are looked after the specialists of educational administration. Hospitals and Research Centers are not administered by the Doctors or Scientists, but by specialists in medical and research administration. In some of the foreign jurisdictions in Courts too, the judges are not involved in the administrative control over the lower courts. I think that it is high time that we too should adopt that system. In the High Court Registry there should be a personal cell, manned not by officials from the judiciary, but by people properly qualified in Court Management and Administration. the cell should get directions from the Standing Committee and should report directly to the Standing Committee, which would take decisions on all matters concerning the subordinate judiciary. But as I said, this suggestions would perhaps not be acceptable to you. In that case I have only one thing to say to you, please realize, that supervision and control of the lower courts is not a power, but a solemn responsibility, and a obligation. The relationship between a High Court judge and a judicial officer is not that of a master and servant. Please see the judicial officer as your junior colleague, most important of all please develop a positive attitude towards the lower judiciary. On inspection don't go to find the culprit and to punish him or her. On inspection don't go to find the culprit and to punish him or her. Go in search of a young legal prodigy who can be celebrated. Most often one finds what one is looking for if you go looking for a culprit, you will find him, but if you go looking for a dedicated judicial officer, you will find him too. And God knows the entire need for good dedicated judicial officers. There is so much negativity, so much cynicism in our system in our national life.

I really feel sometimes very disturbed about it everybody seems to see others with suspicion and distrust all executive action are based on distrust and now even legislation seems to stem from distrust just see the prevention of corruption act comptroller and auditor general CBI then all these are there, then Supreme Court brought CVC, then *lokaayukta* ,,then came the *lokaayukta* now *lokpal..maha lokpal* where will be end had all these be...be...be any good in controlling corruption I think that negativity can be counted by positivity let us be positive as I

said that don't find that don't go with the intention of finding the culprit that is ...that's only a by-product let us let us find the best person let us liberate him so that others also may follow suit. so these are my these are my random thoughts which I have put before you as I said that there may be many things which may be which you may not agree. you don't agree with some of my some of my ..statement or formulations you may find something useful but if if...you think this gives material for a debate this would have served its purpose. Thank you very much all of you. All of us will take questions all of us will make contributionMr Sareen would like to say something first..

Mr Sareen would like to say something first..

What is the pattern ...either three of us take a ...35 minutes are over one method could be..we could speak 10 min each give our thoughts.open it up

Hon'ble Justice Sunil Ambwani: Thank you Justice Aalamwe are changing the format that's why.....there would be no hard lines drawn any thing could be put to panel at any time [00:33:20] and it would be free debate ...don't repeat what just now Justice Aalam had said.public speaking is this where you have to watch the eyes and the attention plan its never more than 30 minutes. so when I will address you I would be watchful of you that you don't make 10 or 15 mins. If the points are striking or different then we will go ahead. Thank you Justice Aalam ... what you have spoken which something which comes from the heart as you have expressed your feelings ...(inaudible) the way I look at it Sir after I have heard the ..system the various shortcomings the question which is basic is what do we do Justice Aalam just said mentioned about various institution being created CVC *lokpaal* ,*lokaayukta* I truly loss ...one path which is you end up creating one institution rather than taking stop of what is wrong in that institution and taking care of it and bringing about reforms in that ...

What happens otherwisepart of administration is you create another institution over a period of time that institution itself becomes a problem ...now you make another institution to take care of that so this is where we should stop ...its alright these are the problems and we will resolve that now the way I look at this one of the things the ACR system as you call it annual confidential reports it is as of now the most accepted system rather this is the one which is permanent the

judiciary have been struggling the various states have brought about different forms and these forms have been continuously revised and the revision have come about with a view to bring in inputs seek information which actually is an exercise in self restrained if ithese reforms.

it is to strike towhen you answer those questions ...you focus on what that officer is doing that is a welcome step and make the reviewing officers or make the person making the inspection fill it up so is he inputs are involved and gone through significant improvements gathering inputs to bring them objectivity in evaluation the purpose is if you want to say that the person is A rated officer you better say how he is A rated officer. you specifyanalysis ...at times you are called to give an statement that he has written inputs require judges to focus on the approval of a appraisal of an individual his performance were the goals sets.

now one of the things which is lacking in our system is this it is called annual confidential report you look at the corporate sector it is the appraisal and counselling part while we do the appraisal what we are lacking and what Justice Aalam said is only counselling part so the distinction I would like to make here is we need to emphasize take the lead from the corporate sector you say this is the assessment of the man and how is he to be counsel on achieving his goals that is a significant portion which all of us had been in one way or the other would like to perform.end up ...duties performed by him descriptions of duties then you have saidold matters disposed of cases of senior citizens done all those things ...now what were the short falls what were the ...faced these are the issues you have to take ..evaluations then another aspect is court conduct where we come to the question of inspection thats a different story we will take it in another session ..then behavior with litigants coping with pressure interaction with advocates ability to ... declare orders in open court these are the various structures which we assess. now let me give you ...brother Valmiki is here he would tell you that every state has differentfor instance in Delhi we have 46 judges now ...36....so each judge gets 4 or 5 official assign to him from the judiciary, its a metro I must confesses brother Aalam did one part of it when a judge gets appointed in Delhi high court in the first five years he is very particular about inspections, very particular about assessments I am saying from personal experience you would visit the court and Delhi is one of those unlike other places if you are a judge just been appointed you would go on thereyou would sit at the back of the court room the judge may or may not recognize you. If you are the one newly appointed one. So there is no fanfare about inspections and another things but the hard reality is this

inspection is ...zeal gets over in first three or four years. After that what the Judge starts doing he says bring the last years ACRs and then the hard reality which I think is self ...I would say and this is where the judges are lacking when we take up ...as brother said let this be the part of judicial administration and if it is not so it is our responsibility then we better perform this responsibility what happens is it is not unlikely you receive reminders from the registry ACRs have not been filled upyou end up filling up ACRs for 2 to 3 years in one lot and what you do for them ...I have brought ACRs how it has been going now under this process great injustice a person who gets rated B in the beginning is doomed by the time he is B+ it would take 3 years to reach B+ no body is ready to change tvat rating that muchI want to tell you there was a district judge who came to me ...he said ...I have given him B ...he said I have no reservations or quarrel with what you have given me ...I told him this is your judgement this is how it is you look at it ...look at this gentlemen he named another judge who he thought far more inferior ...judicial acumen, performance etc. because of the assessment by another person that judge was getting B+ he said my only grievance is if he is B+ I should be A. ...So there what do you do so we have taken care in DelhiWe have constituted a committee of 3 judges to take care of as much as possible some ofso that there is no arbitrary is left.

There is atleast 3 judge who feel the same way so there is a judge , a senior judge, that was a system that a middle courtwhen we take disposal as a factora disposal mania now there is it is essential you have your lastI was reading 58 thousand cases in the Supreme Court 53 lakhs in high Court and 2.64 crores in the district courts2015 now emphasis on this is therefore understandable the ... but at the same time we need to ensure that this was not disposal alone it is decision making also ...but otherwise it has a tendency to come back to dispose of ones party matters it comes back as an appeal. ...Now there are different criteria s for disposal points been given these are constantly been reviewed based on what are the subject matter of the litigation taken care of. now let me come quickly to as I said one is the concerns and shortcomings on this one was I said the bringing as much as activity we ...as I was mentioning that tendency that develops is when you become senior 7 years 8 years you are in the hierarchy then you starts calling for judgments inspection is the thing of the past senior judges don not in Delhi go out and inspect brother am I correct on that generally exceptions are always there so there is no time they have other administrative work so inspection even though in Delhi ...its not travelling to other

district it is within the same time but what you do its very simple ..you call for judgments ...or even formalize otherwise what you call for judgments find judgments for these monthsI used to do that send me your best judgments in the last 3 months which you have written ...so you learn what he think is best. What we need to do in my mind ...when we call a person for an appraisal call him or what pick up his judgment when you are ratting him B+ or when you are not giving him A or it is or....and this what brother said a guide, friend a philosopher to him you tell him this is your judgement and this is how it could be better written, this is the language problem this is how you have not dealt with facts this is how it should have been detailed this is the part which is essential to my mind in a.....which most of us are not doing because you don t have the time and thats why problem comesbrother pointed out your job is your own judicial cut up with you are busy writing your own judgments where to have the time to tell this man how to write a judgement so last two years assessment is there so you just fill it upthen another problem which I am raising it and one of you would find it which is incumbent on us to correct it is what I mention the phenomena of the blue eyed boys over a period of time there are judicial officers [00:46:20] various kinds of judicial officers are there some judicial officers are there who are interested in there work they come to the court do there work sincerely ...they are basically introverts they have nothing to do with the community rest accept once in a while formal function be present there are others those who are extroverts ...who are referred as deputationist term in Delhi is deputationist so that's brings them in close contact with higher level of judges, so you draw a relations now these people ..aa...a ever growing feeling among rest of the service judges that these people receive special treatment and there assessments are better and its isif you know somebody he comes to you every ...smallest of excuse now some people are very fond of organizing seminars so if seminars are to be organized that is the judge you say yes yes he is very good at organisation assign him that ...and you are the high court judge who is organizing the programit is his job to judiciary also to be present in this program so these are those outstanding judges ...when somebody said he is not outstanding in his work but he is outstanding in ...standing always at the gate so so this is where you need to correct that this does not create within the minds of the rest a feeling of discriminate being discriminated we owe it to them that you are objective partial to no prejudiceI think I am sticking to my promise 15 mins not more than that one thought I had on this granted the situation that judges are preoccupied by judicial work brother Aalam had said some of them by temperament do not get time this is not the top

priority what shall we do ...to my mind this is the system which require improvement this is not be given of yet I would say there is time to supplement it with some inputs and those inputs should come from not from your self at time we say we another subject will be coveringand taking those issues at times from the path I would say that is the input should be [00:49:19] from the consumers of justice now how can be that be achieved in a manner which is in consonance with judicially retaining privacy without affecting judicial independence and this I would be putting it to all of you and I am going to make a suggestion and see your reactions on that ...what is that method by which we can bring in an input which would help us elaborate our findingsit is supplemental input ..which would ...our findings which are correct or not. now on this I am reminded ...sir 2 mins more ...how time has changed a.. Valmiki brother will recall you know some time back in Delhi there was a publication made by Madhu Trehan ..you heard of famous surgeon she is his wife she is the publisher of the magazine, She took out the magazine called *Why India* now what that magazine Why India did was it circulated a questionnaire to some 30 ..40 advocates in which it sought opinion about high court judges integrity, punctuality, impartiality right ...that was filled up and then it got published in the magazine now let the storm blew all over what nonsense even the high court judges are evaluated in this fashion ...there integrity is ought to be questioned andmember of the bar promptly filed the motion and ...aaa court on its own mission issued notice on the member of the barnow what happened these people buckled down the publisher buckled down because in this case it was a half hearted attempt does not been done properly because what they found was you are saying 40 senior advocates whom you have you chosenit was all odd ..so this was not representative enough. and that time report came down very heavily said this kind of a survey tends to be low public confidence in judicial and cannot be permitted and the matter was closed ..now that has been 7 years back ...12 years back so life has taken a sample now I was reading a the other day ...I must tell you one thing your material has been compiled but the compilation is a some ..in this manner ..it has very good articles ..so some body has to do it enough material there Mr. Bhattacharya you have picked up every thing but you have to take care of giving right headings right do it in future. I find one of the things which have been happening in America is what they call this judicial performance evaluation of judgments, this program is called judicial performance evaluation of judgments, the methodology adopted is this there is a commission constituted which would be under the judiciary itself now this people will pick up 10 or 15 judgments of the judge in the year in which he has performed and

then send these ..first of all take those files then makes a an assessment of look when does the ,matter instituted when did it get over, how did it proceed along, too many dates, was it delayed evaluation also on the judgement in terms of content, analysis and knowledge of the law. Then they also send it attorneys and the parties to get the feedback on may be the party who has lost, a simple question like after this decision do you know the reason why you have lost? that would show that the judgment to a layman as it understandable or it is like a legal jargon. so for justice point of view a person says yes this judgment I understand why I have lostso this performance evaluation done independently under the judicial administration is a factor which would supplement the evaluationit appears to me,This is something which got strike or this is thinking out of the box the existence system as you say has suffered it has not gone further but this is something which needs to be thought about and may be with the ..aa..modifications changes it needs to be thought about and then introduced. Thanks ..5 mins extra ...10 mins

You have left me with only 2 mins

Hon'ble Justice Manmohan Sarin: I think the house will give you another 10 mins

Participant:unless any one wants tea or something ...we can actually continue this sessionbecause I dont think any body needs teaSareen Saab ke liye chayechaye to peene dijiyeSareen Saab ke liye chaye ke sang pasteries

Hon'ble Justice Manmohan Sarin: Sir Iam a diabetic

....There is no restriction of time

Hon'ble Justice Aftab Alam: If you go looking for a culprit you will find him. if you are looking for a dedicated judicial officer you will find him too, and God knows the entire need for good dedicated judicial officers. There is so much negativity, so much cynicism in our system in our national life.

I really feel sometimes very disturbed about it everybody seems to see others with suspicion and distrust all executive action are based on distrust and now even legislation seems to stem from distrust just see the prevention of corruption act comptroller and auditor general CBI then all these

are there, then Supreme Court brought CVC, then *lokaayukta* ,then came the *lokaayukta* now *lokal..maha lokpal* where will be end had all these be...be...be any good in controlling corruption I think that negativity can be counted by positivity let us be positive as I said that don t find that don t go with the intention of finding the culprit that is ...thats only a by product let us let us find the best person let us liberate him so that others also may follow suit. so these are my these are my random thoughts which I have put before you as I said that there may be many things which may be which you may not agree. you don t agree with some of my some of my ..statement or formulations you may find something useful but if if if...you think this gives material for a debate this would have served its purpose. Thank you very much all of you. All of us will take questions all of us will make contributionMr Sareen would like to say something first..

Mr Sareen would like to say something first..

What is the pattern ...either three of us take a ...35 minutes are over one method could be..we could speak 10 min each give our thoughts.open it up

Hon'ble Justice Sunil Ambwani: Thank you Justice Aalamwe are changing the format thats why.....there would be no hard lines drawn any thing could be put to pannel at any time [00:33:20] and it would be free debate ...dont repeat what just now Justice Aalam had said.public speaking is this where you have to watch the eyes and the attention plan its never more then 30 minutes. so when I will address you I would be watchful of you that you dont make 10 or 15 mins. If the points are striking or different then we will go ahead. Thank you Justice Aalam ... what you have spoken which something which comes from the heart as you have expressed your feelings ...(inaudible) the way I look at it Sir after I have heard the ..system the various short comings the question which is basic is what do we do Justice Aalam just said mentioned about various institution being created CVC *lokpaal* ,*lokaayukta* I trully loss ...one path which is you end up creating one institution rather then taking stop of what is wrong in that institution and taking care of it and bringing about reforms in that ...

What happens otherwisepart of administration is you create another institution over a period of time that institution itself becomes a problem ...now you make another institution to take care of

that so this is where we should stop ...its alright these are the problems and we will resolve that now the way I look at this one of the things the ACR system as you call it annual confidential reports it is as of now the most accepted system rather this is the one which is permanent the judiciary have been struggling the various states have brought about different forms and these forms have been continuously revised and the revision have come about with a view to bring in inputs seek information which actually is an exercise in self restrained if ithese reforms.

it is to strike towhen you answer those questions ...you focus on what that officer is doing that is a welcome step and make the reviewing officers or make the person making the inspection fill it up so is he inputs are involved and gone through significant improvements gathering inputs to bring them objectivity in evaluation the purpose is if you want to say that the person is A rated officer you better say how he is A rated officer. you specifyanalysis ...at times you are called to give an statement that he has written inputs require judges to focus on the approval of a appraisal of an individual his performance were the goals sets.

now one of the things which is lacking in our system is this it is called annual confidential report you look at the corporate sector it is the appraisal and counselling part while we do the appraisal what we are lacking and what Justice Aalam said is only counselling part so the distinction I would like to make here is we need to emphasize take the lead from the corporate sector you say this is the assessment of the man and how is he to be counsel on achieving his goals that is a significant portion which all of us had been in one way or the other would like to perform.end up ...duties performed by him descriptions of duties then you have saidold matters disposed of cases of senior citizens done all those things ...now what were the short falls what were the ...faced these are the issues you have to take ..evaluations then another aspect is court conduct where we come to the question of inspection thats a different story we will take it in another session ..then behavior with litigants coping with pressure interaction with advocates ability to ... declare orders in open court these are the various structures which we assess. now let me give you ...brother Valmiki is here he would tell you that every state has differentfor instance in Delhi we have 46 judges now ...36....so each judge gets 4 or 5 official assign to him from the judiciary, its a metro I must confesses brother Aalam did one part of it when a judge gets appointed in Delhi high court in the first five years he is very particular about inspections, very particular about assessments I am saying from personal experience you would visit the court and Delhi is one of those unlike other

places if you are a judge just been appointed you would go on thereyou would sit at the back of the court room the judge may or may not recognize you. If you are the one newly appointed one. So there is no fanfare about inspections and another things but the hard reality is this inspection is ...zeal gets over in first three or four years. After that what the Judge starts doing he says bring the last years ACRs and then the hard reality which I think is self ...I would say and this is where the judges are lacking when we take up ...as brother said let this be the part of judicial administration and if it is not so it is our responsibility then we better perform this responsibility what happens is it is not unlikely you receive reminders from the registry ACRs have not been filled upyou end up filling up ACRs for 2 to 3 years in one lot and what you do for them ...I have brought ACRs how it has been going now under this process great injustice a person who gets rated B in the beginning is doomed by the time he is B+ it would take 3 years to reach B+ no body is ready to change tvat rating that muchI want to tell you there was a district judge who came to me ...he said ...I have given him B ...he said I have no reservations or quarrel with what you have given me ...I told him this is your judgement this is how it is you look at it ...look at this gentlemen he named another judge who he thought far more inferior ...judicial acumen, performance etc. because of the assessment by another person that judge was getting B+ he said my only grievance is if he is B+ I should be A. ...So there what do you do so we have taken care in DelhiWe have constituted a committee of 3 judges to take care of as much as possible some ofso that there is no arbitrary is left.

There is atleast 3 judge who feel the same way so there is a judge , a senior judge, that was a system that a middle courtwhen we take disposal as a factora disposal mania now there is it is essential you have your lastI was reading 58 thousand cases in the Supreme Court 53 lakhs in high Court and 2.64 crores in the district courts2015 now emphasis on this is therefore understandable the ... but at the same time we need to ensure that this was not disposal alone it is decision making also ...but otherwise it has a tendency to come back to dispose of ones party matters it comes back as an appeal. ...Now there are different criteria s for disposal points been given these are constantly been reviewed based on what are the subject matter of the litigation taken care of. now let me come quickly to as I said one is the concerns and shortcomings on this one was I said the bringing as much as activity we ...as I was mentioning that tendency that develops is when you become senior 7 years 8 years you are in the hierarchy then you starts

calling for judgments inspection is the thing of the past senior judges don not in Delhi go out and inspect brother am I correct on that generally exceptions are always there so there is no time they have other administrative work so inspection even though in Delhi ...its not travelling to other district it is within the same time but what you do its very simple ..you call for judgments ...or even formalize otherwise what you call for judgments find judgments for these monthsI used to do that send me your best judgments in the last 3 months which you have written ...so you learn what he think is best. What we need to do in my mind ...when we call a person for an appraisal call him or what pick up his judgment when you are ratting him B+ or when you are not giving him A or it is or....and this what brother said a guide, friend a philosopher to him you tell him this is your judgement and this is how it could be better written, this is the language problem this is how you have not dealt with facts this is how it should have been detailed this is the part which is essential to my mind in a.....which most of us are not doing because you don t have the time and thats why problem comesbrother pointed out your job is your own judicial cut up with you are busy writing your own judgments where to have the time to tell this man how to write a judgement so last two years assessment is there so you just fill it upthen another problem which I am raising it and one of you would find it which is incumbent on us to correct it is what I mention the phenomena of the blue eyed boys over a period of time there are judicial officers [00:46:20] various kinds of judicial officers are there some judicial officers are there who are interested in there work they come to the court do there work sincerely ...they are basically introverts they have nothing to do with the community rest accept once in a while formal function be present there are others those who are extroverts ...who are referred as deputationist term in Delhi is deputationist so thats brings them in close contact with higher level of judges, so you draw a relations now these people ..aa...a ever growing feeling among rest of the service judges that these people receive special treatment and there assessments are better and its isif you know somebody he comes to you every ...smallest of excuse now some people are very fond of organizing seminars so if seminars are to be organized that is the judge you say yes yes he is very good at organisation assign him that ...and you are the high court judge who is organizing the programit is his job to judiciary also to be present in this program so these are those outstanding judges ...when somebody said he is not outstanding in his work but he is outstanding in ...standing always at the gate so so this is where you need to correct that this does not create within the minds of the rest a feeling of discriminate being discriminated we owe it to them that

you are objective partial to no prejudiceI think I am sticking to my promise 15 mins not more than that one thought I had on this granted the situation that judges are preoccupied by judicial work brother Aalam had said some of them by temperament do not get time this is not the top priority what shall we do ...to my mind this is the system which require improvement this is not be given of yet I would say there is time to supplement it with some inputs and those inputs should come from not from your self at time we say we another subject will be coveringand taking those issues at times from the path I would say that is the input should be [00:49:19] from the consumers of justice now how can be that be achieved in a manner which is in consonance with judicially retaining privacy without affecting judicial independence and this I would be putting it to all of you and I am going to make a suggestion and see your reactions on that ...what is that method by which we can bring in an input which would help us elaborate our findingsit is supplemental input ..which would ...our findings which are correct or not. now on this I am reminded ...sir 2 mins more ...how time has changed a.. Valmiki brother will recall you know some time back in Delhi there was a publication made by Madhu Trehan ..you heard of famous surgeon she is his wife she is the publisher of the magazine, She took out the magazine called *Why India* now what that magazine Why India did was it circulated a questionnaire to some 30 ..40 advocates in which it sought opinion about high court judges integrity, punctuality, impartiality right ...that was filled up and then it got published in the magazine now let the storm blew all over what nonsense even the high court judges are evaluated in this fashion ...there integrity is ought to be questioned andmember of the bar promptly filed the motion and ...aaa court on its own mission issued notice on the member of the barnow what happened these people buckled down the publisher buckled down because in this case it was a half hearted attempt does not been done properly because what they found was you are saying 40 senior advocates whom you have you chosenit was all odd ..so this was not representative enough. and that time report came down very heavily said this kind of a survey tends to be low public confidence in judicial and cannot be permitted and the matter was closed ..now that has been 7 years back ...12 years back so life has taken a sample now I was reading a the other day ...I must tell you one thing your material has been compiled but the compilation is a some ..in this manner ..it has very good articles ..so some body has to do it enough material there Mr. Bhattacharya you have picked up every thing but you have to take care of giving right headings right do it in future. I find one of the things which have been happening in America is what they call this judicial performance evaluation of

judgments, this program is called judicial performance evaluation of judgments, the methodology adopted is this there is a commission constituted which would be under the judiciary itself now this people will pick up 10 or 15 judgments of the judge in the year in which he has performed and then send these ..first of all take those files then makes a an assessment of look when does the ,matter instituted when did it get over, how did it proceed along, too many dates, was it delayed evaluation also on the judgement in terms of content, analysis and knowledge of the law. Then they also send it attorneys and the parties to get the feedback on may be the party who has lost, a simple question like after this decision do you know the reason why you have lost? that would show that the judgment to a layman as it understandable or it is like a legal jargon. so for justice point of view a person says yes this judgment I understand why I have lostso this performance evaluation done independently under the judicial administration is a factor which would supplement the evaluationit appears to me,This is something which got strike or this is thinking out of the box the existence system as you say has suffered it has not gone further but this is something which needs to be thought about and may be with the ..aa..modifications changes it needs to be thought about and then introduced. Thanks ..5 mins extra ...10 mins

You have left me with only 2 mins

Hon'ble Justice Manmohan Sarin: I think the house will give you another 10 mins

Participant:unless any one wants tea or something ...we can actually continue this sessionbecause I dont think any body needs teaSareen Saab ke liye chayechaye to peene dijiyeSareen Saab ke liye chaye ke sang pasteries

Hon'ble Justice Manmohan Sarin: Sir I am a diabetic

....There is no restriction of time

Hon'ble Justice Sunil Ambwani: See the topic is **Evaluating the Utility of ACR: How Effective Grading System Is?**

Now, lets first appreciate what is the value of this ACR? For the system, for the officers, for the High Court. All this is under the exercise of Article 235. We are supervising the subordinate courts.

Now, one of the part of the duty of supervising subordinate courts is to evaluate our own officers. Now the ACR, with the passage of time has assumed such an importance say right from confirmation, promotions, selection grades, supertime scales, even on sending on deputations, elevation to the bench and even I am surprised I'll tell you that, even for post retirement appointments, the ACRs are sent. So ACR becomes such an important thing that a judicial officer is deeply concerned about it. But unfortunately the High Courts are not concerned about it. Its very, I don't think any High court has framed Rules so far for probably one or two High Courts have framed, as to how the performace appraisals have to be done. You call it "Annual Confidential Report" I don't know why do we call it "Confidential"? In other Government Organisations, in Army, in Police, it is called either "Appraisal Report" or "Annual Performance Reports" we call it "Confidential Report". Now, it is so important now that the Judicial Officer, is so deeply concerned that many a time I found officers virtually spending a lot of time only on finding how it has to, how and in what manner I can maintain good records. Now there are some very important questions which have come up recently. When i went to Rajasthan, unlike UP, UP there are about 1800 judicial officers; I think we have the largest number of judicial officers in Maharastra 3600 or 4000. In UP we have 1800, now 1800 all the ACRs are not brought to the Chief Justice. They are written in the graded fashion by the, ...first the performance appraisal has to be filled up as it is usual every where by the officer himself, then comes the District Judge, and then the Inspecting Judges, somewhere its called inspecting judge, somewhere administrative judge, somewhere portfolio judge, somewhere guardian judge duties are the same but in Rajasthan I found a very strange thing, that every ACR was also examined by the Administrative Judge there, that means J-I and then every ACR would also come to the Chief Justice, in was very strange there was about 850 officers, it was quite a time consuming job, but I found it very useful, I found a particular trend in ACRs. Now the J-1 there he is also the Chairman of the State Legal Services Authority. I found that all the State and District Legal Services Authorities, Secretaries got out "Outstanding". why? because they were in direct contact with him and they were reporting to him and they were reporting their achievements to him. So, it was a difficult task moderating them. But, see there are issues which have come up in the evaluating the ACR. One is should the ACRs go up to the...or can the Chief Justice can on the random basis can do it. Most important thing which is starring at us today is should these be communicated? Some of the High Courts have framed the Rules as to how they are to be communicated? and How representations have to be filed on it? But what we

find is that now the Supreme Court Judgment is staring at us that every ACR less than "Outstanding" has to be communicated and opportunity should be given for representation. The reason being, because that becomes his performance and on that he will get promotion, so he should get one more opportunity. Now, how many times? Suppose he has been given very good; aaä "Good" say and he makes a representation, it is very rarely that he will be upgraded to "very good". but, if it is given "Very Good" should it again be communicated? So, until he satisfies himself that he doesn't get "Outstanding" he goes on. Now can you imagine? that a committee was formed in Allahabad and I was made the Head of the Committee, to what to do with the Supreme Court judgment? Because we have got, we are going to communicate all the ACRs which according to us are, less than outstanding and there will be not 1800 representations, there will be 3600 representations every year and who is going to decide it? And in What manner we are going to decide it? That is one question which is very important that we must consider the effect of the judgment of the Supreme Court. Another thing is in some of the High Courts the 2nd representation is barred. 1st representation before the administrative committee, Now there are Full Court resolutions that there will be no 2nd representation. Now, suppose the officer says that the reason for which you gave me this entry , does no longer exist, so please de-appraise my ACR, now that opportunity is not given to him. Now, another question which has cropped up in almost all the High Courts is, who writes the ACR of the Deputationists?. Suppose he is a Law Secretary, who will write his ACR? the...some times what happens is he is sent to a say development authority, the chairman of the development authority (an IAS officer) writes his ACR. So, in Allahabad a decision was taken that ultimately it has to come to the Chief Justice. But in many High Courts I believe the deputationists' ACRs are written by the department where the person is sent on deputation outside the Judicial Services. So, we have to take care of that also. then what has happened is that most of our appraisal forms do not have the assessment of the work which is other than judicial work. Now, you ask the officer to do legal education, lok adalat, ADR centres, computers. Now, most of the assessment forms do not give sufficient emphasis. If that work is given, how are you going to balance it with the judicial work? you cannot have the judicial work of an officer who has devoted 100% time on judicial work and the other who has been asked to do these things. Then many a time the additional works additional duties are assigned. Now these additional duties are not taken care of. Another problem which may crop-up very soon in judiciary is are the ACRs are going to be subjected to "Right to Information Act?" (RTI) Suppose I am being

tried by a judge, I would like to know, what his appraisal says by his own department. And I may ask an RTI please give me his last 3 years appraisals and then I'll say oh! you have not rated him to be a competent officer, why should I be tried by him? Please transfer my trial to somewhere else. This question may come up some day?

Hon'ble Justice Aftab Alam: Very interesting!!

Hon'ble Justice Sunil Ambwani: And a person will have a right to know. Why is it confidential? You are making his appraisal, all his promotions and everything is based on that, I must know who who is trying me as a judge.

Hon'ble Justice Aftab Alam: You are right, there is nothing confidential about it.

Hon'ble Justice Sunil Ambwani: Now, these are the questions I believe that we should aaa now after the subject to be thrown open to all of you, because I can see all of you are very experienced judges and I have met many of you in this aaaaa National Judicial Academy, where it is a pleasure to come every time and since I am being handling a lot of ACR work and these administrative work in Allahabad, I could feel that there is lot of discrepancies in other High Courts. But, in other High Court I got only one year, it was hardly sufficient time to ammend any Rules or do any thing, but to maintain a *status quo* because Chief Justice in every High Court is suppose to be jack of all. So, to maintain a *status quo* first job of the Chief Justice is every High Court is to see that the Court runs smoothly. It becomes, if he gets more time, he is visionary, he can make some changes in Rules, and make some Amendments. But aaaaa, I think that we can discuss these things.

Hon'ble Justice Aftab Alam: As I had being saying this that judge is not an administrator essentially. Yes brothers!

Participant: Sir, I am justice Ravikumar from Kerala.

Hon'ble Justice Aftab Alam: I missed you name brother!

Participant: C.T. Ravikumar,

Hon'ble Justice Aftab Alam: C.D.Ravikimar?

Participant: T. ravikumar.

Hon'ble Justice Aftab Alam: D Ravikumar?

Participant: "T" "T" for TATA ...cross talks... or TATA.

Hon'ble Justice Aftab Alam: C.T. Ravikumar.

Participant: We are accustomed to and attuned to deal with a particular system ACR. there may be short comings but there are no reasons for giving up the system. And while speaking about the, while evaluating the utility of the system, i should say that it should really depends upon, how it is being written. Most of the times we are relying on the reporting authority and principal judges. And without collecting it directly we are simply relying on that, we are looking into the past 3 years ACRs and then, very reluctant to deviate from it, in concern to making some thing. There cannot be the proper way the correct way of a writing a ACR. I am of the view that aaaaa, one should have the Guardian judge should have an opportunity to go to the places and to interact with the Bar, and other offices and then form an about the person in respect of whom you are writing the ACR. Being a guardian judge you should be able to eliminate the fear factor in the minds of the other subordinate officers. You'll have to be friendly with them. And the lackness in uniformity in writing this , it may cause concern, rejection in the minds of the subordinate judges. As per rightly his Lordship said, one judge, one guardian judge, may write in one way and aaaa most of the officers may rate high. and another guardian judge, now in respect to persons who are having the same standards but working elsewhere he may may rate them in a lower manner. This may definitely create ...in the minds of the subordinate judiciary, because ultimately it will affect their career. So, the necessity, definitely there is necessity to have some uniformity. And that is what we have deliberated yesterday, if we are having some uniformity a guideline or rather certain norms, then, to certain extent we can eliminate these short comings and after all I am of the view that the system should be, the what ever be the failure it has to be eliminated and in that manner we can achieve the goal. Thankyou!

Participant: Solutions broadly under two heads and possibly that may answer various sub-heads also. I was told a small story by a very good gentleman he pointed out the big building, a huge building to me, and he said, HOW MANY BRICKS IN THIS? I said lacks. How many pillars? I

said not even a thousand. He says over a period of entire mankind any structure survives on the pillars and not on the bricks. and the number of pillars will always be few in numbers. Why I am saying this is this will actually merge and door... what Justice Alam has said and what Justice Sarin has said. That at the end of the day, a smaller set of people are easier to manage, as also easier to change. Now, but we can't have lesser judicial officers , we can't have now the times are we need more. How therefore to manage those large group of judicial officers by a smaller body? Which is easier to manage and which we can change also easily. That is one part. The second part is somewhat related to what Justice Alam said, that aa 'm sorry what Justice Sarin said that, we each time we keep on having a new system instead of changing the old system. Its absolutely bang on the point, because it is well said that capitalism, socialism, communism, democracy any thing is dictatorship is as bad and good as the people who man the system. and this is similar to the pillars theory. If the people who are managing the system irrespective of the type of system are good, you may call it by any name it will succeed. You give the best of Rules you give the best of system, if the people who are charge are bad the system will fail. What is that answer? and obviously there will also be unpalatable things, which I'll also be saying since this is a close d room as Justice Alam said that this is an in-house discussion and we don't discuss what we have been discussing, the first thing is that if the system of evaluation of ACRs rightly as told by Justice Alam should not be seen as a power given to an individual judge that a particular District is his fiefdom and that can only happen if all the judges of the High Court are not involved in the ACR making the Chief Justice obviously has the privilege to make a standing committee of limited number of judges with the unpalatable thing which I am saying is that even the Senior Judges must understand, and it will be difficult for them possibly to say that we leave our power, to make ACRs of those judges who are in line for appointments to the High Court. So, the Standing Committee should be there, it is the Chief Justices privileged as to the number of judges to be the part of the Standing committee and with no restriction that only J1, J2 ,J3 J4 the CJ must be entitled to pick. Because as justice Alam said, some are good administrators, some are good judges, i for one I hate administrative work, i am most comfortable on my judicial side and I tell many CJs please have an undertaking from me that i don't want to be part of any committee what so ever. So, therefore Justice Alam is right that there are some people who are good administrators as judges also and some who are not. So, if the CJ has the privileged to have a smaller committee . Now, the question is that how does such smaller committee grapple with such huge amount of work? The answer to

that possibly is that, let the committee also have a Secretariat. now, what , Secretariat is a very loose term, what I mean by Secretariat is the smaller committee of 5 judges or 10 judges or depending on court to court, should have the power to enlist as per a particular situation, first of all they must have permanent people, right. Because let us say evaluation of judgments is taking place. Shortly the judges have to do judicial work also, they will not have all the time in the world. SO, they can have people whom they trust, which can be judicial officers but how it'll not harm the assessment, I'll just tell you, that they can have judicial officers also, they can have administrative officers also.

Hon'ble Justice Manmohan Sarin: You know, there was a concept , I don't know, it was given a trial also, of judicial administrators. Cross...talks...

Hon'ble Justice Aftab Alam: what you are saying brother, I am happy and I am in agreement with you, what you are saying is very close to what I have suggested, and I don't agree that this was never, this never proved successful, this has never been given a chance to...I know for a fact...

Participant:by the ordinance of Supreme Court, all courts are having "Court Managers" ...

Cross talks.....

Hon'ble Justice Manmohan Sarin: "Court Managers" i was wrong it that its "Court Mangers".

Participant: Cross talks...In Orissa its working beautifully, they are ... away with the Registrar...

Hon'ble Justice Aftab Alam: I know, ...thank you very much Navniti and you'll elaborate on it, and I know as a matter of fact, that during Justice Ahmadi's tenure as CJI he had invited, he had asked the this business School in Ahmedabab, Ahmedabad agreed to send a delegation to the study the working of the Supreme Court, he wanted the expert groups delegations to come to the Supreme Court on 3-4 occasions, they had, they would visit the different offices, different sections, the filing section how a case is filed, how is it processed, how does it come to the court? How it is argued out? How the final judgment is pronounced? He wanted them to have a full familiarity with the working of the Supreme Court and then to submit a Report regarding how to improve its ...

Participant: That's what I am saying the administrative officers have to be drastically increased in number, and with each committee having...

Hon'ble Justice Aftab Alam: You used the right word, there should be a "SECRETARIAT" for this.

Participant: Exactly, Sir, why because that secretariat must comprise partly of judicial officers, partly of administrative officers. and how, it is the fact that as Justice Ambwani said a private Secretary I have to assess him, and as you said Sir in TDSAT you had to assess the private secretaries, and that relation is there, so it is possible, we are human being that he may feel bad if we down rate him, but afterall rating has to be an honest ...now to this the judicial officers there is a very simple solution SIR. Secretariat and the Committee which ultimately examines...please strike off the names of the judge, who's judgments are being assessed by the judicial officer.Of course the CJ or who ever he know s that packet "A" has been given to this and it pertains to this particular judge. And hence there will be no hesitation even if the judicial Officer is your private Secretary, because that assessment is done by a secretariat and ultimately by the committee with the name being struck off of that judicial officer. So, if there can be a secretariat as I said and a little unpalatable thing that the senior judges J1 J2, Sir, i am sorry to say I am a first generation judge, I have no clue on this, but the hierarchical system which we have in our judiciary is worse than that of the Bureaucracy and Army. I mean, my colleagues will bear out me even yesterday some judge said, sitting in a Division Bench how can I disagree with my brother judge, I mean we have gone to such lengths thatSir i am telling you , it is an unpalatable things

Hon'ble Justice Aftab Alam: It is fossilized.

Participant: Sir, yes yes,but its true its okay, its your Senior judge's DB it is not your DB. I mean these are unheard of concepts for a common man or for a lawyer. because a Division Bench is a ...

Hon'ble Justice Manmohan Sarin: And its worse in the top court.

Participant: Yes! SIR I am telling you ast the Seniority increases its become a Zamindaari System,people are not ready to give it up.

Hon'ble Justice Manmohan Sarin: Just aaa I think what you said brother, I remember now, we had a Seminar here at the NJA only, when we debated for some time the working of the Court Managers. The what I broadly recall these people can give the details, one of the things which need s to be corrected there was why the system was failing was, the administration or the CJs not taking care to see that they are not weeded out by already established interests. You see, this was a counter foil to the Registrars. Registrar perceived them as an inroad to his authorities. So, till the CJ was to protect these people and carve out a niche for them, It will not work out, that was the conclusion in that seminar. Why the Court Manager System in India is not working is this. because he would have no cooperation from the Registry, he would want some detail, it would not be available, and aaa,

Hon'ble Justice Aftab Alam: Why? you look at the Court Manager and Registrar as adversarial, they supplement each other.

Hon'ble Justice Manmohan Sarin: That ha sto be taken care of from the top naa,...that has to be taken care of, you have to think through it.

Participant: I'll just take 2-3 mins I'll complete Sir,

Hon'ble Justice Manmohan Sarin: That what you are talking of that can be easily taken care of, say even the administrative committee, there have been courts where you have departed with the practice of 1st seven judges to be the part of the administrative committee., what they do is alright, J1 J2 J3 will be in the Administrative Committee, balance four will come from different segments of the Court.

Cross talks....

Participant: So, Sir, this will take away all the ills, and give the benefits as Justice Alam says that since all the judges are not going to do the guardian judge or the inspecting judge work they will have time for judicial work. However, the problem of limited people manning the system for the ACRs can be solved by giving them a Secretariat with a power even to coopt a particular judge or judges or particular number of issues or for particular number of ACRs if the system is made flexible Sir and it will help in picking as Justice Alam says the good judges, because object is also

not to weed out bad judges but to pick up good judges because ultimately the basic essence of a judge his judicial work. Administration is heaped up on us. We became judges to do judicial work as justice Alam said. we are of course lots of people do enjoy administrative work, but the essence of a judge is judicial work. So, all these minus points including the blue eyed boys, the organisation and the seminar boys to which I'll add one term Sir, the photo op boys, they will when the photograph is being clicked, they will be seen, otherwise they will not be seen when substantial work is done those quite people they do the work in the background the photo op boys they immediately come in front Sir. So, if this is followed that a Secretariat is there, the Seniors give up the requirement of power as Justice Alam says even the individual judges of the High Court says i don't have to be a part of a District incharge or a judges incharge, leave it to the CJ let it be as elect committee, let it be flexible to co-opt whatever, have a judicial and a non-judicial part, strike off the name of the judges at the time of evaluation of the judgments nitigrities of forms and all can always be looked into depending on the High Court Sir, i think that these therefore I leave again with the same issues that if there are good people in the right places what ever the type of system let the existing system remain Aayukt, lokayukt, lokpal, maha lokpal is not necessary, cure the existing system it will possibly give the answers by letting the pillars be at the right places because the structure survives on the pillars and never on the bricks. Thank you Sir.[01:22:35]

Hon'ble Justice Aftab Alam: I have not said this in my, in my written note, I feel ashamed to tell you what happened, what happens in Bihar at least till 2007. When a inspecting judge is going for inspection of his district. With the entourage of his private sectaries and his members from the registry and 2 or 3 car convoy is going, from the border of that district on the road, he will be received by the CJM, Chief Judicial Magistrate, the traffic will stop the cars will stop, you will be garlanded on the main road and then the procession proceeds. The the the at the boarder of the district head quarter the District Judge will be on the road and and and second the second garland, and then the lavish feast that, that are served in the evening and it it is it is a small consolation that not the judge but all his staff, the personal secretary the member of the registry, the stenographer, they are given suit pieces and then, then...

Participant: Where does the money come from?

Hon'ble Justice Aftab Alam: Obviously, if the judge is inclined to have the choicest drinks and the choicest meals and then he hopes for a modest ICR, the ACR.

Participant: 2007 we started the...had protested on these judicial officers coming on the road to receive and ...cross talks...thereafter issued by the High Court that they will not come to receive or meet while they are crossing their district. And it so happened with Justice Navin Sinha, he was going on a personal visit to Ranchi, now he stopped midway for lunch, the moment he stopped he saw guard of honor and ...being there.

Hon'ble Justice Aftab Alam: old habits die hard, and the the the poor fellow doesn't know who may get offence?

Participant: no no this is exactly,

Participant: And others have to follow suit...

Participant: ...took off he said we have send you a circular you can't do this, its too humiliating, I am going on a personal visit, you can't have a guard of honor and things like that in standing on the road. So after having the lunch when he was leaving, the judge came and said, Sir, and that is what he himself admitted, *ki hum logo ka to hai ki band bajaiye nahi bajaiye humara band bajnaa hai*,...It was just last week a judge went by and we didn't do it and Registrar General had issued a notice to me that why he was not welcomed?

Hon'ble Justice Manmohan Sarin: No no he wouldn't have said, he said why courtesies were not extended?

Hon'ble Justice Aftab Alam: I, I was also fresh I also had idealism, when I experienced this I was, I was appalled. I came and the first thing I went to the Chief Justice chamber and I said CJ what is happening? The District Judge is standing on the high way and garlanding you. I said that please convene a Full Court meeting a, let us pass a resolution that this must stop. Then the CJ was an old man a senior man a seasoned man he said ki Aftab Alam saab aap Full Court me haar jaaiegaa.

Participant: Sir even in the Full Court the senior judges have a say rest of the people are only there as a matter of formality. They can't they don't ...as the system has become such that you dare not speak against your senior...

Cross talk...

Hon'ble Justice Manmohan Sarin: Lets get back to the subject.

Participant: Now so far as our Full Courts are concerned, it is far better, every body is very much vocal they always interact, its not that who's ...

Hon'ble Justice Manmohan Sarin: No no Delhi is much more, Delhi is much more...what he is talking about is of the ultimate result.

Prof. Oberoi: I was just thinking, I have arranged tea coffee here, in the sunshine and we can take this talk over there.

Hon'ble Justice Aftab Alam: Yes, yes bother, let brother finish it.

Participant: Not being surgical in this regards, what I personally feel is, to some extent I also, because in the existing system, let us now think that hoe we can make it perfect. I believe when the Registrars are there, first thing is that the Registrar should be chosen from the highest hierarchical system because the person who is the senior most, should come as a Registrar. And he must be given a separate...

Hon'ble Justice Aftab Alam: That is a CJ's prerogative.

Participant: That a Secretariat should be there, there must be one atleast or 2 person who are manage this that the... person coming from a management....and all, just to handle those ACRs and to just prepare all those aspects of their own, so that at least...

Hon'ble Justice Manmohan Sarin: Court Management Procedure..

Participant: Court Managements in that sense will....

Hon'ble Justice Aftab Alam: I assure you brother, you are saying this now, when you are the Chief Justice you will have a different view. ha ha ha ha ...you will have a view, why should anyone interfere in my prerogative? I will have my own Registrar, I want to run the High Court as I wish.

Participant: that is what I feel, I do not have that....

Hon'ble Justice Sunil Ambwani: : We can have tea and come back...?

Participant: Yes Sir....

SESSION VI

Effective Inspection of Courts: An Assessment

Speakers: Justice Aftab Alam, Justice Manmohan Sarin & Justice Sunil Ambwani

Hon'ble Justice Aftab Alam: Yes we proceed Brother?

Participant: I just wanted a clarification as My lord Justice Alam said, This cant be used as a power, the inspections should not be used as a power, or ACR of a person should not be used. Sir, sometimes it is a requirement, I as a protocol judge or a guardian judge, I have been appointed very recently about 2 months back, I received lot of complaints that the judicial officers are not attending courts in time, they are leaving home early, again just to make over they come back again in the late part of the evening so some times it is necessary to use this as a power, unless you visit you can't rectify this type of...

Hon'ble Justice Aftab Alam: Brother you are absolutely right! Let me, clarify, what you said is disciplining an erring colleague a junior colleague, who is erring, disciplining him, is a must, that is part of your responsibility. When i said that, its really a question of a mind set. When I said that the inspecting judges take it as a , as as their personal power, what Justice Valmiki, brother Valmiki used a expressing "fiefdom" as if this particular District is there fiefdom, and all the District judges down to the lowest Munsif is there vasad I gave it as as as I gave you the illustration, that when the convoy of the inspecting judge, how the convoy of the inspecting judge proceeds to that place? When I said power, I was, I I I was referring to that particular, kind of mindset, as if a feudal lord is going there to receive tribute....

Participant: I make a surprise visit, i don't inform anybody.

Hon'ble Justice Aftab Alam: No, if the, if the, if the judges are not conducting themselves properly there, they need to be disciplined, and and and very rightly, put them right.

Participant: Sir, I know this may be off the topic, but I wish Supreme Court judges sometimes start contempt proceedings against all lawyers who strike, Justice Rath was telling me 1 and a half months, , justice waghela was.....cross talks....boycotted by strike why? he said he is my second brother, if he takes copy of the other annexures to the Writ Petition? that's all he said, and a few things which are justified. Similarly Justice.... and see the concerned High Court judge or CJ cannot take action because they are too close to the people. The minute Supreme Court takes charge and

issues contempt notices and send 15, 20, 30 people of the Bar behind bars, just see the miraculous effect. Because the bar is totally crushing a judiciary.

Hon'ble Justice Manmohan Sarin: I think we will keep it for afternoon, because other wise we will get disgraced.

Hon'ble Justice Sunil Ambwani: This sitting late in the Court and rising early, is a very serious problem, its a matter of discipline. I think the first thing as an inspecting judge or a portfolio judge should ensure, and the way to do it is, very simple. You have to write a letter to the District Judge, seek his report first, don't go for surprise; Surprise inspections are sometimes taken very, in a different manner. Unless it is very necessary, but you must write a letter expressing your serious concern about it, and thereafter seek a report from him. And then you will see that there will be a drastic change. Don't expect things, keep writing to them and then a surprise inspection and then if such kind of complaints come take it very seriously, and if a complaint comes that a judge has risen early then you must confront the judge, I want a report of the District Judge after seeking comments from the officer concerned. and you will find that the practice will stop.

Hon'ble Justice Aftab Alam: One more suggestion, one more suggestion to that, ensure that the District Judge sits in time and rises in time. If the District judge sits in time and rises in time, in High Courts also, in some of the High Courts this malady is there. But, if the Chief Justice starts sitting in time,...

Participant: In our High Court we all sit at time.

Hon'ble Justice Aftab Alam: No no that's very good, in Patna High Court also, we had some Chief Justices who didn't sit in time. Never the less I have a tradition,...a Patna high Court tradition in this respect was such that between 10:30 & 10:35 and latest by 10:35 every judge is there on the seat.

Hon'ble Justice Manmohan Sarin: One of the measures taken at one time in Delhi High Court was the Chief Justice found some judges were coming late. So, rather than talking to them he said all right for this month, month of December or so October, we will have coffee at 10:00 O'clock in the lawns outside. so, that ensures for coffee everybody is coming. So, there are different ways of doing a thing, aaa tackling a problem. And similarly if I am not mistaken it was done in Punjab, to have it at the *tila*. So, these are things which are measures, but there is nothing wrong in the surprise inspection, to ensure people sit on time. You should never have any compunctions about it.

Yes Sir, anything else?...

Participant: I am Manas Ranjan Pathak from Gauhati High Court, since 2014, I am just 2 and a half years in my ...and within the one year I was given the Portfolio judge of Arunachal Pradesh. Onle 2014c Arunachal Pradesh the separation of judiciary came only in 2014. Earlier it was under the executive the Deputy Commissioners were looking after it. What we found immediately after this separation of judiciary, because Arunachal is a different terrain and there are only 2 Additional district Judges initially then there after 3 and , now they have come up. But the difficulty is what they had earlier, they were affiliated with the executives. Now, immediately when the judicial officers were taking up the matters, they have started writing frivolous complaints against the judicial officers, this is my personal visit to the State, of course i could not visit all the Districts because of the terrain, only we can go in this winter session, in October - November, thereafter, again there will be some District which will be having snow fall, in rainy season it is impossible to go there is no communication. SO, what ever is possible I tried my best to 5-7 Districts I could go only to. But, what ever we found people have that thing. Because earlier they had the executives, now going through the frivolous complaints to find out again, my personal visit there and every thing, we found that he was not there, but because, the person who, lost the case he must have made the ground. These are the one thing we found and there is no infrastructure for the judicial officers, where to stay? No electricity, no road communication, these are the some problems for which immediately I'll not blame the judicial officers but these are the difficulties which we are also not getting the same thing, the State governments are not helping, for a High Court it is easy, State government will listen to the High Court, for these High Court matters , but with regards to these District Judiciaries till now they are not coming also. Now I am given immediate charge of the Mizoram, they ofcourse 7 years back the judiciary was separated from the executive, there also same problem, I had fixed my program immediately after going there IO will be going to different Districts which are bordering to the Myanmar State the country of Myanmar. there also same problem there the this districts are effected by the traffic of drugs. So there are cases mostly of traffic of drugs and this mostly, aaa there they were also complaining I have received they do not have a proper place to stay. So, these difficulties are there I don't know how to overcome and to assess ..and they have to stay far away from their aaa quarters , say quarters are 30 kms away from their place of work.

Hon'ble Justice Aftab Alam: As long as 30 kms, as far away as 30 kms?

Participant: That also is a risk....though they have been given manupatra,there is no facilities of the internet, how to use it. I have been consistently telling my High Court, that something else should be done. Last time aaaa about a month back there was a team from the Government of India, law department, they went to assess there, I requested them that to give us separate satellite, they said it is possible, it is available, so that we can get direct access to the internet. We are not getting any internet connections, not even in Izol for very few hours, even for video conferencing in Gauhati is not possible, these are the difficulties we are having in those terrains.

Hon'ble Justice Aftab Alam: We must appreciate that in these handicaps against these odds they are working.

Participant: They are working, they are working. So I do not have personal...they are working in adverse situations.

cross talks among participants

Participant: ...of a complaint saying that, you have seen in such and such car or jeep or whatever truck, or may be trucks that time. that makes them very vulnerable.

Hon'ble Justice Aftab Alam: Absolutely right. ...

Hon'ble Justice Manmohan Sarin: I don't know, but aaaa, there have been different ways of tackling it. At times within the High Court, a PIL is filed and this State is made to take these corrective actions. I don't know, whether you have thought about it or not? You can have the Bar Association move these and there is nothing wrong with it. You know Bar Associations could move it that these are the facilities not being available, to the sub-ordinate judiciary...aaaa so take it on the judicial side....no to some extent you see judiciary is a priority item, it can't be ignored to that extent and when you have money for all other aaa ventures this little bit can come in and you know this is a standard practice in most of the courts we have one Writ going on, for instance in Delhi, you'll recall there is a Writ, for 11 years it is kept and it is still pending, for housing purchases. So, have that, try that out, have the Bar Association file a PIL for facilities to be provided.

Hon'ble Justice Aftab Alam: Personally I have reservations about this, PILs ...cross talks.

Hon'ble Justice Sunil Ambwani: At least brother this gives us at least one understanding, we should not blame the officers just on the face of the complaint. We must ask for the reasons. Some of us know the realities, most of us do not know the realities, in one case an officer was being booked

for low quota, not coming to Court and it was ultimately found that the wife was suffering from cancer. So, we have to, if such a complaint come, we must first hear out the officer or at least give him an opportunity. And that's one thing we always forget.

Participant: An honest officer will have lot of complaints, whereas the corrupt officer will not have....they will have their God fathers in the High Court also.

Hon'ble Justice Aftab Alam: That's what I have experienced.

Hon'ble Justice Manmohan Sarin: You know on a lighter side, I am reminded of something, you know one of the judges said, his junior to him that look now I am in the new roster I am on the Appellate Side, your appeal will come to me. He said my appeals will come when I work.Ha ha ha ha ha ...When I pass an order, then....

Hon'ble Justice Aftab Alam: Yes brother!

Participant: ...District magistrate arrested the ...many of the suggestions Mylord, I would like to share my thoughts on administration being given to some other agency, if we are not comparing with.....with some HR person, with some administrators and also....secretariat will give a report to standing committee ... they then ultimately...us the ACRs including quantitative and qualitative assessment. Then the officer must be atleast given one right to see...if not two. Ultimately in cases of such.....and the rating can be finalized. And so far as standardization is concerned, it should also be taken into consideration the niceties. Say a division officer isis managing a city civil court with 53 courts under him. He has to inspect most of the courts aroundwith 2000-3000 pendency, and then recruiting another judgeand departing member. Doing the work in the same period, of the same batch, you cannot have same yardsticks for evaluation...you have to take niceties into consideration.

Hon'ble Justice Aftab Alam: Absolutely right, absolutely right.

Participant: Then, District Judges are burdened with the administrative work. they should be relieved of that. There should be separate administrative wing in the District Court...Infrastructure, computerization, staff recruitment, HR, transfer substance, commercial substance, then loans and advances, ... So if the District Judge is relieved of this work, then he can be more productive. He can concentrate on the judicial work, and control the unit in a better way. Otherwise most of his time is taken , everyday from 5 o'clock till 9 o'clock he will be doing administrative work and now-

a-days no Saturday Sundays.....as we all know the reasons, legal service works, workshops, 2 conferences he holds, 2 inspections he faces from the District Court, his inspections on the subordinate courts, and attending to the other works which I mentioned i.e. administration of the unit, even for purchasing stationery eh has to call 3 tenders then finalize have a meeting with them, bargain and then finalize. How much time is taken in these of a District judges? So, i humbly feel, that district Just must be relieved of this administrative work. Then Sir, regarding Officers Stopping Working Its a ground reality.

Hon'ble Justice Aftab Alam: Brother I am really glad, I am not so isolated as I thought I would be? You have so nicely elaborated on the small point that I made. You have you have, substantiated it with so much facts and figures, thank you very much.

Yes Brother!

Participant: My Lord Justice Alam, I also endorse that the judges main function is judicial function and not administration. They should be relieved of the administrative functions that they are required to attend to as on date. Apart from, such administration which is necessary like the administration of their court, court management, their own court management, apart from from that, they should be made free to do judicial work, but the present system of rating of ACRs is a pretty old system which is being followed for quite some time. Every system has its own aberrations, its not that any system is fool proof, what I can say is what I followed till now, most of the time what I do is, I make surprise visits of the District. my staff goes 2-3 days early, I go there for a day. Nobody knows that I am there, apart from half the day, after that it is disclosed that I am there. During which period i have to address the Bar, from early evening till late night, by the time I catch the train I meet individual officers. So, I get to know the officers one to one, see what there problem is, if they can be remedied by me, it see that it is done identically, I meet the Bar people and see what problems they have. The problem of the judicial officers attending to the Administrative Judge or the paraphernalia which is normally followed at the visit of the Administrative Judge is all you know, avoided this way. Primarily about 12 hours, half the time they don't know you are there, half the time you are busy with the Bar and the officers. So, that part goes, and you are at the advantage that you get to know the officers one to one. So, when you are writing the ACRs you have, brief knowledge about their, persons without their functioning. So, I think the best thing to do is, to see how these, abrasions can be minimized, and the system

which has been followed for such a long time should not be very easily, aaa we should not let it go. thank you...

Participant: I am in full agreement with the Lordship of Justice Alam Sahab and other honorable judges, Hon'ble Chief Justices, former Chief Justices. True ACR's are always prepared by that system which has become very old. And in that system what I am observing since last 11 years in my State, the ACR is always subordinate officers and the lower judicial officers are prepared by the District Judge, and District Judge is taking the information from the concerning officers, and after giving such information, his remark is there, his report is there. And that report comes through Vigilance. First Vigilance go through, aaaa, vigilance registrar is examining that, and thereafter their envelopes come to us. Our District, our district portfolio. After receiving that envelope there is no copies of the judgments of the concerning judge, there is no copies of the order of the concerning judge, only that unit systems are there. Only the reporting is there. If you want anything then you have to wait for sometime and the all the envelopes were given in the month of January and upto the March we have to again send to the Registry. And at that time during that period if the suppose visit is carried out, visit is carried out during the 3 months after receiving such report, then it is a very difficult in last year the datas is not available with you, that report is not available with you, then you can't assess the work of the person and the second thing is that ki they are directly under the control of the Registrar vigilance and the Registrar General of the State. And sometimes in some court, although it is the prerogative of the Chief Justice, and because that reason, the Registrar General, if a Senior mos district judge is the Registrar General then there is no problem, if there is a some junior person, is the Registrar General, there is a junior person is a vigilance registrar, then there is a problem, they are always interested for one reason or another best known to the him, ki they are interested ki bhai his career should be like that and like that. When ever that report comes, if you want, lodge the complaint against the person, if complaint is received, pick and choose the complaint, start the inquiry of the concerned officer and sometimes the complaint is received it is kept in the aaaa dormant complaint, where complaint is not required, no process is started, it is a choice of the Vigilance Registrar, It is a choice of our Registrar, it is a choice of the our Registry. So, some time the good officer are facing the problem. And sometime, aaaaa besides this the second thing, the second thing,.....

Hon'ble Justice Aftab Alam: I was sharing with my brother here, what you said just now, the norms the traditions, the Rules, are there in place, it is who break those Rules. In till 1960's it was it was

the unwritten Rule that the 3 most senior most District Judges, would be Registrar, Law Secretary and Patna district Judge. But, it is, it is , it is we who break the Rule. Then a CJ will come he'll take the Registrar general from the middle of the cadre saying that this is my prerogative I want this man. And then the system, the whole norm goes to the wind.

Participant: With all respect I have stated this, before this house discussion. And now, the one thing has come that a independent agency should be there for administration of the, the administrative work. If suppose the independent agency, services is taken by us, then in that circumstances, our Registrar General, our ditrict judge, our sub-ordinate officers, even the portfolio judge will not tolerate him, because somewhere, the such officers are posted in my Bench at Gwalior, Madhya Pradesh, High Court of Madhya Pradesh Bench at Gwalior, some MBA person is posted. But, that MBA is doing the work like a Additional Registrar of that Court. he is looking at the management of that. He is not looking at the management of the building, infrastructure, computer, for which there is already Registrar of the aaaa, Registrar of the Computer, Registrar of the others. But what is the use of that administrative that MBA person?

Hon'ble Justice Aftab Alam: No, nothing, in this form it is, it it it is just a it is just useless. What I suggest brother, there must be very imaginative kind of application. As I said, the experiment was not even completed, Justice Ahmadi had asked the, that Business Management School of Ahmedabad, to visit Supreme Court 3 or 4 times, study the Supreme Court procedure, get familiarized with the Supreme Court procedure, and then to submit a report to the CJI who would consider the report. But, even before the report was considered the CJI retired and the next man, who came he had no interest in in in this idea.

It has to be, as as many of our brothers have said there has to be a Secretariate, there have to be, many properly channelized system.

Hon'ble Justice Manmohan Sarin: An isolated administrator, will not succeed. ...

Participant: The system should be accountable to the CJ and the Standing Committee.

Hon'ble Justice Aftab Alam: Absolutely.

Participant: but that system should work, independently.

Hon'ble Justice Sunil Ambwani: See, I'll tell you the 13th Finance commission, provisions were made for Court Managers. Every State it took some one year, some took one and a half years, 2

years to frame the Rules. Qualifications and all that. The money was given, Court Managers were appointed, they were all MBA's. In UP we took care of training our Court Managers not only in the Judicial Academy, State Judicial Academy, but also in IIM(Lucknow). When they went to IIM Lucknow, they said we are already MBAs, so IIM told them that you have been trained in a profit model, this is a Service Model. This Institution is a Service Model,

Hon'ble Justice Aftab Alam: Very important, what brother Ambwani is saying is very very important. Hon'ble Justice Sunil Ambwani: Hon'ble Justice Aftab Alam: different kind of training is required. Now, they were trained. So, they worked for about 3 years, in the High court they did, wonderful job, because I was I was looking after them, they prepared the Court Plans, 5 year court Plans, the Court Development Plans, the Models, the Registrar was not having a real problem with them. But in Districts what happened, the District Judges would come and ask me Saab what work should we give him? I said you have got suppose 100 items in your, in beginning from the cleanliness of the Court, to the appointment of your administrative officer, can you not give them only one job? Most of the District Judges were reluctant to give them even the maintaining hygiene in the court. I said alright, you assigned the duties of the peons and chawkidaars in the Court, at least that job you can give? Later on slowly and gradually the in some Districts they started working and they started working very well. They gave them infrastructure also. They were trained they were working very well. But, in the 14th Finance Commission there was no grant, he he he heso there was no grant, because the Central Government took the feed back, and found that they have not worked and performed accordingly. Because no work was taken from them. See we out of our judicial independence we become so judicially arrogant, our District Judges do not want to part with anything, the first thing the District judge will tell you please keep me away from the recruitment, but the moment you keep him away from the recruitment he will say, well you have deprived me of the best opportunity in my life. This is a kind of a judicial I'll say quagmire I'll say it In which we are. We will have to realize and understand that now the working has become so complicated specially the budget, the computers , the ADR centres. Keeping watch over every, because these jobs have ultimately to be handed over to the Court Administrators. And none of the High Courts a administrative wing in the court. May be alright suppose, we do not have any fully functional Court Managers. We can at least from our own staff train certain people in that. The Registrars will come, Senior District Judges, they will work for 3 years and then they will go away, the other ...will come he'll again have to be trained in that. Now, this CPC business, the computers.

This has become so complicated that once I went and told Justice Madan Lokur, *ki saab mereko B.Tech ki Degreedo do*. Because it is difficult for me to comprehend these terms otherwise and 4 times you have changed the technology in last 5 years. Now, how many CPCs are we going to train? You please realize our problems, you say in 15 our Districts the computer systems could not be installed because switches were not there and none of us could understand what switches has got to do with this? All this has become very technical. We have to understand and give up these roles to the administrators and professional Administrators. Its only then we will be able to . I thing the consensus is emerging from what ever we have heard that, we have to give these jobs to the professionals, and keep ourselves exclusively busy for...District Judge should be there for overall ...

Participant: My experience of the Rajasthan, there is a Court Manager, i went to the Kaila Mata then I stayed for some time at Karaouli Circuit House and Karauli this Court Manager came. I asked him who are you? I am Court Manager, What is your duty? My duty is a protocol. Means he is working as a Nazir.

Hon'ble Justice Sunil Ambwani: problem here is that the person who takes work, like in Allahabad, I was looking after, I was getting the Court development plan prepared from them, and when I reached at Lucknow, the Court Manager rings me up a lady, *Sir aap kyaa khaayenge raat ko?* I said what business do you have to do. She says I am a Court Manager, I am looking after protocol also.... MBA

Hon'ble Justice Aftab Alam: Its like using a patent lawyer as a gardener. What brother Ambwani said is very important, i just want to add a few words to this. You see law is one but within law there are so many specializations. There is tax , tax law, there is Intellectual Property Law, there is Civil law, there is Constitutional law there is Service Law, so administration and management of an organization, may be one subject, but under this there may be numerous variations. Numerous specializations. Person who is trained to manage and administer a hospital, he cannot run a university. A Person who has who has been what what what what what brother Ambwani said so currently he has been there in a University, cannot run a court system. For that you have to have special people. But then the Court must have the capacity and the vision and the imagination to use such people. If you get a person like that, and you put him to protocol, protocol

service, it is, as I said its like putting a patent lawyer to to the job of a cleaner or a gardener or a driver.

Participant: We'll have to carve out subjects that these, these subjects are the subjects which have to be controlled by the ...

Hon'ble Justice Aftab Alam: The experts know that, the experts already know that, that that what what are our requirements. Good legal minds , good legal, good administrative minds, if the sit sit together, they can carve out a whole, whole, whole frame work for this. He is Trained to run a organization on profit profit motives, he is not suitable to run a run a system like a court vigilance, which which which works on a service motive. SO, we have to have persons who are trained specially for this kind of a job, who know how the court works? what are the litigants expectations from a court? Howand in what distress a man comes to court and he needs urgent relieves. A person, a person trained in administration, person trained in managing a system specially with these features. a person trained to run a corporate entity, a person trained to run a very large hospital, a person trained to ...

Hon'ble Justice Sunil Ambwani: Like our computer systems I'll tell you. In every conference I have been saying for last 5 years, *ki please* appreciate one thing, whether Railways the Station Master, or the General Manager Railways runs its IRTC? whether the bank manager, Regional Manager of the bank is running the core banking? The computer systems in banks are entirely different. i have been every time raising the voice, I have raised the voice this time again in the Chief Justices Conference, please separate the computer systems from the courts, so that we can have the best systems, and the best technology which keeps changing every every, computer system, new generation comes every 3-4 years. Now, what is happening is they are insisting upon our judges to be trained. Now, I'll tell you I have worked out 10% time of the judge sis wasted only in computer training, computer training and computer training. Everytime there is a new computer training. Then there is a Master Trainer, the Master Trainer does no other work, he is the best officer of the District, he'll do only do, so I hope my suggestions will be taken some day so the computer system should be separated. because what happens, when a new person comes and sits on it, he is unable to understand, what is ACGM Court-I and what is ACGM Court-II. you know it took one and a half years to standardize the , even today the entire country so far as

computer, we are talking of National Judicial Data Grid, but we have not standardized. Our, you know, even today the filing system in our country is divided into 2 parts:

-
- One is the Calcutta Model
- Lahore Model

□ In one model the Court fees is paid first, in the second model the court fees is paid after it is being worked out in Bengal model. We have different sets of Rules we have different sets of names. *Sristedar* is called at one place, *Reader* at another place. So, unless we standardize we cannot have one national data grid. because it takes, it has taken 5 years to standardize the things. I hope someday the understanding will prevail that this job should be given to experts.

Hon'ble Justice Aftab Alam: It is such an irony brother, I I I consider it as such an irony, that when brother Ambwani would have taken the oath of a judge, he wouldn't have imagined that in the process he would have also become a informally a B.Tech. He was meant to write excellent judgments...not to acquire this kind of...

Participant: Can I say one thing? just one thing only subject to what...all I can say is that, I was given computer system in the begining of July, I worked on it for 3 weeks, I said you have to give me hard copies, because Sir, honestly, by God, it will bring down my efficiency to one third. I know what output I give Sir, it came down to one third with at least 3 times ...more stressed, strained....The minute I insisted that No I also want the hard files, my roster was ...what I want to say sir please understand our volumes of work are such and our generation is such, that you cannot say ...may be the time will come, may be the number of cases, may be the judges will come, that they can work honestly on a computer system. What is the objective is to increase the efficiency, if it is decreasing your efficiency what is the computer system.

Hon'ble Justice Manmohan Sarin: You see now there appears to be a consensus almost arriving at....

Hon'ble Justice Aftab Alam: We have not heard half of them...

Hon'ble Justice Manmohan Sarin: Appears to be, that's why I said appears to be, I am guarded Alam, aaa the point that I am making is this, You see once these Court Managers are to be appointed, and what we heard so far, there have been reports that, at places they have been successful, like in Orissa and at others also they have now, what we need to examine is why the system has failed? Two reasons appear to me to be apparent:

1. One is non-cooperation

2. Lack of direction from the Courts.

Non- cooperation by the Registrars and lack of directions from the Courts, absence of a well formulated policy. There is no point of introducing another system and saying there should be somebody, these MBAs let them come and take over. Till there is judicial will to part with it. Therefore, what you need is, as Justice Alam was saying that after Justice Ahmadi, the next man was not interested, i do not know, but on paper there seems to be a decision to have Court Managers. So, what we need is to formulate a policy on this. Detailed direction...directions, as to how these, what are the scope of these court managers? what are their aims and duties? which are the areas in which they will be given in a phased manner? and there has to be a consensus all over., and only then should we venture to implement it and seek funds. otherwise like in the first case, financial commission has given the fund, it is not been implemented and the next one you are not getting it. So, first the need is there to draft a comprehensive, package for it and linked with that is the suggestion that I made was for, judicial aaaa review of performances, that's a separate issue. Coming to the computerization part to which you are referring, in Justice Alam own State, for the limited the time that I was there in J&K when I reached there what I found was our display system was not working. Now, when I looked at it, there was no, it did not require any, computer knowledge to make that work. What has happened was, there was lack of will to implement it. It had been brought in operation for the last 6 years. It was lying closed because some rats have eaten the wires, and no body was willing to take it, because they said this would, (I am sharing it here no problem with it) this would, this order was placed with out inviting tenders. So, no Chief Justice was willing to put his hand into it and go ahead. I said no, we will go ahead with it, we rectified it and I was trying to know, whether it is still working, but before I left, within 2 months we had the system working. I hope it is working now. So, it didn't require computer knowledge, but all it

required was a will to do it. So, here also we need a will to do it. You formulate a plan, implement it, and then see how it works. At least give it a fair trial!

Participant: cross talks,Justice Sarin gave a very fine and we are implementing it, so he found it out of which

Hon'ble Justice Aftab Alam: Yes brother!

Participant: Sir, first of all i must say, the High Court Judges there are accountable to their own conscience, there is nothing like Service book is there, there is nothing like ...except that they can be breached. There is no other provision in the Constitution they can be the conduct so first of all they are accountable to their own conscious. In this context I must say something about the Administrative judges also. As you said earlier, the Administrative judge has to be the role model. They have to be a role model, they have to be above board, first of that. Then there should be a Code of Conduct for them also. For example if they are going to a District to make inspection, in the very beginning they should tell the District Judges, no booking, no dinner, no guard of honor, these all are very strong messages to everybody over there and they will have to be very strict with their private Secretaries also, these are the persons who take undue advantage about them. They go with their own family.

Hon'ble Justice Aftab Alam: No, what you said as the first sentence, it is you who alone can make a ...no one else can makethis happen but for your self...

Participant: That is what I am saying, because if they are out of board then 50% of the problem will be almost over. second thing is...

Hon'ble Justice Aftab Alam: If we are good then every thing is good...

Hon'ble Justice Manmohan Sarin: So, it is self correction...

Participant: 50% of the problems, yes it is self correction. First of all we can correct the other subordinate court only when we correct ourselves. Second is, the control over the subordinate court is a Constitutional mandate under Article 235. The Constitution has conferred this power on us.

We cannot delegate these powers, as far as the controlling the conduct of the subordinate court is concerned, we cannot delegate this power to some 3rd agency, or.

Hon'ble Justice Aftab Alam: No no you completely misunderstood it. I am not for a moment suggesting that you out source this. That is not the least of my suggestions.

Participant: Simply I am saying, simply the controlling the conduct part, I am not saying, as far as the infrastructure is concerned, maintenance is concerned, second thing, we are administrative Judges, this power has been conferred by 235 as well as it is...

Hon'ble Justice Aftab Alam: 235, 235, I beg to differ, 235 does not say individual judges...235..

Participant: It says High Court, High Court includes judges...

Hon'ble Justice Aftab Alam: Yes, High court includes judges but, but under the High Court, for example, in Patna, this this method of, this concept of inspecting judges, came ,came only in mid 1980, when Chief Justice Santwadia came from Punjab he introduced this, 1984. Before that I don't think that the Patna High Court was acting unconstitutionally, in control, in exercising its powers under Article 235, without the individual judges, through the Standing Committee and the Chief Justice.

Participant: Sir, my trite argument is this power is to be conferred by the High Court. High Court basically Chief Justice. Chief Justice can delegate his powers to the other judges.

Cross talks.....

Hon'ble Justice Aftab Alam: Again, again High Court is not the Chief Justice.

Participant: These powers has to be exercised by the High court, High Court means the judges, through the judges only the....yeah! you cannot outsource these powers, you cannot delegate these powers to the managers or to anybody else...

Hon'ble Justice Aftab Alam: Again High Court is not the Chief Justice.

Participant: Nahi Nahi ...all of the judges, it includes all other judges, so my submission is that, my argument is that, that the Chief Justice, these are confidence which has been reposed on us by the Chief justice and he appoints me as an Administrative Judge, his confidence has been reposed on us. Once there is confidence, then it becomes my duty, to see that my District is run efficiently, there should not be any dishonesty. For that it is necessary that we have a constant dialogue with the lower judiciary. Unless we know a person very well, we cannot write down his ACR, we don't know anything, we just go once in a year, how's it possible. we don't even remember those persons by face. Right now I am a Administrative Judge of 2 Districts, These are Merut and Agra, in Merut there are around more than 60 judges over there, in Agra also there are more than 60 judges which means 120 judges are there. Is it possible for me if I go only for for, for solitary visit, if I make a solitary visit, is it possible for me to even remember the names, for that it is necessary that we should be in constant touch with the lower judiciary, because seeing is believing. seeing is believing, you should go constantly, we should once in very month. You know, where there is a will there is a way, we should go once in every month, we should go, however we should avail the facility of the video conferencing also, it is not , unless we go there....

Hon'ble Justice Aftab Alam: I deeply appreciate and respect your sincerity and your idealism. But, as you said, you must know 120 judges in order to be able to honestly write their ACRs. Now, how much time you need to know what,please, please, please listen to me, you will be doing that only at the expense of your own judicial work.

Participant: See that is what...there is other facilities also, there is a video conferencing, we can talk to a judicial officer through a video conferencing also we can do, and once in a month, not in, once in two months atleast go there we see what problem they face, because as the seeing is believing... because everything all the District judge what ever District Judge feeds us, we just believe that, we should go, we should...

Hon'ble Justice Aftab Alam: I I deeply respect your sincerity and your idealism yes.

Participant: Second thing as far as powers are there, see there should be, some improvement should be made. We cannot do away with this administrative judges and all this power should be there. Because no system is bad, the person who are manning the systems they are bad.

Hon'ble Justice Aftab Alam: Unfortunately that is the position.

Participant: As you said there is no point of getting new posts of low.... this is the foundation and these are the places where the corruption starts again the corruption starts every....so we have to streamline the existing system, instead of changing the entire system.

Hon'ble Justice Manmohan Sarin: Reform it!

Participant: I am Justice Navniti P. Singh from Patna High Court. I have been a judge now for almost 11 years. And my experience of inspecting Judge or a Portfolio judge and now its sort to be said as Guardian Judge and ACR. You see there iswhat Justice Aftab Alam said, is very correct.

All this system was set up keeping in view the feudalistic approach. It has I think outlived its utility, there has to be a change, in the whole administrative set up. It will not be in conflict with Article 235 in any sense. Its a question of how it is delegated and who does it? Now, why I am saying this is, all of us agree, that most of the judges take it as a ...deprive someone, move him, for example move someone move him, for example move someone from Gaya and place him at Buxar an inspecting judge he is saying *maine kyaa kiyaa jo itnaa chota wala jagah de diye. ...but that shows the mind set*. And they think pride I have got 2 districts. now, all that has to go. Now that is one, and what we had generally agreed yesterday, for something which I'll just point, that from a "Feudalistic Approach" , we have to go to a "Guardianship Approach". The reasons are also very clear, because as a inspecting judge our role now, has to be "fact finding" what is again what we decided yesterday than "fault finding". Right now all that the inspecting judges are doing, is who is bad, who is bad,who is bad, who is wrong, who has to be deprived? Now, having said that, if we come to alternative systems, then the question arises, as we mentioned, Lokpal, Lokayukt this that where do we end? The important question is who will police the police? where do we end? I mean we have to rely on someone and ...we are here by the virtue of an oath. If we read our oath every morning, remind ourselves, ...if we take our oath to be authority conferred upon us to do anything that we want, then we go by abuse. now, coming to ACR because that is one of the main thing we are concentrating here, I have found , why I say this is abuse, what is an ACR? It is rightly suggested that it should be called an "Appraisal" rather than an Confidential Report. What is

confidential I have not yet understood. Everyone the day something is put up before me and I sign it, even before it goes to the Registry the person knows it. I don't know what is confidential about it? everywhere it is brought up ...open, with the Supreme Court judgment that anything below excellent has to be communicated, because it is not so good so therefore "Adverse". So, if it has to be communicated,...

Supreme Court bhi extreme pe chala gaya hai

Now, so ultimately it comes down to Appraisal. Ultimately it comes down to appraisal, now, if we see the old ACR, different High Courts have got different formats we have recently in the last 4-5 years, aaaa going through the whole exercise and reformatted it. Now, 90% of the things there is "Objective". a Judge is not required to do any thing. His performance that is calculated, computer churns out the figure. How many days he was present? How many days leaves he has taken? How many cases there is disposal? All those are objective. What is subjective? Its only 2 things:

1. Integrity and

2. Knowledge of Law

Hon'ble Justice Manmohan Sarin: Quality of judgments.

Participant: Yeah!

3. Quality of Judgments.

These are the 3 subjective. But for those 3 the inspecting judge is given such a big responsibility, and what can he do about that, can he find out the integrity of a person? if he gets information about his integrity can he note it barely? Because that will be disapproved. there is no material to support. Only yesterday we have got a judgment, we saw, there they say the Supreme Court said that, so far as the Judicial Officers are concerned High Court judge writing that his integrity is doubtful is sufficient, it requires no proof. But then that leads to other problems. Now, that is there for an ideal situation where it is assumed, that all of us will yourself have an impeccable integrity. Now, there are many things that, oh! to my mind no. 3 is no.2 District Judge. No. 3 should come because there is only one vacancy, so why ...just writes doubtful integrity, ...

Hon'ble Justice Aftab Alam: Meaning same thing what brother said that unless you are impeccable?

Participant: now, therefore the subjective assessment its a very little part. Now that has got to be channelized, as to how it has to be done? Now what I am finding is ACR writing is more to "Punish" or "deprive a person" than promote him in any sense, because let us see where ACR is used?

1. the first time it is used is when it comes Junior Division to Senior Division. (Promotion). And if it is even average it goes through, because it is "Seniority cum Merit". So ACR is redundant unless there is an adverse entry to pull him down. So, how does an ACR comes in only to pull him down. Then

2. When you come from Junior Division to District Judge entry level, it is virtually the same, it is again "Seniority cum Merit" though it is there in some of the decisions that it has to be "Merit cum Seniority" but then you have to justify. And all the courts take it as 'Seniority cum Merit " again. So, again what is the use of ACR there? Dis-entitlement.

Now a person may have excellent ACR, might have 99% appreciation, but you won't get any where if the other person has an average and he is Senior to him. So what is the purpose of ACR? Even however good he may be, he doesn't get anywhere with it. only thing he has to see is, he is not bad. That is what he has to be. otherwise from his UPSC selection, aaaaa or BPSC selection as in our case, that merit list decides his future right up to the end. He has to be just an average performer. So, what is the purpose of ACR? I fail to understand.

Hon'ble Justice Aftab Alam: Negative as you said.

Participant: But that you can without the ACRs... his annual conduct, his bad finished dome him. So, why go through this ...

Hon'ble Justice Aftab Alam: I said that the whole system the whole nation operates on negativity and cynicism.

Participant: no one important. Now, if he has a ... the judgment evaluation again What is the purpose? only to fail. Because whether you give him 40% marks, you give him 60% marks you give him 99% marks it doesn't make a difference. But yes, give him 395 he is doomed.

Hon'ble Justice Manmohan Sarin: This operates on the basis that there is no counselling. Right!

Participant: Sir, even if counselling is there,

....cross talks... it makes no difference...

Hon'ble Justice Manmohan Sarin: Now you require so many ...

Hon'ble Justice Sunil Ambwani: So, its a problem ...

...cross talks...

Participant:most of them will give up, so we take a District Judge from there, that's the highest, ...that's all end of the matter. but, consider right from Munsif stage, there is no incentive to work, and ACR is only used as a whip, to punish him, rather than give him any incentive.

Hon'ble Justice Sunil Ambwani: So its a perennial problem, even the DOPT (Department of Personnel and Training) they have been grappling with it for a very very long time. They have made grading systems, they have made even point systems, they have given every small things. then in army, this is a very important factor in army because, you can be thrown out of the job at the age of say 45 or 54 so there also the grading counts very much. This is not an easy thing as Justice Gupta has said, it is the conscious of the judge where he puts you. But there is one area which is aa grey area here, about integrity, now, "integrity doubtful" i came across this problem in Rajasthan quite a lot. There was one Hon'ble Chief justice who went, he was a acting Chief justice for sometime, he went out. On few days before he was transferred, he called for files of about 12 or 15 officers who were not of his estimation were not good honorary who did not serve him well. He wrote all there doubtful integrity, doubtful integrity, now, integrity doubtful is a matter of big debate as to this, we are all judicial minds we know, to make it integrity doubtful you have to have some material, now can you, will you expect, that Chief Justice to put that material as to what was the material on the basis of which, i have rated integrity doubtful? And it is such a vague term,

such an indefinite, vague, general term the man is doomed he cannot come out of it. He will, suppose he says there was nothing in my entire career which may have given an impression to the Chief Justice that my integrity was doubtful. but, then how do I prove it? In what manner do I establish it? I have to wait for 5 years now for my next promotion. My juniors have all got the promotion.

Hon'ble Justice Manmohan Sarin: we have had some interesting things on this, a officer is rated once, integrity doubtful, now if you really have something against him, that is his propensity, does it change every year? It cannot. If a person has been rated as integrity doubtful then what kind of period must elapse before you change that rating?...cross talks... no no, let me put it, you know there had been cases at times where we all had situations where we said, in these 3 years nothing adverse has come to the notice of the court, so that integrity suspect has been changed.that is the ideal situation, that is the ideal situation. But, it doesn't happens always , you know it....cross talks....

Hon'ble Justice Sunil Ambwani: In Up all representations against the ACRs where sent to a committee of 3. the committee of 3 will meet and decide the representation of 50 or 100 officers, in one or two days.

Cross talks....

Amongst those 5 the Senior judge will say I know this man he is alright....so next.

Hon'ble Justice Aftab Alam: Aftab Alam knows one man, Sarin knows the other man, brother Ambwani knows the third man. ...you take mine and I take yours. ha ha ha ha ..

Participant: Sir, yesterday also we were discussing supposing a person is having a, there is no material to show that his integrity is doubtful, for instance, but his "General Reputation" is bad

Hon'ble Justice Manmohan Sarin: therefore he is a suspect, suspect...cross talks,,

Hon'ble Justice Sunil Ambwani: one one more thing we have to understand, you must as you said conscience, we must ask this question have we actually read his judgments? How many of us read their judgments?

Hon'ble Justice Aftab Alam: I , I, I, i tell you again from a true a factual episode from my experience. I had gone in an inspection in Madyepura it is one of the eastern backward districts of Bihar. So, I reached there around during noon time, in the evening I was told, that the CJM there is suspended by the High Court. I was furious I am the inspecting judge I ma coming here for inspection and I learn about it only on on on reaching it. I was very very angry. I, I, discussed the matter with the District Judge, he said that this man is not very popular with the Bar, because he is very, very stringent in granting bails. I met some elderly members from the Bar, they said that he doesn't grant bail but we never complaints about any dishonesty against him. We have a grievance that he is very very very strict in bail, but we never complaint against him of any dishonesty. i made inquiries from all quarters, i said that he was on the negative side. He won't grant bail even in even in cases in which normally CJM should grant bail. But that ground the Bar was against him but not that he was dishonest of any kind. then I further made enquiry, then I came to learn that, there was some case in his previous posting 3 years ago in Gaya, where he has granted bail and that matter was lingering on and lingering on and he was...a proceeding was started and finally he was suspended in connection with that case. I tell you the most poignant moment in this whole story he had not come to the court. I sent words to him and I called him and I met him in my chamber. An adult person, around early 40s he cried before me, and I can never forget that moment and I said that don't lose heart, I'll go and I'll take up this matter, this is the first thing that I'll go back to the High Court and I'll take up your matter I'll get the decision reversed I'll get the suspension order recalled. And you know what he said? That Sir, how will, how will that, how is that going to help me? I am no longer able to see eye to eye to my wife and my wife and my children. He was crying tears rolling down his cheek and he he is telling the inspecting judge, that you tell me that you will get the order recalled but how is that, how how how, do I look at the eyes of my wife and my children?

Hon'ble Justice Sunil Ambwani: So, you see give integrity doubtful to an officer, you are not condemning him, you are condemning his entire family. Entire family.

cross talks...

Participant: As the chairman of the appointment committee evaluating people for promotion, we suddenly found that two junior division officers, had failed in their judgment. Otherwise

performance excellent, every thing was good. Now, then we got who are these persons ? then we found both of them were Assistant Professors at the National Law School, who had sat for the exam and qualified. Then I said surely probably they have been teaching and they dont know hoe to write a judgment. As an exception we called for the judgments. I said let me see then, probably amongst their batch they would be the most learned that way. I found beautiful judgments, the only sin he had committed was, being a law school professor, he had cited about 3 pages of Supreme Court judgments and the inspecting judge he had his own difficulty in trying to appreciate the judgments. We had a terrible time trying to save these two kids.

Participant: I am Chandra Bhushan Bajpai from Chattisgarh High Court. Sir, I am in complete agreement whatever the Hon'ble Resource Persons and the House it is coming up. That the judges should do their judicial work only, and there should be some committee helped by the experts and all. Sir, in earlier Madhya Pradesh, i am from the Bench, spent more than 30 years in the State Judicial Services MP and also Chattisgarh, I was District Judge for about 9 and a half years. So, one thing I can, its my experience, that a judicial officer who is honest he cannot get any loss or any thing, its my personal experience I am observing it since my days in MP till today. No honest judicial officer is deprived for his rights even for elevation or for anything else. So, this is one thing that I can say from my own experience. Sir, earlier in those days there was no portfolio judges or administrative judges, or guardian judges in the MP but even then the overall functioning and all of the subordinate judiciary was good. Sir, for these things as my Lord said that the input from the consumer of the justice should be taken, for this the High Court judges used to obtain the opinion from the District Magistrate Superintendent of the Police, Public Prosecutors, President of the Bar, senior members of the Bar and every complaint, what ever is received by the High Court is registered and it remains with the vigilance till the person either retires or something. SO, by all these areas where we can sort their opinion we can certainly know about the merits of a judge about his integrity and not there ki if SP says something then the judge asks him to demonstrate as why to sustain to why you are saying this thing? To very the facts. from all these corners if we start taking inputs certainly we are going to evaluate a judge very good. This only I want to add.

Participant: Fortunately in my state we don't have this much of a problem, because the cadre strength is very small. High Court judges areincluding the High Court judges. But the problem what he says thatmuch of a difficulty they are written honestly and everything. But when it gets

out to selection, Specially from the junior to senior, because they are not quite good reasons the ...there's no difference to the fact that even at the time when the ACR is recorded, it goes to the Administrative Judge and it goes to the Hon'ble Chief Justice and its accepted and thats how it is. but it gets to the selection probably with due difference to the members of the selection committee, this those are not even respected the entries therein are not respected. The favorites are then chosen. therefore its not only writing ACRs the question is how honest are we even when we are making selections. that stage is over.

Hon'ble Justice Aftab Alam: He is thy self.

Participant: So, my concern is every one, again every one I mean all of us we are governed by our judicial conscious but this is the reality. That people are dented their legitimate due despite the administrative or the portfolio or the guardian judges for records grading the officer correctly but when it gets on to the ultimate goal of that what it has to achieve? Probably we are delaying that.

Hon'ble Justice Manmohan Sarin: Does it happen that the officer who is selected has better grades?

Participant: No, that is what I ma telling, it is not being seniority, it is not the grading it is whimsical it is personal.

Hon'ble Justice Manmohan Sarin: That is again has to be approved by the chief justice isn't it?

Participant: It is and that is why there are lot of litigation on these. With this the very objective that is defeated, because you are not suppose to give reasons.

Participant: There is no cure if we can't cure our selves.

Participant: Sir, I am Kotishwar from Manipur High court, aaaa even though I have a very short spell so far about 4 years of experience. but, my personal experience reflects the kind of concern which is being expressed aaa When I was elevated in the Gauhati High Court being a relatively junior judge I was not settled with any administrative work so I could fully concentrate in my judicial work. but after the creation of the Manipur High Court, since I was placed in no.2 all kinds of responsibilities were placed, portfolio judge, then collegium, then legal service authorities, in Judicial Academy and also building up the infrastructures in the sub-ordinate courts we had to

establish new district courts in the hilly districts it were not there earlier. In the process what I experienced is that I share fully that, my quality of judgment had gone for a six. I tried my best but I couldn't aaa relieve myself from these administrative duties I felt which was equally important for a new High Court. Therefore I fully share aaa that an effective Secretariat creation , that will relieve so much of burden on us. In fact I would venture to suggest some kind of creation of a State Judicial Administrative service. To by taking up this role of these court managers. By perhaps making it necessary to have LL.B. degree also, in addition to MBA. that would, because, I am saying because evolving court I can see the problems which have been experienced by the larger High Courts. aaa then secondly ACR writing also I have felt myself that, I know a particular judge, who had been known to be utterly corrupt, but without any evidence. My ACR form also contains integrity, there are 3-4 categories:

a) Beyond Doubt.

b) Nothing Adverse.

c) Doubtful

d) Known Case of Lack of Integrity.

But since I didn't have any material so I couldn't write any thing on d) Doubtful, the same expression which had been recently just now, also, if I mark him Doubtful, he is for ever gone. But without any, but I am fully convinced about his dishonesty. but I don't have the material facts. So, I'll ask what to do? I couldn't write this his ACR for a week or so I just kept it, I didn't know what to say, because I couldn't say beyond doubt because he is not that, Nothing Adverse also I can't say, Doubtful , ultimately I settled for nothing adverse, because IBut then Sir, I had to write something, I couldn't again sleep, i again added needs to be watched.

Hon'ble Justice Manmohan Sarin: That's fine but tell me what was the basis for your belief....

Participant: Yes yes yes because his judgments I used to verify....based on the judgments and also my information, i mean, it is not that I didn't do my....

Hon'ble Justice Manmohan Sarin: So it is based on some material...thats what I am saying...that inner conflict would have been resolved.

Participant: Yes yes material but, but...

Hon'ble Justice Aftab Alam: Please appreciate that there is a difference, between tangible material and intangible...

Participant: and and because he used to review judgments when grant bails, but we had reports...but no lawyer would come they would tell me Sir, this is he is doing all these things but I said why can't you just write a letter to me so that I can ...

Hon'ble Justice Manmohan Sarin: That is sufficient, that is sufficient..

Hon'ble Justice Aftab Alam: You are very conscientious I respect your inner conflict and you did the right thing.

Participant: How to get over this problem, I just like to have some more suggestion, in fact I was thinking of putting a suggestion box in the court. not Complaint Box, I was thinking whether it would lead to a flood gate of anonymous complaints, but still in my mind I should have a suggestion box in my court complex, I dont know if if...

Participant: You are adding a lot of work

Cross talks....

Participant: That is why I wanted some more inputs before because it has been in my mind , whether to put a suggestion box in my court? Therefore ultimately my humble suggestion which I seek from the house is how to assess this integrity part, because we don't want some rotten elements to get into the system, that will destroy the system, but again...

Hon'ble Justice Aftab Alam: Watch him more and if your impression persists say that, doubtful integrity.

Participant: In fact we are, my elder brother is also from the same High Court so I'll take only lesser time because he, today only he joined this session, so I'll express my own experience to the humiliation of my judgment as per the format 5 judgment from civil and criminal on the basis of that this evaluation has to be done. Yesterday also we discussed these things, because I am in the Bench since 2 and a half years old. [01:16:07] So, what I have done while this recording the ACR evaluation of the judgments, I ...5 judgment received from the concerned judicial officer and accordingly this, awarded as per the judgments. So, what happened the same officer transferred from that District to another District, so then I was having a roster of criminal and civil, so some matter in appeal came before me, so I had an occasion to go through those judgments from this another Districts. So, ofcourse the earlier you know the judgment supplied by him, 5 judgment, that was as per my opinion excellent, so accordingly I awarded so the judgment which I had gone through from the another district in the appeal that was a really not upto the mark, so therefore what I am, what my opinion is, instead of asking 5 judgments at the choice of the district the judicial officer, I think it is appropriate to get first the list of the disposal of the case total disposal and not to leave for the judicial officer for sending that 5 judges, it is the guardian judge or administrative judge who direct him to supply this A,B,C,D judgments. So, I think that is, otherwise the judicial officer who will definitely you know, supply the best among his judgments.

Participant: ..it could also be ghost writing.ha ha ha ...

Participant: yest yesterday...so this is what you know, instead of giving this you know, choice to the judicial officer, administrative should have asked him to you know supply this, this judgments not at his choice. So, rest I am fully agreed and one more thing I would like to say, because aaa, I have my elevation from Bar, so this experience aa very helpful for me in future also, yesterdays and todays discussion especially the experiences of the Hon'ble brother judges and the specially the Resource Persons so since my brother is here so, I will give more time....

Participant: Thank you , thank you brother, since we are from State ...I have a experience myself as a lawyer and one my assessment was,...position. During the time the file remain hanging,..I was in a fix what to do? but anyhow...So, ...whatever I had the knowledge, the capability the capacity, the ...but I ma not having this impression with respect to having these inspections, assessing the judicial officers, going here and there. So, when I ...I thought that ...where from you get that idea?

Because we are short of judges, overburdened, burdened and overburdened, maybe having 100 cases.....and 40 cases in daily ..then how to do justice in all these pending litigation? so, my concern is that I have apprised the concerned CJ , please don't give me this much of work, administrative work. This is only at the cost of the litigant who is suffering here in the court. Because I have to devote my time I have given my consent with reference to my recommendation as a judge that ...position, that I will ... but since then there is a system going on. So, we are discussing here what is the outcome of this inspecting the District, assessing and evaluating the judge, subordinate judge being a District Judge of the junior division or the senior division?...because that is the only role of a judge. the..work with reference to what ever comes to the court.So, when assess it I firstly I required what is the kind of assessment? we have to give any point or we have to assess whatever the quality of the judgment etc. So, ...earlier from the one year I assessed on the base of the judgment, but later on i was given the unit system. So, I said that who is assessing this units system, is it there any secretariat for this? They said no, you have a division of their own. So already work burden with reference to judicial work, for these I have to ...the support of the ...what is to be done? Civil disposal one case 6 points, so this can be done by an ...process or any administrator who will be able to assess with reference to disposal 100 or disposal 10.... So, you are good as a judge of the High Court and as an administrative judge you have toso I am in agreement and in support of the suggestion of the My Lord the aaaaAftab Alam, supplemented by the both of the former Chief Justice were able having their experiences sharing with us that we should haveand then what is the outcome of this ..out come is that when we assess and put all ACRs before the Full Court, we have ...is the Full Court not the Chief Justice. So this is just okay! what is the net result of this Okay is ...? This is that where the promotion.....the net result is that we reach any ...we have enriched ourand nothing is there to the out come...

crosss talks...

Participant: no the end of the day what is the net result? net result is nothing.

Participant: Sir yesterday he said one thing you know the entire ...possibly and he rightly said CAR becomes useless sometimes...because we ultimately go by seniority, or sometimes ACRs are deliberately downplayed or something like that and one answer which came was that, instead of selections whether from the District court to , Junior to Senior, senior Division to the High court

...is don't look at only the Senior most but look at appointments made about 3 years. Take that entire talent pool + the highest age pool with every other judge who is ..Constitutionally qualified, then you know, as we say sometimes,because it will spoil the entire family right! So, from the talent pool you have to select and which is the larger talent pool..

Cross talks.... there are judge swho got super seceded. they were very excellent, they had the best of the knowledge of the Bar. but they got super seceded because of this rating by the concerned judges who are having the very close ...recovery system, but this is aaa also,....

Hon'ble Justice Aftab Alam: So we are already late for lunch, by one hour we are late for lunch!

...cross talks...and you will excuse me for the post lunch session, it has been a great great experience here. It has been a great pleasure and a great experience being with you. Thank you very much all of you!

SESSION VII

Evaluation of Performance & Increasing Strength of Judges: Time and Acceptability Issues

Speakers: Justice Manmohan Sarin & Justice Sunil Ambwani

Hon'ble Justice Manmohan Sarin: I think our strength is complete now?

Participant: Yes Sir!

Hon'ble Justice Manmohan Sarin: Oh yes, we can start, that is something which one should know, happens in J&K all the time...not 6 times...Good afternoon and welcome back, now the 2nd subject is almost covered in the 1st one, "**Effective Inspection of Courts**" I think we have been discussing that a lot. Barring 2-3 things brother would like to make some comments on that, he may do so ... little, what I just want to remind you is what I recall, feed back in this very Academy from couple of judges. 2 of the judges who had been session judges earlier, and had been elevated, what I am saying are their words, of course I am not stating the Court for obvious reasons. They said Sir, these are raids, So, I was taken aback, I said you are using this expression raid? In the context of your discussing judicial reforms and others, where do raids come in? He said Sir, these inspections are raids. So, I was taken aback, and I said look I am terribly disappointed that something like this is. Then he said Sir, please let us tell you, now we are of course Constitutional functionaries, I said now it is your additional duty now, added responsibility to see that it doesn't happen, atleast in your Court right! What he said was very simple, this is the moment a judge is to carryout the inspection and as the paraphernalia and the staff is to go first that indication comes and if the judge averts that and sends a misnomer after that, that saying that this inspecting judge is not coming today, we have been sent he'll come next week, and he suddenly drops in, and then this is raid. I said but how is it raid? He said look our experience has been, and which I am saying is with all sincerity, that such things if it happened, must, its beyond my imagination that a High Court judge, a Constitutional authority would do it. He said Sir, we had the nominee of the judge coming and sitting back. I said all right, if he is sitting and watching your proceedings, it is for your betterment, he will watch and later on tell you, he says no, on that very day, while he is sitting there, the judge after that gets up and says, come into the chamber. Now, to my mind this kind of behavior is just not acceptable. Whether it comes from the High Court or otherwise, you are dealing with a District Judge, you are dealing with an additional District Judge, you watch the proceedings note whatever

you have to say, and then, don't say anything in presence of the litigant public or anyone else, you have no business to do that. But, I hope these are freak incidents, and once that is over you go to his chamber then act as a guide, elder brother to him and tell him, look in your behavior I found that you are going a little fast, you are not giving a hearing to somebody, or these were the omissions, that is the role which you have to play. But, you know at time it is said, saying is believing. I did not believe it, till I had heard it, I don't know what is your experience of aaaa..., I hope this is a solitary incidence!not at all, but does it happen? Are such freak incidents happening? be frank! No no is it an exception or does it happen?...

Participant: It is an exception I just,....4 years back,...

Hon'ble Justice Manmohan Sarin: And, aaa no let me go further, they said, one of them said after that, his elevation was delayed, on account of the influence of the judge, and he suffered, I said alright, that's a destiny, these things happen he must add this assessment of yours, but I was just curious to know, you people come from different Courts, my understanding is that this was a freak incident, it should not happen. What do you believe.

Participant: Now, aaa, 4 years back a judge was elevated and that was quite at a young age now, inexperienced at Bar and got to the Bench. He went incognito to the Court which was assigned to him, and he sat down in CJM's Court. Being a young boy, no one took notice, and he saw,....he said *ki nahi ye sab gar bar kar raha hai* He got up in the court (again immaturity) and said *tum chori kar raha hai, tum chor hai*. The reaction of the Bar was, they all piled up and he had to run for his life, because the Bar was blazing in to beat him up. Then someone, some senior Judge somewhere, they recognized *Ki ye kaun bhaag raha hai...*

Hon'ble Justice Manmohan Sarin: That is judicial aberration, that's the aberration of the inspecting judge. You are talking of the aberration of the Bench...ha ha ha

Participant: Then I told him, you don't have to start policing. You are inspecting judge know your limits. And then when you find, if you have heard that he was corrupt, CJM was bad this that, there are different ways, you don't go and you stand-up there and you say, ..If no one have recognized they would have beaten you there. You would have got beaten up. And then ...

Participant: Sir, what is your opinion regarding "Surprise inspection"?

Hon'ble Justice Manmohan Sarin: You see let that be put it. I would leave it to the discretion of the Inspecting Judge, he should know when it is required. There is something you can't, if there is inspection is a surprise inspection also has an advantage. You know the things which you may be missing otherwise in a detailed inspection, would become obvious to you. So, the utility of it is not lost. But, it should not be a matter of routine. So, I would say, inspection has to be there,, and let's have effective meaningful inspections.

....cross talks

Interestingly let me tell you, earlier days I recall it, 2 of the judges in Delhi, I think, it was old time Justice Chadha, he reached the District Court unannounced, right! and there was a very interesting spectacle these 5-6 judges used to have lunch together. And after lunch it was the kind of which happens in the High Courts also, Paan club, you know after that you have a paan or something, then you wash-up and then you go to the Court. So, these judges were sitting down and having their paan club and moongfalli chat after that. So, it was already 2:15 suddenly, from the chamber the news came, he was the fellow who came inside, Chadha Saab is outside, in your Court, ha ha hahaha, So, 2 of them ran out, 1 of them hid behind the almira, so that was the kind of fear psychosis that was there. But I think today it is gone. Today if happens in Delhi at least I can tell you, those 5 judges would, just walk out and say Sorry Sir, we were delayed today, we were discussing something. And then walk back. So, this is a transitional shift which is coming around. But coming back to it I think the surprise inspection has a utility, but it must be exercised discretely and to full advantage, and you must correct errant officers. I remember a case where I was an inspecting judge, this officer happened to be the Secretary of the Judicial Association. Now, the moment you become the Secretary of the Judicial Association, you believe you are, you belong to a different category, the normal disciplinary powers do not apply to you. So, once we were at inspection, and we found, there was a judge Senior to me also inspecting, and suddenly this fellow, who was sitting in the District Judges room, this fellow walks around and says, *han judge saab aaiye aaiye, ye bahut achche aadmi hain* to the other judge who is a senior judge, so I looked at him I said what kind of federal-ity is this? He is introducing me ki and he tells the District Judge, *Aap inke liye chaye paani ka intezaam nahi kiyaa madam abhi tak aapne?* So, I just let it go, I reached back to the Court,....I said come and see me the next day. And I called his inspection judge, there were inspecting judge also, and I said, now please tell, how you behaved yesterday? I said, what business did you have, when there's an inspecting judge sitting inside with the District

judge, to enter the District judges room? This is misconduct to my mind. Why did you do it? and for what? But they say some of these hard nuts, did not learn, he did not learn and aaa, purely from the point of history, one of these days he misbehaved with the District Judge, called her names, and in the Full Court we took action and since he was on probation, and despite that he had the audacity to do all that, his services was terminated, but in some other story, that, this is so much so for our system and data base bank, that I am told that he got selected as an Additional District Judge, and would soon join the Bench after few years. That's a different story, so these things happen, we have to correct it. We each keep on doing our duty and we only must do it, that's what I will say, over to Justice Ambwani please.

Hon'ble Justice Sunil Ambwani: I believe that, inspections , regular inspections and routine inspections, are necessary, absolutely necessary, and the reasons are that, these days Courts are just not, simple courts where people go and file the cases and get them registered. Court is a complex, very complex, it includes jails, it includes Juvenile Justice Courts, it includes ADR Systems it includes computers, it includes variety of functions of courts. So, and District Judge is so over burdened, we must all realize that the District judge is highly over burdened officer. Many a times he forgets many things, like in one of the cases we found that the process server, now process server in UP is required to be of 60% of personal service, and 20% of substituted service. But it became reverse, during passage of time, because for years nobody was looking into process servers, so it became 60% substituted service and he would sit there in the court and say I have pasted it here and I have pasted it there, and that was one of the reasons for delay of the cases. So, many a times District judges out of sheer, being extremely bussy, forgets many things. It is the inspection, but it should be given with some warnings at least a month in advance. Then your team will go and each High Court I believe has a team of specialized inspecting officers, who will go. Because if you see from this compilation page 291 to 388 (100 pages)is the inspection requirements. beginning from audit, accounts, because many a times you will find, infrastructure is not there but, no one has bothered to even to make a request for the infrastructure. Chairs are not there, but if you ask them, have you made any requisitions for the chairs? Sir, we don't know, may be the nazarat will ask for it, nazarat says I don't know when a last requisition was made? So, inspection serves this, fills in the blanks about the various aspects of the functioning of the court, which gets stream lined, slowly and gradually, because....also becomes conscious, Courts also becomes conscious, and it serves a very important purpose. Inspection you know, specially budget,

audit, it also serves the purpose of audit. Sometimes fines are being realized at old rates, sometimes fines are being realized they are not deposited in the treasury, sometimes the treasury head in which they are deposited, is wrong, and many a times in the inspection you will find ki the same clerk is sitting on the same seat for 15 years. Now, there are some very coveted posts in the District, one is the accident claim Babu, the Babu who deals with the Land Acquisition Matters, these are paying seats, nazarat seats. Now these seats, when you go there you will also request the District Judge to also rotate them. So, there are 100's of things which you can do there. now, I'll tell you one very interesting incident which happened, very interesting, perhaps the most interesting in my life. In Kanpur, Kanpur is a metropolitan town, and Kanpur is a biggest aaa, District judiciary in the Uttar Pradesh, which is about 80 or 90 Judicial officers. Now, Kanpur, is a bad land, I mean, lawyers used to come with guns in their pockets. There were unauthorized constructions all over the District court. Brother Justice Gupta Knows it he belongs to Kanpur. Kanpur was such a case, there one practice had developed. A very nefarious and bad practice, where the accused was brought for remand would get beaten up by the lawyers and these lawyers were unprofessional lawyers, no work, there was a group of them. What they will do is that they will take money from the complainant, that *remand to ho jayega, meri bail bhi ho jaayega*, but we will beat him up in the Court and we will give a good thrashing and they used to charge money for that. It was so much institutionalized, that the other group of lawyers would take money to save him, protection, so that they will get less number of...in the Court premises, now what happened this whole thing flared up not because of this. There was one Bar Association leader, he was perhaps at student age apprehended by a police officer and put in jail and beaten up also. This lawyer found that police officer on that day in the Courts. So he acausted him and he said you remember you have beaten me up? today it is your turn, and there were about 15-20 lawyers who, gheraoed him. This police officer ran into the wash room of the Additional District Judge and hid inside there, and there were 100's of lawyers calling blood and we will beat him up. For what reason? No reason, he said he demonstrated gun, there was no witness that he demonstrated gun, so its an old enmity. So much so that a very fearless Additional District Magistrate a lady came to rescue she was also beaten up by the lawyers. Situation became explosive. Police had to enter. Police lathi charged and lot of lawyers got beaten up, their chambers were ransacked and the Courts were closed. Courts had to be closed. Now, in this situation, when the Courts were closed and the Courts were closed for 10-

15 days my Chief Justice called me, I was known to be one of the most tough administrators. I had handled Allahabad District court for almost 3

Participant: Anti-strike...

Hon'ble Justice Sunil Ambwani: Anti-strike..., so I said I will 1st like to have the District Judge of my Choice, because this District judge is unable to do the things. And the whole problem was, the problem started not from the police officer or something. And the new District judge was posted there, and the new District Judge said I will hear all the bail applications. The lawyers went to him, he said look customarily the bail applications are being sent to Additional district Judge I, Additional district Judge II, Additional district Judge III on our choice of these Sections. So, if you are not going to give...he said no, I am going to deal, I am tough man I also waiting for my elevation, so I will hear all the bail application. that was the real reason for which the strike started. So, I asked the CJ that please give me my District Judge of my own choice, because District Judge is extremely good District judge but not in a position to handle the current situation. And when we went Mr. Saxena, who is now a judge of the High court, he joined there, we sat down and we started on a theory. Now, this is what I am going to tell you. This was the Theory. The theory was that there is nothing wrong with the lawyers, whatever is wrong is wrong with us. It is our fault, that our systems have become such, that the lawyers are now encouraged to go on strike. This I have applied in Rajasthan also. See, it is we who are the cause of strike, I'll prove it to you how is it. Then we took up about 17 things the 1st thing was cleaning the Court. You will be surprised, 40 trucks of garbage came out from the Court premises. The Court premises was stinking. Naturally the lawyers they was no healthy atmosphere...wherever the unauthorized constructions of the chambers were made, we got them video graphed from up, so that no one can claim that this was constructed earlier. Then this instance justice parting beating up of the litigants, there also, we said now it is our fault because of which they are being beaten up. And then we studied it. We called the District Judge and other judges and we said why, what is the reason, how does it happen? Saab it is like this, that there are 8 lifts. 4 are not in working order for several years. Out of 4, two are used by the judges. and the 2 lifts whenever the policeman gets the person for remand the accused, he cannot get the lift because the lift is very busy. He comes at around say about 2 or 3 o'clock, so there is a ramp, and he takes the ramp and goes up and all the incidents took place in the corners of the ramp, it was a dark corner, where there was no lights. So, that the lawyers cannot be recognized. I said why are they being taken up, they said, because all the Magistrates Courts

have gone on the 3rd floor and the 4th floor. Why are all the Magistrates gone on the 3rd Floor and the 4th floor? because there are 2 senior lawyers who say that civil courts should not go up because they cannot climb. So, civil courts which are peaceful where there are no crowds are on the ground floor. And these Courts where there is maximum crowd where the people almost cant reach including the accused they are on the 3rd, 4th and 5th floor. So, the first thing what we did was, we brought down all the courts to the ground floor. And the 2 lawyers complained, we said do hell with you we are not ...your complaint, we'll provide you a separate lift time. Then we also said that accused will not be brought at 11, so far as possible he'll be brought, not after 11, before 11 he will be brought. Unless it is 24 hrs and you will have to produce it. If it is 24 hrs you bring him at 4 O'clock in the evening and what we did was there was a police station inside the Court. We said police station will be right in front of the ground floor court and they will sit in the corridors, the police officers and another thing what we did was heinous crime accused will never be brought by a constable. they will be brought by the either the starred constables, or the Sub-inspectors. In next 1 month, the incidents dropped by 75%, we never blamed anyone, we never got anyone arrested. We did not lodge an FIR. Then we took up 1 after another small things. Like we found that today suppose summons have been issued, on the next day also the summons, suppose if steps have been taken, the summons will still be in the file, they will not be served. We found that the court rooms and the offices are separated by half a KM. Where the Court room is here and the office is say, on the another floor. So, we joined both the court rooms, then we found that what is the reason of the delays? Committals were waiting, 5000 committals were waiting for 3 to 4 years. Why because the charge sheets were not prepared. Why the charge sheets were not prepared? because there were no sufficient number of photostat machines. There were 8 photostat machines out of which only 2 were functioning. And then the judges were not separating the accused for committals, suppose 1 is absconding, the whole committal will wait for couple of years. Succession certificates were not decided at all, because there was no standard news paper on which the notification had to be published. These are all our faults, these were systemic faults and it was because of these faults that the lawyers, you know the lawyer, gets desperate. Firstly he wants to get the things done, he doesn't comes to the court to fight, but what happens is the successive generation of District Judges they stop paying attention to these small, small, small small, things; and mind it if you ask your District Judge to come to you and discuss with you these things, just discuss freely, you can give then 100s of advises and then follow it up. This is the real

purpose of inspection. And for next 2 - 3 years there were no strikes in the Kanpur District Courts. And you will be surprised when the District Judge Mr. Saxena left, he was transferred, the lawyers contributed for , not only his farewell, for putting chairs in the corridors. And one more thing I will tell you. There was one problem which was so endemic problem, there was a problem of monkeys, in the Kanpur District Courts on the 2nd , 3rd and 4th floors, there used to be hoards of monkeys who would come and sit there, and they will take away the food from...not only food, they don't get food they will tear the files...so we got all the corridors they were fenced, *jaali laaga di*. ...So, my point what I am trying to make here is that, please don't blame anybody, first look within, suppose a District Judge is not working properly, you may find that, suppose the particular judge is able to give his quota, you can ask him, why? what is the problem with you? and he will tell you. I'll tell you one of the Additional district Judges told me, aaa, the District Judge is transferred, they have transferred some files to me , none of the files were ready. It took me 6 months to get the files ready, so issue summons to the counsels, completing the records, its only then I could start deciding the cases, and then the ...again transferred those files from my court to another court, then how would he give the quota? He fell short of the quota, he will come and tell you the problems. If you ask your Additional District Judge, who has fallen short of the quota, if you ask your Chief Judicial Magistrate, the Chief judicial Magistrate in Kanpur is the Chief Metropolitan Magistrate. He is the most overburdened officer. Now in the places like Mathura, and Agra and Banaras, he would always be on protocol duties, either the judge of our own State or the Judge of another State would be visiting, Agra foreign dignitaries will be visiting. Poor fellow he will be only with his jeep going around, how can I give quota? So, what we did was we requested our CJ appointed one of the clerks as the protocol officer there, gave him one car and jeep to look after the protocol duties. So that the Chief Judicial Magistrate is relieved only when either the CJ comes or some dignitary like Supreme Court Judge comes. If you hear their problems, if you understand them, then may be most of the problems will get over, but if you keep on blaming them only, you have not done this , you have not done this...and I believe in one thing, stop sermonizing the judges. The High Court judges the moment they are elevated, I am sorry to say, each one goes and starts giving sermons, big huge sermons, God fearing, *Gita me aisa hua thaa, Bhagwan Krishna ne ye kaha thaa*, and all those things..So, listen to them, if you give solution it is alright, if you cannot give,...many a times you will find that this judicial officer is not fit for this chair for variety of reasons, if you give him civil work, now we have in order to see that the

work is streamlined and the only complaints, some CJ some point of time, gave a policy of zig-zag, zig-zag means if one aaaaam Magistrate goes to ADJ-I to ADJ-II, ADJ-II to ADJ-III, if one transfer is made all zig-zaged. now, that was made for some convenience. Now the man today he is doing a civil, tomorrow he'll handling criminal files on the 3rd day you post him on the juvenile justice judge, how can you expect? when you yourself can't do it, today suppose, you are sitting on Criminal roster and tomorrow you are asked to go and sit on tax roster, what is the performance that you will give? Even if you know tax! and suppose from tax roster you are given a Habeas Corpus roster. Have a pity on those people, they are also judges, they are doing the same job as we are doing, we must have some consistency, I don't say that they should, there should be demarcation, but there should be some reasonable time to which a particular judge should ...and some times judges have, now we have given 5% extra quota for stenographers, first of all why shouldn't we give all of them stenographers when we can't work without stenographers, how do we expect them to work? When they come and complain to you, *ki* Sir, stenographers have not been recruited in our District for 6 years, do you listen to them? Is it not a genuine problem? Should you not put up a note to the CJ? Now, you say, sorry....

Hon'ble Justice Manmohan Sarin: It just reminded me temporary reprieve to Justice Ambwani, you know one of the reasons when somebody, asked for a steno not been provided, I remember the answer given in Delhi was, look we have provided laptops to you at residence for all the District judges, sub-ordinate judges and they are suppose to be writing the judgments at home on the laptop, as a usual trend. That is not an answer to court work. And it reminds me just a minute Sir, I will take it, you know one of the things which brother Ambwani has said, the thing which flows from mid days, at times the solution is very simple, next to you but is not perceived, and i'll tell you this happens not only in judicial field, I was reminded suddenly of while I was hearing him, of an epidemic, which took over the London Hospitals, you see what they found was, over a period of time, there were child birth mortality rate had jumped up 3 times. So, there was a panic all around why is there, after all you know, child birth is one of the safest things, why should there be mortality in the given circumstances when you have medical advances? Why is the child birth mortality coming? So, test for all the known viruses, microbiology tests, ever thing else was going on. The net results were, they were drawing a blank. Till somebody, who was the....eh gave a very simple solution, he said Sir, what I find is, whenever the pediatrician who comes from outside, goes to the ward to examine the new born, you know he picks up his coat, he is in a jersey and he

picks up his coat, and wears it and goes in. So, the problem is with this coat, and secondly there is no place for him to wash his hand before he goes in. Can you believe it? this is a part of recorded history, they provided that look, if they will not wear a coat, ...go like this, or there will be a new coat, taken out from the laundry to give it to him, and secondly his hands will be disinfected there. The mortality rate dropped by 40%. Now, these 2 things they are very simple things, so like you said, now in the example that he was telling you, one of the simplest things for anybody who is doing it imaginatively was alright, alright there is a ramp, these are the places where it is happening, one thing more in the present day perhaps now if you want to do it Sir, you will install a CCTV. So, those lawyers are also, identified and you'll put a light there. So, at times the solutions are obvious, we have to apply our mind and think out of the box.

Hon'ble Justice Manmohan Sarin: Shall I come to the next one Sir,

Hon'ble Justice Sunil Ambwani: Next one yes...

Hon'ble Justice Manmohan Sarin: Now the 3rd subject also, barring the increasing strength of the Judges etc. as far as evaluation of performance is concerned, that part when we have covered the ACR has been covered. The only thing which I want to repeat with all of you is what I suggested to you, in the pre-noon session, i.e. Review of Judicial Performance, by the external sources, external independent sources, that is the consumer of justice, that is not to take, the place of ACR, that is not, it is only for corroboration, and is a further input to ACR. I think to that extent there should be no difficulty in that. You see you receive feedback, I mean no harm in ever receiving a feedback, on how consumers of justice are taking your dispensation of justice. It only will help us improve it further, based onyou seem to be having some reservations on it, I can see it on your face....No, the I aaa, what I want to tell you is this, I was reading the other day at least 13 countries, have accepted it, and tried it successfully, so I think this is time because, you see you are not giving-up ACR, your are not partly delegating your role, you are only using an external aid, to get additional inputs , which you may or may not use. It is up to you for instance if you feel, this input is not worth it, you discard it. But that input is available, I think a tleast we should keep our ears and mind, open to receiving fresh inputs. Yes!..

Participant: I think, brother here will bear me out, because last week we were here, from the Jabalpur High Court has started something that...after a litigation is over, the litigants are given a sheet, questionnaire, and they have to fill up...

Hon'ble Justice Manmohan Sarin: No, it has to be done in much refined fashion. We tomorrow, danger is, that will bring in what brother Valmiki said the other day, as a reaction any litigant who loses his case, he says he is a useless judge, he doesn't know law.

Participant: It was not so much on the judge, it was with the system. Various questions to, whole lot of other things, because you see litigants if he comes to a cleanhis regards for the institution goes up and if you ask him to keep standing the whole day under a tree, so he also belittles the system. those sort of responses, they have tried, he was saying in Jabalpur in civil courts, they are trying that, and they are saying the hoard of information they have got, which the District Judges will not otherwise were aware of.

Hon'ble Justice Manmohan Sarin: That's good! But in this form what they design is they choose about 15 cases, in a judge say in a tenure of 6 months, they would say, they would ...up 15 cases and in respect of those they would send questions to the attorneys concerned, they would ask were you given due hearing? did you get a chance to argue your time? then they would the law clerk would study the case proceedings, were they unduly delayed or not? was it finished on time? right then, the quality of judgment that the law clerk....then the consumers response on, Did you understand, why you lost? and on that I am reminded on something else, I mean one of the things which while, judgment writing, all of us has to follow this principle, at least I was taught by Justice Rao on this, he says, the moment you write a judgment formulate the way you frame issues in civil suits. Even with Writ jurisdiction, say these are the point which you are going to determine. Don't shy away from those points and give definite findings on those. What happened is see the other side of it, its a beautifully written judgment, I when started it is a Writ petition filed before me, learned counsel from the party has invoked the writ jurisdiction. These are the facts the learned counsel for the petitioner argued vehemently that, this was vehemently opposed by the respondent's counsel, who urged in response this, learned counsel for the petitioner cited these authorities, respondent in opposition cited these. Having given my considered thoughts and consideration to this matter, I find this is a fit case in which, its an eminently fit case where the petitioner deserves relief and therefore in exercise of Article 226 the above would meet the ends of justice. Now you see this entire, you have reproduced the facts, you have reproduced the judgments, but where is the reasoning? You see this is what I call self deception. You are skirting the issues. And I remember in the appellate side we had occasions of aaa people without naming people who are now attorney the higher courts, the lawyer who is arguing he says Sir, I have read

through these 30 pages, but I have not known why my petition was dismissed? Please tell me this only. So, that's what is the consumer of justice's entitlement. SO, here I would say, to that extent the supplemental information will be helpful. I'll leave it to the house for comments.

Hon'ble Justice Sunil Ambwani: just one thing I would like to.... all of us receive a lot of letters. please don't ignore them,

Hon'ble Justice Manmohan Sarin: Yes! any response on this part?

Participant: Yes the topic actually is Assessment of Performance, I have to give a suggestion that, ...

Hon'ble Justice Manmohan Sarin: No Evaluation of Performance>>

Participant: Evaluation of performance, the Director is not there, what I would have requested is, going through some of the High Courts they have given their performance chart, evaluation. Now there is a big variance,

Hon'ble Justice Manmohan Sarin: It has to be standardized, it has to be uniform.

Participant: Not standardized in that sense, but at least we can share what we have missed out, because when we are doing there is a lot of complaining of the judicial officers, *ki Sir yahaan pe to aap kuch nahi deten hain? We asked from one High Court, wahan pe bhee nahi milta, but then we asked from another High Court.*

Hon'ble Justice Manmohan Sarin: *chalo usme yun hai* Last night I attempted to see what these were? and then I got from Delhi our performance forms, and not that I have a bias for Delhi or any other, on that what I find was there can be... you need not have a very comprehensive form. The same purpose can be achieved, and that exercise needs to be done, I am in agreement with you, What you need to do is pickup one or two forms see what are the criteria you are looking at make a check list out of these and then go through each form of those and see if you have missed out any and bring a comprehensive check list of it and then it can be discussed.....

Participant: role of bias...

Hon'ble Justice Manmohan Sarin: Sir, *uspe baadme aayenge*, that will be the next subject. that's the next subject.

Participant: I think the Academy should collect these from all the High Courts and make a Best Practices.

Hon'ble Justice Sunil Ambwani: I think what we can do is I mean, we are sitting her about 10 to 15 High courts, since we have attended these 2 days colloquium as we call it, you can also, take this matter up with the CJs we have attended a conference and there are so many variances between the various forms and it needs to be looked into. He will certainly form a committee, immediately and that committee can call through the Registrar all the Forms all the States, put up a proposal ...

Hon'ble Justice Manmohan Sarin: They have annexed most of them Sir, what he has done is, he has put all of them..

Hon'ble Justice Sunil Ambwani: Then, what is missing, if some appraisal is missing, that committee can always recommend, because every High Court will have to go through this exercise.

Hon'ble Justice Manmohan Sarin: I think we need to simplify it, you know, let me put it, take the analogy of Income Tax Returns, you can make it a complicated 35 page return but in essence if you look at it, I was seeing it, in 5 pages to my mind all the factors can come in. Maybe its an over simplification, but at least not that I am wanting, no in these days once you start doing arbitration you don't want to do this work. 5 pages will be enough for the check list for this. Shall we come to the next subject Sir, with your permission? or any of you having any disagreement with this proposal? No fine! You can note that.

SESSION VIII

Relying on Opinion of Bar: Credibility Issues

Speakers: Justice Sunil Ambwani & Justice Manmohan Sarin

Hon'ble Justice Manmohan Sarin: Yes! now this the volatile one, "Relying on Opinion of the Bar". Now this starts with "Relying on Opinion of the Bar: Credibility Issues". Now the 1st question is, for the opinion of the Bar for what purpose? For the purpose of let's say, discuss the 1st element, for the purpose in this context if we say, then for the purpose of assessment of our judicial officers. You want to seek the opinion of the credible members of the Bar and find out what is the persons integrity, what is his general impression? How , yes!...Now how many of you would go for it? that Bar, aaaa. now it is said Bar is the Judge of Judges, there are people who strongly believe it. They are right, aaaaa you have dismissed it with a shrug, but it is not so, you go down to a Bar Association meeting you'll hear lot of lectures on this. I can tell you from experience, in...I have been there at the Bar, I have been the Vice President of the High Court Bar, I would say the breed of the leaders of the Bar on whom reliance could be placed, is with diminishing returns. This is a phenomenon which has come back. I could say it with certainty, say in 80s , 80 - 90 - 95 in Delhi, you know there was an old gentleman in Tess Hazaari, Valmiki perhaps you will recall "Gajana", he was the President of the Bar. And many of us judges used to check with "Gajanan" Babuji he was called Babuji, *is aadmi ka kyaa bare main aapne sumaa hai? Is ko consider kar rahen hain ADJ k liye yaa kyaa iski general reputation kyaa hai is ki?* And you were almost certain that the man will give you correct information, unbiased, objective, and if the man did not know about him, he will say *mujhe iska maloom nahi hai*. But the lives of those persons are fast diminishing. So, there you have to follow on a broader spectrum. Therefore if we....let's look at it this way, the way I look at this is input from Bar, is a valuable input, you need to verify it. So, you need to verify it from, numerous sources, from one end of the Bar, you know the spectrum there, this is one lobby, there is another lobby, for what ever it is worth, you want to get it. And apart from it your own discrete inquiries, that you 'll do. After all it may put it to you, you if you are going to rely on the opinion of a brother judge also. If you don't know about a particular officer, you are going to check with your brother judge, how does the brother judge know? Either his option is he will check back at the Bar, or with someone known to him or someone whom he trusts and then inquire....No vague idea nahi , a reasonable information also, like let me tell you in all our career, I don't know

you'll also get a chance, I have had the situations when a judge was to be elevated in the Court even if you were not in the collegium, you know Supreme Court Judge would ask you, *arebaba, what do you think about this gentleman?* I had the occasion to say Sir, sorry I have not had the privileged of hearing this man from last 10 years, and my answer was, ...he says *aap ke saamne 10 saal se hai Court me pesh nahi hue? Maine kaha ji nahi hue, to unhone kaha, are bhai, Supreme court me poocha, wo kahta hai, yahan nahi pesh hote, High Court me pesh hote hain, to maine kaha Sir ha ha ha...* then it is for you to judge. So, you know, these are things which happen, people check back, after all this is a valuable source, all the point is you need objectivity of your own mind, you need a discerning mind, to chaff out the truth there.

.....

Who is much more, who has said you have not spoken, you have condemned the man, Dr. Johnson said, "you damn it with faint face". Dr. Johnson is the man who wrote the fellow who wrote the dictionary. you know if you can say somebody, one is good, one is if you say he is bad alright, one can say you have a motive for calling him bad, but if you say, *alright* then you are condemning him in a way. So, therefore Bar can be a valuable source for input but, you need all the caution, you need all your objectivity at your command to verify re-verify it, this is what I would say. Brother...

Hon'ble Justice Sunil Ambwani: I have something to offer on this, justice A.N. Ray came to as a CJ to Allahabad high Court from Calcutta. He was not used to the kind of recommendations which were made by the Administrative judges. Oh! he is very corrupt suspend him! this was only the recommendation. He dared to demand 5 lakh Rupees as bribe from the client, I have come to know, start disciplinary enquiry against him. So, Justice A.N.Ray constituted, he is a very intelligent, very sharp man, son of the great A.N.Ray, he formed a committee, aaaa 2 judges I was also there in the committee as a senior judge, and the mandate of the committee was to give your opinions to rationalize my decisions on the recommendations of the Administrative Committee members and in that process we dealt with 97 matters, all these 97 matters came from the complaints from the Bar, mostly from the Bar, whatever kind of complaints they were, but all the complaints were with the recommendations of the Administrative Judge to action against the...out of 97 87 complaints were dropped. We threadbare enquired into the whole thing, went into the judgments, saw the complaints, general reputation, every thing, ACRs and everything and then we used to recommend

to the CJ. Then when I became CJ there in Rajasthan High Court, you know how bad the situation was? I'll tell you exactly one thing, out of 850 officers, discrete enquiries were pending against 90 of them, and so many, and the vigilance officer was the most powerful man in the Court. Any complaint against the lawyer will be registered as a vigilance case any complaint from the lawyer. And there were 570 complaints pending. The situation was so bad, the High Court lawyers were on strike, entire State was on strike, it was for an incidence which had happened prior to my going there. The lawyers not only used to bully the judges, but after the order was passed they will go to him a group of lawyers, *is pe likhiye Punasch, mmtalab* I have to "RE HEAR IT" and tomorrow you change the order and he would change the order. Situation was terrible, we were immediately helped by the Justice Dattu who wrote a letter, in September when he took over in 2014 That no complaint from the lawyer will be looked into unless it is accompanied with an affidavit and most important thing, credible material. now, 90% of these complaints are not verified. Vague, indefinite, you look what is the situation these days? District Courts, a lawyer loses a case, the moment he loses a case he will tell his client, *are tum to Gandhi bane firte the, hum to kahte the isko paisa de do tumne nahi diyaa*. He will not look at his faults, he didnot lead proper evidence, he filed a false case, what ever it may be. *Chalo khabar lete hain judge ki lao bhai ticket laga ke ek lifafa leke aao* and he will write a complaint, and such a meticulous complaint, and by experience you know you will gain that what kind of complaint has some material. There may be complaint ...he has changed the order sheet, there may be a complaint that he has disbelieved a particular witness, he did not give him a particular chance to anybody, variety of things, his behavior is not good, he has relationship with the clients and all that. But, most of the complaints are false, because todays Bar is not the Bar which is a reflection of the judges. Today's bar is a very motivated Bar. You will find very few, as brother Justice Sarin said very few lawyers as the old man, who would give you a fair opinion, so you will have to cross check but at the same time we have to develop a keen sense of perception, a third sense, *jise kehete hain naa teesraa netra humko honaa chahiye* which will recognize what is there in this complaint? And if you stop reading those complaints then you stop the having the grip over them. I used to read about 50-70 letters per day. So, I would ask my personal/private secretary, who was a senior District judge there, to classify them into different parts. And those complaints which were actually to be dealt with by the Administrative Judges would be sent there so that they will look after it. Those which were concerned with general administration would be send there. those with integrity and dishonesty

and corruption and there I found a very bad practice there, every complaint would be filed as a vigilance case, so the lawyer who threaten a judge, even if I write one word against you a vigilance case will start against you...

Hon'ble Justice Manmohan Sarin: I am not sure if it happened in UP in Delhi we never allowed this kind of practice in Delhi. In Delhi unless, the committee the inspecting judge and the committee of judges is satisfied, that there is a case with material, there is no question, rather let me put it, we we had a situation, let me put it the concept is there of what you all know is, "Darlings of the Bar" you know there are judges who are darlings of the Bar. There are judges who are strict judges, there are judges who are business like judges, now, obviously a judge who is darling of the Bar there would be no complaints him. No no not necessarily relief giving also but otherwise, you know at times, let me add a rider here, you can be a Darling of the Bar without giving relief also. Because what happens is at times what relief you are seeking is a very limited one you want adjustment for a day, you adjournment for tomorrow, you know you have not filed a reply, so you say MY Lord give me time for 2 days, you are not imposing cost you will let him be. So that is the Darling of the Bar. You are allowing a pass over, right, second pass over you are allowing it, you are the Darling of the Bar. I personally had this attitude I would always encourage juniors, and if there was a Senior and he had not come on the second pass over, whether it was Venugopal or anybody I would say sorry! I am hearing the matter with your junior or passing an order. So, you may not be the Darling of the Seniors, that didn't matter, okay! So, here when there is an officer who is strict, in judiciary, you have an obligation to protect such people. I mean you have to also guide them, that look you need not be unnecessarily, you have to maintain decor you need to be polite to the members of the Bar, you have to make adjustments, but at the same time you are not to give in to anything to which you firmly believe it is right. barring that don't miss behave in a bar, don't be rude to them but otherwise you are being harassed or you are been coerced, be firm pass your orders. the high court is there to protect you, that message must go.

Hon'ble Justice Sunil Ambwani: that confidence must be developed in the judicial officers. that will protect you.

Hon'ble Justice Manmohan Sarin: not like the president of the bar has complained so many others have complained, therefore, you will not be protected.

Hon'ble Justice Sunil Ambwani: I'll give you an incident, let us say you remember the Bar, in Rajasthan, the Chief Minister complained against a judge. the Chief Minister came for a curtsy call to my place, give me list of 4 orders which, particulars judge, Tribunal has passed the orders. he was an additional, senior additional district judge rank officer. I said I'll look into it, went through all the files, and you know what it transpired? He had granted stay orders in the demolition of buildings in all the 5 cases, and all the 4 buildings were of Congress men which he wanted to demolish. so, please remember one thing, however high the complainant may be, placed your officer is in your hands, suppose I had taken action against that complaint, no officer would have dared passed any order. you have to be , you have to protect your officers, the messages is that you have to protect your officers. the offices in Kanpur stopped giving Bail orders, and injunction orders. today you know there is an endemic problem with the judiciary subordinate judiciary, in district judiciary, they are not passing Bail orders, these are not giving injections. Why? play safe. if you will not giving injection, you will not give a bail, half your problems are over there will be no Complaints against you. but if you do that what is happening you are increasing the work of the High Court. all the matters will come to the High Court and then will the farce[00:54:27]

Even the person who needs, who really needs the justice he will never get the justice because the judge is in fear.

Hon'ble Justice Manmohan Sarin: You see in Delhi, the sub-ordinate the District Judiciary, Which was that pandit's case, Justice Wadhwa had issued that na what was the name of that case Valmiki you recall it? ...No no no it was not that...you see in a particular case, this was dowry or harassment case and there was a murder after that. In that case the District judge had granted Bail. Now, somehow it happened one of the Senior judges took *suo moto* notice based on the press report, called for the records and cancelled the bail. I am not on the merits of what the order was, or what had happened. The impact of it was this, that nearly 5 years in Delhi, District Judges down the line, they would just not grant bail. They would say *theek hai humen kuch nahi lenaa* Why should we go through this odium of suffering it? We will reject you go to the High Court and get it Magistrate *se aap Session Judge pe Jaayenge, Sesssion Judge se* you go to the High Court and get bail, doesn't matter. So, it took nearly 4 to 5 years for that confidence to be restored. So, I think it is fundamental for aaa our jurisprudence to make sure that the District Judiciary functions independently and it is the responsibility of the Inspecting Judges and I'll tell you one thing for the

Bar brother Valmiki will bear it out, once it concerns their member, then there are no loyalties, then their loyalties are clear. ha ha ha ha....right! I have gone through it personally, I had the you can say fortune or misfortune what ever it may be, there was a doyen of the Bar highly regarded in terms of power, who claimed that he had got appointed several High Court Judges, I think people would guess it ha ha ha ha...So, he was found to be interfering with the due process. Now, the CJ issued *suo moto* notice, personally thinking I would think and my Chief would also agree with me, if as Chief Justice I issue a notice I think it is the responsibility of the chief himself, to keep that case with him and proceed. That is a moral obligation if I've issued a notice I should proceed. But, it was not to be so, therefore the search began it went through one judge who found one reason not to hear it. It went to the second judge who found another good reason not to hear it. Then it went to about 2-3 other judges, who said that it could be more expediently tried by someone else and these judges are all adorning the highest Court. So, then the Chief Justice asked me, will you take it up? I said listen, you are putting to me a burden, where as vice president at the Bar i have associated with that man. He has dealt with me, he was the executive at that time. So, in that case he is known to me more than anyone else. But, if you call it a call of duty I'll take it, so rest is history. So, we took it on , issued notice, and the moment the notice was issued the next day in court the Bar rallies and something unheard of! on the first day they say why is notice being issued to him? I said he will answer it. Notice is issued to him, he will answer it. No, it is defamation on the Bar. I said, how are you equating? ha ha ha ha, defamation, the act of an individual, as defamation of the Bar? So, the Secretary of the Bar got-up and said, I want to intervene, I said move an application. As a secretary, as history as you know, got terribly annoyed with me that I have insulted him, I said sit down I am not entertaining you. Anyway the proceedings went on, the net result to come to short of it is, the judge has to take all this in stride and as I put it in my judgment, for the sake of your duty, you have to bear the cross and carry it. Let...whatever be the consequences. the one of the consequences which flew was this, out of this was, that justice Sarin, who had been the Vice President of the Bar, who had won all Bar elections, with maximum votes at that time, High Court Bar, when the time came for his farewell, the Bar Association decided that he does not deserve a farewell. ha ha hah ha, But then the redeeming part is this, there are still right thinking people within the Bar, a large section of the Bar said, hell with you, we will do the farewell, and they did it. So, you know that all is not lost.

Hon'ble Justice Sunil Ambwani: You are lucky Sir, I did not get it in Rajasthan, bar never gave me farewell!

Hon'ble Justice Manmohan Sarin: What happens is, so but that's all right, if you are doing your duty you have to do it. But, what happens is, generally what we believe is this, look when we do our duty you may not say it, but I think, each one of us has to do it...It should not be that it falls to the share of only few of us, that is not to say that few of us should not perform, we will do it. But, i think that all of us should do it. And if that happens, and I think the next candidate its not a prophesy who may not get farewell from the Bar, following Justice Sarin or there may be doubt, he is the one of our most toughest and brilliant judge of the Court. But, then at the same time what I would say is this, the duty of the judge is, I can say it on the hind side, you can be polite, you can be understanding, you can be more patient than we are at times. You know at the rush of the court, at time, especially when you have read the brief, you are ready and you find a lawyer is talking half non-sense, you say alright, next point, is there anything else, you said it enough, that's the time you know what we need to look at it is, here is a man he is being paid by his client, he want's to take his extra minute, let him have it. After that dismiss it with a smile! This is what you know, after hind side say so, may be I have also done it that way. Dismiss it with a smile! because then that fellow goes around, doesn't goes and say, that the refrain is this *ki tumhe batayaa thaa ye Gandhigiri hai, yaa ye hai*. Very ioftena joke that goes in Delhi is, *bhai,d ismiss kyun ho gayaa case? Aree, judge saab keheten hain mujhe samajh nahi aa rahi upar court me jaaoo*, ha ha ha ha ha ...*do judge ke samajh me aayegi!*

Now we want to have your views on this.

Participant: This time we start from that side...

Hon'ble Justice Manmohan Sarin: Yes! that's right, right right right...

Participant: See the relation with the Bar, has a ...of the Bench, if we develop the system, there are some ...but there are fierce people also, most of the time they are...whatever knowledge the capability the capacity they have...net result is being, judicial system gallops. So, with the experience with Bar & the Bench there are majority of the people, ...the majority of the lawyers are conscious, they will not spoil there own side. so, the consultation is the Bar for development of the judicial system, is the prime , should be the prime concern of the bench and wherever we hear informations hoti hain from the Bar with reference to taking any decision, we can sometimes

have a cross check. Wherever we feel based on their experience, based on their knowledge, there are some Bar members, reputed bar members, who can be consultedwho will give their clear opinion, notwithstanding whether they have got relief or the whatever. So, the I am in agreement, with the Chief Justices, they have the experience with the Bar people, they are also from the Bar so, for the healthy development of the system, we cannot ignore the Bar...

Hon'ble Justice Manmohan Sarin: Your speaking reminded me, of a small incident in J&K , you know there they had this tendency of calling a Bandh everyday they wanted. and if the president of the Bar comes and tells you in Srinagar, there is a band, that means the court has 2 close. the court has to close, let's be frank! and tell them there's no harm in it. the court is closed coma Virtually nobody would appear. so, the first time this gentleman came, I am forgetting his name, who was the president of the Bar, Srinagar, Ghayum thaa, came to me, he said, chief justice, we have to, *Kal aap ko Bata Na Tha ki kal court nahi hogi*. GoogleI was amazed,I said what is this man talking? *kal court nahi hogi*, so, I said, what is the problem? he said, *Hamare kuch mehmaan aaye hain, I said mehmaan aap ke aaye hain, to aap chuttee kariyee unki khateer nawaazee kariye...*he said *Nahin Sarin saab kal koi bhi hamara member nahi attend karega..* so then I called Nisar Gakru was there one or two were ther I said what is this happening? Why is this, How can he hold the Court to ransom *ki kal aayenge nahi...* What I find out was there was some delegation coming from Pakistan of lawyers whom he was receiving, and he says for that the court will be closed. so, I put my foot down and said, nothing doing, Mr. Ghayum, the order is,you are the executive, ...president..if you have cases before us,in those cases the judges will accommodate you, less, the court will go on, sorry! and we put it down.

.... *nahi par us din strike nahi hui thee aap ko yaad hoga!!*... you know, Magre let me put it this way, lawyers are lawyers, if you have in convenience matter today before the judge, and there is a call given, you take advantage of that, and don't appear, why are you over looking that possibility? ...No I would say minuscule minority is good now.

Participant: and therefore more importantly, the consultation with the Bar, where you have to make sure, 1) talking to the right man, neutral person cross talks...and who is the neutral person, a person having very limited practice, not that he has no practice, reasonable practice, who goes about his job inconspicuously. Now, these people who go about there job inconspicuously na, the corrupt

judges or the useless judges they don't bother. they expose themselves very easily, the minute a big luminary goes na those ...so catch a neutral person who will, ...so therefore there are....

Hon'ble Justice Manmohan Sarin: Valmiki, you can have consultation, but you should know who's opinion you have to go by.

Participant: The best person I think to consult from the Bar is, if you are in a problem and you sought some assistance, which lawyer will you go to?...correct, correct..yes!

Hon'ble Justice Manmohan Sarin: That's the criterion I had applied in designating a senior always. cross talks...amongst the participants not clearly audible.

Hon'ble Justice Manmohan Sarin: No brother what he is saying is, brother what he is saying is, somebody who is highly successful, may have other reasons, that's what he is editing at.

cross talks... not clear...correct source is the Bar...

Participant: Sir, of course being elevated from the Bar, aaa I was given importance to the Bar.

Hon'ble Justice Manmohan Sarin: We are all from the Bar.ha ha haha, this side at least is from the Bar...

Participant: bar is something which we cannot, aaaa the that, aaa , the Bar office because I have felt it, aaaa, that without the cooperation of the Bar, things will not work. Not that we surrender to them, but wherever it is required we have to show our stand, in fact when this within our High Court there was a strike that had went on for 3 months, naturally 3 months, ultimately the Gauhati High Court had to issue contempt notice to the executive members, then it went till continued ...so were thinking what to do now, High Court has started now, we should close it. I said let us close it, what has happened has happened, let us not close like this, ...yes we are willing to close ...so somehow we managed to get it ... not clearly audible....Therefore I felt in myself that the High Court must take on itself to interact more with the general members of the Bar, in terms of training,

Hon'ble Justice Manmohan Sarin: Encourage them, if he is well prepared give him the relief right away, and if he does well why not?

Participant: I felt is also there is one important way to do away with this problem, because if he directly goes to seniors , seniors they have the you know,....but if he directly approach the junior members of the Bar, if we are able to ...their confidence I think that will be aaa one of the

Hon'ble Justice Manmohan Sarin: Of course here the only thing we want to see is that while it is desirable to encourage juniors, in their practice and give them due encouragement, it could be questionable as to the maturity of the opinion you are getting from them.

Participant: No no we are not asking opinion from them Sir, I am saying is that make them more aware of the system.

Hon'ble Justice Manmohan Sarin: huh, that's all right, no disagreement with that.

Participant: Because we are, ...members of the Bar we know, who are, who are the lawyers?

Hon'ble Justice Manmohan Sarin: ahh, these young fellows another 5 years they will be half seniors...

Participant: Yes!

Hon'ble Justice Manmohan Sarin: These young fellows will be half seniors soon.

Participant: So, ultimately we know, who we have to consult.

Hon'ble Justice Manmohan Sarin: And these days the current generation already thinks , that the son knows more than the father.

Participant: So, I think this something Bar is I think we must hope that as far as younger generation bar we must bring in confidence, in a longer run it will help us.

Hon'ble Justice Manmohan Sarin: That's right, no disagreement with this.

Participant: rather I chose to call them at home, my colleagues...whom I , because Bar is a very wide a,...

Hon'ble Justice Manmohan Sarin: It includes the Bench also, ...in a way.

Participant: Now, what is happening is unfortunately, misdemeanors is even on our Bar. Because the Bar is being exploited and used by judges for their own convenience. There's a coterie of lawyers which is being there for say, ..they will be against someone and in favor of some.So, there's too much of lobbying there in Bar and that's why I said I would rather use my former colleague, a

comrade who as a colleague I had gone to share my problems so even reciprocation on those basis. But, not the Bar as such. I would not say the Bar.

Hon'ble Justice Manmohan Sarin: What you would say is someone in the legal profession whom you trust.

Participant: Not the Bar as such, because the Bar ...

Hon'ble Justice Manmohan Sarin: Aaaaa, Justice Chauhan, it would not be out of place to mention that the person you are referring to as legal, someone known to the legal profession would have been part of the Bar at one time or the other right?

Participant: Continue, but what I am saying is its not the extended form of Bar.

Hon'ble Justice Manmohan Sarin: Sir, let me put it, when we say consult the Bar, it doesn't mean you call the President, Vice President or the Executive Members, it means a person of your choice, in the legal community, whom you believe is a person of righteousness, he is a person of principled person, he would not lie to you, he would not mislead you.

Participant: But then I am making an distinction now again, when I refer to the Bar by being used by the judges, then I mean the Bar. Then I am not referring to people of legal fraternity....

Cross talks...

Hon'ble Justice Manmohan Sarin: Lets elaborate on this part what you are saying...this part. No no let him speak yaar he will elaborate his own.

Participant: first thing I referred to was I would not refer it to a Bar, means that is very very limited, when I refer to the Bar which is exploited or used by particular judges, then I mean the trial bar or the majority of the section of the legal professionals.

Hon'ble Justice Sunil Ambwani: May I give you one example, about one and a half year back, CJ Lodha wrote a letter, that hence forward the collegium will be broadened, apart from 3 of the collegium members, there will be 2 more Senior judges. Senior Judges, not the Senior most judges. And 2 respectable senior members of the Bar. You know what happened in Allahabad? I was a member of the collegium, it was the names were selected from Service, 7 names were selected. Now, all 3 of were sitting with our heads down, from where do we get lawyers, senior one, the moment we tell them that these are the persons they will have their, they will start counting their own aaa, benefits out of it. So, what we ultimately did was, my senior had become very old, he

was hardly concerned with any thing, i went to his house, *Sir, a minute Chief bula rahen hain ek minute chaliye zara saa, Sir sign karnaa hai do jagah, kuch nahi karna hai* he is paying respect to you. We took him and got signed in the blank papers. We could not have, I had practiced there for 25 years, we could not get a single person, who will bring, he will start thinking, the moment he starts thinking, he is a lawyer.

Another incident I'll tell you. It was 1988, I was Advocate on Record, I had taken a senior Mr. B.D. Aggarwal from our court, that day the Supreme court went on a one day strike, I don't know the reason, but it was very stupid reason according to me. I was young, I wanted to go inside the Court. Mr. Aggarwal was virtually holding me back, *arre, don't go* there is a strike called by the Bar, Supreme Court Bar. *ye koi reason hai Sir, I'll go in there.* What ever they do to me let them do to me, you know what he told me? that is the crux of the whole thing. He said today you are not satisfied with the reason, I am also agreeing to it. But, tomorrow, if there is a threat, a real threat to the Bar, the unity of the Bar will be broken if you go inside the court. That was the reason that is why today whatever decision is taken whether 2 persons take it or 4 persons take it, all the youngsters are made to believe, that it is the unity of the Bar, it shouldn't be broken, and so that is being misused by some people, and I'll tell you one thing, very frankly, my opinion, all these strikes are politically aligned and for political purposes.

Participant: Sir, I'll just add to what Justice Ambwani has said, Gentleman the responsible Secretary, because of whom, no farewell was given to Justice Sarin was also the Vice President of the Bar, where in December 2012, there was a strike in my court. The same gentleman does not enter in my court you know. Now, why they don't appear Sir, is I am disliked by the Bar because I don't give adjournments, I say you do your work, each and every member of the Bar are equal from Harish Salve to the junior most lawyer. Only judgment will come on merits, now the thing is, this, Sir, please permit me I do not mean arrogance on this, my own colleagues feel insecured because of things. I am on this issue of Justice Chauhan is speaking. Unless the Bar gets the support of a huge section of the judges, or the influential section of the judges, a lot of strikes are not going to take place and Justice Sarin will bare with me, that unless there is support of the judiciary to the members of the Bar, lot of strikes will not take place, and that was the reason why it took place in my court, and that's why I am saying that, If we just look within it starts from us, unless and untill, the same gentleman, the gentle man one sardar gentleman, right, the fact of the matter therefore is, at the end of the day Bar is not the whole Bar, most of the Bar today is as you Sir, is totally corrupt.

It is now an exception that you can trust a particular advocate and whom you vouched because you have seen him ...otherwise the majority of them, that's why I said in the morning, if the suggestion box issue, or whether taking opinion from the consumers of justice, they will give you the worst possible opinion, so far as the particular judge is concerned. Because they are all...

Hon'ble Justice Sunil Ambwani: When we talk about accountable judiciary, can there be an accountable judiciary without an accountable Bar? It is complementary thing.

Participant: cross talks...

Hon'ble Justice Manmohan Sarin: just one second, brothers, lets look at it, granted the difference in the perception of, (judge saab can I have your attention Sir!) Granted the perceptual differences amongst the judges also. You know all of us are not alike, we have to live with it, and there are as Valmiki was mentioning, there are situations there may be 100 reasons for a judge to feel , I dont go to the extent of insecurity, nobody has any business to feel insecured. your tenure is guaranteed you know up to what date your serving, and if you are not elevated further, so that part should not bother anyone, but they could be small jealousies small things. You know human beings are human beings, all fall prey to these small things. small things. Given those things, what is the solution? you are bound to have some people who may not even actively participate, in encouraging some members of the Bar to strike or otherwise, but if you are the one who is taking action they would like to enjoy your discomfort. At least meaning of that part. so, we won't come out and help you out. no no no no on this I am reminded, reminded of something what Justice Lahoti once narrated to me, he had come from Madhya Pradesh, and he was new to Delhi, and suddenly with witnessed these things happened. there was and incident of a lawyer misbehaving with a judge and creating Hungama, judges have their own temperament, if I was there, I would have held him up for contempt and proceeded, there are others don't. so he let it pass and then there was this resolution that lawyers will not appear before him for so many days. so he says *ek Vada simple solution hi iskaa, Hum Logon NeMadhya Pradesh mainkiya tha, maine kahaa ji kyaa thaa? kehete hai ki yun huaa*, the CJ unlike Delhi, where he is first among equals, other states the chief justice feels he has greater powers. he has the power to allocate you to different districts. so what he did was informal meeting and they said you know theses 5 people have misbehaved. he said that we decided among ourselves, look there will be no injustice done to them. but minor favours list my matter today, or tomorrow, quote and deny them. he says

it took exactly one week and the message went to do stool lawyers and they came crying, and said Sir, *maafi de do hume*. So that is the concerted action when people put heads together and do it. but I think it is the relic of the past it can't happen now. the judges themselves have their lobbies and counter lobbies, but in a small knit court it could happen.

Hon'ble Justice Manmohan Sarin: I'll tell you where their vested interests or their personal interests are involved, I remember, the President of the Bar at one time was a renowned criminal lawyer. He was very agitated, that a particular District judge ADJ, was not granting bails. So, he came, I was the Vice President that time, he said let's go in a delegation to the CJ. I said, for what? he said *is ko badalwana hai. Maine kaha Sir, baat suniye, roster location ka kaam CJ ka hai*, you either come out with what he has, no no this fellow doesn't grant bails, so I said if he doesn't grants bail, then lets challenge those orders, I mean no no he has played ... as a matter of fact my lawyers are telling me, they want to put a poster outside his court Section 438 doesnot apply here. ha ha ha haha..so I said, *maine kahaa ye to nahi chalega bhai*, Sir I can't support this. He said alright you come with me I'll do the speaking. i said don't expect me to support it , if the CJ says I am going to say if this is within your domain, and interestingly something the CJ handled it remarkably well. So, this man President had his say, you know he went off, the Bar is agitating they are all disgusted after all what is there the man's liberty is affected....went on for 10 minutes. so, the G C Mittal was at that time the CJ, he did it remarkably, he said that, he called his steno, *sardarji idhar aana, wo aayaa, bhai aap zaraa Mathur saab ke saath jaaon, saab kyaa ho gayaa? ...ye roster banayenge...* that was the end of it.

You see a lawyer must know, upto what time what place, he can go and not beyond that, so this is where we need to assert our authority also.

....cross talks...

Hon'ble Justice Manmohan Sarin: You see I have another view point on this, which I did not had the occasion so far to voice it. i firmly believe, and this is my experience also, any judicial officer, any judge, who commits an aberration, or who indulges in a malpractice and he thinks that it is not going to get known, is living in a fools paradise. Look at it from another point of view, what happens is, take for example, a judge has accepted consideration, for doing a matter in a particular fashion. You know the circuit operates like this. The persons who has handled it or the lawyers who have handled it, if he was the lawyer in between, they would go about and say, Sir, where is

your mater there, achchaa alright, you come and see me later, baat huee, you know there is something, this can be managed but don't tell anyone. The very persons, who have influenced this person and got the work done and have promised not to bloat it to anyone else, are looking for another opportunity, for getting it done. or even if not for an opportunity, for getting it done, they like to spread their clout, that i have this influence over this person and within their own circles business circles or others it travels. So, this is where the you hear murmurs about it, from there it reaches the legal circles also, so that's how, the reputation comes to, we come to know of it also from one source or the other. So, what I am saying is a person who has done an aberration if he that aberration one day or the other is going to get known it will not remain hidden.

...cross talks...

You know let me put it if a person has got habituated and he has enjoyed the fruits, he can't resist it, it will go on, ...you are talking about the first comers?

Participant: Yeah! I am talking about those persons who are not habitual....first comer, second comer...

Hon'ble Justice Manmohan Sarin: bhai second comer to pata chal jaayega...

and I'll tell you one thing more, there is a need for all of us to be alive to some situations, now i'll give you a practical example: Sir, now I'm doing arbitration, what I found one day in AN ARBITRATION suddenly a gentleman was sitting along with one side, one party, now, our family runs a charitable trust and I am the managing trustee, we run a charitable hospital, we have donated there, so this gentleman when we were setting it up was at time a Deputy Commissioner in a Corporation. So, hew was known me from that time. So,I was a little taken aback, why are they sitting there. so I did not say anything, any way the party said, Sir he is our consultant. So if the party wants to bring a consultant I can't say no to it. I said all right. now exactly after, one thing I must honestly share with you, I have a tough reputation and which is known all over, so, normally party would not tinker with it, after about a month in another arbitration, I found this gentle man, comming with the second party again, he was sitting there so that aroused my curiosity I said, aaa during the time when the tea came, I'll ask this party, how's this gentleman sitting here? Sir, he is a family friend. I said what does a family friend got to do in arbitration? then suddenly I asked him, I said how are you here Mr. so and so, he said, no no I am a government officer I had invested my whole money in this project, because of the wrong deeds done, my money has got lost. I said

then you proceed against your friend. So, that's the time I decided its time to teach him a lesson. So, I simply was having this tea, I said listen, you have no business to be in these proceedings, I said what our impression are you trying to convey? Are you trying to convey that you know me? Yes you know me, and i'll tell this parties how you know me? And let me tell you you have no business to be here, you are not a party, you are not a consultant, you are not a lawyer, I am passing an order, you want me to pass an order right away, directing your removal. You will leave this premises right now or you will leaving your self?

Wo chai pee raha thaa saab chai ka pyaalaa usse choot gayaa. and the man left, you know we have to be alive to such things, whether in your court if you find somebody who is known to you right, and suddenly he is appearing with a party one day, another day he appears again with that party. he may be innocent but there could be something there. So that is the normal precaution I think all of us it is known how to tackle with it. So,these are the thing s which we need to insure OUR integrity about.

Participant: Sir, I have some point to, since the matter is with the subordinate judiciary, I had some experience, though we are in the Madhya Pradesh & Chattisgarh so our culture and many more things are not like Delhi, Bihar and I am not comparing all these things. But for one point I am very certain, aaa general opinion of Bar is always correct. Always correct. Bar will not tell a honest officer as a he is dishonest, the next point is Sir, if a judge passes a speaking order, who is our member of the Bar is not liking it or not, but he has not got courage to say anything, if the judge passes his speaking order, saying each and every thing and deciding the matter as required, from we and from the sub ordinate judges then the Bar may be he like s it or not, and then if he is courageous ...

Hon'ble Justice Manmohan Sarin: Brother there is no difficulty about or problem on the judicial side, you are passing speaking orders, the only thing is the Bar creates conditions for the functioning of the judge which are not congenial.

Participant: I think Sir, after being here for some time, Bar takes his own shape, though I am in the, Sir I am very...not more than about....2 -3 years experience as a High Court judge. Presently I am having this my roster 227. And for many more things the lawyer came senior lawyer, Sir wo humaari, motion me finally sun ligiee, time kitna lenge aap? 40 logo ko chor kar I am not going to hear your matter out of turn, and then I decided I will not decide any these matters out of turn, so

I made it a policy be it a senior lawyer, be it a junior lawyer, so the whole Bar came to know that Mr. Bajpai is not going to hear out of turn.

Hon'ble Justice Manmohan Sarin: I think it is a very welcome thing one of the things which the junior members of the Bar complaint which I can now tell you, is the preference accorded to senior advocates by members of the Higher Judiciary. you know, but people end up doing it. you know, barring certain posts where you have order of precedents like the AG comes to you, he is entitled to the right of 1st hearing right. or the Solicitor General is there they get it. Barring those, if somebody comes and says, senior advocate comes and says My lord I'll just make it this, one practice at least I shunned it all the time brother, I don't know about how you practiced it. One of the practices which I found in Delhi was, you no Delhi the scale of fees are very high. So, for a senior one appearance could be 5 lakhs easily, so what would happen is you have not appeared when the matter was called, and the order has been passed. You are about to rise for lunch, at that time, 2 seniors would come running by, My lord I have to mention a matter, so what is the mentioning? mentioning is, Mylord has given this date, you know MyLords I have some difficulties on this date, this was rather an urgent matter, would your Lordships, advance this date or change it? Actually there was nothing of that advancing or changing, all that is he wants is his appearance, appearance had it, so he makes his 5 Lakhs. Now, at that time what is the dilemma for a judge? Now, here is a senior counsel, who is in the first 5 or 10 in the court, or even you can say 15 of the Supreme Court, are you going to tell him and say, sorry Dr. Singhvi this is not done, you were not present when the matter came I ma not going to record your presence. No no Mylord I am making a mention, but I am refusing your change of date so I am not recording or what you will say alright, if you are giving in give him another date, 5 days earlier record his presence. his job is done. Now, this is what, a senior or juniors, juniors rejects. You know, they say we want a date arguing a matter, we say hear it tomorrow, you are not willing to do it, ...no no nothing doing March, April, and when he comes, it gets advanced to January. No no *aap ki bhi court me hai Sir, aap neeche dekh rahen hain*, no no my brother Sinha, is it in your court also? How do you tackle these so called super seniors?

Participant: Actually we have judges and judges, now there are certain judges...

Hon'ble Justice Manmohan Sarin: What do the majority of the judges do?

Participant: They are equally divided. Half of the judges ...

Hon'ble Justice Manmohan Sarin: You know, Valmiki, this is the quality you need to cultivate....ha ha ha ha ...discrete, don't answer it, ha ha ha ha...

Participant: Half of the Judges they stick to the roster, come what may....the result is there is a lot of resentment at times, there are urgent matters, there are matters for genuine reasons the lawyer doesn't turnup, wants an accommodation, and there is the other 50% which says...

Hon'ble Justice Manmohan Sarin: *nahi bhai main ye kah rahaa hoon, aap accomodate kariye, Junior ko bhi kar do*...what is the difficulty.

Participant: Everybody there we dont make difference, none of us, there we make no distinctions that senior mentions we will accommodate junior mentions we will not...

Hon'ble Justice Manmohan Sarin: That is very fortunate state...

Participant: That's the way it is. We have absolutely no exceptions in that, now the other you say why will we refuse adjournment, my dates or any given day, there at at least 200 cases, even if I adjourn 100, from the rest 100 I can do atleast 10 and that is what I have been doing.

Hon'ble Justice Manmohan Sarin: So, you have never refused an adjournment its a, ...you know this reminds me of a very good joke from, the Bar, since I think Justice Ambwani is packing his things, let end it with this joke part of it, on a lighter note, you see for one of the former judges of Delhi, you know he is a very amiable temperament, anyone who would come to him he would say, al right when do you want it? Sir, day after tomorrow,.... have it tomorrow,...so it went on and went on...so, the joke that went through, its a little aaa you will excuse my, there is no lady member here, we can proceed with it, there is a little departure on it, the joke went around they said his sons name was there, do you know why was Sunil born aaaa late? this Gentleman kept on saying not today tomorrow. ha ha ha ha haha...So, not today tomorrow, you know you accommodation knowing very well that you are not listening to it tomorrow.

Participant: may I also, share, when i joined the practice in the Calcutta High Court, there was a set norms there was no listing of the motions under Article 227 or Article 226,later that is sent to the Registry for putting a number and then that is recorded. What i am mentioning is we used to call it a unlisted motion.

Hon'ble Justice Manmohan Sarin: Allahabad had this practice for bails also....Cross talks...

Participant: That the Senior used to get a preference and what happened they used to come they moved one matter, another solicitor comes and briefed him, another matter, i have got another motion and the juniors who have not engaged a senior, they were just waiting for their turn, ...terrible..when my turn will come and I will now things have changed

Hon'ble Justice Manmohan Sarin: Now, it is computerized and it will come that way, no that's why at one time in the Supreme Court, to ban mentioning by Seniors, you remember that Sir? You know there was an order passed....cross talks... tea? lets have tea!!...

SESSION IX

Persona of a Guardian Judge: Demeanor, Behaviour etc.

Speaker: Professor (Dr.) Amitabh Deo Kodwani

Prof. Oberoi: we start, i mean if the house considers it appropriate? okay! Now, this is a day when we have to say good bye! to each other, and of course lot of things have emerged and most important thing that according to me that has emerged out of this two and a half day discussion is that, since the system is actually "Seniority cum Merit" not "Merit cum Seniority" so even when as a guardian judge or inspecting judge or portfolio judge or administrative judge, when you are putting so much time and effort I am sure you must be wondering, because it takes so much time..

Participant: Its not "Merit cum Seniority" actually it is "Seniority cum Suitability".

Participant: Every court is different, every court is different, till a particular stage it is "Seniority cum Merit" but thereafter it is though it is called as "Merit cum Seniority" sometimes, but it is always generally "Seniority cum Merit" it is never otherwise. Prof. is right.

Participant: ...but that's in theory, they can't dare supersede a senior you see in many courts, ha ...so though the, in print it may be written you know, but in reality you cannot supersede a person, how do you, on what ground do you?

Prof. Oberoi: So, the whole question is that when you are doing this evaluation of performance,...

Participant: madam, for the... aaa as per the judgment of the Hon'ble Supreme Court in Shetty Commission's Case, ...

Prof. Oberoi: Yes!

Participant: It is always, it shall, it is always as "Merit cum Seniority" not "Seniority cum Merit", not at all, even, so in the Rules and on the paper.

Participant: no but what is happening is ...

Prof. Oberoi: Its "merit cum Seniority"?

Participant: Yes!...

Participant: Ground reality is otherwise!

Participant: These are two things, ground reality is a different thing, but so far as papers are concerned, it is "Merit cum Seniority".

Participant: Upto the level of the District Judiciary it is always "Seniority cum Merit", till it comes to the High Court.

Participant: From junior to Senior senior division...cross talks...ha ha ha haha ha

Participant: what we do is while considering merit, we take into account his performance, now there is a performance standard fixed, so they get filtered out there. So, once they clear the performance level, then it is basically "Seniority".

Prof. Oberoi: Yes!, .. then seniority.

Participant: Once we meet the minimum this thing, requirement.

Participant: Rather 3 things we consider,

Prof. Oberoi: okay, so I stand corrected, so I stand corrected, so if merit is so important then, that merit of course is determined by hierarchical system, where the task is given to senior to evaluate junior the performance. In such a system we also in this two and a half days grappled with so many questions. there were, there are two sides of a coin were presented, once side was that what about seniors conduct? are there too many things that the seniors are expecting from the juniors? and second of course is about juniors who are trying to create kind of aaa favorable system for them selves by becoming blue eyed boys and girls when they have posting and deputations at good places and they take advantage of that places. So, all these questions that we are grappling with, but then whatever suggestions and aaa issues that emerged actually it emerged out of your own peers, they were your seniors, like Justice Aftab Alam, Justice Navin Sinha, but they are from your system, from your , they are your brother colleagues and they gave you their ideas but then they

are part of your system. Today we thought to give you something out of your system, So, therefore we have called a Management Professor, because see actually this evaluation is a prevalent in every field, its not only about judiciary, even doctors , even engineers, i mean ever profession, even we are as a professors even we are being evaluated. We are evaluated by UGC. So, this system exists for everyone, except I thing private persons like Bar, but even then even for Bar those who perform well and you designate them as Senior Advocate. So, for, everyone the evaluation system exists in this world no matter what profession you take up on yourself. So, today we can learn from another profession as to how, what kind of tools they have developed? to evaluate, and whether those tools can be taken, some help can be taken because after all all universe is consists of one thing, basically we are evaluating performance. So, therefore we have called a management professor and he'll be giving you some tools and tips , ofcourse tools and tips given by your senior judicial colleagues are there with you, but aaa these tools also will be of some help I think so, and Mr. Professor Amitabh Deo Kodwani is there, he is a management Professor and I'm sure you will like it but, after his session you can ask him as many questions as are possible. So, we have presentation, first presentation.

Yes!

Participant: madam, can I just, one intervention, see there is a big difference if I may say corporate sector, or the judiciary. And the difference is corporate sector you pick out what is known as the best suited. Best suited for the position. So, from amongst large number without very maybe one, when we come to judiciary, we are are dealing with inspecting judges role performance, now here we can't say he is best suited. For example, I'll just give one example, the 3 parameters which dis entitles for promotions or selections that is:

- ACR - if you have an adverse entry- you are dis - entitled.
- Performance- if you have not met a certain standard minimum standard -you are out. and the third is
- Judgment writing - If your judgment writing you fail, - you fail.

But, if you have a clean ACR, not a good, I'll say a clean ACR, an average performer and an okay judgment, as against which you have a junior, who has an excellent judgment, excellent performer,

and a very good ACR. When it comes to promotion, can't skip the senior. You can't say that no he is better suited, and therefore I'll skip the senior. Therefore the evaluation process is entirely different.

Prof. Oberoi: No Sir, I beg to differ with you on that, we used to also think because whenever management this term comes to us the thing that we start to linking with it is corporate sector, which is not so, there are subjects called organizational behavior which is much more about psychology, its not, its nothing to do with corporate at all and we don't promote corporate values over here at all. this is more about psychology, its about organisational behavior.

Participant: That's what I am saying we can't exclude them. we can't exclude them on those parameters.

Prof. Oberoi: Yes! no no not at all

Participant: Whereas here the 3 parameters they are all equal there, irrespective of their...

Prof. Oberoi: Like law is a discipline, a separate discipline there is a subject called Organizational Behavior, this OB is a discipline and aaaa now people are doing Ph.D.s from MIT and Hayward in OB and OB it applies to all institutions, whether we open a hospital, whether we open courts, whether we open I mean any system not only corporate, because corporates have very different system, its like hire and fire, its like a different structure all together. Because its a private entity, they are not answerable but we deal with OB for organizations like ours and DOPT which is Department of Personnel Training, government of India, even they are now taking interest in OB and saying that OB values should be promoted in every, aaa even the Government, governance structure. So now people have started applying OB as a discipline in this structure. So, therefore aaaa we are introducing OB now. thank you so much Sir.

Prof. Amitabh Deo Kodwani: Thank you very much and good morning to all of you, i am i am highly scared in front of judges everybody has to be scared, so I am also scared. i am also oddman out, because I think, except me everyone seems to be strongly connected with the law aaaa but being a law abiding person I am also somewhere connected with the law. And also I am trying to connect with 2 different topics are there, I'll I'll before I open which one you would like to spend

more time with that? One is related to the perception and the personality, the kind of personality one should have, and how that personality influences our activities, that's one area of activity which we are going to do that. And in that we also try to understand how our aaa the different personality, aaa the kind of personality we exhibit, how that influence our relationship with the people and how that influence and affects our aaaa interaction with the people, so that's one aspect.

The second aspect aa what I thing Sir was talking about aa the evaluation component, so the second part is on the evaluation component, wherein aaa the idea is

1. what is to be evaluated, No.1? then it comes to
2. How it is to be evaluated? and the moment we come to the How part then we look at you know the different tools and mechanisms which are available, because lot of research is going on this area of evaluation. aaa you know, i would say the outcomes may be different for the corporate world, to the this system, but it leads to some amount of dissatisfaction. The moment any eligible person feels that he is not able to move forward, at the pace which he wanted to, because of the systemic issues he feels disheartened, so some amount of dissatisfaction creates. Now, in the corporate world the beauty is in the private sector the beauty is the moment you have a dissatisfaction you look for some change, right. Whereas even in the public sector people don't want to change. But that dissatisfaction remains. So, that is the reason lot of research is going on continuously to aaa understand that how do we minimize this dissatisfaction, which the kind of mechanisms we choose to evaluate people. Now, lot of new aaaa, different tools have emerged in the last one decade but still you find that aaaa it is very difficult to remove any kind of a subjective element from these evaluation mechanism. Because the moment we aaa dealing with the people the subjectivity will automatically creep in, whatever is the best of the best system I have, some amount of subjectivity will always be there. So, now the the the issue is that how do we minimize the subjectivity? the moment we are able to minimize some amount of subjectivity, it is helping us to improve the aaa you know the kind of satisfaction, post evaluation. then the issue also arises that
3. Why evaluation? and What for? Do we really need to evaluate? and if so then the question arises you know,

4. How much openness needs to be there in the system and How much confidentiality needs to be retained in the system and then it comes to the other issues.

So the second part we will be talking about the evaluation first I am starting with this perception and the personality and the role of these two in aaaa in in actually shaping our behavior and also shaping our relationship with the people. So first I'll start with that and then we will move with the evaluation.

The personality what it is basically what we say is the some total of ways in which an individual reacts and interacts with others, so often aaa when the two people are interacting we say that the two personalities are interacting. And when the 2 personalities are interacting, there can be a chance of personality clash also. So most often we are unable to understand why this happens, why someone reacted like that? you know...and we are not able to get the answer to that, probably the reason is either lying with me or my personality issues or reason with the other person or his personality issue. So if we are somewhat conscious about these issues we can minimize these perceptual errors to a large extent in our day to day life. Aaaa this is highly influenced by the perception, the way we look at the world aa the research in behavioral sciences says that nothing real, what we believe becomes real to us. And this what we believe is highly influenced by many factors. one of the factors is our own value system. our own belief system okay! aaaa it is also being influenced by the convenience, for example if we were I just entered you were talking about the physical form of material v/s the soft copy and what is the difference between the two? And specially you will find that more cut and paste is happening these days aaa early days you know the real research used to come out. I remember, I was doing the Ph.D. and I found that you need to go physically to the library and then read 100s of journals to find one single paper relevant to you. So, that becomes very painful process. Now, in one click you get lot of information and then comparative data and then all those kinds of stuffs are available. So, so this convenience is also influencing somewhere our perceptual thoughts and then on top of that aaa our own beliefs, our own experiences, past experiences every is bound to effect our perceptual process. So, let me start with a

This HR and technology can't go hand in hand so, aaaa please you'll have to bear with sometime, you know technology is not a good supporter of HR. Alright if I just request you to see that what you see in this picture?

Anything which you observe in this picture? Two things, one that comes first is a

two faces okay! ...aaa facing each other okay!

.....discussions...absolutely fine, absolutely fine, anything else? what do you see in this picture?

she is looking at something or she just avoids something which is very unpleasant...okay!!

Participant: he appears to be very sad...

Prof. Amitabh Deo Kodwani: Very sad!

Participant: She appears to be under dipression...

Prof. Amitabh Deo Kodwani: Depression!

Participant: deep thinking also...

Prof. Amitabh Deo Kodwani: Can you see something in thsi?

Participant: Sheep..

Prof. Amitabh Deo Kodwani: Ahh sheep...are you able to see the sheep Sir? Sir are you able to see the sheep?

Sir, please help him to see the sheep Sir please!..help him...this you are seeing as its nostrils, okay!

Participant: old woman, old women with a long nose...

Prof. Amitabh Deo Kodwani: okay old woman with a long nose okay!.. yeah so in the same picture

1. we are able to see so many perspectives to one situation.

2. we are able to influence somebodies perspective also, look what we tried there. you are able to influence somebodies perspective.

Now I'll show you the same picture in a color form, now what do you see?

Participant: Yeah his is an old woman...

Participant: Princess..

Prof. Amitabh Deo Kodwani: Very young princesses

Participant: looking that side...

Prof. Amitabh Deo Kodwani: When my focus is on one part I am able to see very young princess, if my focus is on other part I am able to see a different picture altogether. So, my perspectives are changing, when I am seeing the same situation which part of the situation? one part or the holistic view my perception keeps on changing. If I just ask you to see this one as a you know a fur on her cap kind and then if you look at you will find a young lady or a princesses kind of a thing.

Who do you think who is right?

Participant: both...ha hah ha

Prof. Amitabh Deo Kodwani: so most often our aaaa....that is true for most of the situation that every perspective is right. In the previous picture I cannot say that any perspective is a wrong perspective. isn't it? So in the real life what we do is you say that what I believe or what my perspective is the right one. Or you try to understand my perspective you know? Often you know between the spouse who stay very close for such a long period we may often find that there is a difference of perspectives between those two. What you see here Sir? In Maths we can call it a circle, but can i call it a circle? no we can call it semi, but again the first appearance it comes to the mind is a circle. Now the another tendency we often have is that we all try to complete the picture. The missing links we are are trying to bridge the missing links with our own past experiences.

I'll show you how that also works.

If I ask you which one is taller?

Participant: the front one appears to be taller.

Prof. Amitabh Deo Kodwani: Appears to be taller! alright! okay!

What do you see in this picture/

Participant: birds flying.

Prof. Amitabh Deo Kodwani: which side?

Participant: Both sides..

Participant: whites on the Right, Blacks on the left...

Prof. Amitabh Deo Kodwani: Anything else you can see?

Participant: a carpet?

Prof. Amitabh Deo Kodwani: Carpet

Participant: Its a puppy, can be a puppy

Prof. Amitabh Deo Kodwani: Clouds heaven, puppies,persons sitting together viewing something okay! any other thing?

Prof. Amitabh Deo Kodwani: Even the teachers have lost their, because of the judgments you know, i cannot beat anybody so, ha ha ha ha ha..

Do you see some birds, something like that?

Participant: cross talk...

Prof. Amitabh Deo Kodwani: chicks, okay!

Participant: There are 2 birds!

Prof. Amitabh Deo Kodwani: Birds okay! any other thing? okay okay okay!

Prof. Amitabh Deo Kodwani: what is this?

Participant: some arguments? ...cross talks...

Prof. Amitabh Deo Kodwani: they are talking, but not cordial....some arguments..Sir you were saying something.

Participant: Some serious issues...

cross talkslady appears to be at the receiving end....ha ha ha ha ha

Prof. Amitabh Deo Kodwani: we have contradicting views like there is some kind of a disagreement you know, and some kind of a peaceful and satisfactory statement that, don't worry everything will be okay, But two different absolutely contradictory views. What's your opinion mam, you are the only female in this room so, I think your opinion also matters a lot.

Prof. Oberoi: I'll ask Jyoti to give her opinion.

Prof. Amitabh Deo Kodwani: Delegate,

Participant: You can't delegate...ha ha ha ha ha

Prof. Oberoi: okay, okay

Prof. Amitabh Deo Kodwani: In the real life also the same thing happens

Participant: what is your perception!

Prof. Amitabh Deo Kodwani: okay! see I am I am highly skewed because I use it for different audience, so the moment I use it for, my students who are 23-24 years old, they have very different stories altogether, a boy friend and a girl friend, you know and then know probably the boy friend

is very angry that she has come very late. so you know with their age they can connect with their stories. Yeah! I think you have something? What do you think?

Prof. Oberoi: Serve properly would be he is saying because the ...cup is one only,

Prof. Amitabh Deo Kodwani: its one only so, unwanted guest you are trying to say?

Prof. Oberoi: Not unwanted, but he is like, its like...

Participant: boy friend may be saying like listen to me before you go.

Prof. Oberoi: But then this kind of aaaa question ...can you do that with your wife??

Prof. Amitabh Deo Kodwani: Can't do it absolutely can't do it..ha ha ha ha ha...

...too many people talking over each other cant decipher

Participant: I think he is pointing a finger...

Prof. Oberoi: Yes right yeah!...

Participant: that is why they are arguing something...yeah pointing a finger...

Prof. Amitabh Deo Kodwani: oh yes...

..too many people talking over each other cant decipher

Prof. Amitabh Deo Kodwani: Sir, something now very important...yes Sir!

Participant: Hand of the lady is to a chair, she wanted to hols the chair and sit now he is really objecting to it...

Prof. Amitabh Deo Kodwani: now now now, tell you very interesting thing you know, look at the two absolute contradicting views, the lady wanted to sit, and this gentleman is not allowing. stop it, how come you know. Not happy with that.

or in contrast she is leaving and he is not not allowing her to leave.

Participant: one thing is there she is at the receiving end.

Prof. Amitabh Deo Kodwani: She is at the receiving end?

Participant: Yeah! that one thing is there...

Prof. Amitabh Deo Kodwani: okay!!

Participant: He is trying to dictate something to her or she is pointing out a finger look here...

Participant: there could be one view, that the lady is about to fall or something and he is trying to support her..

Prof. Amitabh Deo Kodwani: helping!...see if there are similar kind of opinions, suppose you know, if you come to a conclusion that there is something yeah! like you know..

Participant: what Jyoti is saying that she has just arrived, some serious things have been given to her she is about to you know become wobbly and he is supporting her hand and that's what..

Prof. Oberoi: Yeah! but if his right hand if you see its like that...

Cross talks....

Prof. Amitabh Deo Kodwani: If you look at this is a controlled environment, we all know that this is a , we all are in a program, this is a controlled environment, the affect of external environment is very minimal at this time, because our thought processes are by and large set or tuned aaa for this program and on top of that this is going on since last two days so you know, we are into that frame work plus if you look at the other environmental factors like the effect of light or distance almost are same. After that also actually it should have been more of similar aaa stories about the same picture, but we find that there it may be some difference of opinions also. But if you look at here we have an absolute contradicting views right from preventing- supporting; helping friendly relations - a very strong relations where in you know, but he situation remains the same, so if you that our perspective to the same situation may keep varying the moment i look at oh there is only

one cup, so what I am trying to do I am trying to collect some signals, some clues and those clues will help me to interpret the picture. So, first is that odd boy's hand posture, the way he has kept right hand on the chair, or the left hand posture whether he is helping or supporting? or if you look at the facial expressions of both these people, the leg and the hand gesture of that lady, aaa there are so many clues in one picture, and this is not the 3D picture, in the real life we see the 3D pictures. in the # Dimensional the confusion is slightly more, because you are able to see the side view also and that may add up some more confusion in our mind and that may have very difficulty to have a similar perspective to one situation. Very difficult, very difficult and aaa if you look at you know when we are aaa for example when I look at my role also or or or when I see the role which you people play, because your role is very important, my role is not that critical which may lead to a life and death of an individual. Probably I may affect somebodies career. But your role is much more critical. Consciously we all are mature and we try to keep our maturity high so that we consciously do not make any mistakes or tend to be biased. Or consciously we tend to be close to the reality, but as I said you know human mind, human mind its very difficult to keep every thing reminding in ourself consciously that no look look at this kind of a perspective, no I need to evaluate this one, most often this unconscious mind have developed over the period of time some biases. Like you know if you ask a small child of 5 years -6 year old and you know if there are 10 people in the room and you ask them to go and say hello to them, probably he will have the same nature of hello with all the 10, because he don't differentiate people by nature by caste by class by religion by your background by the color by the sexual orientation nothing, it has no clues about it. For him the world is same, but the moment people become matured, the moment they become experienced, now these experiences are lot f positives and negatives in our mind, they keep accumulating in our mind, so more experiences you will find that more rigid are our thoughts. we do some experiment, the senior people you know the 40 kind of people, 40 to 45 kind of people, then we do it for 20 to 25 kind of people, then we do it for 5 to 10. We find that the same puzzle you give to the entire generation, you find that the 5 year old kid will be able to solve the puzzle, the chances are very high. 10 groups to a 5 year old child, the chances are that 5 to 6 groups will be solved. you will be surprised that's the same puzzle we give it to the senior people with some clues also , because you know our experience are forcing us look at the world from your own perspectives and within that which are the clues which are more effecting me, influencing me, touching me, or are related to me, or are favorite to my past

experiences, again forcing me to be further, narrow down my perspective to those issues and that is why, keeping everything same for the same situation, we may have different perception. And that's why we say that we are living in a perception world not the real.

You see this story, what's happening there?

Participant: Observing something..

Prof. Amitabh Deo Kodwani: Are these the same things that they are observing?

Participant: no no they are looking at different directions. ...

Prof. Amitabh Deo Kodwani: If I just request you to aaaa concentrate on the old lady?

Participant: She is appreciatively observing,...

Prof. Amitabh Deo Kodwani: Appreciating?, and also look at her hand gestures...

Participant: So, appreciating and relaxed, deep den thought, yeah!

Prof. Amitabh Deo Kodwani: is it deepin thought or relaxed?

Participant: Relaxed, .

...cross talks and mutual discussions..ha ha ha ha ha ha...

Participant: It appears to me amused,

Prof. Amitabh Deo Kodwani:

Participant: pondering!

Prof. Amitabh Deo Kodwani: Pondering? ...look at this what he says is that there are certain clues which are forcing you to think differently, The moment i am looking into this posture I will thing its a deep thought, right! or probably ...relaxed!

Participant: watch her eyes also...

Prof. Amitabh Deo Kodwani: Eyes also....okay! Are they relaxing, what does it interpret cross talks and explaining the postures and gestures of the picture projected.

Prof. Amitabh Deo Kodwani: Looking at a different angle for the same situation.

Participant: The activity and the act of the that young lady appears to be good and therefore that old lady is satisfied.

Participant: The old lady is saying

Prof. Amitabh Deo Kodwani: okay! young one is under the influence of the old one...

Participant: young one is under the influence of the old one..

Prof. Amitabh Deo Kodwani: okay!!

Participant: And the old one is enjoying the ...

Prof. Amitabh Deo Kodwani: That somebody is under my control...that's why I said the mother in law, daughter in law kind of a relation, ha ha ha ha ah..

Prof. Amitabh Deo Kodwani: Okay! let me let me, if you just last figure that we will move it is aaa. What do you see here?

Participant: It can be a wall ...blocks....

Prof. Amitabh Deo Kodwani: Are these lines parallel? or Not?

Participant: The top one and the last one are parallel...

Prof. Amitabh Deo Kodwani: now just focus on the two lines, any two lines, ...

Participant: Ha 2 lines its parallel....first top and bottom...

Participant: Top and bottoms are parallel....

Participant: They are all parallel...

Prof. Amitabh Deo Kodwani: Okay! i will say that in between any lines you pick up and then see that whether its parallel to other or not?

Prof. Amitabh Deo Kodwani: But I'll tell you all lines are actually parallel lines, very clear parallel lines. The moment you look at the totality, the picture in totality, you will find that they are not parallel. So, I am repeating the statement we are not living in the real world. The real world is actually the parallel lines. But I am not able to look at it as a parallel line becauseha exactly, exactly, exactly, now let me come to you know, aaa why this happens and what happens. This process of perception has 3 steps,

1. observe the information or when we collect the information.
2. then we try to screen the data, and
3. then we organize and interpret the data.

These are the 3 steps which follows in the perceptual process. And if I just ask you, what is your quick perception about a police man, or a politician, aaa within the four walls of this room only.

Participant: Appears to be behroopiyaa (politician),

Prof. Amitabh Deo Kodwani: behroopiyaa, but what is your opinion on policeman or a politician, i'll be more interested to know about your opinion no of politician, very strong question I am asking?

Participant: Opportunist

Prof. Amitabh Deo Kodwani: Opportunist! shrewd? In general your opinion about a police man? or in general your opinion about a politician?

Participant: About the picture or generally?

Prof. Amitabh Deo Kodwani: No in general, in general, forget about the picture. Picture is fine...

Cross talks....

Participant: Both are bad...

Participant: Both are very corrupt, this one...

Prof. Amitabh Deo Kodwani: Corrupt! but, all are not corrupt?....

Participant: corrupt and opportunist...

Participant: By and large, by and large...

Prof. Amitabh Deo Kodwani: by and large...

Participant: exceptions are there...

Prof. Amitabh Deo Kodwani: or let me ask you another question,...alright, hu un !

Participant: May be a this is a photograph taken at a in connection with an ensuing election

Prof. Amitabh Deo Kodwani: Ha ha ha ha ...

cross talks....

Prof. Amitabh Deo Kodwani: okay, alright, I think this is slightly controversial issue so let me ..remove that, let me ask you, in, If I ask you what is the color of a banana? banana?..

Participant: The overall or the inner one?

Prof. Amitabh Deo Kodwani: No no overall, overall?

Participant: Yellow, green...

Prof. Amitabh Deo Kodwani: Yellow, green, or yellowish green or greenish yellow, something like that?

Participant: Yeah!!

Prof. Amitabh Deo Kodwani: Like if suppose a next one week in the breakfast you get a red color banana...which is often there in the South, a red color banana, right...orange, reddish orange sometimes, kind of that...

Participant: Not South we have green...cross talks

Prof. Amitabh Deo Kodwani: South we have red color banana...

Participant: Kerala we haveyou get...cross talks...

Prof. Amitabh Deo Kodwani: Suppose you get to see this red colored banana very often...and then if I ask you the same question that is the color of a banana? probably we will start with the red, because the last one week we have seen the red. So,

1. even things which are happening to me now, or in the recent past has an influence on my perceptual process more than the things which had happened in the past. Okay!
2. two the things which are more repetitive in nature or in my life, one incidence happens like you know, I go to the police station I found that, you know like I was interviewing some young aaa IAS officers, those you have just gone for training and came out. And they had one component in the training that, aaa they went to this Andhra, you know, wherein they were tracking and survival kind of a training was there, that with minimum food they had to survive for 3 days and after that they were told that, you go as a common man to any of the local village and get an FIR registered, the idea was to go and see that what is the status of a common man when he goes to the police station? How he is being behaved? So that you know they can sensitize these police officers so that they should be very careful while they get a posting, and out of the batch of 78 only 3 people they said that they could succeed in getting an FIR lodged in a local police station. And the way they were torchered, the way they were behaved you know they said it was pathetic. And the last when they said it you know, that look we are also IPS officers and we are this is a part of training, they said the things changed completely different. the way they were treated and greeted, were different. So, the idea is to sensitize them. now, look at the same person the moment his

position change from a common man to a police officer, the entire world changes for him. So, these are also influencing my perceptual process plus suppose if I go to a police station, right....and ten times suppose I encountered the police officer, different police officer in the last 6 months, ten times, and out of 10 times 8 or 9 times I happen to meet a good police officer s who are coming forward and helping people like anything...and the moment same question somebody will ask me, I'll say no they are very good! I'll not start with the corrupt, So, how many times the same incident is getting repeated has also a tremendous effect on my process of perception.

So, the 3 things which influence the entire process of perception are:

1. the perceiver. We the way we percieve the world.
2. the target. The situation.
3. the situation within which the context in which we are looking at the situation.

So, the target the situation and the perceiver, like that'll see that you know how we influence.

Perciever: His own attitude about the life. Like when we say that the glass is half filled or half empty, it shows the attitude of the individual. So, our own attitudes are also influencing our perceptual processes. For example, something which I feel is not ethical, now, legal and illegal are very clearly defined. Ethical and unethical are it is different for each individual. So, the moment something I feel is highly unethical, I may not accept it. That's my attitude. I'll say no this is wrong, this is not acceptable, but somebody else, it may be absolutely acceptable. So, because that is driven by the individual attitude. In fact, aaaa, it is slightly beyond that attitude also, there is one more thing that the way you look at you find that, this is our external behaviour, which is reflected to the rest of the world. Now there are different, different layers inside, Now

1. first layer may be of our Beliefs,
2. then our attitudes, then there are so many layers...
3. the inner most layer is called as the values.

These values are deeply rooted. Very deeply rooted. Values are something which defines *what is right and what is wrong for me?* And each individual has a different value system. Sometimes the

values are highly influenced by the society in which we live, a national culture where we live. Our family culture, our upbringing, the first you know, at least 6-10 years of upbringing that has a tremendous effect on our value system and that's the way most often if the perception is influenced by , or the behavior is influenced by these value system, very difficult to change, very difficult to change. When I say this is right, for example if you, if you see the honor killing cases in Haryana, I was in Haryana for one and a half to two years in Haryana (Rohtak) and I saw very interesting thing you know, one was this honor killing, very often you find that the father is killing the daughter or the brother is killing the sister, look at the kind of guts somebody wants a father has to go and kill his daughter for the same daughter you and your wife has taken a lot of pain and going and killing. this means that, the values are telling him that no killing is right, what she did, the inter caste marriage is wrong. That value is so strong so strong that the person is ready to take that kind of a step also. Another incident I saw in Haryana was, if a lady delivers a baby boy, she is being given good, you know, sweets, laddus with full of ghee and everything, so that she can recover fast and strengthen, if she is delivering a baby girl, she is forced to stay for a week in the cowshed. Jind is a place very close to Rohtak, I went and I saw this and I was surprised. Reality we are seeing this thing we used to you know, just read in news papers and all, very difficult to even visualize, because we used to feel that media is creating some hype. I mean you see personal, then it becomes very difficult to accept, how come it is possible. And this lady is also accepting the fact. She don't have any crib, she'll not be given anything to eat for one day its a kind of punishment, that you have delivered a baby girl. In the era of science when we know that who's fault or who's you know is the more responsible for it rather than I would say responsible for it, still we are not able to digest that fact. Why because something is driven from my values. My attitudes. So, this outer layer "Belief" if something is aaaa related you know influenced by the belief, it can be changed. Like I said you know, my belief about the policeman or a or anybody may change if I experience good things with them, in the last few days or few months. So, that will quickly be changed. Belief about the color of a banana will quickly be changed, because the moment I experience something new my believes can be changed. So beliefs are easy to change. So, my perception if it is influenced by belief that can easily be changed. But the moment this is driven by values, very difficult to change. Or attitudes slightly easy than values by difficult than the belief. So, these are the layers through which our aaaaa personality or the behavior is influenced. Similarly our own interest, our own motives, our own, aa like you know, if I am, if I

am more keen of different kind of car and I am driving, any new kind of a car passes by, i'll quickly observe, but probably the fellow with you may not if they are not interested in the cars. Same situation, everything remains the same for both the individual, but because of interest I am able to aaaa get influenced with something. Similarly with the experiences. Now, every individual has his own past experiences, now, our brain the way it works, the way it the entire body works is, biologically, the moment any of the sensory organs be it hands, eyes, nose, tongue, or you know the moment we get any kind of a information through any sensory organ, by seeing it, by touching it and all, it goes straight way to the brain, because, the sensory organs don't have any way to interpret what it is? Now, if I close my eyes and try to touch, still the brain is working, the hand is only passing on this information to the brain. Now, brain is acting like a hard disk, which has stored lot of memories, lot of issues, lot of experiences, everything is stored, and the moment this information goes to the brain the brain has to start working and interpret that data what it is? So that we can visualize, what it is all about? and this processes is influenced by our past experiences, processes is influenced by our recent experiences, process is influenced by our own attitude our own thoughts, our thinking patterns, these all are influencing the process of perception. So that is why we really don't know what is the reality? I would just request you just close your eyes for a second and visualize a situation, just close your eyes for a second, and visualize that you are passing through a deep forest, a deep jungle, a dense forest, okay, you are passing through that bare feet, not using any slippers or shoes, just passing through that jungle, mid-night, around 1 AM or 2 AM, bare feet passing by a jungle. All of a sudden you realize that something beneath your feet. What would you do? How do you react? You are touched by something....

Some reaction will come, something ah...alright! or trying to jump off that situation right....

Participant:	Reflex	action
--------------	--------	--------

Prof. Amitabh Deo Kodwani: Ahum...these reflex actions are also, at this point of time I am not going to say that look I am a qualified person, No let me first collect the data collect the information, interpret it and then react. We will not do that. Okay let me try to touch it, because it is so dark that i'll not be able to see it so let me try to touch it. Is it soft or hard? Let me try to touch it whether it is a length, probably 3-4 feet or one foot or half a feet? okay! let me try to see that....touch it that's what I am saying sensory organs.

hunhh....so, I will not do all those kind of aaaa knowledge....

Participant: Quickly get back...

Prof. Amitabh Deo Kodwani: Get back, right, because, something image has emerged in the mind. What is that image? Of a snake...Now look at this why that snake has emerged?

Participant: Forest..

Prof. Amitabh Deo Kodwani: ForestTime frame: Mid night; and I am passing through a jungle bare feet that too right. So, all these informations these sensory organs are passing to the brain. The brain has to visualize, what will happen? or What will be there in the midnight in a jungle, dense forest? So dense forest will be connecting to some animals and snakes right and then midnight so fair chance, because I am not able to see,...it happens, so fast that the brain says that first jump. Because the quickly the snake is being visualized. but, if the same situation happens with us in our bed room, you get up in the night, and then something beneath your feet you find, unless until you are prone to the snakes in the in your house, otherwise you will not get the image of a snake. I'll probably I might have left something, something might have fallen, or the kids might have, their toys or something might have left, why because the setting is totally now, different. Huh! a rat also....So this is purely, now look at it you know, my perceptions are, or my reactions, rather than my actions are totally dependent on what I visualize, or what my brain is forcing me to visualize, based on that I ma reacting. Then, nothing of sort of conscious mind, let me collect the data, I know the calculations, I know every thing, I am engineer so let me calculate every thing, no it won't work at all. So, that's why the situation, is another factor which is influencing the perceptual process. Then the target itself is also influencing the perceptual process. e.g. something new, first time, a 3 wheeled car, that will catch attention very easily than a normal 4 wheel car, or the kind of a car which we used to see, in 70's and 80's you know, big Impala if you see it now, all of a sudden it catches the attention, because something new, which is not prevalent. Similarly something which is in motion, it catches attention easier than something which is stationary, intensity of the object, the size of the object, the background, if you are travelling on the road and all of a sudden you find so many hoardings on the road, but one hoarding with an orange background and something black on top of that, or a black hoarding with a orange

or yellow on top of that, will catch his attention easily than a normal, blue, white kind of a combination or white black kind of a combination. So, the background and how quickly it is getting repeated? That is also influencing our perceptual process. So,

1. the factors with the individual,
2. factors with the target and the
3. factors in the situation all the three there are so many combinations now you can see that which are influencing our perceptual processes.

Now, how, it is very difficult to be very conscious every time, every second in our life that you know, am I right or not, very difficult, so most of the time, the decisions are or the actions are with our unconscious mind. Whatever comes to mind quickly we are acting on it. Spontaneity or by impulse reaction we can say. So, this is the way our entire perceptual processes are getting influenced. What we will do is, aaa, I just want to know, one more thing, you know, we have aaa three different ego states in every individual which is also influencing the relationship. Now, what we have seen is how do we perceive the world? that is affecting my personality. Now, when we interact what happens, because there is some another fellow also in the process of interaction. What happens? Why the interactions everytime does not go smooth? In the process we have three different ego states which are influencing this process of interaction between the people. We'll do a small activity, I have a small set of questionnaire, which has some 36 statements, very simple statements are there, and there are 5 options in front of each of the statements. Very quickly just read the statement in once and whatever options you think is relevant to you you tick it and just move on. Don't think too much on any of the questions one. And any of the statement you think is not relevant to me, you can leave it also. Just pass on.

....participants concentrate on the exercise....

Participant: We have to fill up the names also?

Prof. Amitabh Deo Kodwani: No no this is going to be with you....you have columns like CP, NP, A, NC, LP and AC, the same in the additional sheet you will find the same abbreviations, CP, NP, A, NC, LP and AC, what you need to do is that for CP you need to check your statement no. 3, 11, 19, 24, 35 & 36 and see that the options you have selected, sum up the options for example,....

(explains to a participant how to add the options)

Prof. Amitabh Deo Kodwani: I'll just repeat again, aaa this table it talks about aaaaa, the 1st column is CP, the additional sheet which I have provided...there also you will find the same abbreviations,CP, what you need to do is that we need to calculate the total score for CP by adding all the options you have selected for statement no. 3, 11, 19, 24, 35 & 36. Just look at the column CP, the first column. This column....

cross talks....clarifications seeked by the participants from Prof. Amitabh Deo Kodwani.

Prof. Amitabh Deo Kodwani: Can I interpret the scores quickly? Yeah! every human being irrespective of the age irrespective of the gender, every human being has 5 different ego states, always present from the birth till death. Now these 5 ego states are:

1. One ego state is called the PARENT EGO STATE.
2. Second ego state is called the ADULT EGO STATE.
3. Third ego state is called the CHILD EGO STATE.

So, broadly there are 3 categories of the Ego States. then further when we break-up, we get 5 or the 6 different Ego States. Now, some behavioral theorists say there are only 5 some say that there are 6 Ego States. So, these 3 Ego States the PARENT, ADULT & CHILD are always there irrespective of age and everything. In the PARENT Ego State there are 2 kinds of Parent Ego States:

1. One is called the CRITICAL PARENT.
2. Second is called the NURTURING PARENT.

CP is your Critical Parent, and NP is your Nurturing Parent. The difference between these two is the CP are like why you are doing so? Why you are sitting like that? Sit Properly. Keep your table clean. Why you are not doing like this? SO this is a examples of a CP.

Examples of a NP are: Can I help you?, or Let me you know, help you to finish this task earlier. Let me support you? Let me think of you? So, those who are showing some care and concern for the people are called as the Nurturing Parents Ego State.

ADULT is only one, there is no further subdivision in the ADULT. Adult Ego State is more looking for a rational or a fact. When we ask any youngster, Don't smoke. he will say Why? Don't drive rash, he will say Why? Because he won't simply accept any statement if he doesn't find any rational or fact in it. So, the ADULTS have a habit of asking questions, looking for a rational, looking for a justification, looking for some factual information. So, suppose you know if I say look no you know cigarette is injurious to health, he will say look my friend's father he is 94 and he is still smoking 2 packets a day. So, they have their own facts and figures. So, very difficult unless until they have a very strong justification, they will not accept, that's a style of a ADULT.

The CHILD Ego State is further divided into 3 sub states: As I said some people talked about one some talked about two and some theorists talked about three, so let's talk about the three ego states:

1. First Ego State is NATURAL CHILD Ego State. It is like you know this is what I want, irrespective of the environment the context or any thing. Let me give example, Suppose you know if we take our kids to a family friend first time, somebody has invited at his home and you are taking kids to them, generally, the mother gives instructions when the kids are small, like you know, don't jump on the sofa, don't misbehave, don't jump and take the food immediately till we say go and take it something like that. Now the kids have entered the house, the moment they entered they are served with very good cookies, one type of kid what he will do, he is liking the cookie he wants to eat also and he is feeling hungry, but he will say no no aunty I'm full, I'm not hungry, I don't want it and continuously looking at mama's eyes, to get the green signal. The moment he gets the green signal he'll pick up. one type of child what he will do: All instructions everything is fine the moment he will see the cookies he will say that somebody wanted me to eat, I wanted to eat, where is the 3rd person coming in between and giving instructions? The cookies are served to eat only so let me jump and eat. No, instructions nothing, he will not even look at the Mama's eyes. Very natural spontaneous reaction, and some times you will see something which is served which he doesn't like at all so he will say..ummm, wakh, yak, I don't like....Am I right? He won't look at to whom I am saying no. This is a very natural spontaneous reaction of a person that's called as a NATURAL CHILD.
2. The third kind of Child is he will go to somebody's place he will look at a very corner okay! switch on the discovery channel, or read some magazine interestingly, without troubling

any body, that is called the LITTLE PROFESSOR, more of thinker and intuitive kind of a person. So, all the ego states are always present in every human being and these are the ego states. So your NC=NATURAL CHILD, LP= LITTLE PROFESSOR, AC= ADAPTIVE CHILD.

3. ADAPTIVE CHILD Ego State is who will just look at the instructions, he will follow exactly what has been told.

Participant: What is AC?

Prof. Amitabh Deo Kodwani: AC=Adaptive Child.

Participant: Who is adapting???

Prof. Amitabh Deo Kodwani: Yeah! who is adapting to any situation. Now if you see your scores also, all the scores if are in the range of 3 okay! here and there up and down 3, it is termed as a very balanced score. It means that, the situations demand need to be critical I am critical. situation demand, need to be showing concern for somebody I am showing concern. The situations demand need to be, needs to be very Adult ask for facts because the role you play you look for justification, where is the proof? you know, you are not going emotionally, right, give me the facts, so that's an ADULT. the moment the situation demand to be aaa enjoy relax may the NATURAL CHILD comes in, but you will find that more often your last score will be on the lower side. That is going to happen. That is bound to happen, because of the role you play which demands aaaa yeah! now you are at senior positions, with the maturity, age, experience, senior...the moment we become senior our AC goes down, because then we don't want to follow everybody. because you know, I too have some say, so our adaptivity slightly goes down. this is a very natural process okay! So that will be low. And if the scores are in the range of 3 nothing to worry its a perfect score, because we are balanced. But, if the scores are too varying, for example you know, my CP is 5 and my NP is 10 it says that most often when i interact with the people I'm showing more concern,my Natural Parent Ego state is dominating when I am interacting with the people. Others are also there,but it is dominating,or most often I am just interacting with the ADULT EGO STATE with the people, okay! Now, what does it mean? How, does it reply? The moment I , my ADULT Ego State is more dominating it means that most often my interaction with anybody I am looking for facts and

rational. I wont simply accept it. Now at times there are situations aaaaa, i am just talking about the personal life, at times there are situations which are full of emotions, now the moment I am asking about rational in an emotional situation, you may find very awkward situation. Otherwise it is very good everytime but, so look at how your that ego state which is dominating is positively or negatively is influencing your building relationship with the people. Either in the personal life or in the professional life right. There is nothing right or wrong its the way, if I feel that yes my Adult ego state is high, and this is the way I would like to be, absolutely acceptable. So, there is no right or wrong score, only thing this score will tell you that which ego state is more dominating while interacting with the people, so my personality is being more dominated by any one or two Ego States most often when I am dealing with the people. This is what it exactly indicates our personality scores. We will quickly break for tea, once we come back, if you have any specific questions to ask in this or you want me to analyze one of the situations I'll do thatI am sorry I have extended the

Participant: No No ...

Prof. Amitabh Deo Kodwani: Its a contempt of Court in the Court of Law so thats what I wasjust

Session X

Transparency in Performance Assessment

Speaker: Professor (Dr.) Amitabh Deo Kodwani

Prof. Amitabh Deo Kodwani:quick interpretation of score.....you may find this score aall the scores are in range of difference of 3 or 4 both 11, 14 you know 13 something like that ... but the difference between the scores are in the range of three also its absolutely average balanced score what does it means, it means that based on the situation my ego states are varying and depend upon the requirement each anyone of the ego state will start dominating example, If I need to be a critical parent. I would exactly playing the role of critical parent because that is the demand of the situation. The moment the situation changes I need to be more showing concern, I will show concern also ok...nowit's very balanced okI have 1 score look at this very interesting score 15 is critical parent, nurturing parent is 10 ok here you can see difference between 2 or 5 what it mean is ..Most often not every day most often when I am interacting with somebody my critical parent ego state is dominating so the idea is..I am trying to tell them is boss this is not the way to do ...this is the way and this is the way to finish the task.....finish your task come back this is the time to go for lunch something like this, so more intothe score which is highest among all is 20 or 22 ..23 rest all are 15, 10, 11, 10 16 so if you see rest all are almost balanced is not a very skewed the only skewed is 23. now 23 is also it says that againmost often I am getting dominated by the idle ego stat that mean whenever i interact with somebody I look for rational prospect otherwise i don t accept, its good[00:02:27] means i just not get drained in the emotions I will not simply dragged by any situation unless until the situation has some justification, some facts, some figures I'll not simply buy your statement. So this is dominating now other way of interpreting it is this score if I feel yes I would like to be like this, this score is a good score...the moment I feel I think atoo much ...may be a problem now again why filling the question did you get the person like ...sometimes when we only achieve the professional thing in mind while filling up then that has a effect on the score so suppose if i know.. with close relatives or kids adult ego stats is somewheresuppose I would like to check then I can think of changing it if not then every score is a good score, there is no hard and fast ..plus a if you look at the natural child score suppose let me explain you what is this parameter known natural child score if it is too low compared to all the scores...too lowfine but other scores are ...14..ok ..This means that again..the

role is demanding that I.....you know what this stupid statement made by the lawyer ...but look I am judge know I cannot to maintain the dignity of the judge I am suppressing my natural instinct to that situationI can I can...i can ..I can show you ..These are the transition between 2 people this is the different combination of the transitions

Participant: In the context of this

Prof. Amitab Deo Kodwani: In the context of this only, so for example Participant: is for parents A for adult and C for child Ok now, If the 2 people are interactive in such a way let me give some example I think then it would be easywhat is the time ? I am asking somebody what is the timewhat I expect ...simply look at the timeyou ask for time expecting that he shouldits complimentary to each other I am asking a question you are giving me a fact.

Participant:watch..

Prof. Amitab Deo Kodwani: Exactly...exactly ..but suppose..dont have a clock ..dont have a watch?

Participant: why cant you figure out yourself ..

Participant: Let me ask a question ...10 in the night if you ask time ..10 mins more

Prof. Amitab Deo Kodwani: could be the answer so this is not the direct answer which I am expecting suppose some body answer that why don t you figure out your self, do you think relationship would be smooth after that no

Participant: No...

Prof. Amitab Deo Kodwani: that is called as complimentary transitions I am expecting him as an adult tell me simple answer and he is trying to give me something other justification so he is acting from a critical parent ego state ..why are you asking meare you going to give me money for that ..some thing like that ...

Participant: Ghari nahi hai kya?

Prof. Amitab Deo Kodwani: han..han Ghari nahi hai kya? Dahej me ghari nahi mila tha kya kya? ... something like thatthat realy effects...so what I was trying to tell you in the beginning there look how this transactions are effecting the relationships ...and it would force you to perceive something about the person look he is so arrogant I just ask him time and he is not telling.....I

would tell an example I was travelling in train and an elderly person on the upper berthmust be interested to know or whatever it is and he asking an young guywith an ear phone so he was listening to some music so every time the station comes this old..elderly fellow was asking beta kaun sa station hai ? so I could easily make out from the first reaction that this young boy is not interested ..that please don t bother me too much ...he would look at this fellow remove his ear phone look at out side the pane and the way he said Jhansi aaya hai.. I could make out is he is not liking probably the elderly fellow did not realize the signal, 3rd time he asked the same question ..and he replied railway station hai. you are getting signal but after that he will again ask ..No ...so the fellow was expecting him as an adult but he acted as an critical parent and ask why are you disturbing again and again why cant you fig out yourself . Those type of things come into minds and thats why he is getting like that.similarly a ...I have given you the example of complementary and the crossed second one was crossed the first one was the reciprocal is more complementary to each other, the 3rd type which is again very dangerous is called as the ulterior transaction i am saying something for example the boss tell to his subordinate can you please do me a favor is he really requesting

Participant: Its a command..

Prof. Amitab Deo Kodwani: Its a command can you see the tone ..right ..I am saying something but the meaning is boss you need to do this ..I am your senior right don t think that I am requesting you and you have no choice to say no to me thats what exactly the meaning is but I am saying it in a very polite way so this is called as ulterior transaction on face it look something else but the meaning is the real meaning is something else, so that also affects our relationship further. Let me give a interesting a..a ..if you look at one statement and see that how many meanings one can infer out of one statement ...statement is been said by one person to the other fellow and other fellow has to think what does that mean so that he or she can react accordingly the statement is why dont I take you to dinner tonight very simple statement but the moment the other fellow feels that he is stressing on you the meaning would be I was going to take someone else so why not you what would be the reaction then ...get lost koi nahi mila so you are asking me or you are anyways taking someone else. you did' nt find so you are asking me or you are anyways taking someone else. you did' nt find so you are asking me I am not special the reaction would be very negative same statement if the person saying that the focus is on I why don t I take you to dinner tonight the

meaning would be instead of person you are going with why not I take you to dinner tonight? Look the same sentence meaning got completely changed. Same sentence now the focus is on don't why don't I take you to dinner tonightDo you have any problem, Look at the same sentence it's all depend upon the other person's perception that where you are putting the stress.why don't I take you to dinner tonight, he is not going on your own why don't I take you to dinner tonight instead of lunch tomorrow, look same sentence how many meanings we can infer out of it right ...instead of today night why not tomorrow night so that's why whenever some interaction happens some transaction happens between the two people it all depend upon the person ...is saying what is his pressure point and the person who is at the receiving end what is he perceiving about it because his or her perception about situation, and that's why we say that the role of listening is very importantlistening with intention, listening with emotion listening with facts and rational it all the different meaning brought together.listening without thinking anything, listening is hearing plus thinking so a..a the role of a if I can connect with you evaluation mechanism that's why we keep it must be there that the communication as one of the parameter of evaluation problem islistening plus speaking plus writing all the three all together. so listening is also one of the important component. now a this is a way it effects our day to day lifeI would request you just keep this work with you ok and in case in case you want some score i want to make a change for example I was talking about natural child natural child score for example is ..is too low .. what it means and how it has impact the moment I am suppressing my emotions to a great extent natural child score means I am suppressing my emotions to a great extent the moment I do that the body has a tendency to react ..you will notice the people with high natural child score they develop less chance of stress which lead to further aa..aa console or ..this type.....the moment we are suppressing our emotion to a great extent chances are it may effect somewhere in our physical problem like you know you may find skin related diseases, are very much related to our behavior, the moment we suppress it have effect on on on our body. A cholesterol or sometimes diabetes it is all because suppression of all those emotions and all so those suppression have some effects on our body. ...Sometime I really feel some people say we also face ...the moment I see football i feel let me go and kick, i am a professor my students are there and how can I ..I am suppressing my emotions right I want to react something ..but you know no no sometimes the students the way they try to use some tricks in the class ..we have also gone through the same we also know that right but achha beta theek hai I can easily pick up right but I cannot react like that ...I have to be

in a matured way of addressing the same issue so what I am doing I am also suppressing my emotions to a great extent the more i suppress i will have to face ..believe me I have found that...I had some itching in my body i went to a homeopathy doctor in Hyderabad and then this gentlemen started asking me tell me your temperament no first he said come with your wife I'll not ask you individually .I said i have a problem no he said it would be good so next day I went with my wife then started asking to me to my wife and he was able to make out the facial expression very clearly he said do you feel angry too much i said no not like that not to portray that i am very aggressive person the moment he looked at my wife face he could make out that I am saying wrong he said no no ..you are contradicting then i say sometimes then he could make out. half an hour he asked me my behavior my personality ..give me the medicine na..this is the way we expect he said boss lot of things are related to the behavior ...and then i studied the literature and then i found there is a strong linkage with our some kind of diseases in our body. ..the body has a tendency to release hormones depend upon the situation the moment you think about good food or you smell a good food you know our one of the organ which is called the gall bladder it will start secreting the acid ok because the brain has set ..the food and all it will go to the gall bladder gall bladder function is to the moment food means it has to secret that acid so that food gets digested in our body. but suppose I think of of a food i smell a lot i am actually salivating but not eating for whatever is the reason you find that it effect and that generates acidity, that generates cholesterol ...to look how the things are interrelated with each other so the body has a its a beautiful mechanism which reacts spontaneously so the score are also showing it a..each each score has its pros and cons on a personal relationship ..but you think i am absolutely ok with the score then nothing to worry about it the moment i think no let me try to make a change keep this grade with you after some months after making some efforts in changing that ...how would you change what i found the best way of change in our personality is while sleeping just think about what i did since morning today and how i reacted with people ..think about your personality

Participant: what should be the ideal score brother

Prof. Amitab Deo Kodwani: ...I tell you the scores are to be seen in relative to each other rather than in absolute sense

Participant: Ok...

Prof. Amitab Deo Kodwani: so thats why i am saying that relatively.....its a straight line with a difference of 3 or 4 maximum ..apparent with a difference of 3 or 4

Participant: higher side or lower side

Prof. Amitab Deo Kodwani: any side no problem3 to 4 maximum not more then that if the gap is more then 4 it means that that ego stat is dominating more in inductions.

Participant: what is the reflection of this thing little professor high

Prof. Amitab Deo Kodwani: little professor high means more thinker more intuitive in any group interaction we will find that i want to be cool calm and think of some very important ...you know ..if i get a news paper i like to read newspaper rather then talking to any body ...ok or would like to read some magazine would like see some news evaluate something...aa..aa i would like to think some situation in my mind rather then just talking to the people or even while talking i would like to talk on a issue where in some debate or discussion can happen that is what the little professor is all.. about. more of a thinker or a intuitive ...not introvert but a thinker so most of the thinkers would slightly introvert because they are always themselves. ...some exchange some knowledge some thinking on some issues.so this is the way we can interpret the scores ..let me quickly take you to the other side a..a of the topic which we talked about ...taking very drastically from behavioral type topic to the very hard core scheme based topic of evaluation evaluation mechanism it is very interesting thing about evaluation issue also this evaluation there is one component which is called why what part of the evaluation ok so the issue arises thatthe issues of evaluation ..what is to be evaluated and the second thing score ok what is to be evaluated and how is to be evaluatedhow is very important how is to be evaluated now the evaluation sort two purposes one is called appraisal and one is the purpose of development..development a a appraisal is of two kind one is called the potential appraisal ..and one is called performance appraisal,... and this is finally the feed back and feed for word for the individual development. this is very important to differentiate the role or purpose of evaluation if the purpose of evaluation is for appraisal within appraisal the purpose of appraisal is to check the potential of a candidate for a higher role the purpose is to evaluate the existing performance and categorize him efficient, good, ok average something like that sometimes in in in a this appraisal is used for evaluating for giving compensation but in this type of environment we don t talk about compensation because those are very fixed guide lines by the government of India so here it is used for knowing the present

performance of a person so that we can know how this person is doing on the role other one is to ensure that whether he is fit for higher level of positions when we go for retention or for new portfolios new positions or promotions its being used primarily for that when it is used for ...purpose only the idea is just ...view the ...so that the person should try to improve his own qualities only for that purpose not to criticize not to punish not to revoked ...feedback what kind of person you are ..or what kind of activities you are doing what is your performance what is your outcome and how to improve your outcome ...only from the individual developmental purpose only. why i am saying that purpose of evaluation is important because one question arises in the appraisal is how much confidentiality to be keep in the performance evaluation system how much transparency is required how much openness is required now ACR it self is confidential report so if we need to maintain the confidentiality what is the purpose of that for example this regular case when i am keeping this input for this individual for his growth for his improvement only why anybody should know about that only he should know how he is doing or how the evaporators are perceiving his outcomes or performance and how he can improve on that. only and only he should know and no body else should know. in fact in sometime in order to keep the anonymity or in order to maintain this confidentiality some officials what they do they prefer the third party to evaluate that those are the expertise in that area they should come evaluate and give the feed back to the individual and nothing else. feedback plus feed forward how to improve on nothing else no body else should come to know very secret why because its only for me let me take it accept it or reject it and think of would like to improve or not. ...with whom this confidentiality is required confidentiality from the person itself or confidentiality from other peers or seniors or juniors ok what kind of confidentiality is required for example the actual purpose of ACR was that it used to act as a black box suppose i am being evaluated by my senior what is evaluation how he perceive ..i don t know anything it goes to the black box the things are confidential for me also what way some outcome will come ..i will be promoted not promoted promotion was due i was ignored this will tell me what might be in the appraisal ..its black box i don t know only the outcome may know that then it will start raising if it was for me at least share it with me so that I can improve upon it then we started talking about some amount of openness in the ACR also that at least the person should know now how much of us the extreme of openness is that let the senior and the subordinate sit together evaluate critically on the subordinates parameters discuss it and then the ACR is being filled. so that the person has no grudges no ...no dissatisfaction and he has been explained why to

do that Sir!..its happening sir there is a concept called MBO management by objective wherever it is used it is like this even in our system sir we are also in govt. system in our system I give the annual plan and then at the end of year the director calls each one and then tell me what have you done out of this i feel that you have wasted your time here teaching feedback is low can you work on thatin my presence only so that i either i have some justification for something for example in non of my class my student has given me the low feed back right do i have any kind of reason or justification any way can able to buy it h can take care of that it was not because of me look i went to the class room your chairs were very bad if you look at the feed back they practically told about all those issues and because of that they might have went out ..so why should i be penalize for that so han let me not take this into account so so in this case both the parties don t have any kind of ill feeling after that and if i come to know that you know you know my scores are low and in the end this director has given me this feedback why he is giving me the lowest score the heart burns are to the minimum as a human being some heart burns will still be there but that will be minimal so the problem that i was telling you post appraisal dissatisfaction would be very minimal. and more the system is transparent and objectivity is there people will find before going to that stage ...because its very objective kind in nature. so other issue of appraisal is that you know that how to be move on more of subjectivity to more of objectivity ..because if you look at a...there is low factor on subjectivity how we can minimize it look at the kind of role there is one matter which is called control ability kind of now in case like you know time how much time judges are taking to resolve the issue so that the number of cases may come down or he is taking too much of time per case that could be one factor of evaluation but is it under your control everything under your control sometime not because a..a..prime objective is the judgement the file of a..a the decision which has a fairness in that thats the prime importance and one of the party is saying you delay buying the time very difficult to have control over it i am not complaining about the control so if i say that time is one of the factor for evaluating a judge i might be wrong because there are factors which are beyond the control of a judge and i cannot penalize a judge which are the factors so by framing a good appraisal mechanism i mean to point out those factors within the time which are under the control of a judge then you know i second factor is inter dependency the inter dependency factor is that is my action or my performance is getting influence or dependent on some other factor for example the way case is being presented the role of the registrar to the process or the role of other players into the process who are combining, creating, presenting if they are lacking

at there part why the performance isso how much i am depended on others so by making a good appraisal mechanism the moment i keep the parameter generally i...i find that ...4 or 5 parameters are used to evaluate the judge one is called the integrity ...understanding of the law and then the communication and one or two i saw like that. this is the broad parameters behavior with others integrity and behavior with others and all a one more administrative system alsono no i am not saying what is good or what is bad but i am not expert in that but what i am saying is while designing the appraisal mechanism the moment i say that ok i behavior be the first it is under my control completely or is it i am depended on some body else the moment i depended on somebody else then i should not be evaluated on that or i should not be given the weight age of the parameter should be low then the transparency and fairness in the system can be established. every appraisal every appraisal the same thing we do there are various as i said we start with the data collection we need to collect the data of the individual then we look at what are the sources of data the moment we see the sources of data we need to chose which appraisal tool what technique we want to use to find our sources then we also look at what are the authenticity of these sources you will find here the moment i am choosing this appraisal tool it has a very important role to play in that mechanisms ..a..i chose a very tradition or prism mechanism where a senior is giving the feed back about it yes in certain job a person is not interrelated with any body else other then the senior then senior has to give but otherwise if there is scope of collecting the data from different people also so there is a fantastic mechanism which says that multi rater oppressive mechanism its also called 360 degree mechanism in 360 degree or multi rated mechanism appraisal what we do is we try to collect data from self also ...rate himself or ..then senior ,peers if peers are playing any role or my actions are or activity i am here any third party now third party could be a...lawyers or third party could be a bench which is evaluating the mechanism or it could be third person coming to the court a..a..so depend i am not saying to chose all the moment you are involving more number of people in the benefit is that if any biases of any individual creeps in the biases will be reduced to every...and the biases comes from the personality factors which you are seeing in the previous class biases because of the class , because of the cast because of the religion biases because of the male versus female the sexual orientation so many biases which may creeps in so this will help me in reduce some amount of biases because now there are now more party which are actually evaluating ...now based on the role of an individual I can say i am giving 20 percent weight age here i am giving 50 percent weight age based on the role because he is more interactive

with the senior i say no its very limited only 10 percent i can give only something like thathow much that individual is interacting with other and how much that role demands and influence other roles based on that i can use it now here the idea is the purpose is simple purpose in my mind to name my all the lined up issues between the appraisal minimize the individual biases minimize the con troll ability and dependency factor a... this is very effective ...the problem is there if you look at there sometime the subordinates are also involved in i may be very good in behavior with my seniors because ultimately he is my senior but how i am behaving with my juniors that is also influencing thereso the moment i am involving my subordinates you know India is a country where boss is always right some time people don t like this appraisal system because subordinates are evaluating the seniors one two what is the level of maturity of this subordinate to evaluate that is also a question if the subordinate is really matured he will not go by one incidence or two incidence he will look the whole over the situationso even in the corporate world wherever this system is being used we are using it at the managerial level only because they have some maturity to understand the gravity of there consequences of there action but i use this as just for the developmental purpose amazing results we get amazing because i am trying to understand how my senior is have a perception about me how my peers have perception about me how my subordinates, my clients, all the lawyers have a perception about me are we get a holistic perception about myself. best told for the sake of developmental perspective. so this can be used not necessarily they need to have 360 degree.....if i dont find anybody it is called 270 degree appraisal if i dont find here anybody it will call as 180 degree but it is slightly more then 90 degree. 90 degree means only one part. so this is also called multi rated appraisal system. There is another tool which is to me a for the judges also which is called as a BARS the tool is called as a BARS because if you look at the a..a..a decision is depended on various factors.....it has its own consequences consequences to the life and death consequences because of the lawyer sometimes know ...court room or sometime some other pressure so there are there are lot of issues which are influencing decision making so BARS has a benefit its called Behavior Anchored Rating Scale it also captures that instead of capturing score on a scale of 10 it creates a scale for each of the role and the scales are primarily coming from the behavior which have to be exhibited to the job the activity which we are doing has to be converted into those scales for example a..a suppose if i say clerk he has to pick up a call now whether quickly picking up a call is an issue late picking up a call is an issue not picking up the call is an issue i think use these kind of evaluation rather just a

scale of 1 to 10 the advantage is that all my role is based on the role the appraisal would be very good different it would not be one standard format for everyone rather for each of the role the appraisal has to be modified and customized. benefit is it perfectly suits to every kind of requirement because its not only the decision which has to be evaluated at the end but it is the process also which has to be evaluated. with what kind of consequences and pressure I am undergoing and then arriving at a decision that is also have to be evaluated that will only be possible when we have the BARS. I think ...also follow that way or collecting through a different sources I can do that also very apt these two are very these two are the new ways of appraisals and very apt for present day requirement, there is one more appraisal method which is called MBO Management by objective this is slightly old conceptualize by Peter Drucker in 1980s but this MBO is a beauty it says that instead of evaluating some bodies performance in isolation involve both the party the senior and the subordinate has to sit together understand their role this subordinates role and then conceptualizing their own parameters of evaluations and then periodically meet to see that whether this subordinate is on the track or not, if subordinate is not on the track quick rectification plan can be made both the parties senior and subordinate can sit together and also they can understand the expectation from each other, subordinate may say look i am not able to do because you knowsenior will also understand that because not providing my support this subordinate is not able to get his goals so let me support ...so the benefit is that there is no grudges its open one both the parties are open two periodically they are meeting so you are need not to wait for...year and then there is no scope of improvement in that, if ia m meeting so there is scope of meeting very fast that is the benefit of that MBO ..so there are various appraisal technique also but these three i found more fit to our requirement where these issues the issues which we talked about can be addressedWe often have a tendency for let me give you my example when I was in industry aa..my..my immediate boss he was very much fond of the handwriting so in an interview suppose somebody has filled up a very nice hand written form by seeing it he will made up his mind Amitabh this person must be a very good person just by seeing the handwriting so just looking at the one particular trait of an individual i am trying to define the entire personality of an individual which is a wrong thing but the consequences are the moment this person comes I already get a very positive frame of preference of me from that i am looking in to this individual i will only see the positives in this individual nothing negative i may ask very easy questions i may see every thing positive in the question and then you will always tend to

prove right at the end of the day soft part...leniency for there for the fellow. ...Justifying ..interview is a process where in first 20s ec...there mind next 20 min they will try to provethe body language ...the first impression the way somebody comes somebody comes and influence you I may like the color of the cloth he is wearing ...or dress up sense or personality or of something like that so completely influences my biases towards individual it may go other way round also i may not like something may be caste may be a religion you know i have my views about it the moment i see the person belongs to the same cast class religion or the group he will be like that only and the moment i made up my mind that it is negative you will find that you will end up rejecting a person because every thing whichever comes out is negative frame of it. so everything will be negative negative negative so these are some kind of individual biases then there are other individual biases those who have the high NP small biases biases is such people tend to be lenient ok like you saw somebody who is not doing and then you find out reasons no no this poor chap must be going through some problem so lenient you know ...my personality is of more of caring attitude and thats why.he is lenientthe moment we have two state probably the other way roundmy grand mother died when i was studying so what how does it effects your performance it must be 3 days 4 days that it what after that the people who are highly tough task master they dont get swayed by those emotionali dont want to say like that.....

Participant: i would say very simplifywe would do our job with perfectionKaam krodh moh lobh ahankar.....

Participant: on the manner of evaluation if i remember to do my job without fear ...cast bias or religious bias he is rich man he is poor manhe is aor he is a gentlemanpreconceived notions right ...we always try to fit in or situations or circumstances ...may be because of immediate past because of history because of habits ..or these things are very complicated ...if i remember to do my job without fear(too many voices)

Prof. Amitab Deo Kodwani: There is a movie which has tremendous effect on my life i.e ek ruka hua faisla I found very interesting you know a....the moment i consciously thinking is it right is it ethical

Participant:whether that applies to your family to your friend circlewhether you have to be harsh ..there is a man in haryana ...end of the day all these issues ...if we are sincere to our principles sincerely throughout our life working as a judgeor by any standard hopefully

Prof. Amitab Deo Kodwani: the idea isit is giving us some scope of some introspection and if i feel i am absolutely good with this every thing is ok. the moment i feel it no probably i would like to improve then this is very

Participant: this a ...very beautiful thingsno.1 he says that never think your job is difficult no.2 he said that in your life you always be a studentalways through your life be a good student ...whether any class.....

Prof. Amitab Deo Kodwani: very true i found that i have too have seen my own personality and i have tried to improve on it has helped me a lot. I used to be very aggressive short tempered short tempered have its own weaknesses the moment you spoil your relationship with your boss you are greatly effected forget about the consequences to you and all but the work is getting effected your work is important so i need to control my anger not for me but for my work the moment i am giving more importance to the work which has tremendous consequences on many ...i am very small player i am not very important in that process why i am giving to much importance to my own ego then it come down it come down its a matter of introspection it helps us to be more conscious about our own decisions that itthe only thing in the process i found you know i am not saying that other appraisal systems are very good and this is not every where the same problem is there the only problem is while making the good mechanism of appraisal please look at the purpose of it and probably you need to forward...appraisal techniques for the different part the purpose is different we cannot mix it as i said only for the developmental purpose and for the appraisal and for the future so it will have a different set of appraisal cannot have the same no. 1 no.2 i must look at those drafting of parameterswhether the individual have complete control over those factors or not or whether the external environment have any complete control same with the dependency he is purely...himself responsible or his his actions are depended on somebody elae so that he should not be penalized for that.thats what i was saying

Prof. G.Oberoi: Thank you so much a Mr Amitabh Deo Kondwani and thank you all of you all justices participating all of you are very intelligent judges and very senior judges in fact we learn more from you then giving you in fact in written something but even promoting a this kind of a coming together and sharing has its own value and we are going to prepare like whatever issues have been raised new ideas that has been suggested and we will formulate that and a submit it for your consideration with that a there is only one request we have sent you a program coordinator

Mr. Sumit Bhattacharya had sent you pre response performa so we have received 11...4 we have not received so it will really grateful if you can ok ...yes ..yes..may be in one week you can send by email we'll be really grateful because it all goes into the research part of the the institute yes...yes that i have already said 11 have ...aa...submitted only 4 are remaining and we just a requesting a Honorable 4 judges to also submit it thats apart from this a evaluation of logistic conditions over her thank you very much i hope a it was not time wasting for ..there is always a fear in our mind

Participant: you should have called this prof. earlier ...

Prof. G.Oberoi:because we are scared actually ...ya ...OK thank you very much

Participant: not the in house resource person ...new dimensions ..

Prof. G.Oberoi: Yes yes

Participant: Such type of lectures should be there in state judicial academy

Prof. G.Oberoi: yes we always have training of trainers five days program four programs this year directors.....

Participant: ...professors actually appraisals

Prof. G.Oberoi: Yes yes yes...actually we have taught law exclusively in India we have not taught with management or psychology or other disciplines which is so economics which is so abroad so may be we need this kind of outside dimensions also supplement ..ya ..legal discipline ya..thank you so much really thank you so much sir, Merry Christmas to all of you and Happy new year to all of you from National Judicial Academy.