
CONFERENCE ON FUNCTIONS OF REGISTRAR GENERAL

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Submitted by

Nitika Jain

Law Associate

National Judicial Academy

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SESSION 1

Justice Sunil Ambwani: Shall we begin? This conference beginning from Feb 8th to 10th has been divided into 3 days and I see that the sessions have been very carefully chosen and most of the sessions are very useful to you in your day to day work. I do not believe in academy there should be any lectures as I see all of you are very senior officers, lectures most of the time miss the point of participation and sharing your experiences, idea is to come and meet have discussions on the issues which are almost attracting all the High Courts and to discuss them and to resolve them if it is possible not with the help of a resource persons only but amongst yourself while discussing and also to share as to how the others are doing the same thing mostly in administration, even in judicial side also deciding the cases it is very useful to know how other judges are dealing with the subject. Now all of you are judges from various High Courts, must have been selected either from the civil judge junior division or from the higher judicial service and I believe that almost all of you will be sitting on the bench within a short time, I believe some of you must also have been recommended for being elevated. One of the interesting thing that I found in Allahabad was, I didn't have much experience of that in Rajasthan that Registrar Generals when they are elevated most of the registrar generals in Allahabad actually withdrew from their administrative work and the Chief Justices did not did not take their services. Chief Justices continued to bring new registrar generals and interact with judges so far as... the rich experience with the registrar general gets in the administration of the HC is completely indispensable, experiences of various kinds, experiences of actual rules of the court, the actual working, the practices and procedures, the customs of the court. What I found is that every HC though every HC is functioning under the same framework under one umbrella of Supreme Court, one basic document Constitution of India but each HC has a separate set of rules and the time now has come that these rules should be standardized and a conscience effort is also being made by the e-committee by standardizing these rules. All HCs have been given grants to reengineer their rules, in fact reengineering, the object of reengineering is to have a standardized platform on which all the HCs will work and a need was felt when the computerization was in progress. It was felt that many HCs there are although the law is, sometimes the procedures are different, the procedures may not be deviating very much but somewhere they are so that if you go from one High court to another high court it becomes sometimes

difficult to adopt unless you understand the meaning of it. The nomenclature of the staff, the method of dealing with the files, preparation of notes, the way in which the administrative functions, the management functions are being performed in each High court are slightly different suited to their own needs like Assam was seven sister states, now three high courts have been separated, it had different laws, different customs, different way of functioning and many a times these also come through the functioning of the district Courts. I did not have much difficulty in Rajasthan because in Rajasthan the first Chief Justice Mr. Verma was from UP so Rajasthan rules were had adopted the Uttar Pradesh rules of 1952, so it was the same High Court rules but then in some other high courts the Chief Justices have to take time to understand the procedures but one thing hurts me is when one CJ goes...now we have had CJs from different high courts, you can have `acting CJ in you high courts for short time or for a long time but in most of the high court's there are CJs from other courts. Now the first foremost thing that I expect from the Chief Justices is to respect the customs and traditions of the high court. Many a times you have found that the Chief Justices come from different high courts and they I mean sometimes admire but many a times have a little indifferent view or sarcastic view of how the things are to be done. I'll give you an example of Allahabad, we saw 11 Chief Justices from 2001 to 2014, three came from Bengal, three came from Patna, 2 came from Bombay Justice Gokhale and Justice Rebelo, now almost all the Chief Justices who would come from West Bengal would have, would now have very respectful view of the rules of High Court. Off course Allahabad has its own share of problems, Allahabad functions in a very indifferent way sometimes but to have respect for the rules, practice procedures and customs of the High Court is one way with which I think we can deliver goods. I felt the same although the rules are the same but I felt the same thing that there were lot of difference, it was not practice and procedure, it was customs and traditions and these are also very important, how the full courts are being held? How the functions are being organized? what is the way in which judiciary interacts with administration, state administration, actual issues of governance, the expectations of the court officers, the litigants, more importantly the lawyers was entirely different, so it is this area where I feel that the registrar general plays a very important role in becoming a bridge between the new Chief Justice and the High Court where he introduces to the CJs from the other states to the High court because the first person who meets the Chief Justice is the registrar general and I

believe the last person also whom he meets before he retires or goes to Supreme Court or is transferred is the registrar general, customarily the registrar general either comes to receive him in his state or..

Now the topic of the first session is the Registrar General as a spokesperson for the High Court, we need not deliberate, the RG is just like a chief executive officer of the high court or rather I would say the entire judiciary, not just the high court but entire state judiciary. He is just like the general manager if you talk in sense of industrial concern, the board of management may be different but the entire functioning in day to day affairs is to be done by the registrars. RG is as a chief executive officer is virtually the phase of the high court, I would say that high court is known by him as he represents the high court, he is the keeper of the entire records. All the correspondence, all the notifications, all the orders are issued in his name. We can compare his office as chief secretary of state, he represents high courts in all non-judicial functions, but at the same time a lot of judicial functions are also entrusted to the RG. It is a misnomer to say that he is the chief executive officer of the administrative side. If we go to through the different rules of the high courts, even lot of judicial functions which may not ultimately result into a dismissal of the case but rather than deciding the case he almost the entire filing is done in his name, the filing is done in the registry, the cause list is printed under his supervision, the copying department functions under his supervision. Almost all the times the cost and the penalties deposited in his name whether it is a motor accident claim, or directions of the court, the security bonds the leases and everything is signed by him. In testamentary and company jurisdiction he discharges a very important function of preparing inventory account, properties and credits, issuing provits and letters of administration, he officially receives the document on behalf of the high court, he through his subordinate officers verifies the compromise, the many a times the functions like ordinary substitutions of the parties, name of the parties, the extension of time and all other things are done are done on the judicial side. We can say judicial side in which a case may not be disposed of except in a case where petition has been filed or action has been initiated without any jurisdiction, where registrar can say that it is just not maintainable here and all other function which the Chief Justice may authorize him to do. Now RG in there are in 21 High Courts which we say the bigger high courts, 3 have been recently carved out including Manipur has a lot of officers, a big staff to function. Allahabad is perhaps the biggest

judiciary in the country with 75 districts, 9.75 lakhs pending cases, sanction strength of 160 judges, working strength of at the highest it went upto 95, as on date its 75, 75 in Allahabad high court is considered to be a very depleted strength, some other high courts it is sufficient. So he functions according to the needs of his office through various registrars, deputy registrars, officers on special duty, we have registrar administration, registrar accounts, somewhere the registrar accounts and budget are also separate. In some of the Registrar looks after the stock and purchases, then the registrar vigilance who is the next most important officer after registrar general, registrar confidential, registrar inspection, registrar now with the responsibility of holding the examination whether it is higher judicial services or civil services, all other exams, registrar examinations. Now we have CPC who looks after the entire computerization, he is also of the rank of the deputy or joint registrars, we have now ADRs alternate dispute resolution, whether it is in big cities, metropolitan cities, arbitration councils, mediation centers are almost everywhere, Lok-Adalats are almost institutionalized now in last 25 years. Then we have another registrar protocol, some of the high courts they are deputy registrar level officer, although there are now senior librarians, there are registrars who are maintaining all the inventory, stocks, cars, equipment, computers, he has to look after not only the electricity installation, the lifts and everything. It is a multifarious functions and then comes the most important function of holding meetings, meetings are one of the most important part of the registrar general, beginning from the full court meetings to administrative committee to various sub-committees because now the HCs are functioning through various sub-committees. There are meetings with the governor, meetings with the chief minister, meetings with the finance secretary, law secretary. These meetings are statutory meetings held periodically. The registrar prepares the agenda items of the meetings, now this is one of the very important function of the RG to prepare agenda items for the meetings. Then comes the another ceremonial duties of administering the oath presiding over, I'll not say presiding over rather conducting the ceremonies of holding the oaths of Chief Justices of the judges of the court. Behind all this lies the primary function of carrying out the policies of the court, all these are functions of the court, policies of the Court are different, policies of the Supreme Court are in the biannual conferences, Chief Justices conferences, chief ministers conferences they are spelled out, Supreme Court also issues Mr. Avadhani will tell you almost when I was a Chief Justice in Rajasthan between 5 months i

received 17 circulars from Mr. Dattu and they stopped coming after the NJAC notification was issued. But then the Supreme Court has a very pious responsibility of having a policy judiciary, many times people will think that what is the policy of judiciary? policy of judiciary is to administer justice but that may be it may sound very general in nature but when you come to the specifics there are so many things which goes on, every Chief Justice of India comes up with new ideas, all the ideas are for the benefits of the institutions. like One of the idea of Justice Dattu almost changed in my opinion the the and instilled confidence in the entire district judiciary in the country was about how to handle the complaints, it came as such a relief to the Chief Justice, it came as such a moral boosters to the officers of the judiciary that no complaint which is not accompanied with affidavit and most important thing was credible material, now even an affidavit would sometime make allegations, sometime there may wide allegations, sometimes there are specific allegations but even in case of specific allegations unless it is accompanied with some credible material like copy of the orders or copy of the FIR, a newspaper report would not be treated as credible material that may be an opinion of the media, that came as such a great relief I tell you with that we could dispose off almost 75% of the complaints that were pending in Rajasthan and I circulated it widely among the others. Every judicial officer must receive a copy of the letter of the Chief Justice of India not the follow up circular of the High Court so that he would know that somebody up there in Delhi credible institution is taking care of these things, is looking after you and looking after your functioning as you function without fear and without fear from the bar. I'll take 5 minutes about the bar also, as how the bar is now playing an important role in administration of justice. Another very important factor with RG is to look after the media. Media is now called the 4th state, 4th pillar of democracy but unfortunately media doesn't have any regulatory body over it so media is free unlike all other three organs of the state. The accountability of the media is a question which is debated almost every day, whether there should be...Because press council has almost is toothless, it may entertain complaints which takes a long time. Justice Katju, I'm very close to him I sat along with him in bench he would tell me, as a chairman it is very difficult to act against the newspapers. There are 24 members in the press council they hardly meet, they can't take a joint action, no punitive action is taken even if some reports are published which are scandalous or without any material and it is also a fact very well known fact that media is

now completely in the hands of politician. If you read a newspaper same news in four different newspapers has different colors, different shades and you would come to know which party's policy this newspaper is following. Judiciary is under severe attack for many reasons, it has been under attack for a very long time but I believe that it is more today because politicians ultimately ultimately say politics is a judiciary ahh judicial procedures are the... earlier it use to be the last refuge of the politicians, now they rush to the courts even for small things. I'll tell you a very interesting I was sitting in a Lucknow airport executive lounge so one after another was sitting there was sofa and arrangement was like this that I could I was not very visible to others small executive lounge, the first one to enter was Madhu Koda you all know he is facing a serious prosecutions against him, the next one to enter was Sharad Yadav and the Third one to enter was Mr. Amar Singh, you all know the notoriety of Mr. Amar Singh, we are not discussing anything about them but how he has been in the power and lime light and how he went out of power and how he had medical difficulties but he is a big power broker of the and the fourth one to enter was Mr. sometime ex few days he was the Chief Minister of UP politicians name I just..

Participant: Mayawati?

Justice Sunil Ambwani: *Nahi!* Mayawati is a big thing.

Participant: Mulayam Singh Yadav?

Justice Sunil Ambwani: No! It was Jagdambika, it was Jagdambika Pal, now the interesting thing I want to tell you is, what Amar Singh was telling others. Amar Singh said, he didn't notice me nor did he recognize me, he said, "all the relief that I have got, all the respite that I have got in my career turbulent political career is from Judiciary beginning from the court of magistrate to the high court where the PILs were filed against him have been benefitted by the judiciary, but now the judiciary has become very expensive". This one area see what he said, very interesting which I couldn't realize says has become very expensive, even for he said, "even for poor politicians like us it has become very difficult to afford expensive lawyers", so he names the lawyers and says every politicians rushes to the best of the lawyers in the country. What I was pointing out was that it is very difficult to get the dates of the lawyers, he was specifically referring to Mr. Harish Salve and now a days their demands that they do not like that small aircraft with 6 seater plane or 9 seater plane, they want bigger

planes which should stand at their beck and call for two or three days at the airports. So he was advising the 3 other politicians to keep apart a large amount of money which you earn from whatever sources they have for services, professional services of the lawyers. So it is not the last refuge of the politicians, they rush to the courts on every small things and there is hardly a politicians who does not have prosecutions or is saved from the prosecutions, there are very few now left, people are also very litigant conscious. Lot of reports are published about the functioning of the courts, one of the most ahh interesting bashing points is the arrears in the courts, someday we'll we may have a session on arrears, arrears is more of a become more of a slogan rather than practical reality. So the politicians will give all kind of statements, now we have NGOs also who have come up who are taking judiciary almost putting them on a receiving end with the help of right to information act. It is one of the most important duty of registrar because the Chief Justice does not give press interviews or does not call for press conferences, he is not supposed to and if anyone who'll do will do own peril because it is only the Chief Justice of India and that too when he either assumes office or demits office, he gives the policies of the judiciary as to what is they are looking for, what are they going to do towards better administration of justice Arrears, vacancies. But it is the RG who has to face, so my first advice to you all is:

You should have very good private secretaries who should keep a continuous watch n the newspaper, on newspaper reports and bring it to your knowledge and then you should immediately bring it to the knowledge of the Chief Justice also that this is something going on because one of the most important duties of the RG is to keep the judiciary away from scandals. What has happened recently is that many a times it is not just with district judiciary it is also with the High court, many a times small things which we don't take notice of like say a particular judge acquiring a big property, these days becoming an target of accusation of sexual harassment or having some fancy to a particular thing may bring judiciary into disrepute. It is one of the most important part of the RG because others don't bother other job is to criticize, others would have to criticize, I have not seen any other officer other than the RG or any judges, most of the judges get advantage of ridiculing their own system, It is the RG who is as he is the face of the court.

So first thing is you should bring in to the knowledge of Chief Justice. Another thing which I'll tell you I'm not serializing that whenever you go to the Chief Justice don't go to him with

the problem going to Chief Justice with a problem is a problem of the Chief Justice itself becomes a problem, I mean he he is busy in so many functions, you also go to him with a solution. Now in some of the place multi-national companies administrate and manage the limitation of the company and advise is given to the staff who is reporting the chief executive officer that whenever you go with a problem you give at least three solutions, I don't know what is there in your High Courts but in Allahabad I found this and whenever a note is put under the note there are three suggestions rather possible solutions, they may not be very apt, they may not be very accurate they may not be immediately relieving the Chief Justices but at least he has a view and many a times it is go by a, go by b, go by c resolve the issues. This is one thing that I'll recommend to all the RGs reporting to the Chief Justices and that makes his job easier. Now so far as scandal is concerned I'll give you only one example and before I ask Mr. Avadhani to take over, one day when I came after the lunch break I got down from the court retired to my chamber, the RG comes to me, Mr. Vyas the RG a very composed person and please don't panic because if you panic the Chief Justice will both have more panic to himself and one more thing that suppose you get an information you just don't get in and barge the information to the Chief Justice, "My lord this this this has happened", first you collect the complete information this is very important you collect the complete information, the background of it it will take 5 minutes to you but it will solve a lot of problem because sometimes the Chief Justice may take immediate decision which will be counterproductive I think, Chief Justice will always ask you background facts like he said that one Judicial officer of the rank of CJSD in a taluka court in Rajasthan had locked himself in a house with a gun and he said he'll shoot himself, now these problems do not come every day these are very rare things, so the natural reaction of anybody is now what has happened why he has done so? The answer was very interesting he says, that one of the lady officers in the limited competitive examination he also had appeared in the limited competitive examination one lady officer who is junior to him has succeed and has become his senior so he is ADJ in the district headquarters and she is in fact passing on the instructions of the district judge to the taluka, this gentleman has taken a lot of offensive to it that how could a junior officer, so the natural reaction was I mean he knew about it he did not succeed in the examination so the junior officer the lady officer maybe his junior but superseded him this is the natural follow. What else does he have a disturbed family background? No! What else is there? Now since

Mr. Vyas appeared to be a local person of Rajasthan he said, Sir he belongs to a community which is called *charan*, you all must have heard that Rajasthan is one of the princely state, lot of princes and kings so in there courts there use to be people who use to keep only praising them, *unko hum U.P main bhaad aur charan bolte hai* these people who sing songs for the kings in their praise, he belongs to that community, he is a poet also, he has written books nobody has published them, he has written poetry nobody hears it, nobody has time to hear it, now if anybody has known poets if you do not allow a poet to recite his poetry to you he feels strangled suffocated. This man had all this complex problems. I said now please tell me what is the solution, he says you ask the district judge he is rushing to the his house and he'll try to pacify him, I said alright please tell the district judge I have given him appointment to meet tomorrow in my chambers and I'll spare one hour for him and I'll listen to him I don't know that whether this worked or the district judge's persuasion worked he came out of the room and the next day he came and we took a decision, RG and me I didn't involve the judges in it, lets listen him out what is his problem, we gave him one hour and in one hour he told his entire story and the entire story was all this combined a very complex situation where he was feeling let down by supersession, suffocation I asked him you wanted transfer to any particular place? He said no, he said next year my son will be going to engineering college or medical college so I'll request you for transfer but not this year. That worked and since thereafter but only one instruction to you all is that he said when you give any directions or any instructions don't give those directions to him through that lady officer who has superseded him, you give directly create a bridge between you and him.

The RG could have spoiled the situation also a RG could have made the position very ugly also, this matter may also have I told him don't this matter will not go to the press, if the matter would have gone to press it was not something which was very serious as it was very quietly resolved but what kind of repercussion it would have created that look the judiciary is very tough on their judges or maybe this judge lost his mind he should not preside over the courts. So these are duties which these are all called emergency duties which the RG have to perform and I am sure that all of you have got similar kind of stories. Now before I proceed further Mr. Avadhani.

Mr. VSR Avadhani: Thank You Sir! I have had several occasions the chance of meeting Hon'ble Chief Justice in several meetings and I know his lordship is a very soft spoken and

at the same time very outspoken person and he appears to be soft but very rigid. Now I will start this interaction with a small story out of my experience as secretary general. The Supreme Court had borrowed the services of one academician from Delhi University he was a Human Right activist, he worked as a deputy registrar heading the research branch of the Supreme Court to help the Hon'ble judges in preparing the material for their reference. In one case the Supreme Court has after holding a court in V hours of the day upheld the order of the earlier bench and refused to stay the capital that is hanging of one accused who is going to be hanged at around 5:30 Am, the orders was pronounced at 4:00 around 3:30 or 4:00, we had faxed the messages to all the departments and completed the job. Two days later when I am just checking the news from the internet a news had appeared that this deputy registrar sent a resignation to his post to the secretary general stating that the orders of the Supreme Court are against the Human Rights and therefore he is very much disturbed to serve in the capacity of research associate in the Supreme Court and therefore he want to get repatriation to his parent department. It is at about 11:30 I had received this news, immediately I rang up the Chief Justice by that time Justice Dattu is a very punctual person he is a very disciplined person, he was already in deep sleep but I have disturbed the Lordship and he knows well that unless there is some urgency I will not disturb him. He asked me to come over there and by that time I had already prepared the ground work by electing the concerned registrars and deputy registrars I have called for his personal files and what is the resignation letter and what are the contents of the resignation letter and what ground he has submitted his resignation I have collected the information, I prepared a note, at 12:15 I reached the Chief Justice's residence along with the note, by that time already press people were after our PRO, it is around 1:00 am, already press people are after our PRO to know what ground it is... now I had appraised his Lordship that he submitted his resignation for his family personal reasons, the ground mentioned in the application is he want to pursue his teaching career in the university but he had never quoted this as a reason for resignation then his lordship is satisfied, then he permitted me to give a press statement on behalf of the Supreme Court as to what happened I had called for the press meeting and I had just circulated the note, without uttering any word just I offered the tea to the press and I have circulated this note, the note is containing only two sentences, "Mr. so and so has requested to repatriate him from the services of the Supreme Court for his on the ground of his personal

difficulties" without quoting anything that's all. Many of you must be aware of the fact that for two or three days there are several interviews several but nothing were made. Now with this example what I want to impress upon you is the Registrar General no doubt he is the eyes and ears of the Chief Justice not the court , Chief Justice is the institution, Chief Justice is the institution and the RG is the ears and eyes of the institution that is the Chief. He is primarily responsible to the Chief Justice and then to the other judges, that is the ahhh one core principle we have to bear in mind while discharging our functions. Let me take one opportunity to present: (Mr Avadhani gave a presentation on the board)

Now when we are dealing with the RG he is associated by some registrars - R1, R2, R3, R4 as the Hon'ble Chief Justice has stated that several persons are associated with the registrar that Registrar general is the primary authority to focus the institutions up gradation and instructional information and organizational importance to the outright on top of the institution. Therefore with these team of the registrars he has to collect and synchronize the information and then to whom the registrar is answerable registrar general is answerable being a spokesperson:

1. To the Chief Justice
2. The other puny Judges and
3. Staff
4. Union of the staff association
5. Union of association
6. Then advocates
7. Then advocates individually and
8. The clients and then ahhh what is that advocate clerks sometimes they also have some grievances, advocates assistance or clerks and then Press.

Why I mentioned press at the last preference is as only after the institution facing some difficulty or turbulence from these these persons then only press will come into play, the press people will come to us to inquire what happen to this advocate. What happened to this client and what happened to this case and what happened to this mmmm grievance expressed

by the ahhhh staff etc. Therefore after exhausting all the avenues of identifying the source of information the press will meet the registrar general, by that time the press people are having sufficient information with them, so in the name of interaction with the RG they want to cross examine you to collect the information what they require to feed their news lines. With my journalist background before and after my joining profession I came from the journalist All India Radio and journalist for sometime. I know how to tackle the some head of the institution to get the information what I require. Suppose you say that the officer had resigned for his personal problems then immediately I'll ask you a question that he faced personal problems because of the harassment from the institution? No no no there is no harassment from the institution, he had some problems with his wife then immediately the journalist will ask you so you have humiliated the boy, you did not allow him sufficient leaves, you did not allow him to avail the holidays therefore he has some problems in his family because he is not able to devote more time to his family, his wife had been picking up quarrel with him. Therefore the institution is the reason for his family withering.. Suppose you say that the his son did not secure the engineering seat and therefore he s frustrated and therefore he is resigning, then immediately he says that you are not paying good amount of salaries to him and therefore he is unable to make a comfortable atmosphere in his family for the studies of his children and therefore he is not happy with his job. So one after another they will pose questions on us and try to get information what they require. If you say that the judgement is over and the the death sentence is awarded, it is only a news for them nobody is bothered about news, there must be something more than a news to ahh appear in the newspaper. So they want to say that he has made this comment, judge has made this comment in the order. Sensation! They have to create sensation. Sensation means that if mother-in-law kills the daughter-in-law there is no sensation, but if it is the daughter-in-law kills the mother-in-law then there is a sensation, therefore most of the papers I have seen in Delhi, the Supreme Court news is the main filler for them, many pages are devoted to the Supreme Court news and judicial news but if we say that the Supreme Court opened a dispensary for the public or Supreme Court has requested the advocates to concentrate on for the disposal of old cases they'll not show it. They will show this news as a very insignificant item but if a client has shouted in the court hall, an advocate has pointed to the judge for not listing his matter then they will come in the top news, even though they are not significant.

Therefore we have to keep an eye on the area where the people or concerned are having concern about the judicial functioning, about the transparency, about the administration they are not concerned. The people's concern is about the personal life of the judges, how their personal life is influencing the institution they want to know. So this is the area where the journalist use to work. As you know that we are very much in the focus to the focuses in the public. We have to make certain protocol whenever we are going to address the press.

First is the Dependability - the information we gather must be trustworthy because we are not the masters of the information we are just collecting the information from our registrar or the deputy, we have to cross check that information. Once we have given an information to the press that the pendency in the Supreme Court on regular side is 38830, the Chief Justice has seen it and approve it but subsequently we came to know that that is not a correct figure the registrar had given only the final hearing matters but not the pending fresh matters and therefore we had immediately corrected it. So this will give a chance to criticize this institution by the others therefore we have to cross check the information before it is being released to the public. So dependability of the information is the first thing.

Second thing is what is the object of giving this press statement on behalf of the institution has to be ascertained, whether this information needs to be sent to the public or not is the question.

The third is, you must maintain some distance between the press and our information sources, so they do not go to the registrar or additional registrar to collect the information, they have to collect the information only through the spokesperson of the institution. There may be a PRO, PRO is only to his role is limited only to maintain public relations including the press but he is not concerned with giving a press statement. So you have to authorize the PRO to give certain statement and the text and content of the statement must be approved by the Chief Justice. Before getting the approval from the Chief Justice we have to take one or two cross checks, first satisfy ourselves that the information contained in the press note is perfectly good, hundred percent it is free from mistakes then only we have to place it before the Chief Justice to get the approval. So in this way after getting the information one is the... The second stage is the analysis of the information and the third one is synopsis, so you'll get the bulk of the matter from various branches and you are analyzing it pros and cons and then

synchronize it and entire statement must appear in one or two lines, you should not place the entire text and content of the information you have collected before the press. You have to place only the synopsis which is the basis of which is the ahh ahhh main idea and object for holding this press conference. Suppose the policy was prepared by the Chief Justice and the other judges, the policy is to dispose off the cases pertaining to year 2008 within 6 months so the main object of holding the press conference to speak on behalf of the court is to make it known to public that all you matters of 2008 are going to be disposed off within 6 months. So the his information has to be communicated so the basis of this information is how many cases of 2008 are pending the reasons for their pendency, whether the reasons are institutional reasons or the reasons of the advocates, or any procedural absence and then how many matters are ready for disposal and how many matters are not yet ready and the reasons for not getting ready and how many matters were adjourned and listed but could not reach, this is the information you have to keep with you, it should not be disclosed with the press. First you say that all the matters of 2008 will be disposed off within next 6 months, then the question will be posed on you why these matters are pending till now, so for that we must have some background material with us, then you have to explain to them that for this reason they were not disposed off, admit it if there is any inadequacy if there is any lapses on the part of institution is there they have their information with them admit that there is a lapse and justify that lapse by giving some background material for it. So while addressing the press always it is desirable to hold the press conference as as little as possible limited to the area we are addressing not to enlarge the scope of press meet, this is one and secondly, while dealing with the advocates on bar and representatives of bar the it is a very great difficult task. Sometimes they want to elicit certain information which is confidential, suppose they will ask why the matter is listed before one judge. It ought to have been listed before another judge. We know why it is not listed before one particular Hon'ble judge and why it is listed before another judge but we are not expected to reveal divulge this information, this information has to be confined before the RG and Hon'ble Chief Justice only. It should not be divulged even to the Hon'ble judge, in many cases the Hon'ble judges use to inquire us why this is not listed before me earlier it was before me why it is changed? We know for what reason for what reason it is not listed before one particular judge. So advocates are also very particular about this information, they want to get this information. But we should block

ourselves from disclosing this kind of information to them and Thirdly, listing of matters also certain matters will be listed on so and so date but it will not particular matters may not be listed on that day, reasons may be knowing to the registrar judicial we should not divulge this information even to the other registrars we should keep this information very confidential. So after all the RG is for that purpose any RG who is entrusted with a special task is only on account of the confidence reposed in him by the Hon'ble Chief Justice. Qualification of the registrar and RG is only trust and confidentially enjoyed by him by the Chief Justice but not anything else. Therefore being the ear and eyes of the High Court the duties of the Registrar general are always mmmm are always will be under the gauge of Hon'ble judges of the High Court as well as the Chief Justice. Chief Justice will always examine will see you meticulously he will observe how the RG is behaving with the outer world while representing the institution so we should not say that whatever I'm speaking here will not be known to my Chief Justice. No! Chief Justice has several ears and several eyes not only the registrar general the Chief Justice will have several persons from whom his lordship will get the information. Therefore it is not a a a I do not know whether there is accreditation of the journalist in High Courts, in Supreme Court there is a policy we are adopting it right from 1968, the journalist will be accredited by the Supreme Court, a committee of the judges will give this accreditation and we will invite only those accredited journalist only to the press meets, they will be permitted to sit in the court halls and they will be permitted to move around the library and press rooms but they should not collect any information from any other source except through the PRO of the office. Likewise the high courts also develop this process this procedure of accreditation of the journalist then there will be some accountability on the part of the journalists also to the institution, we can identify where the journalist is committing the wrong, whether the information given to the journalist is true or not, there are cases where we have blacklisted three journalists, one from times of India, one from Indian Express and one from Sahara for the reason they had published unauthorized information. So in fact as a spokesperson of the High Court RG is not doing any new duty just he is having some information and he is transmitting this information to the other just there is a cooked food and the bearer is delivering this cooked food to the customer before that he is seeing that the cooked food is clean, it is placed in a good bowl, it is covered with a wrapper and it is presented in a a a in a good presentation that is all but at the same time he

has to take precaution that it should not be contaminated before it is delivered and after it is consumed by the customer and after it is consumed by the customer that is the reader of the news a contaminated news item should not reach him. So except this I..

Justice Sunil Ambwani: There is one thing which most of the RGs are troubled with and that is the undue pressure exercised on them by the judges, this is one area I would like to address for two minutes. The judges are elevated and at the time of elevation when they are called my lord, your lordship and everybody starts praising them, most of them you know they forget that they have important duty of deciding cases they start thinking as if the whole institution belongs to them and they are running the institution. It happened in Allahabad when one of the judges was elevated on the 2nd day of his elevation he calls the RG who was also subsequently elevated, he says you vacate your office and this entire main corridor of the court actually it was judge's chambers now gradually all the registrars have occupied it and the wings have gone to the judges;

I want all of you to vacate all this!

He politely explain to him it is function of the court administration and under the guidance of the Chief Justice and administrative committee we work.

No! no! no! When I am telling you something you have to obey.

On the next day he again calls him you have not vacated it so far so I am suspending you , his colleague rush to him he says what are you doing man you cannot even suspend you peon and you are talking so for the first and second day of your office, it took us a weeks' time to explain to the judge what are your responsibilities, what is your authority and the system functions in an entirely different way. But then what happens is many judges you know they may call you on the pretext that their electricity bill is not clear, but something will be somewhere that judge wants a particular caste district judge to be posted at some particular place or his own man will be posted at... This is very difficult pressure to resist and I really congratulate all the RG as to how they `bear this pressure but..

Mr. VSR Avadhani: bearing this pressure..

Justice Sunil Ambwani: and they'll tell you such things like one of the judges say look I am here from 10 years, this Chief Justice will go away within one year I'll see to it that you dont

get promotion unless you do this this is this this this. Now the only way to deal with this pressure is to be quiet, respectful, keep on reminding them what their powers and duties or tell him that alright you'll appraise the Chief Justice of his feelings but this is one area which you can deal with your subordinate staff, you can deal with public, press pressure, lawyers but when you deal with I know you all must be feeling the same, the temptation for a judge to call the RG do this, do that have a policy like this... of course they just have a say other than Chief Justice except those who are the administrative judges, or particular judges who are in charge of a particular work or committees, they can call you and ask you certain questions but this transfer and postings and this ACRs and all that this this is troubling everyone and this is one area where my advice to you is you have to be only polite, humble

Participant: Diplomatic

Justice Sunil Ambwani: Diplomatic I would not say because they are very

Participant: Nowadays we are getting instructions at 4 o'clock you call the vc call all the district judges, principal district judges and take arrears of cases by 4 o'clock that is the instruction we get. Now instruction is on the administrative side even if something of the judicial side.

Justice Sunil Ambwani: there is asking you get this case listed before me, this kind of ahhh refusal.

Mr. VSR Avadhani: Similarly one more problem is also there, combination of judges on the bench, the Chief Justice give the instructions to the RG to change the combination of XYZ from A to Z judge, that judge don't want to sit with a judge, now he will be after the Registrar general, he will not go to the Chief Justice.

Justice Sunil Ambwani: He will not go to the Chief Justice.

Mr. VSR Avadhani: He wants us to convey his feelings to the Chief Justice

Justice Sunil Ambwani: Through the registrar general

Mr. VSR Avadhani: Yes through the registrar general.

Participant: One civil judge passed an order against that High Court administration preferred an appeal in division bench, single judge called why you prefer an appeal against my orders?

Justice Sunil Ambwani: That's also one area.

Participant: if permission is given from the Chief Justice this is the appeal this is the order, should we prefer the appeal, when Chief Justice says yes then only we can appoint lawyer. Why you prefer an appeal I passed a nice judgement.

How many cases have been called for such conferences and such meetings and this being the use when your lordship is also sharing, is there not any mechanism where which we can connect to the higher courts and take an individual step of standardization..

Justice Sunil Ambwani: I tell you, I'll frankly admit here judicial independence sometimes turns a very ugly face of egoism, judge thinks that he can do everything, he can... there are judges who think that they can change the world, change the policies of the government, its only much later in the point of career area he realizes that he can do nothing except to decide the matter which has come before. It is incidentally there decision may affect the the view of the society but but no judge so far has been able to except for those great judges like Justice Bhagwati and Desai and Justice Chandrachud, those who shape the entire legal system and the social values, then the judges can't do and they must realize the judges that if they really want to change the society they'll have to first become a great man great judges like them, they should be so learned that the public should be ready to accept their views, many a times they just... and mostly this this falls upon the registry and their adequacies they follow and as far as... See one area before we go for tea break there are sometimes a particular officer would like to meet the Chief Justice, either the principal private secretary or through the registrar general I'm not quoting but the example is from Madhya Pradesh itself. One lady judge wanted to meet the Chief Justice thrice I do not know why the CJ did not meet but I think the RG should have insisted upon the Chief Justice please meet this judge, however briefly it may be for one minutes or two minutes, that would have resolved all the situation and all this which is snowballed into a big issue could have been avoided, so many a times the Chief Justice may be too busy or he thinks the matter is too pity, you may be able to assess those situation which snowballed into a big thing. So you may advise and sometimes

RG can insist also that no sir no you have to meet this person, you may not be able to do anything for him but sometimes that makes a lot of difference, sometimes a matter is stuck with the finance minister, the chief minister, you insist upon holding up meeting up the Chief Justice and chief registrar to resolve the issues. This is also one of the jobs of the RG. So we meet after we meet at 11:30 for the next session.

SESSION 2

Ms. Nitika Jain: Welcome back we will begin with the second session and over to you sir.

Justice Sunil Ambwani: Thank You! This second session the measures to increase transparency and accountability in Judicial system. Mr. Avadhani is the main speaker but I'll initiate it then he can take. Accountability in any system is extremely important and it comes through one of the as I say the best disinfectant is the sunlight, it comes through transparency, accountability is also accountability can be taken in various ways personal accountability, institutional accountability. What I believe is transparency is a potent vaccine to any accusations on accountability. Now the recent advancement of the judicial system and computerization has opened it up in many areas. Whether it is a pendency of cases, tracking a particular case, making orders available quickly, availability of copies are areas where these services these litigant friendly services 39 services litigant friendly services which are projected in the computerization system are in fact going to friend the take care of the requirements of the litigants, mostly the requirements of the litigants. we are here concerned in this conference with the court administration and court management where I believe these 39 services do not infact offer much of the information of the court systems. Number of courts, pendency of cases, pendency of types of cases, the strength of cases, these are the figures which are very easily made available and also easily provided to the all the stakeholders but what really matters is when it comes to transparency in court matters like when are the selections going to be held, when are the next promotions due, what decisions have been taken on disciplinary inquiries in the matters of the judicial officers, what are the areas where the judiciary itself is facing a problem, now these are the areas where the court system often comes under the public criticism. The RG as a keeper of all the information has almost the entire source of information as we discussed in the previous session that disclosure of this information to a person who may be deserving person for having this information is an important aspect. I was present here in 2005 and the RTI act was about to be, 2005 the RTI Act came into force that was rare occasion when apart from Justice Sabharwal there were four more retired Chief Justices were here Mr Rajendra babu, Justice Lahoti and two more others. The authors of Right to Information Act were also there to introduce the judiciary, we were about 40 judges and one of the most important thing which

was discussed was to whom the information should be disclosed whether the locus standi, the bonafides or *jisko hum kehete hai patra aur kupatra* like a person deserving or non-deserving to get the information is also very important factor. But it was such a Euphoria kind of a thing in that RTI Act that time that we have to follow and we have to follow the European model and PM Manmohan Singh deeply committed to it. It was later on that this problem started coming in that should we share the information with everyone, should you share the information who doesn't deserve to get the information, should you share the information who is likely to misuse the information who has no bonafide to have the information. We'll discuss that in next session on RG as an Appellate authority for RTI queries. That is now coming up in different high courts where the orders of the Chief Information commissioners have been challenged. Some of the orders have been given in your this material coming from Tamil Nadu. Now that is one of the subjects of measures to increase transparency and accountability of judicial system. Now it is very easy to preach. There are some very good articles and write ups of Justice JS Verma Justice Sinha SB Sinha but as registrar generals you must be feeling and as Chief Justice I also felt that off course we are accountable we are accountable to people , the entire system is accountable to people, we get funded from the state funds tax payers money. We have a specific role to perform in the constitution not only as interpretations of laws but also as dispensation of justice and maintenance to some extent law and order also. The question is how far we should go on and increase to what extent we should increase the transparency? Accountability I remember Justice Rajendra Babu had come to Allahabad a big discussion was going on "accountable to whom? To whom are we accountable? Are we accountable to legislature or are we accountable to executive? Are we accountable to general public are we accountable to our own persons in the whole system or we are accountable only to our own conscious? Very lively discussion in which it was discussed. Judiciary is only an organ of the state where we don't take any private decisions any closed door decisions. The judging takes place in open Court, opportunity of natural justice is there to both the parties, appeal and second appeal, now even curative petitions are available. Reasons are given for judgement. So so far as judicial side is concerned I don't believe that except for maintaining ethics and standards and the values which are there in the reinstatement of Judicial values, the questions comes that since in this conference we are having the Registrar generals to what extent you should be transparent and to whom you are

accountable? A judge can say I am accountable to my conscious but a registrar general may not have a defense in the accountability to his own conscious. He is accountable to the institution and Chief Justice being the head of the institution who represents the High Court, chief Justice of India represents the Supreme Court accountability in my view is to the institution. We have different measures of transparency in the system. We declare our policies regularly, Chief Justice speaks from the public platform about how to improve the arrears and administration but it is the RG in my view who actually maintains the accountable standards which ultimately go to give the accountability and credibility to the whole system. For example in Rajasthan I found when I reached there one of the senior District judge's said I am not on the seniority list, I said it is impossible you are district judge quota how come your name be absent in the seniority list, when were you selected? He said 1998, I was from UP so I was not selected in the services, full court said we will not take a person from up in the Rajasthan judicial services. He had 3rd position out of 9 in his batch, he went to High Court challenged the order of the full court, the high court referred the matter to 3 judges, 3 judges dismissed his petition because Rajasthan had a deep prejudice against UP, they would take a person form Delhi but not from UP for variety of reasons, he went to supreme court and finally won the case. In 2001 the judgement came in his favor Rajasthan took two years to take him into service, appointment letter that also when he filed the contempt petition, he was given appointment but his name was never included in the seniority list and the batch of 6 district judges which was sent for elevation to Supreme Court, one retired, two were rejected, one was rejected, one we differed and three names were returned back with the remark that please finalize the seniority list because that is 1998 seniority list that is under challenge in Supreme Court and both the groups as it may be endemic in every high court now it is one area which needs to be looked and re looked as to what is to be done between direct recruits and promotes. So it was the first challenge to the chief justice to resolve the matter, since I have some experience to finalize the seniority list as to how it is done firstly it is tentative then provisional, then objections and open hearings and final, we would do it in three months. But that gave a question in my mind as to how far you were fair to this judge? Were we accountable to this judge? We have given him a place in seniority list after 14 years, he is aggrieved with the whole system, now see big things can be said about accountability but actually what matters in accountability is are we able to take

the decisions timely? Is another thing to say whether we are able to take just decisions and all? Are we managing our things which are taking place in appropriate times, like suppose many chief justices would not prefer a full court meeting for the entire year some would say I have got only three months to go why should I take the the problem of confrontation of judges and some chief justices I would not like to admit it's a open thing are not really prepared to face the judges of the full court meetings, they are not prepared. Now full courts are not just empty formalities, full courts are for taking this actions on disciplinary reports, full courts are there to finalize many things, nowadays even vacancies are determined by full court, and full court takes lot of policy decisions. Now here if we don't hold these meetings within time, if we don't hold meetings of the administrative committees regularly, if we don't remind the judges to whom the task has been entrusted whether purchase of items, or finalization of rules or it is disciplinary matters, the whole system comes under disrepute, whole system comes. Suppose in a High Court you have 300 judges in a district courts and 12 are facing departmental inquiries and inquiries are pending for 2 years or 3 years or 4 years, are we accountable to our own system, own institution, our own people unless we complete those inquiries on time, not only inquiries to take a final decision on those inquiries within time. In many high court the inquiries are concluded for more than 1 year or 2 year but no decision are taken. That is one area satisfying your own officers, here the duty of the registrar general is paramount. He must he has to lay down a schedule, you I I I understand that every HC has schedule of meetings but I persuade you to go and prepare a schedule of meetings, schedule of selections, promotions, meetings and yearly calendar and get an approval of Chief Justice so that there is no delay on those dates. If we are able to perform this task within time good or bad maybe challenged at different levels but at least we will be accountable to the people. Now I'll tell you a very interesting thing, allotment of houses, these are the areas which gives heartburns to the staff, transfers and postings is one thing which is one of the most important thing where we stand accused of our own officer, you laid down a policy almost every high court has a policy but then how strictly we follow the policy we all know, very few chief justices are able to take the pressures from their own judges or from outside. Now a days now even the executive even the state governments are taking interest and I 'll tell you the day we give up our powers or we are influenced in our decision making process by the government the whole system will be put to disrepute. I remember

there was a big strike in Rajasthan, a huge strike when I reached there already strike was already there the cause was 15 days older and I didn't even know. Bar council I mean not going to details of it the bar council members a team from bar council came they said we should have a grievance redressal committee, I could see immediate sense into it, I said we have to do it even if the grievance redressal committee is not able to resolve, the chief minister calls me and tells me that please include a particular judge in your grievance redressal committee, it was unbelievable, I mean I just couldn't imagine, couldn't sleep the whole night, what is this going on here, I told him it is none of your business, it is my committee, it is my judges, I have trust and confidence in all my judges, if you give up to these pressures the entire system will collapse and the accountability will be lost and unfortunately what is happening it is also we can admit it that in order to get post-retirement benefits many a times the judges, the chief justices, even the district judges or even the registry for getting price postings they give up to these pressures. To hold up to these pressures, to keep our policies immune from these influences, to maintain a system which works efficiently which works timely and which take decisions without any I would say fear, bias. Prejudice is a potent weapon, a vaccine for being accountable to the institution. The I remember one thing that it is said very often and we keep reading in newspapers and it's a fact also that people have people still have faith in the judiciary despite the delays, despite the long period which it takes to resolve, despite the fact that rich people can manipulate the system at least in expediting the whole case, common man has to face this system and if the common man starts getting this news that judicial administration system, administration of the judicial system is not working efficiently then we will be responsible for losing that credibility which we judiciary had built for such a long time. It is not the individuals strength, it is the collective strength of the individual also, many a times you'll feel alone, RG have felt, I never felt alone as a judge but I felt all alone as a chief justice, many a times you'll also feel absolutely alone sitting on the top but sitting all alone, nobody helping you, nobody supporting you and everybody blaming you, everybody pointing fingers at you, you becoming target of almost everything which is going on good or bad in the court but that is a test, that is a test of accountability. One should not feel disheartened, disillusioned or depressed rather that is the test that is the examination which you have to perform and many RGs have privately confided if I annoy this man, if I don't follow this, if I don't do this my

career is at stake that is the decision you have to take and I believe that as a district judge you are safe as a civil judge you are completely safe, as an additional district judge and district judge also you have some but in the registry as the registrar general you are at a great risk but that is also a test which determines your and I tell you it's only after retirement that you'll have a satisfaction at least for five months I had the satisfaction, whatever I did I was accountable to my own conscious, did it without any pressure, without any fear.

Mr. VSR Avadhani: the topic is coined in a different style which is not only concerned with the registrar and his administration but it is covering the entire judicial system, the measures to increase transparency increase the transparency and increase accountability in the judicial system not in the judicial administration. Now when we are talking about the system it has several components administration, justice system aaa and others all ancillary topics associated with the system, RG is not concerned with the one particular system he is concerned about entire institutional and organizational environment. He is creating such an environment in which the use of skin feel comfortable to use the system. Therefore he is concerned about increasing the capacity of the system by introducing certain measures to increase the transparency and accountability. This is the way we have to understand this topic in my opinion. Now it takes me to question myself whether I'm sorry for some time I'll take a pause because I have got removed the wisdom teeth I lost some wisdom and therefore I am feeling pain. Whether the users have to dictate the system administrator, how the accountability has to be exposed and how the transparency has to be maintained or it is for the administrator himself to set a set of guidelines how to increase the transparency and improve the accountability. It takes me to epic, whether the user has to dictate or the administrator himself has to decide, it takes me to epic *Ramayana*, there are two controversial statements given by the actors in the *Ramayana* through *Valmiki*; One is *Kaikayi* while pressing *Dusredhar* to give the kingdom to *Bharata* she says *Dusratha* asks her a question, If I make *Bharata* as king the people will criticize me that I have misused the powers by giving kingdom to the junior instead of senior, for ignoring seniority I will be the subject matter of criticism by the public, then for that *kaikayi* will give the answer that no public are being hold by you, whatever your wish they have to follow, so she gave an antonym to the transparency by saying that "ruler need not bother about the rule, now answer

is given by Sri Rama in subsequent years when he has second time deserted sent the wife *Sita* to exile, Lakshmana questions him, "why you disheartened your own wife, because after all you need not follow the words of a washer man, words of the people, they may criticize several thing, they may point out several lapse on the part of the king, you are not bothered, then Rama gives the answer, it is perhaps this is the answer given to the question posed by *kaikayi*, he says No I am ruling according to the wishes of the people, so this is the root of the transparency, transparency which made John Stuart mill in proclaiming the law rule of law saying that king is bound by the law made by him, king is not beyond the law no he is the creator of the law, he is the maker of the law but still he is bound by what he has made. So from that onwards we have developed the principle of rule of law which now we are adopting. in *treta era* there was no rule, there was no king, everybody is a ruler and we did not find the *Krishna Asoka* , *Gautama Buddha* to preach something, In *Treta Era* there is no god there is no ruler we do not hear any ruler or Chakravarty or dictator of *Treta Era* but from *Krutai Era* onwards we have seeing some developments, in *Krutai Era* Rama has developed as a king, in *Treta era* Karava's *Krishna Kamsa* several kings are there, in *Kal Yuga* everybody is the king, every citizen is the king that is the rule of democracy, so *Kal Yuga* even though it is criticized as a negative spirit in the honor of *nigams* but it is the *Era* where democracy has been. Therefore in the hierarchy of democratic institutions why judiciary alone should be insisted to show democracy to show this transparency and accountability, Is it not necessary for the legislature? Is it not necessary for the executive, it is equally necessary for them also as Hon'ble Chief Justice was saying that, The people are investing their faith in the institution of Judiciary more than their investment in the legislature and the executive, even a poor man, a rickshaw puller or a beggar is seeing at the court only to seek justice. Therefore it is our duty to maintain transparency and credibility of the institution. This transparency and accountability is to improve the credibility of the entire judicial system. Therefore it is our onerous duty to work in this perspective this is the idea behind the topic. Then how to improve the judicial system's accountability? Judicial system's accountability in the perspective of administration,

One is to improve the accessibility, everybody must feel to come to the court, everybody must feel comfortable while sitting in a court, Everybody must feel comfortable even though

judge ultimate decision is against him, he must leave the court hall, he must leave the corridors with a respite now justice is done to me, justice is done not to me justice is done! If the verdict is against him also he must give a satisfactory relief respite that justice is done I am comfortable, I am not paid to come to the court that must be the impression we have to leave in the imprint in the minds of the client, how to get this, how to get this response from the public is our duty.

One is to improve the accessibility, there are several barriers of client to come to the court, one is, advocate, advocate fee, time aaaa and he is not getting little cup of coffee or water in several court premises, off course High Courts and Supreme courts are to that extent they make every comfortable aaa arrangements for their clients but in the subordinate courts being a subordinate judge, being a magistrate I know a women who comes from a remote place carrying her child has no place to feed the milk breast to the child, she has to sit in the corridors in openly to breast feed the child, she has no privacy. So with this system whether the rule judicial environment can be improved at any rate to any extent that is the way we have to examine. So we have to see this improving the transparency and accountability not from the perspective of High Court and Supreme Court but from the rural judiciary, from the mufassil judiciary. So RG being the representative of the entire judicial system of the state has to take a responsive care to improve the accountability and transparency throughout the state including the mufassil area. In that area so far as the aa High Courts and its supervisory role on the mufassil courts is concerned communication happen to be one of the problem. The client will not get the information when his case is going to be listed in subordinate court, district court or high court. If he is appellant in the High Court he will be in dark he has to depend on his advocate, advocate clerk only. Now we can improve this by insisting on the clients to give the mobile numbers, their email id so that whenever the matter is listed automatic SMS will be sent to his client. Now that was developed in the Supreme Court and I am happy the same this is developed in Karnataka and Andhra Pradesh also. So transparency by by giving the information to the client about his particular case will give more response, we will collect more response from the client so client is the foundation of our entire system. So if the client is satisfied using the system then the feedback would be positive. Therefore

steps have to be taken to increase the accessibility, to increase the information dissemination of information to the clients. The second thing is, it is the test of PMOO aa PM two OO.

P means permissibility of rules, procedures, publicity, public response, and feedback from the users, this represents the word P and management is the 'M', in the management is vertical management, and horizontal management by distribution of the duties among various aaa stake holders of the registry and the division of the responsibility among them and review of those responsibility by the registrar general.

And the 3rd one is Organizational strength, organization means in workforce perspective, framing the ideology and team formation and orientation and fourth eye is 'operational efficacy', this is team leadership reporting performance indicators. This is the thought of management in judicial system developed by the Singapore College of judiciary, Singapore judicial college. In this way how to evolve a science and mythology to improve the transparency and efficacy in the judicial administration can be decided.

The first one is permissibility, so the rules should permit, the rules should permit the Registrar general to do certainly and the procedure should follow, so unless the rules and procedures are not improved or modified the registrar general will be helpless, he cannot do anything. Therefore first idea is to improve the modify the rules and procedures and give publicity to these rules and to show to the public that the RG is acting not on his own but acting according to the rules and procedures and Thirdly, public response, whether the public is satisfied by certain procedure, whether the public is concerned about his case but he is also concerned with the systematic arrangement in the court, whether he is satisfied with the functioning of the court system, this is the response from the public you should collect and 4th one is the 2nd one is "management", in this management, vertical and horizontal structure has to be framed vertical structure is chief justice registrar general, registrar, deputy registrar, joint registrar so and so. In this vertical management one has to follow the mandate given by the other. Chief Justice will be the source of the order, the chief Justice gives the order to the RG and RG to registrar, registrar to additional registrar so and so and then after the work is done the deputy registrar has to report to the additional registrar, additional registrar to registrar, registrar to RG and then the result will reach the chief justice. So at various stages

there will be check and cross check and RG will supervise how the mandate given by the chief justice is from stage to stage is improved. That vertical management system has to be structured in every High court and then Horizontal, horizontal means RG horizontal, registrar vigilance, registrar management, registrar administration, registrar recruitment, registrar protocol etc. So the work given by the Hon'ble Chief Justice will be taken by the RG and he will distribute it to among his registrars his team and these registrars will get it done through their subordinates and ultimately by a team work, team frame a result will be created and this result will reach the RG for vetting, after vetting the same the final result will reach the Chief Justice. This is the horizontal administrative management and then what my experience after referring to the material I came to know that there is no vertical management system or horizontal management system in several High Courts except one or two High Courts. Now what material shows that RG is treated as registrar, he was given certain portfolios, some important portfolios like administration, transfers or aaa liaison with the government to get the budget, no other thing but that is not credible and the Registrar vigilance is dealing with transfers and vigilance reports etc. Administration registrar is concerned only with special task. The irony is surprising thing is the registrar general is novice to the other things that is going in the registry, RG may not know whether any disciplinary action is taken by the vigilance department against any subordinate judicial officer. He may not know what the budget is allotted for this by the government. Only registrar administration knows it, the registrar protocol, the registrar general may not know that certain vehicle is under repair and certain vehicle was not provided to Honorable judge and two judges are provided with old vehicles, RG may not know. So there is a vacuum created in the various at various stages and this information is not reaching the registrar. If any question is posed to him in any meeting by this chief justice he has to look at his registrar what has been done, whether that officer was transferred etc.? If the Chief Justice asks the Registrar general a question what was the budget given to us, which amount is available to us to purchase new computers, he'll not know, he has to look at the CPC how many computers we have, and how many software we have and how much amount we have invested and how much amount is surplus in our hands. So this is not the correct administration, RG must be the administrative head of the High court and he must possess the every information relating to every registrar. So an organization has to be structured so that a final response, final accountability lies with the

RG, accountability to the chief justice, to the institution. So this kind of structure has to be created in every institute. Supreme Court my experience is every paper will receive the assent of the Secretary General in the first instance before it is being placed before any committee or before the Chief Justice. So Secretary General will know, Registrar general will know in the high court's aaa what is the policy and how to deal with this particular issue and how to satisfy the judges of the committee and how to satisfy the queries posed by the chief justice in any media. And the committee should not be attended by everybody, a committee meeting should always be attended by the registrar, registrar general. So this vertical and horizontal management in any high court is essential, so rules and procedures have to be framed to that extent and if there is any practice then that practice has to be modified in this perspective. And 3rd one is organization's strength i.e. workforce and ideology, I have a registrar who is very well versed with the literature, I have a registrar who is well versed with the management and I have a registrar who is much proficient in judicial function. There is no meaning in placing the registrar who knows judicial functioning in the administration, basically we the judges being the registrars we are not managers, we are only judicial officers, we know law only we are novice to management. Therefore if any registrar is having more knowledge about the management we have to utilize his services in that branch. Now therefore while creating the organization liberty has to be provided to the registrar general. Now in the Supreme Court what the procedure is, the Chief Justice wants the registrar general, secretary general that he need two registrars out of his 9 or registrars 2 vacancies are there, chief justice expresses his view to the Secretary General that I need two registrars and his lordship will select in consultation with with the chief justices of the High Court two officers, they will be posted as these two officers they will be placed at the disposal of the Secretary general. Now X Y are selected from Kerala and Andhra Pradesh, they will be given to the Secretary general, it is the prerogative of the Secretary general whether to place him in the management or administration or judicial, the chief justice will not insist you to place him at so and so place, that liberty should be given to the RG in the High Courts also. So that is lacking in several High courts. And then the ideology, the ideology is the policy, the policy framed by the high court, high court as an institution, it has some ideology, it has some framework, that ideology should be transmitted to the registrar to the through the entire organization, a message is given by the chief justice of the concerned

state in one meeting in a public meeting, he says that we we want to create evening courts, this is only an example, the Chief Justice expresses a view that he wants to create some evening courts in some areas, then it is a policy decision given by the chief , we cannot ignore that announcement in a public meeting that no no no this is not a it is only a chit chat, it is only it is not concerned with the administration. The registrar has to make a note that in so and so meeting the Chief Justice made this announcement, immediately after the chief justice returns to the High court he has to place a note that note should contain that the chief justice, in the meeting so and so made an announcement to create evening courts in so and so areas necessary order is to be made. There is no science in it, it is only after all, let's have your experience now, we have this subject measures to introduce transparency and accountability, now we invite you to suggest the measures or even place any problem or any difficulty or any issue which we may try to understand all of us. We may not be able to resolve, but we try to understand. Anyone of you...

Participant: the ultimate accountability should be rest with the registrar general and practically imposes so many difficulties, especially when the activities in the each section itself has become so very much, now when we come to, ultimately we have to take information from all the sections and even the meetings ultimately is the responsibility of the registrar general....sometimes in the grey area....and at the same time....the other part of the...and the other provision...that the practically...specially the situation arises where the equities so large in each section. Administration has got its own problem and everything to...ministry to the registrar general I think practically it's a...

Mr. VSR Avadhani: but. Registrar general must be awarded, what is going in the registry, in that section, several high courts do not know what is going in that section

Participant: in my high court all the judges...reports to registrar general, so I am aware of all the happenings in the respective section. And registrar general who is directly reporting to the chief justice because of the confidentiality of that investigation which is done by the department, but as far as the meetings are concerned simultaneously so many meetings will take place and so it's not possible for registrar general

Mr. VSR Avadhani: no! It is possible, registrar general. It is not mandatory that registrar general should be physically present in all the meetings. Some special meetings will be there in, and if the other meetings like purchase committee, registrar general even be there, he can delegate it to some other registrar general should be there,

Participant: definitely when the policy matters are taken registrar general should be present.

Mr. VSR Avadhani: transfer of officers, registrar general presence is necessary.

Mr. VSR Avadhani: in the administrative committee meeting, full court and important meetings concerning the policy decisions, in those meetings registrar general is present, but in non-important...

Participant: as you said every file moving for administrative approval should be routed through RG, that means help him in...He may not be aware of all the subjects and everything about all the subjects

Mr. VSR Avadhani: at least he must have some firsthand...

Participants: and major subjects he can himself handle it, like we have several bodies, committees in the high courts, so, major committees are where the registrar general is the secretary, in minor thing in minor committees some other registrar will be the secretary, but since the file moving through the committee, would be routed through RG. So that the some work to the registrar, so whenever.

Mr. VSR Avadhani: we cannot show a blank face to the chief justice, we should know about everything

Participant:registrar general must be given copy of it, because it is not possible for Registrar general to handle all the matters, particularly all the inspection...this is confidential...judicial service, but registrar general must be aware, a copy of it must be given to the registrar general

Mr. VSR Avadhani: the practice should be every order passed by the chief justice, would come to the registrar general only and registrar general has to circulate it to the concerned registry.

Participant: refers to AC, loopholes are there...some matters are there that are so important, this goes to the concerned registrar, like transfer of officers.....but whenever new policy decision is concerned change in transferability norms, then registrar general...

Mr. VSR Avadhani: that is what a matter affecting the individual of the judicial officer but affecting the whole institution or a major group of the judicial officers then, involvement of the registrar general is imperative.

Participant: whenever it is referred to the AC of full court imperative registrar general...whatever the vigilance matter...

Mr. VSR Avadhani: in vigilance there may be some confidential matters, that confidential matters actually what is confidential, what is not confidential, Hon'ble chief justice knows that. so if the chief justice his lordship may call either registrar vigilance some xyz, because it depends on the rate of confidentiality enjoyed by the individuals, therefore that should be kept secret, that need not be informed to the registrar general..

Participant: given by the registrar general...all speaking at once...no reason why RG should not go all the vigilance matters, except when perhaps we have some personally redress.....

Participant: everything so far business issues are concerned, registrar general...for all the judicial officers. And then. If he is concerned matters referred to

Mr. VSR Avadhani: business registrar refers to CJ directly, and CJ makes the file over to the registrar general. That is how it is done...

Participant: but, in our high court even the office submission which is put before the chief justice is routed through the registrar general. Order...that have to follow...

Mr. VSR Avadhani: in some of the high court's there is a reason of conflict between the registry and the person staff and the secretariat of the chief justice, in some of the high courts, chief justice have developed their own secretariat, now personal matters, confidential matters, elevation matters, there I think coordination is required between the two, to share the information, coordination is not there, then many times registrar general may not know that what is going on and what actually the chief justice desires

Participant: When the registrar, chief secretary are entirely different, they are from the establishment,

Infact the chief justice should encourage, because many a times the registrar general has more information than a personal staff. His personal staff mostly is from the. Not from the...because it is registrar general who has worked with officers in the state.

Mr. VSR Avadhani: one thing should be taken care of we should not give a chance to the chief justice to ask her second time. Even if a casual talk during the breakfast I do not know whether the breakfast, during walking the registrar general will be called by the chief justice that is our practice in the Supreme Court. During the course of walking hour, taking breakfast, your lordship may give some instructions, individually we have to make a note, the chief justice should not ask for the second time, Mr. Avadhani, I told you on that day, what happened to that. We should not give that scope, immediately depending on the urgency and importance of that matter, within 1 hour or two hours, within 1 day or two days, whatever the case may be we have to apply the chief about this.

central information system we had very good team of court managers unfortunately court managers were not allowed to continue in U.P., the court managers came to us with a very modern, with a very interesting information management system, like you have information coming from the entire state

Number of cases, this that, compliances and every district court is supposed to send you hundreds of forms is not possible for registrar general to go through all those forms and the information, so we should impress upon that thing and...committee also, because they proposed a system where information coming to the, it will come in the hard copy, by email

it will come, by direct communication system, and the information will be immediately stored in the relevant files, but registrar general has to be computer serving also, he must may not be able to send an email, but he must be able to read all the materials, many a times a trivial information....

I will give an example how we have to act, chief justice Dattu was attending a seminar in Bangalore, in university of law, there students in discussion raised a question, why the supreme court is printing so many papers, when the supreme court itself is showing concern about the prevention of loss of environment, why it's using the papers, wasting the papers, immediately his lordship rang up to me, Mr. Avadhani; tell me the information how much paper we are using? The discussion is going on during the seminar, then I collected information for printing the calls list, daily calls list, and monthly calls list. We are spending every day, at an average 280 pages calls list, separated by printing around 1300 copies, so thereby 1 crores 80 lacs paper is being wasted for printing the calls list only. Then I give the information to his lordship within half an hour. I could not get the information related to administrative papers etc. it requires sometimes. Then his lordship in the seminar itself at the end of seminar while giving his closure remarks his lordship gave an assurance that his registry is taking steps to reduce the utilization of papers to save the trees. That is the remark given, within half an hour it was circulated in the news that the Supreme Court is going to take steps, we were surprised. There were no instructions given to us. Immediately the next morning we have prepared a ground, we told his lordships, that we can dispense by giving only placing the calls list in the website. His lordship...I have predicted that also, so I have requested the bar members, supreme court bar association, for days together we have deliverance with them, all the registrars were also involved and we impressed upon the bar to accept this on the website provided, we send the same by the emails to individual advocates. Then we have accepted so, we have created, we have given emails to them, we instructed them to give their email addresses and around 12,000 advocates who have their registered emails will be given the calls list every day by 5:30 to their emails, then it's ok. Then another problem is there, some advocates started complaining that in supreme court they have no email facility, Wi-Fi facility and therefore it is not possible for them to go through the calls list or other emails, then before bringing this problem to the notice of the

chief justice, we have provided... Justice Lokur has, we know his lordship is a techno savvy, his lordship advised us to work to get the Wi-Fi in the supreme court premises, and his lordship took initiative, we called private service providers, BSNL also. We had discussed with them, ultimately one company came forward to provide Wi-Fi free of cost...only 30 copies per case...that resolution is in after. This work

Participant: all the high courts....and the ...on the payment basis...

Mr. VSR Avadhani: no! we have discovered the payment basis also, we are printing only 45 calls list, only for 30 residential office of the judges and 15 used by the registry and the court officers, 45 calls list we are printing,

Participant: in the full court meetings...

Mr. VSR Avadhani: now the Supreme Court is working to develop a software office tool, the clerk, the office, can submit the...to registrar by email and by email, there itself by opening the tool by operating the tool them. Approved, and after approval automatically it will be forwarded to the secretary general and secretary general will finally approve it and get a hard copy of that note and obtain the signatures by scanning it, it will be circulated to, therefore only one packet will be used.

Participant: we are developing it

Mr. VSR Avadhani: yes we are developing it, MAC is developing it already. In Bangalore it is developed I think, justice....we have borrowed the information from the justice...

Participant: all the systems is highly developed in the multinationals. The times of India, the Hindustan time's offices, writes the report sends it to the sub-editor, sub-editor to the editor, within 15 minutes internal emails they gave it through. in fact what we are trying to do is, NIC has told us very clearly that, its staff is not growing its worth is growing, if we can outsource it to someone and get the software, only we have to care about the maintenance of the software. If we have the software made from outside, we can ask any amount of money from the central government or the state government for that, we can be immediately...

Mr. VSR Avadhani: NIC is now a vital, and has now become a vital, they are not having their own, they are outsourcing. Instead of their outsourcing we can outsource ours also, and they are collecting commission. NIC is collecting the commission after paying to the outsourcing agencies, so we can reduce this commission component by, directly outsourcing the services. So the second session has come to an end, we will assemble back after lunch...

Ms. Nitika Jain: the lunch is for one hour so we will meet again at 1:30.

SESSION 3

Ms. Nitika Jain: Welcome back we'll start with our third session "RG as an appellate authority for RTI queries", we have Hon'ble Justice Mohit Shah with us, Justice Sunil Ambwani and Mr. VSR Avadhani, so over to you Sir.

Justice Sunil Ambwani: We welcome Justice Mohit Shah former Chief Justice of the Bombay High Court, his flight arrived in the afternoon so he has joined us after post lunch session. This is to me it appears one of the most interesting session of the day registrar general as an appellate authority for RTI queries. Almost all High Courts have framed the rules for enforcement of the RTI Act which came in 2005, there are public information officers in all the district courts and high courts, in district courts the in almost all the district courts my experience goes in UP and Rajasthan, the appellate authority is the district judge but for the High courts the appellate authority in most of the high courts is the registrar general. I don't know whether in some of the High Courts...

Participant: Registrar administration

Justice Sunil Ambwani: Registrar administration! But we have almost the same problem with whether its registrar general, registrar judicial or registrar administration about the RTI queries and we now know that this act has not only taken shape it also been put into practice but now there are professionals who are working as RTI activists because this act gives tremendous powers to the general public to seek information from public authorities. The object of the act as it was framed on the model of acts which were operative in Europe was to bring in transparency and accountability in public authorities but the user of the act in practice have now seen that the act is also being misused. I was fortunate that in 2005 I was telling you earlier when this act had been enacted, the persons who had actually drafted the act and the Chief Justice Mr. Sabharwal and four retired Chief Justices were here and forty of us deliberated over, it was not deliberation it was rather an introduction of the act to the judiciary. Two questions which had come up very strongly in those deliberations were about the *locus standi* and the *bonafide* of the person seeking the information and providing the purpose for seeking such information. It was very forcefully argued that time by the persons

who had drafted the act that that is not essential in order to bring in transparency and accountability the *locus standi* and *bonafide* and the purpose are irrelevant. Whatever information is available which is not confidential, not restricted by Section 8 should be given to the general public. We also as judges point out that the purpose of information if locus standi and bonafide is not there purpose for information should be disclosed by the person because this is not a free act, something not like public accountability and transparency does not mean free for all, any information available to anybody but with the kind of weight that Mr. Manmohan Singh has put on the Act and at that time there was a complete general Euphoria mood was there you know in order to bring in contain corruption and bring in more accountability the act should be there. Now we are witnessing the difficulties one of the first difficulties which came in was about the 'notings' and that too was overruled by Prime Minister Manmohan Singh saying that even notings unless they are confidential in nature... the problem with the judiciary Judiciary is facing is the Judiciary has 2 wings judicial side and administrative side so far as the judicial side is concerned there is no difficulty, every record judicial record one can obtain a certified copy of the record, one can seek inspection, the judgments are put into public domain as soon as, it is not just for the parties anybody can apply for judgments with the permission of the court but generally the permission is not denied and the most of the judgments are also reported the problems come up in the matter relates to the administrative side of High Court. Now administrative side of high court is not different then the administrative side of any government organization. It has its own confidentiality issues, it has its own... with judiciary there is one restriction I would rather say it's not a restriction it's a mindset that anything goes wrong with our officers is confidential and we we should not disclose it. In my view so far up to the year 2016 we have been able to resist onslaught of the RTI activist of the judiciary who have gone to the extent of demanding the demanding almost everything. One Mr. Ashok Aggarwal he is expert in asking for anything and everything to the extent that he will even ask for the proceedings of the collegium, the notings, the reasons. Now these are some of the very problematic issues, some of the RTI activists have also gone to the extent of asking for information which is not available. Like an information as to how many disabled persons have filed petition here, we don't have any such parameters asking for any statement, senior citizen off course we have age is given in the petitions but.. There are many such how many

women petitioners are there and how many men petitioners are there, this information can be made available with some search and order research but, should it be given. Whether collegium proceeding should be given? Whether confidential records of the district judiciary officers should be given? One of the questions which came to my mind was suppose I am being tried on a criminal case by a judge and I want to know is confidential record of last 10 years and if it is in confidential records it is written integrity lacking or something like aaa needs improvement I can move a transfer application saying I don't want to be tried by a judge whose integrity is lacking or bonafides are doubt or that there are some reports against him but, that has not so far come up but that may one day come up before us.

Justice Mohit Shah: suppose the accused wants to know that in how many cases judge has given acquittal and in how many cases he has given convictions. I mean it would be a relevant question.

Justice Sunil Ambwani: We have in our compilation some material, some judgments of Tamil Nadu High Court where I don't know I mean I would not have given those judgments where the Tamil Nadu had tried to resist and upset the orders of the Chief information Commissioner about giving the information regarding informal notings, copies of merits and inspections in a... there was a matter contempt matter in which Chief Justice had opined that no contempt is required to be proceeded with on administrative side, the person had requested that the wanted copies of that the Tamil Nadu High Court says no this is not within the purview of the this RTI act it cannot be given. The reasons which given were that they will prejudicially affect the confidential interest and privacy and well-being of the High Court, now this is very I don't know matter is whether it's gone to Supreme Court or not but the exemptions which are given are given in 8. Now as soon as you receive an application is in possession he has to give that information. if the information is not related to judiciary the RTI act provides that he will transfer it to someone but, the problem many times arises with the Information Officer Public Information Officer whether the information should be given or not. Now we must remember that he is a junior officer, some of the high courts have made committees of judges to advise the this Public Information Officer whether to give the information or not now and then the matter is taken to Chief Justice whenever there is a ticklish matter. Although that is not conceive by the act that the Public Information Officer

will look to the Chief Justice to find out the answer, I remember that after going from here in 2005 I was given the task of framing the RTI rules for Allahabad, so we had framed very liberal rules in tune with the central rules and the state rules in which an application would be given for any information which is available on record and the application fees as required we have put it 10 rupees which is 10 rupees postal order in central government and information to be given to on 2 rupees per page. Now the practical problems were also faced but when the rules came up for approval in the full court, Justice AN Ray as he was at that time, he was from Calcutta he had some foresight about the act, he said no the application should be on a application fee of 500 Rs and each page you have to pay 10 Rs. So I still remember I said and another thing that for every information permission of the Chief Justice to be sought, I still remember I said Sir this ostrich like approach will not work when the entire country is moving in one direction, judiciary cannot go in another direction. This is virtually denying information; you are trying to create blocks. Within a year the Chief Information Commissioner and the chief information Commissioner Delhi sent the advisory that please amend your rules, please amend your rules, this is not the way you should not block the availability of information, so rules were amended, now it is 50 Rs. but then the matter came they they wanted some drawings also big drawing of the contracts which were given, now it was not possible to give a huge big page of the maps and drawings to the parties on payment of 2 rs or 10 rs, so for that some exceptions were made. But then the difficulty still continues as to what is confidential, what is not confidential, whether such confidential information can be stopped or denied? What I believe is that until any such.. when the matter is regarding disclosure of assets is pending in Supreme Court judgement of the Delhi High Court authors of the Delhi High Court were here they were discussing the judgement, they went perhaps a little beyond these questions which were raised, so here in the open platform we had asked them I said why did you decide those questions, they said questions may have cropped up in future, I said but as judges we do not decide academic questions or the questions which may come up in future but then everything is landed up in Supreme Court regarding the assets case but so far as b the collegium proceedings are concerned confidential proceedings are concerned those I don't think there are any authoritative decisions on that, so the appellate authority has to take its own decisions, as Registrar generals you certainly have to before giving any information either taking decision

either way you will have to report back to the Chief Justice for whether this... normal mundane information is alright but beware of this that I can only say this this this gathering that you have to be a little cautious and aware of what is RTI activists are doing and what kind of information they are seeking because many a times the information, they actually model there questions in such a way I actually remember one of the RTI activist say that I can put any Depth of difficulty in just 3 or 4 rounds of questioning how many judgments, how many judgments of acquittal, what was the delay between the date of resolving the judgement and giving the judgement, how many LTCs have you availed, how much money in LTC have you spent in last 2 years as compared to the salary which you got, I think anybody will be exposed and come to a difficulty. Many a times we pass the medical bills of the judicial officers or the High Court Judges because it is unpleasant sometimes not to pass those bills even if the bills are for very expensive Ayurvedic medicines or going for a health treatment to Bangalore but then all this can come into and sometimes they also trouble you like that because justice Gokhale was very careful in putting one clause into the rules that if any information will drain the resources of the institution we will not give that information. We could not understand at that time that what does he mean by that but he really meant by this weird kind of information because prior to this RTI act a similar kind of Act was enforced in Delhi. The Commissioner of the information of that act had come here, she informed us that many a times the information sought now in that case the information sought was how many Muslim children are studying in the public schools run by Municipal corporations in Delhi? There was no information there was no column there was no information the schools could not provide so they took an opinion from the Attorney General, Attorney General said if the Act provide you have to give the information. Now that question again is there whether the information available available information is to be given or information has to be gathered for the sake of information, they had to close down the Delhi school for 3 days to get that information how many Muslim children are there. Now similarly suppose an application is filed how many Muslim persons have filed petition in your court now we don't have any such column about the religion of a person who is filing petitions so...

Justice Mohit Shah: Now Supreme Court through Justice Raveendran has already said that..

Participant: Now only that information which is available with the court only should be held and maintained, so now...

Justice Sunil Ambwani: exactly! That area is no longer a grey area now what is information is available available it may take time for you to gather that but if it is not available you are not supposed to go and gather it out for the RTI activist. With this opening debarks I request...

Participant: One question!

Justice Sunil Ambwani: Yes!

Participant: we have received Some matters where the commissioner is rejecting the application on the ground that the required information is given on the website, now can it be a ground suppose the information is available on the website can be a ground to reject the application to furnish the information under RTI Act?

Justice Sunil Ambwani: I remember what was being done was that there the application was not rejected but it was replied with this remark that this information is available on such and such website.

Participant: they are rejecting the application they are having an appeal now we have to mention valid or not whether it can be sustained or not because the fact that information is available in website is the ground to reject the application?

Justice Sunil Ambwani: Why not? Because if the information is available on the website then..

Participant: The people seeking information may not have computer or website

Justice Sunil Ambwani: No that is for him to go and open the website and see it because opening the website...

Participant: But the Act does not say anything that such information available on website that he cannot seek for it.

Mr. VSR Avadhani: But RTI commissioner is in your favor RTI commissioner hold that on the ground that website the information is available in the public domain is a not a ground to refuse that application, is not a ground.

Participant: whether another information not directly on the website information, he has asked for some provisions of an act, the judgement of the Supreme Court is that you can purchase the bare act and see that you need not ask for such RTI information. Somewhat related to this problem which I have...As far as website is concerned there is no direct judgement on the point.

Mr. VSR Avadhani: Only commissioner's judgement is there it is in 2014.

Justice Sunil Ambwani: See you are not refusing that, the problem may arise if there is a refusal to give the information. You did not refuse you only guided him to go to a particular site and get the information

Participant: But when the application is rejected..

Justice Sunil Ambwani: No but why do you reject the application in that sense?

Participant: But even if we don't reject it, it amounts to rejecting of application.

Justice Sunil Ambwani: It can be the term which we have coined in judiciary it can be disposed off but saying that the information is available on the website.

Justice Mohit Shah: What is the query?

Participant: Query was per week gas cylinder for you during.... these kind of queries..

Justice Mohit Shah: Actually in Bombay we have a rule it specifically exempts information which is contained in public material available to public or which is available on the website, that is why refer to this rule while refusing permission regarding whatever is available on the website.

Justice Sunil Ambwani: I think the best course will be to amend our rules. Amend...

Participant: These rules are going to be challenged in the Supreme Court. All the rules every time, some of these exemptions are not there in the original act.

Then the other problem is we are facing is regarding the furnishing the copy of the order. In the act the mode of furnish is not possible so they are sending it by ordinary post, they say that they did not receive it, then problem of limitation comes in from date of service 30 days in the act and they say that we have not received and people say that we have post send it by post. When we ask him to send.... Recently I have passed an order Sir they are paying 25 Rs

are there pay for this application they can give that amount for....Sir this is another area which we have to now concentrate because this problem we are facing how to count the period of limitation. They simply deny it because with ordinary post we don't have any proof of service.

Justice Mohit Shah: In the earlier days there use to be a practice that whenever you send any query to government you had to send a self-addressed envelope with the necessary post stamp.

Participant: We have that rule

Mr. VSR Avadhani: what Sir is saying, in Supreme Court information rules also we have included that self-addressed envelope should be enclosed.

Participant: Sir that is not there in our rules in our high court rules.

Justice Sunil Ambwani: Yes, you can put up a note before the Chief Justice to amend the rules bringing before him all these difficulties.

Justice Mohit Shah: Yes any other registrar has any... You would like to share your experiences, sometimes we receive queries when I was there that give us the correspondence between the Chief Justice of the high court and Chief Justice of India regarding the invitations extended for the celebrations on completion of 150 years of High Court. Now if we send the invitation card to him saying that there is no correspondence.

Participant: In vigilance inquiries the court should be given the permission should be given to a complainant?

Justice Mohit Shah: That is the personal information of the delinquent so that is not to be divulged.

Mr. VSR Avadhani: Information to 3rd party or to delinquent?

Participant: No to the complainant.

Justice Sunil Ambwani: complainant!

Participant: Because in the state of J&K Chief Justice is the competent authority so far as issuance of copies are concerned, confidential you can say.

Mr. VSR Avadhani: In recent instance, in a recent instance Supreme Court internal inquiry committee has taken a decision that day complaint sexual harassment made against one Hon'ble judge of the high court was not substantiated, the complainant who was a mmm district judge, she made an application under RTI act to give the proceeding of that decision. We refused, the report of the internal committee is a strictly confidential between the Chief Justice and the members of the committee and it cannot be divulged. She filed a writ in the she filed a writ against that order or appeal before the information commissioner.

Justice Mohit Shah: What was the order? See the complainant stands on a separate footing. It's a stranger.

Justice Sunil Ambwani: It was treated as a communication between the..

Mr. VSR Avadhani: No it is a communication between the Chief Justice and the committee members.

Justice Sunil Ambwani: See vigilance inquiry see Section 8j within the next exemption because all the judgments have relied upon Sec 8j when the matter is vigilance, there is at page 8 "*information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, is satisfied that the larger public interest justifies the disclosure..:*

Provided that no information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."

No third party here would mean the person who is affected, person who is affected, the judicial officer against whom the vigilance inquiry was... so either you may take a decision under 8j or follow the procedure under Section 11 regarding 3rd party information.

Participant: my lord the Act says that details need not be given for asking information...

Justice Sunil Ambwani: No a vigilance matter involves the integrity of a judge that would certainly be a matter which would not be a matter which would be which may be treated to be a larger public interest. It will be a matter which is between the judicial officer concerned against whom the complaint has been made and the findings of the...

Justice Mohit Shah: Now the vigilance vigilance rules of the high court they also render all such information is confidential. I think based on that we generally don't divulge the information in our high court.

Justice Sunil Ambwani: In most of the High Courts...

Justice Mohit Shah: I also have a very interesting piece of information on this possible queries under the RTI Act when I was Chief Justice of Calcutta High Court I was surprised to know that whenever there is promotion you know the the interviews are there for direct selection, the members of interview committee give their own separate marks and they are added up and the average is taken out, so judicial officer who appears for the interview he sometimes put a query that how many marks were given to each member of the interview committee and the Calcutta High Court furnishes that information, that suppose 3 members are there in the interview committee I gave so many marks, Justice Ambwani gave so many marks, Mr. Avadhani gave so many marks so on.

Participant: We are putting it on website in our high court, they are putting the remarks on the website.

Participant: individual marks?

Participant: Individual marks also..

Justice Mohit Shah: Which member gave how many marks to which candidate?

Participant: This is not put on the website but when a candidate asks for the information he is being furnished with it.

Justice Sunil Ambwani: It is a little dicey sometimes because then member would be in some difficulty. After that CBSE judgement that has to be given copies has to be give, although that has now proving to be very difficult for the examining bodies, very difficult.

Mr. VSR Avadhani: Mr. Subhash Agrawal made an application for the information of the expenditure of the medical reimbursement given to the judges of the Supreme Court giving the names of sitting judges, sitting and retired also, we have furnished the amount of medical ailments provided to Hon'ble judges that only but he was not satisfied not individual. Total amount of medical ailments granted during that period to the judges only. He was not satisfied with it he wants some more information which judge has got the ailments for which

kind of disease or ailment, then we said that disease or ailment is a personal information of the judge. It is not concerned with the public therefore we are not providing. Sometimes it is very difficult to..

Participant: Sometimes the judges want for luxury treatments say Ayurvedic massage and all... Amount is being spent that is public money so they are accountable for that that is the explanation they give seeking these information.

Justice Mohit Shah: But in some High Courts the judges are given the charges for spectacles, no? Every year or something like that?

Participant: Yes

(Discussion)

Justice Sunil Ambwani: Some High Courts have framed this, 15000 for 3 years..

Mr. VSR Avadhani: Supreme Court has also fixed 12000 for the spectacles whether it is glasses or frame whatever it may be maximum outer limit is 12000 Supreme Court is giving.

Justice Mohit Shah: In Punjab and Haryana high court the limit is somewhere 20000 Rs.

Participant: including the glasses.

Justice Mohit Shah: *Achcha* ya because now the progressive lenses are very expensive.

Justice Sunil Ambwani: Recently a medical bill came to me for sanctioning for a retired judge of Rajasthan where he and his wife along with they travel by business class plane went to Bangalore to that Jindal health care center, I rejected it saying that we provide the rules provide for medical reimbursements not for wellness and fitness programmes. They create lot of problem there. Retired judge made a statement against me saying that look for the first time my medical bill has been rejected. I said don't you realize after one month I am also going to retire I would have also enjoyed Jindal care in Bangalore. In some of the High court they have their own medical attached to the high court verified whether this is the medicine required for the decease.

Justice Mohit Shah: But in Gujarat the Chief Justice is given full power to pass the medical bills of sitting as well as retired judges. So the file is not required to be sent to the government only doctor attached to the high court will certify.

Mr. VSR Avadhani: In Supreme Court earlier the Chief Justice was approving it recently the present Hon'ble Chief Justice has created a committee of three Hon'ble judges. If it is below 50000 it will be signed by one Hon'ble judge, if it is between 50000 and 100000 by two Hon'ble judges, if it is exceeding 100000 all the three judges have to approve it that is a sort of transparency.

Justice Sunil Ambwani: some accountability

Mr. VSR Avadhani: *Haan* according to the central government rules also the Secretary General is authorized but Secretary General or Registrar cannot deny the any bill given by any Hon'ble judge.

Justice Mohit Shah: It is better that RG doesn't have that power, everybody avoids that, ahhh specially judges they...

Justice Sunil Ambwani: In one of the cases the retired judge was going to Bombay every month for dialysis from jodhpur so we inquired which doctor has prescribed, doctors prescription was of the year 10 year old prescription, I said may 10 years back the dialysis services were not available in jodhpur, now they are available it is not proper for the judge to go along with his wife business class every month, 1.5 lakh every month, then an explanation came that my kidney transplant was done 5 years ago and the doctors had advised that only that place where the kidney transplant was done only that place can give dialysis.

Justice Mohit Shah: Generally after kidney transplant you don't need dialysis.

Justice Sunil Ambwani: Not required

Justice Mohit Shah: That is the problem generally by and large there is no difficulty but one out of 50 cases you know it is not properly used and then the whole system comes into dissent.

Justice Sunil Ambwani: Fortunately so far the RTI activist have not targeted the judges as such by a group but this cannot be overlooked, they may someday that day is not far.

Justice Mohit Shah: Anther problem is that now when the matters come up before the court Supreme Court or High Court other authorities we say this should come under RTI this should come under RTI you should make public disclosure, that is the difficulty that when it comes against us then we shy away from that. That is the criticism public criticism that you

expect other institutions to follow all this rules and RTI queries and you don't want to reply to such queries.

Mr. VSR Avadhani: there is a saying that as judges you want other departments to follow that information but when it comes to your own...

Justice Mohit Shah: Yes yes that is a criticism.

Participant: Whether it's an information not necessary for public purpose so.... these are not so much of public importance. Can I refuse this?

Justice Mohit Shah: Ya, but then the there is no limitation on judges. There should be it should be covered by an exemption for you to refuse the query it should come under the exemption, otherwise whatever is not prohibited you are supposed to give the answer.

Participant: But keep on asking High Court tax that is a sensitive issue...

Justice Sunil Ambwani: yes off course on security grounds off course confidentiality.

Participant: We have a mention in the rules that such information which is not in the public domain that can be refused. So this we treat it as not coming out in the public domain.

Participant: In how many cases they have as an how many cases so and so been acquitted...

Justice Sunil Ambwani: No you can rely upon the Supreme Court Judgement which say that information which is there on the record is to be provided.

Mr. VSR Avadhani: Similar application was made in the Supreme Court in 2015 seeking information by lady advocate from Delhi how many divorced women approached the Supreme Court for maintenance, how many divorced women approached the Supreme Court for maintenance. How can... we maintain a record in a particular...(Discussion)...Even otherwise we can start maintaining that record from today we cannot give information relating to that topic.

Justice Sunil Ambwani: Main issue actually is Sec 4 which obliges the public authorities including the High Court sub section 1a which says:

"maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerized are, within a reasonable time and subject to availability of

resources, computerized and connected through a network all over the country on different systems so that access to such records is facilitated;"

I don't think this has been achieved in any of the High Court but this is an obligation this is not a it is not subject to any enquiry by the general public.

Participant: Whatever information that is maintained in the form of registers I think that can be furnished.

Participant: There is a query that please let us know how many judges was practicing? That is again personal information.

Justice Mohit shah: You don't maintain any records in that sense. That is not to be done because in vakalatnama judges is not suppose to write that my father is a judge that is no question. Avulsing personal information and making available whatever information is available in the official record is two different things.

Mr VSR Avadhani: So far as the information that is available in the public domain maybe some website is concerned kindly see 2 and 3 sub sections 2 and 3 of, that can be taken Section 4 sub section 2 and 3, 2 and 3 page no 4:

It shall be a constant endeavor of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals...

Justice Sunil Ambwani: See section 2 of Section 4 at page 4

Justice Mohit Shah: Hmmm, this is too much haan like providing as much information *suo moto* of public so that the public have many unresortable use of the act to attain information. Then that is information available on the website.

Mr. VSR Avadhani: So if the information is available on the website we can..

(Discussion)

Participant: we have a rule which exempts as divulging confidentiality of any public exam dates for any post. In our rules so that is why those are under challenge.

Participant: (not audible) marks are given to judicial officers

Justice Mohit Shah: In Calcutta they do.. Has anybody come from Calcutta High Court?
Haan that give me information ya it is still being disclosed na?

Participant: So far as information is concerned so far as judicial officers is concerned their marks are not there on the website because

Justice Mohit Shah: No they are not posted on the website but suppose somebody puts a query that give me information then do you supply that? No but when I was there and such a query was there and the reply was given by the registrar and it was brought to my notice the other said that yes we give this information.

Participant: But My lord this is a personal issue so far as marks of the judicial officers is concerned in promotion...

Justice Mohit Shah: But is being actually disclosed in Calcutta that is what I am pointing out.

Participant: What problem practical problem is there suppose one judicial officer is there one judge is there... use to go to court every day now I come to know that he obtained very poor marks in English or very poor marks in some other subject, next day I ll go and say sir you are so poor in English how can you pass judgement. This happened.

Participant: This is the third party seeking the information personal information of a judicial officer, so we don't divulge that without the consent of the individual officer.

Justice Sunil Ambwani: Because I think once you put it on this 3rd party information route very difficult if the route is completed. It goes into a loop.

Participant: Section 8g

Justice Mohit Shah: And who is the officer who is appointed as the Public Information Officer generally in all High Courts?

A judicial officer or an administrative officer? Staff member? But I have in Mumbai we have realized that it is better to give this work to a judicial officer maybe civil judge Junior division cadre because administrative officer do not realize the significance and gravity of the query you know and then they simply think that this is an innocuous query give the reply.

Participant: Chief Information Commissioner as judicial officers...

Justice Mohit Shah: So I think it is better advisable to give this work to a judicial officer. Ahhh yes yes civil Judge Junior division can be..

Mr. VSR Avadhani: In Supreme Court we have got a Public relation officer PRO deputed for this work only information department. He is posted as additional registrar information.

Justice Mohit Shah: Yes anybody would like to share there there experiences about this RTI queries. I say answer can be supplied then again we have to examine that on the appellate side.

Participant: In these cases we have given the amended rules if it is against the order of the RG then appeal has to be tried by the registrar vigilance or somebody in our rules we have created.

Justice Mohit Shah: In Bombay high court Registrar inspection

Participant: That is why, its the appellate authority..

Justice Sunil Ambwani: In the website I found that there is a new website called RTI anonymous, now what they do is in order to fall back upon them the person who is seeking the information a person sitting in Coimbatore or cochin he will pick up the question of a person in Patiala or Shimla and similarly the person sitting I mean in reciprocation will pick up his question and place it before the authority, both will get the answers and they will exchange so that no one will come to know as to who asked for the information.

Justice Mohit Shah: What is the number of queries that on an average you get every month under the RTI Act? But most of the queries are regarding cases why they are pending for so long and why they are not being listed? In Bombay at least most of the queries are regarding judicial matters.

Participant: Yes

Participant: Some time they do some fate of the application, I made this application; i made this what is the state of this. And judicial complaints, what is the particular complaint that may be lodged. That generally we don't divulge at all.

Justice Sunil Ambwani: One big issue came in court about the cause of action because sometimes even a writ petition there is no limitation, the cause of action is very old so what the people are doing now a days is making applications in RTI we came to know from this

reply given for the first time that my promotion was denied so they are filing the petitions on that. Another thing that they are relying upon RTI answers for the purpose as an evidence in the court now that is very dangerous, some I remember some judgement given by some judge for high court says don't rely upon it because these questions are not directly asked, they are asked either obliquely or they'll be asked in a shadowed form or they'll be incomplete questions.

Participant: Answer will also be incomplete.

Justice Sunil Ambwani: Answer will also be incomplete so that cannot be relied upon as evidence. Like suppose the gentlemen who in a compulsory retirement case that he asked whether on that particular day in that meeting who were present? So answer was given that 5 persons were present. He says the minimum persons should have been present was should have been seven so therefore my compulsory retirement action was wrong, he challenges after 10 years, he says I got this information for the first time. It was very difficult at that time to tell him that this is not permissible now.

Justice Mohit Shah: do there queries under the RTI Act about disposals by individual judges?

Participant: Yes! How many judgement are reserved, reasons for the delay in promotion.

Justice Mohit Shah: Recently that information about disposal by Supreme Court judges

Mr VSR Avadhani: That has become a...

Justice Mohit shah: That was under a RTI query or?

Mr VSR Avadhani: My lord what happened was for distribution of the equal number of matter among the benches the Chief Justice had collected the information from the registry, for equal distribution of work among the benches the Chief Justice appears to have collected the information through Registrar generals Secretary General from the registry judicial registry, distinct branch, that was leaked, it is a confidential material between the Registrar general secretary general and the Chief Justice. Somebody had leaked it to the press. That has been done even earlier also but it was not it was kept very secretly but now..

Participant: No the information collected could be made use of, now for example that particulars of how many cases have been disposed of, those cases which matter civil trial...

Mr. VSR Avadhani: We are not, we are not giving that also.

Participant: This information can be used for such purposes to the blackmailing of the judges, as a judge may have got a limitation which may not reported to those correctness or otherwise of that.. So that must be counter when the right has been given to the public. I think there must be an equal corresponding right to the other party also to repudiate such thing under misuse. For example for justifiable reason for example information has been collected say how many cases he has disposed off, may be in the roaster... it is not justified at all sitting judge cannot justify it he cannot go to the press but name must be in the light on the use of information

Justice Mohit Shah: Haan as slow judge

Participant: this is the basis for it I think when the corresponding Right is there there must be some corresponding right on the other side also.

Mr. VSR Avadhani: That judges cannot defend themselves

Participant: Cannot defend themselves, small information is distorted in the press. We may give the information as it is

Mr. VSR Avadhani: Particularly judges of the High Court and Supreme Court they cannot defend themselves and there is nobody to defend him. If it is from the subordinate judiciary it is the high court or Supreme Court that will defend.

Participant: But here it is good enough to say that it is personal information therefore I cannot give.

Participant: Actually that information is indirectly available on the website, every order or judgement of the judge is uploaded on the website, so it is a matter of collection of that information, compilation, so we can refuse on that ground that is available on the website, you search and take it. It is available in public domain because all the judgement are uploaded, judgement, orders. Now recently Supreme Court asked that every year disposed of by judges annually and disposed off by Chief Justice bi annually. Now document is held and maintained by us.

Mr. VSR Avadhani: That was that information was asked by for NCMS National and the NIC People Supreme Court computerization has prepared a national grid for judicial data, for

that purpose the Supreme Court is collecting this information, that information will be available at the NCMS website.

Participant: it is accessible but even when it comes to the number of judgements disposed by the judge that can be connected matters, in one case connected offence running to 100 sometimes so compare that and project one of the judge is one who is not disclosing at all. So this information serves the purpose gives the limited information number of cases that is asked but how it is projected ...because the judicial function is entirely different, the report kind of issued has some kind of exceptions to when it comes to the disclosure of disposal of judicial matters.

Justice Mohit Shah: Sometimes some judges avoid contested matters so their disposal is about to be very high.

Participant: Section 25 mandates for Central Information Commission or State Information Commission, has to make a report annual report and that each of that ministry or the department concerned shall furnish information. They say in high court we have not furnished or prepared any such information but this time we received the letter from state commission. Section 25;

Justice Mohit Shah: In how many cases the High Court has been required to file the challenges the order of the appellate central appellate central information commissioner or state information commissioner?

Participant: In the last 5 6 months there has been 2 cases that I, writ petition..

Participant: My lord right to information act cannot be used to bypass some other solutions or defeat any financial involvement of the government. For example I want set of copy instead of applying for certified copy which is available on fee, I make an application through RTI act. Can the copy obtained be regarded as certified copy?

Mr. VSR Avadhani: No the copy of information obtained under the RTI Act cannot be regarded as certified copy. Certified copy for the purpose of evidence.

Participant: One person made an application asking for certified copy of this order.

Mr. VSR Avadhani: Therefore in one case I think delaying could hold that for those information which can be obtained by means of a certified copy RTI Act cannot be applicable.

Justice Sunil Ambwani: The Allahabad High Court has the same rules, if anything can be obtained by certified copy pleadings or documents.

Participant: That person does not want to pay the court fee for certified copies. No there is no bypassing.

Ms. Nitika Jain: Before we break for tea I would like to thank Avadhani Sir on behalf of NJA for sparing his valuable time and inputs, Sir have a flight to catch at 4:00 clock so we'll have Justice Ambwani and Justice Mohit shah for the fourth session. Thank You Sir

SESSION 4

Ms. Nitika Jain: We will begin with our fourth session over to you Sir.

Justice Mohit Shah: Very Good afternoon to you. Now we are going to discuss recording of annual confidential report vis-a-vis the registrar general, so I take it that this is about recording of annual confidential report of the judicial officers in the state yes of course the registrar general has to play a very important role no he may not be the reporting or the reviewing officer for all the judges because apart from anything else the registrar general has to make sure that the annual confidential reports are written well in time and also reviewed in time because all the promotions and other matters depend on the annual confidential reports so it's a very heavy and important responsibility on the shoulders of the registrar general to see that the annual confidential reports are properly reported and reviewed within reasonable time. I think now that we have this uniform pattern of these 3 tier judiciary's civil judge junior division and JMFC, Civil judge senior division and district judges by and large in almost all the high court the pattern of reviewing and reporting the officers would also be similar. so as far as the civil judge junior division and the Senior division are concerned it is usually the principal district judge who is the reporting officer And The Guardian judge what we call the guardian judge or the unit judge or the administrative judge is the reviewing officer for those two cadre. As far as district judges are concerned as we all know we have principle district judges and the other district judges, so for principal district judges The Guardian judge or the administrative judge is the reviewing officer and the Chief Justice is the reviewing officer for the principal district judge. For the other district judges the guardian the principal district judge is the reporting officer.

Justice Sunil Ambwani: Administrative matters

Justice Mohit shah: *haan haan* yes, as far as reporting is concerned and reporting of the district judges is concerned we have divided the confidential report into two parts, as far as the assessment of judicial ability is concerned got the principal district judge And The Guardian judge do that, as far as the administrative matters is concerned the principal district judge is the reporting officer And The Guardian judge is the reviewing office. So for writing the confidential report of district judge is required to send at least 2 contested judgments,

judgments into contested matters so the principal district judge will review report and send the annual confidential report of the District Judge and then the guardian judge will do both as far as judicial ability is concerned he will also himself go through the those contested judgments and he will also do the reviewing work as far as the administrative matters is concerned. Now the Guardian judge has got inputs not only from the principal district judge but also from the other judges in the Judiciary because he goes to districts for workshops and other functions so he also has an opportunity to interact with the members of the bar, the members of the staff and the other judges. So this is the system we have evolved now as far as the reviewing officer we also have a system that for principal district judges the registrar general the registrar general is not a reporting officer but for the principal district judge the guardian judge is the reporting officer and the Chief Justice is the review officer but then those remarks are also placed before the administrative judges committee because administrative judges committee has a representation I mean 5 senior most judges who also get their inputs so ultimately for the principal district judges their confidential reports are also placed before the administrative judges committee. So this is the broad structure broad Framework for the reporting of writing and reporting and reviewing of the annual confidential reports. Apart from this that issue about communication of the confidential report is also very important, earlier the view was the only adverse confidential reports are required to be communicated but now as we all know in case of Sukhdev Singh the Supreme Court has taken the view that not only the adverse entry but even the good entries are required to be communicated. But, there is a little debate on that whether what the Supreme Court has said is all entries in the confidential report should be communicated or all the grading should be communicated because sometimes the confidential reports May contain remarks about the integrity of the officer so those remarks about integrity are not required to be are not to be communicated. Therefore in Bombay the view that we have taken is that all gradings should be communicated, whether it is poor, average or good, very good or outstanding. The grading must be communicated. Now what are the other columns in the confidential reports which should be communicated, I think the committee is working on that to prepare the format to decide which entries should be communicated, you know not just the grading but the entries that is I think a very important issue because about his judicial ability, because how he maintains the relation with the bar, with the staff members, how he handles

the litigants all those entries will have to be communicated because it is the question of assessment of his judicial performance but as far as the assessment of integrity is concerned I think that is going to be difficult to take a view that the entries regarding his integrity should also be communicated. *Toh* in Bombay what we are planning to do is to carve out a separate report as far as integrity is concerned so that the entries regarding the judicial work and administrative work can be communicated but the entry is regarding the integrity aspect will have to be kept apart separate. Then aaaa any other issues regarding the confidential reports? Mr. Mangesh Patil the registrar general from Bombay High Court...

Participant (Mr. Mangesh Patil): the RG doesn't have to write the confidential reports of any of the judicial officers except those who are in the registry.

Participant: As far as staff grading is concerned generally it is conveyed but whenever it is adverse the entries which are adverse they are conveyed so that the person can represent, somebody says my disposal is less and I am graded B average then not only B average is conveyed even that column where my disposal is there that will be conveyed so that I can represent.

Justice Mohit Shah: Yes yes yes all the entries adverse entries in individual columns have also to be communicated; only thing is that about that integrity when it comes to integrity that, what do you think about integrity whether it is being communicated?

Justice Sunil Ambwani: Sir very sensitive issue and I remember in Rajasthan I was told by judicial officer that one acting Chief Justice got the confidential rolls of about 15 selected officers and wrote under bottom of it integrity doubtful, now it is it is a I don't know there there no material was referred to that so I called for the subsequent report of those officers and wherever the matter were not pending in writ and there were no material to look so those entries were deleted. But, then the question arose How do you write this this doubtful integrity and what is the meaning of this doubtful integrity, unless there is any material? Because that virtually spoils the career of the officer and there is even if he makes a representation then what kind of representation all that he can say is no material, nobody has made a complaint against me. In the last session we had Hon'ble Justice Mukhopadhaya he said well this is the ultimately it is not a subjective and objective kind of an assessment of an

officer and if there is some information but how does how will that officer try to remove that impression and what kind of material can he produce to say that he cannot produce anything he can only produce there cannot be any positive material as such so that is an area but that is practice which is being so we considered certain cases of Supreme Court there also we did not get any light. But, I believe that before anybody's integrity is made doubtful or there are two kind of entries which are given integrity is it doubtful, integrity lacking, integrity positively lacking and all the cases in material is sighted in judicial side also when these entries are challenged the judges are at difficulty and if there is no material then ultimately so I believe that some criteria should be adopted and this entry of integrity doubtful should also be conveyed so that he can make a, because this will be a very easy way to spoil the career of that person, although we don't we don't attribute motives to the reviewing officer but then there is always a possibility.

Justice Mohit Shah: But difficulty is that if there is material then you have to start an inquiry of the officer.

Justice Sunil Ambwani: Yes that is the issue

Justice Mohit Shah: But therefore...

Participant: Another area is when the judicial order for example while dealing with the UGC cases LAC cases he gets a compensation and observation comes in the judicial order itself in such and such grounds the integrity of the officer and send it to the registry to be placed in the ACR record to be place before the CJ. So what material because judicial officer has made some observations and on the judicial side you are helpless without any material I think unless the Chief Justice may overrule or whether there is any possibility to overrule it because it is judicial observation on the judicial side. My Lord in case of bails also, in some cases doubtful cases bails are granted, we have to take action but that doesn't prove that thing that he has taken bribery, maybe by mistake he is granted bail. (Discussion) Our rules say there should be some material you can't simply say that doubtful you will have to justify the reason for being doubtful.

Participant: Usually there is a column for reputation, reputation some of the reputed judges don't have a good reputation gathered from other persons we don't have any evidence. Ultimately the Chief Justice should be a very understanding person who can come to the rescue of this officer I think he is the only saving grace that's what I have been...Now without any basis such remarks come in the. Some of the very tough judges have bad repute among the so that cannot be taken as a basis.

Justice Sunil Ambwani: It was an old saying that the bar is a reflection but now the things have changed because the bar has its own motives bar has his own likings and dis-likings for a judge, relief giving judge will always be praised by the bar.

Justice Mohit Shah: In fact whenever any complaint comes against a judicial officer first thing that Chief Justice asks is what is the reputation of this judicial officer then we consider whether we should proceed or not and if he has a good reputation we just throw it in a dustbin I means files a complaint.

Participant: That discretionary element is there this can work oral communication or writ petition or writ

Participant: Whenever that discretionary element is there this can work, oral communication or written communication of integrity. Some of the judicial officers are not very.. they have a very bad reputation among some of the members of the bar there is a problem even being very honest and they do honest job but they have a very bad reputation because they did not tackle the bar, they don't tackle the advocates as such. So the reputation is bad.

Participant: There is also a column in the ACRs, reputation among bar members. A judicial officer is very bountiful in giving bails or giving injunctions must give very...and who is very strict in passing bail order or injunction order or stay order must not having good reputation, that should not be a parameter.

Justice Mohit Shah: Correct, so how do we go about it? Do you if you insist that there should be some material for making that entry then the moment there is material then it would be a ground for inquiry.

Justice Sunil Ambwani: Then departmental inquiry

Participant: But only basis of guess we have to make whether it is doubtful, it's just getting impression from the bar that you would not have...

Justice Mohit Shah: But but there may not be any specific material but if the suppose the reporting officer is able to indicate the source on the basis of which he is making this entry.

Participant: In one case My lord what happened that one CJ was passing bail order which is not legal, they found that he was passing bail in case of NDPS cases rape case we should not the bail should not be granted by CJ, CJ was... he was passing bail orders, so that was then taken seriously. Why he was passing bail order in those cases?

Justice Mohit Shah: That would always depend on the facts of that case and we all know that some judges are liberal some judges are strict, as a judge I was always considered as a liberal judge, so a strict judge will not like my orders. That that how do you decide this question?

Participant: It is difficult to decide because at the same time there are certain cases where judicial officers are said to be not very honest. It is in doubt.

Justice Mohit Shah: Correct

Participant: Say I am dishonest I would be granting bail to the NDPS cases, acquitting them, there would be hardly any complaint because complainant would be straight away, acquittal means there would be no complaint against me.

Participant: Infact it is said in a lighter way corrupt judges are very shrewd they don't reveal anything in a case. Because some of them had to be send on compulsory retirement at the age of 55 or 58 but there was no need it is only reputation for doing that.

Participant: Such kind of remarks that spoke on reputation not good these should actually be kept very confidential even if the report is good but these kind of special remarks they should be kept very confidential.

Justice Sunil Ambwani: You are right but now suppose after 50 age of 50 is considered for compulsory retirement and he has one remark reputation bad and other remark integrity doubtful and you are not communicated this, you are keeping it confidential this is sufficient to retire. It was out of service, goes home without hearing anything at that stage he cannot even say that although he can say these were not communicated to me so therefore this should not be relied upon. But the question then again arise is that even if these were communicated how is he going to defend himself?

Participant: But the decisions are such that even the non-communicated adverse remarks can... For compulsory retirement.

Justice Mohit Shah: But for making these entries regarding this aa integrity there should be some mechanism not only the views of one reporting officer.

Justice Sunil Ambwani: There should be very strict rules o that in what circumstances such entries can be done. One problem had come up in Allahabad about the entries of deputation, at a particular point there were about 90 officers on deputation, so there were two issues which came up, one of the issue was how to send the officer on deputation? When the demand of deputation comes and then a person is sent on deputation by the decision was to be taken by the administrative committee, so the administrative committee took a very simple view said alright we will call the gradings of the officer, if he has got the best gradings he'll go on deputation that he has been sent, then we took up the matter I said this is the way then our best officers will go on deputation so that also could not be. Then they say alright we'll consider the gradings as well his capacity and aptitude for that work on deputation. But then again when the next Chief Justice came he said well with this i am getting 100s of recommendations I am in lot of difficulty so let us follow the old system. Then another question case as to when the deputations goes out for one or two year how do you write his ACR, who is the reporting officer, who is the reviewing officer? They would say that I am working under the transport commissioner or I am working under the Nodal authority, so they have given me, and so all the deputations will always without exception bring out the excellent entries, 100%. So that also was one of the reason why they would like to go for deputation. Then the question was who will supervise then the decision was taken that the all

the entries will be ultimately looked into by the Chief Justice who will pass appropriate orders on it as reviewing authority. But then nobody has seen his work for one year, he is almost out. Another difficulty came with this *Dev Dutt's case* and *Sukhdev's case*, now which say that good has to be communicated anything less than outstanding has to be communicated. But then how many times suppose a person from get goods to goods very good on his first representation again that has to be communicated because it is not the best. I think the matter should be reviewed by the Supreme Court it becomes very difficult the committee was formed, I was made the chairman of the committee to resolve the issue, I said how are you going to.. 1800 officers in UP in Maharashtra I think 3000, more than 2000, you you know all of them are not going to get outstanding entries. So that means if half of them gets good communication opportunity to representation, then for very good again opportunity, then for outstanding again. So these decisions have caused lot of complications in the administrative field, administrative functions. I don't know how the other High Courts are taking.

Participant: In our High Court whenever anybody is sent on deputation then in ACR the last recorded ACR by the full court regarding judicial work that is carried forward for the next year and then secondly too many persons proceeding on deputation sometimes Hon'ble judges but now full court decision is there that we have restricted the number 4 from administrative judiciary 4 from civil judges from each state.

Justice Mohit Shah: when the representations are made who considers the representations? Representations against the adverse remarks are made by individual officer regarding gradings.

Participant: ACR committee is there.

Justice Mohit Shah: We also have ACR committee for different cadre, district judges, civil judge, senior division, junior division.

Participant: We are having the administrative judge and the senior most judge they will make representation if there is adverse remark, they 'll go to the Chief Justice will accept it.

Participant: it is the ration also depends on the reporting officer, some of them are very liberal but other are not..It also depends on who is reporting.

Justice Sunil Ambwani: In UP bench at Lucknow almost everyone will get outstanding so when the question of promotion comes they see the remarks of everybody, so they say Sir what are you doing you are giving us good very good and there everybody is getting outstanding now that becomes a huge problem..

Participant: If the promotion is denied to any of the officer based on the entries in the ACR whether promotion is denied at I don't think so... unless unless we allocate marks.

Justice Mohit shah: That is outstanding means 5 marks, very good means 4 marks, good means 3 marks.

Participant: Exactly only for that purpose otherwise because for some adverse remark they'll.. But hardly any case it may come across where promotion is denied because of the entries in the ACR only in case of vigilance, the inquiry itself is denied, or promotion is denied. Otherwise wholly on the basis of ACR...

Justice Sunil Ambwani: But then the marks are allotted on the basis of ACRs.

Participant: Yes

Justice Sunil Ambwani: So ultimately it it... Another area of difficulty was giving entries to the personal assistants and private secretaries of the judges. PA PS of the judges, now registrar general most of the High Courts these entries are given by the judges themselves and the registrar general has no say in the matter and we all know that PA PS are very favorites of the judges and that is another problem even if they are not working properly they are they are taking involved in different kinds of activities or taking too many leaves, registrar general doesn't appear to have any control over them.

Participant: Yes we solicit the instructions of the Lordships.

Justice Mohit Shah: Any other you would like to share your experiences about writing of confidential reports.

Justice Sunil Ambwani; Some days some judicial side will have to some judges have to deal with this because DOPT instructions department of personnel training instructions writing of ACRs of central government employ is very detailed and methodical, very detailed and methodical and whereas in each of our High Courts in every high court keeps on dinging with ACR matters every year, some or other decision this should be graded like this, this should be graded like this and every High Court has its own arrangement although arrangements are there but almost all arrangements are *ad-hoc* arrangements with ACR forms, and gradings and systems and methods are being changed by full court. If we have a consistent policy at least that is the accountability we are talking about, the judicial officers will be confident that this is how we are going to be graded by the system and it will not be that because of certain group of officers that grading systems will be changed because I remember in UP there was a big fight for 20 years almost 20 years about what should be the criteria for promotion. Whether it should be only merit? or merit subject and its merit then the ACR are considered or cum suitability or seniority are considered. So there is no consistent laid down policy in the judiciary of giving ACRs or promotions every high Court has its own policies, its only when we come here then we realize that otherwise we think our system is the best, we come to realize that other systems are also very comparatively better or somewhere you may be realizing not speaking that this system in other high Courts are better.

Participant: ACR could be according to me made more scientific more category of assessment.

Justice Mohit Shah: But what happens is that the ACRs are written only once in a year so because of that maybe and in state like Maharashtra where there are 2000 more than 2000 judicial officers each guardian judge has to write confidential reports for about or review confidential reports of about 30 40 50 officers, so it is difficult for him to you know keep track of so many judicial officers on an individual basis for the purpose of review. Because he may be able to go to the district only twice or thrice in a year for some workshop or some function, so interaction is also not very easy.

Participant: Judgments are called for, on what was it is subjective more than the objective. Now it is about one particular judge, everyone is suggested to have one column that is scope for improvement. For all invariably in the end the remark would be that the scope for improvement whether there is improvement or... So again whether it is advisory or an adversary again matter should be decided. Whether it is falling short of the required standard or he has to rise still up from the existing standard so that. Suppose everything all the judgments should be called but invariably in all the ACRs that will be the so how objective it is is the question.

Justice Mohit Shah: So lot will depend on the principal district judges' assessment of the judicial officer.

Justice Sunil Ambwani: Every time that I have come to academy the common complaint of all the judicial officers in all the groups were that the ACRs are not given rationally logically basis and because of the ACRs we suffer in our career and so many times the exercise is being undertaken by the academy as to what should be the best and proper form of grading but we have not been able to achieve a standardized method of evaluating the work of the officers.

Participant: There is also no proper method...The administrative judge may not have time to go through all the judgments I don't think...

Justice Mohit Shah: In fact we had a case where the the committee considered the judgments of a family court judge as very brief and not elaborate not dealing with proper legal arguments properly so the judicial officer made a representation that under the family courts act I am suppose to write concise judgement, I am not required to elaborate reasons therefore I have written short judgments because our expectations from a judge is that in each case he should discuss about 10, 15 authorities and, that is not the what is expected you know in fact now the expectations are that you should deal with cases quickly for which you should be concise in your judgments.

Participant: whether advisory remarks are to be taken as adverse remarks?

Justice Mohit Shah: they should be communicated.

Participant: Yes they should be communicated but they cannot be considered as adverse remarks

Justice Sunil Ambwani: They they are not considered, no High Court considers them as adverse remarks.

Justice Mohit shah: What happens is that because they are advisory they are communicated, the remarks are communicated as advisory and when the officer makes a representation we tell him that this is not adverse this is advisory but the very fact that it is advisory means there is some negative element about his performance so he wants to get that impression removed, that even this advisory remarks observations are not justified. But, then we don't entertain the representation on the ground that it is the remark is only advisory not adverse.

Justice Sunil Ambwani: these casting expressions in judgments and making remarks into judgments is not a very healthy trend, Supreme Court has been repeatedly saying that the judgement of judicial officer that you call first officer to chambers advise him but this practice still goes on and we have been telling our brother judges very very lot many number of times that you don't know what you are doing or you first call him and make him understand that this is the mistake. The Supreme Court has given a chance to all of them to go to Supreme Court but the kind of mental agony and punishment the officer gets during the period that remarks are expunged that is much more painful than the actual denial of promotion.

Participant: because Judgments are even reported it becomes public. It is very harsh on him. Actually it is expected that the principal district judge maintains an ephemeral role and annexes its copy along with confidential report so that the reviewing authority will get an opportunity to examine and then cross check the entries that is what is expected. In our civil manual we require PDJs to maintain this ephemeral role but either to we have not been calling it now we are planning to call the ephemeral roles along with the confidential reports because they over a period of one year if he comes across some order which is according to him uprightly legal or something like that ahh to justify his observation regarding performance on the judicial side he is suppose to arrange that copy of the order against which the appeal which he has decided. So that is the pattern if suppose there are some complaints

by the bar members he is suppose to maintain that record in that ephemeral role make an entry in the.. there could be some oral complaints also by some staff members regarding the behavior so that should find place in the ephemeral role, then only he should be able to justify it by making some adverse entry in this, that could be made as mechanism to make it transparent as well as objective.

Justice Mohit Shah: I think very few PDJs are maintaining ephemeral roles.

Participant: What is an ephemeral role?

Participant: It is just a diary of diary of events taking place, there could be some staff member coming with behavioral problem with his judge, so he would just take down the note, it is after completion of one year, so there is no opportunity that he remembers each and every individual complaint and grievances of the judge.

Justice Mohit Shah: The issue is that there are many instructions regarding confidential reports that suppose the officers performance is not good then the superior officer is expected to guide him to bring it to his notice and guide him so CR should also mention that he had tried to guide and mentor this judge but in spite of that he did not improve therefore I am writing this adverse remark. But if he has improved then you don't write that adverse remark in the course of the year itself.

Participant: Even in respect of probation period that use to happen in a High court why probation period is being extended that is never communicated. The judge would never come to know what's wrong with him, so I took the solicited decision from Hon'ble Chief Justice that apart from integrity if there is some objection regarding his performance judicial abilities those should be specifically communicated to the individual judicial officer, so that he can improve upon over the period of time.

Participant: But that may create because ultimately if the probation is not declared and is found to be discharged these remarks will ultimately given later to say that you should have an inquiry and then only because his adverse opinion without committing the inquiry you have discharged him otherwise if you communicate the matter at that stage it will be a problem.

Justice Mohit Shah: No but that Supreme Court has made that distinction between misconduct as a motive and misconduct as a foundation, so if it is only motive you know.

Participant: All this is found in a discharge all this what you call... discharged ultimately but if it is put in the form of a remark which is stored before communicating the the integrity part our character part, then only judicial abilities observations in respect of judicial abilities, quality of judgement, so that.. Otherwise integrity aspect when it comes you decide I must have been given a chance in an inquiry.

Participant: Some High Courts have a practice of allocating marks instead of gradings.

Justice Mohit Shah: Hmm

Participant: At the time of promotion assessment of ACRs is different. Writing ACRs instead of grading they allocate marks 5 out of 5 against each individual qualities, 3 out of 5, 4 out of 5 that is what now we are evolving but, what would be the difference that we are not able to contemplate.

Justice Sunil Ambwani: There would not be any difference because instead of outstanding you are saying 5, very good you are saying 4, so instead of normal rating you are giving marks.

Participant; In Kerala it is not there.

Justice Mohit Shah: What else? What is the experience in Calcutta?

Participant: As far as ACR assessment is concerned district judge.. upto the level of civil division. Thereafter from fast track court.. Now one thing from the remarks is made, if I don't find any material to say that he is honest or dishonest and there is provision to make doubtful or did not hear anything, if I say I did not hear anything that is tantamount to say there is a doubt.

Justice Mohit Shah: That is to say here is not complaint.

Justice Sunil Ambwani: But the problem..

Participant: One thing is beyond doubt in that case there is no questions but when there is that I did not find any material...

Justice Mohit Shah: For some time some district judges or guardian judges make this that no material has been brought to my notice, no material means allegation is there but material is not there.

Participant: Provision is not there, speaks out a very specific language... he made, he couldn't hear anything or doubtful this type of things but even if it is doubtful suppose if I pass any order which may not be correct which gives chance to cast some shadow on the integrity but here must be something and I must be given the opportunity to hear this. Without that something some adverse remark in ACR I never got any chance to represent myself to explain a thing and that is adversely affecting my entire career.

Justice Sunil Ambwani: You mean did not hear anything has taken as adverse?

Participant: When adverse comments are placed we may give a chance to representation but that is not that whenever I place representation that will be accepted, number of times it has happened some of the cases are accepted, representations are entertained and they are assessed. Lot of cases the representation is simply rejected, simply rejected without going into any merit or without assessing also.

Justice Mohit Shah: Infact most of the time it is difficult for a judicial officer to make a representation against an adverse officer remark because very rarely specific instances maybe put.

Participant: That can be made by higher officers so far munsif or sub judge is concerned they have to make a representation.

Participant: There are two things one is we take care of the officers when we enter adverse remarks but on the other side is what they say that we don't have materials therefore nothing to enter but that officer in the public is absolutely.. This is I think quiet common sight in judiciary, this judge should be taken care of. therefore a serious discussion has to take place and then this has to be settled otherwise our system specifically when it comes to not only

corruption but moral corruption, not financial corruption, moral corruption to prevent this in system and people from outside our system have informed.

Participant: Lordship's CJI's letter saying that without if there is no basis you should not receive the complaints you should not inquire into. Now we come to that only because there will be allegations floating around but we don't have material so that means we are, so therefore in that letter what our high court did was that because in that same letter in the second part what it says that it is an ascertainable facts could be ascertained then need not to close it. So even if it is anonymous complaint baseless complaint a complainant may make reference to some source, so under that circumstances an inquiry has to be conducted and if that source could be ascertained further course of action and that has to be done not ... Because the allegations which is without which cannot be substantiated then based on truth or not that truth has to be found out.

Justice Sunil Ambwani: How would you do that? I mean if there is..

Participant: In our high court the committee also it just not straight away take an anonymous complaint, if the allegations made made because very often the litigant may not be knowing what is exactly the concrete evidence may not be there but something is alleged, even one doubt if that otherwise off course making general bald allegations it will be out rightly it will be rejected but if it points to some ascertainable facts ascertainable material that we should try to find out and that inquiry maybe discrete inquiry or rather full-fledged inquiry.

Justice Sunil Ambwani: See then then it will be nothing but a roaming inquiry fishing and roaming.

Participant: My lord it amounts to but not in all cases. Say there is an anonymous complaint against me that I have acquired property worth 10 crore such and such property that could be ascertained.

Justice Sunil Ambwani: that's alright!

Participant: Notification does not prevent the administration for my inquiry into any allegation.

Justice Sunil Ambwani: They can do anything, administration can take its decision to make an inquiry, but what happens is like you have 1000 judicial officers' five hundred complaints almost all 95 percent with lawyers and in every complaint saying that he has taken money to give this judgement.

Justice Mohit Shah: In fact most of the complaint 80 percent you can make out from the tenure of the because the offence are against whom allegation officer are known to be honest allegations of corruption are made, they never stop at corruption, they'll say wine and women, wine women and wealth, that is... But the difficulty for the principal district judge in many case is that there may not be any complaints about integrity but the judicial officer is not doing work properly, you know shirking work or then it is very difficult for him to write a negative remark. So...

Ms. Nitika Jain: Before we end for the day we are distributing a pre training Response pro-forma, you are kindly requested to please fill it and give it by the third day. Also can we have a big round of applause for Justice Sunil Ambwani, Sir is here with us only for today he'll be leaving and tomorrow we have Justice Mohit Shah with us and Justice MK Sharma for us tomorrow. Thank you Sir on behalf of NJA.

SESSION 5

Justice M.K. Sharma: Shall we start?

Participants: Yes!

Justice M.K. Sharma: Good morning to each one of you we are here to discuss few related subjects to your evocations spreading over four sessions today, I am there in all the Four Seasons it seems and my learned friend who will be here for about 3 sessions I believe. Now the broad topic that we are going to discuss in this session is recruitment promotion and transfer of judicial officers: role and challenges of the registrar generals probably because supposed to be a interactive session for the Registrar general, although some of the high courts are not represented by the register generals and are represented by the registrars. Now Preamble to our constitution Lays down the four goals that our country is striving for, one of them is justice now when it speaks of justice it does not formally or explicitly speaks of adjudicator system of justice, it says justice that is also defined in the Preamble of the Constitution as justice, political, economic and social, the idea is the goal is to achieve political justice that is I believe we have been able to achieve because we have a very sound political free we have elections, we elect our representatives, we have our own government at the centre and also at the state level elected by the people. So therefore we have been able to achieve political justice but so far the social and economic justice is concerned I believe and all of you will agree with me that we have been lagging behind. The same is the case so far as adjudicatory system of justice is concerned that is the responsibility of the Judiciary, constitution has given it explicitly to the Judiciary but unfortunately over the years arrears have gone up, there are lot of Criticism against the Judiciary and therefore it is necessary that we discuss all these related subjects openly and get suggestions from each other. I will relate to you some of my feelings some of my views and I would also expect that you would also participate with us give us your views because you are directly related to the administration part of the judiciary. Now district courts and the high courts have very responsible duties to be discharged although the judges they discharge the responsibilities of deciding the fate of the cases that come to the court but it is the administration which helps and assist the judges in discharging their responsibilities and duties more effectively and meaningful. So therefore we the judges expect total cooperation from the judicial from the from the registrars and the

registrar generals because registrar generals and the registrar are supposed to be the backbone, I'll go to that extent they are the backbone of the judicial system and they are eyes and ears for the judges because as you all know when you have been working with the judges, judges are practically tag to their chair throughout the day whether it is in the chamber or in the court, they are practically sitting in the chair only so they do not have a know-how as to how the, what is the reaction, how the Judiciary is functioning? There's not much of information that comes to them and they have practically no interaction with the lawyers outside the court room because judges generally do not have the time to interact with anybody, time you say so and they cannot also unless there is some function or something of the nature. So therefore in this view of the matter you are the the registrars are the eyes and ears and your role so far as a high court administration is concerned of course it is onerous but there you can get help of the administrative committee and other judges. But so far the administration of the district Judiciary is concerned your responsibilities are much more because the district courts are the Bedrock of our judicial system, that's the Grass root and that's the starting point of the litigation in Civil and criminal matters And Labour matters. So we must have a foundation proper foundation and strong Foundation so far district courts are concerned and the persons who are manning those courts or those district courts they must be persons of strong integrity, they must be bold, they must be caring also and they must possess the human qualities and first of all I'll say integrity. So how to find out a person of that nature who possess all these qualities because at the recruitment stage you see there will be one has to one has to find out the best talent available and there the High Court Judges may not have much of a knowledge unless he has appeared at some point of time before the judge concerned but you being associated at different points of time, you being associated with the discharge of the judicial functions and they have been appearing before you some of the district court lawyers you know about their performance, you know about the capabilities. So therefore I say that your role is much more important in this at the stage of recruitment of the judges in the district court that is the aa aa judicial service. Whether it is in the judicial service or Higher Judicial Service also. Now recruitment as you all know at the entry point it was generally the Public Service commission's earlier public service commission which used to recruit the judicial appointees also, now there are allegations in such recruitment at different High Courts and states. Later on the earliest decision was 1966 Supreme Court 447

when you see aa just a minute... I'll give you the citation also I have got them with me yes, this is the case of *State of West Bengal vs bipendranath bagchi* AIR 1966 Supreme Court 447, in this decision this is the first in time point of time as I could lay my hands, this speaks of control of the district court and courts subordinate thereto is vested in the High Court and that is exactly article to 235 of the Constitution it says so if you kindly see your constitution 235 it speaks of control of the high court sorry control of the district court is of the High Court. Control over subordinate courts very heading says so, so therefore that relates to I'm not going into the literary I am just giving a broad guideline because my learned friend would be giving his inputs into all these in details. Now then came in the decision of *Malik mujra Sultan* you are all aware of that decision is very famous decision now and is connected with the administration of the high court that is *Malik mujra Sultan vs UP Public Service Commission* reported in 2008 1 SCC page 703, now here for the first time the Supreme Court has said that the power must be vested in the High Court so far the recruitment of judicial officers are concerned and pursuant to that decision and thereafter as a reaction to that decision some of the High Courts have started recruiting the judicial officers all by themselves. Although of-course whatever the recommendations are made by the agency appointed by the high court for making a recruitment to the judicial service it has to go to the Governor and therefore in that process state also comes in but the power was given to the high court for the first time for making the recruitment, earlier it was the PSCs, but, as a matter of fact although the high court have taken over the recruitment process of the judicial officers there are allegations in those recruitments also. We must know about that. So there are allegations and counter allegations against the recruitment process both the ways and this should not happen when we are recruiting judicial officers they are supposed to be something different from the administrative officers, also because according to me and as have been laid down by the Supreme Court the judicial officers stand on a Different footing all together, they are on higher standard. That's what the judiciary feels that our offices are strong, bold, and independent. So you have to look it from that angle so therefore, it becomes very necessary to see that when there is a recruitment process on there should be transparency, there should be clarity and it must be open, advertisement has to be issued and there are number of decisions on that and I find them incorporated in this reading material also advertisement proper opportunity to apply to then the process of recruitment, two stages first

stage the examination written examination, now whether the written examinations should have objective questions or subjective questions? Now I have I believe in some of the high courts I find it is totally objective that may not be again proper because objective answers you see you don't have to write long sentences you have to just give an answer in one sentence also then, how will the person know the capability of the judge to write proper English expressive English or maybe even Hindi for example. Some of the high courts they write in Hindi that he can Express himself in Hindi also mother-tongue also, that must be apparent, I must know before I recruit a person as to whether or not he is he can express himself properly, what is his skill writing skill. How how can he express himself? How far he can express himself. So these are aspects which I think should be also incorporated in the question paper itself so that you know, precise writing for example is a very very important area, you know that you all must have done that grammar although you might not have liked it, grammar is always a very very technical and difficult subject whether it is vernacular or English or Hindi or Sanskrit I find grammar is the toughest but then you see precise writing is an important part of the composition it also indicates as to whether you can express yourself in a shorter form. So therefore all these aspects has to be reflected in the question paper so that a person who is judging it knows that this person yes he has the capability of expressing himself, his English is good, he can write good English, Express he can express himself and he is intelligent, is reflected from is writing only and that he is knowledgeable also is reflected from his writing. So some sort of writing has to be there and then comes the interview part. Now the general trend I have seen when I am sitting in my experience when I am sitting in a interview bench there are some judges who feel that well such questions must be put to candidate won't be able to answer it, that's not the purpose of having an interview, you must see to it that he is put a question which is clear and where you he can express himself he can answer that question, then only you can come to know if he cannot answer how will you know as to how much court fee is necessary for filing a plaint or in a written statement, how is that important he has not joined. Although that may be relevant from some other purpose but then you see that's not the purpose, the purpose is to know how much he knows. So therefore these aspects have to be carefully considered when you go for recruitment and so far promotion is concerned promotion also again is guided by Rules as is recruitment state rules are there. Now recruitment is so so far Promotion is concerned in

some cases it is seniority cum merit and merit cum seniority, these two expressions creating lot of difficulties in different point of time. Now seniority cum merit necessarily seniority plays very leading role. Merit off courses is to be looked into but seniority is the criteria. But merit cum seniority, now there merit is absolute, absolutely important merit, seniority when merit of two persons are almost equal then one has to go to the seniority aspect senior person gets priority. So therefore these are expressions and concepts which must be really understood and those are explained by the Supreme Court and I find them incorporated in this reading materials also there are some Judgements which are during the course of our discussions I will refer to all those. So with this, I conclude whatever I have to say. Because I want my learned friend to put his inputs and then we'll have an interactive session.

Justice Mohit Shah: Thank you my Lord for giving this brief overview of the problems which the registrar generals have to face. I believe this session is the most important session for this conference because we all know that whenever we discuss the issues of judicial pendency and arrears of cases everybody knows that the backlog is very heavy and we all know that we need more Judges. In fact whenever there is any such debate it is always advocated that we should be able to convince the government to sanction more posts of judges. It was I think way back in 2000 or 2002 when the Supreme Court said speaking through the Chief Justice Kripal said, that the number of posts should be five times the existing number of posts because whenever we compare the number of judicial officers the strength of judicial officers vis-a-vis population we find that in USA and other western countries the number of judges per million is 100 whereas in India it is just about 10 or 12 which is now maybe going upto 15. So therefore a direction was given that the Government of India should consider raising the strength of judicial officers from the present strength to five times the strength. But we also know that there are so many difficulties that we are not able to fill in the existing posts existing sanctioned strength. So what are those difficulties and what are those problems which come in the way of filling in the existing post that is I think is a very important topic which needs discussion. Then as far as the recruitment rules are concerned because the Shetty Commission has prescribed the three-tier pattern of civil judge junior division and JMFC civil judge Senior division and the district judges and they also prescribed the model recruitment rules, so by and large we have uniform pattern of

recruitment and promotion. We also know that initially it was 50% for regular promotion, 25% for accelerated promotion and 25% by way of direct recruitment for the cadre of district judges but, it was very soon realized that it was difficult to get enough number of judicial officers to fill in the 25 percent post by accelerated promotion so that percentage has been reduced from 25% to 10% and consequently the quota of regular promotion has been raised from 50% to 65%. Now there are several issues which have cropped up and we will consider them each of them but I think it was a very important reference was made by his lordship to this distinction between seniority cum Merit and merit cum seniority so, that is 1 issue which I would like to discuss with you. Secondly, apart from the question of interpretation or implementation of the recruitment rules and the promotion rules the major difficulty is that when we go for direct recruitment we are not able to find suitable number of candidates to fill in the post. At the last Chief Justices conference it was discussed most of the Chief Justice's said that we find it difficult to get adequate number of competent advocates who can be selected for the post of district judge. In fact as far as the state of Karnataka is concerned they could find only one or two persons competent and suitable to fill in the to be appointed by way of direct recruitment against the number of vacancies being 25 or 30, that was very alarming situation, in Maharashtra also we had a little problem where we tried to fill in the post of civil judge junior division as against the number of post being advertised about hundred, we were able to get only 52 candidates who are found to be suitable for the post of civil judge junior division, for the post of district judges also for direct recruitment we did not find suitable number of candidates that was the situation when it was my second year in Maharashtra. Then at one of the conferences of the Bar Council of Maharashtra and Goa I brought this to the notice that you are complaining that there are not enough number of judges but ultimately it is the bar which supplies the judges. So why don't you see that you give proper training to the lawyers who are Aspiring for judgeship and they took a very positive stand the Bar Council of Maharashtra and Goa has always been a very positive and cooperative so they immediately accepted the suggestion and from the next year they have started running the coaching classes for advocates, Maharashtra state has as you all know 6 divisions so there about 30 districts but there are about 6 divisions, so they started coaching classes for each division, so the lawyers from various districts in that zone would be called to the zone headquarters for training senior advocates many retired judges also delivered

lectures and I tell you the results were so satisfactory at the next competitive examination that when the results were out we found that against 225 number of post of civil judge is advertised we got 250 candidates though some placed in the waiting list. Now this was possible because the bar council took a positive stand and came forward with this plan of running the coaching classes. The response so so so positive not only from the advocates but from certain other Institutions also as we all know that there also as you all know that there are certain post in Judiciary we don't have reservation for scheduled caste and Scheduled Tribes, but everybody knows that there are they have also have aspiration legitive aspirations to see that they also get important public positions, so there are some NGOs working for the Welfare of the schedule caste and Scheduled Tribes they came forward and said that we will support this schedule caste and Scheduled tribe candidates and see to it that they get all the necessary facilities, they also bear the expenses for the lodging and boarding, also they give them stipend so with the result that a large number of Schedule Caste and Scheduled tribe candidates also could get this kind of coaching and training and many of them have been selected. So this is a very important role which the high court now the registry registrar general should play to see that there should be proper interaction between the bench and the Bar and to encourage to motivate the bar members to come forward with this kind of scheme that is very important. This same experience was repeated when we came to the recruitment process for direct selection for the post of district judges and we got more candidates then the number of posts advertised so a question cropped up whether we should recommend more names then the number of posts advertised you know what happens is that there is a Supreme Court judgement which says that there are, the number of the select list should not be larger than the number of posts advertised, but then we found out that there was a backlog we all know that the recruitment is conducted on the recruitment year bases 2013 recruitment 2014 recruitment 2015 recruitment, so we found that the advertisement was for 2014 recruitment year but the large number of vacancies had come up in 2015 also so we club the 2 years and we recruited 36 candidates selected them and put them in the select list for the post of district judges and 4 more candidates in the wait list so we had adequate number of judges for the post of civil judge junior division also for the post of district judges also and it is with lot of pride that our registry conducted this recruitment process so well that the number of vacancies is less than 10%. It is very rare that now you have such a small number of

vacancies in the cadre of civil judge junior division also in the cadre of district judges and civil judge Senior division number of vacancies is much less than 10% because those some vacancies keep occurring on account of retirement etc. Now this was about the difficulties in practical difficulties in recruitment having discuss that, now let us discuss some of the issues which crop up during this recruitment and promotion process, when I became Chief Justice of the Bombay High Court I had gone to Nagpur for attending a function regarding mediation and judicial officer met me and said that she said that there is no adverse remarks against me my confidential reports are really very good and still you have not promoted me from the post of civil judge junior division to Senior division as against that there are about 50 judicial officers who are junior to me in the cadre of junior division but they have been promoted to Senior division. So when this complaint came presentation came requested my registrar general that time Mr. Geelani was the registrar general that please look into this and tell me what is wrong with this lady why she is not getting promotion so, he checked of everything and he said that we are following the recruitment rules, recruitment rules say that so many marks are required to be given for good grading, very good grades in the CR's so many marks for this special report from the District Judge so many marks for disposal at etc and we have worked out everything, the select list is prepared according to the rules and she does not figure higher up in the select list, we have 50 vacancies she comes at about serial number 60 in the select list therefore, she has not been promoted. So that set us thinking that what the criteria for promotion was merit only merit and depending on the merit the persons the judicial officers name would be placed in the select list. So we found that this candidate out of hundred marks she got 69 marks there were candidates who have got 72 and 71 marks, therefore they went up in the select list. Now 69 marks out of hundred is not a bad performance so we figured out that going purely by Merit may sometimes result into a lot of heart burning in the mind in the heart of a large number of judicial officer at the same time we should not follow the criteria of seniority cum merit which means that a person if he is unfit it then only he is to be excluded otherwise he should get promotion on the basis of seniority so we thought a via media was possible, so we then considered and after deliberations we amended the recruitment rules to provide that for promotion from Civil Judge junior division to Senior division and even from Senior division to district judge the if a candidate gets 60 out of hundred marks his or her name should be included in the select list

and once in the select list he or she should retain the seniority in the cadre, so with the result that merely because a candidate gets 82 marks and another candidate gets 81 marks the candidate with 82 marks who is very junior should not steal a march over the candidate who has got 81 marks. So we found out that this formula is reasonably satisfactory and it works to the satisfaction of all if it we had adopted the criteria of seniority cum merit, the merit would have been suitability would have been somewhere around 40 which would have been very low we cannot compromise with quality. At the same time we found that fixing the benchmark at 60 was sufficiently high and therefore we have adopted this criteria. So therefore when this discussion comes up on the question of seniority cum Merit or Merit cum seniority our view is that threshold in seniority cum merit the threshold is very low. In merit cum seniority the general perception is that you go only by Merit and only when the candidates are equal in merit then only you consider seniority but this formula of putting a benchmark at sixty out of hundred is very satisfactory way of dealing with this situation and from that date onwards for the last 3 years in Maharashtra we applied this formula of having this benchmark and all the judicial officers are very happy that reasonably good officer gets promotion without worrying that some 50 juniors will steal a march over me because they get one or two marks more. So that was one issue which we resolved to the satisfaction of all. Then we found that when it comes to promotion from the cadre of civil judge junior division to Senior division do the recruitment rules provide that he should have put in at least the service at the cadre of civil judge junior division but we found that as a matter of fact in the normal course for regular promotion a judge used to take about 10 years, 10 to 11 years because at a certain period of time the number of vacancies was not large. So judges used to get frustrated, there were many who were very good brilliant judges they said that Sir allow us to apply for the post of direct recruitment for the post of district judge which we were not allowing them because of the ground that they were already in the service, so then last year we introduced a rule that for civil judge for promotion from Civil Judge junior division to Senior division also we will have a channel of accelerated promotion. So 10% post of Civil Judge Senior division are now year marked for Limited competitive examination for civil judge junior division who have put in three years' service, the result that good very brilliant bright civil judge junior division they also get a chance for accelerated promotion and that feeling of frustration which they used to have because of long wait for 10 years has also gone

so that is also working satisfactorily so I think you may all consider this introducing 10% post office or such number of percentage that you consider appropriate for accelerated promotion from Civil Judge junior division to the post of civil judge Senior division. Then another important issue which came up for promotion for the direct recruitment to the post of district judge was that as we all know that the recruitment rules provide that these candidates should have practice as an advocate for at least 7 years but in the real experience we find that the age limit is 35 years so when a person starts practicing as an advocate at the age of 23 years BA plus LLB or direct 5 Year Course he is about 23 or 24 years old so when his case comes up for interview he is almost 36 37 38 years old, he has put in 15 years of practice, now a person who has put in 15 years of practice, it happens in many towns and district that the lawyer tends to specialize you know even if he doesn't want to specialize consciously unconsciously also or the matter kinds of matters that he gets there is sort of semi specialization, so a lawyer practicing on the civil side may be taking up a few bail applications here and there but by and large he conduct civil cases more than the criminal cases. Similarly, a lawyer who has more cases on the criminal side he becomes for all practical purposes he is specializing in criminal cases then he doesn't have much exposure to the Civil law. Now therefore asking lawyers to appear at the written test and write judgements both in civil cases and in criminal cases we find that the candidate is not able to give his best performance so we decided that while the written examination will be for both Civil and criminal but as far as judgement writing is concerned the candidate will be given an option that either you write the judgement in civil case or you write a judgement in Criminal Case but not in both so this method this changed amendment has also worked very satisfactorily and the lawyers who are appearing for the for direct recruitment for the post of district judge because of the long practice that is put in about 15 years of practice they find it more comfortable to answer the right the judgement either in civil or in criminal. Ultimately we do ask them questions on the criminal side as well as civil side also but it is also one thing to answer a question on a question of law and another thing to write a judgement detail judgement in a session's case when you have been practicing on the civil side for the last 15 years. Of course after appointment as a district judge you may have to do both civil work and criminal work but that he can pick up gradually but at the threshold when at the stage of examination when he is confronted with this both judgement writing in civil as well as

criminal he find it difficult so this change has also worked satisfactorily and we find that bar lawyers are responding quite well. Then we found that for the purposes of writing examination the Shetty Commission rules have prescribed only 2 hours examination now, we have raised to 3 hours so the candidates take a little longer time to write the answers to the answer because we all know that lawyer are now used to giving dictation to the stenographers. So a person who has put in 10 to 15 years of practice generally is not very comfortable in writing long answers so it was difficult for them to finish the answer answering questions within 2 hours so we have raised that limit to 3 hours. So by this kind of changes we have found out that the recruitment process has become smoother the promotion also we find that the judges are responding well. Another issue which we consider was that when the civil judge is Senior division they are asked to appear at the Limited competitive examination for accelerated promotion we use to ask them to write the same questions and answers which we called upon the direct recruits to answer be the result that they were also asked to write the judgements in civil or criminal civil and criminal in that long handwriting which they civil judge who has put in 10 years of service and used to giving dictation to stenographers, you know he would find it difficult to write those long judgements in hand. At the same time we use to get there judgements to be assessed by this another committee because as civil judge senior division they have been writing judgements, so they use to sent those judgements for assessment by judges committee, so we found that when their judgements are already being assessed it was not necessary to ask them to write again and appear at another judgement writing test which was being held for the direct recruits, so now we have a limited competitive examination for them which is written examination but then we then that is an objective type questions, multiple choice questions so there knowledge is tested in writing but at the same time they are not asked to write the judgements at the time of examination the accelerator for accelerated promotion so that is also work satisfactorily and we propose to we have done that for promotion from junior division to Senior division also that there will be written examination but it'll be a multiple choice examination. Now his lordship referred to the credibility of the examination process and that is very very important that nobody should be able to make allegations against our recruitment and promotion process. When I was in Gujarat we came across situation when the this elimination test preliminary examination was conducted by conducting multiple choice test, it was after the

examination was held some candidates brought it our notice and then we found out I was not there in the examination committee that somebody had tried to play mischief by saying that in the multiple test you think that will there are 4 options so the candidate will have to give the right answer where is the question of any malpractice? Somebody who had printed the paper made the choice bold supposed who was the first president of India, Doctor Rajendra Prasad, Doctor Zakir Hussain, Doctor Sarvpalli Radhakrishnan, if Doctor Rajendra Prasad is the first President so A, B will be Doctor Zakir Hussain, C will be Doctor Sarvepalli Radhakrishnan, D will be doctor Abdul Kalam, so this a Radhakrishna, I mean A Rajendra Prasad was correctly type there was no more difficulty but A was made bold so that hint was given that A is the correct answer. So we scrapped that examination and reconducted the examination because otherwise it would have been very vulnerable and it would have been unfair to the candidates those who had this idea they would have got more marks. So we have to be very careful when we conduct examination for direct recruitment or for promotion. With this words I would invite your suggestions and any queries or..

Participant: Reservation in the judiciary.. Civil judges and even for district judges.

Justice Mohit Shah: In Maharashtra we don't have reservation.

Participant: Some of the High Courts it has, in Kerala we have.

Justice MK Sharma: *Haan* Kerala yes, mostly in the South states and also in some other states it is there.

Justice Mohit Shah: We do provide this concession but what happens is that for elimination test we only call those candidates for interview who have got 60% marks in the aggregate at the written examination but for schedule caste and Scheduled tribes candidate that percentage is lower.

Participant: Even then we are not able to get it. Fill the vacancies.

Justice Mohit Shah: but while while when we conduct the interviews we do keep it in mind that if a candidate from schedule caste or Scheduled tribe is reasonably good then he should not lose out by one or two marks, we keep that in mind.

Participant: The problem we face for direct recruitment of district judiciary is that mostly good category they shy away from examination.

Justice MK Sharma: That is what I wanted to point out also, they want to sit in the written exam.

Participant: because they don't want to face the implication of being failed in the written examination, they may be excellent lawyers but when it comes to written examination as your lordship was mentioning they are not used to writing the exams. So they are not able to fair well in written examination, they don't want to face that humiliation and so they don't appear for it.

Justice Mohit Shah: But this was issue which was discussed at the last Chief Justices conference and many of us suggested that out of this 60 out of 25 % quota for direct recruitment let 5% be year marked separately so that the candidates can be invited just as for elevation to the high court there is no examination no applications are expected but the Chief Justice will invite a good lawyer to accept judgeship, so this should also be considered for district judges but the Supreme Court Judges took the view that no, allegations will be made that if Chief Justice is Sinha and a lawyer called Sinha is invited then people will make allegation that you are inviting only people of your community or this or that.

Justice MK Sharma: Now in all all the high courts have the tradition of giving accelerated promotion?

Justice Mohit Shah: district judges yes! From senior division to district judges

Participant: In the last 2 3 years we have found that none have appeared now, they have stopped appearing now.

Justice MK Sharma: Why? What is the reason?

Participant: Because my lord in first batch there was some accelerated promotion, thereafter my lord almost all of them failed then they stopped appearing, now now that provision is used that all those unused unfilled posts are given by way of normal..

Justice MK Sharma: To the to the general category. How many high courts you have it accelerated promotion 10%?

Participant: 10percent

Justice Mohit Shah: Maharashtra also has accelerated promotion.

Participant: My lord for the last so many years the problem we are facing is we don't have this this candidates who have completed five years as.

Justice MK Sharma: Now accelerated promotion is also made of written examination and interview?

Participants: Yes!

Justice MK Sharma: both

Justice Mohit shah: written examination or the objective type question? Regular written examination?

Participant: My lord they are to appear in the same kind of test which is for direct recruitment.

Justice Mohit shah: We also had the same formula but then we changed it to..

Justice MK Sharma: So you hold the examination along with the direct recruits?

Participants: Yes!!

Justice MK Sharma: If they fare well there then they get through, that's a good idea. Otherwise you see there may be cases of heartburning because the Junior officers getting promoted and becoming senior officers you have to be very very considerate also and if there are really good people you have to promote them, there is no other way because why should see locked in the post which they are holding for the last 10 years, they must get accelerated promotion if they deserve it. But the scrutiny should be I think a very strict scrutiny so that they really deserve and when you are having the exam along with the direct recruits, now they are almost equal to the direct recruits in the sense they have also put in about 3 years I think, 3 years, there it is 7 years off course, now after 3 years going into the district judges Cadre how far that is a again justified is another matter of Interpretation. 5 years for example if one complete 5 years and the other one coming in after putting in 17 years is a lawyer 15 years is a lawyer so there itself it is a case of you know sort of unevenness.

Participant: My lord in Calcutta this practice is 5 years' service in Civil Judge Senior Division.

Justice MK Sharma: Ya that is good. So so this criteria if it is working well you have to go ahead with it but one must be very very observant and see that you see what is happening in Delhi for example when I was there a lot of people they wanted accelerated promotion to be A but ultimately they did not come for the exam. But I found that most of the Judicial Officer they were against it they said it will cause lot of heart burning to the persons who are not getting the promotion and somebody you know galloping and becoming district judges whereas he is rotting somewhere in the Civil Judge Senior division. So these are matters to be considered. Now I was this direct recruitment now what is happening is direct recruitment as he has pointed out the lawyers are unwilling to take the exam written exam but then you see it very difficult again to choose a person on the basis of oral interview. So I believe therefore that some sort of written examination would have to be there and you see if you give them objective type of questions multiple choice questions sort of thing but then at the same time as so how he writes, what is his writing skill that must be apparent from his records, means his answer scripts, so some sort of screening should also also be there according to me what is your view?

Participant: There, there must be..

Justice MK Sharma: for the for the direct recruits also.. It could be multiple. First of all his English must be tested, his knowledge of law has to tested, his expression that is also a part of that and then his general knowledge also is to be tested according to me. How much is that's what I said yes English expression how much is he aware and his Awareness to the social problems, societal problems that also reflects a person's mind, that also has to be included.

Participant: One paper basically for English, English composition.

Justice MK Sharma: That will be very tough then. If it is two three papers very tough for lawyers.

Participant: First paper is English 3 essays short essays, one prissy, 2 translations.

Justice MK Sharma: So that is fine then you know his writing skill also, his intelligence his everything is reflected.

Justice Mohit Shah: Then General knowledge.

Participant: General Knowledge papers are not there.

Justice MK Sharma: General Knowledge you see for example now, women empowerment, child rights, human rights all these are coming in. So how far he is aware and what is his perception to those societal problems must be also according to me reflected. Reading habits that he is reading outside the curricular. So all these I think person must be well aware. For district judge payment is good, facilities are good so why not the best talent should be taken in. So for that I suppose we should find out some ways and means as to how the and it should be a uniform rule. So far you see centralized recruitment agency is created by high courts now so far the staff is concerned after that judgement *Renu v. Tis Hazari District Court*, now that centralized has been done in almost all the High Courts?

Justice Mohit Shah: It is done in Maharashtra.

Justice MK Sharma: Maharashtra, Punjab, Calcutta also. Yes everywhere?

Participant: Karnataka also

Justice MK Sharma: And what about the recruitment of the judicial officers is it still PSC or its High Court? High Court has now taken over, but but some of the High Court I find that they still going along with the old PSC junior level. No what about the other high court junior level?

Justice Mohit Shah: In Maharashtra the recruitment of Civil Judge Junior division is done by the Maharashtra Public Service Commission but at the time of interview two High Court Judges sit in the interview. Papers are also set by the Judges.

Participant: Examined by the district judges, interview committee consist of High Court Judges.

Justice Mohit Shah: So for all practical Purpose it is..

Participant: In Punjab the entire process has been taken out of purview of the board and it is conducted solely by the High Court.

Justice MK Sharma: Now to root out all allegations and possible criticism I think these question papers also should be set at the High Court level not at the district level because there is always a possibility of leaking out.

Participant: Lordship we have a committee of three judges

Justice MK Sharma: Three judges who look after that and the question paper should be kept with Chief Justice till the date of examination.

Justice Mohit Shah: In many states there are more than three or four sets of question papers.

Justice MK Sharma: the Chief Justice is to decide at the last moment. That is the best.

Participant: Yes we also have that 3 sets of Question paper.

Justice MK Sharma: Three sets of question paper with the Chief Justice and when it is given Chief Justice will be handed over.

Participant: In the very morning Chief Justice pick up one set and give it to registrar General and RG carry it.

Justice MK Sharma: That is the best way I think you can probably look into that and find out whether that is a word of consideration and then you see there are some cases about seniority matter because... No before that I think we must deal with the transfer part. Now transfer by routine necessarily and the duration almost every state and every High Court it is the judicial officer transferred after 3 years but there may be cases he may have to be transferred because of the exigencies of service earlier to that also and it is there and nobody can question that but you see after 3 years I believe it must be compulsorily done otherwise you see what is happening is, there are number of you know things happening like the lawyers sometime becoming too close to the judge concerned and the judge because of it the reputation of the lawyer also becomes attracted to him and so there could be some sort of unholy Alliance between the two so after every 3 years if it is compulsory done unless exception exception' maybe 6 months he has to see if it is before the end of the educational year so then he could be given extension for 3 4 months that's a different matter and it is done generally you see this transfer policies only operate only when the educational year is over generally it is done.

Justice Mohit Shah: But the major problem about transfer is the states with larger area for instance in Maharashtra the distance between some stations is more than 1000 kilometers.

Justice MK Sharma: Now it should be then division. It should be divided into different divisions and it should be confined to that, otherwise it would be very difficult.

Justice Mohit Shat: So what we then do is that at least as far as the first posting is concerned the candidate is generally given a posting in the district adjoining his home district so that at least for the first few years when he is trying to settle down in his new career he has least possible hardships as far as his family is concerned.

Justice MK Sharma: Here I have one more query from you. Is it possible to give option to the judges at the time of transfer? 3 options?

Justice Mohit Shah: Yes we give we give

Justice MK Sharma: That's a good idea because you see... never followed.

Justice Mohit Shah: No in Maharashtra generally..

Justice MK Sharma: No why should it not be followed? If three options are given good options you can put him in one of those where he wants him to.

Participant: It is followed as far as possible we can accommodate them the preferences...

Justice MK Sharma: What about you?

Participant: We do not follow.

Justice MK Sharma: Ya do not have that you are from which state?

Participant: Chhattisgarh!

Justice MK Sharma: No choice is given? It is by the administrative committee. 3 years criteria.

Participant: We have certain norms of transfer so the officer knows that he is not entitled to get posting in a particular place. Like in a district he is for 3 years now other 3 years he is transferred outside the district now he can come back to the same district only after 6 years, so he knows he'll not be getting it in that period so he makes his options according to the norms.

Justice MK Sharma: No that is I think alright. Yes you wanted to say something

Participant: My lord in Calcutta it is divided in three zones ABC, a is adjoining Calcutta, then B zone and C zone includes those hilly area. So if you give options you hardly get candidate for..

Justice MK Sharma: No but you see this is first two for example he gives near about Calcutta then he must go to a distant place so a b c must be offered to him alternatively.

Justice Mohit Shah: We ask them to give 10 options.

Participant: yes 5 6 divisions.

Justice MK Sharma: *Haan* 10 options is also fine.

Participant: 10 options 2 from each zone except the zone where he is already having a posting. As far as possible almost 80 percent

Justice Mohit Shah: 80 percent judges are accommodated in the place of their choice.

Justice MK Sharma: But there are some stations which are undesirable postings. Nobody would like to go there you have to put somebody who is. And there is one more aspect now when you see this transfer policy is operated is the man management policy applied?

Participant: yes

Justice MK Sharma: You do that? Now what I am trying to say is man management you see who is the best person? Because you see when you think of a particular are what are the nature of cases there and again in the the city for example now CBI Court is a very very important and relevant there you have to put a person who is well aware who had quite exposure in that area of course there cannot be specialization in these things but someone having knowledge and good background about it should be posted so that man management is to be done by the registry only so these because Chief Justice will be dependent on the registrars and particularly registrar general.

Justice Mohit Shah: and Chief Justice coming from another state

Justice MK Sharma: Another state mainly, he goes by the administrative committee advise also but then the administrative committee members also doesn't they don't know the members of the Judiciary aaaa judicial services so well as you all know because you have worked in that so you know about everyone. So therefore I believe in these matters you should be very helpful and must be assisting the Chief Justice.

Justice MK Sharma: No see you are ultimately answerable to Chief Justice.

Participant: So that my lord this zoning policy should be strictly implemented it will really help, and it has actually helped, this zoning policy was long there since implemented, when our present Chief Justice when he came right from day 1 he asked me that make this history upon judicial officer how many times he has remained posted in zone A zone B zone C and not only how many times exact number of years and on the basis of that we calculated. Any other judge put this query. That transparency rarely happen.

Participant: Transfer system has be be fair absolutely fair because...

Justice MK Sharma: There is no doubt about that. The policy has to be cleared, it has to be transparent, you must know as to why you have been transferred there.

Participant: We have to frame this norms for transfer after discussing it with the judicial officers, so that they have their say in that also, so nobody will question that.

Justice MK Sharma: It is always better to have a rule and follow it strictly, that is that is the best way to it. So transfer policy whether it is transfer rule or transfer policy you must have something in writing and to be circulated amongst all the officers and then see to it that it is strictly adhered to as you say there could be some pressure from somewhere but the Chief Justice must be able to withstand that. That is and he is no way interested in the officers because he has come from outside so he has nothing to lose, nothing to gain by giving a particular posting to somebody but if he knows that this is the best person to for this posting he could be set and notwithstanding the pressure of the brother judges. In some of the high courts I found that there is no pressure from the judges but in some High Courts there could be there could be.

Participant: It is relating to the performance of the officer also.

Justice MK Sharma: no performance has to be good otherwise how he has to be given a light posting otherwise you see it would be difficulty.

Participant: my lord when a person is constantly posted in places there is less of cases then this problem comes up.

Justice MK Sharma: The he should be transferred to a place where he gets more. Yes that is that is natural.

Justice Mohit Shah: But for a lady judicial officers we show some special consideration because they.

Justice MK Sharma: But it is mostly ladies these days. So it is not possible after sometime we cannot have that sort of sympathetic attitude towards.

Participant: in our states more than 60 percent. Another thing is coming up is most young officers they marry they have to go on maternity leave.

Justice MK Sharma: No but maternity leave you cannot do that. Now paternity leave is also coming. So therefore these are difficulties you know one or two twice in a lifetime.

Justice Mohit shah: Now government of India has said that you should give leave upto two years for maternity leave. Child care. But appreciating this difficulty of the lady officers when they come to Maharashtra Judicial Academy for training what happens is that when they are selected for the post of Civil Judge Junior Division and they have to undergo training for 6 months at a stretch. What was happening was lady judicial officers when they come for training to the Maharashtra Judicial Academy those who are selected for the post of Civil Judge Junior Division they are in their 20's or early 30's they have young children some of them very infants also, so some of them wanted to resign on the ground that they cannot stay in the academy for 6 months. So we have hostels for the judicial officers with two seater rooms, so now we permit their lady judicial officers to come with their mother or mother in law and the child so that they can stay in the hostel. The lady judicial officer can attend the training during day time...

Justice MK Sharma: You see you can make provision of Crèche area, so that will take care of almost all the district headquarters and some of the mofussil towns also this facility could be made available.

Justice Mohit Shah: So this this is working well and the judicial officers..

Justice MK Sharma: And the number of high courts and district courts have started this crutch system. That is happening everywhere. Now what will happen to the man force?

Participant: Now married couples are there judicial officers, they are given same postings.

Justice MK Sharma: That is good that has to be , that could be done also because you see if not a post is available in the judiciary somewhere in the like you know motor vehicles

MACT or maybe labour courts something like that could be given. That percentage also has gone up I believe. That is why it happens mostly in that training only all of them get engaged. It happens you see when you are together you belong to the same avocation so naturally liking grows. Now about this seniority cum merit and merit cum seniority. So you wanted to say something.

Participant: that is when the vacancy arrives.

Justice MK Sharma: Prepare prepare for the examination.

Participant: They may not be able to prepare for the examination but they are very good officers their judgements are excellent. So just because they haven't prepared for the exam..

Justice MK Sharma; But can't they go on leave for about 10 days or so? No but that is again very difficult because you see on the basis of interview only we cannot promote a person. Giving accelerated promotion. There must be something in writing to show that he is really deserves it or he or she.

Justice Mohit Shah: can you not conduct the examination after the vacations so that they get some time to prepare?

Justice MK Sharma; these are matters that should be gone into adjustive. Actually I believe as you are saying and as it is pointed out after the exam probably it is possible the vacation.

Participant: The thing is since it is an accelerated promotion there should be put in at least 5 years minimum going by the rules. He is supposed to know about all the subjects that is how it is at par with... the examination you can't just say that he did not get time.

Justice MK Sharma: no he has a point, he has a point why I am saying so. Because you see when you are sitting in court you are dealing with particular.. there may be different things for example prissy writing now that is if he is not doing it here so he will have to have some idea how prissy writing is to be done, so a week's time or 10 days' time.

Participant: That examination is only multiple objective type question.

Justice MK Sharma: No but I I believe that is not the only way you see there must be some other things also to test his knowledge, his other I believe some sort of...

Justice MK Sharma: So you are the people who can advise on this you are facing this problem, you know about the the difficulties, so you are the best person to guide the Chief Justice on these aspects. So I believe you see they will try to walk out a model on the basis of the discussions today and then it could be circulated to you and then you can give your input farther if you want and then probably it could be circulated to the Supreme Court or the High Courts for implementation or their guidance. Not implementation guidance. Now you'll like to say something about the.

Participant: Regarding promotions it is maintaining seniority amongst the accelerated promotees the nominations and the regular promotions there is some issue the people person who is appearing for accelerated promotion gets selected but he is not aware that where he would stand in the roster because as the Shetty commission prescribed with the change of percentage of accelerated promotees from 25 percent to 10 percent, now we have evolved a 10 point roster, so the first candidate from bar is the topper. First candidate from the accelerated promotion is the second, then there will be 8 promotees from 65%, so the accelerated candidate who is second in number goes to 12 number in the seniority list.

Justice MK Sharma: No all these seniority, preparation of the seniority is also abided by the criteria, so if that criteria is applied and if you find that it is not working properly you have to change that policy and find out something which works, then we give a choice to the candidate whether you want to go for accelerated promotion or regular promotion.

Justice Mohit Shah: After both the list are available then we give him a choice.

Justice MK Sharma: No then you see if you find that this is not workable or this is working detriment to his interest then you have to change the policy and find out some other means as to how it could be accommodated. Would you like to say something because we are running out of time

Participant: I have a Question. When seniority list is there, a seniority list is prepared, it is going on for 4 5 6 7 years after that can it be change with retrospective effect.

Justice MK Sharma: No generally retrospective effect it is not done you see it is always prospective, change of rules so far seniority is concerned because a a it could give rise to the rights that are already accrued to him. But when you bring in the new rule it will it may affect

him. it will detrimental to him but still you can question if it is prospective because henceforth my right is affected today but there you see right is a a right should also be affected there because it is given to affect retrospectively so that right cannot be taken away which is already vested on him.

Justice Mohit Shah: Those who are already promoted on that basis cannot be disturbed.

Participant: But what is happening lordship in most of the High Courts while fixing the inter se seniority vacancies arising in that particular category before even entering into the service have taken into consideration.

Justice MK Sharma: This fixation of seniority is the most difficult, I have seen during my tenure also this you can never satisfy anyone. If you bring in a particular rule the others will say no no this is going against our interest. This is going to happen then you have to find out a rule or policy which is you see workable and is you see in the interest of all concern, general concern. Ya that's right. Ok Thank You Now we'll come to the next session unless you want to discuss this topic again. But I don't think we should discuss we can go to the next topic.

Ms. Nitika Jain: we'll take 20 minutes tea break and will be back by 11:35.

SESSION 6

Ms. Nitika Jain: Welcome back we will begin with the second session allocation and formation of benches I request Justice M K Sharma to begin with the session followed by Justice Mohit Shah.

Justice MK Sharma: This session the theme is allocation and formation of benches under the supervision of the Chief Justice. So as the theme suggests this is only about the constitution of benches in the High Court apparently so so far the in some of the High Courts you say roster in some of the high courts you say sittings and then allocation of benches also you say but largely it is the same assignment, different high courts have different expression for it. Now while constituting the bench the utmost importance is to be given according to me to the capability of the judge who is being assigned a particular type of work now mostly what is happening if you kindly look at the background the judges who have brought to the High Court as judges I mean they have been practicing as lawyers and by the time they are brought to the high court they have about say near about 20 years of practice and in the Cosmopolitan high courts those say for Delhi or they generally tend to specialize you know for example in Bombay High Court, Delhi High Court, Calcutta High Court they have original sided also and those original sides it is mostly the Civil cases and those lawyers who have been practicing on the original side and also on the appellate side on the civil they are mostly preferred along with because those are the lawyers who also do writ petitions there exposure there exposure is much more judges see them appearing but at the same time there are some lawyers who are doing very well and exclusively doing only criminal matters and there are judges there are lawyers only doing tax matters because in these cities it is possible to specialize and do well but in the smaller High Courts that may not be possible a person who is doing civil matters also does the criminal matters also tax matters I have an experience of almost on all sides as a lawyer. So therefore you see when they are taken to the bench they a tax lawyer knows only tax matters he has not much of an exposure on the civil side or criminal side so he must be initial stage he has to sit in a division bench to learn about the other subjects also because a judge cannot be a specialized judge that way it's not possible at least till now in India in other places it has become possible but not here in India all judges must do all types of works because you are rotated amongst the benches. If I am

doing when I came to Delhi for example now I had no exposure because I was practicing in the High Court exclusively so had no exposure on the trial courts but when I came to Delhi I had to do civil matters of The Original Side and I was not familiar at all with the you see the procedural part of it but if you have a neck and if you have a positive attitude you can learn everything. It takes only about 15 to 15 days to 1 month to learn about. I never you see practice in the company side in Guwahati High Court but when I came here after about 1 or 1 year one and half years I was put to the company side I had to learn and I told the bar openly that I had not much of an exposure on this side so I learn and then I'll start disposing of the matters and after about 15 days I could have a good grip over the matter so it is possible. So therefore this man management has to be worked out by the Chief Justice while constituting the bench and in that matter in that process the registrar general has to play a role apart from the senior judges who will probably assist the Chief Justice in making the Roaster. Now that is one aspect to be looked into. Then the next is court management so how a judge should manage the court he must be well equipped to be able to manage the court and particularly the case flow management that is the expression being used case management and case flow management, so these aspects have to be learnt by the judge concerned who is appointed fresh as a judge from lawyer or coming from district courts also he must learn all these areas as to how to handle cases and how he can contribute to the flow of the case for the disposal of the cases how can he help and assist. It may not be possible to say a person is sent to a particular roaster on particular subject only for 6 months now he can only help in early disposal of the matters but he may not be able to dispose all cases all by himself it's impossible. so he must assist and help in the flow of the case that is in the process of disposal of the case so this is one aspect which is also to be kept in mind while constituting the benches formation of the benches and I believe as registrars we have been doing that guiding the or assisting the Chief Justice as to how a Roaster could be made. Now there is one area where I believe we have to now think and we must discuss with the constitution of the commercial courts what is going to be a the the outcome, how do you handle that. If you look into the definition of commercial courts in the given in the Act practically everything is included within the definition of commercial courts except for those partition matters probably, almost everything dealing with the corporate side and commercial everything has come in from the sale of goods act to IPR, arbitration everything will come in within that and

how do you handle them how do you manage them? Now who is going to manage because there has to be a original side then and appellate side also division appellate division and the commercial division and in some places it will be the district courts who will be exercising these powers. Of course in some of the mofussil courts probably the commercial cases may not be many but in almost all the district towns at least commercial cases will be there. Now where you have a specialized courts now there is a demand for so far as constitution of specialized courts of intellectual property rights are concerned. After globalization you see there is a thrust on these matters there is a focus. In all other countries you see they have a specialized court for IPR even in China and all the European countries they have specialized courts so far intellectual property rights are concerned there are specialized courts so far arbitration is concerned. Whether we should have specialized courts also in India exclusively 1 judge doing only IPR matters for 3 years after he gets some training on IPR but that I believe that definitely there are advantages but there are disadvantages also in having such courts because that particular gentleman who is manning that specialized courts for 3 years or 5 years you will have no exposure to the other branches of law whereas a person who is dealing with Commercial Courts it is also probably for 2 years Indian Act I think or 3 years 3 years probably, now he will not have any exposure to the other branches for criminal or taxation, Income Tax or sales tax he will not have any opportunity to deal with those matters so whether we should have specialized courts or not there are so many areas of for example arbitration, IPR, tax bench, commercial courts. Now whether these should be made specialized courts or not? Commercial courts off course now is a specialized court whatever is it within the definition will all come to the commercial courts but that is not specialized courts in that sense. They are they will be dealing with other matters also along with commercial Court matters. But when you create a bench for dealing with the intellectual property rights, arbitration separate benches altogether and they deal with that only for about 3 years then it becomes a special courts. As of now Delhi High Court for example I know Delhi High Court so I am giving a reference to Delhi High Court now intellectual property rights and arbitration all are on the original side. The particular judge is appointed on the original is given the original side for about 6 months and after every 6 months the roaster changes some other judges would go so it cannot be in that sense not a specialized Court but a particular judge is dealing with similar type of IPR and he definitely adds to his knowledge

his information. So these are areas you have to consider within this area and there are other factors such as which are the urgent matters which will get priority over the other matter. If it is a death penalty matter in all high courts it gets precedence, if it is it's a habeas Corpus it will definitely get preference, every High Court has that rule. Now demolition of property or eviction whether they should get priority or they should not get priority? Human Rights violation of human rights so these are matter sometimes matrimonial matters also becomes urgent matters at times. So therefore bail matter, anticipatory bail matters are urgent matters otherwise this becomes infructuous. So therefore which are the urgent matters so we must have a common list uniform list and mentioning this is another aspect whether mentioning should be done only before the Chief Justice's court as is done in the Supreme Court and in some of the high courts before the Chief Justice only or mentioning should also be done to the benches who is hearing that matter at that particular point of time, that is the best because Chief Justice would not know whether this should get priority or not but off course it does not mean mentioning and then listing it does not mean it doesn't mean that it will be hard court definitely while handling the matter will decide whether it should get priority or not that is there but if it is mentioned before that judge it saves time. So that is one aspect which you'll also think about and so I believe... You want to add

Justice Mohit Shah: Thank you My lord very often it is said because in our country you know the Chief Justice of a High Court is supposed to do full time judicial work and then full time administrative work, in most other countries the head of the institution, the Chief Justice chief judge of that particular court is not expected to do full time judicial work so he is able to spare sufficient time for administrative work but as you all know in our country the Chief Justice does full time judicial work from 11 to 5 or 10:30 to 4:30 and then also do administrative work and how much time or attention can a Chief Justice devote to the judicial work that is one issue therefore they say that a Chief Justice of a high court is not known by the judgements that he gives whether he gives landmark judgments or he shows number of disposals etc, the Chief Justice's performance is generally to be assessed on two parameters one is the recommendations that he makes for elevation to the high court very important and secondly the roaster that the Chief Justice makes, it's very important because when I went to the Bombay high court there were 65 judges

the principal seat of the high court two benches at Nagpur and Aurangabad and another seat of the high court at Goa, fortunately for me I had the assistance of Mr. Mangesh Patil who was then the registrar judicial so when I sat down to prepare my first roster I was almost feeling that it is like my examination but he helped me to such an extent that I thought that I fared very well like I came out with flying colors when I prepared my first Roaster then I thought maybe the second roaster will be easier because now I have got the experience but then I realized that preparing the second roaster also I had to take as much care *toh* every roaster preparation of every roaster I took it as an examination and I was very fortunate and having Mr. Mangesh Patil as my registrar judicial for 3 years so when question last cropped up as to who should be the RG because four of my registrar generals have been elevated 4 4 of my registrar general have been elevated and he is my fifth RG I wish him equal good luck. Now while preparing the roaster so many things have to be taken care of as far as Bombay high court is concerned Bombay, Gujarat the roster is prepared changes every 8 to 10 weeks. In some High Courts it is for one year, in some High Courts it is for 6 months but in the Bombay tradition is that the Roster after the Christmas vacation the roster will be prepared which will be enforced till middle of March then second Roster from middle of March to summer vacation, third one from summer vacation to around 15th August, 4th roster will be from 15th August to Diwali vacation and then 5th will be from Diwali to Christmas which is off course a very short sitting about 6 to 7 weeks. So between Diwali and Christmas I think it's only about 6 to 7 weeks, every two months every two months. So for the judge it the Chief Justice it becomes almost a regular exercise, there are advantages and there are disadvantages. I think 8 to 10 weeks is a little too short because by the time the judge settles down in his assignment and he gets the key, moreover in most of the writ petitions and other matters civil matters we generally issue notice, we don't straight away admit the petitions. So by the time you issue the notice the other side is served and files the affidavit the roster changes. So in many High Courts it is about 6 months' time, whatever is the tradition of that High Court the roster has to be prepared accordingly. Then while preparing the roster of course the Chief Justice has to take into consideration, so the RG and Registrar judicial will point out the pendency of matters in different branches. Now when you consider pendency of matters it is not only the total pendency in that criminal appeals but how many matters are pending for the admission stage and how many matters are pending for final hearing. So we

have to give more priority to the admission matters that at least the no matter should be left which is not even considered for admission stage so admission pendency has to be taken into consideration. Then the third parameter is the specialization as his lordship just now pointed out that now we have this commercial courts, commercial benches, commercial divisions of the High Court that act as provided for specialization even before this act came into force in Bombay High Court we had we use to prepare roster keeping in mind that the requirements of the commercial matters so 1 judge for arbitration 1-1 bench for income tax 1 bench for indirect taxes, one bench for company matters etc. We had to prepare the roster accordingly keeping in mind the specialization. Now this is as his lordship also pointed out that there are advantages and disadvantages of specialization the advantages obvious that the judge he knows that particular branch so well such an expert that he'll get good speed in disposing of the mattress. The disadvantage is that he does not get exposed to the other branches of law and it is not only disadvantage to the judge but the bar if you just ask the members of the bar they will say sir why are you changing the roster if they are not happy with a particular judge or a judge is very strict. It so happened that I had posted I had given assignment to one particular judge because of specialization and he is specialized because of the specialization that business was continued with him for 1 years and at the end of the year the members of the bar would come and request me sir please change the roster he has been in charge of this assignment for the last 1 year and you know there are very often more than the merits of the matter the temperamental issues also.. this perception so they will say that the judge gets very angry he gets annoyed with the lawyer, he get impatient because if he is dealing with the same branch and he deals with the same lawyers you know then there are some times likes dislikes etc, those perceptions are there, like and dislikes may not be there but that is a perception which the lawyers have. So all this has to be taken into account, so I have found out that when there are advantages of specialization we cannot overlook them. So since in Bombay High Court there are 5 rosters in a year as I pointed out so the judge who is having specialization can be given that subject 3 times in a year but two times in a year he can be given some other subject, so he gets exposure to the other branches of law, the lawyers also get a little respite that with another judge with a change of judge there can be different perceptions etc. So this thing should be kept in mind that a judge who is having specialization we should take the advantage of that specialization, but at the same time to see

that he does not get monotonous that is a monotone is a big problem for the judge once in a while he should be given some other assignment also so that is very necessary to keep in mind. Now another issue is when we have writ petitions now most of the high courts have you know writ petition as the major litigation criminal appeals and the Civil appeals they are there civil litigation and criminal litigation but writ petitions take most of the time of the court. Now while giving giving assignment of writ petitions what should we do should we give year wise or again there should be a sub specialization subject wise act wise so in Bombay High Court earlier it used to be year wise that writ petitions of 2014 will go to one bench, writ petitions of 2015 will go to another bench like that then I found that ultimately they deal with the different acts so giving the assignment year wise did not make much of a sense so I then made it Act wise or the subject wise topic wise, so all matters under the municipal corporation and the municipalities act would be given to one bench irrespective of the year that means all years they would take up old matters or new matters. Similarly land acquisition matters and other land matters would go to another bench, then service matters and Labour matters, writ petition against the orders of the Administrative Tribunal and Maharashtra Administrative Tribunal they'll go to the third bench etc. Now this is the advantage was that it was advantage to the judge for specialization the advantage was also to the lawyers because a lawyer who is specializing in service matters he does not have to or labour matters does not have to run to three four courts, he can attend to one court because all the service and labour matters will remain with one judge one bench. Then in Bombay High Court we have this we have rules made by the government, an act made by the government that all 226 petitions writ petitions are always placed before a division bench and article 227 matters are placed before a single judge. So the advantage is that in matters under article 227 there is no further letters patent appeal so those matter are heard by single judge the 226 petitions are heard by division bench so there is no question of any letters patent appeal. Of course now latter's patent appeal are completely abolished in Bombay and Maharashtra and Goa so there are no letters patent appeal there are only appeals against the orders passed by a judge on the original side of the high court so in a suit suppose there is some order passed it is liable to be challenged in an appeal or in a company matter or arbitration matter appeals are there but otherwise from article 227 petitions there are no LPS, 226 petitions also there are no LPS of course the matter go before division and therefore there is no even possibility

of any letters patent appeal so this is how the subject matters are distributed and the registrar general and the registrar judicial have to give a lot of assistance to the Chief Justice pointing out that which bench is disposing of how many matters because it is very necessary to know for the Chief Justice to find out where the pendency is more how many matters are being daily circulated, so I always took the assistance of the registrar judicial to find out sometimes what happens is that somedays the bench takes up admission matters some Thursdays year marked for final hearing etc, so instead of asking for daily institution and daily disposal what I was doing was that I used to take figures of Weekly Institution and weekly disposal that gave a more fair estimate of the institution as well as the disposal Matters by the judges. Then disposal at the admission stage and disposal by final judgement that also use to help me because we I found that there are some judges who are very good at disposal at the admissions stage so it is so where the admission backlog is heavy that bench can be assigned that that particular assignment and there are some judges who are good at final disposal Stage So when full bench is to be constituted for matters required to be assigned to a special division bench I would keep in mind that this judge is good at you know giving patient hearing analyzing provisions of law and give a detailed judgement so the services of those judges could be utilized for full bench at those special benches. So these are the broad considerations then of course the priorities are to be given now as lordship pointed out senior citizens matters or matters regarding maintenance to be given to women. Now we have also evolved special third category was priorities Supreme Court expedited mattress that also calls for priorities and that also...

Justice MK Sharma: many of the High Courts don't give priority, don't give priority despite the orders of the Supreme Court. I found out some of the High Courts who says...

Justice Mohit Shah: including Bombay High Court we have this difficulties of shortage of judges and heavy admission backlog, they did not have sufficient time for final hearing.

Justice MK Sharma: They felt as a involuntary interference in their point of view.

Justice Mohit Shah: So these are some of the broad issues. Now we would request for your suggestions or queries.

Justice MK Sharma: Yes! Any suggestion from your side. Any one of you can please raise your hand and about the constitution of the bench, giving priority and then say in your High

Court whether there is an appellate provision from writ petitions and if you have original side naturally there will be appeals. So far Delhi High Court is concerned I know of the original side here is the suit and then thereafter an appeal before the division bench it is called FAO i.e. first appeal origin, so that nomenclature indicates as to what is the nature of that matter. Similarly writ petitions as against all service matters against educational institutions or whatever sort of service matters all are taken to division bench, it is called writ appeals so nomenclature could be different some of the high court it is letters patent appeals for all these appeals for example all these appeals. So what is your experience on that if you have anything to say you can add?

Participant: We also take into account requirements of individual judges who can get along well with which judge while sitting in a division bench. That is another aspect which we always keep in mind.

Justice MK Sharma: *Haan* that is true of course unless the bench is quasive it cannot function well. I know of an incident there were two judges it was initial period of my judgeship I came to Delhi High Court and then I heard about it I had not seen it myself or experienced it myself what there two judges both are very strong minded judges, now on the on the very first day they started quashing and then you see when sit that side the other one is this side he'll look to this side and other one will look to this side, they will never come to any compromise or any. And it created difficulties and Chief Justice had to change the bench immediately. So you are right 100 percent there has to be some compatibility but you see sometimes again you see if both are strong judges sometimes it is better because then you see the lawyers feel happy lawyers feel happy because you see they can put through there otherwise if the the the junior judge goes along with the senior judge always you see they don't like that you have to exercise your own independent mind that sort of so judges are supposed to be working independently bold enough and if a particular case deserve agreeing with the senior judge you have to agree and there is no other way out also. In my career for example I had no dissenting judgement whether sitting as a junior judge or as a senior judge I never had any dissenting judgement so far, I mean till I retired from the Supreme Court except for one where I had to differ from the views taken by Justice Sirpurkar in one election matters but except for that I had no dissenting judgements so far. So it's all depends how you look into it and you see when you start sitting with a particular judge you try to develop a

rapport with him because every judge is a human being after all and the perception is always the same, legal issues you look at the legal issues in the almost the same manner as he does but you are hundred percent right so that there has to be some compatibility between the two judges otherwise you see the lawyers will be aggrieved. So this is right, yes you wanted to say something.

Participant: Lordship more often judges elevated from the bar they would be specialized some would be doing exclusively service matters, some company matters, Is it a good idea to utilize the services during their career solely in that field?

Justice MK Sharma: I'll say no because you see when one person is appointed as a judge he is not appointed as a judge of that particular area, he is appointed as a judge in all other areas and let me tell you if you know one branch very well there is not difficulty in picking up the other branches. As I said I did not know anything about the company law when I became a judge when I came to Delhi High Court but within 15 20 days I picked up, the only thing is you have to have a positive mind and you have a you should have an attitude of learning from the lawyers.

Justice Mohit Shah: Justice Desai joined the Judiciary as an assistant judge then he was promoted as a district judge he was direct Recruit district judge, so he had done only criminal matters and civil appeals when he was elevated to the high court after sometime Justice Bhagwati gave him company matters, he said Chief I have not done any matters company matters earlier *toh* he said no no you will be able to do it, so for one month he would grant adjournments to the lawyer but after 1 months he was ready and he became one of the best company Judge.

Justice MK Sharma: That happens but you are also right a person who is has specialized in a particular subject as a lawyer so therefore you see my view will be let him do for 6 months that particular roster where he has specialized and for the rest six months give him something else. Say for example a person who was doing only service matters as you have seen now he can very well go to the original side and do the original side civil suits easy there is no difficulty except for recording evidence that part he can definitely do Civil work also. There is some similarity.

Justice Mohit Shah: But the transition can be made smoother suppose as a lawyer I had practiced only on the civil side now if I am assigned a criminal assignment given a criminal assignment as a single judge I will find it difficult so initially if I join as a junior judge on a criminal division bench then I pick up some criminal law and then if I have to sit as a single judge it will be a smoother transition.

Justice MK Sharma: No but there also I have my own opinion now for example I was exclusively in the High Court, now I was mainly dealing with the writ and the service matters and all other like matters, now criminal matters also I did because there you see in small High Courts you cannot have specialization so I did only the appeals not bail matters so when I went to Punjab after about a month of my elevation as a judge in Delhi sorry Guwahati High Court I was sent to Patna High Court and Patna I was given the criminal bench bail matter, so bail matters you see you don't need any its all practically on the basis of the facts available you don't have to exercise your mind that way in the sense legal principles or other things except for some. But there you see I did not enjoy the work alright but I could handle the bail matters also and so far appeals are concerned it is like any other civil suits only, look into the evidence and find out what is need. So therefore according to me if you know one particular subject well you know the other subjects also and if you are dealing with one particular roster next time you can deal with any other roster also but for initially as I said about month or so you may have difficulties so if you have a roster for six weeks by that time he learns he has to go out of that, so my view is at least for 6 months he should be there so that the cases he can go along with the cases for some time and the lawyers will also be happy.

Justice Mohit Shah: I think the position of the Chief Justice is like that of a captain of a cricket team he should have some specialist batsman, some specialist bowler and some all-rounder, so as many all-rounders he has he'll be happy.

Justice MK Sharma: That's right

Justice Mohit Shah: So...

Participant: So But a person will be able to do better if he is given the subject that he knows well.

Justice MK Sharma: That is there so that is why I said six months given that, six months utilize him in other because he has to learn in other areas and you never know he might have been specialized in service matters but he may become good criminal lawyers later on criminal judge later on or maybe civil side judge.

Justice MK Sharma: that is one aspect you are right 100 percent yes I know about this. In Delhi High Court also it is there the judges who are elevated from the district judiciary they are not given writ petitions immediately or civil revisions but civil revisions also... faster than 2nd appeal..

Participant: Yes My lord

Justice MK Sharma: But second appeals also could be disposed off these days, the question of law you have to see that and dispose of the matters although they are very old and so nobody wants to touch them and that is the difficulty. Now so far your case is concerned aa I mean your suggestion is concerned now it is true that those judges have never had any exposure to the writ petitions Art 226 and you see 226 is definitely is a different area altogether, there you see something more than what you see is that perception is necessary. So therefore they are not given writ side but they can very well be given writ sides so far service matter is concerned, municipality cases are concerned because you have done municipality at at that forum municipality cases also had come to the district court, so you have done those so writ petitions also could be done but you know for example contract now what is the scope of judicial interference, Judicial review? Now those one has to learn so if he sits with a judge for some time sitting in a writ court he would learn from there and there are judges who are doing very well on the inside also there are cases doing very well, so you know this is my experience. Now when I was the Chief Justice of Delhi High Court now I received some complaint against a particular judge that he is not sitting, he is not interested toh I called him, the judge otherwise was very intelligent and he was doing very well as a district judge one with most reputed judge, so I called him had a discussion tried to find out as to why he is then he told me that see I have reached the Pinnacle of my life because I am retiring after 2 years and I cannot Aspire for anything more than what I am today so what is the use of working that was the attitude of that judge toh I told him one thing that look to so & so he is doing very well he also is similarly placed with you he is also retiring another 2

years' time but why is he working because he wants to show that in the high court also he was as good as the district court and then he is also thinking about his future that if he is recognized as a good Judge in the High Court he will get number of arbitrations or some other assignments. *Toh* he understood that so that that is sometimes the attitude of judges coming from the district court but that is unfortunate that should not be the attitude because you keep on learning every day and that learning and the knowledge would help you in future for getting something else but you are right I would say that they should not be utilized but there are number of areas on writ side where they could be properly utilized.

Participant: Specialized judge if he would pick up the other branch I think this judge also from the beginning we should appoint that there be no discrimination between this judge or any other judge.

Justice MK Sharma: but but no there are some there are some areas were probably you will feel unhappy say for example if he is elevated and he is put to the tax writ you'll at a loss, you'll be at a loss direct tax or indirect tax whatever, now indirect tax is also writ petitions.

Justice Mohit Shah: but I am happy that the national judicial Academy conducts seminar and workshop for the newly appointed newly elevated judges, high court judges, that's a very good program.

Justice MK Sharma: And it is necessary you see when you see you have evolved a policy of giving training to the newly recruited district court judges why not to the high court also because they are also being elevated they have to be accustomed to the environment, they have to be accustomed with the happenings and functioning of the High Court so how it functions, what are necessary for a judge, how a judgement is to be written, what is to be studied?

Justice Mohit Shah: And a lot depends on the senior judge with whom you are initially sitting.

Justice MK Sharma: Ya that is the most important. The first sitting must be with a very good judge who'll be able to guide you teach you as to how to become a good judge.

Participant: If a service judge who is elevated as a district judge to the high court he is getting just 2 years so i think there is no point in making him sit in the company law.

Justice MK Sharma: No that is true, given whatever he enjoys, give him criminal appeals or something like that whatever he prefers and now see while constituting the roster sometimes you have to consult your brother judges also even junior judge also that I am going to post him in such and such branch what do you have to say, you have any... sometimes it has to be done because he may not be happy there. So instead of changing you see in between find out from him whether you'll be happy to sit in that particular that could also be done not that it should be done but it could be done.

Justice Mohit Shah: sometimes judge who is sitting as a single judge has so much workload that he has many judgements pending, then again continuing him as a single judge in the same assignment he may find that he doesn't get time to dictate judgements so once once I found out that a judge had many matters pending for judgements reserved judgements so I would then ask him to sit in the division bench as a junior judge so he can relax in that assignment and finish his pending work complete complete his pending judgements.

Justice MK Sharma: But to be effective in the division bench also you have to read and prepare because you have to assist the senior judge if not anything else

Participant: In most of the High Courts the single judge matters are old in numbers. I am concerned whether it could be ...I think one or 2 of the division bench could be for a short duration which could be assigned single judge matters and arrears.

Justice MK Sharma: No single judge benches to be constituted looking at you see the the performance of the concerned judge a judge who is good in disposal, he knows the subject well if you put him there you see disposal will be more and then you see so far the judgement would also be good so there may not be any possibility of interfering that in the appellate side also, so that could be looked into that so and so so and so are doing very well so let them handle the single bench roster because it is always seniority on the basis of seniority only division benches are constituted so if he is a junior judge he could be given those benches and he can dispose off disposal rate will also go up higher and then you see judgement will also be good so that there is no interference of the division bench so that I think is the best way to handle. This is a you see constitution of bench is very very important relevant matter so far high court administration is concerned, the bench will have to be and then you see the second aspect, now what I have found is particular bench has no work the

court rises at 11:30 12 o'clock and as a result of that what is happening is the second judge he has about 80 cases in his court. So this should not be happening you see it should be equally distributed to all of you must find out first from the computer as to in which area or which subject what how many cases are pending. There has to be some sort of co relation with that, in some of the High Courts you must have seen in your high court that particular bench has number of matters is sitting up to 5 o'clock whereas the other bench is rising at lunch time or so. It's happening in your high courts or no?

Participant: Happening

Justice MK Sharma: Its happening and that's regular one two days its fine sometime he may not have cases but if its happening everyday then somewhere you see something will have to be done.

Participant: Sometimes judges themselves express that there is no sufficient work in their court.

Justice MK Sharma: haan that's right some other matters could be brought into some other areas could be brought in and computer always helps you, you know how many cases are pending.

Participant: some judges instruct that they should not to put more assignment....

Justice MK Sharma: Then put more admission matters to him.

Justice Mohit shah: Sometimes in many high courts the judges say that it is a tradition not to ask for any particular assignment or not to make any grievance about assignment but therefore the Chief Justice and the registrar general should be able to get some feedback from the judge whether there are too many matters or too few matters because if the judge on his own may not like to say anything so then we must find out from the judge.

Justice MK Sharma: No most of the judges they don't go to the Chief Justice and ask for a particular roster that is give me this roster, there are cases yes but you see and then this Chief Justice takes a serious view of that many high courts where it is done but I believe the Chief Justice himself could consult some of the matters.

Justice Mohit Shah: Sometimes judges could convey through the registrar judicial also.

Justice MK Sharma: And if you find that he is not able to dispose off Chief Justice can always call him and find out the reasons as to why his disposal is less or what is his difficulty and in those matters you see the as I said the Registrar general are the eyes and ears you have to tell the Chief Justice that this is the he is not been able to dispose off because you get the disposal list every day or maybe within two days you can always find out as to what is happening in particular high court so that is always possible.

Participant: Sometimes there are particularly sensitive matters when the judge passes some remark, we had a matter where he passed some remarks against the prosecutor.

Justice MK Sharma: There are many judges who make adverse comments about the subordinate judges also which is very unfortunate. You see they should not be making such there are so many decisions of the Supreme Court also.

Participant: Sir what I advise is the Chief Justice may call him and advise him not to...

Justice MK Sharma: haan that's right then thereafter you will at least think twice before making such observations.

Justice Mohit Shah: Sometimes some judges are in the habit of making observations against the registry officials. Now it should be brought to the notice of the judge that these are the powers of the Chief Justice under article 229. One matter we had to I constituted a special full bench of the three senior most judges Chief Justice and two other judges pointing out those judgements of the Supreme Court taking the view that under 229 it is the prerogative of Chief Justice and all that so then that judge then realized and he stopped making such observation otherwise he'll say take action against this official, do this against that officer.

Justice MK Sharma: No infact..

Justice Mohit Shah: So at the most the judge can say that this may be brought to the notice of the Chief Justice.

Justice MK Sharma: Now there are decisions given in this your reading material there are some decisions given that the bar is exclusively of the Chief Justice roster maybe you can go through this also, you'll find light from that, listing of jurisdiction by the Chief Justice in respect to a particular matter before high Court judge and pray for determination, the Chief Justice has no authority to order to place an application file to recall an order dismissing the

writ petition before a judge other than the judge who passed the dismissal order. Now now sometimes you see number of criticism also with regard to Chief Justice withdrawing the case from roster of the brother judge and all that that should be minimum but then you see sometimes it is happening because of some...

Participant Sir what I...

Justice MK Sharma: so these are matters to be dealt with intelligently so that they say there is no.

Justice Mohit Shah: Once you all know Justice Chetna of the Gujarat High Court about that time he was the judge of the Rajasthan High Court he issued a contempt notice against the Chief Justice that why this case was taken away from my bench and the Supreme Court had to interfere to make those observation.

Justice MK Sharma: Even in Madras High Court I think there was some problem with regard to this almost similar type Justice Kannan, he made some allegations against the Chief Justice and all that ultimately the Supreme Court had to interfere. So these are matters which require very considerate discussion and now I found that Madhya Pradesh High Court, Is there anybody from Madhya Pradesh High Court? Host is not here alright, now come to you have this with you, come to Page 181 they have made a policy regarding the roster no this is rule High Court of Madhya Pradesh Rules Roster, now I have not been able to go through this extensively but this has given some idea about it and then allocation, listing of cases and cause list in Supreme Court now this according to me gives a very broad guidelines and I believe all the High Courts could consider this and see some of this could be used in there High Courts because I was see dates of adjourn matters, shifting of excess matters but these are offcourse matters relating to the judge concerned but if there is some guidelines I think it will definitely help, you may look into this it's a very broad ye running into several pages, so you can look into this and I believe that this is quite helpful. Have you looked into this? No? Now what are the fresh matters, when are to be, now in almost all High Courts fresh matters are taken up everyday

Participant: Yes

Justice MK Sharma: Everyday?

Participant: Yes

Justice MK Sharma: Now dates in adjourned matters, listing of regular matters, which are to get priority, all these are given, which are urgent matters, so you can probably use this see if something of these could be also done in similar line in your high courts.

Participant: We have a court management information system which takes over this listing of matters, fresh matters and pre admission matters, civil matters we have found that it should come before the bench at least within 7 working days and a criminal matter criminal matter comes in 7 working days and a civil matter comes within 21 working days.

Justice MK Sharma: See now say for example writ petitions you file today it can come for admission tomorrow if admission is every day.

Justice Mohit Shah: No if it is... listing mentioning is to be done before bench otherwise without mentioning also it should be listed within 21 days.

Justice MK Sharma: In Delhi High Court you see there pendency is about 70,000 still you see you file it today it will come up tomorrow or day after tomorrow maximum is 2 days, now I don't know other High Courts.

Participant: My lord next week, if application is made then it comes next day or..

Justice Mohit Shah: No this is only to ensure that every matter has some date otherwise advocates do not move for urgent circulation it will remain in the registry for 6 months so it is to see there are no unmark matters or undated matters.

Participant: The problem that we face is sometime judge gives a particular bench then he gives a direction that so many matters alone will be placed before..

Justice MK Sharma: Then here is a difficulty

Participant: Then that matter is not taken up and the time the advocate comes in with a file.

Justice MK Sharma: That happens that happens in the Supreme Court also because Supreme Court gives you see it is all computerized even if it is adjourned for two weeks it has to come after two weeks but there is an order that more than 80 matters should not be placed. Then what happens to that 81 onwards do whatever. So the order is that it would come up immediately thereafter whenever it is possible that sort of a... You see Supreme

Court it is possible but High Court it is not possible that way so the best way to do is this to root out everything, root out corruption in the registry, and root out corruption in the computerization also.

Participant: to give a fixed date

Justice MK Sharma: Bench clerk will have a roster there he'll go nagging as to how many matters are already there so he'll give a date which is convenient to the court and so the matter is bound to come up on that date and there can be no interference with the listings section nor with the computer that's the best way to do.

Participant: problem my lord is when circulations are granted at will irrespective of..

Justice MK Sharma: Circulation means?

Participant: Fresh Matters

Justice MK Sharma: no fresh matters are different I am not saying about the fresh matters which have already come into for example say now a fresh matter has come notice is issued in that so next day will be a date on this particular date this matter is going to come up so everybody knows about it. Fixed and these are all computerized, it won't know you see already I have 80 matters so he'll say no no I don't have a date.

Participant: That is not our problem (discussion)

Justice MK Sharma: No but I do not know whether this procedure which I am saying is more helpful for disposal of the matters or the system that is being followed. you can weigh and then find out which is more convenient and then probably advise to the that why not we do this so as to you know there are number of allegations in almost all High Courts I have seen that in the listing you can always manage and see its not possible to monitor everything either for you even for the judicial registrar judicial also not possible. So therefore what is how it could be stopped that's the only way if the date is given there is no question, the matter will definitely come up on that date.

Participant: If a date is given then at least be called and another date be given but if it is not called then the blame will be put by the advocates on the registry, they are deliberately not putting dates...

Justice Mohit Shah: One one possible solution is that suppose the judge has set not more than 60 matters so the 61st and 62nd and 63rd matter may be notified with an endorsement on the top that this matters will not be taken up and the next date of hearing will be this so that.. Otherwise some advocates what they manage to with the court staff and see that the matter is misplaced somewhere that should not happen.

Justice MK Sharma: No court registry, no see that no that that will not arise if the judge you see has the register he knows that I'm crossing 50 then he'll say that I cannot accommodate on this date at this particular day so you see there is no difficulty. Some changes that's right. Shall we break for lunch?

Ms. Nitika Jain: We'll take a one hour lunch break and after lunch there is a group photograph so you are requested to kindly assemble at the porch by 1:20 please assemble at the porch. Thank You

SESSION 7

Ms. Nitika Jain: Welcome back, we'll begin with the third session role in infrastructure development in high court and subordinate courts. Over to you Sir.

Justice MK Sharma: Have you got a copy of this. This commercial court see the definition. Section 2(c) kindly go through that heading, commercial dispute means, a dispute arising out of, If they're about 22 practically everything under the sun. So the high court is itself becoming commercial court. Everything everything. See what has happen is originally when they formulated they were only few. But for example, you know these various associations, various lawyers, lawyers forum they went and said that let this be also included in commercial forum they included all that. And so it has become very large. It's practically unworkable now. OK. All no now, immediately they have not said so. But we'll have to be at their one. No you see you see debt recovery tribunals the decisions there from come to the High Court. As of now. So those matters will come under the commercial court's division. They will be trying. So you see practically everything, so these eight courts.

Participant: value should be more than one crore

Justice MK Sharma: Haan that of course is there.

Participant: At least 5 to 6 courts must be there.

Justice MK Sharma: No you see. Arbitration, then. I.P.R. Intellectual property rights, banking, even recovery of recovery money recovery also, sale of goods Act say everything. This should not have been done that way.

Participant: insurance Issues

Justice MK Sharma: insurance also, everything I told you, anything to do with commerce. Put them in.

Justice Mohit Shah: Partnership agreement disputes also..

Justice MK Sharma: Partnership also, There are so many matters of partnership, different area. They can include more, that's right. So infrastructure development in High Court...

Justice Mohit Shah: Before we go to that I just want to discuss this commercial courts act says that the jurisdiction of the court will be where the subject matter valuation is more than

one crore rupees. So in Bombay High Court we had this problem that the jurisdiction of the Bombay High Court was for suits above rs fifty thousand fifty thousand fifty thousand. So the original side of the high court had Forty two thousand suits. Because small value suit also used to come to the High Court and we found it so difficult that the judge were busy only hearing the ad interim applications. Even the interim application would come after notice to the other side they will be heard after three years or so then we decided that something should be done and the jurisdiction of the city civil court was only up to fifty thousand rupees Mumbai Bombay city civil court. So then we persuaded the government that you raise the jurisdiction of city civil courts from fifty thousand rupees to one crore rupees. Initially the bar was also not ready but we said that under the original bill it was 5 crore rupees for commercial division so we are making it only for one crore so they agreed, so forty two thousand suits were to be transferred. Then we gave a draft legislation to the government. Saying that if you do it the your way it will not serve the purpose, suppose all the suits are transferred and the court has to city civil court has to issue a fresh notice, service of summons till take another four five years. Through in the law itself the draft that we give we said that the high court will give the next date of hearing in the city civil court. So we all notified all matters before the High Court give the next date of hearing before the city civil court and out of forty two thousand suits thirty six thousand suits came to be transferred to the city civil court. No no the date was given by the High Court as per the provision that the next date of hearing before the city civil court will be such and such date so parties were not to be served again with a fresh notice or summons. And within three years the city civil court could dispose off twenty six thousand out of those thirty six thousand suits and the high court was left with only six thousand five hundred suits so the High Court disposed of about three thousand five hundred of that in three years. So see how this management worked so well but that is the idea that the high value suit should be tried by the High Court low value suits should go to the lower court.

Justice MK Sharma: No actually the same thing almost happened in the Delhi High Court also, it has an original side so originally it was twenty thousand, pecuniary jurisdiction then you see it was increased to fifty thousand when I was a judge it was fifty thousand. Then a demand was made by the district courts lawyers that why fifty thousand value has gone up. So property prices. So we have nothing left in our courts. So make it one crore it was made

one crore, then thereafter the demand was for raising it to 2 crores after a lot of agitation and all strike and all that you see they had to bog down and raise the to two crores. So now the jurisdiction pecuniary jurisdiction of the High Court was 2 crores in the meantime this bill came and here it is one crore. So matters were sent there now come back again because this will prevail, Act.

Justice Mohit Shah: And there there also there is dispute about IPR intellectual property right matters, toh in Bombay we have made the provision in the Act itself that intellectual property rights matter will remain with the high Court irrespective of the valuation.

Justice MK Sharma: but there what they did you see we did not do that but there what they did they raised the valuation themselves, the parties they could always raise, they can always say no no the valuation has gone up so valuation has increased, the matters will be taken to the High Court. Now infrastructure development in High Court and Subordinate courts this is also very important, so far you see the administration of justice is concerned. Now there is always a criticism against the judiciary that there is undue delay in disposal of cases. Now if you look at the reason as to why there has been delay? To a large extent, it is because of lack of infrastructure in the courts. Now there is lack of adequate number of courts. And also other infrastructure. Now almost all high courts I have seen in some of the high court's where I was earlier judges, Patna High Court, Ranchi i.e. Jharkhand High Court now, in some place is the courtrooms were functioning from very dilapidated houses and in some cases I'm told that it was functioning from a toilet also. This is the position of the courtrooms in some of the areas. So and then Shetty Commission had given a report you probably all know about it that there should be a five year plan which is also given hear about that five year plan that in advance you make a plan as to what you are going to do just like our five year plan. So judiciary should also make a plan so far infrastructure development is concerned five years plan and they have made a policy of giving the money required for it. Earlier it was fifty fifty, central government would give fifty percent state government, now probably it has been raised to seventy thirty or something like that. Seventy thirty?

Participant: 90 percent

Justice MK Sharma: No Jammu Kashmir and northeast. Ninety and ten. So you must take full use of this. No but you see it is depending on the plan you submit. If the plan is more and that is approved then you get the entire money. Ninety percent.

Participant: Not like that, they have allocation of about 70 to 90 crores a year, a year for entire judiciary.

Justice MK Sharma: No you see that because MR. Molly when he was the Law Minister he had gone all over the country and he had also met the High Court judges in Guwahati where I was also present, now there he said You see this is five year plan and yearly they are giving a particular amount and for five years they will go on giving it. It's a Plan year. Now it is thirteenth pay commission, Is it thirteen? Fourteen Pay Commission also they must have year marked some money for the infrastructure development. Whatever you get you see if ninety percent you are getting from the the central government and ten percent is to be given you can always prevail upon the state government to get it. And so far other states are concerned I think it is Seventy and thirty probably seventy thirty something around that near about. So I believe we must take help and assistance of that and get the money for the development of the infrastructure. Now one is with regard to the now when you develop your infrastructure it is possible to develop it within the campus you have their maybe vacant spaces. And there was some suggestions that the old buildings may be demolished and in their place bigger buildings may be high rise building could be brought in. I don't know whether that is possible because where will you run you for example Bombay probably somebody told me that it is located in a very congested area. Now there is no scope of making a development there you'll have to go away from the hub and if you go away there will be strike by the lawyers. That's what generally happens when you go for an infrastructure outside the area even in the mofussil courts I've seen people don't want to go. I mean the lawyers they don't want to go they want to stay in that place and they stay there with difficulties, so you have to bargain with them you have to cajole them. And ultimately they agree in most of the cases they've agreed to go. So but then you see a commercial courts for example whenever you establish commercial courts you will be given the entire help so far infrastructure is concerned, construction of infrastructure under the commercial courts. So therefore you'll have to have buildings separate buildings for commercial courts. In all of your states you need to find out places and the lawyers will have to go because they

cannot say that we will not go to the commercial courts. So this is one way of so how to solve the problem? Now for example, now in most of the areas most of the court complexes I found that very poor toilet facilities. Most of the court complexes and even if it is there it is in a rotten rotten condition. Stinky and all that. And then there is no separate toilets for the ladies, Lady Lawyers, and the litigants. Then lack of sitting places for the litigants this is another area. In most of the high courts and the district courts I find it same position that I have gone to the position almost. Then drinking non-availability of drinking portable water it is provided drinking water is provided. But that is whether how far it's clean and portable is another aspect. Then you see court lockers which is most ignored and neglected area. Court lockers you see they are there like cattle mostly. Most of the. Now. It may have developed I do not know. I have retired from the Supreme Court about four years back. So might have developed in some of the high courts but when I was travelling I'm going to different high courts as a judge of the Supreme Court or Chief Justice I found that in most of the places the lockup is not up to the mark. So like that you know how many complex is district courts, I'm particularly on the district court. Now boundary all around, there's no boundary wall anybody can get in. No security at all for the judges. So these are the areas where I think you have to look into and make it and if you, if there is a will there is a way. Let me tell you this. Money is never a problem At least that is what I felt when I was in Delhi high court. One of the best infrastructures that the courts have must be in Delhi district courts. You go to any district court you find them as a clean spotless and with all basic facilities. But there also you see I had gone while I was Chief Justice there to Rohini Court and I found that lockup system is like just like cattle shed only, people are inside, no facility, nothing of this sort, no fan. Because it appears that they may commit suicide. Lot of... So these Infrastructure will have to be developed and developed I believe with the initiative of Chief Justice and the Registry and the state government never says no if the Chief Justice makes a request that's my experience. So therefore in some of the courts of course the courtrooms have developed the Courtrooms of the district court judges have developed and. Made good but you see chambers, all facilities and working library in the chamber. And then computer room, lawyers sitting room. Now they are also again the facilities available are not very good in most of the places. Then electricity supply without which nothing functions computer won't function. The judge won't be able to function. Even

the administration not go so constant supply of electricity must be made available at whatever cost.

Participant: Solar Power

Justice MK Sharma: Solar Power but again you see if it raining there will be difficulty in getting the solar power. I have in my campus where I stay the solar energy system. Now in the winter I don't get solar energy I have to put on a special ye. So there are difficulties Solar energy if you can utilize it that is the best. It's coming up well also. So and then you see some in some areas lack of proper budgeting facilities also is one of the reasons. Now even if you prepare budget money will come from the state government. Although you see the judiciary is generating revenue for the state it's a huge amount by way of court fee and all that but there you see we have to look to state government for all the help and assistance. So whether we should think of having revenue for ourselves. Of course registry's responsibility will be much more then and we'll have to have a finance division in the registry but whether high court can have at least some budget. For development of infrastructure for development of the urgent need. That could be one of the areas probably you can think. I'm not saying that you have to agree to be it's a. But you can think because there are advantages disadvantages pros and cons.

Now another aspect which needs some relook about the information technology. You have computers you have everything. But have you started digitalization of the records? That should be done immediately. Because why should records be kept. If you digitize them and keep it in ye, safe ye in a computer somewhere else. I think it is well protected but in most of the high courts it is not there it is only in Delhi they have started this process.

Participant: In Calcutta High Court there is the first phase of digitalization that was done 6 7 years earlier but second phase id yet to start.

Justice MK Sharma: You should do it because if you keep the records digitized records then you don't have to retain the records those are itself volume where will you keep it? Now space lack of space all over. Now these are some of the areas where I believe we have to... and now you see there are areas where because of enactment you see case load increases. For example negotiable instrument 138 it was amended and then lakhs of lakhs of cases will come. Now whether it should it should have been done or not is a different matter

but how do we meet with these exigencies, where is the infrastructure? When an act is made I believe they must be told that infrastructure should also be given simultaneously. As and when this is developed you have to give us separate. Similarly in the commercial court bills you see as soon as it is established you must get that additional infrastructure available to yourself otherwise you see how do you manage and the workload increases. You do not have the manpower you do not have the infrastructure how do work?

These are the difficulties that is being faced by the judiciary.

Justice Mohit Shah: Thank you my lord! Infrastructure is the basic need of our judicial system. I think some of you might have seen the latest issue of a week magazine weekly magazine which has the on the front page the photograph of the Chief Justice and saying that we have sixteen thousand judges but many of them have to sit under trees to dispense justice because we don't have the infrastructure and that was also my experience initially. When I came to Maharashtra we were traveling from Nagpur to Wardha I wanted to go and see that Vardha ashram, Gandhiji's ashram, so on the way to get freshen up we were looking for someplace for going to the washroom and we thought that there must be some court premises somewhere some court taluka, tehsil so we found out one and we went there and I found that The court building the actual court proceedings were conducted in a place which was meant to be a warehouse earlier and a corner of that warehouse was converted into chamber of the judge and a corner of that warehouse was a washroom. So with that pathetic condition then we took up the matter with the government of Maharashtra very seriously. As you know that government is very often very miser as far as the judicial department needs are concerned. But then we have to impress upon the government to see that this is also a necessary part of the development activity. You see that very often we find that judiciary, then the Pollution Control department pollution control board all these departments are perceived by the finance department and other government departments as if these are these do not earn many revenue for the government, so therefore only those which are revenue earning departments or those which attend invite the attention of the public like health or education department they should get the priorities. If we impress upon the Government that courts are also a necessary part of the infrastructure for attracting investment in business. I think that goes a long way in persuading the government to release more funds. Now if you have got a statement that has been circulated it shows that in the last about five years these

are the infrastructure projects which are in for court complexes. Eighty five court complexes completed Maharashtra. That means three hundred and eighteen court halls have been new court halls are constructed. Another sixty four court complexes are ongoing projects that means another three hundred eighty eight court rooms will be added and the proposals are sent to the government for another two hundred forty courtrooms so in all almost one thousand courtrooms new courtrooms are added by way of construction activity for the court complexes.

Justice MK Sharma: and what is the requirement as of today, requirement?

Justice Mohit Shah: requirement, we have a total of two thousand judges but there are enough court buildings so once this 946 is achieved then almost all courts will have sufficient accommodation court premises. So the funds spent are by now about almost more than eight hundred crore rupees have been spent, another twelve hundred crores will be spent so in All About two thousand crore rupees the government has agreed to spend. So that is also going to be a great addition to our infrastructure. Then next page you'll find overleaf the residential complexes so already two hundred twenty five residential quarters have been constructed. Another two twenty eight are ongoing projects and so another one hundred thirty two will be completed so we'll have another six hundred flats ready within a short time. So about one thousand courtrooms and six hundred flats. So here also the government has committed to spend two hundred twenty three crore rupees. So in a nutshell we are having nine forty six court halls at the bottom five eighty five residential quarters, one zero five ADR centers, thirty ADR centers and other 100 buildings. So when I left, the situation was quite satisfactory with the result that every day I was signing one file for a court structure or a residential quarter. So government is now quite positive and cooperative in extending the necessary help for which the registry the registrar general has to play a very important role, very often periodical meetings are required to be convened because what happens is the proposal is sent by the district judge then some revision is required some corrections are required, some modification is required. If you could do it by correspondence lot of time is wasted. So the best thing is have to see that the officers from the principal district judges office and registry have interaction at periodical intervals. So also the registrar general should have interaction with the government departments only then because if we go only by correspondence unnecessary time is wasted, so having made periodical

meetings at regular intervals like once in a month or once in two months is absolutely necessary to see that our infrastructure projects are taken care of.

Justice MK Sharma: Now you can please come to page 213. Now this is in relation to Mr. Sing's statement, kindly come to page two thousand thirteen. This is the allocation working group for department you can go through this. This you see broadly states as to what is the position with regard to the fund available. You come to two hundred fourteen you will find in addition the thirteenth Finance Commission has made an award of rupees five thousand Crores in the area of judicial reforms in a period of five years. Funds have been allocated to the state government for ADR, shift courts, using the existing infrastructure input legally. The government has also launched e-courts. Then constitution of working group and its mandate, identification of major issues affecting performance of this sector. These are these study report. And then you will find next page, 216 suggestions for improvement, these are broad suggestions given. Now here you see there is an urgent need to increase the number of judges and courts in a phase manner, now increase of the strength of the judges is now permitted because 10% is automatically given of the existing one. And see if you can show you, If you can show that you need additional judges for certain reasons if you give your if you send your suggestions to the central government central government agrees with it after consultation with the Chief Justice of India. In fact during my time you see the strength of the High Court was thirty five. So I said that thirty five is just nothing so far Delhi High Court is concerned so many matters. And that that about eighty thousand cases were pending. So I gave a suggestion to the Government of India that it should be increased by at least thirteen. Then there was a consultation between the Chief Justice of India and the Law Minister Mr. Bharadwaj was the law minister. And then one day the Chief Justice of India called me and I told him that these are the reasons these are the papers, so then he agreed with me and then he prevailed upon the law minister to grant additional post and about 12 posts, just see about 1/3rd thirty five was the strength, 12 post we sanctioned and now the strength today is about forty seven or forty nine something like that. So it is possible but one has to take up the matter with the Chief Justice and then Chief Justice with the central government. And the strength could be increased and once strength is increased necessarily the other infrastructure will have to be increased, co additional court rooms, additional staff, man power everything has to be increased. Now one of the suggestion here

you'll find is the creation of all India judicial service. Now this has been opposed by many of the states and the High Courts, South most of the Southern states they have opposed, Assam has opposed because I know on that day in the meeting I was also present, the law minister of the state opposed it. So many of the states opposed for various reasons for it and I think there are some good grounds also because the local language and the judge's who'll go from outside they had given the the example of the IAS services Now Indian Administrative Services officers don't have to work in the open. They work in their office. They don't have to deal with the public. How do they interact unless he knows the language? Recording of evidence is have to will have to be in the local language. How would you record it? He has to write by his own hands. There are so many difficulties. So I think it did not come through you drop the idea Mr. Molly wanted it to be enforced and he made a lot of endeavor but he don't succeed ultimately he dropped that. So one of the suggestion is here All India Judicial Services must be introduced and appropriate mechanism evolve for recruitment. Now next is D, Infrastructure development of courts need urgent attention. Then national and state litigation policy should strive to reduce the government litigation. This is one of the suggestions given so there are several please go through it I don't want to waste the time by going through all these.

Justice Mohit Shah: That is one issue about that thirteen Finance Commission of course now that period is over and the fourteen Finance Commission recommendations are before us. But unfortunately what had happened was that though the government sanctioned large funds almost five thousand crore rupees for the entire country, the government said that don't spend this for infrastructure. So Maharashtra was allotted five hundred crores of rupees or 450 crores of Rupees for morning and evening courts and we did not need that much money in fact the judges were opposed to the evening courts that as it is they were overburdened during regular court of working hours but unfortunately the Government did not allow us to use those funds for infrastructure projects. Fortunately now in the fourteen Finance Commission they have considered a little more realistically and they have allotted funds for the infrastructure development so we'll be able to spend it.

Justice MK Sharma: No no because the need is different for each High Court the need and the requirement is separate and different so therefore depending on the necessity only the money is to be allotted.

Participant: Sir morning and evening courts especially in the north east...

Justice MK Sharma: particularly evening courts, morning I don't know. Morning could be possible maybe people get up very early sun rays falls first on that region...

Justice Mohit Shah: Very unfortunate the central government had already allocated the funds, the state government used to the central government had given said that this this is the amount for said activity but still the state government would decide sit in appeal over your view.

Participant: As per the resolution in CJ Conference in 2015 My Lord that unutilized funds permitted to be utilized for other purposes.

Justice MK Sharma: What does it say? Kindly give us idea about it.

Participant: page 269 my lord

Justice MK Sharma: No what does it say? Give us in a nutshell.

Participant: Infrastructure development. Column two 2nd page, 269 Sorry 269. Sub section 2 my lord. Unutilized funds year marked for morning evening courts to be permitted to be used for infrastructure and establishment of additional permanent courts like fast track courts etc.

Participant: We started this magistrate courts in Kerala, 56 courts temporary magistrate's courts.

Justice MK Sharma: temporary magistrate courts dealing with what? The first class magistrate?

Justice Mohit Shah: But the resolution passed by the government never agreed. The government did not accept this.

Participant: the government had its own guidelines, all non-infrastructure funds only could be re appropriated towards non infrastructure related requirements.

Participant: My lord one of the problem is ministry of Law and Justice department of Justice they have... none of them are judicial officers they are from railway they are from IT, they have limitation that they know nothing about the requirements. I think this can be taken up by the Supreme Court.

Justice MK Sharma: I think this could be one of the Suggestion.

Justice Mohit Shah: Just as in the state Government the law secretaries are always from the judiciary.

Justice MK Sharma: Ya that's right, here also he belongs to the Judicial service but not the regular service but.

Participant: The director general may have four five officers in the Ministry of Law and Justice. What would a revenue officer know about? What would they know about our requirements?

Justice MK Sharma: Now what you are referring to this. Why was it so?

Participant: My lord suggested by Hon'ble Chief Justice my lord during the last conference held with the chief secretaries and other secretaries my lord they they said the consent of state government and then response my lord.

Justice MK Sharma: No have they given the response or not? Not yet?

Participant: Not yet my lord

Justice MK Sharma: No that has of course to... no see and there should be provision you see for interchanging the unspent money to be utilized in some other program and that you see that power should be delegated to the Chief Justice of the High Court because Chief Justice of the High Court will definitely be cautious in the you see diverting funds and wherever he finds it necessity, urgent necessity then only he'll do it. So I think that he should be empowered to do that.

Participant: The power of appropriation is there.

Justice MK Sharma: Is there so then in that case, what is the difficulty?

Participant: But this was with this rider for 13th finance, non-infrastructure grants could be used only for non-infrastructure and infrastructure only for infrastructure, project maybe or

head may be different but from non-infrastructure one could not go to infrastructure that was the rider.

Justice MK Sharma: But non infrastructure also you need to have lot of facilities available say for example aa aa you see these information technology development that will be infrastructure or non-infrastructure?

Participant: You may surprise they say this is infrastructure.

Justice MK Sharma: It is infrastructure? How is it infrastructure? It is development of the... Alright if man power could be infrastructure...

Participant: So many letters were written for clarification from the state government and the clarification were never given as to how the money can be...

Justice MK Sharma: So your suggestion is that two joint secretaries should be there and before allocation of the funds by the particular governments separate governments should be consulted so that you see they can about their need and requirement and money can be allotted that way.

Participant: Registrar General can be...

Justice MK Sharma: Now as you rightly point out that in the North eastern states there is no possibility of having a morning and evening courts and you see the pendency is not that also so as to have this.

Participant: We could use that money for development of..

Justice MK Sharma: And wherever that evening courts have been constituted what is the result end result of that? Has it improved?

Justice Mohit Shah: They were successful only in Gujarat but now it is discontinued everywhere at the last Chief Justices conference it was decided that it is not reasonable to place such excessive burden on judicial officers, they work full time during regular court hours and then over and above they are required to do that.

Justice MK Sharma: 2a High Courts will review such courts and continue such courts as are satisfactorily and effectively functioning and discontinue those not functioning. They are bringing in that probably.

Participant: 6 also my lord

Justice MK Sharma: 6?

Justice Mohit Shah: But that is a resolution at the Chief Justices conference but the government does not pay heed to all this.

Justice MK Sharma: No they will not they will not allow the power to do away from it.

Participant: In my High Court they have given.

Justice MK Sharma: They have given?

Participant: Even Madhya Pradesh they have given.

Justice MK Sharma: Government Madhya Pradesh has given. What about your state? Karnataka not given?

Participant; No they have given.

Justice MK Sharma: No but basing on that guideline they can give this power.

Participant: In the budget, while creating a budget heads from the measurements if we create sub heads that we give some money to every subheads, like you say 10000 it is too hard but if we say this is for 1000 this is for, this is for so we have experienced that we have put for minor constructions here and there.

Participant: 14th finance strict guideline is that we should have a court premises, rented premises at the rate of 10 Rs per sq. ft.

Justice Mohit Shah: Bombay you can't get...

Justice MK Sharma: No first you see the court complexes should have its own land. Why should it be in a rented place Number 1? Most of the courts are in rented ye lease property. Now of course lease property you see some of the courts that is the you know tribunals and all they are functioning from the rented premises that is fine but why should the regular courts function from rented premises the government should provide land even if it is outside. The government should be called upon to provide lands and then acquisition of land is itself become a problem now.

Participant: It is very difficult to find land in place like Kerala.

Justice MK Sharma: No you have lot of lands but those lands are lying unutilized.

Justice Mohit Shah: Problem is most acute in Bombay. In Mumbai government is ready to give funds but there is no building available where courts can be expanded.

Participant: In city that is the main problem if land is available where the courts can be expanded but court building is to be shifted own building but lawyers oppose the shifting of the courts.

Justice MK Sharma: Shifting of the Courts, that's everywhere.

Participant: Especially in Howrah, Howrah court complex is near Howrah station government has given a big land it's on a highway, one side of highway but they won't move.

Justice Mk Sharma: they would not move this is in the mofussil towns also I have seen district courts when they are asked to shift they won't shift, then bargaining with them give them better space and all that then ultimately they. In dibugarh that is in Assam there is a court building you see which was the house constructed by the British, now it has been functioning like that with all dilapidated condition sometimes the floor coming down and all and a letter had come from UK form London from the home department that that building has run out its time that should be demolished and new construction should be made at its place but you see the government also wanted to demolish that and construct a new house there so that it could be modernized but if lawyers won't agree so even today despite that warning from British government it is functioning from there only. But now off late they have agreed to go out in nearby place. So this is the position the the lawyers will always make a problem about shifting but they get a better place better room condition of working will be much better but they don't agree to that I don't know why.

Participant: Even my lord in Calcutta High Court separate sessions building is built that is adjacent to the High Court very near so many beautiful court rooms have been constructed, we try to shift the court rooms from High Court main building to the other building newly constructed just adjacent. They will not open this building.

Justice MK Sharma: Guwahati off course that is not a problem newly constructed building about 100 yards away they have agreed to go there but after some argument and all that.

Justice Mohit Shah: No no in Calcutta the lawyers were so adamant for getting space for their bar rooms that when one room was allocated for stenographers they literally trespassed into it they said now this is our bar and I said no nothing doing, we'll take back and we'll use police force. So they went on strike and all that *hungama*.

Justice MK Sharma: No but you see unless you are strong and bold you can't achieve your....

Justice Mohit Shah: when I was there at Calcutta West Bengal Howrah district had 400 posts of Class 3 and Class 4 lying vacant in south pargana district it was 800 posts lying vacant, so I said how can the courts function with such large vacancies and ministerial staff so I said who is running the court then, the staff part of it? So they said lawyers' clerks they go and work as staff members. So actually for them it is convenient because... No no lawyer's clerks work plus court staff.

Participant: even in my court there is only one *peshkar*, one peon and I work with my clerk.

Justice MK Sharma: No court master?

Participant: No bench one, no bench clerk two, no stenographer provided, only one peon.

Justice Mohit Shah: But in that year we engaged one agency we outsource the work for making central or direct recruitments.

Participant: Subsequent to that it was done.

Justice MK Sharma: some of the work will have to be outsourced now. Even construction also now see most of the constructions are being done by the the PWD department. Now you see PWD department has its own difficulties also because they cannot give priority to the law building, they have to give priority to all the projects of the Government but..

Justice Mohit Shah: So we also find that what can be done in 1 crore rs PWD will take 2 crore rupees.

Justice MK Sharma: but then you see it is very difficult for the High Court also to have agency of Constructions. That's not possible, who'll look after this work. So there you see these aspects needs consideration and some sort of brain storming discussion.

Participant: when PWD places some estimation you find that estimation is very much inflated. We have to follow it In Allahabad one separate bench was constituted separate court, the budget was 1 crore or something. I asked PWD for estimate they provided 20 lakhs. They made nice court complex for 20 lakhs PWD.

Participant: Now the problem what we are facing is that they are asserting their right even to the extent of taking the parking space even beyond.. They claim now this is our right special places like Bangalore where there is no parking space available they park the vehicles here. So with restrictions all these things will come in.

Justice MK Sharma: And even if you construct a parking lot for them i mean underground or whatever.

Participant: While developing infrastructure for advocates for advocates association all the facilities are being given so they think that is also the basic right of the..

Justice MK Sharma: But then you see if you give them that facility also parking space and parking space you know with even night halting for the car also because it is given in Delhi but then you see the advocates will not park their because they want easy drive way so they will park the road side and take away the car because it takes about 5 10 minutes for bringing the car they'll not wait for that period also, they will lease all these facilities to others, they'll collect parking charges.

Justice MK Sharma: How can they charge parking fee in a...

Participant: Apart from parking canteens also they want to run. Registrar's parking space is a question. Therefore sometimes restrictions have to be placed while providing these.

Justice MK Sharma: Haan that's right you have to innovate as to what how this could be, these are problems regular problems day to day problems, you have to now think about all those, so those I have outlined some. There are many more like parking space I have not said but it is a it has become a part and parcel of the infrastructure now.

Justice Mohit Shah: but priority must be given to providing proper toilets and washrooms to the litigants and to the staff.

Justice MK Sharma: Ladies particularly!

Justice Mohit Shah: that people are complaining that in public buildings this is the major problem and not you see even if it is provided it is not well maintained. That's the unfortunate part.

Justice Mohit Shah: So now we don't have court sweepers to do that work we have outsourced that work with agency.

Justice MK Sharma: Outsourcing in such matters is the best. You don't have to spend money also. In the sense much less than what you spent on a...

Justice Mohit Shah: Because the court sweepers they go on leave they do not work properly but when the outsourcing agency is given that work then they have good control over the staff.

Justice MK Sharma: You have outsourced your these work?

Justice Mohit Shah: Cleaning work and...

Justice MK Sharma: cleaning?

Participant: Yes outsourced, Sulabh complexes

Justice MK Sharma: Outsourced to them?

Participant: Yes, in general also it is partly outsourced, subsidiary building is outsourced. They have given to one agency...

Justice MK Sharma: why not the entire main building and other?

Participant: it is done by PWD, PWD has outsourced this. The problem is existing scavengers and sweepers cannot be retrenched, placed out.

Justice MK Sharma: No they can be accommodated elsewhere na. you need so many other personnel's, you need for example liftman so some of them could be trained there and you can slowly phase it out so far cleaning part is concerned, cleaning and then housekeeping and then they are very well maintained number 1 and secondly you see they are very punctual and sincere, otherwise the regular employees they'll you'll not get any one of them at the time when you need them.

Participant: Action has been going hire and fire every day, the regular employees.

Justice Mohit Shah: So thank you so much my lord for leading us for all these three sessions and I would like to thank you personally all for giving me this opportunity for interaction I would also like to thank the academy for giving me this opportunity to come here for two days and have interaction with the registrar generals, infact this administrative work of the Chief Justice and of the Registry is so important, it is the central nervous system for the entire state judiciary and therefore it is a very well thought conference that the registrar generals have been invited for this conference for this workshop and this I think the discussions and the suggestions made in this conference will really help us all in saying that the High Courts in all the states and all the Registries will be able to more effectively and efficiently so thank you. Thank You so much. I'll be leaving I have to catch my flight so I'll not be able to come for the next session. So goodbye.

Ms. Nitika Jain: can we please have a round of applause for Sir. Sir on behalf of NJA we would like to thank you for sparing your valuable inputs I am sure your experiences will be very helpful for all the participants.

Justice Mohit Shah: My pleasure

Ms. Nitika Jain: Thank You Sir!

SESSION 8

Justice MK Sharma: Can we start? Because you have made some program I have been hearing over here, so I suppose you should close early so that you can easily go and this subject is also important, I need to discuss a little bit with you.

Participant: Your lordship could sense that we had come early

Justice MK Sharma: Haan I know I could see that, I could sense so therefore I told the Registrar General that lets go and finish this off.

Participant: Lordship our small sentiment or something, if they could allow our spouses also to come they would not interfere in our training or conference.

Justice MK Sharma: See that's alright even my spouse is not allowed. I will join you there is no difficulty.

Participant: But my lord after complaint the High Court judges have been allowed.

Justice MK Sharma: No High Court Judge.

Participant: There has been a modification.

Justice MK Sharma: No you see I have been coming to for the High Court judges training but all the time I have come they have all come alone.

Participant: It's only recently

Justice MK Sharma: Maybe a month back, could be I was not knowing about this otherwise I would also have insisted and without me they could not have done. Anyway so, role of resolving Complaints against judicial officers now you must have gone a number of decisions of the supreme court wherein it is said time and again that conduct and integrity of the judicial officers is very high and it's much more than all other officers there are number of that, this is particularly in view of the fact that they have to sit in open court open to public scrutiny and both parties keep vigil on the officers because it is in the open court you see and you see one of the party always loses nobody can beat that so you see the blame is always on the judge that he did not understand my or he so some to that extent. So therefore in order to see that this sort of blames cannot be put to the judge so therefore the standard has been made very high and there's one more factor because you see we exist because there is trust and

confidence of the general public with us all everybody in the judiciary and you see even if there is some question about other offices people always say that we have full faith in the Judiciary. Why do they say that? Because the officers are clean we function in open court, we try to give justice well everybody is fallible I may also I am also fallible I may commit mistake while deciding a matter but that is always you see it it is it is so it is human I am a human being I am also I may commit also mistake and therefore you see a judge has to be upright, has to be bold, Independence and seem to be so also, as it is said is not only to be done but seem to be done we must also behave in the same manner. And I always used to keep by officers when I was Chief Justice and judge of Delhi High Court senior judge of the Delhi High Court that judicial officer you see for earning good reputation for them takes years they are considered as a good judge after putting on number of years in the service but to earn bad reputation it is a matter of minutes and once they lose that reputation it is gone forever. So one has to be very very cautious very very I used to say this to my judicial officers that see you have to be very careful in your public dealings you have to very very carefully not only you are not only a judge in court you are also a judge outside the court because the people look into you as that so discipline and integrity is one of the most foremost qualities that a judge must have and so far there discipline is concerned therefore conduct therefore is concerned Supreme Court has been very very strict and the high courts are also Strict. Now article 309 if you have the constitution you can see that is the power power given to frame rules service rules, so therefore this service is governed by the recruitment and conditions of service framed under this provision 309. Now 310 is the pleasure theory it says that a person works or functions in the pleasure of the Governor or the President as the case maybe higher judiciary it is the president lower Judiciary is the governor and governor acts through the Council of Ministers so therefore 309 is a pleasure theory that there is no right I am always at a pleasure of the governor or the president as the case may be. That's what 309 says that is actually this 310 is borrowed from United Kingdom there also the same provision. It is a pleasure theory, pleasure at the Desire and wish of the queen there, so that has been incorporated here so this an this is 310 is an exception is 311 this is a pleasure theory that you could be dismissed removed from service at the pleasure of the Governor but exception is provided in 311. 311 says a person shall not be dismissed removed from service or reduced in Rank with out there being an enquiry being conducted

against him as against his conduct. Right? Correct? So therefore 311 first part is an exception to 310 pleasure theory is restricted. Then if the person is to be although it is a pleasure of the Governor if you are to be dismissed removed or reduced in rank a an enquiry has to be provided and you must be given a reasonable opportunity of hearing. But to that also there is an exception this very interesting, that's why I am drawing your attention to that. This inquiry is necessary is a must but in the case of conviction of a person in a criminal court no inquiry is necessary, you see 311(2), notwithstanding with that a person holding a civil post under the union or a state holds the office during the pleasure of the President or as the case maybe at the pleasure of the governor of the state any contract under which a person not being a member of a defense service or an All India Service or of a civil service or union is appointed, secure of a person having a special qualification. Now come to 311 No person who is a member of a civil service of the Union... civil post under the Union or a State shall be dismissed or removed by an authority...

Now come, no such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry... Now thereafter the Proviso

Provided further that this clause shall not apply - (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; Number 1.

Number 2: That is (b) where you see inquiry could be dispensed with if could not be reasonably held for certain reason like for example witness is not available, then in that event an inquiry cannot be held, that will also justify not holding an inquiry but why the inquiry could not be held the reason has to be recorded in writing before action is taken to dismiss him from service.

And third (c): Security of the state, when security of the state is involved no inquiry is necessary.

So these are first 310 pleasure theory, exception to that an enquiry has to be conducted but an enquiry can be dispensed with also under these categories. So two exceptions I believe you have followed that. Now so far the question of enquiry is concern now a judge is guided by the conduct rules, discipline and control rules that provides as to how enquiry should be conducted and where he should be given an opportunity of hearing. Now whether or not an

an anonymous complaint received should be acted upon or not? You see there are you all know that Judge bashing is common in India, if some party loses the case he'll say that oh judge was close to the Advocate or he was close to somebody so therefore the verdict has gone against me and then he files files sets the complete maybe in his own name then probably matter is looked into but if it is a complaint without any name the should one on that?

Participant: Not mandatorily but it should be open for the administrator to immediate inquiry or maybe a discreet inquiry on the basis of anonymous complaint if the charges are so grievous it is apparently it is seen that disclosure of name would not have been possible for the person concerned.

Justice MK Sharma: Now how many of you will agree with him? You'll agree? But there is a Supreme Court decision which says that anonymous complaints should not be should not be acted upon. Against it but you see naturally discreet enquiry can always be made although there is a Supreme Court decision there is no bar in making the discrete enquiry but generally you see these anonymous complaint is always found to be false so much of a credence should not be given and thereby you know creating difficulties for a judicial officers who is doing his responsibilities well. Because in this sort of profession, a judge's profession particularly, reputation is the only asset that we have nothing else. If you see to the others they get lot of other facilities and all even the administrative officers they get many other facilities than our offices get but you see so far reputation is concerned that is the only asset of a judge. And so therefore it must be seen that the subordinate Court Judges should not be humiliated, they should not be proceeded with on a flimsy ground unless you find something strong then only it should be proceeded and when you proceed against him with some evidence then you have to proceed very strictly and following the rules, following the principles of natural justice and give whatever punishment he deserves. There one has to be very very strict this is..

Participant: My lord there is an anonymous complaint and a discreet enquiry is conducted maybe some base maybe there in a complaint and after taking out the discreet enquiry some it is found that matter has substance.

Justice MK Sharma: Some materials are there

Participant: Some materials are there or some strong materials are there then the very cause of initiation of proceeding should be discreet enquiry.

Justice MK Sharma: yes not not the anonymous complaint cannot be because anonymous complaint is given you see what is this? This is a fact fact brought to the notice you have to first make a fact finding inquiry and fact finding enquiry is not a wholesale enquiry, preliminary enquiry as you all know preliminary enquiry is only a fact finding enquiry, the main enquiry is when you start it under the rules discipline and conduct rules, you issue the charge memo and then ask him to reply. Now when you issue charge memo and he gives a reply then if because that that whether a charge memo could be challenged or not on that also there are various decisions of the Supreme Court and the high court. Now a charge memo is issued the concerned person come to the court immediately challenging the validity of that saying that this is vague, this is uncertain, right! now the supreme court has said that; at that stage, no interference should be done at that stage, because it is just a trying to find out the fact, fact finding inquiry there cannot be any challenge, he is not under scrutiny at that point of time, only an inquiry or an investigation is made as to find out whether there are materials against him, or whether there are some reasons to proceedings is, so therefore in some of the cases supreme court has said, at that stage the court should not interfere, unless of course you find grave reason to interfere, but once that reply is given and then the disciplinary authority who looks into that and the charge memo finds that yes; there are reasons to proceed against him, then the inquiry starts, the inquiry officer is appointed and there after the inquiry is proceeded. Now, in the inquiry the question of following the principles of natural justice is a must, he must be given all opportunities, like examining the records which are against him, cross examining the witnesses which are produced against him, to allow him to produce the defense witnesses and all that. Thereafter his arguments are heard and then the final decision is taken. now, as against that he always has a right to file an appeal, if he is aggrieved and after the appeal is filed, appeal is disposed of, the order gets implemented or may be implemented earlier also there is no bar, but generally the disciplinary proceeding comes with the disposal of the appeal filed by the concerned person. As against that he has a remedy to go to the court and if it the case of the central government he goes to the central administrative tribunal, if he belongs to the defense force it goes to the armed forces tribunal and the rest comes to the high court. Particularly judicial officers will have to go to the high

court. now, this principles of natural justice, there are number of decisions, 1969 supreme court is a first case so far natural justice is concerned and there it said, in A.K. Kripak so there it is said that no person should be a judge in his own cause, if for example, my son is appearing in an interview I should not sit in that interview board, because I am interested in him, so therefore Kripak was case of that nature so, where you see the justice should not only be done but, seem to be done because since I am sitting so I can influence the other members of the board to get him appointed to the particular post, so that is why it is said that the person should not be a judge of his own cause. That principle will also apply so far departmental proceeding is concerned against the judicial officer, now the charged employee has to be given all opportunities first of all he will say, that I should be allowed to inspect the documents. Now, documents could be voluminous. Then should you give all the documents to him or what do you do? Inspections, you have to give inspection to him, you can take down copy as notes and then whatever document he require out of that you can provide him that. Then for cross...because you see those documents are necessary for him to defend himself effectively, otherwise it is meaningless of giving him any opportunity. so, these are the principles which are to be followed meticulously to be followed and ultimately if he is found guilty, for his conduct action is taken against him, dismissing him from service, removing him from service or reducing him in rank and compulsory retirement under certain circumstances. Compulsory retirement and voluntary retirement, there is a difference, you all probably know about that, I don't have to go into that. compulsory retirement if it is a case of compulsory retirement he gets certain benefits of his past service but, if he is dismissed from the service he doesn't get all those benefits. So, these I believe is clear to you. About the findings, when the findings are recorded, now there are number of debates as to whether or not, the principle should applied to a criminal trial will also apply to a departmental proceeding or not? Because, the burden of proof, what is the extent of burden of proof? Now, is it necessary to prove the case beyond reasonable doubt as is necessary n a criminal case? It is not necessary, because preponderance of probabilities

Participant: standard of proof...

Justice M.K. Sharma: standard of proof, if there is a preponderance of probability also, then also action can be taken for misconduct of the person concerned, so that extent it is clear and I believe, when action is taken repeal is filed, who is the appellate authority in the high court?

Participant: Appeal lies in the respect of judicial officers, straight away writ petition, there is no appellate authority because it is taken by the full court, the decision is taken by the full court or the administrative committee?

Basically the decision is taken by the administrative committee, and that is approved by the full court, ultimately it is the decision of the full court,

Justice M.K. Sharma: so therefore, so one can go to the high court directly, and high court looks into it on the judicial side, and there are number of cases, where on the judicial side the high court has disagreed with the views taken in the full court meeting where probably those two judges were also members.so, that's the glory of the judiciary.so, anything you want to ask me on this?

Participant: in the administrative...in a case a particular issue one judge member of AC or the member of full court, now this judge particular issue, subsequently by judiciary. After the decision is taken...in the division bench that particular judge heard the matter and in same line passed the judgment s it not the disposition of...

Justice M.K. Sharma: this is you can say that, you can bring in the person is a judge in his own cause, exactly that is what I have to bring in, because you see he might have taken a decision on administrative side on one side or the other

Participant: specific view!

Justice M.K. Sharma: no! That is alright specific view, he has that view and you see because of that only there is an appellate court provided for...

Participant: and he himself is the appellate authority,

Justice M.K. Sharma: you see the probability he should not have taken up to show his impartiality but, then he takes up then there is no bar also, appeal is provided for, you will have to go on appeal and get it set aside, the court may...it would have been better if you not have taken up the matter and since he has gone to that extent of deciding the matter so therefore it should reheard by different bench. All probability would be there, but you see there is no bar also because you see, the two gentlemen who have decided the appeal they are part of the full court and they had also agreed to descent view but, still on the judicial side they found when they were assisted by the council, they found that yes, exist a case for him,

so then set aside, there also he would be judge of his own cause that way, although it is not cause of himself but where he has already expressed his mind still he is taking up the matter. Yes anyone else?

Participant: departmental inquiry you are taking a different judge in all the case, whereas....judicial officer who was....and the charges were proved, in the inquiry committee, but in the full court...taking that as a ground he issues notice to the registrar general, to the registrar vigilance who...deliberately to...false charges...

Justice M.K. Sharma: that is non-existent practically, how can this be, when you have discharged a duty and responsibility as provided for and interested to you, you cannot be held responsible for that, then all the judges will be, tomorrow there will be defamation,

Participant: there you see what happens that, departmental inquiry, all the charges are proved, and now, what is the value....

Justice M.K. Sharma: now, full court must have given its reasons,

Participant: sir! Expulsion is there but only punishment is not given...

Justice M.K. Sharma: no! No, facts are not established in the full court also. Full court has not found him guilty that is why....otherwise if they would have found him guilty of the charges they must convict him, I mean they must give punishment to him,

Participant: that is the...where registrar....prepares the charges and do their job...full court without assigning any reasons....where do we lack? Now, protection is there....discharge of duty

Justice M.K. Sharma: there is provision also probably in some of the conduct rules I found, anything done bonafide, cannot be a charge, something like that.

Participant: conduct rules...all speaking at once...the court has authority to...this is character assassination, because...full court takes the decision, it is widely published in the newspapers...these issues sometimes arise

Justice M.K. Sharma: yes, you are right, somebody might have leaked it out to assassinate his character

Participant: why I am submitting is that our position also sometimes becomes at risk, as normal intention will become now, unnecessary those officers who are...they are facing the...

Justice M.K. Sharma: but, you are also protected under the law,

Justice M.K. Sharma: that is alright, you know fate of these cases, so anything else?

Participant: for misconduct also...dispute or some other case

Justice M.K. Sharma: so, generally you see family disputes are not taken into consideration, because they are not connected with his working in the court, but you see sometimes say for example, if he is beating his wife and therefore this matrimonial dispute, those will come in, not that he is judicial officer...so, whatever the case is made out, will be made out otherwise not.

Participant: moral tranquility is also important

Justice M.K. Sharma: but moral tranquility, sometimes if it is a case of moral...it is held in the Supreme Court that that it may not amount to misconduct also,

Participant: in a criminal case...

Justice M.K. Sharma: there are so many criminal cases could be filed... because he is involved in the criminal case, if he is involved in the criminal case, whatever charges are there they could also become charge here also, departmental proceeding, there is no barred in having the penal proceedings

Participant: both can be done simultaneously...and one is not dependent on the other...

Justice M.K. Sharma: Ya! That is true, even if he is acquitted there and punished here there is no ground made for his acquittal in the departmental proceedings, because the standard of proof is different.

Participant: beating his wife....

Justice M.K. Sharma: beating his wife, would definitely, that is a criminal. That is the violation of human rights, even it's a human rights violation. So, one should be careful... (Chuckles)...Both ways....So, shall we finish? Anything that you want to...so, shall we say goodbye! Because you must be tired after a full day work

Ms. Nitika Jain: ok, we will end for the day and before that can we have a big round of applause for sir!

Justice M.K. Sharma: I really enjoyed it...

Ms. Nitika Jain: sir! Thank you very much on behalf of NJA, day was very interactive session

Justice M.K. Sharma: and I enjoyed doing it...Thank you for giving me the opportunity

Ms. Nitika Jain: So we meet tomorrow at 10:00, last day of program. We have Justice A.K. Patnaik with us tomorrow.

...

SESSION 9

Ms. Nitika Jain: A very good morning to all so finally this is the third day of the conference we will be starting with the first session for today that is implementation of resolution of chief justices conferences and we have Hon'ble justice A K Patnaik with us I request you sir to please begin with the session.

Hon'ble Justice A. K. Patnaik: Perhaps I am the longest Chief Justice of the High Court's now available with this kind of experience I have been Chief Justice of four years 2005 at Chhattisgarh for six months then 2006, 2007, 2008, 2009 for MP Chief Justice. So four year six months and I have attended four chief justice conferences beginning from 2006 to 2009 right so maybe that is the reason why they have selected me.

Now first of all what is the chief justice conference it is not provided in the constitution right, it is not provided in any act then what is the Chief Justice conference? And the chief justices conference has been happening for quite some time when I was in Madhya Pradesh. Now in Madhya Pradesh you will find the photograph of different chief justices conference in the museum and so it is happening for quite some time I don't know who thought of it.

But when I looked the constitution there is no status of Chief Justices conference no constitutional status no act provide for Chief Justice conference and my experience has been that chief justice conference resolutions what meaning they will have? What is the purpose of Chief Justice Conference?

If you look at the constitution you will find that the chief justices of the High Courts are not of the administrative control of the Supreme Court they are all independent. Supreme Court has got some apparent power over the High Court and subordinate courts under article 235.

Frankly speaking the Supreme Court has got no power over the chief justices or what you call subordinates courts only appellat power you pass an order if subordinate courts passed an order it goes with the high court, high court passed the order it goes to Supreme Court that's all.

This collegium system has disturb the balance because they are taking them self on power. So what is the meaning of chief justices conference is it beneficiary at all? And if resolutions are adopted are you sure that they will implemented how you ensure that it will implemented if the chief justice doesn't want it.

Nothing they can't do anything chief justice of India cannot do anything so why at all a chief justice conference that's a big question mark? Right and remember if anything has to happen any thing has to take place in the high court or the subordinate courts of a state it the chief justice or the full court of bench of the high court which can do it and the state government of course.

How long they can monitor in the judicial side how long? So that big question mark is what have a chief justice conference at all is it beneficial yet there has been certain benefits which have come through chief justice conferences which I point out why we have a chief justice conference right.

Now the first benefit is you know since we have a federal set up we have a federal set up Madhya Pradesh and Chhattisgarh High Court they have the same origin right. So they have their own way of administrating the subordinate courts right.

Now anybody from Karnataka yes it has its own way of administrating because I have been to Karnataka in connection with an enquiry you know that Mysore case I was the part of the enquiry committee whole way of administrating. Madras has its own way of administrating anybody from Orissa? ohhhhh Orissa has got it from Patna anyone from Patna no, West Bengal ahhhh West Bengal has its own way of administrating.

So each High court has its own way right administration of justice in subordinates courts also so why have at all in a chief justices conference there is an opportunity for discussing the different ways that different High Courts are adopting in respect to the particular way of administration of justice.

Sometimes it may happen in the discussion that is Madhya Pradesh is doing wonderful job in this area let us follow the Madhya Pradesh system I may give you an example I was a chief

Justice, I was a Judge around eight years in Guwahati high court came back to Orissa for three years then came to Chhattisgarh and then to Madhya Pradesh.

In Madhya Pradesh I found that it had best vigilance system right and I remember the first Chief Justice Conference that I attended from Madhya Pradesh that was in march 2006 Justice Sabarwal openly said that Madhya Pradesh has the best vigilance system we are not like to hear from justice Patnaik right who is the chief justice of Madhya Pradesh what is that vigilance system it has all here so all the chief justices heard from me and let me tell you what is vigilance system?

There is an registrar vigilance right registrar vigilance also report through the registrar general right when I say direct chief justice means registrar vigilance is not suppose to report any portfolio judge right why? Because I found in madras you say portfolio judges develop their own interest in their own areas and they try to protect some judicial officers this is the truth.

Therefore Madhya Pradesh developed a system no no portfolio judge will know what action will be taking by the vigilance head of the vigilance is chief justice right through the vigilance department against the judicial officer. So that judicial officer in subordinate judiciary is accountable to the vigilance department directly to the chief justice not the portfolio judge. If he does any corruption right even for the instance of portfolio judge he has to explain and he is accountable you see that, that is the idea and then Madhya Pradesh has got one district judge vigilance at Jabalpur, only with regard to subordinate judiciary they are called district judge vigilance hmmm. They are called district judge vigilance but they don't take up any judicial work they are only looking to the files of the subordinate judiciary in their area and finding out where is corruption and no corruption and they will report it to registrar vigilance. One district judge vigilance at Bhopal, one in Gwalior another vigilance is in Indore four district judge vigilance they continuous looking at the judicial officer and reporting and the chief justice looks into the file where ever suspension is required right.

All the matter are placed before the committee of full court right. So when I spoke about this a resolution was passed in the chief justice conference let us have Madhya Pradesh pattern

namely let us have district judges have the vigilance reporting directly to the chief justice and not to the portfolio judge everybody got impressed.

First I am give you why chief justice conference are relevant and important. Second is to bring the uniformity in the systems throughout the country for example earlier writ petitions I think in Kolkata it was called WP in Orissa it was called OJC it has come from Patna. In Guwahati it is called WP right so decision was taken in chief justice conferences that all writ petition should be numbered as WP in case it is a civil matter WP(c) of number so and so of so and so so uniform throughout the country right all writ petition should be numbered as WP or WP (Cr)

When matter comes to the Supreme Court we know what it has origin from otherwise Supreme Court will think what is this OJC when I was practicing in Orissa High Court it was OJC and article 226 original jurisdiction of the High Court right so Supreme Court judge will not understand what is OJC.

So the classification were brought up in the Chief Justice Conference sent to different High Courts and the High Court pick up the work converting all those cases and re numbered I was there in Guwahati when this happened and I am responsible to all writ petition it was classified accordingly.

So you have to bring the uniformity right and then another case of uniformity would be I would say these are not case of uniformity. Uniformity where it is desirable, where it is not desirable it is not uniformity one case is there in 2015 resolution I will tell you take the case of evening courts we discussed how is evening courts is doing chief justice impressed and say let us have evening court.

Gujarat is successful is functioning very well we must have evening courts in all the states but may not be successful in all the states there may be diverse conditions the idea of having evening courts is can anybody say what is the idea of evening courts?

But the idea was taking from the industry two shift in a factory, two shift in a factory same capacity court rooms are there right infrastructure are there right you don't have to build courtrooms to clear the arrears. So idea was to have utilize the same capacity, physical

capacity of court building, of courtrooms, of all other furniture everything with same capacity in the morning and to clear the arrears in the evening.

The court Judges were paid extra allowance for working in the evening overtime allowance right and as he rightly said some workers Gujarat they will not leave their work and come, because they are very work minded they are productive by nature, they are not like to leave there work and come and they are earning.

So he finishes his work and come in the evening court right similarly agriculture workers all workers they don't want to lose their wage so they come in the evening this works well in Gujarat, because it worked well in Gujarat in the chief justice conference it was adopted and the recommendation was made at 13th financial commission also made a huge allocation of funds to evening court which went wasted because the evening court in Orissa did not function well, in MP also it does not function because people of Orissa feel tired very soon they don't want to work in the evening, They want to go home and spend time with the family hmmmmm they don't want to work like that and they are very late back people, they will come day time no problem so evening court is still functioning in some states so we have a diverse conditions different states.

A uniform system will not work right these have to be debated, some time they are not debated right as a result resolution get passed and this leads me to the third purpose in the next year somebody is saying it is working in my state and some say it is not working in my state.

So uniformity where ever it is possible and desirable, diversity to be permitted where it is required right. Then third purposes recommendations normally whatever you want to do it has financial implications. Where ever there is no financial implications no problem the High Court is the boss and Chief Justice is the boss the moment there is financial implications then matter has to go to the state government or union government has to fund it that matter has to go to the central government.

So particular Chief Justice Initiate the state government may not give respect to it, but if all the chief justice together an initiate a proposal or make a recommendations it has to be considered either by union government or by the state government right?

I will give you an example two example I give one is when I was in Madhya Pradesh requirement of subordinates court was taking place through the public service commission and public service commission had lot of other requirement to conduct police requirement, this and that didn't find the time for only judicial officers requirement so it was delayed and I was worried because number of vacancies in Madhya Pradesh.

In 2006 chief justice conference we discussed, Justice Sabarwal was presiding he said why don't the High Court take over the requirement itself to its own hand it can expedite right.

Then there was some debate and discussion High Court taking over the requirement then there must be some allegations like taking place in Delhi High Court right and but I was impressed in he idea and ultimately resolution was passed that High Court may take over the requirement.

Then requirement has to be done as per the rules of the subordinate's judiciary so that recommendation I forwarded to the government that this the recommendations of chief justice conference kindly change the rule and they change the rule the entire requirement was done by the High Court.

They also funded the examination cell in the High Court, OMR machines that funding was done by the public service commission that funding was diverted to the High Court you see this and Madhya Pradesh High Court done the requirement. But I told the officers that make sure that there is no allegations against the High Court judges.

As a result of this requirement is taking place every year and very fast requirement so these are some of the examples I gave and another recommendation I will tell you in 2009 when fast track court.....when the last phase was over the chief justice conference saying that fast tract courts are doing great job. We should make the request to the union government to extend the scheme for another five years they did not do it they don't do it.

They discontinued the system all the judges who appointed they filed cases we want the regularization they came before us right and there is one reported Judgment Brij Mohan case where justice swatantra kumar and I we were the authors so we have said how could the union government totally ignored the resolution passed by chief justice conferences for

extending the fast track court. Secondly those who are on fast track court now will be regularized by an internal system of selection not open system and post will be created.

So I am giving example as to how recommendations of chief justice and chief minister conference helps a lot by persuading the central and state government to improve the system right if it goes from the one chief justice it doesn't help if it collectively its a strength right these are the some of the purposes of the chief justice conference that I have the benefit of chief justice conferences.

Now let me come to implementations, while implementing you find there are sometimes various difficulties get up the reservation, the most difficult task is funding you take resolution how to make it happen when funds are not with the government or with high court, there is no financial autonomy with the high court, finances with the government, state government or central government, how to fund it then? How to persuade the central government and state government to fund it? That is very important, and they are not prepared to fund, you must have noticed right! They are not prepared to fund. This is the most difficult task of the registrar general. How to persuade the government to fund it? And mind you don't expect the Chief Justice to pick up the telephone and talk to... because Chief Justice is you know he wants to maintain the independence, he doesn't want to mix around Chief Justices, political leaders and this thing that thing and the things done, so it is a very difficult job right! when I was Chief Justice of Madhya Pradesh everything was funded the came for the breakfast I told him see I don't have any funds all the funds are with the government, but I don't have to contest the election, the next election you have to contest the next election, if the justice delivery system goes wrong nobody will blame me or nobody can take actions against me because I have retired at my age of what is stated in the constitution but everybody blame the political leaders. *Humara anyaya hua* means local people will think *anyaya hua yeh* state government *gadbad hai*, so if you want that you should come back to power again through election, the system ad ministerial system must be very good and must reach out to the people. This is what I told you, it will not have any impact on me it will have impact on you, after about one year I had come to Jabalpur's Chief Justice Colony no no to Bhopal all in me in the guest house, in the high court guest house, and I said is the funding alright? Then he told me sir, *janta toh aapke sath hai*. He felt that the high court is doing good work there, *janta* is with

the high court, if I dismiss the high court and don't provides fund for administering justice right! *Janta* will go against, because there high court is with the people. we are not accountable, we are accountable to law and constitution., so funding is the most, you have to persuade the government, that if any extra funds necessary you must provide it., and sometimes if implementation is possible you think it's a good proposal sometime you think the implementation is possible by diverting funds from one head to another head, those ideas must strike you it would not strike to Chief Justice, it will that Chief Justice would be busy in judicial work, judges are busy in, I will give you some examples which you can take in from while I was Chief Justice Madhya Pradesh, what I did some examples I give. one is you know everybody has got the laptop, that is funded by the central government to all judicial officers, but what is the laptop without the software? Of no use, and I don't know how what kind of planning was done everybody has got the laptops without the software, right! I had found around February that there is lot of money in in the contingents fund of the high court about 50 lacs was left and I said to provide AIR on line to all the judicial officers, how much it would cost work out, it worked out for 40 lacs, all the judicial officers were provided AIR online, for using their laptops. This is one example, how funding is possible, look at the budget and find out where the money is right! Another example let me tell you from Madhya Pradesh again, Madhya Pradesh has got three benches one at Jabalpur principal seat, one at Indore and one at Gwalior. So want it to computerize and Madhya Pradesh is one of the fastest in computerization right! And Justice Lahoti was the judge in charge of computerization, he said without practical hands how can you do it? As with whatever experience I got as I was judge of computerization so we wanted in each bench, each of the bench one registrar computer and one assistant registrar computer, one registrar throughout and one assistant computer registrar in all the three benches. Who would be all technical people, software doing people, how to get it? People had to go to the government and government have to fund it, so I found it that the state administrative tribunal in Madhya Pradesh has been wound up and all those case have come to Madhya Pradesh high court, and I also found along with that right ! All the post of the state... Have come to Madhya Pradesh high court, then I said the assistant post must be there... Yes! It must be there. Right to the government that we want to convert them into registrar computer and assistant registrar computer, three assistant registrar computer, one registrar computer and if there is no problem

there would be no financial implications, the posts are. And then that was with the state government we had the recruitments, we invited the applications held the recruitment, posted registrar computer recruitment in what you call Jabalpur principal seat and assistant registrar at each bench and computerization process was then there, and you must have seen the conferences where they have said Madhya Pradesh is advanced, this is how it is advanced, if posts are not given we had to do, to convince the financial department for post is most difficult job, most difficult job, but you have internal funds available already then you can convert one or two posts like that, you can achieve tremendous things. this is what we did in Madhya Pradesh, I gave you two examples right, how it is been done, so most important is how to get the funds to implement the reservations, either you have to find funds with your own organization, if you don't have the funds you have to look for funds outside or if there is essential requirement of an extra post to be held, extra post I get the high court level, somebody will monitor it, then you have to divert one post form... If you ask for more they will say no, I remember apart from judicial conference resolution we had an ILR series totally outdated in Madhya Pradesh I wanted that it should be updated and at the same time we want this recruitment to go on... so two three very good judicial officers I posted them as officers on special duty, with the same salary in the high court, temporarily, and monitored this, and we supplied ILR series Madhya Pradesh to all the judicial officers to update themselves, free and also insisted that all judicial officers will insist on the local lawyers to cite ILR, and not these local cheap journals because they are authentic and that is the purpose for which the ILR was brought off. From ILR madras, still there?

Participants: yes!

Justice A.K. Patnaik: ILR madras, ILR Cuttack series Chhattisgarh is there? Hmmm, most authentic that high court, high court journal right! Result was that I found a big, big room two halls, in the Madhya Pradesh high court when I was going around, one of these halls, sir, ILR counter sales, sales counter why, it being sold like hot cakes... hahaha...it was promoted, if all the subordinate judge, entire office of subordinate judge are using it, right! And I remember when I used to sit as a Chief Justice, I wrote to all the judges please make reference journals to ILR Madhya Pradesh, instead of local journals. One day I was sitting there, some judgement was cited... this judgement is overruled by the bigger bench then the lawyer said when, when, I said two weeks back, read the ILR of Madhya Pradesh, two weeks it has come

out. you have not seen that because you are following all these local journals, they started subscribing, in the court everybody started subscribing ILR, this sounds you promote funding also right!, and you sales is increased, so, these are funding and funding is the most important for implementing Chief Justice conference as well, otherwise you will face resistance. Second resistance is by interests, either state government is having interest or interest or may be non-desirable or judges have interests, high court has interests, right! Because of certain constitutional difficulties. I give you one example when Chief Justice Balakrishnan he was succeed by Justice Sabharwal by Chief Justice, he was very keen on having all India judicial service recruitment from post of district judges through all India judicial service, right! and he wanted that it should start from one- third at least from all India judicial services of the district judges or additional judges, when he pose this suggestions to the Chief Justice conference everybody, all the Chief Justices agreed, except A.K. Patnaik, except me. Why? I said you cannot do it, you don't have powers to do it union government has the power to it, now I what its state subordinate judiciary recruitment under if you see article 233, 234, 235 entire control is high court and state government state government. The subordinate judiciary has the control of state government, recruitment has to be done by the state government in accordance with the rule made by the governor in consult with the high court and the public service commission. where is the scope of recruitment and all India judicial service, I was totally surprised that what is to be done, then I said you can do one thing you can refer this matter to the state government and to the high courts, high courts not Chief Justice, they will consider if two-thirds of them agree and then the resolution can be adopted in the Rajya Sabha for... And everything, that is constitutional provision, then Balakrishnan started, then state back, in the lunch time all the Chief Justices walk up to me and said *bacha Diya aapne toh, nahi toh hum Gaye the, aap aisa kar, kar rahe kaise?* See that powers to be exercised by the government and the high court, in a full court right! cannot be you know abused by the or misused by the Chief Justice in a Chief Justice conference, we have to left on the court, we refer to full court, all the courts of the state have known it . All the state governments except Odisha government said NO, why? Because they thought that the interests of the state, like Madhya Pradesh thought the interests of the people of the state, who are wishing to join the judicial service would be affected, right! And the Chief Justice... the Chief Justice conference normally followed by Chief Justice and Chief Justice Conference on the next day, let day. Now the

chief judiciary agreed to accept the one who, decides to not to agree. I said. No no we agree, so justice Balakrishnan said is the only state which is agreeing? Why don't you agree? And his answer was very good, we have got all India IAS officers, we have got IPS officers, we find them good. They are doing the good job, then why not? But when it comes to, but other states Chief Justices say no, no when it comes to judiciary language is different, witnesses are all local, this IAS- IPS will not do, IAS is different, so it has not come through a set, and we know that it has not compress yet right! So there may be difficulties, constitutional difficulties, legal difficulties, difficulties in account of various interests clashing right! So its implementation has become very difficult, then you have to rule it out, you have to see no point in pursuing it little aid cannot be achieved, that's all. But sometimes some of the resolutions are easy to implement because there are no obstacles in this kind and in such cases all the tests have to be done is the registrar general to pursue. Chief Justice does not have time, judges don't have time. They are sitting with the judicial work most of the time. So registrar general has to take the initiative and when resolution comes keep on pursuing, need to pursue the registry of the high court, concerned department of the high court, officials, need to pursue the district judges alright! need to pursue with the government, there is very difficult with the state government, union government, the office of registry, the registry judge(s) and court cooperation from the bar, for example five old cases to be disposed of, just keep on pursuing. Pursuing the district judges, these are the matters that are pending, you kindly see that are cleared. Take a statement every month, five year old case separately, separate statement and keep on pursuing, so there is no difficulty there. Now if we come to Chief Justice Conference resolutions of 2015, let us look at them, one-by-one.

First is the resolution adopted , progress on implementation resolution adopted, in Chief Justice conference 201, more efforts are required... to effect in police services, is only efforts, you have to pursue, without pursuing nothing is possible. Administration means pursued, right! the 2, continuation of morning and evening courts, high courts and even such courts and continue such courts as are satisfying effectively functioning, this is what I was saying, evening courts may function and may not function, morning courts may function may not function. In Madhya Pradesh we paid extra arrears, what they used to take, they used to take the overtime, right! And statistically they used to organize in a manner, what they would have been disposed of in the day time, they dispose of in the evening time and take their pay,

overtime pay right! So every court says a good idea, I think the only good idea is in my opinion to have more number of courts, when I joined Madhya Pradesh high court as Chief Justice to the strength of judges. Right! And I did a study and I found your disposal will go up only if there are more number of working strength of judges, because courts are not like, court's work cannot be done by the computers, computer is made for assistance, but a human mind has to judge, so without human minds, no judges, you cannot increase the output. I remember in the Madhya Pradesh high court when we were having golden jubilee celebrations, and President Shree Abdul Kalam had come as chief guest. In my speech I said that Madhya Pradesh high court judges have a good record of disposing off 2700 cases, per judge. in period of one year, so Abdul Kalam like a scientist without the idea how these cases are disposed of, in his speech said Chief Justice I think these 2700 suit increase to 6000 next year, hahaha...so in tea room we were having, how President could say the 277 can increase to 6000 next year. Is it possible? I said he is a scientist, he thinks everything is possible with the computer, this is not production. We are not in the production line right! It has to be done with lot of application of mind right! Sometimes it may happen if you have batch cases and you dispose of batch cases, but cannot happen all the time. then diversion of unutilized funds... with certain finance commission for monitoring evening courts, unutilized funds are permitted to be used for infrastructure of establishment additional permanent courts like fast track courts, this is what we have done, in our judgement, in *Brijmohan case*, the finance commission has given lot of money 5000 crores they have allotted, then finance commission for improving judiciary, improving judicial system right! Most of the funds were for establishing judicial academy, in the state and programs in judicial academy, holding programs, the result was all these money was spent by Supreme Court judges... people from outside to give lectures right! So it should be used properly, not wasted. it helps, but if you get right kind of resource persons help, if you just get the supreme judge who belongs to the own state, he does not help, they are only helping in to come home, with the ticket that's all, air ticket, that kind of approach... you know doesn't improve the judiciary. It only advances somebody's career may be! But it does not improve judiciary, I will not appreciate this kind of method at all, I don't appreciate it, right! Rather you get some very good lectures, with someone very good forensic science in criminal law, it is very important area. In environmental law, you can get experts right! Or environment science can give experts, in

child psychology you can get experts right! Those who can really contribute. Then delay and arrears committee each high court has established an arrears committee, if not it had established, this is good thing and you can implement no difficulty. High court shall endeavor to evolve uniform nomenclature for all category of cases as I have already said, this is legal aid committee right! Then high court will count the named cases only towards pins and arrears. Interlocutory applications will continue to be separately numbered, this is happening already. Then salary and emoluments of serving Chief Justice also, all Chief Justice requested to take up the matter to the central government to establish national judicial plea emoluments of there justices of high court Supreme Court. Then, these are the matters to be taken by the state government, there will be difficulty there it is not that easy, granting financial attributes to the high court there also difficulties, they will not part financial autonomy to us, very difficult. Certain things can be worked out. Computerization of courts this is what I was speaking, how it is to be done, you have to find the funds. This requires funds-computerization, right! You have to ask for funds allocation of more funds for computerization and make out the heads into it. Then the state court management system committee shall evolve workable solution to clear arrears. Establishment of courts laying down standards of infrastructure of courts and residential accommodation for judges, this again requires funds. Accommodation of judges. Then the strength of judicial academy, state judiciary prepare comprehensive model to impart, this can be implemented no problem, because state judicial academy are been funded, then SJ is to impart training judicial officers staff, at different level. High court is endeavor to see how SJ is and the... in filing of filling of vacancies, this is for the Chief Justice of high court. The uniform procedure for appointment of district judges creation of judiciary service commission and to respected high court to evolve appropriate methods wherever it is required. So each high court will find out its own methods. They are strengthens up juvenile justice system, this can be done by the high court, there is no difficulty. Fast tracking of matters related to offences this can be done, interim of the high court right!

Then popularize ADR method to for further, this can be done, no difficulty. Then the central government may be requested disperse funds on the same, infrastructure including courts building, resistance and maintenance right! Then we take up again year funds are required, then we take up with the high court as guidelines for achievers standards each high court can

consider adopting any item with modification including amended parameters, mission papers. These are all hahaha...good to hear. The rules, directions, guidelines for electronic evidence followed by all right! Some judgements have come, and there also the evidence act has been amended by the IT act look at those provisions and implement them, circulate them. Judicial academic... Are bringing them also these new angles,

Participant: like high court rules, those are also...

Justice A.K. Patnaik: haa yes yes! That can be done, no difficulty. They have to adapt to new provisions right! Like when I was in Madhya Pradesh high court, Nagpur high court shifted to Madhya Pradesh in Jabalpur, and Nagpur became a bench of Bombay high court. so in Madhya Pradesh when I was there then we found that the Nagpur high court rules, high court rules failed when Nagpur high court was there, were continuing, 1930s right! what we formed committees and went through it, went through it , then put it before the court, then full court put it to the bar, all for objections and ultimately made in 2009 Madhya Pradesh high court rules. In which PIL was taken care of because what I noticed there was rule making power is that of the entire high court right! There is a constitutional power, and when Madhya Pradesh high court was found by the state reorganization act. it said the rules prevailing in Nagpur high court will prevail, and so those rules were prevailing but the rules made by the high court by the high court, Chief Justice of the high court but judges were giving directions PIL, *ko register karo*, *PIL ko dismiss karo*, for this reason and then this has to be done, I found that judges were exercising judicial powers in the area in which they didn't have power, so once I held the full bench and said none of the judge has got this power, according to registrar this has to be registered like this, this has to be done like that. Don't register the PIL and all like this. so the registry came and said this judge to follow this, this judge says this way that judge says that way, I said *arey baba* these powers belong to the high court as a rule making power, it cannot go to the judges, judicial powers cannot be exercised to make rules so we change the rules with the rules, so therefore, so those rules take care of various new changes. Which have taken place from 30s, 1930s to 2009. The new rules have to be taken into consideration and some verdicts have also come, so we have to go through verdicts and incorporate all that. Then the electronic evidence particularly in regard to the electronic evidence, their amendments now, in the evidence act, you have seen that naa? There is turning a vigilance cell in the high court same is invested by the prescribing modalities deal with

complaints against judicial staff members and others effectively. respective... see when I was in high court of Madhya Pradesh, we found lot of corruption was taking place by the bench class, in fact... published article, some news items, which said that people perceive, the transport department is most corrupt in RTOs, then police department and third is judiciary. I thought that this has happened not because the judicial officers are corrupt or not because the high court judges are corrupt or the Supreme Court judges are corrupt people have still confidence in them, this happens because it goes to the high court or the sub ordinate judiciary for the cases, they have to some money to the clerical staff, 100 rupees, 1 rupees, in our time it used to be when we practiced, so public perception is, if you have to go courts you have to take out money to pay and this is corruption, so as I told you in Madhya Pradesh we had three district judges, four district judges, I put along with them, four additional judges and their job was to raid find out those clerical staff who are taking money. Raids were taken place and many were suspended and then clerical stopped taking money. Unless without action we cannot one way by this and other method to use closed circuit TV, and this thing that thing keep a watch on them. so that is another one, and worst is as for Madhya Pradesh's concerned, there is no separation between the clerical staff and the court room, go to Bhopal now they have done it, I already implemented that, see judges, judge is hearing any cases the court staff is sitting there, and there itself the person is paying the money and getting it done before judge you cannot also say anything because this is the practice, and if I say there is a problem, but now that has been separated. it does not look nice at all, the clerical staff separated by aluminum and glass, and they talk something the noise comes to the judge, so these are ways, these kinds of ways can be established, to have separate staff, having jurisdiction of clerical staff and when report comes take action , otherwise they will keep on collecting money, this is part of the culture and if you have to stop this culture you cannot tell them to become a saint, they will not convert, they will not become saint. You have taken actions, some disciplinary actions, if disciplinary action is taking place throughout the state, you can stop, but I took steps and the additional registrar was withdrawn, you know how it is withdrawn? Because in the registry one member will place some files before the Chief Justice and say sir, let us withdraw it. If the Chief Justice does not show more interest, he will say alright withdraw it, but when I was the Chief Justice I told the registrar general that the particular officer complained against him, that he has taken bribe in past, I said you place him on suspension,

and inquiry. The suspension order was not taken out in fifteen days and I checked it from I had come to Indore, and when I got to know that he is not placed on suspension, so I asked registrar General either issue a suspension order today or I will serve a suspension to go. Then registrar general properly suspended him. Then officer will come and cry before registrar general to settles the issue, and registrar general would say *accha dekhte hain hum Kya kar sakte hain!* but registrar general has to be very tough because judiciary name was bad, and I have no personal animosity against that officer ultimately in enquiry nothing was found against him, immediately he was back, but judiciary's image has to be kept, if the Chief Justice cannot keep the judiciary's image, registrar general cannot keep judiciary's image who else would do it, and I would not select a registrar general unless I find him to be good he can deliver, he is efficient. The moment I suspect about the registrar general's integrity I will keep a watch, and then I would ease him out. Then I would replace him by somebody who can deliver who is efficient who is capable who is understanding his good also, and who is not vindictive towards officers, who has got no prejudices. That kind of registrar general we want. So this is what I wanted to say its 11"o" clock now, whatever questions are there I will take in the second session, next session, right! Because next session will be very short agenda, so whatever questions you come, you can out them over to me I have here only to share my experiences with you so that our judiciary uses. Alright! We are going for tea, coffee!

Ms. Nitika Jain: we will take half an hour tea break, then we will be back to the second session.

SESSION 10

Ms. Nitika Jain: We will begin with the second session for today, agenda preparation for meetings and also we have this feed evaluation we will do this after this session and before lunch, over to you sir.

Justice A.K. Patnaik: Now the topic is agenda preparation for meetings, obviously what meetings, initially when I read on this topic in Delhi I thought this is agenda preparation for the Chief Justice conference. Since the previous topic was that, but now I find this is agenda preparation for meetings. Now let me tell you what kind of meetings, will take place in the high court. Now, in the high court, high court functions in the administrative side. Chief Justice is the exclusive administrator of the high court, so far as the matters in the high court are there. You must get that very clear. Chief Justice has. No power with any judge right! Entire power is focused on Chief Justice, so far as High court matters. very interesting, and this distinction many judges also don't know, but so far as sub ordinate courts for matters are concerned the power is not vested with the Chief Justice, power is vested with the high court. You read the constitutional provisions. You start from 2 and 14 is the high court, they said high court for instance, right! Then 216, every High court shall consist of a Chief Justice and such other judges as a President may from time to time...right! Then

Participant: article 235!!

Justice A.K. Patnaik: that's sub ordinate courts, come to 229, appointments of officers and servants of the High courts shall be made by Chief Justice of the court, you see that the entire powers of the Chief Justice or such of the judge or officer of the court as he may direct. If the Chief Justice directs, some other judge will do? May do, some other officer, will do? Will do, but the power is only with the Chief Justice, have you noticed this? then 2 subject to the provision of any law made by the state legislature and so, the condition of service of high court shall be such as may be prescribed by rules made by the Chief Justice of the court, power of Chief Justice or by some other judge or officer of the court authorized by the Chief Justice to make rules right! again the power with Chief Justice, you see that...so administrative powers so far as High court is concerned is fully that of the Chief Justice not with any judge. There is no collegium of judges also, understand this very clearly. So far as high court is concerned, Chief Justice has all authority. once Chief Justice in Odisha high court, when I was

in Supreme Court he telephoned to me and said that my judges are not under my control, they are not cooperating, and they have along them all the other judges, so I told him, you forgotten that you are the Chief Justice of high court, why have you become so democratic? Registrar is in your hand, appointment of staff of the registry is in your hands, appointment of registrar General is completely choice of the Chief Justice, and no judge can come and tell the Chief Justice right! That this power so and so with the registrar, so is with the registrar General. Chief Justice may delegate some powers for considering promotion all that, that's the different thing, but the powers so far as the high court is concerned and its staff is concerned is exclusively with the Chief Justice. Anybody who has read the Hobbs? In your political science... concept of sovereignty?

Hobbs concept of sovereignty unless there is one head, is sovereign, and you cannot control it. like in your house if there two heads husband and wife, then that family is gone, and disturbed, ultimately one person has to rule, two persons cannot rule. So in high court only Chief Justice has to rule, I am not talking about sub ordinate courts. So Chief Justice may constitute committees, with regard to some high court matters, and those committee may hold meetings, and registrar General may be required to prepare the agenda. Obviously he has to report to the Chief Justice, at the end. What the result Chief Justice has to decide. You take instructions and formulate the agenda. These matters does not go to a full court, unless the Chief Justice says let this matter be decided, why the power on the constitutions with the Chief Justice. I will further give a clear example, when I been to Madhya Pradesh after few months, I started transferring some judges from principal seat to Indore and thought of getting some judges from Gwalior to Jabalpur, so that criminal matters can be heard properly by allocation. Lawyers came to the protest. 50% bagged into my room and said why this? They found the judge who was giving bail very easily, to them is been transferred to Indore, and a judge in Gwalior, is very tough on criminal side will not give bail on criminal side easily, he has been brought to Jabalpur. When they got this news they bagged into my room, asking me that why are you transferring, should not be transferred. Local judge should be kept here, they should not be kept here, Indore judge's bench should be kept here, so I said who said that, this is my power as Chief Justice, and not your power. Iam not saying it is not only power, it is not President of India's power, or CJI's power, it is Chief Justice Power, which judge will sit where, Chief Justice will decide and I decided. they went back and boycotted all the courts in

Jabalpur, I said what, I will not go to spare the power, then other judge were coming, on Saturday for some lecture, I went there, invited them to the Bar and said this is your function, you have to attend the function, if I told you something, being hard, I am sorry all that I want to do is safeguard the powers of Chief Justice, Saturday function took place on, Monday there was another meeting at the bar, everybody joined the practice, went to the courts, told the president you are wrong, and Chief Justice has the power, whatever he want to do he can, we cannot object. What is the registrar General? He does have any power, the power flows from the Chief Justice, so whenever the registrar general speaks, he speaks with the authority of Chief Justice, mind you, how much you can do? If you have the support and confidence of Chief Justice, you can do great things. You will be scared of a judge because, he will be hurt and all that, but you do what Chief Justice says, that's all. Now come to 233, so therefore there may be committee meetings with regard to, high court matters in which Chief Justice is the head, those are committees functioning as delegate of the Chief Justice. Matters have to be reported, instructions of the Chief Justice, what should be the agenda? And then it will go. If the committee says that alright we will meet after sometimes, then the matters should be placed back to the Chief Justice, what they have decided, keep the Chief Justice as important. It's not as if the, you would not keep him informing Chief Justice as nothing is happening. One of his committees, there comes 233. There is, no word used as Chief Justice high court, appointments of persons to be and posting and promotion of district judges in each state shall be made by the governor of the state in consultation with the high court exercising jurisdiction in relation to such state. You see that? again 232, high court, then you come to 234 Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made no Chief Justice is there only high court, The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, not Chief Justice you see the difference in language? There high court means the full court. whenever the expression high court is there, it means the full court not the Chief Justice alone.in very what will happen is the high court means the full court, so full court may pass some resolutions, delegating some of its powers to the Chief Justice, full court may pass the

resolutions delegating its some of the powers to one committee, to also registrar general, but so far as 233, 234, 235... They are all powers of high court, you should understand all this.

Participant: so far as high court administration staff and so and so is concerned,

Justice A.K. Patnaik: total power with the high court, high court may delegate it

Justice A.K. Patnaik: Yes, yes... That is effective.

Participant: so far as sub ordinate judiciary is concerned, and high court itself is concerned...

Justice A.K. Patnaik: Chief Justice, therefore, full court meeting agenda has to be prepared, all the sub ordinate courts matter has to be placed before it. as all the sub ordinate court matters have to go to the full court, you have to tell the Chief Justice that this power belongs to the high court, when it is high court only then those matters belongs to Chief Justice, see the restrictions, find the distinction many persons do not know this, now full court may pass the resolutions, authorizing the Chief Justice to do some

Participation: that is separate issue?

Justice A.K. Patnaik: yes, yes the power of full court, Chief Justice as a delegate of the full court, or it may rest with the administrative judge, some other judge. He also functioning as a delegate, of the full court, or it rests with the committee, the committee acting as a delegate, of the full court...

Different courts, for example in Madhya Pradesh, in Guwahati high court, there is administrative committee, administrative committee to decide all full courts, boosting their transfers. In Madhya Pradesh there is, A committee there is B committee, committee C. depending upon the rank, district judges A committee, chief judicial magistrate B committee, then civil judges C committee. so administrative committee A,B,C. you have to make distinction, as to while preparing agenda, whether the matter before the full court, or the matter is exclusively with the Chief Justice or the matter is within district jurisdiction, the administrative committee. So far as sub ordinate court is concerned, it will all depend upon what resolution full court have passed, The full court has delegate this power to Chief Justice place for the Chief Justice.

Then if the full court has said administrative committee A, it recruited administrative committee A, if it says only full court, then it will go to full court. I will give you a simple

example, see the difference, difference from court to court. so far as ACRs is concerned, district judge ACR is concerned, Odisha high court says, Odisha delegation is, no delegation, it has to be placed before the entire high court, so now Odisha has strength of 22 judges, it has place for all 22 judges, so far as Madhya Pradesh is concerned it will go to the portfolio judge at the first instances, as per the resolutions, last say the Chief Justice will have. In respect of every officer last say will be that of a Chief Justice, when the repetition is made again the ACR, it has to go to the committee. Committee will also say, then it will go to the full court, so it all depends what are the resolutions of the full court, how the powers have been given, and accordingly agenda preparations have been made. Now next, once you are clear with this

Participant: committees are constituted by the Chief Justice, recruitment power

Justice A.K. Patnaik: Chief Justice has delegated that power, because in some resolution, the full court must have said that, it will go the committee, formed by the Chief Justice. If there is no such, then it is subjected to challenge Chief Justice cannot take the powers of the full court,

Participant: otherwise after formation of these committees, all these committees have to be ratified by the full court?

Justice A.K. Patnaik: haan! If they say no ratification required, not necessary. If they have authorized the Chief Justice to form a committee, it is formed.

Participants: all speaking at once... Resolution...

Justice A.K Patnaik: but sometimes you know administrative committee goes if some other repetition or something is made, it goes to the full court, sometimes so never know where the interiorities are, but basically sub ordinate court matters, have to go to the full court, and you have to examine the delegations made by the full court, by resolutions, either in favor of Chief Justice or in favor of committee-A or for committee-B or for committee- C, Selection of... of committee, I think most of the high court says Chief Justice have the power,

Justice A.K. Patnaik: normally what happens, out of experience I am saying, there are some annual postings and transfers, goes to full court, urgent matters, right! It is handled by the committee, because full court it is very difficult to convene.

Participant: article 235 says the control over district courts and courts subordinate thereto...

Justice A.K. Patnaik: no, no Chief Justice, I told you naa Chief Justice, must have been authorized by the full court, open up, go back and see the old resolutions, you will get it. I have not seen the old resolutions, sometimes when doubt comes, I say how Chief Justice has this power, show it to me. So you have to look at the old resolutions, when was the high court found?

Participant: somewhere in 56,

Justice A.K. Patnaik: haa 56, you see the resolution, somewhere they might have been authorized, but the power belongs to high court

Participant: because that power is directed by the full court to the Chief Justice,

Justice A.K. Patnaik: haa! The power must have been delegated. There must have been some dissolution how, how this power has come, and it can be challenged, somebody...I will tell you one thing, there are many Chief Justices in the country, you believe I am the Chief Justice. They don't realize, the moment they go out of their seat. They are powerful so, nothing can happen out of fear. It has to function as per the constitution. In my meetings, sir how this particular judge was transferred from my, without information? I said because this is not your power, that's all the power belongs to somebody else. Then I called the registrar and showed it to him, this is the power. Then the other administrative committee, has decided then portfolio judge has nothing to do, some portfolio judge said, sir how discipline procedure start like this, I am the portfolio judge I don't know this. So I said let us see the powers, when we say the powers he has no powers, you don't have the power to do. You have to ultimately go through the tangle of rules and tangle of constitutional provisions, delegations, and resolutions and come to a conclusion, whether the proper authority has recommended for the transfer. Ultimately the recommendations goes to the state government, as he was rightly saying. Mr. Singh was saying, state government has to implement it that's all. Otherwise how article 235 will be effective, how 235 powers...they are only in formalizing, otherwise they will start controlling the courts, so now, next is the how you will prepare the agenda, once you are very clear. See it's not easy to call a full court meeting, or not easy to call administrative committee meeting and in state like Madhya Pradesh, where there are three benches and all the judges are spread in these three benches. It is very difficult to call a full court meeting. Administrative committee meetings are also, in three inches we hold it through the video conferencing. So

therefore when you prepare the agenda you must make sure, that those items which require immediate considerations or urgent matters are placed in first. Then there will be many matters coming but administrative committee or full court meets for two hours, three hours maximum. All these matters cannot be rushed in, so you have to prepare the agenda taking into consideration the priority. Which one must have priority in point of time and that's very important aspect, many Chief Justice don't put mind into that, Kya hai? You tell the registrar in the full court committee, full court meeting, *thik hai kardo*, sign *karke bhej dete hain!* But I was not one of those Chief Justices. I will see what is the priority of matter? *isko piche rakho, isko aage rakho, isko baad main krenge, isko phle karenge.* And I have also noticed that the registrar general sometimes get influenced by the judicial officers. They put pressure on the registrar general. Something that is prior, they take it on priority basis. Natural things which happens, promotions matter, right! But ultimately Chief Justice has to find out, which will have and which will not have priority. You must take the whole list, before the Chief Justice and which one are, these of the matters, which are the matters that will have the priority and I will take them first. Otherwise in most of the high court's Chief Justice doesn't even know *Kya neeche*, Kya important matter *sad raha hai, neeche!* Important very important, why? Because full court has not been known. Priority is very important thing and that registrar general must exercise sense of judgement and sense of urgency those are there and way it to the Chief Justice. These are prior matters, urgent matters which requires to attend it and these may be attended later on, then leave it Chief Justice, that's very, very important, right! And most of the Chief Justice don't have the time to apply their mind, to which one should be taken up in the priority? contents of each item, the agenda it has been affected, you should be very fair, in judging the item when you make the note, very fair to the full court or to the administrative committee or to the officer concerned, *inke khilaf yeh hai, inke favor mai yeh hai.* Everything should be presented very well, otherwise many registrar generals have faced many problems with many Chief Justices. Registrar generals have been shifted overnight by the Chief Justice, whom he has suspected, *yeh humare samne kyu nahi laye?* Why this was not placed before me? because he has no time to go through all that, so agenda notes have to be very fairly prepared, even if the registrar general is not doing, then some subordinate is doing it, but you have to ensure that very fair note, a comprehensive fair note, not very detailed, a fair note reflecting all aspects pros and cons are placed before it. Committee or in the agenda

note or before the full court in the agenda note right! third, when the meeting is taken up all the records of the files should be kept ready any moment when the meeting is taking place let us see the ACR of that officer, or let us see what the resolution was passed so immediately, when they ask for it you should immediately place before it, this is what if Chief Justice called you, *isme Kya hai padho, padho Kya hai?* So then he will read out it loud. so these are three things, one is priority of items that you put, fair and comprehensive agenda, pros and cons and third is all records of the files related to that right! Then... the private secretary should be ready to take a dictation directly from the Chief Justice or the chairman of the committee. If the resolution is distorted, the next meeting the judge will point out, this was not the resolution, this was the resolution, right! That is very difficult task. Now therefore best way is to tell the administrative judge or the Chief Justice to dictate, and when dictation is over take it to him and show it to him, sir is this dictation alright? Is this what you want? He is going to sign it ultimately. Lot of manipulation can take place there, so one has to be careful right! This is what I wanted to say and now I may also deal with that, in the Chief Justice conference.... comes to registrar general, what should be in the agenda? So the Chief Justice says circulate it to all the judges and find out, it goes to the judges. They suggest something, and then Chief Justice thinks whether it should be included, we should send it to Supreme Court or not, then it is sent to the Supreme Court. That is how the agenda is prepared, and then the agenda is prepared by the Supreme Court and is sent to you and said that you want anything to be added, again it circulated right! That is the agenda of Chief Justice Conference is prepared. Ultimately Chief Justice of India decides what should be the agenda and what should not be agenda. Now you can put questions to me, any questions or you can go for the evaluation also, any questions you have? If you have you can put questions.

Ms. Nitika Jain: if you any question, not only pertaining to these two particular sessions, but regarding any sessions, you may ask sir.

Justice A.K. Patnaik: no question? All are done,

Ms. Nitika Jain: we have a small two page evaluation form. You all are requested to please kindly fill this evaluation form. If you have any feedback any suggestions, that we could put in or implement in our future conferences it will very helpful. Anything that you did not like

about the food, hospitality or any particular session, that should be changed or something that should be added in our future conferences please do mention in the evaluation form.

Justice A.K. Patnaik: you see for example, any area in which you are facing problems,

Justice A.K. Patnaik: concerned government... haa yes that is better,

Discussion...

Justice A.K. Patnaik: is not coming through let us put in CJ and discuss with the Chief Justice, and he may say yes, problems, basically problems.

Justice A.K. Patnaik: haa they may not agree, judicial side they may got it done, through what you call some judicial order, that's the different thing, consultation is must in 229, therefore you should be able to persuade them,

Discussion....

Participant: it is very difficult to persuade them...

Justice A.K. Patnaik: see now let me tell you how I used to get them in Madhya Pradesh, I used to do a bit of politics, I remember, when the sub ordinate courts were expanded in Madhya Pradesh and the case are not being taken up, then the judicial officers told me, that the public prosecutor is not there, only one public prosecutor, in one court, inadequate public prosecutors, right! that public prosecutor, director of prosecution, the judicial officers in Madhya Pradesh, so I told him you recommend, you make an assessment how many more you required in the state, and recommend, so recommend 600 posts, so then it went to the government, this time I went to the Bhopal, I called all the law secretaries and ask him what happen to that director of prosecution, what happen? Still pending. At whose table, at the table of additional chief secretary, and the finance secretary. Same day there was a meeting, there was a function, where the law minister was coming. It was release of civil list of judicial officers, so I found the media was also there. Then in that meeting I said how would be the administration of justice would be delivered to people? *Ho nahi sakta*, Madhya Pradesh mai. Sometimes we have to say in Hindi also, cannot, why? If there are 10 judges in the place and there is one... how criminal justice system will speed up? It cannot speed up, law minister... in English he asking the law secretary who is sitting by side *yeh* Chief Justice *sahhab naaraz kyu ho rahe hain? Kya bol rahe hain?* Or media *wale likh rahe hain*, then he said *bol rahe hain*,

court *dus hain* or court *sahhab ek hai, toh* administrative justice *kaise chalega?* Then the minister said, *yar yeh toh bahut bada wala press chal raha hai, media yaha per hai Kya ho raha hai?* You know what he did? From that meeting he went straight to the chief minister, and told him *chief sahab naaraz hain*, next day morning when I was about to leave when additional chief secretary and finance secretary arrived, I said files are with you? I will clear it today, same day they cleared it, sometimes the Chief Justice has to take advantage of media, media is very powerful and they are very scared of this,

Justice A.K. Patnaik: I will give you another example, there is a place called Devas, near Indore, so when justice Ravinder was there a Chief Justice, my predecessor, he had started an initiative to lot of MLA and MPs to contribute and establish a Nyaya Sadan, which will take care of legal aid work, Lok Adalat will take place, legal aid council will sit there. They can stay also overnight. People can stay overnight there, for their court work. Just before when I was going to go to inauguration, few lawyers came to me and said that, sir... that was public funds, if you go there then what message it will give, message will go that, with this MLA, MP funds, I said this is not court building Mr., this is only this... then I went to the function again media is there everybody is there. in my speech I said this is what happened somebody came and meet me in a break, then I am thinking this way, that if government does not have funds for court buildings also, where is the question that they are providing funds for all this Nyaya Sadans. *Yeh chhap Diya, pura headline chhap diya.* Next day the cabinet sat and cleared for construction of 100 court rooms. So these Chief Justice can do, but he has to be very sharp and he should know how to handle these people right! The political people are very scared of the media, and media is very happy catching this... whatever I was asking for genuine, they immediately followed it. They are not scared of Chief Justice but they find out that their political vote bank is going to go, they followed the line.

See there is a lot of scope for you all to improve the quality of judgments and also to improve the quantity of disposals. You only have to think.

Ms. Nitika Jain: with this we will end this conference. Thank you all for participating in the conference, it was very nice meeting you all and thank you Hon'ble justice Patnaik sir. It was nice having your experiences, I am sure your experiences and your instances must be very helpful for all the participants. Thank you everyone!

