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NATIONAL JUDICIAL ACADEMY



SEMINAR ON APPLICATION OF SC/ST (PoA) ACT

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VERBATIM REPORT

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Contents

SESSION-1	Error! Bookmark not defined.
Psychological Perspectives on Caste Based Atrocities.....	Error! Bookmark not defined.
Speakers: Justice K. Chandru & Justice Prabha Sridevan	Error! Bookmark not defined.
SESSION - 2	16
Preconceived Notions & Perceptions.....	16
Speaker: Justice K. Chandru & Justice Prabha Sridevan.....	16
SESSION-3	35
Moral values v. Constitutional Values	35
Speakers: Prof Pawan K. Singh, Justice Prabha Sridevan & Justice K. Chandru	35
SESSION-4.....	Error! Bookmark not defined.
Interpersonal Sensitivity	Error! Bookmark not defined.
Speakers: J Prof Pawan K. Singh, Justice K. Chandru	Error! Bookmark not defined.
SESSION - 5	74
Discrimination in Schools Case Study - I.....	74
Speaker: Justice K. Chandru	74
SESSION- 6.....	83
Discrimination at Home Case Study - II.....	83
Speaker: Justice K. Chandru	83
SESSION - 7	93
Discrimination in Access to Education Case Study - III	93
Speaker: Justice K. Chandru	93
SESSION - 8.....	Error! Bookmark not defined.
Individual Biases, Prejudices and Idiosyncrasies and its effect on a Judge.....	Error!
Bookmark not defined.	
Speakers: Dr. Nishigandha Bhuyan & Justice K. Chandru	Error! Bookmark not
defined.	defined.

SESSION - 9.....	Error! Bookmark not defined.
Rationality in Decision Making Process.....	Error! Bookmark not defined.
Speaker: Dr. Nishigandha Bhuyan.....	Error! Bookmark not defined.
Session - 10.....	129
Moral Development and Ethics for Judging	Error! Bookmark not defined.
Speakers: Dr.Parul Rishi & Justice K. Chandru	Error! Bookmark not defined.
Session - 11.....	141
Recognizing “Ego State” to Deliver Better	Error! Bookmark not defined.
Speakers: Dr.Parul Rishi & Justice K. Chandru	Error! Bookmark not defined.
Session - 12.....	150
Discrimination at Work Place Case Study 4.....	Error! Bookmark not defined.
Speaker: Justice K. Chandru.....	Error! Bookmark not defined.
Additional Session	158
Discussions & Clarification on New Amendment to the Act.....	Error! Bookmark not defined.
Speaker: Justice K. Chandru.....	Error! Bookmark not defined.
Session - 13.....	167
Caste Challenges in Bar & Bench.....	Error! Bookmark not defined.
Speaker: Justice K. Chandru.....	Error! Bookmark not defined.
Session - 14.....	173
Sexual Violence against SC/ST Women in India	Error! Bookmark not defined.
Speakers: Ms. Pritarani Jha & Justice K. Chandru	Error! Bookmark not defined.

Session 1

Psychological perspectives on Caste Based Atrocities

Speakers: Justice Prabha Sridevan

Justice K. Chandru

Dr. Geeta Oberoi: Very Good Morning to all of you. So this year we meet for this conference with all of you having this assignment were you are a presiding you area I think presiding officers all of you under Sc & ST (POA) Act. Is that so? All of you are presiding having this additional charge for deciding atrocity cases?

Participants: Some say yes a few others say no.

Dr. Geeta Oberoi: no? But I'm surprised we asked High Courts only to send presiding officers of these special courts. But then there are some of you...ok see basically in this seminar we are not thread bare discussing legal provisions of the Act as you see you're program schedule which is before you. We are going to discuss about some higher principles. Why such law comes into existence? there must be some issues with our society an whether you agree or disagree, we have to accept somewhere or other we care all as a human being biased, prejudiced, we have some notions about others. We know very less about our self actually and in this conference all of us collectively can actually reflect back on as a human being why actually this whole prejudices and biases come into being. How they interplay with our decision making process and how society as such is shaped by our own preferences, our own biases, our own prejudices. We think our language is where whichever language we are born is best; we think the religion in which we are born is the best. All this you know thinking that what actually is ours is superior and what actually belongs to others is inferior is a root cause of all biases and prejudices. And then it actually leads to all kinds of discrimination. Sometimes they get so much into our body and our mental framework that we even fail to recognize that these things exist. They become natural and routine part of us. And they are a lot of reasons like Scientists have come out with other reasons for it like for example why this happens when we are deprived of 3 elements: impartiality; objectivity & rationality that is one way of looking at things the other area which is bit more scientific neuroscience has given is like we sometimes we our self don't know we are mentally unwell. Some of the biases and prejudices are also caused because psychologically

we are not so strong. there is some psychological issue with all of us which we need to recognize because what happens when we are actually put into one place and we don't grow out of that place we believe that is what life is all about we are not exposed to the world which is different from us that also is root cause of biases and prejudices. It's like fish in the pond. A fish in the pond has never gone to fish in a river / ocean so it does not know that there is world apart from world. For it the pond is itself world. As human being we should take this oath to our self to nobody but to our self in our heart and in our mind that we should not actually by any chance become that fish in pond. we have to go out of our comfort zone, learn new things, accept new things and recognize existence of every other human being howsoever he/she may be different from us. Then only these whole barriers that are there in our mind that we have framed against others will be broken and then only the society as such will progress and you know this whole caste related discrimination will be somewhere reduced. I won't say completely zeroed down but at least it will reduce. with this I small introduction that what was actually is objective because we are not discussing law over here we are discussing higher principles and why we are higher principles, with this introduction I will leave it to you with our Hon'ble Justices. Justice Prabha Sridevan and Justice K Chandru, both of them former judges of Madras High Court and other High Courts as well and they have enough lot of huge experiences of dealing with these issues and also they have a number of conferences done such trainings an I will leave it to them and also in the afternoon we will joined by Prof. Pawan Kumar Singh from Indian Institute of Management, Lucknow. and of course program co-coordinator is there Sumit Bhattacharya if you have any other issues you can always related to your stay or any other logistic issues or any other issues relating to reading material, session you can always come to Sumit Bhattacharya. Also please in evening we are going to screen 3 films and these 3 films are part of this curriculum. They are not just like optional ok you want to see, see / you don't want to see, don't see kind of things. They are part of our curriculum because next day we will always at least take 5 to 10 minutes and discuss about those films. So with this I give it to Justice Chandru who will be taking first technical session. Thank you, sir.

Justice Chandru: friends, good morning to all of you. Next 3 1/2 days we will be having one subject namely the law relating to the crimes against SCs. So we will have enough time to discuss on various aspects of the issue in question. The first hour there will be a preliminary introduction on the psychological issues perspectives on the in caste based atrocities. now most of you must be already judge in the special court dealing with the SC & ST (POA) Act and some of you may also get a posting in the near future but what is important is that you can't

either ignore this provision or try to make the provision little cut off from the original objective for which it was enacted. the first question when it comes to the special legislation I'm sorry to say it may be due to many factors the conviction rate under this enactment is only 3% and out of every case filed 100 cases there are only 3 cases which result in conviction. The moment we talk about low rate of conviction people always say that this legislation has been misused. That's a standard public outcry about this legislation so now we will have to seriously and objectively analyze why is it true that a law is being misused. In which case there are several hundred legislations which are also being misused. Once you make a law you also have to believe the law will be made use of and enforced by court and there are sections and sections who may try to misuse the law for their own ends and that is why there is a judicial system to keep a check on this misuse. So in my humble opinion if a law is being misused it can't be done without the help of the court. So when somebody says that it is being misused which means the courts is also responsible for the misuse. It is not merely the law is being set in motion there are misuse ultimately there are many checks and balances on any law and ultimate authority to say that a particular offence is being made out/ a particular sentence is being given, is because of certain misuse. I think without the judiciary's help it can't be done and therefore ultimately the greater safe guard is judiciary and therefore our understanding of the law should be much higher than our ordinary people. When he talks about... I want to start with the first illustration you all know what is a scheduled caste and what is a scheduled tribe. I don't need to define. It's a presidential order which describes various castes as per the constitution a scheduled caste. Each state has got a different name of caste. When I mention a particular caste the other judges coming from other states may not understand. But our state the judges will understand what is the name of the caste. There are many times the name of castes in the scheduled caste list are also used as a word of abuse/ a word of derision/a word of derogatory references and therefore it is very unfortunate that people are also using caste prefix / caste affix as a word of abuse and without knowing the true meaning we ourselves sometimes try to use such words in our judgments. In fact the Supreme Court delivered a judgment in 1989 in that there is that was case of course that was a case relating to exercise of the presidential power u/ art161 where the governor can grant reprieve to a convict or a mercy to a convict and that can't be done without the help of the State Government. So a governor acts on the advice of the council of ministers especially Art 161 has to exercised 163 only with the aid and advice of the council of minister and council of ministers are run by a party which gets majority legislators in the house and that majority party has its own political compulsions and therefore there may be likelihood they advice the governor to release a particular person from jail maybe

that be belong to that party. Now the question came whether the action of the governor / the action of the president can be subject to judicial review. after all it is a preliminary power given to the president and the governor though it is acted in the name of the governor / in the name of the president that the council of the ministers' advice is essential that has been held by the Supreme Court and when that advice is given and the governor passes an order somebody brings an action to the court saying that this exercise of power is a abuse of power. The court has undoubtedly power to judicially review every desicion of the government maybe the scope of review may be limited or lost depending upon the issue that has been considered by the court. In one such case the Supreme Court found that a criminal was often a habitual criminal and the council of ministers recommended that this man is a good person, has a good standing, we want him to have a reduced sentence or a mercy given to him and governor signs the order. Now this matter comes to the court and court examines the file and after all this and they find that in this particular case that the criminal belonged to the ruling party and therefore there was anxiety on the part of the council of ministers to recommend a reprieve for that convict. Therefore the court reverses the finding of the governor and set aside the order granting mercy on the convict. Now you may write a judgment, there are judges who use only simple English of the facts involved, of the law argued and the finding. There are judges who use similes, quotations and quotations from known authors. So in this particular judgment there is a sentence which says that all along he has been a criminal but suddenly the governor finds he is a good man. So the sentence used is a Parea dog overnight becomes a hermit. when you say Parea that's a name of schedule caste in Tamil Nadu and when Englishmen came here they used the word Parea ands if there is a street dog, that street dog is called Parea dog and a Supreme Court Judge unwittingly/ wittingly uses the term about describing about the criminal who has been given a concession by the governor and they disapprove of that action. The term used is it appears a Parea dog has become a hermit overnight. Now who will go and tell the judge ' Sir this is a caste reference you should not have used this. It's an offence under the Act. When you try to derisively use a caste name it's an offence under the law. How many people can go and tell the judge? so wittingly / unwittingly or psychologically/ inwardly we have tendency to either being insensitive about the issues on hand and i am only giving as an example because tomorrow when you write you may freely make use of quotations and then when you make a quotation you also might find out / deconstruct the quotation and find out whether any casteist reference is made in the quotation that you are taking. I am saying this with all pain because at times we become insensitive to many problems though we may be doing "justice" within inverted commas but in that process unconsciously you may be trampling into the

feelings of the people and that is why we should be more cautious in such matters. This is a reported judgment anybody can read I will give you the reference. Coming to the issue on hand today we find after the 125th year of Babasaheb Ambedkar there are lot of discussions in public sphere what is the teachings of Ambedkar? what is it that he has done to the upliftment of the people and more particularly the Scheduled Caste people and we have also seen issues were somebody eats something in their house and they are beaten to death not even knowing what they ate in their house all that suspicion is enough that you are eating something prohibited so the prohibition is brought by legislature and the enforcement is done by some groups which take the law into their own hands. They think that this man has eaten forbidden i may say forbidden fruit and they are a sinner and therefore what happens there is a murder. Then the question is what he ate is a prohibited item or a permitted item. so today we have come to a stage were the State and the State legislations permeate into all areas in the manner of dress, in the manner of eating , in the manner of marriage, in the manner of shelter many things the legislature has played and now what we find somebody, some student in a University commits suicide. Now the reasons for his suicide/ the suicide note left by him maybe a subject matter of a debate. Now we have a good system of educational campus which is free of all this caste prejudice? Does the educational campus impart real education? Does it really put stress on such people who are coming from unfortunate social background? On the other hand, the discussion whether he is a scheduled caste or not? Does it matter? My question is that our sensibilities have become so rigid that it is immaterial if suppose A is dead it is immaterial which caste he belonged. If it is an unfortunate death it is have certain amount of feeling g we should express not a question whether he is scheduled caste or not. Now this a these are the public debates that we have seen in our print medias put on this the electronic media had enough debate and social media has its own campaign and now the issue what is important is the issue was come on centre stage, what really is the problem that's most important. Again and Again we are faced with this situation is it being a crime to be schedule caste in this country, that's the fundamental; question. Do they have dignity and self respect? On the other hand we find the leader the great leader Babasaheb; he is made into an icon now the government works overboard to buy his house in United Kingdom. to make a memorial in Bombay, to put statutes all over and the question will be in this process of deityfication what you really do is to forget what he has actually said about all these issues. The caste and religion is an important issue. It is not an issue concerning society, it is an issue concertinaing judiciary because more often we come across many issues which the fundamental the problem arises out of caste / a religion and therefore we cant ignore, we can't wish away these issues. If you, everybody says statute and

the greater the statute the greater reverence because we are a country which believes in idol worship and therefore we also make our leaders into idols. In fact Dr. Ambedkar warned against this personality cult, warned against this kind of a personality cult. he said this will completely make the man's teachings forgotten by the common people. you make a deity and make all the prayer that's all and therefore if you come to Tamil Nadu, i think 2 of our Judges are here and they also come from areas where these issues are very common. If you go to any street corner or a street junction or a cross road there maybe in some places a statute of Ambedkar is there. Now you will no find the Ambedkar statute free in the open space. It has put in an ironed cage with door, lock and key. Now the Ambedkar statute with holding Constitution in the hand but put in a cage. Something like we have given some life sentence under solitary confinement to a great leader. Why is that that an Ambedkar statute has to be protected by an iron cage with a lock and key? When the Ambedkar's Jayanti comes people will have to open the key and put the garland and again lock the gate and come back. You will be surprised the key of the gate, the key of that gate is with the police station nearby. So the police controls whenever any puts a garland. Now why this has happened, why we have given some jail sentence to a leader, a tall leader who was an architect of the Constitution. these are the issues which in fact you will be shocked to see that kind of at not one place almost every place where there is a including in the High Court campus, there is a fiber glass partition so that nobody will do any harm to the statute and we find in a country where there is 1.2 billion 1/5th of the 1.5 billion belong to that community and they have not been given due respect and the civil rights ensured by the Constitution and the laws made by the parliament and that is why we have now some legislations which attempt to somehow bring in some kind of a justice to the issues on hand and you will also be surprised for the Indian civil service, which is very prestigious steel frame of India, the bureaucrats who are produced as a cream of the society to run this country. Now they have a conduct rules and they have a ACR Annual Confidential Rolls. How their ACRs should be written, you have an ACR for you also but we don't have this clause. Now there is an officer who reports, there is an officer who accepts and there is an officer who reviews the entry made and when an adverse entry is made it is communicated to you so that you can make a defence. In some of our proceedings we write ACR, though it's called an Annual Confidential in five years in one stroke they will write. Good bad ugly depends on the judges, high court judges' view about the district judges. ACRs are never mentioned in an objective form and that is bone of the complaints but when it comes to the IAS, IFS and other all India service, in the ACR there is a column attitude of this officer towards Scheduled Caste. Somebody has to write what is his attitude. In fact I also feel that in our judiciary also you must have attitude of the

judges towards Scheduled Caste, though they are supposed to have a very judicial approach to problem. But unwittingly, because of our birth, because of our subjectivism, because of our upbringing, we also develop a lot of prejudices over the years and then that stays in our mind and that is why we start looking at the problem in a different way than what is required. now why i am mentioning about this was when a bureaucracy of this country, the cream of the bureaucracy of this country has to be tested about their attitude towards Scheduled Caste and every year somebody has to fill up the column why is that such clause has been introduced that is most important. Today we need not just law, not the law makers, but the law enforcers or the law justices but their attitude is important, more important than anything else is your attitude towards the law and therefore in the next 31/2 days i don't want any monologue on this issue because some of you who have dealt with these issues must also come and speak. It should be dialogue so that we enrich ourselves when we go back on this issue. I now start with that what is the problem of Scheduled Castes. Perhaps nowhere in the world in the Constitution of the world there will be a clause like Art. 17. In fact anybody from outside this country reads Art. 17 they will ask they will be very surprised that in a Constitution which is the most sacred political document what Justice Krishna Iyer calls as a paramount parchment, biggest paper, mother of all laws, there is a provision which says untouchability in all forms abolished and it shall be the duty of the parliament to make laws. Now why should we have a declaration like that? Does it that is a constitutional recognition of the practice of untouchability. 1950 on 26th January we brought this constitution, what we gave it to ourselves, we also wrote ourselves we will not practice untouchability. Therefore that is a ipso facto recognition that untouchability in any form, why i am talking about form, it can be in a disguised form also, need not be open form. Don't think that it is being practiced at the floor level and even at the higher level such practices are there. When Babu Jagjivan Ram who was a 31 years Minister, right from the interim government in 1937 he has been a Minister till his death and he inaugurated , he went to some temple, it has happened even recently also. After he left the place, there was a purification ceremony done. This was to a federal Minister who is a Minister of 3 decades when he goes to a temple and comes back, the priest perform a purification ceremony. So will you say that there is no untouchability in this country? I know judges and judges, when peons are allotted to them, when attenders are given to them, they find out their caste and if it is scheduled caste they don't retain them. You may be shocked when i say all this. I have seen and I have proof, such discriminations are practiced at the highest level, who are supposed to render justice to the world and we practice the same thing. Why is that the caste issue has continued to plaguing us with is issue is one issue. Now when the Constitution said you bring laws and try

to eliminate untouchability, the first legislation you know Protection of Civil Rights Act, 1955. Now the Protection of Civil Rights Act opening statement what is given under Art. 15 that is a public place you can't have any discrimination whether access to public place like a temple/ a tank/ a water source all this are prohibited and calling them with caste names is also an offence. so more / less before the 1989 act came, for a period of nearly 20 years, 22 years this was a legislation on the subject. Now this legislation which is called as a caste reference that you call me by a caste name and suppose you take schedule tribe, the question of calling them caste name doesn't arise as the caste doesn't exist there it is only the tribe. When it comes to schedule caste, the caste name matters so you call somebody like i said mentioned the word Parea is one of the caste. Suppose you call somebody with that prefix then you are committing an offence under the Act. So therefore there is no much difficulty for the judiciary evidence is written and whether the some caste name are there. Then the question came that people are trying to misuse this provision by calling some body without there actually being called so the chorus increases. I know the birth place of Ambedkar is Aurangabad district. That university in that area was sought to be named after Ambedkar. In fact in Tamil Nadu we have Ambedkar Law University we have Ambedkar Law College. But when it comes to the very birth place of Ambedkar, when the government wanted to name that Maratwada University into Ambedkar University, there were riots, there were so many agitations, why? You should not name this. So that is the prejudice that we have. At that time some of agitators which are not common only to Maharashtra most of the states were this law is put in use people say this is being misused and therefore the law should be withdrawn. Here is a case where even the law is before put to practice, there is demand for withdrawal. Similar like Dowry Prohibition Act or now the Domestic Violence Act, there are now increased campaigns. even some judge3s of the Supreme Court in their orders said this is likely to be misused they have said that and therefore this law no exception but most important in the Protection of Civil Rights Act there is a duty cast upon the judges, I think whether that you have seen it or not S. 13 of the Act. Let me read that act for you because we have some performance to be done under the act.

Limitation of jurisdiction of Civil Court: No Civil Court shall entertain or continue to any suit or proceeding or shall pass any decree or order or execute wholly or partially any decree or order as a claim involved in such suit or proceeding is a passing of the said decree or order of such execution would any way be contrary to the provisions of this act. No court shall in adjudicating any matter or executing any decree recognize any custom or usage imposing any disability on any person on the ground of untouchability.

Therefore here the judiciary comes in. In the 1957 act this is a specific provision under 13 that you can't entertain any suit or pass any decree which may perpetuate untouchability which may try to recognize a custom or a usage which may indirectly perpetuate untouchability. Now many District Munsiffs who are entertaining the suits whether they keep this mind or not I'm not very sure because we had one case in Tamil Nadu that when a Dalit dies in his colony and when they want to take the body to the cremation ground and the many of the scheduled Castes community they don't cremate they bury. So when they take them to the burial ground the access to the burial ground is through the streets of the village and the streets of the village we two Indias, though Mahatma Gandhi's said that India lives in villages that such romantic comments are not appreciated by Dr. Ambedkar he said which village each village has got 2 villages within it. There is a colony there is a main village and now when the colony people, when the Dalit settlement they take the body the people in the other places are objecting to the body being taken through the village. so not only in birth, not only during our life even after death we have no equality even after death there is no equality at all, after all of us are going to somewhere same place maybe or I don't know even in the heaven or in there are 2 separate enclosures i don't know, but now this objection is very common. not only its common to Tamil Nadu but entire South India I think the National commissions report says that its very peculiar to many places in South India. Now when such things happen when they attempted to take the body through the village, the villagers protest. What is the other route they have? The green fields. the green fields have got small borders and 4 people cannot go in the small boundaries of a green field and necessarily and especially during monsoon time it is difficult to walk in the fields so there has been attempt to take the dead body through the village and there have been protests and there have been law & order problem and police tried to intervene and very recently 3 weeks back when there was a court order permitting them to go and there was resistance, what the police did was they go by numbers if those who are resisting more then they will side with them in the name of law & order. So the Dalit refused to take the body in the other what is the unconventional road less route, when they refused to take. In spite of court orders in their favor, what the police men themselves took the body and went through the green fields and went and reached the burial ground. This is how we try to solve the problem. The case which i am referring to is a case where the people in the village filed a suit in a Munsiff Court swaying that the Dalit shall not enter the village streets and it was filed in a representative capacity under Order 1 Rule 8. Now, the Munsiff did not keep this 13 in mind because it was completely 'A' representing the villagers in the seat number so and so and so and so. The defendants are the 'B' who were the Dalits of the colony that was a very representative

suit. Any reading of the plaint will show this can never be entertained by the courts but still the suit was numbered and notice was sent. the result was every hearing they will be 2 groups will be standing in the court and leading to further law & order issue and the High Court was moved in a petition u/Art. 227 saying that how is that this Munsiff failed to keep in mind Art. 13 the S. 13 of the PCA Act. The question came when you should apply your mind. When you number a plaint do you administratively decide the matter or you have some judicial function also. Normally people think number the suit means maintainability issue is not decided but what has been statutorily prohibited can you direct the suit to be numbered? Will you not read the plaint? Will the office read the plaint or the Munsiff read the plaint? So Madras High Court significantly ruled that it is not mere administrative function, he has to apply his mind before a suit even numbered, numbering may be an administrative action, but when a law prohibits he shall not number the suit and return the plaint. So S. 13 has to be kept in mind when numbering a plaint and this order of the High Court was circularized to all the Munsiff Courts. Why i am saying this was at every stage consciously/ unconsciously we also become party to these practices and this one instance where this '57 this '55 Act was brought into notice. What is lacuna in the '55 act? It only talked about access. It only talked about caste references, but it did not deal with the larger question. Suppose there a Dalit owns some land by sheer hard work they occupy some encroach land which also there are lands which can be encroached also. Legally permissible to be encroached, though the word encroachment is used in a negative sense. in the land records there are some lands which can be encroached which nobody uses and then when the dominant community tried to usurp after cultivation is done, after leveling is done, the land has now become usable they try to take over the land by all methods need not only by strict but also by advancing money or coercing them to give part of the land, so many things can be there. In these circumstances suppose the lands have been taken away by force therefore there were also economical rights not merely a right of access to public place but also economic rights were they are subjugated not only property but a human being. The Dalit women are raped because they are available they can't resist and now the law want to be more stringent on them, therefore the 1989 Act came. The 1989 act is a mass departure from the 1955 Act because 1955 act did not deal with the socio-economic rights of the Dalits. it only dealt with their dignity as an individual but the larger as a group right their access to road, their access top burial ground, their access to village water source, their accuse to their own cultivable land. Now if these are denied not just by private people, not by the dominant community even by the government officials because it becomes 2 in 1. When there is a dominant community the officers' belong to the dominant community also work in their own

favour. It can happen in several methods. In fact i had a case, very, very shocking case were there was a bus in Tirunalveli town there were this Southern most district, the bus was going, The end point end in a Dalit settlement town. So the Dalits who are cultivating vegetables they used to carry the vegetable and go to the city market and sell them and come back. Now when they get into the bus, the become full. there are only 48 seats the rest of them will have to stand/ so when it goes to the colony and comes through the village and coming back to the town, the village people cannot find a place for sitting because all the seats are occupied. Now when all the seats are occupied they will have to stand. While Dalit is sitting i am standing. So what they do? They inform their officers who are having a higher position. So one of the police, superintend of police, he writes a letter to the transport corporation: you terminate the bus in the village itself. Let the bus does not go to the colony so that the villagers will have a place to sit. now this is an order, this is a letter written by a superintend of police who is an IPS officer and one lawyer files a Public Interest Litigation saying that how is it suddenly the bus is stopped coming to the village, to the colony. when we called for the file, the files were not coming and government was not filing any reply because a reply means exposing this superintend of police who has written a letter that village people Rae unable to find seat and therefore i request the managing director to stop the bus in the village. Bus did not go and these Dalit people will have to carry the head load and walk all the way to the village today. It will walking about a kilometer form their settlement. Now how do you do justice to this issue? There is no reply filed by the government and fortunately we found the letter written by the SP and that was the root cause for the stopping of bus. A similar thing happened in America were the Blacks are not allowed to occupy seats and they will have to stand even if the seats are vacant they will have to stand and come in the bus and only when the white man. So there was a woman who said when there is a seat vacant I will sit. Rosa Park, she is a Black woman, she is going for work and when a white man said you please get up you can't sit, she refused. She said I have purchased the ticket. But then the conductor was not there was a driver -cum-conductor and they said you must get up. Then the bus was taken to the police station, she was handed over to the police and police registered a case for unauthorizedly sitting in a seat which are empty and the American, in America what they did? They didn't go to court because they never had a right. blacks were not considered, though the American Constitution starts off by saying all men are equal, the women were equal, the blacks were never equal and only very recently women were given voting rights, blacks were given voting rights when the very recently, though the Constitution is 200 years old. All men are equal but they are not equal, that is how we have rights, everything, good things in the constitution but ground reality is not

the same. But what the Rosa said was she convened all the Black people they refused to get into the bus. They walked, even if it is 20 kilometers, even if it is 15 kilometers they walked to the work place and boycotting the bus and finally the bus owners unable to have economic loss on this issue they provided seats for the Blacks. by struggle, in fact the Rosa Park campaign was joined by Martin Luther King and it is a great march and they won and its more than 6 years since the incident took place. So wrote in my judgment that we don't need a Rosa Park Campaign we have Art. 17 which is greatest weapon in the hands of the court to stop untouchability in any form when i mention in any form this is one of the form, in a disguised form and i mention about government officials who also belong to such communities can also participate in such atrocities and therefore we issued a mandamus saying that run the bus up to the colony. We said Rosa Park is an icon for such discrimination, fight against discrimination. But we have a constitution were a Public Interest Litigation can remove this kind of a untouchability and we did remove. This i am only saying because under 1989 Act S. 4 talks about when an officer also colludes with an offence he should be prosecuted, you can't simply stand and watch, you can't take sides in this matter and therefore there may be a situation where the public officials who also party to such matters has to be. Now the 1989 Act when it was brought in there was lot of hue and cry saying this being misused, it is likely to be misused because the Act under S. 18 dispenses with anticipatory bail (AB). so there were big talk that anticipatory bail available in CrPC, now there is a special law and therefore how can you take away little realizing in Uttar Pradesh amendment even CrPC don't have anticipatory bail. By the state amendment they have taken away the anticipatory bail it doesn't mean, only in SC ST act AB is removed, even in CrPC in UP they don't have anticipatory bail therefore it can be. But how the court got out of this situation. The idea was a fellow cannot get a bail and continue to threaten these people from prosecuting them. He should be dealt with in a different way. This was challenged bin Supreme Court; Supreme Court upheld the deletion of the Art. 18, they said there is no fundamental right to have and anticipatory bail. You may move a bail, but then the dominant caste who don't want to give up what do they do, they fail in up to Supreme Court, then they start the litigation from High Court again how: My Lord I want a bail but the Judge will be postponing the matter. Therefore give a direction to the Magistrate to take up my bail application on the same day and dispose it off in the same evening and give the order copy on the same. These are the orders passed by the High Court. So when parliament says no, when Supreme Court says no, we will now give you some short circuit. This is how we operate. this misuse business comes only because there are people who are guilty of committing such crimes and they are the one who are afraid that is the law is put in motion , it can be a real

trouble for them and therefore instead of driving certain amount of caution, certain amount of warning, it has now made some complacent. Today is nobody is worried about the no-availability of anticipatory bail. You can get bail on the same day. all that you will have to get a direction from the High Court, file a criminal OP under 482, a direction is given to the magistrate, take up the bail application, give notice to the prosecutor by the afternoon, pass orders at 3 'O Clock, give the order copy at 5'O Clock, then where is the , you as can as well fast track bail system we have and this is how each method is got over and in its first session which i want to tell you a very simple matter. Now we talk about misuse. How the misuse is done kindly find out in this case. A woman who is a 60 year old women. This is only a simple example to say how the Dalits will have to struggle, even to register an FIR. This is case which is very. Now this lady who is standing you can't see her face because under law, a rape victim can't be shown. So her face is covered. This Mariammal because you have phonetic difference. Mariammal in Tamil is a Hindu name; Mariammal is a sub cultural deity in Tamil Nadu. Suppose you convert a small change Maryammal, she becomes a Christian. There is a difference between Mary and Mari. Now you see the case of Mariammal. How many difficulties she has to register an FIR. She is a widow. She lives in a house which you saw. Her husband died and there is no electricity still. We are in 21st century and one on 24th, 25th April morning, early morning, one of the village Mafia, who is a sand smuggler. He breaks open the house, enters house through the back door and rapes her. The rape here was the not in the is in the unnatural sense of 377 was the rape. she could not resist all alone, that accused name is Durai, that door is not something very, it is small tin sheet and what is important was she got the cell phone of the fellow in that struggle and that cell phone gets a message from whom? From the local inspector because he wants to get his cut in the sand being smuggled out so he is asking the inspector this is how the unholy alliance starts. Then her sons her takes her to the police station and later to the hospital and first time she tried to use that mobile phone. The phone is attended by the local inspector that is the most important and what follows is important. He is asking about his business deal. There is a delay in registering the FIR because he want to make all kinds of enquiries. Now she is a scheduled Caste and they are not registering the case under the SC ST Act. For people who come to college and service they may have a certificate, for the people who are in the village they may not have a certificate. So when a police wants a certificate that you are a Scheduled Caste at the stage of registering FIR. Now what happens is first FIR registered is only under 448& 323 IPC read with S.4 of the we have a local law preventing harassment of women in public place act. Now the FIR is registered not as Mariammal but as a Maryammal because a Christian convert Schedule Caste is not

covered by the Act, They are not Scheduled Caste though they may belong to that caste. But the conversion takes them out of the preview of the legislation. We have only Jains & Buddhists & Sikhs & the Hindus. If you are a Musalman, if you are a Islamic or you are a Christian, then you are not covered by the Act though you may be belong to the caste. So the police man knew the law and deliberately they write a FIR: The complaint was given by Maryammal and the offences were first FIR was offence this. then when the description of the offence took place, the police man thought of 377 and not knowing now 377 is also considered rape under the amendment made to IPC and this the date is after the amendment not before the before the amendment. But the police man continued to work under the old law. For them the law change doesn't come to them immediately so this is altered FIR when the report was sent the Magistrate FIR was altered 377, but never SC ST Act then the lawyer tells him there is an amendment to law, you should make it as a rape. So under 376(1) after 7/5/2014, it is also a rape. Now the FIR was altered second time. The third time about what about the SC ST Offences Act. Now she goes to the Collector saying that these people are trying to make me look like a Christian, i am not a Christian, I am a Hindu. So even to register a crime you will have to find which religion that you belong to and bring proof. What will agricultural coolie of a 60 year old widow, what record she will have? Then the Collector gives a direction to the Sub Collector, the Revenue Divisional Officer who makes an enquiry and finds that she is Hindu. So FIR now third time altered as 325. Her question was the VAO, the Village Administrative Officer, the FRCA Revenue Inspector; the Zonal Deputy Tasildar gave a false certificate that i am a Christian. What about their accomplice their complicity in the offence. Is not S.4 attracted? Now these 3 officers gave a false certificate. Now S. 4 says whoever being a public servant but not being a member of Scheduled Caste or a Scheduled Tribe willfully neglects his duties, even a judge of a court also may be affected by the Section 4. When you neglect their cause you are become a section 4 willfully neglects required to be performed under this act, shall be punishable with imprisonment of so and so not less than 6 months. Now she has gone to the High Court saying that S. 4 they have not put against these officers, but that's another battle. but the point is an agricultural coolie with a widow with no support in the village who belong to the lowliest of community in the village, she has to fight even to register an FIR, to put correct sections and the polices works overnight to get out of the dominant caste accused who was in the they were in the payroll of that man and this the story of Mariammal. then there is the provision under the Act for providing interim compensation under the Annexure 1 Rule 12, the compensation is given depending upon the different offences and for this offence Rs 1, 20, 000/- and 1, 20, 000 is not given immediately 50% before trial and 50% after trial. The

Collector has got the power to pass orders. Now 1 1/2 years have gone by the Collector has not passed the orders. So she is running behind police station, behind court, behind Collector for what? to register one FIR and to get the benefits under the Act still not done. This is case of not one Mariammal; there several thousand Mariammals are there. In fact what Supreme Court says is important because Supreme Court has made a very pro active statement. The Supreme Court said atrocities in respect of personal lives of people committed by brutal feudal minded persons deserve harsh punishment; only in this way can we stamp out such acts of barbarism and feudal mentality. This is a statement given by the Supreme Court not by a Dalit leader and this is a judgment of the Supreme Court which gave a direction not only stop to the case but they also said the district administration must be held responsible. They want their district Collector to be suspended. In this case it this should be done but has never happens. In *Arumugam Servai v. State of Tamil Nadu (2011) 6 SCC 405* this direction has been given charge sheet them and proceed against them not the accused but the government officers, prevent the incident if it is not already occurred but they have knowledge of it in advance. If it has occurred they do not promptly apprehend the culprits and others involved and institute criminal proceedings. In our opinion the will deemed to be directly / indirectly accountable to this section. now the *Lata Singh case from UP (2005) 6 SCC 475* we therefore direct that the administration and police authority throughout the country will see that anyone who gives such threat or harasses commits acts of violence himself or on instigation is taken to task by instituting criminal proceeding by the police against such persons and further stern action taken against provided by law. These are all the statements which are on record but in the ground reality these are never happened. And very significantly a quotation from Dr. Ambedkar. He said that ' It must be recognized that what happened to the ultimately the basic question of caste system that Hindus observe caste because they are deeply religious. People are not observing caste. In my view what is wrong is the religion which has inculcated notion of caste. If this is correct, then obviously the enemy you must grapple at the heart is not the people who observe caste but the Sastras which teach them the religion of caste and taken from annihilation of a caste. This is the village Mariammal. (Video is played) This was shot in her village. This available on YouTube also. We will continue our debate in the next 3 1/2 days. This is only story of Mariammal continues.

Sumit Bhattacharya: So Ladies and Gentlemen, we will go for a tea break and then we will come back for the technical session 2 at 10: 30. Thank you please come.

Session 2

Preconceived Notions & Perceptions

Speakers: Justice K. Chandru

Justice Prabha Sridevan

Justice Prabha Sridevan: Yes! Good Morning again! Are all of you back? I will start with a joke. Those who are not back please raise your hands. You have to laugh. I am Prabha Sridevan. I was the judge of the Madras High court and i retired in 2010. Now i want 6 volunteers for the exercise that we are going to do. If you don't volunteer i will pick. It's up to you to decide whether you want to volunteer or be drafted into the army. Yes please come. No0t from the same table. Come. Please come. You raised your hand. Yes please. 2 yes. 3 please come. Yes sir you said you would. Please come. Stand there in the middle. I will. We need 2 more.

Participant: without book?

Justice Prabha Sridevan: without book. No books are not necessary. We need 2 more. Yes one of you. There are only 2 women and we need representation. One of you. And who else? One more. Yes from that table one of you. Any of you. It's not very difficult.

Justice Chandru: you have the hand mike.

Justice Sridevan: now, (hands over sheets with something written on it) no no you just read it and you are that person. Yes now i want you all to stand in a row in the middle. Because depending on the questions you will have to move forward or backward. Yes? Now all of will read that and internalize you are that person. You must understand that person and you are that person.

First question: Is it is easy for you to make friends? If yes one step forward. If no one step backward.

2: Will your classmate eat the food you brought from home? Yes one step forward, no one step backward.

Third question: you are all actually college students ok? Do you feel excluded in your class? Yes backward no forward. You are standing at a lonely bus stop; will your classmate give you a lift? Yes forward no backward. Will your classmates invite you to their home? Yes forward

no backward. See in that material you all got, you got one case about Lata Singh right? Lata Singh's case. Now some of you are out of the 6 i think there are 3 men and 3 women. Ok? So you could be Lata Singh or her brother ok? If Lata Singh/ her brother is in love with you, will that family welcome this love affair? Yes forward no backward. Lata Singh fell in love with a community which is

Participant: outside?

Justice Sridevan: yeah. So the brothers attacked him and that was the case. That's all right. So you get the hang of it. So if you are Lata Singh or her brother and if Lata Singh or her brother is in love with you depending on whether you are a man or a woman, will that family welcome it? If yes forward, if no backward.

Participant: you honor i don't the facts of the case.

Justice Sridevan: see, Lata Singh

Participant: only as an imagination.

Justice Sridevan: is as an imagination. Lata Singh does not belong to the Scheduled Caste. Lata Singh belongs to a we will assume forward community. If Lata Singh or her brother is in love with you, the character because if you are a woman it will be Lata Singh's brother. If you are a man it will be Lata Singh herself. Will that family welcome it? If no backward if yes forward. Yes. Now you. They will identify themselves.

Participant: I am an urban middle class boy.

Justice Sridevan. This is an urban middle class boy.

Participant: Muslim Boy wearing beard and cap.

Justice Sridevan Muslim Boy wearing beard and cap.

Participant: a girl from the city who is blind.

Justice Sridevan a girl form the city who is blind.

Participant: Dalit boy from village.

Justice Sridevan: Dalit boy from the village.

Participant: middle class woman. A transgender.

Justice Sridevan: transgender girl.

Participant: a girl whose face has been subjected to acid attack.

Justice Sridevan: so now you saw, who did not take even one step forward? For none of the situations, the character that our friend portrayed could take a step forward and for all the questions our friend here took a step forward. You all heard the characters right? One is an urban middle-class boy; one is a transgender woman; one is a Muslim boy who wears a beard and a cap; one is a woman who has suffered an acid attack; one more i am missing. One is a girl who can't see. So you can see the areas of discrimination and more than the physical disability or any other disability you saw what happens to the Dalit boy from the village. Nobody shares the food, nobody is willing to take the food that the Dalit boy offers, nobody is willing to give a lift when he is standing alone in a bus stop, and he feels excluded. If somebody wants to marry him from a different community of course it's discouraged. So the disabilities are huge and the disabilities are at every level not just the physical level when its marriage, even among classmates nobody is willing to eat the food that he has brought from home and is willing to share. This after how many years since we declared that untouchability is abolished? When did we adopt the constitution?

Participant: 1950.

Justice Sridevan: Yes. And we have not been able to do it. See there is one phrase which says Fiat Lux which means let there be light. God said let there be light and there was light. But we said we will abolish untouchability and for 60 years we haven't been able to do what God did because there are insurmountable obstacles within us, Thank you very much for co-operating with me. Please go and sit down.

Participant: What do we do with this?

Justice Sridevan: This can be torn up and thrown away.

Justice Chandru: they want to give back belong to you.

Justice Sridevan: (Laughs). Now we will read the letter. Now i am going to read the letter which Reith wrote. And it will also be shown on the screen. So the both your eyes and ears will register it. Is it possible to make it big? Can you all see it?

Participants: Some say yes some no.

Justices Sridevan: you will hear my voice but can you see it? Not really.

Partcipant: we will try.

Justice Sridevan: may be switch off some more lights. Then the. Is it better now?

Participants: yeah.

Justice Sridevan: Yeah? "Good Morning, I would not be around when you read this letter. Don't get angry on me. I know some of you truly cared for me, loved me and treated me very well. I have no complaints on anyone. It was always with myself I had problems. I feel a growing gap between my soul and my body. And I have become a monster. I always wanted to be a writer. A writer of science, like Carl Sagan. At last, this is the only letter I am getting to write. I always wanted to be a writer. A writer of science, like Carl Sagan. I loved Science, Stars, Nature, but then I loved people without knowing that people have long since divorced from nature. Our feelings are second handed. Our love is constructed. Our beliefs colored. Our originality valid through artificial art. It has become truly difficult to love without getting hurt. The value of a man was reduced to his immediate identity and nearest possibility. To a vote. To a number. To a thing. Never was a man treated as a mind. As a glorious thing made up of star dust. In every field, in studies, in streets, in politics, and in dying and living. I am writing this kind of letter for the first time. My first time of a final letter. Forgive me if I fail to make sense. My birth is my fatal accident. I can never recover from my childhood loneliness. The unappreciated child from my past. May be I was wrong, all the while, in understanding world. In understanding love, pain, life, death. There was no urgency. But I always was rushing. Desperate to start a life. All the while, some people, for them, life itself is curse. My birth is my fatal accident. I can never recover from my childhood loneliness. The unappreciated child from my past. I am not hurt at this moment. I am not sad. I am just empty. Unconcerned about myself. That's pathetic. And that's why I am doing this. People may dub me as a coward. And selfish, or stupid once I am gone. I am not bothered about what I am called. I don't believe in after-death stories, ghosts, or spirits. If there is anything at all I believe, I believe that I can travel to the stars. And know about the other worlds. If you, who is reading this letter can do anything for me, I have to get 7 months of my fellowship, one lakh and seventy five thousand rupees. Please see to it that my family is paid that. I have to give some 40 thousand to Ramji. He never asked them back. But please pay that to him from that. Let my funeral be silent and smooth. Behave like I just appeared and gone. Do not shed tears for me. Know that I am happy dead than being alive. "From shadows to the stars." Uma anna, sorry for using your room for this thing. To ASA family, sorry for disappointing all of you. You loved me very much. I wish

all the very best for the future. For one last time, Jai Bheem I forgot to write the formalities. No one is responsible for my this act of killing myself."

Sumit Bhattacharya: Ma'am there is one line left.

Justice Sridevan: Yes. "No one has instigated me, whether by their acts or by their words to this act. This is my decision and I am the only one responsible for this. Do not trouble my friends and enemies on this after I am gone." How do we all feel? He became independent. We declared everyone was equal. We said we have abolished untouchability by Art. 17 and more than 60 years after we became independent. One child who wanted to become a Scientist like Carl Sagan dies. Is this a collective guilt that we all feel? Now you all are given the responsibility and the duty to prevent any more Rohit dying. Right? The six of your friends stood here right? The one that did not move forward at all played the role of a Dalit boy from the village. The one who had no hurdles in his path was a middle class urban boy that was your friend who stood here first. Then we had a transgender person, we had one woman whose face was marred by an acid attack. We had one urban girl who was sightless. Then we had a Muslim boy who wore beard and a cap. I think that was all. I think I have covered all the characters that were played by your friends and so many years after we abolished untouchability your friend who played the Dalit boy from the village could only take steps backward and not one step forward. What does this tell us about our society? We will come to our courts later because courts are made up only of us. Courts are not made from super stars somewhere else. Right? Your friend who played that role every step that she took was backward. Not one step forward. So we if we pretend that all the six started from one line of equality which is unreal, but anyway if we take that as a given, this Dalit boy from the village had to go backward and backward and backward with every six with every question out the 6 questions that i asked. So that is the Art. 14 that we are practicing and you have the power, you are given the power to address the injustice that is caused by I will only call it curse by a curse that afflicts only our country. Yes there is something Justice Chandru referred Rosa Parks'. Color is a curse. Color has prevented people from being assimilated into the society. If you go into the records of the death row prisoners in USA, I will be surprised if you find many whites. There won't be. Because the prejudice is so deep. We are no different. It's not even as if I mean I am not condoning color prejudice, please don't think that but color prejudice it is at least. It hits you when you see it. Right? But this is not apparent and yet we are not able to eliminate untouchability from our minds and that is why we need this Act. This Act itself is a terrible commentary on our society right? If our society had been equal why would we need this Act? There may be other kinds of

inequalities i am not saying that all men are created equal is a myth. All men are not created equal. We are all different. But this curse that afflicts us so many years after independence when we declared by Art 17, it hasn't happened and the sad commentary is you saw in that case that Justice Chandru just now showed you. Even people in power are subject to the same problem or same they wear the same spectacles right? Colored spectacles which tell them that a person who is a Dalit is somehow inferior to the others and that woman whom you saw did you register how old she is?

Participants: 60 years.

Justice Sridevan: 60 years. So what is it? It is not a sexual act. It is not a sexual act. It was an act to show that this were you belong, you remain there. It is an act of aggression; it's an act of power. It's not a sexual act at all because it was not as if he was overcome by desire or anything. It was overcome by hate and a sense that i will put you in your place. Do you agree? And you are i think most of you deal with the case Prevention of Atrocities case. I think there are a few exceptions, but amongst you and we must understand that and to say that this does not happen, is to blind oneself to the problem. It is really blinding oneself to the truth. We have this Dowry Prohibition & dowry death and all that. Some time ago i think it was 7 or 8 years ago, one group called Ekta did a survey amongst in about 14 districts in Tamil Nadu. They interviewed Magistrates also and the Magistrates said that they have not come across even one false case. But what is constantly said is all these dowry prohibition cases are false case and therefore better to get rid of it than to have it. First of all, all dowry prohibition cases do not are not complained of. So therefore the rate of conviction is something far ahead. It's so far away. It's identical with this the offences under the Prevention of Atrocities Act. The rate of conviction is 3% you heard and whole villages are destroyed, group families are killed, burnt alive and all because of what? Because we believe, that somehow one group of people is inferior to the other group of people. From where what is the rationale for this belief? What is the scientific basis for this belief? and how can we as a civilized group of people keep reinforcing this thought that somebody is inferior to others and therefore those allegedly inferior somebody's can be treated in any way at all? It is really a shameful thing that so many years after independence we are unable to get rid of this Caste discrimination or even religious discrimination that is why in those imaginary characters, i introduced all kinds of discrimination that is possible. This acid attack on women is because men think that women are inferior to them. so it's one religion people belonging to one religion thinks that people belonging to another religion may be because their numbers are less are inferior. Then you can talk of disability we how many of the

courts that we have come across make accommodation for physical disability? How many? We do not live in a world with a world view that accommodates everybody. So if we have 2 legs and we can walk we think every steps, every stairs is manageable. But the time has come when we have to accommodate for people who are physically challenged, people who are visually challenged right? And the physically and visually challenged you will at least see it. The moment you see a person you will know that person is unable to walk as well as i do; the person is not able to see as well as i do. But this the disability that these the people for whom the Prevention of Atrocities Act have been created is not visible but it is more deeply permeated our consciousness than anything else. it is almost as if we ask one group of persons to fight their battles with both their hands tied behind the backs and where will they expect to be treated as if both their hands are functional only in your courts and if in the courts that justice is not obtained then we may as well empty our courts and leave them judgeless right? This is really a solemn it's a sacred duty that you all discharge. The duty to treat everybody equal. Sometime ago i used to train people on gender equality and there was this woman down whose throat the husband had poured acid. So naturally the vocal cord were corroded so when she spoke it's not a clear voice. It's kind of a croaky voice and she came before us. we were trainers who were training another group of Judges in some other place and what she said was she came to the court and she probably asked for an adjournment or something. It was a Family Court and then the voice came out as a croak because the chords had been corroded and the Family Court Judge laughed, not because the Family Court Judge intended to hurt or anything. The whole Court Room laughed. Sometimes we don't even think. When everybody laughs, we laugh not because we are amused or anything. It's kind of an instinctive reflex action. but it hurt this woman and what she said was if the Judge himself laughed, were do we get justice? *Insaaf kahan milega?* So that is where Judges are placed. The people really think that Judges are Gods and therefore judges have a greater duty not to do wrong. Greater duty to treat everybody equally. You saw that story which was shown in the first session were the woman is changed into Maryammal though she was Mariammal and then the police officers the FIRCA inspector everybody goes along with this act of injustice. Now those things hurt the people because she is still fighting for justice but nothing hurts people so much as Judges failing them. So as Judges we can't fail the people and just rationally think about it how is anybody less equal than the other? just one of you try to explain to all of in this room how this inequality works in this case were your friend who played the role of a Dalit boy from a village could only take steps backward and not one step forward. How do you explain it rationally? Can any of you explain it? If any of you can i would like to hear that. No i think you must not be constantly hearing

my voice alone. I think you must hear other voices also. Even if you say yes you are right it doesn't matter. But we want to hear other voices only then the room will be lively. It can't be a dull room so tell me. Is it rational? Please every from every table i want a volunteer and i want you tell me why it is wrong or why it is right? Yes please.

Participant: it is totally wrong and we chose the high caste community prejudice.

Sumit Bhattacharya: I only request you whenever you are responding Sir and Ma'am. Please switch on the mike so that it is audible properly.

Participant: It show i is a case of high caste prejudice and as though some kind of inequality and the mindset of the society which should be avoided and we must follow the principles

Justice Sridevan: Next table. Next Table. No you doesn't matter we just want to hear. We just spoke about equality. We want every bench to speak.

Participant: *yeh stithi jo hai samaj ki apne discriminatories hain yeh situation dikhati hai aur yeh zimidari Dalit varg ki bhi hai ki unko prayas kar ke aage badhna chahiye. Kewal forward class ki hi zimedari nahi hai ki wo unko aage badahayae unki bhi duty banti hai ki wo bhi prayas kare aur aage badhe. jab tak ki yeh zimmedari apni bhi thodi hain* being a judges we should protect all of the persons who came to our courts. But it is duty also of the Dalit person he should also try to go ahead.

Justice Sridevan. Ok According to you there must be an effort on the part of the Dalit person to person to march ahead.

Participant: Yes!

Justice Sridevan: All of you just now heard Rohith Vemula's note. he wanted to be a scientist like Carl Sagan. He was not lazy. He studied. He studied hard.

Participant: My lord may I with your permission speak?

Justice Sridevan: yes. Of course. Use the phone please. You please use the mike. you can sit down. all of us are equals. Sits down.

Participant: I belong to Jharkhand State posted at Sahebganj District and Addl. sessions Judge and I have been deputed a Special Court of SC/ST Act. There are many case in my court pending for disposal of the case registered under SC & ST Act. In those cases when during the court start evidence I felt like that that the people belonging to the scheduled caste scheduled

tribes, scheduled tribes especially scheduled tribes. Because the State are dominated with the Scheduled Tribes population. Therefore the cases are also plenty in heap there. The persons who are arrived as a witnesses in that very cases belonging to the scheduled caste they are always they always turn hostile. They do not even take a step to say their case before the court due to the poverty and the pitiful condition of that very tribal community. Therefore I think that there should be legal awareness on the very points that all the tribal people should be given awareness on the point that they have got such a right to say their case before the court and they have got also right and provision under the scheduled Caste Scheduled tribe ACT FOR punishing the wrong doer. but this is not going right in our state because of the poverty and unskillfulness of the witnesses and the persons belonging to the Scheduled Tribes. Therefore there must be legal awareness. I am asking and i am also suggesting making a suggestion about the points that there must be some awareness to the people who are belonging to Scheduled Tribes. There are many cases in which they are being suffered from such atrocity by the other people. Therefore unless and until they should be aware on that point, the mere enactment of the provisions cannot solve the purpose. It would not be wide enough to eradicate that problems from the society that has been rooted right from the beginning since the making of the Constitution 1950 also. So therefore unless and until there should be eradication by getting them aware over the point that they have good right. There are some provisions and when they should not take care for that availing that right by going to the court, by saying there whereabouts in the court, then there will not be solution of such an enactment there may be several enactments in future. But that can't serve the purpose.

Justice Sridevan: Yes. Thank you!

Participant: this is my humble request.

Justice Sridevan: I think he deserves a. Sir your name Sir?

Participant: Ram Bachan Singh

Justice Sridevan: Ram Bachan Singh. See this a very very important point that he raises and which each one of you will have to internalize if we are all earnest about doing justice yes? We all don't stand (draws a horizontal lines) no it's not like that. Some are here and some are there right? Some are here and some are there. There is a gap. And who makes this gap equal? You. you understand that there are disabilities. Which is as he rightly said poverty, illiteracy;

Participant: health!

Justice Sridevan: Health !

Participant: housing!

Justice Sridevan: housing; and what else?

Participant: livelihood.

Justice Sridevan: Yeah! That true. so these poverty; illiteracy; lack of health; lack of housing; lack of good means of livelihood. Yes Please?

Participant: sense of insecurity.

Participant: Inferiority Complex.

Justice Sridevan: we won't say complex. We will say feeling of inferiority. Shall we use that word? Yeah! So you are actually expecting 2 persons to run a race. One person is wearing at least 8 stones on his feet. So this race of equality is never going to be made by this person who is in this level. But we have promised equality to everybody. Right? Equality doesn't mean you and i are created equal. You and I are not equal. We are different. But you as the judge make the 2 litigants equal by filling the gap. How? See we had that story of where the FIRCA inspector everybody fudged the records. so you are given the duty to find that and set that right. That lady Mariyammal. in that clip. She really wants to commit suicide. She wants to kill herself. She feels that enough is enough. Why should I trouble the family any more than they have already suffered? but the look at her fighting spirit. She is not very young and this 26 year old man who has raped her. It's not out of any desire. It is an intention to punish right? That rape was an act of violence made to subjugate her. She could have just succumbed to that attack and kept quiet. But she fights. But the problem is and the real truth and tragedy is not very woman in India is like her. Not every woman in India has that courage and therefore if by chance or some friends who have helped her or. Women come to your court; it is really our constitutional duty to see that justice is done. Very often people who are not High Court Judges yet. You are all going to be there one day. But who are not High Court Judges yet, think they have nothing to do with the constitution, they only have something to do with the CPC and CrPC. Sorry, every day every Judge is dealing with Constitutional Rights and that thing we must remember. It's not just when they become Courts which have the power to issue writs that on suddenly becomes infused with some Constitutional Role and Right. If today a young person becomes a Magistrate, from today that Magistrate starts discharging Constitutional Duty. It's a Constitutional Role. Yes and now you saw how much of a gap the person for whose

benefit this Act has been created suffers? And we can't allow that person to remain carrying that weight. That not why you are judges. You are judges because you are given the duty to lift that load from that person's neck and make those persons who suffer these difficulties to feel equal with the others. This young man whose suicide note I read, he has become something of an icon today, but our memories are very short, we will soon forget, but a young man who wanted to become somebody like Carl Sagan dies because he feels there is no hope. What greater accusation can there be of our country and the way our country works? Just think about it. It's a moment of shame. It's not that he is the first person who had suffered this disability and killed himself. There have been people before and people after. Justice Chandru spoke to you about Rosa Parks. It is only some people who somehow become iconic for a good cause. I really feel Rohit's should death should be bring about the end of this horrible thing called caste discrimination in our country and you all have a very very important role to play in this and I am so glad sir you brought all those factors to light and told us what is the difficulty that a litigant who belongs to a particular group suffers when they come and ask you for justice. This woman who had had acid poured down her throat, she really said where will I get justice if the courts don't give me justice? Similarly, if we are going to disbelieve or throw it out because see the entire official machinery is against was against Mariammal. They fudged records, they even changed her name, and they changed her religion. All because they did not want the offence to come to light. See the it is almost like this you have you heard of this story David and Goleith? David was a small boy and Goleith was a giant and David goes and fights with Goleith and in that the small thing that children play no. they will do this and that stone will go.

Participant: *gulel.*

Justice Sridevan: with that David will kill Goleith the giant. David will be a small boy. The people for whom whose justice we are today discussing about are weak not because not because they are small like David, but because socially, economically in every which way that group is weak and they are fighting against a Goleith which is the dominant society supported by official machinery as well. i mean just imagine, even to take their dead bodies they have to fight, to take part in religious festivals i do not know if you have those problems in other States, Tamil Nadu has, take part in religious festivals and we all thought probably we are forced that God was there for all, we did not think there were separate compartments in heaven, but it looks like the way we behave it looks like that we are compartmentalizing even heaven those who believe in heaven but definitely we are reinforcing injustice more. Now the foreign shackles

have gone. we have declared untouchability will not be there anymore and we are not able to remove it and this is a great curse and you all should be proud that you have been given the duty to alleviate the ill effects of that curse so that soon we will the sun will rise in one equal India. That is why all of us would discharge judicial duty. Do take that oath of equality and fraternity. Fraternity is something that is least understood. Fraternity is you can call it brotherhood. It is the staying together and the offence, the removal of which I mean you are presiding in the courts is an offence against fraternity because how do we tell somebody not to touch us? And in that game that we played even when the person offered the food that was brought from home, nobody was willing to eat. I think we should internalize that deep sense of injustice which we have practiced for all these years and I think that time has come when it has a to be removed and that is why we have a session for senior Judges like you to talk about this. I am sure you all have positive stories from your courts to share with us. It's not that you are all not doing anything but when we constantly talk about it; we reinforce our beliefs of equality, our belief of justice and fraternity so that the court you preside over is a court of equality. You know, there is a big in some ways a big advantage i was a High Court Judge but my court will only be a called the High Court. It would never be called my court but you all it will be your court because you can really imprint your personality on the way you carry out your judicial duty whereas the High Court we are one group of people. It could be 50, it could be 60, it could be 120, it could be any number of persons whereas you have that unique privilege of making you individual stamp on your court and each of your court should be a court of equality and that is why we constantly do this exercise, we exchange the thoughts here in the Judicial Academy. if any of you has a very positive story to share in your court it will be very nice. Any of you? Somewhere were you saw injustice was being done and then you took care of it and sorted it out? See that lady Mariammal has 18 months gone and she is still is fighting register an FIR. I am sure one of you will have many of you will have stories were you saw through the injustice and did something which you want to share with all of us in this room? I think we should all talk. Ye. Yes Please? you you yeah yes.

Participant: Now...

Justice Sridevan: one minute Sir. Then we will come back to you. Yes

Participant: recently received a petition in post stating that he made a complaint to the SI and he has not registered it. The he sent copies to the Superintend of Police and Collector. In spite of it there is no any action against the concerned, then he filed, sent the petition in post to me,

asking me to take an action against the SI under S. 4 then I issued summons to him and recorded his warrant statement. then i addressed a letter to the Superintend of Police to furnish the caste of the SI even though the complainant stated that he belonged he is of the view that he is not Scheduled Caste. In order to ascertain the truth, addressed the letter to Superintend of Police to furnish the caste of SI by producing the service register.

Justice Sridevan: Very good. Anybody else would like to share a story. proactive story like that. Yes please.

Participant: there are many cases. In our district Sahebganj district in Jharkhand. not registered the scheduled caste and schedule tribe act, but under 302 and 376 of the IPC in which the tribal's are the witnesses but they are not knowing they are they do not know the Hindi or the English and when they come to the before the court for giving their statement there version, there is no management of interpreter at all. They always exploit by the advocate concerned who are well aware of this of their language. then the better statement of the very witnesses also not be going to recorded in our courts, therefore, the person who have got knowledge about the very language of the scheduled caste schedule tribal language, they prevail over the same and even in murder cases

Justice Sridevan: I see

Participant: only at the instance, only at the cost of a cup of wine they turning hostile even the father, the father of the deceased, the mother of the deceased, the mother of the victim, the father of the victim they turn hostile at the cost of only a cup of fine because of their poverty, because of their lack of education, because of their absence of facilities, they turn hostile even at the cost of a wine only. these are the

Justice Sridevan: realities

Participant: These are the calamity, these are the problem, these are the major problems that should be eradicated from the society and we people deal with such a matter, but become handless, unless and until there is material or evidence forthcoming on the record. We people become handless helpless. We are fond of by calling them for recording the evidence the better evidence should be come on the record but, in practice

Justice Sridevan: it's not happening

Participant: more such a evidence is being recorded. Therefore the rate of conviction is going to be lowered down. Only 3 % conviction are there in those very cases. Even in murder case and the rape cases all the cases are going to be resulting into acquittal.

Justice Sridevan: because of lack of evidence.

Participant: I am just going to dispose of very matters such relating to the rape cases but out of 12 of the month disposal there are 8 of the a case recorded under S. 302 but belonging to the Scheduled Tribal people and that has been resulted into acquittal. What I can do?

Participant: there are some other problems also. Specialized and skilled prosecutors are not appointed. there is no room in the court building that if a person from such community and comes to the court. there is no person to help them from the side of government or to make them known to know what are their difficulties and how they can be helped though legal remedies. so unless until such kind of facilities, even in district superintendent all though there is a provision that some specialized some qualified person should be appointed as an investigator, but even then they are not doing so.

Justice Sridevan: and you legal aid cell does not help?

Participant: yes legal aid is there but peoples are not aware about all these facilities. so they should come directly in contact with their lawyers and whatever they gave them advice they directly approach to the court. so

Justice Sridevan: Yes.

Participant: what is the need is the that some kind of awareness and some kind of facilities should be provided in the court complex itself. The person should come and

Justice Sridevan: come there and get the...

Participant: get the legal advice and the person even he should be authorised to file the complaint on behalf of these persons. Like under S. 498 a there are

Justice Sridevan: Yes you

Participant: the main theme is that.

Justice Sridevan: One minute Sir. One minute sir. You just use the microphone please.

Participant: prosecution *prosecution mein acche prosecutors humeni di gayin hain. hostility jo hai woh yeh iski vajah se nahin hoti woh bhi legal aid clinic mein hostility ka 89% cause*

reason jo hai ki usko compromise ho jata haina aur woh financial assistance jo reality hai. financially party jo hain dono jo hain woh compromise kar leti hain aur uske karan mushkil se 5% hostility aisi hogi jo kisi threat vagerah ki usme hoga. otherwise 80-90% jo hostility hai due to compromise aur wo compensation apas mein kuch adjust karte hain. Kuch governement se mil jata hai isliye bhi hoga jo SC/ ST ke main.

Justice Sridevan: They get from the government?

Participant: Yeah.

Justice Sridevan: See for instance in that documentary that we saw?

Participant: ji!

Justice Sridevan: Mariammal is still waiting for that one lakh that she should get.

Participant: 50, 000 compensation they get from the government immediately when the case is registered and the remaining amount sometimes they get higher compensation from the accused party.

Justice Sridevan: accused party.

Participant: and then they get compromised. dusra special factor that jo time lapse. do teen chaar saal ho jatein hain unko wahin saath rehna hain to generally heinous offences nahi hoti khali simple maar pit ke hote hain to usme vaise bhi wo phir compromise kar letein hain.

Justice Sridevan: I see.

Participant: to haan usme prosecution ko humeni assistance karne ke liye prosecutors achein diye gayein hain aur unko hel hi milti hai. Legal aid se bhi vaisey bhi unko lekin karan hostility ka yehin hai.

Justice Sridevan: probably because of this one

Participant: My lord I have referred here the heinous crimes. murder cases the rape cases. I have not referred the compoundable cases only here.

Justice Sridevan: yeah I understand.

Participants: I have specifically referred the murder cases the rape cases, in which the tribal are being exploited by the person concerned by the accused for getting them hostile. by exploiting them. By offering some.....

Justice Sridevan: compensation. anybody else? From yes sir....

Participant: sometimes persons might pay to settle the matter.

Justice Sridevan: Settle the matter. We must understand whether it is a voluntary decision or is it not? Yes last table you have something to share? Yes please.

Participants: because of poverty. the people from this background.

Sumit Bhattacharya: please use the microphone

Participant: people from this background who generally have these matters in courts. they are generally poor.

Justice Sridevan: yes

Participant: and money is very big consideration for them. the compensation which is offered under the rules is nothing compared to what

Justice Sridevan: they have already suffered.

Participant: no no what thee accused in a position to give is much more than what they get so financially they will see whatever benefit i am going to get i will take it. it is a very big consideration for poor people.

Justice Sridevan: another input that you want to give? this side is quite silent? please. i am sure you have something valuable to share with us?

Participant: I am from Kerala. we recently got a newly constituted court. special court for SC/ST (POA) Act and there was no special room as he pointed out by him. there was no special room for special prosecutor. Government did not provide the room, and then the High Court intervened the matter. the High Court of Kerala directed me to allot a separate room providing access to the victims for giving brief to them and which cannot be secluded without causing any interference to the judicial process. that was allotted and it is running well and there is no latches on the part of the prosecution but there are certain instances as Kerala is concerned maybe due to some economic development and social and other development. Maybe the reason, there are reported cases are very few even then the cases are there are certain instances in which investigating agency is not taking much effort or there are certain higher degree of latches on their part to register a crime.

Justice Sridevan: See, here we have. he says that separate room has been allotted in Kerala.

Participant: By the

Justice Sridevan: Is It possible for each of you to apply to by our respective High Courts, for increase of facility for yourself? Is it possible?

Participants: Mixed answers.

Justice Sridevan: why? Problems?

Participant: in our district land is not available and the space is not available.

Justice Sridevan: I see. I see.

Participant: that why.

Participant: such kind of facility can't be provided to all persons because if High Court permits it then you only can be done.

Justice Sridevan: No that is why, If you can

Participant: *agar apan log aisa karein to allegation suit bhi upon us that you are impartial.* You are partial towards such community or you are in such way we may face such type of troubles also.

Justice Sridevan: Yes please

Participant: Ma'am legal service authority can fill up the gap.

Justice Sridevan: Legal service authority but and you are all district legal service authority right?

Participants: no. District judge is the chairman of the legal services authority.

Justice Sridevan: but you cannot address that to them and get. Yes. You can do that. Seek because this basic injustice is happening and all of you see that. So it requires a proactive role on your part because who will fill up this gap? Only you. You have the judicial duty and the responsibility to see that this moves as close to the persons who are on advantageous position as possible. Perhaps actual absolute equality may not happen in real life but our Endeavour must be to bring the ones who are less equal as close and for that if it is necessary to go through the legal services authority whatever I think we have to do. Is it not? See we just read the letter written by Rohit. He wanted to be a scientist. He wanted to be a scientist a young man and see if an ambition if such an ambition was cut short for some other reason than it may happen. But

in this day and age, for a young boy to take away his life because of this social curse. i think it is a comment on our country. Is it not? and the reason why you are all here is you have a more important role to play than anybody else and that you should all recognize. That is the filling up the gap. Nature does not make everybody equal, nature does not make us all like Ford Motor Company cars, and we are all different. One is tall, one is short, fat, thin everything. But socially and economically and India is of law everybody should be made to feel equal and it is your duty and if very few cases are registered, why? it is not because the offences are not happening. One is the persons who are affected are poor. i do not know how many will have the grit of the lady whom we saw. the lady whose picture we saw. How many will have that grit and perseverance? Not many.

Participants: It requires great will.

Justice Sridevan: It requires great will and requires courage, persistence. 18 months on and still she has. Even the FIR is not been registered. How many will have that continuing determination? Not many. In fact she says I wanted to take away my life, but she doesn't. But not everybody is like that. See just, I am sure. I mean I think I can safely assume that the majority of you are parents. You all have children so you definitely will tell the bigger the child not hit the smaller child. Right? Now here the group that we are concerned ourselves with today is the smaller child, so that duty all of us have. i mean i was a judge and I am now retired but still I will say us. All of us have that duty. We will have to protect the smaller child, the weaker child. we can't say I can't do anything that's not why we are parents. Right?

Participant: My lord sorry for interruption.

Justice Sridevan: Yes please. No I want interruptions. I don't want to hear my voice. i can hear my voice even when i go back to Chennai

Participant: I don't know about the other places whereas Andhra Pradesh is concerned false cases are becoming more and more. Political entities also interfering in this. I will give you one example of one case. Recently, one MLA went to the MLC Elections as a protection to his daughter who is also MLA and she is casting the vote. Some galata took place, then this man in order to protect his daughter he also went there. One of DSP, wanted to caught hold this man, the MLA stated that "Don't touch me" except that word that is the FIR in this and also 161 statement is also there Don't touch me. Then the police registered the case under the SC ST Act. The DSP is in his FIR stating that as I happen to be the DSP, he stated " Don't Touch me" Can we infer it?

Justice Sridevan: Yeah. It is possible. But one.

Participant: Because everybody is having a liberty. Many people I know personally know many people will not allow the others to touch them. It is personal liberty. Not for the reason of caste.

Justice Sridevan: Yes.

Participant: They don't like others touching them.

Justice Sridevan: I understand. People may not want to be touched. We understand that. But Sir one swallow does not make a summer. If everybody had equal opportunity before law and nobody was stricken by. We have how many. We have 8 disabilities we have listed which the group for whom we are discussing today suffers. Right? Poverty, illiteracy, health, housing, livelihood, sense of insecurity, feeling of inferiority, unemployment all that are there Right? Yes. If with all this. In one case there something happens, we can't thrash the whole law, isn't it?

Participant: Only

Justice Sridevan: Now, I have got a reminder that you all have to go to tea. We will continue. We are not done with this because see we said I mean in the Bible it says: let there be light and God said let there be light and there was light. Though also we said unemployment is hereby untouchability is here by Art.17, did not happen. More than 60 years we are all still discussing the problem. So we will just go for tea, come back and resume this discussion. It requires some real soul searching and we have to find out what is really wrong with our society that we are not able to eradicate this. Right? It's almost as if you know the people who go in the villages, the cows will have that brand that irons', red hot iron they will make one brand to show who it belongs like that for us caste is like that red hot iron and we have to change it. Yes you can all go have tea and come back.

Session 3

Moral values v Constitutional Values

Speakers: Prof. Pawan K. Singh

Justice K. Chandru

Justice Prabha Sridevan

Justice K. Chandru: Welcome post tea and I would aa I would welcome you to the tea and to 3 session and here I have got the privilege to welcome our senior prof IIM Indore prof Pawan Kumar Singh sir thank u very much sir for coming and aaa prof Singh will be taking us through in this session which is focused on moral values v constitutional values wherein the constitution says us as we had been discussing throughout the this morning that we had got specific provisions thereafter we had and also we had extended from the aa states the duties from the fundamental duties made up certain specialist specializes laws but these are all statutes books we had been discussing nice deliberation cross talks and sharing but however there are certain things which are unwritten which are moral in nature so a constitution says to say to do something but my prejudices is another things morally I am unable to accept certain things or unknowingly we do not accept or ignore so on that we have prof Pawan Kumar Singh sir please..... Hon'ble Justice K Chandru Sahab Hon'ble justice Prabha Sridevan ji all participants in this program all the justices all over India I was talking to Mr. Chatterjee and he said almost we have representation of India here isn't it so just to have a feel and this is my name just to have a feel in in any participant any Hon'ble justice participant justice says from Jammu and Kashmir just to know fine and to know aa whether we receive participant from hmm a karwati or port Blair port Blair is not registered ok then at least I can go to Kanyakumari or Tamil Nadu Tamil Nadu yes so we have representation from to top to south then to Gujarat fine a to Arunachal Pradesh Tripura any Hon'ble participants from seven sisters which place sir Mizoram just i wanted to have a feel that a ahhh entire India is in this room if 4 corners are taken care where Madhya Pradesh can go if we join all these 4 corners Madhya Pradesh can be taken care aaaa just today 2 days back a gentleman told me a at Delhi airport he is from here of and we develop some chit chat waiting for flight he said he has gone in IIM Indore because

I Am working in Indore for last 12 years but I don't know where it is it is not closer to Mumbai or Delhi I don't know where Indore is ? so I said Indore where Indore is it is in the central part of India and what happens in the central part of most of the country if you might have seen that a what is the type of economy of land-lock country land lock country is a country which is surrounded by land on all the 4 sides other countries and there is no portion of the border touching with sea shore aa land-lock country economy is studied separately and they are been found to be a bit land line behind compared average growth rate in those countries which are not land-lock and now suppose we apply same Analogy typically a land lock straight like a Madhya Pradesh so fine hmmm so let us enjoy our journey and a this is your day 1 and I very well know that you have come here for certain up for certain brushing understanding nobody turns attends of your stature no one is in training programme to get informed or to become effective but we are all already effective but every one of us is searching for next level of effectiveness as honorable Justice is searching for your next level as I am teacher who is searching for my next level and students teachers in school or colleges searching for next level and the search creates certain level of restlessness so I also attempt to define of course I cannot define I am not that learned person but describe if you allow me to describe to allow the word I attempt to describe quality of person by quality of his or her restlessness like my name is Pawan . Pawans quality is like his restlessness because apart from all those who have.....or some pragayat Samadhi apart from such people all of us who are action oriented in this domain of karam yog we need to do the action and for action certain a kind movement is required restlessness is required so you are your quality is directly proportional to the quality of restlessness if your quality is of restlessness is bad quality i am a bad person because everyone was restless mahatma Gandhi was restless Luther king 2 was restless or dementia was restless it is only there quality is restlessness which defined the quality of the person this is way i try to describe ones quality and see my face in the mirror let us see the topic is of moral value and constitutional value and it is said we already know and let us see think together discuss together and in that process I like forward to look forward from you in IIMIndore for every 6 lakh fee is deposited by the student to learn and a I also learn but I am given a fairly good salary they have to pay fee and I have to get salary so in every class facilitator is the first learner moral values we know but we see certain aspects of it we will discuss and every time our focus must be if discussion is going well and I know the description of moral values but a question should arise so what, what is there for me how can i use it and what its implementation value now there is a complete you can say essay v . sometimes word becomes paragraph so we means viz a we not versus viz. means going together and then come wearing also but there is an

parallelism it is not like a football team which is trying to score goals against each other then it becomes versus I have taken it as a vis -v-vis but what is a let us say rationale of this topic as I want to place before you and you can polish it first of all moral values and moral values for that custodian is for that I am responsible for moral values everybody is means in so we are custodian and as a person who is a given such high responsibility aaa of taking aa a stand of doing justice moral values its importance need not be underlined but another point is constitutional values but there is common constitution so many amendments we have done but citizen of India for you and for me constitution is one so constitution gives a kind of direction that specially citizen cordially citizen of India and is specially as as an interpreter of law and a person like this August Audience constitution gives to try a common path on which every citizen value every citizens values every lawmakers law and decision makers law interpreters values must be a aligned alignment is also needed I am not saying that necessarily the moral value of the individual and role of an Honorable judge and constitutional value will be at longer heads but it's at longer heads at time because ,, I am free to think something .. and I think it is our duty to respect constitution without trace of doubt but still provisions of amendment are there what does that mean constitution is sacrosanct but in a dynamic process we can respectfully raise the point there can be certain changes in certain clauses otherwise had been fully sacrosanct from different angle you would have not touched it things cannot be touched so constitution is sacrosanct but still amendments we are doing more than 100 amendments have been done what does it mean but sacrosanct but our dynamic process allows and believes that things are evolving and not that at one point we can say anything have achieved perfection. if you allow me to say individual will think that my moral values in constitutional value is coming at certain time of momentum and momentum is c rating different kind of resultant in that case perhaps for Honorable judges like you have to see they are more aligned constitutional values without killing my moral values and also holding moral values because we cannot become responsible individual unless we have natural habit of upholding moral value. With this backdrop this moral value viz.-v constitutional values will discuss. This is my name and contact. so objectives I have also discussed but let me allow to read out from slide but we already have understand moral values we are already understand but we are here to discuss moral values brush up . Next is to discuss constitutional values and next upholding moral and constitutional values and aligning the two in judiciary in our role as, as a judge. ahh moral values let us see few descriptions first word is moral and of course hmmm I have not seen a thick walls separating morality, ethics values etc. but more you go into deeper certain kinds of glimpses you develop that yes here I can put curtailed bits between morality

and ethics, between values and ethics so just for the sake of some clarity and brushing up some descriptions moral, moral means sorry personal standards of thoughts point is personal neither constitutional nor societal. personal standards thoughts and conduct that indicate that how one should behave based on duties and virtues arising from principles about right or wrong point is right or wrong able to choose between the two and a aaa it is a basically intra personal mechanism it is personal standard of thoughts and standards here please see her thoughts also have been added because conduct ids manifested but that is creating a kind of world inside me inside you, thoughts that why you see in behavioral science or a aa psychology that more emphasize of conduct what is behavior manifested behavior but if you see particularly scriptures your quality is not reflected by what you do only i have to ask what is thinking Mancha karma.. what you think through mind and what you speak through tongue what you do through your hands and others organs karmania by having alignment amongst these 3 which has been explained as internal Triveni ek toh Allahabad mai hai outside you but internal Triveni where concurrence of these forces are there that shows your quality so in case of morality it is not only conduct but also thoughts so personal thoughts and conduct that indicate that how should one should behave and virtues arising from principles about right and wrong and choosing right and wrong what is right or wrong aaaa what is required for that what kind of capability will help me to decide what is right is right or wrong as wrong and not that i say right is wrong or wrong as right what it is called in Hindi or English or Sanskrit word it is called conscience , Ok that is called conscience but psychologists has proof conscience your conscience is discourse of others it is not original and we have forgotten we have started claiming which has been carbon copy as original because we have repeating as original my conscience it discourse of others and John Watson had said that your conscience i can build you tell me what type of conscience what kind of career one should take because he was basically behaviorist and behaviorist they say that people can be shaped by that environment and inborn qualities are significant. but other schools of psychology says that what matters is significantly how that that the print psyche at the time of your birth but because Steven pinker said that nobody is born like a clean slate but there are inborn tendencies but Watson will say I don't care for inborn tendencies give me 5 infants now and tell me this infant A who is a male he should be a doctor and this infant B she is a girl child and she should be an advocate. Tell me I will show you that you wanted a doctor a, you will become a doctor because I have met environment around him to become a doctor. so schools of thoughts are conscience is not an answer conscience is a discourse of others and if you allow me to be on lighter side with a because a lighter sorry a serious things in workshops

should be discussed not always seriously hahaha some lighter moments so you allow me to be on lighter side one percent of my conscience said i should not become a prime minister so i didn't become prime minister conscience but the question is was that conscience or a you have to create a certain logic to defend yourself or to or to save your face conscience is also not original psychologists have proved it is basically in English we call it a wisdom and a very popularly known word is VIVEK which is come from Sanskrit and it is used in Hindi also and also at least to some extent I know in Bengali and odia Hindi to some extent i can speak in Urdu and Sanskrit and here in English so Vivek is there in odia also Bengali also Hindi also through Vivek we choose between right and wrong so basically I study on moral values is study of keeping our Vivek our wisdom challenging continuously because even study on our wisdom say that it is not stable quantity for you say for e.g. on average society expects honorable judges and teachers like me they are custodian of Vivek and they can be believed in fine on an average it is accepted has an individual examine yourself might that be that in the morning I behave like more wise person but in one hour the level of wisdom is going down and certain kind of lower tendencies are attracting me and I feel next half an hour I should not do anything creative I should feel jealous about him or her . so at that point of time it is coming lower level than again wisdom goes up there is wonderful aaaa hmm aaaa and a dot in puran of course. parvatiji asked her consort Lordship who is a wise person and lord Shiva reply was very crisp he said that a person is wise when in that moment he or she is acting behaving wisely and the same is person is unwise when the person is acting or or thinking unwisely he did not say that Mr. X is wise and Mr. y is unwise you as a person i as a person in some moment I am wise and in some moments I am not wise. so one of the greatest challenge is basically a from aa behavior psychology point of view that managing others are difficult but more difficult is to manage self-moral value this topic is basically is a topic of domain of intra personal mechanism within myself very difficult topic. a bit easier to deal in class but outside class there is a laboratory which is called world very difficult to operate and stick to standard which is not much vacillating but if you see another discussion more of reasoning but this is process by which we transform our values and beliefs in to action . There is a process and the process is called intra personal mechanism. at this this word has been Romanized now aa internal engineering some persons they float workshop throughout country in engineering basically it is intra personal mechanism the reasoning through which what is called in Sanskrit as uhh haa pooh a there is a book written by nyay nyay a Shastra written by Gautama should be is compulsory for any student of the world because it talks about reaching to a logical conclusion is step by step. So as a professor it is useful for me as honorable judges it

is useful for you for advocate for engineer for doctor it is useful for them. Nyay Shastra is supposed to talk about.....then it is says ... is basically intra-personal mechanism in which you receive input and keep weighing ones against others and what is desirable on certain criteria that should be implemented.. I will come to here. Later on also researches on stage of moral developments also suggests here and they came with nyay Shastra recommendation by written by sage Gautama that how reasoning is done. Moral reasoning means processes by which we transform our values and beliefs into action. This reasoning affects the way one make decisions. This is moral reasoning. Think it is clear and next one is ethics social; norms how you see. How can you kindly see moral not moral reasoning omit that moral and ethics lot of words are common but this clarity is important. Ethics means social norms of standards in moral it was personal standards. And now ethics social norms of standards here I am sorry, sorry, and sorry. Here I want to kindly put your attention on the pointer moral personal standards of thoughts ethics social norms of standards of conduct that indicates after that it is common how one should behave based on duties and virtues so difference between moral and ethics it is sometimes is blurred and a hmm where else in professor somebody's says me give me difference suddenly it may not come to the mind and it is expected that we should be clear and clarity is there whereas moral is more personal in nature ethics is more decided by common understanding in the society. common societal norms that is the difference and last on this slide is when we said you see AAA hmm AAA when we said that morals came here isn't it moral reasoning process which we transform our values and beliefs into action this reasoning affects the way one makes the decision so what values and beliefs are and specially values I think is supreme clarity like a very splendid explainer we should be clear even in our dreams what we mean by values. But values are sometimes misunderstood and may give blur meaning to it. Now you see according to descriptions I have tried to give integrated view I ya values core belief or desires that guide or motivates attitudes and actions. persons attitudes and actions or beliefs or disguising alternatively this is very interesting basic convictions i tried to find out in ordinary English dictionary which is the word which is more close word to values of an individual and most close word i could find is basically conviction it means my values is my convictions. So alternatively basic convictions that specific mode of conduct or enlist of existence is personally or socially preferable to an opposite or converse board of conduct or enlist of existence. now hmmm values are convictions directly towards enlist of existence or towards mode of conducts it means there are two types of values one may be called as instrumental values means process values suppose my goal is to touch the white wall then for that i have to walik if I touch that wall because touching the wall will make the world happier

let us say so I must test the wall so i touch the wall but touching was endless state value but when i steps from here to here every i step took was a thicker or somebody was making a crises cross in front of me and he was obeying law and i was not obeying him and gave him a kick I my goal is to touch that wall because I believe in in a phrase nothing succeeds like success or else believe in phrase ends justifies the means or I am Mesmerized by writing of McKinney Wallis who said if you have one race fine then don't ask how I can I win the race. But Gandhi who believes in process justice process let us say justice procedural justice I will not like to win if my every step was not properly taken. And my belief was disgraceful if my each step was rightly taken. This is called instrumental value that why end is straight of its existence or mode of conduct. Or enlist of existence is personally or socially preferable to an opposite or converse board of conduct or enlist of existence. now hmmm values are convictions directly towards enlist of existence or towards mode of conducts it means there are two types of values one may be called as instrumental values means process values suppose my goal is to touch the white wall then for that I have to walk if I touch that wall because touching the wall will make the world happier let us say so I must test the wall so I touch the wall but touching was endless state value but when i steps from here to here every I step took was a thicker or somebody was making a crisis cross in front of me and he was obeying law and I was not obeying him and gave him a kick I my goal is to touch that wall because i believe in in a phrase nothing succeeds like success or else believe in phrase ends justifies the means or I am mesmerized by writing of McKinney Wallis who said if you have one race fine then don't ask how i can i win the race. But Gandhi who believes in process justice process let us say justice procedural justice i will not like to win if my every step was not properly taken. And for me the defeat would be graceful if my each step was rightly taken it is called my belief was disgraceful if my each step was rightly taken. This is called instrumental value that why end is straight of its existence or mode of conduct. There are two types of values one is straight of its existence and other is what means to I adopt to achieve that. so let's proceed further i think this is just for a kind of lexical clarity to set the ball rolling and to find ourselves on to the same platform. Values quickly ill read it i like this so i just got printed on my slide values quicks 'quicks' one stage shorter of quotation and quick's are basically teasing in nature anyway. Quicks' the things which are most valuable are priceless no doubt i i like this so i brought it for you. The things in life which counts the most are the things which are not to be counted. What does it mean qualitative dimension of life. Next man possessing riches is ok but riches possessing man is not ok my purse is full but soul are suffering starvation next when money is chase wrongly we lose the things that money cannot buy. Next do not reject something merely

because it is old fashioned otherwise the sun and the moon and the mothers love would be ruled out. The things of greatest value are those things which multiply when divided. Quick's are the way of saying in sarcasm locators way and to just challenge your aaaaa conscience of thought and if interest is not fed on moral obligations its spiritual bankruptcy is inevitable. let us proceed further now please take your note pad and your pen ready sir and ma'am sir aahhhh you see these are some of the values prosperity means a world full of prosperity contribution I, I should live for some contributing something to the society peace I want to have the world and do a bit of my action to make the world peaceful place freedom there should be freedom in society i try to find to pull it into chains respect for all recognition i should something significant before i depart finally from this world and wisdom that there has to be a supreme clarity about everything and we go in right direction so i request is take 60 seconds time after of course perhaps noting these 1234567 words they represent and they state value that is for sure . you simply put rank according to you as an individual which value I rank as one if you feel intra-personal conflict please be a little harsh with yourself because you will be in love with all but you have to rank it out . Take one minute sir which value i as an individual rank as 1234567 no tie please. Over? fine so we have rank it out I just like to I will go randomly aahhaaa ant participant Honorable judge is from just randomly i am going Odisha, Odisha who is sir you are from Odisha it is randomly I choose you can you please announce to aa all of us what is the pattern of your ranking if you feel so you can deny it sir let us listen peace is no 1 next

Participant: prosperity should include wisdom

Pawan K. Singh: pardon I will come to that just listen I will just come after listening to just this ranking. yes sir is saying that a 1 is peace and 2 is respect yaa, yaa the 3 is recognition ok just one clarification you said peace it is peace you want around yourself is within oneself fine a let me further rectify i have learnt it rectified it these value are basically end state value life goal life goal you can say that establishing this value peace means a peace where i exist on this earth let this existence be full of peace. it is not only my peace so if that is there please go for ranking it again so i will repeat prosperity means a world the world divide of penury and, and poverty where people live properly and they have at least material things available so that they do not starve they do not cry for clothes that is meaning of prosperity and not my prosperity nor my salary or pension scheme only that is prosperity next is contribution my value that a it will be de-dignifying tying myself without a some small contribution to this existence i.e. contribution and thirdly peace around us peace for me peace

for other human beings peace for non-human beings creatures peace for animates peace for inanimate .peace for this wooden material which inanimate i.e. feeling of peace that is end state value that's why you see a person who is standing for peace how restless he is and i try to describe your qualities is known by the quality of restlessness. Eric from a great psychologist Eric Fromm a great psychologist who advocate it for peace and also advocated for freedom. he was uncomfortable with himself finding that people are not having freedom though country is democratic or countries are highly prosperous but the true freedom you define and he also concluded and he was basically a philosopher psychologist that people are afraid to be free . His one conclusion is I am also afraid to be free. suppose somebody says there is a choice you like to be in bondage or you like to be in freedom I will always say freedom but if poked and investigated deeply i will be exposed I don't want much freedom I want certain bondage certain chains with which i am I have fallen in love and I do not know I have chains. Because have also habit in many have habit of most of the time putting this wrist watch and sometimes happens I am wrist watch is here and it is very uncomfortable thing not a very a small thing and holding my wrist it sometimes the wrist watch is here it has become a part of the body and then i sometimes i search where is my watch oh it is already there it has become part of body Eric Fromm sir deferred or afraid to be free because only courageous can be totally free. So with that context so actually these are well researched and state values for which may be that AAA hmm persons like us should try to think or cope. From this angle we have to see sir that we thought there will be some misgivings in my description now it is clear freedom. freedom means not only me but there has to be freedom and unless all are in freedom I will not rusk myself and then respect hmm many people are disrespected they has to be respected and you see him most of us here dealing in say SC ST court ahhh mostly economically deprived ahh socially discriminated many issues you come across ahhh and a you understand all these things and now respect here means respect for all. At a spiritual plain when everybody is born of the same god how can be there discrimination let there be a respect for all. this is a value and a state recognition this recognition is basically not recognition for all now here they come towards self and also for contribution but even if you are indicating towards your recognition you are spreading any in a macro way doing something significant so it creates impact and i get recognition and may be that there I may say that my mother unnecessarily did not have labor pain giving me birth. at least I justified her labor pain I must do something through which my contribution or my effort should be counted that is recognition and wisdom means purpose of life this is also most oriented words me not that all should be wise like a SRI Aurobindo had contributed to his literature collective conscious but here

wisdom simply means that I must not be a misguided person at the point of my death I must attain a clarity and I must be able to see element as element and can i see element in compound can I develop X-ray vision is still ahh and today I am just struggling having a camera vision I can see only superfluous things I can see able your only court and tie can I see inside ? Peer-son view that is wisdom and wise people do not have camera view they have x-ray view they see the element inside the compound. while seeing the merriment they also see a kind of piece today there is a festivity I know tomorrow this will be a vacant place and people will be no more available so he can enjoy but he knows this enjoy has certain limited hours. I find sometime nowadays marriages are taking place in big hotels unlike older days when marriages use to take place in our own home and a mandap under which the marriage use to take place that mandap use to be maintained for 1 year . so some nostalgic effect use to be there now you will book the hotel may be it is a 5 star hotel but only for limited hour up to 5'0 clock in the morning and if it is 5.30 you start getting the hint that I should vacate the place . hotel owner will not say please vacate but they will start putting ply card for the next programme and you know my time is over so while enjoying the festivity in 5 star Hotel we should know that this facility is available to me only till that time the contract has been agreed upon . so I can see both the sides not that I that I lost my sense that i have stood for the 5 star hotel I slip many a times to pull misbehave I have paid you how can you misbehave with it. if I paid you it is again still my duty that I should behave with you not that simply I have pursue I will keep you on tender hook this is wisdom so state values. Quickly let me go to another friend to Honorable Judge say state Hi-tech Goa Goa small states in size but beautiful. Ahh participants from Goa no one Karnataka is just randomly things coming to mind so sir will announce in his ranking please go kindly listen 1 is respect means respect for all sir

Participant 1: said yes

Pawan K. Singh: sure sir al right 2-contribution 3- peace 4 is freedom okay, okay, okay So there is a pattern sir has a pattern that thus randomly i will go the Rajasthan honorable Judge from Rajasthan ohh hmmm I was just wondering the biggest state is a difficult to find but sir is from Rajasthan. Please tell your pattern number 1

Participant from Rajasthan 1: wisdom 2-vision-3 respect 4 perception peace adjudication by the courts

Pawan K. Singh: fine certain similarities were there but this dissimilarity was also there rank is not exactly same but ahh it is surprising and pleasant surprise I should say and the last one is recognition. I don't know why it is happening perhaps and where the wisdom and sir wisdom 4th one fine is. now I don't have any statistical data to prove anything but recognition at the bottom they show something and I know I am talking August gathering of Honorable judges and both my I think you are like my young brother Honorable Judges we may compete in age at least but bottom recognition not at the top Hain

nai aisa ho sakhta hai ki aap chahte hai ki there should be clarity about the things and should be able to see the things as they are I should not be misguide by my perception i must be able to see truth as truth yeh to theekh hai wisdom lekin kisika dil hai na ya action
Not necessarily that

What I am saying because all are to be respected why say I take say i take a prosperity now prosperity is the prime value means the moment I see unequal distribution somebody is making merry Manson somebody is struggling for 2 times a meal or even 1 meal i will not allow things it to be continue but I may not change the whole world but i will not leave any stone unturned my blood is boiling I will do my contribution for let the resource false let the resource flow to have, have nots also not also this is a fight against the inequality so please let us not say this is the central all have been recognized and I took from well research data that these are the state ends values but honorable judges if I go for say creating a kind of aahhaa data collection may be somewhere or the similar but it is difficult to find that yourself of set of 1234567 is exactly will be exactly equivalent to another aa participant here what does a point i just wanted to hit a point that we are honorable judges we all are equal in statuses and responsibilities but still as a person our priorities will be little different and that's why while making judgements my values come into play there is no problem because each value is to respected they are weightful values but later on will ask that certain values if they get overloaded are they against certain kinds of common values suggested by constitution that is constitution values basically we find constitutional values is spread throughout constitution but mostly the condensed presence of values constitutional values are in preamble part where it talks about their nature its characteristics the very methodological character of constitution is describe in basically preamble. But reflection about values we keep on finding anywhere on any page isn't it for e.g. if we say read about concurrent list a values being be indicated that it is basically a republic state where check in balance is there and certain power is distributed

between center and state so values are getting reflected but for that we have to have clean eyes but in preamble values are explicitly written. so it was just for the point that individuals may differ we may be a learned people we are learned people but still is an individual my moral values may have different shapes than yours you know in advance dictionary on colors 72 shades of green color have been identified and for each shade there is an different name similarly here all Honorable Judges our integrity is impeccable no one raise can raise eyebrows on me on me and all each one of us but still as an individual. To certain extent fragrance is different we are beautiful flowers but little fragrance is different a lit bit of difference. somebody will say fine wisdom is my number 1 sir also and I respect your view wisdom is at your central point but let a say not give overweight to anyone all may be equal if it let us say recognition of the bottom say recognition basically I oriented people should take by name

.....but for me everyone may not be giving a recognition at the bottom but may be may be it is coming on the second last or last point is very clear it is not that Judges don't work I respect that but actually, actually ahhh recognition compared to others has to take little lower er priority for persons like you because recognition is eye oriented that people should take my name and that creates problem many a time I will just quote a research finding which said that need for recognition is managerial world create a kind of .. or charismatic personality leaders it gets created if recognition is the prime drive force and in that case till that person is present who needs recognition organization will not lose but will gain but one day if he/ she retires or gets transferred physically not available he / she creates avoid a person who seeks to cognition his presence adds value to organization but at one point he misses that I must prepare organization which should work without my presence. In one aaaa management development programme one of my participants came to meet before the session began that sir I will go out once or twice to attend the call and that is a very important call. I said you are not a typical student that I should teach you discipline you know and that is that important call so crucial for you but I thought he will go once or twice he started going 7-8 times later on after the class I said I have to give you a feedback and he had a lot of respect for me I said once or twice its ok and you have already taken the permission but 7 or 8 times it shows that department can't move without you, you are here for 5 days programme in IIM Indore campus and don't take pride or pat your back that they have to consult me to go on . then something wrong is there i started using my own way of a straight forwardness during in tea break off-course in isolation not before all i said there is something wrong with your management and I knew he respected so he will not mind my language was harsh my intention was just trying to take care lovingly of his priorities

what wrong sir 7 -8 times during the session of 90 minutes it shows that things do not move without you and you may be taking pride of it a self-praise of it something is wrong and an effective person should manage that things should run in my absence if you are preparing for that you are the right manager it means you have distributed the authority properly you have given autonomy you have given sources you have given confidence you have done everything and by making the entire system dependent on you, you are also not nurturing the next level of managers many things are happening which are going in wrong direction he agreed i said yes it the indication this is the indication then I also told him one thing that a kind of manger you are will be tested how people treat you in the office in which you are no more working you have been transferred and then you go back to the same organization or office how people treat you that litmus trust how you have managed actually at that point of time otherwise tell the point where authority is vested in you people will tolerate you in spite of you being the head so whether the organization I due to you or in spite of you, you have to decide people must be attracted towards you so there are many values and on values we can be different let us proceed further this is this will be perhaps discussed in the other session also so but I will just tell you aaahh this is called the stage of moral development and a depending on that the stage on which I am standing I can take it a call and take his stand i can decide because honorable judges are in there actions of decision making and decision making and as a student of Management we also teach our students and managers from corporates decision making but decision making basically it is said that all ordinarily human being is guided by three forces in stages of moral development second is environment and third is called locus of control locus of control, means the point which controls.. the point is outside me or inside me I think it does not apply for people like us here but that is important research factor that locus of control it means whether I am guided others opinion or I am guided by own values system if I am guided by own values system I will called as internal locus of control person if I am guide by what people will say it will external. first time I argued with my father when I became 19 years old till then I had never dared to talk to, to or discuss even forget about arguing and I said to my father but my dear father you have been perhaps being too much guided by others opinion he said haaain that you will discuss with me on this and evaluate me I said I think so and the point was about my career choice he wanted me to make something I said I will become that but the moment I took that subject that subject was not very popular subject in the eyes of society and society decided and concluded I am just going running from academics. Simple reason I left physics honor's joined economic honor's entire society started coming to my father and saying hey tour son ran away from science he will just not do anything. so I said my father one day perhaps I did not

know the point of that time locus of control terminology ha ha I did good thing or I did bad thing I don't I don't know but I told my father that perhaps you are too much guided by others opinion that is why there is a problem but I said you give my space I will prove the thing anyway locus control so 3 things what 3 things decide our quality of decision which we counted number one is stage of moral development and number two environment in which we work and number three locus of control in his work that why swami Vivekananda said that every new endeavor has to pass through 3 stages number 1 is radical number 2 is a position and number 3 is its acceptance new ideas new thoughts new kind of products radical first opposition second acceptance third . so there are 6 sense on this slide of moral development I will take 5-6 minutes more mm haven't when we go down each next' stage 2 point is better than the first point and third is at still higher level so it is in reverse i means higher means physically up but here please I could not write in that fashion it is basically when you go down we are going higher so point number 1 is sticking to rules sorry is taking to rules to avoid punishment somebody pretend to be moral if they are caught they will be punished so let me have moral values intact . Next following rules only if it at immediate interest. fulfilling selfish interest and claiming also am I law abiding person or a I am a moral person third further improvement lining up to what is expected by people closest stake holder and basically honorable judges jobs and teachers jobs is such that our effect is far reaching. for e.g. had I been a manager in biscuit manufacturing company is still I would have a, a person of status enjoying my life but lets us say that responsibility goes does not go beyond a point I must prepare a biscuit which is which is nutritious in nature and in the process of manufacturing biscuit I should not pollute the environment too much so that there is a negative kind of balance triple boarder line of society. As honorable judges as teachers our reach of impact knows perhaps no end. and that's why we can't define typical marriages who are your stake holders you are stake holder in society at large . and to some extent the teachers stake holders are also at large specially those who are enrolled with us so living up to what is expected by people close to you ok this is third stage but still better stages are available next is maintaining conventional order by fulfilling obligation to which you have agreed living up to that is to say my job description not only that expected out of me but what i promised directly indirectly orally or in written form and a there is Oath ceremony of course in teaching field there is no oath ceremony .there was a debate about five six years back that it who enter into teaching career there should be oath ceremony for them also but there is oath ceremony for president of India chief justice of supreme court hmm gives oath so living up to that standard and next second last is valuing rights of others and upholding values and rights of regardless of the majority opinion.

Respecting right valuing rights of others no doubt and upholding values and rights regardless of the majority opinion if it is required I have guts too stand alone. Swami Vivekananda we were having debate on 11th January ahh 12th January is birthday so one recording was done to be shown on doordarshan so 11th we were debating and one gentleman nicely said based on Vivekananda's writings Vivekananda has said on one place every individual must be obeying in nature and humble so that if there is a call for taking a stand on certain issues the person can take his stand on that issue it means Vivekananda was trying to say that a sense of obedience and humility humbleness it is preparing for you to become more robust and rebellion is strong bold inside if so that there is a need to stand you will be able to stand . And he also punishment to say that day to day arrogant behavior and showing that hey listen i don't care for anybody a, is not going to make you material who will take a stand on any cost. So you see that this 2nd last point valuing rights of others respectfulness but upholding the values and rights regardless of the majority opinion. This goes exactly what Prophet Mohammed in Hadis talked about second stage of jihad he talked about first stage second stage third stage. first stage allowed the right person to do right things and if somebody disturbs him take him away from the scene first stage jihad second stage jihad that majority saying including king that stand X should be taken you have guts to stand on feet and say that please allow me to say that stand X is not beneficial stand y is beneficial when in spite of a presence of king you have guts to say and in those days king was a person in whom President of India Chief Justice of India and entire executive India is merged into one individual . So in spite who can give me order behind him in 60 seconds but i don't worry for that and I can say what is right and what is wrong. So this stays second stage is closer to second stage of Jihad and Jihad the word should be properly understood by each citizen of the world. its Mis-interpretation is creating a lot of problem last point and the last most point now this little controversial but this is a place where ahhhmm aa hmm where these persons treat where angels fear to tread following self-chosen ethical principles even if they violate law humble e.g. can be let us not too much stretch it .let us take the right side of it Mahatma Gandhi after 7 years of his satyagraha practice in ahmm Sabarmati ashram decide on 12th march 1930 I should say goodbye to Sabarmati and let them start Dandi March the day was 12th March 1930. whether Dandi March was legal answer it was ill legal laws created by human being and human being is a follow able creature or if the human being is creating a law with contorted or certain ulterior motive the law will have its own is curious and biased ness and that law said you can't manufacture salt Gandhi opposed that this simple thing we can't do then how can we fight for big cause but again Gandhi had an intra personal conflict even if I go on March and manufacture salt what will happen. We have to stand now

for countries freedom that manufacturing salt will not solve the problem but then he thought even a little step towards a smaller cause will connect me to a larger cause and if 40th verse chapter of Bhagwat Gita motivated him which says none of the action goes unrewarded and no action gives reverse result and a little action in right direction leads to great cause and he stood up and said I should be more dynamic and on 30th March was started but his journey was illegal but see examine from this angle following self-chosen ethical principles even if you have violated the law where you created the law and law is not a hmm creating equality and not let us say fulfilling the basic value of humanity so I am going to break the law and he broke the law this last stage. but in anyway sometimes it happens we are all learned people ahh but sometimes a student may ask who is doing Post Graduation or Graduation that should we break law and ten my answer would be no. our behavior to go to the last stage in post independent India has to be different then pre -independent India. in Pre-Independent India some law we can break and say these stretchers people are creating law to bind ourselves for more and more benefit but post -independent India when the rule is by the people of the people and for the people of India and you are the ruler in that case don't refused the law but keep raising voice against the law and t ill the law is changed in black and white don't break the law I think it is the safest way. To be a dynamic Human Being and prime to reach to the different level of moral development but still it is a law abiding person because we have to behave differently. hmm before Independence another kind of behavior was let us say warranted by post- Independence another kind of behavior I think It is apportionment of Lunch period but this just one more and one more quickly you see this is the listed i have just listen i might have missed one or two but these are the values propogated by our constitution and these values are this is a preamble of course and includes subsequent the amendments where the word secluded Etc. we also had it and for the 42nd amendments have become a bit controversial certain things which we did it in 42nd amendment was aa was undone by by 44th amendment also all things went on but today where we stand this is the basically values propogated by our constitution they are sovereignty socialism secularism democracy republican character justice of social economic and political nature liberty thought expression belief faith and worship equality in case of status and opportunity certainty ahh dignity of individual and unity and integration of nation. I would be happy if spontaneously ahh one of the learned judges ohh Prof you are missing this one very significant important point or we have taken basic values which our constitution upholds. Fine let us proceed these are set of values but before we end this discussion on this topic let me say that moral values Viz-V constitutional values that is the topic of discussion. and we are at the end ahh stage of this discussion i would like to say through one e.g. from management world

because I mostly interact incorporates and public sectors but I also interact with learned persons like you so let me bring one e.g. just to have a trigger that what kind of conflict arises between 2 sets of values in the corporate world so that we can analogies if at all any conflict arise in the world of judiciary because in judiciary human beings are working that is why basic postulates. See what happens conflict between societal norms and organizational counter norms e.g. from management fields see so societal norms says be open and honest this this what the primary teacher would like to teach but what organizational says and whispers in the ears hey don't go by open and honor be secretive and deceitful so that organizational interests is more covered. And this conflict the individual feel... manager the non-manager next set follow rules at the all costs societal norms now organization which is paying you salary might whisper in your eyes that is theoretical golden line but practically do anything do get the job done. What ever happen to this conflicting values between which an individuals is crushed, Dui pattern ki beech mai koi sabot bacha na koi p-kabir said so between conflicting forces individual gets crushed and there is a possibility that at the time when we attain 60 years of age we are now behaving much in a less mature way compared to myself. when i was myself 30 years of age so question is when we grow by age do we necessarily grow by our wisdom or we don't go all forget about growing there is a reverse process of falling down that possibility is there follow rules set all costs and do anything to do job done. Now let us see take this responsibility what societal norms or primary teachers they are shouting at the top of their voice we take this responsibility in organization passed the buck trick of the... there has been grudges world is mostly a honest place to live but there has been research on false reporting in written communication telling lies and the person who is getting the report knows what has been inflated and what has not but they are also know this there part of trade.

B a team player this is good sentence who will say don't be a team player but what happens when one go and the n see the reality or take creed only for you and possibility others actions what about the team player everybody is not like Dhawan aaahhh about n whom Dr kalam use to every-time prays I listen Kalam 4-5 times barring may be one every-time he said Dhawan said me to face the media when became successful and when we failed before in the endeavor he himself went and said I am the senior person i will share the failure story and when there was success he said to his juniors go and share the success story so that Dhawan element everybody may not be having seen what is happening in reality be at team player take credit for own and others actions so there is a glimpse I have brought from the management field research that how individual faces conflict among two different values one value left side

which he was taught which he took a wow following which will it give him a pride and self-esteem and he would know that a by following the first column values i can show my face to my parents or to my children but then we are force to do that but second and the last slide you see when dilemma is there among values sets there are certain ways to resolve certain dilemma abet reduce the counting of dilemma reduce i will quickly read it and if you take interest than 5 minutes more in this second class of course 2nd class is having the different topic inter personal sensitivity so just quickly i will count resolving dilemma when there is an any dilemma in my decision making process the first approach can be abet means reduce counting that you are under dilemma there is no dilemma haven't you seen some speaker very ah ha let us say respectfully or with very brightness on their face invited say life is full of great area . life mai great area but you have become habitual even counting white area as grey white means it is clearly a thick al task and counting black area clearly unethical is still you counting grey you are counting some of the portion grey and also black as grey and saying grey is more whiter ohh just this was based on survey on 93 practitioners in the field of management from academia and practitioner included and based on this for resolving dilemma among values it is the first step what i wanted to place before you in normal language a bit reduce counting that you are under dilemma you are not under dilemma next is negate . don't come logically to deny un an unethical call either from inside or outside don't reach to the conclusion that i will not do unethical ahh by logically reaching it first say i will not do it just say I will not do it . There is no need to find law. There is no need to be logical there next is state and, and next is debate. National Judicial Academy Bhopal has created this platform for us to state and debate that how ahh we can uphold our values which are aligned with myself because if every time my value is tormented i will become a split personality and if every-time let us say i uphold my value at the cost of a common value given by constitution perhaps i am working in my own way and that is also not desirable and it is a deviated kind of let us say approach we stated in debate next is relate, relate to your own past experience and experiences of others that what has happened when ahhh a wrong let us say path was chosen because of convenience or because of allurements and next one is contemplate on or over dilemma now it is inter personal process contemplate and extrapolate if i take decision like that how it is going to impact and after 50 years somebody is coating this decision how whether the decision taken as impersonal or personal because researches say impersonal ethics its impact lasts longer and personal ethics its impact is only felt for shorter period and impersonal ethics always have to be chosen over personal ethics so contemplate over it mediate over it off-course I am did not to say it because various examples of a ahhaahha stable mind are there that there are two types of persons in this world agitated

and meditated and every judiciary officer needs to be a mediator one and meditation leads to a kind of clarity . there is an example of Mr. RK Talwar how he rejuvenated the State Bank Of India SM Dutta how he Rejuvenated Hindustan Liver L N Jujunwala how he did the intervention owner of an organization more agile on moral and ethical and value based front so many organizations they introduced regular practice of spirituality and meditation to resolve dilemma operate means to implemented and last one is after taking a right path you you will not have bed of roses there is a problem intra personal and interpersonal so this my research says and perpetrates means stick to your gun once path chosen has to be further nurture. Sorry for encroachment of your lunch period so we have lunch so that we have may be that ma'am sir you can meet here at 2.15 or 2'00 clock. OK at 2.15 we will start our next session on interpersonal sensitivity. Thank you

Session 4

Interpersonal Sensitivity

Speaker: Prof. Pawan K. Singh

Justice K. Chandru

Justice K.Chandru: Friends we are in the session number 4 and Prof Pawan Kumar Singh will initially start the discussion on the interpersonal sensitivity so can we begin sir yes thank you thank you honorable Justice Chandru sir so after this lunch break inter personal sensitivity this house will rotate around this two words topic this is the topic and the this topic was discussed with the view that every individual who is a decision maker must be able to replicate oneself empathize that other self so that cab be more effect dealing with the so called other person when we say interpersonal sensitivity there are basically two approaches you may say why not third but I may humbly say that law may not guarantee sensitivity law is such a beautiful area that it ensures something that is minimum bare minimum we call acts as bare acts bare footed persons bare acts without law without law of nature without law of gravity without law of I was a humble student of labor laws but I have earned my first bread through interpretation of law only . I was searching opportunity to become a teacher did not get because it use to take time those days employment news publish advertisement you apply after seat 18 months there would be interview first job I got was job of industrial relations officers in Bank of India my job was to interpret basically one law and some other one or two laws my bread and butter was the Industrial Disputes Acts 1947. I have enjoyed the juicy part of law interpretation for some time later on I taught also labor laws and my favorite law as a teacher where again the Industrial Disputes Acts 1947 of course the payment of Bonus Act because many of my friends in school collage they were not a very comfortable with calculation of bonus and with god's grace I knew it. anyway what I am saying law is a wonderful area a student came to me my own PGP students sir law is not giving me interests I said law will not give you interest it does not give very attractive cards to its readers you have to dig little hard and as when you dig to certain extent them only you get water when we did well we do not water at first instance we get dust chips rocks and then we get water similarly reading law I realized in the beginning it says please don't come to me I am not as romantic as English poetry or Hindi Chaya what or even chemistry or physics I am like me you like me or not but once you are with law and you dig at the critical minimum level and then when you interpret the things and see the vibrant part of the law getting implemented and we study our studies with

let us say High Court and Supreme Court Judgements and then you find why in a different context the same act was interpreted differently the law starts talking to you this I felt to say the student . but we like it or not for society the law provides the basic minimum plinth for e.g. what is promised for workers in The Factories Act 1948 that promise according to law is minimum if employer wants to do better than that he is free to do or she is free to do so law provides minimum platform you may not agree and that why let us say when we talk about aah maintenance between Husband and wife who wants to get separated law can take care or law can say no that you have to live together but law may not be able to say not only they have live together you have to have intense love between you law can't enforce and deeper the relation is more we need law to be supported by, by Ethics of society by morality of people by let us say psychological and philosophical and spiritual vibration felt among people I cannot know sirs and Ma'am there is law between ahhh managing relation between Husband and wife is there law ahh enforcing relation between aaa aah hmm between ahh apart from family and proper dispute between mother and child law between mother and child law enforcing behavior between mother and child apart from if it is a family dispute or property dispute house dispute enforceable relation between mother and child woh sabh property mai aajata maa aur beta ka yeh relation hone Hai I mean to say that my knowledge is limited likin mujhe kahene dijiye aisa law hai nai aur ho kaise sakhta hai and even if there can be law that how or not to allow the husband wife relationship to break now toh they allow it and even if it breaks how to have say with equity principle both the parties interest should be served but can be there law as I said there cannot be law that Husband and wife should be completely devoted and should be in love affair with each other why law provides the basic level and when society becomes law abiding society then it uses it has a jumping board and creates parameters value based parameters moral parameters which go beyond that and then the society becomes the better society . So inter personal sensitivity cannot be subjected to law that two persons must feel intense ahhh let us say inter personal attraction or, or, or, an affection law cannot enforce affection but a the law interprets us like us should be sensitive enough because we are facing one side complainant other side tentative counsels from both the sides advocates witnesses of this side of that side examination cross examination so we deal human beings day in and day out. And there are two approaches to understand interpersonal sensitivity major. One is psychological one is philosophical. psychological approach to understand interpersonal sensitivity I call it retail process of understanding interpersonal sensitivity a retail process khudra in Hindi it is Khudra Wyapari retail traders and philosophical and, and spiritual approach to this topic inter personal sensitivity I call it wholesale approach . A complete

bombardment on our field of ignorance and making us sensitive towards interpersonal sensitivity. Well actually and mentally I thought that I should only discuss with a psychological approach because that is more accepted in a world of intelligence yaa but hmmm you cannot avoid a spiritual approach. Would you like me to spend 10 minutes on a spiritual and philosophical approach of interpersonal sensitivity that is I claim it is a wholesale approach and after knowing that in order to develop interpersonal sensitivity you may not even need a psychological approach. But a psychological approach is more appealing to the intellectual mind and psychology is basically empirically tested also. Let us come to a spiritual and philosophical approach to interpersonal sensitivity first. What is interpersonal sensitivity? A kind of intensity of relationship between two persons and say in the morning a milkman comes to my house and gives 2 liters of milk sometimes I take or sometimes my wife takes fine. He is giving me milk and I am giving the money that's all. That's all a mercenary relationship but the point is are you a person who is also connected to that person not in capacity of milk taker and milk giver. About 12 years back 11 years full almost 12 years back I joined IIM Indore before that I was a faculty at the National Institute of Industrial Engineering at Mumbai in the same field of Human Resource Management. In one faculty meeting I uttered a sentence I began like this we teachers should I wanted to say something my one senior colleague said we are not teachers. The high profile management collage where you are working and they said me perhaps to demoralize me because there was some kind of argument we were developing and on which there was disagreement among faculties and I said we teachers but he did not allow my sentence and said we are not teachers then I asked who are we then he said we are professionals we help industries to get rejuvenated we help practical research to grow we help professionals to get trained by us and we create professionals we take the best of the best test student from the society and we make them managers. He was very happy announcing that we are not teachers but that brought me to a different level I thought oh my god we have de-developed then I said him and the faculty meeting I was right or wrong I said it means we have de-developed and you have devalued us saying we are professionals and not teachers he said How and I said yes those days of Guru and shishyayi guru and shishya relationship that sensitivity that was of the highest degree relationship. Guru Shishya then it degraded Shishak Vidhyarathi teacher student degradation Guru Disable to student teacher further degradation trainer trainee's further degradation facilitator's participants and further degradation service provider and service receiver. Today the student may think I am giving six Lakhs rupees fees per year I am the service taker and I will equally challenge on equal footing with the same language if the service provider is fumbling somewhere so we have degraded so I asked him that movement from teacher to

professional is basically a up gradation or degradation here no answer and it was a faculty meeting about 54-55 faculty were there. unhone pehle humhe demoralize kiya but that we are not teacher toh hum soche Ki mai bhi nai chodhunga why I this example interpersonal sensitivity has lost in teaching field also and when I left banking job and became the teacher I use to have 60 students in my class to begin with one batch later on two batches so 120 students per year. I am not saying Ki I love teaching lesser number of students but what happened you see to my sensitivity as a teacher today the intake of IIM Indore is 450 plus one batch also merges in the first year when they are in the 4th year of their program me so total we have 450 plus 120 so 570 so 570 is the number of students 570 students today I but out of 570 there are multiple sections and some sections 1 or 2 I never teach them. So they have never met me in the class I have never met them. just I don't want to link them just want to say when there is 120 students within 15 days I use to know the names of everyone almost fathers name of everyone names almost a background of grandfather almost a background of mother and sister almost the background of their subjects there is special interests their hobbies they want to sing they want to play hockey what? So everything is known about my students. And know the moment there is an eye contact in the corridor of the academy area they use to reflect a kind of warmth and I know them and I know where i have to find tune them. which one sentence will bring very high benefit to each of the student which sentence to whom which one trigger will help as a liver for self-development of others but those days are gone today that thing is not happening for last 10 it is not happening in my career because i deal with large number of students and perhaps I have degraded to professional sensitivity is now lower because it is unmanageable now. so in spite of intention my sensitivity as a teacher has gone down that any way our purpose is just to trigger and see that in the role of Judges Honorable Judges how interpersonal sensitivity addressed and what are the benefits of it . So spiritual approach if spiritual approach says interpersonal means between 2 persons and what it is an English word is for within the person. Intra means Within intra continental interstate in state interstate then inter means within intra means outside interpersonal means between to the spiritual approach wholesale approach it will not talk at marginal level it will talk at whole sale level if spiritual approach says what did you say interpersonal topic we are dealing with actually 2 do not exist it is very queer because spiritual discussion becomes very esoteric queer and anomalous sometime illogical but there 3 domain of knowledge in this world 3 domain of things one is logical one is illogical and third trans logical trans logical means you cannot apprehend only by applying logic you have to surrender and that's why sharunagati is there in spirituality sharaunagati humse kuch nai hoga I can't apply anything you only give your grace that all so

logical illogical and trans logical you transcend logic and then what happens that is there real realm of spirituality so spiritual approach to process sensitivity will say that topic is wrong though we decided the topic and I suggested you this nomenclature when he was discussing something about this has to come then we decided discussed debated inter personal sensitivity and today you are saying I am saying you may say Professor you are killing my time first you must decide with Mr. Chatterjee then you said topic is wrong ya topic from spiritual angle is wrong because spirituality would say when 2nd does not exist how can a topic exist for interpersonal sensitivity this topic to exist the other person has to exist others does not exist then who exists is spirituality says a person who has the right eye sight looks at others as such extension of self and looks at self as extension of others. So you are my mirror of reflection and I am your mirror reflection to does not exist to does not exist I was addressing to a gathering, gathering of 2000 people open for a town city. And topic was Sardham Sarbao in audience people from standard 8 to Ph.D. all were there the Sarvadam sambhav and was I was talking on my edge I said that is slogan Hindu Muslim Bhai Bhai will not work they thought that I am going to say Hindu Muslim Bhai Bhai will work but I gave a pause deliberately to audience to guess I said yeh jo slogan hai Hindi mai tha woh bhashan Hindi Muslim Bhai Bhai log soch rahe honge bolega Ki isko bhadhaao humne kaha yeh kaam nai karega there was turning pin drop in the audience Kya bol raha hai Bhai mere mitrao dekh rahe hai he is on the edge now kya bolega controversy toh khadha nai karega humne kaha Hindu Muslim Bhai Bhai naara lagane se kaam nai banega kyuki Sabah naara lagao ge sham bhool jaaoge kaam kaise hongha humne khaha let me define who is an Hindu and let me decide who is a Muslim I said Hindu is a person who is accidentally born the family because he never chose on the checklist I want to be an Hindu so Hindu is a person who is accidentally born in a family which follow certain method of religion and in whose house relatively Upanishads Bhagwat Gita and Ramayana will be easily available top others and Muslim is a person who has been accidentally born in a family who follow a certain pattern of religion and in whose house Hadis and holy kuran will be more comparatively easily found in the house and so with this Yehudi's oldest testament and for Christians new testaments this is the definition of Hindu and Muslim according to my own understanding . So how Hindu and Muslim can come closer and we do not treat others at as others it is only when accidently born Hindu actually knows what the essence of Hinduism is and accidently born Muslim actually knows what essence of Islam is. After knowing the essence that will come together and will laugh together oh my god we were thinking it is different but the difference was only at periphery actually the essence is same and when they will burst into laughter laughing at their ignorance then only they can be real

Bhai Bhai only a political naara will not do samjh nai hai naara lagate ho subah naara lagega shaam ko fir ladenge spiritual approach says when second does not exist how can be there interpersonal issue at al. so treat others body as if you are treating your own body. I want say if my body so when I will deal with such body i will treat this body as my own body. my own extension and I know by harming myself I will give pain to myself so by harming his body I will give pain to myself only this is spiritual approach where second does not exist . And in Bhagwat Gita Lord Krishna has given definition of good eye sight one eye sight definition is given by ophthalmologist sex by sex good eye sight In Bhagwat Gita you will find at several places that these word yeh parshati se parshati yeh parshati se parshati one who can look like this one who can visually like this his or her eye sight eye sight is correct. Jo aisa dekhta hai woh wahi dekhta hai Jo aisania dekhta hai woh dekh nai paa raha hai motiyabind ho Gaya hai cataract ho Gaya hai yeh parshati se parshati. One who looks self as others extension one who looks at others self-extension his eye sight is correct otherwise we need certain eye operation as per Lord Krishna in BhagwatGita.

Participant: [Not Clear]

Prof Pawan Kumar Singh: Fine sir same thing is there this the shloka which says which says at many places it has been said that even in Upanishads unit has been said oneness ek aatma na bhuti jab.....ek onkar satnam ek onkar that is one so everyone is a reflection of one so Ram Krishan Parmaran had said that we all are like different pieces of mirror is spread on earth,. but the same sun is getting reflected so reflection is same only pieces are different that is this isko bahutik sharir kahete hai this is the mirror with this vision slowly slowly deepening that sensitivity develops and then they go beyond man made distinctions caste creed etc. and a aahhh let me speak out my mind I may be right or wrong bramaham KshatriyaVaishyashudra. these 4 words have been used in Shastra's also actually they are not vertical arrangements that are horizontal arrangements now in a book shelf if I keep one book one after other first second third fourth fifth how can you say which book is more importantly placed in the shelf horizontal basically the distinction is horizontal and they were created with a purpose that somebody gyan yogi oriented shank yogioriented given by Kapil or so and second chapter of Bhagwat Gita is Samantha yogi. and there ais somebody like that let him attain the truth through path of knowledge somebody wants to do actions and through actions wants realizetruthkarma yoga so let him realize from Karamayoga somebody through Bhagto yogi and somebody through Raj yoga that is Dhayan yoga and all this yoga have been described in Bhagwat Gita and many

other places so depending on the personality of the person the path is available that's why various vyavasta were their actually it was established with a good purpose but we converted it to a bad purpose actually we started using Kohinoor to throw on somebody's head and getting him injured Kohinoor is not used like that to injure someone using it as a throwing stone so since there are various personalities you may be knowing that an ahmm it was a 16th August 1886 Ram.. died but 1886 1st January for some time he has acquired special powers 1st January 1886 and if Ram Krishna was touch someone the person will get to Samadhi . His is touching another person he is getting into Samadhi another person Samadhi so touching another person will get to Samadhithis happened on 1st January 1886 it is documented and what happened a person attaining Samadhi by that touch some person started dancing with joy some person became more and more an introvert some person started crying another person started lying down on the earth and shivering question is why it did happened Samadhi experience should be an same for all but the reason is that external personality that we have created is different somebody is extrovert somebody is introvert somebody is thinking oriented somebody is feeling oriented someone perceiving type someone is judging type, type is different based on the type the physical manifestation of those who attained Samadhi by touch happened it means will even at the time point of enlightenment people would behave differently based on their basic psychological personalities so various parts were created . but now what happened we have to create law that we should everyone should be treated equally that is a shame from the angle of human being basically being spiritual entity agar aisa kahete hai ek taraf or dusri taraf kanoon banana padhta hai jaise maan lijiye either it is Hindi or Tamil, Telgu whatever Indian language for Indian language to make official language if there has to be enforcement that is a matter of shame leave kya kare kuch nai hai toh kanoon kaam karega but as we discussed law gives you basic plinth not beyond that but at least basic plinth if nothing is there law is there but ek kanoon banana pade iske liye from the spiritual angle it is not ... to the dignity of Human being but anyway come to the reality the reality is that we have converted this horizontal arrangement to vertical arrangement. Horizontal arrangement for was for spiritual advancement and vertical arrangement was made to create a distinction on social front now see how we have misused this distribution but anyway there is distribution and now based on various distribution based on the economics based on sociology based on religion our constitution promises equality fraternity and justice for all so this is spiritual dimension which has to be pondered over on daily basis now let us come to psychological which is more of a let us say a matter of discussion spiritual dimension is to be meditated and psychological dimensions is to be debated and through meditation journey from outward to inward from

debate journey from inward to outward these two combinedly gives us clear understanding what interpersonal sensitivity so next sir ohh come to psychological approach of interpersonal sensitivity hmm how may think about others that is the central point of interpersonal sensitivity . And the first point is attitudes and behavior's cognitive dissonance very interesting researches have been done on human behavioran interpersonal dimension. First is attitudes but just for a trigger i would like to have a clarification. I had go to madam and asked please tell us what we mean by attitudes

Participant: Which is a being adopted

Justice K.Chandru: Fine needs certain final tuning we will come back to that so behavior ahh towards Sir what is attitude what are attitudes kindly kindly we just should be loud enough to so that for this person the room can listen to you sir what is what is attitude in technical term

Participant: personal behavior's to others

Pawan K. Singh: Persons behavior to others is behavior how did it relate to attitude hha fine

Participant: perception too good to others

Pawan K. Singh: Perception to others is perception and for that we need to understand perception.

Participant: Assessment about others

Pawan K. Singh: Sir here we are closer attitudes means an attitude is a technical term has to be found in the dictionary of psychology. Sir Ma'am

Participant: attitudes means habitat

Pawan K. Singh: Attitude does not mean habit they are not synonyms. .. attitudes means evaluative statements about occurrences objects or people it has to be evaluative statements for e.g. I don't like autumn seasons oh it is a evaluative statements I don't like somebody may ask why ayah because it is not a giving me cold feeling and I like winter season it is your evaluative statement it is comparing autumn and you are saying that I dis-like it comparative to my liking of winter season so towards a season it is your attitude it is attitude towards autumn seasons one my elder cousin is Professor in the Indira Gandhi Open University Delhi he is a senior

professor of English you know his one statement change my attitude towards summer seasons we two brothers I am younger and he his elder we were talking ion season and I said one season I dislike is summer season he gave 3-4 reasons in summer seasons if you find it a tree which is capable of giving thick shadow just put it yourself from heat wave and if you sit down under that thick shadow imagine at 2'0 Clock in intense summer days how you will you enjoy that shadow and he is a professor of English he is master of poetry he is Ph.D. from Edinburgh and ahh the way he described hidden beauty of summer by listening him to for 3 minutes my attitude towards summer seasons my all-time god chased it happened about 15 years back. And just he said it is a summer season you have just protected yourself you are in your home and a syrup or rasna or let us say Roofaza is served to you and you take a sip and you take it slowly and see the taste can you enjoy this in winter season I said no but then I argued that poets are not writings on the beauty of summer season they are saying Barsaat aayi Jhumo nachoGao let us make enjoyment but have you seen any romantic Bollywood song on summer seasons Ki aao aao paaseena aaya hai chipka deh se but then when he described h described 3-4 further uniqueness of summer season actually my attitude changed because except for summer I use to enjoy every season now I enjoy every season no complaint summer season best season winter season best season rainy season best season it was my statement about summers evaluate . So may be because of powerful logic or because of my sensitivity and acceptance of his idea my attitude changed though now I do not allow my attitude to change easily but we should not be stubborn also now point was attitudes means evaluative statements about occurrences objects of person

Participant: [Not Clear]

Pawan K. Singh: Because that mindset is evaluating the things say for e.g. you invested in a company as entrepreneur your friend also invested as entrepreneur you thought you will make margin of 17% you ended with only 3% it is not loss but margin is less than expected your friend also ended 3% but 2 persons attitudes may differ yo may say it is our first endeavor I am not second generation entrepreneur as first generation 3% is actually not a loss so thanks I could do something I never thought I could do but it was just a beginning others may say 17% expectation and 3% gain so right from the first front we have fumbled and I don't think I am the right material to become an entrepreneur . Same thing this attitude you know half glass empty half glass full attitude this matter what attitude this is Aquafina bottle is 4/5th filled and 1/5th empty what you will look first shows my evaluation or evaluative pattern based on my

interest of course attitudes means you are evaluative statement so for e.g. in a common parlance if we say uska attitude mere prati theekh nai hai suppose the actual technical meaning is the person the way he evaluates me he is always interested in looking at my at negativities he does not like to see my positives that is the way he has chosen that's why his attitude towards me is negative means he only sees wants me to evaluate negatively . Attitudes ka hi yahi aarth hai technically there is no other name ek aur cheez aaya tha aapne kaha sir perception, perception ek dusari cheez hai because a interpersonal attraction many things come because it is certainly issue it is very certainly issue . A before going to perception I will ask you a question has it happened in your life for either known or unknown reason you want to meet a person again with whom you have met earlier if I can meet that person I will be happy for known or unknown reason it happens for not sir or for known or unknown reason for time being use these words ulta let ohh that person ohh god save me if I am not able to meet him I will have a brighter day fir se use mulakahat karni padegi known or unknown what does it what is happening and how it is happening because of interpersonal repulsion or interspersion attractiveness and this interpersonal is very, very sensitivity of course topic itself sensitivity it is s sensitive issue and it is a certain enquiry is needed now come to perception attitudes are evaluative statements and that's why if I see am always see negative for e.g. I peep out of window, window ko khola and bahar jaaka bahar jaagke suhane dhoop bhi dikhaye padh sakti hai beautiful bright sun light or I can see the dust also outside of course this NJA campus difficult to see dust beautifully well maintained. But is possibility either you see dust or you see aa green leaves and green trees it depends upon your attitude what you have to see outside come to now perception i would like to Ma'am is baar aapko pareshaan karenge what is perception? TeacherKO tang karne ki aadat hoti hai madam what is the meaning of the word perception?

Participant: [Not Clear]

Pawan K. Singh: these are word which we think we know but it is just like for e.g. table everybody knows table but if somebody ask me question define table. NowI will say I don't know same thing.

Participant: idea of a

Pawan K. Singh: Perception is not an idea. Yes sir what is perception

Participants: Feelings for oneself

Pawan K. Singh: Feeling for oneself nahi. Sir

Participant: opinion about someone

Pawan K. Singh: opinion about someone If you have certain opinion your attitude someone attitude is closer than perception fine.

Participant: How do you receive things?

Pawan K. Singh: How do you receive things is perception yaa how we receive things yaa you are close you are close you hit the ball and the ball post but ball returned after hitting the bar.

Participants: How you look at the certain things?

Pawan K. Singh: How you look at the certain things? Closer coming closer fine.

Participant: [not clear]

Pawan K. Singh: here this is attitude your judgement about others is attitude perception means

Participants: What we have received NOT CLEAR

Pawan K. Singh: self-Adjudication towards anything

Participant: but introspect about the things. What we have received from sensors?

Pawan K. Singh: what we have received ya other is ya it is very close what we have received from sensors is a pre stage of perception. It is very interesting you see it is like this let me conclude this part perception is the process of giving meaning to certain data information collected through senses. Say out of 5 Gyan Indriya eyes nose tongue ears and skin we receive data we see we listen we smell we taste and kinesthetic touch. We collect data from these sense organs this called sensing now this data they are in a scattered form I see i I see this photograph and fine Honorable Justice R M Lodhaji Fine data is collected and suddenly I listen loud speaker and Lata Mangeshkar is singing so this data that they are just disconnect perception is the process of giving a meaning to the data or information collected to sensing. That's why a phenomenon called looking elephant in the cloud piece big piece of cloud is there hanging in this sky and you say yeh Hatthi jaisa lag raha hai now looking like

elephant this is not attitude this is perception because the cloud suddenly took a shape you could see a trunk you could see tail you could see 4 cylindrical pillars appearing like legs of elephant and you are giving meaning this is perception perception is process of giving meaning to the data collected through your sense organs .now point is in order to give the real meaning at both the places we have to be correct your sense should be not contaminated then only you can collect data as it is otherwise the data would be colored data and secondly even if the data is not colored I do not know how to arrange them in to bar diagram or pie diagram that data will be scattered if you will not give any meaning it will not give any meaning so that process also has to be nurtured so senses and that process both if they are intact and if there is an intensity in them they are illumined and that's why very aaaah very surprisingly you will find and many of us know you know itself that a in scriptures there is a prayer Oh God Keep My senses [pure why my senses pure because impure senses will collect data which is contaminated colored data and if the data is colored the meaning will be distorted if meaning is distorted how the seeker of truth can know about the truth I will just lose my life just like that so there is a prayer make my senses pure. And that's why Upanishads invocation say Om one may manaseprathith.....oh cosmic force let my speech be established in my mind my mind be established in my speech and through this union we actually are involved in action ride Karma so my mind should not with this speech should not be that let me mind and speech all be in communion intercept so that's why perception it means giving meaning now what happens I see a person I see a person and conclude a meaning a creative meaning so this is sorry so this is basically attitudes and behaviors and another is ohh perception is coming but later on any ways this is fundamental we have covered it we will come back later to it again. first is attitudes and behaviors and then cognitive discordance cognitive dissonance is a term which was given by Leo Fest Inger and its dissonance means harmony and cognitive means as read by mind as read by mind this dis harmony read by my mind. See this is a very interesting repetition with respect to interpersonal sensitivity I develop an attitude towards a person. Clear Ma'am Attitude has been developed now the attitude which has been developed for e.g. my parents taught me or my AA Primary teachers taught me right in the early age the human beings are the same and it is there in my psyche. But later on as a before Lunch we were discussing society expects something organization expects something society said be a committed person organization said be a chalbaaz aadami now there is a conflict so my parents my primary teachers schools said be a man of character later on I found if I deal with others keeping my character intact my monetary advantage will be depleted so let me compromise and behave in a another way or let me discriminate against people or let my prejudice plays havoc fine. Let

my prejudice play havoc let injustice prevail who cares for it I will live with all my Vimps and Fans in that case what happens this is interesting cognitive dissonance happens. Cognitive dissonance happens means disharmony felt by myself are you getting it sir something was taught I stood for it and suddenly for convenience I went somewhere else and then a kind of discomfort happens within myself. My parents taught me something my school taught me something my professors taught me somethings my professional ethics course taught me some things and I am doing so there is dis harmony dis comfort arises . Now what happens very interesting you have been wonderful listener till now I want your special attention to these 3-4 sentences? when these dis comforts happens in order to regain a false comfort we start revising our attitudes because already we have behaved in a way which is in grunt attitudes so there is discomfort in order to wipe out the intensity of discomfort I revised my attitude and saying that by meet becoming honest alone in this earth on this earth whether the world would be better place where majority of people are making merriment by diluting their attitudes or behavior's or values or ethics the you start remembering Hindi Phrase taught in your school days Akela Chala bhaad nai Phood.... why I have to break my head for levying up to this standard as given by Rishi's and others who am I to give alone to struggle na na na we revised our attitude why we are doing it we are doing to reduce the kind of discomfort because they gap was created between real attitude and behavior . now you have behaved as per your convenience not as per as your attitude so again you revise the attitude and crate the gap lesser between your attitude behavior and in this process what happens the original person is lost that is I wanted to that's why I will say these few sentences with special care please see why we lose our originality and then at some time at some possess right that I am searching the real man which was there inside me not outside me that has gone out I am searching for that Apni talaash mai khudh hi kar raha Hu why it happens I think this can be described through such phenomenon . Oh I pocketed it then attribution causation attribution and Sir this class will go till 3.15 one hour attribution and causation ab decide dusara interpersonal sensitivity ka dusara mudha hai attitude we have discussed perception we have just described we are not discussed will go now come to attribution and causation attribution means attaching a cause for success or failure . attaching a cause generally honorable Judges face two parties one is attaching a cause to other party that he has done this thing to me that's why I reacted like that so my reaction must be pardon but his action can be punished other person may just say that I just a spontaneously did some action not in with bad intension but this person overreacted and created a great loss to me we see people attributively causes attribution causation so attribution means connecting the cause with effect and generally

we are talking about our effect and saying that cause was different not within my control. so somebody else is also responsible there is attribution then with this what happens if you see Sir fundamental attribution errors and self-serving bias. We are studying this topic with a purpose that as in the seat of decision making as a honorable Judge I can see the sensitivity happening between the two parties or two persons when argument is going on or when I myself directly go for cross examination then how through ahhh this understanding I can get the things ahh better understood for myself. Fundamental attribution error and self-serving bias says when we attach causes for certain effect in general what happens. because there are two types of causation internal and external internal causation means the person is responsible and external causation means the person is responsible himself some external factors was responsible and this attribution error self-serving bias says if I am dealing with some other person there is a tendency that if something right goes on I take responsibility myself because we two interacted I was one of them I took the right lead I took the right ankle and that's why the relation fortified so success if it happens I am responsible and I am the cause if failure happens then I will give another kind of argument based on false attribution that we two persons work together we were talking to each other I did my best but success dependent on interpersonal sensitivity he is another person he did not hold the other edge appropriately so we failed. so if success is there I am the reason and if failure is there you are the reason this is self-serving bias and that's why if there is an heated debate in the court room we have to see what type of causation is being attached to so that my judgement gets least contaminated or free of contamination and when I directly cross examine or I interact with the person how I can be more neutral and I can be more and more free from fundamental attribution error and self-serving bias. and that why somebody asked me who is a dharmik manager religious managers is a spiritual manager and my answer was that one who protects responsibility on his side is religious dharmik spiritual one who passes the puck of responsibility to others is a dharmik and he is non-religious is non spiritual internal causation in time of failure is very much required I am responsible suppose we are part of cricket team, team got defeated I am the captain I should say I am the captain I am the first person to be responsible for victory we lost I take the first responsibility and we are going to discuss about how we can do better in the next team if you remember last to last world cup or three world cup back in 50 overs Azharuddin was captain and India was losing badly and India had lost to Bangladesh in that tournament and correspondent asked to Azharuddin that why is your team is losing against Zimbabwe and he said that can I do anything alone I am a single player so what if I am a captain if others are not playing what I can do that I couldn't understand next game also India would be defeated because

there was a complete loss of sense of attribution. next perception in case of interpersonal sensitivity perception we already have a uttered discussed that there is a process through senses we collect data we give meaning and when we give meaning this process of giving meaning may be highly contaminated and that's why there will many short cut to perception and this is called hallow galleon effect hallow effect means to one person giving extra credit extra plus point because one character in that person is such which you like to much which you like too much . for e.g. if one of your staff in court is that punctual everyday punctuality is his way of life but he does not any other merit he is simply comes on right time and goes on right time but you are so fan of punctuality you give extra credit to that person look at that person he is punctual. that is hallow effect, effect apart from punctuality is not time management it is a small type of time management galleon effect is if one character in a person it just you don't like just for one reason but he has other twenty merits but based on that one reason you over paint the person in black color and say he is a person or person n not worth not dependable but why haan he is bit argumentative but if the person is independent he wants to place his points may be that he is certain he is not submissive you don't like it but other things he possess but galleon effect says that only for one effect you don't like you completely dislike the person. Hallow effect says for only one character you like other there is no other merit but because you like that character you like the whole person these are defects similarly one hour argument which you will like the type of argument has completely engulfed the entire of argument for one hour argument the type which you do not like as completely smashed the others merit of argument. so this hallow and galleon effect next is projection after all honorable judges are human beings and given our own life given our lives based on our rights we might have a our own priorities and projection means we project ourselves on others. we project ourselves on others this problem happens when a husband projects himself on wife and expects that her priorities should be just same as my priority if I like green color she should also like green color If she does not like green color she is not worth a person loving you project yourself and there is an another one which is closer to its similarities you find lot of ways and patterns similar and since a person a like you that why the person is worthy if some person is not like you he is not worthy suppose you believe in socialism and other beliefs also in socialism the person is worthy but you believe in socialism other does not believe in capitalism the person is unworthy because he is not like you. These are all short cuts giving meaning and that creates interpersonal distances. And another is reconceive effect is another short cut to perception we say what has happened to us in recent time that remains in front of the mind. One engineer my friend jokingly said to me one day that dear friend my behavior to my boss from April-December is different

and from January to March is different I said what difference is and why you do that. He said difference is that from April- December I will live with my sponstility I am natural If my boss says sum thing which I do not agree I will say will not agree with you but from January 0-March what boss says I agree yes and yes because I know he is going to write my appraisal on 31 March what he will remember about me not what happened in September but what happened in February to March good behavior yes ma'am and then I come to my element. Humane kaha badeacheup ayekhol rakha hai apni zindagi 9 mahine jeeyo aur naukari ke liye 3 mahine thoda kambhal oodh lo just a jokingly he said it what is he is saying this e.g. is saying reconceive effect may be continuously two cases you are watching and there you found one party if you allow me to take e.g. let us say husband and wife fighting family court last two cases in both cases you took a stand it was a girls side ladies side in those both the cases they were making misuse of the given law and the party representing the males side actually was innocent now this recency effect we are human being third case is going on where we have to find that truth a fresh may be due to these recent two recent effect we will still might start thinking from the angle of previous decision that whether in this case the same thing is happening may be in this case the female is suffering because the male is torturous in nature and sometime it might happen my son got married and he was tortured by my daughter in law may be I have developed a kind of effect on my mind or I got my daughter married and my daughter was not given proper care and respect in her laws so all rooms like that or all brides are like that depending on the recent things happening around me so that's why honorable judges have a very difficult task they have to be like a very very religious butcher cutting off from the recent experience and being able to see a case with its fresh perspective as if nothing has happened to me last hour or in the previous case one hour back i was discussing the case and last one is stereotype which you know stereo type is a biased we create in case of interpersonal sensitivity where looking at one small sample where this sample belong to the entire globe I paint with the same color suppose I meet with one person who keeps mustache like Nathu Lal might just Maharana Pratap like just badasa and I found that this person is very tricky fellow any person on this earth who keeps mustache like this is sticky fellow is e.g. of stereotype and stereotype create havoc and that's why you are able to trained you know it society few enlightened persons wise people and we are one of them and we know it that unit of addressable in case of either teaching or in the case of judiciary is individual not the group from where he comes to . so with this I would like to end sir a thank you for permitting for 4 minutes extra aahh other sessions would take place so ISo Sir is saying I think you are comfortable 10 minutes more can we spend on interpersonal sensitivity but a you see this slide is over we have other slides also but I will not

go slides wise now I would like to utilize this 10 minutes with a hmmm a with different approach
ahhh interpersonal sensitivity interpersonal effectiveness is a very vast subject just to give one
example American management association has recommended there are 23 different shades of
interpersonal relations 23 different shapes like coaching Counselling Mentoring conflict
handling between I am a common party between me and you conflict handling goals setting
persuading aahhmm political influencing etc. and American management association says there
are 23 different shades of interpersonal situations for which managers should be trained and
for each shade 3 days training programs means equivalent to 18 hours interaction . 18 hours
interactions for one type of shades 23 so 23 multiplied by 3 is equal to 69 days of training any
manager on this manager deserves only on interpersonal issues and a researchers says a person
who is good in conflict resolution may not be good in persuading may not be equally effective
in let us say negotiating but further arguments say you need not to be an expert in all situations
even if in one shape you have acquired certain excellence you have got it you have done
because you have specialized in that area you are a fantastic negotiator you are a splendid a
influencer you are magnificent a say goal setter or conflict handler you have done it now
especially when you are discussing and debating with other person and we are trained to be
effective we are effective persons but other persons aren't effective unless you make himself
effective with yourself you cannot be effective with himself that is the problem only this point
I want to raise for next 6-7 minutes sir has allowed me 10 minutes extra this is interesting we
all we are sensible educated people no problem but i am another person I know how to be
effective with him he does not know how to be effective with me unless I help him to be
effective with myself how I can I be effective with himself in isolated manner that is a point I
am raising am I making a sense Sir so a good student of interpersonal sensitivity would take
responsibility of making other effective with myself what I am saying it means you have both
sided responsibility has said wise people take more responsibility the way people drive cars on
roads what do you think you have to take your good care while driving car but also you have
to take good care of other cars driver because he is careless so things will be safe for him and
me not only because I drive properly but also that I take care, care of him also otherwise if I
take care of myself and i think he will take care of himself but he is drunkard or he is arrogant
does not take care of himself typically we have to take care of both the cars kay karengse so
there is a way of doing this I will call it Technic not a trick there is no trick in management
technic is you lift the self-esteem of the person to that level where he can interact with you
properly if the person is too much self-downing, self-downing can be shown like this and a
self-accepting can be shown like this and arrogant can be shown like this or arrogant like violent

shown like thisso a person is like this he be little himself does not interact with you properly does not come out with his real self then you bring his self-esteem to a level for e.g. a person is fumbling a person is not able to say then you say there is a place which expects you to come out with your true self and tell what is appropriate this is interpersonal sensitivity. but some person is let us say well maintained assertive for that nothing to be done because he knows how to be effective with you problem is that there is third type of person who is not effective with you who is arrogant type who takes more time and wants to mesmerize time things wants to create impression or wants to create false impression there the issue of interpersonal sensitivity says that you will not cut him short and dis outrage but you will treat him with equal proportional equality and would say that you have taken your time you have taken your time you have taken your resources this place is for giving equal chance to all you have taken your share you can now hold on other person so it is like balancing like wheel balancing case one typical model of management says every individual when you see you see not only a physical body but also as a psychological body and every individual is like three adjutants circles and they are called paraguientic adult egoistic and child egoistic . every human being this is of every individual through psychological camera where you have paratiguestic taught part of personality adult state thought of personality and child ego state self-part of personality and typically and typically in places like court court is a place where national discussions take place well some person can become emotional you give sometime but you bring back because courts time is precious and now talk facts don't just cry talk facts and typically in a in a in a psycho analysts if a client cries he will never say cut short your cry because he will use it as a.. because psycho analysts chamber is a place to express emotion also but court is a place where rationality has to prevail over emotions in that case since this is taught out of personality I will not do anything which will put the next of my parents down this taught to me so I will imagine them before anything this thought part of personality I will thoroughly argue thought here in now what is rational and this is felt part of personality this is the feeling part so court is place where this is to be more emphasized a and this is mine PSC and this is others PSC also because topic is interpersonal sensitivity so two persons have to adjust this is first person said this second person said if the person is talking at the egoist ate from his parent to go to my childegostate your job is to help him to come to at adulthood state and talk to it. Take for e.g. it is from the court take typical a decision making or table where DGM's and GM's are sitting just take this and general manager says to a deputy general manager from his parent egoist ate because he is a senior person that please follow whatever I say and don't forget I am senior to you don't kill time on rethinking my proposal just implement it what kind of communication this is this is

from parent ego state to child ego state he says 8 deputy general manager why you keep forgetting I am general manager I am Your Boss don't waste time discussing follow my dictation don't apply your mind for mind I am there for hands I am there this P to C . This is a wrong way you should have not started with P you should have started with A saying that when I did my homework I found Project A is better than Project B and I had requested you to go for your own homework have you evaluated these 2 projects this is I am preparing a ground because you see in court the supreme Boss is an Honorable Judge who is who will guide he himself a guide in the court who is the supreme boss honorable judge all other machineries are there to help him to take better decisions either registrar or any entire court machinery it is supreme Boss has to facilitate others to create an environment where interpersonal sensitivity is maintained . so begin discussion in a way that others is able to start with adult ego state that sir this is my opinion I want to say it yes please say it then he is saying from adult ego state and more senior will become more irresponsible to be humble not becoming a goody goody person of course so that others best can come out that I am trying to say when we give ground to him or her to talk from adult ego state. This is the best thing that come out that is the point I was making now if that comes out from A to A from other persons not from P to A to A then you can very easily talk from A to A this called parallel A to A transaction level, level playing. anyway time is over I would like to conclude one thing specially because you are at Supreme position at your place also in a classroom I am at a Supreme position in my place our jobs have certain some similarities I think any pillar of the society gets cracked still there is hope but your pillar judiciary and my pillar education gets cracked there is no hope for the society that is for sure. This 2 custodians are present in this room now. I will conclude by saying specially dealing with younger junior is easier even with colleague it comradery friendship that is easier even you dealing with your senior is easier it me say this controversial statement you dealing with your senior is easier for you but the way you allow the environment for your junior to deal with you is most difficult challenging interesting task of behaving well with others and myself. because the way you deal with your seniors that is your duty and the way you deal with your colleagues is courtesy but the way you deal with your junior is modesty that is more deeper character so I will just end with fun typical reflective antidote Ram and Bharat are two brothers by few hours Ram is elder to Bharat that's why Ram always use to complain only by few hours I am elder and every time the system is saying you become King why I became elder Bharat should get the chance. But I want to conclude by saying ram is elder Bharat is younger if Ram does not remember his elder while dealing with Bharat and if Bharat never forgets he is younger to Ram then The relation between ram and Bharat will be the climax of interpersonal sensitivity

. Ram as elder never remembers he is elder and Bharat as younger and never forgets he is younger but now a days in this world reverse is happening Ram is never forgetting he is elder and Bharat is never remembering he is younger that is the problem . Any ways thank you so much for very, very patiently listening so nice of you thank you ma'am thank you Sir's.

Session-5

Discrimination in Schools Case Study - I

Speaker: Justice K. Chandru

Mr. Sumit Bhattacharya (Programme Co-coordinator): Good Morning Honorable Judges so we commenced with the second day's Session I would request very humbly Hon'ble Justice Chandru to take over and today we will be having a lot of exercise oriented hours. So Sir may I have your attention, Kindly today we will be having session wherein we will be doing exercises also and there is a small change in the schedule, and that is; the fourth session we would be swapping with the tomorrows fourth session; that means Assistant Professor of IIM Calcutta she would be there she would be taking a session and today the fourth case study session we will be swapping it to tomorrows that's the only change and with this I very humbly a request a Justice Chandru to take over and one very humble request to all of you whenever Sir or Ma'am you are speaking if you can just put the microphone on and then speak so that it enables sir also to hear clearly what, what is like contention is anything what you want to share so that he can hear it properly so Thank you very much and welcome once again thank you.

Justice Chandru: Very good morning to all of you today's first three session and tomorrows fourth session it is posted as a case study all of you are an already a District Judge and don't think this is some examination and the case study involves a some cases relating to 1989 Act and it gives just a problem you can write any order you want it doesn't mean you must find the correct answer because as you find sometimes special court orders are confirmed by the High Court reversed by Supreme Court. Sometimes special court orders are reversed High Court but restore by the Supreme Court and therefore ultimately this is only to have some application of mind on the theoretical disposed you have on this matters. Therefore it is an exercise not a aa test conducted for knowing how much you have understood the act and a before we reach aa problem is given to you a the that there will be a small interaction on the topics mentioned there in the first and third session relates to education which is the most important and a topic and I want to mention 2 important issues one is a what is the role of education and how much the Dalit's have access to education that's an important issues and a yesterday you saw a film and in fact in that film brings out most of the a, a crimes under the act it also gives some a philosophical disclose on many issues on and first such issues relates to education to find that a he goes to the he wants a rights of petition and the collectors assistance in that a collectors

Bungalow refuses to assist in then they go to some community aa wise man in the community and he gives the advice what didn't you send your children to school because this problem of a aahh writing petitions and all will not be there that's how an advise is given and he mentions the story of a Cheboygan and the film and you know what a Chambogan....that both attempt to cross their caste role try to learn something outside the prohibited areas and both of them are punished and Chambogan was killed.... pays the a Guru Dakshina of His tongue finger we can't use later in an archery he learnt secretly so the idea was that each caste has got Dharma each caste has got a... and you cannot cross that limit and you will be punished in fact there were listing out several punishments and wanting to look on a Manu Smriti on that there are so many other punishments have been given but is important is the Education for Dalit is very crucial aa which has been denied to them to over the centuries so to the first time when the British over here somebody machinery schools were there for the open for them for e.g. in Tamil Nadu In Chennai the stress which occurred.....which is been one of the sub caste in a Dalit Schedule caster and in the first time in 19th Century Schools were open for them and before that they could not even think of aah opening of any school of exclusively for them there were schools and a I don't think they were ever admitted by a the others in fact I remember reading one Kannada novel very famous novel and the particular episode in that novel there was a landlord who was a ruthless feudal lord and he suddenly thinks of starting a primary school in the village the other land owners goes on object to him they said already these people will protest if they will learn more there protest will be more and therefore why do you do all this dangerous experiments and then the land lord will give everybody studious explanation he will say that we are lending money to this people and get there thumb impression and tomorrow they will grow and you do not pay they will move to the court they may say I am illiterate person I do not know what was written on that the defense open to them thesuppose I open a school and give them some primary education they will start signing and once they sign their document and they cannot find any hindrances and therefore I am starting the school so that to secure our the lending a money to these people he gives an explanation as very well recorded novel in Kannada and coming back this is all novel and fiction but in an actual practice what happens is an issue now for e.g. we have aahh aided schools in Tamil Nadu the three were district boards local bodies were running schools and then there were aided schools by machineries or non-machineries . Now one of the law relating to the private school makes it obligatory on the part of the school to appoint teachers on a reservation basis because it is an state funded education and we have the law that once the state funded school you will have to a comply with regulation school now in my own village the vacancy came for I for I post that is to be filled by history

teacher but the management of the school belong to the dominion community and later on wanted to fill they thought they are running the school to a powerful community people and all the teachers should be of our own community but the aa one say refuse to fill up the vacancy the Dalit aa people of the village said that we will not send our children because this is Dalit vacancy. Management said we will not fill this post and an end result was that the school closed and it is not in the use for the last 25 years now the children go to some other village for studying should do not extend there can be strived and stormed in these matters in fact I know number of instances because a as a lawyer I have been fighting for many of the schools teachers what they will do AC vacancy comes they will first fill up the vacancy and tell that man will give you 6 months' salary gives resignation go away you can't work in this school then that point of roaster point gets changed to awhy talking about wide reservation in private school that to among teachers Supreme Court in Gujarat school education case very clearly said that it is not enough to open the school but to also have a multi facet aah composition of teachers so that the Dalits will change their stereotype image that they are only made for some minimal job but they had teachers and therefore it will go away in the long way in bringing aaa coercive scope in the school education but on the contrary the present position in fact far from improving and bringing some kind of a social harmony it also makes the society divide into many places you can't simply wish away the aaa communal pressures on the school also like recently I was conducting a public aa enquiry on the aa Dalit atrocities in Tamil Nadu and another which came was a very serious complain that was a village school that was a aided school and in that village there was a model and a the model was of non -Dalit and it was suspected that the some of the Dalit's will be behind and this way entire village got divided once is the village is divided the school is also divided so the school has got 2 blocks one in the side of playground and one on the other side of the playground now you will find one school for the Dalit Children one school run for non - Dalit children what has happened to the teachers, teachers are the divisor Dalit teacher and non - Dalit teachers now there are not enough aa Dalit teachers but the Dalit children were more because the non-Dalit were studying to some aa payments schools and therefore what happened when you divide the teachers there are enough Dalit teachers to teach the Dalit block and the people of that area they collect money and appoints some aaa Honorary teachers to work in this schools. now the matter has gone to the government what the government is doing they have passed the orders saying we can't allow this division but that can be fine on paper but till today the division is brought about by the people themselves and they are unable to bring the these two groups together and the government is yet to start separation at separate schools or whatever it is. How these issues I

know many people think this is all a thing of past but of not today but if you deeper you will know of how much of this the pressure are there in the villages and this discrimination place a very a crucial role in the society and a how does the other countries deal with the issues. You must have read about the famous Judgement of the, the Supreme Court on.....till 1963 when a case is filed by the public interest groups in America most of the schools were aa either the black schools or the white schools and never mixed schools and it so happened when the townships were formed when the layouts were made the.....any town and when schools were started they have started they were studying to the neighborhood school if I have a school outside my gate I will send my child near to that gate not near to the airport so it so happened there were colored schools all over America mostly in the southern states of America accept in some cities it was slightly difference and now a public interest litigation was brought by the aa .. If you want to have when I tell America if you think all Americans, Americans are equal protection before law and there is no discrimination you should have mixture school because you will have a separate black population and a separate white population emerging and they will never make set all and therefore we should have a mixture school in America most of the school run in public bodies like a municipalities and local bodies and they collect money from the public and neighborhood schools are the only option there are no private schools in America very few not even one percent of American schools most of the schools are public schools in our country when we say public means elite schools not the municipal schools . so when the local body runs a school is it obligatory for a body to run a school with a mixture population how do you enforce these rules so American Supreme Court held that we can't have two America's we will have a single integrated America and therefore the fusion should start from the school education and not the later and how do you bring mixture school population now then the solution was given that people walk to the a neighborhoods school there are hardly any transport in one if you want to have a mixture school then you must have a necessarily transport, transport to children from this school to that school and from that the area to that school . Therefore US Supreme Court ordered that the government must provide transport of this children to go to mixture school and all the schools must be a mixture school. Now the question came what about the parents, parents were little scared so both whites and the blacks were telling that our children will get affected the white boys will bug our children or black boys will bug our white children's and who will be guarantee the aa the violence that may come these are controversies which resides in public platform but here the Supreme Court never purchase any of the arguments they said nothing doing then the US President said that the Judges wants to bring new change let them implement their change I will not do anything so

the pressure on the US president was also different he said that he can't implement there are riots everywhere there are protests everywhere then the US Chief justice . He said that if the present of... do not send necessary armed force we will order the armed forces to implement this decision that the decision was not implemented in one night or in one kilometer it went for a long period than the result was that today that are no exclusive colors schools in America there are all mixture school and each black knows about the white and each white knows about the black and the result you can see you have President In America which never had been thought of he got elected in an election people don't use colors as an issue as it was 200 hundreds years back and we can see a visible changing the American school system in a Harvard graduate Obama is not an ordinary a candidate of a masses he is not a man of masses but he was a Harvard student he was layer law graduate and he got elected and the stereotype image gets changed by this order 1965.. was a big challenge for US Supreme Court his action was brought by the Civil Right Activists of America and they were able to enforce certain decision making process whether or not the Parliament wants it or not it was enforced by the court orders and we are able to see result of that decision making process can we have a similar law that we have all the mixture schools we have there are many people who now says that these things can never happens these were the things of past it is only because they have not seen the village they have not seen the undercurrents of a of a Dalit settlement of the discrimination shown to them and discrimination not shown few individuals 1/5th of the population is denied as an equal right or a civil right of this country and we should think of ourselves why Education is not changed means education never open to all this is one issue secondly if it open to the what kind of an Education we are giving today we will find that you have a different schools pavements schools you have international schools we have a public schools public schools are not really public schools but they are private schools but they have been charging every money and then you have a municipal schools and the standard of education is not the same it is like we going to a five star hotel eating a roti or a Dhabba roti both the roti's are same but rates are different and today many people think that quality education is not given in public schools i.e. Municipal schools what is the municipal schools so what happens is because of the access to the school education has been in some method of..... there has been always a demand there must be a free compulsory primary education now you know in Article 45 the DPSP there was a provision under which the school children up to the age of 14 will be compulsorily free education this was our goal but this goal was never implemented for a long time until in Mohini Jain's case Justice Guldeep Singh said that if the article 45 is not enforceable we will read article 45 in article 21 how would you read article 21.

Article 21 only guarantees liberty now the liberty was as been expanded as a livelihood the he doesn't mean mere animal existence it means dignity how does a person gets dignity he has to get dignity only because of education this is how some kind of legal engineering was done to read article 45 and 21 of course in that case Mohini Jain's case it was all in Medical education and not a school education but later Supreme Court in only Christians cases 7 judgements said Mohini Jain is confined to school education and not to ahhh call it a judicial because that is not the 14 years you are one completing up to 9th or 10th standard or 8th standard and therefore even among the Supreme Court there had been a differences on that now the educational case has been overruled by a larger bench of T.M Pai of 11 judges saying that education is short list model we can't have education open to everybody and anybody can start the education institution it is a right to carry on an occupation not a trade but actually what was done was only a trade but then Supreme Court direct article 19 (1) g as a right to start an institution and they say it is not for the state to provide education it is not within their means and therefore there can be private players once there is a private player you should have them have a reasonable return on their reimbursement . Reasonable return is not a profit but it can be a written and they are entitled to prescribe you have.... of school education if you have money you are guaranteed to good education if you don't have a money go the private school and today the result is there are a, a lot of school run by the private people with different offers given by them and even though in Tamil Nadu we have a free School education and we are also giving uniform footwear mid-day meal writing materials books free everything is free bus pass is given but 42 % are now studying in private school notwithstanding the fact it has been free and it has been given so many other concessions are given people are not willing to send their children to Municipal school and corporations school were the government schools because they feel the quality of education is not up to the mark and therefore they want to have a private education this all the we have a reverse processes has started but the pressure in the government after a ... case was more and therefore the government amended the constitution in 2010 and in article 21 only a was brought in where instead of a mere recommendation now he has become fundamental right to have a child from the age of 6-14 to have a compulsory free education now once this amendment was brought in in 1998 we the corresponding law you guaranteed it is fundamental right how can you enforce fundamental right there must be a law made by the parliament should the parliament right is on owns feet and brought a law in 2002 he foot s mainly 20 years to bring a laws to implement a constitutional right guaranteed to the people. so now we have a right to free compulsory RTE Act in 2010 promptly this was challenged by all private schools management saying how can you compel us to do provide

free education and now this law compulsorily provide 25% seats in all the aa payments schools reserved for the poor or the socially economically backward children's it provides what is socially economically backward has to be described by the rules and it also provide Dalit children can be admitted in this school under the specific person quota 25% quota is meant for these categories is not as if it is free so far a management the sir concerned the money will be reimbursed to the Supreme Court by the school management for his 25% quota. But it not a single school here were applies 25% quota for the simple reason they don't want this children to come in and spoil the ambience of the school in fact when these acts came one city school principal in Chennai said how can I my child sit with my servants children in the same class room . this was the aa letters to the editor received from our school Principal how can my child sit with my servant child in the same compound the same classroom so the we have prejudice that we know how to make the act unworkable the act is unworkable now three reasons first the Supreme Court said that this will not apply to the minority school so whole lot of school specially in south India majority and substantially bigger schools were run by machineries minorities either language minorities or religious minorities so one whole lot of schools are taken away from the purview of the Act number 2 what is the definition of the neighborhood school . The acts says you should have neighborhood school in one kilometer. So within 1 km there are five schools why elite school to aid school the corporation-al and local bodies' school fourth completely free school run by somebody. Now what is an neighborhood school do you have a right to go X school or a Y school the act has got no answer and how does the school fill up these seats in some other schools they have a lot, lot drawn by the because it does not provide for any particular mechanism what is a neighbor want to go to this school. I go on receive an application form I gave the application from there are more number of candidates than what theses seats are provided for? then they have a lot can be manipulated in one school where a case came before me where a lots were drawn in front of local MLA this school thought he is a representative of a people and nobody knew how the lots were drawn whether it is manipulated or not now we are still long way to go that not to standing right to free compulsory education in any school in India but the implementation of the of such an act is yet to be seen in the real ground reality majority schools in Tamil Nadu has never applied this reservation policy of accommodating children . And therefore majority of the children they go to ordinary school and you will find not to....in fact that there was a Tamil poet in a various poetry in Tamil Nadu he composed a poetry he said when a child is born in a family Brahmin family their chair in the Supreme Court is created for them when a child in a Dalit family is born he knew ... the children by not receiving the quality education we continued to be in third

rate or a fourth grade schools and when you talk about access to education depends upon their poverty status and the yesterday a.... was reading a suicide note by Rohinth what is a crime committed by him he studied in a very premier institution but then the scholarship result was not released for him in time . And he never got a scholarship but he can't stay in Hyderabad and a on top of that he has been a expelled from the hostel for some political activities and then when you try to assert you now bring politics in to this . It doesn't mean any politics in it at all. I don't think any of you have ever visited a welfare hostel in a specially in Tamil Nadu I have seen I personally have visited there was a public enquiry conducted it is less than a it is worst then a zoo even the zoo are better on the basis of veterinary doctors certificate they give the even the prison is better because there is prison rules which says how much protein must be given how much a a carbohydrate should be there in the food whereas in welfare hostel there are the school children are kept in a most.. condition so in fact i was reading a paper a day before yesterday I in times of India or Hindu times and a there was a news item relating to Maharashtra that Maharashtra news item says that a the tribe schools now they are creating a central kitchen where the food will be prepared in a district center and sent by the van to all this hotels in a way it is a very good method because at least they are guaranteed good food..... Whereas they left to the schools or wardens of the school and store keepers they steal most of the time. I know in many anganwaadis the, the nutritious a powder given to the a mother who is having a pregnant mother it isand instead of giving full egg the cook will give the half egg and eat the other half . we have so much corruption in these areas and there are many, many welfare schools the warden post is held by a teacher who is teaching in the school same salary but many teachers who want to become warden and not a teacher because you can have severe hands levied on the commodities they are supplied to the hostels once a warden was transferred as a teacher he came to me saying that I have been illegally transferred I said what illegally both posts are same but at teaching posts is a noble post whereas the here you are only a storekeeper he was smiling that the liar was smiling it is not because of money it is because of the extra money he involved everybody wants to become a warden and not a teacher. This is a shocking set of we have at least in our state the children have given some nutritious meal by giving some boiled egg and all that but in Madhya Pradesh where we now aa gathered suddenly the government said that majority people in this country in this state are vegetarians and therefore stopped the egg given to the Wipro. First of all the statements given by the Minister that majority are vegetarian itself is wrong because that was wrong strategy secondly the idea was to bring a nutritious meal to them in the lunch time so that they will have a some kind of a protein so that they will become little strong and there won't be any deficiency of a vitamin

but then politics comes in what people should eat what people to drink what people should live so these are the major issues which continue to up lift the school education unless you have a stronger foundation it is not as if now in our days we all went to an ordinary school that's not the issue what I did what happened in our days is not an issue but today when every children has an right to come to school the school should have here a quality education and that is most important and a therefore with this background will take the case number 1 and this case law all four case laws was the first case law which is given to you I think you left with 20 minutes to a write your opinion . This is not certainly based on a prevention of education but it is on another SC/ST Act. You have time till 10 '00 clock you can read a though it was based upon a decision of High Court it is not important and is it not for you to find out what is a case law that has got relevance but you can apply as if the case before you whether it is a discharge order is a right whether it is is an issue what the particular High Court did this is different issue. Though the Indian Penal Code 500 is given as punishable offence and 499 is an offence you can see the Indian Penal Code also (Case Reading) [Practical exercise]

Participant: [Not Clear] [Discussion]

Justice Chandru : Friends we will have a break for tea and after we re-assemble at 10.30 one of you should come forward to a aahh justify to how do you sustain the charge and one amongst you will also speak why you did not sustain the charge you have to select your own representative and a and that will give in sight to the audience after that presentation we also show the judgement in which we have taken this a case law that is only for your reference it doesn't mean that one is right and the other is wrong it is only a an arguing point so will have a break and we will be back at 10.30.

Session-6

Discrimination at Home Case Study - II

Speaker: Justice Chandru

Justice K. Chandru: The concluding of a first session and a people always use to say if a law is on a very straight line precedents are very clear even a computer can give judgements it's so simple but it's not simple human mind works differently in fact you take a coin and toss it hundred times you may get a roughly 50% for head other 50% for tail you can work on this probabilities so we made a quick calculation of a how many people have charged an and some of them use a word guilty also because this is a case where you are trial is not over therefore those who have said for charged and guilty are codified participants those who did not charge and also not found guilty or .. so we have aa more of a convicting judge than a acquitting judge because Bar always gives us nick names labor judge management judge tenant judge landlord judge so we have among criminal side we have a acquittal judge and a convicting judge . So I now invite in fact a two participants found for partially guilty so they were on the the middle of the road they want to be strictly go by matters so before we go into the actual decision which give rise to a problem I now invite one of the convicting judge to come and justify the conviction or what is the judge who sustain the charge. Any one of you can come and it should be like this and not a.....yes for an in 5 minutes you can justify why you sustain the charge

Participants: Honorable Mr. Justice Chandru

Justice Chandru: Friend you are delivering the judgement not addressing me hahahahaha

Participants: Firstly I have to pay respect to compliments and law and order. Dignitaries and thereafter I am submitting what is required here and our respected colleague members attendant here so far they the case is concerned from remittedly... and the environment of the complainant at coated in the complaint petition and the statement he had a statement ... and also the statements of witnesses recorded under the enquiry under section 202 of CrPC there is clear keys made out to the effect that the complainant being a lady while she was sitting in the office other colleagues who were working there in zoology professor or lecturer and intentionally humiliated and intimidated on her on the first day of occurrence which is mentioned in the complaint petition and secondly there is also an another occurrence for

subsequent occasion that is one 25/02/2015 and that was occurred in the very office or principal in charge the b at that time both of them both the spiritual and the A killed who was working there both of them co-jointly intimated her and insulted her who belongs to member of SC therefore I think that there are good prime Facie is made out against the, the a skilled persons and the, the ingredients for constituting the offence of intermediation and insult is able on their card therefore a charge must be framed against the both the a skilled person and section 500 of the IPC secondly the act of humiliation and the intimidation is also made in the very office that will be a public place at the humiliation and intimidation was an act which was made by the skilled persons against the person or a woman belonging to any SC therefore section 3 (1)(X) of the SC / ST Act Atrocities Act has got application clearly in this case therefore I think that I am of the considered be that that both the sections 500 of the IPC and Section 3 (1) (X) of the SC /ST Prevention of the Atrocities Act has got clearly application in this case and the charge framed against them deserved to be maintained and both the each persons must be tried over the said charge for this I humbly request you honor I submit.

Justice K. Chandru: Thank you Thank you what about the one you did not sustain the charge on a few freedom.

Participant: Thank You

Justice K. Chandru: One of you should come forward to say why you did not aah sustain the charges why you did not invoke 227 for discharge I think you should volunteer whoever there are six people who have written opinion in other way round.

Participant: Anybody who has discharged

Justice K. Chandru: you can be still be popular if one sustains charges hahaha

Haan please you come here please come here

Participants: as per the prosecution case itself that the incident was occurred in the Chamber of Principal. principal chamber is not accessible to anyone easily it is not an public view as per the legislature that they incident must be occurred in the public view whichever insult or humiliate the lower community but as per the prosecution case itself it has not been occurred in the principal chamber that is that I am the winner....I think in this problem you have only given a stage discharge stage there was no evidence recorded after the trial and the therefore

the circumstances under which 227 can be enforced is limited circumstances so first thing for us to decide is to see a provision actually every time in a problem comes and you can't simply say three on ten we know 499 we know I remember one incident where during emergency there was a p... heard by the division Bench and a Mr. KK Venogopal senior advocate was arguing against the order passed by the government so as his argument started he said My lord take the constitution and take article 19 so every time the court master will bring the book and then put a flag and show 19 so the court master gives an constitution but the judges refuse to see the a article so second time Venogopal said My Lord kindly take article 19 in one and they were just keeping quiet and third time he insisted the Judges said we have read constitution in the law collage we did not read again and again so Mr. Venu Gopal got very angry that he arguments are not appreciably this is during the emergency time and under the lot of aa Psychological build up so he said if you don't want to look up into the constitution I have nothing to argue and that constitution doesn't exist he walked out of the court. So what you see from that when a counsels wants to site you may be a judge 20 or 25 years standing you would have gone 100 times each time you look into the provision it gives a new meaning and it is important to us to see the bare act first and in that case in the Judges were all that time were also studied before the constitution was a subject in the collage so the Chief Justice was not correct in saying we have read in collage because when he read in collage that time there was no constitution of India it was a pre-independence day a law student and therefore we should be modest in inn our approach and secondly the bare act is a first ... for any situation the precedent comes later the commentaries come later the bare act is important how you take a 499 which is the charging section is 499 and the punishment is 500 . 499 is a criminal defamation and we talk about poor by words spoken or intended to be a dead by science visible to presume makes or publishes any imputation now what is important is the publication so in a in a principal room another teacher is sitting there and the you say you have defame me where is a publication where is the aa publicity given to the so called impute statements. first question without the publication suppose a write a letter and you are only privy to that letter there can't be defamation at all therefore this is an fundamental principal and that should be a publication and that is absent even in a swimming in a in a well power is accessed in 227 you only take in to a complaint and the recorded statement and not beyond that there is no defense therefore if 499 is not attracted the question of charging and fine that doesn't arise. Similarly you take the

SC/ST Act the Section 3(1)

(X) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view. Now this public view is all the

interpreted by Court we can also go into a that I detail later whether a it means a public place or a public view or a place where a public can view this is a aa issue which has to been seen now there are 2 accused in that case ahh one was a bystander the other one was a person whom aah sit in friends for attributed now a person merely watches and does not contribute you can't bring bible to say they also serve whose stand and wait that's not available in criminal law you should be a participant in that case therefore the person who can file the discharge person is a person who is merely present even as per the allegation made that she was sitting in the principal room watching this suppose she is not a pro-active in saying that it did not of the principal that is not a IPS it may be a moral a question not a legal question in fact yesterday a professor was talking about the moral value and the constitutional value we are now talking about the if you apply that then the professor who was a mere bystander he cannot be accused of this because intentionally insults she was just a witness to that where the principal there may be something to say against the principal who was supposed to say all this and the now you can see the judgement it is not that The powers we are exercising....

Summit Bhattacharya: this is a citation if anybody wants to a take down the citation of the the case on which this hypothetical situation was based and you can go through this how they have how the court Jaipur High Court has done it and the operative part is at the last. Here it is like this one if you can see that is the (Not Clear)

So the last in the operative portion the order framing charge against the petitioner is set aside and the revision is allowed. The trial court shall proceed against the so and so which means those who partially sustain the charged... If there are two people who said that the asked against the professor there is no charge as against the principal that may be a tribal that so that is the case was there.

Actually the case was based on the publication only first instance because there were nobody else only the accused person and the petitioner was there so they found that in the first case there was no publication at all so as regard the first incident is concerned there were will no charge against the anybody second incident there were two witnesses who saw so the court held that Ki there was a publication so a charge can be framed against the person who uttered the words but the other person petitioner was only sitting there she was acquitted there and she was discharged that she did not participate in a defaming the petitioner therefore no charge can be framed. So basically this case is based on the publication and public view whether anybody viewed the incident or not.

Participant: Not Clear

Justice K. Chandru: Not clear

Participant: Not Clear

Summit Bhattacharya: Sir us mai Hypothetical main dates change kiye GayeHai but that's not the case .

Participant: Not clear

Justice K. Chandru: But sir is main we can adjust one thing sir in this when the facts which you have given to us for the second incident for which I have framed charged for both of them is that further the case of prosecution is that on 25th September 2015 at about 3 PM when I R was sitting in the staff room B called her in the office at that time A was also sited B and A intentionally insulted the intimidate the R with the intent to humiliate her then with t this incident the incident with two people

Debate (Confusion Not Clear)

Justice K. Chandru: Now we go to the second case which should be before you that is circulated the topic given us the discrimination home. So I asked Prof Bhattacharya what is criminal..... I want to take the larger issue in the domestic sphere what are the discrimination that we have adopted we have towards the attitude and the more we discuss people get boring because I am unconsciously or consciously we have we also practice certain amount of a untouchability in our home outside and a we i want to tell you a dangerous thing that was recorded we have a in our village tea stall we have two tumbler system that 2 glasses are given one for we and others want for the Schedule caste in our village first the mater to a tumbler was given to other class and the glass tumbler was given to Dalit's and even before that they were not given tumbler and they were only given the only a the coconut shell which is broken into two halves that they can use for drinking and later when this legislations came that was given up and this two tumbler system was very much prevalent in Tamil Nadu and many places I have out of a nearlyso the people now say that two tumbler system is slowly giving away for paper cups so I wrote a book a recording my experience in High Court aa on dealing with matters relating to caste and religion most of the cases that I have dealt are quoted extensively ... and I am of the view these issues can't be disserted divorced from the writings of people who

has the perspective on this issue in fact this session is over I will two judgements under the SC ST Act one by Justice the other by Justice K Ram swami you will say a a perception difference I one had Amedhkar before him the other had merely the world view point of a Jawaharlal lal Nehru and others the conclusion went to somewhat same the perception was different I will show you it later but it might when I wrote the book I asked one senior bureaucrat and a senior IAS officer to write a forward so he said that when the technology advances and science develops that there would be possibility to. System will be given away because introduction of paper cup so that make it gender neutral but a the experience which we have come across in one village there were two teachers belonging to SC the one man took the other teacher to his village for overnight stay . Both of them were slept in the house of Dalit teacher in the morning the man came for a walk side said I want to have a badly need of tea so what is happened all the milk in our village goes to the society and then comes to the city that is how we have white revolution . White rev lotion made milk available in city more and the it has completely AA bled the village from any mining. So most of the villages were happening having 2-3 tea shops so that nobody makes tea at home. So this man said I won't have tea in the morning and that local teachers said no no will go to the town and we have so when that a a guest opened the video he found the tea shop just across the street. So he told his teacher while you we're bluffing me you have tea shop so this man hesitation so that the teashop owner he has to have aa cross examination of the guest he has to know who he is he knows everybody in the village on the finger tips if he comes he knows you are a Dalit if you come you are not a Dalit and he will gives a turn up but if a man comes from outside how to find out so he started questioning guest from which village you are coming from many a times the villagers can be identified whether he is a Dalit villager or no by the name but then increasingly there are renaming of places so you have more Indira Gandhi Nehru colony Indira Gandhi colony so many things so now then he asked which street you belong to. So by street also you can find out because in the most of the Tamil Nadu village the colonies in the eastern side of the village and they were sent slight inside the elevated place and mostly. so if you say you belong to east seat that means you must be a Dalit now this man now a days they are giving Jayalalithaa Street so that also no possible to find out so he questioning stopped and he unable to find who is the guest suddenly took a paper cup and gave to him and he gave to him so i said it is become gender neutral that you become a third gender you have no metal tumbler you don't have glass tumbler then there is paper cup so technology uses not for the lord able purpose where they are paper cup. The tea shop owner becomes wiser how to identify so there are many practices which in our we continues to operate on a many many a ways and a

is very short thing that we have a separate burial ground separate cremation shed. And then one recently AA I gave a judgement where aahh the municipality under the Municipal law has to..... as provided by the Municipality the obligation is provide now we have peculiarly where we have a High Court bench that the a these sheds are given to community wise you have a Brahmin now we have one Marwari Jain's shed is there each community goes and so I want a separate shed so one community was not given her was given but it got cancelled they came to the court so I asked the lawyer what is this legal basis of all this ultimately when you are born separately at least in depth we much go together some where hills and he was arguing no no others are having he is having so I gave an order saying that do not possible to have a community wise segregation even we must have municipality.....this kind of communal segregation now in that cinema songs where he says... the only difference economic difference but then when they go to die they go to the same place and this is the only place where ultimately equality is preserved in any place so some papers said that how can the Judge write on Cinema song but this is a popular song and a and it went to a division bench to a division bench confirmed but what happened is even today as I mentioned yesterday that the injunction granted by a Munsif saying that you should not take the bodies and recently one incident were the policemen unable to solve the dispute they themselves carried the body and buried the body without the relatives . Now this Practice of discrimination as we saw in yesterday it is done in 100 he can't go to the temple he can't touch the water and he can't access to the road also and then several things happened that a the a question of discrimination is widely prevalent and it is intakes different forms how you treat your servant is another difference somebody may treat them well some body may ill treat them well but the fundamental question from right from birth marriage and death it prevalent widely and it si also not as if go to some other religion and the cars difference..... I remember a case in 1901 there was a Church and in southern Tamil Nadu and the Church is constructed like a trousers of a plant in one end they were polluting caste the other enclosure the non-polluting cars will come and the priest who performed the rituals will come in between the two. This group which is sitting in the side can't see the other group whereas they can see the where the prays goes onand a one nonpolluting group there were number were dwelling and the charge was empty whereas the polluting group was increasingly becoming members of the Church because they felt they will have egalitarian treatment so they wrote to the priest that there are empty chairs on the other side and the Sunday prayer why not allow all of us to sit in that side and the priest said all right you can sit on the last rows of the then the other community went to their civil court and saying you can't allow polluting groups to sit along with us there is an.... injunction

was granted saying that the non-polluting group should have a separate enclosure and the polluting group will have a separate.. then appeal was filed the appeal was heard by a British judge he was an English man and he found that this all nonsense to have pollution he said vacated the injunction Matter came to the High Court and was heard by the two judges it is a reported judgement ILR 1912and they went into the entire issue of pollution non pollution and finally they felt that Christianity Judge counsels are not and therefore you should have this injunction cannot be sustained why am I saying was every issue is been a treated as a caste issue and sometimes it comes to a court I remember in 1920 when Mahatma Gandhi gave non co-operation call that includes even lawyers though lawyers are not employed by the British Government Gandhi felt that it is not only government job even dragooning British Court was wrong we are not cooperative with them so all the lawyers who were a subscribers to a non-cooperation they gave up their brief they gave up their growths and they gave up their practice went into the national struggle and Raja Gopal Chari first governor general was also such person who came from the rural area to practice in the High Court the day he landed this non-cooperation call came and he never practiced as a lawyer and removed and he gave up his vakalat and returned but in one case he appeared that was Chittoordistrict where Tirupati temple Balaji temple is there so Dalit out of devotion went to that temple like a yesterday's Hera that Nandu who goes to a temple he went to Tirupati and till that time Tirupati did not allow the Dalits to enter and he was punished he was brought before in trial in Chittoor district by Magistrate Court and he wrote Rajaji that I have nobody to help me please come on an and support me so notwithstanding non-cooperation Rajaji went to help him he did not wear the robes because under the CRPC there is an provision to allow that near friend to appear on. you can have an exceptionsthese Dalit president from getting their social justice removal of all a handling facts it is a greatness of Gandhi who came to Tamil Nadu during 1930 he had world win tour for collecting money for the urgent cyber ... and some other leading temples he did not enter though the devotees call them come to every temple he use to ask the question whether Dalits were allowed inside or not if they are not allowed he will not visit the temple and that is how people under the political field people who are leaders are also conscious that we should do our might to stop this discrimination otherwise this religion will not survive to it may be at any point of view that there is no place for a discrimination in social life and that is by article 17 and the result is we have true legislation and we have one amendment latest amendment the central theme of this seminar will be the amendment will also deal with that how the amendments changes and lastly I want to mention I mentioned about the birth right I mentioned about the death and I am talking about marriage how to to

have marriage do you have real equality fact I yesterday was seeing this Sunday times there is a matrimonial column matrimonial column goes by caste wise bride bridegroom and there is interestingly a column caste no bought if you read deeply into that upper caste no barwhen we talk about the equality when we talk about article 14 are we really equal has mentioned all men are equal all are equal but it never happened blacks were not equal women were not equal but at least that country went through a social movement and made the language used in the constitution meaning but we are rare to make our language meaningful because we have written perfectly all are equal but we are not equal and yesterday's film to some extend brings an every crime under the act under the amended act into a our notice .I can't move out of the village and because there would be no transport available if I move out I had a guts to go and complain my house will be burnt I will denied employment if it is a movement I asked for right there are thousands factors delay in FIR there are methods and methods by which this complains can be benefited and the largest number of acquittal is only because of that we don't have a police force which can sensitively enquire into this complaint though we have a PCR cell in the police but actual ground reality we have inspectors who are in deal with the league with the salient as we saw in yesterday's films.it is in that light the new legislation is brought in and what kind of a solution that you may find the office assistant shall do such work as may be assigned by them by their respective Judicial officer so we were back to square one . Making fish curry washing clothes. In one case man was suffering from Stomach ache he went to buy medicine by the time the officer who went for training came back home he phoned him he was not near the gate he said where did you go and he said he went to buy medicine in the pharmacy so charge sheet was given his explanation was a suffering from a stomach pin therefore went. They say the boss is not at home he should ask the boss wife's permission therefore you are suspended so he simply asked the question when the boss wife became my boss this you may think as the joke but it was a real case came over the High Court and finally we caused the charge sheet saying that ho we can you have this kind of work but the problems can be a thousand methods it's not as if it can come and only in one form clear form it is described in several form and it is a judiciary free from this .

Participant: Whether the occurrence mentioned in the defense occurred prior to the incident

Justice K. Chandru: Prior to the just?

Participant: whether the occurrence mentioned alleged in the defense case occurred prior to the occurrence.

Justice K. Chandru: There was a one fact fact is the same the person was charged in two sections 354 of SC/ST Act the person Now the question is whether the person will be convicted or not number 2 he will be convicted under both the questions or under only sections or whether he will be acquitted . So this is the scope.

Participant: Thank you

I hope I am clear OK

Not clear

See that is because it says this may have a overriding effect .so we have to convict under the this act also. That's why he is giving minimum. (NOT CLEAR)

Justice K. Chandru: I think we can break for tea and come back by 12'0 clock .Like in the last instance one of you should come volunteer to speak upon the order.

Session-7

Discrimination in Access to Education Case Study - III

Speaker: Justice Chandru

Justice K. Chandru: Friends it is just a some preliminary observation that the of all the responses they received we had a the less of convicting Judge and more of acquitting Judge so a better of defense bar so the people who convicted the accused in this case are 11 and the response in respect to acquittal was 14 and partially guilty was about 8 now that as a judge you can decide what all you want but there are two important issues that we will have to consider what always comes to our mind is that suppose there is a over lapping provisions 354 and 3(1)(xi) if you look at the provision a on the first reading it may look like over lapping but if you read deeper into the it is not overlapping there are some additional some a ingredients are put into a The 1989 Act . 354 talks about outraging the modesty but then there may be a schedule caste women where the assailant outrage modesty may dishonor her in public if you take the the Maha Parda where a Draupadi was Isro was outraging the modesty or dishonor in a public court it could not been a outrage to the modesty should be a dishonor now when 1989 Act Section 3 was conceived they lifted some passage from 354 but had dishonor in to that so therefore it is not outraging so in case of SC/ST women it can be a dishonor so taking her and trying to dishonor in a secluded place by pulling her hand even if it is not a a coming under a 354 in this case 354 was fully made out you think there is an obligation of the Judge because he is trying under the SC/ ST Act concerned if additional offences are made you will have to give a conviction also and the minimum punishment is given for 6 months and a section 20 of 1989 ACT he has a overriding effect suppose you try SC/ST offence then it is also a provisionally you have seen if they provide I.P.C you will have to necessarily give punishment under the SC/ ST Act then therefore it may be not wrong in convicting him under 354 and because 3(1)(xi) is attracted then you give additional punishment also . Ultimately it may go on a concurrent jail sentence but the point is on record there must be punishment under this Act also and therefore the accused stand punished on both the sections but a under the SC/ ST Act he gives a lesser punishment of 6 months which is a minimum punishment that is required and a as we did in the a last session one of you who felt strongly about the conviction should come and speak that how you justify the conviction and thereafter the majority view of the acquittal also come and speak so you need to select anybody please volunteer and he did not be the same person who came last time he should be a some other person so that the other person will

have a chance to open in news of the conviction I think you don't need any invitation all of you can volunteer and the one who addresses the first time will come first. OK

Participant: Namaste one and all first I convicted the accused under section 354 of I.P.C as well as Sec 3(1)(xi) there are only two discrepancies of course admitted facts are that she is an SC women of course her certificate are necessary all those particular or not there in the material given to us . So I think one can safely resume that that she is an SC women admittedly the accused belong to is an Non-Schedule caste person there are only two discrepancies one is a as per the material given to us He caught hold her hand and pulled in to a garage where he tried to outrage her modesty . In the evidence it came into the light that he caught hold her shoulder whether in my view it is a minor discrepancies if the evidence is a viable we can distinguish in more vivid manner caught holding the shoulder at first here while pulling her in to the Garage it may lead to the ..Also a victim may not remember all the minute details while giving her the evidences in the court. So I treat is a minor discrepancies. the second aspect is the in which direction the entrance of the Garage is there I also thought that it is only a minor discrepancies admittedly admitted in sir she was pulled her in to garage . So on this both this counts I found the accuse a guilty another aspect is the sole testimony of a witness if it is a trustworthy reliable can be accepted under that also I accepted get and found the accused guilty. As already I had stated about the distinguishing between the 354 and 3 (1) (xi) she SC women with the intention to outrage her modesty he pulled her into the garage and attempted the occurrence so these reasons I found him guilty fort both the offences. Thank you so much

Justice K. Chandru: the next one

Participant: Namaste My lord and one another I acquitted the accused why because the Husband of the victim is not the eye witness admittedly and more over the investigation officers cheated that there are two discrepancies regarding the aah catching up the victim and showed her and more ever the shed or garage shed was not found in the rough sketch. So the husband of the victim also having a dispute with the accused. Because there is a dispute in between the.....And the accused the sorryand I acquitted the in an acquittal manner.

Justice K. Chandru: Now we can see the a the case which gave us the inspiration to prepare the case of criminal law there (**NOT CLEAR**)

NOT CLEAR

Justice K. Chandru: Everything depends upon the appreciation evidence and you see in para 13 second sentence more ever and there is no motive for her to speak fault. But somehow in

our psyche we feel that urban fellows are dishonors and rural people are not. Then why complaints come from the village the person who is assailant also comes to the same groups tic background yesterday his film you say that factory owner among the brothers there is a quarrel and he said this man to give a complaint against brothers to put in jail. And this man taking 200 rs giving false complaint and now how do you justify this preferably once you may say I believe or may not believe and this case the the High Court does not appreciate the evidence it only goes by trial courts evidence and then say I am in agreement with the trial judge I am not appreciating the evidence but the way the trail judge appreciated that I had no quarrel for disagreement so that is how when you use language there are many times people get bucked up above the language . and the perception of the language also differs from Judge to judge for e.g. in most of the a the aa opposite petition the women comes and Public Interest Litigation says she proper in our place they use to have a Mangal Sutra there will be some gold in that . So when they come to court they will change it into turmeric applied thread and remove the chain they knew that the judge may ask how you are wearing a gold also so these are standard practice that we cannot go by that kind of appearance or the background you have to appreciate the evidence as it in fact most of the time in our labor court the worker will come in the best clothes because for him the court is the big institution and he wants to impress the judge for him it is a very reversal actwhereas in that small industry owner he will come with every tarted clothes and a very small cloth bag so sometime the labor court judge just asked who is a employer in this case because there will be a doubt whether the worker is an employer or not but then people know how this psyche or the judge works appearance doesn't matter. In fact though once upon time when you record evidence people say see the demonor of the witness. What is the demoner? A man how it is by first appearance you will find out that he is a good fellow or a bad fellow. we Don't know and therefore its again these are all dangerous tests you have in fact the Pakistani chief justice Sajjad Ali Shah he is written a biography in one chapter he writes a book his action is an appellate court Judge so two people were fighting about a lending of money and not returning so he called both of them to the chamber and then a place the Quran on the table and said both of you take oath and tell us which is truth. Both of them stuck to the ... so he writes that day I stopped putting Quran as a test for these people to speak truth because both who took oath on the Quran and said the same thing they stand he said these are called we can't use this kind of a psychological pressure in getting the truth it is not possible at all. And therefore we have to Levis and the correct language to you. Like most of the people in their control delay I am a widow in a case of a legal aid I am a widow there are some judges who may get worked up saying that why are you keep on saying

widow widow. In fact we have a judge very nice judge so more than 3 time the lawyer went on saying after all she is a widow my lord the judge could not bear this argument he said what are you going saying on widow widow . the widows are broad this country he said like that what he meant was the emergency that you were saying but then you see there are particular world can provoke different feeling so there are we cannot apply what is a safer taste than this a rustic rural illiterate that may be for sometimes it may be there but then there are also tutored by various people and therefore we have to have an objective a method of assessing a evidence and this may be not a sure evidence but when it comes to it we know what they are saying we should not be carried away by our normal day to day belief for e.g. you have a provision in I.P.C for trivial you can't punish now suppose a Director General of Police of a trouble tall straight he what he does in a party he pats the back of a another senior IAS officer . she thought this is a too much aa somebody does in a party tapping the backs not allowed so she takes exception and files a complaint the high contacts sustains that you can't this is all trivial chalta hai you should not have a governed complaint but she was a senior I.A.S officer and she goes to Supreme Court and a the Supreme Court says this is not trivial you can't look at it as a trivial and use conviction but what are the psychological a background this is trouble on shade there are terrorists and this mind is a leading Cop was dealing with the situation we should not demoralize so instead of dealing with offence there are a certain subjective factors guessing into the minds but what is important is look at the provisions local evidence and applies a correct paste law you can't say this is trivial or not trivial the law speaks for itself what is trivial for somebody is not trivial for this trivial of Punjab High Court was not trivial for the Supreme court . and therefore what is important is to shed ourand use the correct language after all the trial court finding always stand of the last court and most important is to apply the correct factual situation and the law that is applied in this case the Judge also noted the difference between 354 and e(1)(xi) because there is a extra word and therefore it cab met under both sections because one of the doubts comes can both section we are attracted if they are similar .But when it comes to SC/St Act and if the women or the man is a SC ST and the section is clearly attracted you got to get punishment under the SC ST Act . Ultimately for different community he may go this same sentence that's different but then their records shows that he has to be punished under the act and that is done in that case and therefore a we will go the a next problem and which is the problem number 3 a which should be given to you now and thisa case number 3

Participant: Sir the reported decision (Not Clear)

Ok this is from Manu Patra I think.....

NOT CLEAR

Sir may I raise my doubt sir

Discussion not clear

Justice K. Chandru: Friends we won't wait for the a analysis being made aa one of you who sustain their order come and speak and the contra view can be spoken we will wait for that it will come to the end so I request one of you to come and speak on the on the aa on question of conviction then we will ask aa the acquittal Judge will be called later who is coming a are there is nothing wrong in acquitting or a convicting that is our job.

Participant: NOT CLEAR

I want state advantage because coming from Delhi we know that Judgement of the Honorable High Court Delhi and a what i did was I sustain the summoning order for the offence and 310 but not on the 315 for the simple reason that for 315 the person should have proceeding he should be forced to leave that station so that aa fact is not here for 310 I have sustained it there are 2 witnesses it is done within public view. Public place is not important what is important is within public view so therefore I sustained it.

What about Acquittal. Please come here we can have more than one view also.

Participant: sir I partly allowed the revision because an accused was not found guilty under section 3 (1) (xv) accused was not a panting transferring authority first second 3 (1) (xv) deals with residence house residence and not office. Ahhh that is why I held upheld the revision for only for the section 3(1) (v) and confirmed it for 3(1) (x). Thank you

Justice K. Chandru: What about Acquittal? Please come

Participant: It is a summoning case hence Prima facie cases to see. I fully agree with my brother but a so far as the section 3 (1) (xv) is concerned I am also of the view that his forcing his threatening Saale Delhi Chodh diyo... He is forcing him he is threatening he means that it. No infinitive forces means intimidation hoga hi hum kahenge Delhi chodh de.....

Not Clear

Justice Chandru: This case is a very significant case to one extent because apparently this was a reference to a Delhi High Court Judgement this is Ravindra Bhatt dealt with the case. Now

100 times in the Delhi Court there was difference of opinion what a public place is and a public view in fact this was a position in every High court that this is not in the public place. Once the legislature uses the word Public view and not a public place we can't confuse the true in to one in the same so you can have a public view but in a private place it doesn't mean for e.g. you yesterday you saw the how the village houses re their even if somebody fights in side it can been seen it doesn't mean you can't see so they are who their division mentioned....

Participants: There are few persons who are not summoned at all we would like to have their views also. There are persons who have not summoned at all. Sir anybody in fact this Ravindra Bhatt notes the difference in the aahh two Judges .he agrees with the view of the Aggarwal in fact he says expression therefore it should not uttered bya person in view of others unconnected to the complaint interest the Agarwal held merely because of witness who otherwise neutral.. all the people who gave evident belong to one community you should not believe that I happened to know that village because we have been travelling extensively he knows in a village so i asked a senior lawyer have you ever been to this village he said I have not been there I know Ihave gone to the village there are 11 streets ten seats belongs to same community only one seat is different community how in a matter of this nature how will you find the person who belong to different community come evidence..... he says that we can't interfere in the revision stage before the a trial of course as rightly pointed out and the ingredients only shows 3 (1) (x) and not 3(1)(xv) like in yesterday's film they throw all of them from the house that is different but here it is not case of nature and therefore 3 (1)(x) and so far the 4th aah case is concerned that we will have it tomorrow because we are advancing the ahh. Before we part I want to make one small comment now you have been in this hall for the last 2 days now this is all in this 4 different halls this all is the special hall where you the picture of the Chief Justices of Supreme Court and Current chief justice we will be seeing him tomorrow. tomorrow he will be here and what do you see out of these pictures when you enter this hall you look at the pictures what is that you are able to see I want to ask you the question some body look at the picture and say he is from our state . regional identity or a language identity some people are having statistical background may say to chief justices constitution king some people may go beyond that and say this Chief justice delivered this judgement I remember I know for this so once you look at the pictures and different view s can be formulated depending upon your understanding of law and courts now you take if you are a statistic person if you analyze every ten years the maximum number of appointments in 2000 and 9 Chief justices which means their average term is one year some of them had only one month also but if you see five or four

their average tenure is 2 or 12 years long tenure but then long tenure or short tenure who decides is constitutional says it will be one Chief Justice but the constitution nowhere says the senior most person should be the chief Justice so there was a dispute whether senior most person should be there or not . Now if you take this 70's so proceedings 3 Judges and they resign you know how they argument of packing the court executive interference and that led to the first judgement of the judges appointment case saying that it should be only on seniority. So result is there are some judges in this portrait had one month tenure also there are no superstitions at all so once you look at these pictures I will see so many things will come to your mind .The cabinet during the time of Nehru discussed the matters they said both are scholars both are qualified. when you have a judiciary what are the factors that you see for appointment then the question came raised time people talk about social philosophy the judges are important therefore the argument was chief justice should not be a senior most person it can be selection he should have a long tenure he should have a correct perspective like a American chief justice appointed separately and you have Judges of the Supreme Court separately. He is not interrelated now this debate finally gave rise to a further question if you allow due pact the judiciary do you bring in people to a support the constitution this one argument there are who says that the ultimately judge should be ready to be social philosophy of the constitution he can't be divorced from the constitution under which she is appointed. then that question come now in the Supreme Court it is ruled purely on seniority basis no question of out of turn selection now this how we have so many people. I am in the favor of judges thinking which plays an relevant factor in this matters it is not as if you are neutral that you are blank what we call a justice blank that everything is somebody as to write is not there when you come and sit you know very well that you have carry the baggage in your mind and that you will find in these two organs both are Supreme Court both under the Act both similar provision kindly read tomorrow and come and Now we will go for lunch.

Not Clear

We will meet by 2'0 clock here.

Not Clear

Sumit Bhattacharya: I have got a small announcement to make that aahh the initially session no 4 today that is 8th session which was again a case study now a since we have done 3 case study today so and we have with us aa honorable NishiGandha Bhuyan Ma'am she comes from IIM Calcutta so aah she would be taking the post lunch session and the fourth case study we will be taking it in the tomorrow .tomorrow fourth session so there is a swap so we are

going to hear something other apart from the case study so we break for the lunch and come back at 2 thank you .

Session-8

Individual Biases, Prejudices and Idiosyncrasies and its effect on a Judge

Speakers: Dr. Nishigandha Bhuyan and

Justice K. Chandru

Justice Chandru: Now we have the 4th session think I have announced already we are having a small swap on the topic and a Dr. Nishi Gandha Bhuyan from IIM Calcutta will speak what was reserve for the session number 12 Individual Biases, Prejudices and Idiosyncrasies and its effect on a Judge. Dr. Bhuyan

Dr. Bhuyan: Very Good afternoon to all of you yaa I think I feel very little speaking amongst this august gathering but could try to do my best. So I am given this topic Individual Biases, Prejudices and Idiosyncrasies and its process of judging. We have been doing this is in the morning sessions I think all those case studies that were discussed somewhere or the other theses things were coming out. Because was reading the case I was looking at all these aspects that how these are affecting the decision making process of judges. We have done the practical part of it now I am going to speak little bit about theoretical part of it and possibly try to bring out the practicalities involved someone has rightly said that human beings are born to the situations. Without your knowledge without your choice without your consent you are actually positioned in a particular situation and which is how you make yourself. So there is two aspects to our existence it could be in continued sometime it should be distinct as well but most of the time we try to relate it as a continuum one the particularities the second universalities that is associated with human beings. so it's like that we can say it is always there is a distinction and the struggle is to achieve objectivity in a process or any institutional process for that matter to achieve certain amount of objectivity if not universality within this context which is extremely complex and which contributes to a large extent to a formation of the self. So there are always two conceptions of the self and sometimes it looks like a paradoxical that we have universal aspect towards ourselves and we have a particular aspect to ourselves OK. and given the kind of species we are always constantly struggling to achieve the state of society which is fair which is just which is good which is a kind of paradise that is our trend and because of which we have a institutions in place other than the institutions doesn't make any sense to us probably he human beings could have otherwise wanted to live in a free society

without the even existence of anything called state. And if a tall we are able to transform ourselves to this position of universalities where there is a possibility for us to act from the point of view of the universe. Someone has rightly said that we are competent we are capable of acting not just for me and my sake we are competent and capable of acting for the sake of universe and from the point of view of the universe and that is exactly the reason we design redesign institutions so that it is more just more fair and more in the direction of achieving the better world or fair world. But we always kind of always almost in constant struggle without particularities and individualities. How many of us can actually convincingly say that there are not influenced by their particular positions when there are holding the position is importance which requires complete objectivity. Can anybody claim that I would like to hear if someone can claim that none of my background conditions so where I exists none of my conditions of what kind of situations I am exposed in my life has in bearing on my decision making process can that be true that I am not influenced by this stages of my living.

Right and can someone also claim that while holding such positions of such humans are important where wherever you are delivering has at most importance to the integrity of the society or existence of society that you simply make decision or your decision is influenced just by what you are going to do next and there is nothing like objectivity rationality other is nothing like objectivity decision making process which wants seems to be more true. Any, any attempt to cooperate with me which one is truer like seems truer at least that people make objective decisions all people are almost always influenced by subjectivity conditions.

Participants: Not Clear

Dr. Bhuyan: OK

Participants: not clear

Dr. Bhuyan: OK that element is always peeping in right some prejudice some instances of your past that way you face situations experiences the way the society has treated you OK others are sub-treated you that is almost always having a bearing on your decision making process or the way you are thinking something is right or wrong is probably more than particulars situation is based on what has been transpired before in your life. Isn't it OK but what is requirement of a good society or a good institution in a society is trying to make the rules or the decisions asked here are possible isn't it even though we do not or cannot possibly do the fairest kind of a decision because every decision that we were discussing in the other

three decisions were like could this have been true could this have been true whether it false in to this category or the Judge has the biased or the you know the person here has some other biased others or something others so everywhere it is like that OK but the attempt in this kind of institutions at least because if you cannot ensure such objectivity in these institutions at least if not an action but in contemplation OK but in designing those institutions OK what these institutions are meant to be OK so that is where it is extremely important that you drag yourself whoever is holding those position in fact it is applicable to everybody but at least when it comes to these kind of vital institutions of society that to determine the nature of society that is going to be in future . So there always attempt should be to drag people from the lower capabilities to the higher capabilities. That is an attempt of an institution of at least state democratic society if not any other .So in this case mostly it is your individual biases your ego state and your interest in catering to those almost instinct desires which we share with all their spaces in this world what distinguishes us is that we are not just instinctive we are also thinking being which is not true of any other creature ok so we drag ourselves from the level of instinct to level of our related next to universe to the others. Though the things and beings that exists other than us in this world. Otherwise there is a chance that you get trapped there always catering to your individual is taking ego state instinct which are like just the desires of the level of desires like there possibly one best example would be the primary thing in our lives is to feed ourselves. Isn't it and that is so instinctive that is just a part of our existence right but that should not remain to be the predominant force of our existence therefore there is a necessity to drag yourselves to this lower capacities to her capacities. As long as I think all philosophy's talk about that even in Indian philosophy you find a description of the courses right.....so Anamaya question is the most basic which you share with all other creatures in this universe but there is a limit to which you cater to that and beyond that you should move out of it so similarly all fields of your existence you should always move out of that particularities to be able to drag yourself more to the universals because it is some as a matter of fact this two are combinations in us they leave or they kind of a existence in us just side by side it's not you will discount the other for the sake of this so you cannot possible completely discount your lower capacities you need to just transform yourself from the lower capacities to the higher capacities and thereby able address more universalistic concerns or concerns fit that can be handled in more objective manner. Again another description of two conceptions of the self-people that either we are completely egoist or some of them are completely altruists again that is not the case. there could be situations where you neither egoist nor a altruists and you may be believing that you are egoist you know people argue when it comes to a this right to death at least I have

faced this in my classes they would say as it is right to life its same is the case for right to death OK and that gives a thing is of epitome of freedom though I don't know whether that have really have that intention of having the right to death but the kind of you that that is epitome of freedom that individuals should have OK but is it actually a state of freedom one need to go deeper into that to be able to find out what exactly this state is all about. Right so probably just for the sake of having another set of rights which people can be deliberating or people think can deliberating therefore there is an argument that OK right to death is us in important right for my existence as right to life OK but when that may not be good for this self nor it is good for society or others whereas people fall here more people kind of a I mean in fact more here more people are here and some percentage of people are here but there is a chance that all of us can transform to this state the one which is plotted in green . Will try to just explain this here you are seeing that the self is in constant struggle with others. As if there cannot be anything which is good for me is good for society so my goodness or something which is good to me must come at the expense of somebody and something. Ok at the expense of society at times that is one sought of belief and at micro level sometimes it is possible that you know when I am designing or deciding about my goals at the cost of others , at the expense of others at the expense of society at the expense of disadvantaged section who cannot compete with me at that level so that I am like self-interested at the expense of others but does it necessarily have to be the case that self-interested being self-interested always comes at the cost of others is there is a necessary connection that if I am self-interested it has to be at the cost of others . Is there any necessary connection not necessarily right? I can satisfy myself interest in coherence of others and what prevents that nothing it is just that how I am approaching things how I am looking at things suppose I am thinking my capability of swimming is possible only when i can sink others and I can float then I am thinking my interest can only be satisfied at the cost of others but suppose I believe in my capacity of swimming without taking or actually sinking other think or being so their it doesn't necessarily have to be in conflict with anything else right? so there are it is possible for me to have regard for others at the same time be self-interested and being objective being fair and good decisions always requires that kind of an approach to life where you figure out a position or a decision which is not bad to you which is not having negative implication on you but at the same time it is good for society in general it is good people always belief that if it is good for me it has to come at the cost of society then there is a problem in the statute you think whatever good for me has to, to me come at the cost of society, OK on it might move that is where and why people do mistake including institutions including business including many other .where they think there is direct contrast

direct conflict of interest and this conflict is either I mean it must lead to maximization of benefit and maximization should come to either side or that side but there is an optimization which is possible and that optimization is a win, win situation in business language and it is incoherence with each other . and that is always possible there are end number of examples in this domain because I as an individual I am not always trying to live my life or being you know be a king of kingdom where there are nobody else OK everything that I do and I achieve and I kind of enjoy is relation to others in a particular society so there is a coherence always established before my thinking that you know it has to be in conflict with each other so where is always a possibility of self and others converging and it does in fact it doesn't actually have to be conflicting OK when you think it is conflicting there is always an attempt to disgrace from what is fair what is just what is right OK . so just to elaborate little bit on that the previous one's so this line this two conceptions of self is can be one self-kind of more of a childhood conception OK because their it is always externalities which influences my behavior the external conditions or is there is an punishment attached to it or there is a reward attached to it OK the external conditions of punishments and reward are influencing the way I am trying to behave .OK or as you move just from direct punishment and incentive but from kind of a social acceptance if you do that you are a kind of accepted you can justify to them otherwise you don't do that's not considered right. Whereas the more objective considerations of right and wrong should come from within its more self-directed it comes from an intact nature of human beings where there is respect for objectivity of facts. Ok there is desire to achieve fairness there is sincere desire to set things right ok a sincere desire to see to that there is justice there or justice is being delivered in this process OK not getting influenced by the external conditions but influenced by though internal conditions some people might question that how do you believe this internal conditions can me more objective right because external conditions when they are not objective how is internal conditions objective. internal conditions has the capacity to become more objective where you not influence by particularities you are not influenced by incentives direct tangible benefits you are simply influenced by the intrinsic value being of human . Ok and that you share with every other human being and everybody has that capacity where is one is able to manifest that or not it is a different issue but it's almost certain that everybody has this capacity to be able to act from the view of the universe where all those particularities of your past your luminous your caste your gender can be down plate OK so for that one needs a constant kind of a practice to reach that state of fairness where you should be able to withstand the pressures which comes from the external conditions right of course by this I am not saying that you should not

be considering the particularities of the external conditions . I am only saying the influence that you get from the particularities of the external conditions should be minimized should be reduced to zero then you are you know like Vivekananda had said that you can do everything and anything so that is like the capacity that human beings have OK that is the capacity because of which they can act room the point of the universe. So there is always a second order choice that is available to us which I saw the case in any other creatures they always act out of their instinct there is nothing that they think right but for us there is always a possibility of a second order evaluation of whether this right or that is right I might be instinctively influenced I by something that I like to eat right but that instinctive influence can always be guided by my reason us to whether I should be doing it. Suppose I am influenced by the sight of Ice cream right, right but I can always go for second order decision as to whether I should be having ice-cream when I am having enough cold and my throat is not well so I only I means here human Beings can do this second order analysis of what exactly is right and that is where the that is the path of objectivity that is what the path to fairness. Always give a thinking beyond what your instinct says instinctively you are influenced by OK you know this person belongs to this caste this is how they behave this is what is their tendency so this what should be the thing right but being in this position where you are assigned with the responsibility to be just it is always a choice to go for second order deliberation which could give you which could assure more of objectivity fairness right so universal moral principles of freedom and rational choice was versus the particular is in every day culture and life or your primordial attachments there always in constant tension with each other. I mean it's no human being ever free of anything the only that happens one kind of over comes that every individual have their subjective biases subjective feelings subjective judgments but if a sincere attempt is being made it is always possible to kind of overcome your subjective bias it is always almost possible to overcome that subjective bias and overcoming that subjective bias is a conscious effort it doesn't come naturally it's not something like you know naturally you become a perfect person and you do deliver Justice a in the fairest manner that is never possible without some one's conscious deliberation in to the situation in constant manner if you do not know that then the other things prevails over you then you know whatever is an instinctive thing whatever comes to you at the first go that always kind of prevails on you that you know this probably the case because I know this people are like this or these things are like this so there you are not allowing the room for conscious deliberation of moving out of the subjectivity and going more to the domain of objective choice so there is a enact capacity in us to act from that freedom and that freedom is different from the freedom that I was talking about you know person who

argues for right to death. This freedom is a second order freedom OK this freedom is the outcome of a conscious deliberation based your inner, inner capacity of being able to deliver Justice OK so this freedom the degree of freedom that we are talking here differs from the degree of freedom that we are talking about anybody who instinct livingly wants to do something and he or she has the freedom to do it right so influence of context plays an integral role in the manifestation of a full human being but at the same time there is always or there should be always a conscious attempt to overcome the context and bring in more objectivity or fairness to the judgment. SO I mean I think we were all discussing these cases as some time back as to how this particularity is impact and I just wanted to take few examples there and I think Sir can add if he wants like because I am not very a familiar with the kind of cases that a you know a that is happening except those famous ones which we have seen in films or read it somewhere So one of the India's preeminent and distinctive particularism all of us should admit this I mean I am saying this because we do face it in our everyday life everywhere therefore I am saying this is a preeminent and it one of the distinctive particularism that we have as a society and not denying the fact that it is there in some form in other countries and cultures and all that but not so much or not the way it occupies our sub conscious mind even at this 21st century I don't know from where it is from when it is existing exactly I can't quote the date some people these days are trying to claim to the Britishers saying that you know they only introduce we were having a conversation on that they only introduce the caste system or otherwise it was not there in our society which is like not so a kind of a believable fact so a but this is like very important and we encounter this in every walk of our life and the moment we encounter this in our every walk of life how is it possible that we can know we can just get out of that subconscious it is always playing a role in us and in India it plays a significant role starting from the politics to the everyday behavior of people OK so our democracy if it is endangered for any reason it will be a cast . If there is anything that destroy our democracy it's the caste I don't know if there is anything else but as if now it seems this is one of the biggest threat that we face as a society and kind of sub conscious mind that have a rim today and the kind of societal institutions and cultures that we are building that there we don't see any escape from it we are getting more and more entangled in to it and that entanglement is actually dangerous because all that provisions that we are attempting to create to kind to wipe out this caste division are actually furthering caste division more and more at some point of time I don't know if it is if it could have been awarded or if it is just turn on as avoidable consequences of the intervention that we are trying to make to bring in parity probably sometimes it is that can be claimed that you know these are the unavoidable consequences of our attempt to bring in

parity but we are entangling ourselves more into that system of the division of the hierarchy of the discrimination and so far I don't see way out of it right so this is leading to the discriminatory social practices because it is so much you know our subconscious it is always influencing us a in our act and behavior and therefore it is further by us discriminatory social norms so you might have a different norm in the court of law but there is always a social law which is existing which is influencing more than any institutionalized objective set of law because this alike I think when he was talking about all these cases of you know different categories of people sitting in different places they can't see each other and all those things they are like just social practices and their they are accepted OK and their kind of I mean that is of possible that is of consciousness we have achieved so far that you can co-exist but in this manner so co-existence where is the parity but if it always require a division a wall so then where is the parity what we should attempt is to create the parity isn't it isn't that more important then you know everybody is having a choice and one set of choice says ok you can have a different room they can have a different Dalit's have a different entrance higher caste people have a different entrance to the same temple just that you know the Higher Caste people do not want to a come across such touch they are untouchables and they are polluted so should we note remove that notion of pollution in its self completely then trying to create provisions which will kind of accommodated so this division itself the wall itself is accommodating that they are polluted and that they are not polluted it is a kind of accepting isn't it accepting that division so should we not create institutions should we not create norms should we not create social structures or social institutions in a manner which kind of successfully abolished this distinction should we not enforce a particular door you know which is open to all why should there be a different door a different entrance for a Dalit under the different entrance for a higher caste so we are perpetuating the difference we are perpetuating the castes system there is no way we can see that we are eliminating the caste system and elimination requires stringent strict actions at least at the beginning because otherwise this subconscious will not go away the subconscious is always holding on to you that you are upper caste they are lower caste because they are upper caste you need a different provision separate provision you need a separate entry right so somehow that sub conscious is also need to be removed and that attempt should also be made in this a systems be a legislators be a judiciary and not probably the right person to say where it will start but somewhere here it should start but this is the place where you are always again infringing another set of rules and regulations which is perpetuating it more So need for holistic social transformation not just limited to law but practices it is more to do with social practices then to coming up with a law or a regulation so law again you are trying to address to all

particularities that these people wouldn't like to share their platform or forceps therefore you are providing separate platform of forceps to different category of people so that it is what law is doing whereas law should make the best attempt to provide the same platform to everybody.

Sumit Bhattacharya: If I am a just add one thing sir I just wanted to know Sir this RT Act when it got implemented I am talking about my child studies in so called sir public school one of the public schools here so after implementation of this RT Act those a They said 25% of the children should be bringing in if you haan the weaker sections what I find because I saw it through the prism of my child this is a these children are coming at a different timing what they are trying to circumvent instead of inclusiveness what the act wants Sir this is why I am telling Sir I am you must be also observing it because that I just want to confirm Hai na Sir.

Participants: NOT CLEAR

Sumit Bhattacharya: True Sir. Yes Sir exactly the same things I mean can we have other views Jaise aap ne bola the same thing Ki mera beta my son studies in here one of the DPS so their people come 25% of the people are coming they are giving Sir Clothes different So what is the fun in creating that Sir you are actually now the my child who doesn't knows about this system he is actually visualizing a set of people who are coming creating a another woh usko nai Maaloom abhi usko Maaloom Hai Papa these children's are coming there are other children's also with in another class. Who are they?

Participants: NOT CLEAR

Sumit Bhattacharya: So isn't it Sir am I thinking in the right way like jo Maaloom hi nai hai mere beta ko aaj tak woh yeh pooch raha hai mere se he is asking a question that there are certain children who come to my school who are wearing a different cloth and they are having a different timing and they are said GURU DEV Shiskha or whatever they have named an NGO and a there are dragging them So see Sir I mean we are so called we are implementing the RT Act.

Justice Chandru: NOT CLEAR The e.g. given by you are true examples we have a sophisticated system where the school two fees system 9 to 1 the regular classes 2-4 special classes if you pay extra money you can sit till 2-4 otherwise 9-1 you can just go like this same fee now which is much more sophisticated that money decides whether you want to get a

better facility so during that afternoon session they have advanced mathematics they have yoga session they have a general knowledge improvement in they also trained for IIT entrance exam all this [NOT CLEAR]

Dr. Bhuyan: So in an attempt whatever attempt we are making to eradicate this it is to little and in fact it is perpetuating more a of this identity you know creating new sort of identity which is more discriminatory than the once which were exist sting ya more dangerous to the society it is again based on some class and caste concept not only caste it's not class like you are talking about class and caste concept so that is going to be more of danger.

Justice Chandru: We have a service rule where a government servant shall not engage in child labor in the house how does it come you are asked many topper government servant they all bring a girl from a village and give her clothes and give her residence and give her food and she will tend to take another baby then she will take her children to the school then she may help the madam in cooking and later she will become a full time cook all this she will grow in the house so you speak to any officer during leisure he will thinks he is doing social service . I asked many people otherwise she will be doing heard ling cattle in her village just sitting a t home I have given her a new life. I have put her on this my wife teaching her alphabets never think it is a social service it is a good exploitation that is why the government has framed the rules no no child labor in the hose why the government should bring rule like this .that is why people now think in our country that a child we are helping the child otherwise it will be starving this are the attitude we have.

Dr. Bhuyan: So this the one best example of how particularities and objectivity differs now here you are thinking that in this situation you are 4 actually helping the child you know feed himself for self and survive but at what is required in the systems levels are eradication of child labor you are what are you doing here is justifying child labor you are trying to say that ok in this condition it is better in other condition but the system needs to eradicate that yaa.

Justice Chandru: of all the child labor conviction so in a particular district took 100 cases and then another is this case one magistrate rise in the order acquitting the a employer instead of honoring for a giving a poor child for employment you are hounding out this man should be honored honor is written like that then how can we enforce any law out of.

Dr. Bhuyan: is what also is happening in corporate levels these days they say we are engaged in them in enlighten child labor we are giving them skill so that they grow up they can sustain themselves so instead of that otherwise they will be roaming and rag picking in the streets so therefore it is more enlightened so that is our argument that they gave.

Not clear A forced labor is prohibited child labor is prohibited article 45 talks about children being in the school if children is going to be in school how can they be labor allowed so the Judge rises that the parents may not agree for the depriving help for the economic help for the family and therefore the parental attitude is the greatest reason for not interpreting an article 23 article 23 uses the hazardous labor what is hazardous nobody knows a child working itself is hazardous but what we now say hazardous industries and nonhazardous industries it can work in some nonhazardous industries so you go to any hotel they will wash the plates they will clean the table you go to any mechanic shop they will do cleaning of the process so we ourselves introduce ya very selective term of hazardous so when M.C Mehta filed a PIL regarding match working workers very startling judgment you will find now the Supreme court in principle agrees that child labor is abolished and hazardous industries so in match industry what is a hazardous process any process in which the child will come into contact with chemical should be compelled to be hazardous so we have a particular work called packing what is packing in our dictionary meaning packing means you put all the match boxes into the cover put a label that is not packing that is commercial packing for sale for shading it outside here packing means a huge wooden boat in which 144 groups will be there that child will arrange the all the sticks grooves then this chemical nitrate chemical is applied then it is put in to an oven for a wax coating then it is taken out of the oven and then the child collects all the sticks puts into the boxes and then the boxes are saved a label is put and then come a commercial packing . Commercial packing is done by the others but his packing work of arranging the stick and bringing back the stick into the box is done by the child now SC judges does not understand what is a packing so one Judge writes it is there in the judgment nimble fingers are the best student for packing why not nimble fingers are the best students in the classrooms I am not blaming I am only saying when you take up a case you divorce from the reality what is packing so they said nimble fingers are the best student for packing which is illegally authorized sale in a hazardous process number 1 number 2 all this factory is having a peace red system number of sticks your number of box you make they pay accordingly . now under the Minimum Wages Act the adulterates are fixed likewise the young adults are also fixed now what is a wage of a young adult is 60% of the adult now in a factory where it is completely done by the peace rate

and not the time rate you can't fix 60% most of the children are employed in this packing because they do faster than adult they are able to work much more they are reflex action is much more that is why the only child children is employed now when children are paid on piece rate bases Supreme Court passes an order 60% of the adulteration we pay to them. First you allow child labor allow child labor in a hazardous process then you fix 60% that is for lower the salary they are receiving that is why when PIL comes shorter form of Public Interest Litigation is PIL in many times it is become a better PIL in practice...

Dr. Bhuyan: Yaa the other factor that we possibly talks about is the danger particularism right here again one of the prime audile particularities when it is found in almost all culture no culture in the history of mankind is free of this kind of particularities I mean in every culture in some form or the other introduced some form of hierarchy here or discrimination and distinction here on the basis of gender. And common mistakes of all this system is it try to exclude them from the decent under the respectable category and therefore the lens through which you are seeing those cases becomes different from the lens that you would use in other cases I think the most important case which I have kind of seen is that other.

(NOT CLEAR)

A priest of 70 year old somebody 40 years old and things like that an Judge is saying that how it is possible these are respectable people they don't want to touch the untouchables how can they touch the untouchables and how can?

Sumit Bhattacharya: There is a case also called *Bhawri Devi*

Dr. Bhuyan: and it's an actual case which a I mean which is depicted in the film is that you know they are saying that you know this people are respectable people they wouldn't be doing such things and they wouldn't be touching them in fact the social boundary of these people touching these people prohibits them a raping and the second thing is how can 70 year old and the 40 year old rapes at the same time it is not possible that also I mean that was the Judgment I guess.

Justice Chandru: We have one Judgment very under article 377 here are two reported Supreme Court judgments allow you should read that because our 377 is under discussion in Supreme Court one Judgement relates to a Swamiji who was abusing a boy and he was

convicted by the trial court performed by the High Court and Supreme Court reverses the findings the Judge writes the allegation was that the boy was taken by the Swami 10'00 Clock after all the Pooja's were over he was taken out of taste and he was sent back so the boy told the court this what happened to me the Supreme Court writes it is unthinkable such things takes place during day time acquitted so where do you fairness exist.

Dr.Bhuyan: that will not go that will always hunt you and probably for many such cases people commits suicide for no fault theirs because they have been stigmatized and they can't leave their respectable lives so I think you know some where it is required that's social sensitivity is very important whether you have passed through such experience or not passed through such experiences but somewhat trying to assure the objectivity which could deliver a fair decision is much more important than anything else because that is what will keep the faith in the system alive and probably the institutions can change the way or the nature of our living and make it more sustainable and more proof so a selfish grounded in our dialect rotate in individuals balancing moral voice with the passions that are induced by our dependents and others and as Rousseau has said there is always a general will that emerges in, in spite of our particularism- of individual interest a so there is always a general wheel for establishing something which is fair you know all of us probably are thinking that India should corruption free but when it comes to a ground realities somewhere or the other inner subconscious we fail because we are just catering to the particularities that is required here many people these days I have heard it was very surprising to me I have met few people from this state I do not exactly remember the place but a they said they have to pay a an some 10-15 thousands as bribe for getting their adhaar card and voter card that's because it is now been now linked to lot of welfare programs and then I said you know this is something which is very new to me why don't you place kind of complaint about it then they said what would have happened like how are things will be delayed and people who do not complain they will get an facilities so who is going to kind of you know get into all these things and then not ripe the benefits I mean what the system is providing so therefore some where there is a collective consciousness that we all want like I think I mean I don't know that movement a kind of little bit of a I mean back track or something but when it started the Anna Hazare movement in spite of the fact that he is not such a good leader or you know there is no not exactly such high agenda like you know like Mahatma Gandhi had all but he still he got so much support because there is somewhere in the consciousness of people that India should be corruption free. But then when it comes to ground realities everybody is ok with paying for passport paying for driving license paying for Adhaar

card so that kind of somewhat destroys the moral fabric and a we remain in the domain of particularism and somehow the need of the hour is to transform ourselves from these particularities to more in the direction of just and fair kind of a society and that is where all this social sensitivities important can I continue or its time. I can Ok So sorry institution is very important that acts as restraint to inner.....and of course that we will have to be the case until the vision of individuals self-restraint takes over because I think most of you have read Karl Marx when he said there is a possibility of us living us in a stateless classless society but if at all it is going to happen in the society until that time it is only these institutions like be it executive be it a Judiciary be it legislation these institutions are going to ensure that our passion or the our lower kind of conception of the self is somewhat a moulded towards the higher self ok so these has to be ensured by this institutional frameworks because there is no other way until we reach this stage where we actually are capable of living in a stateless caste less society on our own without being regulated by external conditions it is all internal but that is a long way to go on probably have to wake . So here i wanted to bring in a justice as fairness as to how a Justice requires fairness and how justice can deliver fairness and I want to explain this through the works of a John a great philosopher who passed away I think in 2013 so I think I can connect this to tomorrow's session and explain there because we already running short of time so I will take it over tomorrow morning I will start from here all right so Thank you so much for the patience for hearing and I enjoyed interacting.

Sumit Bhattacharya: so we break for the tea and thereafter then the library today again 6.30 there is a film show as I announced earlier most probably NH-10

Justice Chandru: One to mention in the paper book we have paper book given to you there is an article by Fabia at page -249 if you see page 252

Sumit Bhattacharya : page 249 then go to page 252 and there the in Bhaveri Devi Case what the trial Judge may remark about the incident is mentioned the comments in the BhaveriDevi Rape case bring out the judicial bias even more startling the quotation given it is beyond doubt that teenagers of the same age can commence gang rape but it is beyond comprehension that those who live in rural culture would in this manner commit a rape particularly in collision with someone who is of 40 years of age another an Brahmin who is 70 years of age during the broad day light in the presence of other men in Indian culture is not fallen to such low depths but some who is brought up in it and drastic man will turn into man of evil conduct who (Not Clear). This only analysis for the case but the Judge himself gives.

Participants: NOT CLEAR

Sumit Bhattacharya: Sir you were telling something he wants to he wanted to speak something Sir you aap kuch bolna chah rahe the haan aap Sir

Participants: NOT CLEAR

Sumit Bhattacharya: So yaa that the Supreme Court decision already done. So Ok that's a different case because that's the Supreme Court decided decision yaa

Participants: Not Clear

Sumit Bhattacharya: Ya and so we break for tea and there after we go to the library and 6.30 we meet here again for the film show.

Thank You very much for coming.

SESSION 9

Rationality in Decision Making Process

Speaker: Dr.Nishigandha Bhuyan

Dr. Nishigandha Bhuyan: A very Good Morning To one and all good morning so a to continue our discussion like Sir said please feel free to ask any question that you would like to be discussed because I owe orientation and my orientation is different so I do not know what is the exact expectation that you have so you can help me if a the kind of questions then it will be nice I am open to intervention so today's topic is rationality in decision making process a here this is how I plan my presentation I will give you a an overview of rationality in decision making when it comes to the domain of law As compared to rationality in other academic domain's and at the end of it I will kind of a give you a theoretical framework of rational decision making and followed by an exercise of the theoretical framework which I hope a would be little interesting because you have the exercise which can relate you to the theoretical framework that we are discussing hereto rationality a in the common parlance or in general understanding is something like a systematic procedure of a analysis that support the outcome that support the decision that you take so rationality is nothing but a systematic procedure of analysis that is how a rationality is distinct from something called emotionality basically this is in that academic literature these 2 are post dichotomy one is rational decision making another is emotional decision making emotional decision making is supposed to be influenced by the emotions of the person concerned and objectivity of the decision can be assured if you have taken the systematic steps to make it more fair or rational so rationality somewhat connected with fairness rationality is connected with objectivity somewhat connected with universality so here a reason is the source of knowledge a i mean your thinking is the source of knowledge . knowledge is not just coming out of the experience with the world rather knowledge is more an outcome of your competency and capacity to think there is a philosopher who said Caustic Argo some which means I think therefore I am my existence depends on the fact that I am thinking being so rationalities an outcome our competency to think or analyses in a logical manner so logic is also extremely important in rational decision making because it has to follow a particular systematic structure therefore the role of logic . power of mind that filter out clarity and relevance from contamination and irrelevance so that is also the kind of enlightenment view of law so emotionality or sense experience can bring in

something like contamination or ill events or facts which are not rationally relevant to the decision making process ok so so ill event facts might come in that you know the witness if somebody is related ok and therefore a the witness cannot give a fair statement because the witness is related to the culprits so it's like you know there is a emotional relation between these two peoples the judgement here cannot be objective and fair or logical all right. So rationality has the power to take it out from that domain of contamination and ill events to the domain of clarity and relevance and rationality is the term which is actually used as a very extensively in the academic discourses starting from the economics to political philosophy so in economics other tool tool of rationality is nothing but reason through reason you achieve rationality or rational judgement achieved through reason which is your power. So in economics the reason is related to the cost benefit analysis and if the cost is less than the benefit then that is what is reasonable to do in economics what is reasonable to do is where there is a minimum cost maximum benefit so there is cost benefit which is usually called utilitarian approach or utility approach of decision making where you want to minimize the cost or damage and enhance or increase the benefit. in psychology this is reason which is superior to emotion so the reason here is something which is superior to emotion because the emotions are clinging emotions are binding emotions can influence you to do irrational as a father you cannot give witness against your son which will be damaging to him. So emotions are more contaminated ok clinging therefore reason is supposed to be more superior than emotion and therefore it is objective and unbiased in philosophy reason is again a superior source of knowledge compared to the source of knowledge or the knowledge that you gain out of sense experience or sense perception that is called a Posteriori which you gain that knowledge because you are perceiving something or experiencing something OK whereas this knowledge is prior to your experience something that is in act that something that is unique to your competency of thinking so even without experience there is something in you that is actually helping you to experience things OK so there is something inherent in human nature which is the capacity to think OK Al right and in political philosophy reason is like justifying the relationship[between individuals and institutions right so its again combination of all this cost benefit analysis an objective of unbiased superior form of knowledge so political philosophy and therefore whatever is in political philosophy gets translated in to legal philosophy and in law reason again is something which gives you objective basis of rational decision making so which is unbiased which is not influenced or contaminated by subjective facts. So concept of rationality in law as it exists today I think one is pure logic where it is completely uncontaminated another is logic plus social experience. So here you are kind of adding two

things together so reason or the rationality that where utilizing in decision making in law today is a combination of both the pure reason which is logic plus the facts that is derived from our social experience OK so social existence is kind of giving us lot of a view to experience or get acquainted with facts of life which we may not be accessing through pure reason because without experience such things will not come to our for front such things will not be evident to us whatever is the complexity of social you know disputes or conflicts OK some like this morning we are discussing you know some conflicts are so unique some conflicts comes with so much of particularities it becomes extreme difficult to find a solution to that conflict or resolving that conflict you know objectively and you know subjectively anyway if you are influenced by one party then decisions are clear decisions are I mean more biased they are but it is kind of you know you know what is the thing but when you are trying to consider the particularities of each instances here or each person's stake here it becomes an extremely difficult to come up with a decision which would be optimum decision not maximum that can only address to one party so which is an optimum decision and acceptable to all the parties to conflict OK that a difficult challenge so is law a rule based reasoning or prescriptions if it is then the problem is you will fail to cater to the social experience if it is not then there is a room for addressing the social experiences that you undergo so if it is so if it is pure rule based which is like probably initially you can it is outcome of that pure reason ugh the process of reason you are arriving at the rules of law so if it is pure then there is a chances it might be ignoring the social experience because sometimes you say rule of, law rule of law means it could mean of course I am explaining it later it could mean that it is not addressing the particularities of the particular situation right then a if not how to explain the tacit basic of judicial preferences that inference. So if it is not OK and everything is just law or following or following rational law then how do we explain certain tacit things that we add on our judgement and which may probably makes the judgement more a fair OK more appealing. So in an sense does rationality alone failed guarantee legitimacy so if rationality just rule of law Ok which is catering to the letter of law instead of addressing the spirit of law then does rationality failed to guarantee legitimacy to the decisions so does legitimacy requires a combination of both rationality as well as social experience. So social experience there is a contradiction here as I said one I am saying that it could contaminate your decision making two I am saying that is necessary for your decision making so there is a problem so the problem is your social experience or your clinging certain particularities could contaminate the decision but at the same time there may be an essential component of your decision making Ok so there lies the problem so this is what rule of law means like little bit more explanation I mean I am sure all of you would know more

about it but I am trying in my way to explain what it would mean so legitimacy of logic legal institutions is due to rule of law which is their purity of content of purity of principals without being constraint and contaminated by the situations so purity of principals so society ruled by law order and justice so outcome would be it will be more fair concept of no one is above law so rule of law actually gives in to idea that no one is above law so it is applicable to one and everybody be it a tycoon business tycoon be it political a figure or be an ordinary citizens so rule of law also means it is applicable objectively to everybody so nobody is above law. Right then in one sense it legitimacies the existence of state and sovereignty of the state and our citizens. It doesn't means to control the arbitrary power of citizens so I think little bit sorry power of citizens well I will explained that I think i will take 2 mins to explain that why it is necessary to have a state . Just thinking little out of the box why it is necessary to live in a state for us human beings other creatures are not living in state right they do not have a democratic or any sort of nations for e.g. right so why it is necessary for individuals to live in a state .Is it necessary yes and why it is necessary

Participants: Not clear

Dr. Nishigandha Bhuyan: OK so can i try little bit of political philosophy if it is not or that will not be boring ok so this is how the existence of state is justified I mean what I am going to talk the existence of state is a latter development of human existence right human being did not existence under state in the primordial time they existed as any other creatures in this universe right so at some point of time it was felt that there is a necessity of organization or an organized form of living which is supposed to be more beneficial than the ordinary living where everybody every day is fighting for survival you know fighting against each other for survival because there was no rule no law anybody can prevail over anybody else so that is where I think some notion of Darwin's survive of the So survival of the strongest was the rule of the existence OK so whoever is strong can survive and they had the absolute freedom to manipulate with every other creatures existence even today we have but not when it comes to our relationships with other citizens it is true when it comes to our relationship with other creatures right that we do that we should not be doing but we do but here so because there is a arbitrary power of Individuals and to contained the arbitrariness so we come to form something called as a state which is beyond the state of nature state of nature where everybody can have can at least think of having absolute and arbitrary power of citizens so I think little bit sorry power of citizens well I will explained that I think I will take 2 mins to explain that why it is

necessary to have a state . Just thinking little out of the box why it is necessary to live in a state for us human beings other creatures are not living in state right they do not have a democratic or any sort of nations for e.g. right so why it is necessary for individuals to live in a state .Is it necessary yes and why it is necessary

Participants: Not clear

Dr. Nishigandha Bhuyan: OK so can i try little bit of political philosophy if it is not or that will not be boring OK so this is how the existence of state is justified I mean what I am going to talk the existence of state is a latter development of human existence right human being did not existence under state in the primordial time they existed as any other creatures in this universe right so at some point of time it was felt that there is a necessity of organization or an organized form of living which is supposed to be more beneficial than the ordinary living where everybody every day is fighting for survival you know fighting against each other for survival because there was no rule no law anybody can prevail over anybody else so that is where I think some notion of Darwin's survive of theSo survival of the strongest was the rule of the existence OK so whoever is strong can survive and they had the absolute freedom to manipulate with every other creatures existence even today we have but not when it comes to our relationships with other citizens it is true when it comes to our relationship with other creatures right that we do that we should not be doing but we do but here so because there is an arbitrary power of Individuals and to contained the arbitrariness so we come to form something called as a state which is beyond the state of nature state of nature where everybody can have can at least think of having absolute and arbitrary power Ok because nobody is controlling you right nobody has jurisdiction over you accept the fact that you are the fittest if you are the fittest you are the one who would survive and you could manipulate with anything and anybody for that matter so to come out of that state of an existence which is unjust disorderly people consented to live under an organized form which is the state . Ok and then you assigned maximum sovereignty or your complete freedom to the state an exchange the state guarantees some fundamental basic rights to you Right so you give sovereignty to the states state has the complete authority over the citizen and the citizen here is protected which was not the case in the other example where you are constantly fighting right your fighting against each other here your fighting has stopped because somebody has taken care of your basic rights that is the state Ok that in political theory that justifies the existence of state and state having maximum authority over the individual and because state having maximum authority over the individual

these institutions of the state are a means to ends you are the basically liberties of the individual; institutions like law judiciary executive so state kind of creates avenues for guarantying the justness order in society and these are the mechanisms so sometimes you know people you must have heard something like police is necessary evil have you heard this police is necessary evil so why it is evil because that controls you right other than that there is nothing right so it controls necessary because it has to otherwise it is disorderly unfair unlawful I mean there is no law and order. Right so this justification in one sense this rule of law kind of legitimacies existence of state and the sovereignty of the state over citizens otherwise I am all powerful right so absolutely free there is no state over me right and my absolute freedom has nothing there is nothing to curtail me except the power of nature whereas here there is something to curtail me so whatever is my right has to be compatible with similar rights of another citizen right so my liberty ends where his liberty starts therefore state justifies so rule of law kind of is more in this direction of legitimizing the existence of state because when there is rule of law when there is state rule of law and when there is rule of law we have compatible rights and liberties otherwise it is not possible . otherwise it will be conflicting rights and liberties not guaranteed by anybody nobody to protected therefore it would be disorderly al right that is one sense another sense it is fair balanced and truth centered which is again no son of objectivity that was that i was trying to explain in yet another sense judicial enforcement of legal rights and duties so rule of law basically means the 3 things i mean it could be understood in these different senses one is the legitimation of state over citizens Ok legitimacy of state citizens second it is more fair balanced and objective which is taking into consideration every citizen so nobody is above law . Therefore it is more fair that is also rule of law and yet another rule of law is the judicial enforcement of legal rights and duties so i know there is a special act that is judicial enforcement of a particular group of peoples special rights right that is again rule of law I mean if you are associated with this SC/ST Act you know how to implement that so it is like the judicial enforcement of legal rights of a particular group of people right so that is again rule of law. How we apply reason to law so the enlightenment you of reason strong to decision making process in general because of its just objectivity fair rational resolution of dispute and rational law is both necessary and sufficient condition for political legitimacy it guarantees good governance because it doesn't say that if you are a political member of a political party so you are a above law. Right so it guarantees justice to everybody legal rules are a check against the antidote to arbitrary power of any individual or any other institutions which is not aligned with institutions of state all legal rules are capable of filtering out the legally relevant from the legally irrelevant that is what reason or purity of reason would mean in love so they

must ill clear predictable consistent objective legal standards that is a expectation of rationality in law ok so rationality in law is nothing but expectation that it must yield clear predictable consistent objective legal standards . But there are certain limitations and this limitations are they may fail to achieve objective outcomes they may because human nature is complex right so I am sometimes they interpretation rule of law could again go as per the letter of the rule not as per the spirit of the rule right so there also be failure in.

Participants: Not clear

Dr. Nishigandha Bhuyan: so yeah extra legal considerations here probably what i mean more this political social

Participant: Not clear

Dr. Nishigandha Bhuyan: OK Al right yeah I am mean so some cases require that extra legal considerations OK I think yesterday we were discussing some cases about yeah a that public view full public view or public a places you know those are the things probably in my definition probably would come under this yeah ..Al right these are limitations of legal rationality so here a I am here to bring in a particular philosopher to explain how this domain of legal rationality or rationality in law could be more fair. Objective and just OK actually he has written this course mostly keeping in mind the social justice he has not kind of directly oriented this philosophy to legal justice but I see a potential of that social justice to be somehow applicable to the field of even retributive justice. Social justice is distributive justice so i will feel this also can be applicable to the retributive justice system ok and that is what I am going to explain for 10-15 mins and then possibly give you an exercise on this ok. So though it is focused and distributive justice it has the potential to guide decision in retributive justice. He is saying that justice is nothing but fairness he is equating justice with fairness the general conception of justice in social justice is actually justice is equivocated with equality ok he is not doing that and very intelligently because there is no equality which can be guaranteed in state except moral and political equality as of now i think as a society we have been successful in guaranteeing some amount of moral and political equality but we are struggling for economic and social equality which is an which is a objective for us to achieve as a good society but we are struggling to achieve that some amount of moral equality where we consider every citizen to be equal to every other and that is reflected in the political equality where a every citizen irrespective of power and position and wealth has one single particular right to vote like if you

are a business tycoon you can not 100 votes against one vote a particular individual right so therefore some amount of assurance of that equality in moral domain or a ethical domain in conceptual and political domain is assured. But what the society is trying to achieve is a economic equality and social equality and they are probably completely inter dependent with each other without economic equality social equality is not possible without social equality you know coming to that level playing field economic equality would not be possible because everybody has a potential to utilize at the resources in a completely different manner right but a virtue of social institutions measured by fairness in allocating benefits and burdens defined by the two principals and i will try my best to explain this to you so justice is nothing but a virtue of social institutions ok as justice as fairness how can justice can bring fairness is through social institutions and that is dependent on this two principals . One is principal of liberty so look at this each person participating in a practice or affected by it has an equal right to the most extensive liberty compatible with like liberty for all and I am trying to give you examples from law this is like the this sort of equal right in law guarantees the due process .Ok I am sure all of you are acquainted with due process and right to fair trial so every citizen irrespective of you know his particular situation irrespective of the fact he is accused of something or not but everybody has a right to fair trial and that is the due process so ok due process ensures the liberty ,rights, basic rights , liberty and equality of every individual. Right so due process therefore every individual has a right to fair trial. Right so that is what the liberty principals should ensure here so he is talking about in case of social institution I am also finding a parlance in the legal system right so equal right to most extensive liberty compatible with like liberty or fault. If that is most extensive liberty in the case of law which is the due process it is applicable to one and all. It is not limited to some and not applicable to others it is equally fairly objectively applicable to one and all right So the principal of difference here again he is saying difference can exist Ok which was a contention there when we talked about rationality we talked about whether social considerations or like the extra legal considerations are part of the process of legal deliberation or legal decision making so he is saying it can be their but there is a condition for it to be there. Ok so what is that condition this inequality b otherwise be arbitrary unless it is reasonable to expect that they will work to the advantage of the list advantage. I think it is where this is where our point is and this where you must see why you have I mean this kind of a training Right if there is necessary to have this sort of inequalities there must be to the advantage of the least advantage OK So yesterday's case i can quote you know that SC/ST women who have been dragged by another person Right to the a garage right and we are distincting about whether the modesty is violated right and there was an another factor modesty

and the outrage. Outraging the modesty and there is an another factor yeah dissenter OK so even if we are considering that she should get some consideration of the fact that it is actually an an act of dissenter to a person office special group Right right so if that is a case then our laws can have that particularities so that is why you have these special acts right so this inequality in the system or in the social institutions and institutions of whatever you know justice this inequalities can figure in if they are to the advantage of the dis-advantage otherwise they will be arbitrary . OK so these social factors need to be in consider in to our decision making process so pure rationality is not the only thing that matters here. Rationality need to incorporate these things. Right so the position officers which again is not very a close to that but still the position and offices to which they attach and from which they may be gained and open to all under conditions of fair competition OK So it is under fair competition accessible by all Right and how that fair competition can be insured I will give an example try my best to explain this what is a fair competition in a game? Suppose you are playing a game suppose we divide the entire a audience in two parts to play some sort of card games yeah playing as per rules I think i will explain that little more like how this rules can come OK how these rules are ensured to be fair OK so here after you start playing one party discovers that they have the excellent cards and this game is in their favor and in 99 percent chance that they are going to win the game and in a minutes time the other party discovers that one particular card is missing right so one party is very sure of the win another party is in a vulnerable position because they do not have necessary means to fight the game properly right so they need certain number of cards but they are following sort of card right so what would be the case here it is a case of conflict it is a case of dispute the party which is having good cards wouldn't like to give up the game because they know the game is in their favor the party which is not having the card would always want to throw the game and restart isn't it .

Participants: Not clear

Dr. Nishigandha Bhuyan: Yeah so exactly how that fairness can be insured here I am contesting I have my inclination my instinct to win and everybody has that

Participant: Equal facility

Dr. Nishigandha Bhuyan: equal facilities how so everybody has this instinct to win over the other right have more power over the other right so whoever is playing the intention is to mean the game right so this party is sure about winning this party is unsure about winning about

therefore this party is wanting to throw and there this party is wanting to continue this can be assured if the rules like Sir said of this game is designed before the game is started. that is where you can insure fairness how because what all these two parties would know that there might be a situation where one party is having curd another party is not having the record number of cards but what they will not know is who will be Oh whether i will be that weaker party or I will be the stronger party I do not know and that time for me to design fair rules or accept fairness of the roles would be easier. right So if the rule is already there and when the rule is deigned all that you that there is differences there are differences OK so one is a advantages position one is disadvantages position one is very strong position one is weak position but what you did not know is who will be in which position and that case for both the parties to agree to the fair rules should be extremely easy. OK but once the games starts the tendency is I should manipulate to the extent possible for me to be the winner that is a tendency that is an instinct nobody can deny that isn't it right so fairness can be ensured behind the whale that is what this person says behind the whale all that you know that there are positions and there are disparities in these positions but what you do not know who is in the inferior position and who is in superior position therefore for you to design the socially institutions in a manner which could be took the advantage of the most disadvantaged Ok and his I mean his completely making sense to this design of institution as per my understanding Ok when he says this fair rules can be designed here and rules are not fair if there are arbitrary but the arbitrariness can be justified if there are to the advantage of the disadvantage like yes OK i think i am clear or any question to be clarified here. Am I clear OK Thank You Thank you so much OK so who are the least advantage those which lowest expectations for access to primary goods what free and equal person need a citizens so the due process is also a need of a citizen as a free and equal person right and there are conditions of a yesterday we discussed this arbitrary conditions Sir was telling all those things like you know there is a incident that has happened with me I am trying to report the case but there is no facility I cannot reach the police station somebody is preventing to go to the police station there are no boss there all buses cancel all vehicles are cancels so I cannot go the police station OK so I lack the necessary means available otherwise available to every citizen of a free society. OK So this arbitrariness kind of mix these list advantage therefore these considerations their positions requires special considerations therefore pure rationality cannot be a factor whereas these factors are Sire was considering that you know why a FIR was Lodged late it's because I mean I cannot reach there conditions are made so unfavorable for me there is no access to the primary good that otherwise would I expect to be there so this primary good here becomes my access to the police station Right but

I am deprived I am made to be deprived right so in that case this is the least advantage and therefore that requires special considerations and this is how he defines the basic rights or what are the basic goods here like liberty property is there and that is part of the legal this courts OK so social biased for self respect a these are the 5 kinds of basic goods aspects of basic institutions normally essential if citizen are to have a lively sense of their oath has persons advance themselves with self-confidence this is what I mean by moral equality I should not be like yesterdays He also coated another I think you had done this case study somebody is saying because you are a Chamar you cannot have a job here Right So that is what I would consider the probably I don't know if Sir meant it as the extra-legal factors right so those who lack access these goods are the least advantaged OK this is where the least advantage comes in and he justifies his claims a original position which is a well of ignorance inside that whale of ignorance because you know the societies are full of disparities so society is full of arbitrariness society is full of discrimination therefore pure rule of law would something not so good or not so just which otherwise you would think as just or fair may failed to be just and fair because there are least disadvantage or least advantage people in the society and there level playing field is not similar to every other people so the primary goods are not insured therefore this provisions OK need to be there al right I think I am kind of done so we can read that so I think. So I have a given a political a simple example of a distribution of a toy among three children's based on their claim to that good so it is a basic good right which everyone has a right to claim . And my in an abstract I am wanting you to discuss within a particular I think in one table as you can discuss as to what sort of institutions

Participants: Not clear

Dr. Nishigandha Bhuyan: Ya I will also put in a slide

Participants: Not Clear

Dr. Nishigandha Bhuyan: is there anything possible to distribute it fairly ya please Carlo

Participants: Not clear

Dr. Nishigandha Bhuyan: Sir Ok any can be there be something some arrangement yes can be there be some arrangement where all these three people can be benefited out of a distribution that is what is more important than giving it to somebody . Sorry Sir One possible relationship

between No between a and will I mean exchange can take place very fairly without any obstruction because if have money to by the flute right and can pay the money for both there is an incentive for making the flutes so when he gets or she gets more Carlo more resources then she can make more flute so in that exchange more that people are benefited with each other look at BOB what is a requirement for bob he wants toy probably no utilization of flute for him he has admitted that it's just a toy and within this process of exchange between An and Carlo something can be given to Bob which satisfies his basic needs of a toy OK he is not exactly demanding the flute for him it is a basic Ok of a toy and that can be work out from the exchange that happens between these two peoples . So in that process the exchange there fairs everybody is requirement is satisfied no Why

Participants: Not Clear

Dr. Nishigandha Bhuyan: sorry see for Bob I think in the last slide i said there are difference set of principles and institutions which can be for bob there could be various options one Bob can be trained by Carlo Bob work as an assistant to Carlo Right Bob can be trained to play the flute if none of these can be done to Bob at least something can be done is to donate a toy to Bob. His main requirement is toy right and there is surplus with here with Aan and Carlo so bob can be given a toy.

Participants: It is no other option available how you will arrange for other things I agree

Dr. Nishigandha Bhuyan: I agree to that I agree to that but since i posed it as a social good which is to be distributed among the unequal equal people therefore this faculty of imagination was important that you know how if it is not just a toy it is anything else how a society should make arrangement that this is accessible to everybody who needs it

Participant: Not clear

Dr. Nishigandha Bhuyan: ya but so Carlo should get it. he doesn't have a utility attached to it he doesn't know how to play but he knows how to make and he knows how to make he will utilize only when he gets money for it and Aan can pay pay the money she is also rich she can pay the money and that makes the car manufacture manufacture car ya yes she can teach. Fantastic Sir one is that I teach to play you teach me how to make that is also fair exchange that is also a fair exchange in a system. Right But when these.

Participants: Not clear

Dr. Nishigandha Bhuyan: Exactly so only difference here is in case of bob he is not equal with them so he neither has resource to make nor he has talent so should we some .No No exactly it is some provision should be created for Bob to be equal with them that is the exactly the case and initially since there is equality is not there you ensure it through some distribution OK which why you pay tax which goes to the benefit of the disadvantage. Right so I think you know one can imagine in that way how social institutions can be fair which can make provisions for all parties their talent competency resource everything can be taken care of Thank you so much.

Justice Chandru: we can also have another methods like our salmon justicethe other ADR method given to a court officer.....

Dr. Nishigandha Bhuyan: this is from Amartysen's book idea of justice so this example sorry no no idea of justice and he is a student of John Rolods about whom I have talked about it.

Justice Chandru: we will go for a tea break and come back. Thank you.

Session 10

Moral development and Ethics for judging

Speakers: Dr.Parul Rishi,

Justice K. Chandru

Sumit Bhattacharya: So ladies and Gentleman Hon'ble Judges welcome back post tea lot of hilarious session has happened and we have had fun so just taking up with the next session with the permission of Honorable Justice Chandru Sir I would now be very happy to invite ma'am Parul Rishi Prof Indian Institute Forest Management IIFM which is next hill she says so we are very privileged to have you amongst us ma'am and as the session is on stages of moral development and ethics so ma'am will be taking the session from here on; so I request Prof Parul Rishi to please taken up from here, Thank you Ma'am.

Parul Rishi: thank you Sumit and thank you Honorable Justice Chandru for giving me this opportunity to interact with all of you as already told I am the closet available faculty to this institute from your Guest House you can see my institute it's on the other hill and the top of the hill and the since last few months I have been regularly interacting with a esteemed judges like you and the registrars in different gatherings and this session is of course is the third or the fourth time I am sharing I am just sharing with people like you help from me original I am from Agra the city of Taj OK basically my ancestors were in Punjab if you want to just know it further but I am born and brought up in UP anything else you want to know . It's good we are going to be here for 2 hours so if we are starting with the informal note absolutely no issues with me anything else I am a Ph.D. in Psychology from Dayal Bagh University Agra and the I completed my Ph.D. in the year 1992 24 years years back when I was just 23 anything else hahahaha OK a what happened with this so I am IIFM and have in HR mgmt. and I have currently since last 3-4 years I am involved in business ethics and corporate social responsibility related issues and with the incoming of the recent companies Act 2013 this CSR 2% spending on CSR has become quite important so I have been teaching full course on Corporate Social Responsibility Business Ethics and presentation that I am Going to share with you is a part what I am what teaching to my students molded in the different perspective to suit

to you needs so this what a brief introduction about it I want to keep it interactive I just don't want to sit here and be on the other side of the table I want to be the part of you so that the more closer we are the more we can learn with each other that is the objective it is a mutual learning experience a from a many of you I might be quiet inexperienced and younger so my major objective is to learn from you rather than just to just say something so this we will wait for few minutes because the photocopy is just going to come it's an experiential exercises that I have just designed creating some stimulated situations on which you will be just giving your reactions and you will just see where we are and will start with ethics teaching ethics to Judges is really a challenging task because rather we learn ethics from you people but just in a systematic way I have tried to organize certain things like ethics when we talk about from where they come . The question arises from where ethics come so you all know that you have the noble principles and a values all these documents in which what you are supposed to do what you are not supposed to do so all these things are well lay down in every company also they have a ethical code of conduct in which employees just follow that these are the do's and don'ts s of working in a particular organization so this is the first thing that ethics are documented in the official documents of our institutions and organizations the second place where we can find ethics is that ethics are enforced by law we all know that if we do this this is OK if we are not doing that it is against the law some action can be taken against me that kind of issues are there so we find that's particularly the lay persons that ethics are somewhere hidden around law that we are not supposed to violate the law until unless its violating the it's OK if I am deviating a little around my circle which i have created all by myself it is fine but I should not be caught many people say ok if you are doing some corruption fine you should not be caught that is the major issue if you are caught that means you was wrong if you are not caught and you are continuing to do like that and that for years and years al together it's absolutely fine so it's all different people have different kinds of interpretations of ethics but what I preach that most of the times ethics are in our minds if ethics are there in minds then no matter what the law says no matter what is written in ethical code of conduct it hardly matters for us primarily what matters is what is there in our minds so if our if we are having a ethical mindset then no one can stop you from becoming ethical if we don't have the ethical mindset then we are flexible enough to accommodate different people around us in the way they want then OK no comments its your choice and you must be ready of its reparations that's what we say. So mind from where ethics comes in our minds? Any idea? From where ethics come in our minds?

Participants: Parents.....

Parul Rishi: Parents. Society

Participants: Not clear

Parul Rishi: Peer Group what people around us are doing basically ethics are its a process of our mind becoming ethical right from the childhood till we are grown up in a professions at different stages are mind accommodates and de- accommodates different ethical issues I am focusing on de-accommodates also many times we have a very strong principal mindset but certain situations and incidents occurs around us which force us to de- accommodates certain ethical issues because they are giving us trouble and we are not able to handle that particularly issues related to political pressures and the resulting consequences on us many times we are forced to de-accommodates certain things so ethics start with our values our value system which is a part of our socialization family siblings all you have very well narrated that our culture ethics are part of our culture also and that makes our mindset so mindset is not suddenly created so if you say a person who has been doing all the unethical activities up to the middle age and suddenly you tell him you change your mindsets very easy to say that it's not possible so that's why we say that all ethical issues are to be trained right from the childhood ads the parent as a teacher particularly the most important role which is plate for development of ethical mindset is primary school teachers that's what I say because they are building blocks for children the kind of mind they are going to develop and later on of course with the experiences are accommodation and de-accommodation process goes on but definitely childhood days and our family set up as culture they play a very important role in formation of ethical state of mind

Isko pehle distribute karo so a small experiential learning is in front of you a by the time it's being distributed I am just continuing with that what values are another question? what values are basic convictions of what's right and what's wrong I am just taking this session in a simplest possible manner no complications but if you want to know the difference between values morals and ethics values morals and ethics is this difference correct values we decide what is right what is wrong from my perspective I am the best judge about what I should do What I should not do forget about, about all the principals and code of conduct and law and whatever may be but I am the 4 more judge of myself what is right and what is wrong decided by myself morals although they are build up on our value system but morals are decided by society this

you are supposed to do this you are not supposed to do if you do like that society will take an objection on it so society not like that I want to do that I feel it is correct but I don't want to do in front of others because I don't want any one should know that I am doing this so because the society is treating it as unacceptable so society plays a major role in deciding what is right and what is wrong and many times the just change are values system also to fit in to the existing society in which we are existing. Like you will find lots of variations from state to state can you are from different states I believe If I am right so can you just share with me some of the moral principles which are existing in your state and you feel that they are not like that in other states probably. Anything which is just coming in your mind state just I want to compare with the North Eastern states and the Southern States and the Central India and the Northern states such kind of differences are there yes socially acceptable in one particular society and not acceptable in the other society .

Participant: not clear

Parul Rishi: OK

Summit Bhattacharya: Not clear it is used as Lakshmi Bai in a one state so these are morally accepted.

Parul Rishi: OK something else in certain communities aggression expression of aggression is socially acceptable and the people feel it like a proud like particularly if you take the example of Naga tribes a I have been working with some closely with some of the anthropologists in my institute and I have got this information that in Naga Tribes aggression is a very positive trait and its socially acceptable and in this scriptures it written that earlier Naga Girls use to marry to only that boy who could bring the head of the lion so in that way it used to be a related with the kind of power expression of power the person males are supposed to be powerful and that is yes exhibition so that was socially acceptable but this similar kind of aggression if it is projected in the northern states and the southern states that is considered as a negative trait because that society is not accepting the kind of open expression of aggression so I am just giving you one example, similarly you will find place to place a culture to culture there are variations in morality what is accepted by society what is not accepted by society. Go in beyond the values and morals are ethics, ethics have a kind of narrower framework narrower in the sense that they are from organization or sub-group of society means what is ethical in Judiciary is just related to that only it's not percolating although it's an expression of morals and values

of the larger of the society but definitely there are specific norms which an organization is supposed to follow and that applies to the at organization only so in that way ethics morals and values they differ and you can just find out that value is the largest framework within which ethics are the part of it so ethics are the reflection of definitely are word of values are word of morality but not the core of it just a small part of it is known as ethics . now let us come to a small exercise that we are going to do hmm yes so one page is with you and there are 6 situations which are given over there you may find them absurd doesn't matter I am not the part of Judiciary so I have just try to explain in a manner as it can suit you, you can reject the statement but imagine it's happening like that then what you, you will do in a particular situation there are 3 Choices A B and C for all the six situation first and foremost instruction you have to write number for all the 3 options you would need not take it you have to write option what will be your first choice is to be written as number 1 your second choice is to be written as number 2 and third choice is number 3 but all the 3 numbers are to be written in the boxes in all 6 situations is not to be tick I am just reminding you once again your first choice your second choice your third choice if you are finding situation not fitting you just imagine if at all it happens or you can even modify the situation to help me out to modify this case further. OK so you can just start doing that it will take 5-10 mins of time and at the same time you can do whatever number you are given to all the A's of Situation 1,2,3,4,5,6 so you will find the back of it its written $A1+ A2+A3+ A4+A5+A6$ so all this scores that you have given on all the As of 6 situations you will transfer in this dash and total it similarly for B's and C's scoring I will explain it later first you can do it OK so just read this statement or situation carefully and priorities your possible reaction to that situation not to be ticked 1,2 and 3 options. No there is nothing good or bad then you have to do for B similarly you have to do for B and then was C. are you getting it.

Participants: Not Clear

Parul Rishi: 3 is the last choice means you will not 3 is you consider it as you will not do OK .So friends I am again explaining over the scoring component for all the 6 situations there are A B C options OK so whatever number you have given in A yes I told you not to be tick just 1, 2 and 3 number as per your first choice second and third choice so may be what you have ticked is your first choice when second and third choice you have to indicate. Boxes are not to be ticked all the 3 boxes should have 3 priority first priority second priority and third priority then you have transfer your scores of all the A here A1 means situation number 1 and your

response in A then Situation number 2 your response to A so this is 111 and this is 223 and total similarly for all the B's and all the C's fine please call me if any problem in scoring Sir it's OK Fine Thank You Sir wherever whatever place you have OK yes the court with which your attached currently if you want to fill its optional no problem this is what number you have given no no A,B,C is already there you have to give numbers 1,2,3 and 1,2,3 will be transferred over there suppose you have given A means you are number 1 this is A OK so this 1 and this is 2 OK this is 1 this is 3 this is 2 and similarly this 1,2,3, 1,2,3 so yours is 2,1,1 for A 2,1,1 then here 2 ,1 , 3 then 2,1,3 then 2,1,3 2,2,2 so $2+2+2=6$, 7 ,8 ,9 ,10 so this 10 similarly for B and C. Yes if you can do that you have to give all the A's scores A 2,1,1 2,1,1 then 2,2,2 total similarly for B all the B's and all the Cs you have to score all the A's all the B's and all c's together all the situations you are response to A number what you have given so number $1+1+2$ you have to write $1+1+2$ then $2+2+2$ similarly 6 responses of A the 6 responses of B and 6 responses of C couldn't get it OK let me do it . Situation number 1 response to a is 1 only A's Nahi third nahi Hai aapka yeh hai 2 1,1,2- 1,1,2 then 2,2,2- 6 ,8,9,10 fine like that all the B's numbers and all the c's numbers clear OK you have given 1,2,3 this is 3 fine fine so 3,1,1 this is 3,1,1- 1,2,3- 1,2,3- 6,7,8,9,10,11 like that for B and C fine OK so if you are not able to do that those you have done it its fine otherwise I will do it for you please leave it and lets continue with the session anyone still wants help.

Participants: Not clear

Parul Rishi: Hahahaha

Participant: Very slow

Parul Rishi: Aap bhar denge toh theekh hai nai bharenge toh koi problem nai Hai aapka yeh score Hai na 1,1,2 so aap yaha likenge 1,1,2 haan yaha likenge 2,2,2 and total similarly for all the B's and all the C's . your score in all the A's 1,1,1 1,1,2 then 2,2,3 and then total Fine similarly for all the B's B1 B2 B3 B4 B5 B6 means your score on all the B's of six situation theses are 6 situations yes and $2+2+1$ perfectly fine please write it here so this was a just an experiential learning and will come to that what it means a little later you just keep it with you I will take it at the end of this session I will explain you and then a even if you are not filled it I will just do it myself and I will share the results with the organizers over here because I am already doing it with 3-4 batches I have already done with you so values there are 2 types of values values which are stated and values which are operational many times there is a

difference between this stated values and values which are in practice like what's written in your and what is operational which is actually driving your judicial decisions many times what's written you are not following that you are following something which has been done by the people which is socially acceptable which you feel will be OK and no objection will come on that and many times there is a disconnect between the two please forget about this now when we will do scores analysis later on then during that period you can do it OK so many times there is a disconnect between what is written and what we are actually doing and the disconnect many times you do not know what we are doing is something unethical many times people say its everyone is doing like that what's the problem if everyone is doing like that I am also doing like that so what's wrong in that so many times you do not know that we are doing something unethical and who will tell you when you are doing something an unethical who will tell you? The answer is ask yourself no one is going to tell you no one is going to tell you that you are doing something wrong till you are caught OK so ask yourself if you feel that there is a minutest fear in your mind there is a minutest fear in your mind that what will happen if someone knows about that I have done something with the wrong intention what will happen nobody should know about it if that kind of minute fear is there in our mind we are not supposed to do it considering it a s a voice of conscious as somebody was already saying that listen to the voice of conscious and your conscious is all always there to save you and this is the best check no other external agency external person can give you that check what your conscious is giving no only thing is listening to your conscious for that you have to just be your inside and just think in a calm manner is it OK and I am oK if anyone knows about it what I am doing I have absolutely no fear about it my intentions are perfectly fine if that voice is coming then of course everything is fine if there is some fear then you have to think OK how justified is the fear many times situation is like that that there are fears and you a cannot just take a very pure strong ethical decision there are fears in your mind so it's OK you can analyze the pros and cons of that situation and there are lots of threats to morality these days there are lots of threats to morality a simple cartoon in front of you to explain you even if you are on a right track even if you are doing absolutely fine whatever you are supposed to do you will get run over if you just sit there what does it mean? what this cartoon is trying to explain even if you are on a right track you will get run over if you just sit there wrong systems will crush you OK you have to not just self-interest we have to safeguard your interests you have to in a sophisticated language you have to safeguard you because if you are not able to safeguard you then how you are able to safeguard the interest of the people who are dependent on you for Judgments so first you have to safeguard you many times you are doing the right things but

still there are lots of external pressures there are lots of threats or benefit or there are sometimes humanity concerns sometimes you are own attitudes and biases which create a kind of threat to morality and you have to overcome those threats in a way that you are not violating the morality and ethical issues on one side at this and on the other side you are able to safeguard yourself also so it's a balancing act we cannot say we can just strongly moves towards one side we have to sometimes do the balancing keeping in mind that we are not harming the other party for whom we are going to take the decisions so it's really difficult why it is difficult to be ethical what difficulties we face when we are trying to be ethical what difficulties what practical difficulties we face I would just like to know from you people what are the practical difficulties are there any practical difficulties please share in an open manner this is for my learning victimizations definitely it's true that if you are trying to be too ethical and others who are quiet strong who are like the road rollers as you have seen in the previous cartoon so they may try to victimize you so that is a kind of fear that it is a kind of difficulties so it's easy to be ethical is basically a myth it's easy to yes sure sure yes.

Participant: So it is not feeling a pressure to be ethical

Parul Rishi: Hmm OK, OK that's true so in our mind is the most important thing which applies over here it's easy to be ethical is basically a myth sometimes it is difficult also people have their own a concerns smell test what we prescribe in being ethical which you will conduct yourself no one else could conduct on you if something stinks don't do it if you find something wrong many times we want to be ethical but the facts and figures are presented before us in such a manner that we are not able to sometimes we are not able to get in to it so if we find that someone is just something is just stinking someone, someone is just trying to mis-lead us in one way or other so definitely we can explore it further before arriving at any judgment so there are 2 types of frameworks which we generally use 1 is consequential framework and another is a Duo Ontological framework 2 frameworks are there Consequential frameworks says that whatever Judgment I take in what way it's going to benefit or harm the society in what way it's going to benefit or harm the society this is the consequential framework we can see the consequences of our judgment on society in accordingly we will decide Duo-Ontological framework says that only justice rights and virtues they have them for taking some judgment nothing else we are not bothered about its consequences on society so example of the controversy between a consequential and duo-ontological framework is in front of the Judgment that's given over a here a first example is the child labor prostitution in developing

countries so we have to balance whether we are concerned about its consequence of a particular group or we were concerned about the integrity and virtue and actually as per Human Rights what is supposed to be in many times we are shaken whether a purse a child's aa hunger is more important or child labor stopping al together child labor is more important so many a times we are puzzled particularly in the developing countries that kind of situation occurs similar situations occurred when there was a bans on bar dance in Mumbai you all must be familiar about it and later on it was lifted so the controversial law which was banning the bar dance in Maharashtra which provided employment to 1000 women's was put on hold by Supreme Court in the year 2015 I am not going in the Judiciary aspect of it but I am just trying to say that looking into the consequential frameworks sometimes we have to just rethink while taking our decisions that our concerned is that society should at least their livelihood should be in place so with lots of conditions so that their living conditions and their dignity is not under threat that kind of ban was lifted so we have to just balance in see us situation which framework we are trying to just look into unethical behavior is simply the result of bad apples another Myth that unethical behavior is simply the result of bad apples if people as we say that one bad apples spoils the rack so it's in the same way we say that if people around us are being unethical why can't I so looking at the a other scenario looking at the other situation we many time decides but it's not true as are friend has already said that if we want to be unethical no one can stop us so this is a myth you have very rightly pointed out unethical behavior it is not just a result of bad apples it is in our minds if we want to be ethical we are going to be if not, not to be.

30 seconds left last 30 seconds one of you could do it in four lines in four straight lines all the nine dots join it pen was lifted not lifted no dot remained unconnected.

Participants: Not Clear

Parul Rishi: all lines are busy on this route OK time over what stopped you from doing it what stopped you from doing it what stopped you? Lack of grim no no it's not like that hahaha grim matter is there so you are there in the positions you are holding you can't hold the position without that. without lifting the pen OK so fine that was an instruction Ok let us come to the solution this is the solution we started from here went like this 4 lines 4 straight lines whether I wrote this instruction that you are not supposed to go beyond frame was there any instruction which was stopping you to go beyond the 89 dots go beyond the frame and extend it only for an instructions I was repeating it again and again only 4 instruction no 5th instruction who gave you that 5th instruction who gave you that 5th instruction that you are not supposed to go

beyond the frame. there are 11 dots no dots are only 9 haha Ok let us forget about the fun now let us come to this So what we are going to learn from this 9 dots puzzle the first all dots in our cases behind the all the judiciary cases on day to day cases all dots are cases not so simple to connect some cases challenge and mental capacity in order to take the right judgment we are shaken we have to just bring out the grey matter to find out what's there we have to go beyond the logical sequences of events the way the things appear many times what is visible is actually not like that we have to go beyond that we have to see beyond our eyes we have to listen beyond what our ears can hear we have to feel what are mind says so there is an need for out of box thinking the box we created of those 9 dots was within our mind that we cannot go beyond that but it is required in our day to day life when we are taking Judgments there are cases in which we have to adopt out of box thinking we have to move from a logical to lateral thinking there is a logical frame of thinking and there is a lateral frame of thinking where you have to go just beyond what your organs are actually giving you the message and you have to go for the road not taken that's what this 9 dots small simple 9 dot puzzle teach us that go beyond your usual routine monotonous way of functioning and try to look for some innovative ways through which you can help the society in a better manner so ethical dilemma are there within us many times we have already discussed about it because of the paucity of time I will just move further .

We have 3 components of our mind which will discuss about it in the next class also given by segment Froid Id ego and super Ego Id is a reality principle ego is a Id is a pleasure principle ego is a reality principle and super ego part of our mind is basically what talks about conscious what talks about guilt feeling how we address that this what super ego is all about all that time ego just enters in to a super ego and says everyone is ruining like that this practical this reality why you are not doing it so always a kind of tussle between ego and super ego within our mind what everyone is doing and what I am supposed to do and it depends who wins if super ego wins we are going to be ethical if ego wins then we do what everyone is doing what is socially acceptable social practice we just take all these defenses about it so I will just take you further to the stages of moral development always there is a right way and there is a wrong way and we are the person who decide what we are supposed to do so there are 3 categories of morality one is moral behavior another is immoral behavior what are you are not supposed to do and the third category which is the most difficult to handle a moral behavior a moral behavior means you are doing something intentionally or unintentionally which is not accepted you can be intentionally a moral or you can be unintentionally a moral unintentionally a moral

means you don't know whether its right or wrong or accidentally you do it and later on you come to know that you are not supposed to that and intentionally moral OK I am doing it i want to give it a kind of face that as if everyone is doing I am also doing that but we have the intention for my personal gain to it so I have the hidden intention of doing something wrong in the façade everything fine so this a kind of difficult thing to handle and in today's society most of the people try to behave like that they are very ethical and whatever happened is just because they couldn't sense it but actually they were senses they were sensing so this is what the a principal conventional and pore conventional there are 3 stages of moral development principle conventional and pre- conventional so pre conventional stage says sticking to rules to avoid physical punishment you don't want any kind of punishment let us come to the next slide this stage 1 pre conventional I do it so i don't get into trouble I don't want to invite in kind of troubles so I am just doing it I do it so i get something out of it I want to see get some reward because of which I am doing whatever i am doing then second stage is conventional I do it so like me whatever is socially acceptable I am just because it's a law and I respect the law . I do it out of fear of law I do it because of the social contract we have with each other means actually we are supposed to do I will do that only and I do it because it's a right thing to do so this the highest level of ethical behavior and this the lowest level of ethical behavior if we see like this these are all the stages 1,2,3,4,5,6 the situations which were given over there in your the test that you have already filled stage 1 is fear of punishment no law or justice but just the cost to me which bothers me so all these statements which are given on number A they are basically on pre conventional level of moral development A is conventional B is principle and C is pre-conventional so this is the part of C fear of punishment no law and justice but cost to me second profit, profit in the sense like I want to minimize the pain and maximize the pleasure right behavior means acting in one's own best interests my interests should be fulfilled that is my concern. Reasoning is largely based on an attitude you scratch your back I scratch my back that so this is the common practice which is followed in the most of the cases conscious such people are basically trying to be cunning this the conventional level where people are just meeting the expectations I am doing like that because if I am not doing like that others will know that I am such kind of person I don't want that so just to maintain the kind of social conformity people try to behave like that this is number 1 A of your skin group loyalty is very important obligation to one's family acceptance of being nice behavior is often judged by intention so this is a loyal behavior loyalty towards the society and law and order . And the last it is a good citizenship basically conventional stage you all try to be the good citizens and post conventional which is also known as the principle stage of moral development where people

try to actually become ethical they are ethical by heart they are not just doing it because of some other reason they are actually ethical only 25% of the people are able to reach principal stage of moral development rest 75% people are basically in the grounds so the lowest number that you are indicating is indicating the dominant stage of moral development A is the conventional stage of moral development if your score on A is the lowest that means you having a conventional stage of the dominance stage if your score on B is the highest that indicates is the lowest not highest that indicates you are at the principal stage of moral development if it is C that is means at the Principle stage of moral development. So wherever is your lowest score that indicates what is your dominance stage of moral development so we have the last two slides with us the row of pebble sin front of us what they are going to teach us what these pebbles are going to teach us what are the features of these pebbles you will find they are of different shapes and sizes they are of different colors largest at the bottom smallest at the top all connected this is what we are able to see all balanced on each other so the first lesson we have that people come across we have cases from diverse sections of society the caste class religion age groups there is a need to balance the interests of all the people . through values for fairness and impartiality overcoming the individual attitudes and biases which are important many times our judgments are masked by our own individual attitudes so that is a thing we have to control and that becomes so spontaneously at many times we just don't know our selves so you are the largest stone acting as the base of judiciary you are largest stone your responsibility to keep all the courts down the line connected with the Judicious value that is the major responsibility on all of you and responsibility to make sure that smallest one on the top is not falling down due to any imbalance whatever imbalance is there that will shake the whole row so you are having a crucial responsibility off keeping all the things in balance and if they stands strong and connected no one can roll from their own way so the whole responsibility lies with you as the highest largest stone in Judiciary that you can handle because morality and values generally they percolate from top to bottom, and are attitudes in the life are frequently the chains that binds us no one else thank you please keep this sheet with you because we are having the next session also with us will have the discussion in the break both the sheets will be taken together at the end of the session Thank You will meet after 25 mins.

Sumit Bhattacharya: So we break and meet after 25 minutes thank you

Session 11

Recognizing “Ego State” to Deliver Better

Speakers: Dr.Parul Rishi

Justice K. Chandru

Dr.Parul Rishi : So we are back with a different topic with a same group this is transactional analysis it is basically away from exact the previous session and this session they are not directly related it is something related to the way we communicate the way we develop relationships with others the way we connect with others the way we react to the people with whom we are talking to it is something which revolves around that its known as transactional analysis a this session is based on a very famous author of the book Games people play by Eric Bermi Eric Bermi has written this book and this is a world’s best seller and it just informs us how different people with the way of communication try to just make or mark their own life this is what this book is all about self-awareness as I just got the response that the most important thing is to know about ourselves Sir was just making this statement on the last You Sir know about ourselves is something which is very important so it’s a basically a journey towards self-awareness how we can be aware about ourselves so transnationally analysis is we are not let me tell you it’s a big topic of the full day you are not going to be and just introducing this topic with the brief a ways of communication which can be of your help not going in the technicalities of this topic it’s a method of understanding communication between two people when two people are talking with each other what's the method they are following.

How they are just talking system of analyzing and understanding Human relationships what goes around when you are just interacting with people when you are listening to various kinds of witnesses which the people are saying what's going on in the back of the mind of those people when they are in the witness box what they are saying which is coming from their hearts or they are just trying to just pose something sop these are certain things with the information about transactional analysis we may be able to better grasp all those things.

So it was first developed as I already dictated an American Psychiatrists Eric Bermi but it’s based on a psycho analysis segment provide about which we were mentioning in the earlier

session also ID ego and Super Ego stages so I am taking you back in order to establish the connect with the previous session and this session so this is the common point of connect.

ID Ego and Super Ego ID is a pleasure principle so before understanding Transactional analysis the most important thing is to know about what these stages of human mind are ID Ego and Super Ego we already know about Super Ego which is an ethical principle which talks about conscious it is a pleasure principle if it just forget about on which designation we are I am mostly I take my training sessions I say that my first a condition of my session is you all please become designation neutral and age neutral designation neutral and age neutral only then we are then able to just be open to whatever we going to interact otherwise when we are thinking I am such and such I am of this age I am of this structure this power theses control systems that is a kind of wall we are creating in between the learning process which is simultaneously trying to come to you and this wall why should I listen why should I get it .

So if we people are are common platform becoming age and designation neutral it is an ideal condition where maximum learning can take place in the both the sides so it which is a pleasure principle we all want to be happy we all want to do what pleases us and don't want to do which doesn't please us .

I will give you the example of a child because we are age neutral and we have regressed to our childhood days by doing the 9 dots puzzles and any other activities so we can just imagine being a child suppose instead of you a child is sitting in this classroom attending the session or teachers class whatever the may be and the child feels hungry while the class is going on and it's already at the verge of lunch time and the faculty is still taking the class what s stopping it what stops you from just going of the class and food what stops you Ego you know that this formal session is going on you cannot go out you cannot just behave in the way which is socially unacceptable which is unbecoming of this participant of this particular group but for a child the child is no Ego no super ego no ego if you see right from the earlier days of a 'child the child is hungry the child will start crying only then you will get food similarly in the class the child doesn't like the class child just jumps up and says no I am going out to play I Don't want to listen that's why lots of fun activities are there to engage the child in the classroom so that the child can be

There this is pleasure principle we all should remember that we all have Id within us that Id has not gone that is it is there the only thing is with the process of socialization we are able to

learn what we can do at what place we all behave in the Id manner hunger thirst all social needs sex these are Id impulses which very well exist within us but with the process of socialization we know where and what we can do where and what we cannot do and who teaches us that ego reality principle this ego is not a kind of negative ego which we say that the person is very proud if the person is at the end of the ego it's reality principle what 's society wants what society doesn't want we know that and in according we will try to behave and super ego is the highest form when we are at the principle stage of moral development so these 3 are basically the basis all the communication which takes place when we are talking to the child we know it what level we have to come down similarly you will find these things do not have direct relationship with age do not have direct relationship with age you will find people in the witness box or criminal with whom you are interacting still at the ID stage .

They are not concerned what society thinks about I wanted to kill this person and I will do that because I don't like because that person is creating hurdle in the way I want to operate in nothing doing there are only at the Id level so most of the criminals with whom you interact most of the people who different ranges of crimes they are basically not able to cross this Id stage which is a pleasure principle to the realistic principle ego and super ego nothing to talk about so with this bases we proceed further on all of us 3 persons hidden within us child adult and parent this is a child I want I need satisfy need whatever I want I must get that similarly you will find adults also who are actually at the Id or the child state of development who just want their needs to be fulfilled who want the maximum share of whatever they are having without being concerned about others in what way they are going to put harm on others life,

They are not bothered they are just on I want I need you have to satisfy me then I will explain further what is a natural and adaptive child further then super ego you can't child's says I want adults says parents say you can't you cannot do this how can you do this this is wrong this is not supposed to be done you must not it's not allowed you are giving summons at the judiciary level basically you are at the parental state of id ego where you are just trying to let people know this you are supposed to do this you are not supposed to do so this is parent ego reflecting on super ego or conscious of what we have already talked about in between is the poor ego crushed by both the sides what should I do whether I should satisfy my need or I should listen to what my parents are saying what I should do I don't know and it depends on the scenario on that person poor adult poor ego who is matching towards it side and that is the situation which is created by society there is a likelihood the criminal is just pulled towards ego it ok why you

are bothered why you are listening to parents who listens these days to parents this is an era of teenagers this is the era of children what we want we will do that we will definitely achieve it and we are not bothered about anything else the poor ego if not having a fully developed ethical mindset there is a likelihood the person is pulled towards the pleasure principle and involved in various criminal activities and involved in alcoholism drug abuse all the ills of the society because the other side was weak the super ego was weak because the family just failed to develop a kind of conscious or ethical mindset or the scenario or the situation in which that person was living that scenario was not that strong that could keep that person in that particular place and the person goes there so this is what we are just going to talk about further these are the Id ego and superego of croute and these are Eric Berne's ego states child adult and parent we can tell which ego state a person is because of the verbal and nonverbal behavior appropriate to each state so lets us see transactional analysis why it is useful .

why should we know about transactional analysis you will say that these are all ethics we already know what new in that the only thing is that new terminologies are just given to signifies certain things otherwise we all know about it frankly yelling you not telling you anything which you don't know just we are going to organize it in a way so it becomes little more meaning so it's a positive communication to do. Transactional analysis is a positive communication tool how we can understand at what ego state a particular person is when a person is behaving in accordingly changing our style of reaction this is what it talks about provides better understanding about the personalities about the transactions how we can solve various personal family caste based creed based problems how we can resolve that it's a non - threatening approach you are by knowing transactional analysis you are not creating any kind of threat to other persons very other persons very very neutral it's just that you are able to look inside the mind of that person of a particular time. So it's easy to learn we will just try to see these are different parts of transactional analysis again as I have already told you it's at least one day session I am just trying to give you an overview of that its starts with the structural analysis to transactional analysis to stroke analysis to came analysis to script analysis so broadly I will just explain you structural analysis how to analyze the personalities of different peoples these are all basically one session each but overview I am just trying to give first thing is you must know the people in front of you but personality many times its required that we have to use some kind of psychometric test to know what kind of personality X, Y , z is having practically it is not possible when you are holding such a position you are just interacting and the requirement is that you should have a kind of inner skill of identifying people you already

have . Many times we cannot use psychometric but we can also use we can also use psychometric tests for that transactional analysis how people communicate first we know the personality then we know the people around us and how we are communicating with them stroke analysis how people recognize each other at what stage of an ego at what ego state the person is when game analyze is ulterior transactions ulterior transactions means persons says something and at the back of the mind something else is going on which commonly happens in the witness box what they are saying and what's at their back of the mind whether they are lying or whether they are actually saying truth and why they are saying all these are basically the game analysis is the most important thing you do when you are just trying to differentiate between the actual witness giving saying truth or a witness just trying to just mis-lead the whole court and script analysis life positions so we will come to that a you will find this we have already talked about child adult parent ego state parents basically teach us the concept of life adult taught thought concept of life this is taught concept of life means which is taught to us which is thought concept of life what we think about it analyze and do and this is felt concept of life felt what I feel I will say that if I don't know like the session if you don't like a session taken by me and you are at the child ego state so stand up and say madam I don't like that. It's not interesting I am feeling bored in the class I don't like the way of communication How you are just giving your viewpoints these are all known to us you can say like that if you are at child ego state you must be at the child ego state we are not saying that at different points of time we are at different ego states. And there is a shift over shift over from child to parent parent to adult adult to child so this shift over is there and there is a shift over is well taken there is no harm in that so taught thought and felt as an adult if you are attending my class you will raise question you will logically try to analyze what I am saying what is correct what is not correct from your perspective try to just clear your doubts what you are saying in reality it happens like that with us how do you relate to it so we are both are adult level interacting. at the child level just because you are hungry or just because what I am talking about is not fitting in your mindset you will accept or reject that when you are at the child ego state at the parent ego state you will have a kind of thing what you want to listen the similar thing is spoken if what I am saying is matching with what you are expecting to listen its fine otherwise you may say it is right it is wrong you will try to give some kind of information which is disturbing the process so in that way these 3 ego states operate . parents when a person thinks and behaves in a way copy from his or her parents so when we give summons when we give taught concept of life means what we have studies at our childhood we are just trying to give that as copied by our parents . thinking feeling and behaving as a a child is doing and thoughts feelings and behaviors

that are related with current happening this is how they all repeated as I have already told you people shift in all these ego states parents say do as I do most of the times we are giving Judgements or we are in our parental role we consider that we are on a particular position we are supposed to say what is right all the time so whatever I say you are supposed to follow that we don't like questions we are it depends there are 2 types of parents Nurturing parents and controlling parents it varies we will come to that detailing later on but most of the time we expect that whatever I say people should follow that this is do as I do child what should I do I don't know I just want my pleasure and a person who is trying to stop my pleasure why he is like doing that I am not able to understand so 2 types of children's also natural child adapted child we will come to that in adult I will be frankly with you my view point is this you are saying this this is a logical conclusion let us come to that so in that way these 3 stages operate so you will find at one side there is a nurturing parent whose trying to nurture their child trying to explain him do this do that if you won't do this this can happen like that and controlling and just a minute controlling parent is saying if you will not do that this can happen if you are violating the rule this is the punishment prescribed for you so nurturing child just like when we are as a judiciary when we are in a compromising mode we want the both the parties should settle with each other we try to start with nurturing parent that OK settle down compromise this is wrong from your side this is wrong from your side just patch up comes to a negotiating point so you are trying to be like a nurturing parent but if people don't listen and they are just on their view point no.

why I should just reduce this much particular part of my benefit I cannot do that I am right I am perfectly right so you become controlling parent OK if you won't do like that these are the prescriptions for you and you have to follow that . So this is nurturing and controlling parent similarly for child also there are states natural child and rebellious child how do they differ natural child innocent simple you can understand a person is giving a witness whether a person is giving a witness from the heart naturally is saying what is truth what is correct the sequence of events as they happen or the person is just trying to fight with you becoming rebellious I won't do that like we say certain children are stubborn they will not listen to you they will be just be on their wish list I want my wish to be fulfilled nothing else I don't want anything else this is a rebellious child natural child is spontaneous behavior he will listen to you he will expect love and affection from your side some kind of compromise also the child can do so strokes another important thing in transactional analysis. We are not an nurturing parent in India particularly we can't expect that there are cultural differences I am not focusing upon it

mostly I readily lend my belongings to others without worrying about whether they will return to me or not not commonly there so similarly such kind of questions are their critical parent I like work that is done well precise finished in the allocated time are we critical parents are we critical parents most of the times yes we want work to be done well précised finished within the allocated time sincerity is fundamental to human relations

I am not afraid to telling others what I think then when faced with difficulties I do my duty it is sad that certain point of politeness and prosperity are dying out before taking the decision every possible choice should be looked into so these are all the aspects which makes us a critical parent so there are 3 types of transactions as we have already talked about complimentary crossed and ulterior complimentary when both people are operating from the same ego state you will find this is parent adult and child also. Like another example or any head of the institution is saying you are 3 hours late i want an explanation as a parent as a critical parent person is asking for explanation we all do that this is parent to child now let us see the response employee what employee say i am really sorry I slept through the alarm it won't happened it again I promise similarly child to parent he has accepted the ego state of the director and responding by saying sorry this is a complementary transactions you feel satisfied as a critical parent OK he has accepted his mistake fine no problem ok don't repeat it again

finished this is a complimentary transactions now let us see crossed transactions in which what happens similar things you are 3 hours late and I want the explanation this is parent to child now let me know what is the other possibilities. Sometimes you are also late anything else? OK he may tried to give excuses why he was late OK so let us see what the employee say oh didn't you get held up by the accident on road as well so what he is trying to be his trying to be extra smart and he is trying to be at the adult ego state challenging the director that you don't know that it happened you are not supposed to ask me when its known to everyone so he is trying to be at the adult ego state this is a crossed transactions although the manager at the parent ego state attempted to address employees as a child but the employee refuses to its ego states he challenges how you can be a parent just be the adult and talk to me I am also adult I am also logical frame of mind and response to the adult ego state to the manager so a crossed transactions is any transactions where persons are being spoken refuses to the ego state which is assigned to him and tries to be at the other ego state so it causes difficulties crossed transactions act because we are not expecting the person we always expect person to be at the right ego state with which we have assigned we don't accept the ego state of the other person

so it creates difficulties in social situations may be you should improve your way of delivering lecture another example that you just say to me may be you should improve your way of delivering lecture so the response you always find fault in me whatever I do so his trying to be at the parent ego state but he becomes at the ego state not parent not adult becomes the child you always fault finding so what kind of child natural child .

Natural child coming to that's persons mind then there are lots of games which people play they just try to just jumble up the situation try to just put their views in a way which is not desirable so there are first degree games where there is a minor upset played socially end with minor discomfort second degree game and third degree game people get so angry because of the ego state change that they were not accepting that they can even harm the person how can this person can say this to me on this simple sentence people do murders people can do anything I was just reading news in today's paper that a teachers scolded a class 9th boy for talking to a girl and that boy commits suicide and there are incidents where a in a Chennai few years back when a child kills a teacher for scolding him simple scolding so understanding what's going on in the mind of people when you are talking to them its so important these days that it can go to any extend if you are not able to understand if you miss that you don't know what's going on in the minds of that person.

Just want as much work done by you in a small possible available time that kind of tendency you have in mentoring relationship if you are mentoring somebody you want an instant relationship you don't give time you want to just to rush with your thinking whatever it is they can't see why there is a need to have a so many stages in mentoring process they just want to take action they can't wait for the process to be over they want speed they want everything to be done very quickly so a hurry up personality is very good in taking judgement in a time pressure if there is a time pressures such people are very good in taking a judgements there energy level is very high but where they have improve they have to think and plan ahead in regard to reality of available time many time they are not able to plan they just want to come at the actions stage this is what hurry up stage is all about for them short term goals are important and they are not sometimes concerned about the long term goals next be perfect is number 1 if your score is highest in number 1 be perfect that's also a type of a personality

Such people want to be perfect and energized by doing things first I should be the first one to do this I can't wait for anybody to take the lead I want to take the lead that kind of tendencies

they have they aim for perfection in everything they want their office to be arranged in a perfect order.

Their home to be arranged in the perfect order everything to be taking up perfect shape that's what they have they have very high work standards and they want to stick to that sometimes they even miss deadlines many times they are not able to prioritize their work but perfection is something which they just look forward.

So passive assertive and aggressive 3 possibilities of behavior are there and we have to choose sometime we have to assert as an adult sometimes we have to be passive to accept whatever is told to us is a complied child ego state some time we have to be a rebellious child or a kind of a controlling parent that we are just giving summons OK you are supposed to that when you see that nothing other is working out and person is just going out of the way to pressurize you to force you so in that case you have to be like a forcing parent or a controlling parent also .

So we have just completed the session this is for communication this is motivating the people to speak up there genuine rights their genuine voice it's for leadership particularly to play a leadership role you have to develop assertiveness you have to accept the responsibility for what you are saying because your words are having a huge meaning for society and you have to manage the different kinds of conflicts which you are doing. Regarding criticism we have to deal with criticism.

I just thank you all for bearing with me for 2 and half hour roughly and we could learn together certain things I have already learnt a lot and we hope to interact in future if the time permits Thank You all Thank you.

Sumit Bhattacharya: So on behalf of the august gathering I thank both the speakers I thank Nishi Gandha Bhuyan ma'am who has come from **Calcutta IIM** to be with us to part the knowledge I thank from the core of the heart a Dr. Parul Rishi Thank you ma'am for being with us and also I thank a Justice Chandru for being their throughout the sessions handling yeah definitely for the session till now and with this we break for Lunch and at 2'00 clock we come back here and take it up again at a different law level so thank you very much for being patient and hearing thank you.

Session 12

Discrimination at Work Place Case Study 4

Justice K.Chandru

Justice K. Chandru: Friends welcome back the this session will be dealing with the discrimination in workplace and also yesterday's a there was a case law 4 that was given to you and before the last session which is a library session will be spent on on the discussing latest amendment therefore there would be any library it will be here only before I go in to this session on the question of rationality decision making you saw some theoretical presentation but it also requires some practical a understanding of what it mean by rationalizing a decision or decision making. Now if you see the a legal history of our independence if you read the history book you will have a long chapter of how the first war of independence and congress party and so many other struggles but if you take the legal history if you ask a student how did the India get a independence one word answer one sentence answer India independence Act was passed in the British Parliament and we got Independence. We can say that also not go behind what really happened and how we got independence there is a student of law divorced of all sociology history economics he can be always be convinced by saying the British parliament passed a law granting independence similarly how did the constitution was Indian Constitution made there were 2 year debate so many amendments so much speech the entire parliamentary debate is available in 5 volumes but you can simply say they took the 1935 Act brought several other enactments made some drafting works and then made the Indian Constitution . So like that we can keep on rationalizing in both ways that in simple terms it was is happened but in the longer term what is the inflation blood of such decision making and while your decision is rendered by the Higher Court we call this as a precedent and what is a precedent not every decision is a precedent and it should be precedent made on the subject under which the a an answer was required in the case not all the observations made or a we call that as a Ratio Decendi what is a recent data what is a central subject under which the decision was granted . But the judges are also after Human Beings and they have their own ideas and the many times their ideas also a read into the decision making process. As a relevant irrelevant or taking a very proactive stand of the decision making process in that context I only want to a bring it to your notice 2 incident took place in a first incident relating to the Dowry offence there was a time when

people thought Dowry menace was a very severe an offence which is uplifting the society not only as a poor but even as a rich and there were Dowry Murders dowry suicides were there. And therefore the Judge thought that he is duty to bring a severe punishment for a Dowry offender what is a severe punishment that our a penal law contemplates it is a death sentence so that was a case relating to dowry demand followed by a death and therefore there were a murder see maximum sentence can be given a only a death sentence as to how the life of the convict should be taken away it is set out in CRPC but this judge thought that there should be a public hanging our CRPC doesn't think about public hanging there are some other countries where they kill in public but we have not made any law like that so this judge is of the Rajasthan High Court only fix a date for a public hanging in the parade grounds in Jaipur he thought that the public see this hanging there will be afraid of offence and there will be some change in the mind so the question of penology is to correct the individual is it to retribution against the individual or is it a warning for other's that you are going to have this kind of punishment so when this announcement came everybody was shocked that how this announcement could be made because it is not contemplated in CRPC and the Judge was very bona fide in fact he he always climbs that a he follows a Krishna and that I where the trouble comes in fact what the Krishna has said that the question of penalty you will find it at page 255the quotation starts from a on the right hand side it says there are several sacred Cows of the criminal law in the ankle Anglo Jurisprudence which are superstitious survivals and need to be re - examined when rapists are revolving and the half of the human mind women kind is protesting against the helpless slot when no women of honor will accuse another of rape she sacrifices thereby what is the dare is to her we cannot cling to a fossil formula and insists the corroborative testimony even if taken as a whole the case spoken to by the victim strikes the judicial mind is probable in the case the testimony has commanded acceptance from 2 cones this is what we talks about bringing change in the appreciation of evidence but on the question of penalty you will find the previous page at 253 this was the judgement in Krishan Lal v State of Haryana while the law reforms the necessary there are sufficient insure Justice and provide protection to every victim of crime here is sensitive Judiciary under a responsible investigative as well as prosecution can offer a victim better protection as above court from renowned jurists Krishna.....(Not Clear) why am I saying this was there are increasing the judges start experimenting on these laws what a calling he is a best way of promoting this is one their idea comes to them in fact this happens all over not only in Tamil Nadu I am familiar with the Tamil example and giving you because some people will say a that I am letting down Tamil Nadu last time in one of the sessions I mentioned it so one Judge asked me when you go to Judicial academy you will only

bring down Madras High Court and no other High Court so I will search of other High Court examples also but a what immediately comes to a mind is a some other reason happening which is every important the first decision was a case where a minor girl was induced by a neighbor and then he married her but she became pregnant and deliver a child and she gave a complaint of a a rape and the trial court formed and no consent actually in case of minor consent is not a issue at all and the trial court recorded she was only 14 years at the time of incidence and therefore convicted the boy for a 7 years' Imprisonment and when appeal was filed normally all this 7 years appeal automatically admitted because we have a right to speak on both facts and law and there is no question of arguing for admission but what the another Judge did was he said that after all she having a child and this man is a father why don't have a mediation so principal of ADR is question to service even in a rape case this is how then what was the shocking even at the bail stage in order to grant bail the learned Judge recorded the finding suppose he is inside this mediation may not be at the level playing feel only when he comes out from the prison he will be in a free position to go and talk and therefore I am granting bail he knew very well that the background of the Nirbhaya Case and the Bombay Case and all that if you grant bail to the rapist they will talk on this issue so therefore he now now is a very novel way pass an order now little realizing that which are the issues which could be sent to the ADR or mediation in fact the Supreme court is earlier ruled and now subsequently ruled and fortunately there was a public criticism and there was also a judgement of Supreme Court for such offences there is no question of any a compromised between the parties he recall the order so the honesty is recalling the order but later what happened was much more a shocking because the matter was taken on final hearing The Judge dealt with the appeal another Judge he said that the question of age was not satisfactorily proved and therefore I am remanding the matter this is how matter was remanded and finally what happened was that the girl was a given up by the parents given up by his own brother having nothing else to hope because during the conviction a compensation 2 lacs were ordered that was an deposit and then she was not willing to wait for all these an everlasting litigation finally she married that boy having a no other option in fact there is a saying in Tamil instead of begging the witness surrender to the accused that's how it happens and a at to some extent we are responsible for such insensitive approaches though I am not saying the every decision was not bona fide but what is in our mind that we tried to do some reform in these areas and this is little bit taken to a wider area for examples there was a judge before him a case of 4 judges came a man ..and then it was registered with the registration department it was a property transfer and it was proved that it was a forgery so the judge want to punish the man who committed forgery and tried to plead that it was a bona

hide darkment so I more of an aggravating circumstances he did not only withdraw but we are trying to argue so he imposed a penalty of 1 lakhs on this man who committed forgery that such experiment but what is important was the judge said if I had powers I would have chopped off his hands as if done in another courts . Was it relevant for this case and what is his mind of a chopping of or are we to bring back the retribution 3 of a arm for arm eye for eye in fact said an eye for eye will make the whole blind and we never opted for that kind of a situation having fine for lakhs of Rupees which is a sufficient compensation for the a person who was duked but we now try to bring our ideas in to the other it is fitting in the frame or not fitting in the frame nobody can say in fact the Judge goes to open a Mahila Court we have Mahila Court in all districts in once area we went he said this Nirbhaya case is a very unfortunate situation but I must tell you one thing women should not go out at odd hours at odd place this was said by a High Court Judge opening a Mahila Court. And then when it was reported in the press a people there did not protest because lawyers can't protest and Judges are making the such remarks and somebody from Delhi wrote a letter to Chief Justice who is this Judge to give advice that we should go only on a appointed hour Mahatma Gandhi said there will be freedom true Independence India and women walk during midnight without a fear that's a day when you really got independence then that the Judge said you must go and not go at the odd time that is why Nirbhaya case happened and then in that clatter they also said supposed this TV is advanced then if people don't come out there would be no road accident no road death traffic death also so finally he was called by the Chief Justice of India he said I never made like this paper some wrong statement but what I am saying this when a judge comes he comes with an ideas he now thinks it is his jobs he has to crack the society so inn every case for that in fact there was one matter where there was a child sex abuse and a case was registered and that man is a British and he was not coming attending this case therefore a the CBI was asked to give red corner notice it was not the red corner notice took all the pork and when he tried to quash this proceedings the Judge did not agree with him because the quash was dismissed ...then he said I would like to participate in the court proceedings but this red corner notice which means when you appear in any Indian airport they will be arresting you for producing you at the Magistrate he said that myself will attend the Court proceedings in mother right please cancel this Writ that was not before him the whether the red corner notice was required or not was not before him what was before him was a quash petition but then he said it is man who wants to come to India therefore red corner notice is suspended now that is suspended and things did not stop then he went to the whole idea of what is sex abuse how the number of crimes are increasing finally he said all these people should be castrated I direct Union Of India to bring

a law for castration of the child sex abuse so this is have whether it has awhen we talk about the rationalizing the decision what is a recent rational deter whether you want to quash or not that's a issue then you go beyond these issues and start saying things which are relevant or not relevant and this goes on and on on different patterns other castration is accepted or not even recently our Supreme Court said we can't decide these matters this will be decide by the Parliament but never the less everybody feels they will have to register their opinion in a matter other it was required or not and this creates more a problem in the society and when we talk about a division of power each has got a he says that each function in the sphere we don't become a third chamber like a third polymer so we try to enforce the law if the law is bad we say bad the law is good or inadequate we tried to give a purposeful introduction and in that process now we come to our 1988 Act which is the subject matter of the a this session and if you I told you there are 2 Judgements of the a Supreme Court is given to you that is page 144 that is the Judgement of the Justice K R Ramaswamy this page 144 is a *State of Karnataka V Appa Paulo Ingle* now in this Judgement the the trial Court Conviction was restored and the HC order was set aside by the SC.

If you see the aa 144 the Judgement of Justice Kuldeep Singh was a heading the bench it was only one page aa just one page and few lines more he merely says at paragraph 4 we have given our thoughtful consideration to re-prosecution the evidence has appreciate By the Court below we did not find any infirmity in the evidence of the prosecution witness the High Court law cite the fact there is a social disability Harijan Committee was enforced on a threat of seeing a gun it is proved beyond doubt that the complainants were complainants were stopped from taking waters from the well on the ground that they were untouchables like we saw in yesterday's film they were not allowed to go and they tried to be where he was take a gun and shoot in the air and this was proved but this case are also out of the 1955 ten that time 1988 Act was not there and it was a 1955 Act .But a what is a Indian History that is referring to the all the three are different opinions on this issue but a most important is at a see at paragraph number 16 a 161 para 16 para 17 India was a relatively a prosperous country before the coming of Britain because of high percentage of people which could be 40% was engaged in the time in the industry was no doubt this was a handicraft industry and not a mill industry thus Lord Cliff in 1777 when the battle of Plassey was fought described which was then the capital of Bengal as a city more prosperous till then when the British Conquer India they introduced products of mill industry to India and they extraorbitantly raised the expert duties on Indian handicraft products thereby they practically destroy the handicraft industry in India the result

was by the end of British rule hardly 10% even less than population here are still in the Handicraft Industry and the rest of those who earlier engaged in the Handicraft industry were made unemployed in this way about 30% is a population of India were employed in handicraft industry became unemployed and were driven to starvation 'dis-institution beggary or crime the terms and the criminals were really those are the unemployed sections as a English Governor general wrote in 1834 the basis of the cotton weavers or a bleaching the Plains of India and now he goes in all this suppose there is a unemployment in the rural India and people migrate to the cities for employment how does the explained the cost of pressure in the unemployment is for every community not only the Dalit who was doing other menial jobs handicrafts are although the other committee but he went off saying this finally he says that the that para 20 the Chamars also suffered terribly during the period the British industries the battle almost the completely destroy the Chamars with the result while they we relatively respectable section of the society before coming into the British rule because they could earn their livelihood through manufacture and others. all these have got no data at all because the caste system was there before the British Came the fact is the British could not destroy the caste system either by the rule or by law or by conversion they could not destroy but then the learned Judge gives on but most important thing is what was the issue here in 310 the word public place a public view is the only issue a public place is not mentioned in the Act as you saw yesterday's Ravindra Judgement following the 3 Judge bench in Daya Bhatnagar case Public view and public place are 2 different issues the legislature choose the word public view and not a public place so even in our private place if there is public view you can also have the offence the people can speak about the witness about the incident and the learned Judge here a will find he now goes on the discussion on what is a public view using here.

At para 28 page 162 it has been alleged in the affair that Vinod Nagar the first and formant was insulted by the appellant 213 by calling him a Chamar when he stood near the car which was parked at the gate of the premises in our opinion this was certainly a place within the public view since the gate of the house is certainly a place within the public view you could have stopped there then you next sentence it could have been a different matter had the alleged offence be committed inside a building and also was not in the public view however the offence is committed outside the building example the lawn outside the house the lawn can be seen from someone on the road or lane outside the boundary wall the lawn was certainly be a place within the public this is wholly advisory for the simple reason that even people who got big lawns like Ministers and Judges there will be visitors in the house also why bring in

controversial examples where in somebody will say it is within the Bungalow and therefore would have seen it even in Bungalow can be at public place the minister 110 supporters will be standing inside the house and therefore when we write a order we don't go beyond the point because in this country 95% people don't have lawns in their house and they have street houses anybody can see the a if you talk loudly everything will be heard in the street there will be children's don't speak louder somebody will listen to you that is the kind of housing we have yesterday you saw that a shopkeeper said refuse to throw that Beedi Packet and the nothing is secret in that sense in the village everything is so open and now he also comes through the same conclusion that the this is not the case for a quashing the before a trial in fact 35 uttered the intending words with the intention to formulate and complainant as the matter of evidence if fully agree with the view and we find no merits in the appeal so and so now why I am comparing this 2 was both are under the similar acquisition both had a long judgements on what is their concept of history and a castration both had their one view of a why this should be prevented but ultimately both reach the conclusion but when you talk about rationalizing what is the rationale behind these two judgements in one word when a trial Court records a findings of fact and a trial Court refuse to discharge the person it is not a fit matter which the High Court should take up on the task of reversing this and that was a therefore the importance is on the trial court action ultimately Supreme Court in both the cases a upheld the trial court and then in doing that you reach the conclusions which are not the also a based upon you are own worldly experience so it is a unavoidable you may have a transactional you may afford to fraud you may stereotype into individual on a psychological analysis in my view point it is not an individual psycho analysis going to fine in fact in our country it will be difficult to make psycho analysis of a caste it is impossible how the caste behave how a caste factors determines your own thinking how this super structure in mind how the best operates in the super structure a given situation 2 Judges of the SC drawing the same salary living in the same condition having the law degree were able to write differently on the very same issue therefore how explain this this was not taught in colleges they were learned life experience and they are right this is how when we talk about rationalizing what is important in these 2 take the facts of the case don't go beyond a permissible limit confined to the issues on hand apply the law correctly and then if you want to say something like a poetry or a good prose that does not determine the case or what it is important is the a sensitivity on the dealing of such matters and now when we go to the next session of the next hour you will think why there is a third law that is brought in that we go in later but today the in this topic my request is that when a matter comes apply your mind applies a law apply sensitivity with all the drawbacks that is required even for

lodging the complaint and then make a decision which is a which is to be scrutinized by her court you are not the final court therefore we have a greater degree of a sensitivity is required so we are going to give you the a case law number 4 after reading the case law model case don't accuse me that I have already leaked the answer for you so,..... (No Voice)

Participants: May I ask a doubt

Justice K. Chandru: yes

Participant: The acts narrated in the 2 paragraph the prosecution is narrated the 5Th para facts are narrated in para 2 ...both can be read together.

Justice K. Chandru: read the entire page and you will get the idea

Participants: Not clear

Justice K. Chandru: OK

Participant: facts of the case in the paragraph

Justice K. Chandru: I think the facts are contents of the FIR and the prosecution case entire prosecution case is disclosed in the prosecution case so you can base your conclusion on the prosecution case you can base it on the prosecution case

Participants: that he was abused and the prosecution case is prosecution case is that some water was pour to her and to him dirty water was pour on him and she was again abused it is a separate incident is narrator in prosecution case .

Sumit Bhattacharya: Not clear

Justice K. Chandru: sir you can base your conclusion on the prosecution case.

Participants: Discussion Not clear

Justice K. Chandru: There finished we come after tea break by that we come back we study by that time she will make that..... We will have a break and come at 3.30 after the tea break we will have we will meet here itself. Thank You

Additional Session

Speaker: Justice K.Chandru

Justice K.Chandru: The last case number 4 I think majority are close to the correct answer there are 28 who have given the verdict that A2 A3 charges can be sustained that's may be released the answer in advance for that but the hmm only 4 guilty of an all the 4 are guilty but 28 were given only for A2 A3 that's a judgement of the Supreme Court in currency case. before we go in to the ordinance matter the one topic which we mention in section number 12 discrimination at workplace what is a discrimination at work place the we mentioned in the morning it can different forms need not be a in one particular form the practices which are adopted in rural areas may not be a practicing the urban area but never the less the discrimination in work place continues and a the amendment also a tries to find some answer to that question that we will see in amendment but when there is such discrimination what you do in these matters in any form in open form it is different and since it will coupled with the other topics so i won't go into details there is one experiment which I have tried in Madras High Court in fact the experiment continuous for 3 years the a in a 2007 I came across a case where you know in all over India now SC given an direction that for school children must have a mid-day meal noon meal this was a practice in Tamil Nadu long before and in fact it was selectively operate in some district and when in MGR was a Chief Minister he said completely all children will be provided and won't be in this school itself now this provision for providing noon meal initially everybody laughed that how can you give noon meal to children this is what I am talking about some 30 years back somebody thought on this which now everybody's follow in fact the result was that we have nearly 97% in Indian School number 1 the nutritious level of the children have little gone up and we don't have the mortality death rate very high among the a school age children it had its one impact in terms of a the nutritional care of the children which is a con-social objective but what is important this provision for a noon meal now we have a school we have a teaching staff we do not have a teaching staff in this in addition to the existing establishment the social welfare department was maintaining the sentence in the school itself one room will be converted into a Kitchen and there will be some staff will be appointed initially there were not correctly employed but later the social welfare department with the help of the a Panchayat Union Commissioner they were appointing this a women now for appointing a women the women should belong to a village she must be in the age group of 25-40 and she

must have studied 8th standard in case of a cook because she has to write account in case of a cook assistant in case of cook and cook assistant there is no aa strict in terms of educational qualification now all these 3 women are appointed from the village with the committee of every collector the Panchayat Commissioner and the this school has got no direct role in the matter now when first time when a case came to us in this A Dalit cook was selected by the committee and send to the school school can be a Government School or a Municipal school or a private aided school it can be any category so it was sent to a school that lady was sent to a school in a in a school owned by Jadhav's management and they were not happy with that a appointment so they told the lady don't come inside the school we don't want you she has to cook and feed the children and they don't want a Dalit Cook in the school the is the case came before me when he told the collector that we cannot acceptable to have this lady Collector issued an order saying that if you don't a allow the teacher or the cook to we will close the school so the there was a stale mate that the management won't allow the a the cook and the Collector said we can't run the school now the children are indirectly or directly were directly was affected because the school also closed now at this stage the school a correspondent filed a writ petition saying that the collector order is wrong the collector cannot close the school if they don't allow the people to come in this was the case came before me so what was the decision is uphold the collectors decision school will be closed if the uphold the correspondence objection I will be perpetuating a an untouchability openly by Court orders so it's a dilemma so we want a cake and also eating in that situation what I pass an order was I said in a case where somebody is seeking relief the Court can also put conditions it doesn't mean we should give relief or delay relief so I passed an order that the school correspondence stands not allowing this lady was wrong he has to allow her within 15 days failing which the special officer will be appointed to run this school because it is a fully aided school and if they tried to do a misconduct or a ma-lade administration there is a provision to take over the school to run by the special officer so we were able to solve an individual problem and a individual manner this was an open objection that we do not want a Dalit cook but the problem was solved by our exercising our extraordinary power saying if you don't have the cook we will now run this school it is not closing the school is a solution so that was only a solution meant for a school but larger problem we don't have reservation in the matter of non-Dalit workers...and a Government stand the central government has taken a stand these workers are the part time workers no question of this reservation there is no post but we fortunately we have a got a law where in 1993 in any employment our state is providing funds there is a reservation and the second options that came was each time when a candidate is selected in a village school there is always a competition that I am a superior a candidate and

they will ignore me for XYZ reasons now it is difficult in service matters to go in relative merit of the candidate because all that qualifications required is only age factor of 25 to 40 and there should be a women the presumption is that the women knows how to cook therefore there is no further condition they must know how to cook so the result was the government started issuing circulars as to how selection should be made so one circular said the aspiring candidate should reside within 1 km radius of the school that the school is got the aa the kitchen and all the equipment's are and they said there is 1 km idea was that this available to the school the school children are not going to the starved and they should be available and therefore people are going to come long distance it will be cause a dis location therefore government with all good or bad intention should issue a circular not knowing however the villagers are there see the point you know most of the villages especially Tamil Nadu you have a main village you have a colony the colony is outside the village not in our like therefore you have for example the villages may exist the colony will be aNow the school will be somewhere here whom you say 1 km radius it will be never the colony people will never come so the idea was that the candidate should made available but a this circular indirectly excluded them from making an application because of the 1 Km radius now if you see the a constitutional provision under article 16 relating to public employment that no discrimination should be done on the basis of residence now if you say that we want people only from this area then it is unconstitutional in fact in the case of UP school teachers where a there there were trying people from the same area itself the government said that we have different dialects in Hindi so the children should understand the teaching what the teachers are teaching and if you are going to have a different people coming from understand the teaching what the teachers are teaching and if you are going to have a different people coming from the dialect may also be different . But the Schedule Caste said to have an exception to Article 16 you must make a strong a case that you must give data that it is not solely based on differential criteria there must be some other reason and the solely only on grounds of resident or only on ground of sex only on grounds of caste you can't discriminate so SC said you were never satisfied us that it was only on this ground of a resident and therefore in the absence of government giving data we will not allow you to have a regional or a area wise recruitment but in this circular everybody started saying that I am leaving closer to the school so I called it is a in step jurisdiction for first of all somebody said I am a true.....this person is living 3/4th Kilometer so this is not our job to say who is closer to school you can't have a job based upon a essentially residential criteria how number of cases started coming and we found that indirectly they excluded the people from the colony. now in one center run by a freedom fighter they were feeding the children in two different dining halls

A for the Brahmins and B for others now for that because he was a freedom fighter but some of here all the freedom fighters are not above the communal conservation and like Gandhi so what the Congress party gave a lack a Rs to this center because they were also doing some social work and the money was a given by the congress party.

And demand statutory minimum wage refused to do anything bonded and forced labor they vested interest tries to cause and terrorist them the SC and ST tried to preserve their self-respect or honor of the women they become irritants for the dominant and might occupation and cultivation of even government allotted land for SC and the tribes he resided and more that have more often these people become victims of the attacks and so on so forth what they meant was the existing legislation was not satisfactory there has been reports of a there being a dealt with a more brutal manner and therefore the 1989 Act tried to preserve the academic and social rights of the Dalit's not mere individually calling individually telling them you can't come to the temple in the larger economic rights are sort with defendant but not withstanding law there has been a continuous a in fact section 3 or 4 you can read it must dealt with the provisions also section 4 is important it talks about the government officials in the Collusion with the dominant caste tried to perpetuate or just watch these things to happen they can also be held responsible under section 4 if there is any neglect of duties.

One of the discrimination we found in this report is this a there was one peculiar a a discrimination which somebody pointed it out was that in the colony when you have pet dogs you can only have a she dog and not a he dog so i was surprised that somebody says why you can't have a he dog then they said no no our dog may go their she and pollute those dogs and therefore these are.....then what happened is important they are waiting for a service of a barber and then the village people completely makes in him to drink a liquor they fully give him so he become completely a out of fear so who should handle the knife when he is already drunk so the colony people was shocked that they were once out their entire access to district capital divisional capital and then there are inquiry passing orders all this is gone he was made to drunk and he was flagged then what these people did was very important this happened in the 7'00 clock so they wanted a came with love bucket full f water started pouring on this barber so it took 3 hrs. to come back normal at 11'0 clock they said now you do the shaving haircut so this looks like very like a very humorous but began that there has been a war of nerves even the revenue administration involves it doesn't matter there are 1000 methods to defeat this kind of a and that is what it says that to abstain from profession and business relation so they tell the

shopkeeper don't supply all the shops are owned by the other committees it don't supply even if they money it will be no.. so what happens this most of the legislative to have curtain come back so these a traditional services are soft therefore this sis all brought in under a economic boycott means means it is not a it is only inclusive definition this is not a exhaustive definition because the parliament the law makers could not identify all the discrimination so they brought a general category economic boycott means you may in your earlier a latter experience may come out with some other Id cards also we don't know what is define here is only this then there is another definition exclusive special court is important that is established under section 14 to try offences under now we have a general court special court now exclusive special court there are third category why it has come you will see later then the a the other definitions you can read for a another act but you will find the social boycott is section 2 (e)(b) social boycott means a refusal to permit a person to render other person and receive from him any customary services or abstain from social relation that one would maintain other person isolating from others this is what is important one is social boycott now under the earlier act you will find the that it comes to elections you see here section 3 you take section 3(7) a forces forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law; now this is only talking about the voting right but little realizing when the Law came already constitution amended and the 73rd Amendment Panchayat Raj Act has been incorporated under Art 243 under Article 243 (d) there is a reservation introduce in the Panchayat election so Schedule Caste can also have a ward number ship or a Panchayat president ship and now only voting what about standing in election they presume that there will be allowed in election where there is a reservation now in the ground reality we found in Tamil Nadu at least in 4 villages 4 villages they said though this is reserved nobody can stand in election so election notification can be given by the collector and nobody has filed nomination because that is a decision taken by the villager Khaap Panchayat he said nobody should stand so initially people were afraid even to file a nomination there are people who file nomination got elected they were murdered and therefore these 4 Panchayat s went on without any nomination is every 6 months there will be fresh elections and no nomination so 19th times elections were conducted in these 4 villages without any success and thereafter somebody a social welfare organization started encouraging Dalit's to file nomination saying that why did not file a nomination now the people who file nomination they were elected after that no other candidate immediately the dominant group said better resigned and they resigned and their resignationnow this was the 17th time this happened when the collector receives the nomination what is we supposed to do here starts

the nomination but fortunately we had rule in Panchayat Act that collector must be personally satisfied on the bona fide reservationmany times they were elected but then they made to resign because of the village pressure then the collectors started refusing accepting this resignation so by the time it became the 20th election in 20th election again the dominant group decided that if you have a one person to stand we will put our own fellow whose our own employee he will stand he may not be a very serious candidate but we will put a dummy candidate and make him elected in the election so they contest was betweenthis is the 4th experiment that happened the 5th experiment was that after having elected how will he go to the office he has to he has got a small employment as a agricultural laborer he will be denied of employment saying that not in the deceive manner you become village boss how can you work under me no employment for you tomorrow onwards so he is a deprived of his economic livelihood and when he goes to the Panchayat office the Vice Chairman belongs to the dominant committee he the members 1-8 belong to the dominant only 1 SC ward member is there now he has` made to sit in the floor whereas VC will be sitting in the chair the Chairman will be sitting in the floor there are 1000-1000 methods by which they are true appreciation can be derived so therefore when this was brought to the notice of the Parliamentary committee and the Human Right Commission the social Boycott has been added more elaborately not just voting now section 3 (7) talks about intimidating a member for voting now theyin Section 2(e) (b) social boycott means a refusal to permit a person to render other person to receive from customary service... now you have election offences are being made you will find here in a

Participants: Not Clear

Justice K.Chandru: This L is a repetition of 3(7) forces are intimidate prevention number of Schedule Caste not to vote or vote for a particular candidate or vote in a manner other than provided by law not to file nomination as a candidate this is an improvement now now the Parliament realized there are also standing in election that can be stooped and not to propose the second nomination then forces are intermediate obstructs the member of SC who is a member of Chairperson or a holder of any office of Panchayat under Part IX of the Constitution or a municipality for performing their normal duties the after the pole cause hurt or a grievous hurt or assault upon the member of the Schedule Caste and commit any offencehaving voter or not having voted fora particular candidate then institute falls a malicious vexatious suit on criminal proceedings a member of a SC and gives a falls a frivolous information to any

public servant so ... so now they have elaborated the a election related offences what was originally voting now standing in an election putting an nomination performing the duties all that certainly protected the you will find the social boycott refusal to permit a person to render other person receive from any any customary services what I mention about services of a barber service of dhobi you will find in village services there are dhobi's who collect clothes and washes it bring it back in the evening now in Tamil Nadu we have a peculiar a community we have a Dhobi for a village you have a Dhobi for a colony that Dhobi for the Colony though he was originally done by a OBC Community now they have become SC because they are Dhobis for the SC not for the village there is a community called Dhobi for a Schedule Caste and there are also SC now these are all the a new then you will find the victim a victim means any individual who falls within the definition of SC and who has suffered and experiment physical mental Psychological emotional monetary harm harm to its property as a result of commission of any offence under this act including the relatives legal Guardian this was not there in the old act in fact Section 3 originally the both 16 sections now it has amended to the 32 subsections and similarly you will find the amendment sections 4 if you see the a over non being the member of the Schedule Caste puts any obnoxious substance in the mouth of the member so and so and a ...yesterday you saw pouring a you want urinate on the member of the SC and the wife was also given a as acid the garlands footwear's now they have expanded because it is an criminal law they didn't want have the imagination the judiciary to decide these matters therefore the law has been expanded to include more number of crimes committed against them in a and you will find section a yes at page subsection yes abuses any member of the Schedule Caste and ST by caste name in any place within a public view.....The then you will prevention relating to right to worship is also elaborated and is at A is it C is important imposes are a family or a group of SC or ST shall be punishable about a term not less than 6 months before which so and so then another important is that a you will find a in subsection 2 the word on the ground on the person is a member of Schedule Caste the property belongs to the said member the words knowing such persons is a member of SC ST arethat he should have a conscious that he is a SC then you will find there is an addition to file A he commits an offence specified in schedule against the person a property knowing that the such person is a member of SC and St and such persons belongs to a such member shall be punishable the under the so and so then this section 4 is more elaborated unlike the previous enactment and the duties of the Public servants are now increased and now they have also brought in a financial assistance for commencing an offence if supposed you finance that litigation or a then you will find in the a in section which is very important sub section C is the accused was having a personal

knowledge of the victim or his family the court shall presume the accused was aware of the casehereto most of the acquittal was done it was a unintentionally mentioned these issues it was not with a view that you are saying all these in fact for in case one person is acquitted because he only send the fact of a situation he was only said he was a chamar that was only the fact not a abuse but now suppose somebody says takes an defense that I never knew he is a SC now the burden is on him to prove that he is having a lack of knowledge so there is a shifting of burden in this amendment under section 8 (1)(c) the accused was having a personal knowledge of a victim and Court shall presume the accused was aware of the Caste or a Tribal of the victim unless the contrary is proved contrary is he has to prove that I never knew about this that is a shifting of burden is mentioned and a then there is a exclusive a special court that is set out in section 14 and sometime you are border may be shifted to the exclusive court what is important is introducing the exclusive per court there is a sub section 3 whether it is possible for you or not there is a burden on you that in every trial this special court are the executive special court exclusive special court approaching shall be continued from day to day until the all the witnesses in attendance has been examined until this special court is.....

Participants: Not clear discussion

My lord previously

Participant: Not clear too far to understand

Justice K.Chandru: In 2004 4 SCC 584 SC says

Participants: not clear

Justice K.Chandru: Directly you can't receive a case and proceed with the case it has to be committed by the accused.

Participant: Not clear there is no need of committing directly your charge sheet will come to the court

Participants: Discussion among them

Justice K.Chandru: today we are allowing intervention at the time of bail if he comes with the lawyer now Parliament says you hear him as a matter of right today suppose somebody

wants a post bail they file a memo saying we are opposing so the de fact of complainant lawyer is a

Participant: sir aap isko samjhane ka prayasta kijuie iska kitna misuse hoga Not clear we don't have to give the notice it is the duty of the special public prosecutor or the state government which will inform the victim the court is not required to note to the victim.....Not Clear

SumitBhattacharya: So ladies and Gentlemen we had a lot of interactive sessions really a thought provoking we had thread bear discussion about the amendment act thank you very much for being here and a informally the round goes on So with us so we together for yet another day tomorrow so i would like to make a small announcement which has been formally passed on that 7'0 clock in the evening at the auditorium Sir could you bear with me for few more seconds i want to make a formal announcement and that is that this evening this evening at around 6.30 and you can say 6.45 can we organize in the auditorium which is down there to hear out a musical a cultural programme which is their so you all are welcome over there and probably the dinner is also going to be served over their thank you very much for being with us .Thank you.

Session 13

Caste Challenges in Bar & Bench

Speakers: Justice K. Chandru

Justice K. Chandru: Good Morning to all of you, and the first session today is on the Caste Challenges in Bar & Bench, the so far we are talking about the society, talking about the world outside, what about talking about the world in which we are living in now, is there a caste challenge in Bar & Bench is a fundamental question that has to be raised and unless we see the truth in this, we will be failing in our duty to understand the real problem and we will be having a make believe world that everything is fine, there is no such problem at all this one..so significantly in 2016 started with two strange events, judge of a Gujrat High Court said that these reservations are all irrelevant, it divides society, we don't need reservation, this he said in a judgement and that is was his world view point a judge can also he is not immune from such views and he thought it is his duty to record this in an order the issue is not whether we should have reservation or not, the issue was something else, but then he felt that the society gets divided and therefore it is high time that we abolish reservation, in this process he might have been conditioned by the fact that one of the dominant community in Gujrat was demanding reservation, if that community is included there is one...other community left outside the reservation so because there is craving for each group that why don't we also get reservation whether, whether it is socially and economically backward, or not that is also political parties and try to put in their manifesto that if they come to power they will bring in reservation for economically poor people which means all irrespective of the community, irrespective of the social backwardness but the constitution as you all know was amended to provide reservation for socially and economically backward therefore the twin test was social and economic backward not a mere economic backwardness or not a mere social backwardness both are required to come within the ambit of reservation that is provided in Article 15 and 16 how the Constitution came to be amended for the first time you know that...case started from Tamil Nadu then it was a Madras state the Madras Presidency always had a communal reservation for the 8 years it was purely based on caste, there will be one Brahmin, one other than Brahmin, there will be one Muslim, one Christian and one Schedule Caste, and one Non-Brahmin, so the all the six posts will be reserved on the basis of caste, this was there from 1920 onwards what

is called as communal roaster, so the most of the government jobs were given on the basis of community and religion, and after the Constitution came the Article 15 was put to test, saying that can you have a caste based reservation now, the person who challenged was not an applicant to medical college, but then a cause of action was created by saying if I want to apply I will not get it on the basis of merit because there is caste base reservation and the person who appeared for that lady was a member in the drafting committee of the Constitution, Krishnaswamy Iyyer was a former Advocate General of the Madras was also in the drafting committee of the Constitution, and he took up this case and the court held that you can't have a purely caste based reservation, this was the ruling of the Supreme Court and that led to series of agitation because once you are used to a particular privilege then nobody wants to give up the privilege, and therefore there was lot of agitation in Tamil Nadu, and Pdt. Jawahar Lal Nehru, after consultation brought an amendment that so the Article 15(4) came to inserted in the constitution where it provided for social economic backward reservation. Now, suppose a Judge says this reservation divides the society that may be his view point and the background you know the Patel's are agitating in Gujrat and it was very strange demand the leader of agitation first said that everybody else is getting share why we are not getting our share, secondly in some other interview he said, the only solution is remove the reservation, that is after we...either include us or remove reservation, this may be a social debate, but when it comes to judiciary we have taken oath on the constitution that we will uphold the Constitution, Constitution its entirety, who amends the Constitution, the Parliament amends the constitution, ultimately the constitutionally valid or not it is a for the judiciary recently held that the NJAC is unconstitutional because it interferes with a independence of Judiciary, therefore the ultimate arbiter of any Constitutional issue is the court, and but who is a law maker is the parliament, whether you like it or not, you are abide by the constitution, in fact in Pakistan whenever they amend Constitution Judges there has to take second oath or the third oath if you don't take oath you will out of office, there are some judges who lost office because they refused to take oath so there is seem to be a vote politics, which is a very well-known debate that suppose a new government brings a new constitution, and then you refuse to take oath you lose the office this happened several time is Pakistan, and but in our country we have an amendment ultimately the court decides what is the constitutionally valid or not, at any time this could be challenged, like in Sri Lanka before the bill was introduced, opinion of the Supreme Court is obtained, and once Supreme Court says its valid no other challenges ever permitted whereas in our country at each time at every time when a matter comes this could be challenged, it can be a two judges bench, it can be a three judges bench, it's a constitutional bench larger bench, then review

petition, then curative petition now let us there is a curative petition also so you have...time to challenge every piece of legislation when it comes to the both of office, why I am placing importance is that when you say that I shall uphold the constitution without fear and favor and when you take office you are also to bound by the Constitutional Principles but you can't bring your own ideas into the situation, I remember during the after the emergency when janta party came to power and George Fernandis one who has the very...politician he as a Industries Minister under Moraji Desai and he went to take oath of office, he said I shall uphold the constitution then he puts a bracket minus 42nd Amendment because 42nd Amendment was brought in during emergency taking way lot of rights of the people making the constitution...and to the executive and therefore he felt when the word constitution comes it is minus 42nd amendment, so we took off he went to the North Block and started working until somebody until somebody filed a...saying that the constitutional oath given under the schedule 3 of the constitution can't be mutilated by anybody by their choice suppose you say constitution minus 42nd Amendment that is not the...schedule of the Schedule 3 and therefore a co-warrant was there and then notice was issued then people realize that you can't have your personal ideas into this and how to prove what was the oath taken by him, suppose he has not taken the oath as prescribed under the constitution then he can't enter into the office of a minister and then what happen was they summoned the audio recording by the All India Radio so in All India Radio audio recording came and that's there were some over somebody done some surgery to the audio recording and it was not audible, and George Fernandis escaped from the co-warrant so this constitution when we talk about is a constitution as amended by any qualified amendment and if the amendment is unconstitutional for the court to say that it is unconstitutional, now when a Judge says let the reservation go, we are not shocked because we have seen judges speaking whatever they want whether in court or outside court but the parliamentarian didn't want to give up, so an impeachment motion was moved in the Rajya Sabha all these started the thing...last few months Rajya Sabha when they submitted the impeachment resolution they said here is a judge was deviated from the constitutional oath that he has taken and spoke directly against reservation saying should go and therefore he should be impeached any...in office you can also bring in impeachment, the moment that news came the passed a suo motto order removing that paragraph from his judgement. So, this is the language you can't have a carrot and stick language, this is an office which is an independent office or then when you speak louder like this and there may be consequences not in the judicial world because the lawyers and judges are the two sides of the same coin they may not do much but doesn't mean the society will keep quite at the same time when a judge says reservation is

bad there is another judge in Madras High Court he spoke in a meeting not in any judgement he went to a meeting he thought that he is a torch bearer of social justice so he said over a person's reservation there are scoundrels he also mentioned about the Gujrat Judge therefore, there is a open Debate now, High Court Judge, once writes an order another Judge in the southern part says he is scoundrel, so some people said Judge can't use such strong language and it is not good for the judge because yesterday also somebody was mentioning about the code of conduct, do we have a code of conduct like you have conduct rule framed by the government, but High Court Judges don't have a code of conduct, and the bill which talks about accountability is yet to be passed by the parliament but 1984, I presented a paper saying that there need to have code of ethics for judges, that was a first time I gave a paper in the Bar Council of India seminar where there was a President of India was the chief guest and this issue was first time brought in and it was reported in two journals Indian Bar Review you can also see what is a code of ethics, should we have such code of ethics at all, for a judge, in America the American Bar Association evolved a code of ethics for the judges not apart from the conduct rules for the lawyers it also brought a paper that this should be the model code of ethics for the judges. The American Judiciary didn't hesitate they said we will go by that code of ethics framed by the Bar itself and today in America the only they observe the code of ethics framed by the bar, but in our country we never had any such things but this is only a suggestion based upon the American example and also the various internal precedents that are evolved by the court itself and in that process the Supreme Court in 1997 framed a statement of values in Judicial life statement of values, values of judicial life and it contains many things that judges should not as per as their own personal opinion, judges should not speak in public meeting, judges should not go mingle with people who are likely to be a litigant before you all that is that but this was adopted by 22 judges of the supreme court which was sent to the high court much later most of the high courts have also adopted the code of ethics, when it came to discussion in our high court one judge said why should we have this kind of a conduct we are constitutional office holders why should we have all this, it was a minority view, they said that we can't be given all this do's and don'ts we know how to behave but ultimately most of the high courts have adopted and in fact yesterday the that Parul Rishi was mentioning about Bangalore principles, Bangalore all the SAARC country judges have met and adopted certain principles for values in judicial life and that these two are the parameters for much later came the question of giving a said declaration, a said declaration is you are doing at every time when you buy a property, when you give a declaration because that is a requirement of the conduct rules but whereas judges don't do that then how to make the judges do some of us will took

office we gave them a said declaration and put it in the website it's for everybody to see what it is therefore it was not appreciated but then there is a social pressure on judges to accept this a said declaration. Now, it is with the Chief Justice, in fact when I left the office on the last day I gave the final my asset on they asked on the day on my leaving office also these are something which society evolves there is nothing great about all this everybody is doing and we are also doing these all met meant for the purpose but the point is when the judge used the word very, very harsh like scoundrel, and when people started telling the judge what you said is wrong, that may be people who honestly differ with the, it doesn't mean everybody who opposes are malafidely doing this or have ulterior motives so that judge was keeping quiet and then he attended another meeting, in that he said what is wrong in my using the scoundrel you see the dictionary meaning, it means a person who is dishonest so even now I am saying anybody who opposing reservation is dishonest, so he have fortunately he is going to retire next month therefore he can all his meetings outside but point is in two different parts of India, one from the south one from the west, people say there is a strong view, therefore when you say caste issue in Bar & Bench can you wish away that the man in the Bar are all completely neutral they are all constitutionally...philosophy they still have the opinion and we enter into the bench with all this backlog baggage which is already built to over the years and therefore there are strong views both for and against and that is why whenever matters like this goes it is not ever unanimous opinion, you know Indira Sawhney's case when Indira Sawhney's case came out of Mondal Report there were wide spread agitation all over India you must be knowing in 1990s there was big agitation and some people committed self-commemoration in Delhi and it is in this background we are hearing the cases in courts not shown of mere legal arguments but there is social agitation on fortunately in when north was in complete turmoil, south was completely peaceful, the Vindya Mountains divided they open in India, it is two different opinion, why is south so peaceful, why is north so turmoil and finally when the matters were referred by a 9 judges bench the Indian Express wrote an editorial the courts are not suited for deciding this matter take to the...a newspaper says agitate the court may decide on the basis of precedent, on the basis of the legal precedent courts are supposed to decide only on the basis of legal precedent, courts are supposed to decide only on the basis of Constitution but then here is a opinion which is created that not all problems will be solved by courts and therefore what you do take to the streets and shown of all this public agitation supreme court upheld the Mondal Report and then said it is Constitutionally valid and then the opinion is not unanimous so therefore the caste challenge has always been there and people have taken stand not strictly on the basis of the constitutional principles but also on the basis of their own personal notions of

reservation and that is how we have come to live on the reservation principle that reservation does bring in social justice and Article 15 & 16 are exception to Article 14.

Mr. Sumit Bhattacharya: So, Thank You Justice Chandru, sir has thrown an open forum to you all and we have some time for this session to continue definitely. So it will be really nice and I request the august gathering, if you could come across with the cases which you are handling and the difficulties that you might be facing, which within this forum, if we can discuss out or share, that will be of real benefit. So my humble request is that, if you can just come out with your experiences, because you are handling day in day out these kind of cases which may be right from challenges from the bar may it be taking of too many cases of different domains together as a special courts so whatever it could be, if you could share amongst your own colleagues it will be a great idea. So Thank You sir.

Session 14

Sexual Violence against SC/ST Women in India

Speakers: Ms. Pritarani Jha

Justice K. Chandru

Participants: yes some of the court in every district have been conferred power to deal with the cases relating to POCSO.

Pritarani Jha: So victim has to go to separate courts.

Participant: Not Clear

Sumit Bhattacharya: So we have very interesting break open and mind opening questions these could have come although I would have loved it that these questions would have flown from day 1 it is always good and nice questions are coming with this opening up of this session I would first introduce you to Pritarani Jha ma'am she comes from Ahmadabad she is a specialist activists in Women's law and Children's law so very pertinent question flow to in the occasion to suit the occasion was put forward Thank You very much and I request Pritani ma'am to take over the session and hopefully we have a very nice interactive session ahead thank you ma'am.

Pritarani Jha: Thank you very much a I begin to say that the advocates out here I am I have actually practiced in England I move to India in about 2005 and here I am mainly actually working as a Justice researcher activists and now I also teach at Nirma University a on gender and law a I have around 10 years practice in England and practice in India based on dealing working in Justice projects supporting survivors of sexual abuse a violence domestic violence sexual violence particularly POCSO . So I know lot of the problems so I mean I have a lot of respect for all of you India is a very complex a context to judge init's a very complex context to even be a heading an NGO a and of course these laws a are there but I know there are problems a the thing with what I want to start with actually we will talk about this little first since this is about discrimination I wanted to start a Sab Koi ke liye English theekh hai ya Hindi

zyaada acha hoga. Theekh hai acha hai Ok a but if anybody wants to have a interact please interact in the language English or Hindi because I don't understand other languages but a please feel comfortable to interact in the language you are comfortable in toh mai I consider Ok Ok so then please the please those i will translate for you in English OK

I want to start by saying that I feel very lucky you know in one life time I had the experience of being a minority community and majority community in England I was a part of a minority community and now want to relate some of the experiences to you because they were very significant in making me a I remember I was only about 10 years old a when a just normal incident like a teacher because you know the institutional racism that there is an England affects everybody who is not white similarly caste based discrimination in India will affect everybody who is not high caste those who are high caste you will be not aware of the privileges because we take it for granted it only when you experience being a minority that you realize what privilege is so to relate to you in incident which happened to me when I was 10 years old a very nice school photograph was taken of all the children I think I was the only non-white child in that classroom and the teacher looking at the photograph aimlessly there was no need to make this comment.

He said oh what's Prita doing looks like to praying to Allah he doesn't know I am a Hindu Brahmin am praying to Allah for him anybody who is not white was something other and at that time Muslims were hated so I was Muslim who was praying to Allah this is you know this was a racist teacher but that is there in the system an in England I found myself fighting against trying to justice for Pakistanis because they were victims of racists attacks yeah I was called a pakki that's the thing if a group of young people see you in the street tells a pakki to you all kinds of things walking with my mother on the street wearing a saree wearing a bindi what's that bindi why you wear that do you have a arrange marriages that the big question.

so having experience having fought against that I was very strong that people weren't aware of whiteness you see in England they talk about colored people but they were not aware that there is a whole lot of privilege that goes with whiteness the norm is whiteness and after that everybody else is there so similarly when I come to India you know that's a norm we who are high caste Hindu's or Hindus do take it for granted I noticed it I know that when I am driving and got a Bindi on my head I will get certain privileges that I will not get if I wearing a head scarf in India visibly Ok so when I came to Gujarat I was actually Ph.D. when the 2002 cases were going on I felt it was my duty because I don't think you know the institutional

things that there are I think if you believe in the constitution of your belief I cannot say fight against England and think I have no responsibility to fight against a you know a discrimination against Muslims or low caste people in India that becomes my responsibility and duty OK so I made a decision to stay in India and fight for victims for mass violence and now we are dealing with cases with sexual Violence Gender violence all kinds of things the main difference and this is have already come a and I am can easily share with you various reports a that show that there there is discrimination in society if you also inclined I can go through that but I don't believe there will be much point those of few inclined can go and look at the information I asked to you look at and reflect on your prejudices it's not possible for us to come we are all products of a particular society culture religion I just ask you to question not that we have them I think we all are have them but I ask you to look at whether that in way might affect the way your adjudicating and that is something I feel it is very internal thing that you all have to do it so conversation you have to have with yourself . really if you want to change I don't think coming here being told this that and will change that I don't believe that will happen but I think I will focus on and what I will try to talk to you about is competence we have already started talking about that a in a today. My experience of working in India has shown an actually I knew what I initially when I was working with the criminal Justice system here and I came across cases of compromise.....to recognize to say we recognize you have done something big because they have turned something big when a case comes before you something big has already happened because biggest battle actually for me looking at child sexual abuse is not what happens in court because you will be aware that there is research done by DCD run for a POSCO Act showed that how many cases you think come to court if there are 100 cases of child sexual abuse how many cases do you think come to court. Kitna? 80% aata hoga.....I am not expecting that's going to be a something that will be there. 2 months charge sheet this is the thing I want you to go through. The whole new chapter added on rights of victims and this is you will be aware over the last 20-30 years we are getting more before victims were and witnesses was seen just like you go to court and your witness in your case whereas now with the declaration of Victims riots you international instruments as well as in our Domestic arena there is a lot more recognition of rights of Victim's in criminal proceedings so criminal amendment Act you see a lot more of that POCSO is totally victim central legislations and this act a new chapter being introduced a special public prosecutor and a special Court a I want to a talk with you again having a special public prosecutor doesn't necessarily mean that you will get sensitivity prosecutor its 7 years a sorry haan pehle se bhi tha haan but a yeh is chapter mai include kiya hai jo naya chapter hai.

Participants: Yeh jo rules bane hue hai na SC ST rules usko act mai le aana tha.

Pritarani Jha: So I want to raise a issue actually we support victims on the ground I received a phone call that Ki jo police officer tha jisne summons serve kiye tha POSCO Ki case hai it could be a easily SC ST case usne bola Ki compromise karlo . This 8 year old child who has been sexually abused by a 40 year old a. It is a case of Muslim so that's the area where we work .The address the matter of sexual violence against SC/ST Women in India. The an interesting question as to which special court is to decide on matters wherein the charges include offences under the SC & ST (POA) Act and the Protection of Children from Sexual Offences Act (POCSO) Act respectively. The views of different High Courts vary and the Supreme Court of India is to adjudge this matter is what was concluded.

How there are various reports to depict discrimination and sexual violence. The competence of adjudicating matters and its defects. The aspect compromise has been so common that most of the cases result in acquittal and there is no reaction for it as it has become a norm. How well known that the main problem is poor quality in criminal justice system. The actual work is to start from here. The example of S. 166A of CrPC being amended in 2013. So far there has been only one instance reported in Bangalore. The amendment of this section states that it is a punishable offence on part of a public servant if certain offences are not registered.

It was further observed that just having the law does not make the problem go away. In a survey in Mumbai it was discovered that if an NGO is involved then there are more chances of case being registered. This is not the right path wherein the access to justice is now to be determined on the basis of access to an NGO. How conviction/ acquittal in every case is not the matter. The fact that the party was heard/ fairly tried is what matters to people. The fact that procedural justice is just as important should be acknowledged. Make sure that the feeling of respect of the human rights of the parties is invested in the parties.

It is a huge culture of silence that the victims have overcome to register case and publically establish it. The Women and Child Department conducted a survey as to how many instances of POCSO cases are registered cross 13 States with about 12,000 children. It was an astounding fact that of every 100 cases about 3 were reported. If a similar survey is conducted regarding the atrocities against SC &ST women an analogous result may be observed. It was further seen that about 70% children don't report it to anyone. The aspect for this statistics is that the idea of marriage being the optimum level for women to achieve will be spoilt. This misconception

needs to be rooted out. That it is also heartening to see that there is a bit of a change in this attitude. The said details an instance a father of the child victim who had been continuously harassed by her teacher had stated that he would keep his daughter unmarried and at home but he would fight until he gets justice.

There exist multiple layers of vulnerability for the Dalit women among whom 70% reside in villages to access to services. Enlists an instance wherein a minor disabled girl had been raped and this came into picture when a routine medical checkup was done to discover that the victim was 6 months pregnant. The victim then stated that a certain neighbor had raped her. The DNA test came negative and the Judge had ordered counseling. It was then revealed that the girl had been raped by many men in the locality. All of them were caught and the child birthed by the victim had her paternity test matched with one. The victim then committed suicide within six weeks.

The conviction was done but to what effect did it meet justice. The family of the deceased victim was happy that at least one was convicted. In a survey in Mumbai it was observed that in 60 cases the offence of rape is discovered only on the pregnancy of the victim in similar fashion as stated above. The amendment is to be brought into proper effect. It was also noted as to the inadequacy of shelters wherein the victims prefer to stay with their abuser than to stay in shelter. The condition is such that a victim feels even more unsafe and subject to abuse. This is to be looked upon and the state should strive to condition shelters to be a safe haven and not another place to be abused at. But again more vulnerable on ground of religion in Gujarat so I just thought of go to Court please We are deeply disturbed by the silence of the Standing Committee on this issue. The existing statutory immunity for armed forces 'acting in the line of duty' surely cannot apply to sexual assault committed on women. No sanction should be required to proceed with prosecution of such personnel in sexual assault cases. There is no basis to the argument that gender neutral laws allow young boys to be protected from abuse, because all young boys and girls are fully protected by gender neutral laws in the Protection of Children from Sexual Offences Act 2012. If you marginalize in the society if you have vulnerability the police also know that they can do these things to these people and get away with it. Economic status social status cultural status we have the transgender judgment now they have no right you know gender is not just male or female a gender is now male female and transgender please take note then also judgment of SC has asked all states provide a series of rights to transgender community.

Participants: Not Clear

Pritarani Jha: I have . I have.

Participants: Not Clear

Pritarani Jha: OK Okay I will have to end I could talk to unless it's a privilege really please to be able to talk to you today a please think about what you can do to make the experience of victims a specially whoever there you know it's been journey and I don't claim that all victim's are perfect human beings they are not I deal with victims all the time right they have many other problems there are good bad honest dishonest victims that's not for us to judge or decide a you know I think we have to think about is the reason why they are before us and what powers you have and thank god some powers now to make their experience not as it use to be . thank You for your attention and a pleased to be with You.

Sumit Bhattacharya: Thank you very much maam and a for the eye opening exchange we all participated we have actually encroached for tea we will have tea quickly and come here thank you.

Prof Geeta Oberoi: Good afternoon to all of you so first day and last day first day of course to commence this conference and last day to understand where we failed in realizing objectives our goals and how far this programme was useful to you and also if there are certain logistics related issues then you are most welcome to write it on paper even enormously no issues about that because we always improve based on this feedback. Otherwise if there is any issue please let us know. Was program helpful for you Do you think it will help you in any way in your work you think so.

Participant: yes first of all the amendments have just come into being it's a great to have it just right now because now the new cases will start coming in so we have the discussions on what are amendments to the SC ST Act and the it's a very well explained to us that's a very big help regarding the other aspects of sensitivity also a the Justice Chandru was excellent the way he put it across. I could never conceived that these things do exist may be in Delhi it's not there But a these offences exists in such manner I never knew about that.

Prof Geeta Oberoi: Yeah I am really grateful to Justice Chandru because whenever he comes all participants go Gaga over him they really appreciate what he does for them. Is there something you want to inform us so that we improve? Please tell me.

Participant: nothing to do with academic content and all but in the evening when you go back you feel caged because you have to wait for the person to come and clean it so why can't they clean our room in absence .You can take the written consent from the officer concerned that I have got no difficulty.

Prof Geeta Oberoi: No, No because sometimes Judges have come and said Ok my things have been stolen. Then go FIR and this and that.

Please a come out this is a place where you can come out speak freely and make new friends from your own fraternity imagine, a safest friendship I would say.

Sumit Bhattacharya: I thought maam they have done that they are quiet successful and narrating that story they have made a good group of friends today and just changing the side going from my family for the 4 years . I must thank you for conceiving this idea of SC ST Act it has been really an excellent not only going on law thank you we enjoyed all of them. Said that thanks.

Prof Geeta Oberoi: So can I take leave then thank you so much till we meet again next year yaa. Thank you.