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**CONFERENCE ON COURT GOVERNANCE**

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**VERBATIM PROGRAMME REPORT – P 979**

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## SESSION 1

### **Traffic control in courts: Controlling per day movement of Bar/Judges/Litigants/Ministerial Staff in Courts**

**Dr. Geeta Oberoi:** I thought it's better for me to say good morning now over here and then go to another program, there are two parallel programs that are running today, and here we have all Justices and there we are having no Justices, So all judges and Justices are over here.

**Participant** - but you are there...

**Dr. Geeta Oberoi:** No, No, No, someone has to take care of that program, so I'll go there. So before I go I should welcome you all to your own academy - National Judicial Academy, and of course, we will, as is always the case, we will begin with your own introduction. First with what you have been doing and what are your expectations from the course and then of course we will have a session by all our great Judges over here and they'll ... this is a program where you can actually voice out your issues but of course keeping in mind that the issue should actually pertain to what topic is mentioned because there are thousands and thousands of issues that we all have and judges, senior judges, they can help you.. And the best part of the Judges that we have called for this program, you will note this is that all judges have been alleviated to High Court from service, career service, so they are also from career judiciary like all of you, so they know pretty well you're problems and they can also guide you...All these judges , justice Vimla, Justice Tripathi , **Justice U.C. Dhyani** , Justice Dhyani all of them have been from careers judiciary. So as this is quite a moment for you to get .inputs and find out ways to move forward in law. Whatever issues are of course pertaining, as I said, they should be pertaining to sessions that are mentioned. Program schedule is there with you, with that...and...Also we have our faculty and program coordinator Sanmit Seth. Any issues you can always talk to him, he is there, all these three days of your stay he is there with you, so with this , brief , I would say , introduction about our whole program, it's about court governance , there is lot of things to

be talked and I leave it to Hon'ble Justices to talk about that. with this, I'll take my leave and go to other program . So, I think we can begin with the introduction first.

**Mr. Sanmit Seth:** Yes, Yes

**Dr. Geeta Oberoi:** Isn't It?

**Dr. Geeta Oberoi:** also if you, if you can also give it to Hon'ble Justices, your expectations from this program- Court Governance. You've seen the program schedule, what do you expect actually Hon'ble justices to provide you, just two lines it would be grateful. So Judges will also solve your issues.

**Justice U.C. Dhyani:** Mata temple or Bhojpur, Raja Bhojpur

**Participant:** bhojpur is near...

**Justice U.C. Dhyani:** we saw a milestone and we thought we are very near to devas.

**Participant:** I am district judge from Kanpur and I want to learn how to deal with this strike of the lawyers

**Justice U.C. Dhyani:** celebrated case is Uppal vs union of India...you must have

**Participants:** that does not work

**Justice U.C. Dhyani:** Yes, Yes

**Participant:** even if the High Court..

**Justice U.C. Dhyani:** but so far as the decision is concerned , decision by Supreme Court , Uppal vs union of India, we'll discuss , we'll discuss. Yes

**Participant 3-** I am V. Sivagnanam from Tamil Nadu, I'm Principal District Judge, District Court, Thiruvarur. and my expectation that all the courts should be converted into ecourts

and that will be ( inaudible) , records and other ( inaudible) and all the documents by way of , like anyone who wants to register his office ,by that way of

**Justice U.C. Dhyani:** You mean e-filing?

**Participant 3:** e-filing...because we cannot keep all the original documents.

**Justice U.C. Dhyani:** yes, yes

**Participant 3:** we should return all the things, we should return all the things to the litigants itself and we should not even whenever the file commences us should take it back. we should not keep likewise we are taking lot of court fees so for that purpose also we can , at least we can convert into the a onetime stamp letter because that every time lot of court fee because of that our courts need lot of space..

**Justice U.C. Dhyani:** yes. yes, yes

**Participant:** for that we need something..

**Justice U.C. Dhyani:** and space and then you have to deal with the issue of suits valuation and court fee on every time...every time..

**Participant:** Yes

**Justice U.C. Dhyani:** every time. But so long as 1870 Act is there, Court fee act is there, that is the central legislation, we can't help it.

**Participant:** No, No...we can help it...Instead of getting stamp paper we can make smart , we can get stamps, instead of getting money by way of anything..

**Justice U.C. Dhyani:** Yes, yes

**Participant:** we can get CD's like that

**Justice U.C. Dhyani:** yes

**Participant 3:** instead of avoiding getting stamp papers we can put something like pre stamped for suits (inaudible) we should not ...and second thing in Tamil Nadu, I don't know what about the other districts, we don't come for district judges...they only depend upon PWD so you all need guest house...that is the main thing I learned because every time you have to go and ask PWD for your...

**Justice U.C. Dhyani:** yes, Yes

**Participant:** when judges have to go and visit many places every day we depend upon the PWD

**Justice U.C. Dhyani:** Yes

**Participant:** so there also some politician are coming then, for that we have to make our own arrangements because all the departments because all the depts.

**Justice U.C. Dhyani:** continue, continue, Please take your seat, you need not...

**Participant 4:** I am Gita Gopi, Principal District & Sessions Judge, Athwaline, Surat Gujarat...My lord, my expectation form this conference is making the courts litigant friendly..

**Justice U.C. Dhyani:** Litigant friendly

**Justice U.C. Dhyani:** that's true, yes

**Participant:** good morning sir, I am Rajesh Gupta, district and session judge, Neemuch, Madhya Pradesh. I have been in this court since 1987. Nowadays district judges are under various kinds of work, like legal aid. Lack of manpower is also an issue.

**Justice U.C. Dhyani:** yes, thank you

**Participant:** I am Mr. Pratha Sarathi Sen, District Judge and session Judge at Howrah, my expectation is ...your lordship may kindly say that experience with regard to administrative jobs. We can discuss with the same also.

**Justice U.C. Dhyani:** how is Justice Sumitra Sen? Thank you

**Participant:** good morning lordship, myself Kishore Kumar, from Jammu and Kashmir, I am district and session judge. Lordship (inaudible) there must be...conference in all...

**Justice U.C. Dhyani:** Justice Bansilal Bhatt used to preside over your court? In Srinagar..

**Participant:** lordship, Jammu also

**Justice U.C. Dhyani:** Jammu...Thank you.

**Participant:** I am B.N. Mohanty, I am now the Principal District and Session Judge Balasore. So my expectation would be...the court governance. The most obvious thing in the High Court is the shortage of staff. So in what way, High Court are (inaudible) and the government is unable to figure it. And the recruitment process should not be so cumbersome, it is difficult to get the court freedom..

**Justice U.C. Dhyani:** thank you.

**Participant 9:** I am G.V. Subrahmanyam, District & Sessions Judge, now I am attached to Senior Judicial Academy, Secunderabad, Sir...My opinion, till yesterday I was the (inaudible)...for the litigant public is certainly lacking Sir, they don't have the minimum needs in the court premises. Then madam said that we should become litigant friendly. In my opinion we should have minimum facilities for the litigant public. The staff of the courts are also have to be trained simultaneously. They need to ...governance of courts.

**Justice U.C. Dhyani:** thank you.

**Participant 10:** good morning lordship, I am Imtiaz Ali, District and Session Judge from Assam. I would like to know about how to use, the technology to control traffic movements in court campus.

**Justice U.C. Dhyani:** that will be told to you by **Justice U.C. Dhyani**...Yes.

**Participant:** good morning I am Susmita Phukan Khaund.. I am district judge session judge in Karimganj district and I seek, as to, how to work efficiently because infrastructure is very poor, and manpower is very poor and court building...and I am working in the remotest part of Assam, for that your lordship should go to see to believe it...It's very poor... We are trying to accommodate everybody on makeshift temporary basis and video conferencing is out of question, once again the building and...Thank you very much.

**Justice U.C. Dhyani:** you will be surprised to know that, yes...Mrs. Saroj Yadav will recall...In lucknow, when we were posted in lucknow, then many a judicial officers used to hold court in tin sheds and garages..

Mrs Saroj Yadav: Motor garages.

**Justice U.C. Dhyani:** motor garages...in American library, Mrs Yadav you will recall in American Library.

Mrs. Saroj Yadav: Son Bhadhra also.

**Justice U.C. Dhyani:** Son Bhadhra also...So far as the situation is concerned, it is very poor in most of the states, of course, Uttarakhand is lucky in that respect...Yes...yes..

**Participant 12:** My lordship, I am Mukund G. Sewlikar, Principal District Judge, Alibag, Maharashtra. We are facing the space crunch. Records are piling up since 1960, even before that, the records we have to maintain, so there should be complete eRecords so that space will be available for courts.

**Justice U.C. Dhyani:** yes.



**Participant 13:** Good morning, myself Shriram Modak, I am Chief Judge, Small Causes Court, Mumbai. I joined in 2007 as a direct recruit, earlier I was there at Nagpur, then Bombay Mukundpur then High Court registrar then one Principle District Judge and Now I am a Chief judge Small Causes. So basically as my earlier friends have said, we have to perform judicial as well as administrative functions so while discharging administrative functions normally the Registrar used to place before us, all the courts finances...from the High Court or from the other depts...In the morning session, in the afternoon session in the evening session, so even we are used to work as chairman of LSA, we have to look after...in Maharashtra we have got a infrastructure committee, set up under the leadership of ADJ and collector and executive of (inaudible), they are the members of the committee. So we have to conduct meetings for that also. So now it is the job of the ADJ to multi task functions. So we expect from your Lordship, how to balance between the judicial part and the administrative part, because it is also difficult to observe the dais...it is difficult to go on dais...generally so how to deal with all these situations. and so far as said that stamp paper, so in Maharashtra, there is a eCourt fee, we have started eCourt fee, so no need to have a physical stamp paper, now we have got the payment of Court fee online...So we have to take out...print out the amount and (inaudible) will be there, so.

**Justice U.C. Dhyani:** there is no space crunch so far as this court fee is concerned in your case...you say that it is...eCourt fees...yes...yes.

**Participant:** We have started my lords and even for video conferencing, our government has given that LED's and depending upon the number of under trial prisoners. At Bombay, more units, in Nagpur, more units are there, so they are given.

**Justice U.C. Dhyani:** Thank you.

**Participant:** good morning my lord, I am Arindam Paul. I am Addl. District & Sessions Judge, Judge, Kamalpur, Tripura. My objective here is to learn how to manage in less fund in the lower judiciary is very pathetic so how to manage in very less fund...that is my objective..

**Justice U.C. Dhyani:** how is Mr. S.C. Das?

**Participant:** my lord has gone for an operation of cataract..

**Justice U.C. Dhyani:** cataract.

**Participant:** So right now he is not.

**Justice U.C. Dhyani:** there are only two judges left then.

**Participant:** 3 judges

**Justice U.C. Dhyani:** three judges.

**Participant:** there were 4 judges, including the Hon'ble Chief Justice..

**Justice U.C. Dhyani:** Thank you.

**Participant 15:** I am Anil Kumar, from state of Kerala. I am district judge, Thalassery, I would like to say the quality of the staff and advocates are not good.

**Justice U.C. Dhyani:** Justice Joseph is our Chief Justice, he is from Kerala.

**Participant:** Sir.

**Justice U.C. Dhyani:** Justice K.M.Joseph is my Chief Justice. Thank you..

**Participant 16:** Main, A.L. Joshi, Chhattisgarh se, District & Sessions Judge, Korea, Baikunthpur. Mera problem hai sir, district judge ko jo financial power hai woh bhot kam hai, jis karan administrative aur financial section, fir High Court,

**Justice U.C. Dhyani:** ji..ji..ji..

**Participant:** aur baaki ek problem hai, (inaudible) baaki sab ground problem hai..

**Justice U.C. Dhyani:** Chaliye...hum discuss karenge..

**Participant 17:** myself, Govind Kumar Mishra...I am posted as District & Sessions Judge, Korba, Chhattisgarh...my problem is shortage of staff.

**Justice U.C. Dhyani:** Shortage of staff.

**Participant:** Shortage of staff...and many problems of record room, of copying, typing not up to mark.

**Participant:** Sir, I am Yogesh Khanna, I am district judge North West Delhi. Sir, security is the main issues now, so....and also, with regard not only to the appointment but also with regard to optimum utilization. How to optimally utilize them and how to train them? These are big issues which are coming up. We would be glad to have your words on that...on these issues..

**Justice U.C. Dhyani:** Thank you.

**Participant:** I am...of administrative and judicial work...every district judge is facing other social work, they have...supreme court or the High Court (inaudible) these are social works, so diverting the judicial work and social work and apart from this they are directing the judge to go to the (inaudible) it would divert the work, so we have to take out from the social work, thus they are so many people for doing social work. It is not our job. Yes, judiciary is responsible for all but it can't interfere and forget its primary duty...(inaudible)Constitution says that state **government** has to provide (inaudible) to the court, not the judges but often direct us to go...in rural areas, sending more people to rural areas is more...they dilute the judicial work and the administrative work. It has to be separate and until and unless it is separated from social work. Sir, we cannot expect the judge to dispose cases...it has to be diluted or minimized. Suppose you are giving directions to, because their superiors are the policy makers, we can suggest...So that should be separate, so that is my expectation from the session.

**Justice U.C. Dhyani:** thank you.

**Participant 20:** I am Harendra Singh, in the rank of District Judge, presently posted at MACT, Judge bhilwada rajasthan. Ek experience main share karna cahunga...jaha pe strike wala maamla hai. Abhi 2 saal pehle Rajasthan main ek ajeeb si ghatna hui thi, Jaipur main, which I would like to share. Main hi waha posted tha uss samay and humare ADJ sahab arrest huye, shaam ko 4 baje ka time hoga, toh waha pe jo advocates they, woh unko leke jo lawyers court main aaye aur 2-3 lawyers aur aa gaye, unhone kaha ki hum aapse baat karna cahte hai judge sahab, unhone kaha ki theek hai chamber main ajao. Chamber main unhone kaha ki yeh humare colleaugue lawyer hai, inka yeh case hai jismain yeh...toh yeh aapse yeh cahte hai ki aap humare favour main order kare. My lord, jo landlord they, woh aadmi is retired from the government job aur unko kareeb 10 saal ho gaye unko, yeh decree liye huye, toh unhone kaha ki aapko kuch nahi karna padega, bus aap yeh kardo, sorry bhi feel kia, so woh unko aur unhone un advocates ko...woh fir matlab bahot jyada violent ho gaye, ke aise kaise hum lawyer hai, toh unhone woh kuch...jo hua usko likh dia...Fir woh lawyers jo they, woh district judge ke paas gaye aur kaha ki aapka yeh officer kitna badmaash hai, aur humari...matlab advocates ke liye itna bhi nahi ki adjust karle thoda, Unhone kaha ki chalo kal iske baare main dekhte hai. Fir, district judge ke paas phone aata hai unka ke kal se hum strike kar rahe hai, toh unhone kaha ki aisi kya baat ho gayi...woh kehte ki ADJ sahab ne humain bilkul adjust nahi ki aur order sheet pe yeh likh dia haisab kuch aur woh usko contempt main bhejne wale hai, seedha High Court main. Unhone kaha ke aisa hai ki main file mangwa leta hu, inn sab cheezo ko taalne ke liye aur smooth karne ke liye, subha aap ajayeiyee, main file mangwa leta hu, dekh lete hai usne kya likha hai aur aisi koi baat hai toh main unko persuade karunga ki woh contempt proceed na kare. Toh yeh ho gaya, so udhar jo hai, hum log bhi baithe huye they chamber main, lekin lawyers jo hai woh aaye hi nahi, aaye hi nahi matlab karib 60-70 lawyers ek sath aaye, naare wagherah karte huye ki ' Vakeel Ekta Zindabad" or yeh woh karte huye bilkul serious tone main aakar chamber main ekdum aagaye aur kuch ni kia, bus file dikhaye aur chale gaye. Dekho aisa kuch ni likha, fir sir yeh strike hijack hoti gayi ki Bar ke election aane wale hai, toh jo election ke jo candidates they aane wale election ke, unhone highlight kardia isko, aur mudda bana lia aur yeh baat High

Court tak chali gayi. Yeh baat 3 mahine tak chali, aur fir ismain district judge ko bhi lapet lia ki district judge ne humari nahi suni, ek aur transfer cahiye humain. Fir jo inspecting judge they, unko lapet lia ki kyuki woh chief they.

**Justice U.C. Dhyani:** haan chief they.

Participant: haan, yeh chief hai aur yeh bhi kuch nahi kar rahe toh humain inka bhi ahin. Uss time Justice Sudhir Gangwani the...

**Justice U.C. Dhyani:** unhone toh nahi kia hoga...

**Participant:** Unki toh jitni tareef ki jaye woh kam hai..

**Justice U.C. Dhyani:** Na, na, unhone toh nahi kia hoga transfer...

**Participant:** unhone kuch nahi kia...aur fir unhone instruction diye, bhale message diya ki aap litigants ko hurt nahi karsakte, advocates ko karne do jo karna hai. Pehli baar experience raha metro main, ke litigants aaye, unhone apna ID card dia,

**Justice U.C. Dhyani:** Seedha judge ne entertain kia...

**Participant:** Direct judge ne kia, pura kaam hone lag gaya without the advocates. Advocates chambers main apna drafting wagherah karke de rahe they, lekin woh pura kaam jo hai woh hone lag gaya. Bail applications jo ho sakta hai agar judges aur advocates sath main hoti toh woh unko grant nahi hoti, lekin unko grant ho rahi thi, sab kuch itne efficiency ho raha tha, advocates ko laga ki yeh toh gadbad hi ho gaya.. toh woh ek excuse cahiye thi ki humain koi bulaye. Humain koi matter ke liye bulaye aur hum unko call kare..

**Justice U.C. Dhyani:** Honorable solution...

**Participant:** aise hi hua sir, woh ekdum apne decision se hatt gaye, tanaav main agaye, jo kaam karna caah rahe they woh hua nahi, kuch aur jarur ho gaye...aana sab caah rahe they lekin ab kaise kare...

**Justice U.C. Dhyani:** koi bulaye unko..

**Participant:** Bas, yahi hua, bulana pada unko...District judge and ADJ sahab ka koi transfer nahi hua, ek mahine baad un dono ko High Court main le liya.

**Justice U.C. Dhyani:** Justice Sunil Ambwani is a tough man, jitni tareef ki jaye woh kam hai. Do cheez puchna cahiye tha. ADJ and then the District Judge ought to have enquired from the lawyers, when the decree is finalized, decree is upheld by the Supreme Court what can we do? Can we defy the Supreme Court order or take the consent of the landlord. If he wants to give you time, he may not enforce the decree.

**Participant:** Jo judgment debtor they advocate, unke khilaaf ek...woh hostel main..lekin jab unko reality pata chali, dusre advocates ko toh unhone unhe bahar se hi nikaal dia.

**Justice U.C. Dhyani:** Chaliye thank you very much for narrating this nice incident. Good morning mam.

Justice S. Vimla: Good morning to all of you.

**Justice U.C. Dhyani:** Yes, thank you

Justice S. Vimla: I have come just to listen to my friends here..

**Justice U.C. Dhyani:** You were supposed to go to that class also.

**Justice S. Vimla:** The next one.

**Participant:** Good morning house, I am Major Phalak Sharma, Additional District and Session Judge at Gurgaon in Haryana Sir and as far as expectation is concerned, I expect this becomes memorable and educative from a practicable point of view, because in theory, things might be different but on ground it is different, that is what everyone is facing and for this a practicable solution is required.

**Justice U.C. Dhyani:** Thank you.

**Participant:** Good morning, I am Rajan Gupta; I am district and session judge Bilaspur, Himachal Pradesh. Most of the problems are common, yes but I want to say, definitely like basically the infrastructure. Like we talk about Vishakha Case, we talk about women rights; I don't think that these court houses are fine for the ladies. So these are basic things which I want to say. Then one thing more sir, NALSA has increased its activities a lot, so a lot of time is consumed in those activities. It is not criticizing those activities, some of the activities are very influential, but some of the activities...This is causing a lot of problem (inaudible) Now one of the doctors, a crew member of the committee, so he wrote three letters to the Chief Medical Officer to nominate a doctor to be appointed as a member of the committee, to be nominated by the District Judge but no response, because they say, you want everything and no permission. Ultimately when this came with a letter that this is the letter....

**Justice U.C. Dhyani:** Court letter, from the court.

**Participant:** and the district court, and within two days this letter will be sent to the higher... I said let me talk to the DCM. Then I personally talked to the DCM. After my talk, after one week one doctor was appointed to be in the committee, one doctor was nominated, because he was to be appointed by a district judge. Now many schemes are coming, schemes are very good, very good, but what is happening is because in many things a lot of time is wasted, lot of time is consumed of the district judge in these things and other department...they say for everything there is a scheme, for everything they need a doctor. Now let us take a simple document...

**Justice U.C. Dhyani:** Yes...yes.

**Participant:** they were created by certain police officers... S.H.O. police station so and so, Sub Inspector Police Station so and so...That can be fine, but still the nominations, or the persons nominated by me in 2008, 2009, they are no more than...

**Justice U.C. Dhyani:** and then there is one problem also, every second Saturday and Sunday, there has to be a Mera Lok Adalat, it is very cumbersome for the district judges.

**Participant:** every Saturday...now every month there is national lok adalat.

**Participant:** What the judges will come to the court and sit till evening and then leave..

**Participant:** This is something which we must do it..

**Justice U.C. Dhyani:** We agree and then there is a provision of juvenile home, special homes in the JJ Act, hardly there is any, one home in any district, what to talk about a separate and fully functional juvenile home.

**Participant:** in my jurisdiction, there is a provision for special home, but unfortunately there is no special home in the state of Haryana.

**Justice U.C. Dhyani:** There is no special home, there is no observation home, and there is no juvenile home...

**Participant:** In my district my lord, if a juvenile attains the age of 21 or more years, then he should be sent, there is no provision at all. Hon'ble High Court states that if he cannot be sent to observation home, there let him go scot free- then where the justice is. What about the victim? What about the person who has lost a child, who has...Now, if we talk section 64... Because so far Hon'ble Apex Court and Hon'ble High Court are of the opinion that if he has crossed 21 years of age, he cannot be set free. So, what I say is if we are framing any law and if we are taking care of the juvenile why should we take care of the witness also. Why the victim's safety should be compromised at the instance of the juvenile.

**Justice U.C. Dhyani:** the offence that was committed has to be reckoned with, now after 21 he cannot be kept, either in juvenile home or anywhere. That is the problem.

**Participant:** they themselves say it's a fake institution.



**Participant:** Although in Delhi High Court, there is...

**Justice U.C. Dhyani:** But there is no separate home no?

**Participant:** lordship we have one experience, system doesn't have separate room for those who have crossed 21 so we have opened a separate cell in the jail.

**Justice U.C. Dhyani:** cell in the jail itself... Yes..

**Participant:** Cell in the jail itself...This is a local arrangement, because if the district judge does not become man in this regard, so they will be scot-free, getting there by easy means

**Participant:** Same provision is there in our state...

**Justice U.C. Dhyani:** In jail itself...That must be under the direction of the district judge...session judge..

**Participant:** because there is no provision under this juvenile act.

**Participant:** I am V.B. Nirmala Geethamba, Principal District Judge, Srikakulam District, Andhra Pradesh. Actually the judicial accountability of the earlier Principal District Judges is increasing, and then the judicial officer, day by day their accountability is strictly being seen. There is a need of surplus, compulsory to communicate the... there must be equality, and common orders will be passed, whenever it is possible to follow any process to reduce the dependency and sometimes...

**Justice U.C. Dhyani:** yes, order 17...

**Participant:** So actually we are doing judicial work 10:30 - 5 p.m. Thereafter they are giving the administrative work on the bench itself. So we are strictly following the timings of the court...as well as we are attending the administrative work. Apart from that, there is need of staff members, because in staff now the senior members are going to retire, so their services will not be available to us, and when the new comes, they are taking assistance with the DLS

funds, we are conducting training programs for the staff members also, so that we are able to make them aware as to the changes required for the job.

**Justice U.C. Dhyani:** You have academy also in your state? State Academy?

**Participant:** We have Sir; Academy at Hyderabad caters to the need of both the states my lord.

**Justice U.C. Dhyani:** Telengana and A.P, both...But then you can train your staff in the academy also.

**Participant:** yes, yes, sometimes we do...

**Justice U.C. Dhyani:** because if you train the staff out of DLSA funds, then the training has to be imparted only for the legal services and the spectrum in the academy is broad and there is a provision...We in UP and Uttarakhand train the staff in the academy also.

**Participant:** Actually in the district level we are giving...

**Participant:** In the High Court of Guwahati, we have the training program for the staff also.

**Participant:** Sir, I am Satya Narayan Mishra, Principal District & Sessions Judge, Cuttack Sir, so far as my area is concerned, we are lacking in the infrastructure. Fund is also not a problem.

**Justice U.C. Dhyani:** Fund is not a problem in problem.

**Participant:** I must say that fund is not a problem, but I may be sounding a bit indifferent sir, we have plans, we will do this, we will do that but the problem lies in execution, in implantation of the plans. As my friends here will all agree that we again have to depend on the government agencies?

**Justice U.C. Dhyani:** No you see that there is no resource crunch. Funds are there..

**Participant:** while executing the plans, suppose...again we have to take permission of PWD...

**Justice U.C. Dhyani:** Naturally they are the executing bodies..

**Participant:** Can we not have one special...for the judiciary, like for Housing Corporation, for defense establishment, where hundreds of crores are spent. Can we not have one special agency to execute the works of the judiciary? Second Sir, we have to plan everything sir, only through plans for three years plans. So now the system which...is one and the same. Kise sign kare? Workload is increasing, but the venues to meet those challenges. So we need to have a plan to meet these.

**Participant:** I don't have such problem, but as my learned friend from Rajasthan said, the problem lies with the Bar. Actually we don't have problem over them. My friends will agree.

**Justice U.C. Dhyani:** Bar Council has control over them according to the Advocates Act 1976.

**Participant:** they cannot be controlled; you need to have some sort of mechanism to control them.

**Participant:** Because of the legal aid activities, we are under their mercy.

**Participant:** ...provides training to the staff, to enhance their skills. Most of the staff is working, new boys are coming...this is because the older staff is not cooperating.

**Justice U.C. Dhyani:** Not cooperating?

**Participant:** no, not coping...Actually now we are doing everything on the computers because of the eCourt Program, so on my own, every day I provide time to the staff. At least we can provide some training to the new staff. Sir, I am not critical of anything of our institution. Earlier they were the legal services activities, now we have the other activities, now I have found those activities to be quite beneficial to the institution. Certain cases are

being disposed off which have no connections, but still some old cases are getting disposed off. We need to implement some of the programs with full dedication; thereafter I hope the system is better. the courts are for the litigants, not for us.

**Justice U.C. Dhyani:** We the people of India...

**Participant:** Qualification of staff also is there sir.

**Participant:** any other answer I would like to hear my learned friend..

**Participant:** I want to add one more thing as far as Lok Adalat is concerned my lord. Even before, earlier to 1995, we were settling the case as 33 Rule 3 and all 23 rule 2, without these Lok Adalat. Now what is happening is here, we settle it in the court of having the judge and lawyers and the party will go to some other place and record the settlement so is it not waste of human...

**Justice U.C. Dhyani:** resource.

**Participant:** in what the lok adalat is... actually in a state function, mediators are appointed, and then we will call registrar and do... for settlement. we are asked for giving to each case by Hon'ble High Court and it is a settled case for chief judge was asked to award 3000 rupees, so that they are try to settle the case to avoid, to save the time of the judicial officer, so sometimes there are also trying and giving time to the... that is now it is a process.

**Participant:** just to reduce the burden of the district judge... we can have appointment of full time...

**Justice U.C. Dhyani:** Now if you all permit, you can intervene in between. Now I request..

**Participant:** We have a very big task which virtually every day we face- submission of figures and submission of data. So can't we have a pool that will upload the data into the system...to the High Court?

**Justice U.C. Dhyani:** to the High Court...

**Participant:** We can classify that also. See the data of Andhra against the data of Karnataka and I can see the data of Tripura.

**Justice S. Vimla:** See, I do agree that lot of manpower has been used for the purpose of collection of data. Now the situation is not the same. We have National Judicial Database in which every data is available. After this software, that is updates version 2, I think you have a presentation on this also. You have every detail there, just the collation of entire details and send...From this you will be able to know, manpower need not be needed thereafter. Sitting at your desk you can control the judiciary; you can collect every detail that is already available. If any fresh details are available that you need, you can collect it.

**Justice U.C. Dhyani:** if you all agree, then the tea will be served in the conference room itself in order to save time, and now I request **Justice Dharnidhar Jha**, to take up the first session on Traffic Control in Courts.

**Justice Dharnidhar Jha:** the problems you have individually highlighted, I am constant to note are spread over 12 sessions over three days. If you have the occasion of going through the program schedule prepared by NJA, then you would have that every individual problem has been laid down in one session. We were eager to know one particular program that you would have, we wanted to know, but ultimately it turned out to be a presentation. If I am permitted to note, individually coming from each of you which was not required? When we were requesting you to introduce yourself and point out your individual problems or the issue which you wanted this workshop to focus, attend it and again to repeat that the issues are listed over 12 sessions on three days and they will individually be taken up by each of the resource person, who interacts with you. You very well know on account of being the Principal District Judges or on account of being associated for a longer period with the judicial service that administrative capability of a district judge is what serves the nation the best. The judicial image reflected only in your administrative capability. It is not the High Court, it is not the Supreme Court. It is you people, who administer the judiciary really in

real terms, so we have all to remind ourselves that we are ultimately the depository of the respect and honor which the judiciary has earned or is likely to earn or it has earned in the past and it was our effort that the image of the judiciary has been painted so beautifully, with respectful passage. Our capability to administer the individual district, I had the opportunity of serving two High Court's - Patna High Court and the greatest and the biggest High Court, Allahabad High Court and Mrs. Yadav is here. I was incidentally administrative committee members of the two High Court. I had my own experiences of running three judgeships as district judges over 5 years, before my elevation as a judge. What came out to me from serving the judiciary and the state higher judiciary the High Courts, is that being slack or a bit tolerant on the administrative side of your institution creates problems for you, so you have to identify the problems or if it is placed before you, you have to take cognizance of it very sharply and react to the situation quickly. You know, the infrastructure facilities are not uniform across the country, you have yourself pointed out the poor facilities provided to the district judiciary by the State Government, you cannot do much about that because on account of the subordination of the district judge before the High Court, you have to request or to route every request through the High Court. This I believe is the normal procedure.

**Justice U.C. Dhyani:** Normal practice throughout the..

Justice Dharnindhar Jha: So it is ultimately the High Court, which has to create things or get things done for you, but whatever facilities are available with each of you, we have to create some beautiful things there, we cannot run away from there, we cannot shirk there rather. When I was serving the districts of Bihar, the three districts of Bihar, the fund crunch was there, you must have known Lalu Yadav, you must have heard Lalu Yadav, he was governing the state of Bihar, personally and through his wife and it was very difficult to tally..

**Justice U.C. Dhyani:** Brother, let that be over, he is trying his level best, but..

Justice Dharnindhar Jha: No matter, it happens.

Justice Dharnindhar Jha: My phone was also ringing, Justice Garg used to be very sensitive about it. It was very difficult to eke out a single paisa from the Bihar Govt. you cannot do anything about that, you have to make request, you have submit the report, that this is the requirement of this judgeship for running the judicial administration, for running the general administration, for meeting out the expenses, daily expenses of petrol, diesel, this that many things. This depends upon your clarity and vision as to how you manage your administration and that in minimum fund provided, the minimum resources out at your disposal. But you know your court rooms better; you know your establishments better. There are confidential sections and departments, in your court rooms. Say for example the record room. No one could access the record room; no one is expected to access the records in the judicial sections of the court also where the officers of the different courts are located. But in spite of these rules...stringent rules, framed by the High Court and handed over to all of us for immediate and proper education we very well know that things could not be run that better if we go by the letter and spirit of each and every rule. We have to be a bit relaxing in those things because advocates, clerks has to approach the office clerk, the bench clerk for obtaining the next date, for the information regarding listing of a particular case or a particular bail petition, other petitions, interlocutory matters. Where there is no system of filing of court fee electronically as mam from Chennai was pointing out, necessarily the advocate or his clerk has to approach the concerned Nazir or whoever is in the accounts or other sections of the court, to receive the court fee. We cannot make everything out of bound for everyone, then we have to make it workable and that is the practicable aspect of judicial administration because we have to take further the court proceedings because if we strictly prohibit entry of a particular person, the advocate or his clerk, then maybe that we are also strictly prohibiting the plaintiff or the defendant from appearing or approaching a particular section of the court for discharging his obligation as per rule and procedure. So, there some barriers we create, that beyond this point you don't traverse, you don't go inside the chambers, you don't go into the court office and you parley with the court staff, fond out from the Shristhdaar of the subordinate judge or the munsif or the district judge as to what was the court fee to be paid, If there is no electronic filing of the court fee. In most of the states probably, in my state Bihar, I was the member of that committee, there is franking machine

established right from the district court to the subordinate level so no one is to make monetary transaction in matter of court fee, no stamp is purchased to be filed before the court, only you have to present the petition, and you have to pay the fee to the counter, they acknowledge the receipt, put a receiving. It is very easy and the other benefit is that you don't know exactly. You had the Telgi Stamp Scam, you don't, everyone is aware of it. Suppose that, that was a fraud in transacting purchase and sale of stamp papers, so that particular eventuality is also voided off. So I would request every one of you where the system has not been introduced, to right to the Registrar General of your courts, High Court, respective High Court to take steps by citing at least Bihar and one gentleman from Andhra Pradesh was also pointing out, wherever, wherever you take, get the information from your colleagues present here, where the system is in place and you write to your registrar general that in order to obligating any scam, it is some sort of a scam one day or the other when it comes out, we require to establish Franking machines at every headquarters, right from the, you cannot say from the High Court, but you can say very well, from the District Headquarters up to the Taaluka Level or sub divisional level. This is one aspect of the administration of judicial administration which will go a long way in lessening your mental agony. Every day you are facing a petition in the box of the vigilance committee, the railway staff, of the railway magistrate has shown the lesser amount on the counterfoil of fines picked, then what was really picked and what was really pointed out to him. Why all these things? This creates agony for you, tense moments for you, you have to bring the officer before you, you have to call the officer before you, you have to call the staff before you, and then lose your composure. Why? You are the head of the administration. You have to be very composed, very calm. You have to constantly contain yourself in your mental and official equilibrium. It is very necessary for you and the whole system of running the administration that you look to these matters, ponder over it, imagine it and then suggest to the High Court and I believe, because I have done it, I have seen it happening, you will get things done very fast and properly, you pursue it, you talk to the Registrar General, you talk to the Registrar Judicial, you talk to whoever, you talk to the law department, if you are, I could point out to you that if you are sending a request for the handing over of some funds for some particular purpose, then I could suggest to you that you send a copy of the letter to



the Registrar General of the court also with a request that sir you pursue it. Now, I believe that in every judgeship there is a monitoring committee. Is there in your judgeship?

**Participants:** Yes, there is

Justice Dharnindhar Jha: District judge, district magistrate, S.P. and all concerned, the building construction department, the PHED, the electricity department, everyone is there, the police is there to take a stock of the execution of the warrant, non-production, production of the witnesses, the chief medical officer is there for the non-production of the medical officer or the doctor who is required to depose in case of injury cases or postmortem cases. You know we are all district judges, we had been district judges, we still find ourselves living in those days of having run the districts and we really, it is a matter of nostalgia and great exultation, feeling of great exultation that we were administering justice. It is a great job. It is a very big job in your hands; this is never done by anyone which you are doing presently. You, you have to simply imagine, say for upkeep of maintenance of vehicles, though the number of vehicles must have dwindled now on account of providing of 50 Liters of petrol to every judicial officer and 120-200 liters to district judges, these are what the district judges and other officers are getting, but still you have some vehicles for other purposes in your judgeship. They may not be in good shape. What do you do? You simply call a garage, a proprietor of the garage; you call the motor vehicle inspector also. This was the way I used to do it. I only want to share my experiences. You call them and you tell them that this has to be repaired and you point out the defects, the repair is required, the overhauling or whatever, you give the estimate of these things and you send these two reports to the LR through your High Court and believe me, you will be getting the amount in no time. This is simply, you sit down in your chamber for handling administrative job, you don't go to your home, your wife is waiting for you with a cup of tea, your naashta and refreshment which she has prepared, your children are also looking for you that father or papa or pitaji has not come back. These things and one thing is you rely upon your registrar. If you don't feel that he is a person to be relied then you form a committee of officers of real known integrity who has imaginative instinct of administering things. Even in matters of transfer my experience

was of staff from one section to the other section I never did it myself, I formed a committee of five judges, headed by the senior most ADJ, and handed over, right from the day of joining till date, posting and they are aware of the rules that where one has to go from the complaint section to the GR section, from the GR section and I simply told them that please, ensure that these things are adhered to and even a High Court judge was, if at all he was giving me a call ki Jha sahab, so and so has been transferred from, I said no sir, this cannot happen, because I cannot demoralize my officer. This was my reply. Sir, sorry sir, I cannot do it, next time sir, I shall take note. This will not happen and believe me no judge was annoyed because as soon as I pointed out that this is the manner I have done it, the judge was satisfied that there is no favoritism, there is no scope of favoritism. So one thing we have to eliminate is any suspicion anyone has been favored or made prayed to administrative.. We shall take action if someone comes into that category, then we must initiate action, but not otherwise. You know very well, the courts are there, the dais is there, that is fully protected but really the advocates in Uttar Pradesh especially, I had the, throughout I was sitting in district bench, Uttar Pradesh, and for one particular 5-6 months, I was heading the bench which was hearing the contempt matters and in one of the biggest districts Bareilly, Mrs. Yadav could be telling you, I am forgetting the name of the gentleman who was the district judge there, a nice gentleman, whole civil court was vandalized, name plates were procured, this happens generally in UP. Chairs broken, dais broken, panels broken, door broken, windows broken...

**Justice U.C. Dhyani:** When did this happen?

Justice Dharnindhar Jha: In 2012-13.

**Justice U.C. Dhyani:** And who was the District Judge?

Justice Dharnindhar Jha: I just cannot remember the name.

**Participant:** Your lord ship something like this had happened in Benaras also.

Justice Dharnindhar Jha: It generally happens, you cannot be..

**Participant:** We are not permitted to act. The best measure the High Court adopted was to immediately transfer the...

Justice Dharnindhar Jha: No, that is not effective, that I am sharing with you. Transferring the jurisdiction has not been that effective. In Allahabad itself, under the very nose of the High Court, when Chandrachudh was presiding over, I was there and one of the highly respected judges India has ever seen, S.U. Khan, Justice S.U. Khan, he headed the Ayodhya Bench you know. He is such a nice gentleman, he was the administrative judge of the judgship and for what, a criminal was shot dead by another criminal and some policemen were manhandled or advocates were manhandled by the policeman, so judiciary did not have anything to do, so the judiciary normally does not have anything to do in Uttar Pradesh except when in one or two cases, you could be having an astray example of any particular order having been passed against any advocates. I took up the cognizance and I wrote down. I used to write down my orders on contempt's and sending the order by way of explaining the charges and by way of notice boards, simultaneously and that has its own desired effect. Recently I was in Allahabad and Railway magistrate Varanasi, who came to see me and an officer Deepak Yadav. Deepak was telling me that when I was in Allahabad some vandalism was indulged into by an advocate, I made a reference and you had proceeded and that ended into conviction. I used to convict them also, very quick. But still it is a problem in some of the states. In Uttar Pradesh, it is acute, reason is not you, I know and the reason brother Dhyani will share with me or maybe concede the point to me, the Hon'ble Judges are so slow with the acts of the advocates, I don't know why. You had been advocates all life, all right, I had also been advocate one time, but now that I am a judge of the High Court I have to firstly see the subordinate officers with respect. Secondly I have to protect them on account of the parental control the High Court has over all of them. Thirdly, this institution is allowed to be vandalized, then where do people go, what shall happen to the society, what shall happen of this democracy, so this is one problem, where we could be vary of warding off the advocates and their access to most of the parts of the court except the courtroom, because court has to be open, court hearing has to be open except for cases under Section 376 or matrimonial matters. We could put some imaginative barrier that no, not beyond this, but in

certain cases we have to relax that also, as I have just pointed out in matters of paying of court fee or some other judicial matters. We have in any case at any rate and in worst of the situations which might be prevailing in various judgeships from where you have assembled here. On account of the poorest of the poor infrastructure, still there is a chamber for a judge, there is a courtroom for a judge and that arena of a courtroom and chambers I believe are still secluded from any encroachment which no one could enter unless some real grievance, some real reason is available to a counsel, at best a counsel could come to see you that Sir, this was where an order was passed, I was not present, could it be possible that my name appears in the order sheet or could it be possible Sir that I come and your honor hears it again and I am ready to assist. These are things where we could exceed the or we could permit the entry of a counsel or on count of being the district judge, one someone may also have a real complain, that look here Sir, I was there in connection with this matter and so and so has done this there and if you find that it is really to be taken cognizance of, you must intervene because ultimately that may not boomerang into an incident. There we usually hear the tactful, be tactful. I could not understand what is the meaning of that tactfulness, except that you smile and tolerate every wrong thing. This I don't expect any of the district judges to do. You have to be very forthright, act with a very heavy hand, if the occasion so requires, but at the same time, do not over indulge into issues, yes. I told you that I served the Bihar judiciary for 15 and a half years, 3 judgeships over 5 years, 9 years at High Court judges, one of the most explosive High Court, my brother, Saroj is there, Allahabad High Court, 15,000 above strong bar and if you are sitting in courtroom number 42- 52 to 53, then it is jhaao jhaao jhaao, the sound is like that, so the peace is not there but you have to work there, you cannot call every advocate, that be quiet, what nonsense, what are you doing. So what did I do, you are not put in a beautiful tune, cannot you put this tune, cannot you put this filmy song, this song is not at attractive, that jars your ears. This was effective, the counsel was simply ashamed off, rather not ashamed off, but sorry for his act and he would immediately rush out and will take care that next time he enters before and before that he has put it on silent mode. So Garg sahab in Patna, Yes, held up in contempt, that to me never appeared the right approach. Sometimes an advocate may also harshly address you, it is not necessary that you, Newton's Third Law of Motion- that every action has an equal and

opposite reaction, no never, you smile, that yes, you might be right. There in Allahabad High Court, a judge was transferred from Patna, R.K. Singh and A.D. Giri who happened to be Attorney General...ummm Solicitor General and he would send words through the jamadaar of the Hon'ble Justice Singh to appear before, in a writ petition which we had filed in a land sealing case. A.D.Giri came and without coming to the points of the case started abusing R.K. Singh like anything and Singh was simply gazing at his face, looking smiling and then A.D. Giri had exhausted himself, you exhaust, when you lose your composure, then you exhaust. Then Justice Singh said that all right Mr.Giri, you might be right in saying whatever you told me but kindly come to the point of the case.

**Participant:** he made him cool down.

**Justice Dharnidhar Jha:** yes, and then he heard A.D. Giri...

**Justice U.C. Dhyani:** By that time he had exhausted himself.

**Justice Dharnidhar Jha:** Then he heard A.D. Giri and dismissed the petition. The other example was of a counsel. He was friendly to a judge in the Bar, the judge got elevated, the counsel was counsel. He was appearing in a case and Bakshi, vakeel sahab koi Bakshi they na..? Haan bakshi sahab was adressing the judge, a friendly judge, they were both friends, " Arre samjhne ki koshish karo, tumhari buddhi hai kya" and his friend judge was smiling at him, yes Mr. Bakshi, you are right, you might be right to the larger extent but you have to stay on this point. So this approach of yours, mine in Allahabad, they were hammering me, yes, yes, I have heard you, and we have heard you...no...no...No further time, you don't have, you can't take liberty of spoiling our time that liberty does not lie with you, no...No...Sorry, okay yes, take dictation. I never boiled in Allahabad and on most of the occasions I was smiling, always smiling, always pointing out to them the provision of law; the position of law and in one case an appeal was filed under section 372 for enhancement of the sentence from life to death. The counsel was a middle aged counsel and he was very confident about the merit of his petition. Then I pointed, I told him come to 372, and then I pointed out that though this appeal is not maintainable because only three things, an informant or a victim of

the offence can do, he cannot seek the enhancement. Then finding that the provision does not permit then he said that sir please adjourn it. I said no no, I have communicated the order to you and I passed the order. So..

**Justice U.C. Dhyani:** and then he filed a mercy petition.

**Justice Dharnidhar Jha:** You have a pen in your hand, you have to put a signature over the order, this is the best thing you do, you all will do, and you all will resort to. Do not enter into verbal argument with a counsel, yes, if he is transgressing then tell him...confine yourself to the brief, to the point...yes, alright and whatever you have to say, if you say some harsh order is required then you come down, you reserve your order and then pass your order, you will find that, when I came back to Patna after being repatriated from Allahabad, a counsel filed a petition for issuing a direction for issuing release of Sanjay Dutt from Yerawda Jail. Now in Patna, I heard him and he was known to be a rowdy element, he is known to be a rowdy element..

**Justice U.C. Dhyani:** What was his locus?

**Justice Dharnidhar Jha:** He was filing, I have seen his films, and I am fascinated by his acting or this or that, in public interest. Habeas Corpus I was hearing, I heard him very calmly, I never interfered, never put any question, I had examined the provisions properly and then I reserved the order. I came down, I dictated 4-5 pages judgment and a petition was ordered and dismissed the writ petition and noted down it was a case in which the court ought to have imposed heavier cost because it was the use of the public time and 5,000 costs imposed. That was over, he came on the day of the order, when it was publicized to be handed down, and he came and read the order and silently moved out of the court. So this is one of the things, now your staff, the judges, they move in a...this is also a part of the topic, the judges do move in their own way through the corridor of the court room and security is one thing which is, security reasons or security perceptions I want to take stock of because it is you people, it is under your aegis that some of the dreaded criminals are brought to justice and you have to be very cautious about it. It is true that no pebble has been thrown

on a judge till date, barring a single incidence of one district judge being killed by terrorists in Jammu and Kashmir and that was a case of mistaken identity, else no judge has been hurt. there might have been pandemonium situation in courts, there might have been protests, there might have been boycott. I had faced those things, the police vandalism I faced when I was the district judge Sasaram and that is a reported case, Arun Paswan versus State of Bihar.

**Participant:** But in UP sir, there are many cases of such incidence...

**Justice Dharnidhar Jha:** In UP there is there, but in other places, but that does not mean that you should not be cautious of your securities, you must direct the Superintendent of Police who is handling these things to ensure protection of the judicial officers by providing personal security officer and security properly in the court campuses also, because records are known to be burnt out, records are known to be destroyed, records are known to be stolen away and these are all done by persons who are deeply who have their hands deep into the scams, scams also. White Collar criminals or gangsters, and you must send your request, point out to the High Court as to what requirement on the security front is there of yours and I again assure you that the High Court must be very cognizant of these things and they should take steps by calling the DGP and providing the security. Records are very sacrosanct. In Great Britain there was no High Court, you know, but now they have created a High Court. The criminal section of that High Court in London or anywhere else it is established, Kings Court, this is not Queens Court, now you cannot enter into, no one can enter into, unless the Chief Justice has specially ordered for the entry of anyone. On account of being judges yourself, hearing many matters, I have in High Court, I was hearing a bail petition under the Narcotic Drugs and Psychotropic Substances Act, the recovery was of 400 and something kilograms of Ganja from the falsely created chamber of a vehicle and earlier I had rejected the prayer, it was the second prayer and the counsel has annexed a photocopy of the FSL report and the report said that there was no trace of Ganja and 400 and something kilogram, I became suspicious and it was Photostat, I noted down in my order that the copy of the FSL report has been annexed as so and so, this speaks of this and I have a fundamental doubt in

the veracity of the defendant, send this copy of the order to the Director FSL and the concerned SP is directed to re sample and send it to Alchoid Factory, Ghazipur. As soon as the order reached the FSL Patna, the director shot back, to report and sends his report that No Sir, we had found Ganja, that is a forged record and the son of a High Court judge was involved in that. What can you do? You cannot by status move in this country. You know what is happening these days or had happened recently, so please take care that confidentiality of the records are strictly maintained. You could be finding or you must have found or come across that deposition seats have also been removed. In Allahabad I was confronting the records been destroyed or never made available to the High Court in many criminal appeals. Yes, this would happen in other modes also. They would be issuing the Photostat copy without observing the rules; they may be noting or copying the documents themselves and supplying them. If these things come into your knowledge, yes, yes, if these things come into your knowledge that if at all this has happened in a particular room, particular court then the records of that particular court, then your direct the Registrar of your court, who is the administrative head in these matters, that is I don't know what is the designation in different jurisdictions, you direct him to fix the responsibility as to who was the custodian of that record and then immediately transfer him. Initiate proceedings. Initiate a proceeding but take care not to put him under suspension, why...because the number of staff, ministerial staff is dwindling. He is taking the subsistence allowance, not doing any job, so transfer him and take work from him and give him another job to do and direct the proceedings to be brought to a logical conclusion within a timeframe and then take a stern action against him, scratching off increments, stopping of increments, reductions in DANK, these things as per the gravity of the offence. So this is what I was pointing out to you that your administrative capabilities are ultimately what have earned as regards the judicial aspect. It is not the High Court or Supreme Court, because you handle 2/3rds of the Indian litigation, these are you persons, the subordinate court judges who have created this aura for the Halo for the judiciary. It is not us the High Court judges or the Supreme Court judges, no, no, we are wearing false notion of respect and honor. This is you people who have done it. I tell you from my own experience, my own standing as a district judge, I am more proud of my past position of being a district judge than being a High Court judge, only because I



was delivering things directly to the needy people. So staff also has to be reward. Reward the good staff definitely. If he is competent, he is competent, he is alright, he is within the frames of his subordinate service under you and he is doing fine, and then give him the same posting time and again, time and again, there is no bar in it, but rewarding the bad persons or protecting him, that will ultimately tell upon your own capabilities.

**Participant:** Lordship I have one query. Your Lordship has spoken of the records have been destroyed willingly by a person, so could there be a provision for reconstruction...

**Justice Dharnidhar Jha:** Reconstruction is there, reconstruction is your judicial duty.

**Participant:** Suppose, as lordship in Bihar, I am from Jharkhand, same things happen...

**Justice Dharnidhar Jha:** Yes, yes, same rules are there..

**Participant:** In our state, we are writing the...

**Justice Dharnidhar Jha:** Everywhere, everywhere, the reconstruction provision is there.

**Participant:** Lordship the real problem lies in the fact that we are writing the deposition only in one copy. In UP it is in 3 copies. One given to other side and one is for the court. So in UP, there is no problem.

**Justice Dharnidhar Jha:** No, no, you don't know. In UP it is acute problem. In Bihar and Jharkhand you don't have and problem, if the party has the copy he will obviously come and produce it before the Registrar or the district judge and reconstruction is easy in Bihar. I had myself done it. In UP, we direct and all steps taken, brother Dhyani will share with me his experience also as a district judge and everyone and then a report comes that in spite of best efforts this party said that there is no copy available, that party said that there is no party available, reconstruction is not possible and then we refer to Vijayee Singh versus State of UP and pass an order.

**Participant:** they just compromise the matter to avoid the hassle.

**Justice Dharnidhar Jha:** Yes, yes. In Bihar and Jharkhand this might not be, but in UP it is an acute problem, so reconstruction is there, but in the garb behind the facade of reconstructing the record, you do not punish the guilty person. The point that I want to drive to you is that if there is an instance you firstly fix the responsibility, secondly transfer him from there to an obsolete post like librarian, accounts, Hazarat, yes...

**Justice U.C. Dhyani:** Record room, yes that is the worst place.

**Justice Dharnidhar Jha:** Record room and initiate departmental proceedings, don't put him...

**Participant:** Record room post is not a punishment post sir.

**Justice Dharnidhar Jha:** I used to post...

**Participant:** because the person who worked in record room, he used to earn more money. He would supply the whole database.

**Justice Dharnidhar Jha:** No, No, you put him in the vacant court, for maintaining the correspondence with the High Court.

**Participant:** That is very good sir. He will be getting nothing.

**Justice Dharnidhar Jha:** Nothing, You are responsible for the tracing out of the record, you make correspondence with the High Court, and it is alright.

**Participant:** May I share one...In one civil suit, one...was the subject matter of the suit and the amount was 2-3 lakhs. When I joined as a Principal district judge, I had that notion that the file was missing, so I gave information to the concerned person to trace out the file. After just 21 days I put him under suspension. Then another person came to me that sir should I serve this order to the person. After 10 minutes, the file was found..

**Justice Dharnidhar Jha:** yes, yes.

**Participant:** the person said, sir I found it. I told him keep it with you, I will again consider after 7 days. So I put him for seven days more suspension.

**Justice Dharnidhar Jha:** So you have to be very...Didn't I tell you, you have to be very decisive in these matters. Never delay these things.

**Participant:** one such case I had also seen the same thing. I joined on 9th of September and my mother district...So on 5th or 6th there was hearing an appeal against dismissal of the fourth restoration of the...it was the restoration of the restoration of the restoration of the restoration.

**Justice Dharnidhar Jha:** one miscellaneous to other miscellaneous.

**Participant:** So, the case pertained to 1978 and there was some collusion with the advocates and I was told that sir record is not been found since the last six years and is pending. there was one document which was disputed, the power of attorney for the document and I wanted to see. I called the record keeper of that time, at the time when it was deposited. I said main tumhe 4 din ka time deta hu, yeh order maine type karlia hai suspension ka. main tumhe 4 din ka samay deta hu, if you do not get it, you will be suspended and sir within an hour, before lunch he got the record. Record le aaya, then maine usse dangha dia and told him that tum 7 baje tak duty karoge. Fir ki usne.

**Justice Dharnidhar Jha:** One thing and last thing before I leave, the litigants are there. We exist only in their interest. It is not our interest, it is not others interest. We never serve the Bar Association; we are not concerned about that. Bar is a necessary system of the judicial system, the justice system, but necessarily we exist for the litigants. We have to cater to their needs, we cater to their needs, we live for them, we slip for them, and we do everything for them. This is one sensitivity that we have to develop, because you don't know in this caste religious ridden society of India, variety of course, it is the beauty of the nation of course but the reality, the underlying reality are quite different. I may despise you because you belong to a particular caste, you may not like me because you belong to a particular region. One

may abuse me because I belong to a different religion. No one is concerned; no one has himself contributed to all these things, aspects of circumstances of his personal life. 67 years of Indian democracy and this sacred constitution, the reality still remains that powerful persons still rule the roost. If someone has migrated from Bihar to Punjab, for earning his livelihood by manual labor, his real landlord there might have filed a complaint before a magistrate in order to force him to remain in Bihar so as to serve his interest. These are not unknown social realities. This could be prevailing everywhere. So whenever you have some litigant exessing, you are not supposed to mix as your kind self...as from Tamil Nadu was pointing out, you have to go in the rural side, we have to mix up, we have to do things, yes I will come when the topic comes on other day or if I am there then I can interact with you also. But there could be certain cases, certain examples where meeting that litigant is very necessary. I was district judge Sasaram, Rohtas. My peon who was standing at the door at the entry of my chamber came out with a slip that Smt. so and so, some Tandon, so I pondered over whether I should meet her or not meet her. She was a lady, she might be a litigant, then lastly I came to the conclusion that she is from Allahabad there must be some problem with her and I must meet her. She came and she started profusely weeping. In Bihar, I don't know of other states, there are certain judgeships where the High Court had delegated the power of the district judge, in those days, now the Principal Family Courts are there, The Hindu Marriage Act cases and the succession cases had been delegated to the subordinate judge. Now that subordinate judge who was handling those things, she was complaining many things and I was also having the feedback that he was thoroughly corrupt, corruption of all sorts and the way she had been weeping...her husband had been the railway employee, he died and his dues and deposits were not being paid to the lady only because succession certificate was required. Then I heard her and said yes you will hear from me in two days. You tell your counsel that he will inform you. I didn't know who the counsel was; I pulled out a piece of paper and drew out an order. All cases under the Hindu Marriage Act, relating to matrimonial disputes, all probates, all succession matters everyone stands transferred to me, because district judge has original jurisdiction. Then, the list came, then I divided the cases equally among the all additional district judges and the issue was quickly resolved and the lady also got the benefit. the succession cases, I could request all of you to be very kind

to those who come with succession cases and my experience I never ask anyone to pay the duty fee, unless I have passed the succession order, because if you don't grant succession certificate you have to refund, so why and ultimately they are destitute persons, they are running from pillar to post for the rightful dues. The man is dead, the woman is dead and we cannot do this much of magnanimity to the dead dependent. We have to be that much sensitive. So, do in appropriate cases, meet the litigants also, how does it benefit you. It benefits you to know what is going on in each and every nook and corner of your judgeship and thus you have a feedback of the performance of the judgeship and the correctional steps and measures you are required to take to erase those creases in your administration. that helps out in ironing out those creases. and if you find that there is some integrity wise involvement of the officer then you get the feedback also that in that particular case, that officer has done this and you report. In your annual report you put it.

**Participant:** We have to handle spies also.

**Justice Dharnidhar Jha:** no, don't do that. A district judges position is so sublime, you sit in your courtroom, you sit in your...My experience, I never ventured out of my residence.

**Justice U.C. Dhyani:** you can gather information from all the sources. You can simply sit in your chambers or residence and you will be getting all... never talk about your officers with your employees. Never talk about your officers with some counsel also. You simply cautiously read the orders passed and meet some of the litigants who have genuine grievances and you will find out what is going on where and please reflect those things in your report, because ultimately you know very well, this is common adage that one rotten mango, rotten the whole basket, so this is one thing you have to be very particular about.

**Participant:** You have to depend on somebody.

**Justice Dharnidhar Jha:** No, no, don't do it. No please, I won't comment. My experience...what is your good name...

**Participant:** B.N. Mohanty

**Justice Dharnidhar Jha:** my experience I could share with you, I never talked about my officers with anyone.

**Participant:** No sir, not talking about the officer.

**Justice Dharnidhar Jha:** What I used to do is...

**Participant:** In the year 2005.

**Justice Dharnidhar Jha:** I could tell you, you will find it, or you must have found it from your own experience, while going through the orders, you find what is the nature of the order and why this order has been passed and what I used to do, I never asked any officer by name that you had passed an order in such a case, I will in the officers meeting, that while hearing some revision petition or this and that, I was perusing an order which spoke like this, I don't know who had passed this order, all of you are here, you might be knowing who passed this order, because any of you passed this order. This is, if you pass this order, if you know, if we pass this order then the allegation is right that we are corrupt. This used to have its own effect.

**Participant:** My lord, I am not on that part...

**Justice Dharnidhar Jha:** I cannot dispute your ways, I could rather tell you. I could rather share with you my own experience, I had served 2 states, you know, Bihar and Allahabad and I did not spare a single corrupt officer and I have my own ways, and I don't dispute your ways. You do it in your own ways, I cannot say, but do the consensus about it that we owe our responsibility. God has created one hundred and seventeen or twenty crores of Indians, it is about 20 thousand Indians who are judges, right from the Chief Justice to the lower level, ever have we pondered why we are judges, simple reason is, Gods delegated duties are to be performed by us, we are performing that duty and we should not do anything which could be ...of the confidence of his. I have transgressed my time limit, these are some of the broader aspects of administration which is in your hands. One aspect I must put into and I could simply share mine, there is fund crunch and there is a difficulty in managing the

stationary in the judgeships, I believe this is there. Do try to firstly plan your stationary, from march 2016 to May 2017, this could be the requirement and you firstly and if possible you parley with the bulk supplier, the wholesale supplier through your administrative persons and you will find that to judges they are very considerate, they will give you 20%-25% rebate on wholesale prices and you purchase two three months extra requirement, so that the sanction amount comes late and you don't have any difficulty in running your court rooms, so these are some of the things I did, I don't know, why and how I could succeed in doing this, there is no limit in Bihar, in Bihar you are simply to observe the purchase committee.

**Participant:** In Jharkhand we have a limit.

**Justice Dharnidhar Jha:** In Bihar and Jharkhand, the district judge is unparalleled in financial matters, no one puts a question to him and things are still going beautifully there.

**Justice U.C. Dhyani:** the only thing is that you have to adhere to the procurement rules which have been dealt with by Justice.

**Justice Dharnidhar Jha:** So this was what I wanted to, the time was very short and I am thankful to all of you that you lent such patient ears to me. Thank you very much.

**Justice U.C. Dhyani:** Thank you very much **Justice Dharnidhar Jha** for sharing his experiences and **Justice Dharnidhar Jha** will continue to speak to you on day 3 also on several important issues Bar Judge relationship in district court. Now since **Justice S. Vimla** has to go to other class in the session 3, therefore straightaway with your permission, I would request her to deal with the session which has been allotted to her- Cleaning management in District Courts. Thank you.

## SESSION 2

### Building upkeep and Cleaning Management in District Courts

**Justice Dharnidhar Jha:** now that since **Justice S. Vimla** has to go to the other class in the session 3, therefore straightaway with your permission I would request her to deal with the session which has been allocated to her "Cleaning management in Courts"

**Justice S. Vimla:** Good morning to my friends who are all on the dais. No good morning to all of you?

**Participant:** Good morning

**Justice S. Vimla:** the tea was not strong enough to say a strong good morning for me?

**Participant:** good morning

**Justice S. Vimla:** This good morning is not at all enough for me

**Participant:** Very good morning..

**Justice S. Vimla:** yes this good morning should bring the all other **Participant** in the other session here. That is a very good, good morning.

**Participant:** we can visit there also.



**Justice S. Vimla:** Yes. Yes. When I go there, I will ask them to say good morning that will bring all of you there also. That can be done no problem about it. How many of you feel tired or how many of you feel refreshed that you are not from your normal routine.

**Participant:** Refreshed, Very fresh.

**Justice S. Vimla:** almost all of you refreshed. You are taking a detour from your regular work. That is the burden of a principal district judge or a district judge even nowadays.

**Participant:** there is a need to have such programs

**Justice S. Vimla:** you need to have. We call it as learning by collaboration. We discuss, we interact and we just learn. So it is a very good learning experience for us also because you are all principal district judges and district judges coming from various states and your experience and your practical problems and your practical way of handling things, that'll give us lot of input and we will also carry it in our own state and we will ask our district judges to do it in the same way so it is a very good learning experience and I'm going to talk to you only for five minutes, rest of the time, I'm going to hear from all of you. Only five minutes bear with me. We will begin with a story, small story. the very word story brings a smile on her face, this is how we human beings are always fond of hearing stories. Is it not? I am fond of telling stories; I don't know whether you are fond of hearing stories. Because of my experience as a director of judicial academy, it is my experience that whenever we tell stories, it brings whole attention of all participants to the session, otherwise we will be here our mind will be roaming here. We do not know where it will be roaming around, so to bring here all of you, I just had a small story. In a busy day, in Calcutta, it is...I should not call it as a story, I should say it is an incident, that I have read very recently. in a busy locality, in a busy state, a lady, a middle aged lady, carrying human excreta in a bucket, she was walking on the street, the smell as you. As we understand it repelled all of them from walking away from her. But when people started walking away from her, she was not scared of that, she was. She did not feel ashamed of that, she did not exhibit any reaction at all in her face. She was as if, nothing happened, she was walking. Supposing we walk and with somebody avoid

us, how do we feel? We feel so annoyed, that why people go away from us that is what we feel. But she did not exhibit any reaction at all, just she was walking. Behind her, an adolescent boy along with friends was also walking behind her. As expected, all the friends of this adolescent boy started walking away from her, but he...that adolescent boy...that one boy alone, was closely following her, he did not go away from her. All this boy colleagues and friends were asking, you mad fellow, the smell is rotten smell, we are not able to bear with it, we are going away, why do you go closely following her, you come along with us. That is what, so saying they pulled that boy along with them. He was not for it. Added to it, he was closely following it up and then suddenly fell at her feet and these people were really surprised. They never expected this to happen. Then all of them suddenly stopped and they asked the boy "what made you fell at the feet of a lady who was carrying human excreta. that boy, replied, this is his reply, he said-' when my mother cleaned my excreta, I was so impressed, I was so happy, that I ever remember, whenever my mother was angry with me, I used to remember the services rendered by her, by my cleaning including my cleaning my excreta. I always worship my mother, I have my mother in great heights, this is the respect, this is the kind of worship I had for my mother. When this lady is cleaning the entire town, cleaning the excreta of somebody else, she is more than a God therefore that made me fall at her feet. See the kind of temperament, such kind of attitude, such kind of approach. Why I wanted to share this incident, it has happened, in a way you may be wondering, who is that boy...any guess? From Calcutta? Anybody from Calcutta here? Anybody from Calcutta here?

**Participant:** Me mam.

**Justice S. Vimla:** You. Who might it be?

**Participant:** Vivekananda?

**Justice S. Vimla:** Yes. Yes, absolutely. It is Swami Vivekananda

**Participant:** because, somewhere I have also heard about this.

**Justice S. Vimla:** Yes. Yes. I read it recently because of the celebration about Vivekananda, I was the speaker invited for that function and before going there I wanted to know more about him. I studied about his life history; there I happened to read this. One of the incidents that has taken the whole soul towards that incident. Why I wanted to tell this incident to you is, how important the cleanliness is. Cleanliness is equal to godliness. Wherever there is cleanliness, god is there. People believe that judges are God, people believe that it is a place from where which they get justice. Then how we should keep it? When this topic was in fact, let me be frank with you, when the organizers...and he had called me that I should speak on this topic, I was just wondering whether, is there anything for me to talk for one hour regarding this cleanliness, is it essential that is what I asked him, but he was telling that there are...if madam shares the experience as the Principle district judge and experience of how to go about this cleanliness when there is no funds at all. If there are no funds, how will you do that, and he was telling that if there is a way to think about that there is lot of things to speak about that. That exactly was true. When I went through that topic in a little bit elaborate way, I was able to find lot of things, there to speak about that. Till when you say about building, building what? When we speak about cleanliness, is it about the cleanliness of the physical infrastructure. That alone or the cleanliness of the surrounding, or the cleanliness of the air, we have so much of pollution problem these days. When they...my colleague friend was talking about man in the record room getting more money, I was tempted to say, that he has to spend all the money received (inaudible) give it back to the doctor. He can't spend the money for him. That is the kind of atmosphere in the record room nowadays. How the air could be purified, how clean water we will provide, portable water we will provide, after all these litigants, we can't say as we are doing some service to the litigants, in fact because of the litigants coming to the court, our relevance is there. If they have no litigation, if they are not going to approach us, where is our job. When they are coming to us, they are coming and seeking some justice, what is the basic justice we are providing to the litigants. We provide nothing. Take the case of, I specially selected this incident because the basic problem for them is the toilet. Everywhere there is no toilet or one toilet even that toilet without water. If this kind of facilities is provided, who will be...having to the inclination to come to the court? It is their headache that they have to approach us, otherwise if choice is given whether

they...anybody will exercise the choice of coming to our courts, the way in which we are functioning. Then we are posted, only place where I have been functioning as the Principal district judge is at trichilapally. When I took charge in trichilapally as the principal district judge, there was no fund allocation for cleaning from the High Court. We got allotment of funds only from the High Court, under the head of cleanliness, no funds. It was located in 25 acres. Lot of bushes, you know you'll be wondering, what are the materials we discovered after cleaning. We thought that if that kind of situation is allowed to continue, tomorrow snakes may come or even elephants may come and hide we do not know. We will not be able to identify, that is the kind of level to which there were bushes, entire area, it's a very beautiful building, it is a heritage building, chief justice court security building, but we do not have the funds, that was our problem. Then we thought whether we could take the services of some NGO's who do not have place in our court, so that these NGO's can come and help us. We just started discussing with some of the senior lawyers, went to the Bar Association, not in my chamber, I went to the Bar Association, had a discussion with senior judges, sorry, senior advocates there and they suggested, Exnora is one institution that is an international institution which provides some help for us in cleaning. They are also very good in plantation. When cleaning and plantations are done and that will take care of the entire situation. Then we called them and in the meantime the lawyers also told me that they had no case at all, in the district court and other courts in the district is concerned, they have no case at all. Then they have started coming, when they started coming, the lawyers themselves felt, instead of calling somebody, why don't we ourselves take up the responsibility of cleaning the entire campus. They collected money, I collected money, I told them, they will not receive any money from any of your hands, it is for you to do everything and we will not be able to do anything. They collected money, they engaged vehicle and in a day or two, the entire campus, entire bushes were removed, by the lawyers themselves, but of course we were along with them just to show...just to extend our moral support, we wanted to extend our moral support, we were along with them, that made them to work. You know what are the things we discovered? A Swimming pool which had the connectivity with a major river in Trichy district. The connectivity is to the extent of one kilometer. Water comes from there; there is water...the output of the water also. It is a very huge swimming pool. At

a time we can at least...20-25 of you can swim. To that extent it is a very big swimming pool. Just imagine, what is the kind of situation, a swimming pool which can be covered to the extent of not being able to be seen, such a huge swimming pool and portrait of a district judge who was shot dead while he was functioning as a session judge. He was from a foreign country. Along with the history we had some portrait also, the next day, reporters had a publication regarding this and on reading this, the relatives in foreign country came after 2 weeks here, just asking permission to offer worship and they were offering that for the cleaning of the entire district court campus, they are prepared to donate any amount of money for the district court. This is one side of the story. After cleaning then the question of plantation came and plantation horticulture department and the forest department, those two officials we called them and they came and for the short term planning and long term planning we talked about and one beautiful thing about these trees. There are trees which give oxygen for full 24 hrs. For the first time I had that information only during that time. Prior to that time, I had no information regarding this. They were telling detailing about the trees which require water and trees which may not require water, trees which require your constant maintenance and trees which do not require any maintenance at all, trees which give you some kind of oxygen only in daytime and carbon dioxide in night time. There are some trees which give all the 24 hours oxygen...lot of information, host of information which we were deeply impressed and he was also telling about some medicinal plants. Medicinal plants which take care of each and every day problems of the lawyers and judges. Very small medicinal we allocated one area for the medicinal plants being planted and for rest of the places, they gave us the plants and the entire 20 acres nearly, they had the complete plantation. Once a plantation is there, the atmospheric air is getting beautified automatically. There is no need for any mechanism being adopted. just growing of trees, they take care of everything. I read a very interesting poem, this...just to impress upon the importance of trees. You see, this goes like this, A tree cries and asks this question, when you were born, I gave you cradle, when you started going to the school, I gave you pencil, when you were a student, adolescent student, I gave you chair and desk, when you got married, I gave you sandal, when you have died I also gave you coffin. From birth till the death I am giving you everything, then why don't you allow me to grow, you're always cutting me...cutting

me...cutting me. Then what is the kind of humanity you are showing towards us, allow us to grow. This is the importance of the plants being reared in our campus. Importance of the medicinal plants was made known to the lawyers, the lawyers community just came forward. They were telling me for each and every one of the tree, every lawyer will be in charge of that tree. If they are permitted, they will put the. After the growth partly...partly growing of the tree they will just have the inscription of their name in the tree and they will be responsible for the whole growth. Even today, in the Trichy Bar Association campus, all the plantations are taken care of by the lawyers only. We don't spend any money at all. What we...from the judge's point of view we had contributed only for the purpose of putting hot water, not the plain water as it is available, it is not portable. Simply we have a heater and because...we have a very crude way of heating it and keeping it in mud pot. Clean water in a mud pot, it will not be hot when you take it, it will be cool and chill for them to take. this is the only thing for which we contributed and we had water facilities in a mud pot in each and every court hall. I am not exaggerating; you may not understand the happiness of the clients who had water. There are certain moffusil places where they do not have money at all to buy a water bottle. Many of them may not have finance...sufficient funds for them to spend for the bus. Many of them walk together for kilometers; they come from away kilometers by walking along. This is the kind of place where we are. And therefore they felt so happy that they have clean water to drink in the campus itself and for the...construction of toilets. That time, now we have enough funds, High Court takes care of us in preparing the annual budget. We call the entire District judges, we ask them what the requirements are, we find out their requirements, ascertain and give a consolidated budget proposal to the Govt. that is happening now. Not before 70-80 years. The entire requirement whatever the PA writes or the head clerk writes, he will be scribbling something...he will take the...it is only back file syndrome. They'll take their back file...add 10% extra and say that this is his budget. Maybe new courts are coming. Buildings have to be come up. New staff has to come. He is not bothered about anything, Whatever he knows, his style of functioning is, only to take a back paper add 10% extra and say that this is the budget taking care of the increase in the inflation, that is why 10% added . He will speak so much about his performance and he will send it to the High Court. High Court also will forward it and for the next year each and

every proposal we have to send a proposal, then we have to beg and borrow from the Govt. and then we have to get it and before the inauguration comes, almost all energy will be exhausted in the district court. That is how, yesteryears functioning based their...And for this toilet, MLA, M.P. Fund, once again we did not ask any MLA, did not ask any MP. You know if we make an offer, what will be the counter offer coming we were not prepared to do that and the lawyers who were present in the political parties...have affiliation with the political parties they themselves went and they got sanction from the funds MLA and MP funds were utilized solely and exclusively for the purpose of constructing toilets and the toilets were constructed in the district court campus. This is how we were able to manage at that point of time. Now gone are the days, the High Court and the Supreme Court have said the State has no right or authority to say that they have no funds. They can't say that now, they have to. The Supreme Court is keeping a litigation pending and they are closely monitoring, what are the building activities going on, and when you are able to communicate to them that, yes these are all the functions, these are all the buildings in which courts are...running these buildings and where the rented buildings are there and the conditions of the rented buildings, we are continuously. We are having a monitoring committee at the High Court level and you must also be having at the district court level- monitoring committee will be functioning and we will be reporting it to the High Court, regarding the condition of the building and our requirement also. And these were all the basic things I wanted to share with you. Now the PowerPoint presentation that is taking into account, the cases in which the High Court and the Supreme Court said, they state that state government has no right to say, they have no funds. they are bound to grant whatever we require and what is the basic requirements for the district court, everything is very explicit and whenever slide is played, at least one slide one can read, so that you will also have a sense of participation and if anything is required from my side, I will supplement it. Thank you. Yes who will start reading, come here. Yes. Quickly. We have to finish it off by 12:30

**Participant:** "Our work must reflect our heart-felt response to the work. Let us have excellence in work, highly disciplined and responsiveness to the institution and Justice delivery System."

**Justice S. Vimla:** Yes, this has anything to do with the subject that we are discussing? Yes. You are at liberty to say anything. Not necessary you have to say yes to everything. Whether the cleanliness has anything to do with the quotation here?

**Participant:** yes

**Justice S. Vimla:** Yes, definitely, very clean atmosphere will prompt us to do more work, we will be more responsive to it. Yes. Quickly you pass it on.

**Participant:** A building management system (BMS) is a control system that can be used to monitor and manage the mechanical, electrical and electromechanical services in a facility. Such services can include power, heating, ventilation, air-conditioning, and physical access control, pumping stations, elevators and lights.

**Justice S. Vimla:** pausing here for one moment, in our High Court, we had a repeated problem for one particular judge. He was always having sneezing and asthma problem. Later, we were really wondering, he is a judge who...right from the morning, right till the evening he will be concentrating more on his healthcare. He will be doing exercise continuously, correctly and we were really wondering what happened why this problem is. That particular court hall air conditioning machine was not cleaned at all. And his doctor himself had suggested that it should be cleaned. Clean the air conditioner, you will not have the problem of cold being affected repeatedly, it was done, it was found to be correct.

**Participant:** madam, why solar system can be introduced in our courts?

**Justice S. Vimla:** a solar system, yes it should be implemented in order to conserve energy, state government is also insisting that, but in Madras High Court we have a peculiar problem that it is a heritage building. We require the permission of the heritage committee. Heritage committee feels that it may not be appropriate to cause damage to the part of the building. That is why we are not able to use it. In any building plan by the district courts, we insist that solar system must be there.



**Participant:** now solar system is permitted everywhere..

**Justice S. Vimla:** yes. Yes.

**Participant** discussion

**Justice S. Vimla:** Yes. Yes. It should be...it should be...

**Participant:** now there is subsidy. Subsidy by the government.

**Participant:** In installation of solar cells...

Participant: For installation of solar systems there is subsidy by the government.

**Justice S. Vimla:** Yes you can save electricity; this electricity can be used for constructive purposes. Yes. It is very good that he started raising that question. Solar, everybody should be so keen and anxious to have solar systems..

**Participant:** There was a scheme for the private houses. They have to install and sell the electricity to the government.

**Participant:** Even private roofs they have now started using.

**Participant:** It's very nice that the government is encouraging the use of LED, but that is costing, but in future that also will result in saving also.

**Justice S. Vimla:** Yes. Environmental pollution needs to be prevented; this kind of system needs to be in place.

**Justice Dharnidhar Jha:** In Bihar, in Bihar...

**Participant:** We cannot spend fund from the contingency or office expenses

**Justice Dharnidhar Jha:** In Bihar, every household is supplied 10 bulbs, three years warranty, and 100 rupees per bulb.

**Participant:** And lordship even on installment of 10 rupees per month, I have purchased even. 10 bulbs, 100 rupees cost each, I purchased on showing the Aadhaar card.

**Participant:** solar energy...

**Justice S. Vimla:** If the High Court...

**Participant:** lordship...

**Justice S. Vimla:** Yes...next.

**Participant:** Benefits of BMS...Good control of internal comfort conditions. Possibility of individual room control, increased staff productivity, effective monitoring and targeting of energy consumption, improved plant reliability and life, effective response to Heating, ventilation and air-conditioning ([HVAC](#))-related complaints. Save time and money during the maintenance.

**Justice S. Vimla:** Yes. Yes, absolutely.

**Participant:** Increase in the number of Judicial Officers will have to be accompanied by proportionate increase in the number of court rooms. The existing court buildings are grossly inadequate to meet even the existing requirements and their condition particularly in small towns and mofussils is pathetic. A visit to one of these Courts would reveal the space constraints being faced by them, over-crowding of lawyers and litigants, lack of basic amenities such as regular water and electric supply and the unhygienic and insanitary conditions prevailing therein.

**Justice S. Vimla:** In a High Court also, in our High Court, from court hall number 1-7, it is highly spacious and highly sufficient and the remaining court halls, when we go and sit and occupy the dais, our first effort should be, focused in such a way that lawyers are sent away

from the court hall. We will try to keep only 10 of them, only for 10 of them, there will be sufficient and only for the 10 of them it will be convenient. Only to this extent even the High Court today is functioning. The reason is as soon as new judges are coming, swearing in ceremony, they will be making ready the car, the driver and the PSO, nothing else. No increase in staff, no increase in building, divide, divide, divide, that is the only thing that is happening, I think in majority of the High Court. If the High Court position is this, imagine what the kind of position in the subordinate courts is.

**Participant:** so far as the toilets cleanliness is concerned, there are two three issues. First one is supplier of water, second one- No manpower and third one- litigants they are not using it properly. So because, so far as staff is concerned, we have a sweeper post. But they are insisting upon outsourcing. many a times we are using outsourcing agencies and supply of water and third one, even if we are providing good toilets, the litigants they are not using proper water and even there are cases about theft of irons also.

**Justice S. Vimla:** you can make use of the self-help group that is available in Tamil Nadu, I don't know whether it is available in your state. We have self-help group consisting of mainly ladies and they are available for any job and every job. They are the cheap and best services and we ask them to train the person also who are using the toilets. Before they enter the toilet they will say it should be say, it should be clean, supposing if I come and see it is not clean , you are to charge extra. If that caution is put and they are made to...

**Participant:** that is permitted by the High Court?

**Justice S. Vimla:** Yes, permitted.

**Participant:** I think we require the permission of the High Court to employ..

**Justice S. Vimla:** yes, yes, permitted, permitted by the High Court.

**Participant:** If it is permitted by the High Court then...

**Participant:** In High Court and Supreme Court there is Sulabh Shochalaya.

**Justice S. Vimla:** Even if not permitted, write to the High Court; ask for permission as it is the policy of the government, to outsource this kind of services, High Court cannot say no. High Court provide you funds or permit you to outsource the services, therefore it is for you to now insist upon these things being taken out by the outsourcing agencies.

**Participant:** mam, outsourcing is the policy of the government.

**Justice S. Vimla:** No, no, when they are not sanctioning the post of the sweeper, then for the outsourcing they should provide funds. It is for the RG to...Registrar General to go and fight with the government asking for the sanction. They will not, they will not, they will not. Yes, yes absolutely. Yes, yes.

**Participant:** my lord, in our state there is one, they have formed, they have selected some sort of people right from fourth class to three class, class three and even class two officers who are now being appointed by the government for some 25,000...40,000..and these kind four class of people they are being paid 8-10,000 or depending on the educational qualification, they get 12,000 and they are ready to do any kind of work. I had gone at one law district I had saw two sweeper like persons, they are ladies. Though they are the third generation sweepers, but they are not registered at the group of the government. So when we requisitioned, they were sent by the government.

**Justice S. Vimla:** you were telling something

**Participant:** one more suggestion is there your lordship, because many...most of the litigants, we can. We have suggested to make a... we can send this to the Registrar when there is a list of workers.

**Justice S. Vimla:** Definitely it is a good suggestion and it may appear to be insignificant, but it deserves the greatest significance and this proposal you send it and I will see that the High Court approves that.

**Participant:** lordship we have already sent it.

**Justice S. Vimla:** Already sent, I'll speak to your Administrative Judge as well as the Registrar General and do something about it.

**Participant:** Mam,

**Justice S. Vimla:** yes, yes.

**Participant:** Mam, government has sanctioned two posts, outsource...to outsource the sweeper and a maali, so now we don't know how to go about it, so what is your suggestion? Should we ask the Registrar general to, or to ask for funds, how to get outsource done, because in our remote places, we don't have many organizations.

**Justice S. Vimla:** Better if the guidelines come from the High Court. Nowadays people are there only to prefer complaints against district judges and especially when you are ready for elevation, more number of complaints will come. These are all the very simple matters to be taken care of by ourselves, still days are not good, therefore better some guidelines and some money comes from the Registrar General, it will be safe for you.

**Participant:** After taking charge, I called the Municipal Commissioner, and asked him to clean up the court premises to allot some of the people. One day, we are cleaning, court commissioner.

**Justice Dharnidhar Jha:** Yeah, that is the Minister Commissioner.

**Justice S. Vimla:** For madras High Court also corporations, NGO's are sending people, but only thing is for cleaning these toilets, nobody will be inclined to do. That we should take care of.

**Participant:** We have a system; everyone will collect one rupee or two rupee and engage.

**Justice Dharnidhar Jha & Justice S. Vimla:** Okay and they will clean it.

**Justice S. Vimla:** Whatever you have been telling we will continue to talk in the record management. Yes.

**Participant:** Many times it happens that, we rely upon the (inaudible) for the supply of the certain items, for example, for villagers, we require dustbins. And we used to write to the (inaudible) to supply dustbins, even we used to write to the local authorities also to supply dustbins. But that was expensive, in our district what we have done.

**Justice Dharnidhar Jha:** Yeah, that you can do.

**Participant:** So, we have purchased more than 50 dustbins by giving tenders and they are there in use.

**Justice S. Vimla:** but I...

**Participant:** such a vision, there is a firm for providing subsidized bio toilets, which require no maintenance.

**Participant:** it is only for individual, not for institutional use. That was given only for individuals not for institution.

**Participant:** What happens, every six months, there is a need to change the dustbin as it is very small. The basin requires water from the container. Only water for maintenance work.

**Justice S. Vimla:** You give me some details; the High Court can insist the government that this kind of bio toilets can be provided.

**Justice S. Vimla:** If it works out, it is excellent. In terms of resource management it is very good and give me some me some details. Whatever details you have, just pass it on, we will carry it.

**Justice Dharnidhar Jha:** if it is ...individually..

**Justice S. Vimla:** No, no. Is there any difficulty in mass use?

**Participant:** actually in Swachh Bharat, there only targets is individual, not for institutions.

**Justice S. Vimla:** No, no. Why not for individual? If for individuals, why not for institutions, that you should think about and ask them to provide for the institutions.

**Participant:** It's the policy of the government...

**Justice S. Vimla:** No, no. It is a policy. No, no. It is a policy...policy is not suitable to our practical requirement; we will ask the government to change the policy, what is the difficulty. We will suggest.

**Participant:** what they are suggesting madam, the High Court, the funds are allotted to you from High Court for development of all these things, so therefore they have to establish their district courts and (inaudible) with toilets and.

**Justice S. Vimla:** if the government. is not going to hear us, we will ask somebody to file a PIL and see that some orders is passed on judicial side, let them follow it up. That's all. Yes.

**Participant:** requested to collect them to consider toilets inside and outside the border of the wall, so the outsiders should have the toilets and the insiders. Litigant public will use this side of the toilets.

**Justice S. Vimla:** Yes, yes. Somebody was telling something from there..

**Participant:** I was trying to implement it in Maharashtra. That he has installed the, these bio toilets, these prototypes, but the litigants' don't maintain it there. They chew pan, they chew tambaaku, and they throw it there, therefore there is no maintenance.

**Justice S. Vimla:** We'll ask the legal services. No, no, while we go for function arranged by the legal services authorities, we should tell the public that these, are what is to be done,

what is not to be done. We have to create awareness. These people do not have the awareness at all. They don't do it intentionally. They do not know how to maintain that's all.

**Justice S. Vimla:** No, no, before they say...those who are in charge of maintaining...no, no.

Participant: We have to catch hold of them, impose fine, and then only they will stop.

**Justice S. Vimla:** two things can be done, the second thing, no, no, the second thing what is done, what is said by you. First thing is before they go, at least for some days, only regular people who are coming to the court, tell them that this is not to be done. If not, if they are not hearing then punishment only.

**Justice S. Vimla:** can try both...we can try both, yes.

**Justice S. Vimla:** Yes, yes. That is also a good thing...

**Justice Dharnidhar Jha:** One thing, I...

**Participant:** that is.

**Justice Dharnidhar Jha:** One thing I'd like to share...

**Participant:** Lordship in Germany, in a very busy place, where they will keep it for a particular time and take it away after that time.. After a week or so, and there is no question of maintaining or nothing.

**Justice S. Vimla:** Yeah, very, it appears to be very good, but whether it is viable financially and whether we should.

**Justice S. Vimla:** Technology nowadays, from the internet we can get all the technology, but only thing is whether feasibility of using it in our country we have to work it out. Share the literature with you, you can collect all the literature, all the suggestions, then we will



consolidate and find out what is possible. Wherever it is possible, we will write to the High Court, from here also you can also write.

**Participant:** my suggestion...

**Participant:** my lord, one thing I would like to share, in my monitoring committee meeting, I used to invite the municipal commissioner in district Howrah, West Bengal. I made them understand that it is equally their responsibility to keep the court building clean, because...

**Justice S. Vimla:** it's a public building..

**Participant:** It is a public building and the people who are being benefited are from the district only. They really, I am really astonished that they have understood the problem..

**Justice S. Vimla:** that's a good idea.

**Participant:** Haan, it's a, so that. As per my request, rather as per request of my judicial officers, they have set at least 4 or 5 bins in my court complex. I persuaded them to clean at least. They express their inability to clean it regularly, I express them...it's a big bin, I'm telling you. They have started cleaning those bins, twice or thrice in a week. Sometimes we request the municipal commissioner, because the staff of the court is shortage, there is shortage of staff, sweepers, so I used to request them to employ staff of the municipal, municipalities, or the municipal corporation like that and there is some...it happens that there is some overlapping between the PWD and the municipal corporations because PWD says it is not our responsibilities...our duties. It is the duty of the corporation and sometimes municipalities say or the corporation says, no it is not the domain. It is not in the domain, of ours. So if we in writing, monitoring committee, we sit together and resolve the issue, I think it will cut short the problem.

**Justice S. Vimla:** it is a practice to be emulated by all.

**Participant:** yes..

**Justice S. Vimla:** emulated by all, we can also try this and this seems to be a good idea. Yes.

**Participant:** my suggestion to this madam, it is also one of...we put on...to ensure that the court premises are clean.

**Justice S. Vimla:** yes...you're right..

**Participant:** The National Commission to review the working of the Constitution- The National Commission to review the working of the Constitution noted that judicial administration in the Country suffers from deficiencies due to lack of proper planned and adequate financial support for establishing more Courts and providing them with adequate infrastructure.

**Justice S. Vimla:** Next, next, next. Yes.

**Participant:** that is the problem.

**Justice S. Vimla:** you can just skip off all the slides. These are all the slides from the Tamil Nadu court, so we are not concerned with.

**Participant:** Entry 11A was introduced in the Concurrent List of Schedule 7 of the Constitution of India in 1977 vide 42nd Amendment Act of 1976. By this Amendment, subject of “Administration of Justice; constitution and organization of all Courts, except Supreme Court and High Courts” was brought in the Concurrent List of the Constitution. It has become incumbent on the Central Government to make sufficient and appropriate provisions in Budget, keeping in view the Central Laws so as to share the burden of States. As far as possible, the sharing between Centre and the State should be in the ratio of 50-50 %.

**Justice S. Vimla:** In the foreign countries they have a provision called judicial impact assessment. Whenever legislation is introduced, what is the kind of litigations that are likely to come? How many courts will be required, how many judges will be required, how many

staff will be required and with the financial implication of it. That is a practice that is being followed in other countries, but we do not follow anything at all. Supposing, your rent controller is there, motor vehicles act comes in and the accident compensation is to be given.

**Participant:** madam, 138.

**Justice S. Vimla:** yes, yes, 138, negotiable instruments act. Already overburden the criminal courts, they are not able to breathe, they are now a bunch of petitions are coming, 138 filed...filed...returned...plead to be represented. they are not able to manage.

**Participant:** within a stipulated time.

**Justice S. Vimla:** A civil liability has now been made a criminal liability without ascertaining the implication and we are overloaded with no interest as far expansion at all, If the central government. Whenever we feel that...whenever we write to central government, they say that ask the state government, then go to state government. They say ask the central government. It is more of Central Laws today and more of...added to that, the State is also passing laws without any assessment at all. But it is not for you, it is for the High Court to insist upon, whenever new laws are there, they have to insist upon new courts being provided with requisite infrastructure. and there is one more thing, there is this Centrally Sponsored Scheme. They allot funds; state has to provide matching grants. And unless all the Principal district judges write well in advance regarding their requirements, when the central funds come, we are not able to insist upon the state matching grant, because the state is not providing matching grant, this centrally sponsored scheme funds go back to the central government. Without being spent. This is one problem which is happening in Madras High Court. I do not know what is happening in the rest of the High Court. If this is the same problem, you can take care of that and give your proposal well in advance regarding what is your requirement. Yes..

**Participant:** the main perpetual problem is that every time the government- state or the Centre, they create a special fund.

**Participant:** without providing infrastructure.

**Participant:** if ADJ- I shall be the in charge of this court, but they are not providing any infrastructure or staff or any.

**Justice S. Vimla:** Not even a computer, what to speak about the building, not an additional computer.

**Participant:** So with the same number of staff, we set of staff we are given more work.

**Justice S. Vimla:** yes.

**Participant:** In High Court there is pending pre litigation

**Participant:** Normally it is the nominated court, in Uttarakhand, we have nominated the lady judges.

**Participant:** agar Supreme Court-ST courts khol diye, toh saare courts wahin pe ayenge..Abetment ke bhi.

**Participant:** Straightaway file the charge sheet..

**Justice Dharnidhar Jha:** Directly.

**Participant:** the provision is there.

**Participant:** is it the Central Amendment?

**Participant:** you will decide it as a judge, as a magistrate.

**Justice Dharnidhar Jha:** Arbitration they are to be handled by the District Judge, essentially they are to be handled by district judges.

**Justice Dharnidhar Jha:** ADJ cannot decide it.

**Participant:** all these are transferred to principal district judge.

**Justice S. Vimla:** see we are

**Justice S. Vimla:** see that unmindful of your lunch time all of you are speaking very well, participating very well, but we really do not want to interfere in your lunch time. We will go through only important slides for 10 minutes and we will have...lunch at what time? Lunch at 2 o'clock, real tea break...real tea break. Then we will just go through only important slides and if it due course, in rest of the two days, if time permits, we will again discuss these things. Whatever is omitted, then later on we will discuss. Whosoever wants, you can take the copy also.

**Participant:** Role of State Government-For the development of judicial infrastructure, time has come when States should provide requisite resources to the Judiciary without cutting/rejecting the demands made by it so that it is able to smoothly discharge its judicial functions. Legislature enacts new legislation's and increases the workload of Judiciary and, on the other hand, Executive holds back funds and facilities as required for administration of Justice which tantamount to interference in the administration of justice. One Branch of the Constitution should not ideally decline the needs of other parallel Branch thereby creating difficulties in discharge of its constitutional responsibilities.

**Justice S. Vimla:** Only for...only to emphasize the point, it amounts to interference in the administration of justice if the funds are not granted. when Justice Subhash Reddy was our Chief justice, the state government was repeatedly tending that they have no funds at all to provide, then one day, during the hearing of a writ petition, Chief justice asked this question, see if the government, is not going to sanction funds, we are going to declare financial emergency for the state, then the state government, has to wind up. See immediately, the next day, whatever was their demand, got sanctioned...Only to remind that, I put in this slide.

**Participant:** even for all this problems, my lord, if any High Court puts one IPS or IAS officer inside, within one or two days, everything would be sorted.

**Justice Dharnidhar Jha:** .hahaha.

**Participant:** but here they are warning...warning...warning...in courts, they will take them into task and they will.

**Justice S. Vimla:** yes, yes.

**Justice Dharnidhar Jha:** they will not give even as an appropriate case. They will be provided with just one month, 3 lakhs, 4 lakhs, 5 lakhs, and then I have to make a plan...urgent plan. Suppose I return it, then next time, they will stop that.

**Participant:** we are sending the funds and in the evening, at 4 o'clock, they are demanding this in hand. 10 lakhs, 20 lakhs

**Participant:** In Karnataka was filed. There was an IAS officer, senior IAS officer called Baldev Joshi. Some contempt position was filed against him in connection with some personal...no...no botanist department, not personal...subsequently in that contempt petition, he was...punished in the. Then he was sent to jail. High Court was (inaudible) to release him and they have kept him inside for two days and that time, still I remember, the entire government machinery was so much responsive to the judiciary.

**Justice Dharnidhar Jha:** may I...may I...may I share my own experience? I was elevated. I was the inspecting judge of Gaya district in Bihar and there the monitoring cell minutes were put up before me. What I found was that, the district judge has reported to the High Court in minutes as regards maintenance which are in occupation of the judiciary, the office building or the residential building. The plea of the building construction department which is responsible for its maintenance and construction, and everything was that, there lack of funds. We know, you must note it, if fund is allocated to building construction department for maintaining the building of all government buildings, including judicial building. Now

what is the rule, generally that area wise they distribute the fund? that what is the carpet area covered by the judiciary, both on the official and the residential side, executive and all. When the minutes were put up, then I drew a minute of my own. let the district judge seek a report from the concerned executive engineer, requiring him to furnish as to what was the plinth area both of residential and official buildings under the occupation of the judiciary and what was the plinth wise square feet wise or whatever, the allocated funds which should have gone to the judiciary and under whose work completion certificate, those funds were utilized. if he fails to furnish these information within this stipulated period, district judge shall ensure that FIR is lodged against the executive engineer within 7 days through the Nazir of the court. but it was a policy decision, so I directed that let it be first placed before the Hon'ble Chief Justice. The Chief Justice should have a look. As soon as he looked into that, he told me. Arre it is a far reaching decision so place it before the administrative committee so to approve it and High Court approved it and circulated a general letter. So if you are finding that the executive engineers of your building construction department are showing you lack of funds...lack of funds...lack of fund...then you do adopt this procedure and you will find the result coming out.

**Justice S. Vimla:** Yes.

**Participant:** he will try to conceal the fact, no...no...I was not granted any funds..

**Participant:** Sir one more thing, some fast track courts are created by some trial courts, by Central Govt. sometimes by what happens, our High Court in the...FTC and so number of courts remains the same and public, because number has not been increased and they are thinking that additional fast track courts have been created and so the workload remains the same.

**Participant:** Same happens with the gram nyayalaya. Same munsif is placed, it is gram nyayalaya and this court remains begging. So district court is facing the problem, who will deal with these cases, if the person is sitting here, he is going there. Number of persons has not been increased and people are thinking that additional courts.

**Participant:** before implementing anything, a feasible report has to be done. That is not being done here.

**Justice S. Vimla:** definitely...we will.

**Participant:** my lord they probably think we are a department of the government, towards judiciary is that is also a department of the government. A lesson has to be given, that No, we are not.

**Justice S. Vimla:** we will skip off several slides regarding this court decisions, which you may be knowing or you can take out copy of this and study.

**Justice S. Vimla:** maybe, but we will skip only one slide, it is regarding, national judicial infrastructure plan. This plan has been approved by the Supreme Court. Whenever any construction comes, you should ensure that all these facilities are provided in the plan itself. That you take care of..

**Justice S. Vimla:** You mean to say, own court should have its office independent... attached to that court alone or general shifting.

**Justice S. Vimla:** for internal adjustment, nobody can have any grievance regarding this. Before concluding I would say the last experience. When I was the judge in the family court, 10:30 the court starts, if I go by 10:10 I will be able to go inside the court hall and if I go by 10:20, I will not have the place to go in. that is how it was. I have been reporting to the High Court that this is the kind of crowd we have in the family court and it is any mishap may happen at any point of time, and later on I should not be blamed, this is what I informed. Then one fine day, the chief justice himself came and visited that place and then he ordered the shifting of the court to the ground floor...first floor, it was on the first floor. He ordered all the family courts to be shifted on the ground floor. It was very helpful for the elderly people accompanying the either the husband or the wife and those who are carrying the children it is very much useful and the later on, the additional family court also shifted because of the visit of the chief justice, it was widely carried away by all the newspapers.



And you...nothing is insignificant or nothing is negligible. Whatever comes to our mind, however little it may be, try to implement it, it will have a great success and it will have its own implications. Rest we will discuss during rest of the...I'll be coming again for the record management and bench and bar relationship. During that time if time permits, we will continue our discussion. Thank you very much for your wonderful participation.

**Justice Dharnidhar Jha:** I'll request, Mr. Sanmit Seth to give you the print of the talk of Hon'ble Justice S.Vimla and then we are very thankful to her for intense discussion on this building management. Now we take a break, a real tea break and assemble...reassemble at 1 o'clock.

### SESSION 3

#### **HR issues in district courts: Recruitment Systems in place for the Ministerial Staff**

**Justice U.C. Dhyani:** Good afternoon and welcome everybody. Present topic relates to HR issues. Yes...Welcome...Justice Tripathi. We will discuss on HR issues confronting the District judiciary in this session. Whenever a training program or a refresher program is organized by any academy, there are certain preset objectives, certain preordained objectives. What do we achieve after organizing such a program? The objectives of this program which had started in NJA today, in my mind would be to help the participants acquire improved professionalism in, efficiency in, judicial administration in districts. And with this, wide objective we have started the day, and that is why a response was called for from all of you as to what are your expectations from the training program. Whenever any training program is started, the trainers' looks at the empty behavior of the participants and at the end of the training program, he looks it when the valuation takes place, what is the end product. If there is a difference between the behavior and the end product, that means the training program is successful. If the training program is able to generate sensitiveness, it is able to sensitize the participants, it is successful otherwise it is not. So, basically our job is adjudication. If one says what is the job of the judge- that is adjudication that is judicial decision making. Oft quoted proverb and maxim, that it is the heavenly duty bestowed upon us judges on this earth. Professor Panik in his book- Judges- said that it is a most difficult task which the others seek to avoid. But the judges cannot avoid judicial decision making, that too judicial decision making in accordance with law. What do we do- We do JDM in accordance with law. The postulates of Constitutional Courts are little different. There, the extraordinary power inherent power in the form of 226, Article 32 is there. But uptill this stage of District judge, we have to go by what is written in the Statute books and discretion is only in the form of, that is given in the procedural law. If there is any other law, then they discretion cannot be used, and the discretion that that can be used is only as per the settled laws. So basically our job is judicial decision making. While dealing with as a district judges,

we are not robots. We are not robots like that weighing machines in the hospital and the railway station that you put a coin of rupee 1 and it will give you the weight. It is 6 kg, 80 kg or 56 kg. Had there been robots, the task would have been very easier, but then we have to deal with human issues, that are what we call. We call it Human Resource. Human Resource management means we have to extract the maximum from the human beings, which have been assigned to us. Sometimes, the staff is less, so until the staff is adequate, adequate staff is provided to us, how we go about it that is the proficiency of the district judge. How to marshal his own resources which are in the form of HR that is starting pattern? No doubt the problem is there, recruitment has to take place but suppose, there are 30 vacancies and you have to work with only 30 persons. How to go with..? We have to. We can't complain to the High Court and we can say that yes, 30 vacancies are there, but we can say at present only 30 people are there. The High Court will say, till the recruitment takes place, do the work from the 30 employees which are at the disposal of your judgeship. Then, comes what is the stakeholder, what are the stakeholders, what are the stakeholders in judicial administration system. For us one is judge, another is lawyer, the third is litigant for whom we survive and the fourth is the staff and registry. So we have to deal with all these human resources. Marshaling our resources in the best possible way is known as HR management and management like all jargon, you must have heard about judicial activism. What is it? It is a jargon. Court management, case management, notes control, time management, material management, what are all these? These are newly coined jargons which have bestowed upon, which are born into the era of judiciary, because I remember, in the 1984-86, I come from district judiciary, and then came the topic of court management. Most celebrated, sought after topic was court management and umpteen of lectures on court management. Then case flow management, the Supreme Court was obsessed with this case flow management, court management. What is this management? Just as I have told you that marshaling of available resources, there is a difference between management and administration. In administration, there is an element of coercion, iron and stick policy, but that is not so in management. Management means, you carry on the work in the best possible ways without any inertia and that is management. And you might know that management and training has a very humble ancestry. In the good old days, the trainer which used to train

the horse was called a trainer and trainee. Later on, it has dawned on judiciary. Managing your affairs in the best possible way, keeping in view the available resources, howsoever little they may be, howsoever small they will be and I have told you, we have to deal the stakeholders. We are not robots. We have to confront with the human beings and in the court, suppose the cause list is there outside the court, judge is absent, what will happen, the case will be adjourned. The second stakeholder is lawyer. Order 17, if the lawyer is not there, he seeks an adjournment, therefore according to the Order 17, three adjournments to either of the parties, plaintiff, defendant, appellant, respondent, although that is hardly observed. But then adjournments are there. The third is litigant. Suppose you fix up a case under Order 10 Rule 2 CPC. You want to take the statement under Order 10 Rule 2 CPC, the party is not there, or under 18...Order 18. Nowadays, this examination in chief is permitted through affidavits but what will happen to the cross examination unless the party is there. He says that I'm in Siliguri. I'm unable to court, come to Patna or Lucknow. So, there has to be no option with the Presiding officer but to adjourn the case and the Staff. You have got one munsherin suppose, and one suits clerk, one criminal clerk and on account of Holi, all of these three go on leave. They say we have perform Chatth Puja in Bihar, so what will happen. The Court, court has its limitations; therefore the case will have to be adjourned. Therefore I'm saying that whenever we talk about the Human Resources, this is a very essential element. Again at the cost of repetition, had we been robots, we would have just send a one rupee coin and got the weight of it but then it is not possible. We can't feed the plaint averments in any machine, defendants averments in, I mean sorry, written statement in another machine and we can't say that yes, please give the affidavit and the result will be there, because in law 2+2 doesn't make 4. Not necessarily, it may make 4, may make 5, may make 3 depends upon the evaluation of the evidence and the evaluation of the evidence is the task of judge, depending upon the parameters given to us, assigned by the evidence act. You might be knowing that, when Sir Stephens, drafted Evidence Act, he went from Kanyakumari to Kambhu, in Assam and Kashmir. It took 22 years for him to draft the Legislation and then came the Evidence Act, Sir Stephens. He went through the width and breath of the country and he saw that we Indians use hyperbolic expressions. Either we say that man is very good, excellent or we say that he is a duffer of the lowest order. We don't

remain in between. So, by way of judicial decisions came the expression of *Falsus in uno falsus in omnibus*. *Falsus in uno falsus in omnibus* is available in England, but not in India, because we use hyperbolic expressions. Perhaps because of this, statement before the police in police custody, section 25 is not admissible. Statement before police or in police custody, that is section 25 or 26, that is not admissible. In England, if you make a statement before the police constable, that is admissible. That was after this, extensive survey, elaborate discussions; with the people of this country that evidence act was enacted by Sir Stephens. Now, as a District judge, you have to recruit the people. What are the salient features? I'll highlight the oft and celebrated judgment rendered by Hon'ble Supreme Court in *Renu vs Tiz Hazari*, District Judge Tis Hazari. I'll let you know in a short while from now, but what are the essential features. on the one hand you have to maintain the confidentiality and on the other hand you have to maintain the transparency which are antithesis of each other. Transparency vs Confidentiality. Confidentiality in the sense, so far as the examination paper is concerned, confidentiality. Who will check those papers, confidentiality, who will be the committee, confidentiality, they are to be a person of your confidence as a District judge, but then transparency, Transparency means,

**Participant:** in the process of .

**Justice U.C. Dhyani:** Yes, the process of taking the recruitment, unbiased. There has to be no discrimination. It has not to be violative of Article 14, then 15 and 16. 16 are to be adhered to. The reservation will have to be implemented. The reservation policy of the state has to be implemented. There has to be transparency and then it is also the law that

**Participant:** Equal opportunity..

**Justice U.C. Dhyani:** Equal opportunity that is why I said it has to adhere to Article 14. After the examination it is better if you paste or place a copy of the answer sheet at the end of the program. Suppose the examination commences at 9 o'clock finishes at 12 o'clock and it is based upon objective type questions, then you have to place, the correct answer of ,

correct checklist of the answers to...key answers to the participants. Paste it on the gate of the examination center. I did it.

**Participant:** now we are sending the same in the mobiles or internet..

**Justice U.C. Dhyani:** Mobiles, then yes, try to declare the result as early as possible as a district judge. This is request to you; this is my piece of advice to you that whenever you conduct such an examination, you...

**Participant:** Judicial officers or confidentially from evaluation..

**Justice U.C. Dhyani:** Evaluation..

**Participant:** they will be taking their own time,

**Justice U.C. Dhyani:** I'll tell.

**Justice U.C. Dhyani:** I'll tell you what I did, I'll tell you what I did.

**Participant:** in our state, they have got to be approved by the Hon'ble Court; there also, we can commence it.

**Justice U.C. Dhyani:** Yes, what I did is, I was district judge, Nainital. A judicial academy in Uttarakhand was to be established, and then the then Hon'ble Chief Justice B.K. Gupta, who also was the Jharkhand, Chhattisgarh and Himachal Pradesh, called me and said that you have to establish a judicial academy. I said that I'll do it. So you are being transferred from District judge Nainital to Director Academy. I said Okay. Nothing was there, I was well placed in a good house as a district judge since the academy to be established, therefore there was nothing. I was thrown out of the house, thrown virtually. Virtually thrown out of the house and there was no directors residence. I opted for a type 3...I had no option, type 3 houses, meant for SDMs and ADMs. I had no options. No orderly, no vehicle, I had Maruti 800 of my own. The academy was to be established at Bhawali that is 14 kilometers from Nainital. Nothing, I had to start from scratch. So, first of all, what I did was, I published an

advertisement in the local newspaper. I thought that let me recruit class 4 first. Then 14, 15, 16 vacancies of class 4, were notified. Lot of pressure, take my man, take my man, take my man, even from the High Court I said nothing doing, I'm not going to do it. Then selection committee was formed. They did it and then I said that, take the poorest of the poor and there is absolute, lot of discussion in class 4 recruitment. Take the poorest of the poor who can work and don't take into consideration any sifarish, any recommendation. So anyhow, 15-16 class 4 employees were recruited who had not dreamt in their dreams that they will be given government assignment. Then, mobile phone was there, telephone number was there, I rang them up, personally, because there was none. I said that, yes Mr. Bhole Nath, yes sir, aap appoint ho gaye ho, you have been appointed, please join the academy tomorrow. Sir, who are you speaking? Who are you? I said I am nothing; I'm just informing you just come tomorrow. And this way I recruited class 4 employees. Then came the turn of because, Class 4 was not enough, I had to appoint the class 3 staff also. Then again I got it advertised, there was resource crunch, and money crunch also, then there is one Ghodakal Sainik School, in Bhawali, run by Army. I requested the Principal of the Army School, to please provide me your school for organizing the exam. He readily agreed that my volunteers or my invigilators will work. Then I said that they will be taking money from me, he said if it's possible please provide some honorarium. I said I'll not provide them honorarium, I'll request them to gather before...Provide lunch to them. Then, in that classroom, which was provided to me in the Ghodhakal Sainik School, those class 4 employees who I had recruited earlier, I said you'll be working as an invigilator. Who knows that that is a class 4 employee? For the **Participant** he is an invigilator. Then invigilator, they were done, class 4 employees, class 4 employees did the invigilation work and then that was in the form of OMR Sheet. Except the stenographers, for other posts there was one OMR sheet. I engaged a person from Noida that you provide me OMR sheet. OMR sheets were given, prepared the question paper on my own. One of the Hon'ble judges, because I was the only the director that time, one of the Hon'ble Judges said that can you give me some hint what type of questions are you going to place. I said that, that will be known tomorrow only when the examination begins. Because 12 o'clock I pasted the real answer sheets on the wall of the, on the gate of the Ghodakhaal School. Then I sent one of the people, one of the persons from civil court because I had none,

so I requested the District Judge with the concurrence of the chief justice who was my patron in chief. There was none between me and my chief justice. I said that I have to send somebody to Noida, for evaluation of the OMR sheets. So he gave him an officer and I sent him to Noida. I said that you please contact this person and as soon as the OMR sheets are evaluated let me know on telephone. There was no mobile phone even...I mean landline. As soon as the OMR sheets were evaluated, he rang me up. He said, Sir kara liya hai. maine kaha tell me the telephone numbers...tell me the roll numbers...he said that roll number so and so, how many marks, roll number so and so how many marks... and on my table, I jotted down the roll number and the telephone number and he said that I'll be reaching by tomorrow morning. I said that you want to come whenever you want. You come by your own convenience. In the meanwhile, I said, please check whether this roll number has got how many marks or not. in the meantime I prepared a note on the telephone itself, hand written, went to my CJ. I said the mark sheet is ready; the OMR sheets have been evaluated. He said you come at six o'clock in the evening. I went to him (inaudible) that is the official residence of my Chief Justice. He said that what this is. I said that the chart is ready. Please sign over my note, if you agree. Then what will you do? I'll get it published in the newspaper and the next morning the list of successful candidates appeared in the local newspapers in the form of press release. What I mean to say is that if you take time, I mean there was no hindrance for me, because I was directly under the CJ, no committee nothing else. I went to chief justice straight away, got his approval, got his note and get the result declared. What I mean to say is that, different persons act differently in different circumstances. But when it comes to extraordinary situations, extra ordinary problems, require extraordinary solutions. So you have to act according to the IQ which the Almighty has bestowed on each and everybody. It is possible that, if I am acting in similar situation, Hon'ble Justice Tripathi will not act. My elder brother **Justice Dharnidhar Jha** would have different perceptions as to which, what will be the best available option for you and that you have to do accordingly. That cannot be a readymade solutions for all the problems, different people might act differently. So, time is the essence. Somebody has said that yesterday is a cancelled cheque, I'm emphasizing upon the time management. Somebody said that cancelled cheque, tomorrow is a promissory note, today is ready cash, use it. So time and tide wait for nobody. Once I was sitting as a



district judge in Dehradun and had some complaint. CJM had some complaint about the efficiency or the competence of an official of his that is CJM'S court. When I called him in the chamber, that official, CJM told me in my presence that you are a useless man, you are a useless fellow, prompt came the reply, that I am not useless, the only thing is that I'm used less. I'm not useless; the only thing is that I'm used less. Then I said what do you mean? That this learned CJM has not given me any work. He has assigned me, that work which nobody wants to do, that is consignment of files that is not according to my competence. There are other officials in his establishment, that are less competent have been given better work, whereas I have been given the work of consignment. So my dear friends, little bit about human resource management and then I'll continue to talk but in the meantime, I want to let you know, what are the guidelines of the Hon'ble Supreme Court in the matter of appointment of ministerial staff. Because it is my bounden duty to let you know and your bounden duty to assimilate these things, because these are binding under Article 141 of the Constitution of India and two cases are there. One is Renu versus Tiz Hazari, District Judge Tis Hazari and another is Ajay Hassia. It says that whenever you formulate the interview, the marks for the interview, I'm letting you know, because. One is Renu...Dikha dijiye aap..

**Participant:** Justice Chauhan's judgment?

**Justice U.C. Dhyani:** Yes, Justice B.S. Chauhan's judgment in Supreme Court. We will deal with it.

**Participant:** there is a judgment of Justice Goel also.

**Justice U.C. Dhyani:** There are, Renu versus Tis Hazari, 1, 2, 3 just like All India Judges Association which is an unending judgment. I mean started in 1980's continues to hold the sway even today and then is another judgment I tell the lawyers of my court, that MC Mehta, files different petitions.

**Participant:** Sir, T.M.A. Pai?

**Justice U.C. Dhyani:** No sir, Not TMA Pai, that...which is on environment protection. That defines the forest, Gowda Badhman vs Tamil Nadu. So you can please note down. Renu and Ors versus District and Session Judge Tis Hazari Court, Delhi and Anr (2014) 14 SCC 50 and I'll supply the photocopy. I'll request Mr...Supply the copy..

**Participant:** eCopy.

**Justice U.C. Dhyani:** eCopy or hardcopy. Or hardcopy print. Yes. Both...both...both because it is very important..

**Justice Tripathi:** Give your choice. You'll be given according to your choice.

**Participant:** then the question arises where the Renu judgment is, it is difficult to find then. But the eCopy remains on this.

**Justice U.C. Dhyani:** Yes, so this is ...this is (2014) 14 SCC 50. And what is the ratio of this case? I'll like you to read one by one. Please read.

**Participants:** All High Courts are requested to re-examine the statutory rules dealing with the appointment of staff in the High Court as well as in the subordinate courts and in case any of the rule is not in conformity and consonance with the provisions of Articles 14 and 16 of the Constitution, the same may be modified.

**Justice U.C. Dhyani:** this is the first guideline. Yes. Next is. Please..

**Participant:** To fill up any vacancy for any post either in the High Court or in courts subordinate to the High Court, in strict compliance of the statutory rules so made. In case any appointment is made in contravention of the statutory rules, the appointment would be void ab-initio irrespective of any class of the post or the person occupying it.

**Justice U.C. Dhyani:** yes.

**Participant:** The post shall be filled up by issuing the advertisement in at least two newspapers and one of which must be in vernacular language having wide circulation in the respective State. In addition thereto, the names may be requisitioned from the local employment exchange and the vacancies may be advertised by other modes also e.g. Employment News, etc. Any vacancy filled up without advertising as prescribed hereinabove, shall be void ab- initio and would remain unenforceable and inexecutable except such appointments which are permissible to be filled up without advertisement, e.g., appointment on compassionate grounds as per the

**Justice U.C. Dhyani:** there need not be, you know it... there is no need of an advertisement of a compassionate appointment.

**Participant:** Rules applicable. Before any appointment is made, the eligibility as well as suitability of all candidates should be screened/tested while adhering to the reservation policy adopted by the State, etc., if any.

**Justice U.C. Dhyani:** Please, please, yes.

**Participant:** but first of all these guidelines, in our state, we the principal judges are asked to procedure is equal to the.

**Justice U.C. Dhyani:** Yes.

**Participant:** our rules do not provide for the recruitment.

**Justice U.C. Dhyani:** yes.

**Participant:** for the time being, issue a guideline, that the person having uniform...

**Justice U.C. Dhyani:** yes.

**Participant:** he is the...for.

**Justice U.C. Dhyani:** yes, yes...vernacular as well as English

**Participant:** there shall be no short... how to short bridge the.

**Justice U.C. Dhyani:** yes, yes.

**Participant:** We received 60,000 applications. Yes.

**Participant:** So we cannot supplement the same.

**Justice U.C. Dhyani:** And we have learnt through the newspapers even the PhD people have applied for class 4 posts in courts.

**Participant:** My lords kindly see, the worst kind of situation, to accommodate 60,000 candidates the district...where to place the 60,000 candidates, so if they prefer to do it in a stadium.

**Justice U.C. Dhyani:** Stadium or yes ramlila ground...Stadium.

**Participant:** so, before this ...was allotted to the...

**Justice U.C. Dhyani:** yes, yes. Cancelled? By the High Court?

**Participant:** he has written to the administration about its scrap.

**Justice U.C. Dhyani:** Okay, okay...

**Participant:** My lord, I was one of the organizing committee. Just

**Participant:** that is what the situation is?

**Participant:** Sir, problem is that.

**Participant:** minimum 12th pass, maximum does not matter, but condition will be put, it will be.

**Justice U.C. Dhyani:** No, but the Hon'ble Supreme Court has said that yes, you cannot say that a PhD will not be entitled to become a class 4 employee. The judgment is...just a minute...the judgment... haan judgment is published in the reading material, printed by Mr. Sanmit Seth. That is there, that you cannot say that since he is a graduate or a post graduate or a PhD therefore he is not entitled to become a class 4 employee. That judgment is there, Supreme Court judgment is there.

**Participant:** Sir, thereafter this judgment now our recruitment process for clerks is stalled..

**Justice U.C. Dhyani:** Stalled?

**Participant:** 30,000 candidates, how will district judge conduct the examination, when no resource is available with him?

**Justice U.C. Dhyani:** yes, true...High Court is doing, that's fine, that saves your skin..

**Participant:** they say, thoda sa bata dijiye, humko bhi kuch jaana hai..

**Justice U.C. Dhyani:** No, no, he says that, now High Court has taken over the job of employing the Class 4 employees and centralized...that's fine..

**Participant:** now that has also been recommended that....

**Justice U.C. Dhyani:** That is the best thing for a district judge...

**Participant:** They have withdrawn their registry and have implemented for making the...

**Justice U.C. Dhyani:** Yes...Yes...Yes.

**Participant:** High Court formed the bench to agree or not agree but

**Justice U.C. Dhyani:** Request of the district judges...Yes, yes.

**Participant:** So we are now having this in our states also.

**Justice U.C. Dhyani:** Yes..

**Participant:** because there is also a ...that's what applications are being received. So what High Court has done all online presentation of the application, then? But this is for High Court staff only, so whatever he has said, there are no norms for the finalizing the shortlisted. This all should be done by the High Court only, with the help of software, thereafter what they have done. They have given the shortlisted candidates of every district and further procedure was followed by the district judiciary. For example, conducting examination, then conducting viva, all are finalized by the district and is then presented to the High Court.

**Justice U.C. Dhyani:** High Court

**Participant:** So what happens, there are many applications in which no details have been filled up, so that scrutiny was done by the software only.

**Justice U.C. Dhyani:** In Uttarakhand, we have assigned the job to. Technical Education Board. They are doing it on behalf of High Court. High Court has taken over for itself, employment of...I mean recruitment of class3 and stenos in the district

**Participant:** Sir, I have, I have...one suggestion...my lord something should be given to the persons particularly. I think sir, this is to be.

**Justice U.C. Dhyani:** So far as Class 4 is concerned, class 4...that is why, it is, Article 16, doesnt recognize nativity, but then you can say that, yes those who have been registered with the local employment exchange, can be taken instead of another mode of saying.

**Participant:** Actually lordship, the class 4 employees will not know the English, so we are requiring only 8th class...they will not know the English.

**Justice U.C. Dhyani:** They might know or not know English in your state, but so far as U.P. and Uttarakhand are concerned, they don't know anything.

**Participant:** My lord, they don't know how to write the online exam. That is very difficult. So actually High Courts are taking recruitments now. Again we are giving the...Public Servants

**Justice U.C. Dhyani:** Application will be online, yes.

**Participant:** That means the examination will be conducted there only.

**Participant:** your lordship, we have called for the...online. There are 20,000 applications, so I made committees with my staff members. I used to sit with them, each Saturday and Sunday, those things. Then we charted out who are eligible, who are coming into the category, then we sent through email, whether they are selected or not. Then I call them for one day for scrutiny of certificate, and then we charted out. Only those who are eligible, we called for (inaudible) we call for junior judges. By that successfully I'm able to manage recruitment.

**Participant:** how many remain are? There are 7 or 60,000... This is a.

**Participant:** How many posts you admitted? How many posts you admitted?

**Justice U.C. Dhyani:** How many posts you advertised...his question is? How many posts you advertised?

**Participant:** My lord I only advertised for 33..

**Justice U.C. Dhyani:** 33.

**Participant:** 33.

**Participant:** for 33 posts, 7000 candidates remain..

**Participant:** No...No...Not at all. Only remaining candidates are informed, the other candidates.

**Participant:** No, No madam, all he is asking. How many applications you received from seven courts?

**Participant:** No mam, actually,

**Participant:** required.

**Justice U.C. Dhyani:** How many candidates actually appeared in the examination for the 33 posts?

**Participant:** actually...actually we called for 33, for that 28,000. Now we require enough to fill.

**Justice U.C. Dhyani:** No, no. How come 28,000?

**Participant:** Sir, he is not showing residential address, if he is an alcoholic..

**Participant:** 28,000 required.

**Participant:** For example, 50 posts are there, 20 posts are out, so now.

**Justice U.C. Dhyani:** Haan, Yes. Anybody can file.

**Participant:** Sir, there is one thing. Now, application...nobody is going to be...there will be less number of candidates also.

**Justice U.C. Dhyani:** Yes, yes.

**Participant:** Because of the technology, there are now lakhs of applications.

**Justice U.C. Dhyani:** Lakhs of application.

**Participant:** That is one thing. Now even if we will receive lakhs of applications, in our High Court, earlier this duty was manual, now the (inaudible) is giving that scrutiny. Now



even the worst case, what we, we are seeing whether the scrutiny is there. For example, along with the application, there is a registered enroller, that has to be accompanied, because we have to send.

**Justice U.C. Dhyani:** Send the mark sheet.

**Participant:** So if these are not there, these candidates are eliminated. So from lakhs, we reduce it to 50,000 or 20,000. At least not more than that 20,000 or 50,000 we will have to conduct the examination, for written examination and if written examination is there, out of 20,000 suppose 10,000...

**Participant:** In class 4 there is no written examination.

**Participant:** No, no. Let me complete first, we are trying to find how to handle this situation.

**Justice U.C. Dhyani:** Handle this situation.

**Participant:** Even if 10,000 are there, 10,000 pass, for that purpose also there is a ratio. If one post is there, how many candidates you should call for the viva. So it does not mean, that the 10,000 have passed, we should call all 10,000 because there is a ratio, 1:4, 1:5

**Justice U.C. Dhyani:** depending on rules, 1:7 also.

**Participant:** For viva, we are to call those numbers of candidates, and thereafter for final merit list, we have to only choose those candidates and...For which the...and the situation is different for Central government. For Central government...we are not taking eligible candidates.

**Justice U.C. Dhyani:** Yes, yes...For that we have to take undertake another test.

**Participant:** lordship, it is only the High Court which they are selecting.

**Justice U.C. Dhyani:** For them, for the time being let us proceed as to what the Hon'ble Supreme Court has said. Yes, who was reading?

**Participant:** Each High Court may examine and decide within six months from today as to whether it is desirable to have centralized selection of candidates for the courts subordinate to the respective High Court and if it finds it desirable, may formulate the rules to carry out that purpose either for the State or on Zonal or Divisional basis.

**Justice U.C. Dhyani:** Yes. And the last is direction, next.

**Participant:** The High Court concerned or the subordinate court as the case may be, shall undertake the exercise of recruitment on a regular basis at least once a year for existing vacancies or vacancies that are likely to occur within the said period, so that the vacancies are filled up timely, and thereby avoiding any inconvenience or shortage of staff as it will also control the menace of ad-hocism.

**Justice U.C. Dhyani:** Ad hocism, Same, same direction that was given by Hon'ble Supreme Court in Malik Masar Sultan Case, recruitment of judges at the lowest rung as well as the HJS. Promotees as well as direct recruits, because every registrar of every High Court has to file an affidavit that he has complied with Malik Masar Sultan's case and then came Renu 2 with little modification...Uska bhi dedo aap, woh...Citation only. I'm not dealing with it. Basically these were the guidelines.

**Participant:** this sir coming again.

**Justice U.C. Dhyani:** No, this was first; this was Renu 2, then Renu 3 also.

**Participant:** Some additions were there?

**Justice U.C. Dhyani:** Some little modifications, somebody said that I have not been able to do, some application was filed by some High Court, then the Supreme Court dealt with that, granted permission, granted some time, so basically guidelines are these which we have dealt

with, but then as a district judge, you should know as to what is Renu 2, citation at least and then Renu 3 also. And quickly thereafter we will deal with Ajay Hassia, small ratio, ratio. Renu 3 bhi de dijiye.

**Mr. Sanmit Seth:** yes sir, yes sir.

**Justice U.C. Dhyani:** this is Renu 3?

**Mr. Sanmit Seth:** yes.

**Participant:** All the three are 2014 itself.

**Justice U.C. Dhyani:** yeah, one is 2015 I think.

**Participant:** Sir, the third one is in 15, one is in 3.

**Mr. Sanmit Seth:** 15 sirs.

**Participant:** volume 15.

**Participants:** Volume 15.

**Justice U.C. Dhyani:** yes, All 2014, 15 SCC. Yes.

**Participant:** They are going for other jobs.

**Justice U.C. Dhyani:** So, let us.

**Participant:** There is no condition imposed on them. You have to work at least 5 years.

**Justice U.C. Dhyani:** Then, the next is Ajay Hassia. Ajay Hasia aagaya? Next is Ajay Hassia, it says that suppose the total marks are 100 in any examination, then for interview you cannot do it beyond 15%, beyond 15, it has to be either 15 or below otherwise that will be in contravention of Ajay Hasia. You cannot say that yes out of 100, 50 will be marked

for interview. More chances of abuse of power, misuse of power, favoritism, so in order to minimize the subjectivity in the appointment process, Ajay Hassia says that yes, for interview you have to fix up, 15 or below, not beyond. Woh laga dijiye, yes, please read somebody.

**Participant:** Can you increase the font?

**Justice U.C. Dhyani:** pardon.

**Participant:** Allocation of ...

**Justice U.C. Dhyani:** font. I'll request Mr. Coordinator to provide copy.

**Participant:** Soft copy.

**Justice U.C. Dhyani:** Soft copy, soft copy de dena.

**Participant:** Because normally when we read.

**Participant:** Because soft copy will remain forever.

**Justice U.C. Dhyani:** I hear.

**Participant:** soft copy, eCopy.

**Participant:** eCopy is a soft copy.

**Justice U.C. Dhyani:** You have said that nobody will read it, but then you are hearing it, I hear and I remember, I remember and I forget, I see and I remember, I do and I understand, so, you have to do it in order to understand it. Please.

**Participant:** Allocation of more than 15% of the total marks for the oral interview would be arbitrary and unreasonable...holding interview for only 2 or 3 minutes per candidate and

asking irrelevant questions, held, would vitiate the selection. Selection can be quashed even in the middle of an academic session if mala fides established.

**Participant:** who will record it was.

**Justice U.C. Dhyani:** Ashok Yadav. He has rightly.

**Participant:** Ashok Yadav made 40% of the minimum.

**Justice U.C. Dhyani:** No, Mr. Learned District Judge has rightly pointed out, Ashok Yadav was basically on the point of selection of promotees, judicial services, I mean it started from the handicaps or Punjab public Service Commission.

**Participant:** yes, earlier it was Haryana.

**Justice U.C. Dhyani:** Haryana, Punjab and Haryana...Haryana. So that is the judgment in which the High Court judge is nominated to participate in the interview board. Ashok Yadav versus Punjab and Haryana.

**Participant:** The ratio was this that the interview marks should be minimum of the 40, minimum 40% of the total interview marks.

**Justice U.C. Dhyani:** Yes, yes.

**Participant:** this was the ratio laid down and thereafter it was being followed by UPSC etc.

**Justice U.C. Dhyani:** That is for judicial service.

**Participant:** my lord one question.

**Participant:** 40%, not 40 marks, 40% of the total marks.

**Justice U.C. Dhyani:** But now, what the Uttar Pradesh and Uttarakhand has done is, suppose there are 1000 marks for the recruitment of PCSJ and HJS, then the marks allotted for the

interview is only 100. That is the practice adopted by the Uttarakhand Public Service Commission as well as by the Uttar Pradesh Public Service Commission. 100 marks only. That is 10%.

**Justice Tripathi:** In Bihar also it is 100, and the minimum is 30. If you don't bring 30, then you disqualify.

**Justice U.C. Dhyani:** Minimum is 30, and normally the judges, I mean the judge who is heading the, the committee will not give more than 70. I mean this is an understanding, understanding... I was the member nominated by the Lord, Chief Justice this year. In 60-65, were the highest marks we have given, of course with the concurrence of the other members of the committee. So this is about Ajay Hassia and...

**Participant:** Suppose the marks for the interview are more than 15%, in that case, in the selection process, that is the person has taken the selection process, then can he challenge it?

**Justice U.C. Dhyani:** Then the High Courts will decide that he has participated, why he did not... That's a different thing.

**Participant:** It means, what is happening because... in the case of the recruitment of judicial officers, subordinate level, the marks of the interview are more than 15%.

**Justice U.C. Dhyani:** yes, yes, but that should not be.

**Participant:** Not more than 15%, now the question comes, once a person has appealed and he has (inaudible) supposing they always say they are cross checking, you have not qualified that's why you have come to this forum. Estoppel applies.

**Justice U.C. Dhyani:** But the High Court in that circumstance can say that once he has participated, he has no locus to challenge but for future recruitments, the High Court or Supreme Court can say that yes for the next year onwards, please don't fix up more than

15% marks keeping in view the Ajay Hassia...Ajay Hassia...this is Supreme Court law...Supreme Court law..

**Participant:** Ajay Hassia is applicable to all High Court's Sir?

**Justice U.C. Dhyani:** Yes, General...general...general... Ajay Hassia is not confined to any particular class or particular class of recruitment. Yes.

**Justice U.C. Dhyani:** haan, it is applicable under Article 16, public employment. And now quickly,

**Justice Tripathi:** but Ashok Yadav does not discuss Ajay Hassia.

**Justice U.C. Dhyani:** Ashok Yadav, that doesn't discuss Ajay Hassia, and then quickly you have to formulate the rules, in every state, employment, giving to Class 3 and Class 4, you have to frame the rules. What is the basic structure? Just two minutes we will discuss, and we'll just go through what are the essential ingredients of any rules.

**Participant:** The Subordinate Civil Courts Ministerial Establishment Rules

**Justice U.C. Dhyani:** Jaldi...jaldi, Quick...ek ek second, second. It has to be there, take Tamil Nadu or Haryana or Uttarakhand or Karnataka, this has to be there.

**Participant:** model rules?

**Justice U.C. Dhyani:** Model rules! Model Rules...family court rules are also applicable. I mean, in the same set of rules, you will also find that Judge Family Court can recruit for the establishment of his own, so these are basically, you need not go through just for the sake of displaying it. I've displayed it on the notice board otherwise all of you know what are the essentials of any recruitment rules, that is applicable and that is model rules. Every state has formulated its own rules.

**Participant:** Sir, I propose one thing, now our rules are outdated, we have to change, because these days, emphasis is on computers. Now we require person who are very skilled in computers.

**Justice U.C. Dhyani:** Yes, yes.

**Participant:** We don't require staff, who are limited to..

**Justice U.C. Dhyani:** Then your High Court should suggest rules to the State government, because ultimately it is the state government who has to notify the rule.

**Participant:** It will be easy.

**Justice U.C. Dhyani:** yes,

**Participant:** it will be easy. All the processes are long drawn.

**Justice U.C. Dhyani:** yes, yes.

**Participant:** Written test, thereafter computer test, then interview, it takes around 6 months, so if the candidates are more, and it'll take more than six months. (Inaudible) Appoint one judicial officer, he takes his own time.

**Justice U.C. Dhyani:** the constraints are there no doubt.

**Participant:** It has to be made a little more scientific.

**Justice U.C. Dhyani:** yes, yes.

**Participant:** that they want to scrap the interview.

**Justice U.C. Dhyani:** oh yes, yes, yes...that is not necessary in class 4. Yes.

**Participant:** not necessary for class 3 also.



**Justice U.C. Dhyani:** Class 3 also. Yes, if one wants to do away with the interview, yes one can. It is permissible under the Rules. I think it is better to do away with this interview and since we are heading towards 2 o'clock, therefore the last sentence of mine today is - A book was written by Alfred Toffler and the name of the book is Future Shock. It says that you manage the change, either you manage the change or the change will manage you. You manage the change or the change will manage you, therefore my dear friends, you have to be a management expert while dealing with all HR issues and with these words, I don't want to stand between your lunch and yourself. Thank you very much.

**Participant:** Sir, written by..?

**Justice U.C. Dhyani:** Alfred Toffler

**Participant:** Toffler.

**Justice U.C. Dhyani:** Toffler, Future Shock, haan yes, we will be back by 3 o'clock. Enjoy your lunch.

#### **SESSION 4**

#### **Procurement for District Courts: GFR 2005**

**Justice Ravi Tripathi:** Good afternoon to all of you..

**Participants:** Good afternoon sir.

**Justice Ravi Tripathi:** The lunch seems to be too heavy; in fact I was talking to my friend saying that, I'm given the toughest session today. Is It..? Why?

**Participants:** After lunch session

**Justice Ravi Tripathi:** After lunch session...after lunch session is always considered to be the, you know...tough...tougher...toughest...And it becomes additionally tough because it talks about GFR. I am told even in the ministry, PM office can be told by the officers, Sir, Finance Ministry is not concurring, of course not in the present government. Present government, the scenery seems to be little bit different. Where nobody is in a position to say to the P.M. Office that no, somebody is not concurring. I've been...you must be having that assessment, I don't know...that is my assessment of the situation today as it appears from the, you know T.V. episodes in the all right. That P.M. office is not told by anybody that somebody is not concurring. But one thing is sure that you being the district judges, you have to be very careful when it comes to finance. There are two set reasons for that: 1) for every single achievement of object, you will have to have finance; at the same time dealing with the finance is always very prone to invite allegations. One single mistake and you may find banks of allegations coming to you. So you have to be very careful. Now of course my brother Mr. Jha as well as Mr. Dhyan, had the benefit of, you know working at the level from the...right from the level from where they have to deal with the finance right up to the High Court, I did not have that benefit. But one thing is sure, that when you are dealing with the finance, you know, rightly one of the district judges said, Sir, we have to have atleast one person of confidence. You're right, one person should be that of confidence but that should not be a blind confidence. Even in mythology, they say ki aapko sharaddha honi cahiye, lekin andh shraddha nahi honi cahiye. Same is the case with finance also, you should have a man of confidence and not of blind confidence and at least that man must have an idea that when he advises you something, you do cross check with the provisions. Right...Now this material is one way very useful that possibly gives you a handy access to GFR. You'll find it on page number 21. If you have got this material handy with you, you can come down to

GFR, that says general financial rules 2005 and it becomes very handy for you. You can keep this booklet on your table so that while dealing with the finance you can always have a glance to.

**Justice Ravi Tripathi:** It does give you guidelines, it does give you guidelines so far as general principles are concerned and once you know anything about this, you can always cross check with the position qua state. It is for that, for that purpose it is very beneficial. Verbatim it will not be applicable to the state and that of course the coordinator also knew about it, but still they have placed it because we are coming from different states, it will not be possible for all those financial rules in this compilation for every state, and possibly that is why they have selected this and specially this letter which is there on page number 21, you'll find, It is by the secretary to the government of India.

**Participant:** Just like constitution for other states...

**Justice Ravi Tripathi:** You are right, absolutely...absolutely and I tell you, in the morning it was referred to by somebody that our entire objective is to have exchange of ideas, because one thing is certain, what is prevailing in Tripura is not going to prevail in Tamil Nadu and what is prevailing in Gujarat definitely is not going to prevail in West Bengal, that is one thing that is certain. In such situation when you have such type of meeting or conference you have an exchange of ideas and with that exchange of ideas you can carry home the message that is applicable to you. We are not saying that every word which is spoken right from morning 10 o'clock till right now or even subsequently you have to carry home. No, you have to carry home a message which is applicable to you and that is why, it was rightly referred to. You know when you hear something it remains in your mind for some time, when you read something, it remains for a longer time, when you do something it remains permanently possibly in your experience note. In that situation possibly this is very good and that is why in second paragraph the sentence is "therein the form of executive instructions, so far as these rules were concerned. Then you will find, there were 1963 and then updated and last we have got these General Financial Rules of 2005. Now I have selected, some of the things from this, I have underlined paragraph number 3, third line' the appendices and

the forms of the GFR 1963 have also been comprehensively reviewed but for the sake of convenience and avoid confusion the existing form numbers have been retained. I don't know how many of you are having that background, who will be looking after your own income tax returns of their own possibly none. At least I'm not looking. I also have to take help of my friend who I rely upon who will be looking after my income tax returns. The reason is simple, not only is it clumsy but every time when Financial bill comes, you know so many things are added in that, and here also you will find, something which is added is you know, section, sub section, clause, sub clause and what not further and mainly it is governed by proviso. So it becomes very difficult to handle with this , but then, you have to at least two things- one, when we are having a closed door meeting, even if you don't understand, don't make it known to your subordinates that you don't understand. very frankly I am telling you, because I am sharing my experience as brother **Justice Dharnidhar Jha** was sharing his experiences in the morning, don't make them understand that no, you don't understand. They must appreciate that No, Sir ko sab pata hai...aur Army main toh kehte hai Boss is always right. Army ka ek anecdote mujhe acha yaad hai aur woh main bhool ni pata hu. Geography main PhD karke ek sahab aaye, aur unki class ek lagi Rangroots ke pass. Toh unko yeh samjhana tha ki duniya gol hai. So poor fellow you know started sweating. Woh aap maidan main chale jaiye aur fir waha pe teen lakdiyan gadhiyen aur fir beech ki lakdi aapko oonchi dikhegi aur baaki side ki dono neechi lagegi and if you go to the sea shore, when the ship is coming, when it's that, you know smoke will be seen and all that. So he was perspiring and he asked that did you understand. The rangroots were giving no expression. So one of the havaldars were standing by, he said sir, main samjha dun class ko? So poor fellow out of frustration said yes, tum samjha do. SSo that havaldar came- Attention! And everyone was sitting attention..at ease..Attention..at ease..yeh sahab aaye hai, yeh sahab PhD hai geography main aur sahab ka kehna hai ki yeh duniya gol hai..Samajh gaye!/? Yes Sir! You know with that spirit with which madam wanted you people to say good morning, the rangroots responded by saying yes sir, we have understood. What have you understood? - Ki duniya gol hai. So sometimes you have to be careful and tactful in dealing with your subordinates specially in the matters where it is ..I remember, my senior used to do like that. You know he will have thick volume on the table, and when a client comes, he

will say yeh sab padhna padta hai uske baad case chalta hai..aise nahi chalta, pehle isko padhenge, fir aapke case main ismain kya apply hoga usko dhundenge, fir usko lagayenge, fir uske baad case ko court main chalega so uske liye mehnat toh karni hi padegi.. Ab aap kahen toh main yeh choti wali book se chala deta hu. It may be Constitution of India; he will say Sir, nothing doing agar 5,000 lena hai toh uske badle 10,000 lijiye but case badi wali book se chalaiye. Case toh aapko iss badi wali book se chalana hai. Pata chala ki woh Privy Council ki jo volumes thi na unko compile karke ek volume banaya hua tha bind karke. That position is possible; it is nothing that is not possible. Iss tarah ki position ho sakti hai. Acha isliye aapko karna kya hai, aapko aisi koi kitab jispe financial rules ya kuch likha ho, usko apne table rakhna hai aur aapka jab woh leke aata hai na, financial matters, so apko sirf usko yeh dikhana hai ki yeh book mere pas yaha rakhi hui hai. Rest of the things he will take care. Rest of the things he will take care, don't worry about it. But one thing I must tell you, I really feel pity when we come across the budgets which are prepared in the manner which sister referred, 10% enhancement in the budget, preparation is over. That casual approach is should not be there and coupled with that, you should not have Mothers-In-Law syndrome. What is that Mothers-In-Law Syndrome...What is that?

**Justice Ravi Tripathi:** Mother in law Syndrome...And let me share this.

**Participant:** Sir, I will...neither I will consume, nor will I let you consume.

**Justice Ravi Tripathi:** Na...yeh toh PM sahab ki baat ho gayi na...Na khaunga na Khaane Dunga...Woh toh alag baat Mother in Law syndrome is something, mujhe jo jo mushkile padi thi na, toh tumko usse thodi jyada padni cahiye, kam toh nahi honi cahiye. You must undergo that suffering that I have already undergone. But I tell you I was part to a program of this Academy which was known as CEEP program. It was Court Efficiency Enhancement Program and the model was worked out when the Director here, Dr. Mohan Gopal, he used to call 8 stakeholders from one particular district of a particular state and there he had a classification- Gujarat, Bombay, Kerala and Tamil Nadu, they were considered to be comparatively the states which are having less difficulty or they can be said be model states, so those teams will come and the other states teams will come, they will have an interchange

of ideas and everything and they'll try to learn that what should be the pattern of our courts also if we want to reach that particular stage. in those programs invariably and this is not individual to anyone of you because those teams have gone back, it is about 4 years by now so I'm sure that none of you could be in those particular things, but our general information collection was, that in the courts below a judicial officer who is a new entrant trembles even in entering the chamber of the District judge, literally trembles. it is if we are able to change that atmosphere to certain extent, to certain extent. I am not saying ki aap kal se itne free ho jaiye, ki aap khana kha rahe tab bhi koi chala aa raha hai, aap kuch bhi, important dictation de rahe hai, tab bhi koi chala aa raha hai, not like that. Uske liye mujhe ek dusra anecdote yaad hai, ki ek baar ek gaon se Saadhu Maharaj nikal rahe they, he was just passing by aur saare villagers unke paas iqakthe hoke gaye, bole Sir, jo humare gaon ke jo bahar ka taalaab hai na waha ek saanp rehta hai, there is a snake who causes at least one bite a week, or month or something like that, so that is a big nuisance. Toh unhone kaha chaliye hum saath main chalte hai. He went to that snake and then, you know, worshipped something and he said that snake appeared and said ke bhai dekho tum yeh galat karte ho, kisi ko kaatna mat, he said okay. Sadhu baba went away and that poor snake remained there and he became so saintly that children started playing with it. You know they'll pick it up, and move it like a rope and throw it in the water or somewhere like that. So by six months that, after when Sadhu Baba again came that snake was lying half dead. Bole kya hua, aapne jo kaha tha kaatna mat kisi ko, kaatna chodh diya toh log na ab mujhe khilona banake rakh diya hai. Toh Sadhu baba ne kaha maine kaatne ko mana kia tha...fufkaarne ko toh mana nahi kiya tha...I did not tell you, not to hiss, you can continue with the same spirit hissing, but not of...you know causing damage to anybody, so that people will have some faith. you know in fact I tell you, I look forward to all these judges, specially you people, you know you people when I say I refer to the district judges as the real guardians of this institution and mind it I have nothing to collect from you, I have nothing to collect from you, mera koi case bhi aapke court main lagne wala nahi hai because I have given up that idea so, so no difficulty in that. I don't want anything from you still I'm telling you that you people are the real face of the judiciary because people, those who are getting any impression about the judiciary, they get it only up to your level and that is a matter of statistics. You can find out how many cases

are filed and how many cases come to district court and how many cases from district court come to the High Court. So you are the real face of the judiciary and in that particular scenario, you people have to have a little humanitarian approach to every single problem coming to you. You may say sir this is not the topic here. Right you are, this is not the topic, but I take this opportunity only to interact with you people and carrying home the message from you also, because the new assignment with me is Law Commission and I want all of you to have my email id so that you people can suggest me, you know because the first project we are taking up is Revamping of Criminal Judicial System. So I want you people to give me concrete suggestions on that and that will be one of the, you know big contribution if I'm getting those suggestions from n you and if we are able to incorporate them after necessary exercise on that. I'll be giving you my email id, Sandeep will give you that...not in soft copy, not in hard copy, it will be available to you so no controversy on that also. With that we will be able to have at least one concrete thing, because ours is a country wherein a variety of problems and varied problems. Gentleman sitting from Delhi, he just can't have an imagination of what Tripura person is feeling or experiencing in the remote place. You know, Delhi, half of the courts are already eCourts, eFiling, Video Conferencing and what not you know. Subha shaam first class know, everything is right...Or woh Tripura wale ko ek kursi cahiye toh he has to just on striving for hard for that. Fortunately for us Gujarat is number one possibly in infrastructure. When I/m claiming number one that doesn't mean that I want to profess that we are superior, not that way, but somehow or the other we had a very right time and that was a blessing in disguise when the earthquake hit Gujarat in 2001, Bhuj..2001, that earthquake came as a blessing in disguise to us, thereafter I remember Justice Bhawani Singh was the Chief Justice of Gujarat and more than 100 court buildings were inaugurated during his time. He was there for two and half years something, uske dauraan humnai 100 court buildings literally haan, under processed or yeh sab nahi, bilkul taiyar karke usko humnain court functioning kardi aisi 100 buildings thi and you just put a demand with the government, ready there with the solution, bhai lijiye aapne laptop maanga hai, yeh laptop ki choices aap kaunsa pasand karenge le lijiye. aapko eLibrary cahiye, government ne abhi recently abhi Bar Council ke sath kuch meeting karke humari har Taaluka Court ko, Taaluka is that block level or something, unko sabko eLibrary de di hai.

So infrastructure wise and I tell you this is not something which is earlier prevailing. Earlier prevailing position is see, mujhe yaad hai ki 1999 main I joined as a High Court judge and I visited a place very close by to city of Vadodra or waha jo hai na Judge Sahab barsaat main apni kursi aage peeche khiskate they, Kyu? kyuki paani tapakta tha toh jab pata chala ki paani yaha tapak raha hai toh woh apni kursi thodi si iss taraf kar lete they aur agar idhar bhi tapakna shuru hua toh fir, he'll have to find out some other mode of working on that particular building. That was the position. But today the position is very different. Miss Gita Gopi can tell you. One of the Chief justices, when he was invited to have inauguration of the district court, toh sahab ne kaha yeh hum log court ki building main ja rahe hai ya kisi corporate office ki building main ja rahe hai, that is the standard of our district court today. A uniform design and uniform, those you know, those facilities which you mentioned by sister Vimla that these should be there in the courtroom, you will find all of them there. Possibly District Judge Maharashtra rightly referred to Sir, woh hum woh toilets waghera banate hai usko public ko use karna nahi aata. Very right, very right...But then that is not the end of the matter. We will have to find out a solution for that. You'll have to find out a solution for that and if you find out a solution to that you'll be something different. Otherwise toh agar hum log yaha pe aake sirf yahi kehna hai ki Sir, humare pas yeh mushkil hai, humare pas yeh mushkil hai toh then there is no use of it. Instead of that, every one of you, select the best example of your own handling a particular problem and share among yourself then you will have at least I think you people are 40 plus, toh 40 problem agar aate hai aapke paas hai iske baad bhi toh you'll be able to handle it with that very efficient mode in which your brothers sisters have already handled. Let us go to this again and you'll find something which is by way of rule 7 on page number 29. It talks about general system of financial management it is chapter number 2 and rule number 7. I am reading this with a particular purpose that though it is in Central this thing, but it will be equally applicable to you because it is a matter of principal. It says all monies received by or on behalf of the government either as dues of government or for deposit, remittance or otherwise shall be brought into government account without delay, in accordance with such general or special rules as has been issued under Article 115, 283(1) of the Constitution. Later part apart, but one thing remains here, Shall be brought into government account without delay. now this principal is going to be



applicable to every state, irrespective of the change...I mean...the rules being different, you'll find that this has to be followed. I remember the last session that I came, there was some discussion. Sir hum jo hai na, woh certified copy dene ke liye we collect some funds from them, some...some...amount. Then what do you do? Sir woh fir hum usko copies main de dete hai, baaki jo bachta hai usko fir woh legal aid main ya kisi main kharch karlete hai. Not permissible, not permissible...aap kar rahe hai theek hai, jab tak kisi ko koi objection nahi hai toh theek hai, jab kisi ko objection hoga toh even with retrospective effect he will be filing complaint against you. So in the matters of finance be careful aur Jha sahab se acha kaun bata sakta hai woh ghaziabad ka case toh sabko yaad hoga, sabko pata hoga..uss samay kisi ko andaz bhi ni tha ki yeh kabhi kisi din bhoot banke itna bada..bhoot bhi ni shayad Djinn kahenge usko aap log, itna bada hoke aur ekdum prakat hojayega and it will start engulfing so many heads. So that is why I was, you know very painful for this ki aap logo ko finance ke baare main you have to be very careful and possibly rightly it was said by Mr. Dhyani that when you are about to reach that stage, when they are last two stairs of ladder, you know you will find, not one person, but 10 persons, 10 people are pulling your legs so be careful with that. Aap logon main se young faces ko dekhke lagta hai ki aap logo main se kaafi kuch jo hai, they will be able to make their headway to the High Court and I wish all of them and all of you together the good luck for that, but for that requires a very meticulous working, especially in finance, as such you should deal with every problem you know very carefully, there is no doubt about it. Sir, jab tak sab kuch acha chalta hai na tab tak chalta hai, jaha ek bigadna shuru hota hai na, then there is series of it. Humari Gujrati main ek kahani hai, I dont know aap logo ko hindi main yeh kahani hai ya nahi, mujhe yaad nahi hai. There is a story of Raja Nal and uski wife Damyanti, is it there? Acha, then very good. Nal Damyanti ke jab stars kharab huye, toh Raja Nal, woh pond main se fish pakadta hai aur damyanti ko de deta hai and she had a vardaana that any dead thing will become alive, so fish will go back to the pond, then they thought of serving in the you know Royal Palace, so she was the wife of Nal, that is Damyanti was employed as a maid to the Queen aur bathroom main, she went for a shower, she kept her necklace on a kya kehte hai aap usko, uspe rakh diya aur uski aankh ke samne woh haar waha se disappear ho raha hai and she is seeing that, and then she has an allegation that she has stolen that. Aur jab stars badle toh wohi haar wahi

se appear hua and the things maybe exaggeration of that. What I'm saying is once your stars are favorable, there is no difficulty, but the moment they become little you know change, woh kehte hai na Shani ki Sharashakti hai aur fir adheey hai aur pata ni kya kya...that you have to try to keep it away. That will be one, so this, says about every pie of a you must see that it is meticulously deposited in the account and it is being accounted for. That is one, you'll find next one, General Principals Relating to Expenditure and Payment of Money. Rule Number 21, next page. Rule number 21, it says General Principals Relating to Expenditure and Payment of Money. Now those general principles are bound to be common, not in so many words, then other words, but they will be there. And let us read 21 it says 'every officer incurring or authorizing expenditure, from public monies should be guided by high standards of financial propriety. Every Officer should also ensure financial order and strict economy and see that all relevant financial rules and regulations are observed by his own office and by subordinate disbursing officers. Among the principals on whom emphasis is generally laid, is the following and then of course the following principles. Aap sab logo ko pata hai, there is an Act which is known as the Trust Act. And you in your capacity as a district judge is the trustee of government money and the general principle is as a trustee, you have to be more careful about the trust money, then even your own money. aap apne paise ko thoda sa agar loosely use karna cahte hai koi puchne wala nahin hai except your wife of course. Woh bhi mujhe lagta hai ek limit main relaxation deti hi hai, aapne jaise aaj coffee pi li thi toh coffee thandi wali pi thi ya garam coffee...it was cold coffee costs more and hot coffee costs less. Toh woh unke paise chale gaye lekin government ke paise mai nahin chalega...nahi chalega...Right...so these are the general principals of course, you'll find them useful for your purpose. Let us go to Rule number 30. It is page number 32. It says lapse of sanction. Why I've selected this? Because all of us have to keep in mind that sanctions granted for one particular purpose is not the sanction for any other purpose. It is not. So if at all you are going to change the use, you must seek a fresh sanction. Agar aapne socha ki nahi nahi waha toh unhone kar dia tha na, chai pina ho ya coffee pina toh fir theek hai, chalo chai ni pi, coffee ni pi toh ab thanda pi lete hai. Ultimately it's a matter of you know a welcome drink only. No not at all. In government money no and that is why you have to be careful about lapse of sanctions. If you are granted sanctions for a particular

function, it has to be for that particular purpose, if at all you are going to change you will have to go back for getting a fresh sanction. and I tell you finance is one subject where you know those people, those who are expert in that they can manipulate things, so be careful about that also. He was rightly saying that woh aapne bataya na ki woh toh sir, ab toh sir net pe hojata hai, sanction bhi ho gaya and shaam ko cancel bhi ho gaya. Sanction bhi ho gaya and shaam ko cancel bhi ho gaya. 31st march thi baat puri ho gayi.

**Participant:** Hum log wait kar rahe hai, 31 march ko hoga, kam se kam 10 lakh rupay aaye the aur 12 baje ayega aapke paas net pe, form diya jayega, isko jaldi kharch kar diye, shaam ko 5 baje tak wait karenge aur wapis aya ya nahi..

**Participant:** Uske maano toh pura wapis kardo..

**Participant:** Jab karna hi nahi hai toh fir..woh humnain kuch utilise kar liya.

**Participant:** Kabhi kabhi toh kharch hi nahi karne dete..

**Participant:** Haan..

**Justice Ravi Tripathi:** Nahi...delhiye main batau aapko, kharch karne ka lobh bhi mat rakhiye.

**Participant:** Haan, karna hi nahi hai..

**Justice Ravi Tripathi:** I used to tell my officers when I used to visit the, you know districts...woh kehte the Sir, humare paas bail ka matter aye toh humko grant karni cahiye ya nahin karni cahiye? maine kaha ek minute soch ke batata hun. Maine kaha yes, maine soch lia...Maine kaha agar aap bold enough hai aur aapko lagta hai ki yeh bail dene jaisi hai toh forget about the consequences and grant the bail, that is one, that is the first piece of advice. Second piece of advice is more important. If you are little timid and admit that you are timid, dont worry about it, aapko main aap sab logo ko I don't want you people to be Gandhiji ki tarah jhanda leke aur jaake sacrifice ho gaye and usne aake saamne se teen

golijan maar di aur fir pata chala ki aapka naam jo hai na badi achi wali shaheed ki list main likh dia, I don't want that to happen, no...Not at all. So if you are little timid, then commit an error of not granting bail rather than granting bail, that is my advice. aapko bhot saare lectures milenge haan jismain kahenge arrey you should be bold enough you should grant bail, you should not forget about this, yu shpuld not forget about that. maine dekha hai apne 16 saal ke career main High Court main ki jab us officer ke upar dusre High Court judges comment karna shuru karte hai na toh koi aake yeh nahi kehta ki I know this officer, he is very honest and he has granted the bail in the right

**Justice Ravi Tripathi:** That is the failure of the judge.

**Justice Ravi Tripathi:** Of course yes, of course yes, but sir brother we are dealing with that only High Court, what to do.

**Justice Dharnidhar Jha:** I said why, should the judges be fearful of their functions.

**Justice Ravi Tripathi:** Not at all Sir, we should not...we should not...that is my first advice.

**Justice Dharnidhar Jha:** It is more of an approach that you should search in judicial functions.

**Justice Ravi Tripathi:** Not at all...if you are able to do it, fine, that's the best of it. No difficulty on that. But if you take my personal advice, I'll say agar aap galti karna hi cahte hai toh dene ki galti mat kariye, nahi deni ki galti kariye. That is my personal advice. This is again not a pronouncement of High Court and this is not any...any...you know advice which you can say...that no...No...It was given by so and so...not that. But if you are good enough, if you are bold enough, you should not do that. That is an ideal situation, no doubt about it, it is an ideal situation. If you feel that bail is required to be granted, you must grant it. Sir, uske baad jaane dijiye High Court main single judges main kaam karte huye log apni pure matters ka list rakhte hai aur uske sath ek common (inaudible) rakhte hai ki ismain LPA main jaake kya hua. Jab division Bench main baithte hai toh woh list rakhte hai ki jaake Supreme Court main iska kya hua...Why it is required? You have discharged your duty, you

have done your job, matter is over, but then there are people those who do like that, no difficulty on that. But then again this is a personal thing, brother is right; you must not shirk that responsibility. Absolutely right, if you are able to do it, I'll be the first person to be happy about it, no doubt about it. but then as I told you if you are on those last two ladders, aapko sirf main yeh bata raha hu ke koi aapko uss samay kehne nahi ayega ki nahi sahab aap toh bohut ache hai aur aapne sab kuch theek kia tha aur yeh ho gaya. Not that. So that is the message I want to give, you can carry home in the color and complexion which suits you, not a general thing, again. So this is again lapse of sanction part. Then we go to the next one. You'll find then of course various chapters are here and they are all dealing with budget formulation and all that. Budget formulation as I told you, it's a very responsible job, and if you are really able to devote time, you should have your own assessment, of course assisted by your subordinates those who are experts on those particular fields and accordingly you should prepare budget, not blindly 10% hike and budget is prepared. That should not be the approach. Sir, let me tell you the most grey area of our functioning, is about CR writing- Confidential Writing. Main kisi se yaha pe admission nahi chahta, I don't want any admission from any of you. Aap khud ghar pe jaake, apnee dil pe haath rakhke puch lena, ki jab aap CR likhte hai toh sahi main kya kya dekhte hai. mujhe kisi ka admission ni cahiye..I dont want anybodies admission, khud jaake ghar pe puch lena apne aap se ki bhai jab main CR likhta hu toh kya karta hu..aur specially tab, jab Sir last week bacha hai, teen din hai aur aapko file aage submit karni hai, what do you do? Aap apne aap uska answer dijiye aur apne aap woh kariye, lekin ek cheez yaad rakhiye usmain bhi, aapke writing pe uska pura career jo hai na woh depend karta hai. His entire career depends on that, and same is the feeling I get when I hear any irregularities in assessment of answer books. Uss bache ne pure saal mehnat karne ke baad, 3 ghante main bukhari tha, fir bhi likha, aur apne uspe se ek line kardi aur ek number laga dia..Chutti ho gayi..Could there be any greater crime than that. But then we are not on that. CR ke baare main jarur aap apne aap sochiyega and if possible, try to see that you are doing better than what you are already doing. I'm not saying anybody is not saying that, good, I'm not saying that at all, but if at all getting any answer from your conscience please see that it is improved. That is one...front I feel that we all are required to

improve upon, right...So friends this is the short you know address to all of you. You can have a discussion on this. Thank you.

**Participant:** As far as ACR was concerned, the principal district judge has to write ACR also fellow judges, other than the visiting judges and of the staff. now it is ones individual capacity, first one as a reporting officer...second one as a reviewing officer, so reporting officer for those staff who are working under any judge concerned with the (inaudible). Whereas for the entire state, so that he works as a reviewing officer, so there are various taalukas, various tasks and the judge who is in-charge of the taaluka, used to write the ACR for the staff working under his immediate control and they come for review. They come for review, if it's not possible for any principal district judge, to know each and every staff...we have to rely upon the reporting officer only..

**Justice Ravi Tripathi:** My appeal to you is only this, whatever way you are functioning, if there is any scope of improvement, please do it. Nothing beyond that...Nothing beyond that...because you people are working on the hot ground, so you should know better that whether I can do something better. That is only an appeal, nothing else than that. No lecture on that, no suggestion, no advice. Only this appeal to you, that is one front where I have found my officers to be very very...little indifferent and that little indifference causes injustice to...you know great extent to that particular person. That is only appeal, nothing beyond that.

**Participant:** Sir, we are doing those things,

**Justice Ravi Tripathi:** That is very good.. woh sahab batayenge..

**Justice Dharnidhar Jha:** Brother, with respect, I want to dwell upon..

**Participant:** Before your lordship starts to say, if some disturbance in the protocol is there, dangerous situation will come.

**Justice Dharnidhar Jha:** Let me...let me...first share my views after **Justice Ravi Tripathi** was..

**Participant:** Having protocol...

**Justice Ravi Tripathi:** Lordship is telling...we also have objective..

Justice: I'm only attempting to share my views on financial matters. I am not going here and there and everywhere. The principles as enunciated in that Government financial Rules, those are inherently applicable to all rules, state rules, and financial rules. You know...you are district judges in different jurisdictions in different states but you are aware that in addition to the financial rules formed by your state government, the High Court has also framed certain rules of business. Those rules are also in respect of certain financial transactions which are carried on in day to day functioning of the court. Now, payment of the court fee, refund of the court fee, imposition of cost, service fee, notices have to be served service process establishment, there are finance generated from the administration of the district judges also. How? By cutting cost by running your machines, copying sections, Photostat copiers or other copiers. There are fixed table of fees for issuing copies. My lord was pointing out that within certain or in a particular place that a district judge has been so naïve...so to say as to pointing out that he was expending the additional money generated by issuing copies in service, legal services matter. No, you don't do it, it is extreme irregularity liable to be...to go to prosecution. Once you have generated any money by any public act, then it is the public money and that has to be deposited in the state treasury.

**Justice Ravi Tripathi:** You're right.

**Justice Dharnidhar Jha:** As likely as the fine amount is to be deposited in the state treasury, fine is also generated. Fees are also required to be paid, you have to execute a decree, you seek the deputation of the magistrate, the city magistrate, the police force and whatever and you direct by your order of execution that such amount has to be deposited in this date, this amount on this date and if the amount is not spent, then either it has to be reimbursed to the

person who has deposited the amount or it has to go to the state treasury, if some part has been spent and some remains in your hands. As regards the running of your business, day to day business or judicial business so to say, you have to be guided by the state rules, principles enunciated under these rules. These are general principles no one should deviate, no one could deviate from those principles. The purchase committee is there in place in every district I believe. You have certain financial powers vested into you. you have day to day requirement, day to day expenditure and if you are ever in doubt as regards the appropriate rule under which you have to function, I could suggest, because like brother U.C. Dhyani, I was also drafted from the district to establish the Bihar State legal Authorities and I didn't have the home, I didn't have the office space, Lalu Prasad Yadav was caught in the fodder scam, he had a clandestine house, that house was taken over by the CBI. The Chief Justice of Patna High Court, Justice Wadhwa, he asked the CBI ki hand it over to the Legal Service Authority. If there is no claimant, then we are the claimant. That was the beautiful answer. So I used to sit there...still it can be...yes, the state authority is now fully.

**Participant:** One good thing.

**Justice Dharnidhar Jha:** That was an experience. So whenever I was in doubt because that was the first administrative job I was handling. I had not been a district judge, I was an additional district judge of say 8 years or so and I was brought by Justice B.N. Aggarwal who the in-charge, I mean the acting chief justice and Justice Aftab Alam to establish the authority. but whenever I was doubt on financial rules, ki under what rules I have to do, what are the provisions, what are the extent of the powers, then when the office note with the relevant papers were put up before me, I simply put two words- Put up with Rules. Now, these three words were of quite meaning, they...those are sealed to you ki you are not blindly doing anything. You wanted to know the rules, to view the rules and to act accordingly. Now the responsibility is gone from your shoulders because you have discharged your business and you have asked the office to place the rules, set of rules. Now they are bound to place the rules. Now you view the rules, the general letters which is administrative instructions, as to issue by the High Court or the Finance Department of the government. They honestly and



meticulously would place those things before you, because, if they don't, then the only thing is that you proceed against the employee and he is dismissed, because he has acted to mislead you in the most inappropriate action to be taken by you, of financial irregularity. He will be dismissed. So no one will incur of his own, his dismissal, and you be very particular in going through the rules, what are the meanings, how it is applied, you discuss the rules, so you find them the route to discharge your administrative functions. Now in some states as you were complaining, the powers of the district judge are not as vast as could be in Bihar or in Jharkhand. In Uttar Pradesh also there are some shackles on the powers of the district judge. Basic shackle is from the High Court, because High Court is the depository of all financial corpus. It is the High Court Allahabad, which receives all finances and then through its Registry, routes the corpus of financial corpus to different district judges for different purposes. I don't know Saroj ji will be telling us ki whether the situation has improved. It was poor when I was there. but other thing is that the High Court is itself in Allahabad, the High Court itself engages architects through PWD department, finances the construction and oversees it, so that is a nice thing there. But in your case, whenever you are there, then take precautions not to violate or overstep the financial jurisdictions, not because you will be incurring certain difficulties, but because you are judges. You judge the facts of other persons, you pronounce sentence, you pronounce someone guilty and that is the whole good of us that, ourselves having lectured on moral and proprieties of another act should indulge ourselves knowingly in those things. We in appropriate cases, as I in the early hours had shared my views; we must also not allow the judicial administration to suffer. Relaxation of interpretation of certain rules for meaningful purposes has never earned any wrath, I can assure you. I'll tell you about myself. I was district judge Sasaram and certain forms, such important forms like forms for framing charges, forms for recording statement of accused under section 313, forms of summons, and forms of oral swearing had depleted. Then should I sit tight and the administration comes to a standstill. No! Here is the need to be imaginative. I don't know of your High Court, but in Jharkhand and Bihar, there is a standing instruction that you could utilize the photo stat copier for any administrative purpose. What did I do? I interpreted this instruction bit widely, for a wider purpose. By written order I directed to create forms by photocopying these forms - 200 in number, 300 in number, and 400 in

number. My inspectorial was very technical. He told me how you could do it. This is the letter of the High Court. Where is the letter? This does not say ki you should not photocopy the forms for administration of justice, is it void? Administration of justice means administration your, judicial administration includes hearing cases, passing judgments and looking after the administration of justice also. So, these are some of the fields where you can relax and interpret your rules that way also. I had purchased, for making purchase of single paisa, the purchase committee has to be there. I purchased, report came ki the stationary is, simple, and writing papers, for writing deposition judgment paper or something like that carbon paper, and these things were not available in the stock. Not available. I immediately ordered purchase for 2000 rupees from the general market. The audit raised an objection ki you did not consult the purchase committee. The High Court sent me for me for my reasons, for my comments. I wrote to the High Court, if a district judge could be as short on powers as to consult the purchase committee, so long as the purchase committee does not sit and orders the purchase, should the district court put the working of the courts as standstill. If this is the power then I don't want this power. High Court simply wrote that no, the District Judge was correct, he was justified. In emergency situations you can do that. Simply, you write down, under the short span of time, it is not possible to summon the purchase committee for its sitting and to place the requirements, sounder this special exigency I waive that. You have that power.

**Participant:** But lordship, subject to certain limits...

**Justice Dharnidhar Jha:** Yes limits...limits...5000...you know what the value of 5000 rupees is. If the purpose is very sanctified, the purpose is genuine, you have placed everything on record, then in spite of...I tell you my predecessor district judge had been served a notice by the High Court that you pay up the telephone bills of 6000 for this month, 5000 for this and they came, the audit party to audit my tenure. Mine this was also like that. They did not raise any objections. My office pointed out, you have pointed out that objection in that case and you are not. Arre no no. ab, now that varies from the reputation of the person who is the district judge. This is very simple, if you are of a reputation of person of struggling

integrity, you can get away with anything and the same audit party was not raising any objection in my place. So don't be afraid of running the administration. This is the one central theme I could be, requesting all of you to put into your mind. Yes, do show the respect to the financier propriety, try to implement them and follow them as far as you could find it practicable, but in exceptional circumstances, by noticing those circumstances, by noticing those circumstances, you may exceed that. These are one aspect of judicial administration, which also has financial implication is the processing of the pension papers of your subordinate staff and the judicial officers who have retired with you. I have some experience of, I was a district judge who used to attempt to give, handover all the deposits, the general provident funds deposit, the insurance deposits, which were the government deposit, everything on the day the officer or the employee was to retire and I also used to take attempt to make efforts that on the same day, his pension papers are also received by him. This is necessary, because you know I was getting 2 lakh rupees as salary as a high court judge, I retired; now I could be getting a fixed amount of pension which could never be around that particular amount. I have a family, I have children and for lower level employees, the salary and the pension in that ratio could be too meager to be belated as regards its payment. So please do make it a point that payments of pension money or deposits are met on dot. This should be one of the finest services to the mankind and I believe and I trust that he shall be extremely graceful to all of you. The other thing is again of financial implication.

**Participant:** My lord, how is it possible, in my district one of their district one of my employee retired on 31st march, so basically due to the ...

**Justice Dharnidhar Jha:** In your rules, yeah yeah...that is the, that is the, that is the..

**Participant:** We should always by..

**Justice Dharnidhar Jha:** Goswami ji, I don't know of your High Court instructions, or state instructions but in state of Bihar and Jharkhand and I believe in other places there is a standing instruction that before two months or three months of retirement of an officer,

**Participant:** Six months lordship.

**Justice Dharnidhar Jha:** Haan six months, six months, the steps should be taken for processing his,

**Participant:** No my lord, my question to you is , my question to you is, like let us say we have to make this payment of let us say DCR, leave encashment, okay we have submitted a statement, arrears have been given, we have received the letter, we have received intimation, PPO okay we can give, but suppose (inaudible) is there, this statement is there, now that is to be credited to his account (inaudible) that can happen only on 1st, not on 31st.

**Justice Dharnidhar Jha:** No no...31st...Paper I hand over, I hand over the papers,

**Participant:** So sir, sanction letter they may be.

**Justice Dharnidhar Jha:** Sanction letter we used to give.

**Participant:** Sanction letter.

**Justice Dharnidhar Jha:** Sanction letter, yes...papers, and then, then , my account of his shall process and make the payment, but he is not going, he is not having to run from pillar to post and time and again to my office. This is one thing...the other thing..

**Participant:** This, doesn't matter much..

**Participant:** Iske baad usko daudhna nahi padega.

**Justice Dharnidhar Jha:** The other, other aspect of your administration of financial implication, appointment on compassionate ground. Appointment on compassionate ground, I had as a district judge found ki my predecessor has left 5 girls, boys standing in the corridor for five years. Why? Why do you do it? The man is dead, his family has been rendered pauper, destitute and you don't look to the face of those children, the starving family members, what for are you a judge, if you don't have that much of sensitivity.

**Justice Ravi Tripathi:** Right, absolutely right

**Justice Dharnidhar Jha:** So you, you will please make an attempt and you won't do it, if the appointment is not there, you form the appointment committee and on the tehravi of a man's death, I had appointed the children of the district employee. So don't be afraid of implications of financial nature in these matters because in compassionate appointment, everyone knows ki there is no requirement of advertising the post, doing all those exercises which are necessary in general appointment, so these are my views, these are the ways I used to run my administration and I'm fully satisfied that I did not, I don't know, but in no case, one officer who had to retire in three months he was transferred from Bhagalpur to Rohtas in Bihar and he was an acquaintance of me, we were posted, I was enjoying my first posting as additional district judge, he was posted as sub judge. Then he rang me up ki Sir, I'm coming to your judgeship. I said, why? You have three months, you represent with the High Court, I could converse your case with any High Court judge and they will grant you a stay. No...No...No...My district judge is not forwarding the pension paper of one, a person from Madhya Pradesh was, had retired as subordinate judge in Bhagalpur. He had to come to, every month to Bhagalpur to Madhya Pradesh to lobby for the forward, mere forwarding of the papers. Toh, would you forward my papers? I shall ensure that you are paid the pension, you come. And he came and he joined. So, this, these situations crop up or generated by ourselves also, so sensitivity is here required to be injected into administrative affairs and this is the human face of administration. the human face of administration is more meaningful and more satisfying than whipping of the subordinate staff or officers. I was simply complementing my Brother, His lordship was very elaborate in pointing out to you, the practises of financial practices, but there are certain fields where you could inject humanity and sensitivity for the relief of its suffering, family.

**Participant:** Lordship, I have a query regarding government fund. We have seen in number of cases the Hon'ble High Court has been passing orders, by imposing cost to be deposited with this NGO and that NGO. This has happened in so many cases.

**Justice Dharnidhar Jha:** District judge has been asked to appear, why not you have paid.

**Participant:** No, no, Hon'ble Court has passed the order ki this court will deposit with the NGO, working with the children or the handicapped and so on. Again in some cases, the cost is to be deposited with the legal services authority. Now since the legal service authority has been made the owner, by putting the cost here, we can, there is no restriction.

**Justice Dharnidhar Jha:** Yes, yes... no restriction.

**Participant:** But what happens with those money that has gone to (inaudible)..

**Justice Dharnidhar Jha:** Now...they...Goswami Ji, you are speaking about the wisdom of the judge and the wisdom of the judge we cannot discuss so openly. I have in very...very outspoken in High Court also, but I have not been as outspoken as to challenge the wisdom of a judge as regards the judicial order. Administrative side I could go, tonk and barrel to challenge and to smash the order of the judge, when the chief justice I have challenged, many chief justice I have challenged. When he has faltered on administrative side or where he has taken a decision which has not been in the interest of the judiciary. Propriety wise I would never have directed the cost to be paid to any outsider, than the legal services authority, because after all at any rate, the legal services authority has to send the money only for the purpose of the legal services or legal aid. Ab if you are directing the payment of cost to an NGO privately run by some private person, then the list one could say is sorry order. this is never the spirit of imposing cost. I have imposed cost; several times I have received cost as member secretary of the Bihar State Legal Services, Supreme Court, High Court. I established many permanent Lok Adalats out of that money.

**Participant:** We have other authorities who are sending the cost to the CO.

**Participant:** Many areas know that, the advocate bar associations are collecting money from the canteen and parking areas.

**Justice Dharnidhar Jha:** Never do it, and your poser is very right but we can say little about that because wisdom of a judge.

**Justice Dharnidhar Jha:** No...No...It is wisdom of the judge...what can I say. You can direct. Cost is to be paid in proceedings, as per the CPC provisions, section 32 or section 309 CrPC in the criminal proceeding or inherent powers of the High Court is also there. But this is simply, simply in low voice the misuse of the power, if I direct cost being paid to "A" resident of Bhopal.

**Participant:** My lord, we came across a case in the Supreme Court where two erring parties were there, they had manufactured their cases up to High Court, they were imposed, and each one, the defendant and respondent both were imposed cost of 5 lakh- 5 lakh. The matter went up to Supreme Court and this 10 Lakhs were to be given to the State Authority. The matter went up to the Supreme Court, the case originated from Orissa High Court. The matter went up to Supreme Court, Supreme Court passed the order that no, we should not create a corpus of fund by putting this cost in that cost. That means there was more or less some sort of amount 2 lakhs or 1 lakhs each.

**Justice Dharnidhar Jha:** The chair or the district judge is the best thing to happen to you. No one enjoys that much of power and responsibility both and this is where the High Court and the Supreme Court has earned respect from us. So, I have, I served the judiciary for 15 and half years like that and 5 years as district judge I had shared all these things with you and I was, one of the Chief Justices, one of the Chief justices with whom I was serving, then he wanted, he created courtrooms against the National Infrastructure Policy, you have the copy before you. In the primary health Centre, in the godown everywhere, and destroyed the Bihar judiciary. The administrative, I was the inspecting judge of Bhagalpur Judgeships, one of the biggest judgeship and Bakka, two judgeships simultaneously situated side by side. He wanted me to accompany him for similar inauguration without any infrastructure. The registrar general came up and said No, Sorry, I don't, I told the registrar general ki you know I have not indulged in any wrong things till date, I am not going. Then he was inaugurating the court in my sub division, the home sub division, then he threw a lollipop, we shall go to his house in the village, fix another date, I shall go there, receive all of you there at my door but not this time, this is wrong. Then he told me if you don't go then I have, I shall have to

change the inspecting judge of Bhagalpur. I said, I shall be damn happy. I shall be damn happy if I am relieved by your Lordship of the duties of performing, of performing duties of inspecting judge Bhagalpur and I may inform your Lodship that I have enjoyed being the District judge of three judgship for 5 years and no nothing is left for me to be enjoyed now. So, I really feel, I was invited by Sanmit, and not invited, rather I was checking my email, then I found that there is a mail from NJA and the date was not there...no I was at my village so the net was not properly working so the letter was not downloaded so I could not. Principal District Judges, so I had to meet you and interact with you sitting here, this was one incentive, major incentive for me to come here and meet you all. It is really a matter of pride for all of you are district judges and doing sublime things. Please do create things for you with your human face that is very important.

**Participant:** May I request my lord to say something about Ghaziabad..

**Justice Dharnidhar Jha:** Ghaziabad, I have heard a very, couple of corrected writ petitions and revision writ petitions plus 75 paragraph of order was passed by the Special judge GPF Scam on a petition of discharge, 227-228 petition and that by ex-district judges, employees and everyone, I had the opportunity of when Dhananjay went to your judge went to Allahabad as Chief Justice, I was heading the division bench and some of the brother judges in Allahabad, Allahabad is a very good place. It is a big, people are vary of the number of advocates, they simply hear they are unruly but no, they are not that. If you are a working judge, if you are a hard working judge then they simply keep you on their point. They respect you and they love you and that I inform them. Brother Judges ask me, there was a problem of bail petitions there, ab in bail petitions, this is not criticizing but informing you not criticizing the brother judges there, they used to direct the filing of the counter affidavit in the bail petitions. Ab now you know, prolonged disposals and hearing of bail petitions. Then brother judges and sister judges ki Jha Sahab kaise, how will you...is there any remedy of end to this thing. I said yes, yes, what, let me sit there. You will correct it? I said Yes, definitely I will correct, I will not correct it, I shall put the clock back 5 years because in 5 years ago, in Allahabad the same procedure was being adopted which is being adopted



everywhere in every High Court. Then they conveyed to Dhananjay ki, then Dhananjay told me brother, you had the division bench all important matters are there, Ghaziabad matter was also there and (inaudible) matter was also there. I said, no, no, no problem; I shall be sitting half day division bench and half day single bench. So for couple of days or so, then I asked the Registrar Judicial ki no, disband my division bench, let the Chief Justice form another division bench. During that single sitting I had an RHM, a bail petitions, transfers, GPF scams, transfers, revisions, quashing all everything. Then I came to know at past 45 paragraph order on that particular presiding member that must have been reported also. It was a huge scam and that Nazir of Ghaziabad was a Nazir Asthana. His wife, his brother that is Saala (wife's brother) and all the relatives had acquired properties in crores. What of that scam? What did they used to do? They used to do was to show that this amount is deposited in the GPF account of this employee. Then they will create a forged and fabricated application for withdrawal of the amount. And withdrawal of amount and thus the amount was withdrawn not only in excess, but many times in excess of that persons GPF deposit. A district judge under the financial rules, brother was pointing about; you have to be very particular about the relevant rules.

**Justice Dharnidhar Jha:** Haan, yahi toh tha hi, they used to certify na that account is there and who verified these things. When the district judge is certifying then who verifies it . the allegation was that most of the judges were entertained out of that fund. Entertained, not only courtesy wise, you are speaking of courtesy and protocol. Ab I could give you my own example. I took,

**Justice Dharnidhar Jha:** Everyone...everyone...I went to Chitrakut with my daughter-in-law, son and everyone. I stayed in the circuit house. When we were leaving then I called the Nazir, ki what is your bill. The Nazir was not ready to give me the bill. 500 Rupaye hoga...Hoga? It may be 500...It may be 500...I said, maybe 500...we have dined, we have taken lunch, we have taken our breakfast we have taken our tea. My grandson has taken milk and you are asking ki hoga...that is this? Bas so much so then I became very tough and then I told him alright, let me reach allahabad and then your district judge shall have to explain

and humnain kaha ki chalo baitho gaadi main. Jab main, I was completely out of control of my rage...I was I rage, then the fellow could understand, then he produced the whole expenditure chart.

**Participant:** uss beech main lordship bana raha hoga..

**Justice Dharnidhar Jha:** Nahi, woh nahi, woh jo practice dekhiye, uska dosh dekhiye...No No I don't...hold him guilty or accuse. I don't accuse him. He was in the habit; he was simply following the practice. Then I told my son ki pay him 500 more and I came and then put down the note to the Chief Justice, this was an attempt to bribe a judge by the district judge. The district judge ought to be as conscience. So I could tell you when I was, drafted into the service then one of the most respected judges in Bihar, S.N. Jha, you must have heard his name, he was Chief Justice, he had initiated for the stamp investigation and he was chief justice Jammu Kashmir and Rajasthan. He told me ki even, whoever visits, whoever among the High Court judges visits you, give him the...else he will think that you are dishonest. And I never paid from my pocket. I never paid from my pocket, my own fund. I always asked the district magistrate. I asked my Registrar that call the district magistrate and tell him that the High Court judge is visiting, you will make arrangements and he will make arrangements. One particular judge, I won't take his name, he gave me a ring and said ki I have some personal problems and for that I am coming to your judgeship so are you available in the town. Yes...yes...Sir, I am available. Then I told him Sir, would it be possible that you take your lunch and dinner and breakfast in my house. Said, I shall be happy, but I have 5-6 naval chiefs with me and it will not be proper and it will not be manageable for you. So you make arrangements in the...believe me I issued a cheque of 1400 and something for the stay of 24 or less or 24 hrs. stay of Hon'ble judge from my own, by issuing a cheque. I never, as they generally do, as I'm informed, I never. So in Ghaziabad scam everything was happening that way and crores of crores, some of them had been elevated, one could not be confirmed others could not be, others were facing trials, at least 8 district judges were facing trials and while passing my order in 45 pages, I was castigating the CBI also because the CBI had taken over the investigation. I was castigating for certain reasons, I have pointed out those

facts, and these were short facts which had required certain persons holding high offices to be also investigated into. So let the CBI, reopen the investigation under 173(8) and investigate their complicity also. Probably there are, there would have been certain High Court judges. It was a blot, it continues to be a blot on judiciary, not only Allahabad or Uttar Pradesh, the judiciary, because you know, Judges of any rank, we are not supposed to thrive on any others pocket. Austerity and high degree integrity is only for which we are known and for which we are identified.

**Participant:** We don't verify the balance standing in the..

**Justice Dharnidhar Jha:** Yes...yes...District judges were simply certifying the withdrawal and cash book account everything. Though they were much aware of those things. In spite of being pointed out by the audit, they were not looking to it.

**Participant:** In Ahmedabad, we are checking the list and sending the list of withdrawal to the..so that we are not making any.

**Participant:** What about loose staff? Staff working with the justice.

**Justice Dharnidhar Jha:** So one thing financial, you should have to keep some grip over financial maintenance of records. I don't know of your rules but when you are back to your respective jurisdiction, I would request you to seek the production of the relevant parts of the Rules regarding maintenance of cashbooks and relevant papers, because those books require the District Judge to certify the expenditure and balances every one month.

**Participant:** Even the judges of Supreme Court are maintaining these checks.

**Justice Dharnidhar Jha:** No district judges are also countersigning. You should see the rules. If you are not countersigning then you get them produced, in Bihar and Jharkhand every week. In every week we have to get them produced.

**Justice Ravi Tripathi:** You'll find there is a nomenclature like drawing of resource, dispersing of resource, there is something like controlling of resource, there are various nomenclature and you fall one of them- control of ..

**Justice Dharnidhar Jha:** District judge cannot be absorbed of the responsibility on account of being the head of the department.

**Participant:** Now that the district judge is the part.

**Justice Dharnidhar Jha:** So you verify the rules and if you are not following that practice then do follow that practice and if at all you find any expenditure which is not explainable, properly you seek the production of the vouchers every relevant record and enquire into it those things. Don't be afraid of understanding the money in running of administration but be very very careful that..

**Participant:** My lord so far as...are concerned, in our state, the Nazir's they produce before the district judge for passing.

**Justice Dharnidhar Jha:** For passing...above a certain amount.

**Participant:** The amount being?

**Justice Dharnidhar Jha:** Rs. 100 and above

**Participant:** Suppose 200, because the violation of the building committee.

**Justice Dharnidhar Jha;** Still you have to sanction the...you are the sanctioning authority.

**Participant:** I have to sanction?

**Justice Dharnidhar Jha:** Yes.

**Participant:** So we will produce the note before the district judge and on the...

**Justice Dharnidhar Jha:** No it is all lies...it is all lies...but one of the...district judges from Chennai, and you are pointing out the court fee. Now court fee amount or the Stamp that is purchased out of that treasury challan, those court fee stamp papers are also entered into the cash registers. You be acquainted with this aspect and you have to be very much careful about that also. You go and verify.

**Participant:** Cash register I'm pertaining..

**Justice Dharnidhar Jha:** Cash registers and the relevant subsidiary register..

**Participant:** Yes, court registers.

**Justice Dharnidhar Jha:** Yes court fee register is different and that gist of the court fee register is weekly brought into the cash register.

**Participant:** Is countersigned by the Registrar.

**Justice Dharnidhar Jha:** No, no you be vigilant about that also. I tell you, you go and read the rules.

**Participant:** Which rules sir?

**Justice Dharnidhar Jha:** And never delegate powers, why delegate powers? Why delegate powers, you are the departmental head, what is there, you should have the proper grip and vigil

**Participant:** When we delegate the power then we have to..

**Justice Dharnidhar Jha:** Na, na. You delegate the, not in spite of.

**Participant:** Then also you have to put the signature.

**Justice Dharnidhar Jha:** No, no, In spite of having delegated the power you have finally to pass the sanction order.

**Participant:** Haan, sanction toh aapko hi karna hai.

**Justice Dharnidhar Jha:** So what will you get power for...Why delegate the power. Duplicity of job, duplicity of job done.

**Participant:** Cheque issuing main kaam delegate kia aapne vaastav main.

**Participant:** If job is delegated why worry, ultimately we have to sanction

**Participant:** We have to sanction finally.

**Participant:** We cannot just delegate our powers.

**Participant:** Then woh delegate hota hi nahi.

**Justice Ravi Tripathi:** Alright friends and the last sentence is one of the judgment of the High Court Gujarat starts by saying, people in power, madam, this is something for you. People in power will have to be bitter. So unless you have an inbuilt human desire to be popular even among subordinates, the difficulties will not be there. Have control over that particular instinct of being popular, you will have no difficulty at all. This judgment was given by the Gujarat High Court bench, Division bench in the matter of giving general options at the time of Nav Nirman Andolan in 1974. The university authorities, being, trying to be popular, they said alright, we'll be giving you three general options. General options means there will be 10 questions in the question paper, you can write any five, not even 1 oblique 1, 1 or 1 or 2 or 2 not that. total 10 questions attend any five, so half of the syllabus you can avoid not reading it because you read any five and from every chapter there will be one question so five chapters you finish and get it. So the judgment started by saying, 'people in power will have to be bitter', this entire system which was adopted by the Gujarat University was declared to be not valid and they were compelled to give the paper on the normal pattern. So if you are in power, you'll have to be bitter and I'll tell you one more thing which I told of course in one of the districts when I was visiting. It is reported but I don't remember the citation. I'll get you the citation that is not the difficulty. Division bench one

of the judges who wrote this judgment is Justice M.H. Bhat, so with the name if you can trace have then great. I told that until you ask your peon to go home and fetch your kids from the school or fetch vegetables for your wife, you can always ask him to clean the you know fan on your head and the office properly, but if you are doing those two things, you'll not be able to tell him to do this thing. This may look very strange to you, but then this is the hard reality of life and you just try. Once you tell your peon to do something private, then the next day he'll say Sir, woh aadha ghanta late ho gaya, mujhe thoda kaam tha. Woh kya kaam tha, then the things start getting and this is precisely it happened, when the things mounted to this extent in GPF. Thank you very much.

**Participant:** Sir, Haryana main isko kehte hai agar bhugwana hai toh khaana nahi hai.

**Justice Ravi Tripathi:** Bilkul sahi..

**Mr. Sanmit Seth:** Thank you so much sir, thank you so much sir.

**Participant:** There is no provision for home duty also.

**Mr. Sanmit Seth:** Thank you all.

## **SESSION 5**

### **Case Information System (CIS)**

**Mr. Sanmit Seth:** Good Morning all of you, today we have Mr. C.M Joshi from Mangalore and he will take session on Case information Management and he will showcase you all the, I mean background of the system that you use at your respective courts. So I request Sir to give a brief introduction and then begin with the session. Thank you.

**Mr. C.M. Joshi:** Before we start with the actual CIS and how the things are there and what best we can make use of using the CIS, there are few things which we need to orient ourselves towards that. So, I have been associated with the CIS since last more than 7 years and was part of the original group which was involved in the developing the CIS at NIC headquarters at Pune, regional headquarters, so even after the CIS 1 version now CIS version 2 is also there, National Court, version 2 and at least some of the courts where we are working they have migrated to the version 2. And version 2 is more versatile and usable interface which is there for us. we all talk of the docket explosion and number of huge pendency and the fabric of the litigation has also expanded, number of special courts has increased and the type of the case which enter the courts has gone a lot of change in the last about 10 years. This is all the things that we hear and we also hear that the pressure on the judiciary is



mounting; national court management system committee at the National level then it has come to state level and is also coming to district courts level. So by all this what is the information we want? So it comes to the basic question of that , then , what information as administrators in district , because we are all in district , let us not bother about what is happening in the state or at the national level. when it comes to our own districts to manage the courts, to manage the load on the courts and to study whether the matters which are coming in and going out they are monitored and whether these five year old or five plus year or seven plus year old we are hearing, so whether we are delivering the goods or is there anybody who is not doing it, so this would be the main task when we head a district team like each of our own states. So when it comes to that what do you think would be the information which is important?

Mr. C.M. Joshi: what is that ?

**Participant:** types of cases pending before the particular court, (Inaudible) whether the judge may be the...

**Mr. C.M. Joshi:** yes, then?

**Participant 2:** certified copy pendency is there

**Mr. C.M. Joshi:** Right, Right. Yes, property details

**Participant:** Then the issuance of summons is there...

**Mr. C.M. Joshi:** Yes, they are being adjourned more than three months in how many courts.

**Participant:** whenever High Court seeks information, so if all these entries are properly entered... then...

**Mr. C.M. Joshi:** Then it will be easier, right? Updated...

**Participant:** because we are not being given sufficient time.

**Mr. C.M. Joshi:** Correct...Correct...Correct...correct...Right...Right...

**Participant:** once it is updated, then the various reports are there...

**Mr. C.M. Joshi:** Correct

**Participant:** then it will be easy to observe...

**Mr. C.M. Joshi:** No it is there, I'll counter that at a later part of this discussion. You see, broadly what has been culled out by the suggestion you have given is one- one set of information is there which is required for the litigants, the next date or what happened, see he keeps coming to court and pestering the court staff and what is the next date of my case and what happened on the pervious date etc. and lawyers also come and see the manual, court diary to know what is the next date and all that. So this is one set of information which being transacted between the court and the litigants and the lawyers, so this is one set of the information which is being exchanged. The second set of the information is the presiding officer of a certain court, he wants certain information. Suppose let us say, he wants to know how many cases involving his (inaudible) and how many cases under section 125 Crpc are there, how many cases of theft are there...

**Participant:** Senior Citizen

**Mr. C.M. Joshi:** Senior citizen, so this kind of information is required for the presiding officer of that court so that he can manage his own court, at his level. So this is the second set of information which is required by the presiding officer of a particular court to manage his court. Now this third set of information which is required is for the establishment and the administrators like you. Even the court establishments , let us say the district court establishment it requires some information as to number of particular types of cases are there in a particular district , so that it can think of...

**Mr. C.M. Joshi:** For that administrative purposes... so this information is required, so these are the three... whatever the statement etc. we send to the High Court whenever they call,

all that information falls in this administrative kind of information. so these are the three sets of information which is being required for us , so with this background , so , I've segregated three sets of information with this background I will go a little detailed in respect of the information that is of second and third category. I will not touch upon, mainly on the set of information which is required by the public, which is on the public domain, it is already there in the NJDG site, so entire information is there, but only thing is whether that information is right or wrong, that depends on us, we will come to that aspect later , because that also reflects on the information which we want as administrators and...

**Participant:** so far as district judges are concerned

**Mr. C.M. Joshi:** yes,

**Participant:** suppose that application was not dismissed by High Court, (inaudible) it is very much important...

**Mr. C.M. Joshi:** correct, again, correct it comes with the linking of the High Court information system with the lower court and it is the High Court which has to look after, in Karnataka it is there, in some of the states it is there, in some of the states it is not there

**Mr. C.M. Joshi:** yes, it is there, in Karnataka whenever an appeal or whatever against the order or petition is filed in the High Court you will get an SMS (Participants - Inaudible), that you will get an email, that information is there, it's in some places .. Yeah that is also there... (Inaudible). See what a presiding officer is required whenever an appeal or whatever the revision is filed before the Higher court, either the lower court files it before the district court or against order of the district court , it is preferred to the high court, whatever it might be, but the flow of information from the top to the bottom ,so that is to be ensured , so far as this information flow is concerned , in the CIS it is already there but it is not yet implemented because , see there have been no uniformity , there is no uniformity among the nomenclature of the courts. This is again depending upon another area called judicial process reengineering. See, I was part of the committee for judicial process reengineering in

Karnataka and when we tried to standardize the various factors which is there in the CIS, it was a mammoth of the job. so after development it is done, they have done it, so thereafter it is now our job to carry it forward because our set of information is not standardized , each of I think, it will be a subject in itself which would be for discussion. It may take huge time also, but I will touch upon the judicial process reengineering , let us see how much of the information can be culled out at present from the CIS, after seeing this we will enter into those aspects of what we should do to better the inputs which we get. The inputs we get should be accurate. For that what we shall do? For that we shall touch upon at the end of this. See monthly statement which we send, it is already there , I think you know about that , I will not go in detail on that , we will just refresh what is there . So monthly statement is there, so that... the path is now there, login CIS, menu option, click proceedings, select the court and then go to DJMPCA reports. In fact what, what I'm showing is it belongs to my court, it belongs to my court in Mangalore. I was a first additional district judge in Mangalore, so pertaining to that court I'm giving or showing all the information.

**Participant:** DJPMC means?

**Mr. C.M. Joshi:** District Judicial Project Monitoring Committee

**Mr. C.M. Joshi:** Nomenclature may be different but most of the reports are there in this menu. DJPMC, most of the reports of the CIS is available at that manner. So if you go there, you'll find the ... entire if the particular information or the format in which this is shown is not as required by you... You may put it across to the State eComputes Committee that this is the error which is there; we want the right kind of information to be taken out from the system. So that take care of that, that is where the core interfering comes in, the core of the CIS is one which is sealed by the Supreme Court, the Supreme Court at the national level it requires certain information. it doesn't require the information as to your copying status, it doesn't require information as to the court fee, it doesn't require information in respect of some property disposal mudharmaal etc. , but what the Supreme Court wants , what is the data which is required at national level, so that part is the core and that core has been finalized by the eCommittee of the Supreme Court. Now the rest of the information, that is what I

mentioned now are all periphery, so periphery has to be looked after or developed by the High Court, so this is what the major change which has taken place in the development of the CIS since 2012. Earlier, this was not envisaged but later each of the High Court because you know Supreme Court is not superintending over the High Court's, so each High Court may say that "yes, I'm independent; I'm not bothered about that, then what to do? and that is why this core-ed periphery has been thought off, core will remain and it can be changed only at the instance of the Supreme Court, the periphery using the core information, the periphery will be built and it is built in CIS 2, that has been taken care of and all that information which the state High Court needs that can be built around the core. So this is a core under periphery thing which is there. Now, reports may be pertaining to the core or the periphery because it is only taking the information from the database and projecting in whatever way you want. So information is already there, it may be PDF, it may be excel, it may be word or whatever it is, so that doesn't matter. So, this monthly statement is already there, this is how our monthly statement looks. The...You can mention, the dates, see that date that is to 1/2/2016 to 29/2/2016. So this is the period. This period is optional, you can select any grid, and you can say six months reports also. It gives... absolutely no issues... So this kind of information you can get. What is the pending at the beginning of the month, institutions during the month, and total for disposal, disposed off?

**Mr. C.M. Joshi:** Yes ,it is there , this you can change it, not you , you means state High Court can change it , they can get whatever the format they want but kind of information they want should go from (**Participant** inaudible), haan that is also needed , that is also needed. So this is what the year wise breakup of the pendency is also available, all the case types and all the breakup, and each year wise breakup is also there. So this information is now, it is being, in Karnataka in all the courts are just printing this information on the evening of the 31st of the month and they are sending it. They are no more manually maintaining the balance sheet and all that. No. so this is there. By this you'll all also come to know what is the kind of disposals of that particular court in the last one month or two month or whatever the period you choose, the choice of the dates is there. Before coming to this there will be choice of date, you have to set the choice of the dates and you can get this information. Now

the Balance sheet, this is always... Balance sheet of the court is not usually kept updated. What happens is, the balance sheet reflects what is the total pendency before that court, so when a case is transferred to some other court it has to be lessened, when is transferred in or filed, then it adds, when disposed, it is deducted, so if this is not mentioned , this is not kept then there is bound to be variance in the total pendency, the count will not match . Quite often, the Headquarter will be calling the explanation why this is not matching and all that. Some 24,000 ...when we implemented CIS across the State, the total different was about 20,000. 20,000 may have been disposed off long back but they are not entered in the concerned registrars or whatever it is and therefore it gives a skewed picture. See at the state level, some 20,000 cases means it is something, huge. It may vary from one state to another state, so this is the information which becomes accurate, because for this, what we have to ensure is every case or every petition which enters the court must be entered in the CIS. If we stick on to that this would be proper. If you allow, anything to be filed in the court without entering it in the CIS then gone! Therefore it is essential that every case which is filed is entered in the CIS, and then every case which is transferred also should be entered, every transfer out or transfer in. Third, every case which is disposed should be entered compulsorily. These are the three parameters which have to be ensured with utmost priority to set right the balance sheet. In Karnataka, there is one rule under the administrative rules of the Courts Handbook of Administration that every six months one has to do the physical verification, the files, the number of counts, so we gathered that it was not too strictly followed, strictly followed is the officer used to sign the report and send it but he was not personally going to the section and counting the files like this...one...two...three...on one or two occasions we ensured, else the officer has to do it. Once that is done then all these (inaudible) are sealed. It is cleared. It is one time activity. So once we do it, it is finished and thereafter no taking up the matter without entering into the system and no disposal without entering it into the system. So this has to be ensured. Then automatically this will come to a correct position. So this is a balance sheet which is there. Balance sheet looks like this, you can take the printout. Now what happens is the officer takes the printout of this balance sheet, goes to the section, then one by one the concerned clerk he shows the files , you round, he rounds off each of the number , then whatever that is there, if the file is not traced then he

has to show within two days, or one days or three days or whatever time you give, they will search it, maybe there , it may be there in copying section, it may be in...like that...so you ensure that each and every file is accounted for. Then automatically on one or two occasions if this is ensured then everything will be set right. So the numbers will be perfect. At any given point of time, yes this is the number you can tell referring to this. And once this is ensured the High Court will not ask what your pendency is because they can get it there. That much of the preparation of the statement work is lesser for you, your botheration is lessened. So this is level one. There are many such things. So next is written report which is spoken, that is every month the disposal report is sent by the officer to the High Court. I don't know whether the High Court is very much looking into that kind of information because this kind is there but...

**Participant:** being practical, No officer when on (inaudible) before the Hon'ble Court...

**Mr. C.M. Joshi:** Correct...correct!

**Participant:** send it up to the High Court (**Mr. C.M. Joshi:** Correct, what is the...whether it is a)... whenever there is any information sought from the Supreme Court against any.

Mr.Joshi: Because this happens, this happens because there is no such collation of the information which is happening in the High Court level. Of course, see manually doing such collation of the information is something huge, if you have a system excel sheet then you can do it in a minute or two that's all.

**Participant;** there the court managers are more competent than that.

**Mr. C.M. Joshi:** Now we should be equipped, yes you want whatever information... I will give you in 10 minutes for that we are going now. So, this is the return report. Return report looks like this; see this again, my own courts information. I'm giving only the screen shots because I cannot correct my own server in Mangalore from this place. It is on the NIC internal IP series and state (inaudible) does not allow the public IP to be entered into the network. I tried it but it is not possible. Maybe in future, the NJA may take such necessary

steps. But a typical information looks like this. You see the type of cases , arbitration suits, total number is around 88, institution -3, transfer -0, contested 9, uncontested 0, transferred 0, balance is 82. Disposed is 0, total weightage...weightage means , you have that...points, or minutes or what do you call them, (participants inaudible) , every month officer has to dispose off 10 or 8 or ...( **Participant:** Units )...Units. That is also there. Once at the time of disposal it will ask for the number of units and the officer has to... the person who is entering the details will enter and it depends, now miscellaneous matters will carry point 0.8 or something like that or  $12=1$ , that formula, so according to that they will enter and at the end of the month you'll get the complete, total number of units.

**Mr. C.M. Joshi:** no, that is interlocutory, it seems, wait...

**Participant:** What is the, difference with the monthly statement that we send, what more information is there in this?

**Mr. C.M. Joshi:** See, monthly statement is also a statement, the units used are not depicted..

**Participant:** Other statements can be reduced

**Mr. C.M. Joshi:** Correct that can be done, that is where, and our say should go.

**Mr. C.M. Joshi:** No, that is also there in another (**Participant:** in last column, is about (inaudible) they have given 'n' number of reports, so this is one of the reports which I'm showing. Then, the importance of this information is whether a particular officer is disposing off one type or cases only or not. Suppose there are some officers who are well versed in criminal side, they only dispose off criminal cases; civil cases go on increase, so you will come to know what the expertise of (**Participant** inaudible) the presiding officer is. You will come to know what the expertise is and what not the expertise of the officer is. So it is required for the purpose of appraisal, so judges also...

**Participant:** I don't think, that part is there where there is no input, (inaudible)...the units are less..



**Mr. C.M. Joshi:** Correct...Correct...correct...definitely 100%...100%. See if you see the (inaudible) , it shows what a ten year old case is and what a five year old case is and all those no.. If you see that, those are the cases which are either the hard nuts or they're simple matters which do not carry any weight. No point. So they are pending, because nobody bothers, especially the appeals, appeals are pending in most of the courts, it's because the weightage of appeals in Karnataka is 3 is to what? (**Participant:** 3:1), regular appeals, so...the officer he will not touch upon. (**Participant:** in other state for, for, cases pending more than 10 years we have given 15 units and for (participants inaudible)...So these are the (participants inaudible), this is one such information which is available. Now the disposal report. So the disposal report looks like this, you can set the dates again, it applies to all, all reports you can set the dates and within that day whatever the information is there it will show. But one thing we should remember is that this is the live data, suppose, in the month of, let us say February, total number of 2008 cases let us say, there are some 10 cases are there and then what happens is, in the month of March, two cases of 2008 are restored either by remand or by an original application under Order 9 to the file which were dismissed for default. So then what happens is, the 2 number figure is added to 2008, it will not be renumbered, it will be in the original number itself. Then what happens is it becomes 12, if you show the, get the report for the period from January to let us say March then it shows the pendency as 12, but one may say that in the month of February you had shown it as 10 , now how it has come as 12? That information will not be settled. In and out, transfer in transfer out will be there but it will be live data...because this information is generated from the database which is there. It will not store that date's information intact, it would be live data. So this one has to bear in mind.

**Participant:** but does not reflect...

**Mr. C.M. Joshi:** Dismissed is they're all unmentioned. It depends on the units. In Karnataka, if it is contested then it is dismissed or, the short order is written or reflected here.

**Mr. C.M. Joshi:** No they are all ex parte.

**Participant:** I'm asking whether it will incorporate the modern...

**Mr. C.M. Joshi:** Yes, it is there, it is there. Where at the time of the disposal of the case, all this information is there, whether it is contested or whether it uncontested and if it is contested then what is the points er... units...so this information it will ask and what is the mode of disposal that is whether it is dismissed, allowed, what happens.

**Mr. C.M. Joshi:** that we have to do, there is a radio button in that, that's what I said, I would have gone to the CIS itself and shown it (**Participant:** inaudible), see this report, this disposal report shows contested, uncontested everything, all disposals, (**Participant:** In Andhra Pradesh, we have one more point where if its uncontested it will be mentioned as UN... inaudible), No, no...that information is there. We didn't ask the software engineers to prepare that kind of a report. You can ask and you can take any type of information that you want. They'll only lift it from the database and show you, that's all. That information is already there.

**Participant:** sir, you mean to say that I can write dismissed uncontested on my own?

**Mr. C.M. Joshi:** Yeah, (**Participant:** Right), Sir, one more thing, this information, if you want to have any further information on this, you just note down the number, go to NJDG, get it and you'll get the entire thing, including the judgment you'll get.

**Participant 4:** Now if still it doesn't show it, it means allowed or disposed?

**Mr. C.M. Joshi:** It is a... (**Participant:** We only saw disposed, contested, disposed uncontested). Sir, you get any case, you'll have full information of that case on the web. So there is one, this thing, I will show you live on that.

**Participant:** In the monthly statement we are showing the details about the institutions disposal. Now the case which you have referred, for example is 9(13) application is there and the person is distraught and there is not a fresh institution, so in the monthly statement that will come under which column?

**Mr. C.M. Joshi:** haan, this is what, this is what, this is what, this is what I wanted some of you raise that point. See what happens is, no what happens is... (**Participant** inaudible), what happens is it is a live database, the case information is there , and when you enter the disposal so disposal date is entered in one of the column. You imagine an excel sheet, excel sheet I think you're familiar, spread sheet, so then it reads from one column that yes it is disposed off from such and such date and thereafter when you allow it and re-register it and recall that order of dismissal so, the dismissal is not taken off and there it is pending, so the system reads it as it is a pending case. For when it is pending, it is pending from the date of registration. You're not asked it to say that during this period it is sleeping or dismissed and restored. Let us say it is the sleeping time that is not reflected in the report. This is where you're misguided sometimes, the officers, many officers call and then say that yes this is happening, this is happening, it is not showing the right thing etc. No, it is showing the right thing but it is the live database. That is why I said, you just remember that it is a live database. It shows on today what the pendency from this date to this date is. During that period let us say 10 cases were dismissed and 10 cases are restored and it shows as restored only. It will not show that 10 cases are disposed off. So this is what happens.

**Participant:** Let us, let us understand what you, so in the January 2010 the (**Mr. C.M. Joshi:** Right)...Once its removed from the total pendency, it has happened in the month of January 2010, so in the year 2011, the plaintiff filed an application for ... in the year 2013 that application was allowed and suit was restored. So in the month of January 2013 the suit is restored, so in the monthly statement of January 2013, will that suit which is restored be shown or not?

**Mr. C.M. Joshi:** It will be shown, it will be shown, and yeah it will be shown. Disposal entry is there. Disposal date whatever is entered is there but when you are generating the report from there, it will read from that, it will read from a particular column. The disposal is there, the number of units you're (inaudible) it may be contested for some reason it may be demanded. I'm not talking about 9 Rule 7 or this thing. I'm talking about the remand by the superior court, appellate court. Appellate court never remanded it, then when the

(inaudible) court remands it, then that case was disposed on merits and your units are also given to the officer. Officer now has transferred or retired or whatever it is, but that report during that time it was disposed then it is there, that has been given. But for the purposes of today's report it shows that it is a pending case. It adds to the pendency from the year of registration that's all.

**Participant:** and the suit is restored and (inaudible)...so on that basis we are saying that the suit is restored. (**Mr. C.M. Joshi:** Yes, correct, definitely)...if that is the provision in the month of February 2013, the case is restored. (**Mr. C.M. Joshi:** yes) so for the statement of February 2013, the (inaudible) would be shown. (**Mr. C.M. Joshi:** Shown! Definitely). I'm on that point that it will be shown on the institution column.

**Mr. C.M. Joshi:** Institution, it is there, so this is one, it is not there, there is no renumbering...see now next one is, I think I'll leave this disposal report weightage wise, the year wise, these path etc. You can try on your own, most of, most of the reports are available on that and some of the reports have been constructed by Karnataka High Court for the purposes of generating the information, and these information is also, it is also taking the information from the CIS itself, so this is the disposal that is wise, there is...what is the year wise, how many years, so that information is there.

**Participant:** where it speaks if reinstatement, so can we not make three columns institution. One first, second (**Mr. C.M. Joshi:** Sir, number 1 after getting that information, how you use that information is one important aspect. (**Participant:** sir I have few doubts, what are the column so far as criminal cases are concerned? number of accused persons in custody? (**Mr. C.M. Joshi:** yes, that is also there), second- suppose a trial judge keeps a date for disposal of a case, whether the CIS, the present one which you are using will show , actually under the case has been disposed off on the date fixed. (**Mr. C.M. Joshi:** Yes, definitely),

**Mr. C.M. Joshi:** Yes, definitely, yes, absolutely! I'll come to that point; I'll come to that point later. See we color collated some information which is from the CIS itself, see this is above the 5 years old,7 years old ,10 years old, 5+0 , so the thrust was on that in the entire

district. In my district, you see, we took the October as the baseline , October 2015 and 12th October has been shown in the first, the pendency is there, there... 12th of October. So in the month of October what is the disposal, November what is the disposal, December what is the Disposal, and what the CIS or the system has done is we took the 5 years old in the month of October I.e. September end, then we calculated again in the month of October. In October some more cases entered the 5 year old list, which were let us say, 4 years 12 months and 11 months, they entered the 5 year category, they are added. Similarly the cases went on adding each month. Now, we may have disposed off all, or the particular officer may have disposed off, let us say the 5 year old cases as on , as they were pending in say October, but whether he is giving priority for the old cases, how will you come to know? You take all the 5 years old number, five year old cases, paste it into the excel sheet and then calculate this. See, this ultimately in the month of February, it is also shown and ultimately percentage disposal, disposal percentage against pendency. For calculating the percentage we took the October 2015 as the baseline. If you calculate on that, so this is the percentage. 5 years old cases what is the percentage, 7 year old cases what is the percentage, 10 years old cases what is the percentage. So this will reflect as to whether the priority is given for the old cases by that court or not.

**Participant:** there is some formula?

**Mr. C.M. Joshi:** Yes, simple formula, it is simple. You take the present pendency err...disposal and baseline of October and divide it by 100, that's all.

**Mr. C.M. Joshi:** Every month is also there now, October, November, December, January, February, that percentage you can calculate , that is not the problem (**Participant:** inaudible), Yes, absolutely.

**Participant:** it can highlight the percentage for the (**Mr. C.M. Joshi:** Yes, correct) and after...that is the percentage...

**Mr. C.M. Joshi:** Sir if you, if you maintain the correctness of the data, perfectly, nobody will ask you any of these statements... see, it...it...haan...no...Sir, what happens is, we should ensure and we should also, see it is like this, if we can assure, yes the data is intact or it is perfect, then they would develop their methods to get the information. If we don't keep the data correct, then each time they want to shift the burden, whatever happens, let him be responsible, it will be thrown to you to send the information afresh. This happens. Because I worked in the High Court for more than 5 years, I know what happens there. See, therefore, if we keep the correctness, accuracy of the data, then automatically the things will start changing at that level. Unless we do that, it will not happen. There are very few people who will be telling how to correct these things, that is where the problem lies.

**Participant:** we are going for inspection, (**Mr. C.M. Joshi:** Inspection, I will come to, see this is the daily cause list, I'll skip through the slides a little faster, so that at the end there are some two points that I want , recopying the branch reports it is also available, opening balance, filing, copying, so same thing.

**Participant:** Balance sheet is also there?

**Mr. C.M. Joshi:** Yes, balance sheet is also there, copying is also there and if you spend about 30 minutes for about 15 days on going through all these reports which is already there in the CIS and secondly you ensure that the data is correct, then I think nearly 60 percent of your botheration in asking for the details will be over. What happens is the staff may also be not well versed with where the information sits, because CIS is such a vast thing it encompasses many things and anybody from Goa sir?

**Mr. C.M. Joshi:** In Goa, it was about 7 years back , in Goa there is one system where the client is given a time slot, he is asked to come at let us say 3o'clock . Not 11 in the morning, he need not come, and he will come only at 3 o'clock.

**Mr. C.M. Joshi:** It is there. You can fix the time 1 o'clock, 2 o'clock, 3 o'clock, 4 o'clock whatever the time you say, like a doctor's appointment, you'll have an appointment with you

and he'll come at that time and finish off his case and go. Whether that is possible? Yes, it is possible in the CIS, (participants: Inaudible), old version itself it is there, that is why, haan, because what happens is the courts are not accustomed to using that kind of system in our locations, we are not accustomed to that.

**Participant:** I am working (**Mr. C.M. Joshi:** right sir), so in the (inaudible) board we used to mention the timing also, so for example (**Mr. C.M. Joshi:** Correct) judgment, 7 matters of admission at, 7 matters at 2:45p.m., so our CIS permits (**Mr. C.M. Joshi:** yes, yes, yes, yes definitely. Sir, this is, that is why I pointed out, in Goa, in olden days it was followed there and that has been picked up from the CIS from Pune NIC team, because it has been implemented, CIS has been implemented in Maharashtra, much prior to other states in the country, it is already there)

**Participant:** Are other parts of Maharashtra that is not being followed (**Mr. C.M. Joshi:** Illa, no correct in other...other...other...parts of Maharashtra it is not there, but I don't know, maybe the Goan culture, it promoted that kind of a, the rule and it is followed.

Participants: It depends upon the litigants and advocates also (**Mr. C.M. Joshi:** Definitely, definitely), even at small causelist, (**Mr. C.M. Joshi:** Yes), at Bombay, at least (**Mr. C.M. Joshi:** correct) if you're not 10 places (**Mr. C.M. Joshi:** sure, sure),

**Mr. C.M. Joshi:** No, this is where I say that the information flow from the Court side to the litigant side and lawyer, that counts a lot, so that information I'm not touching now because you know it is by website the information is being sent by SMS the information is being sent and in the...in Karnataka we have provided the kiosks, touch screen kiosks in each and every court complex and there they can see their case what happened and they can also get the information on that.

**Mr. C.M. Joshi:** Sir, this is copying application reports which are, which can be taken from the CIS, so three weeks old pendency, four weeks old, five weeks old, copying application, whether it is there, it is disposed off, all those things are also there. So this information you

can go on monitoring each of the establishment in the district on the basis of this because in a particular establishment there may be some huge number of copying applications which are piling up, this can be monitored. Two or three seconds of glance over this information is sufficient enough, or you can ask the court manager to observe any such thing and then report to you. So that is that, they can get it, definitely they can get it.

**Participant:** but if you ask, can we see the corum of judges.

**Mr. C.M. Joshi:** yes, yes, yes, yes, haan...there is, yes, yes, so this depends upon the network. If the Maharashtra is using the state network, then it's possible, it should be on the same series of the IP, then it's possible, if it is using only the VPN connections across from one point to point, then it may not be possible, therefore it is the network which is important, and in the coming days I think you gone through the Phase 2 document of the eCourt project. Phase 2, phase 2, on the Supreme Court website it is available. If you see that, now they are doing the way which server rooms and all that, there is, there is a...mention of cloud technology and all that. The servers will be located somewhere you don't know where it is and you only have the network...connect it...you have the IP address...log it... log onto that...update your data, finish off and this has been tried by us and thereafter it has been incorporated in that. In Karnataka what happened was there was one court which is the court, it sits two weeks at one place and two weeks at another place and all that. So we located it at one place and thereafter we provided the network and they started updating wherever they are. So, that we tried and it was successful and therefore now it is there in almost...many of the courts in Karnataka. So that has been now taken up, that takes you off your head to see the maintenance of the servers and all that in each court complex, the power, the generation, the digiset, putting diesel into that, all that headache work will be off. What you need to do is, you have a PC or the and then have a network, then finish. Rests of the things are maintained by somebody else at somewhere else.

**Participant:** Sir, can I take information about the pendency about the senior citizen?



**Mr. C.M. Joshi:** Yes, sir, definitely. For that you need to enter whether the party was a senior citizen or not at the time of filing of the suit. That is possible, but **(Participant:** I was just seeing, you used to write in a patter, In version 2, it is compulsory, mandatory field, earlier it was not mandatory. This is where I'll come to last point, I think this all roznama details you have, you will come to know what transpired in the court in each of the cases.

**Participant:** sir, I think we have, CIS has not been implemented totally.

**Mr. C.M. Joshi:** It is there, but they are not taking the printouts. But as the district judges, you need to insist upon what transpired in that that, on that day. Let us say the order sheet is written that so and so is examined, you ask the officer or the staff to enter whatever that is written in the order sheet as the business of the day in the CIS. **(Participant:** As it is?) As it is! Then if you take the printout of this, you will find the entire order sheet of that case from day 1 till the end, Full.

**Mr. C.M. Joshi:** Yes, Yes...any...any...any...provided on that day it is entered, yes!

**Mr. C.M. Joshi:** nahi, it's already entered no, we'll only take it from that and say that this is what it shows. B diary,

**Participant:** interim data is input.

**Mr. C.M. Joshi:** Important...ultimately it comes to some of the reports we have developed, Karnataka has developed and here Civil pendency, you can find any number of years pendency, 4 years old, 5 years old, 6 years old,10 years old...like that. So that is there.

**Mr. C.M. Joshi:** No, that is 4 years old cases. In my court, 4 years old cases are 135. Mine is 135. 4 year old, it is shown as, in the top, third arrow. Now my target is those 135 cases that are why you'll see percentage high.

**Mr. C.M. Joshi:** So this is CIS (inaudible) reports cause list, so cause list. There is one, this you can also get it , what is the total number of cases posted under a particular day, whether

it is there on the higher side, or the lower side, whether the officer is spending court time in say (inaudible) work. Let us say 200 cases he posts, his pendency may be around thousand five hundred something but is it necessary that 200 cases to be posted every day. That you can monitor.

**Mr. C.M. Joshi:** you, first start using these reports, when you read the ACR's of the other officers and then they'll start.

**Participant:** can you please repeat this?

**Mr. C.M. Joshi:** This is daily cause list, criminal, civil total...so... haan...see the calling work completed by 12p.m., 12:30-1:00, so this...this is analytics again, so these kinds of analytics also can be used.

**Mr. C.M. Joshi:** See this is what we have done; using the information, with...this is what we have done. In each Court we selected the oldest two hundred...about two hundred cases...Oldest. So then what is the type of the cases in that slot...200 cases...almost 200...see 1...2...3...4...oldest...irrespective of the age or the year...so this is what it showed...so what is, say...you take my court...First ADJ...regular appeals out of 206 oldest, 59 are regular appeals, that accounts for 28.64% of the total cases. So this kind of analysis one can have and set your priorities on that. Can you say...can you ask in your review meeting of your unit, that ...every month let us dispose off not less than 25% of the oldest cases among these 200 which are the oldest. Like that goal fixing a target, that can be done. For that the officer, he will get his own information from his own system, absolutely no problem. So these are the things. This is about the CIS 2, where the...the...a person who logs in will find this... (**Participant:** Inaudible), High rise Mumbai. This is the dynamic pie chart as well as the Bar chart...if you place cursor on this, you will find, let us say...this is...this is...more than 2-5 year old cases is the network...so this is 2-5 year old case...if you place the cursor here, it would show 2-5 year old cases...how they are distributed...This is reference appeal, (inaudible ), sessions case, so (inaudible), if you place the cursor here suppose...now this is special (inaudible), now if you place the cursor here, if you show its

stage whether 2-5 year old, more than 5 year old...so...so that it will show...the CIS is 2.0 version and it has been...some of the screenshot are there...I will not go into that...already I have...the time is over...Last, to do this...to do all this, there is one more thing which is required. See, either 2 or 1 is accustomed for manual preparation of the reports or some information getting it from the system and all that, we are not accustomed to or we have...we therefore have made no changes...see there is already, judicial service center which is there. In Mangalore court when we started the work, of course we started later about one and a half year back, because earlier it was not in the phase 1 of the Courts also as the building was new, so then when we started the work, there was reluctance among the staff to adopt this...the reluctance is because of cultural background, because they are not accustomed, second one is there are various reasons, that is called change management. When you want to change something, a little bit of effort is needed for that. I think since yesterday you're here isn't it. Can anybody say have you changed your chairs from yesterday...How many? Only 2...3...4...5...why? Why? (Participants: inaudible) see majority, majority...nearly 80% of the people would change the seats. This is standard phenomenon. You go to...you take anything, they won't change because...because you have created your own comfort zone in that chair. Suppose if this is the position for one day, at NJA when you have come visiting. You think of (inaudible) or the CMO who is the...who is working since more than last 25 years, whether he will change? Never...wills him...he will lose all his might, not to change...

**Mr. C.M. Joshi:** This is why...this is why...the change has to be managed, then only it will happen, otherwise no, Number 1. Number 2, see, I'll just finish off this one...the organizational level, you can make the changes, tomorrow onwards, you close this gate, open another gate, or if you.. if a particular person is sitting on the same chair, you put a pin on that etc. etc. see, these are all organizational changes, but the cultural changes, whether I'm accustomed to that, whether we are going for that, whether I'm going for starting a filing counter in my court, whether 4 -5 establishments in the court...in a Mangalore court, 5 establishment in the District Judge Court, there are 6 district courts...Principle and 5 additional courts and then there is Chief Judicial Magistrate Court, Senior division courts,

Junior Division Courts, JM of (inaudible) and family courts...so there are five establishments.(Participants: and Labour courts), Labour court is there, but there will not be a direct filing on that because its only based on the referrals. So in these five establishments, the filing will be there, suppose you shift the entire filing of all these courts into one location...then what happens? You, we have installed these systems like if you go to any bank, how does it look, like that we have arranged it. Yes, bank counters. So you go to any counter and file it (**Participant:** Centralized filing?) Yes, centralized filing. So, you change to that, then, that is not tolerated because, his...there will be a person who takes the files, he has some vested interest, now you are changing his position, he will resist and there will be resistance, but if you withstand that and change it, maybe one or two days, it may be disrupted but after that it will settle down and they will be accustomed for that. So this has to be done in order to adopt the new system. If you do that then at the time of...a case is filed, everything is entered, allocation is also online, and you can go to the CIS and find out which court you have to allocate and there ends the matter. It goes to that database and it is...that court will look after...the file movement has to be done towards the date you have given; one cannot detain that, his file with him. So, these things will streamline and it will ease the processes. So these are the things. If you manage the change then it is very good, the disruption will be less...if you do not manage, then change will happen, the disruption will be a little more. If you do nothing, then also change will happen, it will take a long time and disruption will be more and your discomfort will increase. And we'll be groping with what statement to be sent whenever it is asked. So this is what ultimately accounts for. So this is like registers. Registers to change will always be there. It is very difficult to...to...adopt further change. So...this comes to the end of the session. Lastly you asked one question in the beginning and that was about the case types and these things...I...judicial process reengineering, that's what I mentioned. See judicial process to understand is very simple one. Now, you let us say, you have got, a flow that when a copying application is filed, it is entered and then he pays certain fees and...and or he doesn't pay anything, and only when the copy is ready, he pays entire fees and goes...takes the copy...You may have to change it, that application is filed and then nominal fee is deposited, if any deficiency is there, then he calls him and total number is updated by the office...the concerned court and

then it is entered into the system. Then he pays the deposit or the deficiency is paid, then the copy is made ready and he deliver, it is delivered. So, this is the...as per the rule, this is the procedure but local...this thing... working scenarios, they have changed that and they have used their own this thing...this is going to change...So how to change this, so these changes have to be there Number 1...Number 2- standardization of the information, that is suppose, in one of the district in Karnataka, there are 10 case types...let us say...in another district there are 12, in another district-15...if that is the case then how you're going to collate that. The High Court cannot do...so the uniformity of the case types is essential so that the data is...it can be analyzed...otherwise it is difficult to analyze...So standardization of the data, so that is the second point. Third point is the...there are certain processes...of certain activities which are redundant, which have become redundant...let us say for example, the suit register is there...In Karnataka we call it as Register Number 1, some 25 parameters are there which are there which have to be written and we aren't writing and it has become redundant after...you can generate the...the... history of that case. The information on this is more than that register number 1. Then do you want to...do you want to keep that register number 1...writing...writing and writing...what for...so these are the three aspects that is the things that are redundant have to be (**Participant**: Scrapped) Scrapped... unless we do that , then it would be double the work. Will we be doing double?

**Participant**: We were told that (inaudible) (**Mr. C.M. Joshi**: Correct Sir, no that is also there, rules also to be changed, but if you...if you...if you...everybody feels that it is to be changed, then only will it take momentum otherwise not. If you start using this and telling this yes this is the information which is there and you're not taking it and then only they will think over it...

**Participant**: in High Court in the State should prepare a nomenclature of the cases. Suppose 125 applications are decided after 6 months husband stop payment and then execution application is filed. Earlier we registered it as new case, after nomenclature is changed; High Court says you treat the original application as the new application. What happens? Yesterday I gave the information is forged. Today one execution application has been filed,

I say it is filed, but there is no new filing, but since because of the standardization, I have got the number...the old number...I'll put it on the register of the new file...Now the original number which was (inaudible) by us is 225, then (inaudible), Lordship because the new application has to be countered against the old application...(Inaudible) so there we face lot of problems as to how we should...

**Mr. C.M. Joshi:** see, one thing is basic, in CIS whenever a case is let us say, transferred in...it has come to me on transfer, then if it is across the establishment then number will change...the number is bound to change, if it is within the establishment, then it will not change, then it takes me to what is the definition of establishment. Suppose there is a principle court and first additional, second additional... third additional...fourth additional whatever the court may be, then within that, the office is one and therefore the registers are one and they're...it is consecutive numbering...if you go out of that...then that court already has four of, ten of...eleven of...whatever it is, then you...four of sixteen let us say... then if you add one, it will be five, it can't be four...it has already been done...so that has to be... these are the working solutions...and there should not be any much problem on this...it only needs a convincing act to be done..

**Participant:** Suppose a partition final decree is being (inaudible) now we have to open the main (inaudible) of partition case...which may be of 78...concluded in 82...now we have to reopen the first case which has been...

**Mr. C.M. Joshi:** Individual

**Participant:** if the High Court decides to...

**Mr. Sanmit Seth:** Thank you Sir, Probably you can take the discussion offline during tea break, so thank you so much...and we will assemble back at 11:35? Thank you.

## SESSION 6

### Record Management

**Mr. Sanmit Seth:** Welcome back, now we will start our session 6 on Record Management, I request **Justice S. Vimla** Mam to start with the session

**Justice S. Vimla:** Good morning to all of you. (Participants: Good morning mam). The good morning continues... very nice to meet all of you after yesterday's session. It was really a very participative session; we do not have the mind at all to end the session, and then today is an opportunity to continue it. when we talk about record management, how many of you feel that this topic is relevant or how many of you that it is so important and how many of you feel it is unimportant.(**Participants:** essential and important).it is very important , it is relevant, yes ... very good answers and we might see for want of record management, what happens at home, what happens in railway station, what happens in the airport when we miss taking our passport and visa documents and when dispute arises at home for not maintaining the records in proper places , in proper way, then think of problems of court especially after the passing of the Right to Information Act. Right to Information Act, takes away the whole time of the High Court, we can't sit on administration at all, whether to give the record or not to give the record- If to give the record, when to give, where to give, how to give, to whom it should be given. That is the kind of problem that is being faced by every High Court so far as Right to Information itself is concerned. Then where do we go for the litigants asking for the documents, party to the document, matter of right India asks for documents and are we able render justice to the parties? By exercising our Right to...Right to court management. Instead of saying that it's a right, it is a responsibility to maintain the records in a way in which they should be maintained. Let me share a problem which the subordinate judiciary recently had, in not maintaining the records. It is a suit for mere recovery of possession. Suit is dismissed. Then he goes on appeal. In the appeal, the suit for recovery of possession was ordered with a direction that what is due from him that is a sum of Rs. 3 lakhs is to be paid back to the defendant. This is the order, he was...the matter was taken second appeal by the other side, you know second appeal takes... second appeal takes...second appeal is the last priority for any High Court. Second appeal is always for pending for 10 years even 15 years second appeal is pending. Once a party files a second appeal, the party would deposit the amount felt that it is not going to fetch interest, then if

the second appeal is not likely to be disposed off in near future and therefore he wanted the money back. He filed a petition for getting the money back with notice to other side. The other side naturally made an endorsement of no objection. The Court should have ordered return of money immediately but the court could not. For what reason? All the records are in the High Court on the file of the second appeal; therefore they were not able to pass orders. But tell me, what should have been done by the court?

**Participant:** by opening a past file, the money should have given (**Justice S. Vimla:** pardon?), By opening a past file, the money should have been given.

**Justice S. Vimla:** No, they want to verify the details. they say the suit is filed so dismiss, they say that that first appeal it was already in his favor, then he says the money is deposited in such and such bank account, this is in virtue...by virtue of order passed by this court, so many details which are given in the petition have to be compulsorily checked by the office but they don't have the records with them.

**Justice S. Vimla:** they should have called back the records from the Appellate Court, Not available so far not implemented so far, (**Participant:** and all the copies of the party were scheduled copies of the order). There are only two opinions operating...After the passing of the order, after the disposal of the CrP, I just...I wanted to know what was operating in the mind of the judge who did not call for the record. Just so the petition was simply dismissed, stating that records are not available, therefore it is dismissed. No...No...It was dismissed, I heard the CrP, I brought the judgment also, I have asked them to circulate it all of you also. It was dismissed, because... what was operating in the mind of the judge is, when the records are in the High Court, it is not for them to call for the High Court especially when the High Court wanted it for the second appeal. No doubt it is the High Court which wanted it; no doubt, it was for the second appeal. But the Question is, only for the single day, these records are wanted back by the sub court, property is not our property... maintenance is our duty and responsibility but a record does not belong to us. Like any other property, records do not belong to us, it is their own record. It is a record created by them, generated by them and it is in the custody of the court. And if at all if it is going to be requested that records must be



set for the purpose of comparison, for the simple purpose of counterchecking it, what will happen in the High Court, it is not as if it is the High Court is ready to dispose it off on the same day or in near future. We do not know when it is going to be listed, because of the fear of the High Court; High Court should not feel it as a rise. See, how the safe play mode, they do not go...get themselves entangled into any trouble. I was of the firm view that any judge should have the courage to call for the records. Why not? Because it is the High Court does not mean that High Court is everything. It is after all the right...The liability of the litigant (**Participant**: inform the level court that this and this has happened so kindly issue necessary direction) why always directions from the High Court. (**Participant**: the case was disposed off by the Trial Court, the entire material has been no...No...It is the court.

**Participant**: nothing is pending...it's not the period for calling for the record, but it's the...we keep on writing...keep on writing...but we are basically answered from the High Court, so it will take months and months together for...making the...

**Justice S. Vimla**: Gone...gone are the days if you just write a request that records must be called for, immediately the litigant will go to the High Court, and ask the section people to send back the records...that is what is happening...No...No...(b) Participant: High Court judge (inaudible)...appeal is pending for the lower court, in the part time, the process got disrupted in the absence of and then dispose off the file...then send the same to concerned court.

**Justice S. Vimla**: What I...What I...want to tell you is, just because it is the subordinate judiciary, it is not subordinate to High Court. It is subject to supervising jurisdiction of the High Court. Yes, wherever there is a mistake, it is for the High Court to correct it, wherever there is guidance is required, it is for the High Court to guide you that is different. That does not mean, that when you require a document for a particular reference to in a particular case, the court need not have waited...should not have weighted...Immediately they should have called for records. If then...the...records called for may not be appropriate, it is a request letter from the Court, asking them to send back the records for the limited purpose of deciding this application, thereafter it should have been sent back to the file of the second appellate court.(b) Participant: you're talking about a requisition?) Yes...yes...as you said

rightly, for want of this...this party is now asked to come to the High Court...one more addition...one more...

**Participant:** there is general instruction that we can write only once in six months...  
(**Participant:** that is in respect of same matters... (**Participant:** because of which matters)

**Participant:** For any matter! To meet this kind of situation, we just inform the Hon'ble High Court in seeking further directions... (**Participant:** What to do?) Then they send all the information.

**Justice S. Vimla:** It's a diplomatic way ...it's a diplomatic way of doing it, for the same thing.

**Participant 9:** madam may I give one suggestion?

**Justice S. Vimla:** Yes sir

**Participant:** so...can the officer of the court, for example superintendent or like that, can be deputed to go to the High Court for getting the record and giving it.

**Justice S. Vimla:** Excellent...excellent, Yes...

**Participant:** Who will take responsibility of that person?

**Justice S. Vimla:** No...No...almost in a week, from every district court, a special messenger comes either to take back the record or to give the record. That is happening...that exactly what I did when the matter came up in CrP before me, I was asking...the counsel himself gave this suggestion that was highly irritating for me. Then he told me that records are available on the file of the second court...second appellate court...I was telling that it is very easy...Just wait till the evening I will give you the order...He said, No...No...it is not possible, the court should see the tendency operative in the minds of the lawyers also. They don't want the early disposal also... He says record should be called for, communication should be sent and the personnel working in the second...person dealing with the second

appeal court should keep it pending for six months and later they should send me the records and I should pass an order. This was the mind...The mind that the lawyer was having. I called the deputy director judicial and asked him to go and verify the records and give me the report in the evening. It was filed on 2/2, report came in the evening and the same day evening I passed an order and the next date was listed and they were permitted to take back the money. It is very easy. The court which passed the order is...this is...just 100 meters away from the High Court. If they had thought of an innovative way, they could have deputed a special officer or a registrar of citizen court should have been directed to go and verify the records and give the report. What I'm telling, what I'm trying to say is if there is a mind, there is a way. If there is no mind, nothing will come to our mind... we will not...after all it is his own money. He wanted back, specifically saying, my money will not fetch interest, therefore I want return of money. When they say that it will not fetch interest, we will keep it without fetching interest for you...Is it our duty? Is it our way of doing justice to the party? And this is how it is ...Many of the cases that are... now a days there are direction petition...what is the direction they sought for? You dispose off applications

**Participant:** where Mr. Joshi is working, there was a story...some litigant had filed a suit against the Judge for....

**Justice S. Vimla:** Yes...Yes...yes...it happens...it happened...

**Participant:** In a bailable offence...

**Justice S. Vimla:** type of... (**Participant:** Litigants are going to that extent)

**Participant:** I would have released the money...

**Justice S. Vimla:** There are rare types of cases where the sub court and the district court even many courts, for which High Court issues directions to finish it off within a limited timeframe. Many of the time, we depend upon the bench clerk or the court officer for that matter to tell us that it is the direction given by the High Court. This...if...the person has any grudge against us, that is the end of the matter. Many times...many times, the lawyer's just

wait...first...just wait...first of all they get a direction from the High Court, saying that there must be a direction to dispose of the case within a limited time frame. We were asking them, if you're cooperating, if you're requesting, why the trial court itself will consider your request, why do you come here for way of directions. Immediately say that no...No...The court is inclined this way...that way...they attribute by us and they get the directions and then they come and complain that it is...the direction is not complied with. Then we call for the reports from the officers concerned, the report comes, it is...It was not brought to my notice by my bench clerk...or head clerk or (inaudible) as the case may be. Now whether the High Court will accept this kind of explanations (Participants: No...No...) High Court will not accept. It...then...Then comes a question of record management. How would you, when the High Court issues directions. It is very simple. On the top of the bundle, in a red ink or in a highlight pen, you right High Court Direction Case. End of it. Why should we depend upon unscrupulous persons around us?

**Participant:** What is the function of record room? A person files a copy, goes to record room, says that my case was decided on such and such date by such and such person, give me a copy. The record room (inaudible)...and after two three days...They say that such and such file is missing from our account. It was earlier there, you see the entry in the register and in the register on a torn page there is entry in between of that particular case...for... let us say (inaudible) that was, they tried to search, by saying it has been decreed ex parte. I think what emerged, this case was never filed. This judgment was never called and this gentleman deposited the file in the court room, managed an entry into the register of the readers, dispose of the register. When asked, he said...haan sahab, woh ... yeh wala hai mere paas.

**Justice S. Vimla:** In English please, I have a difficulty...only certain words I could I could follow on this...

**Participant:** okay...Magistrate in whereas 11th entry was disposal entry. I called for the records; give me details of units in a particular month. Only 10 were there whereas, 11 were shown in the register of the reader also. I called for the relevant cause list. There was an

entry of this case at the bottom of the cause list. (**Justice S. Vimla:** On the Day of Judgment alone?) On the Day of Judgment alone. Now the (inaudible) of FIR has been registered against the record keeper and the person concerned who was making the (inaudible) So this is what is happening in Gurgaon.

**Justice S. Vimla:** It is very difficult... it is ... what to... what to... say, is highly unwarranted decision, highly illegal decision...Unwarranted, .illegal decision to have this kind of.

**Participant:** we can go to that extent. When the staff has been caught. Judicial record and the judgment is signed by the magistrate concerned not the civil judge. Never deposited the monies and entries on various registers.

**Justice S. Vimla:** when judges come to judicial academy for training, we are in the habit of asking them, what are the best practices that are being followed, so that it could be circulated to all of them to follow. We always compare best practices, and we tell the judges that this is the practice being followed in this district by so and so...you follow that and it would be helpful for them. After hearing you now I feel that what the practice that should not be followed is and we should have a model for that also. If an FIR is to be registered and see the career is spoilt. The confidence of the general public in judicial administration itself is lost...Everything is lost...if judges are going to do like this, it is very very bad. Then it is...to the bench clerk...if he does that... for what purpose he does that...only to please the judge (Participants: No...No...) Then? Money?

**Participant 14:** the ultimate objective was to get the property or whatever the relief in the form of the judgment.

**Participant:** Sir, you know, Gurgaon is one of the lucrative suburbs in Delhi and the price of the real estate is sky rocketing and one judgment which is...which is...heard 10 years or 12 years when the limitation is over, then...it doesn't and it transfer the title to persons who are poor. Why do you keep it in the record room? The judge is nowhere it is only the record keeper and...

**Participant:** and interestingly, the judges concerned of the court (inaudible), 11th entry is not. So everything was manipulated by the person concerned.

**Participant:** One particular lawyer, he was even barred for three months, so...

**Participant:** He has kept an original decree Photostat and the and below that decree my signatures put there and one Photostat copy was taken and it was posted in some other proceedings. The other side advocate was suspicious and...

**Justice S. Vimla:** he was trying to tell something twice and someone intervened.

**Participant:** One person went there, one court person went there and intensely (inaudible) left that file before the concerned clerk and went away. The concerned clerk took it, this is the official file and registered...and made an entry in the register. And that person took the certified copy...came again, took the certified copy and showed the other person (inaudible)...and the...the...purchaser confirmed that this (inaudible) is present in the JDA...JD office ...and he was satisfied. Then the fraud person sold the plot to the purchaser and thereafter (inaudible) then the clerk came to note thereafter.

**Justice S. Vimla:** And the all the more essential that we should go for record management. These are all incidents.

**Participant:** The additional district judge awarded a compensation of rs 45,000 or something like that for a judge... for a client...he went in appeal. The Hon'ble judge after hearing the arguments before the Hon'ble High Court awarded compensation after hearing both the counsels. Said...I'm awarding 65,000 per acre. Okay. While reading the order, the (inaudible) he typed 95,000...the court master. Signature of his Lordship and everything is there... (Inaudible) it was signed as 95,000...@ of 95,000... later it was known through the GP, and found that the original record was only 65,000. I tell you mam, two officers...Abdul and Vijay Kumar...both...two officers are entrusted there...

**Justice S. Vimla:** If MS Word is used as a software to type judgment, I do not know which software you are using, If MS word is used, we have an option called a tracking, what is the original judgment typed and what is the correction made later on, it will give...tracking option is used it will give you the complete picture at what time done, which part of it is done and to that extent they will be able to track the (inaudible). That is a question to be exercised. I'll only tell you two circumstances that are frequently coming to our notice on account of this kind of lack of management of records. The one thing is "The Motor Accidents Claims Tribunal", when they dispose of petitions, immediately when the insurance company passes the amount, they file an application to withdraw the money. In the meantime the records are sent to the district courts central records and for years together , wait for records...await records...await records...await records...await records... they are not getting their money. Immediately complaint comes to the High Court, not saying that they don't have the records, not saying that records are to come from the district courts, but saying that there is collusion between the judge and other party therefore judge is not dispersing. It is very painful to see such kind of allegations judges. when they are not at all concerned with...it might not have come to the knowledge at all, then he should have simply said , call for the records at initial stage... he would be getting signals in 100 files.. To call for records. He will simply put on your table saying that, sir...these are all call for record files. Simply we are inclined to sign the papers and this type of complaints comes. The last complaint is with regard to the depositions. You will be very careful about it, only that I'm telling you...What was...what was signed is not the same as I deposed before the court. There are additions by using the computers...there are additions which were deposed at all. This kind of complaint comes immediately...because of the seriousness of the matter involved, immediately vigilance inquiry is ordered. You know what is the consequence of Vigilance enquiry being ordered? Once a Vigilance Inquiry is ordered, the future prospects of elevation itself are lost. For the District judges then...the next is it is only elevation, that is why I'm telling...you be very very careful on the deposition. Impose strict conditions on the persons who are maintaining and who are issuing copies and ensure that no manipulation is allowed to be done in the deposition. Take care of that. We go to the presentation part, what is record management? Yes...Yes...

**Justice S. Vimla:** yes

**Participant:** so how do you ensure...so there is a traditional practice of mentioning on the file (**Justice S. Vimla:** yes)... In CIS there are various options, so by going to the master option, we can add what word ... that is High Court is...

**Justice S. Vimla:** Yes sir, if we start using software, there is no problem at all. You might have seen the software CIS 2 in the morning.

**Participant:** What I do is, whenever...which contains the direction, I enter into (inaudible)...like plaintiff is represented by so and so...defendant is represented by so and so. I ask the registrar to put (inaudible) I ask them to carry it forward... Every day...Every file...I ask them to carry it forward.

**Participant:** I would request all judges here and add this option in CIS. I think my brother Mr... Joshi will also agree. So that will come on a daily mode.

**Participant:** Your experience (inaudible) but we find it very difficult to get optimum copies from the advocates. So if we get back to if that will come under that caption na...that immediately gives notice to the litigants, the advocates that it is coming under that caption.

**Justice S. Vimla:** It will be facilitative. As you said, it'll facilitate more...it'll be bringing into our attention that it is due for disposal. It is a very good suggestion, but only thing is many of the places, the software is yet to be implemented. That is a problem. Once they start implementing, absolutely it is a very good suggestion to be followed. Every one of us can take note of that and once it is implemented, we will start implementing that.

**Justice S. Vimla:** Both... both... Many courts are still functioning in the rented buildings, therefore no Computers, Tally in several courts. That is true...So long as that position continues, we can give them instructions to be careful in such kind of matters, whether by keeping a separate notebook where the High Court directions are there... the officer must have personal attention over that. They should not believe upon the bench clerk, that is what



I'm telling you. We should never rely upon their words... even if they are telling you, you should countercheck by your records.

**Participant:** can the court put some specific mark on the files.

**Justice S. Vimla:** That is what I started telling that it should be...

**Participant:** there is a direction from the Hon'ble High Court to dispose of within three months

**Justice S. Vimla:** No...Only if cases will come for High Court directions.

**Participant:** I will give you one example madam, (inaudible) and how hurtful it is one is a district judge, one is a person is guilty of murder and has been sentenced to (inaudible)...the appeal was allowed...was acquitted...on that day the order of the Hon'ble Court was misplaced. He put his signature and put it on record. Now it is with the senior judge...the record remained silent because the original file of that person who was acquitted had been in jail for 8 years.

**Justice S. Vimla:** Did the person ask for compensation, and then who is answerable for that. Awarded...

**Justice S. Vimla:** yes...yes...All of you kindly take note of this situation...this situation is a very serious situation that he is sharing and if this is allowed to happen then it is very dangerous. Because of practical importance I thought that these two things could be shared on a practical side and then we will go for the regular...what we are talking about the record management.

**Justice S. Vimla:** it needs elaboration... I'll tell you what it is...(participants discussion inaudible)why they are called perpetrator of crimes is because they did not ensure equality , did not allow the wife to walk along with him...that is why it is described as the perpetrator of the crime. (**Participant:** husband is the perpetrator of the crime) No...No... Husband who

declines equality to the wife .not all husbands. Who declines equality? Just to make you wake up...not for any other purpose...not for you to cause injury to anybody, this is...There is somebody here.

**Participant:** the walk from footprints?

**Justice S. Vimla:** footprints... recently there was an international women's day celebration in which...our chief justice was one of the speaker... he was telling, why always people say "for every successful man, the women is behind", why don't they say a lady in front...there may be various perceptions...various views on that...Now see...very beautiful interpretation

**Justice S. Vimla:** w is always double v that will never lag behind. Yes...

**Justice S. Vimla:** like yesterday, this item, this side was reading this...now this side...yes...

**Justice S. Vimla:** No...No...that is that the case I discussed yesterday, we can skip off that.

**Participant:** Should I start??

**Justice S. Vimla:** Yes...yes...

**Participant:** people have a stereotype view about district courts which is rigid and information and communication technology.

**Justice S. Vimla:** Our courts are user friendly...how many of you feel that it is user friendly.

**Participant:** mam it's becoming...

**Justice S. Vimla:** Becoming...very diplomatic way of...

**Participant:** We are yet to start...

**Justice S. Vimla:** We are yet to start... we will start... or we will not start....

**Participant:** we will start...

**Justice S. Vimla:** We will start...and I...slowly...slowly...snail pace it is going. It is not as fast as it is expected...Another...one more thing I want to discuss with you...but it should start only from the district court and from the district and for the High Court...High Court can follow the model of the district court even...we have...in Tamil Nadu we have restriction of record rules...in which it is classification is...what are the permanent records and what the temporary records and what are the documents which are to be maintained over a period of time and later it should be destroyed and when the...when we wrote to the government asking for digitization of records, government wanted us to tell, How much of records we want to digitize and how much will be the expenditure. This is a million dollar question for which we could not give an answer because our record rooms is now excepting for one single chair and for a record person to sit there, there is no place at all. It is a heap of papers there. Even if you to take it out...index...arrange...everything is to be done...in my opinion it would take another 3 years to do that. That is why (inaudible) that is how records are kept. It is not so easy...then we wrote saying, it is tentatively this much will be required. Then another query came...What are the records that we have to destroy so that only permanent records should go for digitization and not all the records. And then we started posting the court masters of all the courts and all the registrars...for each and every vacation. No vacation for them for the past 3years...They have been assigned special duty of segregating the records under the destruction of record rules, what are the permanent records and what are the records that are to be maintained for a period of one year or three year...having regard to the importance attached to that. Many state... They were told that they have no record rules at all. They are yet to frame the rules relating to the maintenance of records...I do not know... Take care of the position in your respective state, whether the state government has framed any rule or law on this and subject to that...we should go for digitization of only important records and if you go for entirety there is no.. Practically it is not possible.

**Participant:** if we categorize the documents, A...B...C...D documents have to be kept for certain period of time...

**Justice S. Vimla:** whether it is subject to rules available...

**Participant:** Suppose a document (inaudible) and one document was registered there. (Inaudible).. And then applications and revisions and...Disposed off and actually what...

**Justice S. Vimla:** yes...yes...that is a meager amount that is being allotted, considering the practical need for each and every High Court, anywhere there is a move now that at least now they have allotted some funds. If we start with that and rest we will address state government to give us additional funds and I wish we would be completely able to digitalize all the records... yes...

**Participant:** ensuring the integrity, reliability and accessibility of the judicial records is critical to maintaining public trust and confidence in the court.

**Justice S. Vimla:** It needs no elaboration...Next...

**Participant:** records are fundamental and essential to the legal system of the country and perhaps are even more crucial to administration than to any other function of the government sector. Now coming to the records in the various legal reasons. For records of the various sections are also used for a range of ...Even indefinitely and justice won't be served to a citizen who was wrongly convicted.

**Justice S. Vimla:** We had the experience of taking the judges who were really recruited to hear and during the prison visit, because they are very new to prisons, their mind is excited and they were very eagerly going and talking to each and every prisoner. We were afraid that this prisoner should not cause any harm to them if they are closely moving with them. And one of them who was in jail for nearly 10 years, he was asking this question ...my examination started about 10 years back, it was not on a day to day basis.. If we continuously attend the court, we do not know by listening they become experts or they will apart from reading law books they become expert...we do not know...he was telling exactly the same sentence, "Once examination commences, it will be on day to day basis, it is not like that...it is on year to year basis. One year one witness examined and almost all witnesses have not

turned hostile. Am likely to be acquitted shortly and if I'm acquitted after 10 years , who will give this productive 10 years period, who is going to give me. Whether we have answer for that?

**Justice S. Vimla:** yes...only thing is...All of them are talking and...May I request you to listen to him, and then we will listen to all others...yes...

**Participant:** what the courts in Europe do is, they put (inaudible), they put in a device...an electronic gadget to his leg...in respect of (inaudible)...because of this pendency is also, so if you adopt that procedure then find some solution in this...

**Justice S. Vimla:** Can we do it India is the question, No, no, if you are subjecting the accused to a ... no...No...it's a very good suggestion...Unless law is amended we will not be able to do anything.

**Justice S. Vimla:** No. no...it is not the question of caste...they...immediately...the human rights group will start agitating saying it's a right to privacy violations.

**Participant:** Human right is also there (inaudible)...particularly in some particular offences... if you put this, it will be very easy to track the movement of the accused...

**Justice S. Vimla:** yes, it is about...

**Participant:** We need not bother about the cost.

**Justice S. Vimla:** It is about human rights...

**Participant:** the cost is very less, because it is nothing but a....

**Participant:** I had personally witnessed, in that case what happens is that , they are ...first there was an argument for...you are at the district level and we have heard the arguments and reserved the order and (inaudible) so after closing the argument, again here was an agreement between the PP and the defense counsel, whether to put the device or not, so I

have heard the argument, if the defense counsel, no it will curtail the social movement of my client (inaudible)...if the offence is a very grievous offence, so if this is required in the larger interest of the society and...so when the judges have agreed to put this device, the card is with the police officer and they are given directions...They then are giving instructions to the (inaudible) saying that you should keep the gadget ready by say ...next Monday at 10.30a.m. So in the meanwhile, the data should be saved and keep it ready and at 10.30a.m. On Monday...this was the condition of the bail...so we should not do it in all cases

**Justice S. Vimla:** no...No... Personally speaking.

**Justice S. Vimla:** Rape cases, yes...

**Participant:** habitual offenders...but not for all.

**Justice S. Vimla:** no...No...it is not cast at all...cost is immaterial...no...No...Considering the manpower being wasted...Considering the manpower being wasted to take out these accuse, cost is nothing...no...No...

**Participant:** there is large number of case pending for (inaudible) I think we should give, human right is also there.

**Justice S. Vimla:** no...No...It is...

**Justice S. Vimla:** It is absolutely beautiful, if I'm given liberty I will also follow this...but the only problem is we follow the system where the accused is presumed to be innocent till he is found guilty. No...No... we should change the law...I'm for changing...we should change it...law commission chair, one of the members is here... I was also talking to you in the morning...He was expecting each and every one of us to contribute.. We will contribute...we will write a recommendation that this should be followed, no...If it is for your personal view...it is a very good suggestion...very good suggestion...No culprit will escape.

**Participant;** we want to adopt it, that's all.

**Justice S. Vimla:** see the problem is we live in a country where the people expect, the persons who committed murder of the PM, even to be released and pardoned. This is a condition in which we live. This is the expectation of the people...yes...yes we are diluting it...instead of diluting it, if it has to be made rigid, your suggestion is very good...it is to be followed...but to be followed in accordance with the law...if it is to be done, we have to change the law and we should be ready for that also. It's a very good suggestion

**Justice S. Vimla:** Yes...by and large...any refinement of this definition...Information generated in the course of an official transaction and that is also documented as a source of reference and a tool by which a organization is governed...there are three points coming in that: Records arise from actual happenings, they are Snapshot of an action or an event. Then next is what record management is.

**Justice S. Vimla:** Records now are for the passing of the Information Technology Act, records include electronic records also.

**Participant:** Records management is "the field of management responsible for the systematic control of the creation, maintenance, use and disposition of records.

**Justice S. Vimla:** disposition of records. Yes, what is the sequence of this creation of records...then classification...Classification is being done anywhere...Anywhere.

**Justice S. Vimla:** when we call for records...records are being sent without even an index. If you have to see the confession or the dying declaration, I have to go through the entire records to find out where is the...in which page confession is there and which page dying declaration is there, that is...indexing itself is not being done...where is the question of classification...unless what I'm trying to tell you is...unless ...unless...this part of it is taken care of, there is no use of management at all. There is no use of maintaining it at all, that's it.

**Participant:** while indexing they should not write the index...they type...and also I ask them to provide their (inaudible) otherwise I say, I will send the required people to take in the pen drive and I'll keep in the...

**Justice S. Vimla:** Starting from

**Participant:** from...old records, and I started I said you have to records in the put it in the computer (inaudible) further because. The record rooms were not properly maintained then we are not giving...most of the records from this records are likely to be spoilt and the record assistant and the clerks are not trained... so what we have to do is, unless we have to give a proper room with safety measures, we can't, we have to lock it...and the concentration of records, alone it should be opened, otherwise simply they are.. It should be separated from the record section. They have to provide computer monitors with all the (inaudible) and the record room should be locked and unless, some person who is the in charge of the room, it should not be opened, then only we can feel that no record can be...

**Justice S. Vimla:** stolen...

**Participant:** and as far as... is concerned, what I have to do now is I have to send in each pages to avoid...

**Justice S. Vimla:** Manipulation...

**Participant:** haan, everyday...I'm sending...each page...where the signature of...whoever deposes no...

**Justice S. Vimla:** last line of the deposition...

**Participant:** I used to sign, so we can avoid the manipulation...

**Participant:** can we address at the local level...ultimately is in charge of registry, but normally issue arises about the availability of finance, but for that purpose also we can make a proposal and send it to the government through the High Court. Even now compactors



have been introduced so that those records are kept in those compactors also. But I think if (inaudible) can take the initiative, these things can be done, but at least we should move in that direction.

**Justice S. Vimla:** See PDJS are heroes of the district, they feel like...nothing like...Yes...Yes...without funds it is quite possible...no...No...without funds also it is possible...I will tell you...

**Justice S. Vimla:** No...No...I will tell you...

**Justice S. Vimla:** then you should understand the power of the Hero in making the Director to act according to your dictation. If you're the real hero, the director is in your hands not elsewhere. I took over as the Director of Judicial Academy at the instruction of the High Court. When the district where I was the principle district judge is...Trichy District, which I have been sharing with my experience is with you today...one fine day without even the waiting time of 24 hours, I was asked to take over the Academy...Justice A.P. shah was the CJ then. He told me, as of now, the academy has no funds, what you will do...I was just blinking...if...he is such a fine chief justice you might have come across his name... I have never seen such a flexible and sensible and very accommodating chief justice...I have never seen...just to test my mind, I was just thinking...whether to test my mind...I have any creative ideas, he has asked me this question or really...If really the academy has no funds...he is asking me...because in those so many...things were passing in my mind, but I did not say it was not possible to do anything...I said your lordship may give me waiting time for 24 hours, then I'll come back with my suggestions...then I went back and suggested that , the Prime requirement at that district at that moment of time was Judges were not knowing how to use computers.. I thought to increase the productivity and proficiency use of electronic device is a must. Then I told the CJ, that till we get the funds from the Govt. let us not waste our time, for each District there are universities and colleges, of course the first thing we ensure , whenever we take help from others is , to ensure that no case of them is pending before the Court. If we start taking that assistance from them, then they will start demanding something else which will be counterproductive to our efforts. I told him that

several universities and colleges, they are willing to help us; we can go for computer training for all the judges... Then he said, if there is no litigation... Absolutely I give complete freedom to you, you start doing that...then for each and every district, the best colleges, best resources, one to one hand on experience to each and every one of the judges in that particular district. This program was arranged from Monday to Friday, word one day, power point one day, excel ne day...everyday...five days. Complete training for each and every district in entire Tamil Nadu it happened in zero budgets...Not that we can't do anything without budget. Judiciary stands for the people, and people are ready to help judiciary. They take it as a matter of honor to help judiciary, only thing is we should make use of it from appropriate persons. if we know that technique.. it is quite possible to do anything. I never for a moment say that you don't ask for funds and we will not provide funds and we want you to do things. Now that a time has now reached, the Supreme Court has taken cognizance of the electronic governance now. It is fortunate, that Supreme Court judge directly in charge. One of the Judge by name Ramesh, has been deputed from Tamil Nadu to work along...he is a member in the committee. See he is a subordinate judge, he is a member in the committee to that takes him where leading in computer association. We are doing it... We are getting the funds from 14th Finance Commission, the State Government and from the eGovernance committee society of the Supreme Court... From three sources we are able to get the funds, still the problem is, when we go to the record room, if you want to.. Say (inaudible) if you want to clear the record room, if it takes, if they keep lagging behind, technology will advance so far and we will not be able to do that. We have suggested to Chief Justice, that local student and students of IT, those who are studying electronic...subjects, there services can be.. We can utilize their service. Maybe of course by paying some nominal amount during their vacations, even they could be assigned a project like that.

**Justice S. Vimla:** Yes...Yes...Something.. Something for them, without...utilizing them without paying anything or doing anything, it was suggested that their services can be made use of and we would be able to assist them.. Provide moral support for them,, if we're asked to do them independently, they may feel otherwise.. Their teachers and vice Chancellors are

ready to help us in this way. and now there is a proposal that is under discussion whether those students can help us to sort out these records. They will also learn about the system that what are the impediments in the system, bottlenecks in the systems and before they enter it , if they know the level about them, they will come ready to manage all these things and we are talking about this. Yes!

**Participant:** one small query, you are taking about physical record, when nowadays even the police have started ..

**Justice S. Vimla:** Electronic records?

**Participant:** because, in our the CD, so hardcopy as well as the CD for the purpose of supplying to the...

**Justice S. Vimla:** No...No, in Tamil Nadu, they are talking about sending only through mail. Everything, and they have now started sending FIR that is being tested as a pilot project in one of the district, without any practical problem that has worked out very well, and now the second stage is now you're talking about from FIR up to the filing of the final report, whether it could be received in e form, whether this security features will be very intact and the certain records are confidential. And certain records not even the accused will be entitled to copy.. In such circumstances, of it comes to the knowledge of the bench clerk whether there would be a violation of the confidentiality and these kinds of legal issues are under discussion.

**Justice S. Vimla:** CD.

**Participant:** In chara ghotala case it was supplied by way of CD, the documents were in the form of one or two.

**Justice S. Vimla:** then let us come back to the session because it appears that next session is at 1 o'clock, I don't want to take your tea time and refreshment time and I don't want to take. Quickly just rush through, 2-3 slides, important is...I'll ask them to circulate only e

copies.. paper will be saved, human resources will be saved.. I believe you are e saving people..(participants inaudible) .yes.. 2-3 slides..

**Participant:** Goals of record management programs. Create only necessary records for efficient and successful operation of the office/institution produce the records when needed, retain/preserve only records needed for continued operation of the office/ institution, and dispose what is not needed.

**Justice S. Vimla:** Yes, next...

**Participant:** Benefits of effective record management- Facilitates effective performance of activities throughout an agency. Provides protection and support in litigation. Allows quicker retrieval of documents and information from files...Improves office efficiency and productivity...Supports and documents historical and other research..

**Justice S. Vimla:** Yes, Next.

**Participant:** Well-managed records are essential tools for good governance. In turn, an efficient court system must of necessity be based on effective record keeping systems and services...—They facilitate the achievement of transparency and accountability in public administration...Well-kept records are the greatest enemy to corruption.

**Justice S. Vimla:** this one line, all of you...I would like to request you to keep in mind.. Well-kept records.. Greatest enemy to corruption...Yes...the next slide electronic record management..

**Participant:** In many Indian town Courts or District Courts, record rooms have become filthy paper junk rooms even smelly and un-traceable of records. With the advent of electronic age all these papers or judgments may be converted in electronic software data. Mostly in all High Courts and District Courts of India this practice is already started to save the records electronically which further need fast completion..

**Justice S. Vimla:** we'll go to only two slides...just go to docket management...yes...Who is next..?

**Participant:** Technique, files are given unique ID numbers...The unique IDs may be printed, bar-coded or embedded in an RFID tag...RFID / Bar-Coded Readers can be installed at strategic points...Active / In-active RFID tags can be used to identify the files.

**Justice S. Vimla:** Yes, next is digitization of record room. What is the advantage of it?

**Participant:** Digitization of Record Rooms. Technique...Technology for fast scanning of Court files is available...After scanning the files, OCR (Optical Character Recognition) software is run ...Proper indexing of the documents is done and the files are saved in original scanned format as well as in Word Format with index..

**Justice S. Vimla:** Yes, next...then the benefits of digitization...how much space we are saving... when we talk about record management we are equally talking about space management. This is only to give a impression regarding how much of space we will be saving by record management. Yes. Somebody can read this.

**Participant:** Digitization of Record Rooms...Benefit - One normal typed page is equal to 10 KB and after compression with Win Zip it is equal to 2 KB...One Flash Drive of 256 MB capacity can store 1.28 Lac pages in Win Zip compressed format...One CD Rom of 700 MB can store 3.5 Lac pages...One Hard Disk of 40 GB can store 2 Crore pages...The savings in maintaining record rooms will be huge...Data can be retrieved very fast...

**Justice S. Vimla:** then is it not a motivating factor for all of us to go for record management, .undoubtedly...Then we will go for record management, then next time when we meet, we talk about our management efficiently and the system being updated by all your efforts...Wish you all good luck...thank you.

## **SESSION 7**

### **Budget Preparation for District Court**

**Mr. Sanmit Seth:** Welcome back, so now we will proceed with the third session for the day, for that we have Hon'ble Justice K.G.Sengupta with us who will be taking session 7 & session 8 on budget preparation for district courts. to start with first...for convenience of Sir,, we will have a self-Introduction followed by what are the expectations out of budget preparation for district court, so that in a better way.. He will be able to answer all your queries. So I hand it over to sir..

**Justice Kalyan Jyoti Sengupta:** a very good afternoon to all my dear honorable judges, I can't say all of you are sisters or brothers anymore, because technically I'm out of the system already. But my fading memory sometimes helps us to join together and here is a forum we get all brothers and sisters. Initially when I used to come, that is dating back to 2004-2005, then this system, reminds me, I suggested in a function...at the time Justice Lodha used to come.. Justice Deepak Mishra...and Justice Manmohan Sarin, these were the Hon'ble Judges,

we used to come together here and we just helped everyone to save. So one day I remember I suggested that why this ..who are you ...who are you...it's not like that... let us have a self-introduction...I'm such and such from so.. That is why this is a place as you know, in bank it is said - KYC means Know Your Customer...right... Here we say, KYB...KYS... Know your Brother and Know your Sister...an truly speaking in the scheme of the Constitution, the District judges from all the states, from various states.. in the scheme of the Constitution is not supposed to come to this place but because of the effective administration of Justice and the intrication of the Judiciary, our Supreme Court thought it fit that there should be a forum where all over India, all the judges of any level can come and tell what is good, bad and feelings and bad things. I must be very candid to say that...because this...our Judges of the District level, they are subjected to superintendence, guidance and control by their High Court, because of their administrative discipline, the Brothers and Sisters Judges in all days did not dare say anything about any bad things unknowingly done by the High Court and High Court judges. So here I remember Justice Balakrishnan as his Lordship then was. He was then the Judge of the Supreme Court. he rose from Subordinate Judiciary initially he was there his Lordship...he felt the need, so something should be done...so what is the forum...our Constitution doesn't envisage that any other forum can take control and guidance for the subordinate judges other than the High Court. Naturally, this forum is thought to be a appropriate forum as a voluntary expression, it's not that the expression of anguish...expression with the retaliation...expression with nothing, but it is a voluntary in order to see our system is smoother. So this is why we are...naturally this budget system, I mean this is Budget Preparation for District Courts. Truly speaking , before we go back to Constitutional Era, the government of india 1935, the government of India 1919, the government of India 1900, at that time there was no provision like this, but because of the Commencement of the Supreme Court, High Court under Article 235, is having administrative control and guidance of everything in the process is the High Court is guardian so to say in all this pattern. Before that, a district Judge, a Principle District Judges are the custodian and not the responsible for everything for the administration of justice within his district and his power was so much before consti, and he was answerable, not anyone else.. a very enviable position I've heard it from a number of judges who were the

Justices of Calcutta High Court, was the Pre-Independence High Court Judges and he continued post-independence and after commencement of the Constitution and .. Their Lordship used to receive salary more than the existing judges, who have been appointed after commencement of the Constitution, because their Lordships salary at that point of time Rs.8, 000 per month. Just Imagine 8,000 per month basic salary per month in 1947. So by workshop Constitution (inaudible), But the district judge's position also was very good. After independence and after independence because of the commencement of this Constitution, the District Judges position has been subjected to the control and guidance of the High Court. Now budgeting is the most important thing. A Budget means in our judicial system and for you kind recollection I say the judges...subordinate judges are not the judges' simpliciter. They are the organ of the State, because all the Judges of the subordinate level are the Constitutional authority. So administration of justice is one of the sovereign functions of the State. See, it has been explained in Supreme Court in All India Judges Association, you must be aware in 1993, reported case that they are the constitutional authority and judges of a level are at par with the member of the Cabinet, because cabinet takes decision and bureaucrats execute it. Similarly judges take decision...follow it...Running the judicial administration is a very stupendous task and the judges, the Principle District Judges at present, their responsibility is being increased day by day by the Legislature. Why I tell you, before Legal Services Authorities Act, 1987, the District judges duty was to see his own District administration, judicial, income, expenditure all this. Now principle district judges now, has become the Chairperson of the District Legal Services Authority. There is a legal aid, lok adalat, ADR system all are envisaged in this act. First, our Principle District judges think about regular justice delivery system how it can be done. So before that, I want to know my brothers with a self-introduction and then I will request each of our Learned brothers and sisters to speak how they have prepared their budget in his own district and what is the constraint they are experiencing and what is the suggestion he/she wants to give to overcome this constraint within this framework of Constitution and mind that only two or three minutes time will be given so say within short time, so that I can understand that what is the problem you face, because the problem varies from state to state...it is not static. The problem which is for example in West Bengal is not the problem of Telangana or Andhra



Pradesh or Hyderabad for that matter and it is not for the state of Uttarakhand. the problem which is for West Bengal it may be similar problem in State of Kerala, in State of Tamil Nadu, in so many states. Now I will request from this end kindly.

**Participant:** (inaudible) presently chairman (Inaudible)

**Justice Kalyan Jyoti Sengupta:** Which state please?

**Participant:** Jharkhand.

**Justice Kalyan Jyoti Sengupta:** Jharkhand, Okay.

**Participant:** Sir, recently I was posted there. I was there for District and Session Judge. The problem I faced was with regard to budget, specially, for District Legal Association. Because of the civil side we have number of staff and budget clerk etc. so that was making me...

**Justice Kalyan Jyoti Sengupta:** Bring Legal Services Authorities Act, send for. Yes Please.

**Participant:** But we don't have separate registrars for the legal services authority, we have to run the administration with the services from the assistance of the civil courts, so there we face difficulty because none is interested in going and taking the fair copies with us, so they are least interested. So there we have to take personal interest in making the provisions (inaudible) conducting Lok Adalat, mediation fees and other things of management. So this is what is feeling because of crunch of staff...because of no staff at all.

**Justice Kalyan Jyoti Sengupta:** So in Legal Services authorities you are facing a problem?

**Participant:** yes sir,

**Justice Kalyan Jyoti Sengupta:** and you're regular? You don't have any problem? The government is generous enough...Whatever the demand you make, they accept

**Participant:** yes

**Justice Kalyan Jyoti Sengupta:** Excellent! So please kindly tell...

**Participant:** I am Mr Srinivas, Principle District and Session judge working at (inaudible) in Karnataka. So far as the budget for the legal aid activities is concerned, we don't have any problems with that. They themselves allot the funds. The state itself will allot the funds and we will manage with the, and we will manage all activities with the fund. Whenever we send requisition, they are met. So there is no question of preparing budget and submitting. So far as office expenses are concerned,

**Justice Kalyan Jyoti Sengupta:** office expenses of your regular judicial administration or all legal services.

**Participant:** No, legal...As far as legal no problem.

**Justice Kalyan Jyoti Sengupta:** So your regular administration...what is that problem?

**Participant:** My office staff will prepare list and filing section will return with basic foundation and then we will sit together and they will come up with some proposal and suggestion which I might have left and we will prepare and give it final shape and then submit it to the administration

**Justice Kalyan Jyoti Sengupta:** Yes... So...please madam! Use the microphone if possible; I'm little bit short of hearing. I'm aging...yes please

**Participant:** Myself Sarita Singh, district and session judge, devas, M.P.

**Justice Kalyan Jyoti Sengupta:** M.P., oh you're local so to say.

**Participant:** 146 kilometers away from Bhopal. Sir, budget is prepared in my district, in very district of M.P. as per direction of Hon'ble High Court. Hon'ble High Court has given us a proforma including every head and we have to fill up the proforma, what is our requirement. We access it on actual basis and some guesswork, estimate it and fill it. So, at present I didn't find any difficulty in filling the form for budget and preparation of pie charts.

**Justice Kalyan Jyoti Sengupta:** Can I ask you one thing?

**Participant:** yes

**Justice Kalyan Jyoti Sengupta:** In the proforma, what is mentioned? Is there any column for receipt or income?

**Participant:** Every column, stationary.

**Justice Kalyan Jyoti Sengupta:** That is the expenditure. I am asking you normally preparation of budget; we are to show what our income, receipt is. Receipt means what we get income on account of court fee, on account of fine.

**Participant:** We never deal with this kind of, we don't get such column.

**Justice Kalyan Jyoti Sengupta:** You don't get such columns, okay.. I want to understand each and every state varies...

**Participant:** Yeah, expenditure and my clerks tell me that our expenditure was that last year and we enhanced looking to what a person needs and future need.

**Justice Kalyan Jyoti Sengupta:** so you are not facing so much of problem..

**Participant:** at present I don't feel so...

**Justice Kalyan Jyoti Sengupta:** fund is not the problem, whatever you put ,you just get it. And madam, yes please....

**Participant:** I am Saroj Yadav, district judge Rampur, U.P.

**Justice Kalyan Jyoti Sengupta:** U.P. okay.

**Participant:** (inaudible) we write our demands on the particular side...

**Justice Kalyan Jyoti Sengupta:** as I understand, no problem. Is it true? if it is true then I'm very...more than happy... Yes please...

**Participant:** I am Poornima

**Justice Kalyan Jyoti Sengupta:** Poornima.

**Justice Kalyan Jyoti Sengupta:** Tamil Nadu, yes.

**Participant;** Lordship, normally I am distributing the funds for the whole district. Sometimes we use to ask about requirement but we have been provided lesser use. It is not sufficient for us to utilize the object, so we have to again request...Whatever request we want, they will provide it. So now they have been asked us to (inaudible) No amount, no expenses have been.. There is no specific head, so we don't know how to spend the expenses because all the.. we have requested all the judges to come and attend on the Saturday and Sunday, so we have to collect some extra amount for the funds and one more thing is , in some...for example if I ...there are two, for computer maintenance and computer purchase, if there is an excess amount in maintenance, then I can use this for purchase of computer. Is it possible?

**Justice Kalyan Jyoti Sengupta:** understand.

**Participant:** what I need got to know, before 31<sup>st</sup>.

**Justice Kalyan Jyoti Sengupta:** whether you can bifurcate this expenditure or not.

**Participant:** so once earlier I can't go and purchase (inaudible) one for me to see, and other for the litigants to see, how what the discussion is going on. So there is no permission to purchase computers, this is only...or doubt on me whether it can be used or not.

**Justice Kalyan Jyoti Sengupta:** So, I understand your, I find that ....Tamil Nadu as I apprehended, and this demand is not made, yes madam.

**Participant:** Principle district and session Judge Surat, Gujarat.

**Justice Kalyan Jyoti Sengupta:** Gujarat is a very prosperous state so no problem.

**Participant:** my lord, my predecessor judge, he starts providing for (inaudible) for each and every staff, so now latest when I asked my purchase committee to go , they come up with a proposal saying that printers for each and every staff would not be viable instead you can have a Jumbo Xerox machine where LAN connection will be given. So 1 page should give up to 60 pages instead of (Inaudible) so I said that this idea is very good, I want to do (Inaudible) we had the money for all that, so finally purchase committee , came up with a formula(inaudible) purchasing all the printer, the jumbo machine, then we had saved a lot of money, so we asked the legal department that we want some other things to be purchased like we (inaudible) record sessions and all and more other things. So they came out with a query saying that how come you all could save this money. Even the justification was why.

**Justice Kalyan Jyoti Sengupta:** there is the difficulty also....how could you manage?

**Participant:** I wanted new things, new models.

**Justice Kalyan Jyoti Sengupta:** So as far as fund is concerned there is no problem?

**Participant:** No problem.

**Justice Kalyan Jyoti Sengupta:** in any sector. That way, Gujarat is a prosperous state, so because Gujarat, Justice Bhattacharya was Chief Justice, he used to tell me how he is getting all these, no...Gujarat is a prosperous state, yes, next.

**Participant:** I am Kishore Kumar from Jammu and Kashmir, District and Session judge, Jammu and Kashmir.

**Justice Kalyan Jyoti Sengupta:** Yes, Yes, Tell us please.

**Participant:** Lordship we get the funds from the Hon'ble High Court. We have no direct conversation with the Government. Whatever we require, we make a requisition to the Hon'ble High Court and they provide us the funds.

**Justice Kalyan Jyoti Sengupta:** while preparing budget, do you mention that is what your income from district judiciary is?

**Participant:** No your Lordship.

**Justice Kalyan Jyoti Sengupta:** you never mention.

**Participant:** I give only the expenditure, what is the estimated...

**Justice Kalyan Jyoti Sengupta:** only the expenditure column is given? Everywhere, yes... next

**Participant:** Mylord I'm Partho , District Judge Session Judge Howrah in West Bengal. So far as my district is concerned,

**Justice Kalyan Jyoti Sengupta:** what about your building?

**Participant:** Yes, my lord, my building plan has been sanctioned but the, because of the unauthorized occupation it cannot be materialized. But so far as the building is concerned, in my, headquarters and the sub-divisional area, it has been remodeled; it has been renovated like anything. The entire building has been plastered, repainted, the seats have been changed, marble and beautified tiles are there, so far it is done. So far as budget is concerned, what I do, I make a meeting with my officers asking them about their requirements. We make a note of that. thereafter, we...myself, my registrar and one of the senior additional district judge and my (inaudible) used to sit together and just verify the requirement and the prospective requirement also and thereafter we prepare a budget for the proposing, for the expenditure for the next year.

**Justice Kalyan Jyoti Sengupta:** do you show what is the receipt in your district administration on account of fines, on account of...

**Participant:** Yes, yes.. We make a statement and I am happy to say that the year 2015 and the year 2016, District Howrah has got enormous fund from the Government of West Bengal.

**Justice Kalyan Jyoti Sengupta:** So you have got fund.

**Participant:** We are getting funds but it makes some delay..

**Justice Kalyan Jyoti Sengupta:** government is helping you.

**Participant:** government is nowadays, in 2015-16 we got funds, and there is no issue.

**Justice Kalyan Jyoti Sengupta:** and so far this unauthorized encroachment is concerned, that you are to take care of for removal.

**Participant:** As a matter of fact, cases have been instituted by the district administration on the unauthorized encroachment.

**Justice Kalyan Jyoti Sengupta:** local problem ...or.

**Participant:** local problem, local political problem.

**Justice Kalyan Jyoti Sengupta:** but this has to be done with a circumspection and with a very well thought of action.

**Participant:** yes, yes.

**Justice Kalyan Jyoti Sengupta:** That I shall cover how it can be done.

**Participant:** Only the space crunch is the only problem in Howrah. Otherwise it's all right. Because in the subordinate courts there is (inaudible), two additional district and session judge

**Justice Kalyan Jyoti Sengupta:** at one point of time a proposal was there to shift the location from that place to other.

**Participant:** Yes, that proposal was mooted out, because the lawyers were not willing to go elsewhere. A proposal was mooted out for shifting the court proposal to Dhumurjhala. The lawyers were not agreeable.

**Justice Kalyan Jyoti Sengupta:** this will take time, so, yes next...

**Participant:** I am Mukul Savelekar, I am Principle District Judge, Alibagh Maharashtra.

**Justice Kalyan Jyoti Sengupta:** Okay.

**Participant:** generally the expenditure are usual expenditures. We do not find any measures...problems in preparation of budget. We find problems in getting funds from the government.

**Justice Kalyan Jyoti Sengupta:** You are getting fund problems?

**Participant:** Fund problems, if we demand 50 lakhs as for...

**Justice Kalyan Jyoti Sengupta:** they reduce it...

**Participant:** they reduce it...

**Justice Kalyan Jyoti Sengupta:** that is the phenomenon everywhere except a few states.

**Participant:** yes, your honor and most of the times, in case of infrastructural matters, the funds are released almost 2-3 months before 31st of March, then we have a system in place

**Justice Kalyan Jyoti Sengupta:** revalidation is required.

**Participant:** even...is required. So it takes almost three months, so we are not able to utilize the funds.



**Justice Kalyan Jyoti Sengupta:** understand, this problem is very common to west Bengal also and some states like Tamil Nadu...not in Hyderabad I must say. Yes please. Next Please Sir.

**Participant:** my lord, myself B.N. Mohanty , District judge Balasabh, from Orissa.

**Justice Kalyan Jyoti Sengupta:** okay...tell us what is your situation?

**Participant:** Sir, so far budget is concerned, literally we place the demand; there is no income, only demand. So while preparing the demand, I use to collect information from all the courts about their requirement in different heads, so after compilation of those demands, we (inaudible) them out keeping in mind the opening of new court and to meet some exigency, and we submit the same to the Hon'ble High Court. the Hon'ble High Court after compiling the compilation of the data of all the districts, they used to place the same before the government. what the problem lies...Suppose I calculated the expenditure in one way, but my counterpart of other district exactly put the amount, for the compilation made in High Court, toh High Court placed the demand before the Government, government. lump sums sanctions the amount. When the High Court distributes the same, equally distribute..

**Justice Kalyan Jyoti Sengupta:** oh I see, not according...

**Participant:** suppose my demand my one lakh, so 60,000 to me in first lot, (inaudible) but because mostly below 1 lakh. (Inaudible) so where we prepared the budget of one lakh to meet the exigency, we receive only 60 thousand, but the district which don't require the amount , they are provided with more money. So who'll bell the cat sir, who'll tell the High Court?

**Justice Kalyan Jyoti Sengupta:** just one second, yes please..

**Participant:** lordship, this is the exact problem we are facing.

**Justice Kalyan Jyoti Sengupta:** I understand. Now we shall discuss how it shall be got over. In which way.. it's not a very short term method, it should be a long term method, but we shall start at it, because every state has got its own problem. As far as Gujarat is concerned there is no problem, all are in abundance.

**Justice Kalyan Jyoti Sengupta:** so Almighty takes care of them properly.. Yes, next please.. Yes my dear..

**Participant:** Myself S.M. Modak, Small Causes Mumbai.

**Justice Kalyan Jyoti Sengupta:** Okay.

**Participant:** Sir, normally we receive grant from state government and central government, central government. grants means court managers salary, morning evening court, and heritage court. Now there are no Morning Evening courts, but we receive grant for court manager. So normally the grant received are salary grants, office expenses, and computer like that. Now So far as those grants are concerned, we are getting the grants. Now normally the expenditure is plan expenditure non plan expenditure. So far as infrastructure is concerned basically we have two - Minor work and major work...as far as minor work is concerned, state government has sanctioned us Rs. 3 lakh per item, so we are submitting the proposal to the High Court and High Court used to release that grants. So at present the grant is 3 lakhs. So far as major work is concerned, we have to depend upon the government and even if we submit the proposal, this year, we do not know when we will be issued the grant and at that time, prices are escalated. So far as the running the court is concerned, there is no issue and so far as my judges have said, if grant is given under a particular head, can it be utilized for another head. So according to my knowledge, we have to submit the proposal to the government for re appropriation of the grant and if it is falling under one head, then take the permission and it can be utilized for another head also. because there was a problem at Alibagh, daily wages laborers are there so there was a limited grant and we sent a proposal to the High Court that we may be permitted to use the grant under a different head for that purpose and there are also certain limitations, how much time you can re appropriate the

grant, that depends upon the financial delegation of powers. So far as the daily expenses are concerned, there is no issue, the issue is mainly about the infrastructure and my other candid admission is before this August gathering is that , basically we are not trained for that purpose, so our

**Justice Kalyan Jyoti Sengupta:** are you trained to manage your own family affairs? it is an inherent. Am I not correct..? When in a corporate sector dealing with public, then there is some sort of idea. Who requires training? Who doesn't have inherent qualities; he requires training according to my estimation, therefore don't go for training, you just...pointed out very important thing, how the diversion could be done...you have given an idea. I will explain later on, what could be done, so I will disclose what resolution has been taken, it will go a long way. I will explain that by taking a cue of your thought, it was thought.

**Participant:** I must make a candid admission before this gathering that what about our Nazirs? Should they be called as Assistant superintendent, superintendent.. they are placing the figures before us, they are just asking them Budgetary provision for the last year how much and this year for example, more number of fast track courts, let us increase the grant for salary , then wait for computer , so we have to just make it just addition and submit the proposal, this is .. This is my candid admission, before this gathering.

**Justice Kalyan Jyoti Sengupta:** No... This problem is being faced by many officers and many district judges over the country, where (inaudible) constraint is there, our problem is that there are states which are always deficit , they don't have any of their own source of revenue generations.. There are problems, so we will discuss

**Participant:** I must also make a candid admission, that I think any expenses are concerned , there is no issue, issue arises about utilization of those grants, because ( **Justice Kalyan Jyoti Sengupta:** that is the most important) my learned brother judges will also agree that many a times grant has to be surrendered. There are two issues. First one- Grant is released, few days early to 31st March, that is one issue and even though grant is released earlier, many a times it happens that it lapses.

**Justice Kalyan Jyoti Sengupta:** that will be taken up, we shall discuss, taking care of ...some sort of measure in Honorum style, I believe honorum model will also be a very workable idea.

**Participant:** my lord I am G.B. Subramaniam, I am now attached to the judicial academy at Hyderabad.

**Justice Kalyan Jyoti Sengupta:** Hyderabad, oh, you are in Judicial Academy now, you have come..

**Participant:** Senior faculty, FAC..

**Justice Kalyan Jyoti Sengupta:** you are director, now?

**Participant:** No, I'm additional director, senior faculty at FAC..

**Justice Kalyan Jyoti Sengupta:** So no one is taking care...

**Participant:** No, Shreesudha is now working as director.

**Justice Kalyan Jyoti Sengupta:** director...oh I see... She has become director, as a director...okay...now because judicial academy Hyderabad is my brainchild also. Yes..

**Participant:** as far as...

**Justice Kalyan Jyoti Sengupta:** what is your problem? You can't have any problem..

**Participant:** absolutely my lord, the Hon'ble CJ is the pattern in chief and there are board of directors..

**Justice Kalyan Jyoti Sengupta:** anyway, you need not tell about it, I know about this. My memory is not so...

**Participant:** ...was the CJ of our High Court and

**Justice Kalyan Jyoti Sengupta:** so I have taken care of everything, when it was settled...in Hyderabad, in both Andhra and Telengana, there cannot be any problem, both the CM's are very cooperating. so when Chandrababu Naidu was in old time the undivided Andhra Chief minister , he was even helpful and even Kiran Reddy.. But Kiran Reddy could not do one thing I wanted for increase of pecuniary jurisdiction of Junior Division Civio judge , that he could not do it. I got it done later on. Yes madam, what is your problem please?

**Participant:** Mylord I am Sushmita (inaudible) I am from District Karimganj. I am District and Session Judge. Normally I..

**Justice Kalyan Jyoti Sengupta:** which state please??

**Participant:** Assam, District and Session Judge Karimganj...Normally...

**Justice Kalyan Jyoti Sengupta:** Here also, what is your problem there in Assam?

**Participant:** Problem my lord, as such, I am not having any problem. I try to

**Justice Kalyan Jyoti Sengupta:** No problem, you're getting...

**Participant:** I Try to adjust within the budget.

**Justice Kalyan Jyoti Sengupta:** are you getting funds from the government?

**Participant:** yes, my lord... whenever I am making a demand under different heads, I am getting funds and I try to make the adjustment. Normal problem is regarding infrastructure. Whenever there is a new room coming up or a new building coming up, we dont have AC's in our courtrooms, in our chambers. I have one A.C.

**Justice Kalyan Jyoti Sengupta:** infrastructure wise?

**Participant:** yes, that grants...Lapsing of grants and normal problem is there..

**Justice Kalyan Jyoti Sengupta:** lapsing of grants..

Participants: Yes, Yes...and I try to adjust within the budget and so far only I am (inaudible) in District Judge and regular expenses problem I'm not facing. We get the budget, as I make the demands.

**Justice Kalyan Jyoti Sengupta:** What about legal aid?

**Participant:** legal aid also...we are getting funds, which is very small which is sufficient..

**Justice Kalyan Jyoti Sengupta:** yes.

**Participant:** for legal aid..

**Justice Kalyan Jyoti Sengupta:** what about... yes.

**Participant:** your lordship I'm Imtiaz Ali, district judge session judge from Lakhimpur district of Assam...

**Justice Kalyan Jyoti Sengupta:** Assam, Okay...

**Justice Kalyan Jyoti Sengupta:** As far as funds are concerned, no problem?

**Participant:** so far as Guwahati High Court is concerned...so far as other forums are concerned (inaudible) funds come from Government, so government...

**Justice Kalyan Jyoti Sengupta:** So you are getting funds?

**Participant:** we are not getting funds as per our requirements...

**Justice Kalyan Jyoti Sengupta:** Oh, I see... say so

**Participant:** as far as High Court is concerned, there is no problem..

**Justice Kalyan Jyoti Sengupta:** Listen, High Court cannot have any problem, why I will tell you later. Why we are facing problem, district judges or judiciary administration is facing

problems that will be explained to you. High Court and Supreme Court will not have any problem. Okay, I'll explain why. So we are asking you your district.

**Participant:** District?

**Justice Kalyan Jyoti Sengupta:** Your district no problem... your sister has spoken about that no problem, fund is there. So naturally maybe revalidation of funds, revalidation of grants requires some time. This is a common problem everywhere. Yes, what about you..?

**Justice Kalyan Jyoti Sengupta:** which state?

**Participant:** Rajasthan...

**Justice Kalyan Jyoti Sengupta:** Rajasthan, okay, how liberal is your state to?

**Participant:** my lord, MACT, is directly under the supervision of the State Government,

**Justice Kalyan Jyoti Sengupta:** State government is cooperating? Supplying funds?

**Participant:** yes lordship, there is no problem..

**Justice Kalyan Jyoti Sengupta:** You are in which district? You are in which district?

**Participant:** which?

**Participants-** District!

**Participant:** Bhilwala

**Justice Kalyan Jyoti Sengupta:** Bhilwada ...okay

**Participant:** from Jaipur to... As far as the High Court is concerned, from the other courts, the compilation of (inaudible) is under the supervision of District judge, but the (inaudible) is not from the High Court. Court wise...

**Justice Kalyan Jyoti Sengupta:** This is the problem. So fund is not being supplied, is that so.

**Participant:** Yes, if we demand the budget, the justification is needed. it is the records which is the justification. Even then we are not allotted the demanded budget.

**Justice Kalyan Jyoti Sengupta:** Oh, I see. So deficiency is there, okay, yes, please..

**Participant:** Good after my lord, I am Mohindon Pal and I'm additional district and session judge Komolpur , Tripura

**Justice Kalyan Jyoti Sengupta:** Komolpur Tripura

**Participant:** we have a unique system where our budget is prepared by the law department. of the government of Tripura.

**Justice Kalyan Jyoti Sengupta:** Entire Judiciary?

**Participant:** except High Court.

**Justice Kalyan Jyoti Sengupta:** No don't you prepare your budget from your district?

**Participant:** No...My lord let me explain, Till 2014, every quarter we give expenditure as well as receipt statement which shows our expenditure as under various heads like salary etc., as well as our income. We give a quarterly statement to the law department. , the Secretary law department. and ...

**Justice Kalyan Jyoti Sengupta:** Not to High Court?

**Participant:** Not to High Court. The law department. then prepares the budget and after end of the financial year, the new financial year starts, every quarterly we are given an LOC. Before the LOC, a letter is issued to us asking that this is our allocation, maybe 2 lakh for the quarter and they will ask us that you please tell your choice or preference for the various



heads. Accordingly we give the heads of our requirements and the money will be issued in the form of LOC. Since 2014, our Hon'ble High Court, our Hon'ble CJ has given a letter to the law department. saying that the budget for the subordinate judiciary, which is definitely an quoted budget unlike High Court which is (inaudible). They have said that the budget must be preparation in consultation with us. Hon'ble CJ has prepared a format derived from various High Courts, asking us our requirements. As of now we, make our budget depending upon the three years.

**Justice Kalyan Jyoti Sengupta:** Government accepted the proposal of CJ?

**Participant:** High Court...State government is now preparing...it's still the law department which goes in the discussion in the revised discussion, it's the law department. chap who goes for the discussion. We are not represented, but a consolidated statement from the High Court is now given to the law secretary for placing before the finance commissioner. But unfortunately, if I ask for 2 lakhs, it will definitely not be more than 60,000 or 1 lakh. Fund is a very big problem, especially under the office expense or whatever is popularly known as contingency. Under this head there is acute shortage of funds. Our Hon'ble High Court has come up with some judicial directions regarding payment of witness's diet etc., for that they make

**Justice Kalyan Jyoti Sengupta:** no, that ...that provision is there in the CPC, payment of the costs to the..

**Participant:** in criminal courts also we pay the witnesses...

**Justice Kalyan Jyoti Sengupta:** Witnesses, is provided in the CPC..

**Participant:** there is a judgment...

**Justice Kalyan Jyoti Sengupta:** order 16...

**Participant:** there is also a judgment from the High Court that the witnesses must be paid, their diet and PA money on the same day.

**Justice Kalyan Jyoti Sengupta:** ohoo...just this thing, so far as the payment to the witness is concerned it is provided in the order 16 of CPC. The party who is asking, for calling a witness, he has to deposit.

**Participant:** pardon me, my lord, I'm talking about criminal cases..

**Justice Kalyan Jyoti Sengupta:** Criminal is concerned, you are right...so far criminal is concerned, supposing witness has to be summoned, for example , a doctors witness...Doctors transferred to some other place. In spite of issuing a summons or notice he does not turn up. Because of this problem first of all travelling expenses. If they are law says that it shall be provided immediately at his hand travelling expenses, then after completion of deposition, he has to be paid his daily allowances and that is the problem in criminal justice delivery system.

**Participant:** My lordship, we are never paying to the officer, because they are getting from their department.

**Participant:** we can issue the certificate that he has deposed...

**Justice Kalyan Jyoti Sengupta:** Okay, we shall take care of everything. I don't know whether you are paid you're travelling allowance, TDA regularly or not. Coming to Bhopal.

**Participant:** to pay to the witnesses, for that funds are coming..

**Justice Kalyan Jyoti Sengupta:** are the funds of the judicial order, now they are paying.

**Participant:** for that, the government is giving sufficient fund but for all other aspects, the fund is very less.

**Justice Kalyan Jyoti Sengupta:** fund is less...Okay...Yes next please...

**Participant:** I am Anil Kumar, (inaudible) from the state of Kerala. I am district judge in Tlichery District. Only recently I took charge. I do not have any experience in budget preparation.

**Justice Kalyan Jyoti Sengupta:** you are from which state you say?

**Participant:** Kerala..

**Justice Kalyan Jyoti Sengupta:** Kerala, yes..

**Participant:** always there is shortage of funds.

**Justice Kalyan Jyoti Sengupta:** No funds...you see...Kerala is always like West Bengal or others and also Tamil Nadu.

**Participant:** even for normal expenditure, there will be deficiency of funds.

**Justice Kalyan Jyoti Sengupta:** let us find out...I can give you an idea; I can give you an idea that how it can be done in future...not this year...so I shall give you an idea...Yes please.

**Participant:** Sir, I am L.Joshi from Chhattisgarh, district and session judge Korea begumpur. I am not facing any budget problem sir, if required more budget, we request to the High Court and High Court will sanction.

**Justice Kalyan Jyoti Sengupta:** So you are not facing any problem?

**Participant:** No...No...sir..

**Justice Kalyan Jyoti Sengupta:** Chhattisgarh is now prospering.

**Participant:** Sir..

**Justice Kalyan Jyoti Sengupta;** yes, next please

**Participant:** myself Govind Kumar Mishra, District Judge Korba, Chattisgarh. Budget allotted is not a problem, but much problem is expenditure.

**Justice Kalyan Jyoti Sengupta:** Yes...yes...Budget is not a problem

**Participant:** Budget is not a problem, expenditure is a problem. certain power of District Judge, 50,000 stationery, furniture other things, then higher purchasing.

**Justice Kalyan Jyoti Sengupta:** if the limit is enhanced...

**Participant:** So what I want...three months...so current requirement is not fulfilled. this reason

**Justice Kalyan Jyoti Sengupta:** okay

**Participant:** Contingent fund is also less...fewer funds. This is district judge to increase many funds. Contingent heads..

**Justice Kalyan Jyoti Sengupta:** I understand.

**Participant:** It is the main problem.

**Justice Kalyan Jyoti Sengupta:** Yes, next please.

**Participant:** my lord, I'm Yogesh Khanna, I am district judge, rohini Delhi.

**Justice Kalyan Jyoti Sengupta:** Delhi.

**Participant:** yes my lord..

**Justice Kalyan Jyoti Sengupta:** Delhi can't have any problem...

**Participant:** No...No...Absolutely no problem with regard to the funding.

**Justice Kalyan Jyoti Sengupta:** Delhi ...Delhi court and Delhi people generate their own funds..

**Participant:** recently I had a problem, you see, we basically wanted 33 security guards for our Rohini Court, so we went for eTendering process and technical bids of approximately 10 or 15 firms, they were accepted and 5 or 6 they were rejected. Before the financial bid could open, they started resorting to all this, you know complaints and CVC's and all that. So then, I also went through...because, the notice of tender was given by the earlier district judge. When I went through that particular notice of tender, you see, there was some discrepancy. It was based upon certain instructions of the government, the state government which was later on revoked by the government and then some other instructions were there. So ultimately I had to cancel that entire process and then I thought we should take the...not outsource the security guards but take it from the homeguards from the office of Director General of Home guards. For that a separate sanction is required and for which you see we are working it out. I mean so far as funds are concerned, that is not a problem, but home guards they take more...400Rs more than the minimum wages, 4-500 rupees as compared to outsourced ones. That is also not a problem; simply the problem is that we have to take further sanction for this.

**Justice Kalyan Jyoti Sengupta:** Okay, thank you, next please.

**Participant:** Sir, I am (inaudible) Tamil Nadu, on demand our High Court provides, but one problem, our government provided car for all District Judges, but refused to provide expenses for accessories. Without basic accessories, we cannot use the car long period.

**Justice Kalyan Jyoti Sengupta:** So according to you, demand is not made?

**Participant:** yes...it is.

**Justice Kalyan Jyoti Sengupta:** yes, yes.

**Participant:** So without basic accessories we cannot use the new car for long period. Further for maintenance and regular service for one year or two years, they are not allotting funds at all. On demand they prescribe certain formats, on that head allotted, we can demand it. Accessory demand, there is no column, for maintenance there is no column. So if it is not maintained properly, the car will go on for two years, three years and it cannot purchase..

**Justice Kalyan Jyoti Sengupta:** Okay... Yes.

**Participant:** has to be solved.

**Justice Kalyan Jyoti Sengupta:** yes, next please.

**Participant:** myself Rajesh Gupta, district and session judge, Neemuch, M.P.

**Justice Kalyan Jyoti Sengupta:** M.P... M.P... No problem...

**Participant:** generally there is no problem, but at the time of allocation or allotment we get lesser amount than the expectation of our demand, that is general problem...and we have to make supplementary and further demands.

**Justice Kalyan Jyoti Sengupta:** Yes please, you are from.

**Participant:** good afternoon sir, I am Major Phalak Sharma, Additional district and session judge, Gurgaon, so far I have not...

**Justice Kalyan Jyoti Sengupta:** Haryana?

**Participant:** yes sir, Haryana sir... So far I have not got any opportunity to prepare the budget, but otherwise from my experience as a magistrate or a additional and session judge, I can say that paucity of funds, definitely and positively affects our stationary..

**Justice Kalyan Jyoti Sengupta:** you are getting lot of funds.

**Participant:** Funds are there but not to the mark sir, like stationary..

**Justice Kalyan Jyoti Sengupta:** as per your demand you are not getting..

**Participant:** yes.

**Justice Kalyan Jyoti Sengupta:** okay... Yes please.

**Participant:** good afternoon my lord, I am Rajan Gupta, I am District and Session Judge, Bilaspur, Himachal Pradesh. So far as the budgeting is concerned in our state, every judicial officer is his/her own DDO (Drawing and Dispersing Officer). So far as the (inaudible) is concerned, he has no role basically to play in the budget preparation of the other courts working in his district. The only thing, the (inaudible) is supposed to do with the High Court where the Budgeting is concerned that is only under one head. Of all the courts that is (inaudible) payment of road and diet money to the witnesses, as my brother from Tripura was pointing out, so far as..

**Justice Kalyan Jyoti Sengupta:** it is borne by the government

**Participant:** No, Road and diet money payable to the witnesses. because the corpus for the

**Justice Kalyan Jyoti Sengupta:** Criminal matters.

**Participant:** Criminal matters...if total allocation is made by the High Court to the District Judge. Now what the District judge does, suppose the CJM needs some money, or the additional district Judge needs some money, or the JMJC needs some money, they send the request to us. So we are sending the, we allocate the budget to them only under that head. So far as all other heads are concerned, they directly send their proposals, their estimates, surrenders, excess surrender direct to the Hon'ble` High Court and Hon'ble High Court allocates the budget. So the district judge has only one...

**Justice Kalyan Jyoti Sengupta:** High Court allocates the funds for.

**Participant:** we send our proposals to the Hon'ble High Court. Every court sends. So like in my district...let us say there are 10 courts I am not to do anything with 9 other courts budget

preparations. I am to prepare only my budget. But yes I am concerned with road and diet money because under that head as District judge I am supposed to demand, because it is me, it is the district judge rather, if not me, the office of the district judge which is to allocate the budget under that head- road and diet money to witnesses to all the courts because the requests are made by the courts to the district judge who in turn allocates the budget. that is the system..so far as funds are concerned, no problem.

**Justice Kalyan Jyoti Sengupta:** funds are no problem.

**Participant:** No problem.

**Justice Kalyan Jyoti Sengupta:** this is a major thing.

**Participant:** no problem. Whatever we want, we get.

**Justice Kalyan Jyoti Sengupta:** and you are from Sitakulam...

**Participant:** Yes your Lordship, Namaste Lordship, I am Vimla (inaudible) Principal District Judge, Sitakulam. Actually I have no problem to submit budget to the Hon'ble High Court. The funds are allotted. But one thing is the recently we are...our (inaudible) conducted recruitment, and resort to taking fee from the candidates of Rs.200 for each application. We are raising that amount for conducting the process.

**Justice Kalyan Jyoti Sengupta:** Lot of surplus fund is there.

**Participant:** yes...but amount where we have to be, rather it is to be used for future recruitment or not, we don't know

**Justice Kalyan Jyoti Sengupta:** I remember...

**Participant:** But we have written for sanction of the funds..

**Justice Kalyan Jyoti Sengupta:** In the Junior Division Civil Judge Exam..I remember.



**Participant:** yes, your lord ship.

**Justice Kalyan Jyoti Sengupta:** lot of fund was generated..

**Participant:** we have to be careful...we have to ask it to be kept in which account of the said account. That is...by that way we are processing the recruitment and no amount for allotting to the judges who are appearing for interview or who are as invigilators. So it is our moral duty and we have to do it.

**Justice Kalyan Jyoti Sengupta:** you need to...Andhra and Telangana need to curtail the expenditure and to make yourself self-independent as far the energy sector is concerned.

**Participant:** actually I have just one problem Lordship, actually recently as sir told that vehicle was got repaired and it is more than 75,000 it was required, only 40,000 is permissible for the district judge to spend on the..

**Justice Kalyan Jyoti Sengupta:** I understand, the limit has to be increased.

**Participant:** So that I require, I made a permission but the budget is going to be collapsed in this month of March, so that they asked us to adjust from another head, but how should I adjust the remaining amount, I could not trace actually that this is the problem..

**Justice Kalyan Jyoti Sengupta:** yes, what about you..

**Participant:** My lord, Namaskar, I am also from Orissa and as my Learned friend from Balasher, I want to add just one thing. There is a column to show the income we can...

**Justice Kalyan Jyoti Sengupta:** You have a column?

**Participant:** yes,

**Justice Kalyan Jyoti Sengupta:** You are from Maharashtra?

**Participant:** I Am from Orissa sir..

**Justice Kalyan Jyoti Sengupta:** Orissa.

**Participant:** Principal district and session Judge Cuttack sir, regarding preparation and submission, we submit the budget to the High Court.

**Justice Kalyan Jyoti Sengupta:** that is the scientific method..

**Participant:** So we.. the district judges, in my state, the district judges prepare the budget, so far as my district is concerned I prepare two budgets (inaudible) What I take care, I give the vision to my my staff who do the ground work. I give a vision to them, my vision to them is last years wants, once provided (Inaudible) and prospective expenditure we are going to incur. Infrastructure (inaudible) regarding construction of old buildings other expenditures are looked after by the High Court, so far as the expenditure (inaudible), so while preparing the budget all these factors I take into account sir...Regarding funds sir, more or less our demands are met so far as my district is concerned.

**Justice Kalyan Jyoti Sengupta:** okay.

**Justice Kalyan Jyoti Sengupta:** Fund is not a problem.

**Participant:** at times sir, but at times as my learned friends will agree, we receive the funds very late. There is no shortage of funds, but is there is shortage of time to expend it.

**Justice Kalyan Jyoti Sengupta:** I see. I understand any other.

**Justice Dharnidhar Jha;** I am Justice Dharnidhar Jha

**Justice Kalyan Jyoti Sengupta:** okay nice to meet.

**Participant:** So there is no problem regarding funds I would say, Funds are not the problem in our district.

**Justice Kalyan Jyoti Sengupta:** I think it's over..

**Justice Kalyan Jyoti Sengupta:** Just I'll finish. After discussion

Justice Vimla: brother with your permission, with your permission, on behalf of all district judges here, I have a statement to make. At least so far as Tamil Nadu is concerned, they are very right in saying when a government sanctions a car, no driver is sanctioned. government sanctions a car, no petrol is sanctioned. I raised this issue before the Central government Finance Secretary, who was there in the ECommittee meeting organized by the Supreme Court of India. Justice Madan B. LOkur was with us for one and half days, just about one week back, and I raised the issue, the Finance Secretary coolly says, that whatever is allotted and sanctioned by the Central government, it is the High Court. We make you serve the funds and whenever central government makes matching grants is not given by the state government and that is how system is being delayed and they are sanctioning everything, and it is my practical experience, that when the High Court judges were elevated on the same day (inaudible) no additional sanction of staff members. When we were asking for only the P.S. to be sanctioned for the Hon'ble Judges, they sanctioned the car and the driver and not the P.S. we were asking the government as to how they can function without the P.S. being sanctioned, how the day to day administration, which is the basic and the primary requirement that cannot be sanctioned. The IAS officer who is the secretary, finance secretary has to ask me this question when one IAS officer is having only one P.A. why three P.S. for the Hon'ble judges. Then I told him, I want you to be my guest of the High Court for one day. You come and sit in the High Court and watch the proceedings and then only you'll be able to understand why three Hon'ble. P.A's for the Hon'ble Judges, then he did not understand I had to tell him that if a P.A. takes dictation for one and half hr., it takes 6 hrs, For him to transfer the whole thing, therefore three P.S. are to be required. This is how the High Court has to fight with the government to anything and everything. It is not as if that the High Court is not having problem with them, our CJ, in yesteryears had to say that the government has to be declared of financial emergency if the government is not going to sanction funds to the High Court. When we went to that extent then the government was, came forward, not as if the government is changing. government has so many problems, programs of their own, they want to spend more on their programs and then on the programs

of the District judiciary. I don't think all the subordinate officers in the district judiciary ever got money for their medical reimbursement; they got money for the tour travelling allowance. They sacrifice all their rights, the funds allotted to district judiciary is never sufficient, not at all sufficient. that is a professionalism in the budget preparation is the need of the Hour and we should go for that, make appropriate demand and get appropriate amount and do whatever is essential for your subordinate judges.

**Justice Kalyan Jyoti Sengupta:** So just after discussion, just excepting few states, I find that the common problem is that, even if the fund is allocated sufficiently, then because of the limit or cap put, so judges cannot spend on the money, so that's why money goes back. This is also peculiar problem, so the cap putting, that it has to be unlimited. So how it, next this is the common problem everywhere and another problem I find, supply of funds not made according to the demand, and then problem is that even if somewhere the High Court has no role to play. Now that another problem is common, nonpayment of the TA & DA to the witness in criminal justice delivery system. This is also common problem and as a result the criminal justice delivery system suffers. It is a common problem everywhere. Now you know that why High Court and Supreme Court do not have any problem? Do you know?

**Participant:** yes my lord..

**Justice Kalyan Jyoti Sengupta:** Yes.

**Participant:** It is on the contingency fund.

**Justice Kalyan Jyoti Sengupta:** is it consolidated? It is charged to the consolidated fund of India.

**Participant:** One thing my lord, (inaudible) the grounds for the subordinate courts not to the High Court.

**Justice Kalyan Jyoti Sengupta:** Listen, Listen, listen...listen...You see under Article 229, Constitution of India, all expenditure of the High Court including the salaries of the staff,

pension and everything stand charged to the Consolidated Fund of the State Concerned. Similarly under Article 146 clause 3, Supreme Court expenditure, salaries everything stands charged to the consolidated fund of the...But you will not find such mention in Article 233, 234, 234(A), which concerns with the district administration and even you'll find in Human Rights Commission, also depends upon the budgetary allocation. Our district administration depends upon the budgetary allocation. Budgetary allocation means law department., just make a demand with the approval of the Governor before the Assembly justifying this amount and how this is done. First they take all the estimated expenditure of the concerned district judges, all over the state and they work out this. This is their demand. So supposing if our District Judges is making a demand, the actual expenditure, then it will be wrong. You are to bargain. For example I tell you, when you are on account of salary for example in a district judge on account of salary one crore, right. On account of salary, salary will...it will not be refused...monthly salary will not be refused for the staff and it's invariably paid. Next is capital expenditure. Capital expenditure means, the construction of the building and infrastructure. If the new court has been sanctioned and immediately you are to get a plan, and estimate it, and then put it, for that here, you are to give an estimate up to a window level, up to certain level, up to plinth level you are to do that. So when you give the estimate, give an estimate in higher figure, because the tendency of the government is to reduce the expenditure. If you requirement is Rs 10 only, you make it 15, you make it 15, then how far they will reduce. Then you will get at least 7 or 8. So this is the bargaining. So you do this, so far as the office expenses and other expenses, non-planned expenses are concerned, revenue expenses are concerned, you are to put forward in this way. So when you prepare the Budget and to justify it, you take the last five previous years expenditure, right and give the whether the filing of litigation is on the increasing side , then you give the 10%- 15% increase minimum. Then you give the figure of expenditure. Once you give it, then when it is (inaudible) obviously it will be routed through High Court, but what I feel it is understandable because when I was in Calcutta High Court, I was for sometimes an Acting Chief justice, what I used to instruct. I instruct the registry to call all the district judges and their staff and to have a conference before what is your requirement, what is your requirement, what is your requirement and give the estimate. and if the registry concerned

sits with all the principle district judges before preparation of their individual budget, rough estimate, then here an equitable distribution could be made by the High Court if our High Court takes care of everything, naturally, if this system is not available, I would advise to all of you to suggest the High Court, and to make a request to High Court registry, please , we require that an annual conference of all the judges before preparation of the budget, we need at least in the month of February, first week of February you make a request, then you put forward you demand justification. You must be justified for the putting forward any demand and once it is done, then High Court will be in a position what is the proportional requirement, for example, as one of our learned District judge says that, he requires this fund for 10 lakhs and odd, and another district judge requires for 2 lakhs and odd, then distribution is made equally. Not according to the proportion of the requirement, that is why, if the pre-budget preparation of the pre-budget preparation, if a conference is invited among the district judges, and by the High Court registry, it will be an equitable appropriate distribution of the funds and how this fund could be whatever allocation is made, how this fund could be appropriated. What happens it varies from state to state about the release of fund. Some state, immediately release the entire funds for the annual, maybe Gujarat, maybe other areas...undivided Bihar used to do that, I don't know what is the Jharkhand now, entire fund ..

**Participant:** Now they have checked their (inaudible)

**Justice Kalyan Jyoti Sengupta;** No, No, yes, now it has come, so in some states for certain quarterly release allocation, or half yearly release. what happens in the last quarter when they release, then maybe the last week of February it is released, so naturally, 31st March is coming to an end, if we (inaudible) the money goes back, unutilized. How it will be utilized in which manner, that we will discuss later on. So, that is why, you...there is an outcry, everywhere, even our Supreme Court level, when CJ , Justice Dutt was there, last chief justice chief minister conferences, everybody was clamoring for financial autonomy to judiciary. Then I was just telling the August gathering in the scheme of Constitution it is impossible. Financial autonomy to judiciary is not possible at all, but in the scheme of the

Constitution, the frame of the Constitution, how financial autonomy of the judiciary can be achieved to a large extent. I proposed and I believe that proposal has been adopted in the chief minister chief justice conference you will get this later on. The Honorum Model, what is done, whatever funds are allocated by the law ministry, that fund because what happens, (inaudible) law ministers address the assembly, this is my grant, you require for administration of justice and this is legal aid and then the assembly sanctions it. and thereafter appropriation bill, power of appropriation under the Constitution has been given to the government, the executive government, but no power of appropriation has been given to the judiciary at all. Why, because from the judiciary no one can participate in the debate of assembly. then who is to make a demand in the assembly. Appropriation means, first I make a demand, then sanction, then appropriation bill by an Act. So from judiciary it is not possible. That is why until and unless the Constitution is amended, it is difficult and the CJ has to go and make a demand. This is not possible...No one can make a demand. So who is to make it, unless he becomes a member of the Assembly? Right of Audience is not there, so Constitution amendment is required. It's not possible. I think so financial burden should not be shouldered by the judges also, otherwise they will be bugged down with this and corruption and unauthorized misappropriation and.. It is safeguarded. But it can be achieved. How? My idea was that it is an appropriation, so whatever fund is allocated for example in a Sikakulam district, have made a demand. So Sikakulam has made a demand for about 20 Crores and government has sanctioned 15 crores take it for example, not entirety. So again these 15 crores after appropriation is done by the government, so government in its own way, they will issue a GO-government order of re appropriation, Government order of re appropriation meaning thereby entire fund allocated to a particular district should be given immediately to the District judge. Entire fund at the beginning of the year, and if is not so, then whenever it is released then immediately. As a result you need not require for the note of the finance department, you need not require note from the law department. you need not require note from High Court. Of course High Court will do that, but in District Judge level, it is not possible to work out like this, but I can give idea and hopefully the appropriation concept has been adopted by Chief Justice Chief Minister conferences in last year. I remember, the resolution has been adopted re appropriation. Andhra, what happened in

(inaudible) whatever money is allocated, immediately re appropriation by government Order is issued, therefore High Court did not go time and again, Please Sanction Release for a box of pins and you need not go to the government. So similar procedure should be adopted for district judgeship also and if it is done, of course the power has to be the moment re appropriation system is introduced, power would be automatically enhanced unlimited. If the District judge in judicial side can decide the matter having unlimited jurisdiction then why in administrative side, the expenditure should be limited. So this is the idea I can give you and let us come back after having our lunch then we shall discuss.

**Participant:** in our district we have no limitation.

**Justice Kalyan Jyoti Sengupta:** In some districts no limitation.

**Mr. Sanmit Seth:** we are having a group photograph, so please assemble at the porch for the group photograph...Now...Now...So we come back by 3 o' clock.

## **SESSION 8**

### **Budget Utilization in District Courts**

**Justice Kalyan Jyoti Sengupta:** yes, everyone is welcome back. Now, I will take few minutes of time regarding the first topic preparation of budget. Suppose you are a principle district judge for successive one two or three years. Now it may so happen there are revenue expenditure as I say salary and day to day expenses, these are the revenue expenses and this is met out of the so to say the non-planned expenditure. But building of infrastructure, new court has been created and the court has been created, court has been made functional on a rented house, on a rented house with a temporary infrastructure. I can tell you one



experience. When I was, I am talking about the year 1999, and then I had gone to my own district to see the regular inspection so I had gone there. There I found that one junior division civil judge court was housed in a rented house and magistrate lockup in a rented house, house is not very suitable and anyway it was managing. The problem really cropped up, the landlord was demanding payment of rent from the District judgeship and naturally the district judge is forwarding the demand to the law ministry and judicial department. So, five years rent was due and unpayable. On account of non-payment of rent, an official notice was given for the entire court. Just see, mere nonpayment of rent, rent was not paid and then notice was given for eviction and indeed a suit was filed in the same court against its eviction. Can you imagine the situation? So this, what happened then, I had a good term with a law minister as I said if you want we shall close the court and the bar altogether. When I threatened it, then it worked. But that request was a personal request and personal pressure but this is not always done. So this happened. Supposing in a rented court infrastructure court, I just advise you, all of you, you first make a, ask for the construction of new building, acquisition of land. Immediately the court, the immediate creation is there, try to see that and give the advice to the High Court and also government, unless you give, the blueprint of the permanent infrastructure, we're sorry, we cannot do on a temporary infrastructure. I remember another case in West Bengal, I bifurcated to the state, where one district will not get is called Midnapurnu or West midnapurnu two are bifurcated. And then because of some political pressure and other things and some sort of concession on part of the High Court also, there no infrastructure has been built up permanent district court as yet. In the month of January, I visited last to see what the situation is. Of course I am no longer a judge there, but when I enquired to my surprise, I found that it was the same thing if not worse. Therefore I advise you, all of you, you must see the infrastructure of the court building permanent and also the residential accommodation of the brother judges also. Make it a point, as if your own case, as if it is your own requirement. Don't miss it. So you give this estimate. Take estimate, what is this amount and plan and drawing and design. Supposing land is to be acquired. Under the old act, acquisition of land was very easy. In present acquisition of land is more than impossible. So, acquisition of land is required, land is...asking the government to find out, identify the land, if it is not available then report to the High Court. It's not

possible, so therefore, infrastructure make a plan design beforehand and estimated cost you put forward. Suppose it may so happen, in the first year, nothing will be released. Don't let it up there. Following it, put the same thing, with the escalated price, right? Escalated price, supposing coal had, for some fund had been released first year and the moment fund is released, you get to know, you have to take personal initiative, that how much fund has been allocated and released by the government. informally. So when you get you get to know, you have demanded 5 crores, you have got 1 crore, so you can make a plan and program with 1 crore expenditure. What you can do, with a little bit of boldness I should say, legitimate boldness. The moment you get to know that one crore has been sanctioned and released, but when you get the money, it will take some more time and don't wait for that. Fund will be reaching my hand, thereafter I will make a tender call and ... No, you have come to know that fund is going to be released one crore, then what you will do- immediately after coming to know, you ask the PWD Dept., Move it, we are going to do this, you must make a preparation with an advance. Call a tender with a rider that only the tender or the contractor will be chosen for the future works to come, don't give him the assurance, estimated is one crore .... So the moment you make it a mention in the notice, it depends upon the work will be allocated subject to availability of funds which is not really reliable now. So tender process takes lot of time, because once you float a tender, they move High Court and plan all the delay factor will be there, then you can avoid this time. the moment you'll get the funds or you can ask the contractor I'm getting the fund very soon, this is the G.O., you start working at once with your personal initiative and then therefore you can avoid the diverse, avoid the diversion of funds, you can utilize the fund. Suppose fund is released actually released, came to your hand in the month of June for example, but if you come to know in the April month itself, that this amount has been sanctioned by the government, you will be getting very soon and you start your work. From the April in anticipation you are getting your funds,

**Participant:** But how can we do that because we are not experts, we need a blueprint first.

**Justice Kalyan Jyoti Sengupta:** that is why I say in a tender, there is no rules and no law until and unless you don't get any funds that you cannot float any tender. You can make in anticipation. It is up to you...

**Participant;** Sir, then how do we come to know that fund is...

**Justice Kalyan Jyoti Sengupta:** As I said, informally you will get to know with your own initiative.

**Justice Kalyan Jyoti Sengupta:** You get to know...

**Participant:** In our state, High Court monitors all the infrastructural matters.

**Justice Kalyan Jyoti Sengupta:** very good, it is very good. It is very easier then. You get to know from registry.

**Participant;** No your lordship...

**Justice Kalyan Jyoti Sengupta:** the moment state government is giving the ...

**Justice Kalyan Jyoti Sengupta:** I'm coming..

**Participant:** we even don't demand for the funds for building infrastructure. it is there with the High Court, they see everything, they will make the plan with our assistance and local administration and the entire fund will be released through the High Court.

**Justice Kalyan Jyoti Sengupta:** Then what you can do in that case, you can make a suggestion to the High Court.

**Participant:** Yes, Yes, we can make suggestion.

**Justice Kalyan Jyoti Sengupta:** wherever you see there are states where the district judges funds is invested with the district judges, there are some states where it is not available, if it is given to the High Court,

**Participant:** now the fund is actually released at the level of the High Court to the building department.

**Justice Kalyan Jyoti Sengupta:** the building department. then you can make a ..

**Participant:** there is a building committee..

**Justice Kalyan Jyoti Sengupta:** I understand

**Participant:** it is...

**Justice Kalyan Jyoti Sengupta:** I understand, first you can make a suggestion to the High Court (Participants: yes, yes, we are doing it) I am giving you innovative idea. I am not saying you follow what are traditionally followed, then every year the same problem. Just because High Court you will tight ..., there is no bar to give a suggestion to the High Court, so long...

**Participant:** 14 projects are on, the requirement is supposedly 50 crores, the government sanctions only 20 crores, so the building Committee of High Court will ... will allocate the funds as per the required budget

**Justice Kalyan Jyoti Sengupta:** different states, so therefore you will be getting some fund.

**Participant:** yes.

**Justice Kalyan Jyoti Sengupta:** My point is that in order to avoid the return of fund being unutilized, we can make a plan in advance, we can give a suggestion to the High Court, please let me know how much fund has been allocated to my project in my district and I'm suggesting you kindly give permission to work and to call a tender in advance on the PWD ... so that the fund may not go back unutilized. This is the check and balance you are to take. I say this innovative idea; you are to give suggestion to the High Court. Just High Court is saying High Court is doing so I will not do, then every year this perennial problem will be there so long the order of appropriation is not made by the government. appointing

overlooking the High Court straightaway to the district court. I mean to say, until and unless in substance, financial autonomy is achieved by the district court, the problem will go on. Within this system, this problem will remain to stay. Therefore you are to think an innovative idea in my little experience I think I think you are to take the initiative. There is no harm in talking to the Registry and to speak to the Hon'ble judge or judge in charge of folio. My lord in my district this is the project is there. If your Lordships let us know how much fund...

**Participant;** Sir, High Court seeks report and we are just sending to the Hon'ble High Court, these are our proposals and how we can achieve.

**Justice Kalyan Jyoti Sengupta:** if you make a frequent attempt, reluctantly the High Court will tell you this is the fund, you can go ahead.

**Participant:** High Court will never, lordship because there is no.....

**Justice Kalyan Jyoti Sengupta:** No don't...

**Participant:** they are ... releasing the funds to the district.

**Justice Kalyan Jyoti Sengupta:** don't anticipate that High Court will not do. the whole idea is the that wherever the fund reaches in your hand, then and there you can utilize. This is the idea you within the system you have achieve this.

**Participant:** directly to the construction agency..

**Justice Kalyan Jyoti Sengupta:** High Court directly, therefore until and unless it is approved by you, district judge, first of all High Court will make an approval no doubt. You are making a proposal, you are doing that, but there is no harm.

**Justice Kalyan Jyoti Sengupta:** Your monitoring committee. There is no harm to coordinate, to re monitor.

**Participant:** monitoring committee is there, we are just...

**Justice Kalyan Jyoti Sengupta:** you are to just remind them, your role at present in the system, your role is to make a reminder and a gentle request always and once you do persistently you can achieve something so that our whole attempt is that, the fund may not go back unutilized. This is the main thing in case of infrastructure buildings.

**Participant:** for the executive agency.

**Justice Kalyan Jyoti Sengupta:** So if you know the area of ...,

**Participant:** who will check?

**Justice Kalyan Jyoti Sengupta:** you outwit them with your noble idea and thought process. Each and every individual says there is a problem. Now this is number one, then whatever expenditure is allocated, for example petrol or fuel expenses are allowed, so how we can sometimes always deficit, not surplus of fuel expenses. So how we can meet this? This is one of the constraints also. So what we are thinking that what the requirement is, we must see as far as possible to reduce the unnecessary utilization of the cars. It is true, every judicial officer is having, has been allotted a car and it's understandable, but when you find a fund constraint we have no option but to little bit sacrifice. See in old days, pool car system, supposing we can do this, neighboring my brother judge, additional district judge is there, as District judge I can say him, please pick me up today, I can save my fuel. So austerity we can maintain so long as fund is not in abundance and in fact, in initial days, the district judge were not allowed any cars even, in old days, but thanks to judicial intervention by the Supreme Court, everything is provided, but provided in book and theory. In practically they are doing little bit. Still that problem, old cars are allotted, or higher car is allotted to the officers, the vehicles are not allotted. So these problems persist. Supposing if it persists, then we are to make a rational utility , rational utilization of the funds so that we may not miss, the essential requirements and that is why we can do this utilization of the cars as a.. as much as possible to avoid the unnecessary utilization of the cars and to save the fuel.

**Participant:** now it is not the issue sir, because the government is provided with...for use of the old car, so now officer can use his own car.

**Justice Kalyan Jyoti Sengupta:** I think most of the judicial officers are having their own cars, is that so. Own cars, supply of fuel is sufficient?

**Participant:** no, actually not sufficient, only 50 liters is provided

**Justice Kalyan Jyoti Sengupta:** 50 liters that is less

**Justice Kalyan Jyoti Sengupta:** therefore, A.P. is much, don't compare with A.P. therefore it varies from; it appears that it varies from state to state.

**Justice Kalyan Jyoti Sengupta:** Now next, you come to the stationary expenses, that is the problem

**Participant:** so we receipt.

**Justice Kalyan Jyoti Sengupta:** No the finance commission, just a minute, just wait, just a minute, from various corners, it is complaint that our judiciary was unable to utilize the grant made by 13th finance commission. Even yesterday, here the Director In-charge, she was also telling this, that fund is not being utilized, the budget estimate and all this. Then I told her the real problem. Problem is that, normally central government is not responsible to release any fund for state judiciary, it is state concern, state expenditure. But in order to have a one-time program, 13th Finance Commission, because I was also instrumental after one point of time, 13th finance commission, here it was moot point here. So on various heads, for example- fast track court, central government released for function of fast track court, certain amount. but the infrastructure has to be provided by the state government No cost is to be borne from the funds of the 13th Finance Commission for fast track court. naturally those districts who are able to provide infrastructure or opening or starting a fast track court, the funds are utilized, but there are state governments, who cannot provide the infrastructure at all as their ... and it had gone back. So entire blame is on us. And nobody is looking into the

problem as it has been rightly pointed out the fund is not given to the High Court directly, fund is given from central government to state government and the problems surmounts that some state government diverts the funds to some other head and it is spent for some other account. ... Lady police, police head, money spent and is not ...when it is given, when it released by the State government, by that time, this period is over. What we need to do for this? I tell you very frankly, the moment the grant is made the High Court is to take the lead. High Court is to take the lead, and High Court can take the lead only when, when you district judges assemble together and make a joint prayer to the High Court. This fund has been allocated, therefore kindly take initiative. take up the matter with the state government what is the fund position, what is the status , let us know so that we can get the fund. But if you wait for the official files and etc. if you don't take extra initiative and then we are to suffer and we are to do this and because you are answerable to every litigant and every litigant you will be seeing you. Therefore it is your house; you have to take in order properly. so far as central, ad-hoc grant is concerned, we must be very careful and you know there are judicial officers and there are judicial officers who are over activists. How do they do that, do you know? They ask some lawyers and ask the lawyers, you file a Public Interest Litigation in High Court, Public Interest Litigation in High Court and once it is taken in judicial side and then order is passed, something is done, actually when the grant is released to the state government and the state government is bound to release the grant to the actual beneficiary, if it is not done, then writ of mandamus will lie automatically. But I tell you very frankly, even district judge can also do, but I will not advise to do that for your future career. You are not so bold that you will sacrifice your future, so naturally you can do it also, but if you cannot do, supposing if you are really interesting to do the job then you are in legal aid, Right? you work some legal aid lawyers, so you do some legal aid and then you ask him to file a Public Interest Litigation in High Court. Automatically you will be beneficiary, for example I tell you, Justice Prasad, legal services authorities act, right? Chairperson of the, state chairperson of the state legal services authorities act. Act provides for appointment of a chairperson who is or has been a judge of a High Court. Initially in some states, an appointment was made from and among the retired High Court judge, right. So retired High Court judge used to function as a chairperson in Calcutta, West Bengal it happened several



times. Then when it was found by Justice Prasad, the retired judge cannot really ... so all this is sitting judge is provided for all over India, so it is not possible. But Legislature provides otherwise, so I'm told some lawyers, interested lawyers, some interested lawyer, he filed a Public Interest Litigation in Supreme Court and eventually matter came before Justice Prasad. He had his mind, so justice Prasad delivered a judgment saying no, sitting judge. So this is how Judicial Activism, you can do well for ourselves also. For example, so far your salary and your benefit what about ... , the All India Judges Case, when you are concerned with your own salaries, benefits and everything, why are you not concerned with the infrastructure, why can't you ask someone else to file a litigation. But this is an extreme measure, it is very easier to say and to follow it is a very million dollar question but as I say that in order to have the financial autonomy, I should advice all of you, to make a fervent prayer to the High Court and show that re-appropriation order is achieved, so that the entire money can be rested with the district judgeship itself and of course High Court will look into that and High Court will oversee that. If you strictly read, Article 235, and 227 both, even financial aspect actually should not be looked into by the High Court. Even in old days, any appointment of staff is made by the District judge, even High Court would not, need not interfere with it , but now it has to because of Judicial order etc., High Court is looking up. That is good for various reasons. And this also give good impact on one side but bad impact is that the district judge's discretion and power has been so to say minimized and as a result the District Judge has no discretion. Everything has to depend upon the High Court, that is why to have a balance in step, I request you to approach the High Court and also to get in touch with the Judicial Secretary and Finance Secretary both and you answer will be No, they will not be listening to me. But I can give an idea, you approach the Hon'ble Administrative judge, Zonal judge and through him give him a suggestion and ask the judicial secretary and the finance secretary and PWD secretary, I tell you, when I was in Calcutta, and this I also followed sometimes in Andhra, Hyderabad. What I used to do, I used to, we used to call a monthly, if not a fortnightly meeting asking Chief Secretary, Finance Secretary, PWD Secretary and Law Secretary together and then we used to discuss what is the project pending and where is the fund remaining outstanding. Each and every issue, monthly meeting and calling that District judge concerned in that meeting that in your

district...and also the zonal judge, portfolio judge, that in your district what is the project and what is the project pending, outstanding and what is the progress and where is the bottleneck. With this monitoring system, a lot of work could be done. Even supposing it has been sanctioned that this amount is released, so with our interference...we used to ask the Finance Secretary that when you are going to release the fund. It was found that the finance secretary has released the funds, it has reached the hands of the Law Secretary but Law Secretary for some reason or rather has not issued necessary G.O. So we can intermission it is done. What you do every fortnightly, give a reminder to the registry and copy to the Law Secretary and finance Secretary. This you have to do so that in anticipation that you will be receiving the fund this is then is status report. I understand the fund is not given to your hand, it is utilized through the High Court or in nodal regions it is done. But there is no harm to pursue the matter, every now and then. Once it is done, we can utilize the funds in time, you can do that. And as far as the...it is the release of fund for witnesses and how do you estimate the budget? do you estimate the budget expenditure? What is the basis ? do you prepare the budget that this will be estimated cost of witnesses in this financial year, do you prepare such grounds? How do you estimate?

**Participant:** we make the lump sum amount.

**Justice Kalyan Jyoti Sengupta:** You must have a scientific basis. for example you take the data for last five years and depending upon the number of cases, and last five years data how many witnesses in average came to the court, you're to take last five years average. Then in addition to that, you enhance 20%, you enhance 20% and then if you enhance 20%, they will not be releasing to that extent. What I say, said in the forenoon, that you make a bargain always. You hike the figure always to such an extent that it looks absurd and they will come down to such a figure which will be your desired figure. So this you have to do, so you must have a scientific basis for making a demand for the expenses for the cost of the witnesses etc. Now what to do about your fine? Do you show in the fine or do you not show in the fine? in some states fine and court fee are not shown to be an income, it straightaway goes to the treasury and deposited and funds of the state. But in some states, I believe in West

Bengal, it is still followed, in the budget, the estimated budget it is shown the income of the district judiciary on account of court fee and also on account of fines. You know that in police system, the realized...some portion of the realized portion is allowed to be spent by the police officers but in our case, there is no authority to spend the amount realized on account of fine. It was found in statistics, at least 10-15% of the expenditure on account of judiciary, is realized from the court fee and fine also, but now a days what is happening on account of fines, the expenses from the judiciary has been reduced to a great extent because in traffic challan cases, all were used to be disposed off by our Regular magistrate court, but now a days, state government is very clever, this power has been given and coordinately with the police also. Police is compounding the offence on the street and realizing the fine and some portion, they are allowed to spend and some portion is going to the State Ex-Chequer but is not coming initially it was through the judiciary but it is no longer through the judiciary. So that is why, some section of the executive and the politician says that judicial income is going down and as far as court fee is concerned...

**Participant:** ... because interest of judiciary is not to make income...

**Justice Kalyan Jyoti Sengupta:** Correct, because it is the sovereign function, as the Legislative function is the sovereign function, so there is no fee is which is levied for legislation purpose. No, legislative fee is realized, then why the court fee concept has come up? We must know the Historical background. Court fee concept has come up in order to have, to set up infrastructure for temporary measure. Once building is set up,

**Participant:** it also helps to avoid frivolous litigations.

**Justice Kalyan Jyoti Sengupta:** that was the ... secondary object, if you say frivolous litigation then how you can say frivolous at the initial stage. Therefore, the very concept of frivolous litigation is antithesis to Justice. Everyone should be allowed to file litigation according to me. Whether it is a frivolous or not, that can only be judged when you see by yourself. No one can say. Why do you anticipate that it is a frivolous? So frivolous court fee that is as far as the court fee concept is concerned only it was done by the Britishers. You

see in East India Company, even after parliament, British Parliament took over our judiciary via government of India Act, 1858, followed by 1862 Charter and Establishment of High Court 1861, what they decided, for the courts set up for the native people, the money should come from the natives and that is how idea of court fee was formulated and not only that, the ad valorem duty, according to the value of the litigation court fee was introduced long time back and mind that in Mofussil Area, District Areas, but in High Court particularly Three Charter High Court where original side was there, only fixed court fee for stationary expenses 20 Rs. irrespective of the valuation because industry commerce were dominated by the Britishers and for Britishers only, for their benefit. You can see bridges are constructed and toll tax is realized, in old days this was the system in British times, but after realization of the cost of constructions they stopped realizing the toll tax. Therefore, the very court fee idea, for building infrastructure, the court fee is imposed naturally, but this has become a permanent measure. Once the court fee is rationalized, then you see that lot of litigation will be coming and access to justice should be smoothening or if supposing uniformly in rural area, for example irrespective of valuation, if 20 rs, court fee is realized, then realization would be much more. you know the educational cess is realized through our central government they add it to our income tax, but I think if the judicial cess, is realized from the public as a whole, how much fund will be generated you can imagine? The state government can take a movie easily. I remember when, what happened in Calcutta High Court, what happened, they demanded a hike their salary at par with the 6th Pay Commission and the 6th Pay Commission they hiked. But they were not prepared to pay the arrears of the salary. So High Court staff went on strike, and then thereafter they were advised to file a writ petition. Don't do strike, don't paralyze High Court, then they realized that and filed a litigation and then order was passed. Then once order was passed, contempt applications followed, then law minister approaches that please save us, how we can do all this. So then I gave them idea, you can do this, you are meeting this extra cost and you can realize this way. I gave him idea that you see, when execution application is filed for enforcement of a commercial award in arbitration. No court fee had charged, why we don't impose the ad valorem court fee. All you can do, you can add ad valorem court fee as an additional charge in the vakalatnama, you can charge 5-10 rupees more. You can realize this fund or you can

do this thing, you can do also in case of ... litigation 260A, there you can charge ad valorem. So many areas were there. So they realized and made some demands but the question is this, it is possible in High Court level but it may not be possible in a district judge level, but why I say I shared the experience and you can have an idea so that you can make a suggestion to the High Court as to how the funds could be realized and how the funds should be done. And next our Lok Adalat is also one of the problems because I know that. My dear Sirs and Madams, if you look at the Act, you can solve your own problems. Just see your section 17, because it is a separate statutory body is not subordinate to the High Court, am I right? And some extent so to say great extent state legal authority that is chaired by a sitting judge. But you see section 17, and you say your staff is not supplied, so you will supply your own staff, why you are bothering about depending upon somebody else. Maintenance and recruitment of the staff, what you require, you require the sanction of the staff strength, you make a proposal to the government, through state legal services authorities, I require this staff and get the sanction of the staff and if the sanction is accorded, then you can make the demand for salary of the staff, unless you do that, government will not do. And moreover you can generate your own funds. Look at section 17 what is said? Section 17 says, what is your fund- Legal Services Authorities Act, look at this, Fund.. What is the source? We! We is very important. We...any grants or donations that may be made to the district authority by any person, with approval of the state authority for the purpose of the SAT, or any other amount received from district authority under orders of any court or from any other source. So in Andhra, what used to do is unique. Supposing, a matter is dismissed for default and restoration is made, or any setting aside any ex parte order is passed, application is made, yes and allowed and cost and condonation of delay

**Justice Kalyan Jyoti Sengupta:** it depends upon the number of days delay. So I remember in one matter 1000 days delay, so award cost there. As a matter of courts legal aid, so this is every day I have estimated in Andhra Pradesh High Court every day, at least minimum 1 lakh Rupees was generated with the order of costs and next another source I'll tell you. You see, there are MPs and MLAs, MP and MLAs are there, they have plenty of funds. So with the approval of the State Legal Service Authorities, you take a donation for building

infrastructure, legal aid fund etc. If you simply rely on this charity of the State government then you cannot run. As far as the Andhra High Court legal services committee is concerned, there is no dearth of funds. State government is also liberal, so this fund, once you get the fund, you can maintain the staff automatically. You can increase initially...on daily basis, you can give minimum wages...you can give it and manage it. I think this will not be a problem, you can do this. And as far as the... there are States which are very generous. Because I don't know whether it's still is there, I made a proposal in the Andhra Pradesh in the 23 District-Mobile Lok Adalat. Mobile Lok Adalat means one van and equipped with all like a moving court and Lok Adalat judges will be sitting and supposing in one village I have asked all the district police officials to collect all complaints of any nature, if it is compound, if it is a non-compoundable, you retain it as an FIR, lodge a GD and FIR. Compoundable or Civil, any matter, send it to district legal services authorities. Once this complaints are received 100 in number, in a particular pocket an area, our van goes. First attempt is made, with mediation, if the mediation is not possible, then conciliation, if conciliation is not possible, then it is a Lok Adalat and then arbitration then and there which is called Mobile ADR System. So Mediation, Conciliation, Lok Adalat, Arbitration...

**Participant:** Who is the arbitrator sir?

**Justice Kalyan Jyoti Sengupta:** Listen, I give you the mechanism. I give you the mechanism...Listen...

**Justice Kalyan Jyoti Sengupta:** Listen...Listen...I'll tell you the mechanism. Both parties are present, right? And both parties say that we are not prepared to get it through either by mediation, or conciliation Lok Adalat because there is a highly disputed fact. So they say, what proposal is this alright? You want take ... test. You want adjudication, so he will be told, you will get an exclusive judge for both of you. You need not go to court. What is that? You sign this, you sign this and you as the judicial members, the additional district judge level or district judge level retired, he will be arbitrator then and there by agreement. Okay...So he started deciding, give your evidence, and give your reason. If it is not possible today, I shall come tomorrow - Justice at the Doorstep.

**Justice Kalyan Jyoti Sengupta:** what are you talking about.

**Justice Kalyan Jyoti Sengupta:** What are you talking about...Please, Please? Have you read the Arbitration, Conciliation Act? If both parties, in writing sign and agree, I am appointing a judge an arbitrator, he becomes an arbitrator, and then decides the matter in accordance of the Arbitration conciliation act. He will call witness, then and there and the other member will go away, he will remain in the van, because he has come from outside,

**Justice Kalyan Jyoti Sengupta:** then you will decide, you will take evidence, they say I want to adduce evidence then award can be passed. No they will sign an agreement.

**Justice Kalyan Jyoti Sengupta:** he will be explained, when he will say I do not want any award, lok Adalat, very good, you want to contest? Would you like to go to court? No I don't want to go to court. You will get your exclusive judge at your doorstep. He is the judge, because he is the serving additional district judge, so he is appointed an arbitrator. And appointed by both parties by agreement and agreement for what is there, who are this following persons, do hereby appoint this gentlemen Mr. so and so as the sole arbitrator and to decide our dispute.

**Participant:** Your lordship, he has raised the point that after initiation also there ...

**Justice Kalyan Jyoti Sengupta:** After?

**Participant:** After the suit was initiated...

**Justice Kalyan Jyoti Sengupta:** No, (it is not) this is pre litigation. Even pending litigation is possible.

**Participant:** Sir, but in pre litigation stage also..

**Justice Kalyan Jyoti Sengupta:** Pre litigation stage, I...I... mean to say, all the pre litigation stage.

**Participant:** Sir, in pre litigation stage...

**Justice Kalyan Jyoti Sengupta:** Justice at the doorstep...

**Justice Kalyan Jyoti Sengupta:** Justice at the doorstep,

**Participant;** Serving judge, how can he

**Justice Kalyan Jyoti Sengupta:** Cannot?

**Justice Kalyan Jyoti Sengupta:** Is there any ban? Listen

**Participant:** There is no ban

**Justice Kalyan Jyoti Sengupta:** Listen, I have a precedent, Not the District judge, High Court judge acted as arbitrator.

**Participant:** Sir, sir...Section 11 is different that Hon'ble Chief justice has the power to appoint, when there is dispute for the arbitrator. Parties approach under section 11 and then..

**Justice Kalyan Jyoti Sengupta:** Listen, Listen, section 11, the power is not with the CJ now. It is no longer the CJ now.

**Participant:** In our Hon'ble High Court...

**Justice Kalyan Jyoti Sengupta:** At High Court, No, High Court. Now it has been amended. Recent amendment 2015 amended the Arbitration and conciliation it amended only High Court and Supreme Court, not the Chief justice. So what is there, Section 11 will come when there cannot be any appointment on consensus.

**Participant:** Sir, there is a clause...

**Justice Kalyan Jyoti Sengupta:** yes, and if they both parties appoint arbitrator, section 11 has no manner of application



**Participant:** But sir, earlier the...

**Justice Kalyan Jyoti Sengupta:** You mean to say...

**Participant:** sir, how can a serving judge

**Justice Kalyan Jyoti Sengupta:** Yes, How? Just see whether there is a bar. Only thing is this, serving judge will not take any remuneration. If the serving judge, or serving High Court judge, serving district court judge can act as the judge in the Lok Adalat, am I right?

**Participant:** Yes.

**Justice Kalyan Jyoti Sengupta:** Lok Adalat... So, in the arbitration and conciliation act, there is no disqualification, only disqualification is that the arbitrator himself must not be interested in the subject matter, must not be related to any party, which are the disqualification of arbitration and conciliation act.

**Participant:** if parties are concerned with themselves, they are appointing a

**Justice Kalyan Jyoti Sengupta:** they are appointing...

**Justice Kalyan Jyoti Sengupta:** the essence of the matter, what happened, in serving judge, whether a serving judge can do or not, when the arbitration and conciliation act was not there,

**Justice Kalyan Jyoti Sengupta:** if you have stopped. If you have finished your conversation, I will give the reason. In old days in Madras High Court, in Madras High Court, a sitting judge in a particular litigation, he became arbitrator, to decide a matter. Madras High Court, in old days with consent, both parties, in court and then he decided the matter in arbitration and passed an award and following that madras High Court decision, in Calcutta, in year 1961, a sitting judge in a partition suit family matter, he by consent of the parties became arbitrator of both the parties and this jurisdiction is called exercise of Extra Curie Jurisdiction. I can give you the reference and find out, I remember the Calcutta, the

coast title is 1961 Calcutta, AIR, Maruti Bharsu versus Registrar of Calcutta High Court, original side Registrar Calcutta, this is the .... In fact a last year taking note of this, in Hyderabad High Court, I have checked up, the madras High Court is the precursor, then it was followed by the Calcutta High Court soon thereafter. In one matter I held so; say extra ... Curie Jurisdiction, there is no bar to act as an arbitrator then what is the advantage and difference between a judgment rendering in court and an arbitrator. What is that?

**Participant:** he is acting in a different capacity with the consent of authorities.

**Justice Kalyan Jyoti Sengupta:** That is, that if you don't mind, was not the real object.

**Participant:** the procedural aspect quasi-judicial...quasi-judicial function..?

**Justice Kalyan Jyoti Sengupta:** whether quasi-judicial, or judicial, it hardly matters to litigants, what is the advantage to litigant, correct, as a judge, if I decide the matter, appeal first, second, third, fourth, all are there, but if I decide as an arbitrator, you have limited grounds to challenge. On the ground, it is called power of judicial review in private law field. In each jurisdiction, is power of judicial review, In a public law field, here is a private law field. Supposing if there is evidence, in appeal, evidence are there. If we say this evidence is insufficient inadequate, this may be ground to set aside the judgment, but in case of a challenge to the award, if we say, this evidence is inadequate, No! If there is no evidence and perversity, only then the challenge can lie, in a limited ground, this is the advantage and moreover once the award is passed, it is as good as now civil decree. In old arbitration act, it has to be made a rule of court, decree, this and that, So the Contest is rather is rather very limited. That is the whole idea about. But we are diverting the topic, so a lok adalat problem as I see,

**Participant:** and passed the award..

**Justice Kalyan Jyoti Sengupta:** before the regular district judge?

**Participant:** yes, so what will be the position of the district judge.

**Justice Kalyan Jyoti Sengupta:** No problem. No, no...

**Justice Kalyan Jyoti Sengupta:** what it is, listen

**Participant:** Not as the sitting judge, he is stuck over to the sitting judge.

**Justice Kalyan Jyoti Sengupta:** Sitting Judge, if you

**Participant:** that is the call of the duty allotted, you have to take it.

**Justice Kalyan Jyoti Sengupta:** No, No, No...if you...

**Participant:** what would be my...

**Justice Kalyan Jyoti Sengupta:** No...No...No...you understand, listen, no...I am...I say what is possible,

**Participant:** that is what lordship is saying.

**Justice Kalyan Jyoti Sengupta:** what is possible under the law, why should it be dogmatic? We must have our pedantic approach. We are to see the mankind, but you see supposing it may be the other way round. A sitting judge has passed an order with a reason, compact, everything, and then you'll say on the other hand, have you seen who has passed the award. Tell us where the fault is. Very politely, and it will your knowledge, when you are just facing a very tough opponent, then you are enhancing your skill. So now, award passed by a sitting judge is a very good challenge, so you are strengthening your mind, strengthening your approach with a polite approach and if you say so what would happen, then you can do this, I can tell you. You can just pass on to your senior, you are a district judge, you can just take an appointment of a zonal judge. Talk to that judge. Sir, I am facing this problem, so what should I do, kindly guide us. Obviously he will say no, no, no brother I appreciate it. you proceed in accordance with law. So your anxiety is over. Am I Right?

**Justice Kalyan Jyoti Sengupta:** I'll give you an example. After retirement of a Calcutta High Court judge, his house was raided, by Director of Revenue Intelligence and CBI both and lot of money was found and everything. So he violated the FERA and all this. So he was arrested after retirement. Then an application for bail was moved before a CJM, Right, and the CJM was hesitant. First day he did not take up, he sought for an appointment for the Chief Justice. Through the channel, I mean, zonal judge, district judge, everyone...proper judge. so Chief justice said, I'll not mention the name of the Chief Justice here, then because he became Chief Justice of India later on. So, audience was given, he told the problem. Chief Justice of India says, I will be proud if you do in accordance with law. So this course of action. Eventually he refused bail and the retired judge was taken to custody. but before the High Court, because of the popular support of the member of the Bar and pressure and coercion, Hon'ble Judges succumbed to the pressure and granted bail. But that, judicial officer was in due course of time, elevated to High Court also. So what I say, please, the present situation culture, please, just move from there. I understand the present what is going on this practical level. All that I can tell you, as a judge, you cannot have any ambition in your career. As a judge, don't go in for the rat race. Your achievement will be when you are remitting the office, and when you go down, people will say, this is a judge. I remember, he...one judge, district session judge, he tried a very...much publicized murder trial, which is some sort of honor killing at that time. He tried and before the public prosecutor appeared and he lost the case before him. But he was a very good, outstanding district judge. He was not elevated, but the public prosecutor who failed, he became the judge, elevated. And then, when they elevated this judge, just to meet him, but they elevated High Court judge stood up and says sir, please take your seat. I will just stand up, still I am a lawyer to you. this is the feelings and respect and there are other judges who was directly put district judge, they passed, they rose up to High Court but along with them, some of them participated in direct recruit district judge in old exam. They failed and they were elevated to the High Court from the bar and eventually he became chief justice of India.

**Justice Kalyan Jyoti Sengupta:** therefore it depends upon, you see I Gujarat, from Gujarat came Justice P.D. Desai, Justice P.D. Desai, came from Gujarat. He became Chief Justice of

Calcutta High Court. And what exemplary record he has left behind, because of his chief justice administration and everything, everybody remembers his name and someone also hangs up the photograph and just worships like him. So it depends upon how you'll taste your life, whether you want to achieve by your career and so and, that is different..

**Participant:** I want to say about Justice P.D. Desai because he was the district judge in my district..

**Justice Kalyan Jyoti Sengupta:** Himachal, he came from Himachal..

**Participant:** what is his ADR system, can we just go by the rules (inaudible) project he started, I think all these ADRs they fake, they are zero before the scheme of conciliation by Justice P.D. Desai. If there scheme would be in practice today,

**Participant:** why only that, about writing of confidential reports the rule system, he laid down in a judgment in Gujarat High Court. There are so many judgments in Gujarat in High Court. There are so many ADRs where his contribution is at par to none.

**Participant;** I would request, the ... but whether this section 89 if I can use your ...

**Justice Kalyan Jyoti Sengupta:** Actually, you're so far, conciliation is concerned, diverting from the point, conciliation is concerned, because the agreement on conciliation has got the effect of an award. It is an executive instrument. Whereas in a...whether pre-litigation and post and pending litigation both matters, but in case of mediation, pre litigation matter is not an enforceable instrument. this is the difficulty. In arbitration, conciliation, under the Statute, you can enforce, as a decree, so what I say, coming back to the point I was...So they budget supervision, state legal services should be absolutely independent functionary. You are to generate your own funds and do the needful and now then coming to that I can give you small things. As far as the, in some courts in some areas I found there is a delay in certifying the certified copy. Am I right? Almost all High Courts. In Andhra I have found, every day I used to sit...this month... this month you have to finish, large number of certified application is pending, for what. Litigant can wait for 10 days, 15 days alright, but today is the modern

system. So, you can think about that, but whole problem is that, sometimes you supply Xerox copy, so Xerox machine is not available or is not functioning, or not proper, it's not doing. This is one thing I find the problem. These are small things, not the great things to be a judge. Then what will you do? Xerox machine is out of order, then how you can manage?

**Justice Kalyan Jyoti Sengupta:** outsource, from your contingency funds. Therefore when you are budgeting, your contingent fund, you increase your budget, in anticipation. And then supply of electricity. In some areas, I believe Sikakulam also, very hot, hot zone so to say. Electricity supply is erratic and the generator, we are only depending upon generator. So generator again cost factor, so cost factor, how you have manage, so what I was thinking, whether we can go in for solar system. Is it possible or not ?

**Participant:** sir, we are implementing.

**Justice Kalyan Jyoti Sengupta:** its processing, I have...I have introduced and implemented and is satisfactorily functioning. So we can just reduce the dependence as much as possible within our own resources and for some, for example supply of drinking water. So far supply of drinking water and what about our rest houses. Have you built in your own headquarters guesthouses and rest houses? Nothing. So make a plan, please, from my request, I want to visit.. I have seen Justice Vinod Gupta; he was the Chief Justice of Himachal. Every district, every sub division he has made a judicial guesthouse.

**Participant:** We are having very good guesthouse in Himachal.

**Justice Kalyan Jyoti Sengupta:** Kasauli...I had been in Kasauli...Kasauli I had been.

**Participant:** Kasauli, Shimla, Dharamshala..

**Justice Kalyan Jyoti Sengupta:** and upstairs, I had been there Kasauli, and upstairs, in sub division...in sub division...Not district. This is sub division..

**Participant:** in every district there is a provision.

**Justice Kalyan Jyoti Sengupta:** not only district Headquarters, sub division headquarter. Sub divisional headquarters, a judicial guest house has been constructed. So what I request you,

**Participant:** Not in every sub division..

**Justice Kalyan Jyoti Sengupta:** whatever tourist ..... for example Vizag. Vishakhapatnam, I don't think we have any judicial guesthouse. It's a very important district. Therefore I ask you, I ask you brother, this financial year, go back to your each and every district, and prepare a proposal to be given, for construction of judicial guesthouse, because supposing High Court judges will be visiting, where he will be staying? or some district judge is coming. For example, someone is Hyderabad for treatment, so unless there is judicial guesthouse, district judge level, he cannot get a good accommodation so therefore each and every district, you make and prepare a plan for construction of judicial guest house at least for district judges.

**Participant:** No Sir, No headache. It is on the plinth area level, we have to share the particular grant with you. That is what ... Brother **Justice Dharnidhar Jha** told you, otherwise, ask them to identify.

**Participant:** what misappropriation of funds?

**Justice Kalyan Jyoti Sengupta:** another thing I will end up

**Justice Kalyan Jyoti Sengupta:** another thing I will end up. Now you have also focused, supposing sanction has been granted under this heading, you cannot divert. you cannot divert, this is one of the major problem also, so within the present system, it is very difficult to change your head, otherwise the audit will raise objection, therefore until and unless, the idea of re appropriation and with a liberty to appropriate any amount against irrespective of head, of course subject to auditing, so what you can do? At the present moment? At the present moment you can do, you can estimate or anticipate, you require diversification of funds or diversion of funds from which account to which account. You have to anticipate beforehand. You just write a letter to the registrar of the High Court and copy to judicial

secretary and then you pursue the matter through the High Court and of course with the guidance of the judge in charge, and I believe the judge in charge will obviously help you in the matter immediately, for the time being you can do this. But so long as I say appropriation, re appropriation is allowed by the government order, with the unlimited power of expenditure changing head, at the present moment you have no option but to take the help of the administrative judge, write a letter to judicial secretary and also the registrar general of the court and I tell you one secret thing, you must set up a good rapport to our judicial secretary. They are of immense help; this is secrecy, internal secrecy, because they are our officers. Anyone of you may be a judicial official, judicial secretary or law secretary, therefore what I say, don't forget, who is exclusively appointed as the law secretary. This is the problem of your brothers and sisters.

**Participant:** in our state, there is no judicial secretary

**Justice Kalyan Jyoti Sengupta:** Not from judicial department, not.

**Justice Kalyan Jyoti Sengupta:** you see I would not say it is for the High Court to intervene. had I been there, I would have said nothing doing, take my officer, I am giving you three names. Take my officers, do it..

**Participant:** That is the system that is the practice

**Participant:** the government itself asks them to send the...

**Justice Kalyan Jyoti Sengupta:** Of course, No, no, I don't say, this is a temporary phase. I don't say High Court is wrong, I don't say High Court is right. All that I can say, the request made by the government was not an unreasonable one...all that I can say. So there should be rational approach, there should not be any competing. Actually what happened was I'll tell you? The Chief Justice becomes slightly younger than the chief minister always, and the younger chief justices are always want to assert his authority. No what is, this is...

**Participant:** that case it is...



**Justice Kalyan Jyoti Sengupta:** where?

**Participant:** the chief minister is the youngest.

**Justice Kalyan Jyoti Sengupta:** where? Allahabad?

**Participant:** UP...

**Justice Kalyan Jyoti Sengupta:** UP...Oh yes, don't tell all about this.. I have seen the...your chief minister avoided the Chief Justice Chief Minister meeting but he was careful to attend prime minister Dinner. But he avoided the main function and chief justice.

**Participant:** your lordship, I was there.

**Justice Kalyan Jyoti Sengupta:** you were there, your Chief Justice is Chandrachudh, brother Chandrachudh, in his absence he...he is this and he is that and he will take care of all this. He is young Chief Justice, and He also young chief minister, there is fight. Can you imagine for appointment of Lok Adalat, so much of intervention. Why Supreme Court will intervene in all this. it never used to happen. When I was in Andhra, when I was in Andhra, I have opened, I have made so much ... but nothing is done.

**Participant:** that happened in Gujarat also.

**Justice Kalyan Jyoti Sengupta:** So I had gone to Supreme Court we all this, of course there, anyways, you see, there would always be darkness and light everywhere and salt and sweet must be side by side. So what I said, you don't remember when you become a judicial secretary then you don't forget this idea. So there must be good rapport with the judicial Secretary and the registrar for the practical approach. And then once you get in, and another thing, when acting a district judge with a DM, you see in our West Bengal, there is a system of monitoring committee monthly. I think everywhere. So in the monitoring system, you are to take along the DM as far as possible and SP. they are of great help. Frankly speaking, almost by and large, the IAS officer's, bureaucrats, they have the great respect for the judges,

because they are trained up in their academy by the judges, so naturally they have by and large a good respect. So if you call the DM, call DM. I am nothing doing wrong, supposing you are having the breakfast, first you can meet DM, have a lunch or dinner or breakfast whatever, evening tea. You can do it either your residence or independent place you do it and then sit with SP also. SP, DM together, if you work together, then through the DM, you can push the channel in the executive level. Things become easier, so no use of confrontation. Confrontation in the sense, I don't want to suggest you for a single moment to sacrifice and with your dexterity and with knowledge and wisdom, you are to just outwit him and you are to command over him. That you can achieve if you all the time think over, ponder over the problem and where is the solution behind. When you are putting a problem, you'll not be accepted. When you're putting a problem then if you give the way of solution, then you'll be respected and accepted. This I give you the secret of this, because while acting in Calcutta, while acting in Hyderabad, I never faced any problem for information. Never unsuccessful. Then I am satisfied with this, therefore you can do this. I am sorry we are...

**Mr. Sanmit Seth:** thank you so much sir, one announcement, and today we are having poolside dinner and we are also having a cultural event at 7:30. Yes...Thank You...7:30, yes Poolside! Thank you!

## SESSION 9 AND 10

### **Bar- Judge Relationship in District Courts & Judge Litigant Relationship in District Court**

**Justice Dharnidhar Jha:** Should we wait for sister Vimla or, or should we carry on the deliberations. We should carry on. The most vexed issue occupying most of the judging, the minds of most of the judges, most of us- bar- Bench Relationship.

**Participant:** you are sharp on time Sir,

**Justice Dharnidhar Jha:** yes, sharp on time. Judges have to be. So apart from what vexes us, and how we are pre occupied with these issues, we simply have to look around the document which has created ourselves, the judiciary, the judges, the Constitution of India, I mean to say. You all know that Justice equally to be imparted is a constitutional guarantee, the Preamble speaks about that, Article 14 of the Constitution says that no one shall be deprived of an equal protection of the laws and the equality before law. Even if we do not resort to, as the higher courts have regularly been resorting to Article 21 of the Constitution, the very solemn resolve of the Constitution through its preamble and Article 14 could have convinced us that we are here sitting anywhere, in any corner of this great democracy to discharge our solemn, to carry out the solemn promise of the framers of the constitution of providing Justice equally, without any discrimination and anything. System is there and the system is formed by us ourselves, the judges and the assistance we derive from the counsel who appear who are engaged by the customers of Justice. They are the officers of the court as we are the officers of the court equally they are also the officers of the court. The very origination, the origin of the profession the profession of advocate, we all belonged to that one profession one time or the other and we used to derive equal pride of being one of the members of the greatest of the great professions. Our commitment to assist the courts in order to obtaining relief for the person who had authorised us to stand before the court, before the judge or in a court was very solemn and deep and I believe as I used to have the feeling that most of us had the feeling at some point of time if I had been the judge I would have passed this particular order or I would have heard the matter more deeply, I would have

analysed the evidence and then passed the order or judgement in a different manner . Even if we had received the relief, we could have, we had the feeling at some point of time or other in our career as an advocate to this extent. So it is not that consistency is lacking in the advocates also consistency lacks in us also. Sometimes we allow our personal feelings or personal perceptions to overcome our decision making process. Advocates on the other hand who are the officers of the court and who are supposed to assist the court by production of true and proper evidence, by producing the circumstances attending on a particular case of a particular case. Welcome sister, I am guilty of taking up your time.

**Justice S.Vimla-** good morning, I should say sorry to all of you because I am late by three minutes.

**Justice Dharnidhar Jha:** No you are not late

**Justice Vimla:** I am sorry..

**Justice Dharnidhar Jha:** No, no, maybe we had to start. You'll carry on?

**Justice Vimla:** you make a statement..

**Justice Dharnidhar Jha:** The duty of an advocate, the solemn duty, the professed duty, it is the profession, profession is a commitment, you are professed to do something, the meaning of if you analyse the word profession then you get the analysis that you are professed to a particular thing, so you have professed to assist the cause of Justice by appearing in a court by producing evidence while assisting the court in other manner. the advocates are supposed to make submissions, and if you again go to the word submission and you analyse again the origin of that word then one has to be submissive, submissive - something very docile, requesting. These are traits which are expected of an advocate. Definitely and these are the traits which we also carry with us when we come to the other side of the court room the bench. We are polite we are persuasive even if you are denying the order we pursue, that no, no. This is not in the interest of our court, functioning of the court that you pursue a point which has no merit and you are being persistent unnecessarily.

Traditions of origin of the profession was that the exploited lot in the French republic when it was ruled by tyrannous, anarchist king had caused the, the subject of the state to rush to the church because they didn't have the direct access to the king, so and the church the fathers who were managing different churches they had access to the king and they used to place their grievances before the officials of the church and they by and by approached the king and placed the grievances of the subjects devoted and started obtaining some relief or the other for the subjects of the French and French nationality. It was so honourous and it was so thickly in their hand that the original work of the church started to get on to the backburner. the primary duty in the hands of the personnel of the church was to place the grievances of the aggrieved, exploited lot before the tyrannous French king and then the church.. Did what did the church do? The churches stopped their payment which was made to them. The subsistence allowance so.. and that forced them because they were doing best of the social services so they could not have demanded any fee or any charges for rendering that particular service, so you find the advocates gown there is a pocket like thing hanging from the advocates gown. that is the rudimentary bag which the fathers have put over their back. without speaking anything without telling anyone anything to pay to them it was a significant, it has some significance they were signalling them that I am serving you, if I need subsistence, I have to live and I am not doing my service to the church so if you please do something for me and then they used to put in. so if you go to the Advocates Act you will found that no senior counsel is entitled to realize his own fee, no senior counsel is entitled to appear before the court without being engaged by junior or being accompanied by a junior. These were tradition's which were being carried out from a very ancient era, but we all know we all are acquainted with this change in the enrolment of the advocate. a person who did not get a job, a person who did not have anything to do and a person who could not even have the motivation to do anything lastly at certain stage of his career obtained a degree from law university or a School which were a few years passed so much there without there being any building or anything like that and they got enrolled, because state bar council also do not also have any mechanism to screen the entrance to their Council and this probably and not only probably this was the real reason that elements of all sorts infiltrated into the bar making it a place which was so nice and good in the ancient time, and not exactly for

gentlemen. The angle of social service which we have just discussed with the reference to the French history, that is no more available anywhere in the courtrooms, in the bar associations. The primary objects of all advocates present advocates are to amass as much of wealth as they could and as such the scale of it varies from anything to anything. They most of them in the courts of which we man I mean you people man or I have manned it is overflowing with the persons who does not have any respect for who are the gentry who are the judges. They have their own ways of appearance in The courtroom they have given guarantees to their clients in most of the cases that they should obtain this decree or that order or this judgement. the Old principles of advocacy that no one should hold out wrong promises to a litigant, no one should act on the instructions on the illegal unlawful instruction of his client are now over, those days are gone. The principal of advocacy recognised behaviour rather was that if a client and a counsel was telling to indulge into some unlawful thing or to adopt an unlawful tact in court room you would simply say that no, is not possible, you engage another lawyer. I had myself seen this; I had myself done all these. what in 80 and in 1980 and when I was the member secretary of Bihar State Legal Services Authority senior most counsel, a self-made Dr Sadanand Jha, his story is a story I would love narrating to you but at this stage. I had to engage him for filing writ petition because the accountant general of Bihar had on retirement of the member secretary of my authority had deducted 10,000 odd amount from his pensioner benefits, on the ground that you were not entitled to special pay. then when Sri Priyasharhan, the member gentlemen, he came to me and then I told "sir `aree you had applied for special pay, I had not applied and they issued the pay slip, so you take it and you point out to them that without having requested to issue anything you had yourself issued this pay slip to Jha, so how is that you denying. Then he said I shall deny and snatched, then they issued a new pay slip to me but because sir, retired and his pensioner benefits had been blocked so I put in more before the executive chairman that this is in the interest of authority that litigation should be taken up because no officers shall come here. Alright. then I was directed to, order was passed and engage Sadanathan he was the senior most counsel then he said if you become the petitioner then I could file the.. then I said no I won't, I will join rather but not in my name, the aggrieved person, is he the authority has to file the litigation if you have to do it ,or else I

engage to another counsel. This is not the principle and you are known to your principle person then he came to his normal self-yes yes, then I could file. the counsel used to be very consciences, he would never agree to do anything wrong at the instruction of or for the benefit of his client, even if his client had, he would argue the case with all remnants and all tenacity and everything, but I had myself experienced that counsel will drop into my chamber on any pretext and would tell that sir I don't have a good case, I had argued, with all vehement, but I don't have a good case. I have experienced it, but those are matters of history now, those are matters of the past. Nowadays a counsel says that an order of this will be obtained, if you pay this much that amount of fee if you do these things and I have access to the judge, he cannot tip into your he cannot even top your, the Dharwan who is standing at gate of your residence or at your chamber or in the very entry of civil courts he could not even have the courage to talk to him but the upbringing of the man the training he has got and the circumstances on which he has been brought up or he has grown up, that has inculcated these values in him that he can hold out any promise to his client and tell this thing could happen. Now this does not happen, it has never to happen because a judge is consensus, he has to act as per the facts and law of the case, applicable to the case and he has to pass an order accordingly, then what happens, then you see a fury of counsel, taking everything in his hands and I don't know of other states, but in Bihar it is not that much ferocious, but in Uttar Pradesh, Mrs. Saroj could have shared with you, it is very difficult for them to work. A counsel, I have convicted him, from Kanpur, some Chaturvedi something like that or Dwivedi, his brother had filed a case and it was bailable offence 325, 323, 341 something like that, no non bailable sections. The magistrate was approached by him that it is my brother's case, my brother was assaulted, and you reject the prayer. The magistrate said and how could we do it because these are bailable in court room this is all happening in courtroom and a counsel was, his friend was also appearing and he was pressuring and that Chaturvedi was standing by him, he was also telling him, pressuring the magistrate to dismiss the prayer. and the magistrate was being pleading with it is impossible, I cannot do it, law does not permit me and at least you should take in to consideration my position also, I am my action has to transparent, I am responsible to the higher authorities and it won't be for judicial consistency and granted bail. Now the whole Kanpur bar was up

in arms, within an hour everything at a standstill. The district judge is not allowed to function, no court was allowed to function, it was a pandemonium. The police was called to restore law and order in the campus of civil courts and then the report was made by the magistrate to district court and district judge forwarded it to high court initiated contempt that was heard by me. I convicted them all counsels, Supreme Court dismissed the appeal, but up to this point that the Supreme Court dismissed the appeal or Allahabad high court convicted them in contempt, these are not that much important, the importance is that you have lost the work hours, you have lost the momentum. once your momentum is broken it is blocked, you're with heavy hands heavy heart sitting in your Chambers or in your home the court is not being allowed to function. Your conscience is picking, your conscience is simply weeping for you, for the system and this is happening. We cannot do much about it except that we stick to the normal functioning which is expected from us. Yes Allahabad was not allowed function for many months, just under the nose of High Court and there was no fault...and never hearing the Kanpur is case, the magistrate has passed the right order, the proper order which was required of him. In Allahabad a criminal came and shot dead another criminal and police and some advocates, the police personnel were on duty, they bring the accused from custody, and from there to anywhere else. The advocates were so if infuriated that it happened in the very Civil Court they started beating on the policeman what behaviour there after there was complete stoppage of works for many months I was there I was the standing administrative committee member there. There was a fight and then one of the finest judges, one of the most dignified judges I have met **Justice S.U. Khan** was the administrative judge. He was heading the Ayodhya verdict, and then **Justice Khan**, and the travesty was that they were not allowing him to function, but in urgent matters of bail petition or injunction, they were appearing some of the other, and asking the court to pass order. When we came to know about it, then we call District district judge and told him ki you don't sit here in the court room, you stop functioning. Don't entertain any prayer. We are not going to transfer jurisdiction also, we are..

**Participant:** Just a minute sir, if it happens everywhere and we stop the work the High Court asks us why you are not doing the work.



**Justice Dharnidhar Jha:** No, No, **S.U. Khan** had issued..**S.U.Khan** had issued order, ki you don't give them any urgent orders, then they approached.

**Participant:** in regard to these strikes, we are asked to report to the High Court. We firstly send the resolution, that this is the resolution which has been received, again as district judge we are supposed to report. As far this, work is going on smooth,

**Justice Dharnidhar Jha :** in Allahabad they do two things, either they transfer the jurisdiction from Allahabad to say any neighbouring judgeship or they ask them, when the Allahabad bar members approach the High Court to **Justice Khan**, then **S.U. Khan** sahib said, the vandalism that you have indulged into has caused minimum of this damage so you firstly deposit that amount. Then we are likely to hear you. it was very difficult there, saroj I don't know what is your judgeship, how is the position in your judgeship, but in most of the judgeship they won't, most of the time, allow, at the fall of a mere hat, the High Court, is closed, the High Court is not functioning. I was there, I was, they used to swarm into my court room.

**Participant:** Sir, recently in Pratabgarh, one counsel was shot and the other counsel collect her body, in front of the district judge chamber.

**Participant:** in??

**Participant:** In Pratapgarh

**Justice:** Pratapgarh is never ready, it just is never ready..

**Participant:** So what has to do the District Judge, with the..

**Justice Dharnidhar Jha:** what can a district judge do and in Allahabad High Court, when they used to swarm into the courtroom I was an outsider I did not know most of the advocates, none of them. I used to smile and tell yes, how many days you are going on strike? My lord, no, no. For two three months, I would love going on without any work and

to leave Allahabad High Court to my village look after my agriculture, so I request you to go on strike for 2-3 months what can I do, what can I tell them. In Allahabad high court, I have told you, Allahabad it is very difficult function in Allahabad High Court and the credit goes to the judges who work there. For many reasons, and for this reason also so we cannot, do very much about it because we are not supposed to reign those rowdy elements, reign in those rowdy elements and unfortunate part of the whole system is that we are here getting inputs for enhancing our tools, for sharpening our tools, but there is no system in the bar, the bar council has not developed any system so as to inculcating the good elements, etiquettes, work ethics and the respect for the judges into the advocates. I could very well request all of you that I had on the very first pointed out to you that don't indulge into verbal exchange of words with a counsel, because your position is very exalted, you, most of you have earned the position by your hard labour, integrity and you are committed to the institution you serve. it is not that you get a salary, no, this is has never been, this is never the motto of a judge. Yes he gets salary, yes all right, but primary object of a judge, the primary motto of the judge, the force that drives a judge to do good things is his commitment of doing good things, giving relief to the exploited a lot. So please don't, don't indulge into verbal exchange of words with a rowdy advocate or any advocate. You hear him patiently alright, even if couple of minutes are wasted unnecessary. **Shri Justice A.K. Srivastava** used to sit with me division bench, he sat with me a long time, **Ashok Srivastava** and I used to hear. and I am yes we have heard you it's alright and on many occasions **Justice Srivastava** will tell me as kya sir, kitna patience hei apko.?(laughing) how much of patience you have ki you hear all nonsense , Ashok Babu, you know we know that we are going to dismiss this petition, so why not he/she have a sense of satisfaction that he was heard. So one should show that the hearing was afforded appropriately because we are supposed to hear and to the satisfaction, yes there is no reputation, we should curtail the reputation, all right and another point, yes, any other point yes.. alright, over, yes...Mr counsel and then you either pass the order or if you feel that it could flaring with anything in the court room, then reserve the order, and pass it in the chambers, it is the best way

**Justice Dharnidhar Jha:** because, I have told you in Patna high court I had a habeas corpus petition for the release of Sanjay Dutt, and that advocate I knew he was a rowdy, he is a rowdy and I heard him very patiently and I did not open, I am a talkative judge, I used to discuss everything with the counsel. If the counsel is of his standing and well behaved then I am, he knows what order is likely to be passed during his discussion. So I was very much, I like talking to the counsel, becomes clarity comes, many things comes out, discussion brings out the clarity in judgement and order and he also gets to you clearly. if you have said certain things in your mind then you bring that out, then there is opportunity for the counsel also to reply to that point. But I patiently without opening my mouth, I had learned this art form one of my gurus, my seniors in Darbhanga Bar Association. He would say, when you know that this counsel would carry on for days, then how do you cut him to size. How sir, don't open your mouth. the time you make a query, he gets recharged, energized and then he will be going on for many hours and this really helped me. And the other thing which I did, I adopted as a method, if the counsel is unnecessarily wasting your time, then what did I do was to fix the case at 4pm. 4pm -4:30 used to be my sitting time in Bihar, Patna

**Participant:** Timing at the end of the day..

**Justice Dharnidhar Jha:** yes, ab such advocates generally run away from court rooms early, you may know it, and they leave the court rooms early. So you...

**Participant:** one lawyer told me I know why you have fixed my case at 4.

**Justice Dharnidhar Jha:** you fix the case at 4pm. now he is sitting like this in the bar, this is the only work that he has to do at 4. And now he comes with a shrunken eyes and tired face, your honour may It be possible that this is taken up tomorrow at this time, this particular time, then you put down, yes if you conclude in one hour or 45 minutes. You see, he will be the most disciplined counsel the next day. so this is one of the tricks or the traits which I adopted in the high court also, in the subordinate court also. I never, I have made one reference against a counsel after 5-6 years of my... while I was about 5 year old judge, and the Chief Justice himself came to enquire into that this, **Justice Wadhwa** himself came from

Patna to that station and he did everything which was possible in that matter. But that also creates tense moments for you. And that waste that is wastage of your talent and intelligence, so better to adopt these tact's of being a silent judge, in cases of such class while hearing such advocates be silent, hear him, come down and pass the order. When I came back to Patna High Court, **Justice Rekha Doshith**, who was he Chief Justice there, she transferred a bail petition and I was sitting in division bench. The bail petition came to, I talked to... my son, and my son is an advocate there. He came to my house and said that bail petition has transferred over to you. The counsel has not allowed other judges to pass an order. Haan they don't allow, they want a particular order, but they don't allow any judge to complete the proceeding, I called the court master and the registrar, put up a notice, as the first case today I will sit singly. I sat singly and incidentally I heard him, I did not speak a word. Alright, within 15 minutes, the petitioner was had completed his submission, then the state, yes...alright, then a counsel rose on his feet and appeared for the government. No, No, informant does not have any locus, I have heard this alright and I dismissed the prayer. So, if you adopt these tact's in the courtroom I don't think you will be having any confrontation with the, you have some tip off with one counsel or the other but confrontation with the bar usually won't occur. Your duties, our duties are sublime; this is something short of discharge of delegated powers of him. So, it is more necessary and ... we stick to our normal norms and recognized behaviour of the judge. We are not rowdy elements that we behave as rowdies. Rowdies could be appearing; we all know that rowdies have been inducted into bar council on account of there being no system for screening out these elements from the system. So it is better to silently handle them, than to have a policy of tit for tat. This is what I could share with you. My sister respected one is here, so let us hear her also and her views.

**Justice S. Vimla:** I'll finish it off, we are here only.

**Participant:** but the situation differs from state to state, so it will be different in north India, it may be different in south India, and it would be different in eastern India, so basically, with bare hands we find it difficult to take the cognizance while conducting the matters. So if we insist the matter should be conducted, so ma y times it happens that there is

confrontation and advocates knows how to avoid conducting the matter, so he will adjournment application or even though he will come to court, they will be busy in some other court, he will appear before me and the last resort they have is to file a transfer application, so if a judge is, because the directions from the higher court are certainly binding on you and time limit matters, dispose in six months or dismiss in one year, so even 5 years matter, or 10 years matters, time is being given but the interest of the advocate is not in those matters because due to three elements because clients not coming to them, for example bail matters, injunction matters, so deep this situation is.

**Participant:** in time bound matters, the directions are only to the Presiding officer, there is no, even though we should have called the officer, there is no binding on the advocates. in fact I would suggest that such directions, there should be some coordination from the Bar Council from the High Court side.

**Participant:** maybe by some instructions, that the lawyer shall not seek any unnecessary adjournments, this kind of instruction is there. if we find, then you just give the application regarding directions of the Hon'ble Court.

**Participant:** I would like to say something; I faced strike in my court for 2 months just for rejecting an adjournment. That is true, after giving warning for 8-10 times earlier occasions; he went on seeking more adjournments. Then my district judge asked me to go and say sorry, to the clients.

**Justice Dharnidhar Jha:** Never do it.

**Participant:** I told him, I won't do this..

**Participant:** because our system is advocate system powered system..

**Justice S.Vimla:** Yes, good morning, good morning to all of you. this good morning is not at all good because you all are parting today, your good mornings should be carrying your good morning, Yes, with what force you would like to say good morning. when I was about

to come here, I was just reminded of a joke, a teacher went inside the class room the students started laughing, that teacher asked her student why unreasonably and unwantedly you started laughing ,it irritates me in the morning, your behaviour should motivate me in the morning not that this the way to behave with the teacher, then student said it is not for you to get irritated, it is exactly in tune with what you have been teaching, therefore it is for you to gladly accept our behaviour. Then the teacher asked him in what way you are doing whatever I taught you it is only you have taught u. It is only you who told us to laugh when difficulties comes. we were little bit reluctant come here for third day, but on seeing your enthusiasm at the same level, I am not really perplexed but I feel so happy to be along with you only that purpose I wanted to share that joke with you. A question came how much is  $2+2$ ,

**Participant:** what mam

**Justice S.Vimla:** how much is  $2+2$ , a very simple question to a house wife. What is two plus two, numeral two  $2+2$  how much.. 4? This question was asked to a house wife, she said two plus two must be 6 so far as a house wife is concerned because it is my duty to augment the income of family, if  $2+2$  is going to be 4 my existence has no relevance, therefore  $2+2$  is 6. The same question was asked to an accountant, he is an income tax practitioner he said  $2+2$  must be 2 only, because only if I show your income less I will have more practice therefore for me it is 2 only. Same question was asked to a lawyer, he said two plus two is x. It must be filled up by the client who is coming to me, whatever and how much and how much my client wants it to be, I will make it up, this is what the lawyers story that is the we should take it as ability of the lawyer or power of the lawyer or capacity of lawyer or the unreasonable conduct of a lawyer or a reasonable conduct of a lawyer. How are we going to interpret? How are you going to appreciate? This is the kind of a statement that a lawyer alone can make in the country but nobody else, this is the level at which we stand today. I think all the queries raised by you can be answered in a single incident which happened in our High Court. you must have read it several occasions, and before that what is the kind of relationship between the bench and bar. What should be the nature of relationship? People

always expect speedy justice, quality justice, timely justice, instant justice, nowadays they have started asking for that also. when the level of the litigants coming before the court is so much, how do we function or how do we fulfil the expectation of the public when the behaviour of the lawyers, my brother Jha was pointing out and you have also been sharing the same view when the lawyers behaviour is going to be like that how are you going to manage. the way in which we handled the bar, whether it will help us to increase the productivity, by and large there are two categories of lawyers now, the elder members of the bar who are sufficiently aged showing utmost respect for the court, whenever they argue a matter before us, even if the case has no merits, we feel like giving 10% of the relief, at least some sort of relief or not for the simple and humble behaviour exhibited by the senior lawyer. some junior counsel come, irritate us to the core, irrespective of the merits in the matter at least in order to teach him a lesson sometimes we feel that the matter should not be entertained at all, but for the behaviour of the lawyer, the client should have the relief. Whether the lawyer behaves well or bad it is our duty to look into the invisible client who is not before us, he is residing elsewhere, then how do we handle the bar and what is expected of the judges to handle the bar? There was one district called the Dharmapuri for which I was the first time administrative judge, all my brother judges are telling, sister you go and tell the chief justice that you don't want that district, the lawyers there are adamant on 365 days, they are 366 days on boycott, don't go to that district. Then I was asking them, if nobody is willing to go to that district that will go? Who is to do that? Who is to bell the cat? One day or other somehow or other we have to deal with them, let us see let us go and see what is the kind of lawyers they are and what is their demand and what is their expectation and when I visited there, no member of the bar visited me and nobody had a courtesy to come and say hello to me but anyway I told the district judge I wanted to meet the bar president, bar president sent a reply saying that they are boycotting the court, therefore they are boycotting meeting of the judges also therefore, he will not come and meet me. then I called the meeting of the S.P and other officials who are there, the problem was for a lawyer along with a litigant, it is in connection with the discharge of the professional duties of the lawyer, the client took exception that the lawyer ought not have done, that he had beaten the lawyer, and therefore the lawyers are boycotting, that was the incident that was prevailing

because of the complaint given by litigant, the S.P has filed a case directly against the lawyer. That is why all of them were boycotting, the lawyer was not willing to meet me, perhaps living that if he comes there, some officials may come and meet me during that time he might get arrested. so many apprehensions in his mind, that is why he did not come I did not take it serious at all. It is his own will and wish to come and meet me or not to meet me that is a different issue. After the meeting, S.P told me that he will be willing to, 18 were cases pending against the bar members that time, I was telling him whether all the 18 cases are really true and really justified in registration, then he told me I will show you the files, cd files are readily available with me, where ever cases are false, we are prepared to withdraw, wherever cases are true, come what may be we will not withdraw. Don't ask me to withdraw only on the simple ground that lawyers agree to go back to the court, on that ground we will not withdraw. I find that the stand of the S.P is perfectly justified I told him even if you are willing to withdraw, I will not say that you should not because your stand is justified, where ever they are guilty let them face the trial. this news spread out and immediately along with the president all the lawyers came to meet us, and we were telling the stand of the S.P that, I told him point blank that his stand is very correct, if they are agreeable let them finish it off, if they are not agreeable, let them face the consequences. The consequence is this, what the district judge will decide so far a strike is concerned; it all depends upon the Chief Justice who is heading the state. if the chief Justice is very strict in controlling the bar, the bar yes ,the principle district judges can take a very tough stand and if the Chief Justice is not so kindly don't take any stiff stand and land yourself in trouble. you know what our Chief Justice is doing after he is taking charge, now the control entirely with the High Court. Many times it is in the hands of the lawyers, only it is called High Court of this and that. we will have celebrations, we have complete a 150 years over but many times they take the law into their own hand they dictate terms and they want to ensure that the court should function in accordance with the expectation of the bar, but if that is so there is no justice at all. If it is in accordance with law, it is by the judges only and then we can claim it as the court of **Justice** then it cannot be called so. what the Chief Justice is doing now, in almost all the court buildings lawyers are having the chambers. I am I right? In many court halls it is there..



**Participant:** the present set up is so, the plan is so.

**Justice S. Vimla:** no, bar association premises are inside the court complex. They are the licensees of the places, may be still it is worst, they are paying the rent.

**Participants:** no rent.

**Justice S. Vimla:** for madras high court, for madras High Court, we have called

**Participants:** no question of rent, when we ask for the same.

**Participant:** even the want us to let go of the bills.

**Justice S. Vimla:** they also filed a writ petition seeking exemption from payment of electricity charges and we said so long as you are receiving fees from your client and there is no question of exemption from paying electricity charges, we did not give the exemption

**Participant:** they are running canteen, photocopy machines and other things in the court complex

**Justice S. Vimla:** all places belong to the government; they have to pay rent to the electricity, PWD department

**Participant:** the government should have some control over the lawyers..

**Justice S. Vimla:** I will tell you how the Chief Justice is having the control. whenever first on as usual, he called all the bar council president as well as the bar association president and, told them that we cannot tolerate the boycott anymore, and only one day token boycott, if there is any serious grievance, that to with prior intimation to the high court, and if there is going to be consistent boycott, our officers will not obey any of the expectations from you, they will act only accordance in instructions in high court and from your side and if you are going to continue the boycott we are going to suspend the licenses granted to you, you cannot occupy the premises anymore. You have to be out the premises anymore. You

have to be outside the premises of the court. Almost 50% of the lawyers are having the chambers inside the court hall, I am sorry inside the court campus, and once we started this instruction for two districts and almost gradually the entire Tamil Nadu boycott was not there. Now it is a very peaceful. So for us High Court premises are concerned you might have seen the news in the newspapers also, once upon a time about two years back there was clash between the police and the lawyers.

**Justice Dharnidhar Jha:** Yes, **Justice Mukhopadya** was there

**Justice S. Vimla:** yes, yes

**Participant:** CISF was deployed

**Justice S. Vimla:** and now CISF has been brought in to our campus

**Participants:** challenge before the Hon'ble court and the CJI has passed a very tough order that no one is allowed to vandalise and hijack the system.

**Justice S. Vimla:** yes, yes. **Justice Iqbal** was there when it started these security issues and we got a special fund from the government, we got introduced to complete security system and the entry pass exit passes for anything. Nobody can just like that enter into the premises. the problem in a particular case when they come with a lot of lawyers for single bail application with a 100 different lawyers in order to exert a moral pressure upon the judge to ensure as far as what is concerned that is the hidden agenda behind them. Now if you want to do 3 lawyers for the same case, if the lawyers have no case they can't come at all. it strictly goes by the security system. Even we have introduced biometric security system now the system is completely under the control of the High Court. If maybe your high court is willing introduced the same kind of measures to control the atrocities I should say not by the lawyers but the hooligans engaged by the client who is accompanying the lawyers and the persons who didn't study law at all, somehow they get enrolled, call themselves as lawyers. they come and stand before the court, not being able to explain what is a plaint. they do not know the difference between when is returned, they bring it to CrP. Only if the plaint is rejected

can it go to the (inaudible) if it illegal, you can come in CrP and how do you bring a CrP, when a plaint is returned, they have no answer. That means they do not know the difference between when a plaint is returned and when a plaint is rejected. This is the quality of legal education. we should address there, the quality of legal education . Unless the quality of legal education is improved, the system of administration of justice by the assistance of lawyers, it is very difficult. Now that we have national law school, National Law Bangalore, National Law School Bhopal, I think only six, not almost all schools, all states, only six.

**Justice S. Vimla:** Yes, yes, definitely. Obstruction of your efficient duty, certainly each and every judge, right from the magistrate, any judge can take action for obstructing the official duty, discharge of official duty, we have a separate section in IPC, maybe contempt jurisdiction is raised to the High Court, we need not go for contempt for each and everything.

**Justice S. Vimla:** yes, yes, definitely

**Justice S. Vimla:** only thing is, if you take action, contempt action alone you cannot take.

**Participant:** There are very set procedures madam, (inaudible) after the enquiry is made

**Justice S. Vimla:** Disciplinary action you cannot take against lawyers. The disciplinary jurisdiction vests with the Bar Council.

**Justice Dharnidhar Jha:** with the permission of...

**Participant:** sir, you are saying

**Justice Dharnidhar Jha:** please, please, with the permission of my lord Justice Vimla, I could point out to you that there is a provision under the CrPC. Specific chapter is chapter is 29, probably, section 349, if any act of contempt is committed, in lieu of the judge, in his presence, then he has the power to punish someone for two days, three days or impose some fine.

**Participants:** fine and two and three days.

**Justice Dharnidhar Jha:** yes, fine and two or three days imprisonment, after calling for expulsion, showing show cause and then proceeding.

**Justice Dharnidhar Jha:** to the High Court...yes.

**Justice S. Vimla:** very simple (**Participant:** can refer this to the magistrate to take cognizance), very simple, ask your bench clerk, describing the incident, how you were prevented from discharging your official duty, let the police register the case and end of the matter.

**Participant:** Sir, Sir, Section 228 of IPC is much easier section, only after show cause also, we can send lawyer.

**Participant:** Sir, if the lawyer gets very unruly, then section 228 of IPC is much easier section sir

**Justice S. Vimla:** I think now the Bar council of India itself is having control over all Bar Associations. Recently there was an announcement in Tamil Nadu that entire Bar will be indulging in one day strike on the ground that the lawyers practicing in the district Bar Association are not considered for elevation. This is the only ground, the only day they wanted to boycott. Immediately the Bar Council of India wrote back, saying that this issue was in fact argued before the Supreme Court, and they were considering the memorandum, finalizing the memorandum of procedure and it was not agreed to by the Supreme Court, therefore in near future there is no chance and whenever there is a chance which arises, they will take up the issue and therefore immediately they should withdraw the boycott. On response from the bar council of India, they have withdrawn the boycott. Now it is completely under the control. It's all depends upon, how we treat them also.

**Participant:** madam, pardon my saying that there is a direction of the High Court in the statute of the State, Magistrate even in his own...from the Hon'ble High Court, that is the reason magistrates of the superior division officers, they work like a coward.

**Justice S. Vimla:** no, no.

**Participant:** they can do anything and everything, but unfortunately

**Justice S. Vimla:** No, I have a distinction to make. You are right, but I have a distinction to make. No doubt, these sort of problems are happening to the subordinate judges and the main problem is some judges come from the service side, really those who have practiced in the mufosils bar, they really know the problem, they understand the problem. But those who are practicing in the High Court and straightaway coming as the High Court judge, they are not aware of what is happening. If we tell them that the magistrate is beaten and manhandled, then they don't believe them at all. I told them on one occasion that whether you come along with me or go. One day, made a surprise visit to district to see, how the lawyers are behaving with the judges. They deserve some respect, they...for the job they...there is a seat occupied, they command some respect but these lawyers are not respecting at all. And this is what is happening, unless you go and make the judge understand that this is your problem, if the administrative judge understands the problem there is end of all the matter. He...if you are not able to talk to your Chief Justice, the Administrative Judge has access to the CJ at any time. They can go and impress upon the CJ, this is what is happening then they...you'll get the remedy through the administrative judge.

**Participant:** Mam, even the contempt, shall word is used, for the honor of High Court regarding advocate...

**Participant:** rarely is has happened that judgeship or the Judicial Officer...otherwise, there is now called for the...for the representation only till the advocate is cautioned for the future.

**Participant:** No, then that judge would transfer the matter

**Justice S. Vimla:** you don't have judicial officers association?

**Participant:** yes, we have.

**Participant:** we are not the advocates; we are stand of the High Court.

**Participant:** Supreme Court is much simpler.

**Justice Dharnidhar Jha:** we can work efficiently, we can work very strongly, but feelings should be there. If there is a strike, then they will say your honor, there is a strike for the High Court...

**Justice S. Vimla:** when the High Court calls for pendency details and when the subordinate judges are not able to discharge of their duties on account of this lawyers boycotting the court, don't write that it is boycott of courts, write that it is the misbehavior of lawyers, lawyers preventing the court from discharging their functions that is why there is no disposal. Then their officers are also saved and it will be brought to the knowledge of the High Court that is no court functioning there. Many times, it is not within the knowledge of the CJ that the courts are not functioning for months together because of the boycott.

**Participant:** another similar...

**Justice S. Vimla:** every day Chief Justice do not have the time...

**Participant:** but that time there was a boycott of courts but they will do boycott in the morning till 2 o'clock, so thereafter they will, afternoon session they, so we are also (inaudible) and we take matters of the...

**Justice S. Vimla:** as brother was telling, on one occasion we were telling, no interim orders, no bail orders, no bail applications, no injunction application. if they want to come and argue, they can come and argue all the cases, if they do not want to come, no orders at all. We stop the granting of interim orders that took care of the situations. Somehow brother, we have to tackle them, because we also we had been lawyers once, we have come only from them and they are...they are not different...they are answerable to the society, answerable to the client, answerable to the court. They are in...three dimensional ways they are working. Majority of them, really...I may also share this with you. Majority of them do not want boycott. It is only

the 10% of the (inaudible), its just 10% of the lawyers who are new to the field, who don't have the work at all, they dominate and the seniors are afraid of these (inaudible) that is why they are not participating. If you are able to control, these 10%, the 90% will fall in line and they are ready to fall in line, and they are ready to cooperate. This is a real situation prevailing. if we take care of this situation and have control over the 10% we will be able to control.

**Participant:** stock answer was given to us..

**Justice S. Vimla:** which stock answer?

**Participant:** we should procure... you have the bar association in your confidence. you take them into your confidence.

**Justice S. Vimla:** what is the...what the manner in which that can be done is? Where is the question of taking them into confidence?

**Participant:** if the High Court stops litigating the...that will solve all...most of the problem will be solved.

**Justice Dharnidhar Jha:** yes. Your question was. Your question was regarding...your question was regarding the disposal of cases where there is a direction of the High Court to dispose them on a time bound basis. Generally...generally these orders...are received from the High Court or passed by the High Court, considering the custody period of the accused. Seriousness of the offence prohibits the judge from entertaining the bail petition and acting as per his discretionary...discretion to grant bail. Say, a man is the ...of the deceased, he has paid for bail, the High Court has dismissed the prayer and the High Court has expedited the hearing and directed 6 months, 9 months or one year whatever. Now, my experience, I used to list some of the most heinous cases before me when I was the District Judge, or I used to transfer those cases also when a judge was confidentially writing to me, that he was not inclined to hear that particular case further. Because of the problem, which you generally feel, the advocate is combative kind of nature or he is not allowing you to proceed further,

then I used to transfer those cases to myself. The first thing I used to do was, in such cases, to extract the order of the High Court in my order sheet, communicate the order to the concerned counsel. by calling him into the court and then expediting the hearing, with whatever method that is provided in the CrPC. Fix the date for the, in most of the cases you will be finding that one particular activity or couple of activity is custody. But some of them are on bail as well and who they are on bail are not appearing. So I used to do was to inform the counsel that you produce him because the bond is, the bail bond is having a clause, undertaking clause, that whenever the court directs him to appear, he will appear before it. The generally I found, that the accused person who were on bail used to appear on a particular date fixed by the court and if the counsel is not...now what happens is, you must have experienced that, they will file the petition in installments. I have to argue on this charge first, I have to argue on discharge of this accused, then this accused, then this accused. Ab now, if you consider...this is where the imaginativeness of the judge comes into play and it is handy. Imagination, is nothing, imagination was defined by Einstein as not knowledge. Imagination is not knowledge, it is...intelligence is not knowledge, intelligence rather, it is imagination. Ab imagination, you are finding the that in batches the petitions are being filed under sections 227 or 228 for discharge of an accused, you don't, you file petitions...whatever petitions you have to file under 227 or 228. The public prosecutor has to address the court, open the court and to point out to it by which material he wants to prove the charge...and what charges could be framed on that basis. So it is virtually the duty of the PP to address you and then it is the duty of the judge to find out what offences are made out. so you pass an order of charge and discharge in one go, In respect of all accused and if the petitions are filed, this petition is of no merit, appears infructuous as order on this point has already been passed. If anyone is aggrieved, he will go to division...go for division, go for session whatever. You then fix the case for...I used to adopt the method, I had pointed out...In that workshop I was pointing out to the prosecutor. You kindly have a glance of section 170 (2) of the CrPC. This requires the officer who has investigated the case, to obtain bond from persons who are acquainted with the facts and circumstances of the case to appear in court, when called upon to support the judges. So, what I used to do was, and I would suggest, that you adopt this methodology of procuring the attendance of witnesses. You issue a notice,



the day you frame the charges or pass the order for framing the charges, you issue a notice...I had a format; I had created a format of my own. In one of the conferences of District judges, the High Court wanted from me as to how you dispose off these cases and how an additional judge dispose off this number of cases. then I told them this is the method, I have formulated. I have created a form, the day I used to frame the charges; I used to issue a notice in that form to the officer in charge, a copy being forwarded to the concerned SP. You are directed to produce these witnesses on this this this date before me. In case of failure to do that, you appear before me- officer in charge...was directed to appear before me when show cause as to why necessary action should not be taken against you. Necessary action what could be? 349, 200 Rs fine, direction to the SP to deduct the fine and deposit it with the Nazir of the civil court. It used to have immense effect and there was a line of...So you issue notice and you direct the PP to examine the. Even if the defense counsel is not appearing, you examine the witness, examine in chief the witness. You have a power under the session trials provisions to defer the cross examination of the witness. If he is not coming for one day, you defer. if he is not coming the second day, you write down in spite of waiting for the counsel, having sent words through my orderly, Sh. so and so or the counsel for the accused persons are not showing face. They are not present here, they do not appear in client, to next date inform them. If they are not turning up, then you resort to appointment of a counsel of your own.

**Participant:** Legal aid?

**Justice Dharnidhar Jha:** yes...Legal aid counsel, yes definitely and then proceed with the trial and when any explanation is sort by any court on transfer petition or bail petition you jot down all these things. You bring it all these facts in order and make a report whenever you are requested to make a report considering and pointing out these entire things order sheet wise and you see the effect what happens. No counsel shall dare absenting himself from your court. This is being tactful and then acting with heavy hand also. So this was the procedure, this was the way, I used to work and the.

**Participant:** Sorry to interrupt, (inaudible) this is the first tendency in our courts. Now suppose the witness is not (inaudible) and that stage is marked for (inaudible) now defense counsel cannot come to the court, kindly adjourn this case...

**Justice S. Vimla:** you cancel the bail and remand the accused to custody.

**Participant:** But he will be in custody already..

**Justice Dharnidhar Jha:** alright, that is alright.

**Justice S. Vimla:** accused is in custody.

**Justice Dharnidhar Jha:** No, you record this..

**Justice S. Vimla:** if trial is not being able to proceed

**Justice Dharnidhar Jha:** this was what I am telling you, you record the statement of the, you don't allow adjournment. You record the evidence of the witness in examination in chief and then you put

**Justice Dharnidhar Jha:** no, Then you grant a time... tomorrow.

**Participant:** Oh yes.

**Justice Dharnidhar Jha:** tomorrow.

**Participant:** by imposing cost...

**Justice Dharnidhar Jha:** by tomorrow and write down that this this had happened after the examination in chief evidence was recorded. A time petition was filed. I exceed to the request..

**Participant:** sir, the only thing is when we speak to the court , then PW is 1-5 but then PW 6-10, 11-16..this is what we know, because (inaudible) let us say it is a murder case, the prosecutor is there.

**Justice Dharnidhar Jha:** No, that is what I am pointing out. 273 says, or 72, this CrPC section, the evidence of the accused. Evidence of the witness has to be recorded in the presence of the advocate...accused or in presence of his counsel if the accused is represented through it.

**Participant:** the question is who will defend for him..

**Justice Dharnidhar Jha:** No, that...why you are worried about the defense...Kindly let me finish.

**Justice Dharnidhar Jha:** are you have to record, the evidence in presence of the accused. You have recorded the examination in chief and then you record in your order sheet that an application for adjournment of the hearing of the witness has been filed. You adjourn it for tomorrow.

**Justice Dharnidhar Jha:** deferred, You discharge, I have upheld a conviction as a High Court judge in Division Bench on this basis ki repeated adjournments and refusal to cross examine..

**Justice Dharnidhar Jha:** the opportunity has to be given to the accused for cross examination that does not mean that he cannot examine and the accused person...and the case will remain pending.

**Justice S. Vimla:** why doesn't this be done in this way? When the counsel is not cross examining and he is not cooperating, just record that at that time there is no cross examination. If you're continuously going to record the evidence of all the witnesses, and the accused comes to know that without cross examination, the case is proceeding, either he will try to ask for a legal aid lawyer or the court itself can appoint a lawyer saying that

already appointed lawyer did not defend the accused, therefore we are appointing a competent lawyer for the defense being conducted. Then defense lawyer will conduct the case and then the rights of the accused also will not be defeated.

**Participant:** if the accused itself is not asking the counsel for appointment of legal aid.

**Justice S. Vimla:** No. We have given sufficient time to the accused to engage a lawyer, the lawyer engaged by the accused is not cooperating and if the accused is not able to bring back the lawyer, then it is our duty to protect the rights of the accused. We are protecting that all.

**Participant:** then against this will become a prestige issue for the lawyer that we are not being given...

**Justice S. Vimla:** Maybe several issue, supposing his conduct is referred to Bar Council, for being...it is misconduct...It is a professional misconduct.

**Justice Dharnidhar Jha:** the Bar is not concerned about your respected prestige and you are concerned about the respect and prestige of the Bar. You have to impart **Justice**. You make a strong report that it is a professional misconduct and you are referring to Bar Council for reference. In one case if they had done.

**Justice S. Vimla:** it all depends upon the facts and circumstances. you can never say that this kind of order should never come to you...

**Participant:** No madam, in such cases where the accused or the counsel is taking adjournment...adjournment...adjournments..

**Justice S. Vimla:** No we call for record. Now that whenever somebody comes and asks us for the mere asking, we are not passing orders. We call for a report from the concerned judicial officer as to under what circumstances this has happened. Only from the report received, you pass further orders. In cases of appeals and division also, counsel appear and on seeing a tough judge sitting there, which could result in conviction, immediately they

report no instruction and goes. Immediately they even ask the legal aid to appoint a counsel. Immediately we say so and so, a competent legal service is being afforded to the accused to defend the case...legal aid director to pay the fee. Immediately the lawyer takes over, immediately argues the matter, we don't allow them to take a chance at all. In division as well as in appeal, because appeal cannot be dismissed for default. We appoint a lawyer and then we proceed. You talk the same procedure

**Participant:** we give the opportunity, but there are certain lawyers who do not want to proceed with the litigation. I tell you

**Justice S. Vimla:** then...you are expected to record reasons for doing so.. Only when reasons come we would be able to appreciate whether the reasons are justified. If we feel they are justified, we don't also...we are also concerned with your respect. We have also come from your side, not as if we sit here only from heaven, from your category only. We understand your problems. You record reasons we will consider. That's all.

**Justice Dharnidhar Jha:** how do these things happen? These things how do they happen?

**Justice Dharnidhar Jha:** we are, exceeded our limits as the time stands. It is 20 past 11 and we have our tea here but break for 10 minutes.

**Justice S. Vimla:** 10 minutes.

**Justice Dharnidhar Jha:** alright, someone is required..

**Justice S. Vimla:** it appears there is a request from you, that if some of you have early flights, we will try to finish it off by 1 to 1:30, so that you will be free to go early.

**Participant:** my lord was suggesting about the conducting the session trial, there is a provision in the CrPC. So I have civil matters are concerned. So matter was (inaudible) the accused went to the High Court for bail application against the bail application dismissed (inaudible) but only suggestion is that when I am passing the order, if the status report of the

case is called from the session court, how many cases are pending, that will be useful, because many times it happens that six months' time is given, but the session judge is already having a number of expediting matters, in that case the status report will be really helpful.

**Justice S. Vimla:** final report itself would not have been filed at the case of, at the stage of bail, investigation would not have been completed, and directions will come from the High Court saying that you dispose it off within 6 months. These kind of orders are being passed. We'll take care of that.

**Participant:** as far as civil matters are concerned..?

**Justice S. Vimla:** Civil matters because of want of time, we will discuss individually. What we find major cases coming across is they file an application to receive additional evidence, there is already a judgment, application to receive additional evidence to be considered along with the appeal only. Therefore ask them to argue the appeal, you should hear it along with the appeal only. Rest of the applications, interlocutory applications, if you find merits, yes allow the application, and inform the High Court, that because of the pendency of the interlocutory applications you are not able to dispose it off. If you feel it is only for the purpose of getting adjournment, you dismiss it, saying that despite, there is an order from the High Court, expediting the disposal of the case, therefore the application itself has been filed only to drag on the proceeding, therefore dismissed. Just four line order, giving one line reason that is more than enough for us.

**Participant:** I am not that point, because whenever the civil appeals are expedites..

**Justice S. Vimla:** you can come and discuss ...all officers go and come back within 10 minutes, Come here..

**Justice Dharnidhar Jha:** discuss this 10 minutes after..

**Justice S. Vimla:** 10 minutes. Let them come back, we'll comment

## **SESSION 11**

### **Bar Litigant Relationship in District Courts**

**Justice S.Vimla:** By and large, they have come, only one or two absentees, let us begin. He said he has some doubt, we'll begin from him or. You said you have a doubt, yes

**Participant:** So we had discussed about the criminal batch, now certain directions are also...so probably six months or one year, so instead of having a different sort of balance sheets...direction is always binding on the Presiding Officer, whereas the advocates who are representing, there is no obligation on them. So instead of that, what I will suggest.

**Justice S.Vimla:** Whenever the High Court,

**Participant:** Even if we are ready to do all the things other than, think of our side also.

**Participant:** madam, you can give another suggestion also, like one way of suggestion, how to control?

**Participant:** that even the Supreme Court is giving..

**Participant:** May I suggest, some of the High Court judges used to pass such type of order. They used to describe at the request of the advocates, and in extension request is made by the coram, he would pass the order, and the Learned Trial Court is directed to dispose off the matter in regular course.

**Justice Dharnidhar Jha:** yes,,

**Participant:** yes, that is right.

**Participant:** that is the best method, other side of the coin is, one of the judges from our own High Court, has taken it seriously and put up the report in every part of Tamil Nadu. One judge could not dispose off the matter, for various reasons of course, and most of the reasons are attributed to the learned advocates, but when the explanation was submitted by the learned Additional District Judge, it was not accepted and put up before the administrative committee and unfortunately a drought was there in the .

**Justice S.Vimla:** We follow a slightly different norm. According to instruction from the High Court itself, wherever cases of senior citizen, women or children are involved, we are directed to take top priority; we list those cases on each Wednesday and therefore if similar request comes from the disposal of the district judges or any other courts is concerned, only in those cases we give such directions to dispose it off quickly. Even in those cases, we record the undertaking given by counsels on both the sides that they will cooperate and there will be no unnecessary adjournment at the request of the counsels. These undertakings we get it and record it in the order. That makes them not to seek any unnecessary adjournment when we go to the trial court. Even otherwise, let me finish, and whenever extension comes, from the judge concerned saying that there is no cooperation, we call upon the lawyers, see you sought for a direction, you gave an undertaking now there is a report saying that you are



not cooperating and if this is how it is going to be done, we are going to take away the direction already given. If such indication is given, immediately they call the counterpart and tell them and ask them to dispose it off. This is how we are managing it in Madras. We will give lot of elasticity in the order, preferably within a period of three months, if possible within three months, only to impress upon them that the subject matter requires the immediate attention of the judge concerned.

**Participant:** I have a suggestion regarding the cross examination of the witness. Your lordship, if the witness. If the obligation are being undertaken and even if possible, show the obligation...my suggestion would be, if we wind up this provision of section 309, then we decline the cross examination, then at the time of filing the application under 311, with heavy courts the application will be allowed..

**Justice Dharnidhar Jha:** this is applicable to, there is a procedure, you are simply to act accordingly, and one thing more, when you are, we are talking of 309, then, one thing more, when we talking of 309 and one part of it on declining to or not permitting to cross examination once the witness has been discharged on account of non-attendance of the defense. Yes, the first part or the most important part originally, being the draft of that particular provision is the imposition of cost. In cases of non-production of witnesses, you people never impose the cost upon the prosecutor. Why? You will be very easily or you will be rather free in imposing cost upon the accused or penalizing him by resorting to that particular provision of barring him from cross examining the witness, it an impediment which causes unnecessary adjournment in the hearing of the case, so should not we, I used to act, I simply want to impress upon you that I used to impose cost upon the State and used to direct that this cost should be realized from the salary of the officer in-charge who was directed to produce the witness and this amount of course should be remitted to the Nazir of the Civil Court for being deposited in the State treasury. So imposition of cost to one tool, which is equally under section 32 of the CPC also, you have immense power. Now quantum of cost is also quantified in that particular provision- Section 32, but we seldom use. These are tools which have been put into our hands so as to furthering the cause of justice and for

taking the proceeding further. So, apart from barring the defense from cross examination of the witness who has been discharged on account of its non-attendance of the proceeding, we must also consider the cost if the witnesses are not being produced by the prosecution.

**Participant:** Sir, we have been adopting to issuing warrants etc.

**Justice Dharnidhar Jha:** no, never do it, you impose the cost. I tell you some of my tips. Friends my tricks of success were very clear and as per law. I did not have a different CrPC. In bail petitions, the non-production of the case diary is one field where you are very much vexed. I believe it is across the country. You issue a show cause under section 349. I used to give two adjournments to the public prosecutor, first installment 15 days out of my own motion, seek the public prosecutor to produce the case diary and if the case diary is not produced then 7 days another and that particular order of adjournment, I used to issue a show cause to the officer in charge through the Public Prosecutor, ki appear in show cause in case of non-production of case diary as to why necessary sentence of fine or imprisonment should not be passed upon you under section 349 and that was the reason that Arun Paswan erupted and that went up to the Supreme Court and I had to make reference the Patna Full Bench, the High Court sat at full bench, three judges sat together. Justice Garg had been transferred, he was my administrative judge then and th police officers were punished and the Supreme Court upheld the punishment. So, those provisions under chapter 29 are probably there, CrPC 29 or 26. The heading of the chapter is "Provisions in Aid of Administration of Justice". So these are powers which have been created, which have been vested in us, these are extra ordinary powers to take care of extraordinary situation when any impediment is called and that chapter is available to you in CPC also, in civil proceedings also. I have used that power because in a motor accident claim case, I tell you my experiences. In motor accident claim case, one of the infamous politicians of Bihar, I won't name him. He was infamous; he has a fleet of buses, trucks running. Naturally one bus was involved in an accident, man was killed, and his frail helpless father used to stand up in the corner of my court room. Why? The respondent, proprietor of the bus was not appearing and it was pending for 4-5 years, when I arrived in that court. Then I used to look to the face of that,

sullen face and I used to curse myself, ki cannot I do anything, why I am sitting him. then I looked through the motor vehicle accident claim provision, 163-164 or any provision contains that, that particular chapter of CrPC shall apply to this proceedings. Now, the man was infamous, he has money, power and he was MLA also of the Legislative Assembly of Bihar. Ab the police officials, what did they do, they released the bus after seizure, you know once a property is seized, the report has to be made to the magistrate and the magistrate has the power to release the said property, no Police Officer has any power. No authority on earth has any power except the magistrate or any judicial authority. Then I called for, how the vehicle was released. Then I called the criminal case record and I found from the paragraphs of the case diary that the vehicle was released by the officer in charge. Then I drew up an order and I issued a show cause for the production, not show cause, directing the officer in charge to produce the vehicle before me. The officer in charge came, after 10 years, he wasn't there. The officer in charge was already gone, must have retired. He told me I was not the officer in charge. I was like officer in charge was not the officer in charge. the officer in charge post is available from your PS. It is a constant; the post is a constant post. Persons could be changing, the post does not vanish. I have issued show cause and order to the officer in charge, who are you to tell that you are not there. The officer in charge I released, I know the officer, that you are the officer in charge, you produce the bus. Then lastly I tell him, yes, I can tell you one thing more- Go back to your family and to the police station. 7 days is the time, I fix for the production of the bus, if you don't, then tell your family and come here that you are travelling to jail and this is the order I drew. He was a badmash police officer. My courtroom, he brought the bus and blocked the whole entry of my...I understood it is his badmashi, but he did it. he produced the bus before me and threw the key of the bus towards my bench clerk ki lijiye

**Participant:** Inke liye, the order is never straight.

**Justice Dharnidhar Jha:** Yes, then I told him, have you filed the petition? Pointing out the seizure of the bus and production of the same before me. He said yes. I said, come into the dock. then I dictated the order, ki the bus is handed over and put into custody of the officer.

Even if a nut of the bus is removed or found replaced, he shall account for it besides being criminally prosecuted. The keys are also being handed over to him. Sent back, and the very next day, that infamous politician, the agent of his came, who had been made respondent, in whose name, they do not register the vehicle in their own name. the name of the person who was the registered proprietor, he came with the compromised petition, paying up every amount. So, I was talking to you people about acting intelligently and I was in that course, pointing out intelligently means imaginatively. So you read the provision, everyone reads the provision, you have the CrPC, you have the CPC, you have the High Court Rules, you have the circular orders, you have the general letters and in crunch situations, you imagine and recall if there is any provision. If there is no provision, how could we improve upon, because every situation can never have a particular provision either in the civil side or the criminal side, so this is the reason that courts have been pointing out that provisions, procedures are the handmade of justice, judges are required to develop their own procedures in certain cases in absence of any provision. It is not barred, you have to administer justice, the purpose has to be on the honest purpose of administering justice.

**Justice S.Vimla:** there is a continuation to that, if the procedures are handmade of justice and if the maid is allowed to become the mistress, there is every danger.

**Justice Dharnidhar Jha:** that is there. Then why does it happen? If mistress, she would not allow you the freedom. You know in your household. So they won't allow you the freedom of dispensing justice, you will be dispensing with justice then. So, please be imaginative on the administrative and judicial side both and even handed application of provision 309, yes it is a very good provision, it gives you a tool of utter importance and utility and if you utilize and apply that provision properly, rightly pointed out by one of my friends, ki barring the cross examination, then heavier cost at the right moment and in one days, all witnesses to be produced. You have to cross examine, remain there, counsel can be taken care of by resorting to the provisions also with imaginative application of those provisions also. So, this could be, this could be, I had my own ways of functioning but Chandramouli Kumar who happened to the Supreme Court judge, C.K. Prasad, he had been your judge also and we were walking

in the corridors of the court. We were coming from the Judges lounge after recess, he told me that brother, Hindi main unhone kaha, 'ki aapne bade thaata se district judgeship ki', are you acted as a district judge very boldly. Thaat se matlab, then I told him it is very easy to do that. How? You must have respect for yourself number one. You must have the respect for the written rules number two. And number three, you must also have respect for the office you hold, so if you respect the office you hold and if you respect the necessity of creating that particular office, it is the utter public interest that we exist. I have been telling you, it is the utter public interest. We exist only for the service of the litigant. So, whenever you have, I have pointed out an instance also when I was the district judge Sasaram, Rohtas, a widow lady from Allahabad had come to meet me. Initially I was jittery to, whether to meet or not to meet, because she was a litigant. We avoid meeting litigants also, but I felt that she has come from Allahabad, she has travelled from there, and she must have some very serious thing in mind to convey to meet. And I had, told you what was befalling her. Her successor petition was not being disposed off and what did I do, I transferred all successor petitions, all matrimonial matters to myself and then distributed those to the additional district judges and within a few days her oohs were gone. So, sometimes meeting the litigants also is necessary so that you get the feedback as to how you are performing, as to how your officers are performing, how the judgeship is running and then if you are required to take any corrective measures, then you take that corrective measures.

**Justice S.Vimla:** I have one exception to this. Because of the order of the day, because of the nature of the complaints we receive, we would add that, yes, we can meet the litigants, that too in open court, after maybe the end of the session, I will make it more clear, maybe there are ladies, I never mind saying this, they always take the tool of sexual harassment in their hand to the extent of making. Therefore it is better to avoid meeting the court, in houses also, if at all they want to meet, meet them in the open court, there is a liberty not in..

**Justice Dharnidhar Jha:** I could share one of my experiences, similarly, very rightly pointed out. I was hearing a revision petition against interim maintenance under section 125, district judge, I was elevated just thereafter. It was on order under section 125; the statute

itself provides that interim maintenance up to 10,000 could be granted. I told the counsel, that what nonsense, what futile petition you have filed, this is wastage of time. the very provision provides for the same, the magistrate has done the right thing. Then he said that Sir, we have mutually separated from each other, there is a written document. I said, where that is. Then I adjourned the case for the next day and asked him to produce the document. He produced the document, the photocopy. I asked him give me a photocopy and I issued notice to the lady and such matters are generally heard in chambers. Incidentally the counsel of the parties and I had made it a point that whenever I was hearing something in the chambers, all my support staff should be standing beside me. The secretary, the orderly peon, the bench clerk, the concerned clerk who maintains the record everyone. That young girl, beautifully dressed, having been bestowed with beautiful looks, she wanted me to hear her in confidence. I put up a simple question, show me the original document and please tell me whether this document was brought into existence between you and this petitioner. You are married? Yes..Yes..This document was brought? Yes..Yes..This is your signature? Yes. Yes. It's alright. Now she insisted upon me hearing her in confidence. I said no. That is not possible, the purpose is served. She was not ready to leave the chamber and it was a very hard time for me to get rid of the lady, at least half an hour was consumed and the lady was during that discourse she pointed out that she was teaching in DAV School. The principal happened to be my friend. I gave a ring to Anant Sahay and said that this lady had come and she claimed she is your employee. 'Arre Sir, what are you talking about, she has made my life hell. I was always fearing a complaint before you under section 376, she is a lady who operates inter district. You know, and that was the, I had some inkling from the order that when there was judicial separation, the Magistrate, how could the, when the defense was taken, he had appeared before the magistrate, he had taken that defense and showed that fact, particular fact, which was through a document. Then I had to make an entry into his records and that was never erased so long as I remained in the Patna High Court. My transfer from Patna High Court had these reasons that I was very tough on these things and you know we are judges, you are judges, but in some part of our administration of the judge we do not deserve to be judges. Early morning I had opened up the internet links to scan certain information and on judge bar relationship, I found an article which has castigated the

judiciary like anything for spoiling the relationship. And the central theme was, that the higher judiciary has gone as corrupt as to be not respected by any counsel. I could not tell you, because this is not to tell you these things, but as soon as your transfer to Allahabad, he was made Additional District Judge and one of the judges on caste line, the judges of his caste, told me that brother you made a very serious entry against a very good officer. I said why? His wife used to live with him, you are castigating the report of the district judge, his wife, he was a resident of Gorakhpur in Uttar Pradesh and his wife was a teacher in a government school, how could you suppose her to live with him in the district of Seetamani and I was the district judge, I knew everything, I had made the report, then he was shaken but as soon as I was transferred, his career was torpedoed to the maximum. He was rocketed, not torpedoed, so I was...As such I was telling you, if you carefully peruse some of the orders passed by your officers. Then my friend was pointing out, engage some spies. No, don't do it. Don't divulge these things to any outsider that will worsen the situation more. You have yourself, your resources, if you want to have many things about your judgeship, you will have all those information's.

**Participant:** We developed the spies according to the need and the situation

Justice jha: No, order. I was seeing an order where the magistrate has refused compounding of the offence. You read some of the Supreme Court judgment, Shivanandan Paswan. If you read Shivanandan Paswan versus State of Bihar, the judgment.

**Participant:** I think he was punished with TRC, terrorizing a court by your lordship.

**Justice Dharnidhar Jha:** No...NO...kaun? Arun Paswan? No...No...I had simply..349 says you could take him into custody and serve the show cause and hear and punish, so I had asked him that you remain in the court room. Peshkaar, he is in your custody. I have to put him into custody and file your show cause, after the court reassembles so that I take up your hearing on that show cause and in between the policemen were. So whatever..

**Participant:** We are thankful to my lord for sharing these experiences.

**Justice Dharnidhar Jha:** I was perusing an order on compounding an offence in a criminal revision petition. The magistrate has refused to permit the compounding. Shivnandan Paswan is the case, they have compared section 320 and 321. They have derived the analogy that, consent to withdraw and permit the compounding is almost the same thing. Ab now the law is if you don't have any compelling reasons on worst administration of justice then you cannot refuse to consent or allow the compounding of the offence. Now the value property was within permissible limit 100 rupees and the magistrate has not allowed and I knew the magistrate from before and the counsel was shouting in the courtroom openly that this is the reason that he has refused sir, this is the reason and I found that reason from the order. Not only that, the High Court sort an, all on a sudden I found a confidential letter from the High Court, that this is an allegation coming against that officer, you seek the information. His allegation was that he has obtained some television, some color television from some litigant and he has, the allegation was that he has taken bribe, so when I forwarded to obtain his comments, he sent me that I had purchased it. Then I had to seek the information regarding the purchase of the, rules of business conduct required that if you purchase certain articles, up to certain limits, then you have to inform the High Court and send all the relevant documents. Then he was fumbling, then he came to meet me, then his wife came to meet my wife. I had to make a report against him ki bhai this is his situation and these things happen. I don't say that this is rampant, but a single rotten mango, rotten the whole basket. So the disrepute of the institution, the disrepute and who is held responsible. You are honest, you are upright, you have nothing to do with these things, but people will allege that the district judge also is of that class. So please, these things are issues which are to be taken care of very seriously, not only for the reputation of the institution, but rather for creating. I was talking yesterday conference hall, the whole system of judiciary has been created for ensuring the one particular human right, availability of one human right, that is the right to justice and apart from the civil rights which you enjoy, the criminal laws take care of that particular human right which has not yet been recognized but ensured by the Constitution of India, a crime free society and while dealing with such matters regarding criminal or -person who alleged to have indulged into any particular crime, if we come across certain irregularities on part of the judicial officers and we don't take some steps for eradicating or



correcting that behavior, then we are definitely encroaching upon the right of the victim or the informant to have justice. So this is one angle I see things as regards the administration of justice.

**Participant:** My lord, we are grateful to you for sharing that experience about the bus and the lady, so..

**Justice S.Vimla:** You are strongly carrying that lady..

**Participant:** because what we have understood, you must show the correct mind. you should ask that police officer go get that bus,

**Justice Dharnidhar Jha:** Friends, I have been pointing out repeatedly, no power as wide and as of such depth have been vested in any authority on planet earth as in a judge in any class. I say any class. You could summon a magistrate of the second class, if materials are produced before him, to summon the Prime Minister or anyone, any executive member. The president of India had to appear before the Supreme Court, you remember, Y.V. Giri. These powers are sublime powers and you enjoy all these sublime powers. Why? The only goal is to impart justice and of 20,000 on the very first day I had pointed out, of 20,000 judges, I have never stood first in the University, might have stood first in the High Court, in the High School. I lost momentum, I was an ordinary student. my father forced me to study law and become a counsel and after his death I became a judge. I was destined to be a judge. I see the things that way and I studied science, I was brilliant in physics, but I lost momentum and now I talk about law, so what is this. God had created me; God had created me for a particular purpose of delegating his duties, his functions into us. So we have to be very much conscience. G.G. Soni had been my Chief Justice who had recruited us, directly from bar. He was such an imaginative person. Earlier only 5-7 judges of the standing committee used to sit and select additional district judges and mostly their wards. When my lord, Justice Soni arrived at the Chief Justice, he said why 7 judges, High Court every judge is High Court, so full court has to do it. Then the judges said that most of us won't be succeeding facing the full court. he said, let it be whatever. I shall organize screening test, written screening test

and there after viva voce by full court and we were the first batch who had to written test in Patna. he created..

**Participant:** Class of 91 my lord?

**Justice Dharnidhar Jha:** 91, 90 was the year when the written was organized and 91 we joined. In fact, viva voce had taken place in 1990 only. The recruitment would take place on account of reservation this that and we joined in May 1991 and he used to tell us, when you have the pen in your hand to sign an order, remember HIM. So what was the statement, the same statement? It is not your order, it is the order passed by HIM on account of that particular power being delegated to you. So this is what...

**Justice S.Vimla:** Yes, we will now close this Bench and Bar Relationship topic. We are already running short of time, it is 12:20. We will switch on to the other topic. But before that, one note of caution. This incident had happened, how to maintain the relationship between bench and bar, this is a very important one. When we talk about the Bar, what is it that is to be done on the side of the Bench, in order to make the lawyers confident? that we never discuss, but there is no time also left for discussing, that we will think of ourselves and find out ways and means by which we will give that confidence to the lawyers. One day a client sought an adjournment before the judge. He was not willing to give the adjournment. It is a simple application to condone the delay. He was just passing remark, the judge said, 'it is not a very difficult petition for your lawyer to come and argue, even if your lawyer is not available, some lawyers will be standing under the tree, he will come for just 10 rupees, go and pay 10 rupees and bring a lawyer. That is what the judge told him. He went and asked the lawyer to come. The lawyer did not come to the court but sent a reply, you go and tell the judge that those lawyers who are receiving 10 rupees under a tree has now become judges and therefore there is no lawyer to come and now what I want to say is let us give respect and take respect. let us not give opportunity to degrade ourselves, let us be mindful of them words that we are intending to use. Words may break or words may heal, words may build. It all depends upon how you use the words, what kinds of words you use reflect our personality. The language used, the felicity of language should bring you respect. For

heaven's sake, don't ever forget to use the correct language before the court and then if you are conducting ourselves in such a way that, when you go and sit in a court as a judge, people should understand what kind of a judge you are. Initially to begin with, there will be teething problem in every profession everywhere, let it be, let the problem come. Problem should come only so that we learn to overcome that problem. Even if problem comes, don't get yourself discouraged. If problem comes initially but send a powerful message that you are a kind of judge, before whom you cannot ask for an adjournment, before a judge you cannot be misdirected, before a judge you cannot be misguided. If that message is powerfully going, day in and day out, in long term you will earn a name before that particular judge this kind of atrocities are not possible and only if your case is perfect, if you have an arguable case only you can go before the judge. Now as usual I had a presentation, but because of the interest shown by you, I want it to be a real time discussion, I don't want it anything to proceed on theoretical basis therefore I stopped the presentation. If any of you want a copy, you can take a copy; I have left a copy to him. This is the opening slide, but for this presentation, this will be the closing slide. Who will read? Yesterday where we stopped...yes sir.

**Participant:** Expectations from our legal system. Public confidence in the legal system can be measured by the answers to the following questions. Do people believe that the legal system can: Solve disputes quickly and honestly, provide speedy justice and thus maintain law and order in civil society? Recognize the voiceless citizen like the juvenile, prisoner, mentally ill and poor? Facilitate an environment necessary for economic growth? Prevent absolute power and corruption – be an efficient check and balance in governance? ž Be a watch dog for this country – as one of the three constitutional limbs of governance? In order to fulfill the above expectations, we need a good Bar- Bench relationship.

**Justice S.Vimla:** Yes, I think this will be more than sufficient to remember that what should be the nature of relationship between bench and bar. Now we will switch over to the other topic, Bench and Litigant Relationship. Then it is now for us to completely explore ourselves, how we are, what kind of relationship we maintain between the bench and the

litigants. When we talk about the bench and the litigant, whom do you, who all are the persons coming to your mind as a litigant. Any answers...Who are all the litigants that you can expect in your mind when you go and sit in a bench. Who all can be termed as litigants? Accused and the victim...on criminal side, on civil side..

**Participant:** Plaintiff and defendant...as well as witnesses.

**Justice S.Vimla:** Yes, where you are, witnesses are also litigants. On a criminal side normally we take the PP and the police as the persons who are directly fighting with us, forgetting the victim or the witnesses concerned. There is a very beautiful quote on civilization, and then what is the relevance of civilization in this topic. Is the word civilization relevant to our topic?

**Participant:** of course it is..

**Justice S.Vimla:** of course it is relevant. This answer itself gives complete satisfaction that you are all very civilized judges; you are respecting the rights of the victim. The reading is like this, what is the measure of civilization. In judiciary, what is the way in which these kinds of people are treated, that is how the judiciary treats those who are at the dawn of life? Who are they?

**Participant:** Woman, children.

**Justice S.Vimla:** dawn of the life...No women...Dawn.

**Participant:** Youngsters.

**Justice S.Vimla:** those who are at the twilight of their lives. Elderly... Those who are in the shadow of their life- the sick and the infirm. How the judiciary treats those who are in the dawn of their life, those who are in the twilight of their life, those who are in the shadow of their life, this is the measure of civilization. See the kind of expectation from the judiciary. We have executive, legislative and judiciary; they have not chosen to define civilization in

terms of anything else. they have chosen judiciary because judiciary is the ultimate hope for the people. If judiciary treats them well, that is the end of any atrocity in any branch. If the judiciary is not going to treat them well, this is end of everything. There is no use of getting the freedom at all. About two days back I read an article in Indian Express. That I have got it and I will just read it. It is in New Indian Express. Just bear with me, it is opening very gradually, not with the expected speed, no. WIFI is not working? See it has opened already, I'm just reading what exactly is reported. Six year sex abuse victim, tangled in courts long drawn procedure. This is the title. Throughout the day, she kept asking, why they were there and how long she could be there and pestered me to take her back home, the father of the child told the Indian Express and only way the mother could keep her child calm was by promising her a chocolate. The mother could not tell the child the actual reason why she had come to the court, to give her statement against an anna in her neighborhood that the girl had said had sexually abused her for several months in a government run day care home. In a government run day care home, the girl has been sexually abused by a person who is known as anna in the neighborhood, for which to depose regarding the incident, the mother has brought the girl to the court. They have been made to wait indefinitely from morning to evening. The child was pestering the mother as to why they have come to the court at all. Then father then gives the reply, the mother could control the child only by giving a chocolate. This is how, knowingly or unknowingly we treat the witnesses. You can now just tell me how you would treat your witnesses in a respectful way. Witnesses are after all coming to the court only to help us in the administration of justice and in turn how do we treat witnesses or how we can treat the witnesses, what is the kind of reform that is needed. One answer, one second to each.

**Participant:** they should be provided with comfort and they should be provided water also.

**Justice S.Vimla:** yes.

**Participant:** Respect.

**Justice S.Vimla:** Yes. Yes. Respect. You just think of ways in which you can...he said by providing chairs

**Participant:** by giving them priority..

**Justice S.Vimla:** yes, by giving them priority in terms of time, yes very good. It's the manner of treatment. Just treating the children in a different way than we treat as an adult witness. Yes, any other answers?

**Participant:** make sure that none of them are left standing..

**Justice S.Vimla:** Provide a chair.

**Participant:** we are providing chair and everything.

**Participant:** and in addition to that, they should ensure that the witness is not being threatened by the other counsels.

**Justice S.Vimla:** Yes. Yes. Very good.

**Participant:** We should not allow insulting cross examination.

**Justice S.Vimla:** Yes.

**Participant:** Sometimes when they are sitting, the accused counsel has a supreme court judgment, they will.

**Justice S.Vimla:** No. No. Supreme Court judgment never permits a law to be violated by asking the accused to stay outside. What the Supreme Court judgment said is put a screen in between the witness and the accused so that the witness is not threatened by the accused. You should not do that.

**Participant:** counsel is there, you can permit him..

**Justice S.Vimla:** Permission is different and asking the accused to stand outside is different, we can't do that. No. No. If the counsel is there, it amounts to substitution of the accused; in that case we can permit. Permission is different and asking them to go outside is totally different. The very purpose of the examination in the presence of witness cannot be defeated in such other arrangement. It should be by providing screen and in case when the lawyer says that his presence is enough, the presence of accused is not needed, they can ask them to go outside. Yes, he wanted to say something for long time.

**Participant:** We have vehicles through which we bring the children to the court.

**Justice S.Vimla:** Bring. You have the vehicles. Excellent.

**Participant:** And before that, the legal authorities visit the house of the child witness, explain them the whole procedure, just a bit of guidance, and when he is brought to the court and there is a separate room and a female support person is also there

**Justice S.Vimla:** Psychologist like.

**Participant:** yes.

**Participant:** and we have a bundle of chocolates and other things, which we give to the children when they come to the court.

**Justice S.Vimla:** it is a good practice to be emulated by all, but we don't have the vehicle even in the High Court. We don't have any vehicle for that. Of course in the family court we have such arrangement, children room where we have all CD's, videos.

**Participant:** We have that even in the POCSO court.

**Justice S.Vimla:** That's good.

**Participant:** Now we are asking to construct some children care room that will be used for the children.

**Justice S.Vimla:** Yes, anything else.

**Participant:** yes, my lord, one message is to be given. What I used to do, that I will not return any witnesses on any ground without being examined? This is...

**Justice S.Vimla:** Without being examined. If this is followed, many of them will come forward to be a witness.

**Participant:** So, by this way, we will get the confidence of the witnesses that when the judge has called me, he will definitely examine me and at the end of it we will be released.

**Justice S.Vimla:** It is a good way of respecting a witness. Yes, you wanted to say something.

**Participant:** We can construct a waiting hall and we can make them known as to which the case that is going on is, and some little things.

**Justice S.Vimla:** you mean the display boards for the witnesses also.

**Participant:** and let them, these ladies to come in the evening.

**Participant:** Mam these witnesses are waiting for a long time, we can treat them as a guest also. In short we can treat them as guests. If we treat them as guests, they will get all respect due to a witness, like they should not be threatened, insulting questions should not be asked and if they are ailing, then we can provide them a chair, In short treating them as a guest will cover everything mam.

**Justice S.Vimla:** Yes, that is.

**Participant:** One of the judgments of the Hon'ble High Court, they are to be treated as guests of the court.

**Justice S.Vimla:** Yes. Yes. Yes. The witness does not stand to benefit, we don't invariably in all cases, we give compensation to the witnesses. Witnesses come and assist us, and finally



to say that whether the accused is either convicted or acquitted. Only to the limited extent we make use of the witnesses. Only in cases of where the accused is a very rich person, where he has got sufficient funds, we order him to pay compensation. In many of the cases we don't even offer compensation to the victim, who is coming to assist us as a witness.

**Participant:** I do mam, we do it. Most of the cases we...

**Justice S.Vimla:** Several directions of the Supreme Court saying that rarely it is being made use of, that is what we do not know, what is happening that is what I wanted you to tell, that is what the Supreme Court judgment reads.

**Participant:** My 5 lakhs of funds have been exhausted. Sometimes PP claims up down sometimes, at times they do clear.

**Participant:** In this sexual assault cases, I can reward up to 3 lakhs, and last year I have awarded...

**Participant:** you can take the financial status of the victim in consideration my lord.

**Participant:** yes, yes, very functional in Assam. 5 lakhs every year, even more.

**Justice S.Vimla:** Can't you think of examination of these child witnesses through video conferencing. There are collectorate buildings available where we can practically avoid waiting of those people.

**Participant:** Cross examination will be a problem then.

**Justice S.Vimla:** What is the difficulty?

**Participant:** Chief Examination of course we can.

**Justice S.Vimla:** Why the chief examination can be done and not the cross examination? let him, let him

**Participant:** It can be done but..

**Justice S.Vimla:** No, No. Supreme Court already said that examination through video conferencing is permissible; there is a Supreme Court judgment on that.

**Participant:** No, it's permissible as per the Supreme Court guidelines, it is permissible.

**Justice S.Vimla:** No, No. No distinction between trial by a magistrate and trial by a sessions judge. There is a Supreme Court judgment; I will take it from academy.

**Participant:** We are following this, but today or tomorrow we are bound to be asked how we are doing it..

**Justice S.Vimla:** No, No, examination of witnesses include examination through electronic media also.

**Participant:** Headley terrorist is undergoing cross examination right now from America via video conferencing.

**Justice S.Vimla:** No, no, Not a special case. Case to case law cannot differ.

**Participant:** But that was by the permit of the court, Headley was also being tried by the..

**Justice Dharnidhar Jha:** as a special officer...

**Justice S.Vimla:** Beyond the law, we cannot have any pronouncement by any other court. Examination includes when we have amended Information Technology Act. See, in several cases in the family court in mutual consent cases, we are examining the other side only through video conferencing. I have done 100 different cases in the family court.

**Participant:** by way of a family court provision, it's a way by which the court can adopt any...

**Participant:** madam, may I share the experience.

**Justice S.Vimla:** Before you make any comments, kindly think over and tell. It is not as if we are not receiving the counter comments, but the basic principal, you think of the basic principle and then make your submission. It is permissible in a particular case, not permissible in another case, what is it? Procedure is common to everyone, to every case then how can there be a different procedure for a different case.

**Participant:** madam may I share my experience?

**Justice S.Vimla:** Yes Sir.

**Participant:** Our brother judge has referred about Praful Desai Case, now I'll tell you what has happened in that case. That case is from Bombay. So there was a case of a medical negligence against a doctor and the deceased was a lady and she was staying at America and she was operated by the famous doctor, Praful Desai, cancer specialist doctor. So, prior to that operation, that lady has taken a opinion from America that the operation is not necessary. So, what has happened in spite of that opinion, she was being operated and she died during the operation, so there was a case of medical negligence? So her husband fought that case and her husband wants to take the evidence of that American doctor, so for the first time, the application was filed before the MM and the matter went to Supreme Court and the Supreme Court has said that CrPC, because these lines are very important- CrPC is an ongoing statute, so we must recognize what are the development in technology and science, so the Supreme Court has emphasized that the witnesses can be examined through video conferencing, that is one aspect of Supreme Court has clarified, so there cannot be only for family courts, only for civil courts...

**Justice S.Vimla:** No, no for example I was telling example of a family court where they have tried, but when they have amended information technology act saying records include electronic records, it goes without saying that it is permissible to examine the witness, through video conferencing, that is the end of the matter.

**Participant:** So, in Praful Desai, there was argument that the evidence has to be in the presence of the accused, so what the Supreme Court has said that normally, we record the evidence in the presence of the accused, so what the Supreme Court has said, what is the meaning of Presence of ... So Supreme Court has said, presence need not be immediate,

**Justice S.Vimla:** Yes, remote presence.

**Participant:** that can be secured, so I will request all our brother judges to read that Praful Desai judgment. That is one aspect, now so far as Maharashtra is concerned; our Home Dept. had supplied the VC units to all the district courts. So now we are recording the evidence, not only recording the evidence, framing of the charge and 313 statements, pronouncement of the judgment also, we are conducting. Now, I have recorded the evidence of two cases, tow session trial cases, one is a medical officer from Jaipur, he was transferred to Jaipur, I recorded the evidence. Second one, one investigation officer from Nagpur, so whatever difficulty you are raised, I want to share that difficulty. So, normally I was transferred to some other station, the difficulty arises about the case diary and the original papers. Now we have to prove that certain documents through IO. The question arises how to prove it? What we have done, our PP send a copy of the charge sheet paper to the IO there. So, he has read all the charge sheet paper and whenever the question of proving the panchnama has arisen, we have shown it that panchnama through camera on VC and he had identified that and we can make an endorsement that what the witness used to do, he used to go to local district court and we used to write a letter to the local district court that so and so witnesses we want to examine, so please give us the VC facility to that witness. So, it can be done.

**Justice S.Vimla:** Now the eCommittee is also thinking over whether digital signature can be made use of, instead of asking High Court people to go and get it, digital signature can be introduced, that is what the eComittee is now thinking over. Repeatedly, the eCommittee of the Hon'ble Supreme Court, presided over by Justice Madan B.Lokur, is telling you that principal district judges should ensure that in all cases, the maximum use of video conferencing facility should be exploited, that is the language used in the recent conference. You should exploit maximum use of...In all states, in my knowledge; it is being used only

for remand extension. Now the Supreme Court is insisting that it should be extended for examination of witnesses. Being the principal district judge, you should insist the other judges to make use for recording of evidence. Kindly for heaven's sake, don't carry the impression that it is inadmissible if you record through video conferencing.

Discussion

**Justice S.Vimla:** That is mandatory, you should make the child comfortable, and you should make the child. No, first of all, before, atmosphere alone is not a criteria. It reflects on the competency of the child to depose also you should ensure, by putting certain preliminary questions you should find out whether the child is capable of distinguishing what is right and what is wrong, what is truth and what falsehood is. Only after ascertaining this, the child must be allowed to give evidence. These are all the basic rudimentary things that should be ensured by every judge who is allowing the child to depose as a witness.

**Participant:** madam, I record the statement of the child witness in my hand diary..

Discussion

**Participant:** there are three contingencies, first one the accused is in jail, witnesses, judicial officers, advocates are in court, and this is one column. So, we can record the evidence...

**Justice S.Vimla:** No, we can connect the accused also through video conferencing; this facility is available in prison now. Wherever prison is not, video conferencing facility is not available; the accused should be produced in some other way.

**Participant:** That is one possibility. Second possibility is that, accused is present in the court, judicial officer is present, then advocates are not present but the witnesses are not present. Witnesses are present in some other places, so in that possibility also, VC can be made use of. There are two contingencies- accused present or witness is not present.

**Justice S.Vimla:** in either case, somebody has to be there to represent. Without there being anybody, then we cant. We can't bypass the law, but procedurally we should ensure somehow or the other, their presence is...If the witness is not there, some advocate should be made available.

**Participant:** In Punjab and Haryana, we are having video conferencing, with doctors and judicial officer. They are not required to come, we send in the required document prepared by the doctor concerned, or the scientist concerned, copies of those and date is fixed, time is fixed...

**Justice S.Vimla:** It saves time, it saves energy, it saves cost, and so much is saved on this kind of examination. In fact in several cases, I have told them, instead of husband travelling and spending one lakh, two lakhs as travel expenses, you give it there and then, you pay the cost to the child and the women and that would be helpful for them and in several cases they have agreed for that. Instead of obtaining leave and instead of travel time is not being wasted, instead of some airliner being the beneficiary and why not the wife and the children. That has happened in several cases.

**Participant:** That is more necessary when the sanctioning authority is to pay the cost, because he is transferred from one district to other part of the district.

**Justice S.Vimla:** Now the boundaries are becoming invisible because of the technology now.

**Participant:** the data is always with the police, they can just identify where they have to send it, sending it through fax or other mediums.

**Justice S.Vimla:** Yes, during cross examination of the witnesses, how do you protect the dignity of the witness? If there is any contingency like that or no contingency?

**Participant:** Section 100 in Technology Act is there...

**Justice S.Vimla:** Indecent questions, scandalous questions...that you should practically ensure...No...no...no, say a case of adultery. Several persons are doing this and that and unless there are materials to put that question, how do you put that question. In several civil cases also, where the status as wife is disputed, the status of the child is disputed then so many contingencies for putting that question. It is not the only.

**Participant:** that it is a defense we can think of it which assists the judiciary.

**Justice S.Vimla:** If they are justified in their question depending upon the context, yes. But where the mere intention is to put her under distortion then it should not. Then do we any scheme of protection of the witnesses and the victims? What is the kind of protection you can offer?

**Justice Dharnidhar Jha:** Here is the necessity of your intervention. The whole thing is that judge used to be in power, he is no longer there. You have to involve, get involved yourselves in the proceedings because it is your proceeding, you have to take it along as per your desire. The evidence and witness protection, I have just pointed out Section 170 (2), the officer in-charge to produce the witnesses- Shailendra Kumar versus State of Bihar is the judgment, reported in 2000 Supreme Court 270. It was a case from Gaya. I'll read the provision. AIR 2000 Supreme Court 270. Shailendra Kumar versus State of Bihar. I am reading section 170 for you. When the officer in- charge of a police station forwards an accused person to a magistrate or takes security for his appearance before such Magistrate when he has granted him bail, under this section he shall send to such magistrate any weapon or such article which it may be necessary to produce before him and shall require the complainant if any and so many of other persons, who appear to the officer to be acquainted with the facts and circumstances of the case. So persons acquainted with the facts and circumstances of the case are witnesses, as he may think necessary, to execute a bond to appear before the Magistrate as thereby directed and prosecute and give evidence as the case may be, in the matter of the charge against the accused. So this provision requires the police officer who has investigated, officer in charge is there, but in fact police officer had investigated, he might have left that police station, so officer in charge of the police station is the custodian

of the case diary everything. Now, you have to issue a direction, In Shailendra Kumar's case, the additional district judge Gaya had shut down the case within 3 years due to non-production of the witnesses. The informant approached the High Court, the High Court dismissed, that no interference. He went up to the Supreme Court, the Supreme Court said that no, it was primarily the duty of the PP to produce the witnesses; he did not discharge his function properly. The court can also not say that it did not have any duty, he had the duty and he ought to have issued a notice to the officer in charge of the police station direction him to remain physically present with the witnesses on a day to day basis for the hearing of the evidence. So as soon as you issue a direction, out friend from Delhi was pointing out that a vehicle, I have seen it happening, I have done it. Issue a notice to the Officer, send a copy of the notice to the concerned Superintendent of the Police, with a copy of the order which you have passed, on the basis of which notice has been issued. Basically this is the procedure that I had adopted and I never had any inquiry from anyone that how you did it. So direct him, and in every police station, there is some provision, they don't do it, they do it that is an altogether different matter. Witness has to be produced by them, brought from there place to the place of deposition by the police vehicle and then sent back and they leave them at their house. So, this method of protecting the witnesses, from any corner, from all attacks is the security which automatically provided by the company of the police officer who brings him from wherever to the court, ensures his deposition and takes him back to his house. Now, if you could find, because we under certain circumstances talk to the witnesses also because, who was pointing out yes and no... The advocates puts a question, she starts explaining the situation, No, no, No you say yes or no...Because he does not desire that the circumstances depending on a particular answer si brought on record, or the witness is given a chance to explain the answer. Law says that explanation must be obtained from a witness by a particular statement which can be detrimental for the prosecution. So you intervene, everyone intervenes, talks to the witness that did you understand the question he has put to you? There is nothing wrong here. I learnt a language, Bhojpuri in Bihar, I learnt and I am a proficient speaker in that language. I talk to all Bhojpuri speaking people in that language. So, I used to talk to them because they are rural people and even they could not understand Hindi. I used to talk to them in their language, and then used to explain the import of the



question and during that course you may also find out from their face whether they are fearful, they are frightened. If you find that they are then talk to them, maybe to keep the PP, keep the defense counsel, order everyone out and talk to the witness and then ask the PP to talk to the Superintendent of the Police for providing security till the trial is there, till the judgment is delivered or for whatever period. This could be one way to ensure the protection to the witnesses and once we latch on to these tools which we could develop ourselves or which we may derive from this provision 170(2) , then I'm sure the confidence in the witnesses shall flow and they will be more forthright to the court, so the main objective behind witness protection that the faith in the system and faith as regards their own security, the confidence as regard their own security, their family members is enhanced and they are assured of some protection, some backing from the court, because other limbs of the administration, they may not be as blindly reliant upon, but as soon as the judge says ki I shall ensure that no harm is caused to you, to your family members then there is a message definitely implanted in the mind of the witness that now I cannot be harmed and as soon as that sense of security is inculcated in the minds of the witnesses, you will find them coming forthright and the whole purpose of trial is to find out the truth, to reach the truth, to deliver the judgment.

**Justice S.Vimla:** In some cases, there is a first and foremost respect to any witness is to protect the witness in any trial during cross examination. As he was telling that, many judges while we have been the lawyers, many judges we have found that they don't agree. Say yes or no first, then we will come in the re-examination or other examination, they just encourage this system. In one such case, Motilal Nehru was in-charge of the case, he was opposing this sort of witnesses being cut short, saying yes or no. The judge did not agree. Then Motilal Nehru wanted an answer from the judge. he said-' your honor may answer my question first, then if your honor is comfortable, then we will continue the same system". He asked the judge this question, whether you honor has stopped beating his wife, yes or no? This is the question. Supposing he says what is the implication. Yes means so far he has been beating his wife, supposing he says no, then so far he has been beating and now stopped, no. Then, he made him understand the judge the methodology adopted is wrong, this is how the

witnesses were protected in the yesteryears. Now the lawyers, they don't take so much of care, it is for us to take care of the witnesses. Wherever explanation is needed, we should intervene and confirm explanation, Section 165, court may put any question, to any witness at any time, let us use that power and get the answer. That's all.

**Participant:** I did the same thing, but I faced a lot of problem. in one case, one criminal case, insisting me to first record...

**Justice S.Vimla:** Then when you record it in the form of question and answer, then..

**Participant:** I followed, but what is your interest mam, why you are asking all these questions, why are you clearing the doubts of the witnesses.

**Justice S.Vimla:** We had faced so much of problem in criminal cases. There was a case of kidnapping and rape as well, but the charge is only for kidnapping. It is a special court for dealing with the offences against the women. She was in the box. She was telling that she was kidnapped. Later that she added a statement that she was also subjected to sexual intercourse. I put an instant question, why you did not state it before the police when you gave your statement was recorded. She started explaining saying that there was a talk of compromise, my man was telling me that only because of the opposition by the parents, he has not been able to marry me and if an allegation of rape is made, that will not be recognized, therefore, you just bear with me, he assured to marry me, and thus I did not make a statement towards the police. Now I'm making a statement, because what has happened is, he is a minor, consent is immaterial, and I'm subjected to rape. Because of the statement, I wanted to amend the charge. Addition and alteration of charge, then they started making allegation that the court is in, favorably inclined towards a woman, being a woman judge you are favorably intending towards her. I told them, charge is an opportunity for you to respond. When I'm framing an additional charge, it is an opportunity for you to learn, against extra evidence. If I'm not going to do that then ultimately without the addition of charge we are going to punish you that alone will be an injustice. You kindly understand that, they understood that, they never wanted to show that and said that we wanted to go to the High

Court. I thought it is the next door building; I will wait only for 15 days. You go and come back, I would also like to know the fate of any order passed by the, I would like to know, it's better you go to High Court and I gave them 15 days' time. They went to the High Court, High Court rejected it saying charge is an opportunity, then we framed an additional charge, then comes the next allegation. Because we went to the High Court, that will be carried in your mind and you will not give us justice, you allow me to go to some other court. Then I said, you may have so many applications, so many imaginations, I will not give you any more time, I will start the examination of witnesses, then when the PW1 after being cross examined, they wanted three days' time. I wanted to know why. He said that a pleasant surprise will await your honor and we will want 3 days' time. I gave them 3 days' time and the third day, in the evening, at least 500 people with a lot of sweets, flowers, everything, my lord the accused got married to her. If we have the fear that lawyers may take these things, we have to assert ourselves, come what may. Justice is there, law is there, justice is there, why should we be afraid of these lawyers, we need not be afraid of...

**Participant:** My lord, Supreme Court in various cases has categorically stated that the judge should not be a recording machine, he must take an active role, he must have an active participation in the trial.

**Justice S.Vimla:** He should not be mute, be a participative judge, be a proactive judge.

**Justice Dharnidhar Jha:** Your participation, your objective participation is very necessary.

**Justice S.Vimla:** Meaningful participation is all the more necessary.

**Justice Dharnidhar Jha:** you don't have to write down elaborate evidence also because, if you are participating and you are very careful in recording the evidence of the witnesses, you will cut down the inadmissible evidence. The questions which are put, you have heard this happened like that. The first thing you have to say is no, this question won't go, no you don't respond to this question, you don't have to talk to the counsel, yes this won't go, yes you don't respond. When I was elevated to the High Court, many senior criminal lawyers

told me, we know, you never allow these questions, because during hearing, I used to raise objections that how could this question come on record. They used to inform me, yes, you will never allow these questions. So a participative judge in the proceedings is always beneficial. You cut down on the wastage of time, you labor, because we have generally to manually to record the evidence and recording evidence in long hand is very useful because firstly you have participated in the trial proceeding and now they are addressing their argument. You are recalling each and every line of the evidence and you are countering also, this is your argument but evidence is like this, witnesses so and so has said this, so you are very much clear in your mind on points you are likely to take up while answering the submissions of the parties, so being participative is very helpful. I was a district judge, you are a district judge, and you have the facility of having stenographers called to you for writing your orders, taking down the deposition sheets also, law permits. Law also permits session court may direct someone to record, but writing your depositions yourself is more practicable an approach to judging. Justice Barin Ghosh from Calcutta had been to Patna High Court and they were mooted some proposal for providing some deposition writers to the judges. I had opposed that idea, then Barin da put a question to me...this will make judges comfortable, save their time...I said, it won't save their time, they shall have to constantly sit in the court and instead of writing them himself, someone would be writing, the real import in context to the fact of the case, you know, and the answer which is coming, you know what is the importance of these. How could a secretary, in vernacular the witness is answering and you are dictating or you are the deposition is being dictated, either in Hindi or English or any language. Now he is translating it, he will be translating it in his own way, now they whole facts will get distorted, so this is always practicable and useful and...

#### Discussion

**Justice S.Vimla:** What is the other kind of litigant problem we have in the court, recent origin. No, no what is the kind of litigant, that we have problems day in and day out

**Participant:** party in person

**Justice S.Vimla:** yes, party in person. How do we handle, that is the biggest headache now.

**Participant:** parties shall go on listening to the...

**Justice S.Vimla:** We should, train us how to be patient. We don't have so much of patience to listen to whatever he says. No, none of the petitions filed by them carry any meaning at all.

**Participant:** yes...

**Justice S.Vimla:** Then how to hear them?

**Participant:** And if you try to explain to them that whatever you want to convey that is not being written here, then they want explanation...

**Justice S.Vimla:** We tell them, that we are prepared to, in appeal and division also, in criminal appeal and criminal division also, they can be party in person. We ask them whatever...we have competent legal missionary is being provided by the legal services authority, you need not even take the choice given by them, you can have your own choice, we will ask them, same lawyer to be appointed for your counsel, they don't agree. Asking for the reasons, they say, lawyers are liars and we will not have the assistance of lawyers. Then we say lot of quince's are involved, intricate question of law is involved, are you a law graduate, then how you know the law and how are you going to argue your case, your liberty will be in peril, or give it in writing that you will not complain of any violations here because later on you should not have a defense before the Supreme Court to say that legal services were not provided to you. Yes, I am prepared to give it in writing. Then he started telling the whole, right from the birth to the death in his family, he started saying all those things, have mercy upon me and release me. This is the kind of litigants who are coming before the court. I had just gone through some of the material, some deadlines have been framed by the US and the UK and under what circumstances a private litigant should be permitted, under what parameters, too many guidelines have been forthcoming. To my knowledge, no High Court has come forward with any deadline for dealing with...

**Participant:** Bombay High Court.

**Justice S.Vimla:** Bombay High Court...

**Participant:** Supreme Court has also framed...

**Justice S.Vimla:** Framed..? For private litigants? What is the guideline? At least one or two for the information of all here...Okay, it is available in the internet. yes, we would like to hear you regarding at least some of the guidelines..

**Participant:** One of the guidelines is that, the registrar of the Supreme Court will issue the.. that this person has legal knowledge, the registrar of the Supreme Court should certify that this person has the knowledge of law and he can argue the matter legally and on the same guideline is there in the Bombay High Court rules.

**Justice S.Vimla:** Registrar Judicial...

**Participant:** High Court registrar, Not for subordinate courts, only for High Court.

**Justice S.Vimla:** For subordinate court, any separate guidelines or no guidelines?

**Participant:** No, no...No guidelines

**Participant:** Whatever they say, we are supposed to hear.

**Justice S.Vimla:** Very difficult, how do you pronounce judgment, whatever he says, if you are hearing, how do you pronounce judgment without understanding his case. Nothing on record to understand. One line does not just convey the meaning.

**Participant:** when we go on hearing the case.

**Justice S.Vimla:** by any stretch of imagination, you will not be able to even create a case that is how their case is.

Participants: So what he will do is he will cut that photograph from the newspaper... and he will annex one application to it...

**Justice S.Vimla:** I think many of them have finished filling your evaluation forms and if any of you feel that any remark you have to make towards improvement of the further program, you are welcome to offer your comments and suggestions, anything ought to have been included or your expectations were fulfilled or any suggestion from your side, you are welcome.. Yes, you read it in the mike.

**Participant:** What I have written, Party in Person Rules. It is chapter 6- A that is applicable. Go to chapter 6-A. haan, chapter 6A is there.

**Justice Dharnidhar Jha:** yes.

**Justice S.Vimla:** Only to enable you to finish quickly, we stopped with the one slide and started with the other things. Yes..