

NATIONAL JUDICIAL ACADEMY



Conference on:-

FUNCTIONS OF REGISTRAR

(Vigilance/Intelligence)

(P-946)

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INTRODUCTION:

National Judicial Academy organized a conference of the Registrars (vigilance/intelligence) of the High Court on “Functions of Registrar (vigilance/intelligence)” on September 28th-30th. 20 representatives from the High Courts across the country participated in the conference. The three-day conference was split into six sessions for each day, out of which four sessions were taken by various resource persons and the last two sessions of the day was devoted to Library reading and Computer skills training. Justice A.K. Patnaik, Justice R.C. Chavan, Mr. Kuldeep Khoda, Justice K. Hema, Justice Ravi R. Tripathi, Dr, J.N.Barowalia chaired and guided the sessions.

DAY 1: SESSION 1 (09:00-10:00AM)

ROLE OF REGISTRAR (VIGILANCE/INTELLIGENCE) IN ENSURING JUDICIAL ACCOUNTABILITY

Speaker: Justice A.K. Patnaik

Prof (Dr.) Geeta Oberoi, Director In charge of National Judicial Academy gave warm welcome and brief introduction on all the sessions and deliberated on the objective of the conference. Prof (Dr.) Geeta Oberoi, deliberated that in this academic year National Judicial Academy is going to have four programs for the Registrars (vigilance/intelligence) of the High Courts. She introduced the resource persons for the day and asked the participants for their introduction as well. The warm welcome to all the resource persons was given and they were requested to open first session of the conference.

The baton of the session was then handed over to Justice A.K.Patnaik, who initiated the session by talking about the uniformity which has to brought in our

system. Emphasizing on uniformity, he further said that uniformity has to be brought in the State Judicial Academies as well. He then discussed about the Constitutional differences present in our society. He then referred and discussed about the “BANGALORE PRICIPLES OF JUDICIAL CONDUCT”, which were:

“VALUE 1: INDEPENDENCE

Principle-

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects:

Application:

- 1.1 A judge shall exercise the judicial functions independently on the basis of the judge’s assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, pressures threats or interference, direct or indirect, from any quarter or for any reason.
- 1.2 A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.
- 1.3 A judge shall not only be free from inappropriate connections with, and influence by, executive and legislative branches of the government, but must also appear to a reasonable observer to be free therefrom.
- 1.4 In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judges is obliged to make independently.
- 1.5 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

1.6 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is functional to the maintenance of judicial independence.”

He then discussed Article 50 of the Indian Constitution- ‘Separation of judiciary from executive- The state shall take steps to separate the judiciary from the executive in the public services of the State.’ Laying emphasis on the separation of judiciary, he stated that separation of judiciary is prevalent only in some states and for the same he cited an example of the Meghalaya High Court. Coming on the functions of Registrar (vigilance/intelligence), he said that the problems are faced by the magistrates in granting bail to the parties due to the vigilance officers since they make objection on such granting of the bail. He then pointed out that the corrupt judges follows the principle of “paise do, bail lo” and hence, no fault of the vigilance department can be brought. He further said that we cannot have an external agency to look into the complaints in judiciary and thereby, pointing out an important role of the Registrar (vigilance/intelligence). If we too have an external agency to look after our complaints in judiciary, then there will not be any status of the ‘Independent Judiciary’. He also discussed Article 235 of the Constitution- ‘Control over subordinate courts- The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under that law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.’ He also discussed Article 234 of the constitution- ‘Recruitment of persons other than district judges to the judicial service.’

Giving a suggestion, he said that if the courts agree on the uniform vigilance system, then there would not be any problem. He further deliberated upon the ‘Resolution of Chief Justices Conference on Functions of Registrar Vigilance’ which was part of the reading material provided to the participants wherein he discussed about strengthening of vigilance cells in the High Courts and progress made in setting-up of vigilance cells in each district. Emphasizing on the best vigilance system, he praised the system of the Madhya Pradesh High Court.

Talking about the role of Chief Justice of a court, he said the Chief Justices are no angels. One cannot judge or know the character of a person at the time of recruitment. Saying this, he discussed about Somitra Sen's case upon impeachment. Further discussing about the character of a person appointed, he said that temptations of power and money can destroy the character of a person. Good recruitment is not the only way to check a person, a system of good vigilance is needed as well. He then shared a case of Karnataka High court regarding a sex scandal. He then discussed about the vigilance inquiry and the RTI Act, due to which the reputation of the judges are harmed. He further advised that the vigilance system has to ensure the quality of judgements and not the quantity of judgements. He then pointed out towards the bad reputation of the subordinate judiciary and thereby blaming the clerical staff for the same. However, he also suggested some measures by which the reputation can be uplifted, i.e. by keeping a check on the clerical staff and computerisation of the records. And lastly, by concluding the session he said that you cannot root out the corruption all together, but you can take steps to remove corruption and thereby uplifting the position of the judiciary. Also keep judiciary perched under strict vigilance.

DAY 1: SESSION 2 (10:30-11:30AM)

VERIFICATION OF CHARACTER AND ANTECEDENTS OF JUDICIAL OFFICERS PRIOR TO THEIR APPOINTMENT/ PROMOTION

Speaker: Mr. Kuldeep Khoda

The second session of the day was taken by Mr. Kuldeep, who started with his introduction and then proceeded with the topic discussing some directions given

by the Government of India. He then said by praising judiciary that judiciary is one lifeline for defence in our country. It is in limelight because of its big and valuable judgments which brought many changes in our country. He further discussed about the intelligence department, the ways by which they record the activities of a person whether on daily chores or on social networking sites. The discussion was then carried forward by Justice Patnaik, discussing about Art. 14, 15 & 16 of our Constitution. He then came up with case from Meghalaya High Court. Justice Patnaik further suggested that the reports of IB/Police/Vigilance shall be properly scrutinized. The baton of the session was again handed over to Mr. Kuldeep and he then discussed about the IB reports and further pointed out some cases. Out of all, one being of Chandra Mohan Vs. State of UP

After his discussions over various aspects of the topic, he then asked for the questions from the participants. Interestingly, the participants' response was very positive towards the speaker and hence, many of them came up with their questions and query regarding the subject. Out of all a few questions are-regarding the register 9 at the police station, whether it is permitted to IB to access the professional competence of professional candidate? This was answered by Mr. Kuldeep accompanied by a case: Union of India vs. Kalidas Batish. A further add on was made by Justice Patnaik, discussing about the rules made under Art.234. Another question asked was- whether IB reports are based on hear-say evidence or case evidence? This was again answered Mr. Kuldeep along with Justice Patnaik who discussed about Gopal Subramainam's case. Further Justice added that we expect the IB/Vigilance system to be honest on its report. He then discussed another case regarding the 6 candidates from Orissa for the selection in Judicial Services. Another question asked was- How can we find out an information on the allegations made by the IB? This was answered by Justice Patnaik stating that such information can be received from the nearest pan shops from the house of such officers.

The session was concluded by sharing of a case of Shillong wherein a Judicial Officer had two wives and later, Mr. Kuldeep too shared one instance of the similar genre.

DAY 1: SESSION 3 (12:00-01:00PM)

CONDUCTING DISCREET INQUIRY AGAINST JUDICIAL OFFICERS: ISSUES AND CONCERNS

Speaker: Justice R.C. Chavan

This session was preceded by Justice Chavan, who initiated his session by posing some questions to the participants and they were- are the preliminary inquiries necessary? And why did you opt to be the vigilance department of the High Court. The answer of the latter question was same for all, that they didn't opt for such a post however, they have been appointed one. Praising the post of Registrar (vigilance/intelligence), Justice Chavan said that your appointment to this post, itself states that how sincere and honest you are towards your work. However, he conveyed his sadness saying that it hurts when people remark that judiciary is corrupt at the lower levels. He further added to this by saying that if you too are hurt by such remarks then only you should join vigilance department otherwise ask your Chief Justice to find some other suitable person for this post. He then discussed about a fact, which has already been discussed in the preceding sessions, that there is no guarantee about the character of a person so appointed. One must do his work without any fear and favour. He then extended his heartiest thank you to Justice Patnaik for sharing some of his valuable experience in the field of judiciary. He further advised that if we have to keep a vision, we don't have to wait for the complaints. Expanding upon one of the lines said by Justice Patnaik, Justice Chavan said that good lawyers may give quality of judgments at their initial stage but the time passes, they may no more be concerned about the quality of judgments they deliver. Successful lawyers may look upon integrity but not the utility. However, Integrity of such good lawyers is often not considered by the judges. He then compared the Military Academy with Judiciary and said that we, as in judiciary, often take the shelter or defence of the committee in exercising our duty and fighting our enemy whereas in the Military Academy, their enemy is the ultimate aim without running off from their duties. He further discussed about the Discreet Inquiry saying that it shall be conducted with thoroughness. For which, he further laid down three steps:

STEP 1: Mechanism of ignoring things

STEP 2: Beat around the bush

STEP 3: Hit the bull's eye

Further elaborating the above steps, he said that we cannot have rules regarding the discreet inquiry. Citing as example he said that in the bar, we cannot rely on good lawyers which can be the only source of information. Not necessarily good always gives good and bad cannot give good. He further suggested that while collecting the information, one shall not breach any law. 'satyapati satyam' is the rule he advocated. He also stated that if you impart on discreet inquiry, ensure that it is indeed discreet. Keeping everybody at check is important. He then discussed one of his experiences of the time when he was a district judge. He then deliberated upon the rest two steps, mentioned above. And lastly, he advised by stating a quote from Mahabharat that do your duty and don't think about its fruit. Before concluding his session, he invited questions from the participants which were collectively answered by Justice Patnaik, Justice Chavan and Justice Ravi R. Tripathi. The session, however, got ended by a story (Thomas Becket's story) briefly narrated by Justice Ravi and in connection of the same, he stated that:

- An advocate is duty bound towards client
- A judge is duty bound towards justice
- Registrar Vigilance is duty bound towards honesty

DAY 1: SESSION 4 (01:00-02:00PM)

ASSESSMENT AND NOTE ON 'ANNUAL CONFIDENTIAL REPORT': ISSUES AND CONCERS

Speaker: Justice K. Hema

The last session of the day was taken by Justice Hema, but was initiated by Mr. Shivraj (the program co-ordinator) stating the difference and importance of

ACR. Later the baton of the session was handed to Justice Hema, who started her session by asking a question from the participants that whether there is any role of Registrar vigilance in assessment? The answer was given by only a few members, who told about the role of Registrar vigilance in their respective High Courts. Out of all, only Himachal Pradesh, Tripura, Andhra Pradesh, Gauhati and Punjab & Haryana High Court recognise the role of Registrar vigilance in assessment. Further one more question was asked by her about- How many of you have written ADR? She then carried on her discussion regarding the preparation of ACR, for which she stated a few points which were suggested by the participants in the session. The points are:

- Self-assessment
- Involving bar
- Colleagues
- Supervisors
- Quality of judgment

Further, the discussion was continued by Justice Patnaik, who too stated a few points regarding ACR. i.e.:

- Collect the forms of ACR from all the High Courts
- Enclose judgments
- Cell for assessing quality of judgment
- Call for judgments to assess the quality of judgment
- Dairy should be maintained by the judge who writes ACR

Justice Hema further discussed about the quality of judgment evaluated by the judges. She added that in some High Courts, while writing ACR there is a separate column for the quality of judgments. However, this trend is not common among other High courts. The session was concluded with the discussions amongst the resource persons and the participants about the different formats of ACR at their respective High Courts. And it was also pointed out by the participant from Allahabad High Court that they have a separate post known as 'Registrar Confidential' for this purpose in their High Court.

DAY 1 (02:00-03:00PM)

LIBRARY READING

DAY 1 (03:00-04:00PM)

COMPUTER SKILLS TRAINING

DAY 2: SESSION 5 (09:00-10:00AM)

CONDUCTING FACT FINDING INQUIRY AGAINST STAFF OF JUDICIARY: ISSUES AND CONCERNS

Speaker: Justice R.C. Chavan

The first session for the second day was headed by Justice Chavan, discussing about conducting fact finding inquiry against the staff of judiciary. He pointed out that registry interferes in the administration of the court and hence, creates problems. Talking about preliminary inquiry, he said that split the charges so framed, start with the first allegation then second and so on. Ascertain the truth first and then start the inquiry. In the fact finding inquiry, look at all the possible aspects arising out of that situation. Discussing about administrative decision making, he suggested that judicial methods/ decisions are not always apt in deciding administrative decision making. In Administrative decision making, make decision first and then carve the path for inquiry. He further stated that there cannot be one solution for every problem. Be brave, don't seek rules always which cutter your decision. While giving an example of the proportion of forest and human cultivation on earth, he added that likewise rules which conduct human activities shall not be more than human activities. He also stated, for the same context, that every lock has a different key. And all throughout his session, he advocated the principle of honesty.

Further, he discussed and shared his experience related to Justice Damolkar, who laid down the foundation of vigilance commission in Mumbai and also praised Justice Damolkar for his contributions made in Maharashtra. He advised the participants that if you really want to carry out the vigilance activities then you need a team of soldiers who can sacrifice their life for their duty. If you cannot believe in yourself, then you cannot deliver. He admitted the fact that there is corruption which cannot be eliminated by one step yet it can be brought into check. Talking about the present day's scenario, he said that judges walk with their chin down while the rats, the corrupt people walk with their chin up. It is high time that we should secure our position and work on "sifarish won't do" pattern which was followed by Justice Damolkar. The result of this pattern was very positive in Maharashtra and many people got their work done without

any bribe or sifarish. He further deliberated upon how to built such organisation like that established by Justice Damolkar.

Coming over to magistrates who fear in granting bail, Justice Chavan shared his experience regarding the same context and further discussed as to how the bar bullies judges. He narrated a case wherein a judge was to be transferred and the bar objected on his transfer and later, the matter was taken to the Chief Justice of that High Court and was found that a big racket of corruption was involved. Talking about preliminary inquiry, he said that such inquiries against the staff are not the easy matter to deal with always. Because there can be situations where in the employees are favoured by the judges or other judicial members and hence, it gets difficult to find out the mischief. However, it is not that the mischiefs in such cases are over looked, but it is traceable if you find the right person. He also pointed out the mishap done by the employees that is –

- Hiding documents
- Assuring recruitment
- Money for work done
- Record manipulation

He further discussed about modus oprendi. He said to build modus oprendi record of your employees. He further advised as to how can you check on your employees or find out about his mischief. He pointed out that one should not follow the mantra of ‘chalta hai’. He further emphasised on fight corruption, not just for our duty but it may also hurt us being a judicial officer.

A further add on was made by justice Patnaik on the present topic and he further interacted with the participants asking questions. He further suggested that fact finding shall be the earliest opportunity. He quoted an instance from his past experience. He emphasised that late action means Ghaziabad case and hence early action is most important. The session was thus concluded by justice Patnaik, suggesting looking after your staff which is very important for the position of judiciary.

DAY 2: SESSION 6 (10:30-11:30AM)

INSPECTION OF COURTS

Speaker: Justice A.K. Patnaik & Justice K. Hema

The session was headed by Justice Hema but was initiated by justice Ravi Tripathi, who stated that there is no direct role of registrar vigilance for inspection of courts. The session was then carried forward by Justice Hema, who cited a case of – High Court of Punjab & Haryana Vs. Ishwar Chand Jain. She further discussed about the inspection of courts saying that inspection shall act as a catalyst for the courts. And also inspection of sub-courts is not a one day-one hour work. This opinion was given by Supreme Court which is also there in the reading material provided. Moreover, Justice Chavan also discussed about the object of inspection in this programme. This discussion was further carried over by justice Patnaik, who first quoted Article 227 of the constitution-

‘Power of superintendence over all courts by the high court – (1)Every high court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2)Without prejudice to the generality of the forgoing provisions the high court may –

- a) Call for returns from such courts;*
- b) Make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts ; and*
- c) Prescribed forms in which books, entries and accounts shall be kept by the officers of any such courts.*

(3) The high court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practicing therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a high court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.’

He further praised the constitution while stating the importance of S.227, which is not available to the Supreme Court. He further clarified that Supreme Court has no power to order high court about dealing with a case in particular matter. He further discussed about U.S. stating that they have federal courts and state courts, performing separate functions whereas in India there are no federal courts. He further pointed out that no Supreme Court judge can come to the high court to conduct inspection unless authorised.

Taking the session further, Justice Patnaik discussed about the role of judges of different courts in exercising inspections and also discussed what would an inspection cover, which would be –

- Maintenance of records
- Maalkhana
- Cash box
- Cleanliness of the court
- Computer room
- In bar
- Supervise inspection

He further commented upon the trials conducted by the judges which is, at times, in a very casual manner. He also pointed out certain practices which is not followed by the district judges, one of them can be inspection of jails. He also discussed that inspection is prone to be influenced by all kind of things, for which he made a reference to a Gujarati movie 'Bhuvanshom'. He then concluded the session by saying that no entertainment shall be carried on while inspecting.

DAY 2: SESSION 7 (12:00-01:00PM)

SEXUAL HARRASMENT AT WORK PLACE- ROLE OF REGISTRAR (Vigilance/Intelligence)

Speaker: Justice K. Hema

The session was headed by justice Hema who initiated the session by asking the question from the participants about their role in sexual harassment cases. In answering this, majority was of the view that there is no role of theirs' in such cases. He then pointed out that sexual harassment is a totally neglected area and one of the reason being gender sensitizing. For this purpose she emphasised on the role of CIC. She further asked the participants about their idea on sexual harassment and later she discussed about what constitutes sexual harassment, for which she quoted Sec 2(n) of *THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013- "sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:- (i) physical contact and advances; or (ii) a demand or request for sexual favours; or (iii) making sexually coloured remarks; or (iv) showing pornography; or (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.* She then again asked the question from the participants – what will you do in cases of sexual harassment wherein the victim is reluctant to share her experience. She posted another question asking about how you will look at the complaint of sexual harassment as a judicial officer. Some gave their answers as

–

- Enquiry will be made,statement will be recorded
- Assess the woman if not comfortable in writing complaint
- Suggest the victim to make a complaint in writing

She then narrated an instance of sexual harassment on a woman staff who was reluctant in giving a written complaint. She further requested to deal the matters of sexual harassment as humans rather as the judicial officers.

Justice Patnaik too contributed to this session, firstly by sharing an instance of Gauhati High Court, from which he conveyed that a woman may be weak physically but not mentally. He further emphasised upon the vishakha

guidelines and advocated that woman should be given equal rights. And lastly he shared his experience of his rotary membership wherein there was no membership given to the woman.

Justice Chavan also contributed to this session, thereby concluding it by stating that equal rights should be given to a woman. And also stated that a woman should not be considered as a sex object only. This phenomenon is, however, brought by the educated class. Thus it is our duty that we must provide protection to woman and they shall be allowed to live freely. Lastly he said, one has to change the vision of looking at a woman. He ended by quoting-‘Men has will, it’s always a women who has her way.’

DAY 2: SESSION 8 (01:00-02:00PM)

FOLLOW-UP ACTION ON ‘INSPECTION/INQUIRY REPORTS

Speaker: Justice Ravi R. Tripathi

The last session of the day was headed by Justice Ravi, who started his session by discussing page no. 97 of the reading material which talks about the thought evoking observations on power of supervision and inspection. This was supported by a few Supreme Court judgments. He then discussed about the different objectives regarding ‘inspection’ and ‘vigilance’, wherein he referred Rule 566 of High Court Rules & Orders (civil) i.e. *‘The object of inspection is to satisfy the District Judge and through him the High Court that the courts are functioning properly, that rules are understood and followed and that work is disposed of promptly and regularly. At the same time the inspection offers the District Judge an opportunity of helping and instructing his Civil Judges and of correcting faults in procedure which would not normally require reference in*

an appellant judgment and full advantage should be taken of this opportunity..... Inspection with its opportunities for helping junior judges and for improving the standard of the judicial administration generally is one of the most important aspects of a District Judge's work, and is an aspect to which he should devote considerable attention. Unhelpful and routine notes are to be strongly deprecated.' He also discussed Rule 703 of High Court Rules & Orders (criminal).'

Regarding the objectives of the vigilance, he quoted (from the reading material) that “‘Vigilance’ means to be watchful, to be alert as to what is happening and what may happen.” He further quoted from the reading material that ‘*an inspection note is not only a commentary on the court inspected but also on the officer inspecting. The important quality is insight and penetration; and attention should be given to the court’s method and attitude in trying cases rather than to legal points unless there are mistakes of an obvious kind in law or procedure. It is important that when an error or a fault is revealed the way to avoid it should be explained at the same time, to show not only what was done wrong but also how it should have been done and why.*’ He then preceded his discussion by referring and discussing about the printout which was circulated amongst the participants. The printout was the rules, which was called as ‘The Orissa Inspection of Subordinate Courts (by the High Court) Rules, 2004.’ From the given set of rules, he gave his bulk focus on discussing about the matters to be dealt with in the notes of inspection of the subordinate courts made by the High Court.

Coming back to the reading material, he further quoted that ‘*minor matters should be disposed of in a personal discussion with the judicial officer but all important points should find a place in the inspection report. He then discussed about preventive and punitive vigilance. Talking about preventive vigilance, he quoted from the reading material- ‘The term ‘vigilance’ is wrongly understood as barely enquiring, fixing responsibility, etc. Vigilance is not only punitive but also preventive in nature. Prevention of misconduct is as important function of vigilance as punishment is. The principle behind preventive vigilance is “Prevention is better than cure” and the purpose is to reduce corruption and bring about a higher order of morality in official functioning. Preventive vigilance is nothing but adoption of a package of measures to improve the system so as to eliminate corruption. This can be done by identifying sensitive and corruption prone areas by detection of failure in quality or speed of work.*

As a part of preventive vigilance, a system of maintain the list of officers of doubtful integrity shall be required to be maintained.' He then posted the question to the participants asking about the preventive and punitive vigilance. And lastly, he ended his discussion by saying that judiciary must act smartly and say smartly through its judgments. The system at present is at stress and hence, in such a situation vigilance registrar has a crucial role to in it.

The baton of the session was taken by Justice Patnaik. He pointed out the deficiency of inspection and stated that vigilance has a role in removing the deficiency in inspection. However, unfortunately the Registrar (vigilance/intelligence) does not points out the deficiency and remove it and thereby promotions are done on the basis of ACRs. He advised by saying that inspection helps to know your staff/ officials and thus, helps in making right decision in promoting the officials. He then discussed about the preventive vigilance, relating it with the provisions of the Constitution regarding the Comptroller and Auditor General. He further added that preventive vigilance is very important, it can only be happen if the Chief Justice of a High Court is very bold and strong.

By concluding the session, he said that don't fear from media, be truthful and strong and then no one can stand in front of you. Before truth, no one survives.

DAY 2 (03:00-04:00PM)

LIBRARY READING

DAY 2 (04:00-05:00PM)

COMPUTER SKILLS TRAINING

DAY 3: SESSION 9 (09:00-10:00AM)

CONTRIBUTION OF REGISTRAR (vigilance/intelligence) IN MAINTAINING HIGHER JUDICIAL STANDARDS

Speaker: Justice Ravi R. Tripathi

The first session of the last day was initiated by the program co-ordinator- Mr. Shivraj, who requested the participants to share their articles relating to the Registrar (vigilance/intelligence) so that such articles can be compiled into a booklet and hence, be circulated in the preceding conferences on the same subject. The baton of the session was then handed over to Justice Ravi, who started his session by telling the participants that a Chief Justice and Registrar Vigilance shares a special bond. And in the same context, he referred and discussed the articles given in the reading material upon 'quality of the Judiciary and Integrity of judges in Ancient India' and 'Kautilya on corruption in Judiciary and need for vigilance'. He also quoted a few lines from these articles, such as- *'A judge should be banished from the realm if he takes bribes and thereby perpetrates injustice and betrays the confidence reposed in him by a trusting public.'*

He further stated that the success of Registrar vigilance depends upon the response of the Chief Justice. Be efficient in your work and point out the pending inspection. He also added that you (Registrar Vigilance) shall contribute in listing down the pending inspection, which can be of great help to the respective High Court. Talking about inspection, Justice Ravi narrated one of his personal experiences while paying a surprise visit to his court campus. He shared that while he was on a surprise visit, he found many instances of mismanagement and undisciplined behaviour of his staff. Seeing such behaviour, he ordered for suspension for a few of his staff on the spot. He further stated that one should worry about the quantity of contribution but quality of contribution. And by this, he ended his part of the session.

The discussion was then carried forward by Justice Patnaik, who advocated that every little contribution is counted, and hence one shall not be reluctant in contributing. He further emphasized by saying that if you initiate, then only the things will change or happen. It's you who need to build the culture, just like the culture is built by the father in a family. He then narrated a story of Mahatma

Gandhi and relating to it stated that you cannot lead by lectures but only by instances (setting examples). Talking about the subordinate judiciary, he said that there are rules to follow which is either set by the respective High courts or the Governments whereas in the case of Supreme Court and High Court, they have their own set rules.

Justice Patnaik, concluded the session by discussing the following, from “The Bangalore Principles of Judicial Conduct”-

- “The following principles are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standard, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.”

- “VALUE 5: EQUALITY

Principle: Ensuring quality of treatment to all before the courts is essential to the due performance of the judicial office.

Application:

5.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes (“irrelevant grounds”).

5.2 A judge shall not, in the performance of the judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.

5.3 A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial

colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

5.4 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.

5.5 A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy."

- "VALUE 6: COMPETENCE AND DILIGENCE

Principle: Competence and diligence are prerequisites to the due performance of judicial office.

Application:

6.1 The judicial duties of a judge take precedence over all other activities.

6.2 A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.

6.3 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.

6.4 A judges shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.

6.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

6.6 A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity.

The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.

6.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

DAY 3: SESSION 10 (10:30-11:30AM)

**ROLE OF REGISTRAR (vigilance/intelligence) AS
APPELLATE AUTHORITY UNDER RTI ACT, 2005**

Speaker: Justice A.K. Patnaik & Dr. J.N. Barowalia

The last session of the day was headed by Dr. Barowalia, who asked the participants to be interactive during the session regarding RTI. He then started his discussion by discussing about Article 19 of the constitution and also referred a case- State of Uttar Pradesh Vs, Raj Narain & Anr (1975) and quoted: *'In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can but few secrets. The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security.'* He then talked about the National Commission Report and discussed the Judicial Delays, given in chapter 7 of the report. The report said- *'7.10.1 One of the reasons for the delay is often said to be the inadequate judge strength and the inadequacy of the*

number of courts and the infrastructure facilities in them. According to an eminent member of the Bar, the best solution to tackle the arrears is "to appoint less number of judges and more competent judges". This was the view of the Report of the Arrears Committee (1989-1990) constituted by the Government of India on the recommendation of the Chief Justices' Conference. The Committee said: "the failure on the part of the Executive to produce adequate number of competent judges from time to time has substantially contributed to the mounting arrears." The arrears can be substantially brought down with better management, computerization of court system, increased settlements by Lok Adalats, the effective and greater use of provisions of the Civil Procedure Code with all its congenial amendments with the cooperation of the lawyers and the court staff. The competence of the judges in terms of quality and quantity of disposals should be assessed by the superior court judges and reputed senior advocates.'

He then preceded his discussion regarding the RTI Act and deliberated on the enforcement of RTI act. Talking about the act, he started with discussing the preamble of the act which says-

"An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto. WHEREAS the Constitution of India has established democratic Republic; AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed; AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information; AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal; Now. THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it."

He then proceeded further by discussing **Sec 2(j)** of the act, which says- “*right to information*” means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to- (i) inspection of work, documents, records; (ii) taking notes, extracts or certified copies of documents or records; (iii) taking certified samples of material; (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.” He further enlightened that we have the right to get the information on the working of the government offices. He then proceeded by discussing the following sections of the act:

‘4. Obligations of public authorities. — (1) Every public authority shall—

(a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated; .

(b) Publish within one hundred and twenty days from the enactment of this Act,—

(i) the particulars of its organisation, functions and duties;

(ii) the powers and duties of its officers and employees;

(iii) the procedure followed in the decision making process, including channels of supervision and accountability;

(iv) the norms set by it for the discharge of its functions;

(v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;

(vi) a statement of the categories of documents that are held by it or under its control;

(vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof; 4 Right to Information Act, 2005 (Chapter II-Right to information and obligations of public authorities.)

(viii) *a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards; councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;*

(ix) *a directory of its officers and employees;*

(x) *the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;*

(xi) *the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;*

(xii) *the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;*

(xiii) *particulars of recipients of concessions, permits or authorisations granted by it;*

(xiv) *details in respect of the information, available to or held by it, reduced in an electronic form;*

(xv) *the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;*

(xvi) *the names, designations and other particulars of the Public Information Officers;*

(xvii) *such other information as may be prescribed; and thereafter update these publications every year;*

(c) *publish all relevant facts while formulating important policies or announcing the decisions which affect public;*

(d) *provide reasons for its administrative or quasi-judicial decisions to affected persons.*

(2) *It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo moto to the public at regular intervals through various*

means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.

(3) For the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.

(4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible. to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer. as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.

Explanation.-For the purposes of sub-sections (3) and (4), "disseminated" means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority.

5. Designation of Public Information Officers.-*(1) Every public authority shall, within one hundred days of the enactment of this Act, designate as many officers as the Central Public Information Officers or State Public Information Officers, as the case may be, in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act.*

(2) Without prejudice to the provisions of sub-section (1), every public authority shall designate an officer, within one hundred days of the enactment of this Act, at each sub-divisional level or other sub-district level as a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, to receive the applications for information or appeals under this Act for forwarding the same forthwith to the Central Public Information Officer or the State Public Information Officer or senior officer specified under sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be:

Provided that where an application for information or appeal is given to a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, a period of five days shall be added in computing the period for response specified under sub-section (1) of section 7.

(3) Every Central Public Information Officer or State Public Information Officer, as the case may be, shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.

(4) The Central Public Information Officer or State Public Information Officer, as the case may be, may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties.

(5) Any officer, whose assistance has been sought under sub-section (4), shall render all assistance to the Central Public Information Officer or State Public Information Officer, as the case may be, seeking his or her assistance and for the purposes of any contravention of the provisions of this Act, such other officer shall be treated as a Central Public Information Officer or State Public Information Officer, as the case may be.

6. Request for obtaining information.—(1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to—

(a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;

(b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her:

Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

(3) Where an application is made to a public authority requesting for an information,—

(i) which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the functions of another public authority,

the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.

7. Disposal of request.—*(I) Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request. either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9:*

Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.

(2) If the Central Public Information Officer or State Public Information Officer, as the case may be, fails to give decision on the request for information within the period specified under sub-section (I), the Central Public Information Officer or State Public Information Officer, as the case may be, shall be deemed to have refused the request.

(3) Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Central Public Information Officer or State Public Information Officer, as the case may be, shall send an intimation to the person making the request, giving—

(a) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed under sub-section (I), requesting him to deposit that fees, and the period intervening between the

despatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in that sub-section;

(b) information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms.

(4) Where access to the record or a part thereof is required to be provided under this Act and the person to whom access is to be provided is sensorily disabled, the Central Public Information Officer or State Public Information Officer, as the case may be, shall provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection.

(5) Where access to information is to be provided in the printed or in any electronic format, the applicant shall, subject to the provisions of sub-section (6), pay such fee as may be prescribed:

Provided that the fee prescribed under sub-section (1) of section 6 and sub-sections (1) and (5) of section 7 shall be reasonable and no such fee shall be charged from the persons who are of below poverty line as may be determined by the appropriate Government.

(6) Notwithstanding anything contained in sub-section (5), the person making request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified in subsection (1).

(7) Before taking any decision under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall take into consideration the representation made by a third party under section 1.

(8) Where a request has been rejected under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall communicate to the person making the request,—

(i) the reasons for such rejection;

(ii) the period within which an appeal against such rejection may be preferred; and

(iii) the particulars of the appellate authority.

(9) An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.

8. Exemption from disclosure of information. —(1) *Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(f) information received in confidence from foreign Government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (/), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.'

He further quoted a few cases, such as- CBSE Vs. Aditya Bandhopadhyay, wherein he quoted- *'The right to information is a cherished right. Information and right to information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability. The provisions of RTI Act should be enforced strictly and all efforts should be made to bring to light the necessary information under clause (b) of section 4(1) of the Act which relates to securing transparency and*

accountability in the working of public authorities and in discouraging corruption. But in regard to other information, (that is information other than those enumerated in section 4 (1) (b) and (c) of the Act), equal importance and emphasis are given to other public interests (like confidentiality of sensitive information, fidelity and fiduciary relationships, efficient operation of governments, etc.). Indiscriminate and impractical demands or directions under RTI act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counter-productive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquillity and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritising 'information furnishing', at the cost of their normal and regular duties.' And Abhijit Ghosh Vs. Union Of India. He also stated what all things cannot be supplied under RTI, out of all, a few are-

- LTC
- Medical bills
- Income tax returns
- Pending trails
- CCTV footage

The baton of session was then handed over to Justice Patnaik, who praised the speaker and further discussed about the democracy and the adoption of our Constitution, which was mentioned by the speaker in his discussion. He then discussed about the situation in the government office before the enactment of the RTI Act. Recalling the discussion of the speaker, Justice Patnaik discussed the preamble of the act and also stated the importance of the act. He said that RTI Act brings transparency and accountability. He also pointed out that every matter cannot be covered under RTI and hence, for this reason exception has

been laid down in Sec 8 of the act. He further suggested that RTI shall be used to create balance between transparency and Public Interest. He then discussed about the misuse of RTI and further quoted from a case- CBSE Vs Aditya Bandhopadhyay (decided by Justice Patnaik and another): *'At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non- available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provided advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.'* Justice Patnaik further discussed Sec. 5 & 19 of the act and also the rules by Orissa High Court.

The session was concluded by Prof. (Dr.) Geeta Oberoi, emphasizing on the RTI act.

DAY 3: SESSION 11 (12:00-01:00PM)

FEEDBACK AND EVALUATION

