

*For Private Circulation: Educational Purposes only (P- 962)*

# NATIONAL JUDICIAL ACADEMY



**Seminar on the Role of Guardian Justices [P-962]**

**18<sup>th</sup> – 20<sup>th</sup> December, 2015**

**Rapporteur: Mr. Aishwarya Nigam**

**10<sup>th</sup> Semester, B.A., LL.B (Hons.)**

**National Law University, Assam**

## **Objectives of the Seminar**

High courts in India are given supervisory and administrative jurisdiction over the district judiciary and thereby establishing power of high courts over district courts in almost every spectrum – administrative, financial and judicial functions. This conference will provide guardian judges an opportunity to come together to formulate uniform guidelines on their role as guardian judges.

## **Resource Person**

*Session 1:* Hon'ble Mr. Justice Venkate Gowda (Judge, Supreme Court of India) and Hon'ble Mr. Justice Navin Sinha (Chief Justice, Chhattisgarh High Court)

*Session 2:* Hon'ble Mr. Justice Navin Sinha (Chief Justice, Chhattisgarh High Court)

*Session 3 and 4:* Hon'ble Mr. Justice S. J. Mukhopadhaya (Former Judge, Supreme Court of India) and Hon'ble Mr. Justice Navin Sinha (Chief Justice, Chhattisgarh High Court)

*Session 5 and 6:* Hon'ble Mr. Justice Aftab Alam (Chairman, Telecom Disputes Settlement and Appellate Tribunal) and Hon'ble Mr. Justice Manmohan Sarin (Former Chief Justice, J & K High Court) and Hon'ble Mr. Justice Sunil Ambwani (Former Chief Justice, Rajasthan High Court)

*Session 7 and 8:* Hon'ble Mr. Justice Manmohan Sarin (Former Chief Justice, J & K High Court) and Hon'ble Mr. Justice Sunil Ambwani (Former Chief Justice, Rajasthan High Court)

*Session 9 and 10:* Mr. Amitabh Deo Kodwani (Indian Institute of Management Indore, Faculty)

DAY 1: 10:00 AM – 11:20 AM

SESSION 1

**Standardization of Roles & Responsibilities of Guardian Judges: Uniformity Approach**

Hon'ble Mr. Justice Navin Sinha

He started the session by asking a question that how many judges present in this seminar are having experience of more than 5 years as High Court Judge and some of them have raised their hand.

What are the do's and don'ts for inspecting judges? Why can't we have standardised Rules of inspection? It was suggested that NJA can be asked to make guidelines. It was pointed out that it cannot be called as Rules as no organisation can frame Rules for High Courts because it is an independent sovereign body. It can be call out as "*Model Rules*" or "*Model Norms*" as it would be more appropriate nomenclature. Himachal Pradesh, Patna and Punjab High Courts are already having Rules for inspection. Whereas Chhattisgarh has no Rule or guidelines, Madhya Pradesh earlier had a separate position for inspection of district courts.

It was agreed to have some standard norms for judicial works and assessment of judges. The practice followed in many high courts is that they call for the judgments and inspecting judge at random picks 5 of them.

As highlighted by one of the participants, that the Patna High Court is flooded with the bail cases, how to deal with this problem? It was explained that it created blockage in the mindset of Judges.

How to standardise the whole procedure, how NJA can work on it? It was suggested that every judge must put all their efforts together.

The reality is explained by one of the participating judge that if a district judge grants bail, High Court will look at him as if he is a corrupt judge and will serve a 'show cause notice'. It is because of such situation high courts are flooded by bail matters.

It was held in *Bishwanath Prasad Singh v State Of Bihar*<sup>1</sup> that Article 235 of the Constitution vests administrative and disciplinary control over the district judiciary including the subordinate judiciary in the High Court immunising them from the executive control of the State Government so as to protect judicial independence. Control over subordinate courts vested in the High Court is a trust and confidence reposed by the founding fathers of the Constitution in a high institution like the High Court. The trust has to be discharged with a great sense of responsibility.<sup>2</sup>

It was held in *High Court of Punjab and Haryana through R. G v Ishwar Chand Jain*<sup>3</sup> Object of such inspection is for the purpose of assessment of the work performed by the subordinate judge, his capability, integrity and competency.<sup>4</sup>

The procedure for code of conduct of inspecting judges and whom they are going to inspect is to be standardised.

There are certain problems which are common to all the subordinate judiciary across the nation. Therefore it is suggested to have a bare minimum standard which may apply to all inspecting judges.

As to the question why *suo moto* revision can't be used? It can't be used because then the inspecting judges have to proceed against him judicially and not administratively.

As Supreme Court judge drafted standardised procedure of code of conduct for high court judges, similarly can't the high court judges make procedure for district judges? Rules regarding Inspection, Judicial work, Quantitative, Qualitative, ACR's etc. can be formulated. It is suggested that High Court Judges can make Rule for district judges and district judges can make norms for lower judiciary.

It was also suggested to have one full day region wise conference with Chief Justices of each High Court for direct problem solving and effective management of the lower judiciary.

Hon'ble Mr. Justice Venkate Gopala Gowda

It was highlighted that Tarnishing of judiciary is rampant. All states have to streamline and standardise the functioning of district judiciary.

---

<sup>1</sup> (2001) 2 SCC 305

<sup>2</sup> *Ibid*, Para 36

<sup>3</sup> (1999) 4 SCC 579

<sup>4</sup> *Ibid*, Para 29

It is suggested to deploy eminent researchers to analyse, research on present functioning of the judiciary.

Justice Gowda suggested that, firstly we must have a code of conduct for subordinate judiciary. He also emphasised that it is wrong to say High Court is subordinate to Supreme Court. Both the courts are constitutional courts under Articles 32, 136 (Supreme Court) and 226,227,142 (High Courts).

An inspection includes having a look on administrative work, judicial functioning and infrastructure. Inspection does not mean typically a financial or accounts audit, i.e. inspection on only financial matters rather it's on facts as to how many cases disposed of, how much money is deposited in court treasury, how many cases are pending, is any malpractice going on in the subordinate judiciary, do they have proper infrastructure etc.

The objective is to clean the administrative work for which there is a dire need of a model procedure.

It was submitted that administration requires expertise, skills and knowledge.

It was suggested that District judge must review the matters periodically, although they don't get time to do it but such an argument is not acceptable. Chief Justice must have a meeting with their Guardian Judges at least once in a month.

*Guardian Judge:* What is meant by a Guardian? Guardian is a person who protects or defends something. For example a Guardian to a minor who teaches him how to behave properly. Likewise a guardian judge must work as a *karta* of the family. A judge must not act as a boss rather he should act as a fatherly figure. All he needs to spread is his commitment to work with love and affection to his brother judges.

Justice Gowda insisted that it is always advisable to hear the personal grievances of the judicial officers, make them comfortable by taking them in confidence, at least meet them once in a month, and ask them to let you know the problems faced by them while working. Most often the problem faced by the higher judiciary is not same with problem faced by lower judiciary.

It was suggested that to solve the pendency of the cases a conference must be scheduled for Chief Justices of High Courts and they must be trained to be a Guardian.

It was also suggested that

1. A regular meeting of portfolio judges with chief Justice of High Court.
2. Model norms may be made by NJA (including judicial work, code of conduct, administrative work and infrastructure etc.)

DAY 1: 11:50 AM – 01:10 PM

SESSION 2

**Challenges faced by Guardian Judges**

What are the challenges faced by the guardian judges?

Whether district judges take oath? No they don't take oath, only a formal oath is taken by them.

It was explained that the whole purpose of the training is to ignite the brains of fellow judges to think. Introspection is required.

The selected paragraph of *High Court of Punjab and Haryana through R. G v Ishwar Chand Jain and Another*<sup>5</sup> was read out in the conference:

Inspection of the subordinate courts is one of the most important functions which High Court performs for control over the subordinate courts. Object of such inspection is for the purpose of assessment of the work performed by the subordinate judge, his capability, integrity and competency. Since judges are human beings and also prone to all the human failings inspection provides an opportunity for pointing out mistakes so that they are avoided in future and deficiencies, if any, in the Working of the subordinate court, remedied, inspection should act as a catalyst in inspiring subordinate judges to give best results. They should feel a sense of achievement. They need encouragement. They work under great stress and man the courts while working under great discomfort and hardships. A satisfactory judicial system

---

<sup>5</sup> (1999) 4 SCC 579

depends largely on the satisfactory functioning of courts at grass root level. Remarks recorded by the inspecting judge are normally endorsed by the Full Court and become part of the Annual Confidential Reports and are foundations on which the career of judicial officer is made or marred. Inspection of subordinate court is thus of vital importance. It has to be both effective and productive. It can be so only if it is well regulated and is workman like. Inspection of subordinate courts is not a one day or an hour or few minutes affair. It has to go on all the year round by monitoring the work of the Court by the inspecting judge. The casual inspection can hardly be beneficial to a judicial system. It does more harms than good. As noticed in the case of *Registrar. High Court of Madras Etc. v R. Rajiah and K. Rajeswaran*<sup>6</sup>, there could be ill conceived or motivated complaints. Rumour mongering is to be avoided at all costs as it seriously jeopardizes the efficient working of the subordinate courts. Time has come that a proper and uniform system of inspection of subordinate courts should be devised by the High Courts. In fact the whole system of inspection needs rationalization. There should be some scope of self- assessment by the officer concerned.

It was stated that the irony is everyone can easily point out the faults of another person but it is very difficult for them to look into themselves.

It was suggested that inspection must always be a “fact finding mechanism rather than a fault finding mechanism”. Therefore, it was suggested to prepare a questionnaire. But it was pointed out that Allahabad High Court already has a questionnaire which is provided with the reading material.

It was suggested to use the national data grid for monitoring the cases dealt by the lower judiciary.

When problems are identified the next question that arises is, where are we going wrong? It was asked to the participants that what do they think where does the problem lie? It was answered as: Inspecting Judge comes on inspection and he finds two types of judicial officers, one who was an overall good performer and the other one who was a poor performer. He scolds him and humiliates the officer who was a good performer on a pending

---

<sup>6</sup> (1988) 3 SCC 211

case and appreciates the bad performer on any of the good records he have, on the basis of which the latter one gets promotion. Therefore the problem sometimes may lie in the inspecting judges i.e. lack of fairness and personal prejudices.

In *Manipur*, one can find that ACRs of judicial officers are good but none of them are fit for promotion. When we talk of integrity no one comes ahead. It can often be seen that appointment and promotion is done on the basis of favoritism. It was suggested to have a regular interaction between guardian judges and subordinate judges.

It was also pointed out that, there are cases wherein everyone knows a person is questionable on grounds of integrity, all of the ACRs will show him clean. How to deal with such a situation? There is no evidence to substantiate the fact that he is questionable.

The ground reality is now highlighted by one of the participant as the inspection committee goes to a district and had food, enjoys and comes back. The report made by them is actually the report prepared by the judicial officer and inspecting judge only put his signature on it.

They problem lies in:

1. Human failings of the inspecting judge.
2. Where officer is corrupt and everyone knows it but no proof is there to substantiate.

It was suggested that to fix one day in a week or month, ask the entire subordinate judiciary to be present in the conference room of district judiciary and have a video conferencing.

It was pointed out that the time is very short to do all this. But it was suggested that to take time out of the busy schedule, as being a guardian judge it is a duty to train them, interact with them.

*Decision of Full Court:* One problem was illustrated during the session: A judge was compulsorily retired and he challenged his retirement as there were no such adverse records present. He was retired on the basis of the unanimous decision taken by the full court. Question thus arises whether unanimous decision taken by the full court is challengeable in the court of law? Supreme Court in the case of *High Court of Judicature, Patna and another v Shiveshwar Narayan and another*<sup>7</sup> held that examining each complaint and material against

---

<sup>7</sup> (2011) 15 SCC 317

the Judicial Officer to find out the correctness of the decision of the Full Court is legally not permissible.

*Seniority:* To resolve the problems faced because of seniority issues, it was suggested that to put the judges in a batch and promote the one who is performing outstanding in that batch. It was also pointed out that some of the judges' are working 5 times more than the other judges but are promoted as according to the seniority.

On the issue of inspection where one portfolio/inspecting judge becomes the king or a sole authority to inspect the judicial officer's performance, integrity etc., it will be the sole discretion of that portfolio judge and he has the ultimate power. To curb this problem Chief Justice of Delhi High Court has made a 3 judges committee for inspection so that there might not be the issues relating to making a sole investigating judge happy. It is always open for the High Court under Article 227 to check the potential of a judicial officer whether going in the right direction or not.

DAY 1: 01:45 PM – 02:45 PM

SESSION 3

### **Developing Standards for Evaluation of Judgments**

#### *Evaluation of the Judgments*

It was pointed out that evaluation varies from different judges. Each judge has their own way/style to evaluate. It can depend upon:

- How the arguments is being done
- Clarity of explanation
- Application of law on the given fact

Every judge has watched/seen the practical aspects but there is no such concrete procedure to be followed. It was suggested that the High Court must be vigilant on the judgments coming from the subordinate courts.

It was highlighted that the practice followed by many of the High Courts of calling of random judgments from subordinate judiciary is not followed by Madras and Gujarat High court. The practice followed in these High Courts is to ask for records.

It was asked by one of the participating judge that how many High Courts require a portfolio judge to visit the subordinate judiciary before evaluating the judgments and the performance of a judicial officer.

The procedure of evaluation of judgment is not uniform and even absent in the guidelines.

There are many cases which are heard and adjourned for 3 months, on the next hearing it is again adjourned for 4 months, 7 months have already been passed and no progress is made on the case. What should be the response of the judiciary on such a problem?

#### Model Opinion Review Criteria

Individuals designated to review the opinions of appellate justices and judges should do so based on the following criteria:

- Adherence to standard of review
- Clarity of expression/arguments
- Application of Law and Logic to the facts presented
- Language used is ambiguous or clear

It was suggested that the parameters discussed is not for judicial officers rather it is for guardian judges for the appreciation of judgments. Every judicial officer has a right to write judgment in a manner they like; it is the work of NJA to train them.

It was discussed that whether saying 'no adverse remark is found' is right instead of saying integrity is doubtful or integrity is beyond any doubt.

It was stated by Justice Navin Sinha that:

- Write down the arguments on the very same day it was made.
- In a judgment one will find everything (marshalling of facts, evidence etc.) but the body of the judgment which includes reasoning is usually absent.
- The judgments are regulated by the judge's personal believe.
- The judgment passed must be able to communicate the reader.

DAY 1: 03:15 PM – 04:25 PM

SESSION 4

**Meaning & Scope of “Character Roll”**

It was criticised that the Guardian judges ask the judicial officers of subordinate judiciary to send their judgments. They send only their best judgments. It was suggested to have self-assessment of judicial officers.

While looking at the format of ACR in respect of officers of Jharkhand Judicial Services it was pointed out that two things with regard to which there is no separate column i.e. whether he is suspended or departmental proceeding is initiated in the current year or not.

It is suggested that ACR must be looked at the time of promotion.

The Pro forma can be circulated to all High Courts so that on their discretion they may implement it or not.

It was suggested to visit the subordinate judiciary and meet the judicial officers at least one month prior writing the character roll.

It was also suggested that to have a one to one conversation with the concerned judicial officer, it will bring change in the attitude of the officer when he realise that his portfolio judge is like a fatherly figure and want to help him.

It was suggested that within 2 months of the preceding assessment year (it may be 1 January to 31 December or 28 Feb to 1 March), inspecting judge must write the confidential report and before writing to ACR within 3 months prior to it, a visit to the district judiciary to have direct knowledge of officers and the staffs, maintenance of records, cleanliness, requirements of infrastructure (including building, furniture, toilets etc.).

*Justice Navin Sinha* stated the practice followed in Chhattisgarh High Court:

1. How much interest is taken by a judge in Legal Services matter, extra points are given on the basis of work done by them?
2. In ACR from now on a separate column for computer proficiency is to be included.

3. If the judges write a minimum number of judgments in English language, extra marks will be given.

It was criticised that a Judge may deliver a very good judgment in Hindi whereas delivering the same judgment in English is a big hurdle for him and compelling him to write a judgment in English, he will not be able to express himself clearly. It was highlighted that in Delhi and Kerala all judgments are written in English.

It was also pointed out that Allahabad High Court pronounces judgments in Hindi which is in contravention to the Article 348 (1) and (2) which speaks that a judgment can only be written in English by a high court judge while discussing.

Characteristic Roll: The general reputation about an officer, everyone knows everything about him but nothing in writing and even if something is written against him the person will say what is written against me show me. Character roll is an assessment by an inspecting judge; no proof is required for the purpose of integrity. If it is said that integrity is doubtful it means inspecting judge doubts his integrity but if a charge is made out against him a proceeding has to be initiated. The inspecting judge must differentiate between charge sheet, punishment and integrity which is individual assessment. For a doubtful integrity no incident is required it is only the assessment of the inspecting/guardian judge.

It was explained that integrity can only be 'doubtful' or 'beyond any reasonable doubts'. It can never be excellent, good, bad or very bad. It was also suggested that reputation is different from 'integrity' and 'honesty'.

In *High Court of Judicature, Patna v. Shiveshwar Narayan*<sup>8</sup> it was held that in assessing potential for continued useful service, obviously entire record of service, character rolls, quality of judgments are of considerable importance. At the same time, over- all reputation of a Judge in the entire period of service, his judicial conduct, objective and impartial performance throughout his career are the relevant factors which also have to be kept in mind. To find out the potentiality of a Judicial Officer for continuation in service beyond the age of 58 years following the decision of this Court in *All India Judges' Association*<sup>9</sup>, obviously, the entire record of service, character rolls, quality of judgments and other relevant circumstances like general reputation, integrity, efficiency, performance, conduct etc. do

---

<sup>8</sup> (2011) 15 SCC 317

<sup>9</sup> (1993) 4 SCC 288

form the basis but at the same time, it is not ‘proved dishonesty’ or ‘proved misconduct’ that is determinative but doubtful integrity or suspicious judicial conduct may be sufficient to deny a judicial officer benefit of enhancement of superannuation age to 60 years.<sup>10</sup>

Reputation is a general perception. Finding out a judicial officer’s integrity and reputation is very difficult as bar is divided and media is deceptive.

In *Rajendra Singh Verma (D) Thr. Lrs v. Lt. Governor Of Nct Of Delhi*<sup>11</sup> it was held that in view of the control over the members of lower judiciary vested in the High Court by virtue of Article 235 of the Constitution, the Governor is bound, in each case, to act in accordance with the recommendation of the High Court. This decision also takes the firm view that the recommendation made by the High Court is binding on the Governor.

It was also explained that confidential report reflects the personality of a person.

It was suggested to the participants that a judge must not think about the higher judiciary while writing a judgment, he must apply his judicial mind and write it fearlessly. A guardian judge must not be worried about standing committee; he must do his job sincerely.

Scarcity of time was pointed out by one of the participating judge as in Patna High Court 39 guardian judges are dealing with 1400 judicial officers whereas in Chhattisgarh 8 Judges are dealing with 345 judicial officers. It was suggested to take out some time from the busy schedule.

---

<sup>10</sup> *High Court of Judicature, Patna v. Shiveshwar Narayan*, (2011) 15 SCC 317, Para 19

<sup>11</sup> (2011) 10 SCC 1

DAY 2: 10:00 AM – 11:40 AM

SESSION 5

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

Emphasis was laid down on video conferencing.

It was highlighted that the Madras High Court Rules does not permit the inspecting judges to spend more than 5 days in a year for inspection and also inspection can't be done on working days.

Hon'ble Mr. Justice Aftab Alam

He suggested that while evaluating the performance, it must be done objectively and fairly. An inspecting judge must act as a role model. It was pointed out that problems faced by lower judiciary in Madhya Pradesh, Uttar Pradesh, Chhattisgarh are not same as in Maharashtra and Delhi.

*Bihar*

The system prevalent in Bihar at one point was Judicial Administration was on the shoulders of Chief Justice, senior most judge (JAD I), Judge next in seniority (JAD II). A Standing committee is appointed which looks into the matters relating to Transfer and Disciplinary actions. The development which can be seen today is that each judge has given administrative work of one or more than one districts, and these judges' acts as guardian judges. Thus question arises, whether the system successfully made the judicial administration working?

The answer is no, it rather created more problems in the judiciary. There can't be any system of Judicial Administration, there can only be series of orders, circulars with no power to a single judge over a district.

*Power or Responsibility:* Individual judges take it as personal power rather as personal responsibility. It is suggested that being a guardian judge take it as responsibility.

*What we have achieved under Article 235?*

There is completely no restraint on the corrupt officers and those who are honest with their work has stopped working.

It was suggested that individual High Court judges should voluntarily given up their power of inspection. Judges are trained for adjudication and not for administration. Examples of other countries was given as in all over the world administration is not done by the person who is involved in teaching or adjudication or those who are expert in a particular field and are appointed because of such an expertise. But as seen everywhere in our country this culture of giving an extra task of administration to a person appointed for adjudication or teaching or any work in which he is specialised is prevalent.

Supervision of lower court is not a power rather it is a solemn responsibility. It was suggested that while inspecting a judge must not try to find a culprit rather he should find a dedicated judicial officer and celebrate him for his performance so that others will also work like him.

#### Hon'ble Mr. Justice Manmohan Sarin

It was asked by him that as we already know the problem, what should be our approach now to curb the problem.

One answer came up as create an institution. It was then argued that from a very long time we are creating institutions and when it starts to face any problem we shut it down and create a new one.

It was highlighted that when a judge is appointed in any High Court, for the first 3-4 years he will take active part/interest in inspection. After this period he stops taking interest in inspection and call for last 3 years ACRs for evaluating the performance. Because of such practices a judicial officer who once got a score of 9.5 will always get the similar score.

It was pointed out that, two judicial officers who work similar to each other would get two different ratings as both of them are evaluated by different judges. It was suggested to formulate a committee to look on such an issue to bring in uniformity and parity.

It was also suggested that while writing an ACR and rating a judicial officer, call the judicial officer and tell him where his judgment went wrong and where he is supposed to improve. It will create a relationship between the inspecting judge and judicial officer and because of

which performance of judicial officer will always increase as the inspecting judge is not shouting at him rather acting as a fatherly figure.

There are two types of judicial officers:

*Introverts:* Works well, does not attend any functions and not exposed to higher judiciary. (Chances of being promoted is lesser)

*Extroverts:* Average performer, attends functions and meets judges of higher judiciary. (Chances of being promoted is higher)

#### *Judicial performance of evaluation of Judgments*

It was suggested to take 10-15 judgments of a judge, and then look at the time of its initiation and time of disposal, was it delayed? One of the most important things to be looked in a judgment is whether the judgment is understandable from the point of view of general public or is the language is purely legal.

#### Hon'ble Mr. Justice Sunil Ambwani

Why ACR is called as Annual Confidential Report when there is nothing confidential in it.

#### *Rajasthan*

Every ACR will first come to the Chief Justice which will be asserted by JAD I. It is a difficult task to moderate it. Sometimes Chief Justice also makes random checks on it.

Question arises for the judicial officers who are on deputation, as to who will write their ACRs?

A question was raised as to ACRs are subject to Right to Information or not? It is contemplated that there is nothing confidential about it.

#### *Kerela*

There may be shortcomings in the system but while looking at the system what measures can we take to pour up the shortcomings?

Being a guardian judge, it is the duty to eliminate fear factor from the minds of the subordinate judges.

A necessity is also felt to have uniformity in the rating. As one inspecting judge may rate a subordinate judge 9.5 whereas another inspecting judge rate 8.5 to another subordinate judge who is better performer than the previous one. It ultimately affects their carrier and they start losing hope in the system.

### *Delhi*

Each time we try to get a new system and each time we have to change the adopted system. It was suggested that no system is required, all we need is right people at right place or else we will keep on changing the system.

A standing committee must be setup by Chief Justice, where CJ appoints a judge who is good and able to perform well as an administrator as a part of the standing committee.

It was also suggested that have a secretariat for judicial officers as well as Administrative officers. But as pointed out, now we have court managers who are qualified MBA graduates.

It was highlighted that while starting the evaluation process by looking at the judgments, the administrative wing must strike down the name of the officer and then forward it to the judicial wing so that the evaluation will be fair and unbiased.

If this mechanism is applied in all the state judiciaries, every problem will be solved.

*“Structures survives on the pillars and not on the bricks”*

### *Calcutta*

The emphasis should be given on:

- Grading system
- Compartmentalisation of ACR is not working well.
- Registrar has a stick in his hand. He is holding the supreme power of Administration.
- Before writing an ACR and anything objectionable to integrity of a judicial officer, it is suggested to meet him in person first.
- Secretary must be appointed to handle the management and administrative staff.

DAY 2: 12:00 PM – 01:30 PM

SESSION 6

**Effective Inspection of Courts: An Assessment**

While continuing the previous session it was pointed out that the inspecting judges are taking inspection as a power vested in them rather than taking it as duty.

It was suggested to make a surprise visit to check whether the judicial officers are coming on time or not.

*Guwahati*

While highlighting the issues faced by judicial officer and subordinate judiciary present in Arunachal Pradesh it was pointed out that there is no infrastructure for the judicial officers to live and work. They have access to database but due to the different geographical terrains and conditions electricity or internet is not there. Transportation is one of the biggest problem in many of the districts. But the best part is that despite of such conditions, they are working.

It was suggested to take it on the judicial side as Administrative side has no solution, i.e. to file a Public Interest Litigation for curbing the difficulties.

*Andhra Pradesh*

On the issue of standardisation, it was suggested that standardisation will lead to practical difficulties as same yardsticks cannot be applied to all judges alike.

For example a judge has expertise in adjudication and hence he must be relieved from the work of treasury, infrastructure, transfer, computer, loans and advancement of Human Resources etc.

For legal services workshop, inspection to the subordinate courts, even for the purchase of stationary he has to call for tenders, finalise the amount etc. which takes a lot of time which if used on the judicial side the problem as to pendency of cases and efficiency in judgments would increase.

### *Allahabad*

- It was highlighted that the system of ACR is old now.
- It was pointed out that even if a new system is adopted it may also come with some exceptions and shortcomings.
- How these problems can be minimised?
- It was suggested that at least visit the subordinate judiciary once or twice in a month.

Two things must be kept in mind:

1. There must be a role model for administration of judiciary, which shall include Rules as to their code of conduct and self-correctional mechanism.
2. Article 235 the power to reform the existing system is vested in High Court.

### *Madhya Pradesh*

ACRs are prepared by District Judges, and report is submitted by vigilance department. By the time it reaches to the High Court Judge, there is no judgment annexed to it and therefore it is very difficult to assess the performance of the judicial officer. The grades are already written on the report.

It was suggested to have an independent agency for management and administration. The role of court managers were also highlighted as they are IIM graduates they can train the other court staff. The staff must be trained to work as computer expert. Emphasis was also laid down on appointment of Administrative staff.

It was exemplified that whether Railway Managers are working for IRCTC, a Regional manager of a bank is working on online banking? The answer is a big no!

It was suggested that court should have a standardised separate customized wing which is computer proficient, rather than insisting upon training the judges for the purpose. Because of these imposed training of judges the efficiency is degrading.

As pointed out that working on computer is very tiresome and stressful. It is to be noted that efficiency is also affected. Therefore, it was suggested that introducing new system will not serve any purpose and it's better to issue some directions for the court managers.

It was stated by another participating judge that an administrative judge must act as a role model and there must be some code of conduct for them. It was suggested for introspection and self-correction. It was also pointed out that power under article 235 cannot be delegated.

Unless an inspecting judge does not know the officer, it will be difficult to write his ACR and therefore, it is suggested that the subordinate judiciary must be visited once in a month. On the issue of scarcity of time it was suggested to take help of video conferencing & ICT.

### *Patna*

The concept of inspecting judge and its genesis was set up keeping in view the feudality which prevailed. It now needs to be looked in our modern democratic set-up for better administration.

The 2 approaches were highlighted:

#### *Feudalistic Approach – Guardianship Approach*

i.e. Fault Finding Approach – Fact finding

ACR must be an appraisal report rather than confidential report where shortcomings must be written. It was again asked what do you mean by confidential?

The ACR format in Patna High Court is now 90% objective and only 10% of which is subjective (which includes integrity, knowledge of law and Quality of Judgment).

Now a days ACR writing has more to do with punishment rather than motivating, it ultimately demotivate and demoralise a judicial officer who is very serious about his work.

*Promotion:* It is seniority cum merit based. If Seniority is seen while promoting a judicial officer then what is the real purpose of ACRs? This will lead to only one answer i.e. promotion is only based on seniority.

### *Chhattisgarh*

It was explained that no honest judicial officer is actually deprived of his position. He can never be deprived of his rights.

Consumer of justice must always be consulted (Magistrates, Superintendent of Police, Public prosecutor, A senior member of the Bar.)

It was argued that the question of elevation does not depend upon ACR or seniority; rather it is on discretion of High Court Judges. Unless we cure ourselves, system can't be cured.

### *Manipur*

It was suggested to have a Judicial Administrative Services where LL.B and MBA graduates may be selected.

It was asked that, how to access the integrity objectively without tangible material. When an investigating officer knows that the judicial officer is lacks integrity but no evidence is there to prove it.

### *Jammu and Kashmir*

Selection of the judgment must be done by the inspecting judge in order to deeply assess the work of a judicial officer. Therefore, instead of asking 5 judgments it is suggested to ask for the list of disposed cases and call for any judgment which the portfolio judge thinks fit.

It was pointed out that there are many problems as to:

- Shortage of Judges
- Judges are already burdened with Judicial and Administrative work load
- Pending litigations

System must be changed so that the judicial work is done with precision. It can only be done when the concept of seniority is removed and promotion is done on the basis of knowledge and application of law.

DAY 2: 02:30 PM – 04:10 PM

SESSION 7 & 8

**Evaluation of Performance & Increasing Strength of Judges: Time & Accessibility**

**Issues**

&

**Relying on Opinion of Bar: Credibility Issues**

It was argued as to whether to go for a surprise inspection? It is always on the discretion of the inspecting judge. If inspecting judge goes incognito, it will put fear in the mind of the judicial officer and he may start to sit on the right time was one of the viewpoints.

It was highlighted that a district judge is usually busy and overburdened. It is very difficult for him to do administrative work because of scarcity of time and lack of knowledge in the field of administration.

Emphasis was laid down on regular inspection and it was suggested that it must be done by experts. Inspection is like audit where various records are checked.

It was mentioned that, when an inspecting judge checks records he sometimes find a clerk or a staff is working on the same place for more than 15 years. These types of irregularities must be eliminated.

It was also explained that the fault is not with bar but with bench. It was suggested that not to blame anybody and take the responsibility to correct the system.

If a judicial officer is not working properly or facing any difficulty, it is the duty of the guardian judge to hear his problems. If the problems and issues are clear, finding a solution will not be a difficult task for a guardian judge. It was suggested to come out with a solution to problems rather than blaming. Sometimes answers are hidden in the problem, it will be discovered if a guardian judge thinks out of the box and applies his mind.

On the issue of how evaluation of performance is done it was suggested that National Judicial Academy may collect reports from High Courts and compile it. No disagreement on this

proposal. It was suggested by Justice Ambwani that the CJs can do this exercise at his high Court level also which is likely to yield faster results.

#### Relying on the opinion of the bar

It was suggested that the input of the bar must be checked as it can be misleading at times. But that does not mean opinion of bar has no value. Opinion of the bar is very important.

But sometimes lawyers may file a false complaint against the judge. In such cases if action is taken against the judge, it will prevent/deter other judges from making judgments according to law and application of mind. Hence actions must be taken after due enquiry.

#### *Jammu and Kashmir*

It was highlighted that majority of the lawyers are conscious enough. Wherever it is evident that complaint is made up on the false charges it is advisable to always cross check the records and complaint. Bar cannot be ignored. It was suggested that the best lawyer to consult is a person who has a limited practice neither more nor less.

#### *Manipur*

It was highlighted that without the cooperation of Bar, Bench cannot function. It was also suggested to encourage the junior and younger lawyers. There is too much lobbying at Bar and before taking any opinion it must be ascertained that the person is not biased or belong to any group.

It was mooted that can there be accountability of Judiciary without the accountability of Bar? Answer was 'no' there can't be accountability of judiciary without the accountability of Bar as Bar forms a part of the system.

It was highlighted that senior lawyers are given preferences in courts and junior lawyers have to wait till senior completes his case. Sometimes senior lawyers argue their cases out of turn whereas a junior lawyer reaches late to the court room because he had another case in different court room, no opportunity is given to him to explain his delay and a date after 6 months is fixed. It is suggested that if preference is given to the senior lawyers, junior lawyers must not be neglected and should be taken care of.

DAY 3: 10:00 AM – 11:35 AM

SESSION 9

**Persona of a Guardian Judge: Demeanour, Behaviour etc.**

Prof. (Dr.) Geeta Oberoi

It was asked by her that since the system of promotion is based on the principle of Seniority-cum-Merit, when the hon'ble guardian judges are evaluating the performance of judicial officers what will be the response on blue-eyed boy and girls?

It was explained that principle of Merit-cum-Seniority and that of Seniority-cum-Merit are two totally different principles. So far as Rules and regulation of Supreme Court goes promotion must be based on the principle of Merit cum Seniority but the ground reality shows that it is based on seniority cum suitability.

Difference between principle followed in corporate sector and judiciary is:

A senior who is having {ACR - Clean, Performance - Average, Judgment writing - acceptable} as against a junior who has {excellent in all the three AIR, Performance, Judgment writing} the former will be promoted first as Seniority-cum-Merit is followed in judiciary.

Whereas for corporate sector the principle of Merit-cum-Seniority is follow.

Prof. (Dr.) Amithabh Deo Kodwani

It was asked that how to minimize the subjectivity? Why evaluation is required and what purpose does it solve? How much openness and confidentiality is there in the system?

Some photographs were shown and asked what the participants are able to see.

It was explained that the *Perceptual process* is consist of 3 things:

1. Convenience
2. Believes
3. Ideology

He explained that with experience thoughts are becoming positive and negative. As we grow up we start to look at the thing with our own perspective only. We are living in a perceptual world and not in the real world. He explained it with an example that ‘close your eyes and suppose one fine night you find yourself walking barefoot in a jungle and it is too dark that you cannot see a single thing, all of the sudden you put a step on something’ what it could be? Everyone answered it as a snake because experience. If the same question would have asked to small kid he would have answered something else. But it is not always you collect data, sometimes reflex also works.

*The Perception is based on three processes*

- Observe
- Screen
- Organize

It was asked to state the opinion on Policeman and Politician? More or like the opinion were same.

*Factors that influence perception*

1. Perceiver - Attitude, Motives, Interest, Experience and Expectation.
2. Target - Novelty, Motion, Intensity, Size, Background, Repetition.
3. Situation - Time, Work setting, Social setting.

He stated that Values are the most important thing. Values are something which defines what is right or wrong. Values are made on the basis of upbringing of an individual. It helps him to guide his activities. It is very difficult to change. For example Honor killing where homicide of sister/daughter by Brother or Father, due to the perpetrators’ belief that the victim has brought shame or dishonor upon the family, or has violated the principles of a community or a religion. The values of perpetrators allow them to commit such an act.

An exercise is given to the participants to recognize which type of Ego state is present in them. The following are the types of Ego States:

1. C.P. – Critical Parent Ego state
2. N.P. – Nurturing Parent Ego state
3. Adult – Rationale fact

4. N.C. – Natural Child Ego state {for example: where a child says this is what I want irrespective of the surrounding atmosphere}
5. L.P. – Little Professor {Thinker}
6. A.C. – Active/Adaptive child {who adapt to any situation}

It was explained that the moment one individual become older the value of A.C. will go down.

DAY 3: 11:50 AM – 12:50 PM

SESSION 10

### **Transparency in Performance Assessment**

#### Types of inter-personal transaction

1. A<sub>1</sub> - B<sub>1</sub>
2. A<sub>2</sub> - B<sub>2</sub>
3. A<sub>3</sub> - B<sub>3</sub>

Where,

A<sub>1</sub> –Complementary

B<sub>1</sub> –Expected response, no conflict

A<sub>2</sub> –Crossed

B<sub>2</sub> –Produce conflict, stop communication, Hurt feelings

A<sub>3</sub> –Ulterior

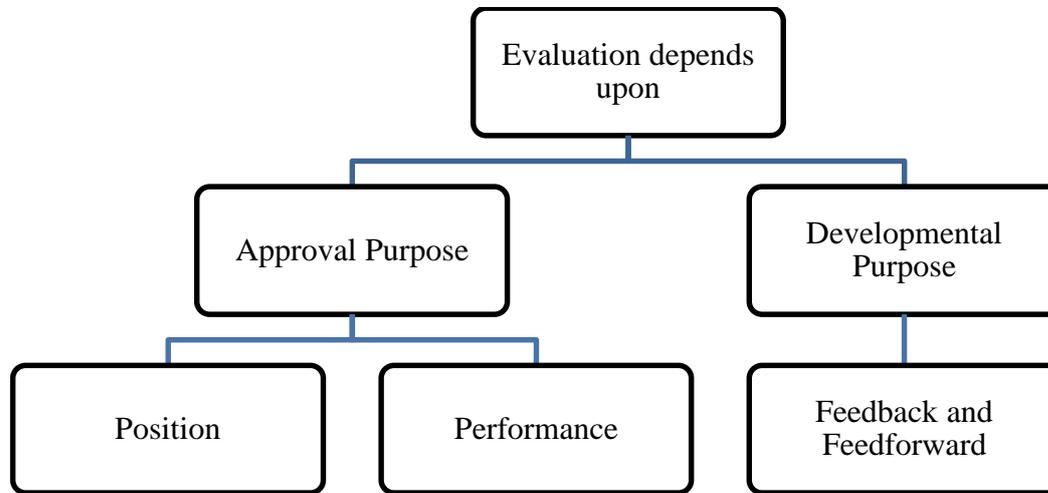
B<sub>3</sub> –On face of it looks something else but real meaning is something else.

On every transaction, the placement of emphasis will matter.

#### Evaluation Mechanism

It was again asked that what is evaluated. How the evaluation is done?

He explained that:



For the developmental purposes the evaluation report must only be shown to the person whose evaluation is done, so that he can improve.

For the approval purposes, the evaluation report must be kept in a black box and only the administration should be able to identify the name of the judicial officer, scores shall not be disclosed to anyone and on the basis of which promotion is done.

It was submitted that today Annual Confidential Report is transparent no confidentiality is there.

The ACR can be filled as on the basis of Subjective and Objective analysis.

While looking at the purposes these two things must be looked at:

1. Controllability
2. Interdependency

*Issues can be addressed by these 3 approaches:*

Rules:

- 1) The common tendency is: First look at Seniority then for ourselves then for Peers and at last for subordinates/third persons
- 2) Bars

3) Management by Objective.

It was suggested by one of the participating judge that if we have too much theory in our mind it is very difficult to work out which theory must be applied. While being a guardian judge one must apply only one theory i.e. doing evaluation without fear, favor or affection.

Hon'ble Mr. Justice Valmiki J Mehta

Focus must be on three things:

- 1) Don't ever think your job is a burden, always love your job.
- 2) Always try to learn and be a good student.
- 3) Help others as much as possible.