

**NATIONAL CONFERENCE ON FUNCTION OF REGISTRAR (ADMINISTRATION)**

JULY 29 -31, 2015

**Verbatim Report**

**Prepared by Programme Coordinator:**

**Dr. Amit Mehrotra, Assistant Professor, National Judicial Academy**

## **INTRODUCTION**

The National Judicial Academy organized the “National Conference on functions of Registrar (Administration)” from 29<sup>th</sup> to 31<sup>st</sup> July, 2015. This conference provided a forum to presiding officers of family courts to share views and express their problems with their counterparts. The aim of the conference is to develop harmony & better co-ordination between Judicial Officers, Ministerial Staff, other stakeholders in the justice system. The object of the conference is to initiate the discussions on vital issues related to the disciplinary matters, issues related to disposing of RTI appeals as an appellate authority, functions with regard to appointment, promotion and transfer of posting of the ministerial staff and issues pertaining to the infrastructure and budget.

Total 21 participants from the registry throughout the country participated in the conference. The resource persons in the conference included Hon’ble Justice B. S. Chauhan, Hon’ble Justice S.Vimala, Hon’ble Justice Ravi R. Tripathi, Hon’ble Justice R. C. Chavan, Hon’ble Justice A. C. Upadhyay and Hon’ble Justice Sadanand Mukherjee.

## **VERBATUM REPORT**

### **Day1**

The theme of the **Session 1** was on **Registrar (Administration): Role & Responsibilities:**

**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.) Oberoi** – A very good morning to all of you. I hope you have you have a pleasant stay. All of you have arrived here since yesterday evening. This academic year we are going to have twelve programmes for registrar; for different kinds of registrars. The object is that in this year we will able to call all registrars at least once in the National Judicial Academy. How many of you have visited to NJA. All most all and how many of you not visited, this is first time. Ok. Are you judicial officers? Judicial officers, OK. So, the object is that this year we are covering all registrars. Now, why we are doing these types of programmes. Yesterday I was taking to our resource persons **Hon’ble Justice RC Chavan** and we were thinking about many issues like..Our first

question is whether all our activities should be regulated. Whether there will be rule and regulations for every work allotted to the registry or there should be the area where we should leave with the discretion. These are important questions to be discussed. Secondly, whether there should be some uniformity with respect to the functions of the registrar as some of you have written in your Performa and asked there should be some uniformity within the states and it should allow to differ depending on the local context and situations. These are all questions and when all these twelve programs will be concluded NJA will be coming out with a kind of set of recommendations. I won't say a set of recommendation but we will try to understand whether we require the clear compartmentalization of duties of the registrars or not. All these issues we are thinking. These are the objects of all twelve programmes. So, please feel free to share all your issues, learn with each other also like how you decide a particular problem. For all these three days we have eminent resource persons. We have Hon'ble Justice B. S. Chauhan the former Judge of Supreme Court of India and now president of Kaveri water Dispute Tribunal, we also have with us **Hon'ble Justice RC Chavan**, former Judge of Bombay High court, we also have.

**Hon'ble justice Ravi Tripathi**, Former Judge of Gujarat High Court, we have Justice Sandananda Mukerjee. All have if our eminent resource persons have wide interactions with registry officials in their judicial carrier. They have interacted with the officers, they know the issue, they can guide you with the day today problem, which you face. So, with this small introduction about the programme I, leave you in the august company of eminent resource persons and also we have the programme coordinator Dr. Amit Mehrotra. He will be there for all three four days for you. If there is any issue let, him knows also. Thank you so much.

**Hon'ble Justice BS Chauhan** - Good morning to all of you. Dear friends you all have a long experience as a judicial officer before you become a Registrar of a High Court. When any registrar is taken to the High Court it is a serious consideration as who are the best officers available in the State. You have been working in the High Court, you have experience. Now only difficulty is that every High Court have there own rules,

there is no uniformity. You are supposed to follow the rules, you must be master of rules because judges whether they are Administrative Judges, inspecting judges or Hon'ble Chief Justice are not aware about the rules, mostly Chief Justice came from outside the State. They are not aware about what the procedure is and what the rules are. All High Court are govern by the rule and they can change it. It is the prerogative of the High Court to change the rule as per the experience, need and convenience. So first thing is all of you should be well acquainted with the rules so that you can render the assistance when sought by authorities. Administrative committees, standing committees whatever name we give them basically depends upon you. Even in the matters of transfer and posting of judicial officers and other subordinate staff you play the important role because you know the judicial officers. High court judges or Chief Justice might not be knowing. Many times or almost all the times if we need a very good officer of a particular district or of there is any difficulty at district head quarters. Lawyers are on strike or for a long time the judicial officers are facing some difficulties so they depend upon you, High court depends upon you. So, High Court under section 229 or 235 cannot function without your aid or advice. In some High court there are large number of judges and one may not involved in decision making process, so everything depends upon you what kind of assistance you are rendering them. So, you have to take the responsibility. You can't say that after one week or two week you have suggested a wrong name. You have to suggest the name of the inquiry officer. Who should be brought as a registrar vigilance of the High Court because I have the experience that the registrar vigilance is himself facing the inquiry. So, everybody start laughing at the High court. We received a large number of letters that what person you have brought as Registrar Vigilance who is himself is facing the inquiry. So it actually the fault of the person who is advising because Chief Justice has follow what you have advised, they have to depend upon your assistance, so you have to take the responsibility. You have to act without any bias or ill will. You have to think what can be the best in the interest of the administration because I have faced many times problem appointing a wrong person in the High Court. If suppose a Chief Justice has brought a wrong Registrar Vigilance on your advice, whether the Chief should trust you any more you should send back to your district head quarter. These are the basic problems rest

are the rules, it is the procedure you bound to follow it. But when the rules are framed these are the statutory rules binding on us binding on everybody. We must keep in mind that every statutory rule has a statutory force that is why they are known as statutory rules. They are not ornamentals to be placed in our drawing room. They must be observed strictly. I will deal with the matters of appointment officers and power under Article 229 and 235 but so far as the administrative control and problems are concerned if you have any questions or problems you have here so many persons to solve it. Now I request my brother Chavan.

**Hon'ble Justice RC Chavan-** A very good morning to all of you. It is always a pleasure to be here to know so many things from persons in the field and it is a adding pleasure today to be sitting with Dr. Justice Chauhan. I have many occasions to interact with him and the simplicity of the heart and simplicity of the behavior strikes me as the quality, which is becoming rarer and rarer in the judicial system. The opportunity the NJA has given me to be with you for that I thank the Director and the resource persons first. Just now Justice Chauhan said that Hon'ble judges of the High court and Chief Justice depends upon you for making the decisions. It is the registry, which in fact make many decisions. So do you feel as a member of the registry are powerful persons or powerless persons. How many of you feel that power rests in you. Very good, you have raised an hesitant hand; **participant**—No...some laughing. So power actually rests in the judiciary. Chief Justice Comes and Chief Justice go. Average age of administrative committee is six months because somebody always changes. It is the registry, which strive the whole administration and therefore it is the registry that must also takes the responsibility for failures of the system. If the system has failed, it is not because of the Chief Justice or Judges; it has failed because we have allowed it to fail. With somebody says that there are lots of corruption in the judiciary, how do you feel? We feel sad know. When somebody in the power, some Hon'ble judge say yes there is lot of corruption in the judiciary but it is at lower level. Do you feel hurt or not? We feel more hurt, Therefore, it is for us to take some steps to ensure the administration to run in a proper manner Let the citizen feel that the system is running properly. Unless we do not accept that there is any wrong in the system we can't treat the system. Many times the

efficiency of corruption is raised we create a strong wall. No No there is nothing wrong in the system. Whatever is wrong is because of inadequate numbers, without bothering how to find out how many judges are there in the seat for at least five hours in a day, half of them are missing for half of a day. Without bothering to find out how system in fact works in practice. Therefore, as a member of the registry it is our duty to ensure that the administration runs efficiently. Dr. Chauhan mentioned about rules, Yes we must have thorough knowledge of rules. But I have a rather different perception about utility of rules.. How many of you play cricket. Very good. Many must be watching cricket. isn't it. So, a batsman at the crease looks at not just the ball but the field, how the field is arranged by the rival captain. I look at rules as fielders at various places to find out how they will be able to obstruct and look at the gaps between the fielders in order to ensure that my ball reaches the boundary. The difference between administrative decision-making and judicial decision-making is this. In Judicial decision making you follow the rule, that is the path which is laid and whatever the results come you have to accept that. In administrative decision, making you first set a goal that I have to hit a boundary and then you decide how you can do it without offending the rules. If you understand this difference I think lot of good things can be done. What happens when you come to the registry. How many of you want to come to the registry willingly? I want to come to the registry because I have to do good things or I want to come because my family is at that place and it will be convenient for me, I could spend some time there or chief Justice wants I can't displease him or some other judge wants.. Many would don't like to be behind the boss because at more places you are likely to be kicked. Isn't it. Many of you think that spending time with the registry is extremely risky, like maat ka kuya. But many courageous people like to play. But most of us you might be watching professional Kabbadi which is going on. When Kabbadi player goes other side, those who are timid and are not strong enough would just enter the field and come back. So some come to the registry like that. They come to the registry and go back possibly ensure that the risk posting is good. If we come with this selfish motive, we will not be able to do anything. There is one Registrar General here. I also was once the Registrar General. Registrar General tends to look upwards waiting for warrant to come. Therefore, they may not be able to take much risk in the process of administration of the

courts. But Registrar (Administration) is the in charge of administration can definitely effort to take some risk.....prepare ultimately dawning the role of Registrar General one day. I suppose that If we mean too we can do a lot. Prof Geeta mentioned about the desirability of uniformity about the rules in all the High Court, so that they can perform well. First we have a federal structure; secondly the situation of Sikkim and Tripura may be all together be different in Mumbai. Our Registrar of Aurangabad will be able to tell you that he has to possibly deal with far many problems than the entire North east..Half of the country is governed by State of Maharashtra, Length wise—north South or east west. The problems are different; in Tripura, the Registrar may know every judicial officer. Here is the Registrar General knows all the district judges personally that is also good enough, it's not possible. Therefore, problems are different, situations are different..Uniformity I don't know whether it is desirable or not. You cant have similar solutions for all situations. Second think of course when we come we share the experience of each other, we go through the rules framed by each State and then decide what is the best out of it and can take that back home. We can have that implemented. But I have another problem, of you can excuse me for this..You can bash me after the session is over in the canteen..What is the proportion of forest that we desire and against human habitation, factories, railways. What should be the proposition of all these human habitation as against forests? At least 50-50. Ideal is more that now. Can it be less that 50-50 can it be good for us. No. Then what are we doing. In our self we are spreading the rules for everything.. That is human habitation, control activities and uncontrolled activities are getting reduced. The area of discretion is getting reduced. Is it true should we have rule for everything. Now we have almost all the rules for how you should behave in public is OK but how husband and wife should behave in the bedroom that also is decided by the rules, you know the enactments. How parent should deal with the child is also govern by rule. But in administrative decision making such rule comes the what happens whether we will be able to administer court properly Thus role and responsibility of The all of you is very high. So reduce rule making; rule making earlier was a very time consuming exercise. For last 5years I myself have spent 100 hours to frame Bombay high court rules however, the rule have not yet notified, Know. No. So rules have not yet come .This is the situation. Rules making is costly,

time consuming, we can settle best practices which are faithful, which can be modified easily, which can give enough discretion. If we don't trust our officers district judges who comes to the registry in taking decision then I think so that it will be difficult to decide...What I have said is extreme I know that but try to implement. Thank you.

**Hon'ble Justice Ravi Tripathi---** Good morning friends.

**Participants—**Good morning

**Hon'ble Justice Ravi Tripathi---** You are not in the chamber of Hon'ble Chief Justice Once again Good morning...a loud good morning. That's good. We want our officers to speak up. Friends this is a particular subject and this is a particular exercise which is been taken up by NJA is of a different purpose. The purpose they are talking to me I told this that all my judicial officers to be bold enough and you can be bold only when you are strong form within unless you cannot be bold. You will find very few judges to whom you can compare with Justice BS Chauhan or with Justice RC Chavan here. They are the judges who have always encouraged all judges and officers who came in their contact. You cannot find that smooth sailing all the times. You cannot forget that your role is very important specially making out the face of this judicial system. You are the people who are shaping the face of the judicial institution in the State. I have been always telling the judicial officers when I talk to them that in fact you are the judicial face in the people because people know you rather a Judge or the Chief Justice. How much percentage of cases coming to the High Court any idea? I think not more than 10% of cases of the total litigation in the State. So 90% of the people get the impression of the judiciary at your level and this is why you people are making the face of the judiciary to the people. It is your responsibility to see that it is projected and painted well so that the people can appreciate the face of the judiciary.... One of the judge who has attended a facilitation programme; he said you cannot be goodie- goodie to all especially when you are in power you will have to take the decision which are bound to be bitter. There is a judgment of the Gujarat High Court, it's with as phrase. The people in "power have to be bitter" and Just what Justice Chavan said that the people have to be in registry just to pass 1year or 2 year, you know to just move out of that and should be untouched by any anti- factor. Is that is your approach. Well that you must think of yourself we can't do



anything but if you have a power, you have bonafides, you conscience is clear you can make any decision and you will not be in trouble. That is the message I want to give you because it is my experience of 16 years in service that when you bonafides are clear it is a very rare possibility that you will be in trouble. Therefore, be sure to yourself that your conscience is clear you can take any decision..of course I do want any judicial officer to be Gandhi ji to take out the rebellion march..I am taking about Mahatma Gandhi because people did not like his some of the decision and he was shot dead. But this is not happen to all of us sp please don't worry about it. Keep your bonafides clear and take decisions in best interest of the registry. Best interest of the judicial system and there will be no difficulty at all. One another incidence which I remember, it was US president who was advised and he on the basis of the advice he took a decision, was a possibly it was time of Vietnam war and when he starts failing in that people told him that you said that you were well advised by advisors and therefore what you can do..He said No the job of advisors was to advice and it was my job to take decision I have failed in my decision and I must owe the responsibility of my own decisions. You say how this is applicable to ours role. This applicable as when you will advising you will be taking the decision to advice and then you must take the consequences of the advise that you have given and you must be ready to take the consequences of that. Some of you must say, that sir what should we do have advised as per the resources which we have. But you must develop new resources, you must check the reliability of that particular information coming to you, scrutinize it and then pass it on to the decision maker i.e. the Chief Justice of your State and I am sure if you do that you will all be successful and will have no difficulty. Friends, though we have mentioned Registrar (Administration) This Registrar (Administration) in no way less that Registrar General of the High Court. In Gujarat there was Registrar of the High Court and there was no term as Registrar General. It was later on they change the nomenclature and now termed as Registrar General. Registrar of High court is meant to administer the whole thing. So you all make a very important role to make it acceptable to the public. With thus we have more discussion form you..As far as the uniformity part is concerned what I feel to have a different view on this point. Broadly we can have the uniformity and inside working you may have more freedom or discretion to suit your own requirement. It

should not be happen that at one particular State the Registrar Vigilance takes a job, which is in another state, is taken up by Registrar Judicial. To that extend there should be uniformity .Inside we can have the discretion as brother Chavan has rightly said that if we take one state from north east or that of Sikkim it will have no match with requirements of the administration in Bombay or Gujarat. But broad classification and broad marking should be there so that once a file comes from a particular high court and if it is marked by Registrar Vigilance we must know what is the file is suppose too. Thank you very much.

**Hon'ble Justice Sadananad Mukerjeee**—Good morning to all of you...The uniformity of rules between the High Courts is not so possible because the Chief justice of various High Courts establish rule and Chief Justice discharges functions through the registry. I will outline some of functions so as Registrar... is concern. The Registrar has various responsibilities....but I will sum up briefly..of the functions and Role of the Registrar...It may not be just restricted to the Registrar (Administration) but may extend to other Registrar also. As we all know that Article 229 clause 2 of Constitution of India as so as the condition of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the High court or by some other Judge or officer of the court authorized by the Chief Justice to make rules for the purpose. In the case of State of Maharashtra v. Association of Court's, while interpreting the provision under Article 229 of the Constitution of India, the Hon'ble Supreme Court has been pleased to observed that notwithstanding the constitutional provision that the rules are framed by the Chief Justice of High Court, so far as they relate to salaries and other emoluments are concerned, these require the prior approval of the Governor, it is always expected that when the Chief Justice of a High Court makes a rule, providing a particular pay scale for its employees, the same should be approve by the Governor. Now so far as a particular service is concerned the Chief Justice of the High Court who exercises controlled over the High Court Staff and Registrar plays a very important role to assist the administrative function of the Chief Justice. The Chief Justice of the High Court exercises control over the High Court staff and on all these matters, the Registrar play's a very important role in the discharge of these administrative functions of the

Chief Justice..... Powers and duties of the Registrar defined differently in each High Court and **Justice BS Chauhan** stated so far as judicial administration of the High Court is concerned it is not possible that uniformity is maintained; although no uniformity has been maintained in the in the designation of the Registrars and their functions. Apart from Registrar General, responsibilities and duties of different registrars variously named such as Registrar (Administration), Registrar (Vigilance), Registrar (confidential and Appointments), Registrar (Judicial) etc and other Registrars have been differently disturbed in different High Court for performing different kinds of duties. Registrar (Administration) in different High Court functions differently and their duties and powers are differently defines for monitoring and supervising. Various sections of the High Court that deals with the matters related to the High Court staff and District Courts which range from preparation of data and statistical figures of the High Court and District Courts, preparation of Calendar and holidays of High Court and District Court, to look after the finances and budgetary exercises. In these matters Registrar (Administration) face number of challenges. He is also responsible for examining the substantive law for which the rules have been or have to be framed in the High Court, for example, in the High Courts, Right to information rules have been framed, schemes have been prepared for appointing Arbitrator by the Chief Justice as required under the substantive Act, contempt of rules, the rules for the family courts, additions or alterations to be made in respect of the High Court officers and staff conditions of service and conduct rules and also such rules which are to be framed by the High Court in relation to substantive Act or Acts..

Coming to most challenging task of the Registrar, if so entrusted by the Chief Justice is budgeting and resource planning. So far as the financial independence is concerned, the High Court is suffering from multiple difficulties. There is no financial independence of the High Court or Chief Justice. Budgets are prepared by the respective High Courts but these budgets have to be submitted to the Union or Sate Governments, as the case may be. Conditions and factors with regard to the expenditure of budgetary support have to be examined. Again the budgets are generally based on usual recurring expenditure on the pattern of the previous years and these budgets are submitted to the executive to cut down in size. This is both at central and state level.

In respect of the District Judiciary, the law department of the states prepares the budget. It is common knowledge that the Union Government sometimes provides funds for the judiciary in the Finance Commission and it is found that substantial portions of those funds remains unutilized. On a comparison of the budget estimates and the amounts actually spent by the court, it is the duty of the Registrar (Administration.) to find out the reasons of non – utilization of fund’.

So, the Registrar (Administration) should take care of the planning in the preparation of budget by the Registry. The plans should include amongst other things also and not just the salaries, pay and allowances of the judges and the staff. There should be adequate provision for funds for infrastructure, expansion of court and court staff, construction of buildings and residential quarters for Judges and the staff, the development of computerization, legal aid, alternative dispute redressal system, in fact all the needs of the judiciary. So, as far the needs of the judiciary is concerned we need the best from the judiciary.

Each High Court would have a trained finance wing headed by a Chief Financial Officer and the strength of this department can vary as per the size of the High Court and the number of subordinate courts under the High Court. In my view, there is no harm if at the initial stage, a report is got prepared from some reputed financial management consultant for each High Court. Then there is an existing problem regarding absence of power of the Chief Justices of the High Court relating to appropriation and re – appropriation of expenditure under the different heads in the budget as allotted. So, we should be very cautious while supervising the preparation of the budget.

These are some of the basic facts and you all already know that it is common knowledge that fund allocation and the budget is proportioned under different heads, which include recurring expenditure as salary/allowances, office expenses, medical reimbursement, travelling allowance, fuel and transport, goods and materials and such other heads required for functions of court. Budget is one of the most important things in the judiciary. Registrar (Administration) should see that while planning the budget estimates are realistic. Situation may not be allowed to arise where the budgetary

allocations is not utilized. However, the fund may not be mis – utilized. It is the duty of the Registrar to see that the funds allocated to the judiciary are utilized in such a fashion that no questions of financial improprieties are ever raised. Therefore, we must also develop on a system of checks and balance to ensure that the finances made available are not mis-utilized. One more thing which is very important is inspection of the offices of the High Court.. So, it may be stated that the Registrar (Administration) for the sake of efficient administration of the High Court should make regular inspection of the offices of High Court.

Another very important aspect is the preservation of the records of the High court .So decided cases relating to original jurisdiction and appellate jurisdiction must be kept in the Record rooms. The Registrar (Administration) should take care in supervising the preservation of the records and since some High Courts are successful in preserving the records electronically by digitalization, Registrar (Administration) should supervise such digitalization of the Records systematically. In respect of scrutinizing the files of the Administration and particularly the appointment, transfer and promotion of the High Court staff, Registrar (Administration) needs to be very cautious in discharging the functions after perusing the service records. The departmental examinations which make the staff eligible for promotion to the selection grade or in the high rank, has to periodically taken under the supervision of the Registrar (Administration.). ..as mostly class III and class IV get promoted to higher rank.... The Registrar (Administration) also discharges the function of secretary to the different committees of the High Court. The district judiciary sends the out turn of judicial work and it is the responsibility of the Registrar (Administration) to take care that the data and statistical figures are obtained in the form of monthly, quarterly and annual statement to be examined and suggestions regarding the improvement be given. Care and caution has to be taken in the preparation of calendar of the High Court and the subordinate court as it is generally placed before the Registrar (Administration) by the concerned department of the High Court. Rules regarding the conditions of service of the officers and the employees of the High Court have to be examined and the recommendation to the competent authority i.e. Chief Justice may be sent in respect of such additions or alternations which may be require to fill in the gaps if any.. As far as the disciplinary officer ....particularly for the

High court staff the Registrar (Administration) has a very responsible duty and some courts Registrar (Administration) and in some courts Registrar General has a responsibility to dispose of the appeal under Right to Information Act about that you have a separate session also. We will discuss in that session. These are important functions which I found. Thank you.

**Hon'ble Justice BS Chauhan-** Dear friends you have heard so many learned judges. Now I want to conclude, remember one thing that we are well acquainted the provisions of General Clauses Act and Article 236 provides a district Judge includes judge of a city civil court, additional district judge, so these inclusion is always there... so see Article 236 we really get a chance to see the Constitution.... One person was asking me this constitutional problem I told that I spent 20 years for deciding bail and anticipatory bail I had no opportunity to read the constitution because we are overburden; Why it is so...number of criminal cases have surpassed number of civil cases; why so there is more criminal activity in the country because our subordinate courts could not perform well. We create a fast track courts. They have minimum quota otherwise they will not be promoted. Now there is no fast track courts in the High Courts. All appeals are pending. My own parent High Court is hearing appeals 30 years old. The lawyer who has filled the appeal is not alive. Their children appear and make a statement that we don't know whether the accuse is still alive or not. Because his father has charged Rs. 20 which was maximum at that time now even munshi will not accept that. Therefore, there are so many difficulties we must keep in mind; what I want to say, you are a administrator General of the High Court you criminal and civil administration of the state. Administration by any means cannot include mal administration. Keep it in mind..It is been repeatedly been held by Supreme Court. If it is so we are here to administer. So your responsibility is much higher. Much greater. How to reduce the criminal cases our appeals to be heard. Why people are losing faith in the court..Even in Supreme Court six courts at least out of twelve spend whole time hearing the matters of hardly five or six families of this country. They have nothing to do with the poor Ram Lal or Shayam Lal who are in jail and whether there matter is to be decided in their life. Why people have faith in us. What type of judicial system we have. If we sitting for only big business houses. Big lawyers have no respect for the poor citizens who is 90% of the population

and what my brothers have told that you are not willing to come to the High Court as registrar I have seen otherwise also I may suppressed my brothers and get an elevation. So all things are possible. Complaints are managed. During my 20 years as a judge more that 34 writ petitions were filed against me before the Supreme Court but I never bother because I am the first generation, I was born in a agriculturist family, I never thought what is judge and how to become a judge, what will be the fate it will come to you, don't worry, leave to the God. I will tell you one example earlier there was no system of any Director General in police..IG was the head of the department..We have a very well known IG Ashwani Kumar. He was dealing with the promotion. He saw that 34 persons were excluded for the consideration of promotion. So he asked what is the reasons why these persons were excluded. So he was told sir so many complaints are against them, therefore they cannot be considered at this stage. He passed the order only these 34 persons will be promoted. Because complaints should be against whom, who wants to work..If in case I don't decide any case where is the question of reversion by the appellate court. I can say whatever I have written that everything is upheld. Therefore, don't be scare about any complaint. One person was asking that why there are so many appeals, revisions and review in the country. I answered that we are human being and we are bound to commit some error. Therefore, we hope that it may be review in revision, Before we have started this we would have asked you to all of you to introduce yourself. So that mistake we have committed; we want to review our order/ proceedings. So now, I request you to please introduce yourself one by one. Please start here one by one. Introduction of the participants was taken one by one.

**Dr.Amit Mehrotra**—Thank you so sir, I am greatly thankful to all the eminent recourse persons for giving their inputs and insights in this first session..In second session there will be a break out group discussion were by the dignitaries (participants) will be divided into four groups..I request you all to come back after the tea break .....Thank you.

### ***Session 2: Issues & Challenges faced by Registrar (Administration)***

In this session, all the participant Registrars were divided into 4 groups to discuss their problem faced during the course of performing their duties and were asked to sum up the gist of the same to discuss in next session.

**Prof (Dr.) Geeta Oberoi**— Welcome back we won't be identifying the issues as such and Mr. Amit will tell you that who is in group 1, group 2, group 3 and Group 4. I would like to say that whenever you are divided into a group please identify who will be the presenter in that group..One of you out of 4 or 5 members have to present in the 3<sup>rd</sup> session..So we start from 10:30 to 11:30 you have this discussion of 1 hour..Please don't sit like a this is but really discuss the issues because unless it is not get discussed in the right platform nothing will happen. No improvement can be brought to the system if you show reluctance. 12 -1 you make presentation and 1-2 you go for lunch and 2-3 our resource persons they will throw light that how to deal with those issues because they have a long experience as a judges and Chief Justices..Is it all right we are all right in the scheme of today? So you can mention who are in

### **Group 1**

**Dr. Amit Mehrotra**—Yes...

In group 1 -

<b>Sr. No</b>	<b>Participant Name</b>	<b>Designation</b>	<b>High Court</b>
1.	Mr. Sheo Kumar Singh-I	Registrar General	Allahabad.
2.	Shri P. Mutyala Naidu	Registrar (Administration)	Andhra Pradesh
3.	Mr. M.A. Lovekar	Registrar	Bombay
4.	Shri Bibek Chowdhury	Registrar (Administration)	Calcutta
5.	Shri Mansoor Ahmed	Additional Registrar (Admn.)	Chhattisgarh



**Group 2:**

<b>Sr. No</b>	<b>Participant Name</b>	<b>Designation</b>	<b>High Court</b>
1.	Mr. D.A. Dholakia	Registrar (Personnel)	Bombay
2.	Mr. Anil Koushal	Registrar (General Administration)	Delhi
3.	Mr. Thang Lianmang Guite	Registrar	Gauhati
4.	Mr. A.K. Sinha	Registrar (Automation) & I/c Reg. (Admn.)	Gujarat
5.	Mr. K.R. Jayaprakash Narayanan	Registrar (Administration)	Kerala

**Group 3:**

<b>Sr. No</b>	<b>Participant Name</b>	<b>Designation</b>	<b>High Court</b>
1.	Shri V.K. Chandak	Registrar (Administration)	Gauhati
2.	Mr. R.K. Chaudhary	Registrar (Inspection)	Himachal Pradesh
3.	Mr. Anil Kumar Choudhary	Registrar General	Jharkhand
4.	Shri R.D. Huddar	District Judge, OOD, Registrar (Admn.),	Karnataka
5.	Mr. v. Devanathan	Joining Registrar (Computer)	Madras

**Group 4:**

<b>Sr. No</b>	<b>Participant Name</b>	<b>Designation</b>	<b>High Court</b>
1.	Mr. Krishna Shankar Singh	Registrar (Administration)	Patna
2.	Shri Sundeep Singh	Registrar (Administration)	Punjab & Haryana
3.	Shri Bhuvan Goyal	Registrar (Administration)	Rajasthan
4.	Shri S. Bhattacharjee	Registrar (Admn., P&M)	Tripura
5.	Mr. Krishna Shankar Singh	Registrar	Uttarakhand

So, Group 4 will proceed to Room no 4, Group 3 will proceed to Room no 3, Group 2 will proceed to Room No 2, Group 1 will proceed to Room No:1.. Thank you..

***Session 3: Presentation on the Issues & Challenges faced by the Registrar (Administration)***

In this session, one Registrar as a representative of the each group gave presentation before the panel and after which the panel discussed the possible solution.

We will start with the group 4 to please come make the presentation..

**Group 4**

**Shri S. Bhattacharjee** – I am Shri S. Bhattacharjee Registrar (Administration) Tripura High Court in the Northeast corner of the country, the remote corner of the country. My Lord the Hon'ble judges, the learned judicial official present, Director, National Judicial Academy and other brothers. It is really a pleasure for me though I work in a small High

Court, The High Court of Tripura were the pendency you will be surprised to know only 3500 cases including miscellaneous cases. When our High court was established on 23<sup>rd</sup> March 2013 the pendency was 7000. But my Chief Justice the Hon'ble Chief Justice Deepak Gupta, is the first Chief justice of the Tripura High Court and he reduce the pendency to 3500 and in the last Chief Justice Conference it was decided that in the ratio of disposal Tripura is the best. So, I am from that High Court My Lord. On the issues faced by the Registrar (Administration), though my lord in my group there is a High Court of Rajasthan, P&H High Court, Patna High Court, Uttarkhand High Court and Tripura High Court. They have decided that I will represent on behalf of them. So whatever I am telling is the problem faced by all our High Courts. My lord starting with the very popular **maxim**, "Uneasy lies the head who wears the crown" and I want to say this maxim very well suit to the post of Registrar (Administration).

As being head in the Administration of the Institution, the Registrar (Administration) has to face a number of issues and challenges. Though it is very difficult to narrate them all at an instance yet I want to discuss and share with few ones:

- 1. First my lord Dispensing with the printing of Cause list:** -As per the resolution of Chief Justices Conference, Printing of Cause List is to be dispensed with by all the High Courts except for few printing of bare minimum copies for the purpose of court so as to save lacs of Rupees every year on the printing of Cause list. For example, in Rajasthan High Court it is said 39 – 40 lacks rupees is required to be spent in a year for printing Cause list only. Yes, Rajasthan High Court. Thus, it is a very challenging task to convince the office bearers of the Bar Association for dispensing with the cause list. In this regard, My lord I want to mention that in Tripura High Court the advocate is paying Rs. 150 per year and we are giving copies for all year.
- 2. Advocates' Expectations:** - A large number of Advocates registered with the Bar Association approaches to the High Court for law practice. For example 20000 advocates are registered in Rajasthan High Court but in our High Court it is only 1200. Providing parking space & chambers to them is a big challenge.

**Hon'ble BS Justice Chauhan**--No but have you read that statement of Bar Council of India that 30% of our lawyers are fake /bogus...so we verify, the High court has to verify..Somebody has to address the real problem.. ,Yes.. My Lord there is possibility of theft of their bags, files, and books. Cleaning of Advocates' Block area & its charges is also a great task with no payments by the advocates. There is always an increasing demand of Advocates for the chambers in the Court Premises.

3. **My lord next is Security measures:-** There is entry of more than 10,000-12,000 people to the High Court Building making it very difficult to keep a strict eye vigil at all the entry gates. Sometimes, there is a nuisance by the Advocates and Litigants in the Court Premises and there is theft of Advocate articles. Thus, looking to the increasing terrorists activities, bomb-blast activities all over the Country, it is very difficult to maintain a tight and zero defect security.
4. **Protocol and Medical Facilities:-** There is no universal guidelines about the Protocol facilities and amenities as to what extent, the same are to be provided to Hon'ble the Sitting Judges and Former Hon'ble Judges. In the absence of universal guidelines, protocol service is also a challenging task to the Administration. For example, I am not blaming anybody or accusing anybody please excuse me...**Hon'ble Justice Chauhan**-- Feel at home ..discuss whatever is your problem....My Lord .. Suppose a retired judge or grandson or granddaughter is going somewhere is making a request..so I am telling my protocol people, they refuse to me, why I should go she/he is like my son or daughter and how I will go to see them as a protocol officer, I will carry the luggage..they are reluctant to do.. Further, the situation is regarding Medical facilities, as; preparation of Medical Bills of Former Hon'ble Judges, Appointment of Doctors for Hon'ble Judges, arrangement for Medical Check-ups for Hon'ble Judges, court official is to be engaged in the Hospitals or not. My lord in my state this problem is not there. All these things are a big challenge to face.

- 5. Shortage of Man Power:-** There is a big shortage of man power in all the cadres to cater the need of Hon'ble Courts as well as Judicial & Administrative Sections. It is very challenging to equip all the Hon'ble Courts with P.S., Stenos, Court Master, Library Restorer & Law Clerk, Jamadar and peons in a sufficient number, especially when the Court staff is falling very short. Further, efficient & experienced personal court staff is attached with senior Hon'ble Judges and the less efficient & experienced personal court staff is attached with Junior Hon'ble Judges causing annoyance of Hon'ble Judge. There are frequent court calls in some High Courts to the Registrars in the open court directing for arrangement of the efficient & experienced personal court staff.
- 6.** Then the institution of fresh cases is very fast. A large number of cases are instituted per month for the Judicial Wing i.e. Civil, Writ & Criminal. Nearly 10,000 cases are registered per month in the Rajasthan High Court. For such a huge number of cases, many Stamp Reporters are required for scrutinizing the cases and for institution thereof.
- 7. The Clerks are over-**imposed with the judicial files, contrary to the prescribed number of case files to be handed to a clerk. Only a few clerks are posted in the Civil, Writ, Criminal, Copying, Cause List & Paper Book Sections each. As such, making court compliances timely with insufficient staff is a great challenge.
- 8. Infrastructure :-** Infrastructure of Hon'ble High Court should be of a Mark having all kind of fundamental facilities, viz, sitting place for the Court officials, sufficient space with almirahs to keep the judicial files, furniture articles, Computers objects with all kind of accessories, Photo-stat machines in all the sections, AC/Cooling in the sections to increase capacity and efficiency of the officials and officers.

9. Further, there is a great shortage of placing space for a large number of Judicial files and lower court records. The files & records are generally placed on the floor causing damage by rainwater, termites & rats.
10. Sometimes, budgetary problems arises, when various works are assigned by Hon'ble Judges to be carried out in the High Court Premises but the same can't be executed timely due to non-availability of sanction of the budget by the State Government. Thus, execution of time frame work is a big challenge to the Administration.
11. Apart from that, arrangement of space for the Notary Publics, Oath Commissioners, petition Typists & Stamp Vendors is also a big challenge.
12. **Accommodation to the Registrar (Administration):-** The duty hours of Registrar (Administration) are 24 x 7 days and in proportion to the working hours, sufficient chamber facilities with court official & peon are required at the residence of Registrar (Administration) for quick compliance of the Higher Authorities. Accommodation ear- marked to the Registrar (Administration) should be in easy approach of the city & Institution. Thus, discharging prompt duties for 24 x 7 hours without additional assisting facilities is a challenging task. These are the problems as a whole my lord..Before leaving my lord if I may be wrong from any side I may be excused...

**Hon'ble Justice RC Chavan--**The first step was to identify the problems, it is good that we have identified the problem. Now who are going to solve the problem, you are going to solve the problem. Therefore what are the solutions what solutions you can think off please give a thought to this. You mentioned about the space problem, as we don't have space in the court. It is difficult to accommodate the lawyers, their chambers, Bar rooms etc..they have to manage whatever is available. As far as entry of outsiders in the courts i.e. litigants and other are concerned that too be restricted.. for that you can think of a solution.

You may have a big hall like this outside the city of the premises of High Court where you have screen to display what is going on in each court..those litigants who have to watch the proceedings of their cases will be watching from there. They will not come inside the court room. This will serve two purpose. You will be not much worried about the security. If this reform is push we will have greater discipline in the courts. Indiscipline of judges are not so frequent as indiscipline of the advocates. Indiscipline of the advocates are very frequent who does not sometime appear and litigant feel that his counsel has argued a lot. So, indiscipline on the side of the advocate will also be reduced and half of the problems will be solved if such facility will be made available to the litigants. This also reduces the pressure of Space.

There is also a further suggestion, if we allow video conference then court room can also be small. You need not to go to court to address, you can address from where you are.

About summons and etc, e post facility is available. If a simple summon is to be sent it can be sent through e post.. so that 100 of summons can be generated in one go and post office can sent it through e post. This is the practical solution you can try it.

There are some other things that you have mentioned for example running space for lawyer; you can always say that lawyers can always find the space near by the court premises.

You mentioned about the cause list of lawyers..again asks lawyers to have email address. You can mail entire cause list to them. There will be no question of printing. You can dispense with printing, you say the paper is very costly and it can't be done know. If this facility is available then printing of cause list will also be gone. Think off how to solve the problem. Initially there will be lot of resistance but if 10% agree it is a good beginning for us. Other persons will be following very soon. Reforms does not happens in one day..You ask first lawyer who are ready to take the cause list through e mail..There is no point for printing and supplying the cause list in present days. Like this you can think how to solve the

problem which you have. I also request you to when to make a presentation kindly indicate the problem and also the way to solve it. If you have no other option what is there. No harm in trying.

Yes, His lordship (**Hon'ble Justice BS Chauhan**) said that the court has already started sending the cause list through email...

**Participant**—We take only 80 copies of the cause list

**Hon'ble Justice RC Chavan**--Why 80

**Participant**—For the High Court Judges and some for Bar association..

**Hon'ble Justice Sadanand Mukerjee**— High courts have their sites also..some of them publish on their sites---Yes.

**Participant**--Line matrix printer we have established.. For advocates we are charging Rs.3 per page, so they are paying the money to the High court another thing on the website public domain we had a facility to which they can download it..

**Hon'ble RC Chavan**--Why you have installed line matrix printer?

**Participant**--Because it is cost effective...1000 line per minute..

**Hon'ble RC Chavan**-- Very good so what I was saying that while making presentation also come out with the suggestions so that we can have some basics of starting for further discussions..Thank you.

**Hon'ble Justice Ravi Tripathi**--With the permission of the chair I will be adding only one thing. Please feel at home and then tell us your problem and we are in a close group and we want to hear you.

**Hon'ble Justice RC Chavan**-- Sometimes there are no alternatives in such situation you clinch or take a jump and solutions come. So be courageous

**Hon'ble Justice BS Chauhan**—See it is very difficult to deal with the lawyers. I will tell you on experience. I was Chief Justice in Orissa. And court fees for filling a writ petition was 6 rupees so one day some papers were send to me approving the cost of items sold in the canteen. Cost of Samosa is 8 rupees.



So I asked the registrar what is the role of Chief Justice in approving this. Who ever want to eat can purchase. Then I called the secretary from the Bar, you can afford to pay one plate of samosa of Rs.8 cannot afford to pay Rs.6 for writ petition. Answer was dispensation of justice should be free of cost. Therefore the question is why this 6 rupees. So it is very difficult to deal with the lawyers. We have to manage them. We have to see the situations and manage accordingly. We have to work with them not without them.

**Hon'ble Justice Sadanand Mukerjee** ---About frequent change, court staff you can request the Hon'ble Chief Justice that this is happen particular judge is telling to change the staff. It upon the Chief Justice to manage the entire staff. The staffing is at the hands of registry and in the hands of the Chief Justice.

The efficiency of the staff..is because of the recruitment process...The recruitment process should be fair and efficient staff can be there by adopting fair recruitment.

Regarding infrastructure, for that long term planning is to also needed with the short term planning and should be presented to the government also. Regarding the budgetary sanction courts are sending the recurring expenditure. Usually when the budget is pass that is also pass. Now so far as the special sanction is concerned practically speaking registry have to persuade the government, the chief secretary or the concerned wing as it is required for the High Court functions.

Regarding the registrar accommodation, you can request the Hon'ble Chief Justice about your difficulties and you will be able to get the help.

Regarding the dispensing of the cause list, you have already got the solutions. Advocated should make their own expenses so far as their facilities are concerned. You can speak to the president or secretary of the Bar that High Court cannot bear all the expenses.

**Hon'ble Justice BS Chauhan**-- In the High court were the electricity bill is paid by the Bar Association..

**Hon'ble Justice Ravi Tripathi**-- Bar no where is paying, possibly no were

**Hon'ble Justice BS Chauhan--** That is the difficulty.. we are paying for them for the very beginning and now it has become customary

**Hon'ble Justice Ravi Tripathi-** easement

**Hon'ble Justice BS Chauhan –** No not easement. See here we are for law and justice..Two words are there from morning till night we repeat this word 2000 times. You take any book, ant statute, rules and take definition clause C.P.C, Cr.pc it defines court, judge everything, you won't get the definition of law and justice anywhere. Only the Law defined under Article 13 (1) and (2), It include custom and usage. Now the lawyer is saying it is customary to pay the electricity as customary how you will resolve the problem.. Article 372 says that any law existing on the commencement of the Constitution is derogatory to any law in part III of the Constitution will be void..Now it is very difficult for any Chief Justice or any High Court to take a step that we will stop paying the electricity bill.

**Participant—**In district court the electricity bill is being paid by the lawyers.

**Hon'ble Justice BS Chauhan—**They are paying form the very beginning.

Even in Supreme Court they have an agreement between the Bench and the Bar that whatever we have received will not be recovered from us. So, I was in the committee and I agreed because they are part and parcel of the system. It is not to have possible to have confrontation for all the times...

**Participant--** Recently issues arose for the installation A/C in the Bar rooms in Aurangabad. There are 5 big size Bar rooms. Estimated called from PWD and that estimate given by PWD was around 1core 10 lacks. According to PWD as per the size of the bar rooms it was necessary to install as many as 70 split A/Cs of 3 tons each..Bar was expecting that this expenses should be borne by High Court. It was told that these expenses will be borne by them.

**Hon'ble Justice BS Chauhan—**It depends upon Chief Justice how tough stand he can take....Yes next group---

**The group 4 has also submitted the following suggestions:**

1. **Dispensing with the printing of Cause list:---** Judiciary being equipped & updated with computer objects and latest technology to be able for paperless

proceedings., entire cause lists are being uploaded on the official website of Rajasthan High Court, Jodhpur and Jaipur Bench. Similar procedure if not adopted is to be adopted by all the High Courts.

To make the Advocates user friendly for the purpose, demo classes for searching cause list, case items and uploading the cause list may be given to the Advocates in the Bar office or some other prominent place.

2. **Advocates' Expectations:-** Separate block for Advocates' chambers with permissible heights can be erected in the suitable location covering minimum space. Further, a big lounge having wooden or aluminum cabins can be constructed for the Advocates having no chamber for discussing the case matter with their clients.
3. Computerized parking system should be developed and applied in the premises looking to the increasing number of vehicles and cleaning of Advocates' block area should be set up in the supervision of Advocates.
4. **Security measures:-** As the Local Police have their nexus and looking to the increasing terrorist activities all over the country, a few police personnel's/officials of Para Military Forces, such as BSF, CRPF and CISF with fully armed, capable to handle all kind of situation, should be deployed for the security of High Court Building.
5. **Shortage of man power:-** A recruitment process of the posts in all the cadres should be made regularly so as to strengthen the existing staff for smooth and fault less functioning and timely compliances of Hon'ble Courts.
6. **Infrastructure:** - For the maximum use of existing space for placing the Judicial Files & Records of subordinate courts, compactors should be installed in every High court building as it getting installed in the Rajasthan High Court Building and

necessary budget should be obtained from the State Government for the purpose.

Further, whenever a new block be constructed, It must be designed by the Architect on the latest technology keeping in mind all kinds of issues as to sufficient space for placing judicial files and records and sitting space for the officials and other office assistants so that space can be utilizes in maximum way.

7. **Chamber equipped Accommodation to the Registrar (Administration):-** The duty hours of Registrar (Administration) are 24 x 7 days and in proportion to the working hours, sufficient facilities with equipped chambers at the residence are required. Thus, accommodation of Registrar (Administration) should be provided with chamber facilities well equipped with computer objects, Telephone, Fax, Stationary items, court official & peon etc., so as to increase the efficiency hours.
8. **Uniform for the Officers of the Registry:-** The prevailing uniform i.e. Black Coat and Black pant for the Officers of the Registry is very common one, used by Judicial Officers and Advocates. As such, it does not make any distinguished appearance between officers of the Registry and Advocates. In any opinion a different and sober uniform should be prescribed for the officers of the Registry of the High Courts presenting a uniformity.

### **Group No3**

Good afternoon My Lords on the Dias I am **Anil Kumar Choudhary, Registrar General of Jharkhand High Court.** I put the several problems we will be highlighting the tip of the iceberg..

1. **First problem with regard to the with regard to staff is that :-** Interference by Hon'ble Judges in administration, in particular, in appointments, promotions, departmental proceeding and postings. This is the problem which is facing by all the High Courts and the solution we have suggested is that free had should be

given to the Registry in day to day matters and involvement of Hon'ble Judges should be confined to policy matters..then the interference can be minimized.

2. **The second problems is dealing with Government:-** Whenever they interact with the State Government regarding the assurance or proposals forwarded by the Chief Justice, Officers of the Government create unnecessary hurdle by quoting financial rules, nature of decision to be taken by cabinet and financial crunches. So in this respect the solution that we have suggested is that some sort of autonomy including financial autonomy, like Judicial Infrastructure Commission be set-up at State level to be headed by a Hon'ble Judge of the High Court and Officers of the Registry as members.
3. **The third problems we are having is routine finance matters:-** In routine purchase like standard consumables and other products, delay occurs because the Hon'ble Judges of finance/purchase committee do not have time to sit together and discuss. The practical way is that the registry prepares the note after observing all the formalities. The Registrar (Administration) places the file but only to get the file cleared within 10- 15 days because Hon'ble Judge do not have a time to spare for such type of work. The solution we suggested that Registrar should be given the responsibility of doing all such purchases after observing the relevant rules and formalities. Normally Registrar are the senior district judges. They are at par with the Principal Secretary of the government. If in government the secretary can handle such things, I don't think why such things cannot be done at the level by Registrar (Administration). So they should be vested with the power so like this the problem can be resolved.
4. **The fourth problem is regarding getting audience from Hon'ble Judges:-** The problem is that the Hon'ble Judges heading/members of different committees of the Court keep the members of the Registry waiting unnecessarily causing avoidable delay. The solution we suggested that he Hon'ble Judges who are heading/members of different committees of the Court should have a fixed

hour for doing works related to Registry. May it be 10 minutes or may it be 15 minutes but it should be the fix time and through this solution the problem can be solved.

5. **The next problem is that space crunch for establishment of High Court:-** A part of the space in the High Court has been occupied by the advocates which creates this space crunch. And the solution a part of the building of the court should be given to the advocates. In case of condolence meetings ..a direction be given by the Supreme Court in respect of holding condolence meetings for at the most one hour that henceforth no portion of any court building/establishment can be given to the advocates/ advocates associations/any other agency under any circumstances.
6. The next problem we listed is that lack of proper skill among Group-D employees, and Group-C employees, promoted from the Group-D :- Generally, it is found that the Group-D employees do not have any simple skill like preparing food or serving and attending to guests. The employees of Group-A, promoted from Group-D do not have the skill to man the post of Group-C. The solution is that some incentive like priority in promotion be given to Group-D employees, who perform any skilled job. Training be imparted to the Group-D and the Group-C employees promoted from Group-D for their skill development. Generally they are not imparted any training which is required...
7. The last point which we note down within a limited time is demand of extra hands beyond their entitlement by the Hon'ble Judges:-Very often, the Registrars are pressurized to post extra hands beyond their entitlement in the cadre of Group-D, drivers and stenographers. Again the solution we take out is that a periodical return be asked by the High Courts to be sent to the Hon'ble Supreme Court, mentioning the list of staff used by Hon'ble Judges beyond the entitlement.

**Hon'ble Justice BS Chauhan--**I will respond first see Supreme courts does not have any supervisory control over the High Court. High Courts are Constitutional

authority/autonomous body not under the Supreme Court. There is no provision in our constitution like Article 235 which make the High Court having the supervisory control over the subordinate judiciary. It is unfortunately taken by the Supreme Court constituting this collegium system. Therefore, several difficulties we are facing..How will the Supreme Court will deal with the retired judge....what is the control it has even on sitting judge.. My experience is it all depends what kind of Chief Justice you have. If it is known to the judge that Chief Justice will not tolerate any nuisance he will immediately relieve them without being ask by anybody..Therefore, somebody has to take a step. He knows how many supporters he has in the Bar and in the Bench. Most of the judges are children of the judges. So this is not that judges are very sacrosanct and these 30% of judges children are direct judges. So the last suggestion that Supreme Court take it over will create a problem. Because even in Supreme Court the Judges of the Supreme Court are the children of the judges, don't expect much. It depends upon the High Court so when we talk about the High Court it is not just the Registry or Chief Justice..It is the High Court as a whole; the full court. Suppose the full court does not want to rake any action. what happens in the full court, suppose everybody wants to protect the judicial officer belonging to his caste or who looks after their family takes the wife for purchasing the cheaper sarres. So this is not the solution of the problem. It is the High court has to resolve the problem and take a step that you are not entitled for this....Many High Court said that retired High Court Judge may be given an employee. Some of the High Courts are paying some money to retain one employee..Now we are retaining the facility for our self, which are not provided in the constitution. A question then arise whether we can pass an administrative order or judicial order sitting in the court to amend the constitution. The high court has to examine his own problem and solve it.

**Participant--**My Lord As a Registrar (Administration) if we want to place the matter what is suggested then what will happen the Hon'ble judges they will take a stand against the officers concern, against the Registrar (Administration) and at the end of the day we are all working. So, should I at the cost of my service, should I submit it. Just our **Justice Tripathi** told and advised us to be bitter. So how? What is the extent?

**Hon'ble Justice BS Chauhan**—No No When you became a judicial officer you have taken Oath to do. As a judicial officer place the matter before the Chief Justice /full Court and leave the matter to them to do whatever they want to do. Your duty is over. Many people might not know what is happening in the High Court. So you must bring to the notice and your duty is over but somebody has to point out. Chief Justice comes from outside he don't know what is happening in the court.

**Hon'ble Justice Ravi Tripathi** --He is saying that even pointing out to the High Court they are punished.

**Hon'ble Justice BS Chauhan** --What will happen to the most they will transfer you. They can't dismiss you. There can't be just one way that you supersede your 30 district brother judges. Be ready to face the victimization also. It is both ways.

**Hon'ble RC Chavan**--Just time is running short see there are some participants in this group who are non judicial officers please raise their hands very good. You all are dealing with the matters of the High Courts.. You know the court well. See what is happening in the passage of time that more and more judicial officers are coming to the registry. This should stop. Judicial officers should be brought administer for looking after the judicial officers and see the functions of district court i.e. whatever is to be required in the district court. As far as the administration of the High Court is concerned let it be done by the officers coming to the High Court. They know how to deal with judges also because they know persons working and practicing in the High Court. They know the things better. As Justice Chauhan said see our solutions are limited When such 10 judges demanded extra driver, peon, cook or stenographer. You put all those demands together and say that it is a policy decision and then let it be placed before the full house. Before full house let the discussion begins and they will decide how this should be dealt with. Matter should be placed and we will follow full court decision.

**Hon'ble Justice BS Chauhan**-- Stenographer—there may be one judge who give 10 judgments every day. There are many judges who don't write a single judgment in one day or in 10 days. Therefore, it is the duty of the Chief Justice to see how to adjust. The protocol person serves only those judges who are for longer period why. If you are



not fair why do you expect the judges to be fair to you? The services are provided as per the seniority or the elevation in the High Court. So, we are responsible for every menace that we has made.

**Hon'ble Justice RC Chavan**—See there can be management by crisis also. So you create a crisis so somebody has to take a decision. So there was a great demand of Stenographer. Justice Tripathi has also demanded for a stenographer, Justice Chavan has also asked for stenographer, Justice Chauhan has also asked for stenographer and Justice Mukherjee has also asked and I have given all stenographers; today the work has got paralyzed, we cannot proceed further because all are gone and no body to bring the cases to the court. So can't help it. You create a crisis and crisis gets resolved. But this has to be handled very carefully. You have to be very alert and you have to first learn to master the art of management by crisis. But how many of us are ready to devote our time and our mind for finding out the solutions this way. There can't be straight jacket formula, there can't be one key which opens all locks. There is no master key. For every lock there is a different key. So think of that key how this problem is to be solved and you will get your solutions. Amit can I trespass 5 more minutes.Ok. you have raised the questions of staff interference of Judicial administration proportion etc. Sometimes it is necessary...OK as Hon'ble Justice Chauhan address it that it will be discussed separately.. So there is another subject about problems of dealing with document that also we will discuss when we discuss the Finance ok. Then about the of passing orders of the Supreme Court..Before going to the lunch know say know many times at least 10 times to your yourself. Don't say no to your spouse at home that will create a problem...Ha,ha.ha..

**Hon'ble Justice RC Chavan**-- But start saying no learn to say no. Especially in the court and with the court staff I have not seen them to say no to the extent if Judge said you are idiot... Yes sir or yes madam..I have heard just yes sir or yes boss, ha ha ha

**Hon'ble Justice Chauhan** --Learn from the lawyer. No sir what I want to say is as they say I mean to say this in a different meaning. Therefore, we have to learn from the lawyer how to deal with the situation. First create a problem then solve it.

**Hon'ble Justice RC Chavan** -- About the skill development there a skill development ministry created by the Prime Minister under Rajendra Prasad isn't it. They develop many programmes. So we could invoke and ask them to help us to develop the skills. Skills are not just outside the government service know. We also need to have skill full employees. So that we would have greater services in the courts. So now can we break for a lunch.

***Session 4: Suggestion and Proactive Measure to Overcome the Issues and Challenges faced by Registrar (Administration)***

**Group1**

Sir I am **Bibek Chowdhury Registrar (Administration) form Calcutta High Court.** I am putting

**Following points with regard to the role and responsibilities of the Registrars of the High Courts:**

1. It was expressed that after through discussion among the Registrar (Administration) it is ascertained that the duties and responsibilities of Registrar Administration of the High Courts are same and identical in some of the matters, while all together different in respect of some other matters.
2. In respect of Calcutta High Court the duties of Registrar Administration is twofold- Judicial and administrative function.
3. Thirdly, in exercising Judicial function, the Registrar (Administration) of the Calcutta High court deals with the initial files of cases filled in the High Court like issuance of summons, substituted series of summons, disposal of uncontested applications for substitution and similar other matters. On the contrary in case of

Aurangabad, Hyderabad & Telangana High Court similar power rests upon the Registrar Judicial.

4. In case of Andhra Pradesh & Telangana High Court the registrar Judicial cannot pass any final order upon such applications, and same is passed by the concerned bench.
5. Usually the Registrar (Administration) of all the High Courts deals with the leave application of the members of staff of the High Court except Group A officers. However, in case of Chhattisgarh High Court the Registrar (Administration) deals with leave application of the only class IV employees.
6. The Registrar Administration of Calcutta, Bombay and AP & Telangana High Courts, the disciplinary authorities of Group B, C and D employees are with the respective High Courts. However, in respect of Calcutta High Court imposition of any penalty is required to the approval of Honorable Chief Justice.
7. In respect of Calcutta High Court, Registrar (Administration) is in-charge of all judicial sections. It is his ultimate duty to see that all the records listed in a particular bench and properly places. If any record is not found physically or damaged he is the sole authority to reconstruct the record with the permission of the concerned bench.
8. In respect of Bombay High Court, in case reconstruction of record orders are required to be obtained from the senior most Judges of the respective Bench and committee Judge at the principal seat.
9. In case of Calcutta and Chhattisgarh, Registrar Administration are responsible to look after infrastructure, addition, alteration and repairing and renovation of High Court premises under the supervision of the building committee headed by the Honorable Chief Justice. So far as Bombay High Court is concerned, practice

followed at different Benches is that submission is placed before the senior most judge and after obtaining approval from him the proposal is forwarded at principal seat. At the principal seat if the matter is required to be placed before committee such step are taken and accordingly the registry at the bench is informed.

10. In respect to Hyderabad & Telangana there is a post of Registrar Management who looks after infrastructural matters. However the bills up to the limit of 50,000/- rupees are independently passed by the Registrar Administration. In this regard, financial power of Registrar Administration of Calcutta High Court is 5000/- , Chhattisgarh Court 2000/- and Bombay High Court 5000/-.

11. Next, The registrar Administration of Bombay and Calcutta High Court are the Appellate authorities under the RTI Act while in respect of some of the High Courts the Registrar General is the appellant authorities under the said act.

12. The Registrar Administration of Calcutta is responsible for transmission of statement of High Court and sub-ordinate courts to the Honorable Supreme Court and Department of the Law and Justice periodically. So far as the Bombay, Andhra Pradesh & Telangana and Chhattisgarh High Court are concerned statements of the courts up to the districts judiciary are sent to the High Court and so far disposal and pendency of the cases at a particular bench is concerned, Registrar Judicial sends it to the High Court.

13. Usually the Registrar (Administration) of all four High Courts is in-charge of forms and stationary. In Bombay High Court at its various Benches there are sub-committee under the Legal Services Authorities Act at Nagpur and Panji Benches and the work is being looked after by the Registrar Administration under the supervision of senior most judges. At Aurangabad bench the work is under the Registrar Administration.

These are the functions and duties of the various High Courts..Now the challenges the first Challenges that we face that

1. The Registrar Administration ought to be the Registrar of Honorable Chief Justice and Administrative Committee but in practice, they are registrars of all the Honorable judges to whom they are bound to satisfy. They stated that the **Honorable Justice Ravi Tripathi** advised them “that as people in power we will have to be bitter”. Taken in proper perspective this should mean that the registrar Administration should be more assertive....
2. I am fortunate enough to get the backing of my Honorable Chief Justice who always advices me to say no when the matter is not according to rules.
3. Rest of us asserted that that if they put their submission with the supporting and relevant data there would be no difficulty in making recommendation as well as to decline the demands, which run contrary to relevant rule.

**Now our suggestions are:**

1. The Registrar Administration should be kept with the duties of proper administration of judicial record and departments and should manage and control the members of the staff of the high court.
2. So far as infrastructure is concerned it should be separated from the domain of Registration (Administration) and some technical person like executive engineer should be appointed by the High Court to deal with the matters relating to construction and infrastructure. Now sir what happens we depend upon the Public Works Department (PWD) for making any construction. Now first we have to send a proposal to PWD, they first study, Check it, Verify it, they send us estimate and that estimate got approved by the building committee, again it goes to the government department, form government department to judicial department, from judicial department to finance department and then it comes and in takes lot of time; in order to streamline and to do the things in time funds

are to be allocated to the High Court Administration in the hands of Chief Justice from where we should do the infrastructural.

3. There should be equality on the score of financial power of the Registrar Administration and autonomy should be given to High Court administration in this regard so far the financial power is concerned.
4. And Usually in all the High Courts, my previous speakers have also said that there is a shortage of staff, Now in respect of the group D staff, contractual employees or contractual workers are employed in almost all the High Courts. But Hon'ble judges are not willing to fill up the vacancies according to the law and rules as provided or directed. According to them the contractual labours/employees should not be regularize or observed because as soon as they get absorb they will not work properly. That is there experience. So Hon'ble judges are also not reluctant to release those contractual workers and it is going on. Now in the Calcutta High court there recruitment process is stopped because the bedli (contractual) workers who were working prior to that if those vacancies are filled up they will be jobless. So these are the points, these are the proposals.

## **Group 2**

Good afternoon everybody, I have to say that as the last speaker of this session. Whatever the views and suggestions we want to provide it has been produced by our friend. We are the last so our all points have already been exhaust. Mostly it will be the repetition of the same facts, even then I want to highlight our view and suggestions..not suggestions but problems which are generally faced by the registry. First of all I will introduce myself. I am **Deepak Dholakia, Registrar (Personnel) from Bombay High Court**, I am not actually dealing with the post of Registrar Administration as such..There is the distribution of the work in the Bombay High Court and 11 registrars are working in the Bombay High Court, Principal Seat. My group consists of... so we have find out the points related to the issues challenges faced by the judiciary..

1. First of all the issue raised by my brothers is that there are no exhaustive rules for recruitment and promotion of ministerial staff of the High Court. So our

suggestion was that fortunately our Bombay High Court and the High Court of Kerala come out with the exhaustive rules regarding the recruitment, review and promotion of the ministerial staff and so the guidelines are framed so we have so at the end of this session we may request the academy to circulate our rules and the guidelines so it can be helpful to others in future, if it all it is at all applicable and necessary to get it implemented.

2. Secondly, there was a common question is that there in adequacy of staff. So far is Maharashtra is concern in last 5 years, not a single post has been created or has been approved by the Maharashtra government. Therefore, there is recommendation of the increase in the strength of the staff. Then the outsourcing of the work to the agencies is practically not possible in all the fields.
3. Thirdly, delay in decision for Financial Implication from Government. Now and then we are forwarding the proposal for various..and there is obvious delay in sanctioning the financial approval might be because of the financial crunches or the objection raised by the finance department but ultimate delay results in the increase in the cost of that particular project. So the target, which we want to achieve in time, could not be achieved because of this delay.
4. Next one is about the there is shortage of Infrastructure. Now it is common knowledge that strength of the Hon'ble Judges of the Bombay High Court increase from 75 to 93. The building is now quite old of 150 years old, a heritage building. We have so much space to accommodate all Judges in the present existing infrastructure. We can't do anything out of that area since some senior advocates oppose and have their offices in that particular area, So in the present infrastructure, we can't accommodate even though we are authorized .So we are helpless. We can't increase the strength of the judges. So, if the strength of the judges are increasing ultimately we have to increase the strength of the ministerial staff also. But we can't accommodate because of the insufficient infrastructure. Same thing is with the district judiciary. When they are approaching to the High Courts for the approval of the various projects because

of the non approval of the financial assistance so there is always delay so we are helpless. Time and again there is always a demand for increase in the strength of the judges but then there will be no approval for the increase in the ministerial staff itself. So ultimately we are facing the problem.

5. Lastly there is no specific power to Honorable Chief Justice of the High Court to re-appropriate funds from one head to another head and more particularly the funds accorded by the finance commission. So we have suggested and requested our Hon'ble Chief Justice that we must be have some power to reallocate the funds for one head to other head so that we can achieve our goal.

Thank you very much.

**Hon'ble Justice BS Chauhan**—See so far as the issues raised by our speaker. Registrar Administration should not be accountable to all the judges except the administrative committee or to the Hon'ble Chief Justice is totally misconceived because all you have constitution here yes..Kindly read Article 229 and then Article 235. There is the basic difference in the language in both the articles. 229 deals with the powers of the Chief Justice. 335 deals with the High Courts. Therefore, there is a mark distinction between Article 229 and Article 235. The words in High Court in Article 235 has been enumerated for all judges. See not only Hon'ble Chief Justice. The Chief justice is of course first amongst others. He has an administrative control there can't be any control of judicial powers performed by the junior most judge or senior most judge. The perks facilities is the same. Whether the Chief justice get something extra. Therefore you can't say we are accountable only to the Chief Justice and not to any other sitting Judge. High Court includes every judge and the full court. It for the convenience, the High Court has not provide anywhere about the standing committee or the administrative committee. For committee constituted for the convenience of working and all other sitting judges delegated this power. Any order administrative or quasi-administrative or quasi-judicial not supported by reasons get vitiated. Because Supreme Court in the case of Swaminanda case held that any order without sufficient reasons get vitiated and hit by Article 21. Now suppose if we discuss something in full court and full court dismiss an employee after considering the report of inquiry officer and if there are no recordings of reasons but the judgment of the High Court does not vitiate for not



recording reasons. Why it is so? If a judicial order without reasons said to be vitiate and declared to be void, nullity and superior court remands the case back....if disciplinary proceedings the appellate authority has to consider the issue raised before the an appeal has to consider and give the reasons for agreement and disagreement. The appellate authority cannot said without giving any reasons that the order passed by the disciplinary authority is correct. It is a collective decision taken by a large number of persons and it will be difficult to record the reasons because reasons may vary from judge to judge but the conclusions remains the same. Otherwise, every order and all proceedings of the full court can be declared null and void for want of reasons. Therefore, the word oath contained under Article 235 has a wider connotation. But so many problems are there so in order to avoid the situation it is the duty of the Chief justice to control its court and provide certain guidelines not to the Registrar Administration but also to the brother judges that please don't put or call any file of service record from registrar without putting matter into my knowledge. There has to be some discipline whosoever you are. So it is the duty of the Chief Justice to manage his house and issue some sought of circular. Even if some file be called by some Judge the Registrar may show the circular and say sir I am not able to show it. If your lordship want to see please put this knowledge of the Chief Justice. This is the way to solve the problem and not otherwise.

Now so as far as this problem of allocation of funds or transfer from one heads to another heads is concerned this matter has already placed before the Chief Justice Conference. Many times discussion is going on but either government of India has to take a decision. So it is still under consideration..Yes before that it will not be possible for any High Court to do it..for every stage we get problems the funds are not been sanctioned, the infrastructure problem...I have a very good experience in Orissa High Court there is a system that every district judge sends a report by a particular date every year to the registrar of the High Court what are the problems. Say the Director General of Police is not rendering assistance to you to serve the process in criminal cases. Doctors are not coming to the court for disposing statements, all sort of complaints comes in advance then High Court classify the complaint and send to the secretary of the department and Director General of the police. These are the

grievances against you and you are given 2 months time so solves these problems and a date is fixed by Registrar General, you are invited to the High Court for holding a meeting. Then they try to solve whatever problems are there or to give reasons in writing why those problems could not be solved. Then the meeting is held. In that meeting Chief Justice call all judges of the High Court sit together but they don't participate, they just watch the proceedings. On one side Registrar General and District Judges sit. On the other side Chief Secretary or Secretary against whom the complaints have come and Director General of Police sit. Then one by one they see the grievance and the corresponding secretary submits the reply. Then the chief Secretary makes the suggestions and passes the final order. Sir this money has not been received in time this is Finance secretary problem I am in need of this much funds, these are the requirements. Then Chief Secretary then and there pass the order. Sometimes if he says beyond this I cannot do then the proceedings are recorded under the Registrar General and Chief Secretary and the matter is referred to the committee of the Chief Justice and to the Chief Secretary to be taken up in the next meeting. So most of the problems are either solved by that time or the Chief Secretary passes the order that this problem will be over within this period or funds will be released. Proceedings are recorded signed by everybody present there except the judges because they don't become party they are just the spectators and list is prepared what are the matters to be placed in before the Chief Justice and before the Chief minister. Immediately after that they are received well with lunch, tea, high tea and Registrar General see them off properly they are taken as a chief guest everybody. So everybody is taken in a very good atmosphere. Then the meeting is fixed by the Chief Justice with the Chief Minister also Registrar General. Then they sit together and resolve problem. So I found it so convenient that there was no problem..it was so good. This the way we can find out the solutions of the problems.

**Hon'ble Ravi Tripathi**—Sir, let me respond to that the participants referred to that Justice Tripathi said that people in power has to be bitter; taken that to be that Registrar Administration should be more assertive. Right but I want to add just two more things in that first that you should be more tactful and as brother Chavan said that you must know how to said no. You should be bitter but you should know what should be the degree of

bitterness and you should know how does the bitterness is to be conveyed because doctor knows serving a medicine which is bitter he always recommend it which was sugar coated. So, you should know how to be sugar coated. Just that I like you to advice.

**Hon'ble Justice Sadanand Mukherjee:-** Funds are allotted to the judiciary by the State now in 14<sup>th</sup> Finance Commission also some funds have been created. I am not aware about what is there inside or heads but it is for 5 year. But everything cannot be allotted and to be seen by Chief Justice..Funds allotted..How Chief Justice should execute that. First you make suggestions to the governments and make meetings. So like you can request the Chief Justice and to the administrative committee that let us have meetings with the particular secretaries or particular officers so that you can chalk out the plan how to execute the entire Finance Commission Projects. Now in 14<sup>th</sup> Finance commission funds are now directly allotted to the judiciary and for 5 years. Now it is not that the State government will allocate fund that this amount or that amount. The judiciary is now know how to execute the fund. Now you are to finance committee by requesting the Chief Justice to constitute a committee and concerned state officers to be called and then entire projects have to be monitored by the registry itself.

Now the Hon'ble justice has already told you about the problems, duties and responsibilities of Registrar Administration to contact with Chief Justice only or with the administrative committee. So far as the infrastructure is concerned, in High Court there used to be meetings with some of their experts and I have got personal experience that judges committee use to approve the plan what should be done and even the maps use to be approve by the committee.

Now inadequacy of the staff, first sanction of the staff is to be taken from the government, if there are vacancies recruitment process will be started. If more persons are needed, planning has to be made that in which sections the persons are needed in the High Court. So, these planning and programming is to be made first and then the proposal is to be send to the government after getting approval from the Chief Justice. Only Registrar Administration or Registrar General cannot made this. Only at the instance of the committee of Hon'ble High Court judges that this can be made possible.

Regarding the shortage infrastructures scheme and strength of the judges. In some of the High Courts some additional Judges like in Patna High Court, Calcutta High Court and as you said in Bombay High Court, then I think that Bar council has to be taken into confidence, you have to request the Chief Justice and pursue the matter. Let the officers of the associations may called and let them understand what is the problem. And some suitable plan may be fixed for otherwise in the place like Bombay it is very difficult to space.

Regarding the appropriation of funds it is although of Chief Justices the problem has not been solved and should see that the matter is taken. It is not your responsibility that matter should be taken up but this matter has been taken up by time and again, the solution for this is urgently required. Because it is a real difficulty in appropriating the funds and regarding the appointment on daily basis and on the functions of the Supreme Court we have already thrown light..

Registrar Administration will take care in administration of the files

**Hon'ble Justice BS Chauhan**—This will be discussed tomorrow.

**Hon'ble Justice Sadanand Mukherjee**—OK will be discussed tomorrow..

**Hon'ble Justice RC Chavan**— I was reminded about the story of the seventh husband of Elizabeth Taylor. He knows how to do but does not know how to make the thing interesting. I will try to make it interesting. So, first on the Registrar is answerable to the Chief Justice and not to the other Hon'ble judges..Ha, ha,ha, See there is a distinction as Justice Chauhan has pointed out. One artist is the administration of the High Court were Chief Justice controls everything. Second, administration of the district judiciary, which is controlled by the High Court not by the Chief Justice of the High Court. For those functions you are answerable to are answerable to all the judges but again as lordship pointed out there cannot be chaos. I remember Justice Thakker a very pious person came as a Chief Justice to our High Court.. One of the judges had asked me to show him some file, so I said that it is not possible, I told Justice Thakker judge want to show you that particular file and I told it is not possible to show you that file. He said-- what are you talking; you are keeping secrets to the Hon'ble judges of the High Court.

What kind of administration you are doing. I said sir if 60% start demanding file my officers will have no other business but to circulate the file from one judge to another. So he said what you will do. I said, I will keep with your lordship and will say the file is with Hon'ble Chief Justice and he may talk with you so Justice Thakker said it is right you keep the file and the file was kept in the Chief Justice Chamber. I told the Judge if you want you can go and see the file it is with Chief Justice. He never asks the Chief Justice for the file. So, this is all the problems can get sorted out.

As far as money is concerned even as a district judge I never had a problem form getting money from the government., on getting things done. This is because one is budgeting if you pay attention-preparing Budget, which is normal done in the month of September. So, if you take proper care putting all the items in the budget normally it get passed. How, there are some trick which we could discuss in private conversation...ha, ha,.. As far as re- appropriation is concerned form one sub head to another sub head is permissible, you need not to go to government for that, form one minor head to another minor head also the registrar General can do it. From one major head to another major head, you cannot do it. That form Administration works to public works or from public works to administration work you cannot do it. That has to go to the Finance ministry. So this is only that do the budgeting properly. Put all the items which can be put. If you have on consolidated head, have it squeezed up in several ways so that the amount can't appear big. Secondly, there are supplementary grants. Every government has this problem, grants are exhausted at the end of February or march to receive money whatever you ask for 9<sup>th</sup> monthly revised estimate you send. There is revised supplementary is to be sent an in that if you asked for anything you will get. You are in a position to split it by 31<sup>st</sup> March. The grant comes by 29<sup>th</sup> March and get exhausted by 31<sup>st</sup> March. So this is the trick you have to keep everything ready, put it in the 8<sup>th</sup> monthly supplementary and get it passed. There is no difficulty. As Justice Mukherjee mentioned about 13<sup>th</sup> Finance Commission fund it is judiciary who could not spend. Government laughed at us. You don't have capacity to spend. So normally don't take the responsibility to yourself for spending money. If you want something to be done, tell the Public Works department or IT department or whichever department is concerned to do this. We want 100 computers. We don't want money for purchasing the those

computer. Otherwise You will going to tendering etc. You do it through supplier. There is a way, because for them what is the total budget of the judiciary as compare to the State budget 1% for adding 1more percent doesn't matter provided they get a cut off. So as you enter into expenditure they are happy. I want this type of chair 100 chairs. They will say we will do it no issue. But if you go for purchasing they won't like it...This saves many thing. One money is no problem. They get it done because they get money out of that. They call the executive there... If you say High Court wants it, Chief secretary etc. is also happy provided you don't interfere or look into their business. Therefore, this is one thing, which you should abide. This also saves you of the trouble for tendering and all that , some mischief or mistake can happen and then you are in problem so instead of that pass on to the government they are very happy to do it..

Our post sanctioning of post just Dalokia has mentioned I got 167 post sanctioned and we filled those posts as you mentioned about the space crunches in Bombay High Court. There was no place for this 167 persons to sit and there was no allotment. So for a few days I have make my office in shifts morning shifts and afternoon shifts. The post was sanctioned by the governments we filled those posts but we do not have assigned any work to those persons. Normally the government does not say no to High Court. As Justice Chauhan said there is a way of doing it. They say yes sir what you want provided you won't interfere into or trespass their path.

Now, about inadequate staff see work increases in proportion of time and health of doing it. Your demand for work staff will never be satisfied. Even if you 100% to increase staff. You need more. I have worked in the registry therefore I know half of the work staff will be not fully occupied all the day. What they are doing is not the productive work; Particularly in the Bombay High Court you could see. Justice Tripathi was telling the collector will not go to the file his stenographer will have the file..the section officer first will give to the print...this is how happens in the High Court also..half of the staff members what they are doing if you see their computers and desk you come to know that they are not actually busy with their court works.

**Hon'ble Justice Ravi Tripathi**--In Gujarat you can get the information of the share market on their computers...ha,ha

**Hon'ble Justice RC Chavan**—So, therefore problem of staff will be over if we go for shifts in the office. As if there will be more staff there should be more space to sit. In Bombay there are long distances they have to travel by sub trains. So what I did I shifted the first office hours by 7:00 AM to 2:00 P:M and for second shift 2:00 P:M to 9:00 P:M. But I permitted them to come one hour late that for first shift they can come at 8:00 A:M provided they cannot leave any unfinished work and the second shift can go at 8:00P:M. provided they cannot leave any unfinished work. Now you will be surprise that nobody came before 8:00 o clock and nobody sat after 8 P:M. There was no resistance. Why? because earlier the work they were doing is of 6 hours and not 7 hours..This is the situation. Therefore, staff crunch, inadequate number of men is because of our mismanagement. We are not trained judicial officers are not trained to look after people. So please do not ask for more staff members that does not serve any purpose. It puts the burden on the common people pockets.

Now with regard to shortage of infrastructure in Bombay put somewhere the ability of the administration to say no is the root cause of the ...Bombay High court which cannot and I don't see in 15 -20 years the condition of the High Court will improve. There is absolutely no thought, no attempt to convert the opinion of the Bar. There is a big lobby which does not move out of court and Bombay High Court is suffered because of this..You can't do anything about heritage..What is heritage? A monument of India which is to be preserve. Temples are my heritage no issue. Sachi Stoop is my heritage. What about this Gate way of India or India Gate that is a monument for us?..Victoria terminal becomes a monument, heritage..The building is made to serve as a court cant we ....The question is how far we can and how we will do.

**Hon'ble Justice BS Chauhan**—Two three things I want to point out. Brother has said about the shortage staff and number of vacancies of the strength of the High has been increased. Allahabad High Court has only 76 Judges and sanctioned strength is 160. It has never gone beyond 90. There were no courts no chamber no residence. Now the question is whether you get 60 competent lawyers to get elevated as a judge because I will tell my sad experience. In 20 years I have a sad experience I was regretting to become a judge because it was not suited to my temperament. I have taken a test of a

stenographer. 60 candidates came for a test of a stenographer. Not a single candidate pass. Now from where we recruit or make them pass. See the difficulty what we are facing. I was the Chief Justice of Orissa we have advertised 22 vacancies for the Higher Judicial Service. So far as the judicial officers are concerned no single candidate could pass the entrance test. They are working for 6 years or 10 years and they are seeking the promotion. So far as a Bar members are concerned only 4 persons could pass out of 22. So we selected only 4 because we don't want incompetent person to introduce in our judicial system. What we expect form that when you appoint an incompetent person you are burdening one good judicial officers. If you can't expect to get good numbers of district Judge then how can you expect good numbers of judges elevated to the High Court. If you bring them on bench what you will expect from them.

Secondly, in most of the courts my personal experience is our regular staff outsourced their duties. What do we expect? People are coming for last 10 years and lawyers and others presume that he is the employee of the High Court. In many district courts this is my personal knowledge large number of our subordinate staff has outsourced their duty. They give half of the salary and they don't come to the court. What kind of control we are doing. The persons who comes for this outsourcing duty is like a badli worker. There was a system a worker is working in a factory is not able to come will send one of his family member as a badli employee. That is how the law of surrogacy has developed. Now, if we substitute whole our employees and then that substitutes collects money from the litigants and regular employees sitting at home and we have administrative control we are so many judicial officers and hierarchy of judicial officers upto the court, High Court, Supreme Court leave everything to control by Chief Justice of India, how it is possible. We have to control and set our side. I am telling you at my personal experience. Now I will give an example- I had a copy of a judgment and I had a part of it What had happened 6 stenographer appointed in a district court. They work for several years. District Judge reply that they don't know the typing at all. I said what is the problem with stenographer; they are working for several years. They put substituted employee or outsourced their duty to do their work. So the district judge serve the notice that they do not know typing, they do not know how to take the dictation, so I want to conduct your test. After 3 months come on such and such date and appear before me.



Now it has been challenged before the High Court that we are employee, we are taken after the advertisement and selection committee was held by learned ADJ and such and such civil judge senior division evaluated our copy, was examined by such and such expert. Therefore you cannot conduct our test we people are working for such a long time I want stay. District Judge filed an appeal unfortunately this case came before me. A question was raised by a very senior counsel, Allahabad High Court, appeal itself is not maintainable against interim order therefore you cannot entertain the appeal. So I told him this is not a legal issue. It is a question of fact that whether they know the typing or not. Therefore, don't play all these technical issues we have to typing or dictation. But I realized that the appeal is not maintainable. I know if my judgment will go to Supreme Court or anywhere it will create a problem. So I have thought in a difficult situation you have to innovate to deal with as and such the circumstances demand. So, I think it better to shift my responsibility to their shoulders. He was a senior most lawyer dealing with service law. I said don't argue on the technicalities you are the most senior advocate of this court. Take your time at home, satisfy yourself that whether they are fit and if you make a statement that they are fit to be in service the appeal will be dismiss but if you say they don't deserve we will dismiss them from service now the kare was in soup what to do..

My lord my only concern is about the maintainability. I said forget that if they don't know the typing there appointment is void. But you have to make a statement. Anything, if you say my clients are fit to be retain we retain them. He went back to his office and after three days, he said he can't do it. Issued notice asked them all to appear. Everybody got 0 marks..The copied were produced in the court. We did not see. We said give to Mr. Kare we will not decide Mr. kare will decide. Mr. Kare took the copy at home and came to my chamber and said sir why you are harassing me. Do whatever you want to do...laughing...Why you are testing me all the time? What wrong I have done except taking brief from them? I said No you are a responsible officer you must know what problems we are facing. Ultimately, I dismissed the writ petition also and passed a order all persons are given three months time to improve and district judge will conduct a fresh test if they fail they will be deemed to be dismissed and after three months they dismissed. None of them got pass. They went to Supreme Court. Supreme Court said

that they have never seen such a fair procedure. Then they said how they were appointed. Sir I have sold my land etc..Now what we say about the staff if we take money. Now the problem is we our self has to be honest and fair to appoint a quality and fair persons. So this shortage of staff and employees always remain unless we are honest enough to appoint the most suitable candidate. That is the problem we must appoint the competent persons. It is the question of appointing the quality and not quantity. We need only 20% of the sanctioned strength of the Judicial officers and staff .. to dispose of all the cases which are pending. So, these grievance that we are short of employees in my opinion is not justified. So think over it. We will discuss this issue of appointment at least 10 of my judgments are dealt with. How we make the appointments, how do we promote them, what reasons to get appointed and who will appoint. We have to solve the problem. Thank you.

**Prof (Dr.) Geeta Oberoi--** Thank you so much. We are been hearing this programmes for last 5 .6 years, have you read this or that they say no we have no time, these files consumes all the time we go home very late at 9 o clock. From the office, Were is the time to study? So, this year we thought there will be mandatory library reading. So they will go to the library and will read anything apart from your files. So please do not return back to your rooms..This is not early retiring sessions. This is going to library discuss new things and please study there. Thank you. So much.

## **Day 2**

### ***Session 5: Court Administration and Scrutinizing the files on Administrative Matters: Ins and Outs***

**Dr. Amit Mehrotra--**A very good morning to all of you once again in this second day of the conference of this functions of Registrar Administration. After having the intensive discussions and constructive suggestions on the previous day. Today we have assembled again and today's topic for the first session is on Court Administration and Scrutinizing the files on Administrative Matters: inns and outs. So with this session we

will be opening the day. So, now I will request **Hon'ble Justice BS Chauhan** sir to kindly make the introductory remarks so that we can start with the session.

**Hon'ble Justice BS Chauhan---** Now the session is on Court Administration and Scrutinizing the files on Administrative Matters. All you are working in the registry therefore you all are well acquainted with the subject. How to deal with the administrative matters and how the files have to be dealt with. So, I have to take the next three session so it is desirable that my sister and my brother Judge who come today speak.

**Hon'ble Justice A. C. Upadhyay-----**Avery good morning everyone. I will begin with a small story; once upon a time there was a judicial officer. He was very honest, hardworking. A judicial officer of higher judicial service working in a very important district and District and session judge. Accordingly, the chief founds and his capability is being notices by the Chief Justice of the High Court and after the notification s judicial officer becomes the Registrar Administration of the High Court and in a fine morning judicial officers find himself sitting in the chair of Registrar Administration... The judicial office in fact is now Registrar Administration. Most of us almost all of you faced the same situation. Judicial officers in fact does not have any practical training of the administration. Once he joined the registry...you are basically human relation manager and you are dealing with human resources. It is very important post. Now since you will be discussion the main.. Court Administration and Scrutinizing the files on Administrative Matters inns and outs. I would first of all like to emphasize my practical experience because I was not taught any management course. Basically the job we are doing is of a manger. It was the understanding of the judicial officers taken to the High Court as administrators. In 99% of the cases I have seen the judicial officers are were appointed as a Registrar in the High Court to show that they can do the best, better than all others, why it is so? Because the judicial officer who are chosen to the High Court as Registers. If the person is sincere, honest and hardworking he can master anything, were ever you put in he will come out with flying colors. First of all I would like to share one of my personal experience. After joined a Registrar in the High Court what is most important work to learn because so far you are leaning how to be good judge. Till date

you might be reading articles of for how to become a good judge, Justice Raveendran article. But now after joining as a registrar you have to learn how to behave good administrator. According to me you should learn technology skills..This is most important. You should have a basic knowledge and should be computer savvy how to prepare your presentation, how to browse some material, if it is data base and secondly you need to have skill to solve the problems. The problem solving skills should be there, once there is a problem. A problem comes before you, you must first of all analyze that particular problem. Consult with your senior staff find the solution. This is important and you will be respected. This is one very important area. And another thing I want to suggest with my experience like you are also required to scrutinize files that is place before the Chief justice or before the administrative committee. So while scrutinizing the file what is most important for you to must be able to indicate the policy decision matter. If normal problem matter comes to you no problem. But if a files comes to you related to policy decision matters and those you must put your mind and then analyze all steps. If there are rules you must pace the rules and relevant materials before the Chief Justice and not only that when the file is presented you should be present there to bring, because it should not happen that in your absence some order is passed. If some due to misrepresentation some wrong order is passed by the Chief Justice then you will be in problem and another thing I will just want to tell that any development of the infrastructure of the High Court, first of all it comes to the minds of the registrar. Development of the infrastructure file get initiated by the registrar and all the requirement is been seen by the registrar. Apart from that I will share another experience with you; Attendance of the employees and discipline in the registry. For this you can resolve one thing I tell you. You can install biometric machines for securing the attendance of the employees. I think most of the High Court has done it. If the employee comes late to the office for three days in a month then biometric attendance register has to have some kind of monitoring system or you need to put someone to monitor and then inform the officer concern that he is late in the office. Not only that There should be a system by which you can send the sms to the concerned person yes this your attendance you are late in a month for three days and if you want your causal leave be deducted in your account. The biometric system can be kept in each section of the High

Court department. Second, the problem we face regarding the movement of the senior officers. Now here was that every time the protocol officer... the dignitary. Like everybody get message when withdrew the money from the ATM card automatically a message is generated and you have withdrawn such and such money this is automatic and you get satisfied. Similarly, The Person who is in charge of protocol is always in tension that whether that dignitary gets see off or received what the status, then you can instruct your officers that immediately after you work you should send the sms. Instead of giving a call, you might be busy with another call, so such a system will help you in the registry work..So.

**Hon'ble Justice BS Chauhan**--no no please continue.

**Hon'ble Justice A. C. Upadhyay**--So, this is another area of concern. For a High court to perform on judicial side there must be efficient registry. As an in charge manger it is you duty is to maximize work the employees. I say that with due respect you efficiency will improve the disposal of cases. So you have to improve and optimize the employees of the High court in several ways. So now you have to another, See you need to acquire another skill that is skill to organize your abilities. My way of dealing was like this. Immediately after the sitting of the courts, I use to call my senior officers in my chamber every day and use to discuss all those important issues which are pending and all those important issues which can be solved a direction is issued to all the departments. To somehow to create the oneness in the registry. You must able to communicate to them that what you are doing and what is the requirement. The meeting with the officers either in the evening or at the daytime is very important. So may I pause here. You may have any questions on this so that we may have an discussion. Because we are discussion on the administrative matters and scrutinizing the file you may have some problem.

**Hon'ble Justice BS Chauhan**-- it is the problem of the High Court they can't say I have a problem we are there to solve the problem and makes the High court working, if the driver does not come in time.; an employee has to come in time, file has not reached the court. So all these problems if there has to be solved here so you can't get rid of your responsibilities saying that I have my own problems. Leave all problems at home

and come to court to serve the High Court. Feel at home whatever difficulty you have asked my brother will answer it.

**Participant**—Good morning sir.. I want to say one problem; Employees monitoring of attendance is difficult...and

**Hon'ble Justice RC Chavan**--Can I respond can we do one thing that some of the officers react and then we will try to...ok ok..

**Participant**--One of the possible solutions is that CCT camera may be installed.

**Participant**--My suggestion is the whole object of putting this biometric machine is that the employees are present in time and it is for the concerned section officers to see that they are working and when were they go for tea or coffee they returned in time...that is the responsibility of the Registrar Administration and concerned administration heads.

**Participant**—The employees are coming at 10 or at 10:30 and going after 5:00 o clock or so..Our friend that posed a problem that some of the employees are leaving the premises earlier and say that some task has been entrusted to tem...so it should be checked...

Any other reaction

**Participant**—Sir..periodical inspection can prevent this ..at least one in a month a surprise checking can be conducted..action should be taken..

Now I request **Hon'ble RC Chavan** to react with the problem..

**Ho'ble RC Chavan**—See anybody children are serving with IT firm..No...what happens in IT firm..the access of the room itself is controlled by that. Now how many situations in the court litigants or lawyers required to enter the office you can identify those situation and ensure that these things take place across the counters. If somebody has to do the correction etc.. it should be across the counters..As far as other staff is in concerned, there is no question to relieve without swapping the card. Because the door will not open. This doesn't take much time or expenditure and 13<sup>th</sup> and 14<sup>th</sup> Finance Commission has provided funds. As far as biometric is concerned by friend from Tamil

Nadu says that this is the duty of the section officer..No.. the duty stops here at the desk of Registrar General. He is responsible for everything. Whether section officer is responsible or not you cannot leave it to him. Biometric is to be done by all State governments because it is all central policy... There is nothing wrong if we say the management principles should be inducted. Difficulty will be there it will take time..it will take years..Let us start thinking about it so that it can work out..

**Hon'ble Justice S. Vimla**—I would like to share my views on this. As Registrar General there are means and ways to control this that whether they really go for court work or they go for their personal work and make an excuse of court work as per the lordship instructions of this and that.. If it is done by the person who are under the control of section officer, they should inform the section officer and then go and section officer can ask for the record that under whose instructions you are going for what purpose and which place and how long it will take. If this procedure is to be adopted then it will become very difficult for the employee to escape from his duty..This is one action we can think of..We are in a process of transition. In many places we have biometric and in many places we don't have biometric so till the biometric is done this measure is essential.

**Hon'ble Justice Ravi Tripathi**—I have another problem, the person in the section and is not working. You can control this coming out and coming in...what you do..

**Hon'ble Justice RC Chavan**--Let me ask first how many of you are present here.

**Participant**—I am present, ha,ha, ha..

**Participant**—To solve this problem My lord we have made a provision in the software to enter all the fields in the computer my lord with the employee code at end of each day. Using their employee code they will make certain entries about what they have done in that particular date at the end of each day so that centrally their work statement is monitored. And the Registrar Administration or the Registrar General who were in charge can easily watch what can be done on this day or the previous day.

**Hon'ble Justice RC Chavan**--Right if this is done then physical presence become secondary. If the work statement you able to generate and monitor then it is ok and you cannot say that it is the duty of the section officer as you are the guardian of the section officer also. So, through section officer you have to take care of all members..If this can be done then possibly this is the better answer. Because Brother Chavan is totally right as what I see from your faces that the half of them is not here,..ha, ha..

Of course the principal is the present company always excuse. If I say you come in time means that you should develop a policy that you should be punctual. And my experience is this if I am in the chamber right at 9:30 or at 9:45 my staff will be there at least 5 minutes before I reach but then there must know that my lordship will be there at 9:45 dot and if I don't leave my chamber till 6:15.. So all these things first start form ourself... And surprise checking means it is at any time and at any place. You can do that also but you have to device your own mechanism to solve your own problem.

**Hon'ble Justice BS Chauhan**-- The person who is present on the site is responsible had in such a situation to control a matter..It depends what kind of situation is there what kind of person is..

I tell you an example- One of our competent district judge was elevated to the High Court was very efficient but had a habbit to abuse the .. So he abused a zamadar while getting up the court at One O clock a court..Zamadar had with his all union went to discuss and went for strike. So Chief Justice called a meeting to how to resolve this problem. So, I went to the chamber of Hon'ble Chief Justice and asked what is the problem and what had happened and he is not physically fit to carry out his duty because chairs are so heavy. Those are the chairs which comes 50 years also..So I said take the plea that he is above 70 years of age and still working. His school certificate should be produced. Only then we will be able to deal with this problem. All employees came to know.... We have to device anything before saying anything... we said we will examine their school certificate and SP was called and we will hold a physical medical examination and we called SSP to verify the genuineness of the school certificate..The strike was immediately called off within 2 minutes.. Ha, ha..Because most of the zamadars had got job by fake certificates. So you must know how to solve the problem..Basically their appointment is obtained by fraud which is void.



So you must know what is the weakness of the person and must act according to the situation...yes

**Mr. K. Uthirapathy Registrar Administration (NJA)**--Due to the security concern, I can understand that CCT camera should be installed in various courts. This will virtually cover the security measures also my lord..This will virtually cover the biometric system also..This is my submission..

**Hon'ble Justice A. C. Upadhyay**--The solution, which has been already found out nothing to add regarding the biometric attendance.... Depending upon the situation the solution has to found out and we have to take steps and have to sometimes initiate department proceedings also... So we have to apply all the perspectives...We have to find out what is the irregularity..we have to keep them under control...Duties assigned to the Registrar is different in different courts..Rule and duties have to be followed and here somewhere we have to take a decision..Some time we have to initiate disciplinary proceedings..Article 311 of Constitution of India provides general rule.. The person should be informed about the charges level against him...He should be given reasonable opportunity to give the explanation against those charges.

**Hon'ble Justice S. Vimala**--Good morning to all of you,...

**Hon'ble Justice Ravi Tripathi**--Sister there is a problem they accustomed to say good morning only in chamber...ha, ha....

**Participants-** Good morning

**Hon'ble Justice S. Vimala** --I have a great honor and pride to hear Hon'ble Justice Chuhan and all the dignitary on the Dias. And off the dais .I want to ask few questions and few answers from you from you. Who is the most powerful person in the court... as an executive head he represent many places who is the most powerful

**Participant**—Registrar General..

**Hon'ble Justice S. Vimala**— So, You feel yourself to be proud to represent each High Court.

**Participant**—Yes

**Hon'ble Justice S. Vimla**—At the same time when you say you are suppose to follow rule. Are you not one of the most responsible one also...

**Participant**—Yes

**Hon'ble Justice S. Vimala**—So you are the most responsible person of the High Court. That is a say that a leader is a person to know the way, to show the way and go the way, which is the difficulty we may know we may show but we must create also. This is one of the most difficult task for the Registrar General. Hon'ble Justice Chavan was requesting me to share my experience as a Registrar General. So it the only relevant time to share my experience. When I was called by the Justice Gokhale the Chief Justice of the Madras High Court. He said you will be the Registrar General of the Madras High Court. I was totally nervous. I was not comfortable because I have the experience of several Registrar General functioning there. But Chief Justice never expected this reaction from me and said that I thought that you must be the most happy persons. May I say few things that is coming up in my mind. There are two type of persons one is who always say yes boss..I told my Chief Justice that I should get the liberty to tell Plus and minus of everything..I should get the liberty to say whatever I want to say..I tell you what Chief Justice was telling me..only this type of person we want. We don't want any or just yes..I hate yes boss syndrome. I want you to tell the plus and minus of everything only for that you are chosen. Then I was very happy. So, I will not do anything which is inconvenience to my conscious...This is the thing which is right I will show and then I am not responsible for anything more.. This is the thing I want to share with you all...Secondly, regarding the files many of the file comes before you as a Registrar General and many of the file you put it before the Chief Justice for signature...Many times the contents of the file is cut copy paste..unless you are not very meticulous it becomes very difficult to point out the problem in the file.. sometimes you sign in routine without going through because of the work pressure. Registrar work is not a one person work.. It is teamwork to achieve a goal. Your efficiency can be 10%, 20% 50 % or even goes to 100% also depending upon the teamwork. Whether it is the Registrar Administration, Registrar Judicial, Registrar management should contribute towards the functioning of the institution. This yes boss syndrome is very dangerous. I

tell you we adopted the practice for appointing and creating a post of court managers..The court managers were appointed for a period of 5 years and funds is been allotted for the appointment of court managers.. The question was that after 5 years whether the court managers can be appointed for further period ....This question has to be put up. The question should have been that after 5 years what will be the fate of court managers so whether it is the state government to decide. So the question may be whether the state government will fund the project for the court managers after the 5 years. So, the consent of the government should be taken even before initiating the appointing process. That was not done. Then I told the chief Justice that we should also see the future of the court managers who worked for 5 years..Many of them joined without knowing that their job will not likely to be continued.. what will be happen if they cannot get absorbed, many of them married saying that they are court managers and many of them having children and many of their services are not extended. In our State, we addressed the State government. State government said about the 14<sup>th</sup> finance commission... still we are requesting so that the court manger cannot put into trouble..The order of the Chief Justice is very important...there are lot of problems and troubles, there are demonstration, resistance for Bar. It is only the Registrar General who can make comfortable to the Chief Justice. All process is initiated by the High Court, So ultimately it is your responsibility to say the plus and minus to the Hon'ble Chief Justice.

This is one part of it. And the second part of it is my experience I share with you..When I joined immediately after 3 months 2 months Justice Gokhale left and Justice Eqbal joined as a Chief Justice, The persons who are closely associated with the Chief Justices are PS to Hon'ble Chief Justices and Registrar General two on both sides. Both spend more time but comparatively especially PS work with Chief Justice more closely, spend more time, and are very efficient in execution work. There work is also very important..Chief Justice tends to believe him also. It was a grievance that they are not promoted to the post of Assistant Registrar. But PS are very good as well as honest.. I was ready to put up the file. But there was one problem that once the PS is been promoted to the Assistant Registrar they will be doing the administrative work and will not the taking the notes of Hon'ble Judges and already there was a shortage of PS

to the Hon'ble Judges. The ratio of PS in High court is per Hon'ble Judge there was 3 PS. 1:3 ratio was adopted and therefore there was already shortage of PS.. Therefore, I was not able to suggest to the Chief Justice to promote the PS to the post of Assistant Registrar immediately. Form various corners it came to the notice that the PS are not promoted. Chief Justice called me and said are you unhappy with tem, they working for so many years they are very efficient do you don't want to promote them. If there is a shortage the Chief justice asked me to come out some solution because he want the PS to be promoted. Then I said that, press the State government to sanction more post ,that is one part of it and second part of it that, after the PS gets promoted to other side, they may get promoted because of salary purposes or other purposes but they may be directed to continue the work of PS till the new post are sanctioned and new persons are appointed and they are being trained . Again the problem is of State government to convince the State government to sanction the post. I went to Finance Secretary; Finance Secretary said this one PS for one Judge is enough. As secretary, we have one PS for one secretary. I said pity on us sir, you come to high court, sit on the high court for one day, you understand the nature of the work. You will understand why 3 PS's are required. Even the sanctioned strength of 3 PS's are not sufficient, we are somehow managing it..Kindly understand our problem or trouble. I called on of the PS and showed his the notes. The PS of the secretary takes notes of two lines and type it..That is not the PS of the Hon'ble judges. After getting some understanding this they sanctioned the posts PS and we got appointments..They were also promoted. But they were deputed to do the same job for 1 year and this how the problem got solved. This is the nature of problem we have in the High Court. And this is how I said that you must have the courage to speak out. Unless we speak out, the judges don't have the time at all. Really, judges are overworking. This is the kind of job they are doing. Unless the Registrar General are very efficient, very courageous, very honest, very cooperative and High Court is what the Registrar General is. That was my experience.. ..But in many cases those who are at the verge of elevation are posted to the post of Registrar General. Some of the Chief Justice understand the problem and appreciate it may be but in many cases there are difficulty as there are chances of elevation they are not in a position to speak out. It may be said that those who are at the verge of the elevation

need not be posted to the post of Registrar General so that the inconvenience should not be there. So, next to seniority may be put to that place so that the inconvenience should not be there for any of them. This is the experience I want to share with all of you..

**Hon'ble Justice BS Chauhan**--Now I will share my experience I have seen in most of the High Court where I worked one of our Registrar will find out how many cases/writ petition are pending against the secretary. He will take them and posted it on the same day. The Finance secretary will come and will contact the government counsel as well as the registrar. So, he will say he cannot find time in so many cases. They say we can't save you. That is very difficult .You may send to jail. What is the way to save you. There nothing above the law. Be ready to go to the jail. Have you told your wife that you will not come back...Ha...Ha.. Have you made all alternative arrangements at your home. Sir, it will be very difficult to ask Chief Justice.. Chief Justice will ask that so many matters are pending against him..If he is not helping us why we should help you. Sir please see do something...Then the things change ..Then he will say no sir no matter I will see your all the files give me so much time I will see it. So, you have to be innovative, find out how to get the work done and my sister has pointed out the very important matter then who is very important in the judiciary. I will tell you that why you are so important person. See, If you examine entire judicial system....Indian Supreme Court is considered to be the most powerful for this simple reason there is no provision in the Constitution in any law or in any country in the world as Article 142 of the Constitution 142 is Supreme Court can pass any order to do complete justice between the parties. Meaning there by he can ignore the facts....If we examine the power of the Supreme court with High Court.. High Court is more powerful. Article 226 along with the appellate jurisdiction has more powers than Supreme Court. If you compare the power of the High Court with the trail court, trail court has all the powers one High Court has conferred.. The power of the High Court is limited either by the constitution or by the Statute..Article 226, 227 and statutory appeal under various Statutes. Now the powers of the trial courts are not limited..See High Court has limited power but the trial court all residuary power only exception section 9 C.P.C. unless that power is expressly or impliedly taken away, so you are the..the trail court is more powerful and you are sitting

in High Courts and controlling only High Courts. You are the most powerful person in any State so far the judiciary is concerned. So, considering that level think that your responsibility had to be carried out in same manner..

**Hon'ble Justice RC Chavan**—This is really great..

**Dr. Amit Mehrotra**--So, we are breaking for tea break and on behalf of National Judicial Academy, I am very much thankful to Hon'ble Justice S. Vimla ma'am and Hon'ble Justice Upadhyay to be there for these two days and for sharing there inputs and experience and definitely with the help of all these resource persons National Judicial Academy will come out with some constructive solutions with regard to the functions, role and responsibility. So we break for tea and will be back at 10:30

### ***Session 6: Registrar (Administration) as an Enquiry Officer***

**Hon'ble Justice B.S. Chauhan** – See this session deals with the Disciplinary authority and yesterday..you can just change the page and mark of it so that you may not to take the note and write..Why it is so. Yesterday, I made a statement of law that administration does not include mal administration. If you kindly turn the page 21 of this compilation..it is not actually accordance with order..the just above this Renu and others, the right to administer cannot obviously include right to mal administer. It has been explained by Supreme Court time and again on in the judgments mentioned there in..So, no need to go into that. Ratio of all these Supreme Court Judgments have said that you cannot tolerate maladministration and take the person responsible to the task. That's why we come to the disciplinary proceedings. Now what is the basis to proceed with disciplinary proceedings. Article 311 (2) of the Constitution. It comes from there. It was there in the earlier Constitution of the government of India Act 1935. It has been taken from there in a different language. So, if you read Article 311 (2) it will give you the complete idea. It deals with the persons holding a Civil post under central government or the State. So, part (2) No such person as aforesaid means person holding a civil post shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a

reasonable opportunity of being heard in respect of those charges. So, this is the requirement of the Constitution that either you directly proceed under Article 311 (2) follow this procedure or for your guidance and convenience frame your own rules. So, when you frame the rules you must ensure compliance of this requirement mention in clause 2 of the Article 311. You cannot deviate. You are not permitted to make the rules in contravention of clause 2 because if you want to dispense with the inquiry that is permissible only under further proviso. You can adopt your rules providing that it is not practicable, possible to hold the enquiry, it is not in national interest to hold the inquiry. This type of exception was exist there. Otherwise there has to be full fledges inquiry so this is the very basis which empower the employer to initiate disciplinary proceedings against his employee.

Now there are two kinds of enquiry. There may be complaint before the High Court against the judicial officers or any of the employee working in the district court or High Court. The High Court has a power to direct appoint an enquiry officer and initiate the disciplinary proceedings. Second option available to it is hold a preliminary inquiry. Purpose of holding a preliminary inquiry is entirely different, not to punish but to find out that there is any substance present in the complaint on the basis of which the regular enquiry can be held. Now when inquiry officer is been appointed to hold a preliminary inquiry, it is not require in law that he should also involve the delinquent at this time because he is not the delinquent at this stage. It can be proceeded with ex parte. The inquiry officer can record the evidence of the persons, examine the complainant but there is no body to cross-examine the witness or the complainant, not necessary to examine the delinquent. So the inquiry officer will submit the report that there is some substance in the complaint, it is a fit case were regular inquiry is to be conducted. Beyond this preliminary inquiry is meaningless cannot be used against the delinquent for any other purpose whatsoever. So, once you take a decision that regular inquiry is to be conducted, then you have to give the charge sheet to the employee, to the delinquent. A civil trial in civil suits is starts when the issues are framed, not prior to that prior to that is only the proceedings done as defined under order 6 Rule 1 or this written statement even rejoinder does not comes in pleadings, it comes under subsequent pleadings. Like that criminal cases are started when the charges are framed prior to that

it is not a trial but the proceedings. Similarly, in disciplinary proceedings commences when the charge sheet is issued, the inquiry starts. When the charge sheet is served to the delinquent, he has a right to reply to the charge sheet. Department had to examine the witnesses; what is the material against him prove the documents as per the requirement of CPC, documents are admissible, denied all those..and then the delinquent has a right to cross- examine the witness. Now the officer has to consider everything and have to submit the report to the employer or to the disciplinary authority. At this stage disciplinary authority has a right to differ from the inquiry officer. Suppose the inquiry officer has exonerated the delinquent. The disciplinary authority has a right to differ from the inquiry officer but he has to record reasons how the inquiry officer has mis-appreciated the evidence and reached a wrong conclusions. After re-appreciating the material and records place before the inquiry officers I reached the conclusions that the delinquent is guilty of that. The reasons and order are bound to be supplied to the delinquent because these are all technical's issues. If any link missed inquiry stand vitiated. If you don't give the reasons for disagreement to the delinquent and a reasonable opportunity was to the delinquent to make a reply that sir your conclusion is wrong inquiry officer has rightly exonerated me because the evidence which you have re-appreciated could not have been appreciated like this. He has a right to file the reply on the reasons for you disagreement. The disciplinary authority will consider it and the giving him an opportunity of hearing..then can say no I stick to my disagreement, now you come I want to hear you on the punishment and then he has a right to pass the order. But the delinquent has a right to go in appeal or revision that is something different under the Statute this is permissible. What we commit mistake while passing the orders against the delinquent sometime the copy of the inquiry report is not given, copy of this disagreement is not given, he is not being heard order is passed. So in such circumstances the inquiry starts vitiated form the point the mistake is committed not from the point of charge sheet.

Now when you pass the punishment order you have to keep two three things in mind that at every stage you have to ensure the compliance of principles of natural justice. What are the principles of natural justice? And why they are so important and why they are called the principles of natural justice. Principles of natural justice means which



comes within us naturally. It has been gifted to us by God inbuilt. Suppose you have finalized your judgment to be delivered in the court today. You keep it on the table and go to take bath. Your 1 and half year grandson come and spoil that judgment, you have to pronounce the judgment today..The child of 1 year does not know what is this. You may slap the child ask him 50 times why you have spoiled knowing it well that he cannot reply, he doesn't not know how to speak, he does not know what is the judgment. What is the document? But it comes naturally why you have done it why you have spoiled my judgment..Now I have to take another copy, adjourn the case..So many questions we have to put the one year old child. It comes naturally therefore they are called principles of natural justice. How it has been introduced in law. The first reported judgment is R v/s University of Cambridge 1723. What happened in that case the university has issued a circular that no boy in the campus of the university should not be found in a company of a girl after this particular period of time and nobody should take the girl in his room after 6 O clock or whatever the time mentioned in the circular. One boy was found sitting with a girl in his room beyond that time so he was rusticated. The matter was ultimately went to the house of lords and one of the argument was advanced that what is the purpose of the circular, that there should not be illicit impermissible relationship with the girl within the university campus beyond this period. Prior to this period, it is permissible. Now the girl found in the room unfortunately she was a prostitute of international level. He said she is a prostitute.. As there was an order that a very famous prostitute was got found in your chamber beyond the contravention of our circular..Therefore, we have no option otherwise to rusticate you. The defense was taken first time from the House of Lord was that undoubtedly she was found in my chamber but what is the purpose did not contravene your circular because she is my real sister. Then the question is the why don't you raised this issue in the university itself. The answer was the university has not accorded any opportunity of hearing. So this is the first case, the House of Lord laid down the law that no person can be punished without giving opportunity of hearing and in this judgment they have dealt with the spiritual story of Adam and Eve that when Adam has eaten the apple and God has kicked him out to come to the land that even the God has given the opportunity of hearing to Adam before throwing him out of the heaven. So if God has observed the principles of natural justice and given the

opportunity of hearing before imposing the punishment, why not authority should give opportunity of hearing. From there it started the principles of natural justice and it becomes so important that if you don't observe the principle of natural justice inquiry stands vitiated. So these are the basic purpose.

Now, many times objections are taken that many times inquiry has been initiated at an initial stage by an authority higher than the appointing authority. If you read article 311 (1). It is in negative terms. Disciplinary authority cannot be initiated by subordinate to the appointing authority. So it does not say why the superior authority. Now, the question is the if the superior authority is the appellate authority can it be initiated by him who will hear my appeal. Therefore, if he initiates the inquiry I loose the right to appeal. Therefore, these things should be kept in mind when you initiate the inquiry. That who is initiating the inquiry should not be the appellate authority so that the delinquent will loose the opportunity of hearing.

Disciplinary authority cannot become a witness in a case because that will be a case of bias. If you are my disciplinary authority, you cannot claim to be witness as you decide my fate. How I expect justice from you therefore, it will be a case of bias and inquiry will again be vitiated in these circumstances.

Now kindly turn to page 26 of this compilation. On the top.. this is the whole concept of bias in disciplinary proceedings. Punishment for misconduct can be imposed in consonance with the statutory rules and principles of natural justice. The legal maxim "nemo debet esse iudex in propria causa" ( no man shall be judge in his own cause). So, the disciplinary authority cannot be a witness because he become the judge in his own case...I have quoted here all the judgments were this issue has been dealt by the Supreme Court. An order in violation of the principles of natural justice may be void depending on the facts and circumstances of the case. So, this is the basic concept who can be the witness, what should be the conduct of disciplinary authority.

Now sometime what happen you initiate an inquiry against a clerk. The presenting officer before the inquiry officer is a judicial officer. The clerk is not knowing the law. He cannot match so far as legal issues are concern. In such a situation the disciplinary

authority or the inquiry officer must provide some legal aid. A defense person not a defense council. Lawyer can be taken only in extraordinary circumstances. Suppose additional district judge is appointed as an inquiry officer. He is well versed in law. If the delinquent is not provided with any assistance of the lawyer in that case there is a possibility of miscarriage of justice because he cannot plead his case properly. So in such a case legal aid is to be provided.

In the case when we proceed with the disciplinary proceedings against a person, we put him under suspension. Suspension means you continue in service get suspension allowance but we don't want to take any work from you, have rest because we have lost faith in you. That's why we do not want to give you another opportunity to commit further mistakes or misconduct. That is the basic purpose. If you don't give him dearness allowance, he may take a defense, I was not able to plead my defense properly for the simple reason that I could not afford to maintain my family. I will not travel because you did not give me the suspension allowance. Therefore, suspension allowance should be given to the employee to avoid such kind of defense at a later stage either before the disciplinary authority or subsequently in the judicial proceedings when he challenges the order of punishment.

The punishment awarded to the delinquent should be proportionate to the delinquency. If the delinquency is very low you can't give him the punishment of removal or dismissal. You can withhold an increment or hold a minor punishment. Sometimes authority himself or the High Court imposes punishment not prescribed under the rules, that also vitiates the punishment order because the courts are supposed to enforce the law as it stands. You cannot amend the law. Therefore, when you follow the procedure you must keep in mind whether the inquiry is for minor punishment or major punishment. There are separate procedures for both types of inquiry. In case of minor punishment you give show cause notice, he will give the reply and then pass appropriate order which is prescribed as a minor punishment under the relevant statutory rules. Withholding one annual increment without cumulative effect is a minor punishment. But he loses the increment for several years it will be major punishment... But punishment must be one of those which are provided in the statutory rules.

**Participant** --My lord if the statute is silent about the punishment then what will happen..

**Hon'ble Justice B.S. Chauhan** – No. It will not silent then give reasonable..I give you another example—if in statute there is no time limit given to file an appeal or revision, particularly in consolidation matters, revenue cases..any time has always been interpreted as reasonable time not after 100 years. What is reasonable time is according to the facts and circumstances of the individual case. The if the rules are silent then you apply your mind what will be the most reasonable punishment in view of this particular misconduct...

Then many a times while passing the punishment order if the disciplinary authority mentions you are earlier being punished three times. You are getting this punishment and that punishment.. You are an habitual offender. Now hereby I think you must not be fit to be in service and dismiss. To what extend the consideration of the past conduct is permissible and under what circumstances you can consider and for what purpose. If you don't tell him in the charge sheet or even in the second show cause notice that I accept the inquiry report submitted by the inquiry officer and want to impose the punishment of removal. Removal is necessary because you have been earlier been punished three times and I am of the view that ultimately you have to be removed you are not fit to be retain in service. You cannot consider the past conduct. When you record the statement in 313 Cr.pc if you don't put the relevant question to the accused that circumstance cannot be used against him for conviction. Why 313 is so important because it is a part of natural justice. He must be given the opportunity to explain each and every circumstances of the trial. That is why such a long questionnaire is prepared. Same principle applies here. If you inform him that you past conduct will be considered for the punishment and he give the answer sir you are not aware that the appellate authority in past matter has exonerated me or I went to the High Court, High Court has reverse your order. Because unless he gets the opportunity to explain the past conduct cannot be considered.

Now I have dealt with all these cases at page 26 of compilation. How to consider and what circumstances...the past conduct can be considered.

Now many times even the High Court commit mistake on the judicial side or on administrative side also is that material collected during preliminary enquiry behind the back of the delinquent is used against him. Preliminary enquiry was conducted for a different purpose. Only it was to find out that whether it is a fit case to hold regular inquiry or not. But you cannot use the material collected against him in a preliminary enquiry. If you want to use, supply all the copies to the delinquent, call all the witness which are being used in the preliminary inquiry, permit him to cross-examine because the cross-examination is also a part of principles of natural justice.

Now if you see page 31 there the third line in *Ayaaubkhan Noorkhan Pathan v. State of Maharashtra and Ors*: AIR 2013 SC 58, in which the Court while placing reliance upon a large number of earlier judgments held that cross-examination is an integral part of the principles of natural justice, and a statement recorded behind back of a person wherein the delinquent had no opportunity to cross-examine such persons, the same cannot be relied upon.

In one case, it came from Gujarat a judicial officer the term was dismissed only on the findings of preliminary inquiry. Though this argument was never advanced before the High Court or before the Supreme Court no ground was taken but I had been the inquiry officer in very large number of cases. I am very experienced person so far as the inquiry officer is concerned. So I new it I summon the original file give the notice to the State counsel and asked how could use this record which has been never been shown to the delinquent. But by the time he reached the age of superannuated. So we awarded some compensation and deemed to have him continue in service, so that he can get some retrial benefits. But these are the basic mistakes. *Nirmal Jhala* is a reported Judgment it is in page 30 -31 *Nirmal J. Jhala V. State of Gujarat* AIR 2013 SC 513 second part evidence recorded in preliminary when it can be used. So it only be used when the entire material is being supplied to it. See even in CPC you see O19 R2 cross examination, affidavit become meaningless. Same principle is applied here... and in *Nirmal Jhala* judgment it was discussed when the material collected in the preliminary inquiry can be used against the delinquent.

Now the basic questions which comes every day in which the defense is taken every day in the court. I am a judicial officer. I have to decide a case which includes and

implies that I may and I can decide it wrongly also. Right to decide a case includes to decide wrongly because we are human beings. We may make judicial error. Therefore, there is a provision of appeal, review, revision so many are there. ..If my error in the judgment can be corrected in the appeal, revision or review why you hold an inquiry against me. This is the basic issue when the inquiry is initiated against the judicial officer. The test is have you decided a case in good faith or you proceeded with some malice. Thirdly, you proceeded in good faith had no malice but proceeded so negligently, recklessly that you don't deserve to continue as a judicial officer. These are the basic two three tests. You may be very good officer, honest officer proceeded and decided the case without any bias but could you proceed so negligently ignoring the fact. Now I will tell you..I feel ashamed to tell this example I was the fifth court four courts have decided the matter already. A civil suit was filed for partition among the children from two wives in Banaras. When suit was pending consolidation proceedings started so as the suit of civil proceedings got abated and transferred to the consolidation authority. There the consolidation authority is in three tier decide it in favour of one party. Ultimately the matter went before the High Court. The High Court also considered. The matter came before us Supreme Court. Both sides were represented by senior advocates and it was to be heard but basic question was what was the time when second marriage took place whether it was prior to 1955 or subsequent there too? What is the evidencery value of school register under section 35 of the Evidence Act because the admission of the children of the second wife, first wife.. we have to determine that issue. I just saw the documents filled there as an annexure and I started calculating that what was the age of the second wife..when she got married because those days even now..the balika Vadhu is continued for 4 years..and I was in Rajasthan for 6 years so I know what was the Balika Vadhu business..No body can prevent it..Mr. Goel could you improve anything..nothing..See the basic difficulty in all our judicial system is the enforceability of the law depends upon the acceptability by the society as a whole. Neither the court nor the administration can enforce the law which is against the public opinion. Now we have this Child Marriage Restraint Act 1929 now have been replaced by 2006 Act. Whatever may be the punishment you could not stop it. Even today more than 50% of girls get married below the age of 16 years. Sati was prevented

by lord William imposing a severe punishment. Enforcement was so serious that sati could be removed otherwise Sati could have also been continued. So, unless a society accept a law it can not be enforced.

Similarly when we talk of a judicial officer you are suppose to be performing a divine function. Performing a divine function does not mean we our self become divine. Why it is known as a divine function. In earlier stage when civilization is started people started thinking they should not commit sin what is sin something unlawful. Law was not defined. Anything which disturbs the peace of the society is unlawful. Therefore, there was nobody to enforce the law. God will take care of it. If you have committed sin God will punish you. What is the remedy.. remorse (Pachyatap). So if everything has to be decide by the divine. It is the duty of the God to punish a wrong doer. In Judicial system it had been inherited that you are performing the divine function because when civilization develop this duty was taken by the king a representative of the God they could not detach that... Subsequently this duty has been assigned to us. Therefore, it is known as a divine function. So even when we conduct a judicial inquiry against a judicial officer, first defense comes it can be corrected, there is no malice. But number of judgments said that if you proceed so negligently so restlessly that it cannot be accepted in ordinary norms and rest of our rules does not define what is misconduct. Statutory rules sometimes defines sometimes most of the time does not define. So I have given what is misconduct from page 13 -16 and 25,26,28 &29. Now please come to page 16 six circumstances are there

1. Where the Officer had acted in a manner as would reflect on his reputation or integrity or good faith or devotion of duty this one it is very wide
2. If there is a prima facie material to show recklessness or misconduct in the discharge of his duty.
3. If he has acted in a manner which is unbecoming of a government servant.
4. If he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
5. If he had acted in order to unduly favor a party;
6. If he had been actuated by corrupt motive, however, small the bribe may be because Lord Coke said though the bribe may be small, yet the fault is great. So

these are the circumstances. Now come to page 16 against State of Punjab v/s Ram Singh misconduct was explained. So now aging page 28 misconduct and disgraceful conduct. Many time in arguments in advance it may be a disgraceful act but not a misconduct.

Now, contrary to this if you have satisfied the inquiry officer or disciplinary authority that you acted in good faith. The question will arise what is the meaning of good faith. That has been explained at page 21. Supreme Court has dealt with the meaning of good faith General Officer Commanding v. CBI and Anr. : AIR 2012 SC 1890. So this is my judgment I have explained what is the meaning of good faith and to what extend this defense can be examine. So it is a meaning of good faith as it is a very vague term. Judicial officers protection Act so many, everything is there to protect us, even then you have to satisfy that you acted in good faith. So we must know what know what is the meaning of good faith.

In 1974 an enquiry was initiated against a district judge by the High Court of Punjab on a very serious charges and an IPS officer was appointed as an inquiry officer who was deputy inspector general, When he was found guilty. High Court thought that the charges are so serious that a person from police department can investigate is better. It may not be possible for the High Court to investigate the matter properly. The Supreme court in Samsher Singh v. State of Punjab AIR 1974 SC 2192; it is at page 18 had taken a very serious note of it. Supreme Court said however higher a police authority may be he cannot be permit to examine the case of a judicial officers. Judicial officers stands entirely on different footings. Therefore to ask a police officer to investigate a district judge or asking a district judge to appear before a police officer is against his dignity. We cannot think that Judicial officer may be asked to appear before any person other than belonging to our own departments. Therefore what the Supreme court said 235 who are bound to hold the inquiry yourself. No police officer, no outsider whatever he may be can examine. This judgment Samsher Singh is seven judges bench. Now how it is misused. See the case of Visakha 1997 two judges bench without taking note of Samsher Singh, any allegation sexual harassment against any person can be examine by a committee which comprise of 2 ladies, 1



member of the NGO and one so and so..So if there is an allegation against a district judge there may be a lady may be a clerk or stenographer in the department or stenographer of a collector. An NGO who takes so much donations from so many people whether genuine or fake may sit against our judicial officers. Why these kind of judgments are been passed because by the time of making such type of legislations by judicial interpretation we do not call the lawyer to assist us. Had that bench given the opportunity the somebody would have pointed that there is a seven judge bench judgment, you cannot involve an outsider against Judicial officer on the face of this seven bench never been overruled. It is followed every time. Judicial officers have to be protected and save otherwise ever kind of allegation is likely to have it. Why we have not given the power of review in criminal law so that there is no possibility of indulging in corruption. I will give you the death sentence and then I will make the review of the Judgment. If that much care has been taken by the legislature from the very beginning how do you make against the conduct of a district judge you bring an NGO member which is funded by unwanted anti elements of the society or a lady stenographer. So this type of problem persist by not giving opportunity to the Bar to assist.

Now another issue that comes before us that whether an inquiry can be conducted against the retired employee. There is no difficulty if the charges have been framed before the retirement then continue with the enquiry. There are certain fundamental rules 351A within the period of four weeks with the sanction of the governments you can proceed and various exceptions are there..But only you cannot impose the punishment of the removal as you know he is not in service. You can only withhold a part of his pension.

I found a article which speaks ...in a case were criminal case is pending against an employee disciplinary proceeding could not be initiated. This is too general statement.. Law is otherwise.. Why what is the reason behind it. Before the statement is recorded under section 313 crpc. The accused cannot be forced to disclose his defense. Even if he disclose his defense at an earlier stage prosecution will be able to fill up that blank. This is the logic behind 313

statement. 313 statement is recorded in the last and he asked to plead his defense. In 89 there was a reported judgment of the Calcutta High Court were by the Supreme Court said how to fill up the gap . that even after 313 statement whether it is permissible to the court to permit additional evidence in the trial court. Suppose the prosecution file the statement I want to re examine the witness or want to examine a fresh witness because in 313 he discloses his defense. If you are permitted to examine fresh witness after the statement of 313 then it will violate Article 21. It will not amount to a fair trial. Now the courts are bend upon to protect the rights of the accused and not to the victim. And at this stage if we permit the prosecution to fill the gap after 313 statement there will be no acquittal under and circumstances. When disciplinary proceedings is initiated he suppose to disclose his defense.. and in such circumstances the whole document is to be examine and then court must take a decision whether it is a fit case by way disciplinary authority should stay the proceedings or not..

Disciplinary proceedings are quasi criminal in nature, not a civil or criminal proceedings page 30 &26 I have given all Supreme Court Judgment which say that they are the quasi criminal proceedings because they have a serious consequences and this Bk. Meena is in AIR 1997 SC 30... In an article, Justice Sister K. Suguna has refereed to automatic conformation. She said that after the completion of the period of probation prescribed, declaration of probation has to be made. If, for any reason, the period of probation has to be extended, before the expiry of probationary period, the concerned staff should be informed of the extension of probation or else, his probation is deemed to have been declared. Why it is important for disciplinary proceedings. Why I want to discuss is that unless you are confirmed a probationer can be discharge at any time only the requirement is the order of removal should not be stigmatic. So, no need to hold the article. So, now what has been mentioned is that or what the Hon'ble judge has pleaded that once the period of probation is over and you don't extend the period of probation conformation is automatic. It is not..The Judgment AIR 1968 SC1210 is otherwise..this is constitution Bench seven bench Judgment.. State of Punjab v/s Dharam Singh what has been said here is if the rules say probation

period is one year and you cannot extend it further beyond one-year language has to be in negative terms there must be a clear indications that authority does not have a right to extend the period of probation beyond one year. After two years if order of conformation is not passed. You will be deemed to have been confirmed. In other case unless the order of confirmation is not passed you will remain on probation. That's patvardan case 67. He was the member of the Higher judicial service of the Maharashtra. He remain on probation and elevated to the High Court. Therefore, he was never confirmed so these issues were considered there. But in .. State of Punjab v/s Dharam Singh it has been held that it will all depends upon the rules and the law how this theory of automatic confirmation is there.

So now one hour is over so if you have any questions so far as domestic inquiry is concerned..yes please, any question be free..we are at home don't worry because if you don't ask any question it will be deemed that you know everything.

**Participant--** There one problem lordship regarding the employees of the High Court that when charge is framed, it requires the approval from one of the higher authority. So far as class IV and class III employees are concerned RG is given power. So far as class I officers the Chief Justice has the power. Now require that the charge must be proved by the Hon'ble Chief Justice...

**Hon'ble Justice BS Chauhan—** by the High Court..Take care of all these things...There are exceptions in the principle of natural justice also. AIR 1981 SC 1336 paragraph 6 there are two things There may a question of which there cant be any answer..There may be a charge against which accused cannot take the defense what so ever. In such a case the compliance of principles of natural justice will be a futile exercise and wastage of time. This is the exception were there can't be any answer. Why we should ask them and waste our time.

**Participant--** When a criminal case is filled solely on the basis of the criminal offence committed by a staff member or a judicial officer which in no way is connected with the discharge of the duties...

**Hon'ble Justice BS Chauhan --**Do you permit a judicial officer whose daughter has committed a suicide to sit in the court? Kindly see if I am involve in forcing my daughter in law to commit a suicide would the accused have the faith in me. You itself is a accused how you can sit in the court.

**Participant--**No not like that

**Hon'ble Justice BS Chauhan --**No No ..this is the answer why suspended employee is not permitted to work. What is the reason behind it I am paying you...for a particular period he is given a suspension allowance 50 % then 75% and then 100% after a particular period of time.. I am giving you the salary but not giving you any work. Why? Because any person can ask how you permit this person to work whose is facing such serious charges or misconduct to deal with my case..He will also ask bribe from me. To save the office as whole.. to protect the employer from this problem, this provision of suspension is there..that is will be disgraceful to permit such an employee to continue with the office work. But he is paid the salary..So it is a suspension of work and not of service. This is the concept of suspension.. The relationship between master and servant continues.

**Participant--**Would same principles will be applied to the other officials of the High Court like who are not judicial officers.

**Hon'ble Justice BS Chauhan –** Yes ..yes Everybody in general.

**Hon'ble Justice Ravi Tripathi--**Secondly he should not have a access to the record and everything. Suppose he is you office employee and he is having all access to all your filed and the charge is that some one has manipulated the records then how he could be allowed to be in the work place.

Now kindly see 311 (2) you have raised a very important question A person can be dismissed or removed or reduced in a rank if he is found guilty for any charge in a criminal court. There are exception to this to hold an inquiry 311 a--- where a

person is dismissed or removed or reduced in rank on the ground of conduct which has lead to his conviction on a criminal charge..So, a person has been conducted in a criminal charge. Therefore, no need to conduct an inquiry. Now, what will happen he goes in appeal. On the order of conviction High Court removes his employees from the service. You have been found guilty of such and such offence from this criminal court. Therefore, we dismiss you without holding inquiry. He succeeds in appeal. He comes back. High Court is not bound to reemploy or re instate him for the reason now we will hold a inquiry..why is a finding given by a criminal court is not binding by a civil court or in administrative side or you might have been acquitted with some technical ground. 197 sanction has not been taken, witness have become hostile. Why we should accept the finding of appellate authority or anybody.. Therefore, if High Court conducts an inquiry and found guilty..no need to reinstate him.

Another question is should we give the salary of the intermediary period. Whether we are retaining him now. There is theory of relates back...So that depends on various facts..what kinds of findings are given..ground on which he was acquitted, so it is to be examine in the facts of that case.

**Participant---**In some criminal trial is going on for example a relative has done a suicide and no inquiry is conducted do we suspend him.

**Hon'ble Justice BS Chauhan --**See whether they want to proceed it or not. Suppose I take a decision no need to initiate an inquiry wait for the decision but in criminal trail he is convicted then what should be do we should remove him and even though if he is acquitted then a departmental inquiry can be initiated..may be the witness who have turned hostile may come and support the inquiry here..

**Hon'ble Justice Ravi Tripathi—**Law does not change according to the representation. Law remains the same. His lordship say the law is if in disclosure of the defense in departmental inquiry is going to affect the criminal trail, then the departmental inquiry should not be conducted in that relevant time. Law is simple if he is facing a criminal trial and till his criminal trial is over the

departmental inquiry will be withheld. But there are exceptions were the departmental inquiry cannot be stayed but they are to be proceeded as it is said that if he has already discloses his defense in the show cause and in the charge sheet then what to be disclose in regular inquiry. So these answers are not possible on hypothetical questions, they can be done in a particular fact and you have to apply this particular law. We are trying to tell law to you that this is the law and you have to apply it according to the particular cases.

**Participant—**My lord an advocates gave a complaint. The complaint is like this my lord the staff members is the in charge of a bundle. Seven days sir I was dragged from pillar to post by the staff but could not find the bundle. On the seventh or eighth day he himself said that were ever the bundle is I will find out and give it to you sir and then he gave to me. Then I have a suspicion this fellow was responsible for missing of the record. And I was appointed as an inquiry officer..I summoned the complainant. The complainant instead of coming send the letter stating that I want to withdraw the complaint, I wrongly gave the complaint against the staff member. Later on I released that compliant will not serve any useful purpose except the staff member being suspended. I am sorry for the inconvenience caused to the registry. Based on that I closed the inquiry. I submitted the report to the registry. Now registry is telling me that no no some misconduct has happen so you conduct an inquiry and gave the report. How can I now again summon the complainant in view of his withdrawal of complaint.

**Hon'ble Justice RC Chavan--**There are many occasion the witness are hostile. Does it mean that you stop your hand? No...if you are a regular inquiry officer and you have the power to summon a witness. It is not his choice he will come or not.... He will come, he will examine and you may take you own decision.... It is happen.

The complaint has been withdrawn

After making a compliant there is no choice of withdrawn it is not a compoundable offence....It is between the department and the employee..

**Hon'ble Justice S.Vimala**— Beside that you will have the factum of the material that the file is mission from such to such period. So even if he say I with raw the matter you have still material to say that this material for mission for this particular period.

**Hon'ble Justice RC Chavan**--....so as far as the disciplinary enquiry is concerned it is between the department and the employee..

**Dr. Amit Mehrotra**—So we come to the conclusion of the 6<sup>th</sup> Session. We will have a short tea break since it is 11:50 so with the permission of the chair I will request you all to assemble here at 12:05.

### ***Session 7: Role & Responsibility of Registrar (Administration) under RTI Act***

**Dr. Amit Mehrotra**--So after this refreshing tea, welcome back to this the 7<sup>th</sup> session on the role and responsibility of the registrar administration under RTI Act. Now I will be requesting **Hon'ble Justice BS Chauhan** Sir to address the gathering and open the session.

**Hon'ble Justice BS Chauhan** --See this session deals with the Right to Information Act and your duties and functions under the said act. Personally speaking I never liked this act because it has two purposes. It is a double-edged weapon. It can be used for blackmailing as well as for preventing corruption etc. Many a times many people come for information to the court, they file petitions – this information is not given that information is not given. The question that arises is why do you seek information? why do you make it your profession? Many people have become professional filing PIL. Most of them are abusing the processes of the court for extraneous consideration. Many people file petition, he is corrupt, he is corrupt. I always ask a simple question in hindi. Aapko bhrashtachar mein aapatti hai ki patti chahiye. Seedhi baat hai. Because why are you raising this grievance. Look after your family look after your children. Why are you running here and there trying to find out about everybody. You know nothing about your

family members and children. Where they are what are they doing. You want to find out my medical bills. Now information is sought on how much money is spent on the treatment and medicines of the Supreme court judges. Why? Are you willing to share that expenses or what? How are you concerned with it? What is the relationship of this judge with that.. how is that information available? So it can be abused. The worst kind of abuse which we say that first thing the legislature should have taken care of it, who should be provided information. A person who wants to utilize it or a suitable person who can use it for public good. Take an example, in Ramayana, Dashrath made a declaration that Rama will be appointed as Raja of Ayodhya. Everybody was happy including the kekai. It was a mantra who was unsuitable to have this information. Once he got this information she changed the situation entirely. Now had this information not been given to an unsuitable person perhaps this Ramayana could not have come. Or take Mahabharat. Pandava went to their lawyer Lord Krishna. How to kill Bhishm. File an application under Right to Information Act and he will disclose. If he does not disclose this information then there will be appeal under the Act. Kindly make the disclosure. Bring Shikandi or a women and I will be killed. So for whose benefit, for whose good, how does this serve the society. This is the basic problem. So far as we are concerned, we are judicial officers. We have a duty to decide our case according to fix norms, good faith. If you don't do that, if you violate that there are so many proceedings, disciplinary proceedings and our promotion can be withheld. So many problems we are already facing. Another problem is this right to information Act. Now what is this information. It is defined under the act. Nobody reads it they just file an application. Just see this at Section 2 (f) Information means any material in any form including records etc so and so relating to any private body which can be accessed by a public authority under any other law for the time being in force. Now, another definition is right to information under Section 2(j). Right to information accessible under this Act which is held by or under the control of any public authority and includes the right, so and so. Now this information which a person is seeking must be in possession of the authority. Many people file these ,Suppose someone asks to know what is the medical expenses incurred by the Supreme Court on me as a retired judge. That information is available. Suppose they want to know what kind of relationship I have with the present



Chief Justice how this information can be provided. These are the regular circumstances. Furnish the information. They take a photograph. This car was parked in Chandni Chowk and was driver was buying jalebi from this shop, disclose whose car it is. Even if we disclose, it is permitted to park the car or to purchase jaelbi from that dukaan. What is the information you are seeking. And how this information. This information may be that I am a private person and a retired person. What number of car is not a concern of the Supreme Court? This information may not be there. But they seek this kind of information because they have no other business except make a public nuisance. So unless somebody solve this thing under Section 133 CrPC that it is a public nuisance it should be stopped we are bound to face this kind of problem. Now one person had filed a suit. After full trial the suit was dismissed by a reasoned order. Instead of going in appeal the –plaintiff filed an application under this Act before the district court for what reason with what intention my suit had been dismissed by the such and such learned civil judge. Reasons are recorded in the judgment. If you are not agreed , you are not convinced by that it is a good ground for appeal. Go in appeal. File revision whatever remedy. So many remedies are available to you. Now the district court dismissed that application, it goes to the high court, it comes to the Supreme Court wasting so much time so much money and in the meanwhile no appeal. So the time of filing appeal limitation expires. He comes to the Supreme Court. This is a reported judgment AIR 2010 Supreme Court 615. So now how to deal with this kind of situation. If we are facing this kind of frivolous applications everyday. This is one of the examples and I had decided this case and what I said here it should be in that compilation also last page 31. Khanapuram Gandaiah v/s Administrative Office & others AIR 2010 SC 615. It is a reference of an Andhra Pradesh High Court because the appeal came from Andhra Pradesh high Court AIR 2010 SC 615. Now what we have to hold here – In the instant case the petitioner submitted his application under Section 6 of the RTI Act before the Administrative Officer-cum- Assistant State Public Information Officer seeking information in respect of the questions raised in his application. However, the Public Information Officer is not supposed to have any material which is not before him; or any information he could have obtained under law. Under Section 6 of the RTI Act, an applicant is entitled to get only such information which can be

accessed by the "public authority" under any other law for the time being in force. The answers sought by the petitioner in the application could not have been with the public authority nor could he have had access to this information and Respondent No. 4 was not obliged to give any reasons as to why he had taken such a decision in the matter which was before him. A judge cannot be expected to give reasons other than those that have been enumerated in the judgment or order. The application filed by the petitioner before the public authority is per se illegal and unwarranted. A judicial officer is entitled to get protection and the object of the same is not to protect malicious or corrupt judges, but to protect the public from the dangers to which the administration of justice would be exposed if the concerned judicial officers were subject to inquiry as to malice, or to litigation with those whom their decisions might offend. If anything is done contrary to this, it would certainly affect the independence of the judiciary. A judge should be free to make independent decisions.

Now what the problem, how this kind of applications are maintainable and most of the applications because you are authority under the Act. One way because it is a legislative function somebody should ask for what reason it should be mentioned. It is unfortunately not asked. It is otherwise. It is not necessary and the authority cannot ask the applicant why he wants this information. It could have been that it must be disclosed why he wants this information otherwise it will be very dangerous for the survival of the institution itself. In Allahabad high court the fees for seeking information was 500 rupees earlier. Now I do not know. Mr Singh what is the .. 50 rupees. In my time it was 500 I wanted to raise it to 5000. If you want to seek information pay 5000 and will say not maintainable and will reject the application. Why we should not impose the cost while rejecting such type of application 10,000, 2 lacks or 1lacks. Because it has become a profession, full time joke, the people seeking about the information about this person that person under the RTI Act. So it is a very dangerous Act. We have to act very carefully. Now the Allahabad High Court has reduced the fee. I was thinking that every High Court should enhance 5000 so that he can think twice or thrice. Supreme Court registry is full of this applications. Give me information about this judge, where his children are studying. Why are you concerned with the study of my children, if you want

to contribute in the fee come and pay me. Why you are seeking this information? This is a very dangerous proposition. Because most of the people collect information and then file PIL, he is corrupt and I am the only Yudishter on earth. Everybody in the world is Durodhan. This is the whole proposition under this Act.. Ha... Ha..

Now I would like Brother Mukherjee to take over.

**Hon'ble Justice Sadanand Mukherjee**—So as far the rules framed by the High Court is concerned that is the Right to Information Act 2005., Chief Justice is the competent authority under 2 (e). The rule are framed in the High Court to carry out the provisions of the Act. Now who are authorized persons, form the authorized persons the information is being derived. Now the authorized persons are different so far as the different High Courts are concerned. Some were the assistant registrar, deputy registrars are the authorized persons and the Registrar Administration is the appellate authority. Somewhere Registrar General also acts as an appellate authority. Now it may be mention that High Court rules have not incorporated all the provisions of this Act. The High Court rules also go by the Act. Now so far as section 8 and 9 are concerned there are provisions for getting exception from the giving the information. And such prohibited provisions mandated that no such information should be delivered. The Act does not provide access to citizen to all kinds of information. Under section 8 (1) of the Right to Information Act 2005. Now this section 8(1) is the category of the information which are to be prohibited and just I am quoting from the Act; Following information was exempted from disclosure.

1. 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;
2. This is related to the judiciary information, which would impeach the process of investigation or apprehension or prosecution of offenders.
3. In this context, I am just referring a recent judgment of the Supreme Court Subhash Chandra Aggarwal V/s Registrar Supreme Court. SLP of 1521 of 2015, In this case Supreme court upheld the decision of Delhi High Court, it was held that the information sought by the medical facilities availed by the Hon'ble judges cannot be disclosed as it is violatate of Right to Privacy. It is not possible for the

authorized persons to provide some information which is not in his access. And person who is aggrieved by the order for the information officer as chosen by the Chief justice may file an appeal before the appellate authority. And the appellate authority may be Registrar Administration or Registrar General as I stated earlier. The limit to give the information is fixed for 30 days and then it goes to the appellate authority. Appellate authority also has a limit of 30 days. Now against the appellate authority it goes to the information commission. Thank you

**Hon'ble Justice Ravi Tripathi--** So any questions..

**Hon'ble Justice BS Chauhan--** Any questions pertaining to this Act.

**Participant--**Judicial Officer also apply for information under Right to Information Act.

**Hon'ble Justice Ravi Tripathi--** Let us first answer this that whether High Court can apply for information. Yes, Even High Court can apply for information.

**Hon'ble Justice BS Chauhan--** The subject must be there whether relating to the working of the registrar.

**Participant--**Suppose we initiate some disciplinary action against him and he ask for same type of information to us under RTI Act. So, whether we are bound to supply such information as the Act says a person or any person can apply to get the information..

**Hon'ble Justice BS Chauhan--**No but everybody is bound by service rules whether it amount to good conduct seeking the information..You must be reading in the newspaper or in the TV..One of our senior officer in UP is facing this problem. He was collecting many information and then his wife was filing PIL now he put into suspension....So many difficulty he is facing..So the question would be whether such a senior IPS officer can collect the information, you do your duty...or he himself file the PIL seeking information. Now the court said that instead of doing your work you collect the information. How do you file PIL and for what purpose, you are a inspector General of police, So do your duty...So you can't file the PIL without taking the permission of the State Government..These are the problems, you can also raise if any person wants to seek the information of another person he can seek the approval of the registrar or any

other person...The High Court rules should provide for it otherwise it will be difficult for you to work. That will be the problem.

**Participant--**He can seek the other remedy in the service rule, his plea was rejected but it was allowed by State Commission.

**Hon'ble Justice BS Chauhan--** Challenge the order before judicial side. See you are most protective person because always-judicial powers can be exercise in all these matters. You are the High Court, on administrative side whatever the grievance you can take it to judicial side and take the decision. Even in State the appellate authority under this Act got a or issued a direction, file a writ petition, Challenge that order,. High Court will decide..

**Participant—** In Patna High Court May lord there is a committee of two Hon'ble judges who decide which information is to be given and which not. We furnish only those information which is approved by the these two Judges my lord. Then while hearing the appeal at appellate authority. It is always came in our mind that already the decision has been taken by the Hon'ble judges.

**Hon'ble Justice Ravi Tripathi--** See, officially it cannot come on record that two senior Hon'ble judges have decided whether this information is to be given or not then you are passing an order. If that comes on the judicial side then your order cannot stand. Because then you order has been passed by somebody else or been decided by somebody else.

So, now for this answer, whether an employee can seek the information. If you give an ideal answer is a citizen . So as a citizen he can ask for that particular one. But then as an officer when you are deciding the application, you should have so many things in mind that what is the purpose and then you should try. That is why his lordship said section 2(f). Now you should try to find out whether it falls in that particular one and if you are able to distinguish no the information which he is seeking does not fall in this category you can reject it. Now Suppose, on safer side you were doing by not giving the information. He has a remedy to going into an appeal and that appellate authority allows his appeal and ask you then you have a remedy to get the matter challenge by filing the

writ petition on the judicial side and then further of course not a matter which can go on record you can see that particular writ petition continues till he retires. We are not telling you this in writing no no you should see that writ petition should not be decided till the employees retires. Not that. So there can be a practical answer which you have to find out yourself and this is why brother Chavan has rightly said that you must know the crisis management also. You have to sometime manage you effort that like creating crisis to an extent which Sister Justice Vimala rightly said number of personal assistants to the judges are promoted to the assistant registrar. There will be nobody to take dictation. So she said alright we make them understand that one year you have to continue to take the dictation though your salary and everything will be paid as per the grade of assistant registrar. They all are crisis management illustrations. And see the benefit of all these discussion is you should see that which particular discussion helps you in your particular problem and then you apply. The most advantageous position here is that you all are having the so much of experience and that when that experience is exchange, you know that that this solution is for my problem which is pending before me..You can apply that. Because every problem no one of us can give you readymade solution. It is something like you know you suit will be stitched by your tailor taking your body size and measurement. So you will have to take the suggestions from here and then apply to your particular facts and situations. You were saying something..Brother wants to say something..

**Hon'ble Justice Sadanand Mukherjee**—You have to see that The information officer has a access to the information. The information officer can straight away reject the stating that I don't have access to the information. If you don't have access then how can you. Every information may not be accessible to the information officers.

**Participants--** In such circumstances he has to obtained the information from the concerned person and furnish the information.. My lord.

**Hon'ble Justice Ravi Tripathi--** You would be right but possibly the earlier answer will take care of that whether the information fall in within the section 2(f) and if it is not you can say straight away no or else if you feel it is like to be allowed, you have to allow. We can't tell you alright you can act beyond the law and then refuse or reject all the

application. We are not telling you that and that cannot be message given to you form this dais. But at the same time we can always tell you that you must act smartly and handle the problem at your level in a particular manner.

**Hon'ble Justice RC Chavan**--See when somebody seeks information you get a prior notice of what mischief he is going to commit with the use of that information. Therefore, you can take precautionary measures. Give the information and keep the stick also ready.. Isn't it..There are many ways of not giving information also. That can't be discuss here. That depends upon the particular facts and situations. So, first see not to decide the all matters promptly. That is not just information matters there are various proposal that comes before you. So, that all proposals need not be promptly decided. Which proposal should be kept pending, which should be promptly decided, that is a matter of discretion. So, somebody seeks information, files an application for information, he is deputed for reconciliation of accounts with accountant general office for a week. The demand of fees is made, he does not pay the fees. The application get rejected. Somehow, he again get deputed on some training. It happens know. So, there are many things that happens in office..

**Participant**--One Judicial Officers has asked for the copies of the ACR, an information under the RTI Act. Whether this information can be given to him?

**Hon'ble Justice BS Chauhan**-- The Judgment of the Supreme Court ACR of the judicial officers whether it is good or bad what may be, not only those which has adverse effect, therefore under the law or even otherwise you are suppose to give the ACR's. So you furnish it. If he is aggrieved let him challenge it in a judicial side. ..Because we have created so many problems, we have created so many Bhasmasurs for ourself. Article 21 explains this that. In Now if I am getting outstanding throughout my carrier why did you gave me very good. If you work sincerely, my assessment is you will never be assessed outstanding. Who is assessed outstanding who is standing out the gate of reporting officer and does not work at all. If you work sincerely you are bound to make many mistakes, so can never be outstanding. Outstanding are only those who do not work.

**Hon'ble Justice Ravi Tripathi--** The work is very clear out standing

**Hon'ble Justice BS Chauhan--** Standing outside. The gate of the reporting officer. Had we be outstanding would our country be in such a mess. Everywhere there is a problem. How we are, we are good or average. But we have unnecessary classify as very good, extraordinary..So many problems what extraordinary. If we are extraordinary then why there is a backlog of 10 lacks, 20 lacks of cases. 2.5 crores of cases pending in the court. Because we are standing outside and not in the court therefore these pendency are there.\

**Participant--**Sub clause 4 of section 6 provides the information in the form of floppy, disk, compact disk Some RTI applicant using this as a tool seeks copy of all judgments of the High Courts to be recorded in the compact disk and given. For disposing of such type of application we take the assistance of section 9 which says that an information may ordinarily be provided in the form in which it is sought unless it disproportionately divert the resources of the public authority. We reject their application using this term that the information sought by you requires disproportion of our available resources. So the information cannot be provided. That's how we reject the application my lord. But they go on appeal using the ealier provision which I told and they say no you give all the judgments through the printers the law generals in the compact disk form and you have to give the judgments free of cost to it to and under the RTI Act you are bound to give us. If we ask the purpose, further they say no no under the Act you should not ask the purpose for which the information is sought.

**Hon'ble Justice Ravi Tripathi--**The lordship that why said that that is the problem with the Act. But then again a suggestion pass an order which think is proper and then bring it on the judicial side..What else can be done. If the means are unreasonable you have to meet with the unreasonable means only and you cant help it.

**Participant--**And the judgment of Hon'ble Justice Raveendran Central Board of Secondary Education & Anr. Vs. Aditya Bandopadhyay that case also we are using.



**Hon'ble Justice Ravi Tripathi**—And beside that you can ultimately approach the High Court on the Judicial side..Yes..Even if it is been allowed by the appellate authority otherwise printing cost give Rs 3 and say 1 lacks of pages are there you deposit 50%...

**Participant**--This is also we dispose of some applications my lord because information sought by them goes to lacks of pages..

**Hon'ble Justice Ravi Tripathi**—See what happens in Gujarat High Court on Hon'ble judge took a bribe that no application of certified copy should be kept pending. So he make the staff to work overnight and 50,000 cases judgments and orders printed. The pages were running into lacks of pages and then nobody came to take them. They were all required to be destroyed. When that came to my notice I made them compulsory that High Court will not entertain any application without putting the assessment that this would be the number of pages and this will be the estimated cost and that cost should be deposited and then only the copies is to be prepared. The moment it was place on notice board that 100 pages you have to pay Rs. 500 half of the application they did not turn up. So you have to find out some practical solutions. That was all waste that lacs of pages which were prepared in certified copies, they were all in waste, public money, the staff that we put the labour everything was waste. So Something you have to find out the practical solutions.

**Hon'ble Justice S. Vimala**—Under section 8 if the disclosure is disclosure is the detrimental to the economic interest of the state we can reject it. We can use section 8 A. to reject it.

**Hon'ble Justice RC Chavan**--See as far as you copies of CD is concerned don't say no, put a fees which is realistic..what is the harm. Anyway our judgment are on the website, anybody can get them free of charge, but somebody wants to pay, let them pay what is there....What is secret about it . Only the thing is that keep realistic cost, not just cost of the CD but also the cost of getting transferred into CD that is man power cost, your server resources you can calculate that and then you can fix the schedule of fees and say that this is the cost which will discourage the person. Otherwise the information

is available on the website, why he should seek this information. Make it little difficult but not very difficult. Don't say 5 rupees per page. No that's not correct.

**Participant--**You rightly said your lordship all the access we can made in public domain...

**Hon'ble A.C. Upadhyay—**The practical point of view is this I want to again suggest that you must keep your records ready. There are certain information which you have to be..sometimes what happens you know, non availability of the records you take time; sometimes the records are lost. This thing should not happen. As far as possible, practically I am telling you, you should try to digitize your records. Tomorrow, when you want to furnish the information you can furnish the information immediately.

**Hon'ble Justice Ravi Tripathi--**So anybody else. Yes.

**Participant--**My lord I want to say one thing.. Hon'ble Justice Ravi Tripathi— Yes. One person wants the caste certificate, I was PIO my our Justice Gokhle said we have the record why not to give and we gave the caste certificate and nothing happen later on.

**Hon'ble Justice S. Vimala--**I only want to invite you attention to one paragraph of the Judgment in Central Board of Secondary Education & Anr. Vs. Aditya Bandopadhyay & Ors. (Civil Appeal No. 6454 of 2011, it has been circulated to all of you; it is helpful to us in removing the misconception about the RTI Act. That is number 1 is RTI provides access to all information that is available and existing, the underlying words are available and existing. If it is not available and not existing there is no necessity to provide. Second this is it is subject to exemption of section 8 of the Act. Once an application is filed just go to section 8 and see under what circumstances it is being exempted. Number three the Act does not cast an obligation upon the public authority, to collect or collate such non available information and then furnish it.

Number four, It is not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. If somebody is providing it is there interest and we are not required and what is not required has been given and this judgment has been taken note by Ministry of Law and Justice and they

have circulated this with the circular for handling this RTI act to all the high Courts even and they are also following it. This will be of great assistance to all of us to handle RTI inquiry. That's what I wanted to say.

**Hon'ble Justice Ravi Tripathi**--So with this you have the idea of Registrar Administration of the role and the responsibility under the RTI Act. Friends I want to put a word of caution that the RTI Act has a very good objective in mind. But it is the misuse of the RTI Act by certain people as the lordship already depose in the beginning that they only one business till morning to evening that they go on to file RTI application to collect information and at a given point of time when they are able to misuse it by blackmailing or something. Our approach should be as far as possible we should not have a tendency to create a serious havoc. We should have a tendency to give information. That should be our approach....Our approach should be that we are open to give our information and so that they should have that faith that there should be transparency in the matter. Basically that is the object when RTI was brought otherwise in a given case we can have all this resort which we have discussed. Thank you.

**Dr. Amit Mehrotra**- So, with this we are concluding this session and I am thankful to all the resource persons on the dias for giving such a great insights on RTI. Now we will be breaking for a lunch and before lunch I will be requesting the dignitaries on the dais and the participants to kindly assemble under the porch for a group photograph as a token of remembrance. Thank you.

### ***Session 8: Appointment, Promotion, Transfer – posting, Seniority Registrar (Administration)***

**Hon'ble Justice BS Chauhan**—My opinion is that the academy is taking of so much care so we also have to do something gain, go back with certain understanding, learn to that it can be compensated. So now this session basically deals with appointment, promotion and transfer posting. So, far as promotions are concerned they are carried out with the statutory rules; whether they are of the judicial officers, staff of the High Court. Only problem is there is always be the pressure of the union of the workers that

promotion should be there due to the seniority and under that pressure most of the High Court has amend their rules and mostly the promotions are there on the basis of seniority giving go by to the merit. That's why we are suffering. When we make the transfer, it is always the grievance of the judicial officer that some people manage at good place and those who don't have God father in the High Court they are sent here and there and particularly in a big State. So there are always certain grievances because transfer, posting etc. does not fall under any kind of stigma or any kind of punishment, it cannot be taken a serious matter rather it is a matter of management. How do you manage you next posting that depends upon you skill but as a Registrar General, it is your duty to see that innocent judicial officer should not suffer because those judicial officers who can manage always get a posting at a very good place. They can use it by giving fake medical certificate my wife is not well, my mother is suffering from cancer for 20 years. So these are ok..but the basic problems arise is with the appointments which is most serious problem today..Now we deal with this first and then will come to the other issues. Prior to the commencement of the Constitution, there were no Article 14 or 16 under the Government of India Act 1925. There could be any appointment as per the existing Statutory provisions. This is the situation in 1950. But after the commencement of the constitution it is mandatory for everybody that the provisions of the Constitution is not be not violated. Why it is so? As the student of law we must have here the theory of Grund Norm. In law there is a hierarchy of law and ultimately you reach a stage when hierarchy comes to an end.

Suppose a police officer comes to arrest a person and the person can ask him how do you arrest me. I am a respectable citizen and Article 21 applies to me. I am entitle for the protection. So, he say that I have warrant too arrest you. So I arrest you. Whatever you want to say you say before the magistrate. He goes to the magistrate and say the same question who are you to remand me, I the respectable citizen. He says Cr.pc provides. Ultimately, the questions comes who has authorized you the constitution. The Constituent assembly made the constitution. The Constitution is the highest Grund norm. No body can challenge the authority of the Constitution. Because nobody can say this provision violates the provision of the constitution. Now debate is going on challenging the validity 499 of IPC in the Supreme Court is pending. Validity of the

various Acts is under challenge. But you can't challenge the provisions of the constitution. Why it is also a law. It is a law but supreme. You cannot challenge it. According to Grund norm theory it is the highest norm and you are not permitted to raise any question on its validity. This is the reason why we have to respect the constitution and everything has to be govern by its basic theory introduced by the Constitution.

So far as the service matters are concerned kindly read Article 13 (1) and (2) of the Constitution. Let us see how it comes so that you can understand the basic principles and philosophy of appointments. All laws in force in the territory of India immediately before the commencement of this constitution, in so far as they are inconsistent with provisions of this Part, this part means Part III of the Constitution of India, shall be void. Second, the State shall not made any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause, to the extent of the contravention, be void. Therefore, Article 13 (1) and (2) says that any law existing prior to the commencement of the constitution shall be void if it hit by any part or any article contains in part III of the constitution that deals with fundamental rights. Secondly, No State is empowered to make any law contravening the provisions of fundamental rights. Now come to article 372 Continuance in force of existing laws and their adaptation; same things has been said there all existing law which were existing prior to the commencement of the date of constitution will continue provided they are not hit by part III of the constitution. If parliament wanted to continue it can be adopted according to the law or can alter or modify but it should not contravene the part III of the Constitution. Now, what is so important in the part III of the Constitution? Article 14 and 16. Equality before law. State shall not deny any person equality before law or equal protection of laws within the territory of India. Therefore, you cannot discriminate. Every citizen is equal so far as law is concerned. The 16 Equality of opportunity in matters of public employment. We are dealing with the public employment. There shall be equality of opportunity for all the citizens in matters relating to employment or appointment to any office under the State. So, all citizens and all persons should have equal opportunity to be considered appointment is not a right. Right only to be considered for an appointment is a right. And whoever is more better have more merit can be selected. A reservation in favour SC, ST, OBC fall within the exception contain in the Article 15

and 16 of the constitution. So these are the basic provisions in the constitution which gives the employment.

Now at the same time you see Article 142. Because many a time problem arises that Supreme Court can do this do that, make the law change the situation. Enforcement of decrees and orders of Supreme Court and orders as to discovery etc.- The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe. So there are mark distinction between Article 141 and 142. The law declared by Supreme Court shall be binding on all courts within the territory of India. Now any law on service matters declared by Supreme Court in India is binding on us even it is wrong unless it is corrected by the Supreme Court itself. 142 gives extraordinary power to Supreme Court to do complete justice. Now in the court..Now the question does arise that the Supreme Court...What is the effect on the decree, compromise decree which is contrary to the statutory provisions, can it be enforced. No..Were there may be compromise in court in contravention of the section 23 of the Indian Contract Act..It is devoid of the policy..it cannot be enforced..Now the basic question was as to whether Supreme court can pass an order in contravention of the statutory provisions..Because the problems arose many times without considering these issues...So there are 21 Judgments of 5 judges of the Supreme Court to the effect that you can invoke the facts to do the complete justice. By no means are you authorized to decide a case in contravention of the provisions. You laid down the correct law then pass the order that in the social facts and circumstances of the case we pass the following order to do complete justice between the parties meaning thereby the law made there in is not binding on all courts in India. This is the basic difference between 141 and 142. Now a person came before the Supreme Court for transferring a matrimonial case from one court to another court. The court .said husband wife .. .you don't want to live..alright we grant you decree of divorce by consent.. file a litigation...Very highly qualified doctors both, filed a petition of divorce under section

13(1) (B) divorce by consent. The family court in its first motion admitted the case and asked to appear after 6 months..Knowing well that if he will go to the Supreme Court, Supreme Court will grant the decree of divorce.. easiest way..see what do they do..we come from a very far place so transfer this case from such and such place to some other place...in Allahabad and then instead of arguing the transfer petition advocate...my lord I don't want as it is a matter of mutual consent.. then why don't you grant....Now I quoted all the judgments and this is the reported Judgments Manish Goel AIR 2102 SC 1099 and rejected their case saying if 6 months period is given by the Statute..the court might have considered 6 months and opportunity to the spouses..to reconcile ..If we grant divorce decree in Supreme Court by invoking Article 142 without completing that period of 6 months it will defeat the very purpose of this uniting this second motion. There must be no occasion. Parliament have said whoever appear before the court and file the application in 13 1 (B) and if the parties are examined and if they agree they will be entitled for divorce..Why they have put this 6 months bar..Reason was give them the opportunity to reconcile. They may agree to live together and may not insist for decree of divorce. So, the purpose is defeated if we dispensed with this period of 6 months statutory requirement and I have laid down that Article 142 does not empower the Supreme Court to pass any order which is contraventions of this statutory provisions because it goes against the intention of the legislature, the purpose is stand defeated..Now what is the option left..Any law, which give any statutory provisions made by either any State or by the High Court which runs or contravene the Provisions of Article 15 or 16 of the Constitution of India is be void under Article 13 (1) and (2) and 372..Therefore, any law permitting the appointment except those reservation they are exceptions or employing persons on compassionate grounds which are permissible..every other appointment must meet the minimum requirement of Article 14 and 16...Equal opportunity to all the persons..for appointment and promotion. Now please take this compilation first issue is on page 1, Calling for names from employment exchange and appointment/employment without advertisement. At one time upto 1992 there was several judgments of the Supreme Court that the minimum requirement of Article 14 and 16 was that if you send a request to an employment exchange they have to call you for any post.. now in 1996 Supreme

Court said many persons who have not registered themselves in the employment exchange are deprived for being considered therefore in addition to that you have to advertise it and employment exchange is not liable, therefore, every post has to be advertised and all those judgments from the very beginning till 2014 have been quoted there in the first 3 pages..Now, the second appointment against the rule of law..Statutory rules have been framed in consonance with the Article 14 and 16. Therefore, any appointment made in contravention of those rules is void and cannot be enforced. So, all those judgments are there..Now if you see the last Purshotam V Chairman, Maharashtra State Electricity Board, the Supreme Court has held that appointment should be made strictly in accordance with the statutory provisions and a candidate who is entitled for appointment, should not be denied the same on any pretext whatsoever as usurpation of the post by somebody else in any circumstances. Therefore any appointment made in the contravention of the rule is void. Now for time being we are not concerned with the appointment..Many time cases come we have remove the person without holding enquiry without giving a show cause notice so many cases court ask them, Supreme Court particularly , how you were appointed, While making the appointment do you made any application. How do you know that there is a vacancy existing..Under what circumstances, somebody must be knowing you, told you to make application and you have been appointed..So, Supreme Court held that you have been entered into service in a wrong way therefore your appointed is void. So, you cant be permitted to go from the front door because your appointment is void. It was held that those who comes from back door should go from back door. You cannot challenge your termination.

Why it is so, if the basic order itself is void and if the appointment is void you are bound to go. You are rightly been send out. Therefore, no protection of law can be given to a person who has the appointment which is void and not in consonance of Article 14 and 16. So all those judgments are there at page 4...If an persons appointment is void he cannot continue..that is another question that sometime nobody challenge..If it happens in High Court then who will challenge and were it will challenge...This is all the difficulty we made mad the mess..nobody else have done it. We are responsible..There is complete darkness in the lighthouse. I don't question the appointment of the secretary,



cabinet secretary...even in temporary situations, urgent situations there should be an information to the standing committee that there is a such an urgent need that we cannot wait for the regular selection process. Therefore, we are appointing them for a period of 3 months, within this period of 3 months we will re advertise the vacancy and consider every eligible candidate and these person who are appointed shall not claim any rights or priority from others..This should be clear stipulation but if purposely if we want to perpetuate the fraud. How do we raise the grievance, we are the High Court ourself. We are the law and we tell the law to everybody, you are in jail you have violated the provisions why? **Hon'ble Justice RC Chavan**--Because the we are the law my lord..Ha.ha..

**Participant-** There is Article 229..

**Hon'ble Justice BS Chauhan**--Wait wait I will come to that also there is a separate heading...

229 part 2 of the Constitution read it..how does it override part III. Yes this is the power of Chief justice as nobody can challenge it..229 (2) and 235 there are two provisions. Both these articles are in part VI. Now Article 13 says Part III will override..please consider that how Chief Justice will order anything under this part VI and overrule part III. So what the power of Chief Justice..Court are the to make the law and not to violate the law. If you and your Chief Justice will violate then where the people will go and lodge the complaint. But have you ever consider that part III will not be violated by part VI or power conferred by Chief Justice under part VI...creating the problems when others come how you can do it..We are doing because we are the law. This is the basic problem..But keep it mind that nobody in violation of the fundamental right can make the law or in contravention of part III.

**Hon'ble Justice Ravi Tripathi**---But lordship may give some discount for lordship...Ha,ha,ha

You are my lord why we say my lord why it is so. We have complete tolerance, we have patience and we are here to do justice beside knowing the law..I know this question will be raised of 229 that is why I asked you to read article 13 (1) and (2) of the Constitution

because most of the person say about article 229 and 235 without knowing or going through article 13. This is the basic difficulty....I have discussed in Renu Bala case you can go through it...

In Mughal period you were aware about the geographical situations of the Delhi. There is a river to reach Red Fort..So they use to cross the jamuna river by boat other side there was a jungle It go upto about 50 Km. Many of them latter on started living and the place was said to known as

now as Shadra..Learned district judge advertise 10 vacancies for class IV employees. He prepared the list of successful candidates, first list 72. If there are only 10 vacancies at a time and then he appointed 12 of them, now see how the fraud is been played..These 72 people belong to different district of the Uttar Pradesh. They were asked an application to transfer their districts..home towns..Those applications are with the district judge to be transferred to the High Court. All 12 were transferred to their home towns so there are 12 vacancies...10 vacancies were advertised and 12 were transferred to the district courts again the person appointed was transferred...so this process continue and all 72 persons got appointed. Then somebody in the High Court raised this grievance because they realize that there is something wrong in the appointment process and it can't be go like this. So, effect was somebody application was pending that why I have been not considered...then the question was how the appointments were made..what reasons such appointments have been made and I have decided this Bhagpat, which was the hunting grounds for mughals become the hunting ground for our judicial officers whether they are sitting in a district or in a High Court and terminated the service of all the 62 candidates except the 10 persons who are in the merit list first and all 10 persons were transferred wherever they were posted to High Court and 62 persons were terminated by showing the show cause notice that your appointment is void being hit by Article 14 and 16. Go home... Supreme Court upheld the judgment.. That's why this problem was so serious. Now what I said is a reported Judgment.... And I also said that that there can't be transfer for further five years. First see no district judge can appoint the persons more that the vacancies advertised. Unless a person complete, his service for 5 years cannot make an application for transfer. So ultimately the fraud revealed, they said that since may I not

be permitted to get back for what I have paid for my appointment or permit me to continue for at least one more year so that I can recover from the salary for what I have paid to so and so. Ultimately, the district judge suffer because if you get the instruction from the high Court to appoint one more person and there are only six vacancies advertised, how you will accommodate. Then be ready to face the consequences your ACR will be spoiled. I want to protect the judicial officers, Purpose was why they should face the humiliation on our telephone. Because in the high court the transfer was managed by the High Court and not by them. District Judge had no authority. So, this was the basic Judgment to think over how our district judges are forced to do something. which case. Uma Devi.

**Participant** – I want to say my lord. There is a judgment of the lordship were 5 district judges were sent home with 50 % of their pension...

**Hon'ble Justice BS Chauhan**--No No I know because I have initiated the inquiry against them..But when a district judgment make a statement on oath in the enquiry that I have been forced by the High Court to do it, impaled the High Court Judge so and so. How to do that? That is the problem. See in it very difficulty for a judicial officer to take the name of High Court Judge. But when you are losing your job, file a statement.

In Rajasthan I have issued a notice to one judicial officer who was holding the inquiry, he annexed the list, he appointed his own relative without doing any formality..When the inquiry was initiated against him, he filed a list how many class IV and class III employees has been appointed by a Judge. Fortunately my name was not there in the list because I have never appointed any class III and IV employee in my life. I have appointed large number of Judges in my life but not class III and class IV employee Ha, ha..and only for removal not for appointment because there was surplus staff everywhere. You cannot raise the grievance that there is a shortage of staff. Staff is everywhere surplus, useless they are sitting. So what he took the defense that these are the persons appointed by so and so judges so what fault I have committed. And I have nothing to say. Implead all of them. I said I am no one I am just the inquiry officer appointed by the Chief Justice. I am not holding the inquiry against those..They are not

the delinquent before me. Not the appointment of such persons are challenge in this inquiry. So as far you are concerned you admit it. Therefore, only punishment is removal. The matter went upto Supreme Court but noting happen. But this kind of defense 4 – 5 district judges were lost their job. But they have done under the pressure of the High Court. So, why does our judicial officer suffer for it. That was in my mind.

**Hon'ble Justice Ravi Tripathi--** Beside this there was another theory, you follow unlawful orders and take as many as benefits or expected to take the benefits you must be ready to take the consequences thereof also. This plea came before the High Court of Gujarat also. One Chief officer say that this illegal act I have done because the president of the municipality told me to do this. The High Court said that at that time you followed that illegal instruction to please the president of the municipality to take whatever benefit, whether you have taken or not that is not a question, now you be ready to take the consequences of having done that illegal thing.

**Hon'ble Justice BS Chauhan—**See this plea is rejected in November trail 1946 that this defense is not available to you that have killed so many people following the orders of superior authority. So that was not acceptable because in this case I say that Bhagpat become an hunting ground for our judicial officers. No it was a local, at that time I was in Allahabad High Court. This is District Judge Bhagpat and another v/s Anurag Kumar and others. 2005 volume 2 education and service cases (Allahabad) 1509. Because here we have passed very serious directions removing everybody without providing any opportunity of hearing, nothing, so get out. It is a very detailed judgment.

Now kindly come to page 5 Appointment in absence of rules; these are the judgments of the Supreme Court which says that there may be a situation where the rules have not yet been framed. Suppose a new High Court has come. It has not allotted the rules farmed by parent High Court from which it is been bifurcated. Or in this new re organization of this Act creating the new High Court. But suppose there is no provision then the Supreme Court says that you have a right to make the appointment but ensure the compliance of Article 14 and 16. Advertise the vacancy consider the persons on

merit and select the most meritorious persons. This is the gist you can appoint. Absence of rule is no bar in making appointments.

Appointment by way of misrepresentation or fraud is voidable. Many a time you seek information have you ever being called in criminal case. They say no. Simultaneously, some of his friend or neighbor informs the court that he is involved in such criminal case though he was acquitted. Here the acquittal will not take way from the declaration that I was never involved in a criminal case. Making a declaration that I was not involved itself is a fraud and fraud vitiates everything. But the appointment is not void but voidable. Because even after knowing that he has obtained the appointment by misrepresentation the employer does not want to proceed against him, no body can enforce the employer to take action against him. Therefore, it is said it is voidable. Now in this appointment made over and above the vacancies advertised I have quoted most of the judgments of Supreme Court which results to up to page 10. Once you fill up the number of vacancies advertised selection process come to an end automatically. Therefore, you become functions- officio so far as that advertisement is concern. If that selection process is over you cannot be permitted to reopen it and make further appointments. Its chapter is closed. If vacancy has occurred re-advertise it fill it up...

Then page 11—Appointment- Select list expired – No appointment is made. Every statutory rules provide what will be the age of select list. A person whose name is appeared in the select list of the candidate cannot claim a right to be appointed. You had a right to be considered as an appointment. That consideration is over you have found suitable and you name is appeared in the merit list. But you cannot have any grievance if we don't select you. However, the grievance arises if person below him in merit in his category is selected. And Once a select list is passed you cannot make the appointment because the select list even if remained unexhausted dies his natural death. You cannot revive it. Statutes provide a age for it and therefore it is out.

Now, the most important comes to this judgment in rem. Renu was a judgment from a Delhi High Court. Actually, she was selected in the district Tez Hazari, court in Delhi. She had a grievance for appointment. We have issued notice to all the States to all the High Courts and raised the issue how do you make the appointment and there we have

discussed the entire law giving reference to 43 cases earlier on this issue and issued the guidelines. There we have considered all the law. See page 331 paragraph 5 of the compilation entire judgment is there it is said that Rule of law is the basic feature of the Constitution. There was a time when REX was LEX. We now seek to say LEX is REX. It is axiomatic that no authority is above law and no man is above law. Article 13(2) of the Constitution provides that no law can be enacted which runs contrary to the fundamental rights guaranteed under Part III of the Constitution. We wanted to deal with the power of the Chief Justice therefore we have started with article 13 of the constitution and then we referred to large number of judgments and then come to 229 and 235. Kindly come to paragraph of 20 of this judgment power of the Chief Justice- Even under the Constitution, the power of appointment granted to the Chief Justice under Article 229(1) is subject to Article 16(1), which guarantees equality of opportunity for all citizens in matters relating to employment. 'Opportunity' as used in this Article means chance of employment and what it guaranteed is that this opportunity of employment would be equally available to all. Now then paragraph 22- Article 235 of the Constitution provides for power of the High Court to exercise complete administrative control over the Subordinate Courts. Therefore, in this we discuss the scope of power of Article 229 and 235 and all the judgments on this. Now, ultimately come to paragraph 25 this is the Supreme Court Judgment, which we do not agree it gives power of the Chief justice to make the appointments. But this was made in 1991. From 1991 two articles of this constitution particularly 14 and 21 had been interpreted completely and differently because whatever was the scope of article 14 and 21 now has been enlarged to an extent that it covers everything. R to breath, R to sleep, R to food, R to employment everything. From 91 judgments much water has flown. Therefore, the power given to the Chief Justice under this a in Puttaswamy is not a good law today. As article 16 has been interpreted differently and then come to the conclusion in paragraph 29 – in view of the above, the law can be summarized to the effect that the powers under Article 229(2) of the Constitution cannot be exercised by the Chief Justice in an unfettered and arbitrary manner. Appointments should be made giving adherence to the provisions of Articles 14 and 16 of the Constitution and/or such Rules as made by the legislature. So we stated Article 229 (1) (2) and Article 235 is governed is controlled by

Article 14 and 16. Now what are the directions they are in paragraph 35. These are some directions which made some problems to the my lords..ha ha..

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

ii) To fill up any vacancy for any post either in the High Court or in courts subordinate to the High Court, in strict compliance of the statutory rules so made. This rule must be in conformity with Article 14 and 16 In case any appointment is made in contravention of the statutory rules, the appointment would be void ab-initio irrespective of any class of the post or the person occupying it. So, Now through this we have accorded the children of staff and then it becomes an problem..Next

iii) The post shall be filled up by issuing the advertisement in at least two newspapers and one of which must be in vernacular language having wide circulation in the respective State. In addition thereto, the names may be requisitioned from the local employment exchange and the vacancies may be advertised by other modes also e.g. Employment News, etc. Any vacancy filled up without advertising as prescribed hereinabove, shall be void ab-initio and would remain unenforceable and in executable except such appointments which are permissible to be filled up without advertisement, e.g., appointment on compassionate grounds as per the rules applicable. Before any appointment is made, the eligibility as well as suitability of all candidates should be screened/tested while adhering to the reservation policy adopted by the State, etc., if any...Next

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

v) The High Court concerned or the subordinate court as the case may be, shall undertake the exercise of recruitment on a regular basis at least once a year for existing vacancies or vacancies that are likely to occur within the said period, so that the vacancies are filled up timely, and thereby avoiding any inconvenience or shortage of

staff as it will also control the menace of ad-hocism. This problem we create first that there is no staff then make adhoc appointment and permit them to continue, give them break after every three months and then make them continue and then come to Uma Devi. So so many problems are there but this judgment...

**Hon'ble S. Vimala**—My lord this judgment has been circulated..

**Hon'ble Justice BS Chauhan**-- No no this is there but has not been enforce it. See we sit on a dais. So if any selection is made which does not require Article 14 and 16 like court termination then you say in the appointment letter that he cannot have any legal right to continue..

**Participant**--It was said that for the appointment of one day also you have to follow all the procedures and rule..

**Hon'ble Justice Ravi Tripathi**-- All appointments except by court --- and compassionate. But for all your information in Gujarat Government had said go bye to compassionate appointments and Gujarat High court has adopted that policy and Gujarat High Court has no provision of compassionate appointments.

**Participant**--My lord when the computerization was started on the decision of e-committee in all the court particularly in subordinate courts the system officer and system operator was employed on contractual basis from outsourcing some agency. Now at present the High Court are framing the rules, incorporating the provisions of absorptions of those people. Now in respect of some of the districts those people will be absorbed according the rule. The rule provides absorption. And in respect of others article 14 and 16 hits. Now as far as the appointments is concerned for system office and assistants in computer section. This type if contrary position has been followed.

**Hon'ble Justice Ravi Tripathi**--No there will be no difficulty. The moment somebody challenges the absorption and even it is under the rules the rules can be challenge as it is contrary to article 14 and 16. Because if the rule is there for absorption can be provide for preference at the most that there will be a selection and they have an



experience and because of the experience they have given some percentage of preference or watiage or you cannot simply say that they will be absorb otherwise this will be something legalizing your own illegal action by providing the rules that cannot be done....If it is possible to find out the way no difficulty. If it is not possible, it is not possible.

**Participant**—In Tamil Nadu my lord even though the technical members are selected through the HR agencies, procedure was followed by conducting an interview with one Hon'ble judge on the board and two persons from NIC. So everything is done accordance to rules.

**Hon'ble Justice Ravi Tripathi**-- See if everything is done accordance with law then there is no difficulty otherwise also it will not hit by the judgment

**Hon'ble Justice Sadanand Mukherjee**--You are talking about due process, some persons have been appointed in due process.. If due process has been followed, the procedure has been followed then the absorption there is no difficulty.

I need to tell you one paragraph form Uma devi as it is the Judgment of 5 Judges:

Paragraph 41; It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution of India, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23

of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality. And so and so...Therefore the constitution Bench also noting doing unless you ensure the compliance of article 14 and 16 which are the basic feature of the constitution. No other provision, no other rule, no sympathy will work out and override this article 14 and 16.

To the Computer section, we have appointed system officers on the contractual level and because of this able judgment we have conducted a competitive examination and in these all contract employees were applied and except on all were selected and being appointed..We have followed the judgment..

**Hon'ble Justice RC Chavan--**Very good

**Hon'ble Justice BS Chauhan--**Where the persons are already working they may get some benefits, some relaxation of age etc. and ask them to compete, if they succeed its well..

**Hon'ble Ravi Tripathi--**So that giving relaxation of age to the persons already in employment is not prohibited by this judgment. This Judgment says that simply you cannot play fraud on law. In gist, I want to say this that this judgment just say this.

**Participant---**As your lordship knows that recently we are facing difficulty in recruiting the stenographer. So recently, we have recruited 221 stenographer, typists out of them 13 or 14 of them are studying the stenography and even High Court is thinking to conduct one training programme for them...

**Hon'ble Justice Ravi Tripathi--**See there are two alternatives....The judges get trained themselves for dragan Programme or you trained people as a stenographer which will find again difficult..It is high time when judges themselves have to start finding out the solution to the stenographer and in High Court of Gujarat we are at least couple of judges who will type from themselves on the laptop rather than waiting for the stenographer to come. So there are only two alternatives and I am sure stenographer

will be coming a rare commodity in the two to three years more Not even 5 years. You will have

**Hon'ble Justice BS Chauhan**--Next generation will not require stenographer

**Hon'ble Justice A. C. Upadhyay**---What one thing has happened in Guhati High Court all judicial officers were provided with Dragan software. All of them..

**Participant**-- My lord I want one suggestion my lord regarding vacancies my lord when we are giving the advertisement, if we use the word vacancies may increase or decrease in that way my lord to what extent the select list may continue

**Hon'ble Justice Ravi Tripathi**--No No the law is very simple and clear on that 10 vacancies can be increase or decrease in 72 list.

**Hon'ble Justice BS Chauhan**--I will tell you now there was a clear provision under the Motor Vehicles 1939 section 47 clause 3 containing the same provisions ..the number of vacancies is available today is 10. However, the number of vacancies can be increased or decreased at the time of consideration. Now Supreme Court has considered this provision that giving the arbitrary power to the authority to increase or decrease will open the floodgates of corruption. This increase or decrease shall be considered as a projection. Suppose this room has the length 50 ft. So this extension can be but if the room itself is 20ft, you cannot have an extension of 70Ft. **Participant** --No my lord..

**Hon'ble Justice BS Chauhan**-- Right extension means some projection. Therefore the law is, if you have advertise 20 vacancies at the time of making the selection the authority must record the reasons that because of such and such resignation of A or demise of B, we could not anticipate these vacancies, it is desirable to fill up these vacancies in these circumstances. Therefore, instead of filling 20 vacancies we are filling 22 vacancies. This is one. You want to decrease.. Before starting with the selection process, the authority must record three persons who has gone on deputation has come before time to parent department, two persons is to transfer from other places so our vacancies have been decreased from 22 to 15 and we will fill up only 15 vacancies. You can't just increase just 4 times or 5 times. That advertise 10 vacancies and appoint 72 and transfer them somewhere else. This is not permissible in law. You

may increase or decrease but give the reasons. Why you want to increase or why you want to decrease. See, the whole purpose is you should act fairly, honestly otherwise you every action will hit by Article 14 as being arbitrary and entire selection process will get vitiated....You know such and such person is retiring in six month so those vacancies are already been taken into consideration. Vacancies which occur for unforeseen reasons that resignation, deputation, proceeded to study leave and gone abroad so many problems are there so unforeseen reasons if vacancy has arisen only then you can increase. You cannot multiply because 5 other persons have also paid money therefore I will fill up 25 vacancies and not 20 vacancies.

**Participant**--Now the Supreme Court has deprecated that for increase or decrease in the advertisement.

**Hon'ble Justice RC Chavan**--These are the vacancies which will be absorbed in the next year

**Dr. Amit Mehrotra**-- So, at the end of this session I request you all to proceed towards the library but before proceeding towards the library I request all the participants and resource person to have a tea break and then you may proceed toward the library. Thank you.

### ***Session 9: Matters Concerning the Infrastructure and Budget***

**Prof (Dr.) Geeta Oberoi**—A very good morning to all of you. Hope you had a good saty and good sound sleep. So, today actually is the last day of our meetings. There are three sessions as you can see. Each of one hour each and you have library reading and computer skills. So the first session is about infrastructure and budget. How many you are actually making budget. Are you indulge in budget making activities. Three four..OK. Of course I would like the session would be taken by Justice Vimala can start, She can ask question. Maam was in budget making exercise. Can you guide or can you tell us, how you go about your preparing your budget. Do you prepare for whole judiciary. Own budget. So you only prepare for High Courts and guide the district courts.

**Participant--**Madam. Earlier the budget of subordinate judiciary was prepared on the basis of the requirement by the law department. But after establishment of High Court of Tripura in 2013, last year our High Court prepare the Budget for 14-15 and also for High Court.

**Prof (Dr.) Geeta Oberoi—**High Court prepares for itself and as well as of district courts.

**Participant--**Yes madam. So by September we collect all the data and information what is required form the subordinate judiciary. Then we compile it and send it to the law department and then to the finance department.

**Prof (Dr.) Geeta Oberoi—**Now I have one question as we have next week a course on Budget preparation exercise were the people of ministry of finance are deputed. So, I am just curious to ask two three questions regarding that. One, when you are preparing budget do you see what was done last year or do you see what is there allocated in a central grant. What is expected that you will get or do you see the needs and quantify all the needs.

**Participant--**Central grants come in finance commission and for this we have a separate plan of action and for day to day expenses we have a separate budget which is given by the State government.

**Prof (Dr.) Geeta Oberoi—** I just want you people to be acquainted. Many time judicial officers come for different programmes and they always complaint, we don't have this, we don't have that, some people even said that they don't even have papers.

**Participant--**That is because the judicial officers are very conservative in as spending money. That is one of the reason it often happens.

**Participant--**My lord what happened in Tripura, we asked them what is you requisition. They send the requisition and entire money was given by the government of Tripura. After three monts money is exhausted.

**Prof (Dr.) Geeta Oberoi—** So, needs are more and money is less.

**Participant--**I think it was not calculated properly. So, again we requested government for additional budget and they have given of course. In Tripura Budget is not a problem.

**Prof (Dr.) Geeta Oberoi --**Even there are certain financial principles. Even I learnt slowly I was sitting with the financial consultant that whenever we have a need pen, we will ask as multiply by 3. So requisition should be for 30 pens may be.

**Participant--**That is absolutely correct because as a fact in month of October or November we send our need for the next year. So, it is practically prepared by the law department and the Finance department, the budget is prepared and when they prepare budget. Suppose we send budget of Rs10, they allocate 3 or 4 rupees. So, the need is always more than the allocation.

**Prof (Dr.) Geeta Oberoi --**But you should also multiply because you know this much depreciation would be there in final allocation.

**Participant--** Now we are doing. But in spite of the fact there are some gaps because now the government is saying that that there are two aspects of the matter. One is plan sector and other is non plan sector. The judiciary falls in non plan sector. So when they allocate the budget or money they allocate the minimum amount of it. That is the problem. They think it is better to give one cow or goat to the schedule caste and schedule tribe people than to make a necessary repairing work of district judges courts building. So, that is the absolutely the priority of the government.

**Prof (Dr.) Geeta Oberoi --**Actually when I talked to the ministry of finance people, they say that they never prepare their budget well and they don't defend well. Now for example 13<sup>th</sup> Finance Commission 5000 crores rupees were given which is a fact also this also a fact that we have only spend 700 crores and returned back 4300 crores rupees.

**Participant--** The main drawback of the 13<sup>th</sup> Finance Commission is that judiciary were never consulted inspite of our repeated approaches. Whether under which heads money is to be given. That's why it was a failure. But in 14<sup>th</sup> finance commission they are consulting us. I hope it will be better.

**Prof (Dr.) Geeta Oberoi** --Also utilization certificates. That is major problem. The utilization certificates are never given, therefore other portion of grants we don't get.

**Participant--** In 13<sup>th</sup> finance commission there are certain heads where money cannot be spent. But this appropriation from one head to another head took place in several cases but again from one major head money cannot be transferred to or appropriated to another major head.

**Prof (Dr.) Geeta Oberoi** --Look but that was good know, infrastructure is the major problem and it still remains so.

**Participant--**They have allocated certain funds for heritage building. How many heritage buildings are there in how many States. There are many States where heritage buildings are not there but money are allocated. How to spend. That remain unspent. There were honoristic money was given for the training of prosecutors. So for training of prosecutors you have a infrastructure, you have a State Judicial Academy where you have everything except TA even that is given by state government.. So how will one spend cores of rupees. That was the basic reason why 13<sup>th</sup> finance commission was a failure. Regarding this shortage of funds and papers all that in Jharkhand we have centralized all these things basically for two reasons first is the economy, funds are all the same in all districts. If individual will go for printing then the cost will be more. Second thing that there are certain district judge who are greedy. They want that their office and establishment is well furnished and magistrate and all that are neglected. So to overcome this we centralized it. Thank you.

**Participant**—When we are talking about the failure of the 13<sup>th</sup> Finance commission. Let me give you the example of the Maharashtra. 503 cores were allotted only for morning and evening courts that is 56% of the total budget. They have calculated only on the basis of the working of the courts. It is not practically possible to run all the courts in morning and evening. Only 10% of courts are running in the morning and evening and only we are able to spend the money only 10%. So, 90% of the fund was unspent. Because we are not able to spend it to the other head. So far the infrastructure is concerned we were needed 100 cores, only 53 cores were allocated. Then we have

started utilizing it in the second year, problem is that the heritage committee has to approve each and every work that has to carry out by the agency. It always take much more time even though the work is in progress; but the heritage committee has not approve the work unless that has been completed in all forms. So unless it is completed and certified by the heritage committee, we are not suppose to give a utilization certificate which has been expected by the central government. So far the 14<sup>th</sup> finance commission is concerned..

**Prof (Dr.) Geeta Oberoi** -- But there is a difference between 13<sup>th</sup> finance commission and 14<sup>th</sup> finance commission which we pointed out. Now let me tell you in 13<sup>th</sup> Finance commission they give 5000 cores rupees even though it is in different heads. In 14<sup>th</sup> finance commission even though it is 9700 cores rupees is much more than 13<sup>th</sup> finance commission but then you have to defend your budget. There is a cilch about that.

**Participant**--They have released the figure how much fund they will allot under 14<sup>th</sup> finance commission still the guidelines are not clear

**Prof (Dr.) Geeta Oberoi** -- No No you have to defend your budget.

**Participant**--It has not approved by the finance commission and it is not release.

**Prof (Dr.) Geeta Oberoi** -- They have been released and come to state and you have to defend now. That is the difference.

**Participant**-- One of the shortcoming of the 14<sup>th</sup> finance commission is that establishment of fast track courts. They are telling that we will finance fast track courts for five years. So, were from the officers will come. After five years were they will go.

**Prof (Dr.) Geeta Oberoi** -- Retired judicial officer.

**Participant**--For retired judicial officer, entry level magistrate will come

**Hon'ble Justice Ravi Tripathi**—May I intervene. Friends good morning to all of you. See, possibly the discussion is going in a different direction. Today we are here to discuss a picture is created among the public that the government was so generous that it gave 5000 cores to the judiciary and they have spent only 700 and that gives an



impression as if government is ready to do everything. You people yourself are not ready to do anything or utilize that particular money. In built those difficulties or limitations. Like it was said that 56% was morning and evening courts. At our side there is no spoke person who will defend or speak in the parliament for allocation of budget that these were the difficulties. That is how the budget was allocated, it was for a different purpose and therefore it has not been utilized. Our spoke person is not there. Budgets in courts is in totally unskilled hands and district judge hardly knows anything about the budget. They take out the file of last year budget, increase it 10% or 20% increase and gave it again. So now we are here to discuss the problem how to overcome this. We are not accusing anybody for anything. We are only to find out that something better we can do, so that tomorrow when the fund is allocated to us we are able to utilize it better. And if you know under anticipation that if it is in one major head, it is requires to be change be in time and be prompt to say that particular because on our part there is no spoke person. Nobody going to speak in parliament nobody is going to speak in finance committee that these were the difficulties; therefore this could not be done. The whole burden comes to the judiciary for not utilizing the fund and we are here to find out the solution for that.

**Hon'ble Justice RC Chavan**—13<sup>th</sup> finance commission was spread for how many years. Five years. Did any high court approach the centre government for changing any head. Yes, When, in which year, third year, not in the first year. First year when the fund came nobody even give a thought that how the fund will spend. We woke up in the third and fourth year and your High Court has applied. How many High Courts have applied 1,2 3,4 and 5. Five courts out of how many 20. Heads cannot be changed by us but it can be changed by the government. The government can yes..

**Prof (Dr.) Geeta Oberoi**-- Yes I have attended meetings. They say nobody approach them.

**Participant**—Government can.

**Hon'ble Justice RC Chavan**— Secondly, even in state government when they give us the budget we can't change from one major head to another major head. But there is

always a provision for re- appropriation. If you see the budget they will provide for this and they can do it. Now 14<sup>th</sup> finance Commission has just begun. Morning evening courts also this is not a place to discuss morning and evening courts etc. See, we have to capitalize whatever has been given to us and how we can utilize it. See for morning evening courts, there is a resistance from Bar that is the issue but the common man will be happy if he get freed in the morning because he will be able to llok after his day today work know. He will be engaged in the evening after his work is over. The resistance in from Bar. For morning evening courts we burdened the judicial officers and then everything went wrong. Who proposed this morning evening courts, not the government know. Somebody from our side said that this can be done. In fact we have morning courts working in Mumbai for a very long time. Now, Gram Nayalyas, we could not utilize the money. Our own perceptions about the scheme result in the failure of the scheme. See, we don't have to think the way government thinks. But take the money utilize it the way you like, put it into four corners. This how the executive officers utilizes the money. How do they do? How collectors residence renovated or air conditioned. They put it in some other head. This is required because there are meetings in the collector's house. A meeting hall is to be constructed. Isn't it. There are many things. There is a question of non imaginative implementation of the scheme by the government. As you said that we are conservative, we are concerned about public money. , we are concerned that this money comes from taxpayer pocket. Therefore, it can't be standardize, correct. But for the sake of God don't think of taxpayer money. If you are saving one rupee they have spend it 100 rupee. Your saving will be drop in ocean. Therefore don't indulge in this, if they have given money spend every pai if 10% more it all the better. Now 14<sup>th</sup> finance commission be alert, I am sure many of us absolutely have no acquaintance how budget are prepared and money are spent. Now about heritage committee, Government of India do not want the certificate form heritage committee. It is the local heritage committee which obstructs. Government of India wants certificate form Public Works Department. You have done this work money is spent. You issue the certificate the Government of India. Matter is over. In every High Court there is a Gag in sending the utilizing certificate, money doesn't come. See, they are happy as Justice Tripathi said we have given 5000 core and they could not spend.

Now, they have given 9700 core, you will not be able to spend. We don't have plans for new buildings. They gave 1000 core for new buildings, do we have plans. No. We have not identified that space. If we identify the space, the bar will resist and we could not be able to do. Then how we will be able to do if we tie up our nails with the Bar, nothing is going to happen to judiciary. If you are timid and do not have courage to say no to the Bar we are doomed and a common man is doomed. No facilities are created no additional courts are created. Somebody mentioned about fast track courts. There is a way after 5 years fast track court dies out, there is no issue, but every year your court has some recruitment know. There is that every year there has been increase in judicial officer 10% then we can absorb them...

**Participant--** But state government is not increasing the post by 10%.

**Justice RC Chavan-** Correct.

**Participant--** We have seen that State government is refusing the post

**Hon'ble Justice RC Chavan --**We also have fast track courts and government stop supporting fast track courts. We also have problems. We solved it. Create a pressure. It gets solved. See the whole problem is government gives you money, you say we can't spend it. If government does not give money you say government does not give money. This is not going to work. If you judiciary is independent you should take your decision properly.

**Participant--** But decision is taken by the government and not judiciary. How it can be

**Hon'ble Justice RC Chavan --**Therefore, only 5 High Courts have requested the government to change the third year of the finance commission grants. What is this? You work for five years and then give the budget. That is the problem. The speed of work in our registry is very slow. They are so deliberative. It takes a lot of time. See, don't file fault in government.

**Participant--** Last year we have worked accordingly and submitted the vision statement and we have got the fund approved.

**Hon'ble Justice RC Chavan** --Granted know, the problem is solved now. You have to make a resolve that not a pie of 14<sup>th</sup> finance commission grant will go back. Those who are at the verge of elevation or those who were in the last gage of services would identify the persons who will be here in the next five years who are going to see that every pie is spent. Judges have there own work. It is for us.

**Participant-** Lordship, we have already submitted our plan for 14<sup>th</sup> Finance commission

**Hon'ble Justice Ravi Trapathi**--That very good. Kindly tell to your colleagues also to do the same thing. That is why we are here together, that they should also submit their plans for 14<sup>th</sup> Finance commission. See the difficulty with the judiciary is that they feel very proud if they are able to work with one person if the requirement if of 4 persons and Gujarat High Court I know personally, the person will work till 9 O clock when computer system was not there and they were not paid for over time. Office hours are till 6 O clock and I have seen that old man Chauda will be running around to paste all those cause lists at the Bar he will come and paste the cause list. I was supposed to be there because my senior insist no when the cause list is pasted you must be check that it must be in office. So we feel proud in that. When you are district judges how many of you write that sir staff is short or this is my requirement. Have you send reminder regularly. Your answer will be sir we write but they don't do anything. That does not mean you should stop writing those letters. But Somewhere you are afraid that if portfolio Judge may take exception to that or if my High Court take exception to that then what can be done. Brother Chauhan is rightly said that you should not be timid and see when you are dealing with the government you have to deal with the same language. If they are fast you have to be fast.

**Hon'ble Justice Sadanand Mukherjee**—What happens is that in 14<sup>th</sup> Finance commission, for upgrading of course in each and every finance commission money is given. First State government takes advice and data from the High Courts. High Courts give entire data after planning everything and then the State Government submits to the Central Government. Now so far as 14<sup>th</sup> Finance commission is concerned that nothing like matching grant by State Government; money given by the Central Government. For morning and evening courts we don't have the vision. As Justice Chavan said, Vision

documents is to be required. You need a planning and see how we can programmed that. What should be our goals..we have to make a statistical projections, how the next 5 year works will be going to happen. In that way Budget should be prepared. Help of the experts can be taken. When needs arises we have to submit additional budget/ grant. That also we cant do because of the inefficiency of the staff. We should see how many personnel we are needed, how many personnel we have to appoint. Sanction of post should be given and accordingly the amount is to be given. Now, it is the task of the High Court to prepare budgets under different heads. It is true that re appropriation cannot be done by High Court. Chief Justice cannot do it. Of course, in some High Courts some type of re appropriation has been made. But in principal final autonomy has not been given to the Chief Justices of the High court. Appropriations in the High Courts are done so far as the minor heads are concerned. We have to prepare our own budget and finance. Now how can you do that you have to plan your programme and budgetary resources. Finance commission has come. I do not know how much amount given to each High Court. The 14<sup>th</sup> Finance commission report should be placed before Chief Justice. You have to press on the amount and on the sanction and how these are to be executed. Now, the protects have to monitor, you don't have an agency to do the infrastructure. So, what High Courts have to do is the structuring of the budget with planning for next five year and each year how much is withstand. 14<sup>th</sup> finance commission is very clear that it will not take any matching grants from the governments. For up gradation entire amount has been given. Now we have to plan the things.

**Hon'ble Justice RC Chavan**--We have become the slaves to the bar associations and to the Bar Counsel. .. Now see resistance of Bar from shifting the court form one place to another or establishing a new court. You know Rohini in Delhi, there was a resistance. They won't want to go out. They won't want additional infrastructure to be created. They don't want morning and evening courts. See if Justice Lodha suggestions of working 365 days is accepted we would have more courts in the same infrastructure. Common man would have accepted it because the common man would be saved of the harassment of waiting in the court for the whole day. The young boy in the Bar gets the work. Work will be distributed... But we have not placed the publicity of the benefits of all this that how it will benefit the common man and general members of

the Bar. I know it is little that you can do because with the great apology to all we have become slaves of the Bar. That is the constituency for which we work We means Hon'bles. This is the trouble but See, if our commitment to serve a common man we have to create more infrastructure. You cant have a situation where civil suit is pending for 10 years without a decision, You can't have criminal cases prolonging for so many years. Are we concerned about all this or not or we go in a stream spent our time and say what can we do. Always think for this. We serve a common man not even the Chief Justice. I am sorry I am very strong in my expression. Everybody oppose Justice Lohda for good or bad reasons I don't know.

**Participant**--With due apology again Justice Lohda plan failed. He instead of doing that wanted the opinion of the Bar. The Hon'ble present CJI in the case of condolence meeting...He took a decision in the meeting of Chief Justice and decided to go for it. And most of the High Court went for it. 1000 judicial hours were set.

**Hon'ble Justice RC Chavan**--It is not a question of 1000 hours. It is a question of 365 days 24 by 7. If you do that all the problems will get reduced. Same infrastructure can be used for thrice the number of the courts. I am sorry my words are strong.

**Hon'ble Justice Ravi Thripathi**-- Brother there is no hurting of any feeling because we are not personal to anybody. We are just discussing this so at least some minds get ignited. Ass our late president said that you have to ignite the mind. We are just here to sensitizing you people. If you feel that you are not so strong, be little more tactful. And one illustration I want to give because that possibly there is a rare example in the country, after earthquake in 2001 in Gujarat, more than 100 buildings were constructed and were lokarphan was done by one Chief Justice Bhawani Singh. That is because law secretary was our law officer. Our Registrar General was very nice to have coordination and Chief Justice gave him full hands that all right to see that whatever is done. In Gujarat the position is in district courts, there is plan already fix whichever is the district. Then in B grade cities there is an another plan which is fixed. For the taluka level there is another plan. The moment the new building is required, it takes no time for giving the plan. Some minor changes which is required is done and is given to approve and the next day the works starts. And for that purpose you at your level can always call

the government officers not under compulsion. You should know how to call them. You can call them for a tea. So that can always be done and High Court does not say that why you are spending on tea. After invited them then you just put to the Chief Justice, then they can only be saying yes and nothing beyond that, and we get the work done. So, again we are not accusing that you people are not doing it. So don't feel that. We are saying that we are only discussing so that you can take more messages from here.

**Participant—**My lord there is an interesting story in the Madras High Court for innovative and diversion of funds from one head to another head. As you lordship rightly said how we dealt with the State Government and how we pay the government in the same coin. When I took over as a joint Registrar (computer), the servers were very old which were installed way back in 2000, when computerization was started in the High Court. We thought of replacing those servers and we said a proposal to the State Government which was not been considered by the State government for the months together. So we thought of using the funds available in the maintenance account to buy three servers. Before entering to that venture, I called the Chief Administrative officer and account officer and sought their advice. They said no no sir there is a difference in replacing a mother board and computer and buying a computer itself. Then I asked why. Sir, computer is the major unit, mother board is the component of it. I said you take the computer itself as a main unit. I take the entire network of the computer as the main unit. Computer is only a part of the computer network and without the server computer network cannot function. So I take the entire network as the one unit and computer server as one of the components of it. They did not agree, but was not ready to go by their advice. I put up note to computer committee, got sanction and on getting the sanction from Hon'ble Chief Justice place the order of three computer servers. Then when the bill was presented the PA said, Sir, we told you not to done this but anyway you have done this. At least you write State government for ratification of the action taken by the High Court. I said all right, at least that much I will do. I addressed the State Government seeking ratification of the action taken by the High Court. The government which was sitting over the proposal for months together took actions quickly. Within 2, 3 days they wrote a letter to the Registry asking the Registrar General to take action against the concerned officer who has misappropriated the funds. The

Chief accounts officer came rushing to my room asking sir, did you see this letter. That is why I advised you not to take such adventure sir. You have unnecessarily landed yourself in trouble. I said, Yare Baba you leave this matter to me. Do you think that I have misappropriated the funds. After all the server was purchased from electronic terminal carder and servers are inside the High Court only. I have not taken it to my home. Don't worry, I know how to face it. Then, I went to the Hon'ble Chairman of computer committee along with an office note. After seeing that letter, The Chairman got violent and ask me you write an letter to the government. He dictated a letter. Sir with reference to you letter so and so I am directed to inform you that it was not the any officer of the High Court who really misappropriated the fund. It was only the Committee of the judges and Hon'ble Chief Justice who has really misappropriated the funds. The government may take actions against the judges and the Hon'ble Chief Justice. Actually that letter was given to the government. The very next day the additional secretary Home rush to that letter to my room and tendered apology. Sir, what is this, what happen, What I wrote is only routine matter sir. I said no no madam you have said that some misappropriation of fund has taken place. That is what computer Committee got wild. Please avoid hardly worded letter in future.

**Hon'ble Justice RC Chavan**--Very good very good

Participant--So thereafter it was said that computer server can be purchased with the maintenance fund account and subsequently we have bought two more servers also. Every year we are buying server out of the maintenance fund account

**Hon'ble Justice BS Chauhan**--But kindly see that if Hon'ble judge does not take the responsibility. How many of judges will be going to take this responsibility.. See all kinds of persons are there...

**Hon'ble Justice S. Vimala**—I am in the computer committee that is why he is saying this..smiling. Good morning to all of you. I want to share the information with regard to 13<sup>th</sup> finance commission. The main problem in our High Court is communication gap. Nobody wants to share or do not want to share. That is a practice or convention I do not know. Before 13<sup>th</sup> finance commission was sanctioned there was a meeting at hotel



Riatrie at Chennai. All the High Courts were invited to the programme and almost the finance secretary, finance minister, Chief Justices of the High Court and respective executive heads too many of them and to my remembrance roughly 150 of them have attended the meetings and broader proposals were called for asked about the heads on which 13<sup>th</sup> finance commissions to be sanctioned. Each of the High Court with available knowledge and available information were requested to submit the information. After 15 days they circulated the letter again calling for the details about the exact amount that we require to put in each head. Later on finance, Ministry and Department of law and Justice communicated that there is no sufficient response from every High Court and with the available data they are going to sanction funds accordingly. That is number one. Number two At least after the grant of 13<sup>th</sup> Finance commission funds Ministry of Law and Justice along with finance organized a meeting at Vigyan Bhawan. From each and every High Court representatives who are in charge of implementation of the 13<sup>th</sup> finance commission were called and were asked that what are their practical difficulties in the implementation of the programmes that are sanctioned under the 13<sup>th</sup> finance commission and many of them expressed their difficulty that the amount of one head cannot be converted into another head and this the whole difficulty. The Ministry of Law and Justice has said that they will take steps to correction of that but for some reasons they could not do it till the end of it. So, This is the story of 13<sup>th</sup> finance commission. That has been taken note by Hon'ble Supreme Court and the recent a conference on CJI. CJI conference passed a resolution requesting the State government to sanction the funds allotted in the 14<sup>th</sup> finance commission the respect as quickly as possible to the respective High Courts, so that there may not be further delay in the implementation, so that ultimately after the end of five year we will not be losing the grant given by under 14<sup>th</sup> Finance Commission. Why I am saying all these things is, it is not as if they are not ready to consider request. It is high time that we should call for a meeting of all the Registrar Generals along with the administrative judges and we should call them and accept the difficulties. Every High Court may even submit a report to what happen to the 13<sup>th</sup> finance commission, how much was spent and how much not spent and how much we want under each particular head and if now that modified figure is given to them. Perhaps in all probability, they may be ready to accept and they will

accept. And I think in that some initiatives has to be done by some High Courts and subject to I don't know what the Hon'ble Chief Justices of respective High court will feel, or even we may request the Hon'ble Supreme Court or the National Judicial Academy or respective State Judicial Academy can do that. I believe that if I put a word to my Chief Justice perhaps my judicial academy might be able to coordinate this activity so that the 14<sup>th</sup> finance commission funds are not lost. This is my suggestion

**Hon'ble Justice A. C. Upadhyay--** My feeling is this almost all High Courts are making the Budgetary requirements. State governments are necessary providing the funds for the High Courts. The question is that when the additional budget or additional demands made by the High Court. There has to be policy decision behind. Usually what is the budget You need the fund for LTC, DA and you need fund for infrastructural development. So there must be a policy decision taken by the High Court. That policy decision has to be implemented by the High Court. So if the proposal is made by the High Court in right perspective State government will definitely make/fulfill the demand. I definitely know about the north eastern State Whatever the requirement is made is being fulfilled by the State Government. And another aspect of the matter if the State government is not conceding the proposal made by the High Court then the Chief Justice meet the Chief minister. This is happen in our State on many occasions. For appropriate reasons Chief Justice will not hesitate to meet Chief minister to discuss the matter across the table. So this is also possible. But you have to trigger it. You have to make the occasion where Chief Justice and Chief minister will meet and discuss the matter over the table. This is possible. And as far the 13<sup>th</sup> Finance commission, it is a bonus and we would not utilized properly. The central government approved for sending judicial officers to foreign countries. I was in the academy, I put up the proposal for at least two three times but committee did not approve. I don't know the reasons why it did not approve. There may be 101 reasons. But I have told that none of the High Court would do it. But central government basically provided for the funds for sending judicial officers to the foreign countries for training, we get huge amount of money. To spend that money you have to be generous. Fund was there, we could not supply electronic journal and books to all the judicial officers. But the entire money was send back.

**Hon'ble Justice BS Chauhan**--My experience is when I become the Chief Justice of Orissa, chief minister came in Oath. He called the after ceremony was over called the Chief secretary and Finance secretary and without being asked he assured me Sir, whatever you Registrar General will want I assure you, you will get in 24 hours. But only condition is in addition to sending the requirement to the finance Secretary, one copy may also be send to the Chief Secretary. And if you don't get in 24 hours, the Registrar General should talk to the Chief secretary and he will get it done immediately. So I have never heard any kind of problem of any budget whatsoever. It is coordination between the Chief Justice and the Chief Minister... But by that time I realized that government has not complied with the Shetty Commission report. So, I told sir, Mr. chief Minister, all are our judicial officers are here. I have asked them to work with integrity and honesty and they straight away refuse to do so because they are not getting full salary. What is your answer? How long I permit them to work on a reduce salary for which they are entitle for. No No sir, I am willing but I don't have money. I said till my judicial officers are getting reduce salary reduce the salary of you IAS and IPS officers in the same proportion and I give you time take 2 year but by this time their salary should be reduced in the same proportion. You can't discriminate like this. My officers may not get and your officers get it. He said ok give me 4 months time. I said I will give you months time. But to show tour bonafides release in parts. You give 20% now, 20% after two months and then within six months you pay the full and I tell you within 20 minutes when our meetings was going on. We received the fax that 20 % has already been received. So, It is coordination between the Chief Justice and the Chief Minister and a faith in each other... They can meet unless there is problem ego problem, political problem, other problems

**Hon'ble Justice S. Vimala**--In the case of budgeting what I feel out of the my experience is lack of planning on our side. If you are failing to plan you are planning to fail. I tell you my hardship, which I encounter when I joined as a district judge. I was posted as a trainee district judge at Coimbatore. When I went there I stayed there in a guest house for one month, there was no house allotted to a trainee district judge.

When the post was sanctioned.. it took 21/2 years for the High Court to recruit. Even in this took 21/2 years no proposal was ever send to the government for accommodation, stenographer etc. We can go even on a rented building. How to discharge a duty of judicial officer without stenographer assistance. When I went the Principal district judge explaining the difficulty that performance will be evaluated by the High Court, my probation has to be declared. I am a district judge without a stenographer, how I do discharge me duties. He said that one stenographer will there for 2 hours in a day and she said I don't know English, I know only Tamil. She was a person deputed from Tamil Nadu public service commission. She really did not know. Then what I am suppose to do..I wrote judgments by hand six months. There is no other option left. I am little bit afraid, if I am accustomed to that practice. I may not know the dictation at all. Then there will be difficulty in the speed. That was the problem. Then after coming to regular cadre. There also when the courts become more they divide the halls in two courts. There is no concrete proposal at all. We are lacking in planning. After two months I was happy to get a car but irritated to know that there is no sanction of petrol. What lack of planning when we send the budget proposal. Now sanction was send for the post of the driver and sanction of petrol. This is how the budget proposal are being send. Even coming to the High court I thought that now something will improve. At one point of time the 17 judges were elevated at the same time. All the administrative branch of the high Court shifted to another building and that administrative staff building were allotted to all these Hon'ble Judges to conduct the court building. This is a case of Madras High Court. This hall will be into four court halls.. This is the kind of infrastructure we have. We have a National Judicial infrastructure plan to device infrastructure and it is been send to the Supreme Court as well as in all the High Courts. Now the standard structure plan was given by National Judicial Academy, efforts are being taken by the academy and it is available with them. Leave alone our position. About the subordinate courts. When I was Registrar General, a call comes from a munisifal court. What was the call? The roof has fallen down so today there will be no court. Do we ask them to go and ask information under a tree. Many courts are functioning under a rented premises. Those rented premises are absolutely unsafe for the subordinate judiciary to work. What we are doing. How we are functioning. These are the major issues. Only because we are

lacking in planning. I have got a occasion to discuss with a judge of United State of America. She came to our academy. She was telling that there is an independent statutory body in USA who takes care of all the Budget requirements. They prepare the budget in accordance with the policies of the judges. Judges here has no role to play in policymaking. They have called a concept called Judicial Impact Assessment. Whenever the legislation is introduced they widely discuss the implication of that law...In America when there is a statutory body taking care of all the budgetary requirement. The budget is not even routed through executive. It straight away places before the parliament. If any of the judges wants to justify they are on liberty to go on and speak on the budget. Otherwise without any cut, without any modification or touching.. the budget is sanctioned. We are not asking for independent or complete autonomy. We are asking for modifying appropriation or re- appropriation to be done, even that is not been considered. This power has been given to Hon'ble CJI but not to the CJ's of all the High Courts. Every conference of CJI there is a request for the State government to consider this but even after this conference, I have seen the letter written by the Registrar General to the High Court to the Secretariat saying that this power is to be given as suggested by the CJ'S conference. The Secretary coolly writes the existing power is already in the manual is more than sufficient to you to take and exercise the power. I have gone through all the provisions which say that you cannot change from one major head to another major head. Minor head yes you can do but within the major head allotted. Therefore, this power is not at all sufficient to Chief Justice to exercise his power. No flexibility at all. When we make a budget we can well in advance calculate how many court are going to be constituted in future. We can send a consolidated proposal. Each and every time government expect this. One proposal is to be sent for place..you may kindly request the government to allot a place that later for one year, another one year we request you to sanction the fund for the construction. Fund sanction will come in the third year. This is how every process in the establishment of infrastructure is delayed. Computerization the whole world is enjoying. All establishment are using computers. Judiciary was the last department form the government sides to be sanctioned funds for computerization. At the time I took over as a director of judicial academy, we have no funds. Hon'ble Justice AP Shah was the Chief Justice. His

lordship said I give you full liberty to do anything you want even with the zero budget if you want to do..We have started computer training programme for 700 judicial officers..Judicial officers were provided training at the cost of private universities and colleges and they were trained We also ensure that there should be no litigation in the High Court ...Only thereafter we wrote and out a request for computerization. Piece meal sanction of computers. Even today, many courts do not have computers. This is how we are functioning. Advancement of science and technology when everybody is moving fast are we effort to lack behind. That is the problem. What is the central government doing. They give centrally sponsored scheme sanctioned. That sanction should have a matching ...with State Government. State Government say we don't have matching...The funds of centrally sponsored scheme goes back. When we talk about the implementation of the laws under schedule 7 class III concurrent list. Too many laws enacted by our central government. Too many laws enacted by the State government. So, both are under a responsibility to allot funds to the judiciary. The mind set is this for the government, what is in return for us. We say that the law passed by the government is not correct or the law passed by the government is against the fundamental right or the scheme passed by the government is not correct. We say this or that thing. When they sanction funds for protection of goods.. yes when the goods are sold, profit goes to the government. And what we do is we help them in maintain law and order. Orderly society, established society, peace in society. That is very not visible to them. Therefore, they are not willing to sanction any funds for us. So, unless we compel them they are not likely to do anything. How we should compel, through knowledge, knowledge is very powerful

**Dr. Amit Mehrotra**—Thank You so much sir and ma'am for great insights. We break for tea and will be back by 10: 30.

***Session 10: Role of Registrar (Administration): Coordination and Compliance of Administrative/Judicial Orders***

**Prof (Dr.) Geeta Oberoi**— The session is about the coordination and compliance of Administrative/ Judicial orders. You give some orders how do you see that they are complied or not complied and you are in turn may get some orders from the office of

Chief Justice, from the office of Registrar General. So this is more about organizational, where we are placed somewhere we are placed in between there are some people we direct and there are some people by whom we are directed and both functions somewhere we are supervisors somewhere we are subordinate. How do we deal with both functions. How do we coordinate that. I am sure you all will have lot of functions as a supervisor. What kind of issues you have..You must be having assistant registrar I am sure deputy registrars, sections officers..yes..

**Participant--**Registrars are the Central of all the Registry What ever the information received by the High Court either at different stages..sometimes the Chief justice has received some correspondence sometimes the complaints are received by the Chief Justice directly . Sometime the directly correspondence reach to the registrar..sometime it is routed through the departments. So central of all registry, there is a constitution made by the registry of the High Court where all the problem and correspondence should reach at that place and after feeding on the computer..at least the Registrar General should know or aware that what are the correspondence received from various recourses and once it should be reaches it should be marked to the concerned branch. So there should be the allocation physically and electronically to the concerned branch. Sometime electronically it has reached to the concerned officer and physically it has not reached to that place, then he do not do anything. Once he received the correspondence in the physical form, he will click accept it; then automatically the colour have been changed that it has been received by the concerned branch physically also. After words it is a duty of a deputy registrar, he should distribute that work in accordance with the paper. He will carry out the work...If committee is there then it should be placed before the committee for the finalization of the issues and when approved by the committee it should be finally get it approved by the Chief Justice.

Also there is a government order I don't know whether you have got or not..Recently there was a government circular that for all are functions 5 movement should be

restricted maximum to 3 persons only. Maximum channel. So that the prompt decision can be taken.

**Participant--**We have not received madam

**Prof (Dr.) Geeta Oberoi—** No that is from the administrative side that the maximum movement should be to 3 persons. In fact it is a good circular. The file movement should be restricted maximum to three persons so that all decisions are taken in time. I can give it you, it is there with us. DOPT circular and from the Prime Minister Office it has come actually.

**Hon'ble Ravi Tripathi--**Mr. Chaudary, don't have the allergy to because it is marked by the government. They are not commanding you. We are taking about adopting it, if we find it good and suitable. It should be not something, which give you some infectious disease. That should not be our approach. Our approach is that if it is good you can re-module the whole thing. You put it. Let the Chief Justice do it, what is the difficulty. Something that can be done.

**Participant---**That initially the section officer should prepare the and verify the note prepare by the clerk and then assistant registrar and deputy registrar the registrar. That is the now practice ..now it will be remain to reduce to 3 persons.

**Hon'ble Ravi Tripathi—**Mr. Naidu, this was on the much higher footings in the government level. Government realized that cause much delay. They have moved the circular. Now if there is something good we can adopt it. We can have in the High Court also the same thing. That it should be prepared by the section officer then one more officer and then it should directly reach to Registrar General. This can be done. Don't be adverse that this cannot be done. Otherwise you can never improve....This can be adopted by the High Court if it is good, there is nothing wrong. At the same time neither you independence is affected nor your other things are affected. You should not be egoistic on that.



**Hon'ble S. Vimala**--The underline idea behind is it is good let us adopt. But many a times it is seen in place of is was is written nobody is correcting it. All five signatures will be there but..then what is the use of five persons signing it. Let it be saving the time.

**Hon'ble Justice A.C. Upadhyay**--NIC has..electronic monitoring system and this system is been implemented in M.P. High Court and that system is effective..

**Hon'ble Ravi Tripathi**—No No brother is referencing to something else that is file monitoring system. So at any point of time you click that you will find that which file is lying at which particular table.

**Participant**—My Lord In Madras High Court we develop such a system which enables the registry to centrally monitor which file was received from which date and from whom and whether it has been sent to this section or that section and who has attended to that correspondence. The system centrally provided information to the Registrar General and the Director in charge madam has rightly said that this is how we coordinate between the other registrar and between other sections with the Registrar General.

**Hon'ble Justice Ravi Tripathi**-- That is why we are here, there are other brothers here, this they could carry home and can apply.

**Hon'ble Justice S. Vimala**--By designations you have the group of Registrar General and Registrar (Administration) and by computerization we can share. That may be called sharing of the best practices. That concept should be follow. If that is done others may use it and it will save time and energy.

**Prof (Dr.) Geeta oberoi**--Now you have the hierarchy even within the Registry. The Assistant Registrar , deputy registrar, how do you deal with them. Are they also judicial officers. No, they are not judicial officers.

**Hon'ble RC Chavan**--So, now reduce the number of judicial officers in the Registry. Promote the non judicial officers. Because every post is now manned by judicial officers because his arc can be twisted know. You can ignite the High Court staff to start the agitation to sending judicial officers back..Ha...ha..

**Participant**—My lord you are absolutely right. Unless there is a separate cadre appointed by the staff members, my lord definitely there will be disgruntle mentality amongst the staff members. Stagnation is there, the staff will not tend to work and they may be given promotional opportunities to such an extent. I request Justice S Vimala to support us in this aspect. No. I request my lord to support in this.

**Participant**--There is a need for finances in the district court and they showing it to the Chief Justice and Registrar General that this part of finance have to be kept for High Court for certain purposes. So, only district judge will know better.

**Hon'ble RC Chavan**--I will allow to re- appropriate it because of this. What happen in some places the entire fund for example in Bombay High Court there is a 5-core grant for minor original works. Basically this was granted initially to the district judges itself. What happen suppose one lacks is given to the district judges, he spent in on his bungalow and rest of the officers would starve.

When the funds come to the High Court the 90% of grant spent on the Hon'ble Judges bungalows and facility in the court. What about district courts? this is the problem, therefore see ultimately when the committee of judges sanctioned it, that's the end of the matter, therefore this is the issue. No see ultimately, the committee of judges sanctioned it so it is end to the matter know. We have mismanaged funds. See, nobody is opening up this issue. But if our accounts is really audited, because it is a test audit in High Court it is not a regular audit. So if it is audited everything is found, we will see there is lot of financial mismanagement with the High Court. True as he said, we are more concerned about public and then government officer. When it comes to sharing among all since the elder gets the new suites and the younger one get the one which is old one or worn out. Isn't it. Even about the allotment of cars. A new judge is appointed who is he, we give him the old car. Do we give him the new car. No. The senior Judge takes the new car and the old car goes to the new judge. This is what is happening. Anyway..

**Hon'ble Justice Shadanad Mukerjee**-- In all the High Courts district judiciary funds come. In some High Courts there is a provision. But this is my personal knowledge that

the Law department and the government, they distribute funds to the district and district judiciary is in the hands of the district judge. Now the entire funding is with the district courts. They now spent their funds. So far as infrastructural funds are concerned when it comes from the finance commission, they alone have to be utilized for the infrastructure of the district courts after making a plan.

**Hon'ble Justice S. Vimala** -- Allotment of High Court and allotment of subordinate courts are different.

**Participant--** For subordinate judiciary there is a separate fund

Hon'ble Justice Ravi Tripathi-- Wherever there is separate fund there is no difficulty. Brother Chavan is referring to the peculiar situation, when the funds come in common and then it is appropriated like that. That is why.

**Participant--** Separate funds has to be created for the district courts, so that though out the year they can spent.

**Hon'ble Justice A.C. Upadhyay--**In fact, if I am given to say, the funds is allotted in terms of the appropriation bill and the bill if finally approve by the assembly and it becomes an Act. So the funds in different heads allotted in terms of the Act passed by the assembly. So , you cannot transfer a fund form one head to another. There may be some adjustments in the same head. From one major head to another major head it has to be done by the assembly. Again when the supplementary bill is made, supplementary demand is made the matter is pace before the assembly. When the assembly is in session they will modify. Nobody else can do it.

**Prof (Dr.) Geeta Oberoi—**Can I ask one question like this also about co-ordination and compliance of administrative orders and Judicial orders. Can you cite your difficulties? When you tell to your deputy Registrar or assistant registrar for a particular compliance and certain administrative task and what difficulties you have faced in turn?

**Hon'ble Justice BS Chauhan—**I will tell it. See, this country is been run by the few business houses. We have 12 courts, regular courts in Supreme Court 6 courts is hearing the case every day pertaining to 10 business houses they have nothing to do

with this country. Poor Ram Lal, Shyam Lal may be waiting in jail before their appeal may be heard they become infructuous..

Many a times what happened. I tell you the reported cases. How er have dealt with it. A contractor takes toll bridge contract for 1 year, contract is over. He files a writ petition for extension of time the High Court had no competence, the law does not permit granting the further orders. State government being agreed go the Supreme Court. Supreme Court passes the order recite this matter immediately. The order was never placed before the Chief Justice or the particular bench. After 2 months in Supreme Court again the matter was listed. Supreme Court had fix the date in the hope the matter will be heard in the 2 months. The Supreme Court was told the High Court has not heard the matter. It was never listed before the court. They issued another order, that some reason it could not been heard. Please hear it within 1 month and fix th e date after 1 month .When the matter came before the Supreme Court after one month it was told the matter was not been listed till date. Then the Supreme Court wrote a D.O. to the Chief Justice please explain why this matter has been not heard and reply within one week.

The reply came, the orders passed by the Supreme Courts are not on records. It had never been received and never been placed either before the Chief Justice or the Registrar. In such a situation how do you manage? It is not what is the technology, what are your development. The basic question is what kind of persons are manning there. Ultimately when Supreme Courts directed the enquiry the report came it was served there later on removed from the file. And could never replaced. In the mean while the person continued to collect the money on the toll bridge. It is a case of Allahabad and the bridge is on Sangam. So it was a huge amount.

Ultimately when the matter came before the Chief Justice and when the Chief Justice noticed, the orders were received but the clerk manage in such way that it was never placed before anybody in the matter was heard and ultimately Supreme Court not only passed strictures and also imposed a very heavy cost and recover the entire amount he earned through this process.

Now it is not, how we developed and what system we have. We must have the man who works for; who has some respect in our institution. Because now who is responsible in this matter. The Registrar General and the Chief Justice who are the running the function.

There is a reported Judgment 1981 criminal Law Journal Kalu v/s AK Pandey. High court of Allahabad passed a order doing this period and decide this matter. It was not heard. He file the contempt petition. Again notice sent. Come file your reply within four weeks. Even with in that period it was not heard. Then the collector was directed to appear in person. On that date when the matter was fixed by the High Court that you come and appear on this date. The notice has been received earlier; that notice was sent to the district collector, sir you have to appear today before the High Court. Then he came to know that there was certain directions, which was never place before it. He appeared before the High Court and took a honestly sir this order have never been brought to my notice. Who is responsible the clerk ;who has received the order.

Right bring him at 2 o'clock we will deal with him. Can you imagine what the High Court did? At 2 o'clock both were sent to jail. You are not fit to remain a district collector , if your clerk can suppress any order passed by the High Court and did not show it to you.

Now these are the; everyday Supreme Court passes so many orders to the High Court, please decide this appeal expeditiously or within such period. Report comes that it has been never placed before the High Court. It is not a criminal contempt? Who is responsible?

See there is a judgment in the compilation given by them B.N. Shivanna Vs. Advanta India Limited and Anr; I sought how this problem arise and who is responsible for all this. It is there the same issue. It is a matter, contempt under Article 215 of the constitutions. It requires that for filling a criminal contempt written consent of the advocate general is required and if he refuses to give the consent, the you can file a complaint to the registrar of a High Court mentioning that the advocate general has refuse the consent and the registrar shall place the matter before the Chief Justice on administrative side and not on the judicial side. Then Chief Justice will pass the order

whether to proceed or not. If Chief Justice takes a view that it requires to be considered. He will list the matter in court either before the one bench or before the division bench because criminal contempt is to be heard by the division bench.

Now there are rules, in the most of the High Courts are saying it was a case from Karnataka initiation of proceeding on information, any information other than a petition or reference shall in the first instance, be placed before the Chief Justice on the administrative side.

Now the person has been convicted by the High Court of division Bench. What was argued before me that I the complainant file the complaint before the registrar, registrar not put it before the Chief Justice and the matter could not be placed directly before the division bench. There was no compliance of Rule 7 which is mandatory in nature, therefore the order stands vitiated.

Now luckily we have two things, Section under 14 Evidence Act there is a presumption that every function has been done in a regular manner. But every presumption is rebuttable by leading some kind of evidence. Secondly, by chance this complainant, the person who has committed this fraud did not agitate this issue before the High Court. So, I refuse to entertain it, that why did you not raise the question, as it is a question of fact whether the file was placed before the Chief Justice. The registrar could have come filed an affidavit and could have been examined by the court or could have been cross-examined by you, they are quasi criminal proceedings. So I refuse to entertain that plea.

Now the difficulty is not moving the files. Nothing is recorded is whether the file or record because on technical ground it was presumed and it is the duty of yours to revert this presumption or raise this issue before the High Court where this matter could have been investigated, enquired whether the file were placed before the Chief Justice.

I did not go into that issue but suppose this issue after, there is some pleading that I raised this issue for the High Court and was not considered. Or I took this plea registrar have not file the reply... So that the person had committed a serious criminal offence. So, we should take this matter very seriously the negligence of our subordinate or a clerk. Because every High Court receive and issue branch, all orders either from

Supreme Court, all complaints or all petition are file at the filing counters. Nothing come to the registrar General or to the registrar unless it is sent by them. Suppose somebody manage is there? Who is responsible? If I am the registrar or the registrar general it is my duty to control our subordinate therefore merely creating this technical or technology..we must have the administrative control over in such a manner so that we can function properly. It is more necessary because it create more harm.

Many a times Supreme Court passes so many orders never complied with. Ultimately either the Chief Justice suffer or any inferences drawn that he is not competent enough on administrative side.

So, ultimately where we one. Not that person concern. Even if you suspend him or will hold the enquiry then even we suffer, so we have to be very careful so that this problem will not come to us. Ultimately, we suffer so in this matter particularly judicial orders are there. There must be some responsible officer to examine whether all the orders has been placed to before competent authority for compliance.

Many a times if its comes to the knowledge, suppose there is a order of Supreme Court to decide this appeal or Supreme Court asked the trial court conclude the trial within 4 weeks, 4 months or 6 months. Supreme Court regularly received the letter from the district judges or session judges sir for this reason I could not conclude it extend the period and registrar put it before the bench and the bench say all right.

But in such a case at least the order being complained or being examined for some reason it could not be concluded the reasons are given and it will be complained with. But what happed when the order has not been placed before the Chief Justice or constituted bench. This the problem. Because they money people not poor people. Poor people have nothing to do in this country so far justice, peace and liberty. These are the words from lawyers and judges that's why so many criminal cases not single cases. The whole difficulty is we are seating there only for rich people who can managed and buy our staff, we have to be very careful that we must have that sufficient administrative controls, so that they may not manipulate...

...Only in one case in thousand of cases. Its everyday business... and if you conduct a enquiry the matter never been placed before the Chief Justice because many a times Supreme Court asked the registrar general... Ask the Registrar General, call him in the court. Please communicate directly to the Chief Justice, knowing it well that somebody is playing there. Paying money to the clerk not placing file before the Chief Justice. So, make a request personally and tell the Hon'ble Chief Justice that we are sending notice directly to you, not through registrar or registrar general. Why the situation has arise, there is something wrong in our working so we have to remove that. Because people are minted money if this intrim order continue for 2 months 3 months they will earn cores of rupees. So what is the harm to spent 2 lacks. If I can earn 2 cores I can spend 20 lacks. If this is the situation and orders of the highest court or even the High Court are not been complained with; then its create a doubt regarding our working, integrity, sincerity, everything so its not only the Hon'ble Chief Justice everybody knows it and everybody experience...yes

**Hon'ble Ravi Tripathi--** Any response?

**Participant--**In criminal contemned even if it is initiated sue moto by the bench. It has to placed before the Hon'ble Chief Justice.

**Hon'ble Justice BS Chauhan--** No Suppose there is a .. contempt. It's a criminal contemned somebody start abusing you would you refer it? Only section 12 . but I have never issued ant contempt notice to anyone like this. What I did, I started the judgment the so called learned counsel started his argument like this, whatever he has narrated start saying so..and then deal with other cases. What other issue whatever he has argued, so if he go in the appeal the appellate court will know what was argued before the High Court and I will tell my experience. I took it about in many cases that lawyer never appeared before the court because it is everything in writing and the judgment is started client is bound to loose with this kind of starting in the judgment. I issued only criminal contemned in a case. It is reported judgment RP Goel. What is the system there in the Supreme Court that advocate on record can file the case not anybody. Now many lawyers who come from a different states pay to 200 rupees to the advocate on record for putting his signature. So many advocates on record had made it a business is



landing their signature without doing anything and without knowing anything and they don't come to the court. So the lawyer who was appearing who was not able to render any assistance. So, I asked him many questions he could not answer, so I dismiss the petition saying this that the learned counsel, half prepared illiterate counsel present before the court. We don't know who has authorized him, whether he is authorized by his client, whether he know the client or but as he is not able to make any point, we cannot proceed the matter because it is not your duty to decide a case which is not been argued before it.

There is 9 Bench Judge Judgment AIR 1997 SC 2847 and BMC Vs. State of Punjab 9 Judge Bench. We said court cannot decide a issue not agitated before it for the reason you are going to decide in favour of one of the party. Lawyers has not argued. Other side lawyer did not get the opportunity to answer it, therefore you are findings becomes void for non compliance of principles of natural justice and there are some judgment of the privy council that if a lawyer does not render any assistance court cannot proceed with the matter. It is bound to dismiss it. So, mentioned all those judgments I dismiss the petition. But I passed the order that advocate on record is directed to appear before the court today at 2 PM. He refused to come, then we issue sue moto criminal contempt, filing a petition not coming to the court amounts to criminal contempt because I is obstruction in administration of criminal Justice and directed the registry not to accept any document filed by him, so it is a suspension order till the further order and then he appeared we gave him show cause notice, frame charges and decided the case convicted him and put him for probation of one year.

So it is our circus we have to run it we are not there to appease the lawyers. We must know how to handle this in our circus we are the managers. We must know how to manage these affairs. But you have to be very tough, not liberal. So you can always proceed in criminal matters but my experience is that instead of going on criminal contempt, if you mention whatever the lawyer says if he abusing you should mention, I started the judgment like that. That this is the first argument that you are an idiot and you do not know anything in law. You had been appointed wrongly, you must be belonging to some political. Whatever he says you start judgment with that and I have

never seen the face of that counsel ever in my life. So, we have to handle these kind of person because there are some lawyers which are meant only for this kind of purpose, brief less lawyer. They don't have any to brief if a lawyers is agreed by my conduct he will give a useless brief to the lawyers, feed him, have samosa, have this and then ask him go to this court and abuse him he is bound to but you must know how to be ignore him and deal with the matter. So two way either criminal contempt or this matter. But I have never issued a notice of criminal contempt.

Another way is here because if you issue criminal contemned against everybody, Bar becomes against you. That becomes the difficulty and you have to maintain with the Bar. Though I could not manage in my life. I was always in confrontation with the Bar. I sent a lawyer in jail who died in jail. So entire Bar in UP went on strike against me. But I was not afraid or scared of anything. If you commit a mistake you should go to jail. Because in the jail what he did. He asked the jailor that I will have the dinner from that hotel not from the jail. How long you are in jail and you will sit with coat and pant. So breakfast will be from that restaurant. So 2 days, three days he could serve not for two months. So he asked others jail inmates who were serving life imprisonment, whatever might happen, he died in jail. Now people said I instructed the jailor to take care. Ha, ha and at that time my file for becoming the Chief Justice was pending to the president. So this was a very crucial point but I never bother that. Live it to the God what he wants to make. It is him problem and not my problem. We should do our duty. So, you have to learn how to deal with this kind of lawyer.

**Hon'ble Ravi Tripathi**—Friends I think there cannot be any better inputs than what telling you that how you have to tackle a particular situation. Now possibly the director means when she says co-ordination and compliance of administrative office/ judicial orders. May be some times your administrative or judicial orders are also required to be coordinated and the compliances required to be made. I have also told yesterday also that if it is not convenient to you, you will have find out the way for that and we also suggested yesterday that suppose that RTI matter, and you feel that your order is supposed to be reverse by the appellate authority what's prevent you to get the matter from the judicial side. Not necessary that you will succeed in all matters but then that is

a way out of that. When you have coordination and compliance one thing is certain. Yesterday, it was very nicely it was said then possibly the sister told, who is the most powerful person? And if you are most powerful person you may also have the maximum responsibility.

And possibly his lordship commented, you are there to solve their problem, so don't tell us about your problems. Don't tell up means people to whom you cannot put so much excuses that I have so many problems I am not able to solve this problem. Here you can tell them. That is why we called you , so that we can able to discuss them and many more problems you will tell up we will we having more open discussions and find out some solutions somewhere. Contempt notice should not be made so easy.

I remember about the UK courts There is some news have printed in the newspaper saying that two old fools have decided this matter like this, then matter was brought to contempt side by Bench. It was said, on careful consideration we are of the opinion that there is no contempt. We will give it the explanation. So far as part is concerned two old, we fools, well comes little later, two old, so we are old because they were in House of lords so they are not young. So old is part is ok. Now, fools is their perception. Our perception is that we are not fools and therefore no contempt. Therefore, coming to the confrontation it is become ego problem.. its become a prestige point and all that and there is no possibility to taking back. So there should be thoughtful consideration that what will be the line of action.

So, unless you are capable of taking the matter to the to the logical end don't take up the matter. Because once you take up then it must reach the logical end and they must feel that you are really powerful person.

So therefore that is very important and therefore on administrative side and judicial side many time it comes. One of the judges of the High Court issues direction the registry. Now, it is not possible to comply with.. So, You have to be very careful in coordination and compliance.

**Hon'ble Justice Sadanand Mukherjee**—Once it came to our notice that sometimes what happed that the Hon'ble Judges calls the registrar in there chamber and say that

you suspend this employee and immediately within half an hour you suspend that employee or I will take steps against you. What you will do. In that case in create a problem. He has not given any written order. He cannot direct you to suspend that employee because the employee is under the Hon'ble Chief Justice. So in that case without taking the matter on you head, you place the matter before the Chief Justice not in writing , at least orally you can say and now the Hon'ble Chief Justice will solve the problem. Hon'ble Chief Justice says, you do not execute that order, let him tell me for suspension. Because suspension is not the jurisdiction of judge.

Next is about the administrative order sometimes or it is always you will find that full court order and Standing Committee order have to be executed. First it comes to the Registrar General. And Registrar General refers to particular registrar say to you on if a registrar general and you have to see that order is gets executive.

Now sometimes the particular registrar of the person you referred a matter he dealt carelessly and particular registrar entrusted to some staff and the staff does not compliances the matter for days together. Now in that case what will you do? We have to cautious and be and be careful so far as committee orders are concerned. So we have to monitor and should be done within 24hours. If he does not comply then call him and issue a show cause to him and inform Registrar General. So the compliance of the administrative orders of the full court or the administrative committee should be done at once and without any delay. So This is about the committees order.

**Hon'ble Justice BS Chauhan**--There is reporting judgment Tirupati Balaji builders 1999. There Supreme Court passed certain orders. The registrar put it before the Hon'ble Chief Justice of the High Court and Chief Justice said that we are not subordinate to Supreme Court and not bound to compliance the order passed by the Supreme Court.

Now it's a matter with in Supreme Court and to Hon'ble Chief Justice but you are not involved you are safe. Then the Supreme Court decided everything because the view taken by the Hon'ble Chief Justice was that you are only appellate authority in the Court so far our judicial matters are concerned. .. you can correct our judgments, reveres our

judgment but you cannot issue direction, we are not subordinate to you. You don't have supreme power of superintendence like we having article 235 for the subordinate courts. We are not your subordinate court. So don't issue this kind of direction to us. If you are issued it, we are not going to compliance it. But there was the matter and entire matter is on the powers of the Chief Justice and Power of the Supreme Court and then we say if we have a power to reverse, alter or modify your judgment, we also have power impliedly. In one case it was stated that many statute does not have provision to grant interim relief but it is impliedly it is there. That kind of analogy was drawn and Supreme Court said that we have a power to issue this kind of direction though you may not be subordinate to us. But in that situation you are save. You are there to lose anything so place everything before them.

Chief Justice is a master of the roster. He has a power to place any matter before any court. Withdrew part heard matters. Give part heard matters. If the judgment is not delivered even though the Chief Justice withdrew from you and place it before another bench to re hear it. So in that situation there is a demarcation. I have also decided that case in Devinder pal singh. A criminal appeal decided by a division bench disposed it off. After three months of the disposal somebody as was not a part file the application in that case seeking certain directions and the same bench took up the matter and issued those directions and directed the CBI to conduct the investigation. Now the question is that application, he has the right that Devender pal Singh, Kullar that convict, has been given the death sentence and now the life imprisonment. There was a direction that he will remain throughout in life in jail. He killed so many persons. Now the question is, how I have dealt it, this order of the division bench is nullity itself. Because in a criminal appeal this application could not be entertained. He was not a party in that case. He has nothing to do. If independent writ petition is filled seeking for relief it would have gone before the single learned judge as per the rule of the Punjab High Court. Therefore, the order is self is nullity. .In this matter when there is PIL there is certain directions or rules have been framed or directions given by the Chief Justice or by Hon'ble Supreme Court. If High court starts behaving like that then every judge will become the master and the Chief Justice..So, these orders are not valid. In such case matter is to be put before

Chief Justice and Chief Justice will take care of it. You have to save yourself judges and chief justice will deal separately. Don't involve ..ha ..ha..

**Participant--**My lord to save the registry in our High Court we have standing orders. Whatever is been said to the registry, we place it before the Chief Justice.

**Prof (Dr.) Geeta Obeori--** So, Thank you so much. I think first of all I need to thank you all of you to come here and share your..yes that is a evaluation and feedback session so were they have to write. But I think this is the time I need to thank all of you that you all have come and participated and share your views as well as..no,no. no I don't want you all to go at all. Ha,ha. I think that this is the good time we need to have a big round of applause to all our resource persons. They have been so nice to all of us. So first of all the Hon'ble Justice BS Chauhan he is been with us for this whole programme, Sir we are really grateful to you, so please give a big round of applause Hon'ble Justice Ravi Tripathi, Hon'ble Justice RC Chavan and Hon'ble Justice Sadanand Mukherjee who has helped us actually conceptualizing the whole programme, designing all the programme because this is the first time we are conducting this programme for Registrar Administration. We didn't new the small nuances actually, how one work of Registrar Judicial is different from Registrar Administration or how it is different from Registrar Inspection. All are this actually clarified by our resource persons who helped us in designing the whole programme and A. C. Upadhyay sir. He has also helped Amit Mehrotra, I know Amit is harassing you and Justice Sadanand Mukherjee and Justice Vimala like we harass he for every programme. If we don't get resource person, I tell my faculty OK now you go to Justice Vimala and say to give you someone. So she is like our angel guardian. So thank you mam and thank you everyone sir. All of you for being here. Thank you to all of you because you have filled the performa and send it back by email. That is also very nice of you. It will be helpful for us to design our programme more effectively. I thought it is a good time to thank everyone who has helped us. I found all deliberations so helpful. I don't know what you feel about it but I am feeling its really on right track. This is all I need to discuss. So, I filled very thrilled that it has gone so well because of that I am giving me gratitude. We will just come back.

***Session 11: Take away and concluding Remarks.***

In the last session, the participants have expressed their views with regard to the conference and highly appreciated the effort of National Judicial Academy for organizing and conducting the conference. The participants were given a questionnaire to put their views with respect to their new leanings. The conference concluded with the vote of thanks by **Prof (Dr.) Geeta Oberoi., Director In charge of National Judicial Academy.**

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