

**Conference on Judicial Administration
(August 7-9, 2015)**

Transcription of Sessions

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The National Judicial Academy organized the “Conference on Judicial Administration” for high court justices from August 7-9, 2015. The Conference involved discussion on policy level issues in judicial administration to understand various bottlenecks in enhancing performance of courts. The recent initiatives for strengthening judicial administration in India have been discussed in the light of the role of high courts for anchoring these reforms. The Conference addressed issues on budget management, data management through e-courts project, case management and various aspects of governance of district judiciary. Some of the issues which are fundamental for judicial administration such as balancing judicial independence and organizational needs, involvement of court managers in judicial administration in high courts, powers and function of various committees in high courts, coordination with bar associations and implementation of ADR system were also discussed to evolve strategies through deliberations.

Transcription of Sessions

DAY 1: 7th August, 2015

SESSION 1

09:00 AM – 10:00 AM

Introduction

Dr. Geeta Oberoi: Good morning everyone. All the judges are very senior whom we write letter inviting them as resource person and now they have come to participate and that makes life bit nervous. Having said that you might be wondering that you are senior judge having good experience and then why to

come for this meeting on the subject of judicial administration and why the subject of judicial administration thought about for this meeting. There are plenty of reasons for the Conference. Judicial officers from all over India actually they complain to us about high courts. Many issues have been raised through different conferences and these issues relates to directly or indirectly to judicial administration by high courts. First about budget. The judicial officer say that the 13th finance commission granted 5000 crores for the improvement of district judiciary but 81% of the total amount returned back because high court did not allowed them to utilize that properly. High court sent letter late after appropriation. The budget preparation in the high court suffers from back file syndrome where registry people see back files and do 10% escalation what was demanded previously and submit it.

That year's need or future need is not taken care of. The judges from district judiciary says that failure of court managers happened because high courts have not framed proper rules for the effective use of court managers, did not specify job description and directions were not given to judiciary as to how to utilize court managers.

Judges from district judiciary complains about lack of staff in courts and the reason for non appointment is that for every vacancy they receive 10-15 recommendations and they postpone the appointment process. When it comes to anonymous complaints against them and even though there is direction of Supreme Court unless and until it is supported by affidavit the anonymous complaints should not be entertained by the high courts. Still all judicial officer tells us that these directions remain on paper. Even for trivial complaints vigilance machinery is moved on. When comes bail matters, judges say that they are not

interest in bail matters even if accused deserve so for fear of any motive imputed to them and to protect their careers. No matters how much we tell them to discharge their duty without fear and favor they say no way as high court judges call for explanation, give them fear and anxiety and drive them to madness. Women judicial officers complain that they are not treated well. Their dual responsibility is not considered while allocating work to them. There is subtle harassment which may not be sexual harassment but it is subtle harassment and mental harassment.

Regarding uniformity in service condition some high court allows flight journey but some high court insists on train journey no matter how cumbersome is the journey. There is improper allocation of work and some people are posted where there is no work. There is big complaint regarding unit system. The TA DA to witnesses is supposed to be given in installment and not given in one time. For that also witness has to give affidavit and then three installments are released. Another complaint is that high courts burden with lot of work. They have to visit jail, observation homes, conduct departmental enquiries, part of various committees, they have to do work of mediation, lok adalat and all that make them work 14 hours a day without Saturday and Sunday. Through this conference all of you can come up with some plan of action, some strategy on changing existing state of affairs. Also we can develop some consensus on core issues. Also high court judges have can share issue of bottlenecks, attitude and professionalism with district judiciary which can be shared with them.

SESSION 1

9: 05 AM – 10:00 AM

Developing and Managing Judicial Budget

Mr Yashwant Kumar : The performance of judiciary is greatly affected by resources which can be classified into three categories i.e. human resources, physical resources and technical resources. Human resources are judges and official pleaders, officers of registry and support staff. For having these resources adequate amount of financial resources and proper financial administration or budget of the system are required. For proper preparation of budget of judicial administration and managing it after allocation, adequate trained manpower in budgeting and financial administration is required. Only 0.4 percent of budget is allocated to law and justice in India. Budget is prepared according to the provision of the constitution. For union budget we have Article 112, for state budget there is Article 202.

Article 112 provides for preparation of annual financial statement every year for the financial year from 1 April to 31 march of ensuing year. This is presented by the president before the parliament. For state under Article 202, it is presented by the governor to the state legislature. Annual financial statement is prepared keeping in view few requirements like expenditure which will be voted and charged on the consolidated fund of India. Then division of the expenditure under capital account and revenue account is done. Then division of the expenditure under planned scheme and non plan scheme is done. The expenditure charged on the consolidated fund of union of India are emoluments and allowances of president and his office, salary and allowances of chairman, deputy chairman, speaker, deputy speaker of lok sabha and rajya sabha, interest payment on the loans and

debt taken by the government of India, salary and pensions allowances of judges of Supreme Court, administrative office of CAG of India and expenditure on normal running of government department. The corresponding expenditure from the state budget are emoluments and allowances of governor and his office, salary and allowances of chairman, deputy chairman, speaker, deputy speaker of state legislature and salary and pensions allowances of judges of high courts. The expenditure other than these charged expenditure are voted expenditure. Other elements for preparation of budget are revenue and capital expenditure. Other classification is plan and non plan expenditure where planned expenditure denotes the expenditure approved by the planning commission. This classification applies on budget of judiciary also. Most of the expenditure of judiciary comes under non plan expenditure.

Article 13 provides the procedure of passing of the budget by parliament and the corresponding Article for state is 203. The expenditure of the Supreme Court and high court are charged expenditure and on this there is no voting in parliament or state legislature. The expenditure of judiciary is voted expenditure and on this voting in parliament and state legislature is necessary. After the voted and charged expenditure has been approved by the parliament or state legislature under demand for grant all these are included in the appropriation bill and after approval it becomes the appropriation act. No money can be spent out of the consolidated fund of India unless and until it is approved by parliament and state legislature. Article 115 and corresponding Article 205 for state give provision for supplementary grant, additional grant and excess grant. Article 116 and corresponding Article 206 for state provide for vote on account.

The process of budgetary control is commenced before the start of financial year. The estimates are submitted by various authorities of the department which are scrutinized by the head of the department and consolidated by him/her. The normal budget documents are budget speech of the Finance minister and annual financial statement under Article 112 and 202. The receipt budget is part of annual financial statement in which proposal for taxes or non taxes revenue is given. In expenditure budget proposal for various items of expenditure are given. Then finance bill is receipt budget presented in the form of revenue budget for raising sources of revenue. After demand for grant have been approved all the expenditure become part of the appropriation bill.

The form of annual financial statement i.e. budget is like this. We have list of major minor heads which give account head for classification of account. Various items of expenditure under function and sub function are presented and the actual of the previous year is given and budget estimate of the current year is given. Revised estimate for current year is given and budget estimates for the coming year is given. For each provision in the budget detailed demand for grant is presented showing scheme-wise and head-wise amount.

The Fiscal Responsibility and Budget Management Act, 2003 have been passed by parliament and state legislature. This Act shows the limit of the finance of union government and state government. It proposes limit of borrowing that can be done by union government and state government. It proposes that revenue deficit and fiscal deficit will not go beyond certain percentage. Although government has not been able to adhere to limit of deficit but over the years the deficit has been reduced from 5.6% of GDP to 4% -5 %. The target is 3 %.

Participant: The budget cuts are done by executive without any consultation with judiciary and re-appropriation power is kept with executive. Even administrative sanction power is not with the judiciary. How judiciary can have power in budget process?

Mr. Yashwant Kumar: In department of finance there is no representative of judiciary and the continuous liaison with finance department is not there. Thus finance department is at freedom to reduce the non charged expenditure. There is need of an arrangement to take judiciary's concurrence in the budget cuts by finance department. Under the current scheme of financial administration according to the Constitution this sort of autonomy is not there for judiciary. With any issue of finances accountability comes and it is implemented by parliament. If any modification for autonomy is done through Constitutional amendment then we have to see that what could be the arrangement for ensuring accountability. Like at present CAG does audit of all departments including judiciary and present the report to Parliament. If judiciary approves its own budget then we have to see what sort of accountability mechanism will be there. The query was raised that why executive does not permit the power of re-appropriation of budget from one head to other after budget allocation. Once budget is allocation administrative sanction is required for every little thing. Mr. Yashwant said that 5000 crores approved by Parliament. Within that there were certain schemes under which allocation has been done. Re-appropriation from one scheme to another scheme can be done by a committee in the Supreme Court and that re-appropriation may be accepted by Finance department. At high court level also one committee may be formed and can decide about how the expenditure can be incurred. State government should not delay the request about the fund which has been approved by the Parliament.

A participant suggested that there should be a separate wing in the judiciary who should take the task of re-appropriation as judges always want to play safe and will not transfer fund of one scheme to another scheme because of fear of being questioned. Mr. Yashwant said that there should be a finance committee in the Supreme Court as well as high court comprising of the representatives from judiciary and finance department to do this. The finance department representative may not be a permanent member and can come and give his view only when the issue of re-appropriation arises and final call may be taken by the Chief Justice.

A suggestion was given by the participant that high court and the Supreme Court do not have proper machinery to prepare the budget as judges are overburdened with judicial work and administrative work. So a separate finance wing should be constituted to prepare the budget or an IIM can be asked to do that. Mr. Yashwant suggested that a budget and finance officer can be deputed from Central account and finance services and can do this work in high court as high court receives fund from union government. Similarly at district level officer from state account and finance services can be deputed.

Dr. Madhav Menon shared his experience while preparing the report on Judicial Impact Assessment. He said that major issue is to determine how much the judiciary required and who command as to where it is to be utilized for optimum result. The judiciary is not in control of its workload and it is determined by litigants and by legislature through enacting new laws and amending old laws. This law making or amendment process generates lot of litigation as happened after amendment of Negotiable Instruments Act which created 25 lakhs cases in 2-4 years. This requires more court and legislature should have provided more fund to cope with new cases. So when judiciary is not in control of its workload how it can

meaningfully prepare the requirements of its expenditure. There should be some flexibility with the judiciary for its budget. Large chunk of judicial budget is charge on the consolidated fund of India, it is not voted in parliament and that is guaranteed. There has be a certain head of expenditure including re-appropriation of the allotted budget available to judiciary if a meaningful budget have to be developed. Till 1990 judiciary was not in the planning process of this country mo under plan no planned fund ever allowed to judiciary till 1993. Then planned scheme like fast track court come with conditionality and state too has to contribute. So there was little levy for high court to make any re-appropriation within scheme itself.

The independence of judiciary get eroded because of executive control on budget. The judiciary through judicial orders demands money from the government outside the budget. Through Advocate Association cases the Supreme Court has ordered five times increase of judges over a five year order. But central and state governments have not implemented that order. Every year 1.5 to 1.8 crores cases being filed partly because of action of parliament and number of courts have not increased. The preparation of budget by judiciary is extremely poor and it is what was left behind by the British. When the demand for finance is made it should be justified by reason which can be understood by finance experts. So to assess the required number of judges according to increasing caseload, the judicial impact assessment committee has developed two-three economic models for assessing the future requirement of judiciary in terms of likely increase in the workload of court. But the recommendation of judicial impact assessment has not been implemented. According to Constitutional requirement judiciary must be provided with adequate funds and with autonomy to use that fund properly.

Dr. Geeeta Oberoi said that in Washington DC 2% of court fees and keeps it for training institutions and over a year from 1994 in 2014 they have so much surplus fund from that 2% of court fees. May be some percentage of court fees in India can be kept for infrastructure.

SESSION 2

10:30 AM – 11:30 AM

Developing and Managing Judicial Budget

Mr. Yashwant Kumar: The receipts under judicial heads are like this: Major head 0070 talks about other administrative services under which some major head comes 01 that is administration of justice which has minor heads 102 fines and forfeitures. All the fines imposed by any court in India and in monetary and non monetary terms are realized by executives and deposited in this minor head 102 fines and forfeitures. Another minor head is services and the court fees is credited in this 501 minor head. Any kind of court fees and any Act or law is deposited in this minor head. The executive cannot realize any property of anybody unless it is provided in law. Under certain civil laws executive dispose of the properties which are unclaimed and that sale proceed is also deposited in minor head 800. These are the major receipts under the judicial administration. Another major head which the receipts are deposited it is specialized nature but again in my view that relates to administration of justice but of economic services. That major head is 1475 other general economic services. Like 101 fees realized under MRTP Act, 102 patent fees, 103 fees for registration of trade mark, 105 regulation of joint stock companies. We have lot of litigation coming under economic laws. 200 regulations of other business undertakings like partnership Act, trust Act etc. These are the recoveries under various Acts of parliament and state legislature.

The expenditure head of administration of justice under major head 2014. This has many minor heads including head 101 expenditure related to Supreme Court of India, head 102 expenditure related to high courts in states, 103 special court, 104 judicial commissions, 105 district civil and sessions courts, 106 small cause court, 107 presidency magistrates court, 108 criminal courts, 109 coroners court, 110, official trustees, 111 official assignees, 112 official receiver, 113 sheriff and reporters, 114 legal advisors and counsels, 115 central administrative tribunal, 116 state administrative tribunal, 117 family courts and 800 other head expenditures. Another major head 3475 other general economic services where expenditure under economic laws are booked. Expenditure include regulation of MRTP commissions, regulation of patent designs, quality control and standardization, regulation of joint stock companies, regulation of weights and measure and market. For capital expenditure head is 4059 capital outlay on public works under which subhead 60 other building, under which the expenditure of court building is booked.

We after seeing these heads of accounts available in our accounting structure in relation to administration of justice we may find some gaps. Like for capital expenditure under administration of justice, we have only one head and that is subhead of public works department. So under capital expenditure like renovation, use of latest technology for proper administration of justice we don't have any separate account head. These are limitations of our present accounting structure. So we are not able to make budget for capital investment in administration of justice that goes in regular executive heads. Separate capital expenditure account head is not available in our accounting structure.

The scheme of arrangement of financial administration decided in our Constitution during 1947. The financial autonomy of judiciary was thought about at that time. The expenditure on the pay and allowances of judges of the Supreme Court and of high courts were taken as charged expenditure not subjected to vote of parliament. But this envisaged with socio economic environment prevalent at the time of framing of constitution. It was could not be envisaged that time the volume of work of judicial administration will increase thousand fold after 65 years.

Therefore only pay and allowances of judges of higher judiciary was made a charged expenditure. In that scheme it is not provided that automatically that if workload of judiciary increases then the number of judges is automatically increased. It only provide the salary and allowance of existing judges will be charged. It does not provide that with increase in volume of work there will be increase of size of judiciary also. Later on in 1947 the expenditure on office establishment of Supreme Court and High Court was not made charged on consolidated fund. Later on this was felt that merely making salary allowance of judges does not provide the financial autonomy to judiciary. Therefore the exp on office of Supreme Court and high court was also made charged expenditure and it is later development. But this only provides charging of expenditure of the existing strength of the Supreme Court and high court and it does not have a mechanism of increasing the strength of the Supreme Court and high courts. This is an institutional gap. Another gap is expenditure of district judiciary is not at all charged on the consolidated fund of state. So since a major chunk of workload is taken care by district judiciary then what kind of financial autonomy or corresponding financial arrangement with the workload of district judiciary be linked with the financial arrangement under the Constitution or state laws. Then another issue is that what kind of institutional arrangement should be there so that

finances comes automatically for the expansion of permanent in nature which can take care of extended work. So that necessary capital investment can be done. So that the work can be performed with the certain level of performance in terms of time, speed, quality etc by all the all the three levels of judiciary. That capital expenditure which comes for the expansion for the judicial administration is not charged expenditure and it is voted expenditure. This is another gap in institutional set up.

Another gap is financial administration capacity of the Supreme Court, high courts and district court. The experienced manpower is not available with the various level of judicial administration. The level of say either Supreme Court, high court and in deciding the size of the budget of the each year so that performance of delivery of justice meet a certain level of benchmark. When the citizen is expecting that judicial system needs speed and quality then corresponding arrangement is not available. Another recent issue is that the government expects that our judicial system should be so fat especially in economic sphere that the delivery of justice becomes of international standard comparable to that of developed countries. Such as implementation of contract, various dispute under various economic and commercial laws. So ranking of our country comes in top 10 in ease of doing business. The growth rate of our country will automatically improves when the administration of justice become of international standard. But the corresponding resources are required to achieve that stature is not forthcoming.

I have discussed the financial committee in Supreme Court and in high courts and then taking finance and budget officers from central and state account services. We have the recommendations of judicial impact committee. We can also have the work study done at various level of judicial level. What workload is available? What

is the pace of delivery of justice with the current manpower and other resources and what are the gap in the workload and resources available and what are the resource gaps? What are the targets in which period we want to achieve those targets and what amount of financial resources will be required to fill up that gap?

We may also prepare the benchmark for judicial delivery of each kind of cases and then we can prepare outcome budget. In the outcome budget we will mention that how much resource will be required and the present it to union and state level and consensus may have to be derived that this much resources have to be deployed otherwise we cannot deliver justice at the level which we want. When we are talking of reform in financial administration in judiciary in institutional mechanism this point may be included at whatever the court fees come or whatever the fee come under any Act of parliament or state may go in separate fund and that fund may be utilized in development of judicial system. Fee should be utilized for the purpose for which it has been levied. In executive side we are having many central services but in judicial side we don't have any all India central service. If need is felt for that that may also become part of the judicial reform that we may have a central services for judiciary also. That will be powerful enough to improve the financial administration of the judicial system.

The laws passed by Parliament but how much workload of judiciary will increase under that law is not given in the objective of that law. We may take it part that whenever any law is passed by parliament or legislature an assessment on the workload of judiciary may also be presented along with objective of that law. Assessment of workload whether it is increased or decreased is presented then automatically the issue of financial arrangement to take care of that workload may be highlighted. There is delegation of financial power rules 1978 of ministry of

finance. I am sorry I have not read that thoroughly that how much that rule provide for the delegation of power to various judicial setups. That has to be studied. That when we discussing the issue of re-appropriation from one scheme to another it goes to finance department, from detailed head to another detailed head etc. Under delegation of financial power rule which will be competent authority at various level for reallocation from one head to another may be included in that rule also for judicial administration. Now questions answers on various issues can be taken up.

-----That uniform service will deal with central government as well as state government. This will be uniform link dealing with all the levels of the government and that will be a permanent link and under the present setup we have of judges at the high court and the Supreme Court.

Participant:.....the demand can be flexible so when you say that there has to be a Indian judicial service so when the demand is flexible where is the question of having a static supply? 5 judicial officers in particular district suddenly there is change in legislation and there is flood of certain kind of litigation in some area. How will you determine that these five judicial officers. How do they fulfill the need for it?

Mr. Yashwant: That has to be estimated. When we create any kind of this manpower we make it initially at bear minimum level and based upon the need the strength is improved. It can be taken up by experience only. It cannot be taken and foreseen.

Dr. Menon: I would like to raise a related question. According to the data available every year 1.85 crore cases are being filed. And the existing number of judges in court is able to finish 90% or more filing. So that means if the filing do not increase substantially, we can manage with the existing filings, with the existing set of courts, with a marginal arrear of may be 20 lacs or so. How are you going to deal with 2.3 crore arrears. Can there be a plan, a budget independent of the regular judicial budget to handle the 2.3 crore cases which have been pending for the last decade. Is it possible? We need separate courts, we need additional courts atleast to deal with this 2.3 crore.

Participant: One more aspect in fact to add is that according to the statistics given by law ministers, sanctioned posts in the country of judicial officers at all levels is 20214 out of that working is 15643. So far high court j 1017 are sanctioned posts. There are 381 posts are vacant. The judge population ratio is 17 per 1 million. If they fill up all the posts as on today what has been sanctioned and they ensure as and when retirement takes place, there is a advance planning which is required to be done and retirement date is very certain. There is no planning or methodology which is used for filling. The institution ratio as well as disposal ratio being almost equal. Evensolved quickly.

Mr. Yashwant Kumar: The gaps which are there in budget sanction as well as the position. First that gap has to be filled up and then again, it is possible to devise a scheme to take care of the existing arrears of cases in time bound manner, within certain period the 10 year, 15 year. So it is possible to study it to make outcome budget targets, a vision document for 15 years, then targets to be achieved and then outcome budget to achieve those targets and based upon the resource gap a separate scheme may be demanded from union and state government that these

are our targets and we want to achieve this level of administrative of justice. To achieve this, we want this much resources. Then this can be sanctioned by legislature and parliament. That can be made.

Participants: If you see the constitutional scheme, under the Constitution as far as the Supreme Court judges and staff is concerned and high court judges and staff is concerned charged consolidated fund. Article 247 ---Entry 11A of list 3, the central government has the power so far the central Acts are concerned. When it comes to state laws or state courts, then there is no such Constitutional scheme or mandate of the Constitution. The proposal is this that we can have a committee at various levels. Now what is the legal sanction of that committee? It has to be whether they would honor the recommendation of a committee or not.

Dr. Menon: No having a equivalent Article for state expenditure, a Constitutional review commission has recommended a judicial council at the level of state and parliament. That is to be a under a parliamentary legislation. That judicial council will finalize the budget requirements of the high courts at the state judicial council level and budgetary requirements of the Supreme Court at the union judicial council. It will have the representation of the executive and legislature and what is adopted there is directly to go to the legislature.

Participant: The court fees component can be treated as a fee and can be used for appropriation towards expenditure of management of judicial system. But court fees in India come through different state legislations which are the largest chunks rather than what come through central legislations. The central legislation raise pittance compared to different state legislations. Would you be able to indicate a norm which could be available for general acceptance by different states without

any new legislation and without any rule be made? Can it be confined to the budgeting and planning sector in the executive without any rule or Act be made. We know the Indian system where legislation making exercise takes long time. Will you suggest as a managerial doctrine coming from the policy management and the budget session whether the planning and budgeting sector in the executive can treat this as a focal issue while budget allocation or preparation of budget. The yardsticks are different, priorities are different, and rates are different in different states.

Dr. Menon: I suppose the delegation of financial powers rules 1978 provides a general guidelines accepted by so ifas suggested can be incorporated as part of those rules. In it x percentage of court fees could be utilized for appropriating towards judiciary high court considered as legitimate expenditure. Could that be accommodated under this delegation of financial power rules which are from Finance ministry itself on how money could be spent being delegated.

Justice Sarin: I suppose the state approval will also be required that where the bottleneck would be. Which state would like to part with part of kitty which comes to it which is available to them as resources and give it away to judiciary? On long term basis a two prong strategy whatever may be modalities which will be required for it we will work out. That is filling up of vacancies now even that is easier said than this. We have right now NJAC and things are coming up and till that's get sorted out we will not going over to filling up vacancy but if you fill up the vacancies and also at the same time have a two prong strategy what Dr. Menon is suggesting simultaneously and another effort for dealing with the arrears as separate plan for ad hoc appointment of judges. So two prong strategy there be

worked out over a period of time.These days post retirement is more lucrative.....Ha ha ha.

Mr Yashwant: There is one limitation in delegation of financial powers as rules does not provide for appropriation of money. This provides for who is the competent authority to sanction certain level of expenditure for appropriation of money there is budgetary procedure. So whether the money which is being collected under court fees, whether that can be utilized for some purpose for certain period in specific fund which can be utilized for clearance of pending cases before the judicial system for 15 years. For 15 years let us earmark court fees kept in certain fund utilized only for to expand our judicial resources to clear the pendency in 15 years. Certain kind of institutional arrangement is needed to take care of problem of pending cases.Certain fast track court to clear the pendency within 15 years.

Participant: One question issue raised that chief secretary be part of judicial academy governing body or may be some secretary part of the committee constituted by the high court at its own level. In every high court we have committees where some or the other building secretary, finance secretary also take part. From where does the power flow to the chief justice to have an officer from executive as part of the committee and what is the statutory authority for that committee for that committee to be constituted. That is why he resiles when he goes back to his own office as a finance secretary or building secretary. They participate in our meeting but make no commitment or their commitment mean nothing. From where that authority flow to chief justice. May be supervisory jurisdiction in a different way judicial side but at the administrative side how one does co-opt those officers in the committee.

Justice Sarin: If you are looking for statutory power it would be lacking. The committee is constituted for whenever it is concerning a core purpose. So bring it within court administration. Go back to the Constitution. It is in that connection we are calling you. An Administrative officer can sit back and say sorry sir I need to come and attend this meeting. But that is something which is not done. These are the conventions which are built up and in judiciary over a period of time most of the decisions are implemented. Few where they run into a problem of budget and not implemented. So it is a good practical solution which has been working. There would be some where they can't grant it then they back off. But it is a good mechanism in place to solve half the problem.

.....That's all. You don't have to broadcast it. You know it. Not only that underlying the contempt power.....ha ha ha. That's how all the administrative powers are solved.

Justice Ravi Tripathi: Our Experience in Gujarat is very similar. Whenever there is an issue which is required to be settled, we invite the secretary of concerned department with the chief justice. RG will be present, the law secretary will be present so even numerically we will be in majority and they will be supporting the chief justice. Dr Chauhan has said that in certain matters the law secretary will be conveying that this contempt matter is pending before chief justice and the only way out is get adjournment and by that time certain files are cleared.

SESSION 3

12:00 PM – 01:00 PM

Involving Court Managers in Judicial Administration in High Courts

Prof (Dr.) Madhav Menon: Well we are now moving to a particular issue that is faced by the judiciary in putting its house in order proposed by 13 finance commission and attempted to be organized by different high courts in different ways with what degree of success or failure you have to tell us but I heard Geeta Oberoi telling us that fund allocated under the thirteenth finance commission, 80% of it could not be spend and returned to the executive. This talks about a very sad story of judiciary not being prepared to be able to spend the money allocated to it under special scheme for whatever reason. This needs to be analyzed and one such institution which has suffered in the process is court managers. The idea of management of the court has worried judiciary across the world in fact two important revolutions that have changed the management of institution both in the public and private sector that happened during the 20 century the management revolution and information communication revolution. These two development on ecology side have drastically changed the way organizations are management whether in government or outside the government. Particularly in business.

But in India it took a long time to revolution to make its impact and when it got adopted it was rather quick in business to adopt management and technological tool to organize their management with greater efficiency. In government in certain department it started even in state government it been adopted the work culture is accordingly changed because of pressure of particular technology and even

management in government in the institute of public administration have been working for the last four decades with impact in making the functionaries of the executive to be more efficient borrowing the principle of management which has been there in the private sector. Unfortunately the judiciary has been relatively untouched till about 10-15 years ago by both these revolutions and we have been operating with tools which were left behind the British in the way that the system of justice have been managed by those who are in charge of this.

There are reasons, finance is one, the system and subsystem that make administration of justice possible today employs the model that was 19 century vintage. Whether it is filing, whether it is record keeping whether it is processing or judgment copy distributing, so many aspects particularly of the trial level has not changed substantially since independence. Why 13 finance commissions recommended the court managers, the objective of it. It was designed to fail when it comes to its operation in judiciary. Six objectives of 13 finance commission for court manager, one relieving judges from administrative work so that judicial time can be fully utilized for utilized work. Two judges are not good administrator and administration suffers as a result. Three trained managers can not only enhance efficiency in administration but also facilitate up gradation of system for increase productivity with the help of management principle and technical tool.

Fourth the executive judiciary interaction for budget, services, the technical infrastructure are all better served by managers than judges. Five improving the public image of court through litigant friendly public relations work is a job to be done by manager trained for the purpose. It helps in maintenance of independence of judiciary. Six judicial statistics on the basis of which alone you can have judicial plan are task essential for judicial reforms but generations of

statistics in differentiated way that is appropriate for planners to make future plan is a precondition for intelligent management for system to be in place. This collection of differentiated statistics is a highly specialized jobs which only management expert or statistician. The statistics we have today is useless for judicial planning. These are the shortcomings that finance commission has observed which according to them has contributed delay in system. So they though let us have trained managers who understand court system and which can work on modern management principle and technological tool and take care of administration and leave administration of justice entirely to judges.

These are the objectives. Unfortunately these objectives seem to not being read by judges who are in charge of recruiting court managers. With the result the qualification for being a court managers were not properly looked into. Nor the selection process was done with that level of scrutiny required to get the right man for right job. You advertise, you select some people with engineering or MBA. They were not being told what their job requirement are. And they were left high and dry and they have only grievances. Nor the registrars and registrars generals of the court welcome them.

They say it is unnecessary appendage. They felt threatened by their presence and their concern was how to sabotage and kill the system. Judges have no time to look into the type of problems and address them and were guided by the registrars. With the result it was designed to fail. I don't know whether success stories are there about the use of court managers in any of the high court. I would like to have a pilot project run by the NJA at the district level, not at high court level. Because the administrative work of district judge is tremendous. I feel surprised as to why the high court is not giving. Because high court judges are not

under that sort of administrative pressure like the district judge. District judge needs the court manager more than a high court judge. If it were to be provided the right person for the district judge, he could have devoted much of his time. Today he is spending perhaps half of his time not trying serious complex civil and criminal cases. All sort of administrative work some lawyer strike some karamchari strike, some question of budget or from administrative judge. All types of things. Which ought to have been the work of a person who is a trained manager who understand the court processes and system and does it under the authority or supervision of th....therefore I find one other reason.

I am convinced that court managers is the best institution that could be provided in the present circumstances to save the judiciary and direct on a modernize path. With introduction of appropriate tools, facilitating, coordinating, advising, planning, statistics you name it which are all required for judicial reform and it must start from the district level. Therefore at least as a pilot in some of the selected court if it were tried sincerely, it would have made a difference. But five years are lost and money is wasted with no result. We are back to square one. Now the question arises as to what should be paid to the court managers, what should be status. The status should be nothing less than the registrar general. The high court are appropriate if he is made somebody come to sort out the delay question he has to be a integral, I have seen a court manager, who is a judge in America.

They vary from state to state. A person who is a court manager not of one court but a cluster of courts in a district in California and he is one of the senior most judges at the district level. He assigns cases he doesn'tIn Tamil Nadu, there were two courts situated almost in same district. One court had an arrear of about 14000 cases and 150-200 cases are listed. Another court with same

jurisdiction had hardly about 150 cases in arrears. I asked district judge, how come, why don't you transfer some of these cases to other person who has less burden. He said I can't do it. Lawyers will go on strike. The karmacharis will protest. The distribution of work there is no policy. Efficient people are punished by more work. There is no personnel policy and this is not for the judges to worry about. It is administrative work. How it could be organized. This has to be managed in consultation with several parties in accommodative way. Which is not being done. So you look into the ills of the system at the grassroot level which could be sorted out if somebody has time which judges do not have.

Somebody have a disposition to talk to people and then make arrangement according to procedures which can be approved by the high court. But there is no mechanism and nobody is interested. Court managers would have done it. Had they been given the authority and had they been accommodative. Therefore my submission is that I don't want to take it long. The objects involving court managers with the finance commission and all sensible people think similarly it could not be communicated properly to courts. Nor the courts seems to be interested as to how they could be tried out at least in some places and make reckless recruitment with no clear understanding of work to be taken. With the result everybody is dissatisfied including court managers. You might get perhaps a person with an LLB and an MBA and he would be able to understand the court procedures under court system whether you look at filing or record keeping whatever.

It requires statistics, it requires study, it requires discussion. But it is not impossible. In this regard judiciary is not unique which cannot be done. But it requires some authority. The hierarchal system in which judiciary is organized I

believe nothing happens in the high court unless the chief justice gives the authority. Chief Justice is one among equals, why not the chief justice delegate, delegate fully. All these matters why not the administrative judge delegates to the district judge and leaves it to him and trusts him. Havens will not fall, he is also a senior officer which could be any day a high court judge. This hierarchy and the mindset that operates is a serious block. Particularly when you know when lawyers are operating with a 19 century mindset and who are trying to block every reform that will happens. So even is the high court gives the power to district judge and it give him, he is taking risks yes, allow him to take risk. But if you trust him and give him that power he might succeeds also.

If he is not allowed that authority..... But the court managers' job requirements have had to be stipulated much before the selection process happens. Taking the cue from the objectives with which this office was instituted by finance commission which did not happen and therefore the whole system did fail. Having seen the system operating very effectively in some of the American jurisdiction, I am convinced that this is one sure method for saving the judiciary from total collapse. Authority will have to be shared by judges with non judges. Court managers can be used in statistics, research and planning, security and transport management, technology and pre trial services, court reports, probation services and so many other things.

Justice Sarin: I was just browsing through the reading materials and they have published the reports from district judges on how effective have been the court manager in different jurisdiction. Now one of the major problem that appears was the lack of defined duties, non adjustment and acceptability. The administrative burden even for high court judges as they go up on ladder of seniority keeps on

increasing and by the time a judge have 7-8 yrs he is burdened with many committees which are of prime importance. That is where the authority of the court so he wants to enjoy that and specially J1 J2 they would have enjoyed it also. So it is administrative part also. So they also need to be relieved. My perspective is a little different. I would not accept the American model or the Australian model. Their problems are quite different from ours. I was once in London and one of the members of the House of Lords he said he was very busy next fall was. What it is Lord he said that he has five cases in next two months. So our problems are different, we are seized with number and with different administrative problems. I would recommend a different model.

A court manager being employed. The present employment situation is that when in Metros we asked for peons we get applications from graduates and law graduates. So it is not surprising we have definitely some MBA candidates. But that will not solve the problem. We have to look at court management systematically and see that if we have to create a cadre of these problems, not one court managers but he has an administrative machinery of assistant manager, of another person assisting him. Major failures in these states from what the reports are, he gets no cooperation from Registrars Generals, or the existing registrars, staff who feels threatened because they are not trained that way. I would have recommended something more. It is not difficult to devise it at all and none knows better than us rather than any of the administrative staff, within the court we know what are the functions we want the court managers to do....why can't we devise a programme of training to any of the new hired persons at two level where he goes through a training programmes of six months and after that he gone through each function of the court, the department of the court. When I joined IBM Corporation, in the beginning of my legal career.

I joined as legal person but it could be 6 month training programme where I went through each of the functions of the company. So at the end of the day they have an officer who was fully trained that company required. Any of these recruiting with MBA and putting in among the system will not work and system will not accept them. What we need to do is engage these people and have training programme of ours for 6 months where this man gone through the grills and he becomes one of us and become the part of court staff and that increases the acceptability and the confidence buildup with outsiders.Administrative cadre, we recruit administrative officers, we have CJ judicial assistant, we could recruit him at the administrative officer level. There is no bar on that.

As an administrative officer you recruit and put an MBA there as a qualification. And assistant administrative officer without an MBA, there is a possibility of promotion. But these are the people who are internal to court, who understand the court functioning, who are accepted by the rest of the staff also. Training programme and a person can get absorbed in the system. The comments I saw today from different district judges was non acceptability in a sense he doesn't know what to do and not accepting him. Rest of the staff doesn't accept him.....We are so used to itwhen they pick up a phone, one of the protocol follow, call that chap, where he is ask him to come to me. You are so used to it for anything, so here is a person who is well trained, who has the potential to discharge all the function. So that is in a sense the issue. He at length sitting on the basis, that we accept the need of court managers. In a way he can be most effective officer. We accept the need of court manager and he need some training and then introduce it.

.....I saw from Punjab the comment was that court manager functioning is exceedingly well. You tell us how you manage it.

Participant.....We have court managers for five years and then now it was felt that we should regularize as they were working on contract. Justice Banerjee told us we had easy picking whatever we ask government give it us. So we asked him to cadre.

Justice Sarin: They never give anything to your lokayukta.

Participant: Ha ha haany way the judges the power which you not wanting to mention..ha ha ha.....we have got these posts sanctioned and fair bit of feedback, the committee revised the qualification we want and while we were half way through the recruitment process a writ petition was filed by an existing court managers that we have been working for five years. Our courts are good, how can you can take us away, we have been working for five years. This petition was before me.....I was not granting interim order. But the Gods have it otherwise, my roster have changed.

Justice Sarin: Without trying to influence you I can give you a suggestion where a similar situation where similar kind of challenge was there. We said that all right these existing people if you want you have so many years of experience and you still feel you could be relevant but at the same time you have to undergo this training programme and pass an exam. If you don't pass a exam and dot undergo training we are not going to hold you eligible.

Participant: Those I don't think those parameters were being met in any manner. Of course they were assisting the district and sessions judge in a manner which he

wanted it to be done and he was able to delegate some functions of it. The reasons for which that cadre was being made I don't think we were near.....

Justice Sarin: I would think, even we will make a significant contribution and achievement if first few steps are taken towards recruitment of court managers and training them. It is process of evolution. We don't achieve the result for first day or first two years. Over a period of time it will develop.

Justice Ravi Tripathi: To my mind the simile the organ transplants. If you put a new kidney, its not that every time the body accept it and number of tests are carried out before transplant is permitted. In this case also unless we stipulate the work chart of these court managers and specially the area wherein the district judge do not feel that he is encroaching upon his administrative control Only then possibly they can be put in the system with all the training.

Justice Sarin: The delegation of authority to what extent. This again depends upon how effective the man whom you have trained is. He can if he is effectively discharging function. The delegation can be kept on increasing. For instance, I mean other jurisdiction you have even calendaring, case management, courtroom support. Calendaring we would not because a judge himself does it. We can adopt what suits us.

Participant: No court manager will be able to control the advocates when judicial officers find it so difficult to manage the advocate.

Participant: The court managers which have been appointed now are just ceremonial pieces in office. The person who can come and change can be a judicially trained person.

Justice Sarin: Supposing you have recruited somebody as an administrative officer which he is equivalent to deputy registrar or joint registrar? Tell me does your joint registrar operating these days is having any problem with lawyer or not. He handles them properly. In six months training and being in the court staff you will get that. He will not be a stranger.

Participant: Management personnel require judicial training, administrative training and delineated areas have to be specified and he has to be trained in that area.

Dr.Menon: In our subordinate judiciary there may be judges who may be efficient in administration. You can select them. It depends on scale which you offer. If they are trained on the management and technology aspects these judges would be efficient court managers. A cadre can be created with equivalent district judge eventually these CJMs or other who have shown sharp acumen on management of personnel or lawyers, court matters etc. They know the system and subsystem and the weaknesses of that. If they are given those managerial principle training as well as technology efficiency they will turn out to be efficient court management.

Participant: This is what I was suggesting as they know the basics and having interacted with the advocates. Ultimately the court manager will going to interact with manager. If they doesn't have a hold on basics then it will going to be a huge task.

Justice Sarin: And I will tell you...at least in.....Justice Gauba, how many e-courts are functioning in Delhi now.

Participant:Every district has one e-court.

Justice Sarin: You see look at this way initially there was lot of resistant from lawyers. They were not accepting e-courts. There is no files, no papers. They were coming around. You have two full fledged ecourt in high court.

Participant: Rather in high court we have more benches which are functioning as ecourt. The DV in which I am sitting is ecourt on criminal appeal side with Justice Sanjiv Khanna in criminal appeals we have paperless courts. There are no files.

Coordination With Bar Association: Issue of Strike

Dr. Menon: Next topic is what you raise...how to tackle the lawyers

Participants.....ha ha ha.....there is no question of tackling, we have to carry them along.

Participant: Court managers....brothers said they would find difficulties in dealing with lawyers. My suggestion is that lets not load them with entire work. It should be stage wise stage. Our first anxiety to have proper management of human resources, management of matters of finance and then the infrastructure. So in all these areas, they have nothing to do with the lawyers. Lets insulate them for the time being. The system will evolve.

Dr. Geeta Oberoi: Registrars IT are appointed by many courts and in he is IT person and he is also made registrar. Can't we have registrar management like that, pure core MBA from IIM Ahmadabad.

Justice Sarin: Geetaji that creates a lot of problem interse, you know we don't want all other persons who are heading different facets of administration to be told you are hereby deprived of it and here is a guy who is not deputy....let it come from selection and from within the cadre. Otherwise the system fails.

Dr. Geeta Oberoi: But the system is hierarchical. People at higher end like you all will accept then everyone will accept.

Justice Sarin: You will be surprised. The system what else is your report. Please see page 49 and 50. Can we read and see why it has been failed. Shall we go to next subject?

Dr, Menon: well in the limited time we addressed the issue of lawyers' strike. Except in India no where in the world lawyers go on strike. This is become a perennial issue. I only cite apart from the case which is there. I cite one model as to how this issue was addressed by Tamil Nadu Judiciary. That was in 1970's when it was not so frequent as it is today. It became frequent in Tamil Nadu mainly between Police and some lawyer went to police station and he should not have gone. But he has gone and police did not respect him or he asked for bail from the police and denied. It ended in quarrel and strike declared. It was not one case, in different district in Tamil Nadu it happened in different districts. The high court was concerned with it, called the bar association and bar council, the issue could not be resolved, the government got involved , the police was perhaps on the wrong

side in many of these case. Therefore the director general was summoned by the home secretary and asked for explanation at the instance of the high court. Finally a committee was constituted which was agreeable to the lawyers of the Tamil Nadu Bar Council.

The chairman Bar Council of Tamil Nadu, the home secretary and the director general of police will have a committee which will be given 36 hours after incident during which time the lawyers will not call strike at all. Within 36 hours, the machinery will have started to find out the fact and locate the fault and correct it. If those steps were not taken then only a bar association will call for strike. This was accepted as a rule and was adopted and this machinery at the high level has intervened in some cases and it could find resolution without allowing any lawyer group for call for strike. It worked for 3-4 years. That by even the Supreme Court saying that lawyers cannot go on strike did not has any impact. The bar council has called for strike for an amendment in the CPC which was adopted by parliament. Section 89 was introduced and chapter 21A in CrPC, bar council called for strike. What can you do. Therefore there must be a mechanism like the Tamil Nadu in 1970s which can give a statutory basis it required. It worked as grievance redressal mechanism. To find the facts and act instead of waiting for an FIR.

To let the court function without one important wing of the institution calling for a strike or boycott of court is disgraceful. In Kolkata high court, in the presence of the judge the lawyers are shouting slogans against him and do not allow other lawyers who wanted to appear. In the Kolkata high court, the chief justice had to go to that court and asked the judge you proceed and counsel the lawyers to allow the court to function. This is the extent to which the things can go. Some solution

has to be found. One understands that lawyers must be made to realize that they are the servant of those litigants whose cases they taken and then boycott the court. A mechanism has to be found by judiciary and not by executive. You are in control of lawyers, you have to negotiate with them.

Justice Sarin: I was just wondering that Kolkata incident and solution emerging from Tamil Nadu. But what has been happened in Tamil Nadu after that.....it is no longer police but chief justice. I don't think that bar council mechanism is working there at all. These are some police excess. Some excuse to go on strike but if you go to mufassil the strike could be for weirdest reason. I once went to UP there president of the clerk's association died so lawyer went on strike. Any of the lawyer dying in mofussil they will abstain from work. In Delhi high court, ladies cloak not got ready faster so any of the reason can be the cause of strike. The Harish Uppal judgment says at best token strike for a day, if it involve the integrity and independence of bar and no other reason. But these people hardly follow it up. I remember in Kashmir as Chief Justice I encountered a situation and there was a strike call. The chairman of Bar council said our guests have come.

But I thought that was no reason. He said no no we have look after to them. The peon told me these are not guest, there are some people who are from Pakistan and their credentials are not known. I took a firm position and told the president I will concede to your demand you have some guest. Please tell me who are the lawyers who are having these guests. There were three lawyers only and I exempted them from appearance and rest to be sit with matters and that day we ensured that. Next day the law did appears. After all one of the things the difficulty that comes in implementing Harish Uppal judgment. Since the lawyer was not appearing the judges should go ahead. Now as judges we know that we like to

have lawyers on two sides and decide the matter. Even in the absence if it is not there, that means you have to go through the files. So even if there is not a strike, you go through the files carefully or at least pick up 8 10 of them which you have read and you think which can be disposed of. A message of firmness be sent that you are not approving of it. I know it is not easy it is difficult. You become an unpopular judge. But those are the things you have to take as call of duty.

Participant: The actual reason behind the boycott of Justice Gupta's court. He is taking up bail matters. He is strict and bail is not granted on mere asking so therefore they created the ruckus so that chief justice can be pressurized to change the roster.

Participant: Often it happens that chief changes the roster on the pressure of the bar.

Participant: The larger issue is appeasement of the bar on the judicial side. I think that is serious issue. I request Ms. Geeta to have a separate session on this. We are responsible judges and we see it happens day in and day out.

Justice Sarin: Are you talking of appeasement on judicial side is a very strong expression which shows the determination of the matter also on that basis. I though perhaps what you want to say is accommodation.

Participant: No Sir, I am saying it emphatically and responsibly.

Justice Sarin: That was kind of appeasement is dereliction of duty it is dishonesty. One is accommodation. Brother I will take a minute.....Let me take a case a judge

is very strict he says one pass over and no more. You may put that in the category of non accommodation. But if you say judicial appeasement it implies here is compromising. That is dereliction of your oath.

Participant: In state of AP almost for one year strike went on almost for one year in subordinate judiciary. Except in the high court, courts are not functioning and nothing has been done from the judicial side, from the high court side, we just close our eyes. 13 districts entire judiciary was not functioning. In AP.....During telengana agitation.

Justice Sarin: Those are matters of movement. They do not come in that category.....Brother in lighter vein there were few judges in Rajasthan who found inspection in Kotputhli. So you make an inspection so you are on duty every Friday.....

This is what Justice Karol say comes into play. If you in your court who decide to act tough while your brothers are not doing anything...right... then you are singled out while others are treated as those who accommodate bar and which he describes as appeasement..... A judge being strict yet the bar accepting him.

Dr.Menon: Before we break every judge must cite an example on the lawyer appeasement. In one of the district Burdhan, there was a new court building established and the court was supposed to shift from the original place to new building which lawyer found inconvenient and they were resisting. The district judge was asked by the high court to shift and he started shifted. The lawyers assaulted him. Fellow was crying with some sort of injury etc. Naturally the matter reached to high court and there was enquiry and thinks like that. What I read from

newspaper that the high court believed the story of the lawyers and disbelieved the experience narrated by the district judge and resolved the issue. This is unfortunate. This is appeasement by the high court as they want peace and in the process the martyr was district judge who was assaulted. This is lawyer appeasement.

Justice Ravi Tripathi: In Gujarat, in one incidence, the entire bar came and requested the transfer of district judge. I requested the chief justice and he stood with us and we stood with district judge and he was not transferred until general transfer time came.

Participant: The reason which underlies this problem. I we look at it from perspective about 25 years back the legal community whenever a new person used to join he had a particular seniors office and the senior had a reputation and school him in his office. Over a period of time and lot of lawyer coming and no such senior is there in the bar or they may not be getting that particular office. So there are large numbers of lawyers who are uncharted and unregulated. Now on another plain is that all the judicial reforms which we keep on discussing in academies. They are dealing with one part of the legal system specially related to the judges and we completely forget the legal community. I have often come across may be Gujarat has a concept of a lawyer's academy. Brother Bhat is there. In Jharkhand that Justice Radhakrishnan when he was the chief justice and he suggested this idea the bar council took it up. In fact lawyer's academy could come up in each state or may be in smaller size in district also and senior lawyer or resource person do the same job which we are doing in state judicial academy. They can be trained towards a particular skill.....

Participant: I am from Madras high court since a reference has been made I though I should express my view on this. Incidentally I was the chief justice on the day of occurrence. Recently we have a problem. One of the brother judges saying that all the general public wear a helmet. Now in Madurai there was lawyers strike against this judgment. They burned effigy, shouted slogan against order, they burned the helmets. Strike went in other places also.

Now we have initiated contempt. There are two reasons for this, as said is appeasement. We also asked the higher police officer and asked them what is going on. They told that our past experience show whenever a lawyer does a mistake the high court help him immediately and instead of taking action against lawyer you are pulling us. The second problem is lawyers coming from nearby district who are without any qualification. About 80 % of lawyer do not have any work. If action is taken it takes a communal angle. These problems are occurring in states. Judges should stand for and take a strong action collectively. The lawyer's problem is that they convert the criminal case into habeas corpus petition and we pass the order. Naturally the police is very apprehensive of the judges more than the lawyer. Even the chief minister told one of the senior judges that the one community islawyer.

Justice Sarin: You see what you are saying is police is not acting against those persons who are not wearing helmets. The other part of this is what are you doing for those people who are continuing with the strike are you proceedings. Why you allowed one month to go on. One needs a chief justices order for that. Any one of the judges could have done it. Even in dealing with strike if you are saying.....each one has his own conscious. There are judges who say I am going to adjourn it. There are other judges who noand even at that point of

time it is for the chief who can informally over a cup of tea talk about and suggest that it is desirable to court should take desirable position. But every time chief whether will succeed or not?

Participant: Sir in Madhya Pradesh, we had a strike about two three months back. So at 10.15 there was a video conferencing of judges and we decided that we will not going to accept and we issued contempt notice in all the cases and then there is a separate bench constituted. That bench will take up contempt notice. But the message has gone that now the bar knows that strike will not be accepted.

Justice Sarin: Thank you. There is time for lunch.

SESSION 4

2:00 PM – 3: 00 PM

Inspection and Visits to Strengthen Judicial Administration

Justice Manmohan Sarin: Shall we.....Subject this time is that I am quite confident that speaker wouldn't have to struggle to keep to attention all of you because this is a subject which should interest all of you. Inspection and visits to strengthen judicial administration. Under Article 227 high court is vested with power of superintendence over courts and tribunal within its jurisdiction and this power includes calling for returns making rules for practice for proceedings in courts prescribing forms and books of accounts and entries shall be kept. Article 235 gives the control over subordinate courts including posting and promotion of all district judges which is done with the consultation with the state governor. Now district courts have control over all civil courts at the district level as far as section 33 of Delhi and Punjab courts Act, small cause courts are also under the

administrative control of district courts but under the superintendence of high court. Now each of these under the high court rules, rules have been framed, forms prescribed, guidelines laid down which go at length at listing out what the inspecting officer or judge is required to see from the various registers which have been gone into. In today's presentation and the discussion I don't think we need to dwell into all the forms which are required to be seen. What else an inspecting judge should see when he inspect courts. That is not the purpose. Even these cover the whole spectrum of court's functioning. It covers structure, facilities, malkhanas, arrangements for the bar and the bench, maintenance of court fees, cancellation of stamps, execution of decrees and list goes on and on.

So lets come what we understand is the purpose of this inspection. I would begin by saying these inspection are prelude to your evaluation of the officer concerned who is within your assignment or who reports to you. Now inspection is scheduled once, it can be surprise ones also. Lets us take the states if it is a scheduled inspection I am sure the message goes around that his lordship is arriving and the whole premises and the established is spruced up whatever records were required to be completed overnight they will be completed, deficiencies removed, things kept in pace to welcome it. Yet I think that doesn't show that the inspecting judge will not find something. He can still see a lot. One is records it to be kept as they are required to but apart from these is lot to see. In some of the metro a place like Delhi, we have a situation were the judge is inspecting and if he happens to be the one of the recently elevated specially from the bar, it is quite possible that in the district court or the subordinate courts may not recognize him. So he can go there sit in incognito and watch the proceeding.

These privileges you will not be having in the state. If you go in mofussil you will be recognized. But Delhi we have this situation and let me use the colloquial expression in that sense it is metropolitan. The subordinate judges respect you but that is all. It is not that they are going to be on attendance....The court staff maintenance and access to records, efficient court administration, availability of files and records can reduce the woes of the litigants. Now this I am making a reference, the desirability of having all your records complete. When files are over, cases over, they get consigned, people who want certified copies they can get it. Now what is the purpose of this inspection? Does it serve its objective when it is inspected?

In our court, that high court judges are not very true and faithful to this concept. We do not effectively utilize this inspection. Very often the practice is, initially when the judge get appointed he goes with great gusto, inspect the judicial officer, advises him also. But as he go on the ladder, he decides its enough so at that time the inspection slowly wither away and what takes place instead of it is you call for the files, best judgments and by that time you are in the DV you have additional work then this furthers stop and the practice is to just call for few judgment and when we feel we call for judgments at random. At random you get it and you start evaluating him on that. For 10 years I was very particular, I will go every time, attend the court, the evaluation which really is required is you watch his court proceedings. You see how this behaves with the bar. How he reacts to submission before him. Does he give enough opportunity? Whether his question reflect good understanding of law. That visit tells you so much which you miss out. Please may be some of us give it up after 10-12 years at least you don't.

Make it whenever you and make sure out of all the officers you are there at least you inspect them at least once a twice of a year. It is matter of their career and if you talk to subordinate judiciary and you take their views the basic complaints has been that look high court is indifferent in its assessment. You do not really evaluate us. When we do justice to consumer of justice should we not do it for our own fraternity? Of course on the lighter side the inspection have their own history of anecdote when in earlier days usual inspection time use to be wither you reach sharp at 10 then you can see how many judges are in their place.

That can show the punctuality. At times you would visit at 2 pm and see who are the judges enjoying siesta. At the same time it will enforce discipline that the man return to his dais at 2 pm. Another thing once you inspected the proceeding, this person could have had the benefit of you advice on look this is a ticklish problem and this is how you should tackle it. He does not get the benefit of that advice because your are sitting in your chamber and assessing him on what. Either on the basis of judgment or what we hear about him from who are perceived to be known to us or whom we consider reliable enough. These could be people at the bar and that's how you get the information. There used to be time when the.....if the president of the district bar is a very respectable person, judges used to ask him, look what is his reputation is his integrity all right. Now three inspections by you how he is handling his case and this enquiry would be far better assessment than sitting from your office and enquiring about. Of course we can have other means now.

The object of such inspection is assessment of work performance. Assess your competence, capacity and integrity and this is followed by evaluation by us. Above all it is an opportunity for pointing out mistake which he could avoid. Now the

whole purpose of an appraisal is you give an opportunity and see an appraisal form, what are the norms been set for him, what he consider he has achieved. You tell him that look you have not achieved this, these are the things you should improve, your language needs to improved, your analysis is bad, you mix up on law or you are developing a style which is not required and you end up quoting too many judgments.

That is bad judgment writing. If on a issue the legal position is well settled and you start stating the law and reproduce al judgments you are burdening the judgments. These are the areas where the man needs advice. I look at him as a catalyst to inspire him to give best result. Encourage him that he has a sense of achievements and that itself can be far more than what you cal an assessment where you pointing out mistakes. Mistakes can be pointed out to tell him that it is not to be repeated and I expect you to do better. If at least 70% of you doing this then it is alright otherwise not. Now the other part is that these inspections are casual affairs. Even if you have done it one inspection in a year. How does it help. If today I have assessed a person.

He needs to be followed it up on what I advice him on his corrections in three four months five months you tell him that how he has improved in those areas. It has to be as you call continuous legal education so it is continuous improvement. If there are adverse remarks then law is well settled that it must be communicated to him. He should get a chance to work over it. There are other things which are matter of concern. The patterns have been followed. For instance a new judge, he may be brilliant but norms have been set in the court, initially you will give B. Unless it is extraordinary, exceptional cases then only you will give B Plus. Why should you not give him B Plus. We say no let him start with B. Two years B Plus. I have

heard few of my seniors telling me at times. Are Isko B Plus de diya abhia se...agle saal se kya karoge. I said if he deserves it he gets it. But somehow we are burdened with these norms which should not be there. I don know. What is you experience in other courts also where these things are practiced or not.....That is understandable. No requirement to give reasons should not deter you from good assessment. What I am talking is informal understanding that a man in the beginning should not get A or B Plus. It happens in most of the court. OK nowjust few of the points which comes to mind. Few general things which I have already spoken about. I want to keep something for my brother also. He will add much more in it. I want you to react on this. Tell me how many of you have a personal interaction with your officer. Interaction does not mean you call them for dinner or something like that but talk to them.

Participant: But they are family we interact with them a lot

Participant: In the first instance to go two hundred km to your district is a big things. We have to do it on non working day. If it is announced visit then even the court room is stage managed and other wise to go on a surprise inspection on a non working day the moment you go into the court the whole things changes. I know some judges they say the moment they take over a district they will ask all heir officers to come and have a cup of tea. I don't know those poor officers coming from 200 km for having a just cup of tea.

Justice Sarin: My congratulation to you for being candid enough to say so. In our life we cant find solution to every problem. There are situations which defies solution. You say it is mofussil. How do I cover. Alright what about those which are in Metro. They can. Right. At least lets take care of that. I am not talking of social

interaction. I am talking of interaction, professional interaction. Interaction in a sense that when you talk to him where you are talking about his assessment. You are open to him. You are talking what is his difficulty as opposed to it you are sitting in office and one day he finds a written assessment of Tiwari Sahab. Apne likh ke bhej di B Plus. As opposed whatever time you get, you have understood him, what are his difficulty. Interaction, let me clarify where you find out from what are your problem. How can you perform better. Is there a way in which I can help you? This is the interaction I am talking about.

What is giving you is a feedback from across the spectrum from subordinate officers. Their general feeling is that it does not happen and let's face it. It does not happen. Now some of you are very particular what is your disposal. Even if that man has been having although you have disposal norms criteria units. There are some judges inspecting judges, firm on you have not covered your disposal. The man may cry. Sir I have two CBI cases which took so long but you are not receptive to that. So this is how you have to be flexible. In Delhi we do not have a unit for 340 CrPC applications. Now tell me we by not keeping a unit for this you are actually discouraging people from taking u and deciding theses application why should he do that.

And as it a discretionary matter. So these are.....Sir I give you to add all after five minutes. Just let me run through. There was general complaint is that look that due weight to honesty, integrity is not there. Here one thing. Uniformity to the extent possible in assessment. To have total objectivity and uniformity defies. Because it is an human assessment. The second year or third year one of the judicial off came to me he says he had a long face. I said what it is. Is there is a problem with your assessment. He said no sir, I am alright with my assessment.

He had a B Plus. I said what your problem is. Sir that particular officer who was as compared to him in merit or otherwise potential nothing he is also being given B Plus. I said his assessing officer is somebody else and I can't control him. But it struck a chord in me. In those days I was sitting with Justice MJ Roy. I said that chief that this is what has happened today. So that was the day, we decided in Delhi to have a committee of 3 judges. To some extent bring about uniformity and reduce at least variation. At least three persons are thinking alike so there is greater chance of judgment being more rational. But then these three also have a disadvantage. The disadvantage is that a committee assessment brings in certain kind of formality. In technical operation what happens is you find that it is no body may be.

Three of us to assess so you would say five officers or six officers. Either you divide it or otherwise that is general. So that is the problem. And one thing you need to correct otherwise. If a person is initially supposedly poorly rated, B. Now it will take him a herculean effort to reach A. Because the next man who will assess him the tendency will be B or B Plus. So this is something which we need to ask ourselves. So these are the problems which I wanted to say this to you so that you get some feel of that also. Sorry brother I have taken more time than what I should take.

Justice Ravi Tripathi: Friends I want to start with anecdote. Two of our high court judges went to Gandhisharam which is situated at the banks of river Sabarmati. After the visit was over, we were presented with the remark book. One of the senior judge wrote something there and the other judge write below that, I concur and then he signed. So My Lord Justice Sarin has already covered whole point. So I think there is hardly anything which can be shared on this. I have only two points.

One is my regular visit to my district which was assigned to me. District is Surat. You must have heard. It is famous for diamond, yes plague also, but that was on the negative side of it. The positive side is that is very famous for diamond and polyster yarn and polyster sarees and specially sisters would be knowing about it better. That district which was assigned to me I had a very enthusiastic district judge and now he is of course elevated and he is adorning the bench of high court of Gujarat. Without going for the formal inspection, we had an understanding that I will be visiting that district almost quarterly. And I told my district judge that you are free to take any action which is permissible to you to be taken as district judge but before you take that you should let me know about it. So that somebody complains about your action being taken. So I should not be taken at surprise and I may not say that no no I was not told this. So he said OK sir.

So one fine morning he told me that Sir there is a phone from high court of Gujarat saying that I am speaking on behalf of Mr. so and so from so and so honorable judge and he want this man who is transferred from one particular section to another section should be put back. I told him, you tell him that it is done as per the instruction of Mr. Tripathi and sir anything if anything is to be talked to you talk to Justice Tripathi and if he instruct then it will be done within no time. Thereafter I was there for 2-3 years no phone call was ever received. I don't know whether that phone call as also received from the person on the instruction or it was the person was instructing on behalf of his Lordship without giving his name.

The second benefit was that I used to visit it was never to be schedule visit. It will be anytime between three months. So I found that number of staff will be less in the court campus. And I enquired it was found that those staff were on deputation. Not official deputation, unofficial deputation and then you have to just tell them you

give the list of the persons who are not present and the things started working. No this visit takes place at any time so people..... I remember one particular incidence. I went to a court room and the fan on the head of the presiding officer was having dust of not less than half a centimeter thick. So I enquired from the officer why this particular fan is not cleaned. You have got a court peon you could have cleaned it. So he said sir he was busy with this or that. Then I told him in chamber that because one of the principles that you have to appreciate somebody's performance then you must tell him in public. I told him that unless your peon is deputed by you to your residence either for buying vegetables or for milk or for putting the children in putting them school this would not have been the situation. I remember never thereafter I was required to tell anybody in that particular court campus. Second thing I want to share about certified copy.

There was drive taken that all certified copies will be delivered. Then it was found that all copies were prepared but there was nobody to take them. And that was found to be in violation of a particular provision for that the provision in the high court of Gujarat is at least that if anybody apply for certified copy the officer is supposed to give the assessment that these are the number of pages and these are the likely charges and that will be deposited and then it will be prepared. Some of the minor point of course... Mr. M.C. Sharma from Rajasthan, he is having a good nap here.

Mr. Sharma are you alright. Sorry for disturbing you. Ha ha. So these things are very are otherwise are minor but they are very important. Similarly when you go to record room and then all of a sudden you will find that number of things are not in order. The chambers of the judges were burdened with bundles. And Surat has a history. The Surat original court was filled with Tapti water and all the bundles

were kept there. Then I was told that these can be done only if extra manpower is made available to them then only those things can be sorted out. The district judges was authorized to do that and all chambers then were got rid of those particular bundles. If you are not having these visits, Mr. Tiwari is right when he says that to travel from place from high court to a distant place is definitely tiring.

There is no doubt about but at the same time if we take it as a part of our duty and not frequent then at least on a particular time if we take one visit that gives lot of encouragement to subordinate judges and staff. In one of the district judges conference in the Gujarat high court we noticed was ACR writing is considered to be you know worst likely handled thing. And for that in the morning we had that backfile syndrome. Now it is normal in budgeting but it I also in ACR writing and we normally before writing we used look at the pages as what was his grading in the last year. This was then by judges not intentionally, unintentionally also ACR if he got last year B, then directly he will not jump to A or anything higher than that. It will be at the most he will go to B Plus and that takes all the time and that give them a feeling of heartburn. I can only request you to see that maximum we can have some schedule of visiting these courts. Scheduled inspections are no inspections.

They are mere formality because everything is nicely prepared and then it is presented to you. But some visits which is not that certain and I had also point that I used to visit the taluka court with the district court which will also not schedule. I will go to district judge, meet him in advance and next day we drive to a taluka and that used to work very well. These are few experiences which I like to share with all of you. Thank you very much.

Participant: I just wanted to share two or three aspects of the matter. Well one issue which come from Kerala and there the ACRs are written by PDJs and the CJM. They are treated as a reporting authority and we are the concurring authority. I came across a case where consistently one particular bunch of officers were getting satisfactory as the ACR entry. The same half from another CJM same officer got good entries. SO then I took up all the ACRs written by these district judge and CJM and I found that one officer he know only to write satisfactory.

The other officer knows only to write good. It becomes a consistency problem otherwise. As a concurring authority we have a problem that way. What your Lordship says, judgment of the Apex Court in Devdutt and it went to larger bench and larger bench concur with Devdutt where the Lordship says that communicate not only adverse entry in ACRs but also good entries. In fact I would say that Justice Katju said that you communicate good entries the fellow will be motivated. Whether it is staff or it is judicial officer. Now once ACRs are communicated we have to maintain one particular restriction in this access to the high court judges. I found with little bit of experience if PDJ is administratively tough, if CJM is bit tough then subordinate officer has got a methodology of trying to go to the administrative judge directly and trying to show down whatever instruction have been issued.

That sets an unhealthy trend in administrative control. The administrative judge should know why and why not that particular situation has arisen because if PDJ is wrong he is got to be told and otherwise he should be permitted to run the establishment in the district. Whenever we have a meeting we interact with all. One more thing about infrastructure inspection. At one place while inspecting infrastructure I found that not a single staff know how to operate fire extinguishers.

Then I went to the room where material objects are stored. I found that alcohol and petroleum products stored at one place together along with other explosive substances and also narcotics. Now we have incidence from Kerala about theft of material objects including narcotics.

Participants: Perhaps the NJA can have best principle followed by all the high courts and that can be circulated because each court depending upon topography and other conditions, inspection rules and conditions varies. The NJA can study and circulate the best practices. Sir the Supreme Court direction not to do or carry on inspection on working I think needs to be reviewed. Justice Tiwari said on weekends it is difficult depending upon topography. Brother judges from Uttar Pradesh.....Sir may I just only add. After all today is Friday and it is a working day in our courts. Just as been done in NJA, so two to three days in year should be allowed to inspect the courts.

Participant: One of the district of which I am the administrating judge it is 350 km from Ranchi. Once I propose to brother judges and chief justice also that Sir I will take a casual leave on Friday because I want to visit that place otherwise it become totally impossible. And because of this there is now.....there is a complete disconnect between subordinate judiciary and high court.

Participant: I was judge of Punjab and Haryana high court. My chief said that Justice Sharma has been transferred to Chennai so you will be administrative judge from first of November. Fortunately it was Saturday. Without telling anybody I went to the district and everybody knows one officer district judge was compulsorily retired another was placed under suspension. It makes lot of difference if you go for surprise inspection. That is why the suggestion that at least

two three working days should be given in a year. It depends upon person to person. I may misuse it he may not misuse it. Secondly if we expecting from subordinate judges that they will give such and such unit. There is no unit for us...no....no....

Justice Sarin.....Justice Sharma

Participant.....I am coming to the point. Why unit for the subordinate judicial officer. Can we not assess. Why not unit for 164 statement. Nowadays for every sexual offence, Posco officer we supposed to record the statement in section 164 and it consume two three days. First days he will says you think over it and tomorrow again. There is no unit for 164. Most of the CJMs are not interested in doing the long trial work they are disposing petty matters for collecting units. As per section 260 and 261 form 13 notice has to be issued. No body is issuing mentioning you deposit such and such fine and get rid of. No magistrate has issued notice on form 13 petty matters. He is trying it as a regular trial and gathering units. Two thins sir. One unnecessarily burdening case. If notice on form 13 issued then at least one court matter will come down. I have collected datas from 3 districts of Uttarakahand. 40 thousand cases in petty matters.

Daily challans are coming under motor vehicle Act, Shop Act, Municipal Act, Weight and Measurement Act. Why they are not issuing. These are indoor discussion. If form 13 notice is issued that litigant will send the fine. What suits to our clerk is he will issue the summons. Policeman says not found on current address. Second time summon will go and third time warrant will go. Warrant will be served and it suits to the policeman. He will take something then poor fellow will approach the clerk, he will take something then advocate will take something

and the fine is 100 Rs.. The matter is pending for one year. Any one of us has ever cared to check that whether notice on form 13 has been issued or not. Nobody has ever checked. If we honest to our duties then first of all we should impress upon all the CJMs, all the magistrates that in petty matters issue notice on form 13. Third thing is that so far as this grading A B or B Plus... Sir as we know in high court all my brother judges and I know all judicial officers under my subordination what type of man he is. So can we not assess his performance on the basis of his judgments delivered in contesting matters? Why unit? That is what I want to submit.

Justice Sarin:.....Justice Sharma one minute. That completely overlook what I requested you is the task of improvement and future career development, help him in achieving his potential unless you have written him of already. In all these issues you are raising are we questioning the desirability of having the unit system criteria. The answer to that is if you take the balance even the disadvantages you are pointing out notwithstanding those perhaps it makes sense to have to ensure that enough adequate work are done. The subordinate judiciary does not become indolent or they do have a high time and they are working. This is one measure of ensuring it so therefore at times you have to see the overall part. So while there are disadvantage in this is that the notice is not issued under form 13, you make sure it is issued and issue the practice direction.....

Participant: With regard to unit system the first casualty is quality. The judges they take up these MVC matters and NI matter to make up for the units and there the judgment, order they render is horrendous sometimes. They simply record the facts and give some finding and totally unrelated to the facts.....

Justice Ravi Tripathi: We have requested the NJA Director for one more thing. On how many court in how many districts when was the last inspection was was taken place. That they can request the high court. I know for Gujarat, until we have chief justice Mr. Mukhopadhyaya, the inspection list was pending for couple of years.

Justice Sarin: Yes any one else.

Participant: In Gujarat the tenure of the inspecting judge is quite long.

Justice Ravi Tripathi: No the same thing applies there also. It is with the discretion of chief justice and he can change it any time but normally it is not

Participant: In our court it is one year by definition. It is also not enough. But I am told in Chennai it can be even two month.....We have a full court resolution saying that it is one year.....

Participant: Let us not forget the basic principle behind the annual assessment of the officer. It is not a fault finding exercise. It is a continuous evaluation of the work and the inspecting judge has a duty on him to guide the officer along during the year. The officer has to be guided so that he shows an improvement. Secondly the quantitative disposal or the quality they are two different input which go in making the evaluation. We cannot say that quantity is not required. Both are part of the.....The inspection at least gives us some opportunity at work first hand. The third point came from brother there on the side. The continuity as you mentioned earlier in Delhi we have a committee system. That committee system provides the continuity because the chairman of the inspecting committee may change, but the member to continue for the next year.

Justice Sarin: Thank you. We have overshoot. I hope all of you are not very anxious to go to the library to read.

Dr. Geeta Oberoi: No no no...it is mandatory. It is mandatory.

Participants: We will have our classes here

Dr. Geeta Oberoi: There is afrom now up to 4 pm, there is library reading which is mandatory and fro 4 to 5 there is computer skills training. In fact we have justice SG Shah who can help you. Tomorrow also is there. But if anything you want to ask about that e-phase project he will be there with you from 4 to 5. In this 4 to 5 you can also go to cafeteria and catch a cup of tea or coffee but then upto 5 pm please.....do not go to rooms please.

Justice Sarin: Let me say that even at the expanse of annoying the director a little I was reminded of something else. She is forcing everyone to go to the library with or without against her wishes. I remember once in my commercial practices days I was confronted with the legal advisor from Larsen and Toubro who has trained crows. You know crows are not very disciplined bird but he had trained to pick up braid when he gives then. So he had the capacity to train crows also. You are asking him though there is an agreement going along whether we had to sign it or not. So after sometime I insisted that this is nothing left in the class. Why are you not signing it. So the answer.....read but not understood. Ha ha ah..... So Madam, of you wants send everyone to library the answer is read but not understood.

Participant: It is case of taking the horse to water.

Justice Sarin. Thank you

DAY 2: 8th August, 2015

SESSION 5

09:00 AM – 10:00 AM

E-courts Project and How to use it for Data Management and Analysis

Justice S.G. Shah : I am one of you only. I may not a good orator and because to some extent I am on technical side not on giving lecture or explaining something to somebody. I will try to explain what is meant by data analysis through E-court project. Why it is necessary and how it is to be done and what next we are planning and may be some advices as why it is to be followed by all of us. Please never underestimate anybody in the world. This is with reference to our judicial work. It may be litigants, technical staff etc. Always expect and unexpected in every field of life including judicial work and technical work. Think there must be better way. Generally we are following precedents. Yesterday we were discussing that we have no space to do any innovative work. So many judgments are available and hence we do not to need to do any innovative work. You have to follow precedents. At least in technology and in E-court project so many things can be done. We always invite ideas from all of you so that it can be implemented. If we want happiness in lifetime then learn to love to do work.

It may be a stereotype work, it may be a routine work, it may be an inspection as we heard yesterday whether it is boring but you have to love and learn it. And react now. Time, tide and opportunity waits for none. Whatever we want to do we should do as early as possible. If we wait for certain circumstances then it would be too late for us. And this way you to wake up dream come true. More or less I am concerned on technical support. In technology if we do not add up then it would be too late for us to cope up with the pendency.

Now if we come to the subject, I am sure that all of us were conversant with the computers but if somebody is not much conversant with computer and technology few slides are describing the basic facts. A Computer is a machine capable of taking input data, storing data, processing the input data and then producing the output on paper or on electronic storage devices for utilization at any time in future and at any place. Till date we are dealing with the papers record. Unless we carried paper with us we can not work on it. Now if we are comfortable with computer and technology then we could have all the information and report at any place and at any time, therefore, it useful and necessary to follow. Computer collects data, process data, storing data and it is used to retrieve data. And this data is to used for planning, monitoring operations and controlling operations. Practically two forces drives the computer are electrical energy and human energy. Why I have to explain this?

Before 15 years back when computerization was started you will surprised to note it that Central Government asked for all the High Courts that would you like to computerize yourself. If yes then what is your plans. And you would be surprised to know that before 15 years most of the High Courts have denied. There was no response. Nobody wants to computerize it. Today we all talking computerization,

speedy work this and that. In some courts in some places we are thinking to utilize e-courts without understanding what do we mean by the term e-court or what E court would actually do. And basic thing is what would be the result of original records, original evidence produced by litigant before the courts in their original documents and signed by judicial officers and any other original evidence. What would be the fate of those documents?

We could argue that once it is scanned and storing the computer data then nothing is required. I will explain about all this for a reason that I am using the computer since 1985. During this couple of decades technology has changed in such a fashion that my first data stored in 1985 is not readable today whereas papers of 1885 can be read. What is required to access physical information of data or documents? When we store data in a computer, in electronic media it could not be read, access, process without electric energy. You will surprised to know it since I was involved in E Court project for couple of year even today some of the Talukas in India does not have electricity to run computer during court hours. Electricity is available in particular area for couple of hours within 24 hours and those hours are not certain that it would be 11 to 5 only. So what we talk about E court and all are good for metro cities and that there too when you consider the % of availability of this facility among the general people you will surprise to note it that considering the entire population of India it is 10% only. It may be 50% in metro cities like Delhi, Ahmadabad, Delhi and Bombay but in rest of India it goes below 10%. So if people do not have access to computer then E court, paperless court or electronic court is not easily possible today or in coming years as well.

Second issue is that Computer cannot run without electric energy. It runs by human energy. Our knowledge and our intelligence is must. And electric energy is

activated by the human energy only. So we have to activate electric energy. We human drives the computer to carry out the task through issuing instructions to the computer. The commands and instructions are in a language which computer understands. There are many ways to computing and processing the data through Computer and each has its own unique feature. As I said by passage of time technology is so changing rapidly that old computer and old software may not run in new computers. Or we need facility to translate old data into new software for all such things we need help of intelligence person who develops this software and therefore I said that physical data is accessible by human beings without help of anybody including electric energy but here you need support by so many persons. So even we have to follow ecourts project or we have to adopt the electronic devises and methods we have to be careful. If we issue wise instructions, the computer will carry out the task wisely and if we issue foolish instruction then computer will carry out the task foolishly.

Thus it is common in computer world, garbage in is garbage out. Some of the facts you may be considering as boring but I have to explain it. If we don't use computer wisely, it would not give the wise results. Now we should come to issue of data analysis under ecourt project. What is difference between data and information? Simple data means it is a information entered, kept, saved and retrieved in some format something intangible which can be operated this is process. A list of pending cases on a paper cannot be process. It requires again a human labour as how many cases are under 138 NI Act, how cases under section 279, how much cases are of compensation etc.

Here computer can help you. Computer will process the data so it can add a skill to that data. Now after 2 decades and after using computer everybody knows it

that if data is there in computer, we can process it, we can turn it, we can get the required information etc. Without help of clerical staff previously if we have list of cases that in particular court 500 cases are pending but you do not know what to do with those 500 cases. You need some clerical staff to identify that differentiate the cases then unless he completes his work you cannot do anything. Now once data is entered into computer you can do it by click of mouse at your own end. So presently what judiciary needs to make the judicial administration healthy? What is lacking in judicial administration. Lack of knowledge and waste of judicial time. Most of our time from district court to Supreme Court wasted in managing the information. After computerization if it is regularize, then irregularity can be regularized and object would be to decongest the court and speedy disposal. What is the need of the day? Learning Information & Communication Technology, to pick up the speed with the growing technology in 21st century when Computer & its usage with Internet have changed the limitation of territorial boundaries for everyone within no time. Information is the key of success.

You must every information when you are dealing with administration or you are a guardian judge of a particular district. You must have all the information of your district. This data analysis through ecourt project will help you in that activity. Now we want everything to be done in speedy manner. Access, equality and accountability is now required. Now we come to objectives of ICT in Courts. To help the Judicial Administration in streamlining its day-to-day activities. To provide web based information & inquiry counter for the benefit of litigants.

To provide transparency in judicial & administrative decisions as well as of information. To cut short delays in all applications. To comply with RTI Requirements. E-governance is the key word in every department of life. It

increases productivity, enhances transparency & accountability and reduces red tapism & corruption in administration. Now this is factual details of ecourt project. As of now more than 8000 Courts have secured their presence on the e-Courts national portal (ecourts.gov.in) which provides cause-list, case status information in respect of more than 2.5 crore cases (pending & decided) and has sometimes reached daily 'hits' in excess of 7 lakhs which is growing exponentially every week. When you access this website through nicnet as today it is not available through internet. So you can't access it either from your personal computer at your chamber or residence. If you have connectivity of nicnet in you chamber then you can use this information and data. Because entire data is not ready therefore it cant be placed on internet today. Secondly it is meant only and only for judicial administration. But you can have have this information through your CPC or through anybody working in your computer centre i.e. technical staff. So once any court is involved in uploading data they can involve their details. This is the screen-print.

सत्यमेव जयते

Official website of District court


Amritsar

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Home > History of Courts

History of Courts

The history of the District court at Amritsar dates back to more than one hundred and fifty years. During the era of Maharaja Ranjit Singh, the famous Sikh Ruler of Punjab, there used to be no written laws or judicial courts and no established authority. Only the chieftains would decide cases as per their whims. The Sadar adulate court (Chief Court) was the sole court in his realm. The annexation of the Punjab by the British was immediately followed by the creation of a Board of Administration in 1849 having power so a Sadar Court of Judicature and a Sadar Board of Revenue. In 1853 it was replaced with a Chief Commissioner, and two Principal Commissioners separately appointed for Judicial and Administrative work. The Judicial Commissioner was the chief Judge of appeal and his Court was the final appellate court. By 1856, the Tehsildars were empowered to exercise the powers of a Subordinate Judge in small court to deal with the suit of which value up to Rs. 300/-. At that time there were 104 small causes, courts and each court had on the average an area of 784 square miles. Thus, the civil courts started function at Amritsar in the year 1856. During the year 1862 itself Honorary Native Magistrate for the disposal of petty criminal cases were appointed at Amritsar and Gujranwala. During the year 1862, a total of 3117 civil and rent matters were instituted and 3054 case were disposed of leaving the balance at 63. By the Punjab Courts Act, XIX of 1865, inter alia, seven classes of Courts were brought into being in the civil Jurisdiction. Starting from the Court of Tehsildar at the bottom to the Court of the Judicial Commissioner at the top In 1877, the Punjab Courts Act, (XIX OF 1865) AND The Chief Court Act (IV of 1866), were repealed by the Punjab courts Act, (XVII of 1877), which consolidated and re-stated the law inter alia relating to the Chief Court. The Punjab Courts Act, XVIII of 1884, which repealed the Punjab courts Act of 1877, not only touched the question of subordinate courts, their reconstruction, jurisdiction and powers, but also modified and restated the law regarding the constitution, powers and jurisdiction of the Chief Courts as well. The Punjab Courts Act 1884 also created the divisional courts. By the year 1884, elaborate and well organized machinery was established for the administration of justice in the province. On the civil side the British brought up successful working hierarchy of civil courts. There were seven grades of civil court- 1. The Judges of Small cause Courts:- 2. Tehsildars, Naib-tehsildars, Munsifs and Honorary Civil Judges. 3. Assistant Commissioners and Extra-Assistant Commissioners. 4. Judicial Assistant and



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 * Case Number
 * Year

Total Number of Cases : 1
[Civil Judge Senior Division, Taluka Court, Ajnala : 1](#)

Sr No	Case Type/Case Number/Case Year	Petitioner Name Versus Respondent Name	View
Civil Judge Senior Division, Taluka Court, Ajnala			
1	CA/1/2014	Avtar Singh Versus Sat Sarup	View

[Back](#)

Civil Judge Senior Division, Taluka Court, Ajnala Case Details

Case Type	: CA		
Filing Number	: 93/2014	Filing Date:	00-00-0000
Registration No.	: 1/2014	Registration Date:	24-12-2012
Case Code	: 200100000932014		

Case Status

First Hearing Date	: 03rd March 2014
Decision Date	: 26th November 2014
Case Status	: CASE DISPOSED
Nature of Disposal	: Contested--DISMISSED IN DEFAULT FOR WANT OF PROSECUTION
Court No. and Judge	: 3-Civil Judge Junior Division - I

Petitioner and Advocate

1) Avtar Singh Address - Ajanal, tehsil Ajnala and district Amritsar

Respondent and Advocate

1) Sat Sarup Address - Village Teri, tehsil Ajnala and district Amritsar

Acts

Under Act(s)	: Civil Defence Act
Under Section(s)	: ---

History of Case Hearing

Registration No.	Judge	Business On Date	Hearing Date	Purpose of hearing
1/2014	Civil Judge Junior Division - II	03-03-2014	04-04-2014	Appearance
1/2014	Civil Judge Junior Division - II	04-04-2014	01-08-2014	Appearance
1/2014	Civil Judge Junior Division - I	01-08-2014	26-11-2014	Appearance
1/2014	Civil Judge Junior Division - I	26-11-2014		Disposed

Therefore the national portal of the court project....the national judicial data grid which also provide information. Today initially ecourt project is calling data from the courts about all pending cases before each court of the nation. In turn that data will be accessible to everybody. But when we communicating through this electronic media, getting data from taluka court is one part and then providing training and other information from the ecourt itself.

Even live training would be there from the same website. To enter all case details, at present unified national court CIS version 1. It is a name of a software developed under ecourt project. Version 1 of the CIS has been developed. This is in use in almost all states. The process of migration of all data. The data entry of pending cases is in progress. Entries of case data are complete in some states. On completion of data entry every litigant will be able to access his case from the ecourt national portal. So once entire data is entered into and uploaded on this portal then it would be available to public. But then after entering this data what is required further is analysis. Any analysis, conceptualization, planning and strategy of the first phase of the project suggest that there are more goals to post. The ecourt project is not restricted only to upload the data. Delivery of all the services by all the Courts, optimum automation of case workflow, use of computers by all important sections of Registry for day to day processes and service delivery and unified CIS for all courts. This is yet to be done. Then this is also yet to be done. Timely and regular updation of data on NJDG by all courts, discontinuation of Manual Registers, ideal Central Filing Center with sufficient infrastructure, judicial performance assessment through ICT.

We were yesterday discussing about ACR. Somebody has conveyed that why only grading, why not quality testing. But what happens that for all those ACR reporting

you are dependent upon your clerical staff. You go through previous ACR and you may not go through it and you enter some ACR. Once this system is properly in place, you are not required to ask anybody any question or any information. You will get it on your computer that which officers has disposed how much cases of which subject, total disposal, his presence in the court.

Then scanning and digitization of the case records and court record room management & automation. It is yet to be done. Court Libraries Computerization, Video Conferencing for all Courts with Jails, Legal Aid Offices (DLSA/TLSC) ICT enablement, WAN (Wide Area Network) connectivity for all Courts. This is one another tricky area as I said that so many talukas doesn't have electricity. Similarly vast area of India is not connected with WAN internet to be connected with other state or internet. Therefore we have suggested solar energy for power backup. Then mobile based service delivery through SMS & Mobile based applications etc. are just a few of the many important objectives. Most of the deficiency in uploading of data onto NJDG and therefore the lack of delivery of services online is attributed to issues relating to lack of effective, stable and reliable WAN connectivity for the Courts. Another issue is at present the hardware & software has only been sufficient to use CIS for data entry, case updation, order / judgment writing and cause list generation. The hardware provided in the first phase lack scanners. Only some states have been able to do that. The scanned data is a different thing. When we are talking about integrity of different courts we have to provide almost equal facility to all court otherwise total courts cannot be computerized.

Next issue is that the Courts have not been able to fully shift to automated processes. Computers can do some automation but software development even till date is only for string and retrieving data. There is no process to generate

automatic SMS, automatic notices. There is requirement of human interaction. Some high court said that they want to enter data in their vernacular language only. The Phase II of the Project will adopt the Cloud Computing Architecture for all application and database requirements for the Courts. The second phase of the project will adopt cloud computing architecture for all applications and database requirements. Under the Cloud Computing Environment, applications and databases used by the Courts will be hosted in Cloud Environment facilitated at State Data Centers (SDCs).

The cloud computing environment offers unique and valuable benefits for an eGovernance Project including the reduction in server infrastructure cost, centralized / federated application management, efficient server and resources management, automated scalability of application / database servers etc. We have worked with income tax department and we have entered pan card number in our data base also for all these years. When we enter case details, we never enter any third party information, pan numbers are not provided. So some information which is managed by third party. Shifting to Cloud Environment will also call for a seamless, stable, reliable and secure connectivity from all Court Complexes in the country up to the State Data Centers located in the respective States. As the Court Clouds will primarily be at State Data Centers, a full fledged Disaster Recovery Mechanism will have to be put in place for all Court Clouds at National Data Centre. As Cloud Computing Environment is being adopted for implementation in phase II of the Project, new Court Complexes will not require any server infrastructure as all application and database hosting needs will be catered to by Cloud Model only.

All data, including meta data (that is the data about the data) will be unified and standardized in this phase. For software solutions in the eCourts Project across the country, the eCommittee will be the nodal agency for policy on software solutions to be used on the hardware provisioned through the eCourts Project.

This uniformity will ensure compatibility also in the initiatives going on at national level like National Judicial Data Grid (NJDG) and integration of various stakeholders of the Justice Delivery System. In order to achieve a seamless compatibility of application and data of CIS across all Courts of the country, the CIS should be horizontally and vertically integrated. By horizontal integration, the CIS of one Court will be able to export to or import from the case-data of other Courts. Fresh data entry of the case will not be required and the system will be able to effect the transfer with all the case history details. By vertical integration, the CIS of the Courts of different hierarchy will be able to transmit data to and from each other. An attempt will be made to enable uniformity in data structures with local variances so that horizontal and vertical integration can be made possible. This will require standardization of data structures, meta data (that is the data about the data) etc. across the CIS at all levels of the Courts. The Retrieval of digitized data will be ensured by porting the soft copies of the data into Data Management System. The main challenge in the way of regular and uninterrupted long term use of the soft copies of the digitized data; that is archival and preservation; is the frequent obsolescence of technology.

It is also necessary that process automation solutions should be integrated with each other as much as possible and feasible so that it does not duplicate the efforts relating to certain data sets or applications common amongst those applications. The National Judicial Data Grid (NJDG) will be strengthened to mine

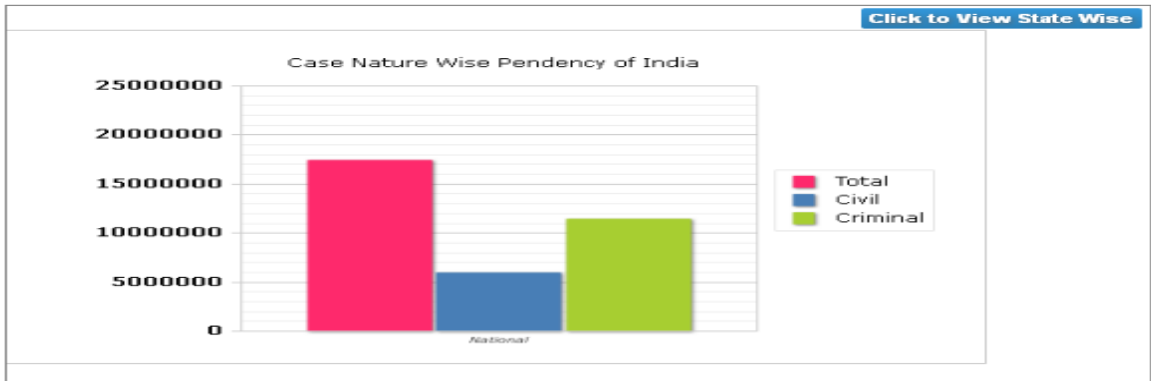
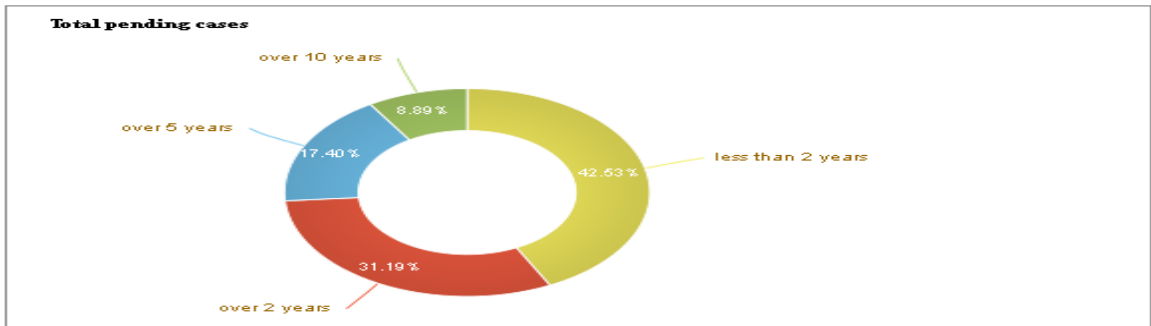
data of all cases, decided or pending. This will enable policy planners and policy makers to manage case loads and bring in effective case management systems. A comprehensive software mechanism in the form of Legal Database has to be in place which has the repositories of all the Supreme Court and High Court judgments and also keeps track of new judgments affecting the earlier judgments.

This software also needs to have a mechanism for porting metadata of the judgment onto it, which also includes Head Notes of the judgments. The uploading mechanism in Phase II will gradually shift to auto pull mechanism from State court cloud installations which will ensure smooth updation of data on NJDG. Storing the data without the data analysis tools will be futile exercise. Now these reports are accessible presently only in NICNet network at: http://10.248.118.147/njdg_public/. The data available through this link is only of those Court Complexes where CIS data migration has been completed to National Core version. This is national dashboard and some of you may be aware who are in committees formed by your high court. You can suggest some more analysis, some more details which can be added at any time.

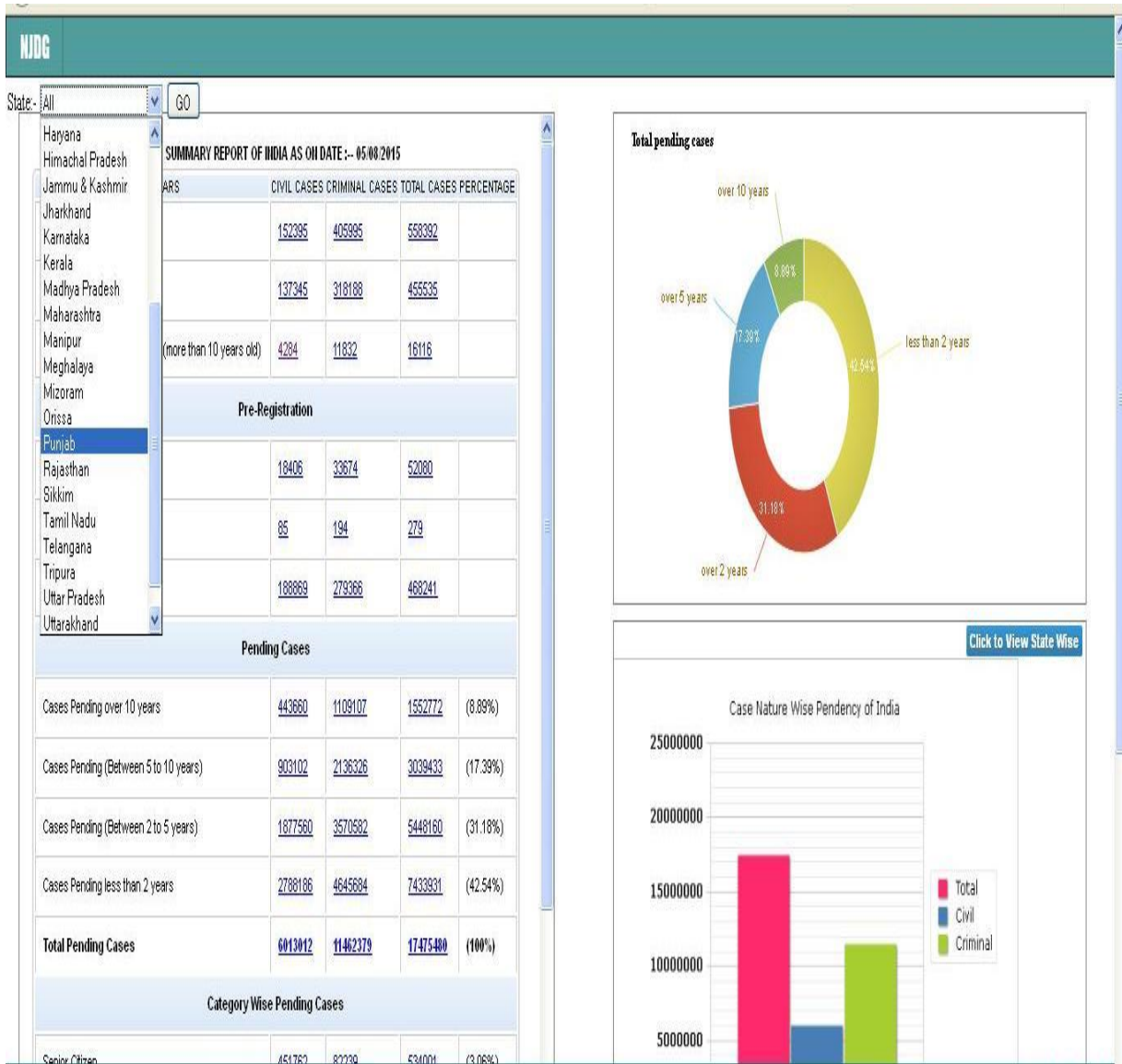
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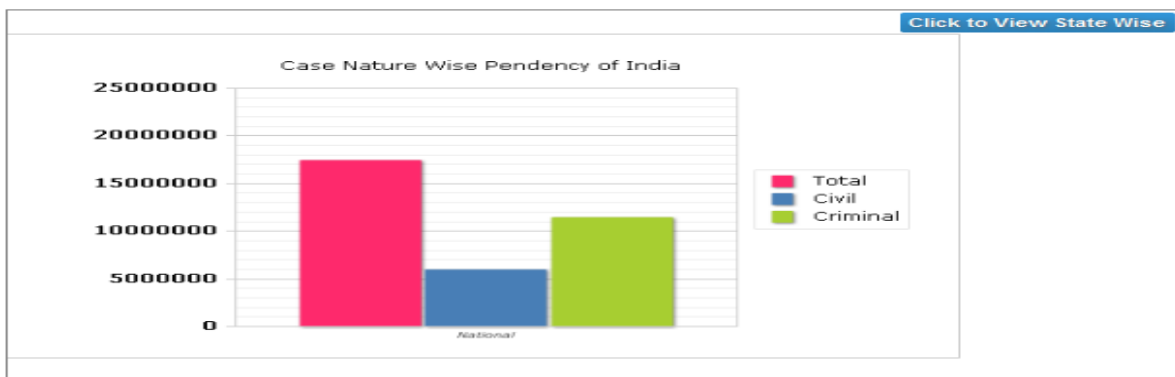
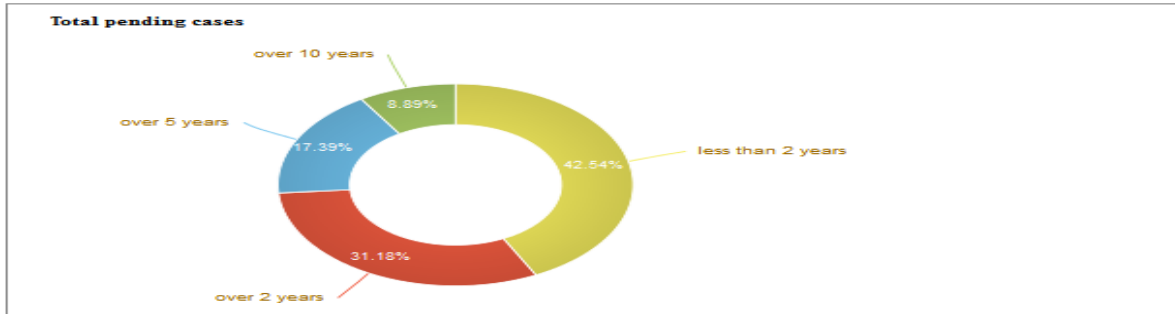
SUMMARY REPORT OF INDIA AS ON DATE :- 05/08/2015

PARTICULARS	CIVIL CASES	CRIMINAL CASES	TOTAL CASES	PERCENTAGE
Cases Disposed In Last Month	152395	405995	558392	
Cases Filed In Last Month	137345	318188	455535	
Cases Disposed In Last Month(more than 10 years old)	4284	11832	16116	
Pre-Registration				
Cases-Under Objection	18406	33674	52080	
Cases- Under Rejected	85	194	279	
Cases-Pending Registration	188869	279366	468241	
Pending Cases				
Cases Pending over 10 years	443660	1109107	1552772	(8.89%)
Cases Pending (Between 5 to 10 years)	903102	2136326	3039433	(17.39%)
Cases Pending (Between 2 to 5 years)	1877560	3570582	5448160	(31.18%)
Cases Pending less than 2 years	2788186	4645684	7433931	(42.54%)
Total Pending Cases	6013012	11462379	17475480	(100%)
Category Wise Pending Cases				
Senior Citizen	454769	82220	536989	(3.06%)



Then it is state wise, district wise, Establishment wise and then particular officer wise.





NIDG

State: Punjab | District: Amritsar | Court: All | GO

DATE: 06/08/2015

PARTICULARS	CRIMINAL CASES	TOTAL CASES	PERCENTAGE
Cases Disposed in Last Month	407552	559979	
Cases Filed in Last Month	319998	456921	
Cases Disposed in Last Month (more than 10 days)	11877	16229	
Cases-Under Objection	33763	52230	
Cases- Under Rejected	194	279	
Cases-Pending Registration	279344	468476	

Category	Criminal Cases	Total Cases	Percentage
Cases Pending over 10 years	443926	1110382	8.89%
Cases Pending (Between 5 to 10 years)	904406	2130880	17.4%
Cases Pending (Between 2 to 5 years)	1878622	3576893	31.19%
Cases Pending less than 2 years	2762238	4656178	42.52%
Total Pending Cases	6089636	11482991	100%

Category	Criminal Cases	Total Cases	Percentage
Senior Citizen	452560	82386	3.06%
Filed By Women	1032767	820729	10.6%

Monitoring Alert

Total pending cases

Duration	Percentage
less than 2 years	42.53%
over 2 years	31.19%
over 5 years	17.40%
over 10 years	8.89%

[Click to View State Wise](#)

Case Nature Wise Pendency of India

Case Nature	Approximate Number of Cases
Total	17,500,000
Civil	5,500,000
Criminal	11,500,000

NATIONAL INFORMATION CENTRE NIC

NJDG

State:- Punjab District:- Amritsar Court:- All GO

SUMMARY REPORT OF INDIA AS ON DATE :- 06.08.2015

PARTICULARS	CIVIL CASES	CRIMINAL CASES	TOTAL CASES	PERCENTAGE
Cases Disposed In Last Month	152425	407552	559979	
Cases Filed In Last Month	136921	319998	456921	
Cases Disposed In Last Month(more than 10 years old)	4352	11877	16229	
Pre-Registration				
Cases-Under Objection	18467	33763	52230	
Cases- Under Rejected	65	194	279	
Cases-Pending Registration	189126	279344	468476	
Pending Cases				
Cases Pending over 10 years	443926	1110382	1554313	(8.89%)
Cases Pending (Between 5 to 10 years)	904406	2138860	3043271	(17.4%)
Cases Pending (Between 2 to 5 years)	1878622	3576893	5455533	(31.19%)
Cases Pending less than 2 years	2782238	4656178	7438477	(42.52%)
Total Pending Cases	6009696	11482991	17492776	(100%)
Category Wise Pending Cases				
Senior Citizen	452560	82386	534946	(3.06%)
Filed By Women	1032767	820729	1853497	(10.6%)
Monitoring Alert				

NJDG

State:- Punjab District:- Amritsar Court:- District and Sessions Court, Amritsar GO

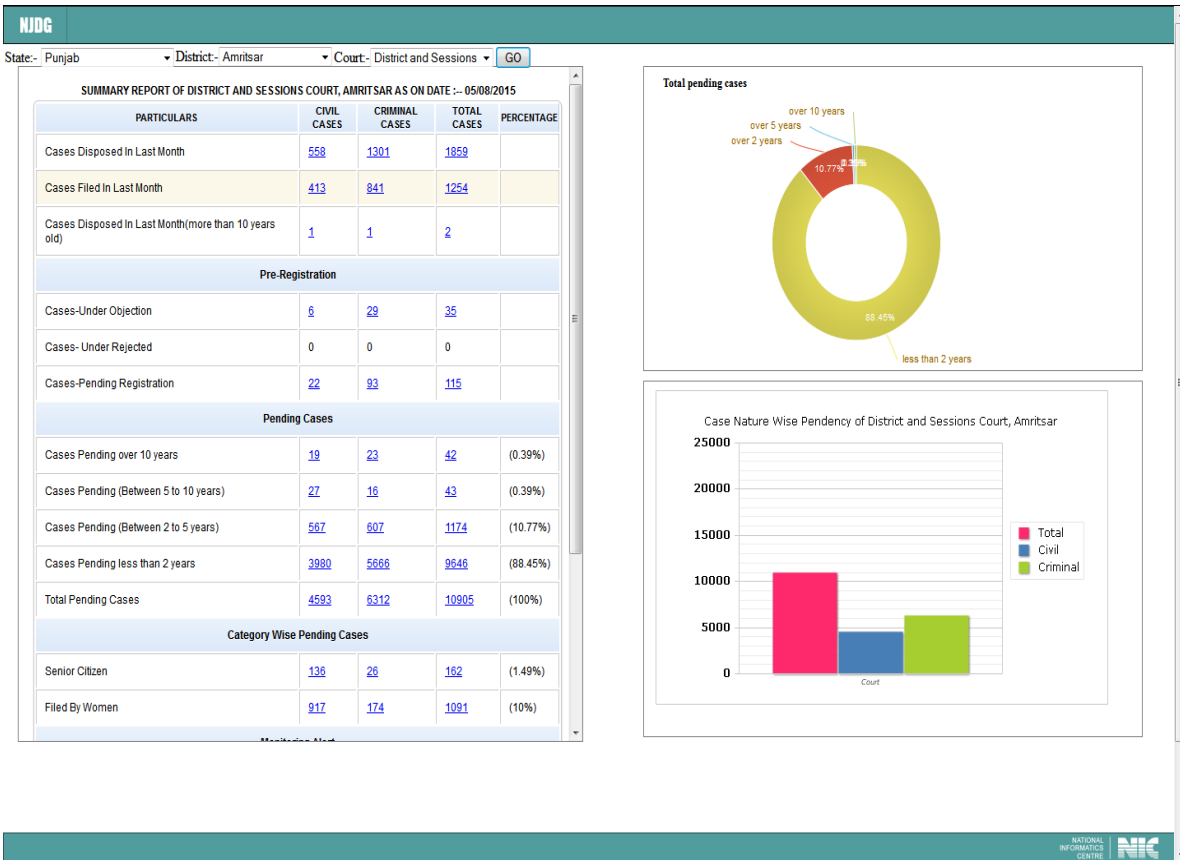
SUMMARY REPORT OF INDIA AS ON DATE :- District and Sessions Court, Amritsar

PARTICULARS	CIVIL CASES	CRIMINAL CASES	TOTAL CASES	PERCENTAGE
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Filed By Women	1032767	820729	1853497	(10.6%)
Monitoring Alert				

pending cases

Case Nature Wise Pendency of India

Click to View State Wise



Now you can access any particular judicial officer or any court room. Once entire data is filled with proper details, section under which case is filed or relevant details are entered, you can get every information through this portal. Now we should start question answer and some interesting discussion rather than this boring discussion.....The period is not within control of one person or agency, may be before next two three years or more than that.

Participant: Software developed to use that data in a particular way by any administrative judge any high court justice

Justice S G Shah: When I use two three years this is e court project from this side and so far as data and utility is concerned unless every court enters result timely, the results could not be achieved.

Participants: Sir if data is entered in next three years, software is being generated to the extent that we can use the data in different ways for the performance evaluation.

Justice S G Shah: If data is entered within two three years simultaneously with development of software and providing hardware and providing electrical support and with everything. If data is entered then yes after three years or after two years or as and when it is completed may be two or four years.

you can have the figures related to institution, disposal or any order passed on any particular date but if an intelligent officer is disposing of number of units as he is required to do. But he is ignoring cases which are more serious, the progress of which is required to be administered by.....

Justice S G Shah: Yes it can be done. You can open details of all those cases. That is why cloud computing is required where unless you enter all the details you will not be able to see the case. Today what happens to generate cause list, only case number and name of first party are entered but since server is at their end. In some court only minimum data entry is done. So unless you enter section or what you call classification of a case as you say that which cases are not taken care of or which cases are more handled and decided just to get more units. Unless information for that analysis is entered into, we cant do anything. Therefore cloud

computing agreed to it because there we will be able to lock it as we are entering in some detail on internet while purchasing something. All fields are compulsory.

Participant: If I want to have information of a court in respect to interlocutory applications which are pending therefore in certain number of months. I want a quarterly report about the progress of those interlocutory applications.

Justice S.G. Shah: Certainly you can get that information. Even today if all data entry is perfectly done.....When we install same software in different server in different place. Though cloud computing require internet connectivity. It is the only answer for so many database at so many place. At present difficulties faced by three four court in different places.

Participants:cooperation. While I was a inspecting judge I see that in my district it was happening. They says that they are not getting maintenance amount and therefore we cant come and rectify. That is the long way. We send somebody then somebody come who is not ready.

Justice S.G. Shah:You are right we have received so many such complaints. Even we select HP as service provider we are not getting proper services

Participants: HP does not do its work and they offload and then there is no coordination between the different wings.

Today we are in hurry to accept this technology but the difficult is that when I say only 10 % people in India have computer facility similarly inner part of every state does not have those technical support service providers available and company is

not in a position to depute technical staff. We have agreement and then E Court project has penalized them, their bills are not approved and they walk out and said we don't want remaining money. At the most we can penalize them but our work is not done.

When you that service provider is supposed to see that whether there is a competent person in Bihar. You have to see that all these parameters have to be fixed.

Justice Sarin: I am saying this with my experience with IBM. You see whenever you are entering into agreement for system support one of things which has been happening for the last five to six years is the system within one year or two is not capable of taking the later version of software such as window 1 or window 2. If anybody looks at the contract which you entered with the service provider, initially they provide for per call service or expert charges, for remote services, so those things are need to be scrutinized and to know that I am entering into this agreement, I will have no computer support at my location but you have to provide and this is what you have been paid. So we have to be careful when we enter into these agreements. Court do not have expertise for this. We have NIC in Delhi, where we have the experts to advice you on this and they will scrutinize these agreements for you.

Justice SG Shah: When I joined service in 97, high court of Gujarat floated a tender to purchase computers for district court computerization. Entire process was over. I only signed a purchase order as an officer incharge of computerization. Our specification says during those days there were only black and white and no colour screen were there. Standard is one mb. Our specification says two mb. Our

specification says both the floppy drives because old software on 5.8 floppies and now we are using small floppies. We have given order for twelve districts, twelve sets, twelve servers and LAN equipments. It was supply and installation. While signing the agreement I requested the chief justice to add one set with six clients to make a replica of that system in high court so that I can work on it and can replicate it in districts.

When supply started I asked first supply me one set at high court. When I checked it screen doesn't have 2 mb ram. There was no floppy drive at all. There was no bay to put floppy drive. Discussion goes on for 4 months and ultimately I penalized IBM for 8 lakhs. But my work is delayed. Ecommittee or court we are only requisiting our requirement. PWD, police department, all other services are being provided by the central government. We go to CPWD and we cannot renovate according to our requirements. So is with computers. When I joined the Supreme Court I request to the chief that I will not involve myself either in purchase or in finance. So contract of purchasing is being done by NIC. Me and Justice Raveendran tried for video conferencing between the Supreme Court and the NJA so that judges may not have to travel to Bhopal and they can take lecture any time. But my tender document was so strict that we could not complete the project. Justice Reveendran approved that document but we could not implement it because nobody was coming forward. The e filing in Supreme Court, I molded the document in such a fashion that it works and then we entered into a contract with ICICI bank and accepting money electronically.

Dr. Geeta Oberoi: Now DGS&D is there. You can buy through DGS&D. It is on rate contract, government approved agencies. They will give you and you have to

have your own engineer and he will verify the product and then only installation will happen. DGS&D you should go. Lets go for tea break.

SESSION 6

10:30 AM – 11:30 AM

Evaluation of Performance of Judicial Officers

Justice Sarin: The effectiveness of this programme would only be completed in my view if we get feedback from each of the participated judges on what you think and feel according to you to improve either the inspection or the evaluation system. Yesterday we discussed inspections as a useful and functional tool for accessing officers, giving them encouragement and correcting them and to realize their true potential. We have appraisal forms and now I broadly say what are these appraisal forms which are in vogue in most of the system. And you can contribute by suggesting any other inclusion here for officers who are in the ranks of ADJ or senior judges in the subordinate judiciary. It is knowledge of law, whether he is industrious or not, his control over work, regularity and punctuality, sharing of responsibilities, does he keeps everything to himself or does he delegates when required. Relating to discharge of judicial functions, efficiency, impartiality, and integrity. Judicial integrity during the period. There are two schools of thoughts on judicial integrity. Integrity is ever encompassing and need not be confined to particular period but at times the thought is we are evaluating him for a particular year therefore you have to see how he has maintained his integrity during that period.

This question in the context who may had a some complaints in the previous year but during their reform or so some believe there can't be any reformation but if

there is no complaint over a sustained period of time. Then the criteria how long has he held the post as have to been on deputation, property returns then the duties and norms and target set for him and how he achieved it. In some states, you have also steps taken for disposal of old matters as a criteria, senior citizens matters. And Geetaji you will be happy to know in Delhi we have that whether he has attended NJA courses or not although it is nit his choice to.....Now coming to evaluation what we should see is knowledge of law and procedure, the impressions gathered during inspections, his behavior with officers and advocates, clarity in understanding, ability to dictate orders in miscellaneous matters and reading of judgments.

These are primary indicators which are given in ACR and assessment forms. If there is something which you ought to be edited, you can share. Now evaluation of judicial officers, the assessment of quality of their judgment has to be done, objective criteria. You all tell them you are required to discharge functions competently, fairly and impartially. Yet what happens if there is a sticky matter, a controversial matter or a complicated matter and the judicial officer goes ahead and gives a decision on that and media raises number of questions which are really not warranted which could go to question whether there is motive behind this decision. We have to do some introspection and we have our duty to our officers and to protect them and on which he has taken a decision on which you are convinced that he is not guided by ulterior motive. They deserve your protection. In the vyapam case young girls who are in custody over five or six months where the allegation is that their father, parents or associate paid the bribes.

The magistrates one or two cases granted bail and the consequence was a judicial inquiry was initiated on allegation on why bail has been granted, the result is that

on none of those cases anyone is granting bail. This is not what an independent discharge of judicial function. Right now what appear to be developing is a clamor that judiciary ought to be evaluated. There are two aspects to it. One is evaluation of the judicial system, the judicial apparatus by external agencies.

Second is it also entails apart from judiciary as an apparatus where you assess how much is disposal, how much are the pending cases across the board. They also talk of evaluation qua individual officers and in the material that has been distributed to you, there are number of surveys, finding of European union nations. There are independent judicial councils which are set up. There are executive authorities which are making these assessments. Now on this, it has been our approach, that it is our internal matter. Whatever judicial reform we require we will bring that internally. We need not be subjected to external assessment or external agencies because it will amount to inroad into judicial independence. I was going through the reading material last night and there was a judge who has decided 200 cases and in respect of those 200 cases they distributed a questionnaire wherein these very criteria which are there in our evaluation form and they said lets get the input. It is a matter of debate really. Can we really say that the stakeholder, the litigants, lawyers, jurors. Incidentally in that case, the forms were sent to witnesses, parties' jurors, prosecutors all those who were involved in the case to get their feedback on what was their impression of trial. Was it delayed, was it some adjournment given.

On the basis of that, they have evaluated, how much does it cost the countries to have a decision. Cost per decision. What is wrong with our assessment system, what correction we need to apply, can we do that internally, bring about the necessary reforms and then proceeds. These were few of my thoughts on this.

And I thought that with this and then another few pages which you can go through. The ministry of law is distributing a letter which has been sent to all chief justices. This is at page 125 yes annexure one. You will now have Sanjib to address you. You would now feast of oratory and contempt.

Justice Sanjib: I will take in a minute before I get on to topic. But I don't think Dr. Oberoi called me here today because of perceived expertise in the area or topic. It is probably because of my association with some work that has been undertaken by the NJA where we were trying to discover certain norms and we were trying to make them as objective as possible. The experiment I thought is finding out what judges in the district judiciary wanted to be assessed on. Rather than imposing it from top. I then put it to lawyers in course of court business in Friday as to what would you think would be the attributes of good judges according to lawyers. \They are the largest stakeholder.

There are certain basic issues which need to be addressed and I have just collected some thoughts which will probably be stimulus to you so that we have a discussion. This is not supposed to be any form of expert opinion or guidelines but certain bullets for thoughts so that we can have discussion and this is the title. For evaluation, first and foremost is to identify institutional objectives. To try and achieve such goals, to set standard of performance based on the purpose of the institution and its desired objectives. Everything has to have a focus and I thought that I will put this food for thought as focus. Evaluation has to be culminated in some result and there is a process by which it has to be managed.

To focus on purpose and goals and to make course correction and to make systemic changes. Individual evaluation is to promote performance, to check

arrest and weed out non performance. Now the use of institution is to help identify merit based on institutional parameters since we promote institutional goals to help detection of personal deficiency for correction and help discover the rotten apples. The mode of evaluation would be to set the parameters that will be dealt in a short while. Determine the modes of assessments, arrived at the parameters and the method of assessment in consultation with judicial officers. At present we have system like of caste system.

High Courts impose and district judiciary has no role. We should have more participated process where the need is to identify merit, merit based on parameters which are helpful for the institution. Then the present system as far as I knows there are four methods. First is unit method, second is judgment appraisal, third is based on complaints and fourth is subjective personal perception. There is an element of subjectivity that will enter. There is an element of perception and you must also give credit to the experience of assessors as judges to indulge in that. I would suggest this subject to criticism be based on more objectivity or at least subjective satisfaction of the objective criteria. This is more on promoting merit and good quality. A process in which comparison would be possible between 'A' and 'B' it push come to sharp and the fourth I want to focus is that demerits should be dealt with punishments unless use as a tool in comparison. Perception as to someone's lack of integrity, perception as to someone tardiness, perception as to someone others demerits should not go into this because there is lot of subjectivity in it and a lot of personal bias which probably does not favour the system.

Now these are the attributes. This is an order in which lawyers rank the attributes-

- Patience in hearing (qualified)

- Behaviour
- Acumen and knowledge
- Disposal
- Perception as to integrity
- Quality of judgments
- Punctuality – in court, in orders and in making orders available
- Speed in understanding
- Communication with lawyers in court
- Clarity in judgments and orders
- Speed of disposal
- Equal treatment to all
- Openness of mind

These are rank as given above. Further, these suggestions I cull out from a body of work prepared at this Academy and it included several judges, academics and in course of discussion with judicial officers across the country both high court and district courts and it was called “QFDK”. The reading material sent by the academy recognized it. “QFDK” stands for Qualities and attitudes

- Functional skills
- Domain skills
- Knowledge

I have magnified as to what would be qualities and attitudes:

- Faith in Constitutional values
- Personal rectitude
- Commitment to personal service
- Openness and human empathy
- Vision
- Decisiveness

After lot of discussion we categorized qualities and attitudes in these sections.

Then we go on to functional skills which includes:

- Listening, including active listening
- Reading
- Speaking
- Writing
- Analysis – logic and reasoning
- English language and communication (including non-verbal communication)
- Dispute settlement, negotiation, bargaining abilities

Domain skills includes:

- Appreciation of facts
- Finding the law and appreciation of the law
- Judging and decision-making; responsiveness in judging: Responsiveness to constitution morality and values
- Managing the adjudication process;
- Teamwork abilities
- Judgment writing
- Administrative abilities

Every judge is the CEO of his own court and he should have the ability to carry the team because merely by adjudicating a matter and pronouncing a matter is not the service which is required and more importantly foreseeing the impact of judicial decisions unless the direction contain therein is effective.

And finally knowledge which has:

- Basic legal knowledge
- Awareness of key social challenges, including the history of the Constitution
- Jurisprudence
- Development of the laws

Finally this is where I have no answer and he has put them as the most important thoughts for discussion:

- Identification of who will assess. I am of the opinion that it has to be more democratic than one judge will assess the career of a particular judicial officer. There are many personal attributes which go into that I think that we should have a fairer system, I am not saying that it is unfair but if there is a possibility of unfairness then we should have more open system.
- How do we allocate weights to the different parameters. All the parameters do not count as one. On constitutional values we have to attributes weights and develop a system where the objective criterion for the subjective assessment is founded.
- Use of technology both in evaluation and in managing the process of evaluation.

My thoughts are open to criticism and discussion.

Justice Sarin: I think the last point which Justice Banarjee made the rational seems to be to bring about the objectivity in the subjective assessment by setting out the criteria to the extent possible and also moving away from individual assessments to prevent the slightest suggestion of arbitrariness or predisposition. There are judges who are strict, there are judges who are liberal which I mentioned yesterday in Delhi they have taken care of it by a committee of three judges. In Delhi there is practice of assessment by three judges. I request each of the participants to introduce himself/herself and give thoughts and suggestions:

Justice Indira Banarjee from Calcutta High Court:

Justice Banarjee was absolutely right when he spoke about the objectivity in the assessment and as we were discussing yesterday we kept very little opportunity to

really assess the judicial officers whose ACR depends on our comments and probably just endorsed by the Chief Justice. It is very often found for the same quality of judgment I might give good, Justice Banarjee might give very good and some other judge might give average and some may say this is not a judgment at all and not fit for a judicial officer. This is a kind of variation I have noted. I have one suggestion. Our assessment is mainly based on judgment appraisal.

The other things which were suggested. Going to the court, watching the performance for one day. Assessing performance for one day doesn't help and there are two things to be kept in mind. One is that the judicial officer may be overawed by the presence of judge sitting in court. So you may not be very natural. You have to assess him in his own environment. When we assess on the basis of judgment we have only 10 set of best judgment. The records are not there. So how he has appreciated the evidence, that is something we do not have before us. I realize that while deciding the appeal where judgment apparently look well written but it was not exactly matching the evidence which was there. There was improper appreciation of evidence but the law fairly well evaluated, possibly from copying from some textbook or by copying from some other judgment. It may be a good idea if all the judges from appeal courts and the judges who take up revisional matters in addition to deciding the matter just make a note of the judgment which are either very good or judgments which are criticized, which are patently wrong or otherwise in general, keep an assessment of the judge who has written the judgment.

So far as points are concerned, points are necessary because it is definitely important. So there has to be a sufficient number of disposal. But the disposal must be of reasonable quality. Very unfortunately I came across an appeal where

the order was, it was in motor accident claims case appeal where the claims case is allowed on contest against the insurer, but discussed exparte against the owner. May be a typographical error. But that was the operative part of the judgment. About objectivity there cannot be a second opinion. We should neither protect any officer nor persecute any officer

Justice Chandrabhusan Vajpayee from Chhattisgarh High Court:

So far as evaluation of judicial officers for their performance I have two suggestions. In earlier Madhya Pradesh there was system of inspection district judges, for in the whole of region. So they use to inspect the district courts of all the judges, at least 3 or 4 times in a year and their reports are submitted before any approval or the evaluation of the judges by the portfolio judges. So that before writing anything the note and inspecting part of the judges are there because at the present time district judge is not for this evaluation of their inspecting their subordinate staff. Everybody is overburdened. The fact remains is we require district judges for inspection. Secondly we require interaction regularly.

Justice Anjana Prakash from Patna High Court:

If we see the parameters of evaluation then we will find that they are either personality based or judicial work assessment. When personality is concerned I don't think it is possible to go and evaluate the personality within 5 minutes of a year. Where judicial work is concerned I would say that an assessment of judicial officer is different than the assessment of administrative officer in the sense every order he passes is a judicial order. Order sheet of the judicial officers also be assessed to see as to whether the case he is routinely adjourning, whether the

officer is taking pains to ensure the efficiency of the procedure, whether he is disposing of interlocutory applications expeditiously, what is the quality of reasoning. We ought to think that the judicial work not to be assessed only on the end result which is a judgment but also the entire procedure.....reasoning process.....reach the end of that procedure.

Justice Aparesh Kumar Singh from Jharkhand High Court-

In my perspective sir, a person is good unless he proves himself to be bad. I interact with judicial officer as a normal person not with a overwhelming presence of a judge of high court so whatever he has to come out with, he can come out very easily. There are many hoods things which he comes to know from the judicial officers during interaction which ultimately improves the system. Third point which my sister Justice Anjana Prakash that I give much more weight to the actual procedure in which the entire judicial work is been dispensed with by the concerned judicial officer because earning of unit or disposal of cases, I think this is going to be an issue may be very soon, which is affecting the quality of our entire judicial system in a great way.

Everybody is disposal maniac and I would never like to compromise on that. So in that context the use of technology which I was just discussing in the first session also. This becomes very important. I want like an IT professional that in my administrative jurisdiction every day after my court works after 5.30 in my chamber in my screen, I can see that how the particular judicial officer in unit has proceeded with. How many things he has taken forward, how many adjournments he has given unnecessarily for a issue of summon or a disposal of an interlocutory

application. These things are perhaps are overlooked by judge. Ultimately is the judgment or the unit he earned because of disposal of things.

Justice G. Narendar from Karnataka High Court:

This ACRs. Are they at all required is one have in mind. Because the work is being appraised on the judicial side. All order that are made by them, parties are dissatisfied, they are taken in appeals and while dealing such appeals, the judges of the superior courts do sit in judgment of the order, they do comment on those orders. I think a review of those orders. Only appeals are being filed or preferred against the orders of the judicial officer. I think that is suffice. Rather than assessing that you don't sit on the judgment on the person. By these ACR, we are seeking judgment on the person and not his work. Because his work is already been assessed on the judicial side and that should suffice. Only and only if his orders are being appealed and only if being confirmed I think that is a very objective assessment. Because by getting into this aspect of ACR you are seeking the judgment of the person. I think that we should avoid.

Justice Sarin: We are sitting in judgment over the person. It is sitting in judgment over his judicial functioning.

Justice G. Narendar: Judicial functioning that the appellate court does....

Justice Sarin: There is an inherent danger what you are suggesting. You knows the time it takes for disposal of cases. There may or may not be an appeal. So if he cannot relegate or leave it to what is the outcome in appeal.

Justice G. Narendar: These annual ACRs. I do not think that is apt. There should be a review once in three years because this is too short a time for you to assess because then you become judgmental. It is not an assessment. Assessment should be of the work.

Justice Dinesh Kumar from Karnataka High Court:

Well I have three points to make. One in so far as making the points, judicial officer collects the points. Some of the judgments must be made rather than only miscellaneous cases. A few of the judgment must be made compulsory for him to be made main matters then consider. Two is about the democratic field that it must be assessed most certainly by more than one judge. At least three judgment must be sent if not through a committee, at least to some other brother judges so that an evaluation can be more democratic. Three so far as integrity factor is concerned. One is about substance, second is about the concept of integrity assessment not only by that year, it must be by three years. So how he has performed in a block period.

Justice Inderjeet Singh from Punjab & Haryana High Court:

Firstly it should be based on whether the officer is been good in integrity. If he his having good integrity then secondly we have to see whether he is a hard worker. Whether he is disposing the cases as per norms. Secondly whether he is disposing good old cases. Thirdly whether in court he is disposing the cases more than the institution during that period. Then comes the intelligence, knowledge of law, quality of judgment. Quality of judgment means by reading the judgment, on the face of it, it should reflect that it is based on the evidence, reasoning and as

per the law. Good officers should be encouraged. Other matter whether he is having good relations with the other person or what is the behavior or other thing. These are not material ones. Though material but not too material. If a officer is not a good officer, integrity is doubtful he isSO first thing is that whether the officer has good integrity, hard worker and then the quality of judgment.

Justice P.S. Teji from Delhi High Court:

Apart from the reasons and circumstances given, while evaluating a person it must be kept in mind in what circumstances he is working, and what is the nature of work. In Delhi there are number of courts and going with the prevention of corruption matters even this 2G scam, there may be one or two designated court. So while evaluating the work the nature of work must be taken into account.

Justice Kuldeep Singh from Punjab & Haryana High Court:

The subordinate judiciary must be kept tension free so that they can work fearlessly. Judicial independent must be maintained so that judicial officer can do the work freely and fearlessly. Terror is created among the judicial officer, raids and surprised all this part of.....There are so many ways without creating tension.

Justice Sarin: I do not think a good officer who is discharging his duty to the best of his ability has any reason to get tension and worried unnecessarily and feel threaten if an inspecting judge is coming. He may be apprehensive on what is going to happen and that is ...if that impels him to set the records I think that tension is worth it. But don't take it that way that this is.....there should be no inspection.

Justice Kuldeep: There are some complaints. Everywhere there are lawyers. They will come and even an honest officer will become tense.

Justice Sarin: What you are trying to say we will discuss it at length in the next session. I am of the firm view that you must be reassured that you can work in a fearless atmosphere. That is our duty. That is our Constitutional mandate. And if we can't protect our judicial officers, those of us who have taken the oath should quit and go home. It is a sad thing if you think that every time an officer inspect or visit your place. You feel threatened because public think that you are being raided.

Justice Kuldeep: I have joined services from lower judiciary and I have experience of 32 years. This is the perception there. There are certain experience where the judicial officers are actually humiliated.

Justice Sarin: Those things needs corrections.

Justice Kuldeep: Nobody dare to say anything to a high court judge. If you want I can share some of the experience with you. There are certain points. Other is the quickness in the disposal of business is one of the serious criteria because one officer takes one year to dispose of the case, the other will take four years or five years. So emphasis should be on the quick disposal of cases and five ways and means in disposal of cases. Then the other is the quality.

Justice: Please tell, We know all this difficulties. Aapki apni suggestions kya hai to improve it. Yeh bataiye.

There can be courses on how to dispose of the cases stage wise. So in civil cases there are certain steps. More intensive training should be given in the disposal of civil and criminal cases so that there can be quick disposal also. The quality of judgment also. They have the knowledge but they can't translate that in judgment.

Justice T.B. Radhakrishnan from Kerala High Court:

He suggested that there has to be assessment of how this man present himself in court, how he manage his body language, his cleanliness, his regularity in keeping up his...we see unshaven faces, no clean clothes. There are lots of things to show that you are a judge in your court. They should be assessed how they behave with fellow officers and staff.

We don't need to go deep in their personal life but we need to know what personal problems really affect the judicial officers in a manner which impinges the judicial function. 52 year old, 55 year old under the present Supreme Court guideline I found two or three officers who had exceptionally good track record at the initial stage but failing at the end because they had exceptional family problems like a child being at home, like a challenged marriage, like a suicide at home but if you ignore all this and if you just go by your statistics and quality of judgment I think you sacrifice human beings in the ultimate bargain. Their conduct, not only in judicial and public domain, but also in private domain is also has to be kept and watch over and then there are officers who type stereotype orders. Because of anxiety to have you statistics in place, there are officers who pass default disposals, default decrees.

They stand to gain in terms of points. What is their mindset, have you noted any special abilities. This is the query posted to administrative judge, the mindset, whether he is proactive, whether he has any particular trait, whether he is pro latest amendment like ADR, whether he is pro legal services. These are things which can be identified. If there is any sort of complaint against him, don't just throw it up for an enquiry, don't ask for report. If you have a sealed cover classified vigilance information that should be looked into by administrative judge.

In Kerala the practice we have is that the principal district judge writing the ACR as a reporting authority about all the civil sector officers and the Chief Judicial Magistrate writing on the criminal sector and the administrative judge just concur or make any specific comment. I will suggest our own self evaluation, our own self correction, cleaning oneself is the first requirement. The appellate committee or the administrative committee of a particular area decides a particular matter of an officer and then one or two demits office by superannuation and the review becomes blessing in disguise.

Justice Sanjay Karol from Himachal Pradesh:

Ultimately what are the attributes of a good judge. If the confidence of the litigants about getting quick and fair decision. In that my views are very radical. Should we not involve the stakeholders in assessing the judges? You may consider it but do not outrightly reject it. Two so there is no timely evaluation of ACR with the high courts level. Three a very pertinent question, identification who will assess. Now there is no all India pattern. Convention varies from court to court. Now either the full court would do it or the...would do it. We have seen the ACRs being downgraded by the AC, the evaluation which has been conducted by the

administrative judge has been downgraded by the AC on what basis one doesn't know. So there has to be an all India pattern.

Justice Sarin: By and large in courts the decision of the inspecting judge or the administrative judge as endorsed by it is not interfered with by theunless there are very good reasons and after a debate.

Justice Karol: There has to be democratic process involved the inspecting judge must know the reasons for downgrading

Justice Alok Singh from Uttarakhand High Court-

I fully agree with the view expressed by Justice Prakash. I want to add one thing that there should be personal interaction must be there before giving any grade then we will be in a position to understand what is the basic character of the officer.

Justice J.P. Das from Orissa High Court:

The quality of leadership should be assessed in judicial officer because they have to work in tandem as a whole. Team work should be there. In our high court we have a practice of giving self evaluation form. They fill it up. Earlier to that we had a practice of maintaining a red book what we call it in the high court. All the judgments all of each judicial officer, whether confirmed, mode of writing judgment, the quality that is being maintained by the registry kept in a very confidential manner. We call it a red book. Whatever judgment come in appeal, we keep it so that it helps in assessing concerned judge while writing the ACR.

Justice K R Mohapatra from Orissa High Court:

I have been elevated in 2015. I was an advocate so I have little experience about assessment of ACRs of the officers. I have no idea at present to suggest and I accept what my learned brothers and sister have said.

Justice R. K. Gauba from Delhi High Court:

It is a continuous evaluation exercise and not a fault finding exercise. Lets not treat it as the End of semester exam where officer fails or pass. The basic philosophy behind assessment is to have performance appraisal and also to watch over the conduct. There has to be an element of guidance built in the whole process where the inspecting judge interacts and has a close watch throughout the year for which he is to make the appraisal. In Delhi we have one system running where quarterly report indicating how the officer has performed on 20 oldest cases which are, the list of which is submitted in advance. The idea is the progress will indicate how great an interest he is actually taking in the judicial work. We have detailed system where several columns have to be filled in but I feel those columns do not get properly filled up. Comments must be articulated in a detailed way. On the input side.....during my stint as registrar, there was a chief justice take on all the revisions and appeal of all those officers who were coming up right for being considered as aI adopted that as district judge at Saket, I kept all the revisions and appeals with me. That brings in more input on a daily basis as to what goes on in their court.

Justice Prakash Shrivastav from Madhya Pradesh High Court:

The problem which we face is of time in visiting the portfolio district. Can we not have system where while doing our continuous judicial work, we could assess their judicial officers. If one Friday, half a day is reserved where the matters from the portfolio revision petition or appeals are listed and we hear those matters then in continuous basis we will be able to see the performance. We had a chief justice in our high court. 7-8 years back, he wanted to know the performance of not only high court judges but district judges and lower judiciary. He had started listing the revision petition on every Friday. Revision directly comes to the high court. So in a year he was able to do roughly the performance of all the judges. So something like this we can adopt. Then secondly if video conferencing can be used for this purpose for interacting with the judges.

Justice Sujay Paul from Madhya Pradesh High Court-

I quote an example before coming to my point. I am in charge of a district which is known as Sheopur. It is a very remote tribal and very very backward area. A sizeable number of litigation was coming from that district then the request of the lawyer was to please keep...my senior in other court. Please keep my matter at 3.30. That request was made at 3 pm and repeatedly we find that request was declined that you twice or thrice already made this request, now this cannot be accepted and rejected. It is ridiculous. Seeking adjournment for half an hour. Why court cannot grant it and similar complaint from bar about some judges on the same count. Later when I visited that district, I realized from discussion with judicial officer, with bar that it is a peculiar feature in that district that there was only one train which goes from...travels through that area...people are very poor.

It reaches there at 12 pm and comes back at 2 pm. So the whole attempt is that in a trial that you skip that period then the witness will not be in a position to depose the statement. He is not in position to wait for another day, he is so poor he wont purchase the ticket. They travel without ticket. If they are able to secure adjournment in two three occasions a witness will either not come or will be managed. So that was the peculiar situation of that area which I came to know only from interaction. My point is that interaction and their problem must be seen and it is very important now-a-days because when I received the complaint I thought that judges, the perception was totally different. Next is when I was a lawyer of a very renowned company. The law officer who use to come to me, brief me, one day I received an envelope from the company whether the law officer who is coming to you whether he come prepared, whether you receive your fees on time, whether he comes with any brief note and other matters. Please fill up this form and give it to the company. So that was the method adopted by a renowned company so that they can evaluate their officer from an outside agency as I was not their employee.

Justice Manojit Bhuyan from Gauhati High Court:

I completed seven months just yesterday as a judge. I am only on the interaction with the judicial officers and for the purpose of assessing the judicial officers, the mode of video conferencing should be maximized. In fact in Gauhati we have those modes of video conferencing in place where we get to interact with all the judges of 23 districts at the same time. We spend about 2-3 hours and we get to speak to them

Justice Tripathi from Punjab & Haryana High Court:

I am completely dissatisfied with my own performance as the accessing officer. The problem is how do you assess them? How do I assess from a long distance capacity of management, leadership, planning and decision making, interpersonal relationship etc. Take away from here were one is that it should be more democratized. We are too jealous of our powers concentrated all ACR writing with the administrative judge which compounds the problems. I think that the idea of the district judge is a very good thing. We are reviewing or accepting authority. The red book is a very very nice idea. It is a great takeaway. I agreed with Justice Inderjeet Singh. The Andhra Pradesh model where interlocutory revisions both of civil and criminal are put up before the administrative judge that could be one of the best way of assessing the judicial work of a man because reading a judgment can be very misleading. It is only when the judgment is attacked and defended before you that you realize the merit of the order. So these are the takeaways I have got from the most productive session.

Justice Dipankar Datta from Kolkata High Court:

I will start from where Justice Tiwari has left. I thought of starting my address by saying that Justice Banarjee should not take me amiss. Complement to Justice Sarin for conducting this session in such an orderly fashion that I was just of Justice Sarin's example that there is a recent advertisement on the television. That a boy or a girl straight from the mother's womb starts handling computer. Same way facts are stranger than fiction. Yesterday we were schoolchildren and today we are graduated into judges. And I do not know what the house would say if the discussion are to be meaningful in the National Judicial Academy, lets my

view be sent to the Supreme Court that we are not to be treated as school children here in the National Judicial Academy. One hour for library, one hour for computer training. We could have utilized two hours of time on this important aspect yesterday.This is the last time that I am coming to the National Judicial Academy because I feel there are judges who have put in more than 10 years of service as a judge. To ask them to sit in library is utterly denigrating. I want this to be sent to the Supreme Court. Nothing more.

Justice Sarin: Justice Dipankar, I think being an excellent judge that is the reputation you carry, you have also an obligation to always retain your.....while expressing what you want to say. See everyone has a perspective. Those of us at times have a different view. Now yesterday of course, there was in that curriculum library reading and the director did mention that this was mandatory and you should go. But att the same time, if you recall, in my polite way I deflected it and by giving you an example and requesting Dr. Oberoi that such things are not mandatory, they are virtually a suggestion and that was accepted by her. So my suggestion to you is at times such things do creep in but at one level or the oter somebody corrects it. So those who has corrected by me as a person monitoring the session.

So I think you should no longer nurture any grievance on that. There are things that happen. Let me tell you, when the programme started in the Judicial Academy, I have been a witness to some of the very strong objections that came up, Initially the programmes were described as training programme and when my Lords descended here from the high court, they said what training, are we school children, you want to train us. So these training programmes...they are misnomer and we refuse to attend. This was the kind of sentiment. Your senior Kalyansen

Gupta was with me those days. So what we suggested politely to the academy was that look change your nomenclature, describe them as interaction workshop or seminar or conference. So these are things which happen. Take them into stride and let me tell you are a very valuable addition here and we should not hear these words from you that you are attending this academy for the last time, yes may be you are attending it as a last time as a participant. You will be a resource person. Thank You

Justice Dipankar Datta : On the aspect of an evaluation, I have been a member of court management system committee and I was given the responsibility on writing a report on human resources development. This was one of the area that I have covered. That is there in my report. The advisory council of the national court management system comprising of the top three judges. The matter is before them and it is for them to accept the report. Dr. Oberoi is also part of the NCMS committee.....have a copy of that report.....because it was accepted at the NCMS level required the further approval from the advisory council. Its pending at the advisory council stage and there are many things in common. Justice Banerjee and myself were elevated on the same day, we have many things in common. I would like him to share his first inspection at Jalpaiguri. The high court was on the strike because the employees were on the strike. They were not opening the court rooms. Suddenly we decided let us utilize this time by going to our districts. If we don't go on working days. If we go only on Saturdays. In west Bengal on Saturdays only execution cases are heard. If we are there..... how do we assess. This system should change.

Justice Soni from Gujrat High Court

I have two points to make. One is though we as a sitting high court judge to visit lower judiciary and interact with the judicial officer. But is it possible to think about the alternative system, special assignment either to retired high court judge or a retired district judge to have a assessment of the judicial officers and to make report. We can further assess our judicial officer as a sitting judge. Because there they will have full time, they will have facilities etc. Like they receive other assignment as members of the tribunal after retirement they accept. I am concurring with Justice Tiwari Sir. We may not find enough time while doing the judicial work as a sitting judge.

Justice Sarin: But Justice Tiwari says something more. We don't wish to part with our authority at all. So I don't know whether any of the judges would be willing to have a retired judge delegated and discharging these duties. These are all trend which we are supporting. You know the evaluation by others. When you these evaluations by European union countries.....

I have a different point. Such retired high court or district judge may regularly visit, make assessment and then make report before the concerned administrative judge. The second is I tried to find out the reasons that why the matters become so old. Matters of 1986, 1982, 1989 etc. I could find true reasons one is some matters remain unready matters right from the beginning. They are just sent in the cold storage. Nobody bothers about these. The old matters unready matters are to be on regular board, may be on the weekly board so that remains before the eyes of judicial officers. He might issue.....removal of objections. The matters becomes ready. Second reason is that many old matters were contested matters and

judicial officers were not ready to take up the contested matters. So the matter remains very old.

Justice Sairn: We have a problem of logistics. We have Hon'ble Dr. Sharma here and the next session was to start at twelve. How many of you left... There are about ten left. These Hon'ble judges are yet to make their comments. We will finish it. Dr. We will take about 15 minutes.....

Justice Tashi Rabstan from Jammu & Kashmir High Court:

So far my experience with the assessment with judicial officers are concerned I have not an occasion to assess the judicial officers as per the guidelines of the.....what justice Banerjee has enlightened. J & K is situated in a different topography and most of the districts are situated far away from the headquarter. So not having the sufficient time on a holiday we could not inspect the court and we could not miss the court's time also. Therefore I could only assess the officers on the basis of what materials are before us, judgments they have supplied. So my suggestion is that because we don't have a video conference facility in J & K. At least the administrative judge be allow to have physical inspection of the court on a working day

Justice Kodanda Ram from Andhra Pradesh High Court

I agree with my brother. One aspect is that inspection on a non working day is consigned.....of late we have been receiving so many complaints both anonymous as well as identified that subordinate judicial officers are ill treating lawyers and this....Unless administrative judge or somebody from registry or from the judicial

side..... In fact Justice Singhvi, one day calmly went to city civil court and visited all the courts in Hyderabad. He went around privately in all the courts. To his surprise there were judges who were not sitting even at 3.30 or 4 pm and in some of the courts there is no proceedings going on. Some of the chambers locked. These things can be done when you have surprise checks of this nature. There should be some mechanism, may be yearly conference, most of the judicial officers would like to know what is happening in IT sector. This will go in long way and there is an element of openness among the judiciary as a family.

Justice S.V Bhatt from Andhra Pradesh High Court and Telangana:

My sister has been referring the practices in our high court of evaluating the judgment of our officers. I have missed the opportunity as a portfolio judge to look at the docket management of the officer and the reference to respective cases. Points he has formulated and the orders given in a case and how it was challenged. In a given case if I found that in a given case, the officer is on the wrong side and it needs immediate correction. I have followed the procedure of tentatively informing the officer through the district judge. My view of assessing the officers is not to bring them under subjugation or excessive authority by the high court. The fastidious test we are putting to a judicial officer in my opinion he may not be in a position to raise up to that level on all the aspects in one time. He may not get even average marks. On the other hand you should give him the opportunity to elevate to the next level. Give him the feedback. The other suggestion is that I prefer the evaluation of performance along with the inspection of the courts. I also prefer the evaluation of performance by the present portfolio or administrative judge and his immediate two predecessors. On account of such evaluation in my view is that the officer is given a fair treatment.

Justice Seetharama Murthi from Andhra Pradesh High Court

In my humble view there cannot be uniform system of evaluation. There should be flexibility and what is the elasticity of this flexibility is again to be judged. A principal district judge is managing a unit in Vijaynagaram with 23 courts. Another Principal District Judge managing the city civil court with 53 courts. There cannot be a common yardstick for assessing both of them. We have to take into considerations the peculiarities of the court system. Similarly a magistrate in a metropolitan court is handling a court where there is 25 minimum bail applications once a day. There is another magistrate working in a mofussil area where the pendency is less than 500 cases in his court. There cannot be same yardstick to assess both the officers.

Then one kind assessment is involve the officers, take from them at the beginning of the period, the targets, the aims and the objectives. At the end of the period take a personal evaluation and assessment by bringing out a form and take them from an officer. Then judge the officer from the point of view of the officer also. Then the third point is ranking the officers and then the evaluation. Then we look at this from the point of view of officer. Two officers join as junior civil judges at the same day. One is X another is Y. X is a senior, he is rated throughout average or satisfactory. Y is rated very good. They get the increment at the same time. X's vacancy has come early though he is average officer promoted six months earlier. What is the need of this evaluation from the point of view of the officers? There should be some flexibility.

Justice Shinde from Bombay High Court:

According to me while assessing the performance of judicial officer what is important are his punctuality, discipline, behavior (outside & inside the court). Then whether the judgments are precise and have clarity in judgment. Apart from routine cases execution petition are not given the priority, because execution petition should get priority otherwise there is no use of passing the decree. Whether a judge involves himself in a mediation process and particularly in family disputes where judge can play a very important role and where there can be win win situation for both the parties. In some matters arising out of sex determination judges are afraid of granting the bail. So fear in their minds should be removed by the guardian judge. Service of summons are also important aspects wherein judges should ensure that summons are served timely and accordingly matters are also disposed of within the time.

Justice Mahendra Chandra Sharma from Rajasthan High Court

I am in agreement with all the judges who spoken right now. I want to add that time bound programme should be given to trial court to decide the civil suit within such and such time. The plaintiff will file the suit and within fifteen days the summon will be served and 15 days he will frame the issue and thereafter 4 months to the plaintiff to produce the evidence thereafter defendant. In the one year expectedly the case should be decided. So far as criminal case is concerned when the police file the challan or the report, in such circumstances he will decide the case within the period of one year. In addition to that the high court should see that most recently appointed judicial officer should not be posted in the important court having the important cases in that court because the court master mislead

the presiding officer because he is a junior officer. In the important court, experienced presiding officer should be appointed. Time bound program should be given and third one in these cases the people who lot the case or file the complaint to the high court and Supreme Court unnecessarily against the presiding officer. All those complaints.....

Justice S S Chauhan from Allahabad High Court :

What I think that basic thing for inspecting judge is to know as to what his officer is. Unless and until you are able to know what your officer is, you wont be able to do justice with the subordinate officers. Second things are that they should be made to understand that you are like their guardian. There should not be any much distance between you and the judicial officer. They should feel while talking with you, you have to give that understanding to them. An officer may be intelligent or competent but he lacking integrity. So you have to encourage honest officer. The suggestion given by Justice Banarjee regarding the larger body in respect of assessment of judicial officer. With all humility I am unable to agree with that suggestion because the inspecting judge knows his judicial officer when he has association with him for a long period of time. But other persons who have been recruited for assessing they would not be knowing anything about that officer. So how do we overcome this situation?

Justice Sarin: This can be overcome in a different way. If you are in Mofussil it can be applied but take metro like Delhi we have a team of three inspecting judges and every after one or two year the team changes and there is continuity because the leader of the team goes but the other two will continue. You have to choose

between the two. One is to see the possible danger if there is an inspecting officer is very strict or biased or otherwise. Now by putting three there, there is greater objectivity introduced in the assessment of that officer.

Justice S C Das from High Court of Tripura:

The subordinate judiciary is dealing with more than 80% of cases throughout the country. So a vibrant subordinate judiciary is necessary which is to be looked on by the high court. Every high court has got the methodology of assessing the performance of the officers of the subordinate judiciary. The judicial officers in the subordinate judiciary, they worked in a charged atmosphere. That has to be understood by the inspecting judges or the portfolio judges in every high court. Now while they will be assessing the judges. They should not only just examine on one or two judgment or the judgment which are coming before the high court for assessment. They should inspect the court at least twice in a year. So that they are under constant vigil, that is their punctuality, their performance, their relationship with other judges, their relationship with the subordinate staff, their relationship with the bar and their approach to the litigant. On all these basis the officer's performance should be reflected in the ACR. ACR is a very important document and there may be a national standard on it.

Justice T. S. Sivagnanam from Madras High Court

Having has the benefit of all the honourable judges, I feel that system has definitely has stood the test of time and after hearing Justice Banarjee, the input he has received from the two sets of lawyers. Whatever the system of assessment which we have adopted in the Madras high court broadly covers all these

parameters. After the advent of the e-court project, NCPC guidelines, ADR after 89 has come into force. There is lot of activity which a judicial officer as well as high court judge needs to do on weekends apart from his five days work. One parameter would be willingness to accept responsibility. That could also be one of the parameter for assessment. This responsibility has not conferred on him purely, it could be a quasi judicial work. But he is bound to exercise that work pursuant to a direction from a superior court, or the high court acts on a direction by the honorable Supreme Court. There is need of fine tuning of system so that it matches with current trends or scenario.

Justice M.M. Sundresh from Madras High Court:

First thing is on the norms. Recently we had peculiar problem. I believe norms also depend upon participation, cooperation of the lawyers because lawyers' community differs from place to place. One officer, who was otherwise not good, always fixes a norm. So we had a doubt and the judge made a thorough check up. She adopted ingenious way. After the case is adjourned, she used to make a remark saying that dismissed for default. Next day even the lawyers would not have known it as she restore it and makes the case pending. That is one thing though it is not necessary to speak about it. We also follow the same methodology which Justice Radhakrishnan shared. We allow it to only Principal District Judge and the chief judicial magistrate. So far as other officers are concerned, we really confirm it after the assessment is made either by PDJ or CJM depending upon the cases of civil or criminal nature. We go by the records which all of us know, information we have from the records is quite insufficient to assess the officer concerned. In such a scenario we should call the principal district judge or the CJM, have a discussion with each and every officer before we make our own

remark. Second thing is about judgment. The practice is that we the judgment of the officer concerned which I think is not the correct way.....we get the judgment from officer.....we should collect the judgment from other officers as well...from PDJ or otherwise.

Only then we can have the proper evaluation of the performance of the officer. The third is, once a judge makes a remark, should always be considered. Because the object of making remarks in ACR is to evaluate a person when it comes to promotion. In such an eventuality, the judge who made a remark should also be consulted asking him the basis of such a remark being made. That will also....make a remark...keeping everybody responsibility in mind.

Justice Sari: Thank you brothers and sisters. The discussion has been valuable. It has given a greater sense of participation to each one of you. And over to Dr. Sharma for taking up the session

SESSION 7

12:00 PM – 01:00 PM

Enhancing Discipline & Integrity: Complaints and Inquiries against Judges

Justice Mukundakam Sharma: So far the session "Enhancing Discipline & Integrity Complaints and Inquiries against Judges" is one of the most important aspect which troubling the judiciary at the moment. There have been allegations rightly or wrongly against the judiciary. I would not say it in the higher courts but somewhere there are allegations. And what are the ways are out to get out of that is a problem which should be discussed by all of us whether we belong to highest court that is

the Supreme Court or the high courts or even the officers regarding whom there are some allegations heard here and there.

The theme is enhancing discipline. For it we have methodology already prescribed. So far discipline and integrity is concerned we have some outlines already prescribed for us. There is no dispute with regard to the fact that judicial officers have to maintain highest standard of integrity. I am first taking up the issue of integrity because that is what is troubling us at the moment. Now because there at the gross root we come in contact of the litigants and it is very easy to make allegations against the judicial officers. There are persons who take credits that some bribe has been given to some judicial officers. There are instance of that nature which are found false later on so there has been false and frivolous complaints made and there are some anonymous allegations complaints coming in. Now how to deal with them.

The first thing according to my opinion is that these anonymous complaints should be totally ignored because judicial officers are working in the courts and if they grant bail that is fine and if they do not grant bail allegations would be made against them. And so far other complaints are concerned which are under signatures. Now first for them there should be some sort of inquiry to find out the genuineness of that. If there does exist some material in the complaint then in that event some explanation could be called from the concerned officer and thereafter proper procedure could be followed for departmental proceedings against him. The remedy according to me is to let know the officer as to what are the value system or the ethical principles they have to follow. So far the Supreme Court and high court judges are concerned, there is a restatement of values, it was 1999

when it was accepted in Chief Justices conference and also applicable on the judges.

Thereafter in 2002, there was a Bangalore sitting where a principle scheme was enacted called Bangalore Principles of Judicial Conduct. While forming those principles they have also gone into the restatement of values which was discussed in the chief justices conference. In that sitting there were several countries involved and that is according to me is some improvement on the restatement of values also. A copy can be made available of it. There the emphasis is on judicial independence and they have also given as to how to achieve that and compliance of that on impartiality and integrity. They have laid down the principles of impartiality and integrity. Then they have also dealt with propriety, equality and also competence and diligence. I believe that we may do an exercise on this, find out what improvement could also be made. Taking into consideration the present context and the present environment and we can update that and get it circulated to the officers. Some of these can also be incorporated in the code of conduct of the officers and that I think will definitely a transparency to the system.

And if somebody is found acting against those principles then he can be proceeded in accordance with the procedure prescribed. The responsibility for maintaining the discipline is entrusted on the High Court. High Court does it in a particular procedure prescribed. Question is whether there will be one inquiry officer or a team of three inquiry officer one aspect which is discussed today. I believe that one inquiry officer who is also a high court judge and has expertise in service matter will definitely be able to submit a proper report which will be discussed by the full court and then only action is taken because we must be very careful and caution in proceeding against a judicial officer unless there is some

concrete evidence against him there should not be any proceeding against him otherwise it will demoralize a good officer.

So far the mechanism is concerned, we have a set machinery of conducting the departmental inquiries and procedure as to how it is to be done. Inquiries against the judicial officers should be expedited. I may also tell you that apart from the departmental inquiry, high courts also have the option of proceeding under Article 311(2)(b) that is extraordinary power and of course it could be exercised in extraordinary circumstances. I have found in my career in many high court when I was judge of the Supreme Court and dealing with service matters in the Supreme Court, I have found two three instances where the high courts have resorted to the provision of Article 311(2)(b) wherever the circumstances so called forth. So therefore that provision is also available and there only the reasons have to be recorded.

Question of evidence may not necessary but those circumstances, within the periphery the power could be exercised that will have to followed meticulously and I believe that unless and until we do something concrete in the matter, we have to think at this moment as to what should be done for these officers so far their service career is concerned, so far adverse information is given to them and we must take a concrete steps for helping them as also preventing them from resorting to any misconduct. So this is what I wanted to tell you. We can discuss and then I will also give you some inputs and suggestions.

Justice Sarin: You had summary of what are the ingredients and what should be the approach adopted. I have a slight reservation on one issue while it is true, we have to discourage all frivolous complaints that deserves dustbin. There are no

two opinions about it. Inquiries not to be initiated just because of allegation are made as Dr. Sharma has rightly pointed out. You need to be satisfied that there is a good case made out to for an inquiry. But I speak for myself not like to say that anonymous complaints be written of totally. The criteria adopted worldwide in respect of anonymous complaints whether they are in respect of judicial officers or in respect of those who are in executive authority, those who are politicians and I am saying with my experience as Lokayukta is that look in an anonymous complaint also what you need to look at is he content. If the content given inspire confidence.

It shows the credibility then you are not to reject because it is not signed. It is true to recognize that somebody who is in mofussil posted there and if he is not following integrity as he is required to and a complaint is made it doesn't take him long to understand who has filed the complaint against him. And therefore of necessity people are vary of complaining against any person who is in authority and therefore to subscribe their signature. Therefore as a rule is the anonymous complaint do not give any specific detail or do not have credible information as you call him then they deserve dustbin. But if they give requisite details which you feel where your judicial conscious tells you that this is matter which require investigation then it should not be rejected on the ground that it is not carrying the signature. With this I think it is your lunch time and I say goodbye.

Session Continue in Post Lunch.....

Justice Mukundakam Sharma: I request you to put your input also if you want to. Those who want to can start one by one by raising the hand on this particular topic. Yes

Participant: Sir I am Ajay Tiwari from Punjab. We sometimes finds complaints which are properly signed to be false. We have no methodology to take action against such a complaint. Even if it is on affidavit, you cant try him for perjury because the court deposition.....

Justice Mukundakam Sharma: That is one way. If you take an affidavit from the complainant then probably you can proceed against the person if he has given a false affidavit and he is unable to prove the allegation. That is one way except for that there is nothing? So of the high courts are doing that. Delhi high court does it

Participant: Sir there is an advisory from the Supreme Court and the high courts that every complaint should be supported by affidavit

Participant: May be sir it may not be a perjury because it is not a court of law, but nonetheless it is complaint made which is a false complaint. Some action is possible.

Participant: With regard to the complaint, which can be addressed by appellate court...? What do we do in such circumstances? If can be addressed on the judicial side where there is erroneous interpretation of law, that is made out as a complaint.

Justice Mukundakam Sharma: Now if the complaints are with regard to the conduct of the judicial officer so has to be taken on the administrative side. SO conduct is a part which is to be dealt by the high court on the administrative side. Therefore it is an administrative matter. I somebody has any allegation he can go the criminal court with those allegation filed whatever he wants to file. On civil side how do you entertain a complaint a petition?

Participant: What I have adopted. It can be addressed by the appellate side by the appellate court. I closed the file. I closed the complaint. I advice the

Justice Mukundakam Sharma: Why should it go to the judicial side when it can be dealt with by administrative?

Participant: If a complaint is filed against erroneous interpretation of law or an order is filed against settled position.

Justice Mukundakam Sharma: I don't think it is possible. Anybody has any reaction to it. So far an order passed, erroneous order passed it has to be settled judicially only. Order naturally will go to appellate side.

Participant: Erroneous order is made a ground of complaint in majority of complaints

Participant: But Sir in Union of India vs. Upendra Singh and in Dhawan case it has been laid down by the Apex Court, that if order of the officer is found with certain motive ignoring provisions of law deliberately, he can be departmentally proceeded. But sir there is one problem, supposing I am an inspecting judge of a particular district, I know x officer is dishonest and corrupt. But there are no complaints coming against him and there is no evidence because he is amenable to the bar and often the bar manages the complaint. Those who are upright and honest officer, against them, more and more complaints are made and those who are dishonest complaints are not coming forward towards the inspecting judge. In

such a situation except for recommending an enquiry against the judicial officer what the inspecting judge can do.

Justice Mukundakam Sharma: You can appoint a fact finding committee to go into it. If he has done something wrong definitely evidence should be available.

Participant: If it is a mere allegation is the misinterpretation of the law, then not misconduct at all on the face of it unless there is allegation that it is a deliberate misinterpretation.

It is very difficult to get evidence. What is the system which we have even to detect these things and to control and also to put them in place. There is a integrity factor. How do we address it.

Justice Mukundakam Sharma: Whether it there or not it is very difficult to say. There are instances where action has been taken but the allegation is many times more than what....One way is you have a vigilance registrar. You could have some person who know him who will conduct a fact finding enquiry under your supervision. Find out some evidence against him.

What would be internal mechanism or any other mechanism which you like to propose. For instance there is a government servant, there is ACB, for central government, there is CBI. What is the system which we have? Can we go to ACB or CBI.

Justice Mukundakam Sharma: You can think on creating an independent authority under vigilance registrar as I said and find out what has happened..... These

issues can be tackled if there is more interaction between judges and the judicial officers. If you have some against some officer then in interaction you can always point it out to him.

Participant: I will share what is the procedure we follow in the Madras high court. We have got registrar vigilance. Under him there is one additional registrar vigilance and he is got a set of officers working under him. The vigilance cell has a notified police station so therefore they have got powers to conduct search and seizure and traps etc. The registrar vigilance directly reports to the chief justice but for the past four to five years the honorable chief justice who were there have nominated a subcommittee. This committee does the initial screening. We get complaints relating to decision rendered on the judicial side with sprinklings of allegation on corruption. So which we close at the first instance. We make our recommendations based on a note prepared by the registrar vigilance. In cases where something appear to surface then we order discreet inquiry....fact finding. It is done two ways.

One is police official who are attached with the vigilance. Who are on the cadre of DSP or SP or through the PDJ. By this 70% of the truth come out in this enquiry. If something surfaces in that we categorize that into two parts. Relating to purposeful wrong application of law or delay in the issuance of certified copy. We may send it to the concerned portfolio judge to deal with it under the administrative side. But if there is some allegation of corruption then an opportunity is given to the concerned officer to submit his explanation. This system of filing an affidavit before entertaining a complaint, it is his discretion so far as complaints relating to vigilance. He may or may not call for an affidavit. But if on other side if the portfolio

judge entertains a complaints it is their discretion, they can close or call for it. There are no excesses and it is very cautiously dealt with.

Participant: Sir there is one vigilance officer in UP and more than 2000 judicial officers are there. The vigilance officer is required only when AC is recommended.

Justice Mukundakam Sharma: So it if for the chief justice and the judges also to see that it is really effective. OS this could be looked into there should be more.....

Participant: I would like to give a reply to Justice Ajay Tiwari. We can proceed against a person who has given a false affidavit under section 191 IPC and also under 200. There was some complaint against the officer and come for quashing for that complaint.

Participant: Under the present direction of the Supreme Court, where we make an evaluation where the officer reaches the age of 50, 52 and 55 and his continued utility for further service. In some of the cases what I see is these reports which are at the very superficial level. Registrar general, then a discrete enquiry. That all at superficial level and at the time the person is unheard. He is not given an opportunity of hearing. That material is sometime utilized to entertain a mindset where you will give him non stigmatic exit. At the age of 50 when the judiciary gives the person a non stigmatic exit in public domain, it is taken as a stigmatic exit. Now this send the fear among the judicial officer. This is one issue because at disciplinary matter if it would have kept to its hilt may be this fellow would have suffered a compensatory retirement. May an appellate authority would have said no no only barring three increment should be sufficient. But then he is being

shown the door without an enquiry. That is one dangerous trend. As a matter of fact.....both could be challenged.

Justice Mukundkam Sharma: Unless and until you have material, you cant take action. During our period we knew that the person is not a clean person. Yet we could not take any action. Our hands were tied.

The question of challenge, go to the high court or to the Supreme Court. The Supreme Court says go to the high court first. The same high court which has decided the matter in full court.

Justice Mukundkam Sharma: The high court has two wings. And it has happened. What has happened on the administrative side was set aside in the judicial side and it has happened in many cases.

Participant: We generally concentrate on the judicial officer and all our anxiety is towards that whether they have proper integrity and rightly so. But the ground realities are such that your lordship is aware also that class 3 employees who are permanent in court they actually are the main force behind it. A judicial officer is not succumbing or is proving to be strict so other thing which a high court or other court which should see that a district judge concerned should be given enough of support from behind.

Participant: I raise an important constitutional issue. Issue of the power of the superintendence under Article 233 lies with the high court. Now what is the meaning of this expression high court? It means entire high court but in effect that on the administrative side when we look into complaints which pertaining to the

subordinate judiciary. Now those complaints are primarily been handled with the ACs which comprises of only three members. Now problem arises in those courts where the first two members of the AC are from outside who are oblivious of the ground realities.

Justice Mukundkam Sharma: That difficulty is there in other sphere also. So long the chief justice is from outside the state. These problems will persist. But ultimately the matter goes to the full court. Ultimately when it is case of discipline.

My brother rightly said. Transfer of class 3 district.....I want to add one thing immediately after the request on behalf of..... because if he believes our district judge and he is recommending somebody's transfer. For all the reason or till contrary is proved. Unless immediate transfer is there, otherwise that employee he will continue.

The high court in cases of transfer.....transfer creates difficulty by officer. But they suffers much of difficulty because they get accommodation and other thing. But ministerial staffs don't get any immediate accommodation. So ordinarily they should not be transferred. So such cases where it is of grave nature, they should be transferred out. The recommendation of the district judge has to be looked into.

Participant: In subordinate court when participate are appearing in person, no officer is like to take their cases because generally most of them are mischief mongers. So parties in person and conducting cases, judicial officer not willing the cases. Because if they take up the cases and ultimately he loses or application is dismissed, the other side petition to receive documents are allowed till make a

petition. Then complaints are coming from persons that their cases are not being taken up, how to assure officer make take these cases.

Justice Mukundkam Sharma: If it is found to be frivolous you can always dismiss it with cost. That is what it is done in PIL matters. If you impose cost then this menace could be stopped.

Participant: But the problem is even the cases are not being taken up....

Justice Mukundkam Sharma: The officer then must be strong independent and bold

Participant: Brother from Madras high court has explained a model where they have police officer as vigilance person. I am uneasy on that. I am not sure of involving officers of the police as a regular part of the vigilance over the judicial officer. They are also entitle to same judicial independence and comfort zone.

Justice Mukundkam Sharma: According to you, we are compromising the judicial independence by bringing the police.

That is right. I don't think that model is there anywhere else. If you recall at Delhi high court, earlier we had a vigilance committee of senior judges with some service judges are also part of the committee. The complaint is subjected to scrutiny by that committee. Ninety percent of the complaints concerning the incorrect order which has been challenged in the judicial side. The rest where only 1 % would be worthwhile for further process. That committee would then scrutinize and followed up through the registrar vigilance. That worked very well.

Justice Mukundkam Sharma: We close this session now. Thank you very much

SESSION 8

2:00 PM – 3: 00 PM

Recruitment, Promotion and Transfer of Judicial Officers and Court Staff

Justice Mukundkam Sharma: We have two aspects here, judicial officers as also court staff. First we will deal with recruitment, promotion and transfer of judicial officer. Earlier the recruitment was done through state public service commissions which were recruiting the judicial officers. Now after the judgment of the Supreme Court in Malik Mazhar Sultan v UP Public Service Commission the situation has changed and entrustment to high court. High courts has changed the rules and they are now recruiting.....Which place. Now they have all gone to the high court.....civil judge still.....but in some of the high court....many high court the entire recruitment whether it is higher judiciary or judicial service it is by the high court.

Participant: After the Shetty Commission, the high courts were recruiting. But after sometime they have gone back.

Justice Mukundkam Sharma: As far as I know Delhi high court, UP high court, Punjab high court. Which are the high court still recruiting by the PSCs. Himachal Pradesh, Jharkhand, Allahabad, Kolkata also.....and what is the role of high court in those recruitment.

Participant.....Chairman is high court judge.

Justice Mukundkam Sharma: Whether the high court judge has a primacy

Participant: Yes Yes

Justice Mukundkam Sharma: It is the high court knows the requirement needs and you knows what happens in PSCs these days. Everywhere there is allegation. The high court should make recruitment in all cases.

Participant: In Madras high court, the public service commission conducts the selection, the question paper been set by the high court, evaluation is done by the high court and the interview headed by there are fix or six panel headed by the high court judge. By virtue of the order of the division bench, primacy is given to judge's opinion and then the list is released. Probable police verification is done by the state and roster point is fixed by the PCS and then it is released.

Justice Mukundkam Sharma: But the decision by Justice Sabharwal that if the high court. The right to take over the entire process is to be with high court so why it has not been done by various high court. No that is option but you should exercise in your favour.....in one or two cases it may be there in some cases it is coming in but then if the high court does it I can tell you it will be free from all the vices that are going on in the PSC. These questions are being raised everywhere. In Delhi high court there is some raising of finger but it is not proved yet. So therefore high court should take over.....see if the judges cannot conduct.... What is happened to others. High court judges supposed to be bold impartial and

if it is happening there it is unfortunate. Probably high court will be in a better position to recruit their own officer.....So far increase of the cadre strength then only comes in the infrastructure.

Now the cadre strength is reviewed after how many years in your high courts . Must not have been reviewed for years and years. There are two things linked up. One is cadre strength and we should have infrastructure available also. Plus the assistance of the.....we have to give assisting staff. If you go on increasing every year there may be difficulties in filling up those posts. If you see the journal published by Supreme Court there are vacancies in all the high courts. In some high courts it is more than half and the position is same in district. So even if you increase the strength can you fill up the vacant post. So that filling up of the vacant post should get priority. Some where they are having examination twice a year but I don't think that can be done. Once a year it could be done. So filling up of post is one priority to be given by the high court. What is your opinion on that.....

Participant: We promote them but the pay scale is not given so that

Justice Mukundkam Sharma: So you deprive them.

Participant: There is a judgment of the Supreme Court

Justice Mukundkam Sharma: That is why I say. Make an application, point out. I think Supreme Court will understand. It is an order passed on the judicial side. You have to go on the judicial side only.

Participant: Persons who are worthy of being appointed as a judge should be appointed. Not for the purpose of filling up vacancies only. One is eligibility and another is suitability test. He should be capable of holding that post. We have been assessing the answer scripts for jump promotion. We are of the opinion how could they be appointed as judges.

Justice Mukundkam Sharma: Very unfortunate.....This is what is happening to our judiciary unfortunately. If you say this outside they will lose all trust and confidence. So therefore so far promotion is concerned.

Participant: We face a problem in Kerala. In fact I have requested to chief justice to place it before the ACs...Supreme Court for clarification in the order. Now Supreme Court says we should have an initial screening by way of multiple choice question and thereafter they go for a written and then interview. Ground reality is that we don't get the best. The best at the bar do not have the time to prepare for the written test and having been a member of the interview board for the last two three years.....in direct recruitment this is the problem we are facing...

Justice Mukundkam Sharma: Promotion that they are deprived of because of induction to that extent they are protected. There is a demand for that the direct recruitment should stop.

Direct recruitment has also a problem. Earlier minimum three years practice was the requirement now that was dispensed by the Supreme Court. At the grassroot. We do not find the best of the talent who want to come to the judiciary. Those who come suddenly find themselves in seat of power and are not able to digest it. They are the interface of judiciary and they do not know how to handle this power. They

are not mature enough to adjudicate the dispute. So whether the minimum three years practice period should be reintroduced or not. In bigger state in UP there are 2000 judicial officers. In our state we have 60 judicial officers and we find difficult to control sixty officers what would be happening in larger states.

Justice Mukundkam Sharma: One way to handle this problem is rigorous training for nine months. What happens is that after 3 years of practice you don't get good persons coming to judiciary.

Participant: This may be true of metro but as far as rural areas are concerned who would be willing and wanting to join the

Justice Mukundkam Sharma: I believe there is no bar if somebody wants to apply for three years of practice. Therefore persons with who is a fresh graduate he can apply and the person with three years practice can also apply.

Participant: Most of the law student after completion of law join at the age of 24 or 25. But the time they will be eligible to appear in HJS examination they will be completing their 10 years of practice. If A is doing practice in criminal side but when he appears in the examination he fails in civil paper. Why this written examination for the direct recruitment at the HJS level. Can we not make it oral interview.

Justice Mukundkam Sharma: One difficulty would be number of persons appearing. We can't have interview of 400 people. So you have to screen some....

Participant: In uttarakhand what we have faced is that most of the law teachers, they have been selected. Good lawyers are not able to clear the examination.

Participant: We need all-rounder because civil and criminal disputes many times are interlinked.

Justice Mukundkam Sharma: In some of the places there is specialization. So person who is practicing on the criminal side.....very good criminal lawyer doesn't know how to proceed in a civil matter at all.

About two years back we had in Delhi some judicial officers undergoing induction training in northeast. Their training is before appointment. That one year training is before appointment. The appointment occurs after they have successfully completed that period. I think it is little bit harsh.

Justice Mukundkam Sharma: They are recruited but appointment letter is not issues until they complete the training period. So that they take the training seriously.

Participant: If we treat the superior officer at the district level, treat this declaration of probation as a serious business then necessarily the quality will improve because declaration of probation should not be automatic.

Justice Mukundkam Sharma: When they complete the probation there is a screening process. That screening should be strictly followed.

Participant: In Uttarakhand we are facing a different problem. After probation when a officer is posted in Uttarkashi there is no work, three years then he is posted at senior division posted in pithoragarh and again no work. After 10 years he is

promoted and transferred in Haridwar. Good number of litigation. By that time he has forgotten everything. Lost. Out of 14 districts only 3 districts are plain having 90% of litigation.

Participant: Sir cadre review should be after 10 years.

Justice Mukundkam Sharma: Is that what is accepted. I think it should be 5 years because lot of things involve in review. As I said infrastructure etc. So long you cannot fill the existing vacancy you cannot ask for cadre review also. Now what about transfer. Whether existing transfer policy is alright or is there some reservation on that.

Participant: This question should be asked from judicial officer.

Justice Mukundkam Sharma: There must be a transfer policy in writing

Participant: We have a transfer policy in writing and draft policy is put in the website, objections of the officers were taken and final policy has been drafted and put on the web. Request for transfer are received at a particular point of time well in advance. Norms to be deviated only when expressly made by the committee and this get vetted and again the draft transfer list is put in website, objections are called for and final transfer list is published sufficiently early so that the family and children can move before the school is open. It takes less than 6 months because it is available on net.

There is something ahead of this. After the transfer policy is made public the judicial officers start getting their documents prepared according to the policy

suited to them. Those documents are prepared with the medical aid, sometime they get their spouse and children admitted here and there and all those grounds are prepared in advance and then application is moved.

How to regulate this leave availed by judicial officer. The first thing they do is the moment the calendar is notified they say prefix and suffix. In Chennai district we have got 114 judicial officers and they take turns and when file comes they say two days earned leave prefix suffix. You put the total together it crosses 9 days and if crosses 10 or 12 days then you have to appoint another judge who has to take charge of work. Then the government order says that if he has done effective judicial work, he is entitled to special allowance which is 1/3 of pay so as a result the whole system is getting clogged. The chief justice says that leave should be on need basis.

See these problems are concerned. Leave is dependent on the entitlement and it is true court has, there is loss in that particular court for few days because the officer is not available. But you can't help it if he is entitled then you have to give and similarly it is happening in the high court. Leave is a matter of right and you have to grant that. Now coming to the court staff which includes court managers. Court managers where they are not appointed then they should be appointed because registry cannot be handled by the judges.

Participant: Court manager was the creation of 13 pay commission and it has died with that.

Justice Mukundkam Sharma: In many states high court is getting money from state government.

Participant: State government is not wanting. 14 finance commission is not dealing with court managers. Where the government is willing and wanting they are continuing with it.

Justice Mukundkam Sharma: What I have seen in many other country, there registry management is not by the judicial officers. Some of the matters of discipline are taken over by the court managers. The management graduates should be inducted in the registry because they have the experience and knowledge as to how a particular thing is to be managed. I think therethe state government can be requested to release the fund for court managers and they are very helpful. Wherever they are appointed, there is lot of improvement. Earlier the CJM has to go to personally to receive the dignitaries coming to district now he is relieved of that as court manager goes now. He is engaged in construction part otherwise earlier the judge has to go.

Participant: In UP we have a centralized recruitment process for class 3 and class 4.

Participant: In Gujarat, in high court, under the supervision of the high court.

Participant: There is some difficulty

Justice Mukundkam Sharma: If it is transfer there is some difficulty. Once you give him the residential accommodation it is possible. In some of the places rent should be exorbitant how he will pay the rent. As long back as 1994, there is Supreme Court decision, court means ministerial staff and you know whom you should recruit.

Participant: There is a particular service rule which authorizes this man who has worked for three years under subordinate judicial service to go back for any choice, irrigation department, public work department provided it is near his father's house. So he is provided interdepartmental transfer, it creates.....we will not get a substitute. That is our problem.

That all. Thank you very much. Your discussion was very helpful for my knowledge as well.

Dr. Geeta Oberoi: Can we give big round of applause for Hon'ble Justice Mukundakam Sharma.

DAY 3

9th August, 2015, Sunday

SESSION 9 & SESSION 10

09:00 AM — 11:15 AM

Balancing Judicial Independence and Organizational Needs & Allocation of Work and Case Management

Dr. Geeta Oberoi: It is last day almost and I think we should start because we don't know up to what time we have to wait for everyone. So it is better we start as we need to. There are two things about today. Today we would be giving you one evaluation form and there is one hour totally devoted to it actually, half an hour I think so. Yes it is an half an hour which you need to fill like about your

administrative function and also about programme on whole how you rate it. Having said that we come to our first session which is balancing judicial independence and organizational needs.

Now I would just like to say it is in what context actually because this was told to us by many chief justices and because most of the time the practice is that chief justice are from different states. They are not from the home state and they find it difficult that their brother judges agree with them in certain administrative issues. So this is about you know how do you...sometime as an head of the institution you have to take certain administrative decisions and those administrative decisions have to be complied by other judges. Chief justice would only be giving that ok this is what we are taking decision but complying with that responsibility left totally to home state judges.

Some chief justices have told us that judges say that we are judicially independent so why are you telling us we know our duties so you don't tell us. It is like how do you balance because do you see overall that organization or do you see that your own independence. Is it sometime like you have to reflect like does your own independence come into conflict with the overall structural needs of the organization which are very complicated needs of the organization.

So this is how we thought about this issue because it is all about judicial administration. All of you are going to be chief justices tomorrow. You may not be chief justices of your state. You may have to go to some other states. So how will you convince the other judges who comply with some administrative side order at the same time, how will other judges take to that direction from you. It is bit complicated. We have Hon'ble former Chief Justice of India, former Chairperson of

National Judicial Academy Justice Altamas Kabir with us. This is what our topic is all about.

Justice Altamas Kabir: Thank you Dr. Oberoi. Good morning to all of you. Taking a leaf out of Swami Vivekanand Speech at Chicago, brothers and sisters of the judicial fraternity. As you have been discussing the matters over the last two days one thing is quite obvious that the entire conference is focusing on the problems that the judiciary faces with regard to how to tackle the growing burden of arrears all over the country in the different high court in the Supreme Court in the trial courts. It appears that every session has taken up one particular facet of this particular problem so as to come to a solution. India has its own special circumstances. All these things are geared to not to give an education but take that feedback from all parts of the country with regard to the problems which are very obvious at the same time it has to be tackled in a particular way.

Whatever has been set out here is with the intention of trying to see that the administration becomes more and more litigant friendly client friendly so that matters can be disposed of in a manner there is not delay involved. No body is trying to teach anybody anything. We come here to share our experiences. All of us come to learn. Many have rich experience. It is all important that common man, litigant on the street, he get justice within a set of timing. It is difficult proposition as to how a certain case can be brought within certain limited or limits so that can be disposed of within those limits. The courts which all have the original jurisdiction they all have this problem. Whether the system that is functioning is sufficient. Obviously it is not. No body can blame any judicial officers for the delays. But the system. Each judge can tackle certain number of matters in a day. There have been cases, the race against who can get first. That I think is not a very healthy

system. There was a private function in my family in Delhi and invitation cards have been sent to judges and friends. My wife landed up in the house of one particular judge. She expected that she will meet the lady the wife of the judge. But the door is opened by the judge himself. She asked him. Dada haven't you gone to court as yet. His reply was that I have just come back from court.....11.05.

His list was over his docket was complete and he was back home. Possibly that is not what justice required. This is something more. You can dispose of matters. It takes little bit of time to go into the matter. These are the things which need to be assessed. We must think with the use of modern technology, with the use of professionalism, one can streamline matters. So that one can dispose of matters in more scientific way. I was in Supreme Court and there were 25-26 committees which I was heading. It takes lot of time. It takes lot of responsibility if you want to do your job properly. So how we can balance things. So that we achieve the objective of reaching to the litigant and also streamline the system. You have been discussing and thinking. I see a very bright judge from Jharkhand. Aparesh can you just briefly tell us what you gather in these two days and what is your own ideas are with regard to problems judiciary is facing.

Justice Aparesh: The session was distributed over two days on the topics ranging from how to prepare a budget and the problems which the judiciary faces. Ultimately as Prof Menon summarize it. It is all a question of financial independence of the judiciary because at one level it ends up that executive is controlling the purse of the judiciary and we do not have to do much about at the moment. Issues discussed on that among our self also finally came to the same conclusion that we need experts in our high courts and district judiciary who can prepare budget which we need and what is the budget for our projected needs. As

I have felt may be on a smaller plain the judge in charge or the district judges or some high court judges, they may have the session at the state judicial academy relating to the mundane issue if budget preparation. But ultimately the larger issue was whether the chief justice has the power to re appropriate certain allotment which remain unspent. And what has been recommended by the one chief justice could have been accepted by the executive while placing the matter before the state legislature and not curtailing it down. So we did not find solution to that question.

Justice Kabir: Anyway we have to keep in mind that whether judicial, there can be financial autonomy or not. Thank You.

Justice Dipankar Datta: We come here to learn and there is no end to learning and I believe that we can even learn from the lowest magistrate. I feel to make this particular conference meaningful there has to be some coordination between the National Judicial Academy and the various committees that have been constituted by the Supreme Court. I am part of the NCMS committee, I thought what we have discussed at the NCMS meeting could have been provided to all the participant. Because all the topics which we were discussing for the last two days is perhaps discussed and the saddest part is that when we discuss something in the Supreme Court in the presence of judges from all the high court and shared by the Supreme Court Judge. A particular point where the judge chairing the session will say that no this is not possible in our system. When it comes here we find that there is absolutely a different view taken by one panelist who was also a Supreme Court judge or even like an academician like Dr. Menon. So therefore where are we heading towards? In the Supreme Court in the presence of Supreme Court judge

we take one view. Here before another Supreme Court judge we take another view.

Nobody tells that this is the view of the sitting Supreme Court judge. I will give this example. Whether we required court managers or not. In the NCMS it was discussed that for proper utilization of services of the judicial officers, at least the registry of the high court should be manned by professional people. This was the consensus in NCMS. Now when the state committee heads meets together with the NCMS chairperson, the Supreme Court judge, his Lordship was of the view that no this is such a task which we cannot leave to MBA professional. But here we are discussing since last two days that we require court managers.

Justice Kabir: The scheme which was prepared by the NCMS don't you think that has been sent to all the high court. You are part of that.

Justice Datta: We are trying to create a website. I have been most vocal that this should.....When I go back to my high court, my colleagues ask me brother you are going to Delhi almost every month or once in two months. What you do there. Let us know. I can reach out to my colleagues but I cannot reach out to my colleagues all over the country.

Justice Kabir: This scheme that has been prepared which covers almost everything but at the same time I don't find mention of this in the papers. What we perceive materials relating to system working in other countries. Australia UK we were getting an international exposure. But what we need is basically I feel we would also have paper and policies enunciated here for Indian courts. There should have been the discussion on the report. Thank you.

Justice Teji: The discussion taken and some material supplied. The material supplied is a comparative study. So discussion taken place as my brother was telling that there was need of court managers. Somewhere it is successful somewhere it is not successful. Even in Delhi it was put to tasks but ends up whether some judicial function can be given to manager or not. How we will allocate the case. By allocation of the case he won't be able to do it.

May be we need the expertise to find out what are the matters which need to be allocated and thereafter we assign function. He will not going to allocation he will provide the data .

There are day to day important matters. If one matter wrongly gone to one court people have been suffering . Even there is contempt petition for that it was not looked by the CM or ACMM. There was one matter in Delhi in which complaint when it was marked then ultimately Supreme Court took suo moto contempt against that. Why it was not looked into while marking. That function cannot be given to court managers. It is the only executive function. Suppose construction was there.....

Justice Deepak Gupta: The court manager and the court management scheme....it is not... he is not to be given the judicial function but we must also appreciate that we have lot of administrative function which has nothing to do with our court work. We and that is where I feel the need of this conference. Two third of us come from the bar, we may have practices. We don't have any experience of managing. If we have to administer justice then one is the legal aspect of deciding cases but there is also lot of other materials as to which type of cases are clogging

up the system. If you court manager who can say sir this is the type of cases and then the district judge or the judge in charge can decide that this is the problem and this is how.

Court manager has largely unsuccessful but we cant blame the court manager for that. We have to take some blame, we have not permitted the court manager to function. Our staff at the district judiciary level has taken it as an affront to their efficiency. We also have this problem that we have no court management courses anywhere in the country. That is to appoint an engineer who has done MBA will not going to serve the purpose. We have to create our own court managers. I thought that some of our superintendent could be appointed as court managers. We have to have a rethink on that.

Justice Kabir: Justice Datta as you are part of the committee at central level, was this ever discussed in Delhi or is it the part of the scheme circulated.

Justice Dipankar Datta: We recommended that we require court managers but the advisory council comprising top three judges are yet to accept our recommendations. It is still pending at that level.

Participant: Some work in the form of allocation.....fixing of business will always be done by chief justice. Similarly how priority is going to be given to a particular set of cases. That is going to be decided by the judge concerned. But merely providing the data, there is something more to it. Let us say a whole series of cases where one issue of law is involved. He should have some idea of law and court management then he can post that matter to concerned bench.

Justice Kabir: Where is Justice Alok Singh. What is your take from all that has been discussed.

Justice Alok Singh:Some valuable suggestions came that sometimes personal interaction with the judicial officer can give us a feedback what type of problem he is facing as a judicial officer in the state so that administrative judge can take appropriate decision. Personal interaction would be useful for assessing the knowledge of the officer.

Justice Kabir: On this particular issue that has been raised there are certain things like as you say the high court is the guardian of subordinate judiciary. There problems should be made known to highest court. One of the things our district judges feel if we are to discharge our judicial function where the time to do legal aid is. Legal aid is very important duty which has been cast upon the judiciary. Are we have been able to discharge that function. Is it at that point at that place, some expertise some assistance is necessary. So that instead of spending a lot of time in this kind of activities he is provide with the details where he goes to. The root cause of the problems... This is the job of a person, the proper data for the help to take a final decision in the matter. Justice Kuldeep Singh.

Justice Kuldeep Singh: Some pressure groups which directly or indirectly affect the independence of the judiciary. One is at the level of bar act as pressure group and sometime they affect the working of district judiciary. Second is the media, they start to judging the case and particularly at the lower level they are afraid of adverse publicity and if complaint is made then in that case the enquiry started. In one of case, it was widely reported by media and I told someone that in this case everybody knows that all the persons are not involved. Some of them are innocent

and I tell you they will be convicted and ultimately it happened. So it affects the independence.

Justice Kabir: Trial by media and even they sometime call witnesses and finally verdict is given. In Kolkata it happened and they said we will see how you will become chief justice. Nothing could stop me. They could do nothing. It depends upon the person and personal integrity. Miss Justice Anjana Prakash. What about you.

Justice Anjana Prakash: First day we discussed about budget and whether the judiciary should have autonomy. There was consensus on that except how it was to be controlled there was different views on it. The second day we have court managers and on that also there was a general consensus. There also it was that they could be fruitful if the system is modified to our need. If court managers care absorbed in our services to feel that they are not outsiders then it could work. The third was about the manner of appraisal of judicial officers.

The court managers.....what happens is that they would say that the work would be completely administrative. But he should never made to feel as an outsider. He should be absorbed in our services. And manner of appraisal of judicial officers are concerned, what happens is everyone says something which is politically correct. But we also know that there are people who go in open court and pull the district judge in front of everyone and then they say if you can't control this person how do control the court. I am curious to know after this discussion how do they modify their views. After having discussed and there is a general consensus that that is not an acceptable behavior whether they change their views on this or not. We attend these seminars and it is an exchange of ideas. But when the NJA is

making notes whether they are of any help? These things are lost in translation at one level there is a different view which is percolating somewhere else. It does not come to the other judges and we go in a different tangent altogether. There has to be a some kind of symmetry in all this.

Justice Deepak Gupta: One aspect, writing of ACRs sometimes it is said that judges on the administrative side are the most autocratic in their function. Sometime the manner in which we work is not what we preach in our judgments. I fortunately has a very small high court where there are three judges and I was going through the ACR and I found that there is wide variation between three judges. All three have done their assessment absolutely honestly.

When it came to me as chief justice I said it is not fair. So I called all the three judges and we sat and modulated that. When we assess our personal staff attached to us, 99% will get outstanding and that person who is working in the judiciary wing if one day his file gets late an enquiry will be started against him because he is not working. Are we not required to be fair on administrative work. The same judges are very forthright very honest while doing judicial work but then administrative work is also a part of our judicial function.

Justice Kabir: I have seen those who are gone on deputation they got very high profile but when the same person when he comes back at the judicial work, it becomes normal. We have to try to understand those who assess the ACR that we from our own experience should know that it is a criterion and assess the person accordingly. Now Justice Tashi Rabastan.

Justice Tashi Rabastan: In fact I am newcomer in this judgeship and I have been elevated from the bar. Yesterday there was discussion on evaluation of the performance of the judicial officers and there were various opinions by the judges. Most of the judges opinion was visit the judicial court regularly and physical visits. I am from the bar and elevated since 2 years I did not had the occasion to assess the performance of judicial officer as per the guidelines. Though I am an administrative judge of few districts since the J & K has a very unique topography and it is impossible to visit regularly to the district and that too on a working day because some of the districts are situated far away. It requires two three days and we don't have the facility of video conference so I could justify to the officers by assessing.

Justice Kabir: Can you not tell your chief justice that we need video conferencing facility?

Participant: Yes this has already been told but we have a facility at the district headquarter that too in the collector office but sometimes due to climate that also is not visible to us. Only assessment that is done on the basis of judgments supplied by the officer and that too five cases in civil and five cases in criminal.

Justice Deepak Gupta: This is the problem in Himachal and in Uttarakhand. But we have interaction and we must know their difficulties also. We only try to do how we can be difficult to them. On a personal note I can tell you I took pride in this fact I knew every judge by first name. It is only 117 judges. We need to know their problems and we need to effectively put their problems to the chief justice as they come from outside and they are unfamiliar. Another thing take a holiday you know high court judges takes more leave than district judges when you got 4 -5 days of

go to the remotest part of the state and inspect the couple of courts. Because you have mofussil town where there is only one judge. It is a very small thing and it doesn't take much time.

Participant: Here sir different chief justices have different views. Our present chief justices gives us absolute independence but there was time where it was very embarrassing for many judges who asked to go to places like Midnapur and declined permission to go.

Today when I saw topic I was annoyed and I talked to Dr. Geeta Oberoi and said that this wording is not proper. Today's topic balancing judicial independence and organizational needs. I said judicial independence is not negotiable. Where lies the question of balancing judicial independence. Then it was pointed out to me that it is in terms of page 236 of the reading material. It is basically the relationship between chief justice and judges which they are talking about. What they wanted to talk about is integrating judicial independence and judicial administration. This is absolutely right. We never had a himachaly chief justice. It is always been the chief justices from outside and we have some of the best experiences and we have some of the very worst to put it very polite. So it is again individual. The chief justice in my view must consult the local judges. Chief justice is the captain of the team and he has to take the entire team and you have to take the team with you and then only you can succeed.

Justice Kabir: Can we come straight down to the east now. We have Justice Das from Tripura.

Justice Das: Tripura is actually we are running our high court very efficiently and very with all standards. Regarding the discussion actually the first day discussion was not at all fruitful so far we understood that is budget. But the yesterday session was very lively because the assessment of the performance of the judicial officer was discussed. Yesterday everybody agreed that there must be visit to district judiciary almost twice in a year and it least on a working day visit was emphasized by my colleagues. That is for the assessment of their performance, their attitude, for theirthe manner in which they conduct their court. Yesterday discussion were very fruitful.

Justice Kabir: Now we also need to come to Himachal Pradesh.

Justice Sanjay Karol: Basically sir we are all sitting here to achieve the Constitutional Goal and ultimately what matters is the perception in the mind of the litigant with regard to judiciary. He must have that confidence whether he will get that speedy just fair decision within the Constitutional framework. I have raised some issues regarding the functioning of the constitution. My one issue was with regard to financial autonomy. It has to be within the Constitutional framework. If you see Article 146 and 229 (3) the high court and the Supreme Court. But as far as the subordinate court except for Article 247 list 3 entry 11 is concerned the central government has power to have additional court sir. But when it comes to financial autonomy I am not quite sure therefore I request the hon'ble chief justice to elaborate on this aspect. Two Sir I raised the issue with regard to the supervisory power of the high court under Article 235 of the Constitution of India. There are convention and norms of various high courts. Sir what is the meaning of the expression full court. It has significance that when we have to assess the ACRs whether the high court means the full court or whether it means

administrative committee. Because there is divergence of views on full court as also the administrative committee.

There are cases where the inspecting judge or the administrative judge has assisted the ACRs in a particular manner but the AC has different views and without even informing the administrative judge about this or taking into confidence the other members of the court the ACRs have been changed. And thirdly sir I am of 100 % of this view that because each court has its own practices and conventions and obviously the Supreme Court doesn't have any supervisory jurisdiction of the high court. That is my very strong view sir. So these practices which are being followed all over India, the judicial academy perhaps collate that data and circulate to all the high courts. If respective high court want to be informed of the practices which are followed and they want to adopt some good practices or not.

Another thing is that whenever any discussion takes place it should not metro centric. Why I made the point was and which has also been highlighted by my brother at Jammu and Kashmir and Tripura. For example today's conference which we are having all of us have missed one working day which is Friday. Earlier the conference were used to be on Saturdays and Sundays. We have missed one working day. Now if we can miss one working day to have a conference at Bhopal. Definitely the Supreme Court or the authority that may be can consider of giving us at least two or three working days in a year for us to inspect the far flung areas because in Delhi, in metros it is very easy to go for inspection. But in high courts which have got huge territorial jurisdiction, it is absolutely relevant that the inspecting judges should get time.

Justice Kabir: These are very very relevant questions which you raised. The most important.....this is something under the Constitution something in the hand of central government. This is something in spite of all the attempts which we have making, we even make suggestions to the extent of whatever court.....that remain with the high courts or courts. Let us use that only for our administrative work not being accepted. The reason being the collections of fees that court do is a big amount and what they give back in return is a very small amount. You know the amount that is spent on the judiciary in the budget. 0.5%. Just look at that. There is certain reason for this.

As all of us know very well that the executive does not want to be under anybody's control least of all is judiciary. The judiciary hauls up people who have done things which are wrong. Does anybody appreciate that. You saw how with this particular bill which is now an Act about the judicial appointment commission. The entire Loksabha Rajyasabha everybody came together, all difference were forgotten. Loksabha passed it unanimously cutting across all different political lines. The same evening it was sent to the Rajyasabha and in the morning it was law. So this is something which absolutely they will not accept. Even this financial autonomy. This is something where they have got us by ...our neck. You want to do anything. You want to improve infrastructure. If you want tosuggestions which has been made regarding the administrative work being handed over to or rather being entrusted to a court manager. You can say that who is go to pay for that. The government. The central government has to pay for that. Who is go to pay various building which are going to comeup or should come up in the taluks, in the subdivisions, who is gonna pay for it. The government. Do you think they will allow us to have that autonomy? They can fight and fight and fight over it. It will require a Constitutional amendment, a change. Do you think it will be done in the

parliament? I don't think so. That is one area where we can only ask and we can request. Delhi government has always been very liberal. Say with funds. Some of our state governments have not been. This is where I think we still have to consider how we can go on the basis of persuasion.

Justice Sanjay Karol: But the sir, I am sorry for interjection. The chief justice should not go to the begging ball to theseem to be going to the political executive with a begging bowl. There are certain decisions taken in the chief justice and chief ministers conference. When it came to implementation of these decisions we found that difficult. The answer we get from the Supreme Court is go and get it from judicial side. What do we do sir.

Justice Deepak Gupta: This time at the chief justices conference, I had the privilege to present a paper on financial autonomy. Even at the Conference my paper was not fully accepted because I moved it within the framework of the constitution. Even that was not fully met with. We need to do vast changes. There has a committee setup earlier also. I requested them because I will see to it that a copy of my paper goes to each one of you. I will ensure. That itself is a very time consuming topic. But I agree that we need financial autonomy and even within the framework it is not impossible because we certain powers lets use the stick where we can. Unfortunately we are very ill prepared to prepare the budget and that is one of the main point in my paper on financial autonomy is that first we have to strengthen our budget preparation mechanism. Because if we go with facts figures that this much money is required then it is very difficult for the government to say no to those facts and figures. At the chief justice and chief ministers conference this year one of my proposal was accepted and that was that the power of appropriation will be with the high courts.

So the power of appropriation, that there are certain states which are very liberal. There are certain states which are not liberal but they don't stand in the way. But there are certain states which creates obstacle in the way. They will earmark the fund according to the budget but in practical term they don't hand you that money ever. So the high court may have 500 crores in the budgetary provision but at the end of the year the states are giving only 250 or 275 crores.

From 235 the control lies with us, control means also financial control where if you look at the provision of the CrPC, CPC, where the court has to be set up, it is with consultation of the high court. I have suggested one model where there has to be judicial committee because we also at the same time must not make it a pan India body where the high court become subordinate to that pan India body. That is the other danger where we shift everything to the Supreme Court. And I suggested that the portfolio judge, the district judge must be part of that financial budget preparation committee. We are bit vary of taking help from outside. We cannot prepare budget without taking help from outside. We ourselves are not geared up to prepare budget. We are not trained on that and so we need expert help. Either we take from outside or we have special account officers who are dealing with budget. When you give a budget which is fully supported, the state does not say no to it. Sometimes it is our budget which is defective because how do we prepare a budget. In 80% of the high court the budget is prepared, last year it was 100 crores under this head, lets make it 110 crores. So if we are going to use that system then these young lawyers and officers are very clever to shoot down the proposal that last year 100 crores was given for this which has come up why do they 110 crores for building for this year.

We have to give details and budget preparation is required to be really looked into. Even at the district court level all of you just visit some of your district. You will find that in most of the districts, they don't have any forms to issue summons, they will not have file covers. What you will find that those order 21 rule 66 forms under CPC. They are being printed as it is every year so last year it was 1 lakh now this year it will be 1.25 lakhs and they are being filed up and the back of those forms are used to issue the summons because nobody has done that exercise that we don't need these forms because now 21 66 what it was used to be 40 years back is not being used now. Then other thing, supervisory role, I am very clear that though the chief justice is the master of the high court in sense of framing the rules. As far as the district judiciary is concerned means court and court means full court. Now the full court can resolve and give certain powers to the administrative committee. But unless there is a resolution of the full court to give it I think under 235 it is the court means the full court. In a state like Allahabad how can you have a full court meeting for every transaction?

But there also the administrative committee should not be a fixed body. An administrative committee should always include the judge or portfolio judges of that district. Sometimes what we are doing is that we are having a administrative committee of top three or five judges, but we are including the administrative judge of a particular district when his judges are to be transferred. In some stat it is being done and in some state it is not being done. And the third thing is that inspection that is really needs to be done. Uptill Supreme Court has said no not on working days.....the issue has been raised. We can make a recommendation even here that the Supreme Court may reconsider....A judge may spend three days five days only on the inspection of the court and that will be part of his judicial function.

Participant: I am from Allahabad. But now we take inspection on Saturdays only and in one day what inspection can be made. We reach the district concerned by noon and by evening we have to leave.

Justice Kabir: That is very very difficult situation.

Participant: My district is about 550 km from Lucknow. Ultimately what has happened is that we have stopped going to the district.

You have to point this out. May be the outcome of this conference could be a suggestion made to the Hon'ble Supreme Court that this is something which is physically impossible. If one has to do any proper inspection, it can be done only when the court is in session. To assess the performance of a particular court one has to see him in action. So this particular direction which has been given by the Hon'ble Supreme Court needs to be reconsidered. And this is one of the forum where these things could be said. Now who is from Andhra. Where is Justice Murthi.

Justice Murthi: Coming to the view of court managers is my humble view is this sir in every highest court in the district, we should have here categories of court managers. One is a sub treasury officer retired to help in preparation of budget in presenting bills and taking care of the all financial and budgetary matters of the district unit. Second court manager should be an MBA and IT expert he will take care of entire computerizations and other aspects. Then the third court manager is called registrar. He will be a retired senior civil judge. He will be taking administrative work, having nexus with judicial work. If these is categorized then all problems will be solved. He can identify cases, group cases for mediation and I

think this will solve the problem of overlapping. The re appropriation powers are already there for AP high court and then the monitoring the work and devaluation of performance the best way is the administrative judge will be dealing with civil and criminal revision petition and also the civil miscellaneous application arising from the orders of district judiciary same district for one year so that he will be personally seeing the judicial work to assess better the officers.

Justice Kabir: This re appropriation powers are available.....

Justice Deepak Gupta: This is available only in some of the states....only very few states. In the chief justice conference, the chief ministers agreed to this. So you have to bring it notice.....the minutes of CJ CM conference. They have agreed to give the powers. They cant go on that.

Justice Kabir: But it will depend on the information reaching the different high courts that this has been discussed and agreed upon in the chief justice conference by the chief ministers. Unless that reaches to all the high court and the chief justice know about it that lack of implementation will continue. I personally know that as far as changing of heads are concerned, normally the state government not at all perturbed by that. They have given the money, utilize it if not in one head then in another head. These are things which normally state governments do not object to. So this can be taken up by the chief justices with the chief ministers and the finance ministers. I don't know whether it has been discussed in the chief justice conference or not that we may not have the capacity or the authority to make the government give whatever funds we needed. But I remember there was Justice BC Basak in the Kolkata high court. He used to tell us if they do not agree to give you the funds there are ways out taking out ghee and

bend your finger to take it out. You force them to come to a situation where they will have to agree. You show your authority on their authority. Justice Shinde. Where is he.

Justice Shinde: To my mind we should treat JMFC, judges all judges as part of system and then try to address the problem by institutionalizing things, not at the individual level, we should not treat them as subordinate judiciary or JMFC. We should not expect personal things or respect from judicial officer when we are visiting the districts because what is happening if young lawyer is appointed as JMFC all the time she is scared how to talk to high court judge. We have made that atmosphere easy so that they can interact with district judges, high court judges and Supreme Court judges. That is something I feel is lacking. Secondly, the buildings are constructed by government department, the quality is very bad, therefore there should be complete independence to the high court, chief justice or the administrative committee. What is happening after construction within one year roof collapse so it is very important and we must think if the executives are not listening we pass the order on judicial side and assert your independence otherwise things are not happen automatically.

Justice Kabir: When the buildings are constructed it is not done with the consent or rather supervision of chief justice.

Justice Shinde: It is with consent but thetenders are finalized by the department. The tender contract is done by government department as a result the overall control. Quality control is with the government and the funds.

Participant: Funds are handed over to executing authorities. High court does not come in between and then do it in their own manner. They delay the project. They withheld the money, substandard construction is there but the high court cannot do anything.

Justice Kabir: High court can certainly interfere with the construction going on. The expertise is required with you people. There should be a three tier system with different people having different expertise forming part of court management body. We do have the expertise but we can sit with people and try and understand what's going on. Quality control would be in our hand. I have seen it because I have done it. In Delhi where the new complex is coming up. I have done 20 different meetings. If you have interest and compel the government.

Participant: Sir I am SV Bhatt from Hyderabad. On the aspect of financial independence I was really unhappy with the type of dependency we have with the executives. Hon'ble chief justice was saying that last year we have presented a budget of 250 crores as is our benchmark, we have 10 % more present 275 crores budget for this year. As the bureaucrat says that this building is already over. My experience with Hon'ble chief justice, the central government has permitted for construction of a building in constitutional scheduled area worth 4 crores 75 lakhs Rs. As an administrative judge I have gone there to inspect the quality of building. I had the feed back that one is taking the system for granted. I ensured presence of engineer and contractors and after my inspection I sat with him and made him to do the working. The whole thing could have been constructed at the cost of 2 crores 75 lakhs Rs. The government is willing to waste 2 crores Rs. On account of its independence and control of judiciary but not willing to part with that amount to judiciary for proper utilization. Is it that the district judge comes to me with a

complaint? Sir my bathroom is out of order and I want 20000 Rs. for maintenance. Now the process is it is routed through from engineer, executive engineer, superintendent engineer, district judge, high court. By the time it is sanctioned few more repairs are comes up.

The collector was a very young and dynamic person from that district. I feel disheartened when a district judge stands before me 80 thousand 1 lakhs. He first signs and then sends the file to me. He gave me one suggestion. Yesterday I have noted it down.....The audit member was saying that we are not taken into consideration the court fee input into budget preparation because sir no one knows how much will be the litigation for the next five years. Sir in the matter of court fees as the country provides to the military, it is required to be provided to court also. They are going to keep in place ammunition, personnel, likewise they are going to keep judges, they are going to keep buildings. When it comes to army full attention is given. When it comes to court, it is also a guardian of so many rights and territories and everything, it is completely neglected. In between high expectation and complete rejection, we can consider a portion of court fee be as a matter of right through and enactment being transferred to high court for utilization.

Justice kabir: Who is going to pass the enactment. Legislature, the government.

Participant: They are more worried about total financial independence claimed by the judiciary. Why we propose that court fees.....

Justice kabir: That proposal has been going on for the last two years.....ten years....may not be willing to give it. If I am earning one rupee, why should give you one rupee, I will give you the minimum 5 paise.

Participant: In that district, the district budget is 1800 crores. When it comes to judiciary they have earmarked only 40 lakhs rupees.

Justice Kabir: The overall earmarking of money, finance to the judiciary is 0.5 %.

Participant: When they not release, I have to use my contempt power. It pricks my conscious that I am using this power for other purpose

Justice Kabir: The other purpose is good so it should not prick your conscious that much.

Participant: Sir we request you to give us a suggestion to further develop this idea so that.....

Justice Kabir: I have given you a hind it its upto you to take it up. It is a concept told to me by one of judges, senior judges. You have the authority if you want to. At the district level when thee inspecting judge goes and he hauls up the district magistrate, the district magistrate will has to do certain things. It all depends on your personality also.

Participant: Yesterday my brother Mr. Banerjee from Kolkata he has given a checklist of various yardstick for judicial officer. My view is I keep this checklist for myself and henceforth I would like to act like a karta or manager of a very big family who understand and encourages. This is our reaction.

Justice Radha Krishnan: I come from the state for whatever be the reason political or otherwise the chiefe ministers have not attended the CJ CM conference at least

the last three conferences. But we are not having so much problems with them on ground. So far as autonomy is concerned I will always canvas a situation where the budget proposals by judiciary are placed to the government and it ultimately passes a budget. Once a budget is passed they give 20% of what is asked for. But once it is granted there must be autonomy in re appropriation and also related to administrative sanction. Kerala does not have this administrative sanction issue and re appropriation being permitted. I would suggest that whether the Supreme Court and the Justice Ministry could write to the state government to abide by the decision taken in the CJCM conference.

Justice Kabir: Yes they can and it has been done before. We are the ones sometimes do not give that push. That push is required to be given provided the CMs have the knowledge of finally whatever has been decided. Our chief justices will have the chief ministers may not have. These things go and it is kept in the file. We have to make them aware of it.

Justice Radhakrishnan: I would recall your Lordship's letter as a NALSA chairperson when the TFC funds were released. There was a route map and we have to push for the purpose of letting the work done. Letters were written by your Lordship to the chief justices the TFC funds be given to the judges to push the government. That letter is used as tool to arm twist the government.

Justice Kabir: The feedback which is to be given to the different states, different chief justices that this is something which can be done and even at the Supreme Court level, there are certain level where the Supreme Court can interfere with the workings of the high courts as such. But there can be overall guidelines.

Justice Deepak Gupta: The judge from Andhra Pradesh was raising. The issue of getting 2000, 5000, 10000. We give the session judge the power to give death penalty. How many of your courts has the age old rule which has been passed prior to independence that the petty cash amount that the judge will only be given amount 500, 1000 Rs. and how many of the portfolio judges have taken the initiative of getting increased to 10000 or 20000, 50000. That only requires a letter. We also have the raise the issue with the government. It is not always that the government is not receptive. There the role of the chief justices becomes very important. We should have certain sense of cooperation.

Five seven years back there was a judgment of the Supreme Court that in tier one the chief justices and chief minister should get in touch with each other. Tier two the J1 with the law minister should get together but that doesn't happen. I want to add that control from the home department or administrative department should shift to the registry of the high court. The budget for the lower judiciary may be settled by the state bit once it is settled then it is the high court which should take control over that budget and then decide how it is to be done. The district judge should write to the registrar general that this is what is require and the registrar general will talk to the right people and get it done.

Participant: In Allahabad high court, upto Rs. 99000 the high court can sanction the amount.

Justice Deepak Gupta: 99000 sanction to the high court is ridiculous. But I am happy that at least for 99000 there is power. Some high courts have no power at all.

Justice Kabir: There is one problem which we always face. When there is matching grant given the central government send the money to the State government. Unless the state government gives the same amount by way of matching grant the funds are not released. What do the state government do at times. They utilize that fund sent by the central government. They changed the heads. This is something over which we have an control but at the same time we need to exercise our authority so that the money which is allocated comes within certain time with the contribution of the state government or the state government should be directed by whoever concerned that once the money comes from the central government that should immediately be distributed.

Regarding court manager, the reason that lethargy built up that the court managers are not a permanent cadre. The TFC period is over and Kerala has got one year extension from the state government. It is in a sort of fluid state where nobody is interested in being there. Whether we can take the MMs or the senior division or junior division officers who have an ability for administration. Send them in an institution of management in government and give him the requisite training in governance. Judicial budgeting does not require spread of general budgeting. It requires focal budgeting. These are issue specific and training can be given to judicial officers who are otherwise conversant with the judicial or court process. They will form part of the permanence cadre. We have to increase the number of officers. So far as local inspection is concerned. We left a very important point the visiting judge with the PDJ will have to have a personal inspection of thee ground facilities to the litigants including the toilet facility, drinking facility the relaxing facility, the litigant bench facility.

Justice Kabir: We have reached the end of the second session 11 am. Let us stop this discussion which I wanted a feedback from everybody and pass on to what we have to say a little bit.

SESSION 11

11:30 AM – 12:30 PM

Review of Powers and Functions of Various Committees in High Courts and Role of High Court Judges

Justice Deepak Gupta: Our focus on judicial administration has been very little up till now NCMS committee has been looking into this aspect. There is lot of duplication that is happening. We have too many committees. The same thing which NCMS is doing, the ecourt committee is doing and there is a divergently different view on the same topic of what is the framework to be. Sometime we are in conflict with NALSA. Our NCMS should have been the central paper around which the discussion could have been held.

Participant: Material should have been supplied in advance.

Justice Deepak Gupta: It can only be done by a soft copy. He has sent me few papers. I am being on this side. I want to emphasis the importance of administrative work. Somehow we are all very busy. We have lots of work specially you people lot of you do not have the benefit which I have by working in too small high court. I also had the advantage of working under the chief justice who was dynamic as far as administrative work is concerned.

Justice VK Gupta and Justice Kabir also. Justice Gupta rang me one day that you are going to an orchid take a different route. There is a building being constructed. Just go and check the building. When I saw the building this is a small mofussil town with a bar of seven members and there were thirteen toilets in the building. So we worked out with the architect and it was re planned. The lawyer said we don't need a separate bar library. We are only 7. So everything can be done because the building was still constructed. We are not architects. But we have to learn because we decide everything and even those of us are in building committees will have to learn this. Don't we do that when we get our house made. We go to architect and tell him I want a door here I want....When the NCMS committee has given us guidelines on what is the structure of the building. What is the minimum requirement? But then that has to be according to the topography of the area, the availability of land sometimes.

Everything is overlapping. The building committee.....So administrative....the judge specially the top 5-6 judges of the high court are spending not less than 2 to 3 hours on administration. Even a junior judge who has only one district with him normally spending an hour on administration. We depend too much on our registrars or the person bringing the files. We just sign the files. We are not looking into the problem which are there. Administration has been neglected and in that sense this course is very good. I have mixed views regarding the structure, may be it is for the first time the course of this kind is been taken. It can be improved through feedback session.

The feedback is very important. Be blunt in feedback so that people next time are better enriched than what we have been. The first part of the topic is balancing

judicial independence and organization needs. I was very unhappy because it is non negotiable. Justice Naolekar is here.....I have raised this issue with Mr. Suman and Ms. Geeta Oberoi because I said that this wording is not very happy. Then they told me this is more to do with the views of the chief justice and judges. We are reading in the newspaper which should not have been coming. We have our in house mechanism that means they are not working. It is a two street. The chief justice coming from outside has to respect the traditions of that court. In Himachal where we find judges coming from outside we find it very difficult because some of the chief justice tried to impose what was the rule in their state into this as if we have no tradition. When I went to Tripura I found something totally new. But I said that for me it is one person who has to adjust. Why I should ask the bar entire judges, everybody to adjust let one person to adjust.

Best practices must be followed. Some traditions are not necessarily good traditions. The administration of the high court is sacrosanct. The supervision of the district judiciary has to remain with the high court. We cannot be oblivious of the fact that right from Mazhar Sulatan and all the Supreme Court is guiding us on the judicial side as to how to recruit judges. But why did that happen. If you introspect why that happened is because in certain high courts recruitment never happened. So the Supreme Court stepped in judicial side to ensure that at least there should be a timetable for this. If we have been working there would have been no occasion for the Supreme Court to....Today some of us taketo the fact that the Supreme Court is interfering in this. But at the same time I find that why don't we on the judicial side start giving direction to the government. That is also outside the scope of the constitution. But we do it because we are not getting our due from the government and we are justifying our self that we will. Do you think our cadre strength would have increase unless the Supreme Court....would we

had fast track court if the Supreme Court had not passed. Then the fast track court is getting regularized on at least 10% in the cadre.

We have to look at the financial autonomy within the realm of the Constitution. Lets not think of amending the Constitution as that will not going to happen at our asking. Within the Constitutional framework how we can achieve the financial autonomy. Don't look at the State as an adversary. Under the Constitutional scheme we are all working for the welfare of the people. It is not that we are enemies on two sides of the fence fighting with each other. There has to be some sort of meeting. That reminds me of what Justice Chagla wrote in *Roses* in December. He wrote that he was chief justice of Bombay and I broke the provisional law every evening. He said my lifestyle and the lifestyle of Morarji Desai was totally different.

There was an arrangement where he could come to my house for lunch once in a month and I will go to his house once in a month. Everything were discussed across the table and most things were resolved. Now nowadays there is no meeting. If the chief justice and chief minister don't interact with each other then obviously there going to be difficulties. The interactions are for the purpose of administration of justice. Budgeting is very important and if we are geared to prepare proper budget then financial autonomy is easier to achieve. Next come the role of high court under Article 235 of Constitution. The control lies with the high court as a whole. It does not lie with the chief justice. 229 powers lies with the chief justice, 235 is the court means an entire court.

The court may delegates its power to committee but the full court can always overrule the committee's order. The other issue is ecourt project and data

management and analysis. Today we are getting the data, some of you are in computer committee. How many letters do you receive from Justice Madan Lokur a week. I was joking with him my wife, my mother, my daughters combined have never written so many letters which I received from you in a month. Because he is using that data and coming back to the chief justice that in village so and so taluk, there is negative growth in thecases. Data collection is important for administrative judges. Even to decide which court is to cover. You must have a vision for the next 15 or 20 years of the district with which we are dealing as administrative judges. More cases are coming from 4-5 panchayats so that is the area where I should have a court in 4-5 years. If you are planning to have a court for the next 5 years then apply to government for land now because they are going to give you land after a couple of years three years to build. So this is also a very important part of judicial administration.

A vision for the future. If you are a portfolio judge please map out what your district should be five years from now, where do you think the new court should come...because we cannot concentrate courts in one town. The other aspect of data management is analysis of the cases also to decide which judge is better at work, to allocate work you can tell your principal district judge that this judge is not very....either he needs some training or retirement. What are the judge's strengths we should have in the near future because if we can project judge strength not only on a figure that in America for every lakh of population 50 judges and we only 1 judge for lakh of population. That is not the data, we have to look at our own system our own limitation and given the norms that the apex court has laid in number of cases what sort of strength because then you can go for the most forceful of the state that this is how we need the judge strength to increase.

On the contrary the lack of use of such data has led to....Justice Lokur told me on one state there is excess of hundred judges. Those 100 judges are also getting salary because but there is no work for them. Because the state was liberal in accepting the demand of high court, these are the occasions... we have not analyzed our data properly making recommendation. Evaluation of judicial officers and staff, it must be absolutely fair. The chief justice must look into this and there must be moderation and modulation of things. There must be moderation of benchmark at committee level so that it cannot be in one district everybody is outstanding and in other district everybody is average. There has to be some moderation of scoring pattern. When we deal with complaints or enquiries by or against judicial officers. We have lot of complaints and counter complaints by judicial officers against each other.

That is avoidable if the PDJ does his job. Most courts have system that every quarter there will be a meeting of judges in district. One of the Saturdays should be used where you also work in the daytime and also the officers their spouses get together and havebecause most of those who are posted in hinterland they get a chance to come to main town of the district. This is where the role of guardian judges come along that groupism among judicial officers. Integrity is something which cannot be compromised and is non negotiable. It is totally sacrosanct. On the administrative side though you may be very lenient on other matters on integrity no second chance. There should be zero tolerance to corruption. At the same time investigation must be fair. It is not just what we hear, we hear hearsay evidence on administrative side which we discard totally in court.

Some of the information will come by hearsay but it must be verified as administrative judges you must have your own Chankya niti that how you going to

get information from the district. So recruitment of judicial officers there are very few complaints. The Supreme Court has again given directions which were not required but those direction were given because recruitment of staff. Recruitment of staff is required to be relooked into. Please remember that if we recruit somebody who is not competent the institution suffers. One day in Himachal I called judicial officer and I asked what is happening in your section. He said sir I have some officers at the level of senior assistant and even some of them superintendent I assure you if you ask them to write one sentence in English they cant do. I said it cant be true. He said sir agar mein unko bolu ki judges ke naam bhi likh do to who causlist ke bina nahi likh sakte. Now if you recruit people like this how do you administer the court. So there has to be fairness in recruitment process and try to get the best people possible by holding test and minimum marks for the interview.

I am not going to talk on allocation of work and cases management because that I think all of you are aware and the chief justice is mater of the roster. The roster should be fairly designed that nobody has this grouse that all have burdened so called controversial and tough cases and all the....Even for the PDJs in Tripura we have introduced the system that in the ACR form one of the remarks with regard to the PDJ and CJM going to be how they have allocated the work. Because if he is going to keep all the simple work to himself and distribute the tough work to the additional district judges then mark should be lowered on that. That's all on the committees and Justice Naolekar would be talking to us. Thank you.

Justice P.P. Naolekar: Good morning everybody. Although I am out of circulation since 2008 when I retired as a judge of the Supreme Court I have certain experiences as chief justice. I was chief justice of Assam so I looked after seven

states. I have some experience which I would like to share with you. I feel that budget of the high court is very cursory taken and the high courts are not preparing the budget with the understanding of a long term goal.

Because certain building has to be constructed. Some court has to be brought about then there should be a planning and it is a long term planning. So the provisions have to be made looking into long term needs of the court. Budget at that time was taken as a routine matter and the budget of court is usually prepared by the chief accountant staff members. When some allegation arises, finances required for undertaking some projects you are short of money. I have an occasion of meeting various principal secretary of finance and some member of the state who are dealing with the finances and usual stock reply of those officers were that whatever you have asked for we have sanctioned. So it appears that we are not looking for a long time requirements and it is budget prepared for year to year. So these are short term budgets which we are preparing and therefore we find it difficult that we don't have the finances.

We have to take help of certain experts who are working on the financial side. Either the high court has the financial officer who are trained in preparation of the budget or knowledge about the finances and needs of the court. It is necessary for the chief justice or judges to tell their requirements or the future requirements which would be required for functioning of the court. If we take the expert advice either as a permanent employee of the high court or arrangement to be made to take expert advice from outside.

The other thing is that there is a budget committee. Probably the high court has some committee. Wherever I worked budget is never placed in the full court for

discussion. The budget should be discussed before the full court so that the ideas of all to be taken into consideration. Judges may suggest that this will be good for the court if the finances are asked by the government. One of the topic in the discussion before full court would be the prepared budget before it is presented before the state government. Before preparation of the budget the consultation can be made with the experts.

The recruitment process should be absolutely fair and the appointment has to be made on the basis of the merit. Nowadays the recruitments are made by examination. In our time it is the committee which use to select even the higher judiciary also so there were lot of things were talked about. The selection committee and the process which is adopted by the selection committee. Now more or less the recruitment is by examination there is a fair selection and therefore in that matter there is no difficulty but high court has to think about what shall be the requirement of judicial officers for discharging various functions. Every day there is new enactments by the central Acts and they are required to be implemented and adjudicated upon. The question arising thereof are of the courts but we don't have the sufficient number of the courts and therefore there is a pendency. A good idea was suggested by Justice Sabharwal of holding night courts double shift of the court is not being implemented at all.

There appears to be an objection from the bar. Court is not meant for the bar members but court is for the general public. As we have implemented the fast track court when the judges are ready for extra remuneration for working late at night. Because the major problem with the central government is giving finances to the court and officers and ministers say that we have no difficulty in giving their

salary, the staff which is required to carry out the work, but we have a major difficulty in the construction of the building. We can't have a separate building.

Where the judge will sit where the accommodation will be. But if the similar building is used twice. One in the afternoon session and one at night so some matters could certainly be given to the night courts.

The routine administrative matters, the routine direction for the issuance of the summons or giving dates in a particular case. So all these can be taken up in the night court. But there was an opposition from the bar. The high court should think very seriously about it. The pendency is a big problem. When we go out of court and we are not functioning we get lot of complaints about it and the general public is expressing deep concern about not getting their matters disposed of. For a long time the matters are pending in a court. They are not getting relief. This is one of method and just the bar members are opposing this has not been implemented. The other things is one of the cause for delay in the disposal of cases is bar going to strike in spite of the Supreme Court judgment. There are no rules framed under the Advocate Act where the high court can control it but if there is frequent meetings with the senior members of the bar by the judicial officers. One committee can be formulated or the chief justice can have the monthly meeting with the senior members of the bar. If there is a understanding with the bar and the bench this matter can be sorted out. Last four months Rajasthan high court was on strike for a petty matter which could have been solved by sitting across the table and having a talk with the bar members. I think one committee can be formed which can have frequent interaction with the bar members.

Then it comes to the inspection by the portfolio judges. It has to be done most fairly. The case files have to be seen to find out what is the nature of work carried

out by the judges. General reputation of a judge goes a long way and that general reputation you will be able to know only by talking to bar members. Every bar member we cannot rely upon. But there are certain members in every bar who are senior and sincere and they will come forward forthwith for whatever they think about a particular individual and that will give you a clear cut hint that how a judicial officer is functioning. He may be a brilliant officer but if something is lacking in integrity it is very serious matter.

Then complaints of the judicial officer. Our experience is that whenever an advocate argue a matter and he gets an admission, you become a good judge. The moment we dismiss it they doesn't understand. When this is with the Supreme Court judges and high court judges think about the district judiciary. They are working under tremendous pressure. How many cases are pending? What is the facility provided? I have seen that judge is hearing the argument and the clerk is recording the evidence. The matter has to be disposed of by the same judge because he watches the demeanor of the witness and this is all gone. Because you are deciding the cases of two years and by that time three judges have been changed. A regular committee can be formulated to hear the complaints. It is not possible for that committee to hear all the complaints. Some 3-4 committee can be formulated to hear the complaints and so the matter can be decided by the committee. Most of the time 95% of the cases are frivolous because there is no foundation for making the complaint. These are certain suggestions which can be implemented. Thank you very much

Justice Kabir: Since we decided that we get the viewpoint of the honorable judges who are here. The entire purpose of the conference appears to be how to become litigant friendly in the sense as has been pointed out by both Justice Deepak

Gupta and Justice Naolekar. The object is to provide justice to a man who has come to court expecting his problems will be solved. But it should be solved. A lawyer who files an application for bail for a person inside the jail. If application for bail comes up after six months. It has happened. Does it make any sense. As a result these are some of the things which are need to be tackled. The basic problem the judiciary faces today one is the pendency of cases. Secondly the financial power that the state exercises over the judiciary with matters related to it. All these topics is focused on that particular issue as to how the judicial administration can be improved. What you do to see that the cases are disposed of quickly.

This is where new thinking is required. This is where some of the old traditions may have to be....give way rather to new thinking...professional thinking. The budget required great deal of thinking, long range thinking as to you can make certain provisions in the budget now which will have its effect later. The difficult is that we do have that kind of expertise. It is chief justice who interact with the finance part of the administration. It is very stereotype. I don't think many of the chief justice really put their mind to what is required to be in the budget so that we can tell the government that look this is what I want and this is what I should get. One of the take aways would be to see the chief justice if possible will take into confidence senior judges who will sit with the accountant, financial person to prepare the final budget. This 10% increase 20% increase this is very adhoc and it does not serve our purpose in any way. We need professional guidance the implication of finance and what is required of financial management, which department required what, what kind of money would be required for setting up the infrastructural needs, court rooms, additional appointments and then only on the

basis of different heads one could submit a budget which would really have an impact on the administration.

A team of lawyers come from the San Francisco to Kolkata high court and they have bring down the arrears in such a way so that the things can be worked out and the matter do not burden the court. They talked of a system by which in every case before a case comes to the court, there are hurdles put in the way. So first you have to go to the person who understand of telling the counsel that look this is the merit of your case, this is what you can ultimately get at the end of the entire judicial proceedings may be you are fighting for 100 dollors. You will end up spending 50000 dollor to recover that 100 dollor. Is this worth it. This kind of situation is contemplated and it is in many parts of America. Have that initial counsel so that many matters does not come to the court.

The other important matter was alternative dispute redressal mechanism. This is something we have to take a reality. We cannot possibly handle the amount of cases that has arisen and filed in court. It is not possible, the population in India 6 months ago was 1.21 crores. Today it is 1.27 crores. Within 6 months population rises and naturally the litigation will arise. Our judicial officer remains the same. We have more than 3500 vacancies in courts in the judicial system. Unless these vacancies are filled these arrears will continue to mount. We have to accept the fact that ADR is one positive way of trying to dispose the matter and lessen the burden. Secondly the reason why theory of court management in introduced is that we judges are more concerned and more engrossed in our judicial activity and we find little time to turn to administration. The amount of work is more, there are times when I have to return from the court about 9 pm in Jharkhand and one of judges used to tell us when we heard that silence we knew that you are going

home. Why because these things have to be done but if this work could be utilized in a different way and there could be court managers who could do this work for us.

Apart from that even the various types of information we have. When I was chief justice in Jharkhand I have got to a place called Giriri where people spent their holidays. When I went to the court of senior judicial magistrate where I found that there is about 25000 cases which were pending in criminal board. I asked about it and they said these are petty cases if you don't have the time to dispose of. It takes little time to dispose of petty cases. If one judge sits three days in a month this entire backlog can be wiped out. So professional collection of data is required. Again that personal touch that judge in charge or zonal judge goes and inspect what is happening in the court. Seize the data. Personal touch go and speak to their family members or the families meet them. Who will feel that look we are being recognized. It make a big difference. These are personal things which streamline the manner in which court proceedings are held and matter is disposed of.

Now I will just refer to one or two things of the report of the NCMS. And you will see how many things have already been dealt with here which again required which could have done on the basis of this itself. It is necessary to revisit the recommendations and implement those which will prompt court management, case management and improve administration of justice as a whole. Hon'ble the Chief Justice of India in consultation with Hon'ble Minister of Law and Justice has been pleased to direct that NCMS in enhancing timely justice may be established. In pursuance to the direction of Hon'ble the Chief Justice of India NCMS to enhancing timely justice is established. Then the objective of this scheme is that

Hon'ble the Chief Justice of India has expressed that a comprehensive court management system for the country that will enhance quality responsiveness and timeliness of court. A national framework of court excellence that will set up measureable performance for Indian courts addressing issues of quality, responsiveness and timeliness.

System of monitoring then a court development planning system, a human resource development strategy is a thing needs attention and then the NCMS committee. Specific proposals for the court management system and outlined and will be developed by 18 members NCMS committee which submit the direction of Hon'ble the Chief Justice of India shall consist of the following. A jurist nominated by the Hon'ble the Chief Justice of India and in this case it was Prof. Mohan Gopal. Then four sitting judges one from each zone of India nominated by the Hon'ble the Chief Justice, Secretary General of the Supreme Court ex officio, joint secretary and mission director of National Mission for Justice Delivery and Legal Reforms, Dept of Justice, Registrar Generals of three high courts, Director of the National Judicial Academy, two practicing advocates. This was meant to be the breakup an expert statistician, an expert in management of decision making system.

This was contemplated to be an 18 members committee which can contemplate and give report as the how the system can work. Then infrastructure, all has been indicated here. The finances, the terms and condition under which the services of chairperson and members will be availed will be decided by the Hon'ble the Chief Justice of India. Provision to appoint support staff of the Supreme Court of India and on the deputation will have to be made. The NCMS committee will prepare budget from time to time and on an approval of one of the chief justice and to be

put in the budget of the Supreme Court. It also percolates down to the high court and the budget expanses that could need to be incurred could be included in the budget of the state. Statistics was another thing which we talked about. Already we do not have sufficient judicial officers and the vacancies are not filled up. All those things can be done only if there is expertise the people who are expert in these things, who can guide us to provide you the information that is necessary so that you can go ahead. Then we were concerned about infrastructure.

If the institution of judiciary is not independent resource wise in relation to fund from the interference of the executive, judicial independence become redundant and inconsequential. This was the view that was taken in the meeting that ultimately resulted in the scheme. Executive cannot be allowed to interfere in the administration of justice by holding back for development of judicial infrastructure. The judges cannot be allowed to be overburdened by continuous pressure of deciding large number of cases at the cost of quality of adjudication. Like I told you story. One Hon'ble judge was at home by 11.05. You cannot afford to.

You have to gain some amount of attention the counsel who come, what is attention a litigant get when a matter called in a second saying there is nothing in this matter dismissed. If on the other hand the person or litigant who is there in the court he sees oh his counsel was made to allow his submission and in spite of this the case was dismissed. It would have a totally different impact. The first time I came to the Supreme Court in connection with a case was a lawyer was briefed, one of the senior most lawyer in the Supreme Court. From Kolkata I asked him would you like to have a conference before we go to the court. We came to Delhi two days earlier. Even the day when the case was taken up, the morning session I said should I come over. He said no no no I have read the brief. The outcome was

when the case was called. The judge, three judge bench said Mr. so and so there is nothing in the case. Counsel stood up and said yes my lord there is nothing in the case. There was so many things to be talked about. Judge said that nothing in the case. Look at the amount of money that has been spent and the expectation we had. These are the things which destroys the faith of litigant public as far as judiciary is concerned.

You are aware of the item 11 capital A in the concurrent list of the 7 schedule of the Constitution. 11A was brought in by the 42 amendment in 1976 effected from 3 January 1977. 11A says administration of justice, constitution and organization of all courts except the Supreme Court and high court. This is now part of legislation now the state can take up. This was something in the hands of central authorities. Today the state can legislate on the administration of justice and Constitutional organization of all courts in the state. This power can be utilized by the state judiciary but you need a particular kind of ...the word which was used is push. If you can push the state government many things can be solved.

Then one of the things that was there was it is the bounden duty of the central government to make adequate provision for sufficient and furnished infrastructure for high court as well as subordinate structure. Then personnel was discussed, then management of courts in cases, matter of ADR are stressed, throughout the country various lok adalats literacy campaign. The message which should go out from this conference is this that look these are the problems we are facing and we began to take up the matter on a one to one basis with the chief ministers of the different states so that the matters can be resolved more quickly and most substantially. This is what the NJA insist that these be sent to all the different high courts so that they know this is what is discussed and this is what we expect from

you. That gives an overall sort of view point over the problem we faced and what could be done to alleviate these problems. I will also request the Judicial Academy if possible not only to send the outcome of this meeting but also of the CJ CM conference. I hope this conference is worthwhile to everyone. So back to the Director incharge Dr. Oberoi. What she has to say from the point of view of the NJA.

Dr. Geeta Oberoi: First of all I think we should give big round of applause for Hon'ble the Former Chief Justice of India, Justice Altamas Kabir and Hon'ble the Chief Justice of Tripura High Court, Deepak Gupta, they have taken a long journey. It is not easy to reach Bhopal from Tripura or Kolkata. So please give big round of applause. In fact it is not easy to reach Bhopal from anywhere. So thank you so much. This is a time for evaluation and feedback so therefore this form is there.

Participant: Should we give it right now or we can go back and fill and sent to the NJA because certain question for which we have to take information from the registry. It may not be possible to fill it up here.

Dr. Geeta Oberoi: OK fine.

Justice Altamas Kabir: It should be filled in certain time period within 7 days or so.

Dr. Geeta Oberoi: Rajesh Suman will collect everybody email and will you the feedback form and then you can send the reply at NJA Bhopal. Our official email website within 10 days if it is alright. All your feedback forms will be evaluated and it will be on the NJA website. I will show you the website.

Justice Deepak Gupta: The responses will not be in public domain.....

Participant: May I only request for one thing. Whatever you have circulated...if it is available in soft copy.

Dr. Geeta Oberoi: Reading material I will show you the concluded programme. There is programme sheet, additional reading material which is supplied.

Participant: There was one view on the committees the last session about committees.

Justice Kabir: Since we have little time we can speak on committees that are there. Large number of committees and these committees oversees the various aspects of the court administration. Each committee has certain function and I really don't know what kind of review would be required of these committees. These committees were formed for certain purposes and they are discharging those function. What is important is feedback from those committees and the feedback should come by Hon'ble the Chief Justice who can then take it up with either the senior judges and may be just have an agenda the various suggestions that have come in at a full court meeting.

So that all the hon'ble judges are able to share in the experience of the members of the judge in charge of the various committee. One thing is again which is stressed by Justice Deepak Gupta is this question of zonal judge. He is also heading a committee the feedback from them is also very important. A simple thing that in order to get somebody, some requirement in the building to get the sanction. You have to go chase out the people and then get the work done. These

are the things which need to come back to the chief justice who should take an interest. For example today in the libraries many of the books and most of the journal are available on CDs, in a pen drive, how many things you can put it. In the judicial academy which is there sorry not judicial academy. In the NUJS there is a lovely library where there is a separate section where you have computer facilities, email facilities, downloading, all these things could be introduced and this can come through the reports of the various committee. When I was the executive chairman of NALSAR I knew the first 10 judges, the first 5 judges of every high court. This is also very important.

These things can only happen when we have certain commitment and which need certain amount of dedication except that they should not stop using the electronic system that are now available. We established a court which was absolutely child friendly...Kakardooma, Saket also we did it. In Tis Hazari. These are things to be done because problems that the children face. The earlier law the accused must see the face of the witness but a child of 8 year old 10 year old may not be in a position.... Say an 8 year old girl who was a victim of rape. When she sees the man standing there would she be able to open the mouth. May be not. That is where these particular court. These are things which can come in only when you have certain persons who look after these administrative work by way of committee who could give new ideas and new things. I think Justice Badar Durrez Ahmed was also involved in the entire process. The ecourt concept was started by him and I think in Delhi.

Dr. Geeta Oberoi: I have to make apology to Justice PP Naolekar forgot to give him vote of thanks. Please give him big round of applause. Sir really sorry.

Extremely sorry. I think we should proceed to lunch because some of you have flights to catch. Right Ya.

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