

CONFERENCE ON JUDICIAL ETHICS AND ACCOUNTABILITY

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VERBATIM REPORT

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BHOPAL

SESSION 1

Dr. Geeta: So we start, whatever small group composition we may be having, nevertheless you all are important. SO I would like to start by everyone introducing themselves.

Participant: One more is left to join.

Dr. Geeta: No he will join, he is from Jammu and Kashmir, he will join today evening. Sir may be we will start with your introduction.

Participant: I am Chakardhari Sharan, I am from Patna High Court, I was elevated in April 2012

Participant: I am Justice Sudhir Kumar Saxena from Allahabad High court

Participant: Justice Antony Dominic from High Court of Kerala

Participant: Justice R.M. Chhaya from Gujrat

Participant: Justice Arindam Sinha from Kolkatta

Participant: I am Justice A. Rajasheker Reddy from Hyderabad High Court

Participant: Justice A. Ramalingeswara Rao from Hyderabad High court

Participant: I am Justice B. Manohar from Karnataka

Parul Rishi: I am Parul Rishi from Indian Institute of Forest Management, I am a faculty of Human resource over there and my background is I am Phd in Psychology and I am teaching business ethics and Corporate social responsibility.

Dr. Geeta: So we start with Parul Rishi.

Parul Rishi: Slide changer? slide changer?

Parul Rishi: Good Morning all of you, it is my privilege to be here with all of you this morning and this small group I think we will be able to do some justice to the topic that has been given to us.

Participants: Some light is there, green light,

Switch off these lights

Dr. Geeta: Is it all right

Dr. Rishi: No it is still glowing, there is a line in between that is what I think you are talking about.

Dr. Rishi: So we will start with a small exercise, our talking is moral development, talking to you all about moral development I don't think it is a very good idea but I learn from you more than what I can share with you, so we will have a kind of interactional learning and experience sharing and this is a small exercise, some situation are given which is very basic and preliminary from your point of view but just have a look at it, and the instructions are very clear, you can just see over there, title is what will you do in that situation. So you all are taking judgements, these are small ones, so kind of dilemmas what we can say. You can look at the instructions, these are stimulated scenarios, not actual scenarios let me clarify that and you have to just see yourself in that situation and what is your first likely response in that situation that you have to mark number 1, second likely will be number 2 and the left out will be the left out that will be automatically number 3 leave that. So three boxes are there, three likely responses are given and choose which one will be your first reaction, second reaction and leave the third one, so before we start. These are the six situations which are given, you may find it impractical but consider it as a stimulated situation, if it all any point of time happens with somebody.

(Dr. Parul Rishi gave the following exercise to the participants)

An Experiential Exercise

What will you do in this Situation????

Instructions: Please read the given simulated situations carefully and try to see yourself in that very situation facing the dilemma. Whatever is your first likely response, give number 1 in the box, followed by 2 and 3.

1. Recently I came to know about one of the senior judges in the panel, meeting a defense lawyer during the trial and accepting money. When I questioned the other judge, he refused being involved in any illegal activity, calling the money acceptance as a loan from the bank. To the contrary, later on he was found to favour the same lawyer's

client during the trial. I found it difficult to let go the matter as the other party is a poor farmer who is somehowable to make a living.

What will I do in the situation?

a. I will not do anything against him, as such cases are common for other judges too and there was no substantial proof to take action against him.

b. I shall play a proactive role to report this matter after sufficient inquiry, as the judicial system has to work for the public interest.

c. I have to report against him, as I myself may be penalized for not taking action despite knowing the decision being taken in favour of a party with wrong motive.

2. I noticed, one of the administrative staff members of the judiciary falsifying the court documents to reduce the sentence awarded to a judge accused for giving wrong /biased verdict in the court. I made an effort to make him understand that the judicial norms do not allow us to falsify documents this way but despite my best efforts I failed to convince him in this regard.

What will I do in the situation?

a. I will not play any proactive role as many times it happens in this system and I want to save my colleague.

b. I will report against him, as it is in any manner not fair that a judicial authority, serving the interests of the public, manipulates documents to serve his own interests.

c. I will report the matter against him, as otherwise I myself shall be penalized for not taking action despite seeing the confidential judicial information being used for the individual interests.

3. A judge, because of his bad reputation in giving biased verdicts, got transferred to another court. The Chief Justice, after receiving many such complaints ,made up a panel to collect more information in this matter with me as one of the member. It did not take much time for the panel to prove that the recently transferred judge is corrupt but there was a difference of opinion in regard to action to be recommended against him.

What will I do in the situation?

a. I will recommend an action be taken against him, as I ought to take action in such a circumstance as per the judicial code of ethics and any one will do the same.

b. I will recommend an action be taken against him, as the judicial system should not spare the judicial authorities, if they are doing something which is unbecoming of their position.

c. I will not recommend any action be taken against him in order to save the judiciary from the risk of defamation.

4. I had gone to meet one of my colleague judge at his official residence. At that point itself, he got an urgent call and left with phone to the nearby hall. I, on the other hand, got a call from my wife to urgently visit a close relative. I thought I'll inform my colleague before leaving. I went upto him, when I heard him assuring someone of a specific decision/verdict over an election dispute, that he was recently handled with. I talked to him in that regard later but he requested me to remain mute as involving in this case can cause harm to anyone.

What will I do in the situation?

a. I will not report this matter in order to avoid any spoil of relationship with my colleague as it was an informal setting.

b. I will report this matter for further inquiry, as the judicial system has to work for the public interest without being influenced by external forces.

c. I will not report this matter in order to save my colleague from any likely harm from that influential person.

5. One of the politician's son, running a factory, has been accused of extensive discharge of corrosive and noxious gases into the environment which has been affecting the nearby community since long. Many in the community have started suffering because of that. The factory has been accused of the offense by one of its employees who belongs to the community. He claims that the security officer in charge of, had been, from a long time, suggesting the organization to store the gases, and then dispose off later, but this seemed to cost the organization a lot in financial terms. The case has been brought under my trial.

What will I do in the situation?

a. I will not give orders for compensation/ treatment of gases, as many such companies are already there doing similar action and no such report has come in the past from communities adjoining them.

b. I will give orders to the factory owner to compensate the community members and for treatment of gases before discharge, in order to save the community's right of living in a healthy environment.

c. I will not order treatment of gases before discharge/ compensation for health hazard ,so as to save myself from any kind of harm from the politician.

6. I am a senior judge and have been nominated for two courses on recent developments in international law and behavioural skills in judiciary and have to send the acceptance to the training institution for the same. I am working in judiciary since long and have some personal commitment too during that period, making me busy.

What will he do in the situation?

a. I will send some excuse as many other judges earlier also denied their participation in such trainings and it is not that important at this point of time.

b. I will send acceptance in order to learn new skills and knowledge which I may be able to subsequently use in judiciary later .

c. I will send my inability to attend as being on senior position and held up with so much of work load I do not find the trainings worthwhile to attend.

I consider Indian Judicial system as
.....because.....

Court of attachment:

Years of Service:

Scoring: a1+a2+a3+a4+a5+a6 b1+b2+b3+b4+b5+b6

__+__+__+__+__+__ (A) = __+__+__+__+__+__ (B) =

c1+c2+c3+c4+c5+c6

__+__+__+__+__+__ (C) =

Your lowest score= Your second lowest score=

Dr. Parul Rishi: Please leave the scoring part we will come to that later on.

Dr. Parul Rishi: Done? Some of your friends are still doing.

Dr. Parul Rishi: you can keep it with you. you will score it yourself, keep it with you.

Participant: The scoring system needs to be explained

Dr. Parul Rishi: You need not do it now, you will do it at a later point of time, at that time I will explain it.

Participant: We have to give our opinion.

Dr. Parul: No No

Dr. Geeta: You don't have to give your opinion, keep the paper with you only

Dr. Parul: The next part we will be doing at the later part of the session

Participants: We will be telling our self?

Dr. Geeta: yes yes

Dr. Parul: You will be telling yourself, it is for your learning. And through you we will also be learning about the real life situations. This is all imagination, all to learn. Ok so to continue with the session, what we were doing right now was as the session speaks about stages of moral development. So ethics and values and morality all these are very closely linked to each other so first we will share our experiences about all these things and then move back to those stages of moral development. When we just talk about where ethics are, where ethics come from, so the first question comes is its all written, it is all in Bangalore values which were given to me by the Academy. So everything is just given, when we teach the corporate ethics, the business ethics, we say that every company has ethical code of conduct. So it is very simple it is all written, just see what is written. You can easily follow them and give judgements, decide for the clients, second is enforced by the law, where is the pointer, is it this? So they are written, they are enforced by law and the third is they are in our minds. If it is not in our minds, they are written, they are enforced by law but many times practically it is not possible to do that because ethics are not engraved in our minds that is the problem. When you face different cases, the way lawyer bring the cases, if ethics is not in the mind, they try to divert the whole scenario in a way it is benefiting them and not exactly it is ethical or not. So our values, our culture and our mind set these are the three things which just make us decide where we are going to move about when the ethical issue comes, so values as we all know, it is the basic conviction of what is right and what is wrong, it is as simple as that, morals are defined by

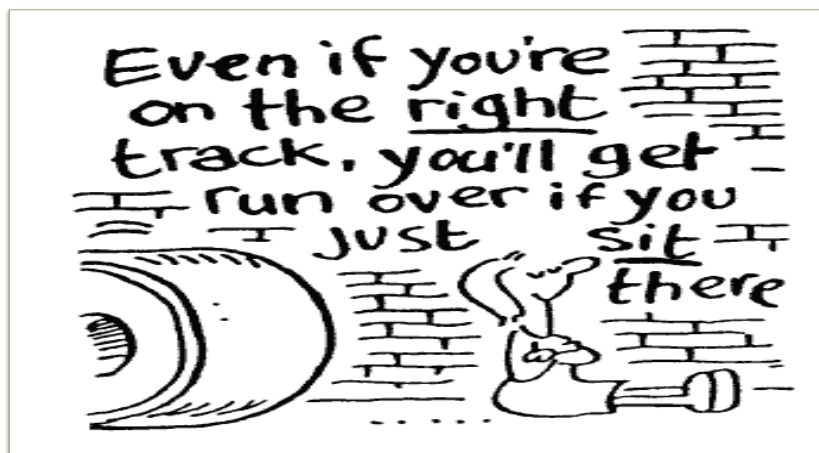
society and we all are living in a society that are having a lot of sub societies, sub cultures and different sub cultures have their own way of explaining what is right and what is wrong, and many times when we are taking a common judgement it varies, in Hindu law it is like that, in Hindu law it is like that, what is ethical in a particular community is completely unethical in another community, people who are vegetarians, they talk about animal rights and all these things, people who are not they consider it is ok, it is just a food chain, so lot of things vary from culture to culture, mind set to mind set, so values are . So values are defined by individuals, whatever judgements we give, whatever we think, the way we behave in our society that is defined by ourselves. We are talking about values then morals are defined by the society and ethics are by an organization or sub group of the society. So when we are taking some official judgment, when we are taking some decision in a corporate organization primarily we are doing is primarily what is defined for that organization , like ethical code of conduct. So in that way there is a relation between ethics moral and values. And the philosophy behind all this is same just to differentiate between right and wrong. So it is a bit conceptual but you will get an idea about whatever we are already doing and how we can fit into this kind of framework. Ethics are just a part of the whole world of values. So the most important thing is our values what we believe in, our own conviction of right and wrong and then comes the law , then comes the ethics it is just smaller part of it. Besides values, two types of values, stated values and operation values, what we do, many times there is a difference why there is a difference. Can I have some understanding for me. So many issues behind that, some humanitarian issue also sometime come into picture, yes practicality also, circumstantial pressure peer pressure, external pressures which are just trying to put us to behave us in particular way, although we don't want to, there is mind-set we have already talked about mind set, so there are range of issues which create a kind of gap, a disconnect between stated and operational values while we are making a decision. So why this disconnect, we have already talked about it and many times we do not know that what we are doing is unethical, that is another issue. That our self-making a judgement that what we are doing is right or wrong, from whose perspective that is another problem, what is right from your perspective many be wrong from another person's perspective, so there is another disconnect, so our whole life while we are taking a decision that goes between perspective of mine and the perspective of another person and the ethics come in between whether we are taking that persons side from ethical perspective or some external forces are working on it. So we have to differentiate between the two, so who will tell you that what you are doing is unethical that is the major issue. Many times we do not know, when I teach my business school ethics related to business, many times

they say that they do not know that it is wrong, because my previous organization where I was working it was acceptable there. It was acceptable that if somebody is giving a contract with a little cut , that is all right, everyone was doing like that, no issues, so who will tell you what you are doing is ethical or what you are doing is unethical. I always advice ask yourself, that is the only response, nobody will tell you. No ethical code of conduct will tell you, no law will tell you, first person who will tell you is you ask yourself. if you feel minutest fear in your mind that what will happen if someone knows about it that I have done it with a wrong intention, so don't do it. So our first check of ethics and values is we our self, if we our self know considering it as a voice of conscience and it will save you. So this is the best test to check to tell you whether your behaviour is ethical or not. There are sessions, classes, everything is Ok but ultimately God has given us immense power to check what we are doing is right and what we are doing is wrong and that voice always comes when we are deciding anything. And if we are ready to listen to that voice we do not require any training, any code of conduct, any law, nothing. But the problem is most of the people are just missing out the sound that comes out from the core of our heart that this is wrong. If somebody knows, i don't want somebody should know about it and that voice we miss out. So threats to morality. Interesting cartoon in front of you, you would like to see that

(Dr. Parul Rishi Pointed to the following slide from her power point presentation)



Threats to Morality –



**External Pressures to threat or benefit,
Humanitarian concerns, Attitudes and biases...**

Dr. Parul Rishi: Even if you are in right track, you will get run over if you just sit there. what does it say, small girl is sitting on the right path, she is absolutely right, she has a right to sit on that path, that is a usual path but a road roller is coming from behind, at the top of it, who is driving is not able to see so down that a girl is likely to be crushed, so she is perfectly fine that driver is also perfectly fine. But you will get run over if you are on right track also, if you just sit there. So external pressure to threat or benefits humanitarian concerns, attitudes and biases, there are so many things you have to take into consideration. Even if we know that we are going to take the right decision, we are absolutely right absolutely ethical but many times we are concerned, what will happen who will be impacted by that , what will be the ultimate effect of that judgement on me, my career, my family, my life, so all these are just threat to morality which you just cannot do away with otherwise the situation will be what is happening over there(pointed towards the same slide). So we have to beware of all these things, I mean to say, that many times practical considerations are important, we have to take them into consideration but until and unless they are crushing the voice of our conscience, beyond that we have to think over it. So this is what many times it is difficult to be ethical. People say in sessions I take Ma'am it is very easy to preach all this but when it comes to practice it is very difficult, and that is to some extent the reality also. We all face that. But still as far as we are able to understand our self and the context, the context is very very important, many times we are ignoring the context and just going by what is written over there, that also practically becomes not right for the particular context so we have to take the context in consideration. We will come to that in later slides. So there are certain myths about the ethical issues, the way we perceive ethics,

The speaker pointed towards the following slides from her power point presentation

Myth vs. Reality of Ethics

★ **It is easy to be ethical.**

-Smell Test. If something stinks, don't do it.

- Consequential Framework

(Consequence –Benefit/Harm to society)

- Deontological Framework

(Justice, rights and virtue with emphasis on integrity of actor)

Ex- Child Labour and prostitution in developing countries

Case on Ban on Bar dance in Mumbai and later on lifting it.

(The controversial law banning dance bars in Maharashtra, which provided employment to thousands of women, was put on hold by the Supreme Court)2015.

Myth vs. Reality

★ **Unethical Behaviour is simply the result of bad apples**

★ **Ethics in Judiciary can be managed through Ethical Codes**

★ **Ethical behavior is linked to Ethical Leadership**

★ **People are less ethical than they used to be**

The first myth, it is easy to be ethical, it is not definitely you have to gear up lot of physical and mental strengths to become ethical, to counter all the negative forces who are trying to create pressure on you , you still try to become ethical, it is really difficult, but we still suggest smell test, smell test not in the ethnological sense of the term, smell test means if you find something stinky, some little idea if you get that something is wrong, just do not do it, if you find that somebody is going to misguide you , they just impose certain witnesses that are not

fulfilling the fairness criteria so if that bad smell is coming to you of some wrong going on , just try to explore something further, there are two frameworks through which we take all decisions, whether they are going towards ethical or semi ethical or whatever you might say, one is going towards consequential framework and other is deontological framework. Consequential framework is that you have to see whether your judgment is going to benefit the society or harm the society. On a boarder way, leave aside person X, Y or Z, whether the judgement is going in favour of society it will benefit or it is going to harm, so it is consequential framework. Many times because of larger benefit to the society we have to forgo the smaller harms which we have to do to certain people who are involved in that case. Deontological framework says that only justice, rights and virtues these are the only things and with emphasis on integrity of the actor, you just have to behave with integrity, with justice virtue and all these things, no matter whether it is going to benefit or it is going to harm, very relevant case in this regard is given in front of you. child labour and prostitution in country, we are still not able to decide whether having food for a day is more important or just showing to the world that we don't believe in child labour and prostitution is more important and another case that was recently there was the ban on dance bar in mumbai that was later lifted by the Supreme Court that was later lifted by the Supreme court, that is another example of that they followed the deontological framework, than in view of harm to particular group of the society they had to lift that. Controversial banning of dance bar in Maharashtra which provided employment to thousands of women was put on hold by Supreme Court, it is very recent judgement. So that is how we have shifted form consequential framework to deontological framework. So both are important. Harm to society also we cannot overlook, people should get food, basic living, if we are able to make alternative arrangements to that then we can go with the deontological framework. Another myth to it, is unethical behaviour is simply the result of bad apples, you all must be knowing the old idiom that one bad apple spoils all. We hear that everyone is doing the same, in India everyone is like that , in companies everyone does like this taking commission why not me. Similar thing happens in all the organizations, people try to take the pretext of others are doing and very conveniently adopt the unethical behaviour, everyone is doing so I am also doing. Again it is a kind of myth. Bad apples are created and nurtured in the organization themselves, they do not come from outside, and when their number increases that culture expands and expands. That is why in government set up we see that right from peon to the person sitting on the top, everyone is involved in that nexus, we are not able to break that, and everyone says that because everyone is doing I am also doing that but who nurtures that, the same organization, the same people, may not the same people but people that

came on the same designation, they nurtured that culture and everyone is trying to take the pretext of other and it is becoming the part of whole barrel and rotting the whole system and right now we are at the stage that rotting is very difficult and until and unless we throw everyone out, we are not able to deal with it, and we are just dealing with it. Third ethics in judiciary can be managed through ethical codes, that is also a myth, not just codes are sufficient, we have already discussed about that, our conscience, our mind set so many other things, our culture, the context in which we are taking decision, the framework, these are all the things not just what is written as such. And ethical behaviour is linked to ethical leadership, not necessarily, although it is supposed to be that people who are sitting at the top should take ethical decisions and they should percolate it from top to bottom but not necessarily. You find these days whistle-blower policies are very popular in most of the organizations, so it is not necessary that your senior, person sitting at the top is behaving in certain way which is not desirable for the society you also do like that. It is not necessary, each and every individual can take a stand, blow the whistle, make his stand clear, not necessary that the person sitting at the top is not behaving ethically so we also should not, it is difficult, repercussions are there, we all know about it what happened when whistle blowing of Khemka in Haryana, he tried to blow the whistle in the Robert Vadera case. So what happened, he faced 41 transfers, that is what if I correctly remember, he was transferred 41 times from one place to another, he faced lot of difficulties, so path of ethic is not easy....yes Vyapam case, every day we are finding one death, that is what I am saying it is difficult, it is a myth that it is easy to be ethical. People are less ethical than they use to be. this is another myth, people say earlier everything was very fine then gradually the ethics are going down, the culture is deteriorating, there is a downfall, this is kind of information we get from people. that is also a kind of way to save our self that everyone is deteriorating it is ok fine for us, so it is not...it is true for culture I accept that but for ethics I am doubtful, may be the reporting it has increased than earlier times, it is not that in earlier time everyone was very correct there is a gradual deteriorating, the major issue is things are more popularised these days because of the media these days. The scams and all were going on since years and years, decades and decades past but people did not have courage to show that this is going wrong. We can say that mental power of people and mental strength of people to speak out that has increased, may be there is some deteriorating, now people have some fear that there is media, may be small villager who is suffering, may be one fine day a media person is reaching there and it will be flashing everywhere. That person will be in lime light and we will be forced to decide what could have been ignored easily. So media has played an important role in giving strength to people's voice positively and negatively that I agree. many times

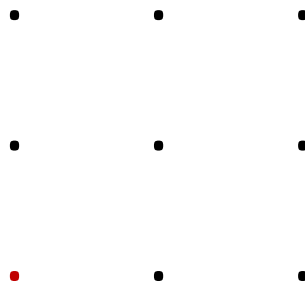
certain things are disproportionately hyped the which they are not supposed to be, so both the things are there. A very interesting puzzle is in front of us, there are nine dots, it is a very common puzzle, I do not know how many of you have done it before , I will just request you to have this fun, all of you have notebook? Ok, just make it on your notebook and try to learn something from these dots while connecting them. Seems very easy, just draw these nine dots the way they are given here and read the instruction given.

The following slides were shown to the participants



Dots Puzzle –

Connect all the nine dots with your pen in four consecutive lines without lifting your pen.

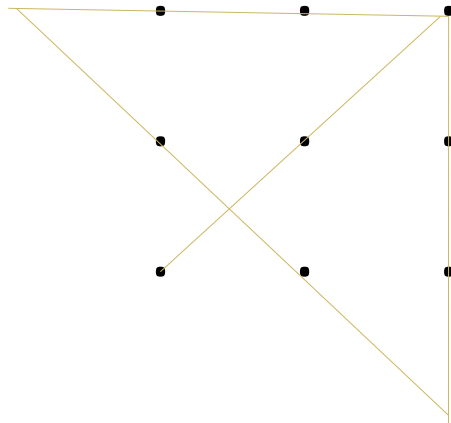


Instructions

- ★ **Join all the 9 dots**
- ★ **With 4 straight lines**
- ★ **Without lifting the pen**
- ★ **No dot should be left unconnected**

Dr. Parul Rishi: Pen you are not suppose to lift, in one go you have to connect all dots, no dots should be left out. There are only four instructions Join all the 9 dot, With 4 straight lines Without lifting the pen, No dot should be left unconnected. if you fail in any one you drawn the dots once gain and give a trial. Only four, no five lines. Only four instructions, it is fun, we are going back to our child hood days when we used to play these kind of games . One of our friend has already done it, must be knowing about it, the most important is the learning that we are going to derive out of it. Last one minute to try. Yes very simple. Our life is as simple as connecting these nine dots, but we complicate. Got it great, you remembered that, without remembering it is really difficult. game is of four, five is simple logic, ok so time over and let us see how it works out

Dots Puzzle- Solution



Participant: There should have been a hint that we can go outside.

Dr. Parul Rishi: Was there any instruction that you cannot go beyond that, I was repeating g you again and again that only four instructions are there, nothing beyond that and in the instruction was it written that you cannot go beyond the dot, see, you are starting from here, one line two line, three line, four line. Please go through the instructions once again, have I written that you cannot go beyond? Ok so let us see the learning which are very much evident to all of you , all of you are so much senior and experienced that me.

Learning from 9 Dot Puzzle

- ★ All dots in cases are not so simple to connect.
- ★ Some cases challenge our mental capacity in order to take right judgment.
- ★ We have to go beyond logical sequence of events to adopt **out of box thinking**.
- ★ See beyond what your eyes can see
- ★ Listen beyond what your ears can hear
- ★ Feel beyond what your mind says
- ★ Move from Logical to lateral thinking

THE ROAD NOT TAKEN

Dr. Parul Rishi: All dots in cases are not so simple to connect. When you are giving a judgment all dots that you see in a case are not easy to connect. Some cases challenge our mental capacity in order to take right judgment. We have to go beyond logical sequence of events to adopt out of box thinking. That is required, we cannot just calculate one plus one is equal to two and decide on judgments. See beyond what your eyes can see. Listen beyond what your ears can hear. Feel beyond what your mind says. You people are at such a [position that peoples life depends on you and Move from Logical to lateral thinking and this a road not taken, it is a very interesting g poem, road not taken , so many times we have to take the road not taken for the sake of benefit to society, for the sake for larger good and not just following what is written over there. many of times we have to create our own instruction, we have to create benefit of doubt in order to favour a particular person, because you feel that , so you all are persons who face ethical dilemmas, I am just teaching that base on my little experience.

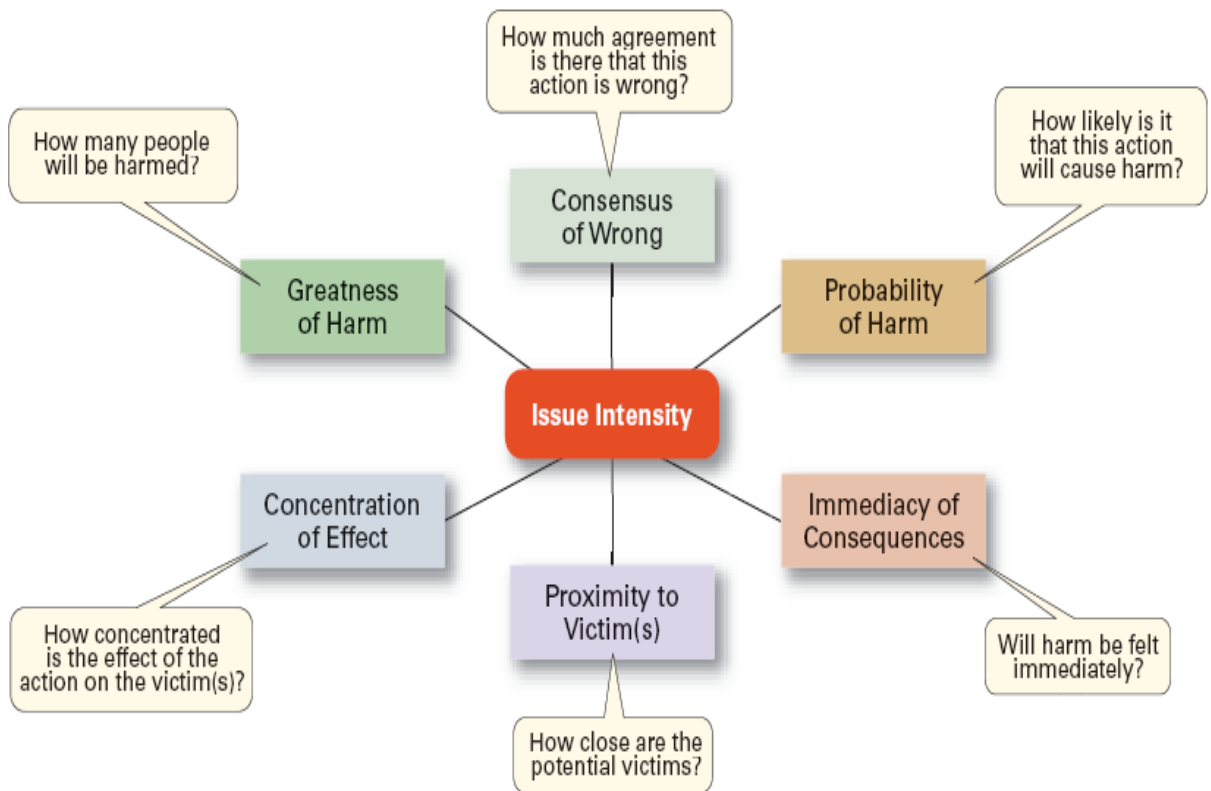
Ethical Dilemmas

- ★ **Judges confront real ethical dilemmas**
 - ↪ **Ethical dilemmas are situations in which none of the available alternatives seems ethically acceptable to write a judgment.**
 - ↪ **The ethical obligations of giving any judgment keeping in mind human rights, corruption, environment and societal concerns.**

I take you to another aspect of this lecture that relates to my core area that is psychology and if you have heard the name of Sigmund Freud, he is very famous person in this field he has given a theory of psychology analysis, my friend in philosophy must be knowing that, he has given three components of personality, one is ID, Id is the pleasure principle, whatever I do that should give me happiness and everyone who comes to the court he wants that whatever he wants should be given to him, next one is EGO, EGO is ok I want my pleasure, whether it is right at this point to get that kind of pleasure or not that I will have to decide. I tell my students a very simple example, you may not find it very appropriate here, you are hungry, you are sitting in the class, if you are at your IF level, you will just run out of the class, I am hungry I can't stand anymore and I will have food, if your ego is developed, you will just wait for the class to end and then go because it is not appropriate at this point to time to go and is socially not acceptable, so what is socially acceptable or not that comes in the development of ego and the third and final stage is super Ego, is it right, is it wrong, it is the conscience. SO these are the three stages of personality, some people, they are stuck for the whole of their life at the ID stage, these stages do not necessarily progress with the age, not necessarily. And it happens that when we grow old we come back to the Id stage, we immediately want what we say, that should be given immediately, we cannot just

except any kind of delay. Not able to tolerate the delay in the gratification of their needs. These are two features of ID people. And this is morality principle. Super Ego is morality principle, so you will find some people are necessarily at one of these stages of moral development. When we are going to take any ethical decision. This model works in away, whenever we are in stage of ethical dilemma, we have to cross at which stage of moral development we are . We will come to that stage later on and we have to cross all moderators in between, like your conscience, your will power, your ego strength that will just tell you where to go, then issue intensity, how strong the issue is. If that issue is decided in particular way, who is going to be at harm. So you have to see how strong the issue is. Then you have to see the structural variables, in which that scenario is taking place and the culture of the society in which that issue is taking place. So context and culture, then individual characteristics, your own attitude, your own superstitions, your own biases, we are all human being, we all cannot do away with it. So stages of moral development is the moderation of all these four issues reaches ethical or unethical behaviour. So this is how we resolve the ethical dilemma. You will find the ego state as a personality measure then locus of control. There are two types of ways of giving attributions, that if something bad happens 5o us, most of the time what we say , it is our bad luck, it happens with me only. That kind of thing people say. Bad happened because X judge took a biases decision, that is how people say. So there external locus of control. They will try to transfer the focus of their own behaviour on others. They try to blame others, they try to blame lawyers not putting the case in proper manner, judge for taking wrong decision, judge for taking biases decision, situation not favouring, luck not favouring, so all those reasoning people try to give because they operate at external locus of control. There is a class of people with internal locus of control, who just behave in themselves. Who are ready to take the reasoning of whatever they do on themselves, this is because of me, I have to do more, I have to struggle. But most of the people are not able to be on internal locus of control. So another diagram related to issue intensity.

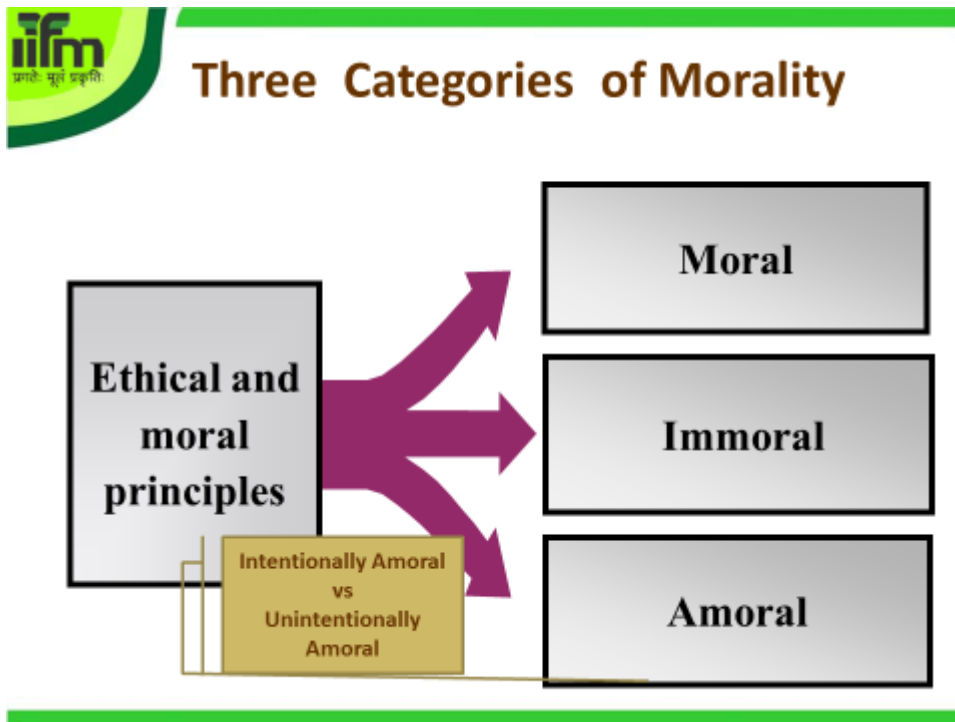
(The speaker pointed to the following diagram)



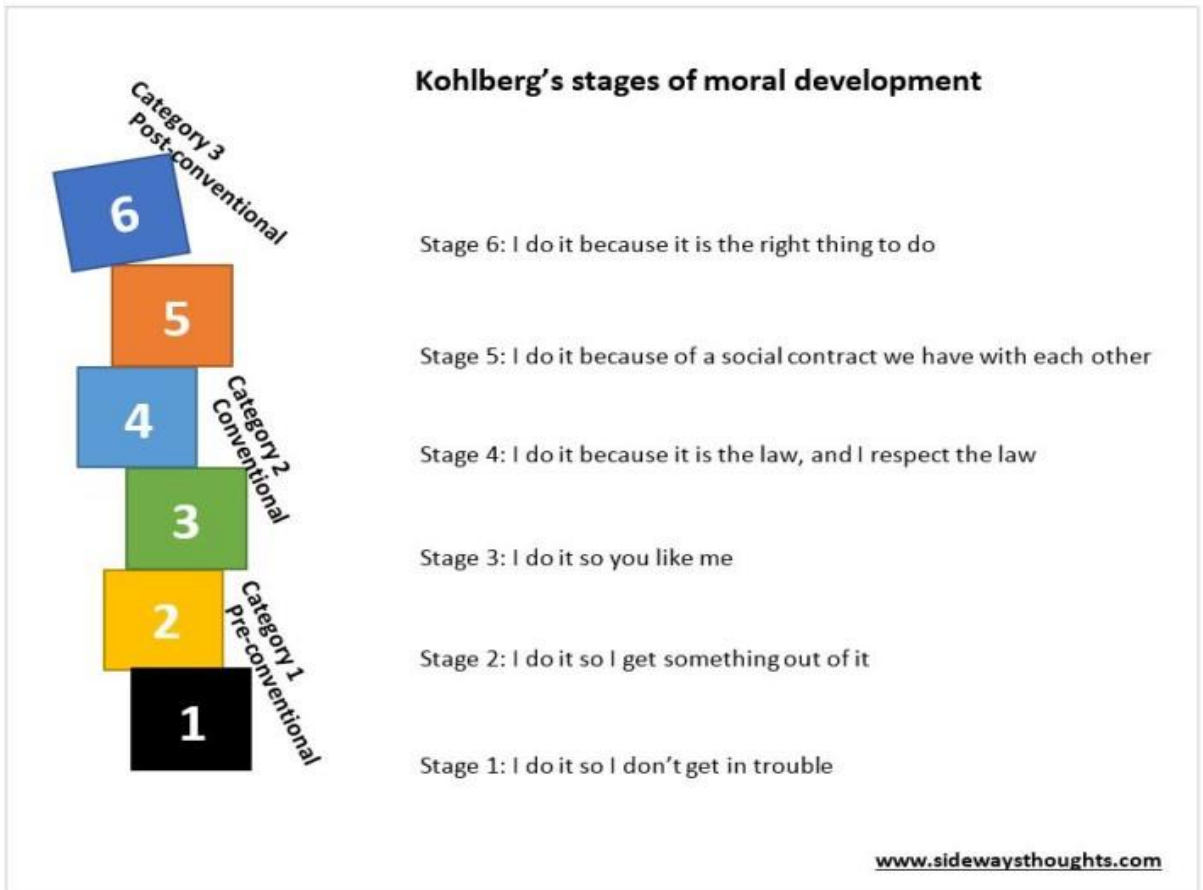
So these are all the things that decide how intense the issue is and Kohlberg has given a very interesting theory of stages of moral development on which I have been just asked to in just 10 minutes sum up



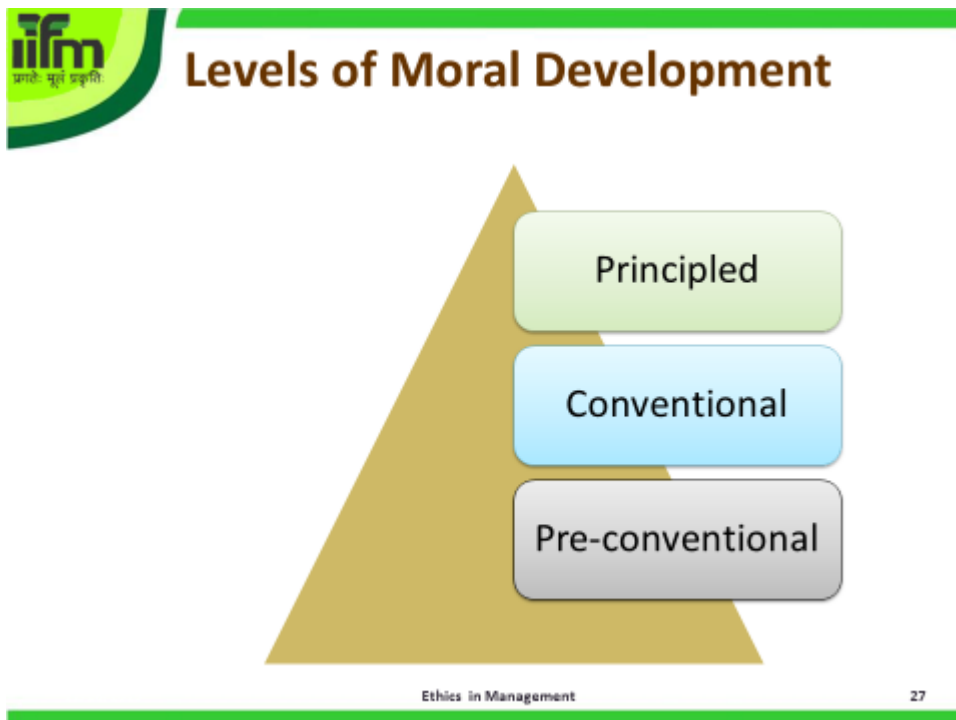
That there are two ways, right and wrong ways and he says that moral development is a gradual one. Right from the childhood moral development takes place. In childhood, a small kid does not mind taking a particular thing for a person or school mate. Until the child is told, no this is wrong, you are not supposed to do that, the first lesson in life that I cannot take pencil or things of other person. That proceeds further the concept of right and wrong, conscience, religious values, behaviour, all these things they proceed further. So there are three categories of morality.



Immoral are people who are intentionally doing something wrong, they are by nature involved in wrong deeds and they know about it. They have no repent in doing all this. You must have come across all this kind of people. This stage is amoral, such people shift from context to context, they may be intentionally amoral or unintentionally amoral. Intentionally trying to do something wrong but they will show off in a way that it does not matter to them or they are unintentionally amoral, it means they do not know and out of negligence, out or ignorance, they do an act which they consider it ok but actually it is not.



So three stages of moral development.



We will come to that with this particular model.

Stages of Moral Development

Level	Description of Stage
Principled	6. Following self-chosen ethical principles even if they violate the law 5. Valuing rights of others and upholding absolute values and rights regardless of the majority's opinion
Conventional	4. Maintaining conventional order by fulfilling obligations to which you have agreed 3. Living up to what is expected by people close to you
Preconventional	2. Following rules only when doing so is in your immediate interest 1. Sticking to rules to avoid physical punishment

Sticking to rules to avoid physical punishment. I am just doing what is acceptable in law, I do not want to attract any punishment. This is lowest level. Second, following rules only when doing so is in my immediate interest. Third is living up to what is expected of me. My fellow colleagues want me to do like that and I am doing like that. Maintaining conventional order by fulfilling obligations to which you have agreed, because everyone is doing, so I am also doing, bad apples, they are created because of stage 5. valuing rights of others and upholding absolute rights regardless of majority opinion, I am not bothered what others are doing, but my conscience is saying this is right, this is wrong, I am not able to do away with that. So level five, level 6 is following self-chosen ethical principle even if they violate the law. That's what we saw the Anna and Kejriwal at that point of time when they were not even concerned about what is law, disregarding political opinion, I have my own self-chosen principles. It can be with wrong intention also, so we have to be careful about it. So I do it, so I do not get into trouble. I do it so that I get something out of it. I do it so that you like me. Then I do it because it is law and I respect the law stage 4. Most of people are on it. Then I do it because social contract we have with each other. I do it because it is the right thing to do in my perspective. Law is not above me, I decide law because society, human rights all this is much more important than law. If something written in the law is not as per need of the law, law can be

changed. These are few class of people who can be in that category also. And leaving all these slides. Just take you to. This is all just to repeat that because we are left with less time and I just want to do the scoring for whatever we have already done. You can just come back to the scale that you filled up. You will find that at the end of it scoring that is given $a_1+a_2+a_3+24$ like that for B, please take your scale, the score that you have written in a_1 please transfer in a_2 , then score in a_2 means situation number 2. Means scores of a of all the six situations. Add it together. Then scores of b in all the six situations will be b_1-b_6 , you can leave b...you were supposed to write numbers, your preference, ok does not matter. You can do it later for fun. These are all simulated situations, so consider it for learning, I may be wrong in making the situations. These are not real life situations. We will revise it with none of the above option. Because of my limited experience in that field we have done that. So whatever the lowest score you find that is the stage of moral development on which you are currently. It can be any of the three. Lowest number is coming in a, you are in the conventional stage of moral development. If your lowest number is in b, you are at principles stage of moral development. If at c then you are at preconvention stage of moral development. There are three stage which we have talked about. Pre conventional stage where we just want to avoid the punishment. Conventional stage where we are just following what others are doing and principled stage where we are self-choosing our principles to behave in ethical way, without any dispute in that regard. So a stands for conventional. B stands for principles and c for pre conventional. People proceed through stages sequentially but there is not guarantee of continued moral development. It is not necessary that everyone can reach with age at the principled stage of moral development. Most adults are in principled stage is a myth. It is quiet possible for human beings to physically mature but not morally mature. So Kohlberg he indicated that only 25% of people in the whole population, he did a cross cultural on this moral development stages, and he came to a conclusion that only 25% of people ever grow in their life to level 6. Majority remaining at stage 4. If Kohlberg's observations are true then level 6 thinners will always be in minority. They might be prosecuted and persecuted by level 4 majority. And this what happens if someone is trying to be too moral in the society others just pull them back, they try to trouble him so much that he is bound to come down

from his level of moral development. So this is what we have already discussed.
Just to end this session with interesting row of pebbles which is in front of you



What can we learn from these pebbles?

Participant: balance

Participant: balance

Dr. Rishi: something else

Participant: Bigger base

Dr. Parul Rishi: Ok to save the time we can just come to the skills.

Features of Pebbles

- ★ Different shapes and sizes
- ★ Different colours
- ★ Largest at the bottom
- ★ Smallest at the top
- ★ All connected
- ★ All balanced on each other

Lessons from Pebbles

- ★ Come across cases from diverse sections of society- Caste, Class, religion, age groups
- ★ Need to balance the interests of all through values for fairness and impartiality overcoming the individual attitudes and biases.
- ★ Largest stone acting as a base for judiciary
- ★ Responsibility to keep all the courts down the line connected with judicial values
- ★ Responsibility to make sure that smallest one on the top is not falling down due to any imbalance.
- ★ If they stand strong and connected, no one can roll them in their own way.

So this is how judiciary is like a chain, morality and values they percolate. So we have invited the top here so that it reached the bottom. And the last cartoon



You can see the chains that bind us, break those chains, and come out of that. Do what the society is expecting from you. be at the principled stage of moral development. Thank you

Participants Clapping

SESSION 2

Dr. Burra: When I was called to give this presentation, I thought I have never given talk to such distinguished audience about a topic that I know so little about...ahh....and when I picked up at the airport, the National Judicial Academy's car that is parked in the VIPs parking lot...people were looking at me...You can't be a VIP coming in thus acr...hhehe....so I thank Dr. Oberoi for inviting me but the reason I took up this invitation was because I was interested in learning about the notion of conflict of interest not because I know something about it that I can impart to you. The topic of the session is Conflict of Interest: Overcoming Ethical Dilemmas, I should say that certainly I do Not have the expertise on overcoming ethical dilemmas, even less expertise I have than in Conflict of Interest...aaaa...In fact I very much doubtful that these are the things that can be very much taught in the first place. I had a bit of scepticism when Dr. Oberoi has send an invitation for this conference on Judicial Ethics...aaa...Even I am not sure that I am a philosopher who works in the area of ethics, the nature of work I do , I do not know how much relevance it has to the actual context...a...behaviour of people....I imagine that there is a great deal of collective wisdom already in this room...aaa....on the topic that one can work at both at the individual level and

institutional level when faced with issues around conflict of interest....aaa...and I would say in general it is more at the institutional level than at the individual level. I am more pessimistic about individual character and possibilities of reforming it. I am more interested in institutional cultures, what one can do to change them. This is not a professional interest, this is the interest I have derived from my very limited interest I have right now these 2-3 academic intuitions I have been a part of. Perhaps one or two things we could try and do is to facilitate that kind of discussion today. A discussion that takes its starting point in the collective wisdom that all of you come with, and perhaps I have been a part of. We can also think about the kind of barriers that we can have in having this kind of discussion. I am not a student of Judiciary at all. What I understand is that discussions about conflict of interests are difficult to have, partly because there are issues of confidentiality, partiality. The whole issue comes with a heavy moral charge, that is perhaps a mistake in how we think about conflict of interest or corruption more generally. The heavily modelled nature make it more difficult to talk about, more difficult to do something about. Again the third is you in the Judiciary, the stakes are so high, the discussions of human fragility within the judiciary have this, I suspect very real prospect of undermining real confidence in Judiciary itself, that is a constrain, that is a much bigger constraint that in the judiciary that in the other institutions these questions also come up. Ok, one useful thing that might emerge from today is not so much advice on how to resolve ethical dilemmas. Or conflict of interest but meta question how to talk about it and make a start in the context of judiciary No but then again the expertise there I think ...lies with you. What I am trying is may be to help frame certain kind of questions and may be speaking as an outsider to this topic, connect those questions not just with judiciary but with other institutions as well where conflict of interests comes up and the literature mostly I will drop on is sort of Western Philosophical literature on primarily business ethics. I am very interested in what Prof. Jerome has to say about these things...hopefully you can be a part of that conversation. Now one of the things about this term conflict of interest is the sheer range of occupations to which it applies. We will be speaking here in the judicial context but of course it comes up in the context of advocacy, in the context of academic researches...the sort of debates about conflicts of interests in medical research arena and funding research projects in academic institutions, questions about conflict of interests that arise in setting executive compensation, in aboard, in the context of financial services, these whole scams, in many different ways, in my own profession, in academia, they arise for journalists and film critics, it is a very broad spectrum context, in fact I was thinking it might be interesting or even in the future it is interesting to have this kind of conversation with a range of difference occupations, right so these arise in

the IAS or in the corporate world, we can have a kind of cross institutional conversations, which we may find fruitful...aaa...but that's another discussion. So what I am going to do is try to present a very general overview of this notion of conflict of interest and not easily tied to judicial cases and I have to say a little bit about how specific context of judiciary may act or change the situation. One thing, there are three sets of questions, one is what is conflict of interests, that's a question which is not an obvious question or answer to that question is obvious, which is problematic about conflict of interest, then what can be done about these things, so we take these three in order. On the first case, on first question, we can say that conflict of interest arise when one person occupies some kind of institutionally defined role, conflict of interest arise at institutions also, for instance in case of financial services questions audits business, they arise where a person occupies some kind of institutionally defined role, which requires the exercise of some kind of judgement ...a...there is some interest of that person which comes in the way of exercising that judgement, properly and there could be pecuniary interest, interest having to do with some kind of loyalty, may be interest which comes in the way of exercising proper judgement in the context and questions. Now in the philosophical literature, some discussion of the extent to which this term conflict of interest understood in this way should be separated from very general sources of bias and error which might creep into ones activity which may not have to do with the conflict of interest at all, so one example that I can say is If I am a teacher and I am to mark my students exam, but I have recently got into fight with someone and approaching such situation in great anger and it is not possible why my emotional situation might interfere with the ability to mark these people but there is no conflict of interest there, but you can think of other sort of biases, I will talk a little bit more about it, other source of biases which might interfere with ones judgement across the board...a...or assumptions about the way the world is which takes away the merits from whatever particular case I am looking at. One question to ask, it is a difficult question to ask but also practical question what the appropriate category we should think about is. Should we think about the narrow category of conflict of interest, having to do with pecuniary interest and things like conflicting loyalties or more general category,. Having to do with things like being physically exhausted for instance or aaa...I think about it sometimes in the context of interviews for jobs, you have whole range of...you know if you have a, when very recently somebody has come into a position where they have a power over to, to be in context, lets say in a department hiring people for jobs. It seems clear to me that my capacity to judge a candidate...as the day goes on an I am more and more tired and it seems that one thinks of as part of my academic ethics should not involve this trivial thing about how tired the board of

interviewer is at the end day. That will have a huge impact on who actually gets hired, in away that is not evident to us. So I will come back to this question, towards the end. My own instincts says that may be those sort of questions or things to be looked at that level of generality, rather than very ethically loaded...ahh...ahhh...framing, you know which seems to be presented as an issue of how strong the individual character are you. To be swayed or not swayed..ah... by particular pressures...So that is the first question about conflict of interest, one useful distinction is always made about out of role conflict of interest and within role conflict of interest. So out of role conflict of interest are the ones that arethe familiar ones we talk about...If I am interviewing somebody and some one applies for a job, who happens to be my relative of mine, there is my role as a job interviewer and then there is this conflicting interest to do with family liabilities, which interferes with the exercise of my professional role ,aa.... And that sort of conflict you find across the board...ahhh...It is new for me, the discussion on within role conflict of interest. People talk of within role conflict of interest in two sorts of ways, one is where the same person plays more than more role with respect to a principle, so aa...one example might be in the medical profession, you are both the physician and the service provider, those two roles are little bit different, as a service provider you have some interest in ...some pecuniary interest in providing services...ahhh...how much money you get that is in conflict with your role as a diagnostician....a...certainly as a teacher I find there are within role conflict of interest between my role as a teacher an evaluators of a student but also as a mentor of the students who has some interest in the students doing good, if my students get good jobs that reflects my ability as teacher but that may come in the way of my own objectivity in assessing how well my students do. And I would be quiet curious to hear and I will come back to it, what sort of within role conflict of interest are in the judicial profession. I have some guesse3s but it would be interesting to hear from you...ahh...wat those are...another kind of within role conflict of interest occur when you have the same role but vis a vis more than one principle, so a lawyer who is a repeat play in a court, might face that sort of conflict of interest It may be the right thing to do to fight very religiously for the client in front of you but, he may predict that while doing so that will adversely affect the interest of the client before the same judge. There is some conflict you have between you and interest of your clients. So one interesting question is what sort of within role conflict of interest might arise for the judiciary. I imagine that there are conflicts, the idea of speedy trial vs idea of speed trial for instance, those push in different directions. You find that in the discussions of procedural specification sin law especially in criminal law. I suspect that you might find conflict in the idea for equity for the litigants in front of you and some broader role which has

to do with justice to the public overall. The regal rule a state may have and its adverse effects on parties downstream, I mean the right rule to do justice to the parties before you. I think that is topic of discussion....ammm....so what is wrong in having a conflict of interest. If we see the literature which I have come with, the consensus seems to be there is nothing wrong in having a conflict of interest . That is up to you, if my sister in law applies for a job in IIT Delhi, I may not even know about it...ahhh....the...so the conflict of interest is the situation in which you happen to find yourself, the interesting question might be if you are not getting into some conflicts. Of course there are professional rules, for instance governing the acceptance of gifts and all are designed to prevent people from getting into potential conflict of interests and then, aa....questions about what to do when one is face with the conflict of interests so that's the...may be the more urgent one for us today...ahhh...so what are the moral dangers involved. There are two dangerous in particular, one is making unreliable judgements and not speaking specifically in the professional arena, what ever professional context one is in,. One is you are getting it wrong, you bare violating duties of impartiality, what those duties are they depend upon whether you are a doctor, or a teacher or judge or an accountant and one particularly important thing that I will return to is that there seems to be a consensus in the physiological literature in 70s onwards in the work of Daniel Cameron , who won the Nobel prize in economics a couple of years back and Enons Tuwasky who did lot of work in studying various sort of biases, cognitive biases, motivational biases etc, and it seemed to turn out that we are very much prone to overstating our realibility...aaaa....in the context of these biases, so people can say that...ya..Ya other people can have these biases but not me b ut turn out to have the same biases, the mathematicians they turn out to make mistakes about probabilities, doctors make very elementary mistakes out, just to give one example, they will presume that we have the expertise w will never make the mistake . So we come back to this question of unrealities, to the question of how good is one at assessing whether one is unreliable and again the consensus seems to be that human beings in a vast range of context, what sort of institutions mechanism might be there to correct those errors and then of course the questions that raises the special problems in the judicial context is that of undermining trust in the institution, just because of the fact that you are in the conflict of interest situation that does not entrails that your judgement is unreliably exercises, because people can be good at streaming of those interests. Buy obviously in situations where part of the issues is not of justice being done, but justice seems to be done ...ah...there is separate question, not a question of reliability but question of trust, you may have moral duties in a judicial context to aaa...be seen to be reliable, independently of being reliable, What are the enons tuwasky, what are the dangers

involved...ah...what can one do about some conflicts when they arise...people distinguished themselves in form of three kinds of responses, one of the responses is an escape, an escape can itself take two forms, one can be again in the judicial context I say, recusal, to exercise whatever judgement you are being asked to exercise, aa...of course the other mode of escape is escape the other interest what is being compromised....The NJAC judgement had come out and I said yes to Dr. Oberoi's opinion, I would be quiet interested in how you think about the issue recusal which has come up here, then there is question of disclosure which does not arise, I don't see it, perhaps I might be wrong. Aaaa....and the issue of disclosure do not go to unreliability of judgement but to trust, the moral question. Again the empirical which seems to suggest that the disclosure is not always very helpful, for two reasons and I think the studies have been done in the medical context, where a doctor sells before you , that except treatment from me, you should know that I have been called to deliver a lecture and there is such and such chance that I will be able to offer their product...so I turns out that different studies, I don't know how these studies have been conducted where first of all consumers may not be very good at dealing disclosures with so they many know how to discount the information they get from some kind of faulty figure just buy knowing that they have they this other sort of interest. Then of course more important point is disclosure by itself does not do any thing to complete the bias judgment itself , and people actually feel issuing a biased judgement after having disclosed their interest,...ki maine bata to diya hai now it is upto you, you choose to follow my advice or not, I am free to give my advice , I do not have to kind of police myself as I may have to otherwise, so there is scape, there is disclosure and then there is managing the conflict in case where there is neither escape nor disclosure, seems relevant...a...the example that I recently read about, it is a very complicated example but you again this is in medical context, I do not know whether there would be an analogy in the judicial context but then the example is, someone is a surgeon and his ex-wife had had an accident and she is unconscious and he is the only person who can operate upon her and the physician because of concerns of compromise of judgment tend not to treat their own family members, that's an offence and I suspect that is true for lawyers or not, that is an informal norm or not? You do not have to represent your own family member because your professional judgment might...

Participant: yes it is...he can represent but they can...there is no problem...he cannot hear the matter

Participant: When I was in practice I did not take such cases...

Dr. Burra: So the example here is there is a surgeon he is treating his ex-wife and that becomes important for the story that he is paying her alimony and there is interest already there, so should he be going against that interest in favor of. You know...there is no option available, he is the only doctor available, if he refused she is going to die, disclosure is not an option, because she is not in apposition to receive that kind of disclosure, so what are the options, it does not help to disclose the facts to his other staff in the team, partly also it is the question of confidentiality. so what is he to do, perhaps in that context managing the conflict might mean telling his staff to be a bit extra cautious, to double check with me that I have gone through all the procedures or not. I think I will be very curious in the Q and A to think about aaaaa. The extent to which managing conflict of interest question arises in judicial context. Certainly in academic context I find very simple thing, like I don't, when I grade my students exam I do it anonymously, I turn that first page, because I know that the standards are pretty subjective, there are some students you tend to be a little more partial towards because of their practice, they participate in class

Participant: Don't you know their hand writing

Dr. Burra: well at the end of the term it becomes hard, but one figures out ways...a...more and more I become astonished that there is this myth that one has to perpetuate about one's own infallibility, and I find that I can talk about more of my IIT students experiences. I do not know what are Jerome's experience, my students, IIT students tend to be, extremely arguing the case to increase their marks, so professors also develop this range of strategies to make sure that I am not going to engage in this negotiation but in that you have to sort of pretend that you are kind of human being who never make mistakes and never does things last minutes so it is, sort of...well that is how more autography stuff comes up. Then I would be more curious in the recusal context, between the connection between recusal and disclosure and what are the pro and cons about stating your reasons for recusal, being the sole decision maker as whether or not to, you know these rules of automatic versus discretionary recusal. I am not sure how to think about these cases, so the central problem with managing conflict of interest at an individual level is that there is a well-documented human tendency to be blind to our own biases, and even when we are not blind to our own biases.... To overestimate our abilities to estimate them once we become aware of them, so there is a huge body of literature and again it is a pity that Dr. Rishi is not here with us because she would know this much more than I, The extent to which biases can be is quiet coconscious, so there has been two sort of studies, one sort of studies in the medical context, there can be very small gifts pharma companies

give key chains or very very small gifts and you think that I am not going to be biased by this very small kind of gifts, but it turns out that people are biased much more than they think they will be, and perhaps because of perfectly innocuous reasons, that wall clock from Ranbaxy in your office and you might not notice, it may not be part of your conscious mind, but when you look at it what strikes in your mind is what ever the product Ranbaxy is selling rather than some competitor, another kind of study which is actually being pioneered by an Indian psychologist, on web they call it implicit association test and they are conducted across a range of countries on range of context, so what they will do is, they will take classic kind of cases, cases of bias between African American and American, they will do is you have a photograph of an African American face in front of you, there will be some positive and some negative word coming across your screen, and then you will be asked to press a button when you see a photo. And people pretty consistently presses the negative button much faster when they had an African American face in front of them and vice versa and these are the people who would be horrified at the thought that they would be racist. That is a very important point when biases are unconscious, then making people aware that such biases are in place is difficult. There is a doctor that looks a Ranbaxy clock that is going to make a difference to their behavior ... difference is happening at a unconscious level. In the range of institutional solutions that people have experimented with in number of different context so they found some years ago in the Boston Symphony Orchestra, they were doing auditions for it and they found that male violinist are more likely to be accepted than the female violinists, they just put a screen and suddenly the judgment changed. And these are the people who are making the judgement are like the most well trained people to judge the music quality but even they are affected in unconscious ways by this idea of bias. Coming to judicial context if you are judging witness credibility, in this set you may need some other kind of norms, governing this. There is a famous and funny story of what is called the interview bias. Job applications in academic context. I got my PhD in Princeton. I think in 70s the psychologists at Princeton documented a pretty substantial bias in interviews, you respond to Qs which might not relate to persons competence for that job, to see how enthusiastic they are or how articulate they are which may be very situations based. It is strange thing we test people's competence in conditions designed to not to the best situations to test their competence. So there is a whole range of studies in the 70s as to how conducting interviews for candidates in academic department was bad idea because of this bias. But the psychology department still continued to have the interviews they documented this bias but nevertheless stuck with it. So may be some general perspective about thinking on conflict of interest. Bias are separate things, I will come back to them. We can turn

now to the specific issue of the judiciary and I have less to say here. One thing that strike me as interesting from the point of view of political philosophy which is my main field and people have written about it is why we regard certain forms of individual bias in financial sector as much more bias than say some kind of ideological conflict . One of the things which I have been working on in my research is the history of civil liberties movement in Indian , I late 1940s and 50s and particularly this figure NC Chatterjee who was a judge of the Calcutta high court but was also vice president of the Hindu Maha Sabha also the father of Somanth Chatterjee, it is interesting to me and it applies regardless of the political ideology but why would I not be more worried about a judge who has demonstrated political...in fact quiet reasonable, quiet acceptable political commitment which might come adversely come in the way of him judging a case . I have great regard for someone like Mr. HS Phulka , who did work on 1984 riots, if he was elevated to the judiciary on one hand who else would one want to sit over preside over bench dealing with some riot case than somebody who has invested some 20-30 years thinking about this things, on the other hand there it might come in the way of deciding the merits of some particular case .

Participant: there is a difference between advocating a cause and judging a cause, while advocating you do not see whether it is right or wrong. When you judge you see both sides.

Dr. Burra: When you see Justice T Marshall of the US Supreme Court, great civil rights activist. It can go both ways on the one hand it seems the reason he is on the Supreme court is because he has great experience in this aspect of the law and at one level it is very strange that you want to remove the deepest knowledge and great expertise and that sort of thing. I do not know enough about the rules on recusal but it is very interesting, even in US that Justice Marshall was important civil rights activist didn't come in the way of his elevation, nor was he asked for recusal from civil rights cases. Something similar is true in the Pinochet case I think. The tension is one the one hand you have particular expertise and knowledge of the situation and on the other hand that knowledge might cloud your judgement in the judicial context. Things even get more complex if you talk in terms of judicial ideologies, may be certain doctrine of judicial interpretation. I find it very difficult at a conceptual level to separate out a purely judicial ideology from other kind of political ideology and it is interesting to me that these codes of judicial ethics and codes of government service in general. You have to stay far away from political concerns. It is a bizarre situation to find myself in. At some level I am a government servant, teaching in government institution and I am bound by these, bizarre service rules about how I am not supposed to write article in the press without prior permission

from the director, strictly speaking. Since we are running out of time, may be what I will conclude with is. Frame a few questions for discussions and leave open some time for that. It is not clear to me that conflict of interest is really the right or the most interesting category in thinking about judicial ethics or reforms, and I am quiet curious about other sorts of barriers to impartiality, it may be that you might have some pecuniary interest in some matter but really has nothing to do with, the laws will ultimately decide it . I guess many medical mistake are made because the doctor is sleepy than the doctor has some pharma connection which leads him to describe more expensive medication. In your experience in the judiciary, what sorts of pressures, circumstances, come in the way of exercising your role as per the institutional norm, impartiality, propriety and all. And my guess would be many of them might be quiet ordinary everyday issues that are not taken, that have some kind of unconscious effect on how you act. The second question which I would raise is what's the best way of talking about these issues , this si how I started off, whether it is within the judiciary or within the public keeping in mind, and this is very specific to our context, on one hand we need to confront human reality and the reality of human frailty, while at the same time , upholding certain sanctity of the judiciary which might rest on, seems like I teach a little bit of law to these IIT students, philosophy of punishment and civil liberties, I bring lawyers, people who practice in trial courts come and share their experience. It is very striking, how much cynical the lawyers are about the judicial, system than the rest of us, so we feel, very shocked, my students feel, you know like something has been taken away from us, , we thought of the Supreme Court jurisprudence on the death penalty was really crystal clear thing, now you are telling us supreme court is self , differencing to a constituent way of deciding. It is not a small thing to undermine confidence in one of the few institutions people are confident in this country, I think it is a genuinely ethical question how to discuss these things, there is a n ethical dilemma in doing that . This is the second question, third question will be question about what sort of in role conflicts arise. I imagine that there must be many within role conflicts within the judiciary so role to do justice to a particular case and you also have roles, we saw examples in previous sessions. You have some role to maintain I guess harmony with your colleagues and sometime those roles can be into conflicts. There is always powerful institutional norms that make it difficult to fall, out colleagues or blow the whistle. Within the tribe you make be cynical of each other but outside world you show a united version. I say this with no special knowledge of the judiciary, but certainly true of my context. I am always shocked when people think that IIT Delhi is the bacon of this educational enlightenment, most of my colleagues think that is well but you do not find that in public domain. And I bet that is true for judiciary as well. s far as actual operation of

justice is concerned, barriers to that again my guess is that the out role conflicts are the ones that take the headlines and people people talk about. In role conflicts may be harder to deal with and talk about. And then final question... what is the role of informal norms in affecting judicial conduct , norms within profession or within the bar, some studies were conducted on experiences of the Indian in the Indian Civil Service ICS officers before independence, how they balanced their role in services with the nationalist mind set. There is quiet interesting how there memory was on the first posting and the first superior who was there in that posting. The kind of mark that is left of how they thought about it, and this is I imagine in all sorts of context, the role of mentoring, the role of institutional culture, most of the time I would say informally, I think you can feel it I felt it in moving from one institution to another, something in the air you breath, in some institutions you can breathe more easily and in some you can't. I am very fascinated to know how that comes about and how that things are transmitted, how they can be transformed, so with that I will end , ask me question kind of...I am left to hear your thoughts about it, thank you for giving me a chance to speak

Participant: there is one issue, speedy and effective trial because on one hand there is huge backlog of cases and on the other hand the elaborateness of procedure , some time we have to take adjournments. What would be the ideal situation in case of a human resource persons when we choose a candidate when you have several resumes? What should be the ideal situation?

Dr. Burra: I think Prof. Joseph must know more about it than I do. My guess would be in the Us, in Princeton ...everyone so overworked, everyone takes a shortcut and when you get a 100 cvs, you look at the institution from which the person has got the PhD., somebody has got a PhD from Howard, initial cut you take and somebody has got a CV from you know. The decision of choice is affected in negative ways, and that is certainly unfair to the candidate. Well I guess I would just ask the man to be efficient man.

Participant: Now human resource persons are finding out that women do more work, so is that not bias? It is now true, people are finding out, employers are finding out, it is better to heir a women.

Dr. Geeta: there is circular from the government that not to have any interviews for class IV, DoPT has given that and I asked DoPT secretary that why this circular, he said because of studies done on biasness.

Dr. Burra: It is connected to the issue of stereotype, stereotypes, hey are often correct in the sense that they may represent something that is true, I would think of two issue I do not know

it goes from top of my head, one is the issue of the individual before you, right and the other is the issue of what sort of stereotype you want to perpetuate or what sort of norms you want to perpetuate, it is not easy. For instance IIT Delhi is an interesting place for me to teach after having studied at a place like Preston. Linguistic components make a huge difference to your ability to do a philosophy PhD, and if my role was just to admit PhD students who to do a philosophy PhD, the easiest thing to do a first cut would be their English competence. But I wonder two things that could go wrong with that strategy, one is that you may have some absolutely brilliant students that may come from a Hindi mediums background and they do not even get a foot in the door, and you see I see in class as well all the time, there are brilliant students who have to go through much more hardship than student who have studied at the DPS RK Puram, grown up in Delhi, and it is just that one thing, certain kind of skill they don't have that's why they are doing badly in class. It is not that I should be in the business of perpetuating that, I could just make that....it would be a disturbance to philosophy to not have that student come but secondly...

Participant: You can see that who make the point

Dr. Burra: It is not that....look I agree with you, all I am saying is if I as an initial cut thought that hind medium student is going to require to so much work so what's the point in

Participant: if a person has merit he may not be articulate but he will make that point

Dr. Burra: I guess one needs a mechanism to screen out the things that are relevant from the things that are irrelevant, so that is one point, the second is, aside from my duty to my profession and my duty to the student, do I want to perpetuate certain forms of inequality...a...that I think are incorrect, that might also come into the way

Participant: We judges have a very good defence mechanism against defence bias. We give reasons. We can recuse our self but we can give reasons, so we have good good mechanism, because reasons are discernible. If you give your reason it is up for public scrutiny and criticism.

Dr. Burra: Ya the practice of writing down your reasons is one institutional mechanism

Participant: that is very good. I think that is very good mechanism against bias, against conflict of interest against all kind of these, Then we have this doctrine of justice should also be seen to be done, so if there is a question of bias, generally we recuse, because then they will say justice is not seen to be done and they are sitting on their own cause and all

Participant: There are two ways, if you feel that your decision is going to be affected by something that is other than what it should be. And the other aspect is it should appear that you are doing justice. These things you have to keep in mind when you decide whether you have to recuse or not. So if you go on deciding a matter where people may think that it can be biased, then you can...but it is up to the judge and no one else.

Dr. Burra: I know the practise. But if it turned out that people are not very good at being the judge of their own conscience and in some way.

Participant: It is very difficult. If you have felt somewhere at the scrutiny of a person's appointment as a judge then yes, but otherwise by things like by virtue of being trained as a lawyer or judicial officers for so many years, these things are always in the mind that my decision will be biased or not and if it will appear that justice may not be done

Dr. Burra: the appearance question is interesting, it can lead to a kind of reckless veto where you know you just...I am more interested in the reliability question, but making it about the appearance, or making the whole issue.....yaa

Participant: Suppose lawyer says or client says, I do not have faith in the court anymore. After having seen the views, after having accessed the views of the judge he says I do not have faith in you, then the judge should not ...recently what happened in Patna High court one of the judges, he may be making certain observations, a lawyer filled a petition for transfer, the judge transferred the case the matter went before the other judge and he initiated contempt proceeding and he punished the client and issue notice against the lawyer also.

Participant: that may lead to forum shopping

Participant: the moment he said I do not have faith the matter was transferred but he was punished

Participant: the notion of transfer should be discouraged

Dr. Burra: there is kind of forum shopping, heckles veto kind of thing but as judges with fair amount of experience you have confidence

Dr. Geeta: I was thinking we can discuss in tea break and then meet. It is a small group we can vbe in cafeteria. And at 12 we come back for our next session....is that all right?

Participants: yes

Dr. Burra: thank you

Dr. Geeta Thank you.

SESSION 3

Jerome Joseph: When I sit on a panel one has to be truthful Sometime what happens when a women candidate comes, I am just giving you an example or candidate who is reserved, sometime what happens is that kind of questioning, the tone of questioning may change then let's say there are three members and one of them is doing this, the candidate goes out and this is discussed and there has been instances where individuals have been removed from interviewing processes , I mean faculty members not candidates, you see ultimately once you are aware that there is a problem we have to find a solution, the solution may be a simple mechanism may not be very complex. For instance when an IIT student comes then immediately the interview panel is into IIT kind of thing, if somebody comes from a local engineering college then...but then you see there are bright students who come from institutions which may not be in the elite list, I think it is very very important, there is something called the homo hierarchy test, we need to sort of like she showed those pebbles we also have this tendency to arrange these pebbles in some kind of rank or order using some variables kind of thing and all of us carry these biases which we need to become aware of and control it.

Participant: Why should the good reputation of IIT be taken as negative.

Jerome Joseph: No not negative, positive.

Participant: the assumption that IIT student is good becomes a bias.

Jerome Joseph: Yes it is that what exactly I am trying to say, What I am saying is , It is only an illustration I am giving , it may not be . The point is that in the traditional societies there are certain variables which leads to certain types of biases, but in a modernised societies other kinds of things come in, one has to become more and more aware, conscious, and make sure that such things don't happen. Even in IIT it is not that nine plus, very rarely someone will get nine plus may be coming in. Most of the time the GPA may be in certain zone ...even 5, we do get but those things don't affect the decision , it depends on the performance in the interview, one tries to set aside all other things, but whenever one sees certain things, it is discussed. I will come to this when we are talking about accountability. One of the important

variable is, the question we need to ask is how autonomous are we, even financially, because he was talking about pharmaceuticals, the medical profession, one is yes the pharma companies do many things in order to get that prescription but the question is there are doctors who refuse to take, my own father was in central government, in the defence accounts departments, he used to sign cheques for huge amounts and if one wanted one could make money, but I remember as a child, he won't even accept the key chain which he was talking about or the calendars, he will not accept, because he felt that anything that I accept will obligate me. And that has stayed with us through life. The other thing is that in Diwali they will bring a sweet box, he will open take a little and say go give to your children, as a child when we saw this, obviously a sweet box is something that you wish as a child that he takes, but he won't. What I am saying is, the issue which came about the HR manager, the accountability which came up was personal accountability, there I won't use the word accountability, I prefer the word responsibility, That is how responsible am I because, accountability is accountability to someone else. But responsibility is when I know something, do I make it a part of my life. I can still dismiss it, why should I be bothered if everyone else is doing it and then when we look at a person the next thing is role, I have a role to play within a framework, so there is a role. I have a role to play within a framework, so there is a role accountability. That we can talk. Role is about public role which I am playing, as a result of who I am and what I am, as a Judge or as a teacher, there is a public face. Although I tell my students in the first class look if you are working in a private sector or a multinational sector, if you are producing something for the public, you are no longer private, you are a public person because if the product is unsafe and likely to cause harm you cannot say that I am a private sector so I can do whatever I want, because whatever you do impact the public, that is why we have the Consumer protection Act and so on, so therefore we have to make a distinction between a person and a role, it is not this versus that, both are important, but the person part is my own something, something which I have to internalize, inculcate and practice because it is not visible to outside world. Role is something, for instance in the question you asked sir one major difference between HR manager who is in the admission process and Judge who is in hearing a case is everything you do is out in the public domain, it is public, the hearing, the questioning, everything is in the open public, the public can come, isn't it? Whereas all the process is over, the decision is behind the smoke screen, so which means we do not know what is really happening, whatever is put out many have everything the process the criteria everything may be met, met in the sense propagated outside, but what happens is behind the closed doors, there is certain opacity about the final decision, so there is a big difference

between what you do because you have heard everything in a public domain . There are two other accountabilities , the other is what I would call functional accountability that is a s a judge I have a function in overall scheme of things, as a teacher I have a function in overall scheme of things. So role is linked to function. Then the other thing is judiciary as an institution, you play a role, because if you look at the executive and the legislature and the judiciary and even the debate about independence and NJAC which just came up. I was just thinking that instead of National Judicial Appointment Commission if there was National Journalists Appointment Commission if, what Arnab Goswami would say, what his views would be. Heheh....today the whole point is, there are lots of discussions going on, but you tell me you can be responsible only if you have the independence to be responsible therefore autonomy, my views as an ordinary citizen, looking around the world today, I would say the collective of judges decide who they should be adding to the existing collection, or if you look at Prof. Burra and his professors in the institute, don't they have the wherewith all to select the professors. Should there be some representative from the ministry, independence, the word independence what does it mean, even in the bureaucracy the concept of independent bureaucracy, independent civil servant, there is a world of difference. Around the time collegium came, early 90s isn't it, I think society, economics, politics everything has changes dramatically, so one needs to find ways to insulate, to insulate so that we can do our job , whatever our role is the functions given to us, so I would say there are four kinds of accountability, the personal accountability, role accountability, functional accountability and institutional accountability. Let's start with institution, because personal, each of us sitting here knows what our role, responsibilities are, we have fulfilled our responsibilities to the best of our abilities , just one little thing, whenever I look at a case sheet before a court for a day , because I have been in an industrial relation for a while , the number of postings in a given day and the number of subjects you have to deal with, I don't know where you get the time ability to be able to do all this. It requires to be very malleable, remember in school science classes we learnt two terms malleable and ductile, , so you have to move from one thing to another , it requires and therefore when we talk about institutional accountability , I did one more thing I just googled to find out what does a Supreme Court judge get in US, 255 Thousand Dollar, it is on the net , nothing that I have cooked up, multiply that by 65 rupees which is the rate, if you want to convert, because we have this habit , we get a dollar you convert and see how much it is in rupees...heheh...isn't it? And then you look at the other things, Chief Justice of Supreme Court, what is the salary

Participant: Newspaper cost in India and in US, respectively same amount of the currency so can we make the comparison.

Jerome Joseph: No but the point is , I see your point, I agree, I just gave an example, don't compare with Supreme Court, compare with the lawyers appearing before it, look at Harish Salvey for example , can we compare with the lawyers who are appearing on behalf of the litigants , so what I am trying to talk about accountability without taking into Accountability without taking into account some of these variables, it is Ok that you get a bungalow, you get a car , a diver but once you retire you get to have some decent place to go to, I am talking about your own earning, hahhah....so accountability is also the function of what is the general you know, of course if you compare with professor, at IIM Ahmedabad when I retired my basic was seventy nine thousand, it is called HAG, higher administrative grade kind of thing ,it is not comparable but the whole thing is linked through the wages and all ,working conditions of the civil service , IAS not even the others, other central service are up in the arms because the next pay commission , there are certain indications that there may be some delinking AND SUCH. Now coming back to institutional accountability, therefore one needs to also look at the some of variable, number one is compensation, number two is competency developed, that is where the National Judicial Academy comes into stake, because continuous upgradation is needed. I was just thinking do you get the time, considering the work load, work pressure, because the other information we are getting through media is that there are so many vacancies in the High Court and Supreme Court.

Participants: 40%

Jerome Joseph: All right 40%, which means that that the workload will be proportionately higher, while the debate is going on who will appoint. Therefore the kind of pressure which one is working under , sometime I feel there is lot of...you know what I call flogging or self-flagellation, that is we whip our self ,...saying we are not doing this, we should be doing more and then the whole question of accountability also comes. Now number one is, look at the overall competency and then look at the competency developed, I mean the culture also, internal culture. When we talk about the culture, the functional accountability comes in, that is where you as a sitting judge, you are handling or hearing cases and you are giving judgement, but then there is whole court system, the registrar and the whole team who support administrative service , that also, therefore needs to improve, you were talking about time earlier, the whole question of speedy trial verses giving enough time to all parties to the dispute

, sort of articulate whatever they need to articulate , now I think within that dilemma or dynamic it is possible to improve efficiency if we improve the other side that is the administrative support, technology also plays a role. Therefore if you see functional and institutional accountability also needs to be looked at, how do we improve, efficiency in managing the whole litigation system, at district courts level, at the High Court level and also at the Supreme Court level, then we can look at personal accountability and role accountability, is it operational?

Dr. Geeta: yes it is operational

Jerome Joseph: I thought why not go and look for some poetry, instead of looking at the Bangalore Principles, which is very comprehensive, but it is not poetic. It starts with whereas, every sentence starts with whereas, I thought why not look at poetry where same message is coming but through poetic means, then I looked at this wonderful little poem of Tagore's and then I thought accountability is a good accountability anthem, it has got all the ingredients which help us look at personal role, now before we look at what we have done so far I have just put it in form of a small matrix personal accountability, role accountability, functional accountability and institutional accountability.

The speaker pointed towards following slide from his power point presentation:

	Functional Accountability	Institutional Accountability
Role Accountability	1 Role-Function Accountability	2 Person-Institution Accountability
Personal Accountability	3 Person-Function Accountability	4 Role-Institution Accountability

Jerome Joseph: person has interface with the institution as well as function, there is an interface and it is that interface which needs to be managed one as a person and the other in the role I play, wherever I am located kind of thing. Now you see, if you quickly try to translate this poem into some variable

The Speaker pointed towards following slide from his power point presentation:

The Collegial Accountability Anthem

Where The Mind Is Without Fear..

From the *Gitanjali* By Rabindranath Tagore

Where the mind is without fear

and the head is held high

Where knowledge is free

Where the world has not been broken up into fragments
by narrow domestic walls

Where words come out from the depth of truth

Where tireless striving stretches its arms towards perfection

Where the clear stream of reason has not lost its way
into the dreary desert sand of dead habit

Where the mind is led forward by thee into ever-widening
thought and action

Into that heaven of freedom, my Father, let my country awake.

The Fearlessness Quotient

The Respect Quotient

The Knowledge Quotient

The Impartiality Quotient

The Integrity Quotient

The Solutions Quotient

The Discernment Quotient

The Interpretative Quotient

The Independence Quotient

Poetic Imagination

Accountability Insights

Jerome Joseph: where the mind is without fear, fearlessness, in today's world you see, you take a view and then you don't know what is likely to happen . Even this young man Hardik, for instance, 22 years old, naturally at 22 , when I am 3 times older to him , my language would be very different. Or you take kakoji case in Karnataka, Ok it is a view and if there is A view you can have a counter view, and it can be expressed vehemently also, but at the same time, you know there is a whole lot of awards being returned by lots of artists, why because they are saying that there is a fear...somehow and therefore we want to say something to see if we can being t5his under some kind of control sort of , so therefore number one is fearlessness, it is not just judges, I feel in many walks of life, for instance, RTI Activist today ,there has been so many stories of being eliminated kind of think, you look at activist lawyers today , you tell me when you become a judge, is is not some grace associated with the role which sort of makes you function a s judge, even though you may have been....there is something about once you go and and get into that role you take on all that attributes which the role means, kind of thing.

Participant: A lawyer when he becomes a judge, he changes automatically by virtue of office.

Jerome Joseph: Ya there is something which happens , and then the respect portion, over the years I have been engaged with so many different kinds of constituencies, even believe me a construction worker who is illiterate one of the thing they say is the only hope they have is go to the court, even the PF, the provident Fund , so therefore there is a kind of scary kind of respect, at the same time , what is intimidating is the cost involved , you need a lawyer, if you need a lawyer you really need trust, one who cannot be brought over by the opponent. Secondly there is a time factor, just think the ordinary litigant. The third thing is getting a lawyer, I remember in Gujrat, since I have been there since last 25 years, Mukul Sinha who passed away a year ago, many would go to him, because they somehow thought that he will be able to understand our situation and understand us. He died of cancer, that is another thing, how do you explain this you tell me. Someone like him who gave lot of hope to people who were, I am talking about people who had employment related issue. I know several people who would go to Mukul Sinha. Then you have the knowledge portion, you have to keep updated not just law but also the environment, so many things are happening, for instance you are referring to ideologies, during the more regulated phase through which our economy went verses today when everyone is working about free market economy , what is happening is that even the judgements also began to change . So some way or the other there is some kind of influencing factor , at the same time if you look at HRM, human resource management, we were known as Personnel and industrial relation area, the department to which I belonged to , just 15 days ago the name has been changed to HRM, , human resource management, now this is not just a change of label , it also reflects something that is there is more and more move towards HRM, and industrial relation takes a back stage , so our managers are not exposed to labour laws, they are not exposed top industrial relations, trade union etc., and in the process, industrial relation goes offshoot, the point I am trying to make is even there this happened and today HR manager is very innocent as far as very basic labour laws are concerned, for instance right to register a union , if something ,every worker, every employee, but today I have document during last 5 years that even that is becoming impossible, because anyone who shows a little spark a leader is immediately transferred from here to some, I don't want to mention places because that also will be hahaha...you have to be politically correct hahah.....all that I wanted to say is when we look at it...when we look at the shift from lets say regulated economies to market economies, there are certain things happening to the marginal workers at the ground level, if you look at Justice Krishna Iyyer, I have a collection of all his judgements related to labour matters, it is such a fascinating collection actually, therefore as a knowledge also means, while we look a change, we also need to facilitate the process of growth or development. We should

also take into consideration, in the first session Dr. Rishi was talking to who is likely to be harmed by what we are doing, because that is what we are when we talk about Indian Philosophical values, I will come to that. What is Ahimsa, at the minimum it is not consciously doing harm to someone, sometime what we doing there will be, the whole litigation process is adversarial, affidavit, there is a counter affidavit, it is the judge who needs to find a common ground and then tries to give a resolution. That is why in the US there is something called, even here, the Madras High Court has Alternative Dispute, All high Courts have...ADR, so therefore that is another possibility, some of the cases which can be dealt with faster, there are so many, related to practically everything, but some of it can go into mediation also. So there are mediation services available worldwide, I in fact visited Johannesburg, some time back. South Africa has something called IMSA, Independent Mediation Services Authority, and I went through one full mediation from morning to evening, related to labour disputes. They were all registered mediators, not necessarily lawyers. So by evening they had an agreement. They are moving from one chamber to another, conference together and so on. Then Impartiality, so important, he was talking about grading, he would turn the first page so that he don't know who the person is and then you raised the handwriting issue. Sometime I fell once they come into IIT or IIM where is the need for grading, what is needed is upgrading, meaning challenge to learn think, analyse whatever, I have also held a view that grading is a degrading process. To give someone A or B or F, it has no meaning, especially at the higher level. Even at lower level, they are giving more qualitative feedback rather than simply grade kind of thing. Therefore impartiality is something that is very personal. It is something within me and it requires lot of discipline. Whole concept of Swaraj, self-discipline, That is something which flows from within, gaining control over myself so that at least I am aware of what my biases are and I control it in the process of taking decision in my public role kind of thing. Then there is integrity. It comes from when words come out of depth for truth, the search for truth. And truth to power, this is one of the most challenging things today where journalists etc get eliminated, I am not talking about India, look at the global stage, truth to Power, you see there is a difference between this august audience sitting here and me, because I don't have the powers you have to enforce a decision. There is contempt of court..ahh..

Participant: Where is the power?

Jerome Joseph: No it is, relatively speaking. Your judgements, Your rulings I have to comply.

Participant(Calcutta High Court) : If I know from before, if I decide before, which side is going to win, then I am exercising power , otherwise facts of the case give the decision, where is my power.

Jerome Joseph: But it does not happen automatically

Participant (Patna High Court): he is right we do not exercise any power. We just adjudicate on the facts, we cannot do anything. To enforce that we can do everything under the law otherwise we do not have any power as such.

(Participants discussing)

Participant(Calcutta High Court): Outside court powerful , but if you are judge in the court, merits of the case decide.

Jerome Joseph: fine, but enforceability, from that angle.

Jerome Joseph: Ok, instead of power let us use the word authority.

Dr. Geeta: It is responsibility, responsibility to the work

Participant: You used the word innocent, innocent of knowledge or ignorant of knowledge. That was very interesting use of the word.

Jerome Joseph: You all are craftsmen, master crafts men of the world, so I can't argue with you on language...hahah....because I know that law is about language , but innocent not in the sense of ignorant, you don't even want to know .

Participant: A senior lawyer addressing the court, he says the court is innocent of law, so I have heard...hahahh

Jerome Joseph: So we move on, impartiality, integrity, the other thing is ...but then you gave example of a lawyer who went to another court and then there was sanction...here we are talking about different thing , I will withdraw the word innocent if you like ...hahah....because you are....

Participants: We are powerless

Jerome Joseph: But try and explain that to me because , it is a relative thing, because if you give a ruling , what about what about point of view of enforceability

Participant: Enforceability has nothing to do with a DECISION ON A CASE , decision if not challenged become s final , enforceability that is an administrative issue, it has nothing to do with justice of it, justice of it decides a case , once it is decided, the enforcement of it relies on the administration. What can happen to a person who does not obeys the courts order, withstands , court can ask the police to send him to civil prison that is what court can do, but the court cannot by itself enforce the order , in fear of going to prison the officer might do the work , that is the whole idea of contempt. Court cannot send anybody to prison, where is the power.

Participant(Allahabad High Court): Sahara Chief is lying in jail, but the source of the final action by the district collector or the police, what is the source , it is your ruling, let us take another example, just for discussion sake, it is good that questions are being put. If I find there is dispute between two students in my institution, and then I say....or between student and a teacher, or between student and institute, for instant students are asked to withdraw form the programme based on performance, now if I say all right I sought to mediate between the dean or director and the student, I try to find a resolution kind of thing and there is an agreement at the end. Compare that with the ruling of a court, is it the same.

Participant: If there is an agreement then the case stands settled, there is no ruling

Dr. Geeta: Comparative context he is saying that he is a mediator.

Participant: If partied do not agree then the judge has to decide.

Jerome Joseph: Everybody agrees?

Participant: The word you used power, it is our jurisdiction to decide, it is our jurisdiction to punish someone of contempt if he disobeys, it is our jurisdiction to punish someone if he has committed some offence. Power as such it is..ahh...I was a lawyer, I was more powerful as a lawyer. I could exercise more power as a lawyer

Participant: He is not wrong in using the word power. The Civil Procedure Code says that the court has inherent power, power the court has. I was trying to use the word in the context of, as we know the word, the effect of. There is provision for giving power to court where there is no provision that meets the situation. What I meant was when an adversarial case comes before a judge, merits of the case decide it, not because of who is the judge or because he is a judge. Judge is a matter of succession. Today I am, yesterday someone else was, it is the same office, so the merit of the case comes first there there has to be arguments, analysis and then he will

give the decision. Unless and until you decide before hand there is no power, that would amount to exercise³ of power.

Dr. Geeta: May be he is saying that in the scheme of Constitutional governance, executive, legislature and judiciary are at one level....no body is above each other all at one level. Independent but yes all three are similarly powerful.

Participant: They have their own independent roles.

Dr. Geeta: Independent role yes but constitution give them that power...may be he is saying in that sense. Because in Constitution nobody else have been given, engineers, doctors or academicians or anyone else have not been mentioned, but the Constitution mentions only about three. So in that sense these three are powerful.

Participants: For outsiders we are powerful.

Jerome Joseph: I wanted to seek another clarification, when we say the ability to decide the merits of the case can that be defined as power, because the lawyer does not have the litigants does not have only you have.

Participant: we have been given power under the law but we are not powerful.

Dr. Burra : Lot of discretionary power is there

Dr. Geeta: What they are saying is also right, there is so much work, what power is there in deciding of this work. This power has become a very bad word actually I suppose....may be.

Jerome joseph: It is a word which is subject to interpretation. I think what we are seeing is many interpretation of the same word. But then you see, since you are using seeing and describing that word from your role , your experience verses I represent the public and therefore.

Participant: As I said we have been given power under the law but we are not powerful.

Jerome Joseph: That is very interesting conclusion to this phase of discussion. One second Dr. Burra.

Dr. Burra: Dr. Pratap Bhanu Mehta in PIL context he talks about that these jurisdictions are exasperations, may be that is sign of lack of power.

Jerome Joseph: You know Dr. Burra this is a narrative I have heard working with managers, you talk to frontline managers they say we have no power, you go to middle management no

power, you go to senior manager no power , CEO, MD no power , so there is a sense of powerlessness which is a good thing....hahhaah....

Dr. Geeta: That is true actually...hahah

Jerome Joseph: In a way it is good also, because anybody began to think that I am supreme and no body can question me that is a dangerous kind of situation . So in a way I feel it is a good thing, that is something I have discovered, so don't worry I am not going to talk about it outside because for us, for me as a individual, as a public as a citizen the role is judiciary is so critical in today's world believe me. Because you see I speaker here, free speech vs offensive speech. Now what is offence when is it offence. No we right so many things, we write not with a view to offend but with a view may be to address an issue related to lets say labour relation kind of thing then will it be seen as offensive . Who do we go to seek clarification, we go to somebody who at least have the ability to determine the merits of the case, in that sense. I was just thinking this morning about this session and my engagement with you, look at what is going around us if we talk of Indian philosophical values, I was thinking what would I do because the word Indian or India it is under debate, who is India kind of thing, but then you see, we are talking about who is an idea today in 2050, the present is a product of many things that has happened in the past . Not only in this region or India but world-wide. For instance I have learned about three revolutions which I think even today manifest themselves , one is the French revolution, liberty, equality, fraternity....look at the October revolution which talked about proletarians and their rights , then you have industrial revolution, it talked about product, it talked about productivity, profitability. Any thing becomes useful only if it becomes profitable , in order to create value you have to put a fence around, you have a piece of land if you put a fence about it , it becomes more valuable kind of thing. So in that sense many things are happening which is affecting us. This whole question of which holy book or which holy books should we base ourselves on to define my Indian kind of thing, fortunately for me this is the holy book(Pointed towards the Constitution of India) because if you look at some of the debates at that point of time, many of the issues were debated upon and it has been put at an appropriate place in the Constitution, in the Preamble or in the Directive principle of State policies or in the Fundamental rights section, isn't it? So the founding figures of the Constitution were faced with this dilemma because if you remember, 1950, three years after the terrible partition, so they had to create under the Indian Constitution , the way it has been drafted, it takes into consideration may of the dilemmas , contradictions which prevail around us . And if you ask who are the priests, who are the clergy in relation to this book, I will say

those who are sitting before me here are the clergy...hahah....and who are the worshippers, I would say the justice seekers. Justice even if it is diluted, there is some justice available there, so from that angle for me it is something which needs to be hammered , that the holy book is this. Of course the Bible or the Quaran or the Geeta all are holey books but then there is something called private versus public. When I go to temple that is a place for worship, when I step I to street that is a public space , from that angle if feel if we talk about Indian philosophical values , it is for all of us also for me a teacher , when I write something I need to be fearless, when I point at injustice, lets say in in labour relation, where the head is held high, respect...knowledge is free, I have one more rider, one of the thing we have been fighting at the IIM Ahmedabad, he was talking about internally how we look at ourselves verses outside world look at us...another thing we believe, many of the faculty meners that we should provide world class education at affordable , middle class affordable rates, because there is increase of fees, EMI is so high today that many students are unable to pay and if you talk to banks they say a part of the NPA is coming from the student loan....where tireless trying...perfection ...because that is all we can do...I was talking to Dr. Sirvastava during the break he said there is scope for interpreting, what Justice Krishna Iyyer told as creative Jurisprudence. I don't know if you are aware of Devdutt vs Border Roads organization , its is an employment related case, have you heard about it sir? Come across? Supreme Court...he was an executive engineer and next promotion was to superintendent and then the final outcome should have been very good every year for a continuous 5 years, only then he is eligible for being included in the zone for consideration for next promotion. and that list goes to the department's promotion committee. To get into that zone Devdutt had to get very good every year for 5 continuous years. If there is a gap...he had to get 5 years continuous kind of thing .Now what happened is that 5 year he got and he was put into the zone of consideration list , but the departmental promotion committee met after 18 months and during the period there was one more review and in that he got a good and management did not communicate that to him and then later what happened that he was removed from the zone of consideration.

Participant: Good was considered as an adverse remark?

Jerome Joseph: Because five very goods were not there therefore he was removed and his junior was promoted. Then he went o single judge Guwahati High Court , rejected, went to the bench rejected, then he went to the Supreme Court , Justice Markende Katju and Justice Seema, there it was very interesting, management argued using case law saying that there is no need to communicate good feedback because it is good feedback and no negative feed back , the

Supreme Court ruled here that the nomenclature is not important here but adverse consequences for Devdutt is the criterion based on which it should be decided, It was also said that whether he get good , as long as you don't get very good you have to communicate, even if it is good. Even very good you communicate, so what I am trying to say is, here they interpreted on the principle of Natural Justice and then Article 14, 21 etc. and then came up with it and this has been a landmark judgment from point of view of what is central today for an organization from point of view of performance review of promotion , etc. So you see even today normally trade union of termination cases etc but here what is central to what is known today as Human Resource Management. And here is a very creative kind of Supreme Court Judgment. But if you go to any organization today are they aware of this case. No....So they are not informed about it...I don't know if I may be permitted to use the word innocence here ...hahah...the point is nobody knows the basic provisions of law and then there is this whole case laws where things are evolving, now that has to become part of the rapporteur of the HR managers decision making process.

Participant: Why would non communication of the rating good render the process of selection bad?

Jerome Joseph: Because it happened

Participant: Because the whole remark was not communicated, why did the Supreme Court decide that?

Jerome Joseph: They said because of the adverse consequences for the employee, he was removed

Participant: If it would have been communicated what would have happened?

Jerome Joseph: At least he could have challenged that. Supreme Court is saying at least then he would have an opportunity to represent his case. Single Judge rejected it, High Court rejected it and then he went to Supreme Court. But just look at the individual by the time the Supreme Court judgement came he was superannuated. The Court had to rule that it does not matter go back and they gave 3 months to go through the process. I am just giving an example that there is something happening in the judiciary related to human resource management but that part does not get filtered into HR decision making today. Even today on negative remark an individual should have chance to record his or her views . Supreme Court said it could be for many reasons, refusal to do something which I didn't want to do, things like that they

mentioned 4 -5 reasons. I am just giving an example of how the interpretative process should get fed into the decision making process but on the contrary the HRM or IR, this is not getting into the decision making process. Now let me just quickly talk about the...this is very interesting here when we talk about role and functional accountability, there are certain competencies of a judge in his or her role in the judiciary. Now number one is analytical ability to look at both the sides and then come up with the merits, be able to extract the merits, then integrity of course, the organized working, for instance there has been some studies on this, on per day basis or whatever many be the time frame, how many cases are being heard and disposed. How many cases are heard on a judge to judge kind of basis. Just to sort of...then gain the whole team which functions behind in order to be able to deliver justice and then communication, as I said earlier, as you move up in experience, you are the master craftsmen of the world.

Participant: You cannot judge on the number of cases disposed because it depends on the subject matter, if you are deciding murder case or second appeal or first appeal it takes weeks, it may go upto months.

Jerome Joseph: Therefore see it in totality. Sir this is a problem everywhere even in teaching, earlier they said teach excellent courses today number of days, number of minutes per sessions, these are the parameters on which we are assessed. So some of other this is part of the whole thing, I am just mentioning what is going on. Whether it is the most effective method that is a different matter. It depends on the case itself, how many adjournments, appeals and all.

Dr.Geeta: Statisticians are entering our doors.

Then if you look at the next level, contribution, transparency and the case are mentioned, it is something which has made a big difference to performance review, jurisprudence related to performance review. Then progressive orientation, that is continuously trying to sort of interpret law in intellectual ability, that is something all of us have I am sure because as I was mentioning, the daily basic there are so many subjects before you. Then mutuality orientation, this is what we were talking about finding the merit of a case there are several who are coming with their own arguments, then knowledge continuance, I don't know like academies of this kind but I am sure at individual level, each of you must be doing what is needed in order to keep updated. The other two is very important, the kind of pressure one works under, enthusiasm and ability to break things apart and then put it together in different permutation

and combination , then the final thing is decisive independence . in order to be able to fearlessly be able to address, then holistic perspective, to be able to see things that way. In the morning Dr. Rishi was also talking about the impact it can have, even if it does not come in the judgment one is aware of what the impact is about. Then strategic capability is also about , you see interpreting law in a futuristic kind of way in order to be able to interpret it as you foresee change and then ultimately of course creative ability , creative jurisprudence kind of thing. These are some of the competencies as far as function is concerned. One of the things people are talking about is assessment of judges, there are four level you can see, there is evolutionary process from efficiency to enabling to effectiveness to enhancing or contributing to law and creating new ways of looking at whatever is already there . So this is a possibility As far as developmental aspect is concerned. This is what I was talking about from a judicial institutional perspective, competency development, what are the kinds of avenues open, I don't know, vacations all of you take on annual basis? Everybody takes? Do you get sabbaticals, suppose you want to go and do a course in Howard law school, that you are not allowed? You can't do that...so only by reading or through training programmes...and then contribution assessment, earlier I talked about numbers, contribution even in terms of values, impact value, and cultural values within.

Dr. Geeta: But do you think there should be sabbaticals?

Participant: yes

Participant: yes

Dr. Geeta: One can go to Oxford and do one course and come.

Participants: We have this Academy, why one needs to go out.

Dr. Geeta: But this whole range of knowledge, even we have studied abroad.

Participant: But if you are exposed to litigation, you have the best in the bar feeding you with knowledge, you need to go somewhere to learn something more.

Dr. Geeta: The world is full of knowledge, it is like a drop on ocean whatever we have I think.

Participant: If a judge is called upon to deliver a judgment on medical negligence, at the end of the case judge is a doctor.

Dr. Geeta: Judge is a doctor?

Jerome Joseph: I think we should close with this, whatever we have been discussing linked to this poem,. Tagore's poem , these are the nine variables which are , in fact these comes out of the poem but these are in your Bangalore principles , fearlessness, independence, respect , knowledge, the way to interpret law , impartiality, integrity. The ability to discern, to be able to get to the key , this is something which is very important, to be able to somehow get to the key as we were discussing in break and then it is over, that discernment comes only because of the other variables, because you are detached , form the pressure, form various forces, infect in this poem Tagore is talking about the clear stream of reasons , then extricating reasons from various kind of possible pressures and that is what the whole concept of inskama karma , that is that you are engaged on a day to day basis in so many issues , so many problems, but then you are detached from the fruits of those, because looking at your role and I looked at all the documents which you have submitted , you are almost in a monastery kind of thing, like a monk who is totally disconnected from rest of the world, you cannot do so many thing, if you look at the list, so in that sense may be I will close by saying that the responsibility is very high on your shoulders because every citizen walking on streets is depending on you for justice . So thank you for giving me this opportunity Dr. Geeta...thank youif you are interested in it I will mail it to you

Participants Clapping

Participant: We understand at least how enlighten Tagore was.

Jerome Joseph: In fact there is another line which I will quote with your permission from Geetanjali.....Lord give me strength never to bend my knees before insolent mind.

Participant: The analysis is your own

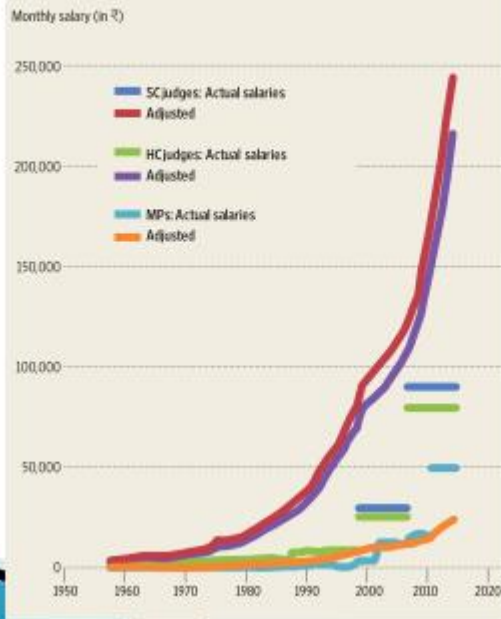
Jerome Joseph: Yes yes

Participant: We understand how enlighten Tagore was, just four or five lines and you were able to deliver a lecture of an hour

Jerome Joseph:.....hahhaha...there I apologize, one hour for a small poem, this is an accountability anthem in my mind for all of us, including us teachers

So thank you very much, the other thing which I started wit, I can show you, this is form the net an article, comparing salary, showed the following slide.

**Actual salaries vs what they should be earning
(adjusted for inflation vs 1957)**



Increases in judicial salaries since they were first fixed in 1950

(IN ₹ PER MONTH)

Year	Chief Justice of India	Supreme Court judges	Chief justices of high courts	High Court judges
1950	5,000	4,000	4,000	3,500
1986	10,000	9,000	9,000	8,500
1998	33,000	30,000	30,000	26,000
2006	100,000	90,000	90,000	80,000

(Note: The last increase took place in 2009 but with retrospective effect from 1 January 2006 and is therefore being shown here as 2006)

I think the Chief Justice has set up a committee, salary they are asking for some 4- 4 and half lakhs kind of think, I just wanted to show you this also , some comparison, an analysis says the salaries of justice is less that what it was in 1950., I mean whatever salaries they are getting in terms of purchasing power kind of thing, because accountability is workload pressure, number of cases before the courts etc., one also has to look at those things, but at the same time there is an marginalised there , the landless labour, the casual workers, the casual workers and many of us in academics also we sort of try to focus on that . Everyone takes care of those who are right on top therethank you very much

Dr. Geeta: We break for Lunch and come back for Lunch

SESSION 4

Dr. Geeta: Yes, As this is about Judicial Ethics and Accountability so only about court staff and district Judges who work under your jurisdictions, their transgressions and what kind of mechanisms are there and what your personal experiences have been.

Participant: Actually in Andhra Pradesh we are conducting workshop for judges in all districts on the same topic.

Dr. Geeta: On ethics and Accountability?

Participant: Ethics and Judgement writing, that is the topic.

Dr. Geeta: Judgement writing I would still say it is very technical

Participant: Not technical because new judges who are recruited they are not having any experience, but we are recruiting them.

Dr. Geeta: yes of course...they are new, ya they directly become, 23, 24, 25.

Participant: They do not know how to behave, they have no exposure to court proceedings. The problem is there despite the one year training that they are given.

Participant: A magistrate in Uttar Pradesh, he took cognizance against Mr. Mulayam Singh Yadav, on his statement that rape is very common and three person cannot commit rape he took cognizance suo moto and charged him for sedition.

Dr. Geeta: but under which section?

Participant: 153

Dr. Geeta: and Mulayam Singh under which section

Participant: He promoted rape by saying that three persons cannot commit rape

Dr. Geeta: So that is contempt power?

Participant: abated rape

Participant: he charged him for sedition?

Participant: Yes for sedition, may be it is a case for contempt, but where is sedition?

Participant: Sedition would be anti-national...he has expanded the definition of sedition

Participant: Judges who come these days do not have the experience at the bar, they do not have that maturity

Dr. Geeta: Recently also 11 judges were suspended in Allahabad.

Participant: 15 judges were sacked

Participant: I will tell you what happened because I was in charge of the judicial academy

They were completing training it was the last day, in evening they all went for a party to a restaurant. 15 people went. Some of them took liquor, others did not take. One of them after drinking said that girl is looking very good, other one said she belongs to my gotra and you should not comment about her, then he said he will do something to her, then the other one slapped him, quarrel took place.

Dr. Geeta: This was among those 15 themselves

Participant: Ya between two persons

Dr. Geeta: but within the 1 know? I thought they fought with somebody else.

Participant: the restaurant owner sent some letter to some higher authority, *dekhiye ye judiciary wale kya karte hain*, then he informed the high court and the matter was reported.

Participant: This was all recorded also?

Dr. Geeta: Ya TV footage

Participants: they were identified and 11 persons were sacked immediately and thereafter it came out that 15 persons had gone and those 4 persons are not in TV footage but all those were also sacked. They filled writ petition in the High Court, the writ petition is not coming up on the board. Some of them they got married, their marriage broke, some of them had got their car financed, now the bank is after them

Participant: Behaviour both inside court and outside is important, this is unbecoming of the office you hold.

Participant: They were on probation?

Participant: They had completed that day only.

Participant: In our High Court it is considered in a full court meeting, so special meeting was called for only those 15 persons not for the entire batch.

Participant: High Court was also hasty in their decision

Participant: There is a movie accused

Participant: Do you have any course on Judgement writing?

Dr. Geeta: Judgement writing? No

Participant: There is lot of things

Dr. Geeta: because civil judge junior division training has stopped now

Participant: Why have you stopped that training?

Dr. Geeta: Good question...it is because other courses have been increased

Participant: Other means?

Participant: Like this...hhahah

Participant: But the point it why have you stopped it?

Dr. Geeta: Not we...we have not done it, Supreme Court has done it, because they say what is the jurisdiction of State Judicial Academy, that NJA should not do, let SJA do what is their

function then you are again doing the same thing then what are you doing, because Justice Lodha and others raised lot of issues

Participant: State Judicial Academy...but you give a broader outlook, you know what is happening else where in the country

Dr. Geeta: To be very honest, I have been part of this civil judge junior division, when they come they tell such horror stories that we really do not know what to do.

Participant: What is that? What kind of horror stories?

Dr. Geeta: Horror stories is with respect to their career, their promotion, their elevation...like that, it more becomes ...see this is a place where we give people freedom, unlike, because I have been a director of State Judicial Academy for two years...Maharashtra Judicial Academy, I know that in SJA, a magistrate does not have freedom, that freedom he or she has at National Judicial Academy, everybody has. You can speak whatever you want to, but that is not in SJA, so they get that whole chance to vent things, but that is not the reason to be very honest. The reason is that judges have felt that SJAs are doing it and very well. Because they do that there for one year, extensive training, induction training. It is not that we have stopped everything, we have trainings for members of Juvenile Justice Board and others. We can start next year. Just for one year we took a halt from regional conferences

Participant: You have the infrastructure here, you should use it

Participant: But they are doing for the state judicial academy's director

Dr. geeta: yes we are doing for state judicial academy's director, just now, yesterday only they went, 5 days we gave like what kind of training, like how you talk to adults. Because after all magistrates are also adults, they are above 18. And then they have cleared the exam. No matter what they are, now they are judicial officers so how do you actually speak to them, how do you get idea across? Those kind of trainings we give.

Participant: You don't have any course on ADR

DR. Geeta: No, we had, we just concluded, 9342, 4days.

Participant: Who were the judges?

Dr. Geeta: PDJs, but it was more about asking PDJs about what they are doing in their districts, the functional part about it, more from that perspective rather than actually giving them 40 hrs

training which we don't do, there is some other agency for that. NALSA is one, Supreme Court one also, mediation conciliation committee

Participant: Regional Conference is also conducted for that, I attended one recently, it was for 4 states, Chhattisgarh, West Bengal

Participant: When did you go? Last week or?

Participant: last week

Dr. Geeta: Next year we will again start with regional conference, this year we stopped

Participant: Why?

Dr. Geeta: Because everyone is doing these days regional conferences, like just now you told me , juvenile justice committee is doing, e-committee is there, this mediation and conciliation committee is there, arear committee is there , so everyone, even state judicial academies are themselves arranging now regional conferences

Participant: Do they?

Dr. Geeta: yes , so then then all of us doing it , does not seem to be a good idea

Participant: The judiciary should have a holistic idea, what should they do and what they should not do.

Dr. Geeta: ya it is a good idea, regional conferenced is a good idea, it started from National Judicial Academy, prof. Mohan Gopal started that in 2006, before that the idea was itself unknown of regional conference, so he did that, and we did around 73 conferences, around 2015 may. So we thought let us take one year break. Because in every year in this month of May, we will meet and revise, the calendar meeting, Chief Justice and two senior most judges of Supreme Court. Ya that is one issue, we will take this issue because also there are misconceptions. Yesterday one SJA director was saying from Bihar that you have stopped Civil Judge Junior Division because they were giving you problem? I said no there was no problem, this is not correct...we have no issues. Apart from that what kind of transgressions? In Bihar what kind of transgressions?

Participant: What do you think?

Dr. Geeta: No I don't think anything..hahaha...I have been thinking like each one of us like for example we heard from Allahabad these kind of transgressions , it was just a , I would say

a brawl at restaurant, question is that we have to think about it these are larger big questions., ethical conduct or unethical conduct. I think unethical we all agree , the only thing we do not agree is the punishment, disproportionate or not.

Participant: In Bihar, we don't have any mechanism to access their that aspect, whether they are indulging in such kind of corrupt practices ,we receive complaints. It is very difficult. We have a vigilance department in High Court, that is in my view not effective...aaa...we talk of corruption in judiciary, we should admit that there is corruption, at that level it is more. Because we are not in a position to identify, we don't have any mechanism provided. I am inspecting judge of two districts, I receive complaints like *wo hamara faisala paisa lekar kar diye* , what can I do? Normally I throw them in the dustbin, complaint like *lawyer unke chamber me ja rha tha, hamne dekha hai , hamare khilaf ka lawyer, wo jarur faisla hamare khilaf karenge*, these types of complaints we receive which cannot be acted upon. What I suggest is we should have police station in the High Court

Dr. Geeta: Gujrat has

Participant: We should have police station in the High Court. The High Court should have parent control over that police station. But the question is how can the High Court monitor once the case is handed over to the police , investigation is the exclusive jurisdiction of the police, so once the matter is handed over it is handed over, where is the question of High Court or any other authority supervising the functioning the functioning of . It is very risky proposition, there is great danger to hand over these things to police.

Dr. Geeta: One judge came from Karnataka, he was the registrar vigilance and he was telling that against this judicial officer, there was this steno complaining of , he doing sexual harassment at work place . So he asked us question can I seize the laptop and phone of that judicial officer. It became a very difficult question for us to answer, can registrar vigilance do so, because seize and search powers are not given to registrar vigilance and if not given to them then who?

Participant: The question is we do not have any mechanism, we do not have any system, we must have a system.

Dr. Geeta: Sir, Gujrat has, how is that functioning? And there are rules also

Participant: I think the rules have been sent to you

Dr. Geeta: That we have shared with other Registrar Vigilance.

Participant: We work according to those rules. As far as individual complaints are concerned, I with my experiences, I am also inspecting judge for two districts. I find that three types of complaints come. One is anonymous, if it is with signature we ensure that it is accompanied by affidavit. And my experience is that out of 10 only one affidavit comes, duty which the judicial officer functions as a judge is complained in the manner my brother has indicated. Therefore unless and until, recently we had a case, which is pending so I will not comment on it, but we try to curb it, we have in-house mechanism.

Participant: In our High Court it was suggested, that we receive anonymous letter, we can proceed if we find some merit, if something is made out we can inquire about.

Participant: This is the general system that is followed. For example, if it is routed through Chief Justice, then it comes to a senior judge, then it comes to administrative judge. If as an administrative judge we find that the application requires merit. Then for primary reporting, if allegations are very serious the we ask the PDJ to send the report.

Participant: Then we are a bit informal in seeking the report. Suppose litigant has grievance, he can write letter to inspecting judge or Chief Justice.

Dr. Geeta: But how will the litigant know who is the Inspecting Judge

Participant: He will write, *Maniniye Nirikshi Judge Mahodey*, then the district, suppose I am at Gopalganj then Gopalganj, so to inspecting judge, then to Chief Justice, then to Chief Justice of India, the to the President, all right. So I see the communication. I do not have a secretariat to check that. We should have, every judge should have his secretariat. So what do I do is, I receive a complaint, I throw it in the dustbin or pass it to registrar.

Dr. Geeta: This is one suggestion that you are giving is the secretariat, in what science you are saying? The RG, this whole registry, isn't that a secretariat?

Participant: It is for Chief Justice. The documents which we receive, suppose as a inspecting judge we receive papers, we receive documents, files. A file will come to me, suppose I am member of a committee, I am member of so many committees in my High Court, I don't have a independent secretariat for myself . Personal Secretary is there.

Dr. Geeta: What should be included in that secretariat? If you are proposing a secretariat what should be there in it?

Participant: One man to see, what the letters documents which come into my office are.

Dr. Geeta: Office Assistants

Participant: We have PA or PS

Dr. Geeta: Every judge has PA and PS right?

Participant: No we don't have PA we have PS. In Gujrat we have PS, two PS.

Participant: they are gazetted officers.

Participant: Allahabad high court has its own mechanism for dealing with complaints. But we are not doing anything for combating corruption. We receive complaints, then it goes to the administrative judge of the district. Normally if it is not accompanied by affidavit, they send it to dustbin. Sometime there is a material in the complaint then it is marked to the Chief Justice. Then it is sent to committee of two judges who will examine the complaint again. If two judges say that there is some substance in the complaint then it will go to the administrative committee, then it will be sent to the vigilance committee, the vigilance report will be sent to the administrative committee which will decide whether to proceed departmentally or to drop.

Participant: But in Karnataka, the office of Lokayukta is having a separate investigating agency.

Participant: As far as Kerala is concerned it is not high, corruption level is not that high .When we get a complaint and once it satisfies the procedural requirements, we see that first, and send it to administrative or portfolio judge. Once in the allegation there is something very serious then it is placed before the Chief Justice for opinion. Based on the report sent by the judge, it will come to the administrative committee and the portfolio judge. We have a registrar for subordinate court, so that way it is done. Corruption level is low as compared to other states.

Participant: In Karnataka there is six registrars , and one registrar in charge of vigilance, if any complaint is received , having some substance , we ask the registrar to get the report from the PDJ and on the basis of report we take action, if no substance is there we close the matter there only. Then after report from PDJ, it is sent to the administrative judge, if substance is found, we ask the vigilance to take action. Every year 3-4 officer is sacked. Recently one day before retirement of an officer, the vigilance found him guilty and he was dismissed.

Dr. Geeta: Even if you see the district judiciary there is a hierarchical tier, because there is a magistrate, there is ADJ, then DJ, then PDJ, so amongst four, whom do you find more

transgressional . In your opinion, you have been in this field for so many years, whom do you find most transgressional

Participant: Civil judge junior division.

Participant: We cannot specifically say, complaints come from all sections...from all sections it comes

Participant: Sometime those who lost the case, they will file a complaint. Recently there was a incident, there was a lady, Chief Judicial Magistrate, what she did was, she was having a conversation with the investigating officer and an accused in a case before her. Lawyer caught her and litigant engaged in a conversation. Same evening registrar's vigilance report came and next day administrative committee gave suspension order and there after removal.

Participant: Recently one district judge complaint against a particular additional district judge that he is regularly indulging in such corrupt practice, but he was not able to get any concrete evidence. He transferred his staff, his PSO transferred because he was getting indication that PSO is working in it but nothing concrete came out.

Dr. Geeta: There is another...yes what you are saying it gives interesting dimension in the sense, for example there may be somebody who does not like his or her junior because he did not pay respect, you know there is so much complication in the relationship or you did not pay me respect when I was there, so when we have like...so there is lot of ...I would say human error also and jealousy and our own nature and there are so many insecurities.

Participant: We should have an effective mechanism to identify and then proceed.

Dr. Geeta: But Registrar vigilance told that they feel like a...what they told me is that they feel very threatened, today they are asked to check on their own peers, tomorrow they are transferred, and then what happens is a whole new dimension is there, some time we know and we don't take action because, next day I have to sit and this person may become, so there are incidents like those also.

Participant: There was an incident in Kerala, there was a registrar vigilance who conducted an enquiry against a judicial officer. Ultimately the judicial officer was removed. This registrar was elevated to the High Court. Immediately after his retirement his daughter's wedding was there. This man what he did was he came to the venue of the marriage and started distributing leaflets against him.

Dr. Geeta: Then maybe we can think of coming out with some strong internal mechanism to control under the High Court itself. That person if you choose from district judiciary and if he has to go back then these are the problems that they face. Judging their own like colleagues.

Participant: Registrar Vigilance, people working as registrar are senior.

Participant: But again it is Chief Justice's prerogative, he can choose registrar not going by seniority but efficiency.

Dr. Geeta: And comfort level

Participant: In my view registrar should not be chosen from district level judicial officers, there should be a separate administrative cadre.

Dr. Geeta: It is time to think about these issues as well for the system.

Participant: because mis utilizing the efficiency of judicial officer for administrative work, that is not correct. And actually registrars who are seniors they are going to be our brothers subsequently. And that will be embracing for them,

Participant: Other difficulty what is there if separate branch is there, then they will not be knowing our judicial work, what are the difficulties included. For most of the judge, lawyers make up this, they say that judges ask for money.

Participant: Any way registrar will not have an independent team, they will work under the direction of administrative judge or the chief justice, he will not act independently.

Participant: That is the case, even with police department it is the same thing, in all departments same thing.

Participant: We should think of new ways of maintaining this judicial process

Participants: Officers they can come on deputation from different services.

Dr. Geeta: Because nowadays, I have seen...we had an conference on Commercial Law and I was thinking , certain IPS officers who have retired, and John price Water House, Ernest and Young have taken them for due diligence, so that rivals are not taking out your data and all. So we can also hire, I mean not hire but at least have them on deputation.

Participant: Retired IAS officers, in Gujrat there are many corporate houses, after they retire they join a corporate house.

Dr Geeta: Even the UN agencies they are also hiring for due diligence IPS officers, so I was thinking Registrar Vigilance could be one section where may be senior IPS officer can come for one or two years.

Participants: No No

Dr.Geeta: You don't think so?

Participant: No No , because again the problem of interaction., and the other thing is they do not know the problems of a judicial officer. In conducting an inquiry the officer should know what are the difficulties, apart from the rules , unless an until he is a judicial officer he will not know, IAS officer, IPS officer will not know.

Dr. Geeta: But for inquiry and investigation, for example if somebody alleges

Participant: No No that also , complaints and everything, only judicial officer can deal with it not others .

Participant: their attitude is different. They are from different department .

Participant: That can be done , only for the purpose of collecting information

Dr. Geeta: For limited purpose, truthfulness of a complaint

Participant: That has to be case wise.

Dr. Geeta: Because CVC borrows them, CAG borrows them

Participant: It can be done for limited purpose.

Participant: No , it is better get the services of retired High Court Judges

Dr. Geeta: You will be intervening a person and you will be having him just on deputation, like you have accountants. I think the account service is also on deputation in judiciary

Participant: No

Dr. Geeta: No? You have your own accountants.

Participants: In Gujrat we have a system, there are cooperative societies, there is a panel of auditors, panel of investigators can be there, retired IPS officers, it can be on case to case basis. In In legal department of our state there are deputy secretaries, joint secretaries from two sources, one from judiciary, they go on deputation, one is *sachivaley* service, if you give one

matter for opinion, the opinion will differ though the designation is same, because the attitude is different.

Dr. Geeta: But I think the other way, look at the labour department, and labour judiciary. I give you another picture look at CAT tribunals, look at income tax tribunals, look at other tribunals all of them are borrowing judges, whether on retirement or before retirement. They are being intelligent, they are making use of judiciary.

Participant: Because of their functions.

Participants: they need the presence of judicial member, otherwise it will be difficult for them

Dr. Geeta: So similarly we also need not for judicial work. Only for investigation. For collecting information.

Participant: because they are accustomed to a particular system of investigation, only for limited purpose

Dr. Geeta: ya ya for a limited purpose only, like they take our help for limited purpose. may be judiciary can open up and take them on deputation, take best thing.

Participant: A panel of retired police officers to investigate a case. That can be done.

Dr. Geeta: And case by case basis, not a permanent mechanism but case by case. Like this officer from Karnataka was saying, how should I proceed? Should I take mobile phone? Then where should I send the mobile phone? I mean these are the issues, so High Court along with Registrar Vigilances, attached to do all this to do investigation part, then it will be helpful.

Participant: Confidentiality might be an issue. Official mobile phone, of course that can be seized, official computer but if he has his own mobile phone how can you take that.

Participant: No why do he have to seize the mobile phone

Dr. Geeta: Because the other lady was alleging that through mobile phone he has been sending messages to me.

Participant: Why will he take the mobile phone itself, he may be talking to others also?

Participant: NIA has as adviser one retired high court judge, one retired IAS officers, for preparing the charge sheet.

Dr. Geeta: Because the systems are becoming,. Look the CAG, CVC, the composition is becoming.

Participant: W cannot permit them.

Dr. Geeta: Every system has something, we can think about it, may be in future we can.

Participant: In broader discussion this can be decided

Dr. Geeta: This man that price water house has appointed, he was a joint director of CBI, he retired as joint director of CBI and there after he was employed.

Participant: let there be an agency under the High Court, no problem

Dr. Geeta: the more you take work on yourself, more the problem

Participant: yes that is another aspect

Participant: now itself, lot of administrative work is there for judges of all High Court

Dr. Geeta: Ya, I mean infrastructure, legal aid, ADR, recruitment, mediation and training also, State judicial Academies are also the responsibilities of High Courts, you can keep on increasing work but you only have to do that you have to remember that. Or you can think about not outsourcing but may be creating a separate department. They will do everything and file will come to you for final checking and signing.

Dr. Geeta: life is so difficult, it is not easy, life of a judge.

Participant: there is need for philosophical intervention.

Dr. Geeta: More than philosophical, the need is I think administrative, because court managers were introduced but the project failed.

Participant: No No, they are working, it is continuing.

Dr. Geeta: Only in some states.

Participant: In Bihar the appointment has not yet been made.

Dr. Geeta: Gujrat, Andhra Pradesh and Karnataka.

Participant: In Bihar I think the remunerations are low

Participant: No No, 60 thousand they are paying

Participant: 70-78 they are paying.

Participant: They have no work, only they ar maintain the computerization and the other things

Dr. Geeta: Nobody is taking their help.

Participant: Whenever the work shop is being conducted their help is taken.

Participant: That system officers?

Dr. Geeta: For example computerization whole work can be given to outsiders rather than judges being engaged in that is also one question.

Participant: variety of job makes us different.

Participant: There should be a registrar for automation.

Dr. Geeta: ya Madhya Pradesh has and he is not judicial officer, he is a IT consultant.

Participant: ya in Gujrat also

Dr. Geeta: He is a proper IT person, still in some high courts, judicial officers are engaged in automation or registry work, Registrar IT they are called.

Participant: CPC

Dr. Geeta: Ya CPC, one judicial officer is given that work, CPC

Participant: Our senior civil judge is working as CPC

Participant: We have district judge for registrar IT. Now, since 2010, we have registrar automation, he is not a judicial officer. He has been assigned to complete the computerization in whole state.

Dr. Geeta: Madhya Pradesh has appointed two, from NIC and other from TCS.

Participant: NIC is a failure

Dr. Geeta: No it started as a good project but now it ended

Participant: Outdated technology

Participant: One thing madam, we talk about the aloofness of the judicial officer. They are posted in remote areas, they do not have anything for their entertainment, apart from their accommodation and good environment, they should have some place where they can play, they

can watch movie. Young boys are there so either they would be going to markets or cinema halls or we should have something at least at the district level. And the other thing that I would be suggesting, we should have cooperative store type, small stores, in every district for judicial officers and staff of the court like the army.

Dr. Geeta: But army has a big budget also. Canteen and all that. The army's budget is too big

Participant: This is very important, if it is not maintained, if you do not maintain aloofness you fail to maintain the integrity of judicial officers.

Participant: You have to go to some doctor, some cinema hall, some tailor and everybody has some case pending, so where do we go. Everybody has a case pending in the district court, these doctors, cinema hall, everyone.

Dr. Geeta: Aloofness has another aspect. It will make you very difficult person altogether, it will change your personality. Will it be good for the system to change your personality?

Participant: yes we have to, we have changed.

Dr. Geeta: but how will you do for the society if you do not know the society. Army can be aloof from the society.

Participant: When we go to legal service authority, we have to share dais with *the Pradhan lokayukta*, that Justice Raveendran is coming, he has very strong views about it.

Participant: I tell you in my sons marriage there was a caterer, last month his bail application came to me. So everybody is involved in some case or the other, if not today it will come to tomorrow. We have to go to doctor, we have to go to hospital.

Participant: I do not say we should be secluded.

Dr. Geeta: If we have to go to tailor, suppose I am a judge and I have to go to a tailor , I will give what price is decided, I don't take favor that time , I don't say o you strict this for 500 for everybody, I am a judge you better do that for 200 for me.

Participant: If he finds you are a judge he will quote only 100 rupees for 200 rupees.

Participant: We have to move in the society. We have to be in the main stream.

Participant: I will stress on two things, first there should be some infrastructure for their recreation and the other things is if we can have on the patter of what army persons are having, for them stores.

Dr. Geeta: But in Tamil Nadu and some other states, some judicial officers do not have houses , they have to live on rent.

Participant: In Uttar Pradesh also

Participant: In Bihar also

Dr. Geeta: Now there lies a big problem, the rent one

Participant: yes the landlord tenant relation.

Dr. Geeta: One interesting thing one person told me in civil judge junior division, now I will tell you, story was this civil judge junior division he was newly posted at this place , then district judge said you become my tenant and he said ok, then district judge's son came as a litigant before him on some accident and he did not favour him. Then he had to pay the price, the next day, bonafide requirement, I really need this house because my daughter in law is coming from abroad, he had to vacate the house. He said in night 10:30 I had to take my luggage and move to some lodge. You were saying recreation which is much higher. I am only saying if they all have houses.

Participant: Most of the officers in Bihar are having accommodation except few because new subdivisonal courts have come up there the problem of houses is there, otherwise in most of the cases the judicial officers have accommodation.

Dr. Geeta: This was told to me by an officer from Tamil Nadu. Anybody from Tamil Nadu?

Participant: Another thing is that no court is having any security

Dr. Geeta: that is why in Delhi, a litigant went to a *mall khana* and took away his file very recently.

Participant: there is no sufficient security for courts, we are just running the system like that.

Dr. Geeta: So you mean to say ethics has lot of relationship with infrastructure?

Participant: yes yes several things

Participant: How will we be fearless?

Dr. Geeta: Then there can be conclusion that infrastructure can stand as an impediment in achieving fully ethical conduct

Participant: Whenever we go for inspection we stay in guest house or circuit house which is under the control of district collector.

Participant: Aloofness is a quality. While accessing the performance of judicial officer, we take into account how much aloofness he has been able to maintain, so therefore in that context I was saying to what extent it is possible. Otherwise yes we have to live in the society. We have to go to doctor, we have to go to tailor, and we have to go to the cinema hall also. That's a different thing, the extent to which it is possible, we can. First thing that I ask is whether the judicial officers go to play in the evening. They must have something, after having done the judicial work they must go. They must have some space for recreation, whether in the evening they have some space to sit and enjoy with family members. This is one aspect.

Participant: You are visualizing the situation where district court are located, but where subordinate courts are there, there will be one or two judicial officers. How to play ...hahah...they have to stay alone.

Participant: No No something small

Dr. Geeta: proper infrastructure is not provided, one can say, we can conclude with that . Proper infrastructure is needed to maintain that aloofness which is required and also registry vigilance is another area as how to strengthen it. You all had ideas which we can jot down and deal with it. With this I think I give you that you should also have some time to play . So there is swimming pool, there is billiard, we are still in the process of upgrading our 12 year old treadmill.

Participant: Why don't we have broad band down in the living area?

Dr. Geeta: NIC is providing. Actually we are trying to shift from NIC, trying to take contract from them and give to another company Reltech, which belongs to Indian railways so that will take time. NIC provides free Reltech will charge.

Participant: Otherwise the telephonic service provider can provide

Dr. Geeta: telephonic service provider is like, full of BSNL here *is Bhai Sahab Nhi Lagta*

Participants: Hehhee

Dr. Geeta: really the moment I try to call anybody from BSNL in two minutes there is call drop, I don't know you have experienced or not?

Participant: yes everybody is suffering

Participant: Our High Court depends on Vodafone

Dr. Geeta: BSNL is too bad, Vodafone is still better atleast over here. I don't know other places, but at least in Bhopal.

Participant: BSNL is *bahar se nhi lagta*

Dr. Geeta: *Bhai Sahab Nhi Lagta*

Participant: In our state it is *bhai sahib nhi lagega*

Dr. Geeta: It never works actually. Office provides that call group facility from BSNL but we hardly are able to use that phone. We all have our private phones. Nowadays you have to keep two phones, earlier one phone was sufficient. Now you have to keep two phones, if this does not work this will. So services are actually...I don't know coming down, maybe we should not say that.

Participant: that case between superior officer and lady officer, these phones have blocking facility.

Dr. Geeta: No, the case was like that

Participant generally in offices people generate huge piles of paper or text , so blocking is there. So why should you try to take away somebody's phone?

Dr. Geeta: No No, not we, this judicial officer, who was registrar vigilance, he asked us this question. The lady she alleged that through that phone he sends me messages.

Participant: So she could have blocked that number?

Dr. Geeta: My God you are still thinking about that issue. I was like I have forgotten.

Participant: I was sleeping with my eyes open ...hahahha

Participant: After 3 o'clock we can learn from him, how to sleep with our eyes open.

Participant: Especially afternoon sessions, after lunch.

Dr. Geeta: But may be why this cannot be done that you sit from morning 9 and finish by 2, after that you do administrative work

Participant: No No

Participant: Income tax appellate tribunal is doing the same thing. Dictation work they do after lunch , before lunch they hear the cases

Participant: We cannot do it.

Participant: Income tax cases my experience is, the best judgements were delivered mostly by commissioners. The assessment officers they are little ideological, they are fresh new. They do lot of research and they may go wrong. The commissioner through his experience gives a good judgement. But really messing it up is the tribunal. They raise a wonderful question of law which does not address the issue.

Participant: Sometime the facts will be different and the question of law wil be unconnected to that.

Dr. Geeta: I think we will meet tomorrow, same time 9 o'clock

Participant: We are not meeting in evening?

Dr. Geeta: So sorry, forgot to tell you, we are meeting, not meeting as such, there is a movie called Lincoln, if you all don't have problem, then, it is a good movie, all Supreme Court judges have appreciated . If you want to see we can put that in auditorium, followed by dinner. If you are upto that idea to see Lincoln.

Participant: is it about that Lincoln.

Dr. Geeta: ya that Lincoln only, Abraham Lincoln

Participant: that argument is attributed to Lincoln, it is not that America is rich that it has good roads, it is that America has good road, so it is rich....something like that.

Dr. Geeta: In Lincolns time I don't think this would be. It was a different time, different era altogether.

Participant: It is a quote said by some American President about their roads.

Dr. Geeta: Singapore they have good roads.

Participant: It is possible, it has small area

Participant: I read in the newspaper, the Singapore's president, they have geared up to welcome our Prime Minister, Indians on Foreign passports, who are working in Singapore, foreign passport or visa to Singapore are welcome to attend that programme. But those who

have Singapore passport or are working in Singapore if they intend to visit, they must make their intention known. And the writing is clear between the lines, that we don't want you to go there to listen to the Indian Prime Minister because he is reaching out to the diaspora and the Singapore government is the first government who has reacted to our Prime Minister's foreign policy....hahhaa

Dr. Geeta: So movie, at 7 o'clock? It is a 90 minute movie, so up to 8:30 the movie will finish and dinner is there from 7-10.

SESSION 5

Justice Kurian Joesph: Very Good Morning to all of you, 9 judges, very interesting programme, all of us have sat in divisional and full benches, to be in a quorum where we have only very few it helps to have a healthier discussion and better interaction this is what I have always felt. And me why I come to NJA is rest of the time in court we speak, here if I come the participant will speak and I will listen, so this has always been my experience. and to listen to the participant what are the topics we can take for discussion as well and we have a very contemporaneously relevant topic for discussion as a judge on ethics. What's the meaning of ethics I just want to ask....I just want to ask, it is not a question, just interacting. What is ethics? I asked for a dictionary to refresh myself, forget about the dictionary meaning, what do we understand by ethics?

Participant: Proper conduct

Justice Kurian Joseph: Proper conduct

Participant: Touching on the morals of the society

Justice Kurian Joseph: Proper conduct touching on the morals of the society

Participant: It refers to the profession we belong to, when ever we talk of ethics it refers to your conduct with reference to the profession which you belong to. So the standard of ethics may be different for different profession.

Justice Kurian Joseph: So it all depends on what fields we are in what functions we discharge, yes..what office we hold, what duties we discharge. so demands on ethical would vary depending upon the functional aspect of a person, or the office the person holds, is it right? what is generally ethics then.

Participant: There are certain things which are very fundamental, like integrity, integrity is something which has to be part of any ethical conduct, say honesty.

Justice Kurian Joseph: Let me ask you if you don't mind, what is integrity?

Participant: Integrity in my opinion would be....

Justice Kurian Joseph: This is just a discussion, I am not asking questions

Participants: Yes yes

Justice Kurian Joseph: I may be bluntly wrong, you have every right to interact

Participant: Integrity would be again I would be referring to conduct of the judges un influenced

Justice Kurian Joseph: I am asking integrity generally. We all write ACR so there is a column for integrity.

Participants: Standard of Conduct

Justice Kurian Joseph: Standard of Conduct of a person

Participant: Integrity is quiet internal thing

Justice Kurian Joseph: It is quiet subjective

Participant: It is subjective. In fact if you question your conscience, what is....

Justice Kurian Joseph: All of us have this study material with us, I would like to refer to this Bangalore principle after this, opening remarks. I wrote a judgement on integrity of judicial officers while I was in Himanchal. I just tried to define what integrity is, I was looking for it.

(Reading from his judgement K.P Singh vs High Court of H.P and Ors 2011(3)KLJ11)

“Integrity according to Oxford dictionary is moral uprightness; honesty. It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short it depicts sterling character with firm adherence to a code of moral values. 'Judiciary is an integrity institution'. Therefore, Judicial Officers should possess the sterling quality of integrity.”

He was judicial officer but what he did was he went to Thailand with his girl friend while he was a judicial officer. We are not dealing with morality of his conduct. But what he did was he tried to conduct an evidence that she did not travel with him, that was the issue. And he was dismissed from service on the issue of integrity there after it was challenged and there was one judgement of the Supreme Court, probably it would be given in this compilation. So I was referring to this oxford dictionary, it defines actually ethics as moral principles that control or influence a person's behaviour, just as what we said it controls the behavioural pattern of people. And integrity this dictionary gives beautiful definition, the quality of being honest and having strong moral principles. So what is moral again, what do you mean by morality. Forget about the dictionary, it is just to help us. What is morality?

Participant: Morality is a code of conduct.

Justice Kurian Joseph: Forget about judicial officers, we will come to judicial officers later, I am just asking generally what is morality, because I thought If we essentially understand the meaning of these three things, integrity, ethics morality . All these are inter connected also, so start from morality goes to integrity and it stems up to ethics. So this is the foundation I thought we should lie on analysing these principles. So what is morality?

Participant: Code of conscience

Justice Kurian Joseph: It is a code of conscience

Participant: Sense of what is right

Justice Kurian Joseph: Sense of what is right

Participant: It is matter of virtues

Justice Kurian Joseph: hmm virtues

Participants: what society accepts as moral?

Justice Kurian Joseph: What is norm for society to understand something, for example gay, gay marriage? What do you means by society's acceptances? I am just looking at the definition of conscience, it has a very beautiful meaning, the part of your mind that tells you that your actions are right or wrong. Very lucid, very clear. So it is part of our mind and mind is part of our body. So that part of mind that tells you that our actions are right or wrong. Whether it is

accepted by you or not that is a different thing but your conscience will keep on telling you right or wrong, whether you're right or wrong. So that part of the structure of the ours which tells whether our actions are right or wrong, this is conscience. So we try to analyse morality by saying that, the person who is governed by conscience doing right things. Morality is again defined as pattern of behaviour of right or wrong, right or wrong both. I will give you that definition which dictionary has given, the principles of right or wrong behaviour. So right and wrong is dictated by the conscience, this is the foundation which I would like to lay as a preliminary to what we are going to discuss now. That is right and wrong is in the realm of conscience and if you are morally good person, right person with morals that means person who listens to the conscience and takes the right decision. Conscience tells you this is right, if you are morally good person, right person with right morals, that means you listen to the morals and take the right decision. Conscience tells you something is right and if you take the right path you are a person with right morals, if you take something wrong you are person with bad morals or wrong morals and if you are person of right morals you are called persons with integrity. Man of integrity and that way if you are person with integrity you may be person with sound ethical principles. Now we have Prashant Bhushan. It was not his problem, it was a real, coming late from Delhi.

Prashant Bhushan: I reached here on time, I just took 20 minutes here.

Justice Kurian Joseph: And justice Raveendran will also be joining us shortly. We were just analysing what something is called ethics. Then ethics necessarily has something to do with integrity, so what is integrity, then integrity has something to do with morality then what is morality. Then morality has something to do with conscience so what is conscience. We just laid a foundation. Conscience is part of your mind that tells you that your actions are right or wrong, and the person who listens to the morals and take the right path is morally sound. If person is morally sound then his integrity is good, I just refer to the various shades of it, I dealt with a case on integrity of a judicial officer in Himanchal, I just looked into various shades of integrity. And now we come to the exclusive area of the judges now, what is judicial ethics, our topic is judicial ethics. Is that ethics of common man, different from ethics of judicial officers? Pragna just give me the bar counsel of India rules.

Participant: Our outside behaviour also has to be...apart from the fact that we should be impartial from within, we should look impartial.

Justice Kurian Joseph: So there is a difference between a common man and a judicial officer? Why do people expect a judicial officer to have an ideal conduct, both inside and outside, why? Common man does not expect it from a politician, common man may not expect it from a lawyer, common man may not expect it even from a teacher? What it has to do with your private conduct? As brother said if you only have to decide what is right and wrong....so to decide what is right and wrong by resolving a dispute you only need to apply the law. And by applying the law properly and correctly into the facts of a case you take a decision and the decision would be absolutely, perfectly right. Why do you want your conduct to be good in the dispute resolution process?

Participant: In the process of decision making we have to keep the view that we will decide it impartially.

Justice Kurian Joseph: why?

Participant: Suppose I interact with him regularly and I have to take decision in which he is party and I will be taking absolutely correct decision, totally impartial but they may shake the confidence of people or litigant.

Justice Kurian Joseph: I will come back to it that falls into the realm of bias I am just asking. I may be person of loose morals, a judge with loose morals, then what it has to do with judicial conduct, because he decides a case after listening to both sides, he takes a decision. So job of a persona judge is to settle the issue by applying law and to interpret law and apply it in the given facts. What that has to do with the private moral conduct of a judge, a man of loose morals.

Prashant Bhushan: A morally weak persons may be easily liable to be amenable to flagerations.

Participant: yes yes ...accessible also.

Participant: If the society does not know my moral conduct, that is too private to be known tpo public. But I myself k now my moral standards, so if I have not been able to maintain my moral standards in my personal life then it is very difficult that I will be able to maintain such standards as judge.

Participant: Now only appearance in h society while acting a s a judge, but also in your private society, because as Mr. Bhushan said that means that you are venerable to being influenced by other things. You have not been able to maintain your own standards.

Justice Kurian Joseph: I propose to Mr. Prashant Bhushan that this is why I started analysing, what is morality, what is conscience, what is integrity, what is ethics and in everything we found right and wrong and right and wrong pertains to the actual conduct of a person so if you have to be a person of absolute rectitude you should be morally clean, because you are a person who lies down standards of right and wrong in a given case.

Prashant Bhushan: but conscience may not give you the correct answer because I mean I am giving an example, for example, Arvind Kejriwal always used to tell me that look *meri neeyat to saaf hai*, my objectives are pure, I used to tell him that look it is not enough that your objectives are pure, it is always necessary that your means are correct. So he sued to say look *politics me to saam daam dund bhed sab use hota hai*. You can use any means in politics, so everybody thinks that whatever he is doing he is doing for the good of the country, or he is doing for larger good etc. And human mind is so weak that it is easy to convince yourself of the righteousness of whatever you are doing or whatever you want to do, it is very easy. Therefore conscience by itself may not be an adequate guide to right conduct. Because in Arvind Kejriwal's view his conscience is pure, his conscience is clean because he feels that he is doing everything for the good of the people. So therefore the point that I am making here is that conscience is of course one guide, ut in order to decide whether conduct is ethical or not, one would have to lay down some further standards. For example this whole issue of, only end justifies the means. So conscience in a way can be loosely seen as your feeling that your end is clean .

Justice Kurian Joseph: But will conscience permit you as far as the means are also concerned

Prashant Bhushan: I have seen that it does, for example I am sure that all that despots and dictators etc felt that they are for a right cause . They are doing this to save the country. Emergency was imposed to save the country. Muslims were killed to save the country, so therefore everybody convinces himself that it is conscience.

Participant: No we supres the conscience, it always advices rightly but we suppress it .

Prashant Bhushan: May not even be suppression of conscience, you see it depends for them that's their conscience. They feel that I am working towards a righteous end and any means is alright so long as it achieves that righteous end. So that's why the means also

Justice Raveendran: When respected chair is there how can I sit here....no no..never never...

Justice Kurian Joseph: You cannot displace me so you have to sit here

Justice Raveendran: Temporarily Ok

Justice Kurian Joseph: We were just discussing about what is ethics morality, integrity, conscience so Prashant was saying that dictators conscience what may be a fact to decide on the integrity or ethical conduct, may not be enough, that is one fact. What is this conscience then? We always have this guiding factor, good conscience, what is good conscience?

Justice Raveendran: I see in judging one should have all three together, then it will be judicial ethics. Sometime as a judge it might happen that I as a judge, my conscience may say that in a given matter between a father or a son or senior citizen, but if the law provides that a particular provision is there then even my conscience may say that I have to take side of the father, I have to decide in favour of the son. Because the law provides for it, so judicial ethics in my opinion requires all the three together.

Justice Kurian Joseph: Sir this started actually from a question, why do a people accept a different standard of conscience or ethics, these are ethics not conscience, a different standard of ethics from judicial officer. We do not accept this standard from politicians, we do not accept this standard from others but people not only accept but demand. I simply said a question that a man of loose morals we do not appoint him a judge, why? This was the question, we were pondering upon.

Justice Raveendran: If a person becomes a religious leader, if he becomes a sanyasi, he becomes a guru, he becomes a father, a Christian father,

Justice Kurian Joseph: Priest

Justice Raveendra: Priest, we do not accept him to rape, isn't it. If you become a judge you don't expect him to be corrupt or partial, this partiality is bias and prejudice, therefore certain things are...see it is a condition precedent, like you go to, join a degree course, you should have passed a secondary or whatever it is. Therefore if you want to be a judge, the non negotiable basic factor is your integrity and honesty. In fact I always say, when I go to, when

I was ..not now, now no body calls me, as a Supreme Court judge I was invited, somebody would say about some judge, even about me, he is a very honest judge. I felt like going and slapping them, what is this honesty, a judge pre supposes, honesty is not a quality to be appreciated, you are judge in a judge, it is a fundamental requirement. so when you become a judge , people expect honesty, expect impartiality, except a kind pf aloofness, expect also certain amount of humility, these are the basic qualities that make a judge. If you don't have them, you will not be a good judge, because I was to Prashant while coming in the car, even one bad element, in a High Court, if forty or fifty judges are there even one bad element, it may be corruption, it may be womanizing, it may be being rude, whatever, arrogance I do not want to say what bad qualities, the entire public and the media have the tendency to brush the entire High Court with those qualities, same is with the Supreme Court. But Please remember, the Higher you move up, the higher probity is required and accepted, if you are trial court judge, I would start from a ...if you are just a member of thye public, certain amount of probity is expected , certain amount of honesty is expected, if you are a government servant, something more is expected, and if you choose to be a judge much more is expected and if you are a judge of the trial court yes, if you are an experienced individual, district judge more, if you are High Court judge much more and if you are a Supreme Court Judge it is just not permitted, nothing it is not just about honesty.

Justice Kurian Joseph: It becomes unthinkable

Justice Raveendran: It becomes unthinkable. This should be the test. Whatever may be our back ground? See another very interesting discussion is that what about people with particular political religious convictions becoming judges, it is dangerous but a t the same time, in a judge, once h takes of oath of office, he is supposed to keep his all personal preferences outside. After court hours he is entitled to his religion, he is entitled to his case, he is entitled to his other beliefs, once you are there in the seat you're supposed to be away. That is the reputation you should get , that whatever may be your religion, whatever may be your caste, whatever ,may be your community , yo see upper caste, lower caste, OBC, all kinds of things have no role to play, no place in the court . I will be say if you are a Brahmin judge, you are not supposed to treat , non brahims lesser. Let us say if you are a schedule caste judge .You are not supposed to harass upper class lawyers and litigants, no...or you belong to as particular community, majority community, you are not suppose top persecute the minority community. These are all assumed, it is unfortunate that we have reached a stage when people who become judges, we have to consider these, discuss these think about these days. In good old days, these were not

discussed because, these were assumed, but unfortunately society is changing fast and we have to discuss. When I was not here what my beloved brother Kurian says or what Prashant says sometime may hurt you, it is not whatever we say, we discuss is not meant for individual, is meant for a particular judge, it is meant for future of judiciary, the credibility of judiciary, the face of the judiciary, and if for that purpose if we say, please do this or don't do that, it is not intended to be advice to you because you can carry it back, to your states, you will discuss it with your brother judge. I am sure if not with the brother judges, because many a time if you tell your brother judge, he may think that what does this fellow think....better pass it on to subordinate judiciary, because they will tomorrow become the High Court judges. I always say that the subordinate judiciary is the real face of the judiciary because very few people come to the Supreme Court, of course little more come to High Court but most of the people their contact with the courts is the magistrates, the civil judges, therefore you carry it, you tell them. I am sure that what the speakers are going to say is very relevant in that sense, but please don't feel offended, I know Prashant can be very very attackive, he will attack in court, I am afraid outside court what he will do. And brother Kurian can be very over spoken, he does not keep something in and say something out, so let us have an open discussion. This is a closed door session, there is no media here, no member of the bar, let us have brain storming, how to improve the ethical standards, I think that is for what we are here. I was not supposed to be here today, my work got cancelled and I asked Geeta if I can be here, with brother Kurian and Prashant, she said you are welcome and I have been honoured by making me sit in the middle. I will leave it to them.

Justice Kurian Joseph: We came to listen to you sir. I just got this Bar Council of India Rules. It is very interesting, I asked about the standards of conduct, They have defined the lawyer as an advocate as like this, advocates at all times shall conduct him in a manner befitting his standards, as an officer of the court and privileged member of the community, equally applies to us and a gentleman, applies to us, bearing in mind what may be lawful and moral to a person who is not a member of the bar, just substitute this with the member of the judiciary, or for member of judiciary in his nonprofessional capacity, may still be improper for a judge, simply substitute for a judge, the people's expectations, we have to be gentlemen. Are we gentlemen judge? I used to ask this question whenever I attend the members of subordinate judiciary, ask a question, have you ever seen a litigant coming to your court and gracefully walking and saying that hereafter when I have any problem in my life I will come here and here only. Have you had this experience. I have asked district judges also, junior judges also

senior judges also , not even one has even told me, that he has seen litigant going out of the court that I am happy and is satisfied with the service rendered.

Prashant Bhushan: They might be over stretching it. I am sure there are people I have come across several, especially the win a case. If the case is decided in their favour they say they will come out and say, not only that the justice has been done , but their confidence in this system

Justice Raveendran: You must have met the winning party, hahah....

Justice Kurian Joseph: This is the only place where, even I have problem I will go, I had asked this question and second limb of my question is why and they are plenty of aspects. Maybe we are not able to conduct our self properly in the court, this is one, very blunt answer. If you have the NJA calendar in all the rooms, go back you must see the calendar, they have given one quotation each from many people. I just looked at a December quotation, Justice has nothing to do with what goes on in a court room, justice is what comes out of a court room.... Justice has nothing to do with what goes on in a court room, justice is what comes out of a court room....so mainly this gentlemanliness has been one of the problems which I got analyzed from the judicial officers. Finally they admitted, but they have gone farther and saying why we are not in a position to conduct our self , they have the issue of infrastructure, of the irritation caused by the lawyers , irritation caused by the staffs, and the irritation caused by the witnesses, the lack of support system and several several factors , but they told that there still is an area where people expect a different code of conduct from the. I will just read a passage from Lord Denning, very very interesting I found for this topic, this is from his book the family story , page is 162:

“When a judge sits to try a case he is himself on trial before his fellow countrymen (gathered in the courtroom.) It is on his behaviour that they will form their opinion of our system of justice. He must be robed in the scarlet of the Red Judge – so as to show that he represents the majesty of the law. He must be dignified – so as to earn the respect of all who appear before him. He must be alert – to follow all that goes on. He must be understanding to show that he is aware of the temptations that beset anyone. He must be merciful – so as to show that he too has the quality which ‘droppeth as the gentle rain from heaven upon the place beneath’.”

There was a lawyer sitting with me in my flight to Bhopal. He is a senior lawyer of the Supreme Court, he was in my court , and he was telling me my problem was, my son who has just become a lawyer, he was sitting there he was asking me , what is that what is this...so that

young man says it affects the majesty of law. Then Denning says He must be dignified – so as to earn the respect of all who appear before him. . He must be alert – to follow all that goes on. He must be understanding to show that he is aware of the temptations that beset everyone. He must be merciful – so as to show that he too has the quality which droppeth as the gentle rain from heaven upon the place beneath’

So a judge about his conduct in court, I found it very very apt when we discuss about the ethical conduct and then why people expect a different standard from a judge what is the reason behind this expectation of a judge . So this reflection by Lord Denning I feel it is very good . What is the good conscience that you were telling, there after we will leave it and we will listen to Prashant. What is good conscience?

Justice Kurian Joseph: Alright we can think about it. Prashant? You would like to address now, we can have a discussion then .

Prashant Bhushan: I...because the issue that were laid out here were, equality, propriety and then integrity and impartiality but the session was supposed to be on equality. So I was just thinking about it this morning itself, on my way and....One is equal treatment of litigants before you, equal treatment of the lawyers who appear before you and of course it is also the case that powerful and influential litigants have powerful and influential lawyers as well. So in that sense there is a double jeopardy in a sense that if there is a conscious or sub conscious bias, in favors of influential and powerful people then that bias gets accentuated also because influential and powerful lawyers are appearing for the, and this is a problem that is felt quiet acutely by the litigants as well as bu the lawyers , they feel that, I can tell you about lawyers certainly, lots of lawyers have this feeling that...a... some judges will listen to even un known and young lawyer very patiently with open mind to what even un known and young lawyer are saying. But lot of lawyers says that look there are several judges who look at what is called face value and will only pay attention to who they recognize , whom they know, whom they respect or who are their favorites , to put it more brutally,...a... and they will not they say look of you go before thins judge and if you don't take a lawyer who is known to him or who has face value, what is called face value, then you have no chance, this is unfortunately the feeling that a lot of lawyers, especially young lawyers has, Of course lawyers who have face value, may not quiet have the same feeling because they are enjoying.

Justice Raveendran: they feel it is because of their capability....hhaha

Prashant Bhushan: So this is certainly a problem that I know a lot of lawyers feel quite acutely. Now let's say there are all kinds of judges, judges come in various grades, there are those judges, who don't bother about face value, who do not get influenced by face value or the kind of lawyer that is appearing before him. But they feel that there are very significant number of judges, even a majority of judges in most courts who are influenced by lawyers who is appearing and they tend to listen more carefully. I mean even if you assume say that they don't show palpable bias in his favour of particular lawyer but they listen much more, spend much more time

Justice Kurian Joseph: Receptivity

Prashant Bhushan: haan, in hearing. They give more time also. See in Supreme Court, in special leave petition, there are 60-70 matters listed before each court each day, you don't have much time. So if a ...lot of lawyers feel that if unknown lawyer is appearing before this particular judge, the case will be dismissed or decided within one minute, if in the same case a known lawyer is appearing who has what is called face value, then even if the case comes to be dismissed that lawyer will at least be heard for reasonable time, for 5-10 minutes etc. So this is a problem I don't know how judges should deal with this problem, it is a human problem also, in a sense that if you know that some lawyers are reasonable or that they will not say something absurd and they argue properly and they put across correct points etc then naturally as a human you tend to listen to them more. But I think what needs to be addressed is this, if an unknown lawyer, I can even understand that if you know lawyer and know that he talks nonsense, there are a lot of lawyers who talk nonsense, they you tend to...there is a human tendency to brush him aside. But if an unknown lawyer. Totally unknown lawyer is appearing before you then I think judicial temperament, proper judicial temperament requires your willingness to hear him properly, at least give him five minutes, ten minutes or whatever with open mind and listen to him carefully so there for that is part of judicial temperament.

Justice Kurian Joseph: As far as Supreme Court is concerned, let me ask a question, and he knows about different High Courts also, is it accepted, a practice in Supreme Court, a convention in Supreme Court, there is a convention by the lawyers, the advocates of the court, they are the ...their capacity lies in choosing the appropriate lawyer for appropriate court, this is something which I have heard ever since I was a lawyer and then a judge in high Court and now in Supreme Court also, people say it all depends on the right advocate for a court, in choosing right lawyer for the right court

Prashant Bhushan: To a very great extent that is what is generally perceived unfortunately

Justice Kurian Joseph: and practices also

Prashant Bhushan: yes and practiced also ,at least practiced by those advocates on records who can afford any kind of lawyer , but of course there are those advocates on record who can't afford these very highly charging lawyers. Because today lawyers are charging huge fees, at least this very well-known and big lawyers, etc, so there for those who can afford to choose any of them they certainly know that there are some courts and some judges, who favour or recognize, let me put it even more neutrally who recognize certain lawyers and hear certain lawyers, quiet patiently and carefully etc and the naturally go to those courts.

Justice Kurian Joseph: Let me ask a positive facet of that issue, I know that Prashant is a lawyer who will not argue something which he is not convinced, in court he will not say untrue the facts, he will not misguide the court, come what may , suppose a judge has conviction about such a lawyer in court , do you not think that such lawyer gets an edge, not just one court but every court?

Prashant Bhushan Actually this question has a reason...a... I am an advocate on record, I know that when I file a case, in my name, if my name is there as the advocate on record, I know that most judge's will at least read the file properly. Now that will happen because most judges feel that if I file a case that would not be frivolous. Now that is something that could not be avoided, if a judge feel that a lawyer is not going to say something absurd, will not argue something absurd , naturally that judge will pay attention to that lawyer, will pay more attention to that lawyer, that is fine

Justice Kurian Joseph: Not even experimentally, there is a lawyer who will not file a case on frivolous matter, you file a case if there is a real cause in it.

Prashant Bhushan: The problem comes on the other side, this part is all right, this bias is a justified bias, the problem is when a unknown lawyer is not heard, people do not listen. Of course there are some judges who display obvious bias meaning they want to favour. In fact the first judge to be removed, in 1949, Justice Shiv Prasad Sinha, who was a judge of Allahabad High Court, he was removed by the federal court, under the Government of India Act where judges were removed by the federal court before independence, before the Constitution . He was removed only on the ground that the federal court held that in two cases , he had decided, he favoured the lawyer, because the lawyer was a friend of his, because on identical facts ,

which were brought before him he dismissed, but which were brought by this lawyer he granted, bail or something. And on that ground alone he was ordered to be removed. Because that is clear palpable bias, but I am saying that it is absolutely all right to have bias about naturally you know that some lawyers who are appearing before you all the time, some of them will not say anything which is absurd, will not mislead the court, will not say something that is false, and to that extent you trust them that you listen to them carefully, that is fine. What I am saying is unknown lawyer...there are two kinds of problem, one is those judges who display palpable bias, the kind of that Shiv Prasad Sinha displayed, that is not acceptable, there are those who do not pay attention to those lawyers whose face is not known to them, that is not acceptable. You have to give every lawyer, however junior or unknown he might be a fair chance to present his case with open mind. Then there is class bias in our society., class bias unfortunately we still have a different society in the country, all of us have servants at our house, who are by and large not treated as equals, and therefore a case, let's say of a bail comes before a judge, and that case is of an ordinary person, say a rickshaw puller, or a case where he complains of being ill treated or being beaten up in police custody. If he happens to be a man from a street, a rickshaw puller, or street vendor, whatever. It is generally felt that the treatment he will get from the hands of many judges will be different from the treatment if a very influential person comes for bail or complains of ill treatment in police custody. Then those judges will listen to this influential person very carefully. Then this whole thing about, how dare police beat him up in police custody, or it is bail not jail. But when it is a poor person, an ordinary person from streets etc unfortunately they same standards are not applied. I am not saying that it is malafidely all the time. Many a times it is just on account of this subconscious class bias that we have and that all of us have and that is why when people ask...in fact there is this debate going on in the Supreme Court about what should be the improvement to be made in the collegium system, Justice Kurian Joseph is one on the bench. One of the issues is what criteria should be adopted for selecting judges, unfortunately no criteria has been laid down till now and if you ask most retired Chief Justices what criteria did you apply, on what basis did you select judges, most of them will say, that we looked at competence and we looked at integrity, after all these are the two main qualities. But the question is, of course those are the two main important qualities, the subsidiary question is how do you judge competence, how do you judge integrity, do you judge competence but apart from that are those the only two qualities, why should you not ask whether this person has judicial temperament. Judicial temperament for a judge is an extremely important quality, that is his willingness, his openness, his patience and his non discrimination, that is his willingness to

listen to a unknown lawyer or an unknown face, as patiently or as open-mindedly as he listen to somebody that he knows. So judicial temperament is a very important quality, unfortunately by and large, this is a quality which is not normally seen when selecting a judges.

Justice Kurian Joseph: How do you access that? Somebody has a mobile with you, may be some message is coming, that is why that sound.

Prashant Bhushan: May be my mobile. I will just switch it off.

Justice Raveendra: We will know about their competence because they are competent lawyers, about integrity yes. But how will he become as a judge we do not know. Many very good lawyers, becomes very bad judges, but many ordinary lawyers who had ordinary practice become good judges.

Prashant Bhushan: In some case I can tell you. At least one case recently for example with Rohington, we always felt that he may not have a judicial temperament. I used to say that he is a very very good lawyer, very competent lawyer, very honest upright lawyer but he may not have the right judicial temperament but after becoming a judge he has developed that judicial temperament.

Justice Kurian Joseph: I had this apprehension how he would be as a judge but Prashant is right, after becoming a judge his temperament has changed.

Justice Raveendran: It is very difficult to access judicial temperament when he is appointed. As a lawyer you are always partial to your client so your impartially never comes out, your fairness counts because whether you are fair to the court that is reputation, but judicial temperament.

Prashant Bhushan : So fairness can be seen, fairness is an important input in judicial temperament also. So therefore one can go into it in a little more detail as to how can one judge judicial temperament, what will be the indicators of a good judicial temperament. But I am saying is that one of the qualities that needs to be assessed for selecting judges. Then another quality, is he sensitive, conscious of and sensitive to concerns of the common people, of the problems and concerns of the common people, now this is where this feudal mind set or having overcome your feudal mind set comes in. There are those...you see all of us who come from elite background, all of us have been born in feudal society. So all of us have to overcome the feudal structure that we are born into, it is a feudal structure unfortunately. And overcoming it requires exposure to, firstly exposure to the problems of the common people, unless you are

aware of what is street vendor, what is his life, what do they go through, what are the problems they face, how do they live their life, or rickshaw pullers or jhuggi dwellers etc or ordinary farmers . SO there must be then, I mean some some weightage should also be given to this because this is an important factor in making a good judge. Because if that judge has to even handed towards the poor and the well to do and the influential etc. then he must be conscious of and sensitive to the problems of the common people of this country. So that is another aspect of equality, then there is this problem, which lawyers talk about more than litigants, this whole problem of what is loosely termed as Uncle Judges Syndrome., that is the children of other brother judges practicing in the same court, sometime obviously children of those judges will not appear before their parents, but they appear before other judges and so on and there is a general perception and feeling that they get better treatment than the other lawyers. This is the general perception, therefore that again that is a real difficult problem to address, because only real way of addressing it would be if judges are not appointed in their parents court, if they are straight away appointed to ...

Justice Kurian Joseph: One suggestion that is coming up is that judges should not be appointed as judges in their own parent court

Participant: That is not a bad idea, in fact the transfer policy we have.

Justice Kurian Joseph: No that is transfer, instead of that there is this radical proposal coming in that appointment should be in the different high COURT LIKE when we see the judicial officers in subordinate judiciary, we have policy that he will be never be appointed in his home district, so why not the High Court judges.

Prashant Bhushan: I think that is something which should be very seriously considered , that may be the right way to going about things.

Justice Raveendran: To see the objections which are being voiced, I am not in favor or against anything , the first one is if you, as far as judges from subordinate judiciary being promoted it is a separate issue, the lawyers who are being appointed as High Court judges, they for that recognition , lets us say a leading lawyer he is practicing in Delhi if he is to be appointed in Assam as High Court Judge, he may say why should I go because I have earned my name, earned my goodwill here , I want to to recognized as a judge here. But most of the lawyers who are offered, I know from cases from Bangalore in 1994, there of the best lawyers, actually their names were recommended and went. Justice Venkatachaliah brought this policy of direct appointment parent Court. They were exceptionally good lawyers I would know that. This is

one aspect, this is only one, the second is language I have seen unfortunately when judges are transferred outside, what happens every Friday evening they take off from their place and come back at Monday 11 o'clock or most of the time at Monday 12 O'clock. So Friday becomes a non working day, Monday becomes a non working day for these judges . So Saturday and Sunday's are supposed to be the two days when judges are supposed to read the file and write judgement. And these judges are not there on Saturday's and Sunday's and the other days first appeals they can't hear , RACs they can't hear, any criminal appeals they can't hear. FIR is in hind any judge from South no. So this is one aspect. The third aspect is local laws, 50 percent of the cases arise from state laws and only 50 percent of the cases arise from the central laws, as far as central laws are concerned, everybody is comfortable, state law is concerned you are making a new entrant a high Court judge, in most of the cases parties may not have the money to go to the supreme court , it will be decided by those people who have absolutely no idea of local laws . They are creating havocs and many judges you find transfer petitions being filled, they are not doing any work at all,. One judge from one Hindi state to another Hindi state may not be a problem but coming from south I know, from one southern state to another southern state, it makes all the difference in laws and language is different. Here Rajasthan, Madhya Pradesh, suggesting Jharkhand, Bihar, Allahabad, yes, you know Hindi, you can manage. . But other states I tell you, put a Bengali gentlemen in Karnataka 50 percent of cases he cannot handle, so he will have to sit only in writ appeals , where a judgement isd there, these are the practical difficulties which affects the productivity of the judges . Their heart is not there, it is always somewhere else. These are the practical problems, as a idea I feel that the idea is one of the best idea because off this castesim friendship everything goes. Transfers are because of that but this is, this is the problem every High Court is facing and I have experienced in two courts I can tell you that it has created havocs. So most of the suggestions whether it may be NJAC or anything else, the suggestions are good by themselves, but the downside of it, the practical difficulties of it, if you consider them and if the practical difficulty is outweighing the advantages then you should not look at it at all. We have this tendency to treat certain ideas which are very good as ideals, I know suggestions may be it is worth considering, you see if all the judges for example are made to learn Hindi, it is possible , it is possible. I know of judges, I was in Madhya Pradesh, as a Chief Justice half of my district judges who were in the area of promotion, the first ten senior most district judges, could not talk to me, because I know English, I do not know Hindi and they do not know English. In the sense English they can read, they can't write a judgment, they can't talk. And they were the first ten. What do I do? Out of ten , eight were of exceptionally competent quality and integrity was beyond question and they

has the seniority, how can I deny them High Court judgeship? What do you expect of them if they are appointed and posted at let us say, Mumbai or Calcutta. Most of them what they do is hearing the conduct in Hindi, if you go to Allahabad, if you go to Gwalior bench the lawyers argue in Hindi, questions are put in Hindi, judgements they write in English I do not know. There may be judgement writers, why they are known as judgement writers...I do not know

Participants: Haahah

Participant: Local law problem also

Prashant Bhushan: local Law is not such a serious problem, local laws can be done.

Justice Raveendran: There was this lady judicial officer, very good and competent, only she could not do anything in English. I asked how she will write judgement. I was told sir, do not worry, her husband is a retired District Judge, unfortunately he could not become a High Court Judge.

Participants: hahhaa

Prashant Bhushan: All the problems that you have mentioned are very genuine problems , accept this issue of local law, local laws I think people can pick up quiet easily that is not a major problem, but yes..

Justice Raveendran: But the officers they are simply not interested, when they are transferred outside their state they just don't want to work, they will say just don't give these.

Justice Kurian Joseph: look at Justice Naidu in Kerala. And I was in Himanchal for three years , they used to speak in Hindi, the documents are also in Hindi, of course as a Chief Justice somebody will always be there . I never asked for a translation, I never got a single page translated. I asked my brother judge sitting next to me what is the meaning and we got to it. But slowly I got them to work in English also

Justice Raveendran: As Chief Justice it does not matter, but what about thye other judges who have to do criminal appeals .

Justice Kurian Joseph: In Himanchal also I ha those criminal sides , sir Chief Justice is not an issue, but ...

Justice Raveendran: as Prashant said, if they want they can. Because at the level of being High Court judge you can pick up any law, you can also pick up the local laws in no time, but whether they are interested.

Participant: Even consent they sign, the states where they should be transferred

Justice Raveendran: They want to become High Court judges, you ask them to join blank paper , they will sign.

Participant: they will sign anything, the feed backs are available in the system with reference to the transfer policy , adopt it. So there is no further requirement with reference to choosing judges from other High Courts . I have experienced it as a lawyer, and then in last three years I have become a judge of the High Court, I choose this job with reference to rendering service as my lord has already said, with reference to integrity, with reference to honesty , with reference to ethics , those are inbuilt, I can be put anywhere in the world, whether I am in the home town , whether in my parent High Court , whether I am transferred to any where else, those are the inbuilt qualities, where ever I am transferred .

Participant: The problem with the transfer, we got judges from Punjab and Haryana, adjacent states, on Friday, they go to their home state and come back Monday morning , two and half days they sit at home , we have seen the difficulties. And by the time the system has proved that they are not delivering, therefore a judge from a same state same high court delivers more.

Justice Raveendran: So therefore we have to weigh the advantages with the disadvantages

Participant: Uncle Syndrome is one, second is caste.

Justice Raveendran: In most of the High Courts, this caste is a very very dangerous and ruining thing , caste and local friendship, local contact, so you have to balance these

Prashant Bhsushan: No, absolutely correct , there are certainly down sides, even for appointing Chief Justices from outside , there are serious problems of Chief Justice not knowing the people there , not knowing the language and so on .

Justice Raveendran: See the minutes a Chief Justice comes from outside , he starts seeing at the Supreme court. His eye is how he will become a Supreme Court judge . But therefore what he does is I will not rack the boat , I will not do anything that will affect my chances of going to Supreme court. Therefore no reforms , no strictness, no discipline, because he thinks no no , if I try to discipline the bar they may work against me and if the lawyers go on strike the

Supreme Court may not appoint me , should I touch this? No No they may send an adverse report, let me spend my time peacefully, without doing anything, have a good name so that I can go to Supreme Court. So they come for six months, one year, one and half year, they don't do anything for the state. And if eight of ten come like that then for eight ten years for the High Court there is absolutely no administration. Registrar General run's the High Court. And it is strange. Recruitments are not done ,nobody is bothered, in spite of Supreme Court saying recruitments should be done, no recruitment is done for High Court's Musifs and seniority issue is not decided , the wants of judiciary is not looked up into , I would say kind of it is good because , it is very good because, he is free from local influences, I know of cases where outside judge have done extremely well, I also know of cases where people come with an eye towards the Supreme Court, they feel they should earn good name, they should leave peacefully. High Courts have gone to docks because of this , this is something nobody has considered.

Participant: What is the way out?

Justice raveendran: That is why we are discussing, this closed doors meetings, brain storming sessions are for that, we want you to think. It is not that you will find a solution today, but instead of three people thinking, instead of the Supreme Court judges thinking, let our 700 High Court judges think and come with an idea. That is what this yesterday wonderful NJAC did, it is a right direction, of course it is too much of a enthusiasm, all kinds of ideas will come , but the Supreme Court is open to views from public, it is a great thing. Similarly if all of you come here interact here, all of you are from different states, different views. It is only people like you who can think and find solutions here. You are not coming just to listen, you are the participants, you are the persons whose inputs are the most valuable and you will go back and discuss and find solutions, we hope that you find solution, and it should come from you because you know the ground realities. When Venkataramaiah was the Chief Justice he said just make the retiring age 65 for High Court judges, this glamour for Supreme Court judgeship will not be there because , A chief Justice up to 65 is more powerful than a pusnie judge who absolutely have no power. We see Delhi High Court Chief Justice will be more powerful, one pilot in the front, one in the back and then policeman will stop us. I am a Supreme Court judge, when Delhi Chief Justice is going, my car has to wait. District Judges, they are lords in their districts. Now what I am saying is if that is done they will be free from the clutches of Supreme Court, they will not feel that they should show favour or listen to Supreme Court judges. So these are the...

Participant: And many may not like to go also...

Prashant Bhushan: But there is one thing outside, Yesterday, we were discussing this and my brother pointed out that if by and large elevation to the Supreme Court is largely by seniority and majority of judges are appointed by seniority and if you have the same retirement age in the Supreme Court and High Court then the tenure in the Supreme Court will be very small.

Justice Raveendra: professors are...UGC Professors are 63 years, others are...medical are 65...somewhere peons are becoming 62...so this was recognized that judges were supposed to be Nobel people, lot of knowledge, their age give them wisdom

Justice Kurian Joseph: Why not subordinate Judiciary also

Justice Raveendran: Yes yes it should be, I am saying it should be for everyone. Judges are same, their productivity is same whether they are district judges, or Supreme Court Judges or High Court Judges.

Prashant Bhushan: See one of the reason, for why retirement age should be higher is, probably is that once you to a higher post you at least have a couple of years in that post, something like that. So here also whoever is elevated to the Supreme Court should be at least 3 years minimum. By and large it is good in equalizing the retirement age, this is only aspect which will have to be considered, perhaps this today the principle of seniority being the overwhelming factor that probably needs to be reduced, the impact of seniority may be a factor but it may not be the overwhelming factor.

Prashant Bhushan One of the intrinsic aspect of transparency is once you may a short list at least that shortlist should be announced, so that if anybody has any information on that on the person who are shortlisted, they should be able to send that., so therefore one argument that was made was that no no people will make all kind of wild allegations. If they make wild allegations they will be dismissed as wild allegations, if they are not backed by any evidence people will throw them in the waste paper basket. So if just that fear that people will make wild allegations therefore it should not be out out to the public that people will make wide allegations to my mind is not justified. Secondly even this

Justice Raveendra: When his name was suggested certain action was taken in order to tar his name, and that affected his elevation

Justice Kurian Joseph: But I said that is not strong argument. And that is lead by him. These things shall not be subject to RTI and these things shall not be made transparent.

No that's a separate issue, the reasons for selecting or rejecting

Justice Kurian Joseph: Prashant, that's a good idea the reasons for shortlisting

Justice Raveendran: Prashant actually what he is saying is whether disclose the reasons or not that is different, but the other criteria which should give transparency, like short listing

Prashant Bhushan: And that's why actually we have permanent secretariat

Justice Kurian Joseph: This shortlisting, I will tell you one problem with shortlisting, look at Kerala...the moment a person's name is suggested as a judge. It takes 7-8 months and that is the time when the fellow gets maximum work.

Justice Raveendran: he should not accept when his name is under consideration that was given by Gopal Subramaniam as a reason

Participant: earlier the policy was not to accept

Kurian Joseph: that will be all right if it comes to within 2 months, suppose for 2 years-3 years?

Justice Raveendran: Prashant is saying that there should be another way of transparency, it is not RTI alone bring transparency, there must be some method by which the method is transparent, whether you make it public or not is a different thing

Prashant Bhushan: Not only that it should be transparent but at some stage, the people who should come to know that these are the people who are being considered so that at least they have an opportunity that they have. Some people may have very relevant information about these person, which needs to go to the collegium or the finals electing committee

Prashant Bushan: Instead of how much this needs to be disclosed amount selection or non-selection that is a different matter, which can be , which have plus and minus

Justice Kurian Joseph: But the candidates may not accept that list to go public because that affects his reputation, his privacy.

Justice Raveendran: that person is being considered for being a judge, his life should be open book, other wise let him not come

Justice Kurian Joseph : No he proposes to be open book, but

Participant: After his appointment

Prashant Bhushan : But him is so shy about this, in US senate hearing all kinds of evidence is brought ,all allegations which are brought, they are subject to very very intense scrutiny.

Justice Raveendran: What they said in a speech 20 years back is put up

Justice Kurian Joseph :We go and come back at 11, 15 minutes

SESSION 6&7

Justice Raveendran: So should we now continue our discussion on propriety?

Justice Kurain Joseph: Is there anything else that you would like to continue?

Justice Raveendran : See I remember a lecture I gave to junior judges, I wanted to give them all these principles of ethical standards and all that and I wanted to give them a practical learning of these things, particularly partiality and all that, I gave them example of a person directly appointed as a district judge, the fellow use to drink, play cards and all that, he had a group of friends with whom he was regularly doing all this, he was appointed as the district judge and he was posted in the neighboring district as he rightly pointed out that they were not posted in their home district. He was posted in the neighboring district. after one year, one evening there is a knock on his door, and he opens the door, and his three friends are there, his chelas who play cards and drink and they said we have come to meet you and let us have a drink, he said no I have become a judge and I can't drink and I can't do all this, they said we are your old friends, and we have come all the way, so they played card up to two o clock three o clock then went to bed. The next day to his surprise when he goes to court the fellow who was one of the friend who was in the team appears before him in one of the case. He does not do anything. After the arguments are heard he scolds him by saying what is this you have not even read the file, what you were doing yesterday, you have come here without reading the file and then dismisses the case. So this story I told the youngsters show how you should be impartial even if you are friends and all that, and I ask the front bencher, now you have heard the story tell me what is the moral. he stands up very seriously thinking for two minutes and then said, sir I use to think that a judge should not drink and play cards now I know that I can play card and drink..

Participants: (laughing)

Justice Raveendran: this is the moral that he learnt, so this definition is like this. Please don't go by it. It is actually this kind of definition in a very broad sense is good but gives a very..

Justice Kurian Joseph: and the famous case where somebody sought a reconciliation. Review was filed on the ground that you decide the case of the same sex you are policy biased, but.

Justice Raveendran: I remember Justice Markande Katju has the greatest regard for. , but he is very open, so he was sitting with me, I am ofcourse the senior judge he was the junior judge but when Markande Katju is on the bench he is the only taking judge other judges are listening, so Shanti Bhusan Sahib was there, and he has got a very good habbit, if he has a case the question of his not being there is not there, he will present the brief and he will be there even if his case had been taken or not, but if it is in the list suddenly he told Mr. Shanti Bhusan, I hear that lawyers are charging very high fees in Supreme Court, what is your rate, please be truthful and you need not say I know that your rate is eleven lakhs per day. Then what can you do. Now what he says is, yes my lord my rate is elven lakhs but there are other senior councils who are charging thirty to thirty - five lakhs per day I am not in that.

Participants: (laughing)

Prashant Bhushan: Markande Katju in Delhi High Court, ones I was sitting there and my case was probably fourth of the fifth, first case was called out and some young girl was appearing for the petitioner and he started lecturing her telling her that you people don't read the brief and this that and then he went on and on. Second case was called out it was same thing, third case same thing, suddenly he told Mr. Shanti Bhusan, I hear that lawyers are charging very high fees in Supreme Court, what is your rate, please be truthful and you need not say I know that your rate is eleven lakhs per day. Then what can you do. Now what he says is, yes my lord my rate is elven lakhs but there are other senior councils who are charging thirty to thirty - five lakhs per day I am not in that.

Participants: (laughing)

Prashant Bhushan: Markande Katju in Delhi High Court, ones I was sitting there and my case was probably fourth of the fifth, first case was called out and some young girl was appearing for the petitioner and he started lecturing her telling her that you people don't read the brief and

this that and then he went on and on. second case was called out it was same thing, third case same thing, by this time I was feeling quite angry, my case was about some Hindi medium textbook in Delhi University. Delhi University about one lakh student have opted for Hindi medium and there were no textbooks available in Hindi medium, so when the case was called out he says..*aap in logo ko pichhara rakhna chahte hain, agar aap inki tarakki chahte hain in students ki to inko angreszi padhaye, hindi se kya hoga* and he went on so after he had gone on for about ten minutes I said, if your lordship would do the same what my father had done for Venkatramaiya and I were the judge and you were the lawyer, I would be happy to hear you till four o'clock but unfortunately it is the other way around, so he just put his pen down, he smiled and sat back, I said now you told me what you feel, now I have to tell you what I feel and we decided what we feel about Hindi, but it has to be decided according to the merits of the constitution. Then he says we will have it next week and before next week he was elevated to the Supreme Court.

Justice Kurian Joseph: now let's come back on the specific issue of propriety, let me ask a very specific issue on propriety, there is one aspect of recusal of the judge, which is a very important aspect, it directly touches us. You can just refer that why there is recusal also

Prashant Bhushan: this is very important aspect.

Justice Kurian Joseph: one aspect touched in this principles also. On the propriety page 4, 4.3, 4.4, then on recusal

Prashant Bhushan: 4.7, and 4.8 are also there.

Justice Raveendran: on the previous page on impartiality also, 2.3

Principle:

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

Application:

4.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

4.2. As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.

4.3. A judge shall, in his or her personal relations with individual members of the legal profession who practice regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.

4.4 A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.

There is 4.7 and 4.8 also

4.7 A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.

4.8 A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.

Justice Raveendran: 2.3 and 2.4

Justice Kurain Joseph: it is,

2.2 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

2.3 A judge shall, so far as is reasonable, so conduct himself or herself as to minimize the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.

2.4 A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.

2.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where 2.5.1 the judge has actual bias or prejudice concerning

a party or personal knowledge of disputed evidentiary facts concerning the proceedings; 2.5.2 the judge previously served as a lawyer or was a material witness in the matter in controversy; or 2.5.3 the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy: Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

Justice Kurain Joseph: now 2.5 is the most important of all, it is all in public domain now, speaks about the bias, his interest, family interest, economic interest or subjective interest and all, and have you read Justice Gokhale decision that eviction of tenants, pre constitutional tenants, pre 1950 tenants. Tenants can be evicted prior to 1950 on ground of public premises. But Justice Gokhale held that they cannot be, but LIC has taken very serious objection to this and they filed another case. Allegation on Justice Gokhale was that he is interested in this decision because his sister had a similar case pending before the trial court in which there was similar issue was directly involved.

Justice Raveendran: I was a member of the bench when the first decision was held against Justice Gokhale, his father was a tenant in boundary of a premises, you know there was that rule that after the father the children can become tenants, though after the death of the father one of his sister became the tenant of the premises, the case came up in relation to some other case on termination of tenants and Gokhale, we decided against the party which was not the owner but some insurance company, now that the similar case, the sister's case came up, which was not related to this case, the sister cited his decision and it was decided in the favour of the sister so when the matter came up the argument was that Gokhale laid down such a law because his sister had such a case and Gokhale was very hurt in this, he said had he known that earlier that his sister would be involved in a similar case he would not have been a part of this decision. Justice Gokhale was one of the finest judge when it comes to impartiality and all.

So he wanted me, I had retired by that time, he wanted me to give a statement that this decision had been given after consultation with me and all that. The issue is this, let us say when we know that our brother sister is having a case, and let us take the easiest example the Land Acquisition Case, where the value is fixed at ten lakh rupees now your sister has asked for an interest. Now a similar matter comes out of this notification and your sister is not involved and case comes up before you. You know that your sister will also be benefited if there is an interest and you will increase it. You will increase it for two reasons one by merely thinking that your

sister will benefit, or not that your sister is concerned but you will decide the case on merit and you increase it to fifty lakh, now your sister naturally benefits tomorrow by stating this judgment

Therefore the issue is not whether your judgment is bonafide or not but you should recuse yourself so that there is no room for somebody to say that you have done this. That is the issue all about.

Prashant Bhushan: this is put very nicely in that Justice Venkatachalliah judgment of Captain Ranjeet Thakur, 1986 Judgment where he said that the real test of recusal is not for the judge to ask himself am I biased but to ask whether a litigant standing before him can entertain a reasonable apprehension of bias and if so he should recuse. That was also the test laid down by Lord Denning in one of his judgements and there the judge needs to be extra careful. So therefore you know that the connection is not direct you know that his connection is indirect but even then if a person asks the judge to recuse he should recuse. On his own also if he is aware of any connection he must recuse himself.

Justice Raveendran: I must say I was a member of the bench that was hearing the Reliance matter which was caused because of the two brothers fighting before the Supreme Court, on the other day my daughter was working in a firm in Bangalore, the firm AZB took up this case. Now this is in Bangalore and I am in Delhi. In February the Chief Justice asked me this matter requires a two judge bench so can I add you as a member, so I said yes. so we heard this for six days, each day Harish Salve was charging one crore for that case on one side, so on the fifth day I got an anonymous letter and some of my brother judges got an anonymous letter saying that Justice Raveendran's daughter has been selected as a partner of AZB which is because of her father looking after the Reliance Matter, so what Justice can be expected in this case. This is what the anonymous letter says.

Prashant Bhushan: I remember

Justice Raveendran: I was in great dilemma as to what to do. So I went to Justice Kapadia and asked him what to do, this is the letter. He said that now I can't do anything, you take a call on it on your own. So next day morning I went for a justification saying that when the firm was taken over and she became the part of the firm not as a partner but as an associate I was not in this case, and I did not know that this had happened, the case was given to me one month before, and I was in Delhi and all that, but I knew that I was the judge hearing the Reliance matter and it was true that AZB was the standing counsel for Reliance in Mumbai, and my

daughter had been a part of it, the next day I came up and dictated an order saying that I am recusing myself from the. The case went through a lot of criticism because it was said that the judge don't have value of time, six days' time of Supreme Court was wasted and crores of rupees have been wasted but that was not my issue. My issue was that, my credibility and the credibility of the institution. Therefore this recusal is not about whether your consciousness is clear it is about what others think. Therefore that should be the test for recusal, because many judges say no my consciousness is clear. It is not that the justice should be done but that justice should also seem to be done. So in such situation the duty of the judge is to show his disinterest in the case. The first thing you should say that no I don't want this case. The Court's time would have been wasted, money would have been wasted but most important part is the credibility of the institution.

Participant Judge: The hearing was held for five days, and by that time the Court had expressed views?

Justice Raveendran: No we were putting question. Ofcourse the question I was putting was against the case. Ramjeth Malani had appeared for the younger brother, and the questions I was putting were the questions to fall on the other side. But when such a thing is there why not to recuse. What if the judgment had been in favour of the elder brother, the elder brother has employed AZB, in AZB was my daughter. Therefore the best way for a judge, who is not like a normal public servant, because you are judge people expect a higher level of propriety from the judges. Therefore certain sacrifices are a must and therefore you should make certain sacrifices.

You see I will tell you this also. What has unfortunately happened with some of the judges who are lazy or who wants to write some defeated or very sensitive judgment in the case concerned, is just to get rid of the recusal. But this recusal is bad. Now if such a case goes to a bench A, recused, bench B recused, Bench C recused. So why is everybody doing this.

Prashant Bhushan: In fact people start believing in such cases that these judges have been approached and therefore. From here the question arises that you can say look somebody approached me in this case on behalf of so and so, whether one should record or not?

Participants discussing: (indiscriminate voices)

The problem is these questions do not arise if in a genuine case, ones in a while, a judge recuses, and let us say it occurs ones in a three months in a court, nobody bothers, but if let us say there

is repeated every time, people would like to know why such thing is happening, whether it is for general reason or otherwise what is the motive.

Participant Judge: it was the news in Punjab and Harayana, eleven judges recused.

Participant Judge: In Allahabad also in a doctor's case five judges recused, and they said doctor knows me. The doctor said I am the top doctor of the city, so what could I do should i go to eleven judge bench?

Prashant Bhushan: Sometime there can be situations like this. For example let us say if there is a case involving

Prashant Bhushan: For example let's say there is a case involving a sitting judge of that same court, now every judge every court knows him obviously but somebody has to hear it, there the issue may be that if some judge is a close personal friend of that judge, then he must recuse.

Justice Raveendran: Now, you as members of different courts, must have taken so many cases on service matters of subordinate⁴ judicial officers, they come before you and you decide against the current, or the full court decision.

Prashant Bhushan: In this judicial standards and accountability bills, in fact I have been critical of some parts of that for this very reason because it says that every complain will first be sent to a committee of three judges of that same court, one retired judge chief justice of that court plus two sitting judges of that court. Now practically speaking to expect two sitting judges, and one retired judge of that same court to entice a fellow judge of that same court, now that they will be able to deal with a complain fairly and impartially is normally not possible. It would be only in extraordinary, when these three people would be extraordinary metal and extraordinary capability they will be able to deal with in a totally unbiased manner. Therefore unless there is no other option of dealing with these case or such situations, these kinds of matters can be avoided. Because normally it would be a case for recusal. if it is a case involving brother judge of the same court, normally that will be ipsofacto be a case for recusal, but if doctrine of necessity applies then if there is no other option then a judge has to hear it or somebody has to hear it.

Justice Kurian Joseph: just take and read with me page 3 para 2.5 on this interest

A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where

2.5.1 The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;

2.5.2 The judge previously served as a lawyer or was a material witness in the matter in controversy;

Or

2.5.3 The judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy:

Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

Justice Kurian Joseph: This is the caveat, now this issue came before the constitutional bench now that is why I have asked Pragya to circulate the copy of this order. Recusal was an issue argued before Justice Dave, he said that now either way you are going to win NJAC or you are in the collegium so you should not hear this matter. So Justice Dave said no I will not. Then the next bench was constituted and Justice Kehar presided over the bench and then an objection was raised by none other than Mr. Fali S Nariman that this perception will be there so you shall not hear, because you are in the five member collegium and you are going to be in the three of the NJAC so either way you have to win. And this went for two days and then the bench unanimously decided that Kehar must not recuse.

Prashant Bhushan: because actually if you take that objection then that will go to virtually every judge because every judge is somewhere or the other interested.

Justice Kurian Joseph: So since I got the opportunity to deal with the other side of the coin I agreed with Justice Kehar and we will just read around the judgment in this issue, not because it is my judgment but because this issue was specifically dealt with in this case. So I dealt with

the other side of the coin, and now we have recorded reason for that, about why Justice Kehar is not recusing. So I took the opportunity to discuss whether one should record reason while recording. In that context if you have page, you just can read with me. I quoted this Bangalore Principle and we can come to 886 may be the first second and third:

Now, that we have to pass a detailed and reasoned order as to why a Judge need not recuse from a case, I feel it appropriate also to deal with the other side of the coin, whether a Judge should state reasons for his recusal in a particular case. One of the reasons for recusal of a Judge is that litigants/the public might entertain a reasonable apprehension about his impartiality.

The simple question is, whether the adjudication by the Judge concerned, would cause a reasonable doubt in the mind of a reasonably informed litigant and fair-minded public as to his impartiality. Being an institution whose hallmark is transparency, it is only proper that the Judge discharging high and noble duties, at least broadly indicate the reasons for recusing from the case so that the litigants or the well-meaning public may not entertain any misunderstanding that the recusal was for altogether irrelevant reasons like the cases being very old, involving detailed consideration, decision on several questions of law, a situation where the Judge is not happy with the roster, a Judge getting unduly sensitive about the public perception of his image, Judge wanting not to cause displeasure to anybody, Judge always wanting not to decide any sensitive or controversial issues, etc. Once reasons for recusal are indicated, there will not be any room for attributing any motive for the recusal.

To put it differently, it is part of his duty to be accountable to the Constitution by upholding it without fear or favour, affection or ill-will. Therefore, I am of the view that it is the constitutional duty, as reflected in one's oath, to be transparent and accountable, and hence, a Judge is required to indicate reasons for his recusal from a particular case. This would help to curb the tendency for forum shopping.

Justice Kurian Joseph: There is a beautiful judgment quoted from South Africa also.

In the Constitutional Court of South Africa in *The President of the Republic of South Africa etc. v. South African Rugby Football Union etc.*, has made two very relevant observations in this regard: "Although it is important that justice must be seen to be done, it is equally important that judicial officers discharge their duty to sit and do not, by acceding too readily to

suggestions of appearance of bias, encourage parties to believe that by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour.” “It needs to be said loudly and clearly that the ground of disqualification is a reasonable apprehension that the judicial officer will not decide the case impartially or without prejudice, rather than that he will decide the case adversely to one party.”

Ultimately, the question is whether a fair-minded and reasonably informed person, on correct facts, would reasonably entertain a doubt on the impartiality of the Judge. The reasonableness of the apprehension must be assessed in the light of the oath of Office he has taken as a Judge to administer justice without fear or favour, affection or ill-will and his ability to carry out the oath by reason of his training and experience whereby he is in a position to disabuse his mind of any irrelevant personal belief or pre-disposition or unwarranted apprehensions of his image in public or difficulty in deciding a controversial issue particularly when the same is highly sensitive.

Justice Kurian Joseph: The South Africa case is very interesting, we can read later. Now please come to the summary, page 892, or just read the underlined portion of the South African case, that is important:

“While litigants have the right to apply for the recusal of judicial officers where there is a reasonable apprehension that they will not decide a case impartially, this does not give them the right to object to their cases being heard by particular judicial officers simply 892 because they believe that such persons will be less likely to decide the case in their favour, than would other judicial officers drawn from a different segment of society. The nature of the judicial function involves the performance of difficult and at times unpleasant tasks. Judicial officers are nonetheless required to “administer justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the law”. To this end they must resist all manner of pressure, regardless of where it comes from. This is the constitutional duty common to all judicial officers. If they deviate, the independence of the judiciary would be undermined, and in turn, the Constitution itself.”

The above principles are universal in application. Impartiality of a Judge is the sine qua non for the integrity institution. Transparency in procedure is one of the major factors constituting the integrity of the office of a Judge in conducting his duties and the functioning of the court. The litigants would always like to know though they may not have a prescribed right to know,

as to why a Judge has recused from hearing the case or despite request, has not recused to hear his case. Reasons are required to be indicated broadly. Of course, in case the disclosure of the reasons is likely to affect prejudicially any case or cause or interest of someone else, the Judge is free to state that on account of personal reasons which the Judge does not want 893 to disclose, he has decided to recuse himself from hearing the case.

Justice Kurian Joseph: So this order has now become a hallmark, though you will have to read Justice Lokur's judgment also, Justice Lokur has commented on this order, but only Lokur, the other four had concurrence with me.

Prashant Bhushan: refusal to recuse is a justifiable order, if suppose somebody makes an application to recuse.

Justice Kurian Joseph: Recusal may not be justifiable but refusal to recuse may be justifiable, so in fact I wanted the comment on it but I can do it later. This is a very good distinction. A judge refusing to recuse it become justifiable because there may be reasons, but why he refused you cannot compel because come personal, because a judge's perception is his own individual choice as to why he is biased, normally no Chief Justice or nobody can compel him to hear the matter because it is his choice. But this recusal has become a fashion in many courts now. So with my little experience I have seen a judge in Himachal also not quite happy with the, what I thought was taking my danda but I could not do it.

In Kerala I have³ seen some judges will never touch the old cases, you see the bundle is thick, but they somehow will find some reason to dodge it. So I think that the time has come when one should not avoid.

Prashant Bhushan: Well problem which comes now actually came up in one case, see what happened was that this was her case which was listed before a bench of two judges, both of whom have celebrated their children's wedding in the last one month before that and both of whom have invited the Prime Minister for daughter's wedding. Now the question was the case involved serious allegation against the Prime Minister and victimization on account of her pursuing these cases against the Prime Minister, and therefore the question was, actually I wrote an article in the times of India about the case in which I also concluded toward the end that today there is this somewhat unpleasant phenomenon which we are seeing where judges are inviting those politicians for attending wedding of their children which is not a healthy

practice. After I wrote that some journalists asked me that in this case what is your view in which some persons have invited the Prime Minister. Do you think that it is a case for recusal? So I sent a written note saying that the principles which have enunciated are the following:

Code of Conduct says that judges should not socialize with politicians, or others generally unless they are their close personal friends. Now in this case if a judge has invited the Prime Minister to wedding of their children then the litigant will not be wrong in thinking that well the Prime Minister must be a close personal friend in which case she can entertain a reasonable apprehension of bias and therefore in my view this is a fit case for recusal. After that I don't what happened but the Chief Justice fortunately changed the bench and the matter was not listed before those two judges but was listed on a different bench but this is actually an issue which is now coming up frequently.

Justice Kurian Joseph: You will find that, this is one case where the Supreme Court had referred to larger bench where the bail was involved of such people, even if you take this NJAC case whether Justice Dave can hear it? This was another haunting issue left

Justice Kurian Joseph: When we refer to propriety and we refer to his article on judges inviting politicians on wedding which was not done in earlier days, I have to also point out one more additional facts, earlier judge's family wedding meant 400 or 500 people, friends and mostly it will be judicial officers, other judges will be called, now the trend has started where judge's wedding 5000 invitations are printed and distributed, of course there that is other way, instead of making any distinction all the ministers are called, now the question arises by the public, now in places like Bangalore or Delhi one plate costs 800 900 rupees now, the question is who will bear the cost? How is the judge bearing it? Is he rich enough or the other side is rich enough? See judges may be very rich men, like for example judges who are appointed from the bar, who had done very well they may be very rich, let us say if Prashant was a judge, he may be very rich, but what I am saying is that it is the perception of the people, people may think that o all this is happening 5000 people, the expenditure is 50 lakhs, somebody must be making it. So why give room for that? That sacrifice is required when you become a judge, i.e you should not have in front your wealth, or in front your friendship or the money. Even if you are lucky enough to be one boy's side and the girl's side is meeting the bill, you have to say no, I am a judge, therefore it should be a very simple affair. This is where the propriety issues come. You may be totally honest, you may be really be a very rich person who can spend a lot of money, but public does not see it, public does not know that you have a lot of money, they

look at it with a jaundice eye. In the case of judges they always look at with jaundice eyes. Ofcourse it is a big sacrifice because you have a number of friends, you have a huge acquaintance, and the only child may be getting married, but it is not what the public will look at it.

Justice Raveendran: there is another aspect, sometimes the Chief Minister or the Ministers in their wedding parties, they would send invitation to all the judges, and it is a different matter whether we go or not unless we are personally or closely related, but normally this is the practice, all the politicians generally send.

Justice Kurian Joseph: they will obviously send, because they want friendship, they want networking, for the rule that applies to judges, do not apply to politicians, if a politician issues 5000 invitation nobody will find fault with it.

Prashant Bhushan: But a judge should not go.

Justice Raveendran: Yes, unless he is a very close relative or something.

Justice Kurian Joseph: Exactly

Prashant Bhushan: Exactly unless he is a relative or a close friend he should not go.

Justice Raveendran: or else automatically he will not hear any of his case.

I will cite a case of Rohintan, Rohintan ones came to Himachal, for a public lecture, I din't invite him for tea, but a judge invited him for tea and he went. The first sip of the cup, he said that no I will not appear before you, this is the first sentence that he said during the tea. I was not there, but the judge himself told me, that he said that from henceforth I will not appear before you. So see look at the high principles people have to follow.

When Ruma Pal was the judge of the Supreme Court, her husband is a leading member of the bar there, somebody from Kolkata would know, he has already written of service law, contempt, and constitution 5 volumes, so long she was a judge, he never ever attended any party or whatever where his wife was invited and she also insured that he never came. It is very difficult sometime, but it is these things that keep the good name of the institution.

Justice Kurian Joseph: Principle 16 of our page 11 would probably summarize our discussion.

Every Judge must at all times be conscious that he is under the public gaze and there should be no act or omission by him which is unbecoming of the high office he occupies and the public esteem in which that office is held.

These are only the “Restatement of the Values of Judicial Life” and are not meant to be exhaustive but only illustrative of what is expected of a Judge.

Prashant Bhushan: One problem that comes up actually, this H.R Bhardwaj who used to be the law Minister, he ones told somebody that look these judges have to come to me to seek approval for their foreign travels and he says that whenever they come I make them wait outside for one hour in order to make them feel that they are applicants before me or something like that he said. This is also become a problem of judges of having to seek permission of the government for even legitimate foreign travel for attending some conference etc.

Justice Raveendran: No see our brother judges from the High Courts do not get any invitation to attend foreign conferences, even Supreme Court judges, unless you are very lucky you get no invitation.

Coming back to the old question, the reason why government was to be intimated was to know whether these judges are accepting the hospitality of a foreign host, and if they have ulterior motive. This is the real reasons.

Justice Kurian Joseph: Microsoft invites to conferences to say how intellectual; property right is getting effected, why you should give exemption, why companies like Microsoft will not file privileged suits and how their values of their trademarks or copyrights or patents and likewise. So they will call you and provide hospitality. So the government needs to know and check on where somebody else is putting their way.

Justice Kurian Joseph: there is almost two three page discussion on this very same person, in one of the judgments.

Prashant Bhushan: and also for foreign medical treatment, what is the criteria? There are many instances of judges going abroad for foreign medical treatment. Do they go on government expense?

Justice Kurian Joseph: No on case to case basis they are reimbursed. This is the only situation of Supreme Court now. For taking treatment outside the country you need special permission from the chief justice.

Prashant Bhushan: But these are the remaining three things by which the government is still managing to influence some judges, one is this foreign travel, second is foreign medical treatment and third is post retirement appointment. These are the things which still remains.

Justice Raveendran: Prashant mentions three things but there are also, regarding the first and second the test should be this if it available or made available to everyone as a rule then this problem will not arise, if it is made available on case to case basis then you know there is always cause for it. Therefore the Supreme Court should fight. It should say that if a Supreme Court or a High Court judge is unfortunate enough to be ill, and for which a foreign treatment is more advance, for example cancer and all, like America is more advanced, so if a rule is made to tackle this kind of situation.

Prashant Bhushan: But even some kind of mechanism needs to be made to tackle this rule.

Justice Kurian Joseph: for the government it should be uniform policy where the discretion of the government is to be taken, if that is done then this problem will not arise.

Prashant Bhushan: that is what needs to be done.

Justice Rvaeendran: As such the Supreme Court has no such norm now.

Justice Kurian Joseph: No not now. But it can do. It can see how the government approval is given. Some babu sitting in the office, some secretary why should he decide? And let there be uniform basis. Let that case to case basis examination take place by the Supreme Court of the High Court and for the budget we look to the government, but the government must not hold it.

Justice Rvaeendran: This is regarding the first part. The second part needs discussion. Prashant has a very strong view about judges post retirement posts.

Prashant Bhushan: No, my view is that it should not be left to the discretion of the government just as judicial appointments re not left to the government to protect the independence of the

institution, similarly post retirement posts should also not be left at the discretion of the government. It should be essentially decided by either some independent judicial appointment commission or the Supreme Court itself.

The question is what is the extend of the government's role in that? If one comes to the conclusion that the government's role in that is very minimal then it is alright. But if the government's role in it is significant just as in this NJAC.

Justice Raveendran: So in two or three months the judge changes colours, this is the complaint.

Most of these post retirement posts are statutory, and the statute itself says how you will be selected. Therefore there is one suggestion, there should be a cooling period. That is what Justice Lodha has said. Two years. And may be some kind of thing may be there. Or it becomes when you can work up to, let us a High Court judge, if he is 62 and can work up to 64 why not have a mechanism that the Supreme Court makes available these judges for being appointed on a routine basis where there is no discretion with the government by paying that same salary the court can appoint if the judge at the time of retirement says that I am willing for my appointment as a tribunal. The Supreme Court keeps a list of it and as the vacancy arise, let us say recommends. Why should a judge at that time of his life when he is 62 when a lawyer go on and on up to their death, then why the knowledge and wisdom of the judge should not be used. Of course provided it is not used by this method of you favoring the government and getting. But as a matter of right if you do it.

Prashant Bhushan: I agree that one must use the expertise and experience of retired judges but that should not be on the discussion of a doubt.

Justice Raveendran: I will tell you when I was of twenty year or twenty five years I thought sixty-five was such an old age. When I am now 70 I still feel that I still have some juice in me. Therefore don't put us to, the only thing is it should not be at the mercy of the government that we are appointed. Let the Supreme Court do it. You give your willingness to be appointed as any tribunal etc. then let the Supreme Court appoint.

Prashant Bhusan: that is why I have been saying that for a very long time our campaign for judicial accountability or committee on judicial accountability and reforms that strictly

speaking that it requires an amendment to the constitution but we require a completely independent full time body. It may be called the judicial appointment commission or whatever which is a full time body which is completely independent of the government and selects judges of the higher judiciary and which also decides post retirement jobs of judges. So that could be a body and people have asked us how that body can be constituted, and we have several models. One model that we have suggested earlier was it can be a five member body one member appointed by union cabinet one member appointed by collegium of all the supreme court judges, one member appointed by the collegium of all the chief justices of the high court or even two member by supreme court and two member by the collegium of high court we can have member selected by the collegium of in a way loosely representing the legislature, so speaker plus vice president plus leader of opposition of the two houses and one member by some other accountability institution like NHRC, the CAG, the CEC etc. So we have this five seven different collegium appointing five seven member. Each member will be a full time member and after appointment will have a tenure of five years etc. and they can then select. This is one model. Another model is what we have selected for the Lokpal. So some such method by which you have a permanent full time body because actually that's why secretariat is required, because this is a full time judges, and sitting judges who are already very busy with their judicial work cannot devote this time for appointing 100 judges a year, or for post-retirement jobs will be selecting another 40 50 judges. So 150 judges a year it needs a full time body.

Justice Raveendran: In principle I do not have any view because I am a retired judge. But I have a great mistrust against politicians if they will be members. I have some suggestions because we know we can't follow the foreign models here, the Indian model is completely different. I do not know whether you recollect the article written by Markande Katju about the appointment of Justice Ashok Kumar in the Madras high Court. He was a gentleman as a district judge, who gave Karunanidhi a bail so this gentleman thereafter he became a High Court Judge, he was made an additional judge. The reports about his performance was quite bad and therefore they were thinking about not confirming. Then Karunanidhi who was a crucial member and the support of Karunanidhi was withdrawn by some 30 of something MPs, even then the Manmohan Singh's government was formed, he said that look if Justice Ashok Kumar is not confirmed we will be withdrawing. This is it.

Prashant Bhusan: If Justice Katju has written about it.

Justice Raveendran: I am repeating what Justice Katju has written. Then what happened the Supreme Court was not willing to do it because the collegium system was brought in to avoid such political pressures. Then Manmohan Singh was to go to America to address the UN, I think Bhardwaj had gone there to the airport, there the message was delivered to Manmohan Singh, if he is not confirmed then by the time you will return from UN, and the government will change. Then Bhardwaj went to court, and I do not know that appeal was made but the Supreme Court considered the matter and said to the chief justice that, let us increase for one year and see the performance. Then this was adopted. Then that chief justice went and the next chief justice came, he also increased it for one year and then he was confirmed, and then he died also. The issue is this, now the BJP has got majority but our country is known for coalition government, where a party with five or ten runs the government, if politicians will have a say every party with five or ten MPs will say you appoint my person or else we will withdraw. This is where India is unique, we cannot adopt this because High Court members are very powerful.

Prashnat Bhusan: See what I was saying was that this is also a problem of propriety that judges have to go to the Law Ministers. I don't know how this will be dealt with but this needs to be dealt with actually to protect the independence of the judiciary.

Justice Kurian Joseph: See wherever there is any sensitive issue which is likely to effect the credibility is there we should rush it and insure that the matter is decided, so that the credibility is not effected.

Prashant Bhusan: Actually the problem that is coming in it is that the politicians are now trying to paint, even this NJAC issue. Look this is now an attempt by the judiciary to control everting and make it into a self-appointing body that is why. And if this issue is taking up by way of a PIL, and this issue of foreign medical reimbursements, or even this post retirement jobs, the Supreme Court says that well this would also be dealt by the collegium and not by the government, again the same kind of charge will be made. That is why we have been saying that form a completely independent body which is a full time body.

Justice Raveendran: But who will constitute that body?

Prashant Bhusan: There are so many models.

Justice Kurian Joseph: Let us not go by the system. Because one of the argument that is made this judges appointing judges is committing. What I am saying it is good and if it is good why not we be the first and other countries follow it. We are following the systems of Australia, U.S and U.K., why can't they follow our system. What I think is let us make our system good instead of saying that nobody else is doing this in the developed world, only India is doing. What is wrong if India is doing something good and following? But as Prashant is saying that transparency issues and nepotism aspects, if it is to be taken. Otherwise J.S Verma Saheb said let us find the fault in us. He was judge, he thought that if the system would be good enough to protect the entire appointments form political interference that is why it was done, it was intended to be good.

Prashant Bhushan: It would successfully address the issue which was to make the judiciary more independent of the government but it did not succeed win dealing with the other problems, the internal problems because that was not the object of that judgment. The object of that judgment was merely judicial independence. Now you will be dealing with the other aspect.

Justice Kurian Joseph: In fact the other thing is that trust deficit has affected the collegium system. This is the NJAC judgment. What I did is I did a lot of job in cutting down, so mine is the shortest. To write a short judgment is the most difficult thing.

Prashant Bhushan: Yes Yes it is.

Justice Kurian Joseph: And the trust deficit is in page number 910.

The trust deficit has affected the credibility of the Collegium system, as sometimes observed by the civic society. Quite often, very serious allegations and many a time not unfounded too, have 911 been raised that its approach has been highly subjective. Deserving persons have been ignored wholly for subjective reasons, social and other national realities were overlooked, certain appointments were purposely delayed so as either to benefit vested choices or to deny such benefits to the less patronised, selection of patronised or favoured persons were made in blatant violation of the guidelines resulting in unmerited, if not, bad appointments, the dictatorial attitude of the Collegium seriously affecting the self-respect and dignity, if not, independence of Judges, the court, particularly the Supreme Court, often being styled as the Court of the Collegium, the looking forward syndrome affecting impartial assessment, etc.,

have been some of the other allegations in the air for quite some time. These allegations certainly call for a deep introspection as to whether the institutional trusteeship has kept up the expectations of the framers of the Constitution. Though one would not like to go into a detailed analysis of the reasons, I feel that it is not the trusteeship that failed, but the frailties of the trustees and the collaborators which failed the system. To me, it is a curable situation yet.

So we were just wondering as to, many of you are in the collegium and many would also like to come to the collegium, so how to regain this trust and confidence?

Prashant Bhusan: The High Court themselves should convene meetings of all the judges and then formulate suggestions for each High Court.

Justice Raveendran: In fact you know for a High Court Chief Justice to call for a meeting and all the time is not there, individually you can say.

Justice Kurian Joseph: Because in the Parliament also very few speak and in the court also very few speak.

Justice Raveendran: Because unless the nepotism and transparency issues are dealt with the collegium system will continue to suffer the same kind of disadvantages.

Prashant Bhusan: Unless otherwise we are able to address this issue of nepotism etc. in appointment which unfortunately remains legal with the collegium system the politicians will succeed. today what is happening is there is an attempt by the political class or the government to try and paint this judgment and this whole collegium system. And unless we succeed in addressing this issue, so therefore we have to be able to clean up this system through transparency because otherwise ultimately this is a matter of public opinion. The reason that government is not able to do anything with this kind of judgment is because public opinion is in support of the judiciary or this in general. The day they succeed in creating public opinion against the judiciary then it will become very difficult.

Justice Raveendran: I think this is dangerous, in fact the Attorney General gave this opinion, I am giving this example, see every father wants the daughter to get a good husband and make his best of effort to search for a good boy but what happens? In atleast two to three percent cases the son in law becomes, and the matter ends up in a divorce, can it be said because of that, that the father did not take steps.

Justice Kurian Joseph: Even if NJAC comes into play there will be one or two percent failure. So this is what is damaging the institution. Some judges become corrupt, sometime it is a good lawyer becomes bad judge.

Prashant Bhushan: But any way that could not to say that thing were alright.

Justice Kurian Joseph: No No certainly not.

Prashant as far as transparency in nepotism is concerned there can be but merely because where one percent of people think that there is some kind of grievance cannot be aground to say that the system is bad. You can with reference to specific cases that the system is bad.

In Kerala I can tell you in last three years, three children of former judges have been appointed as judges. But nobody ever raised any complaint that they came only because they have nepotism.

Prashant Bhushan: Kerala actually has a very good reputation. So far as Kerala high court is concerned there is virtually no allegation of corruption there and very little of nepotism either.

Justice Raveendran: That is because people are so much aware of their rights and all are educated, all are ready for a discussion. Every morning you will find that one or the other discussion about politics and all.

Justice Kurain Josph: The three people appointed are youngsters. Very young people but very competitive. Then nobody ever raised complaint.

Prashant Bhushan: I don't how Kerala acquired this, but it has had this tradition which has continued for whatever reason.

Justice Kurian Joseph: And one thing is there that there is no casteism there. That is a great advantage.

Prashant Bhushan: there is one reason that is one state which has Hindus, Christians and Muslims almost in equal, almost some 30 percent. And they have always been known for no internal conflict between them and also education, and also language.

Justice Kurian Joseph: No Tamilnadu has also one language, Andhra has also one language, but worst of castism I have seen there.

Prashant Bhushan: Even in the northern states it is very much, castism is rampant, it is very bad.

Justice Kurian Joseph: This is one area in which we have to be very careful. In passing the comments. We need to pass comments because we need to elicit the views, or best answers, or deeper analysis etc. but loose talk we should not make it for breaking news.

Justice Raveendran: Though ultimately the judgment will not make that. It will merely be to make a response, but still.

Justice Kurian Joseph: And I know judges preparing this sort of expressions for news, this is sad very sad. Catching words, preparing catching words and then blasting in the bench. And some friends tell me that they use to call and tell them also to be ready next day. It has gone to that level. Not only Kerala it is happening in many places.

Justice Raveendran: We had a justice in Karnataka, he came from Mumbai, every morning he will have briefing media briefing, and he will say in what case he has made what comment, what judgment he has delivered, which are the portions. He retired in 2004.

Participant: I had practiced in Delhi High Court also, and even Markande Katju would call me as a lawyer, and he would give his judgment. He had got a friend in journalism whom he would call.

Justice Kurian Joseph: Virtually the whole media was in his court only.

Justice Raveendran: In Supreme Court when he was there the leading newspapers has two reporters one reporter exclusively for Markande Katju and one another reporter for all the other judges.

Justice Kurian Joseph: because everyday they knew that something was coming.

Justice Raveendran: once my daughter had come for a holiday, and she said that she wanted to come and see the high court Supreme Court and all that. I said that ok you can come, my secretary will take you, so in the evening I asked her have you come to the Supreme Court, she

said yes. I was very happy, I said you came to my court so did you see how I performed and all that, she said no why would I come to your court, I went to Markande Katju's court and came back. Therefore that was the effect.

So now let us come back to propriety. What is the final word of Kurian Joseph Saheb.

Justice Kurian Joseph: taking back to the Bangalore Principles on this issue. That the institution is on public base and we must be guarded of the high office and avoid anything unbecoming of the high office. You may pass through or you may go through but ultimately what suffers is the esteem. Institution's esteem.

In fact again I will citing my judgment because I took lot of pain to write short judgment. I said it is not the institution which has failed it is actually the working which has failed. And Justice Lodha, and in fact I was sitting with the chief justice when he was there, he was coming and telling, and he said that all the chief justices were telling him that for heaven's sake don't depart. And they told him yours is the best system.

Justice Raveendran: Do you say that collegium is appreciated internationally. See as you read the judgment, as a principle it is beyond doubt a very good system, provided the person who man the collegium do their duties properly. And it doesn't stops there in fact there are checks and balances by the government also. So if at all any bad appointment had gone through it is only on account of the active silence. I used that expression also. If a judge has some secret habbit that only government will know because that verification has to be done by the government. We have no method or we have no organization also. No Supreme Court cannot interfere. Those inputs can only be from the government.

Prashant Bhushan: No, but can't the Supreme Court set up a small department for the purpose for verifying the truthfulness of the appointments. Because it's very unreliable system. Let the government also give its report. Therefore it is important in having this whole issue of having a Secretariat there should also be small investigative agency for the purpose of investigating anything which may be required to be investigated regarding this complaints etc.

Participant: In Kerala we have a vigilance department, the registrar vigilance is a district judge. He is assisted by a superintendent.

Justice Raveendran: I had the occasion to discuss it in Karnataka. Government actually sends the most useless officers.

Justice Raveendran: I had the occasion to discuss it in Karnataka. Government actually sends the most useless officers. There are officers who don't want to come there because there is not much money there.

Justice Kurian Joseph: This is also something we must look into, the chief justice should make an inquiry and find out discrepancies.

Prashant Bhusan: Obviously. But the court can also recruit for the purpose of this inquiry they can create posts.

Participant: We need to have a person who has some expertise in making inquiry.

Justice Kurian Joseph: Ofcourse. Reputed retired police officers can be asked.

Participant: That is the only thing that executive has, but if we will take that also they will say that you are taking away our inputs.

Prashant Bhusan: No they can give their inputs.

Participant: Some retired CBI director can be asked.

Participant: No why director?

Justice Kurian Joseph: For example in coal case, in which I am also a member, a retired director was asked to constitute a special team and he is investigation.

Prashant Bhusan: Yes that was done in the Gujarat case also, it was a retired director.

Justice Kurian Joseph: Yes it is a very good idea. And the government can have their own inputs also.

Justice Raveendran: And it will not disturb their own powers also. And we can have our own independence.

Participant: There can be two wings the Central and the state wing, and names can be put on the websites.

Justice Kurian Joseph: My son has always been educating this theory of putting the names of such officers on the website. But I was only wondering whether this was creating a task for incoming judges?

Justice Raveendran: See there are many systems but we should be careful. In England now the system is for the appointment of the high court, and the Supreme Court there, applications are invited giving all the particulars, and that application is also on the website, i was speaking to one of the law lords, he said it has led to a kind of disastrous position.

Prashant Bhusan: But suppose if you have application plus nomination either you can apply or anybody else can nominate.

Justice Raveendran: For Prime Minister do you have an application? for an independent search committee?

Participant: If there is an internal examination most of our High Court judges will fail, the examination which the CJJD gives.

Participant: if for becoming a judge we have an application no successful lawyer will apply.

Justice Raveendran: I will tell you the reason. If a successful lawyer concentrates either on criminal law or civil law, he is the leader there, or here he has to write an examination, and has to answer questions on civil criminal revenue constitution, from which he is not familiar. Therefore who is getting selected in Karnataka is a law lecturer, because they have knowledge of all the laws, therefore they are doing better than most of lawyers. So everything has got a counter point which requires to be examined.

Participant: In Karnataka we have a munsif, he has also written exam for district judge and he has shifted from the CJJD training to District Judge training. All his colleagues are still there.

Justice Raveendran: It is inevitable so long as they have this minimum service and all that rule.

Justice Kurian Joseph: The last in this topic we have to cover, and which is left is integrity.

Prashant when are you leaving? If it is the 3.30 flight you will have to leave by 1.45. You will

get another chance to hear me, but you will get no chance to hear Prashant. Prashant do you have points to make on integrity?

Dr. Geeta: I am thinking now let's go for lunch, because session take one hour minimum, so let's go for lunch and after lunch lets join back again.

Justice Kurian Joseph: We can give five minutes to Mr. Prashant.

Dr. Geeta: Yes.

Prashant Bhushan: I think everything that needed to be discussed around conduct, including about systems has been discussed except, I just wanted this the system for complaint against sitting judges. so today the only method is impeachment, and impeachment is not a very practical remedy, and it is also not very satisfactory, the reason why it is not satisfactory is on a political, because it is ultimately an outcome of political process and voting and as we saw in B. Ramaswami's case, therefor that is not at all a satisfactory system. The reason is for initiation it depends upon getting the signature of 50 or 100 MPs of the Rajya sabha, and that is again a very political process and usually these politicians don not sign these impeachment motion unless two points are satisfied, one that you have un-impeachable documentary evidence to show serious misconduct on the part of a judge and secondly that it has become public scandal. Unless it is a public scandal they will not sign the impeachment motion. This is our experience. In Ramaswami it became a public scandal and in Dinakaran it became a public scandal therefore they signed. Soumitra Sen was a different reason. In that what happened was, the internal committee, in which Justice A.P shah was one of the member, under the in-house procedure they indicted Soumitra Sen, and because of that the indictment by internal committee of judges, the M.Ps indicted. So the bill that was brought "The Judicial Standards and Accountability Bill", That has two kinds of committee, one is called the oversight committee, which is a permanent kind of committee of five judges, or something like that, and then there is the committee made of every high court depending upon the complaint, if there is a complaint against let's say a judge of the Allahabad high court, then let's say there is a committee of two sitting judges of that high court, plus one retired judge or retired chief justice of that high court. So the complaint, if the oversight committee finds that there is some prima facie case it in the complaint against the judge, one improvement made in the bill is that it enables another process for starting impeachment proceedings, instead of getting signatures of 50 MPs and 100 Mps now the complaint can be directly made by any citizen to the oversight committee finds any

prima facie merits, it refers the matter to the committee of three judges, sitting or retired of that same high court. First this itself is a very un-satisfactory process because we can't realistically expect judges of the same high court to impartially examine complaints against a sitting judge of the same high court. And then there are provisions in the bill that say that the whole proceeding should be secret and the complainant if he gives out any material from his complaint to the outside world then he will be liable to be prosecuted etc etc. So therefore that makes it even more impractical and will lead nowhere at all. That will not inspire any public confidence and that will not be any credible machinery and that is why we have been saying again from a very long time, I think we made this suggestion first in early 1997 even earlier that there needs to be a permanent full time independent body for appointment, similarly a permanent full time independent body for complaints also. It has to be a body which is completely independent of the government and largely independent of the sitting judiciary also. Again it can be appointed in a manner such that the government does not control the appointments of this body either, government may have some minor say in the selection of this body but this body will have secured tenure, and complaints can be made to this body and this body will have an investigation machinery under its control, they can use this to verify any complaint and thereafter if it feels that there is a credible material against that judge, they will hold the trial against that judge. And after the trial, if the recommendation is to remove that judge, he should be removed. So that is our suggestion I suppose. Of course it does require an amendment to the constitution. Because there is no point in having a process which has no public confidence.

Justice Kurian Joseph: but the supreme court to set aside or to pass that order, because judges are also there in the Rajya Sabha Committee, nominated ones. So with that we break out for lunch and come back at 2 sharp.

Dr. Geeta: Do you want to come early?

Justice Kurian Joseph: Let's come back at 1.50. thank you.

Dr. Geeta: all of you have to assemble at the porch for the group photo.

SESSION 8

Dr. Pawan: Let us first take up the discussion on integrity and judges they come with lot of interaction have seen some of my experiences of interaction with participants coming from management, academia, technology, judiciary. But frankly my most of the examples will be

from different kind of fields, because that will allow me to be in a flow. Some of the examples I will bring from my limited knowledge of judiciary also. So let us begin our interactions on Integrity, and of course followed by impartiality. Though all of us know the meaning, but I would like to know one or two spontaneous answers, what is Integrity? Aaa...through my experience of interaction with Hon'ble judges, kindly allow me to say, and judges they come with lot of interaction, but I found through my experience they take a little bit type, because they say that they are more to listening.....hhahah....what is integrity

Participant: moral and ethical standards...

Dr. Pawan: moral and ethical standards, fine sir, moral and ethical standards....holistic approach yes...

Justice Kurian Joseph: State of being honest

Dr. Pawan: State of being honest...anything else...one more? Fine, let me also say. In management we describe integrity as phenomenon as when people confide in you. I am a man of words, I am a man of deeds, I am a man of facts, there is also a common perspective. But management has taken, management science or art has taken a stand, integrity., a manager with integrity means a person who system, other individuals or groups, confide or believe, and that meaning can be transplanted in the field of Judiciary also. Because, society nation, people or individual, they confide in judicial system, it mean that the individual is perceived to be a person or the system having integrity. And when they say moral and ethics...I don't want to be just discussion entomological enquiry but just for some clarity, is there some difference sir? Morality and ethical, a person a moral, morally sound, and a person is ethical are these two same things or we have two different sets of responsibilities when we claim that I am moral and I am also ethical.

Participant: Moral is general

Dr. Pawan: Can we be more tangible, when we say general. I am not able to have certain concrete idea about it...moral is general means what? Morality is basically more individualistic in nature, moral....like an individual, out of 50 individuals may be different individual is a stage of moral development. I find that the first session. Can we say....when we say ethical what is ethical today may become unethical tomorrow, or what was unethical yesterday might come into the domain of ethically today. Because ethical when we say it is mutually agreed upon dos and don'ts. For example, a particular behavior in public, today it may be unethical,

but tomorrow, if law is passed in favor of that, the activity of action is no more unethical. So the kind of mutually agreed upon by the society, by the institution, or by the nation, we say dos and don'ts which have been mutually decided upon, fall into the domain of ethical practices. Because the process is dynamic. An area of interaction or commonality between these terms are not denied but in a society a teacher like me can go to family with more comfort and Hon'ble judges, why do you say that cinema halls should not be frequented by the families of judges, because it is mutually decided, when we see various declarations we find that Hon'ble judges should do everything in good faith to remain immuned by the society. Of course they are human beings, everybody is a human being. Hon'ble judges are also social human beings. But there is a kind of understanding mutually decided upon, that's is why we would say, a teacher going to movie hall with family vis vie Hon'ble judges going to movie halls with family is a matter of ethics not morality., because it is mutually decided upon. It can be mutually decided by a society, by a nation or for a particular group, here for example the particular group is group of judges, that's why if we frequent our self with the society it has the probability of getting contaminated that's why we should remain immuned, so this will come under ethical. Whereas morality is more micro in nature, where individual will decide what is moral or immoral. We are all dealing with the field of law and with the grace of God I also earned by first bread and butter by interpreting law, my first job was in bank Of India as a industrial Relations officer, I interpreted labor laws particularly Industrial Disputes Act 1947 and I earned my first bread and butter, I wanted to be a teacher so when I got a chance I became one. I am also grateful to the field of law because it has given me my first job and I could have continued there also. I am trying to say that morality is more a matter of personal choice whereas ethics is a matter of social understanding for nation, for group, for society or for particular group, with this backdrop I would like to say that being legal is the basic. The moral values which we say individuals are at the different stages of moral understanding, let me build this argument in one minute, then it will be more clear, being legal is the basic requirement, if I am illegal, particularly in independent India, I am unethical. This example will not stand if we are talking about India before 1947 because, if there is law and I am breaking the law I am unlawful and the society may say also that you are unethical but you may be still moral. Example Mahatma Gandhi breaks a law on 12th march 1930. This is unlawful act, we know it as dandi march, dandi march was unlawful or not, the answer is yes because law was framed, in such a way that you cannot manufacture law, Gandhi goes beyond it.

Participant: He violated the law to be punished, that is the difference, matter could have been different, if after doing the offence he flew away, that was his principle for violation of law

Dr. Pawan: He decided based on his morality, now it is Gandhi's morality which says that no I will break this rule so in general

May be in management, may be in different field, morality may be different. In law, in judging, morality refers to the accepted norms of the society as what is right and what is wrong. If I take 100 rupees from you morally I am bound to repay that amount until that is paid, that is the accepted norm of the society. But legally after 3 years you cannot demand that amount from me. So what is morally right ceases to be effective in law in distinguishing moral obligations and moral rights vis a vis legal obligations and legal rights. Our discussion, our debate is how do you choose between legal obligation and moral obligation. Somebody comes before you, you think he has morally he has done the right thing, as a person, from time immemorial like murder society accept, theft society does not accept, like the famous hebrus, 10th amendment they are considered to be forever. What does not change what is accepted is moral. Legal is in contradistinction, governed by laws which has nothing to do with moral. This is how we distinguish and ethical is the standard fixed for any standard of the society for doctors for different ethics, lawyers have different ethics, as judges we have different ethics, the code of conduct that is expected of a particular profession or section of a society is ethical and is ethics. Morals are what is generally, what is generally applicable, what cannot be easily changed, morals cannot change, murder today it is not permitted, tomorrow it is permitted, no...law may permit, law may say it is self-defence it is not murder, if you do it out of anger it is not murder. So so many if and buts can be added legally, morally murder is a murder, now this is the distinction we keep. We do not look at it from the management principle.

Dr. Pawan: Actually management principle has a legal angle. They are not at the logger heads. What I am trying to say here is that if you see...

Justice Raveendran: No No what you are saying, your statement that morality is in reference to the individual whereas ethics has reference to a group, may be one of the meanings of morals and morality but the accepted morality for the purpose of law is that which is right, that which is not controlled by law, but which is true. For example truth is a moral value, honesty is amoral value, being fair is moral value, these have no place in law, law does not expect you to be all this....we always judges look at morals with reference to law.

Dr. Pawan: OO that is right, I agree. That is interesting, that's why you see...there is nothing loggerhead that we are discussing that there is loggerhead between....

Participants: No they were trying to express the legalistic angle, as they have been lawyers for a long time, their view of morality and ethics is as they know, with reference to the judicial and legal perspective.

Dr. Pawan: fine, so let me propose on this argument, three words I am taking, I am being legal, some person or society is legal, some system is legal and a society or individual is moral. What I am trying to say here is that...let us examine the same thing and I think more clarity will emerge, and then we will go to of course integrity is the central point here .

(Writes the three terms on the board and explains through drawn representation)

We have more leeway to debate on what is moral and less leeway to debate on what is ethical and still less on what is legal. Legal is more concretized. And being legal is the main requirement of the society, but it is not enough. Being by only being legal, one may not end up being ethical also and some person examine their individual domain of morality and they represent excellent example that this person actually has kept the flag of moral up. That's why with that backdrop I said that the choice of individual is more here . Here I cannot say that my name starts with P and let there be a law that anybody whose name starts with P should be exonerated by the law , your name starts with O or Z you have to follow that law, it is very concretized , it is given, until law is changes you have to follow that , you are governed by that. . Next argument is that only by being legal I cannot claim that I have become ethical, say for example , modus operandi of floating tender. I call it there are four types of persons in this world, type one, type two, type three and type four. Type one they are paper strong and intention strong, second type, intention strong, paper weak, innocent kind of people, they do not maintain the paper work in proper order and if there is any CAG or CVC inquiry the person gets caught, his intention was strong, no body can say that he is dishonest , his honesty is impeccable but he has not maintained paper, third type, intention weak paper strong, this person is appearing to be legal, every process he has followed in floating tenders, but there are under currents paper strong, intention weak, from legal angle he is correct. May be tomorrow Hon'ble court may say there was not much evidence to punish him , or court may not find him punishable but he has done many things. Fourth person I don't know whether we should talk about him or not, intention weak, paper weak, so only by being legal and also by appearing to be fulfilling the criteria of being legal, I may not be ethical necessarily. SO we have to transcend from only

being legal, in order to become ethical, and we have to both also in order to become moral, that's why my submission was, a choice to be moral there is no leeway to individual at this stage of operation Moral and that why very first session I found, first sessions started with sages of moral development. I want to bring in the discussion of integrity, this topic is more for us to examine it from individual perspective and taking more responsibility on my side to understand what is integrity. If I can know that what the stages of moral development are, it was discussed yesterday. Six stages, and some say that two stages can be clubbed together, so three stages. Kohlberg and Mahatma Gandhi both influenced each other, and Kohlberg was a person who was deporting Jews from the coast of Belize, one country near Mexico to Israel and he was person of principles and he devoted his life for the cause he wanted to live. He has said that basically there are six which can be clubbed to three, one is called pre-convention stage, second is conventional and third is post-conventional stage. Pre-conventional stage of morality is that I should remain moral so that I may not be punished, conventional stage of morality is that I should be moral so that I can be rewarded and appreciated. Post-conventional stage is, I am not moral because I am afraid of being punished, I am not entangled with award or recognition. I am moral because I cannot be otherwise. And that's why at the highest stage of moral development, the choice becomes very individualistic. That point I was making. I accept it Sir and I understand it that morality can be applied to macro level also, to group or society also, but when there is demand to be moral, when the light is more darker, when I am finding myself alone, and everyone except me is saying that X option is correct and Y is wrong, and I know that Y is correct and X is wrong, I have courage and moral that allow me to say that my view is different from yours. So with this backdrop let us understand integrity, integrity we are discussing so that we can remind yourself that in our profession integrity plays a central stage role, I think that is the purpose of this discussion. We all know but to must rejuvenate it, ignite and be reminded with one another we are here. And integrity especially for judiciary or it may be integrity for nay common man. Integrity when we say, it depends upon, let us say integrity of an individual, it depends on values we possess, because the grand title of this session is also value. When we say values, what are values, and it is not management definition, in general. how values have been captured. Without values we cannot become persons of integrity, values is at the base, what is that base, what is that mother concept. Value word you will also find in the dictionary of management, also in the dictionary of general English, if we go to general dictionary, what is that word which is closed to that....it will be interesting to find which is that common man English dictionary word which is closest to value.

Participants: ideals

Participant: Virtues, principles

DR. Pawan: Because there have been debates among 1,600 researchers on this issue, on what is value

Participant: Something you hold dear.

Dr. Pawan: you all are very close. The word is conviction. From normal common English dictionary, the word that is closed to the word values, especially human values is the word conviction. Integrity what we are saying comes from value, and values reflects, smells, abstractness . But when we say conviction it becomes more tangible. So values are basically convictions, I will say my conviction depend sorry, my integrity on work place will depend on my convtion, will depend on my values

Participant: beliefs

Dr. Pawan: pardon? No belief is more broader terminology which says that, it is a kind of acceptance of norm, it is not belief it is conviction. Let me further say, I have a conviction and this is question for me of life and death that is conviction. Belief is like I believe, belief system can also go into philosophy, I belief that God exists or does not exist in form , so in that domain belief word is more apt. Conviction is matter of life and death, yes I am fully convinced with this issue that it is right or wrong. We might have seen, we all have attended may lectures, we have attended many talks ourselves. Having you seen some speaker talking with great bright that this life is full of grey areas, generally we listen to this sentence, life is full of grey areas , it means they are trying to say that in this life there are many such situations in which white area and black area they are narrower and gray has the wider area. White area means great clarity is there, this is ethical this is unethical, I am sure that this is desirable white area. Black area is the area in which we should not operate, we know that this is undesirable, unethical. Let me sat white, clear means I am clear, this is desirable, black area again means, I am clear this is undesirable. Grey area means I do not know whether the decision is ethical or not, that is called ethical dilemma, ethical dilemma is not is situation in which, we are trying to understand this is ethical or unethical when the things are clear. Ethical dilemma arises when we find that if I take decision X, and if I take decision Y, the two alternatives available. If I go by X, there are shades with it, advantages and disadvantages. If I go with Y there are advantages and disadvantages. Now there is dilemma, that dilemma is grey area. There is a research with 92

managers on ethical dilemma issue, and I found that this phenomena was reinforced that the tendency of people to say and claim with lot of pride that life is full of grey areas, then I did some interventions and when data was collected, then they were more clear about, with conviction that this is ethical, this is it, this is unethical this is it. So we have to reduce gray area, in order to be man of integrity, we have to reduce gray area, gray area will remain in life, dilemma will remain in life, In the table when we are taking decision, as a manager or as Hon'ble judges, many times things are blurred. But why we claim in exaggerated fashion that things are blurred than actually they are, it happens because our clarity is clouded, our clarity if it works properly, this black area will increase, it will come this side. My white sure will also increase, my area of confusing gets reduced. There is no instrument for it, actually we have to examine it with our sense of integrity that what is desirable, what is undesirable. As in Sanskrit it is said, what is *Shubh* and what is *ashubh*, all *shubh* are desirable all *ashubh* are undesirable. But more the required time we take to decide what is *shubh and ashubh*, but sense of clarity, integrity it reduces our grey area. This is importance of reexamining integrity or morality at my level of understand because values or convictions or integrity, its unit of reference is individual, when we say integrity many persons are more clear about. Person like me who is more vulnerable is not so clear about the things. Why does it happen?

Participant: Not clear about what?

Dr. Pawan: About what is *subh*, what is *ashubh*, what is ethical what is unethical, what is desirable, what is undesirable.

Justice Raveendra: Let me give an example, a section of society is convinced that, Killing cows is totally wrong, they are very clear and they are convinced, all their values says that cow should not be killed and beef should not be eaten, and were have a equal number of people, most of the Hindus do not have this conviction, but a section of the Hindus are very much convinced and there are Christians and Hindus that there is nothing wrong about killing cows and eating them. They are also very clear, there is no ambiguity, they are convinced that beef eating is wrong, and their values also say that beef eating is wrong, now where is the question of integrity? This is the test, then issue of integrity should come in the issue of beef eating, but where does it come?

Dr. Pawan: It is a very interesting observation Sir, you see there may be possibilities ...

Why I am saying this is that, integrity is not something we are examining has ti do something with convictions and morals, it is something added to morals and ethics. All our ethics is added

to morality. If it is not there we only have conviction, values, they are not clear. That's why I said, if killing other animal is not wrong to Hindus then why killing cow should be banned? All over the world cows are killed and beef is eaten, therefore I am very clear , my conviction is clear and my clarity after reading various new papers and going to internet is all that countries ar doing it. Earlier I was a little doubt full, now I go to internet and find about all other country, you are clearer now and if you say clarity is attest, conviction is attest, value is attest , then where is the integrity issue in matter like this? It is mean question of conviction, conviction does not lead to integrity, conviction means conviction. It is a famous statement, a terrorists in India it is patriot in Pakistan. They are considered great persons who sacrificed life for persons of their country, so all the patriots are terrorist here. So conviction depends on, from where you are looking and what you are looking at. Conviction has nothing to do with integrity, values have something to do with integrity, provided values are referred to morality or ethics. If values are not linked to ethics or morality, integrity does not come.. Therefore clarity and convictions are not the tests, it is values yes. And values which are preferable to morals and ethics. From the legal point of view, from the other points of views it may be different, that's why I gave to this example of beef eating. I can give you half a dozen other examples. See in South India marrying your sisters daughters is a matter of right, that is only if you say no, your sister can give the daughter to somebody else, in north India it is blasphemy, because the mama considers her as the daughter. In Hinduism, marrying father's sisters daughter is permitted, or mother's brothers daughter is permitted, in Islam, you cannot marry father's sister's daughter, but you can marry father's brother's daughter, which is permitted in Hinduisms. So what is right , what is wrong differs from where you are standing from, what is your value system, what are your cultures, different people have different values, the vegetarians will have one values, the non-vegetarians will have different value. I am pure vegetarian, I cannot tolerate some animal being killed, but do I have the right to say that a person cannot eat non vegetarian food. What right do I have? And if I try to force my views on anon vegetarian I am being unreasonable, because it is said vegetarians are hardly one percent in the entire world, in India it is less than ten percent, in the entire world it is one percent.. So therefore, everything is related, this is the famous principle of relativity, everything is relative, everything is relative. What is right, what is wrong, it depends on the morals of a particular society in which you live. In 19th century, slavery was considered to be normal, good people even had slaves. In 21st century, slavery is shockingly cruel, it is bad. See if you go to America and say the word Nigero, they will beat you up now, you cannot call a black person Nigero, so Integrity in relation to profession of law, what does it mean, does it mean if a judge has

conviction that all fellows who have stolen something their hands should be cut, does it became integrity?

Dr. Pawan: No we are not saying that, you see...

Justice Raveendran: No I do not know what is the definition in management, what is the integrity in...in judicial system integrity and honesty are interchangeable words, we use only in that sense. But integrity has several meaning, you know what is known as institutional integrity, that is when Andhra Pradesh and Telangana is to be divided, people thought that integrity of Andhra Pradesh will be affected, there integrity has a different meaning. So what is the meaning we are looking at, we are not looking at management meaning, we are looking at meaning with reference to judges and judging their conduct, their values, how they can render justice in a manner, where they are man of honesty and man of integrity. We fully understand your three things, first is legality, what ethical and moral. But how do you connect them to integrity, this is what we would like to hear.

Dr. Pawan: My purpose is, using integrity word here and knowing what is the purpose of this worship, integrity at individual level for judiciary, for Hon'ble judges who have to give judgement and keep the conscience of society alive. So basically integrity for me is integrity for Hon'ble judges, in their individual capacity, with that backdrop I am coming. But it was interesting to find one example that..

Justice Raveendran: Linking integrity to an individual, well I and there is greater danger. See what is integrity for one cannot be integrity for the other, what you say is correct, integrity I want it to be a common term for all the judges, otherwise one person will have the conviction of one thing and say this is my conviction, so this is my integrity, another judge will say this is my conviction so this is my integrity, so both will claim I am a person with integrity but they will be expressing two different views, how can I have a system where two individual have two different views and both claim that they are man of integrity

Dr. Pawan: No I am not giving that much leeway to my conviction, when I say conviction. Conviction related to different debates which have taken place in the field of judiciary, that what are the basic value system of the judges.

Justice Raveendran: in the academy 4-5 years back one test was conducted on 100 judges, trial court judges. Facts of the case were given and they were asked to decide on the fact. The fact was that one girl who was provocatively dressed on a road, which is little dangerous. And

she does something teases some boys 2-3 boys and the boys rapes that girl. These are the facts that were given to the judge. They were asked to decide in reference to morality and law, where that person is to be punished or not, of what offence, whether he has committed some offence .49 people were convinced that she was responsible. 51 people were convinced that her dressing and her being on road has no this thing on why she should be raped, so they were convinced that she was raped. The difference was only 2 percent. I think Geeta was there at that time or not but Mohan Gopal was there. Just one difference 49 said that he was not guilty at all S because they were convinced with reference to this facts, the behaviour of the girl, the dress of the girl, the time at which she was out etc., this is there conviction. So I do not want the term integrity to be associated near conviction, the values yes, the term integrity should always have reference to values. Everyone has got a different value, everyone has different philosophy based on which it is his conviction. Today morning, one of the judges were discussing, which I will be discussing while doing with impartiality, about some judge which said something.... whatever our coming views are when it comes to judging we want to have a common denominator, and those common denominator are either in principles of morals where law is not there . Where law is not there we can see morals, we can see equity, therefore but we want to have a common platform, we do not want to be on this extreme or that extreme, we want everyone to have a common platform. Our law is precedent based approach, instead of following our things, follow what Supreme court or High Court has laid down. Conviction is dangerous in decision making, in a decision making, personal conviction is not good. You have to follow the general norm, you have to follow the ethical norms. You have to follow the values as understood in law. No this is how we put it. That is why conviction is little dicey for us

Dr. Pawan: Let me proceed, and then we will find a concurrent point.

Participant: Same paper you give to different teachers, marks are different, every teacher is right.

Justice Raveendran: Therefore what do you do, therefore a standard answer paper is set before hand and you have to give marks according to that standard paper. That becomes important, not your personal conviction. If that is allowed one teacher will give 2 marks one will give 10 marks, we do not want that.

Dr. Pawan: That is fine sir, so....when we say conviction, convicting is for individual. Let us say there are 20 different individuals and they are all judges, they have their own value pattern, value system. Now let me know anyone who has become Hon'ble judge or teacher like me,

whether there is a doubt that we are coming from a questionable value, we are coming from a society where my values can be questioned? See Hon'ble judges the way they have been nurtured as an individual through their personal life's and through their professional. Or a teacher who has been nurtured by a responsible parents and a system of academia, is there a doubt that I possess a questionable value? I am trying to bring in an argument, value of an individual judge or judge or a common man also or a good member of society values cannot be questions, the point which I am trying to reach slowly is, when values cannot be questioned why my behaviour has not been acceptable and I find sometime get caught red handed, suddenly I hit the third page of a local newspaper...why does it happen? For that I am saying, judges are individual people, persons of values, then we enter into profession, profession says we have to maintain that ridge line, what have a wishful interpretation of this is my way of judging because there is a point of concern sir? That we do not want any individual should more than deviate from the given pattern, we have usually agreed upon, so there is ethical standard set for our decision making. But who is making the decision? Decision is being made by individual also, that is why I am bringing this issue of values, values if it is not questionable why our exhibited behaviour become questionable, so with that backdrop I said that Integrity depends on values and values have been captured for your own conviction on which you stand and If I stand for a value, and let us say when I am given a written document, when I join a job as a judge or teacher, in that case I must adhere to those norms. Then there is loggerhead between what I understood and what has been prescribed by society in general or by organization in general and then slowly we get tuned to the kind of profession we are carrying forward. So in the beginning there may be some problem between personal conviction or the conviction a sit is demanded by job. But later on when we are doing the job, the conviction and values, slowly slowly gets as demanded by the profession. My point that I am making sir, individual judges may have conviction that promotion will be a by-product of my contribution to the society, the way I am supposed to do it. I might tried to plan out how can I solve the jigsaw puzzle and in the given contest how I can serve my personal call also without harming the system too much. There will be possibility, that's why I am watching in one go Hon'ble judges as two entities, one as position of Hon'ble judge, one as individual who carrying his or her own quota of vulnerability If I am allowed to do so. And I am trying to create a link between these two that conviction of an individual and the professionally demanded value in the system both they have to interact, and create an integrated self. So with this I am just putting a question, when values are supported by, I am dropping the conviction for time being. Values they are upheld, then my behaviour basically is going down? This is the question I am asking as an

individual. Family has given values, profession has given values, but sometime behaviour is questionable. There is reporting of corruption in education also, in judiciary also. And I am feeling very shameful saying that 3 percent of countrymen in India say that the most corrupt field of activity in the country is the field from where I belong, most corrupt is education field. Educational institutes, IIT, IIMs they are not filled with hooligans, but why they say so, persons they are carrying their values but they are not able to translate that into behaviour and in this process we lose our integrity. So for this I will ask one simple observation I will put for your examination. Gandhi was born like a person as I have been born. What helps him to become Mahatma Gandhi and I remain where I am. Mahatma Gandhi is you allow me to say, and this is undebatable. Person of Integrity, person of high value, who could translate it into his behaviour, whereas I poorly scored. I prepared for exams I poorly score, he prepared for exam he heavily scored. He was a man of integrity. What is this phenomena?

Participant: This is overcoming of human weakness, greed, wanting for more. These are the things we are required to, these are the things we in our training as lawyers, judge are told to overcome these weaknesses, if we are successful, if we fail...

Justice Raveendran: getting marks has nothing to do with integrity, nothing to do with integrity, integrity has nothing to do with educational background. many families, very solid families, teaching child all values and the child becomes hooligan. and the families where they do not have concept of morals, their only worry is how to add to the next meal, they don't think about and teach philosophy, values, morals. If you ask them they will say, they will know what is good bad themselves and those families have produced very good people. That is because along the way you learn, it is well known phenomenon that your family may help you to become good, but that is not the ultimate thing. Upbringing has nothing to do with your moral fibre, there your conviction...there you can use the word conviction that you should do good, become good, prosper in life, become in leader.

Dr. Pawan: I will put an input with your permission sir, this debate was almost resolved in 1980s among psychology, whether environment makes a person as he is or it is his nature, it is called nature nurture controversy and during 1980s there was lot of hamngama, some took this school of thought that only upbringing helps, nothing to do with born tendencies, some other school of thought said that born mentalities are more important, there was one physiologist who said you bring to me six infants and tell me I want to make this as doctor, this as technical, this as administrator, tell me who you want to become what and I will tell you

after 30 years that they have become that. he said there is nothing like inborn tendency. But the modern researches after 1990 says that environment is not everything, there are certain inborn tendencies, people like Pinker says that person are not born clean slate, there is something programmed for each individual, biologically psychology it is there. They say IQ, intelligence quotient 80% is in the genes, 20% can be taken care by coaching centre. Pleasantness quotient, somebody has to join a job and that job demands certain pleasantness. So please be more careful while selecting and do not depend too much on training, that I will convert this person into a pleasant person.

Justice Raveendran: So if a person is to be appointed, look at his genes.

Dr. Pawan: I am trying to say, it is better to be more sure at the time of recruitment selection, rather than take him and then say that training will take care of it. 80% of IQ is in genes, 60% of pleasantness quotient is in genes, 30% can be taken care and 20% of IQ can also be taken care.

Justice Raveendran: If you go to America, you find researches for this and for that, it is like famous decisions of our High courts...hahah...you can find this view and that view supported by facts. This side will get expert for this view and the other side will get expert for that view, this thing can go on. We do not want such situations here for judges. That is why people are very afraid, we do not want some of the management principles to come here for judges. The issue is management requires different kind of mind set, judging requires different kind of mind set. For a teacher networking is a must, if he does not network he is utter failure, but a judge if he networks, he is a utter failure, he should not mix, this is our philosophy. Judge is not suppose to talk also. Judges are accused of so many things but all our judges they do not open their mouth, this is the difference, so we cannot bring the principles of integrity of management, principle of integrity of judiciary or marketing into judiciary. because we are so much away with everyone, we do not mix, we do not laugh with everyone, if we talk with everyone we are found fault at. therefore we want people like you to tailor make principles to apply to us, instead of trying to apply the principle of management to us. we would like you to make module for us, how integrity can be improved, how impartiality can be improved, with reference to judges, this is the model we are looking at, I am a bit worried because Prashant Bhushan was saying this morning that if you are from a good family, with upbringing and all that you cannot go at. I don't agree. even in family of good apples there can be good apples, and there can be good apples also. An a man from a poor family, from hand to mouth family, we cannot say that he is not a man of integrity. there are also bad people from good families. Till the time we select

High Court judges they are 40-45, they have already passed all the tests. They have gathered all information. I would like you all to hear Manohar's story. He is one of the greatest examples you should ask him, I think he has men mentioned it in his reply. If Narendra Modi, a chaiwala can be a role model, Manohar is a role model. I am talking about type of this thing he underwent to become a lawyer and a judge. We are in a different sphere, these are not college students, and we are dealing with High Court Judges. These are all people who know lot of things, they are sitting here and listening to us, they may be cursing us from inside.. These people have undergone lot of training, these people have been lawyers for 20-25 years. They have seen well, they have seen ugly, they have been part of all this. They know all kind of things. They are not newly appointed team of judge, they are not youngster, or fresh college pass out, they are senior people, they have had a life time of experience. We come here for a refresher course, even people who know should be reminded what is integrity, what is impartiality all this is because we are worried, worried because the institution is degrading. Therefore we try to tell this to them, not because they do not know. Each one of us know, it is only revisiting our self, when I was a sitting judge, I always used to say, when I give a advice, please do not think it is an advice to you, it is an advice to me , to myself as well, how I should behave, therefore we want a model that will fit these experienced people, these are worldly wise people...they are not new, how do you instil the principle of integrity, impartiality in judicial accountness, as the other one was termed as judicial temperament,, how can you instil these things in the judges. When we talk to them we are not talking to them, we are talking to other judges also, they will go back and tell to othetr judges also....I would like Geeta to sit with you and create a module with your expertise into management and human resource to create one model for judges.

Dr. Pawan: That's correct, you will be happy to know that about three months back I conducted a five days programme which was administered by Jabalpur. Hon'ble Chief Justice himself was closely monitoring the programme and he was having dialogues with IIM Indore and I was asked by my director to coordinate that programme and take certain session, we invited about 24 judges to campus of IIM Indore and we conducted programme for them. We understand that integrity for management is to bring laurel for the organization, but integrity for judicial officer is to specially High Court judge is the impeccable self who will be at the helm of affairs, because judges are basically in a lonely world, do not take it literally but integrity for them has a different world. I am trying to answer why my integrity as judicial officer becomes shakeable and how it can remain impeccable, I will conclude this part and then we can go into discussion on impartiality. I posed a question, before we went into this

discussion, let us try to understand, why a person becomes a man of High integrity like Gandhi and My name is Pawan so I will use G and P, Pawan as vulnerable human being as small P, as far as values are concerned, values of Gandhi and value of me this is if not equal almost equal, I am not a person of very questionable value and if you see behaviour of Mahatma Gandhi which has been exhibited to the world and behaviour of this vulnerable Human being, there is no match. So what has what has happened to those values and how it has got lost on the path of proving myself to be a person of integrity? This phenomenon has been examined in the literature of management. May be it will be useful and we will transplant it into the situation of judiciary. Values they lead to attitudes. Values leads to attitudes. Attitudes means evaluative statement about object occurrence or human beings. In court cases there where two persons are fighting, husband and wife, wife says he does not trust me, husband says she is not compatible with me. Depending on my own experiences there may be a chance that I may take certain biasness into this situation. That is individual, I am not saying as a Hon'ble judge. If I witness in the society, my close family, that my daughter has been tortured, I may take a first instance that the gentle man is on the wrong side. But if I witness through my own experience that nowadays many daughter in laws they in turn torture their own husbands, then I will think that may be some individuals are taking undue advantages of law, this is what is attitude, evaluative statement. I try to understand through certain kind of strata that who may be right who may be wrong and this comes from values. Values leads to attitudes, and here according to statistical findings, there is a concept called co field of correlation has been found to be high and relation is positive. Values leads to attitudes and attitudes leads to behaviour. This is my exhibited behaviour which may be scrutinized through a lenses of whether I am a person of integrity or not, research findings say that attitudes also lead to behaviour and here the relationship is, sorry here is positive relationship. Similarly as attitudes are so the behaviours are, so relationship is positive, positive means, both are moving in the same direction. But unfortunately, here the R value, R is the coefficient of correlation, is low. Survey findings say so. It is empirical. So we can have certain faith in it, and this value has been found to be almost equal to 0.1. Actually this is explaining basic human nature, a person with high value, more probability is there that the person will have right attitude, but when he or she translate to work place the behaviour is not commensuration with the attitude, I think with some young mind I would like to know, what is the highest value of coefficient of correlation? And what is lowest value? What is the range? Coefficient of correlation 1 means fully correlated and coefficient of correlation minus one means fully negatively correlated. As the age of son will increase so the age of father will increase, so in general 50 fathers and fifty sons, their age will be positively correlated. But

more educated I become, less ignorance I become, so education and ignorance are in negative correlation and as highest percentage can be hundred, so highest positive correlation is plus one and lowest negative correlation is minus one. So when there is possibility of one point zero zero one correlation, this zero point one four is very high value or low value, this is lower value, this is surprising. I call it misfortune of humanity. Entire humanity is containing positive values, so they are containing positive attitudes but what happens to them their behavior is not actually commensuration with their attitudes. Why does it happen? It happens because of a journey which starts from behaviour to attitude. In general human being, unless he is man of this values, Gandhi, Gandhi's value of conversion of values to attitudes has not been reported, but if you allow me I will like to give a value, please pardon me if you do not agree, say zero point eight values, very high value. I am not giving one point zero eight because, somewhere, if you ask Kasturba she might say that Gandhi I will give ninety marks not hundred marks because in certain things he has failed. And if you see letter between Gandhi and Kasturba we have reason to believe that Kasturba was not very happy but Gandhi had to convince her.

Justice Raveendran: What he did to his son then all this behavior value will go, no doubt he was a great man but in some points he was totally a failure, totally wrong.

Dr. Pawan: With all this gestalt views I am giving zero point eight four, whereas in general in personal life it is zero point one four. Now this phenomenon of this research says that behavior actually starts leading to attitudes whereas attitude should have led to behaviour, this is called, self-perception approach, self-perception approach, self-perception approach, I have behaved already something, not commensurating with my attitude, which was brought forth by my values, I have behaved and now, I am redefining my attitudes, say for example, if I give a statement like this, you are talking about honesty, but where is honesty, many people practice dishonesty on everyday basis, I do not practice on everyday basis, once in blue moon I compromise my honesty. I am taking a reference that many people are doing so I am doing. It means already I have behaved and I am redefining my attitude. In this case what happens that gap between my attitude and behavior keep on increasing and when this increases it leads to internal dissatisfaction. Those who are in the field of decision making and especially Hon'ble judges whose core job is decision-making. Of Course now, we are saying in our seminars that Hon'ble judges are not only decision makers they are also court managers, they have to take the role of rejuvenating court functioning etc. But if we take them as core persons who are involved in decision making, when I have already behaved in a way as suggested by common trend of R is equal to zero point one four, I redefine my attitude there is more dissatisfaction

in my life. To reduce my dissatisfaction I redefine my attitude and say that I am not alone, many others are doing it. So question remains this, on the path of enquiring on integrity, value based actions and decisions, slowly and slowly we are becoming disintegrated persons and that is why a person with integrity is more capable of translating ones attitudes into behavior.

Participant: Why there is dissatisfaction?

Dr. Pawan: I had a value base, accordingly I had an attitude base, I behaved differently because of my convenience, I had dissatisfaction, in order to reduce this dissatisfaction we took certain decision, we behaved in a way, which is not commensurating with my attitude, this created cognitive dissonance, its meaning is internal dissatisfaction. In order to reduce this dissatisfaction, we redefine our attitudes that I am not alone doing this, many persons are doing it. I have a question in concluding part, we say we are rational human beings, but are we rational? Because this is called VAB journey. Values. Attitudes, behavior journey and what we have done, we have ignored our V, we have ignored our A, we have behaved as per our convenience, redefining our attitudes, this value attitude again creating a gap, attitude behaviours already creating a gap and ultimately we end up as a person of non-integrity, fragmented personality. So there is another one or two more issue. Convenience is the principle cause, second is persons whose attitudes are more concretized and well defined, they have more chance to convert their attitudes to behaviour and are person of integrity, whose attitudes are in defined or weak, say for example an organization says to their people, all should be as honest as possible. There is a vague word towards honesty, but let us say one organization in Kerala, KT Thomas has decided, written on their wall, that in no circumstance our officer should either receive or give bribe. Now this is more concrete attitude policy, so when attitudes are well defined, more concretized, tangibly understood and as Hon'ble Justice was saying, that question was whether there is a common shared attitudes by Hon'ble judges or not? because each individual is not given complete freedom to define ones attitude about this profession in his own way, a common understanding is there, so that's why in that case, when attitudes are well defined, that is why when we find documents, I also read in your reading material, principles for public behaviour or Bangalore and the Hague documents. What they are? Through these seminars and conferences, a common attitude is tried to be inculcated in us. So I will just conclude this because we also have to brief other issues called impartiality. So integrity can be interned by understanding, what exactly we are aiming at, and why integrity might fail as in my case and how it can be kept intact for the professional life. So we have some

time? 15 minutes? Ok, fine, so any more observations on this? So that for just 10-15 minutes we can discuss on impartiality.

Participant: How can we overcome the convenience that you talked about?

Dr. Pawan: that convenience we can say this is again our own responsibility, values will be there because, values are actually giving birth to your attitudes which is the base for behaving in particular way and when we say about values, values can be personal values also and organizational values also. Unless both are intact and congruent to each other, this value cannot lead to attitude and attitude cannot lead to behaviour, so there are two prompt role, one is individual responsibility to remain a person on integrity and second is institutional responsibility to create a common understanding on how we need to conduct ourselves, while making decision. Individuals have different values then organization comes into and say that these are our added upon conduct.

Dr. Geeta: what he is trying to say is, even when values are there why the standards are falling in any profession. For every profession has values, for example our doctor also have values, but still we are finding more and more cases of doctors compromising values. Individuals do not make values, values are given by profession.

Participant: We have to overcome our weakness, there are certain human mistakes like greed, your aspirations, and desires.

Participant: There are certain inherent values and certain acquired values, acquired may be organizations, may be peer pressure, because of job requirements also.

Dr. Geeta: Ya, so he is saying that basically some compromise is done due to our convenience.

Justice Raveendran: yes, given the human resources for integrity and impartiality, three things, one is value, second is values, and third is attitude. Now let us translate it into our level. values are the principles, now attitudes are our personal philosophy, behaviour is the conduct or actions or the way we render our decision, the way we conduct a case, etc., so values have a direct relation to our conduct because every conduct, every action of ours should be bases on values, now we may forget our values, we may ignore our values, we may side step our values, and that is how our behaviour, that is our conduct our actions becomes bad, now apart from values, attitudes, what he calls as attitudes, what I call as personal philosophies also plays a part. Now their principle is it is the values personal principles and behaviour , no according to we judges, values directly leads to behaviour that is conduct action and decision making and

personal philosophies , which is equal to attitudes, also plays a part, it is not the major part. There is a great statement by Justice Cardozo, I will read this, every judge has his own perception, about what is right is wrong, what is just and what is unjust, what is fair and what is unfair, which will have a bearing on his decision, Such perceptions of a judge, that is what is fair, what is unfair, what is just what is unjust, what is right what is wrong, such perception of a judge is based or could be based on his personal philosophy, developed upon traditional customs and believes, that is of the society, of our caste , of our community, our region, acquired convictions and prejudices , by your reading, by your, interaction, deeply rooted in its physic, moulded by what he has heard, what he had read, what he has felt and what he has experienced, including child hood experiences and mental scars. Over a period of time, these perceptions lead judges to become type caste in their decision making as land lord judge, as tenant judge, as acquitting judge, as convicting judge, as a liberal judge, as strict judge, so this is how Cardozo explains it. All the principles are applicable, values, attitudes, behaviour are principles, personal philosophies , but values, does not result in behaviour through attitude, values themselves, that is the principles themselves, that is how we should behave, the legal principles, that is what regulates your behaviour. But their this additional factor of your personal philosophy, what a person who has suffered as a tenant, will consider that all land lords are bad or a person whose father owned a house and whom a tenant has harassed by not paying the rent, that also plays a part , if somebody's friend has been taken by police and subjected to third degree he will always feel that police have applied third degree and got a confession but on the other hand if the police has helped somebody to recover his stolen article without much difficulty , he will think different, therefore your perceptions are moulded by personal philosophy or the attitude is moulded by your experience, your experience may be good or bad , the principles are the same, only there is one slight modification , all our conducts and actions are based on the values that is principles but this also needs inbuilt, he is also a judge, you are also a judge, a acquitting judge is also an honest judge, a convicting judge is also an honest judge, with integrity. Both places integrity is beyond question buy personal perception of what is right, what is wrong, what is just what is unjust, according to his own experience leaves an imprint on the decision making , That is how I see it, I conclude it.

Dr. Pawan: Thank you sir, for next 5-6 minutes, quickly I would like to remand our self of impartiality, this is second topic but time is so less, so just a quick reminder, not with Hon'ble judges but with general classes of managers I speak this, you should be person of high IQ and they interpret me or misinterpret it as you should be a person of high intelligence quotient, but

here IQ basically is impartiality quotient. Now this impartiality, that is the subject matter of this session, impartiality the meaning we will not discuss because that will be again lexical, but just taking a clue from the previous discussion, values of judges must get translated into behaviors of judges, but attitudes come into picture, how this contamination of biases and prejudices, they can be addressed and allow me to say frankly, either for integrity or for impartiality, the ultimate responsibility one has to take in one's own hand, and supported by what institutional mechanism is available which tells me why and how to be person of integrity and how we can be person of impartiality, institutional support is there but ultimate responsibility we have to take in our own hand, because by nature these two topics are appearing and they are sounding that the ultimate unit of redressal is individual again. So what becomes, which factor becomes villains in path of unbiased decisions. Those villains for us to become partial, let me propose it like this. These three factors are one is heuristics, it means a general perception and perceptions many times are away from facts, I know that Hon'ble judges do not go by perceptions unless there is facts. One person asked me nowadays judiciary is taking lot of times, justice delayed is justice denied, but we have reason to understand your problem also, again and again we have to examine, that one kind of mistake should not be done, that is a person who should not be punished, must not be punished, to maximize this output sometime other errors happen, sometime person who ought to be punished remains unpunished, but actually your priority is different, somebody who should not be punished, must not be punished. So sometime society also gives its reaction that court has taken a very liberal view, that person is confirmed murderer but he has been acquitted, but court has to examine and re-examine, we cannot go by perception, so this is one of the obstacles in taking impartial decision, second is certain biases, I have no hesitation proposing to you humbly that before you are Hon'ble judges, we are human beings also and in some judgements like this and other places also, many Hon'ble senior judges have put that keep on re-examining your own self, for being able to take a better decision, and third one is prejudices, prejudices means, already mentally you have decided what has to be done and accordingly we collect data. Recently there was an article in newspaper that on 26th of any month most of the earthquakes take place. I did not write an article to refute that but I collected data, there are many earth quakes on 26th but there are many earthquakes on other than 26th also and some major earthquakes have taken place. Actually there are thousands of earthquakes and only 366 days are available on the calendar. So there is possibility of having earthquake at any time, but some writers they decide to prove that 26th is a dangerous day for article and they have proved through an article but that can be disproved also. A person with impartiality sense does not go by such prejudices, because

there can be different possibilities also. There is a very stark difference between, many Hon'ble judges might have come through their practices as advocates and some directly come into judiciary. So if we say about sense of commitment of an advocate, the answer would be whomever can catch a particular officer first, the advocate will talk his language. If A and B are fighting, by chance B caught me first I will talk his language and I will find all laws and rules to support me, but if A had contacted me first then I would have supported all the data and laws in support of him but Hon'ble judges have a different challenge, they have the ability to see complete one go, that is called gestalt view, able to see things in one view, Stephen Covey has said wonderful thing and that might apply to our profession of judiciary also, Develop the capability of watching the jungle in one go and also capability individual tree in that particular jungle. In one go I am able to watch the individual tree and in the same vision entire jungle also. I am trying to say Hon'ble judges in order to be impartial, judges need to have two equipment in their hands, one as microscope and second as telescope, microscopic view gives you vision to analyses on one particular dimension of case, but telescope helps us to give complete view in one go, now the management field, I do not want to bring everything from business field that can be applied here but some thing with certain modifications can be applied, some persons are by nature microscopic and some are by nature telescopic, microscopic is going in detail on one particular dimension and telescopic is taking a total view, holistic view

Justice Raveendran: Micro and Micro

Dr. Pawan: Micro and Micro or microscopic and microscopic or becoming too investigative in one dimension and losing the sight of whole thing, so these phenomenon, so we are basically analysis bias or integration biased, and Hon'ble judges have no scope they have to integrate microscope and telescope both. So a different capability is needed for becoming impartial, that had I been on the other side, what would have been my view, typically advocates are more clear about their profession, say I have to help this client, judges are not clear I am not saying that. Judges have three roles to play, that is *triveni*, one is my role, other is the complainant role, other is defendant role, so all these views have to be concurrent, bases on the principles of impartiality that we know, the principles of natural justice, chances to be given to everybody to defend, all are the place. I just wanted to highlight what has to be physiological angle of judges to help them selves to be impartial. I would like to conclude because I have already shooted beyond time given to me. Any observations you would like to have Sir? Fine? Thank

you . We would like to have the view of sir on impartiality .your some punching sentences on impartiality.

Justice Raveendran: I can say something today or tomorrow.

Dr. Geeta: Tomorrow, so we conclude and we have a choice like yesterday...I will talk to you sior about that later. I was thinking today evening there is this movie, which has gone to Oscars, the court , if you want to see, I was thinking, this room would be...

Justice Raveendran: are you going for library reading now?

Participant: No No

Dr. Geeta: You want to see now?

Justice Raveendran: So what I will do is for 10-15 minutes I will wind up on the issue of impartiality and then you can carry on with your library reading. You heard about impartiality, the theoretical aspects of impartiality and integrity. I will come to pure and simple practical aspects of what has been noticed and what requires to be corrected in the judges. As I said in the morning, this is not intended to be complaints against any particular judge, these are general observations, on the basis of what has been observed and what has been complained and how we can go about setting it right. Impartiality, the general meaning you are aware, that is not being partial, what is not being partial, it is freedom from bias and prejudice, bias is showing an inclination towards somebody, prejudice is showing an inclination against somebody, if you are free from both bias and prejudice you seek to become impartial, this is what every judge is to achieve. Now this issue of impartiality has two facets, I would call external bias and prejudice is one facet, internal bias and prejudice is another facet. What is external bias and prejudice, the most common example is that of caste and community, it is the complaint in all the states, that certain judges favor certain lawyers and that certain lawyers will be usually lawyers of their caste or their community and this has become prevalent not only to lawyers but also to litigants, if the litigant belongs to a particular community to which the judge belongs and the other litigant belongs to other community, the tendency is to decide in favors of that person belonging to your community, now this is the first and foremost example of external bias that is alleged to the judges. You heard Prashant Bushan saying how some judges, Uncle Syndrome and all that, some judges son etc, that is not caste based that is friendship or acquaintance based , personal relationship, this is another form of bias, then there is a political bias, you belong to a particular conviction, you may have a congress view , you may have a

BJP view, you may have a RSS view, you may have communist view, you may have Telugu desam view, people can have, in a democracy each is supposed to have a view, even judges are supposed to vote and if you are required to vote, you should know that I am required to vote this party or that party, so having an inclination or commitment towards a party is not bad, if anybody says it is bad, it is wrong, but deciding a question, because a party in power is your party, try to decide in your favor, in favor of that party, or the party whom you support is out of power and therefore you decide against the government. These are external forms of biases, there are three external forms of biases, based on caste and religion, second based on friendship, mentorship third is political bias, these are three external biases. Then there are certain pseudo external biases, some judges say for example, a junior counsel appears, a youngster appears who has just joined the bar appears, they think they should give an interim order to encourage the junior, this is also an alleged bias but this is a pseudo bias, you are not really showing any kind of bias because he is a junior and you want him to come up, what you are doing is nepotism. In an undeserving if a junior appears, if you give an order, thinking that you will change it later, or it is inconsequential order, then it is nepotism. What is encouraging a junior, junior is tongue tied, he cannot speak therefore you encourage him, if he wants to research give him time, or instead of 5 give 10 minutes, if you instead of looking at the fact that he has made a case or not, issued an interim order because a junior has appeared that is bias or nepotism. This is one thing you should remember. In the morning there was an example given by a lawyer who is very well versed, who is very courageous and very respectful and there is another lawyer who is contemptuous, and fight with you, the tendency is leaning in favour of the lawyer who is good, respectful and short and have a hostile attitude towards lawyer who is contemptuous. This feeling towards the lawyer should not result, should not have a bearing on the decision. What happens when a good lawyer has a bad case and a bad lawyer has good case, should the case suffer because he has engaged a contemptuous lawyer. We must have that courage, perception to raise above the initial bias which we have towards the good lawyer, to examine whether the case has merit not which lawyer is good, to lift the veil of the argument, to see beyond the things, to go straight into the merit and then pass the order, that is freedom from bias, prejudice, avoiding external bias. Therefore, everyone is subjected to this bias. I do not want to go to other things, Prashant Bhushan was saying, the advocates select the lawyers on record, he was referring to Supreme court, depending on which bench the matter comes up then select the lawyer then. This is an open lawyer made against lawyers of the Supreme court and judges, we should be away from that. There was something about senior counsel which I do not agree, the senior counsel are hard by judges a little more not because of showing favour but because

iof the fact that they have become senior counsel means they have some standing, recognition, therefore they are able to point a legal issue or fact which otherwise would not have been shown, an ordinary lawyer would not have been able to put it. Therefore they listen more to senior counsel, that I would not call as bias. If a judge can be away from external bias based on caste community friendship, politics, he would be considered as external bias and prejudice, then we have internal bias and prejudice, it is the subject matter of what Mr. Singh tried to express and I also read out Cardozo's statement that without your knowing you have certain prejudices and certain biases. I gave example of acquitting and convicting judge, what does it happen, it happen because of his experience about what he has learned about police procedure, what illegal things police do, that is why he becomes an acquitting judge, whereas convicting judge feel that police has followed the procedure, even if there are discrepancies they feel it is natural. His mentality is what Mr. Singh calls it attitude or philosophy makes him decide that way, this is not only for Landlord tenant cases or the acquitting or convicting cases, it is in labor cases, Krishna Iyer or DA Desai was famous labour oriented matters. DA Desai made an open statement, in my court no landlord no management will succeed. They were committed biases labour judges. From 1990 entire trend of labor judges changed, because Chennapa Reddy went, DA Desai went, the new judges they became management judges when you sit in the writs, you sit in the admissions, you are known as the negative judge, not liberal, relief oriented judge, he is supposed to, when he reads a file he searches for a point which makes him to give relief or issue notice, on the other hand, convicting judge always looks for a point on which he can dismiss the petition, both are good but this is mental makeup, this personal philosophy, it has been acquired without our knowledge, this has subconsciously gone into our head. We should get out of it, you have 15,000 judges and each judge decides according to his personal philosophy, it will lead to chaos and anarchy, therefore there is need to have a middle path, a uniform path and that is why we have a system of precedent, that is law by a higher authority or your own brethren which shows the way and you follow the way. Whatever your prejudices, whatever your biases, that does not show a part. Therefore need to follow precedents, it brings uniformity, as I said in the morning...consistency and uniformity, because the party cannot understand how in writ petition, one court it is dismissed in other it is not, party cannot digest that in the same time of cases, in one case you allow it. There external bias has played a part. External bias should not be there, internal bias should be avoided with help of precedents, whatever be your personal views, keep it aside and decide according to law, whatever may be caste and religion... forget everything and decide according to law. There is great quote by Thomas Fuller, this is what he says, when a judge puts on his judicial robe, he puts off his

relationship and friendship and becomes a person without a relative, friend, acquaintance, in short he becomes impartial. Therefore please remember, impartiality is the hallmark, if you are capable of being impartial, integrity, aloofness, humility, everything follows. Unless you have all those qualities you cannot attain impartiality. The idea, core of a judge to achieve impartiality, It is very difficult thing, I am yet to come across who is 100% impartial, no great judge you can name I would say he is 1005, somewhere down the line he has got some biases, some prejudices, but the only thing is he is great because, he has reduced the gap between black and white as Mr. Singh said , grey area he has completely reduced. This biasness ne has reduced to minimum, so that impartiality has become prominent. Even though you may not achieve total impartiality, even though you know, you are biases in favors of a particular philosophy, please do not loose heat, always try to keep in mind be impartial, so that nobody calls you negative judge or tenant judge or relief oriented judge, you are not there to win elections, you are not supposed to be populist, you have to be opposite of populist. Therefore I am worried, in a market place or in public place being popular is very important , but for being a good judge it is a disqualification, you should be respected not be considered as very popular. Respected for your strictness, respected for your acumen, respected for your impartiality, that is what should be achieved and I am sure the discussions, debate enable you to have introspection, so that you become free from bias. Thank you.

Dr. Geeta: So when should we meet to see court, & evening? Here or you want to see in the auditorium, The court

Justice Raveendran: Wherever is best suited, do not ask us where . If it is best suited to see it here we will see it here .

Dr. Geeta: ok so we meet in the auditorium, we will close the AC

Justice Raveendran: Only with 10 people in an auditorium of 300

Dr. Geeta: I was thinking if we could meet in management block conference hall at 7 o'clock

SESSION 9

Dr. Amitabh Deo Kodwani: OK. So whenever we interact there are two individuals when they interact. There are some kind of transactions which happen between the two people so suppose you know there's an individual "A" who is interacting with individual "B" so the kind

of transitions happens between these two people that determines the future relationship between these two. For example if I met somebody and I say good morning and other fellow say that what is a good old the morning? What is so good about the morning? Did you get a lottery? Did you get a gold 1 kg or what?. Every day the same morning. Look at what kind of relationship will happen after this interaction or if I say good morning and I get the same pleasing smiling Good morning. What kind of relationship it will continue further. Many times whenever we interact and we don't get the expected outcome from the same interaction, we tend to or if we can just try to find out why this happened instead of making our own judgments about other or the odd creating a perception about of those probably there's a fair chance that we may try to understand: is that anything which went wrong from my side then there might be a possibility that some signals might have gone from my side which might have been perceived by other person as negative. So if I'm able to do that probably again I'm trying to add some positivity to this relationship management. So the idea of understanding self was let me try to understand few things about myself for example we are going to an activity this exercise wherein we try to understand our own ego styles. Each individual has a different set of ego style and if you understand our ego styles it would be easy for us to interact with people and probably it would be easy for us to slightly fine tune ourself depend upon the context or a situation. So that a positive and a healthy relationship can maintained. That's what the purpose is. So I request you there are some thirty six statements. Each statement has five options: 0 to 4. I would request you to read the statements whatever comes to your mind your mind first just take it and move forward. We need not to spend too much time on any of this single statement just read it first and whatever comes to mind. Take it and then move forward. When we talk about individual not necessarily that the only keep the office circumstances.

If you see that there are some columns called as CP NP A NC LP AC. I will explain each one separately. First we will score it then I will explain each one. Just make the column like CP and then in the CP you just see that statement no. 3. Now, statement no. 3 whatever you are answer is just mark it here. For example, in the statement no. 3 which say that I expect people to do what I say if I say almost never then I should write here zero. If I say no sometimes I will mark it two here. I request you to make simple column at the back side of the sheet and then mark it as CP and NP as one column, A as one column, NC as one column, LP is one column and AC as one column. In CP will have this Q is the statement. If you have any doubt I can come and help you.

Resource Person helping the participant judges with questionnaire.

Dr. Amitabh Deo Kodwani: There is another test for that which is Fundamental Interpersonal Relations Orientation Behaviour (FIRO-B), it exactly give you the score of compatibility between the two people. Then they can see whether it is matching or not. It is better prediction of two people staying together for a good period of time. It exactly talks about the compatibility between the two people. In horoscope we match something which is related to their stars or something. Most often the problem between the two individuals specially in husband and wife comes on a day to day activities on...Enough, it is very valid test all these out of any valid instrument which are being validated hundreds and thousands of times across different context. There are books called the games be play by Eric Burn...Games People Play. It's a fantastic book which talks about how people try to manipulate the behavior of others. You have got each column total score also. Just keep it with you I will explain what exactly it is and how does it help others. Please understand one more thing that is one such instrument does not hundred percent that is what my behavior is. In Psychometric what we do is we conduct series of tests 6-7 test at least then there are 85 to 90 % sure that it is showing the behavior. Now, what does it indicate one test it is a tentative indication of my personality and very valid instruments. It is all tested, reliable, validity has been checked not once not hundred nor thousand times infact lakhs of times because very valid instruments. What we try to interpret is only that this is my tentative indicative score of my personality. In this direction my personality is more dominating. This is what it indicate.

Dr. Geeta Oberoi: There is another test which is called MBTI Personality test. It is also available online you can conduct for yourself it is about knowing yourself.

Dr. Amitabh Deo Kodwani: These days like SSBs interviews, they conduct another psychometric tests which is part of the TAT (Thematic Appreciation Test) Very powerful test it will project the inner thinking patterns of an individual. So I am able to understand this individual has what kind of thinking patterns in his mind. So that's why this is these are very powerful tests and now a days in fact in most of hiring processes we are using some of the psychometric tests to understand more the attitudinal issue of an individual so we can see more fitment to the culture. That's what...in fact some organization at lower level also started doing it. The idea is that these tests gives the tentative personality indication of any individual so as a one score and if while interacting while seeing the CV of the candidate I am getting a different

signals. So let me see that is there any kind of a drastic variation between all the signals I am getting through the different channel. If there is a drastic change in all the signals then I need to put a question mark. If all the signal are giving me the same kind of indication then it is fine it means that I have done a confirmatory test that through the various channels the information what I am getting is appropriate about the candidate. So that's the way we look at it. Now....let me start with what we say in transactional analysis is basically whenever we are interacting with some people at home we are interacting with family members...like sometime I am the head of the family or some other is head of the family. So whenever any interaction happen it is some amount of transaction going on between two or more than two people and whenever there is a transaction going on that transaction will determine the relationship between these two parties and how that relationship will last longer or not. So what we say it is a theory of personality as well as the systematic psychotherapy for personal growth and change. The idea is if I am able to evaluate myself and personality trait if I am happy with that there is no issue but suppose after seeing my personality trait I say no no. I don't want myself to be portrait like that I don't want people to perceive me in this image if that is the case then we can even think of making some change in our personality. But the moment I feel that no this is what I want and this is what I am reflecting and that is absolutely fine with me. There is no need to think what is good or bad. The way I wanted to be portrayed I am portraying the same. Again if two people interact A and B if A knows about something about the B. B knows something about the A. It would be easy to deal with it. Suppose If I go home one day I had some bad day on that day something happened wrong. My mood is bad I went home and suppose the spouse says that ahh what happened? You are late. What will happen we will react because that irritation is with me and that's a human nature that people don't keep those things with our self. We don't absorb everything and become neutral. if anything goes inside there is a possible reaction of that. That's the way human body reacts. Now, when we react what will happen it will...wife will understand thatno no...I know him he is not like that actually it means something has happened that's why he is reacting like that. She will keep quite...it will not spoil the relationship but suppose I am not allowing other to know about me I so reserved I never interact with anybody I don't allow them to know anything about me or understand about me what will happen they may react because they have not understood my personality. If the body is stop reacting then you will find that it is affecting your health because it will affect our own health because taking a small kid, he doesn't care you know where I am. He want a chocolate he want a chocolate. He won't care that this isn't some office environment I should not shout loudly i need to speak...he will not understand anything this called as the natural

reaction of a normal body. The moment we become mature we start thinking this is not good that is not good that's not bad. If I do that what will happen. No let me control myself. The moment I controlling too much myself it will affect somewhere in my hormones and that will....for example the research says that many of the skin related diseases are purely due to stress. Stress comes when I try absorb all the things with me. I act as a shock absorber. In a way it will affect our health. That's why it is important if you understand it would be very easy for us to try to control our self. Now, there are three basic parts ego states one is called a parent ego state. All individual, right from the day he is born till he dies, every individual has in all stages of his life these three ego stages with us. Parent ego stage is divided into, one is called critical parent and other is the nurturing parent ego stage....a critical parents are those kinds of....where you know, why are you doing this, why bare you doing that, keep your desk clean, don't do this, don't do that ..often we find some parents who act like that, that is the critical parent style, second is the nurturing parent style, very caring helping, the moment you see someone is doing hard work you arrange something, caring attitude....that kind of attitude reflected by someone it is called the nurturing parent style.....taking care , showing sympathy, showing empathy that kind....adult has only one, adult ego state is an ego state where people try to be very rational , look for some justification, look for some facts and are very rational and are very rational in nature, If you ask an adult do not smoke, may not ask you but his first question why should not I, unless they get some strong logical reason and justification he won't understand, don't drive rash...why should not I ...unless and until there is proper facts, figures, justification, proper understanding they won't understand they always look for rational logic...very objective.....third is the child ego stage....some thinkers have divided it into two categories and some into two categories ...one is adaptive child and second one is natural child and third is little professor....some of your friend or subordinate invited you to his house for dinner and we go with a small kind, generally parents or mother specially try to teach them...look don't jump on sofa, don't immediately rush to take whatever somebody offers, wait till I give green signal or these kinds of instructions we give the kids, now the moment we enter somebody's house and the kids they love to eat some nice cookies and those cookies are being served by the host, so one type of child would say no no aunty we are full , we don't want, in reality they want...but they will be watching mamas eyes, to get the green signal. You might have seen this situation in trainkinds generally they don't take anything from anyone in train and suppose if you build good relationship and you offer also kids tend to behave like that....but there is another type of kid also, they want me to eat, they have served me, why a third person is interfering, why my mother is interfering into it don't do....somebody offer me

and I want to eat relationship is over, they don't care what have been told to them, what instructions have been given to them they simply jump on to eat it...very natural normal reaction of a kid...yesterday one of my senior threw a party, his son had a birthday hardly one year old and his elder brother 3 year...so people brought gift for smaller kid and some also for elder one.....parents might have told him but the moment somebody enters the house, *Aunty mere liye kya laaye aap*, that is a normal natural reaction for a child, because a birthday is nothing more than collection of gifts for him...he is expecting gifts only...My God Don't say like this, again he will go to next person *mere liye kya laye ho open kar du usko*, he will not wait *ki sb chale jayenge tb open hoga*, then very interestingly one thing happened, one person brought them a teddy bear , boy don't like to play with teddy bears , they like gun, cars *jaha kuch todh phor kar saken*, they were excited to offer teddy bear, the moment they offered child said, aunty I don't like teddy bears.....they might have felt very bad, if I don't like why are you forcing me to say I like, it is not done, *usko ye sb nhi malumn*, so some people have this natural child like behaviour, they don't care how serious is the situation, if I need to laugh I will laugh, I don't care about the situation, there is a third category also called the little professor, this is a type of child which is more serious in nature I don't care, if I go to somebody's house I will find some magazine, switch on TV, switch On discovery channel, quietly learn , read that's it...so they are more into thinker mode, so these are six ego stage which every individual is having at every stage of their life, now whenever there is transaction or interaction between two people, both are interacting from one ego stage at that point of time, if the ego stages are complementary in nature this transaction will be smooth and relationship will be better, but moment these transactions are not complementary with each other, It affects further relationship between two parties, suppose at point of interaction this ego state is dominating and he is trying to ask something or say something to other person with a critical parent ego state, for example if somebody came late and senior says, you are late, what answer he is expecting is simple answer sorry, the moment this answer comes the matter closed, but if the answer comes so what you also come late I don't say anything, why are you asking me, Sharmaji also came late you don't say anything to him, do you think there will be very good relationship between these two parties, the transactions are broken, relationship is not complementary.....so when we are transacting with somebody I should know with what ego state is dominating in me and I should also understand other persons perspective at that point of time.....if I am trying to understand that most often I will end up having a smooth transaction and will end up having a smooth relationship so that's the advantage of this, now let me give some example....I am showing you one single statement and see how many different kinds of

interpretations can be there from this single sentence....the statement says that why don't I take you to dinner tonight, one very simple sentence but in how many different ways can it be perceived, the other party has its own way of perception based on which they will make their own interpretation, based on that they will try to interpret the meaning of this sentence and based on it they will try to react....this could be the meaning that I was going to take someone else because the person who is perceiving this statement is stressing on you part, means that I was going to take someone else why not you, suppose if somebody talk to you and offer you, would you like to go, no, you are taking anyone, since you found me you are taking me, its not that I am a special treat, Same statement the stress is on I, instead of the person you bare going with why cant I take you, same statement but there is a different meaning all together, same statement when there stress is on don't and the interpretation could be I am trying to find a reason why I should not take you, same statement.....it all depends on the other party, how he is able to perceive the statement, same statement the focus is on why and them meaning changes, do you have a problem with me...WHY DON'T I TAKE YOU...so the meaning changes, same statement stress is on Iyou can go yourself,...when there is stress on DINNER, meaning changes, why not lunch tomorrow....so many meaning can be inferred from one sentence, most often the confusion arises because with what intention you are communicating,, with what intention somebody is able to interpret the meaning and the relationship depends on the person who is having right intention and the same right intention is getting perceives, if not then is a fare chance that the relationship may get affected, another tonight instead of tomorrow night, so many meanings can be inferred.....now let me give you example of complementary cross at the ulterior transaction, complementary transactions are very simple, when you ask someone with a parent ego state, expecting someone to behave from the X parent ego state, he does the same thing, it is absolutely complementary which is rarely happening in our day to day life, most often we involve into the cross transactions and also sometime into ulterior transactions, I will give example of that ...where you are saying something but has a different meaning altogether, let me give an example, you are late again. The obvious answer should be sorry I won't be late again, the moment you say the matter gets closed. Absolutely no ill feeling and things will go smoothly....and there are so many other examples of that, rarely this that. I will tell one interesting example you know we had one faculty in my previous institution. She was coming from the lunch. One accountant was standing outside, he just said madam namaste...she might have not heard so he said more loudly and this lady reacted so badly that she complained this that how dare you stop me in between and said hello to me. Who the hell are you to say hello to me? Who has given authority to say

hello to me. This guy was shocked what did I say....I just said namaste. What's wrong in that. He could not understand. But why somebody reacted because her perception was that you are trying to tease me, you are trying to make fun of me that's why she reacted. How do you stop somebody to perceive the situation in their own way very difficult to stop that so idea of this self is if I am able to do some amount of introspection and able to understand some amount of my personality I would be having better control over the situation? That's what the purpose is. ok. Let me give more types of transaction examples, this is an example of complementary transaction which will never ever lead to any conflict between the two people. Now example like if somebody says to junior person or a boss says to the subordinate you are late again or a teacher tells to the student that you are late again what should be the answer? What answer a teacher or a boss should expect? Sorry. The moment this answer will come better close so it's say sorry and this won't happen again. Very simple this is no issue in this complementary transaction but the problem suppose if the same question says that you are late again and answer come so...so also used to come late I didn't pointed out any time. Mr. Verma came late yesterday, you didn't said anything why are you pin pointing me. So you know this affects the entire relationship any further relationship will get severely affected by that. So complementary are very easy, very nice, it will have very positive impact on the relationship, it will also help us to know and maintain a relationship, it means also that to some amount of time both the parties are also able to understand them.

It happens, every human being you know we try to do that, even if I see half I am trying to complete the picture because so many things are stored here that will force me to complete the picture. What do you see here Sir?

Participant: Birds flying

Dr. Amitabh Deo Kodwani: What kind of birds, where do they flying Sir? Both ways! Only to the right, now you see sir both? Ya black one look at even perception the law of perception says that sometime if I look it in totality I may get a different picture moment I look at one part of the picture I am able to see a different picture. So the moment I am trying to perceive something..

Participant: It looks like a carpet also..

Dr. Amitabh Deo Kodwani: It looks like a carpet also or it's a kind of an image where you'll find some river so field haan, that can also...ya absolutely sir background, color, size repetition everything changes our perception. What what is your story about this picture?

Participant: she's shocked

Dr. Amitabh Deo Kodwani: She's shocked on certain thing. Ok

Participant: Sexual Harassment

So in first haan, that's it that's it? What do you see Sir?

Participant: he's explaining that wait for some time..

Dr. Amitabh Deo Kodwani: Ok ok he's explaining that please wait for some time I have some urgency ok. So trying to find the reason why don't I?

Participating: No she is waiting and he is asking you please wait for some time, I have to finish the work and then..

Dr. Amitabh Deo Kodwani: ok, ok anything else Sir?

Participant: There is an argument.

Dr. Amitabh Deo Kodwani: There is an argument mode ok. Why do you feel so sir?

Participant: Staring at each other

Dr. Amitabh Deo Kodwani: Staring at each other ok. If I just ask you to focus just focus first on this facial expression of this gentleman and then look at the picture and think the story.

Participant: Something Serious

Dr. Amitabh Deo Kodwani: Something very seriously

Participant: very seriously. Or one way of looking at it is the male is trying to give some explanation to the lady.

Ok ok, alright!

Participant: What is the matter, i'll ask why you are late?

Dr. Amitabh Deo Kodwani: Why you are late haan something within the bad mood. So look at.. If you see that the moment this picture is being shown where I am able to see first that will also change my perception. That's one. Number two, if any of similar situation has happened in my life or I might have seen somewhere the situation that will again force me to think differently. So another issue in perception we also try to connect with thing and the brain is..See for example you know if if you close your eyes and feel that you are going from a dark forest,

dense dark forest, a deep jungle midnight 2 am and while going you are going bare feet and all of a sudden you find something beneath your feet. What would you do? Jump? Try to move away from that? But if I say that no look I am an intellectual qualified person let me use first of all my sensory organs, do understand because my reaction should be purely based on my interpretation and my interpretation should be rational. So in order to have a rational interpretation let me first try to see it but I am not able to see dark jungle, let me try to touch, let me try to see the length, let me try to see the breath, sum.. Will I do that? No. You go away, why? Why, what kind of image?

Participant: Dark and..

Dr. Amitabh Deo Kodwani: Dark and this may portray an image of snake, reptile, a snake. Right? Because the circumstances are now forcing me to perceive situation differently, I have no control literally. It's all circumstances. So the input which goes to my brain are its night, midnight and I am travelling bare feet, I am crossing a forest, a jungle and that all the situations will force me to have an image of probably a snake or a reptile in my mind and the moment that image comes it happens so fast i 'll react. Then all this rational adult ego state nothing will won it. However if the same situation occurs I get up at midnight 2 am in my bedroom and I find something, will I react the same way? If you are not prone to snakes in your house. OK, probably not because I know the work setting very well. Un-probably the kids might have kept something down or something might have fallen you know. I may not react in the same way so the work setting or the situational or the context around is also forcing me to perceive things differently. Now the moment my perception is so different automatically my reaction would also be different. So my all actions and reactions are based on my perceived world, nothing to do with the reality, most often. And when I have all the, the logic rationale with me then I am in a real world but till then I am in a perceived world. Now let me give you another situation, how these things happen in the real life and how people try to play? The games people play which I was talking about the book, How people try to play or manipulate the behavior of others. For example if you look at, you know if we go to, How many times it happens that you go to a jewelry shop to purchase some ornaments with your wife, with you wife you go, most often we go with some budget in our mind. How many time it happened that you come happily that I have spent less than what I thought?

Participant: Rarely

Another Participant: Very rarely! Never!

Very rarely or never, why so happens and now next time you go observe one thing sir just look at the behavior of the shop keeper. Believe me I have feel that they are the best psychologist on this earth. The moment a couple enters the shop, how they are entering the shop, who is entering first, who is showing more confident tell them who has the bargaining power among these two, who is dominating.

Participant: The idea is bakra has come..

Dr. Amitabh Deo Kodwani: Haan bakra has come. Ya definitely! Now whom to target out of these two? Whom to convince? My focus of convention this convincing should be on the male or on a female? Husband or a wife? Very clear number one, number two I found that also the way you come and the way you come and talk and the way you see the items first that also reflect then the pocket. How much depth has? And then suppose a wife want to see bangles. She says can you show me some bangles, some decent bangles? By this time he has understood who has more bargaining power and every time he is getting some signals, for example a aa the moment the bangles come both of them or who is the first one to see the price of the bangle and then the moment the wife see the price of the bangle what is wife's reaction If after seeing the bangle she is not looking at her husband has a different meaning, it means she has more bargaining power whereas the moment sees the price and looking at her husband means she is waiting for some green *signal ke boss thoda sa costly hai*. If after seeing the bangle she is not looking at her husband has a different meaning, it means she has more bargaining power power whereas the moment see the price and look at the look means she is waiting for some green signal that *boss thoda sa costly hai chalega kya?* Is it in our acceptable range or not? If not then I should not unnecessary look into it, so all those signal he is getting. Now wife wanted to see a bangle this fellow will bring some nice bangles and he'll just look at the wife for some seconds and then say look mam I have fantastic one piece available for you, I'll show you, he'll bring out some one piece, really good piece. Suppose he had a plan of some one lakh rupees he want to buy, upto one lakh rupees and this is around 135, 140. Definitely the wife and the husband both will see the tag probably have some facial reaction, but whatever you say i'll show you but i am just request you right this is a very unique piece I have received and the moment I saw you I thought that this is the perfect fit for you. What he is doing? All the statements are trying to manipulate the behaviour, he started playing a game its called the mind game he started playing and then he says look mam right no no dont worry I'll show you hundreds of piece, whatever you say I'll show you , I just request you try it because I think this is the perfect fit for you try it. The moment she'll wear those bangles he'll bring a nice mirror

and he'll say wow madam it perfectly suits you and then he'll look at his all the you know other you know other colleagues and all sales person ya wow yes yes yes. Thats it! He has done his job, okay. Now she'll look at in the mirror, and looking at the husband all those signals he is trying to catch. Probably husband is not please that you know no no boss you said up to one and now its crossing 1.3, 1.4 it's not acceptable, something like that, but you are not able to say it openly, wife gets the signal that no it is not yet green so far the signal is not yet green. She says ya Its good but please show me something else. He says ya ya don't worry I'll show you, he'll remove those bangles and will keep it there, he'll not take it away from there, he'll keep it there then he'll try the ordinary designs so many ordinary designs and the moment this lady will wear those bangles what she'll do now, she'll compare with those bangles not compare with anything else not compare with my own expectations nothing, only now that bangle. No no no can you show me something else. Believe me I have seen 70, 80 % of the time unless until person is highly rigid dictator I often find that it is what he wants to sell rather what we wanted to buy. So what he is trying to do? He is trying to play a game which is called.. Which is a a so many such examples are given in that book called as the games people play. We also often do that for example you know I told my son that, if you study well, you know I'll give you whatever you want. So one day on Sunday he said that boss you are not studying today is Sunday you spend at least four hours on the study. I wanted to see you doing maths for next 3 to 4 hours, then I thought let me motivate. I said Look i'll give you a nice chocolate at the end of the day because I remember this was the way my father used to motivate me and I used to get so easily motivated. But these days it doesn't work motivate us why? Because its just a chocolate, I'm getting so easily these days, earlier days getting the chocolate the source of getting the chocolate was so limited that that used to be the source of motivation. Now so many sources and that you'll compare one chocolate four hours boss no, doesn't. Right, I I don't want. I don't want. Now, But I need motivate so I need to change my tactics, I said no let me be harsh. I'll be very harsh with you now. I found that the moment these days you harshen with the kids they are becoming rebellion, more rebellion attitude he'll show. Now what to do? It's not working this technique that technique both are not working. Then I realized there is a third technique which worked very well in this case. I said that boss we don't think you'd be able to get it ninety percent ever, I don't think you can get it. Why not? I can also! *lagta nahi hai, shayad tum kar nahi paoge boss*. No no I can do it. You are saying but I don't think so because these kids have rebellion attitude *achcha* I ll prove it how can I, I can also do it. Se I put him in one sports he siad that no the teacher is not good after 3 months he said I don't want to learn this sports anymore the teacher is not good. How come he has insulted me in front of all my

class. *Arre yaar* boss you are in a standard 3 standard 4 you're talking about getting insulted in front of people what are you talking about? No no no he insulted I am not going to go to, do what do whatever you want to do but I am not going to learn this sports, one gone second gone. WHAT IS THIS YAAR? Then I said Boss now I am going to put in any sports, I am least interested, I don't want to spend any money on this any sport I'll not do that. One day his friends started joining a karate, very expensive classes. I said no I am not going to spend. No no i want to go, I said no but I am not interested you'll again run away. You have run away from so many sports now I dont want to put in a sports. It means that you are not fit for any sports until you change attitude you are not fit for sport. That the moment I m saying no, now he's more stronger in yes. More no more yes. And what if I say yes you will say no. I said thik hai best style is that what you say now i'll first say no so that it becomes strong determination to do the same thing. And I said that one condition only after one month he perused me I said one condition if you leave this course come what may and you complain me the teacher did this and that with you, I'm not going to leave you and that would be your last sports of the life. You are done. Believe me the teacher is so harsh sometime I feel pain, teacher doesn't care he will eat like anything he is no. If I'm teaching this is the way I am teaching. That's it! But he never complain. Last one and a half year he has gone to so many competitions he has won so many competitions but now, no more cribbing and then every time he'll try to prove me wrong that look. You said it na I'll quit. No continuing last two years I'm continuing. But I said, but I'm still in doubt. I will not look at.. Sometime so you really don't know which human being will get motivated with which style of. So we have to keep on trying some style and every individual has a different set of motivational triggers. Like for example I saw the first time when the parents take the small kid for the school admissions, very tricky situation because getting into IIT IIM is easier. You know getting into a good school is very tough these days. When the kids will take and there is a dead line till that dead line you can be with the kid after that you need leave the kid alone And then this Kid will you know parents are saying that look you know the triumph please tell the triumph. Now kid is a small kid natural behaviour is much more. If he is moody probably he'll not speak anything and if he is in good mood you he may say everything. So the parents are motivating look we'll give you chocolate, look we'll give you remote control helicopter, please speak everything please talk about that you know this also that you know that also and after last moment you know when they are done everything positive reinforcement. One of the parent whoever is tougher will say that, if you don't do well then. Because I don't want to take risk. Boss if you are getting motivated with positive please get motivated, if not let me also try the negative side of it. So this is the way

we try to interpret the behavior of others and try to interact with them accordingly. Same in the transition analysis also what we do is we try to understand our own ego states and one of the ego state is dominating. Now quickly in two minutes I just want to talk about you on course. You have seen N P what is C P N P L P adult and you know the A C is code. Right now C.P. and N.P. If you look at score it says that if there is any if there is a difference of more than three between the two score C.P. an N.P. then we should think otherwise it's a quite balanced score. That's one interpretation, more than three The difference is more than three between the C.P. and N.P score. Absolutely normal its a very balanced state of NP. And it means that if its the difference is more than three it means that most often when you interact with the people that one ego state is dominating. Suppose C.P is my eighteen and NP is 12, it means that most often when I interact I'm interacting with the C.P. ego state critical period ego state. N.P. is more means I'm more nurturing, I am showing more caring when I interact with people. So that is dominating in my interaction. Now equally is balance, situation demand to be critical I am critical, situation demand to be caring I am caring. That's a very balanced very good one. Within 3 it is absolutely okay. Second one is, NP is much more?

Participant: Yes

Dr. Amitabh Deo Kodwani: Your N.P. is much more na. Haan that's what if you ask people who have seen you in the last 3 days they can easily make out that you know. So NP is showing nurturing parent. Okay second thing, if you look at the adult high adult means haan a, it means that most often I am not accepting any statement or a fact unless until I have strong rational unless until lot of statistics is attached with that unless until some proof is that a a adult it

Participant: What is the High?

Dr. Amitabh Deo Kodwani: No there is no High, again we are comparing with all the other scores. So if all my scores are in the range of 3 and 4 the difference is 3 and 4 only then its called as a balanced state of mind , however in your case two scores would be slightly on the lower side which is still comes under the category of balance which is one is called as the NC natural child would be slightly on the lower side and your AC will slightly be on the lower side. I told you for two reasons one because the kind of job you do, the kind of position you enjoy and the kind of role you play that forces you to reduce it. So that the very balance dont worry about it.

No i was talking about AC and NC, AC and NC

Participant: AC and NC that's what you are saying?

Dr. Amitabh Deo Kodwani: Haan haan, this NC you AC and NC would be slightly would on the lower side. But otherwise you see that no slightly no both are on the lower side. Haan why AC is low because you know as I said don't have any superior senior and I the kind of..on myself I am playing a bigger role so automatically my adoptive child score would be on the lower. Absolutely this is natural.

Participant: AC is low, NC is 14 haan NC is 14 its a good sign I tell you, low NC means what?

Participant: If it is only one

Dr. Amitabh Deo Kodwani: But sir there are there is one more boss sir talked about at home that boss will trouble. See I tell you I can share with you the linkages NC low means my natural child behaviour is low. hmmm I want to laugh, no no no I serious what people they'll think about me no, let me control. I saw somebody is playing with the football let me go and play. No no no people are there I should not. So what I am trying to do is I am trying to suppress my natural normal behaviour. The more I suppress strongly it may have other effects on me okay. Probably if you know after sometime I get slightly irritating or you know.

Participant: What if NC is high?

Dr. Amitabh Deo Kodwani: If it is high it is really good but high NC your health would be good no doubt about it right. Specially the issues you know these days cholesterol or you know to some extent this blood pressure, these kind of things would also get improved if you NC score is high. It would have a negative consequence if your NC score is too low 6 7 kind of a score if you have that is that means I am trying to suppress my natural behaviour too much. What will happen I'll keep thinking on those issues because I wanted to say but I didn't react but its with me, when it will` remains with me it will have a negative effect on my some biological factors. Now there is one more score one score if you see that this AC AC AC score, very low score suppose AC

Participant: One you are talking about AC and NC

Dr. Amitabh Deo Kodwani: Ya, One I have talked about is AC NC combination. Now purely AC I'll come to that. AC too low 6 7 5 4 something like that. What does it mean you will not be having any problem with your biological issue no nothing but the others will there bp will always be high because they.. say for example you know suppose if I say that no no no no can

we you know do this one together today? Because adoptive is low, so not today I have my own reason i have my own rational tomorrow we'll do it. So the people are getting irritated ke boss why tomorrow I have something very urgent you are not understanding my feelings thik hai chalo, we'll do tomorrow but that burning is there with him. So there BP will keep on going not yours definitely that's guaranteed, especially in a circumstance when there is a boss subordinate relationship, luckily you don't have but where the boss subordinate relationship boss will always be furious and under tremendous pressure with these kind of subordinates. So home friends you can see about it I don't want to talk. Alright, Then comes to the individually adult score, high means more rational thinker asking for more facts, will not accept any statement just as it is. Look for more rational, look for more statistics, look for more factual things that A ok. LP, LP means a more thinker, I read a lot, I think on those issues, whats happening in the society, I think upon them, I try to collect more knowledge so that is more thinker kind of a.. Now this does not please understand this says one one thing any score which is extremely high as compared to all it means that most often whenever I interact that ego state is dominating in my personality. All other others are also there but most often that is dominating, that's the interpretation of that and that this is the tentative signal towards our own personality, ego states. In case you have any questions, I have exceeded my 8 minutes. Pardon!

Participant: 11 to 15

Dr. Amitabh Deo Kodwani: Ya ya absolutely fine, absolutely fine as I said you know 3 4 difference or its a very balanced ego state.

Participant: For me LP is 22. Does it mean I am right?

Dr. Amitabh Deo Kodwani: Lp is 22 means you are a good, you you love to read and think a lot, sitting alone even sometime..

Participant: Doesn't sound any thing at all

Dr. Amitabh Deo Kodwani: No no not at all.

Justice Raveendran: You know one thing I noticed whether you say high he says very good, whether you say low also he saying very good. Therefore everybody..

Dr. Amitabh Deo Kodwani: No No I told I told them very clearly low is dangerous for others also

Participant: No but he is happy

Dr. Amitabh Deo Kodwani: Haan he is happy. No but low NC has a problem for you

Participant: Sir I apply for a job in a multinational company when I was much younger, I think this is the reason why I was not chosen for the job.

Justice Raveendran: No it was destined that you should become a judge therefore you did not get.

Dr. Amitabh Deo Kodwani: One more, let me correct your statement, you are still too young. Ok I tell you it has its own consequences which I said, If my adult score is low it means that I am not a rational person, I am not looking for fact, I am not you know I am just going people say and I take it on face value I don't look for fact and information. That one, in the process I might be cheated by some people also at the same time. Second thing If my NC score is low it is affecting my own health definitely its going to affect my own health because too much of Natural child suppression that I am affecting somewhere in biological reasons Right some signals will definitely body will give you. no its not again all the scores in the range of 3 4 is acceptable

Participant: Its all relative

Dr. Amitabh Deo Kodwani: Relative or if my CP is high, again I said sir CP is high it is very dangerous for the people. CP high means I am more showing critical behaviour probably may not be liked by people around me. For example I said why are you sitting like that that will affect you spinal cord you know that sign says that's one. Sorry, so *Arre yaar* sometime let me realise you say that.

Participant: adoptive child

Dr. Amitabh Deo Kodwani: Low score has sometimes consequence is for you sometimes for others. 10 15 18 15 16 13 as I said because of the virtue of your job 13 is slightly in the lesser side otherwise your score is very balanced and only thing good thing is that 18 high. If this would have been low this would effect, only thing that sometime you know people will take advantage of you because you are more of nurturing parent less of critical parent.

Participant: But why 18 is low?

Dr. Amitabh Deo Kodwani: As compared to others other scores ya. No sir you have 14 also, CP is 14, a is 11 ya. So so no its a degree it's a varying degree it's not yes or no.

Participant: It is open to change also

Dr. Amitabh Deo Kodwani: It is open to change. Now the idea of see why we run this kind of a test is suppose if my critical parenting score is very high yes I would like to be like that, there is no issue I am happy with the score let me be like that. But the moment I see my critical parent is too high no no I think probably this is the reason why some people only gets irritated so let me try to change . So if I want I can do some amount of change that's what it indicates.

Participant: Range is 3 to 4?

Dr. Amitabh Deo Kodwani: Yes range is 3 to 4 alright perfect. Only we look at the relative score within the range sir. 3 to 4 is called as a balanced range it means that depend upon the circumstance and the situation you will react accordingly.

Dr. Amitabh Deo Kodwani: No nothing nothing absolutely nothing. Its a range

Participant: This exercise if undertaken again and again this will give rise to the..

Dr. Amitabh Deo Kodwani: No one more thing you can do just keep it with you, probably at this point of time when you are filling it what is going on in your mind what part is dominating, which circumstances are dominating on you probably has an effect. After sometime when you are sitting leisurely at home try to do the same thing and see that whether there is any change in the score. No if you do it after a month or so you'll not remember which question has what answer will give me a good image and all. Try on whom first? That's more important. Don't go and check the compatibility score. So thank you very much I have acceded my time Thanks thanks a lot for your cooperation.

SESSION 10

Justice Raveendran: So welcome back, one interesting thing we learned from the morning exercise is that we are not infallible and there is always scope for improvement, because I was noticing said no only this, that no judge sitting here sat back and said no, I am good, I don't require this assessment, I am not bothered about this assessment, because I know I am good, that was not the attitude of any one, everyone was eager to know what was the effect of his score, what is it, was it good, this means that he is not sure that he is good and he does not require any exercise, and that is good in a judge because you have a open mind and you do not have a closed mind, that is evident at least in regard to the none of you, I am not able to say about other judge, what you did, the way you behaved, you showed that you are like a natural

child as he explained, you are curious to know, you are not holding your self back that no I am a judge , I am good, I don't want to show if I have any weakness, no...none had that attitude, that shows that you are open, and that is good because in a judge the quality to be cherished is a open mind, a person with a closed mind is not fit to be a judge, so this is good. I am not worried about your marks, I am not worried about your assessment, I am happy that all of you are persons with a open mind, which means that you will listen to the lawyers and you will correct yourself if you have formulated a wrong opinion earlier, that is what is more important, open mind is that, that your initial assumption, initial presumption you will not stick to it and hold on to it, no you are willing to change, that is a very happy thing, that also shows that you have adult ego, that means you are objective, rational, oriented towards problem solving and reemphasising, and I can say all of you have passed with flying colours, good...then. Two three things about such things , number one it is good, but please do not go by system adopted for other modules to yourself, as I was telling to somebody, now what was prepared and used is a module for management person, it was not for judges, let me tell you, openness, friendliness, all these are great virtues in management that is openness in a different sense, friendliness in a different sense, like if you, in a managerial this thing, the highest marks are given and smile at everyone, imagine you are sitting in court and smile at everyone, it will have totally a negative affect or let us say if you smile only at some person, it will have worst effect, the best thing is to be solemn, it is not that you should not be joking or you should not laugh, but there cannot be individual smiles, you can smile at entire body of litigants and lawyers sitting, but you cannot smile because you know someone, because I know Manohar I cannot give a meaningful smile to him. So we are looking at a different test, the test that applies to management may not apply to us, I will give two other examples, I think yesterday we discussed it, Churchill considered to be greatest Prime Minister, England ever had, immediately after winning the election, ahh, winning the war, in the election, he was defeated. That was because, the simple reason was that people knew that his methods of working was good for war times not peace time because he was contagerious, he was fickle minded, he was courageous, he was not cooperative, all these were excellent qualities at times of war but in times of peace these were destructive qualities. So the English people were very wise, they defeated him after war, so whether to say he was successful there were certain tests, can those tests be applied to today to see whether he will make a good Prime Minister. No. Therefore the test change with the person and type of job you are looking at and the time. Times of war, times of strives, peace tomes, these are different times. Even for judiciary, if you are at the highest of credibility different test will apply, if you are at the lowest ebb different test will apply. In United Kingdom, the judges

will get down for lunch, go in a car with the lawyer who was arguing with him and go in the same car because both belong to the same inn and come back in the same car. No body will attributes motives to them, but can you imagine that in India, a judge getting down from bench and going with the counsel who was arguing before him and coming back. The test in UK are completely different, you cannot adopt them here, the tests here are completely different, therefore while I say testing is good and what test is to be applied is very important and we should generate a module, in fact with your interactions you can suggest questions we can have a modules for self-introspection for judges who come here and how to improve, that is one things, the other example I want to give is I remember having read a novel named chackerboat by Navell Shoot, he was great author of 50-60s, there is incident there, a person is special force operative, he is a war veteran, it is immediately after the war, highly skilled, what we call commandoes here, he comes out, he is in a bar, I don't remember the full facts, he gets into a fight and kills a person, so the matter goes for trial and there is jury trial. The point made by the defence counsel is that the normal rules you apply are inapplicable to it. In special forces it is drilled into heads by repeated training to attack without thinking, somebody who attacks you, it is a reflex, they want you to have reflex action and attack your opponent if somebody attacks you. You don't think what the effect to it is. That is how if somebody has been trained for six years and being on fields and immediately after he comes back and gets into a fight, his reflexes takes over not his mind, therefore you cannot hold him guilty, the arguments he has stated so beautifully that in the end he is acquitted. Why I am saying this is the logic is I sometime feel that in Assam in Jammu and Kashmir, even in other states the police are sometime accused of, it may be necessary to apply slightly different test not the ordinary test because when you are, let us say a Police man who is in a situation of always being under tension that somebody may attack him. If he kills somebody, whether it was intentionally done, or it was carelessly done or out of mistake by reflex action, these are issues that may arise. All that I am saying that tests at different point of time, with respect to different kind of people are completely different, classic example is A man who is starving is stealing a bread and a well to do officer in a bank misappropriating money, both may be stealing but there is a degree of different, a standard of difference and the way we judges look at it should also be different, no that there is stealing, whether there is provision for it, put him. I never as a judge handled a criminal case, I was always put on civil or constitutional side, as a lawyer I never handles a criminal case, of course in Supreme Court I had to handle some cases, and we were getting cases of 60 rupees 80 rupees bribe, I remember I sat with Pasayat and the bribe was 60 rupees under the Prevention of Corruption Act there was a minimum sentence and we had to confirm, I always felt what are

we doing. The politicians taking away hundreds, these days it is thousand and lacks and corers, school teachers becoming Chief Minister after that purchasing property of 500 cores in Maharashtra and Chief Ministers having ten thousand cores, sons having big companies, how is it possible, no body things, I use to always think what is the fun of sending this 60 rupees to jail, of course our discipline takes over, we are not concerned about what is happening outside, we are concerned with the case before us, when a thief is brought before us we cannot take the argument that there are hundreds of thief's outside, why are you punishing us, no, we can't...so I said alright, if the facts require this judgement Ok, but please remember that that is the precedent approach, we are bound by the law we are bound by the precedent, we will allow but you should always have in mind the equity principle where you have discretion, that discretion should be used to help the weaker section and the downtrodden, that is the unwritten law that you should follow, this is one thing I wanted to remind, then next is about, a few passages from How to be Good Judge, first thing is, my apologies, you will read, advice to new judges, who are appointed as Civil Judges or Magistrates, this is not advice for High Court Judges, so if it contains anything you may not like, if I say the word EGO will apply, it is sometime so fundamental that...I have already said in this or somewhere, that there is no difference between the lowest judge and Supreme Court Judge, except jurisdiction, other that that there is no difference, a civil judge dealing with suit for injunction may deal with 100 crores and a Supreme Court judge dealing with appeal, may deal with 100 rupees, it is only a question of jurisdiction, but this is a word of apology, if anybody feels hurt by anything there please do not curse me, it is or younger people, let me just go into 2or 3 passages, for want of time I will not take into more because first something that is taken to subject itself...let me see....page....yaa....one second I just wanted one particular para which I will read....this is at page 18.....you will find it under the heading judicial temperament and humility, I will read it, instead of wasting time, I will read what I have tried to convey

“Every day, everyone, inside and outside the court address judges as " my lord" or "your honour". Everyone goes, greets and salutes them and shows them respect and defense. Day after day, they decide the fate of litigants by granting and rejecting submissions, arguments, complaints, requests and prayers. They can send people to jail. They can declare people to be paupers. They can decide who is right and who is wrong. They have captive audience in their courts. It is but natural that after sometime some judges start thinking that they are personification of wisdom, knowledge and intelligence; more importantly, there word is law and their wish is command. Humility gradually fades from him. a judge is surrounded by his

subordinates, lawyers and litigants who keep telling him what a noble, wonderful, wise and knowledgeable person he is. the moment he starts believing them he becomes a lost soul, ending up the opposite of all that a judge should be. Humility is the quality which makes a judge realize that he is neither infallible nor omnipotent, that he should hear the lawyers who have studied the facts and researched on the law and that he should decide or issues by keeping an open mind. without humility a judge becomes arrogant and perverse with a closed mind and starts believing that lawyers do not know much and he knows better and that his decision are always just and right. He tends to showcase his cleverness, knowledge and erudition in his judgment and orders, relegating justice to the back seat. in the short he ceases to be a judge in true sense.

you should be more concerned about rendering justice rather than trying to exhibit your intelligence or power which inevitably leads to justice . . justice frankfurter described "judicial humility, I think this is one of the best definitions which I have read, "judicial humility" as having a mind that respects law, that can change its thinking, that can accept that another view is possible, that can be persuaded by a reason and that which is detached and aloof and that vests for truth puts passion behind its judgment and not in front of it.

This is what judicial humility is then...

Then you should avoid the temptation of jumping to conclusions are taking a view and then refusing to budge from it. If you first decide what should be the result, without hearing and without hearing, fully and properly and want to stubbornly stick to it. Then you will be searching for the law and facts to fit your decision rather than basing your decision on the facts and law. You will also try to ignore what would look the laws and the facts that are inconvenient are contrary to you. Choosing the facts and law. To sip support be a pre-determined view. And ignoring other the relevant facts and law is judicial perversity, it is said that many successful and experienced lawyers, failed to transfer themselves into good judges if they are obsessed with showcasing their knowledge and intelligence in every decision. Rather than rendering justice. You should be careful and balance. In what to say inside or outside the court. The Bangalore principles of judicial conduct gives you the following advice: A judge like any other citizen is entitled to freedom of expression. Believe. Association and assembly. but in exercising such rights Judge will always conduct himself or herself. In such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary. You should not force a compromise or a settlement. You should not become peeved or upset when your suggestions for settlement which you may consider to be

reasonable. Are not accepted by one of the parties. In fact without knowing the facts. Full facts. You should not be one for just a compromise. Let me clarify. You can always suggest that the party should settle. In fact Section eighty nine requires the judge to encourage settlement, what you should not do is impose your views what your terms of settlement is at a premature stage, when you suggest a compromise and also in terms which you consider fair, in many case party whose case is weak will eager to agree and party with strong case or just cause will be reluctant to agree. Having suggested a compromise. You may feel irritated with the party with not agreeing with you or suggestions. When you therefore hear the matter. You are resentment against that party would refuse to compromise. May make you hostile to the party. Who did not listen to your suggestions and emotions may blur your judicial decision. Of course that these not likely to happen. If you develop. Judicial maturity and experience. Judge who genuinely feels that settlement is appropriate in case and pursues a party should recuse himself from hearing a case if the settlement is not done If he goes into the matter and suggest the terms of settlement and thereafter the party did not agree he should recuse himself, this is one thing which I wanted to say with regard to judicial temperament and humility. We should always we introspect been in fact. Yet classic example can be where you are sitting in a division bench. And you want to defer, you want to give decision of your own. The test there is not, what is wrong with the judgement suggested by my learned brother. What you should be asking for us to use whether I am right, to differ with from the other. It is it may be it may apply to your relationship with your wife. When a fighter occurs or a quarrel occurs, instead of what she has done wrong, Whether she's right . . . But if you think if we get into the mode of thinking we are judges we know the laws we all dealt with these matters and. What I think is correct. If you. That kind of mentality. It is dangerous. It will lead to injustice. Not that in the every case you should be suspicious of yourself and have you know kind of a hovering mind so that you never does a case. No that is not what I'm saying the the only thing is have your mind till the end. I am sure you are having your own experience or it is already you are experienced. I have heard a case. I have reached a conclusion that should be the judgement. I was started dictating the judgement with that in mind. But as a dictated and as I am referring case law as I am referring to fact I find that I'm wrong. And I have changed the judgement. By the time the dictation ended. The view which came out was was different from the view which we started we should have that are open mind. Many a time we put a question to the lawyer.... there is nothing. There is nothing in this case. Are we say that. No no no this principle is wrong. And the lawyer methodically persistently very very respectfully points out that what you are seeing is wrong. We should have the grace to accept it because nobody will

mistake you I f you accept it if you do accept it and stick to a real lawyers will have a very bad opinion about you but if you are grateful to say no I was wrong, I had incorrect in perception. I'm correcting myself. Every lawyer will say that here is a judge who has a open mind. There these are all aspects of justice. Not only justice being done. But just this seeming to be done. Because it is a....it is a continuous process. It is a continuous process where people should feel. Justice is not only being done. But it is seen to be done. This is one thing I wanted to tell you another thing I wanted to tell you is, I know of High Court judges, sometimes passing orders to be just . Orders of what they feel yes I know of personally of judges would think when a Supreme Court judgment is cited no no no it is not a plea, this will not apply, or you cited before Supreme Court, go to Supreme Court. And not a referent to the judgment these are all becoming common. That is arises out of your conviction that you know better law. But you see it may be true that in your particular case you mean you're knowledge of law may be better than the knowledge of the judge of the Supreme Court will rule the judgement. But unfortunately we are bound by your constitutional set up where you are bound by the judgment. Even if it is the wrong judgment. Therefore it is not possible to have your own view. You would view is possible where within the framework of law. Within the framework So it is you have to work within the framework of the law as determined by statutes. And as determined by the precedent. Therefore I think the while dealing with judicial independence. I will read those two paras also because yesterday I did not read it. This is a very relevant subject with reference to equality...everything it gets jumbled up. Page sixteen. Under judicial independence. Judicial independence refers to the independence of judiciary as an institution. As also the independence of individual judge in performing its judicial functions. We are concerned here with the independence of individual judges which refers to the freedom from any influence our pressure and freedom from any interference from the executive or legislative...legislature in the judicial process. You have the right to decide cases in the manner which you consider to be in accordance with law. You are absolutely immunity against any actions are reprisals or actions or personal criticism in respect of your judicial actions and decisions. You have such immunity. Even when you act without jurisdictions or decided wrongly. That is when your decision is held to be wrong by higher form provided you have acted in good faith. The next para, it is not for you it is for this about subordinate judges. Please come to page seventeen. Judicial independence is not freedom to do what you like or what you considered as just and equitable. Judicial independence does not mean you can exercise your discretion asper your vims and fancies. Even when you when you are exercising discretion for which there are no statutory guidelines and precedents. You are required to act

justly and fairly and not arbitrarily. You are required to do and or justice in accordance with law and not justice as part of our convictions are what you consider as just. Justice Cardozo warned: The judges even when he is free...he is still not wholly free. He not to innovate at pleasure. He is not your knight in arm, roaming at will in pursuance of ...in pursuit of his own ideal of justice. Draw his inspiration from well consecrated principles, he is not to yield he's not to yield to spatmatic sentiments. To vague and unregulated benevolence. He is to exercise benevolence formed by tradition. Methodized by analogy, disciplined by a system and subordinated in the primordial necessarily of order in social life. Wide enough in all conscience is the field of this discretion that remains there...there are several judges, there was one judges here in Madhya Pradesh. There is a mandatory or the minimum sentence prescribed for an offense. Because the judge feels great. Judge feels that he has absolute discretion, he says you have under gone two and half months? For the period under gone till the raising of the day. There was one in Madhya Pradesh, so notorious, in murder cases in the rape cases and for everything, two months three months six months whatever under gone, that's all finished. See you cannot do. Maybe you feel that it is fair. Maybe you feel you are doing justice. But that is not justice. When law says something you have to follow it when the precedent says something you will to follow it. It is that discipline that give credibility to the institution. It is that discipline that will build the confidence of the common man in the system. Therefore it is very difficult to human beings are not a robots. Every judge has got a independent thinking process and the philosophy sometimes you will find it very difficult to accept your decision. But if it is decision of the Supreme Court. You have to accept it. When you say in a roundabout manner that it may not be the most proper thing but you are not in a position you are hands are tied or some such thing. You may show wish that the judgement be reconsidered. All these you can do. But you are bound to follow it. You can't ignore it. But repeatedly judges of the high court are not following. I own personally known of cases where this is happening is it not judicial dishonesty in a system in a precedent oriented system. This is something which has been worrying. This growing indiscipline. Two things are worrying, one is this growing indiscipline of of obeying the higher decisions. The higher decisions which you are not to obey. Similarly the worrying thing is, senior judges, losing their independence their independence as High Court and carrying trying to carry favour with the Supreme Court. Both are worry. Because you see. For example you see a Chief Justice is not a subordinate of the Supreme Court. Chief justice is not answerable to Supreme Court. It is very very clear. It is only that appeals lay against the judgments of the High Court judges to Supreme Court. . I am talking about Chief Justice because what is happening. I'm telling you and all of you know,

Chief Justice is first amongst equals. He's not a higher authority. Or an appellate authority. Therefore...but he sets the roaster. Yes he has certain Administrative function, in the judicial side Chief Justice sitting single and deciding, two junior judges can upset that. That is not the thing. Therefore. But it is happening. Because of certain structuring of promotions and all that they become.....what is happening is that Chief Justice is always looked to what the Chief Justice of India says or the judges of the Supreme Court from that state says. They know that a person who was to be recommended for appointment of a court is not good but nevertheless a suggestion has come from so and so therefore I will do. This kind of thing. That's why I said where it has to be obeyed we have stopped. Where we need not obey we are obeying. That is where this entire system will collapse. Unless this is changed. This is of course a sensitive subject to deal in this context. But let me tell you that it is absolutely necessary. Then coming to this perception which was so nicely explained. I have one incident to narrate. 2004 we had this chief justice conference. I participated as Chief Justice of Madhya Pradesh. One day you know. After the conference the prime minister gives a dinner to all the chief justices and I think two three of us, myself, Sirpurkar was my neighbouring chief justice. And one more person. 8 o'clock was the invitation at Hotel Ashoka. There was dinner. So at 8 o'clock three of us were there, but unfortunately the Prime Minister was 2 minutes before 8 he was there and only 2-3 of us were there, it was highly embarrassing for us, but he was host therefore rightly was there before eight o'clock. But we just started discussing the general chit chat. He asked as. I learned that the judges are taking and using the cars of the lawyers, is it true. We all said No no no no no sir. It is all not. Why will our judges use the cars lawyers.. So we assure to him that it is not being done and there was Independence, our integrity, everything is intact. So immediately after that at the Karnataka Judicial Academy where I had gone for the holidays to Bangalore they invited me as usual to lecture to judges. I give lecture on integrity and ethics and all that, I was giving a lecture, And I asked the judge was sitting in the front row that. The prime minister has put question about cars being taken from lawyers for going out and all that. These are the days you remember when the judges. Now every civil judge has a car, I'm told that even loans are being given for that purpose and cars have become normal I'm talking 2004. And is it true I don't think it is proper and all that I mentioned. They all agreed that it is not true. But when I asked the person. What do you say, he said he stood up and said. Sir, whenever I do it I put my own petrol. This is the answer he gave. Then I had the next person, he said I have taken it for going to Tirupati. I was shocked that the information for a minister had which I did not have as a sitting judge for 11 years or 12 years in Karnataka and 1 year chief justice Madhya Pradesh, never knew this. And the judge in

perception of the trial court judges they talking the cars for others pleasures is wrong, but if he is taking to have darshan of Lord Balaji he is not wrong. The other perception is if ihe is not talking the petrol of the layer and if he is filling his own petrol, he is not wrong. They never felt that taking the car from the lawyer is the thing and not and patrol is not wrong. this perception I was worried because Judges who have become corrupt. Trial court judges I am talking about. The trial court judges who have become corrupt. They are not bothered about small thing. There are some honest judges in the sense that they do not take money but I know again, all this is from my experience I have of judges, there is a culture developing, the young judges, when a child is born they have naming ceremony and they invite lawyers They create functions and occasions. Of celebration in their house where normally, except family and friends. Others will not be allowed. Why do they invite lawyers. Lawyer if judge, invited you, judge is the king, High Court judge is nothing, you see may be if you ask a district judge, who has been a principle district judge and who then remains as High Court judge and retires, he will m tell you....If you are chief justice of High Court it is different, if you are the lower rung High Court judge, you are better off as district judge, when judge invites, lawyers will certainly come, they will show respect, how do they show respect. Judge may think I am not corrupt. There is no quid proquo. I am not shown given any judgement in his favor. I'm not showing any favour. He not asking me for any favour. There is where therefore that is the question of lack of integrity honesty. I am honest. My integrity is intact. No sir it is not intact. It has been lost. By you were perceptions that you can invite lawyers and take gifts. You have lost your honesty because nothing in this world is free. A lawyer accepts and attends your function, expects that that will be remember by you that he visited your house when his matter comes to you. Therefore perception we should change of the subordinate judiciary. As I said subordinate judiciary is the face of the judiciary, you are not the face of the judiciary, Supreme Court is not the face of the judiciary. Person litigants, they daily attend, like you saw in the movie court yesterday, the face the see is face of the district court, Face of the district judge how they behave. it is our duty. You see. Each one of you apart from being a judge of the high court. You are also what you call as the portfolio judge your callers the administrative judge and different names you are called you are the mentor. You are the guiding figures of the judges in the district judiciary. What steps are you taking to see that they are working properly? What steps will? you are taking to advise them to them to act property. In what way you are supervising the work. I know of administrative judges who go to the district only if there ia resort or temple in that the area to visit with the family. How many times you check the records, how many times you have discussions by calling all the judges. How many times, if a

judge has got the grades which are not good before writing the confidential report you have called him and asked what is wrong? When lawyers complaining against a particular judge why you have not are the judge and advised him. I know of cases where elected representatives who are criminals are accused before the magistrates their come and share dais with the judge and this fellow poor magistrate is standing the door below the platform. So yes it is demeaning. Everything this thing is organized judicial work for one week goes out. Before The function two days. Then the day of the function. Then after the function is over and the judges. You know you all know when the High Court judge goes the district judge is waiting for the completion of the function and he will leave so that there is no problem. Then he wants two days to relax because of the attention that was built up for four or five days. So one week work is gone. The work of the district judge has gone High Court judges is gone. Then we have legal services. Then the Legal Services judge goes. Then legal services there is a high court. Legal Services Committee. Who is a associate of the state legal authority chairman so there is a judge goes. Then we have what is known as Son of the soil theory that says. If you have a judge that is from that district you cannot ignore him. And when these three four meet they think let us have a party and call another one or two judges, so 3-4-5 judges going, and facilities they have to look after them. You know what is looking after within inverted commas. I have known of a high court judge who...because one judge was unfortunately very efficient judge, who did not provide liquor, inspire of a High Court judge indicating, he did not provide, in the ACR it was written, he lacks in administrative capacity, I can tell this to High Court judges, so the perceptions should change. Pardon me this judge from Allahabad. If have heard from the district judges, the demand made by the High Court judges, when they visit. I went to Varanasi, no what is that place, Rishikesh, there we were having discussions and certain things they said made me blink. SO there is a need to change our self, to change our attitude, thinking, otherwise if all this happen, this is nothing but subordinate judiciary into corruption. If they do not have the money and the High Court requires them to do, means High Court Judges requires them to do certain things and they have to depend on somebody lose, beg borrow, to corrupt is the only option. Let us not do that. This is what makes it difficult, how we tell this to High Court judges, who already know all this. As I told yesterday none of the things that we discuss yesterday and today about, integrity, impartiality, humility are the things which are new, every one of the judges know. But still as the question was put by Mr. Singh, we know but do not do something that is something which comes out of discipline, constant introspection. Whether I should go to district function I am invited at? Whether I should go there and I see function with thousand people, should I may not ask district judge where did you get the money to manage

all this? No we appreciate, We consider him a good district judge because he has organized a good function , our High Court are not suppose to be public speakers, they are supposed to be writing judgements, by reading files on Saturday and Sundays but no judge stays in head quarters on Saturday and Sundays. No Supreme Court judge stays in headquarter on Saturday and Sunday. They are busy opening this and that. I have known same building being opened 6 times, I have known buildings which are not complete being inaugurated. Somebody was telling me a new building in the Supreme Court which is still under construction was inaugurated by the Chief Justice, without the knowledge of any other judges, this kind of obsession to go and inaugurate this and going there, unless it is for improving the functioning of the High Court, if it is in regard to improving the functioning the subordinate judicial officers or helping the judiciary, we should have a second thought. Unfortunately we are getting into a culture which is not judicial culture, it is unfortunate that alos for conferences like this when forty judges are invited 20 judges give consent and 9 judges come. every state is requested to send 2 judges, then 20 judges give consent and then 11 disappear, so the seriousness is lacking. That is why i said that if the Chief Justice is from outside he does not take interest, he is not bothered. Things should change, morning meetings, full court meetings should not be for fighting for their own candidate, every district judge these days wants to have a good father, he thinks if he has no god father his prospects are nil. God father either by reason or by caste or religion and then most of the full courts meetings are fights to safeguard the officers who they are good father or condemning the others candidates. No contribution is made. Are we in the full Court meeting analyse the drawbacks of the high courts, problem of the lawyers, problem of the infrastructure, are we having discussions and conferences about improvment in law and developments in law. No nothing is taking place, slowly we are slipping into system in which we are becoming like government department. Therefore, integrity, impartiality, humility, honesty, all this should percolate from higher stages to lower stages, it cannot percolate from lower stages to higher stages. You are the leaders for your district. And we should have open mindless, we should have tolerance, if two brothers fight for partition, once the partition is over they should have the civility to accept each others, you are blood brothers. I heard one of you saying whether you are from Andhra Pradesh High Court and you said I am from Hyderabad High Court, there is no Hyderabad High Court now, people , judges refusing to recognize their own court by name, that shows intolerance. Should we be that intolerant? Should we not tolerate and excuse, I know lot of injustice was done, I have heard stories about it, both sides, I am not commenting on one judge. I know how much people have suffered, I know how much in justice was done to one side. But when division takes place,

you are independent now, you will have your own high court, until then that name is there and you are refusing to accept that name, they are your brothers, it is not like India and Pakistan. Reddies are on this side and that side, Kammas are on this side and that side, this people speak telgu that people speak telgu, it is unfortunate that division, some differences have come that is why division. Maintain the relationship and if you do not maintain, how will the executive maintain and how will the legislatures maintain. We should not slip into the legislatures way, we are the judges, we should show the way, see this Patna and Jharkhand. Please see Madhya Pradesh and Chhattisgarh, there is no bitterness, there is some confusion in division on employees but it is sorted. We are judges, we should have open mind, we should be tolerant, and we should be forgiving. Please do not feel that I am advising a particular judge. This intolerance that the particular judge has shown is there in every judge, that manifestation is there in every judge, I mentioned that as an example. This intolerance should not be there, intolerance towards other community, other gender, towards everything there is intolerance, and you have a view. We are judges we should not do that. To lead the judiciary, to revive its credibility is in your hand and whatever I discussed is not to find fault. If you come to the last page of that article. This is what I said. Please that is. This is the apology what I gave, the note if you read:

Many of you may have different views as how to maintain practical judicial ethical standards. Some of you may feel that some of my advice on ethical standards are homilies, unpractical, ignore ground realities or some of my apprehensions are exaggerated. May be, may be not. Reoccurring aberrations in judiciary, underlie the needs for strong ethical standard, let there be no compromise with regard to adherence to judicial ethics. This is my request. We are here, in an open views, we have expressed open view, in a free and independent manner, to introspect and find out how it can be improved. I am sure you will carry the ideas, the suggestions made and your own thoughts as to how to improve things, carry back to our state and circulate things among your brother judges and things will improve, thank you.

Dr. Geeta: Thank you so much, can we have a big round of applause for Justice Raveendran who has spent two days with us

(Participants clapping)

Dr. Geeta : We have been calling Sir since many months and we were able to get him for his favourite subject ethics, no one can talk ,like him...so...thank you so much...and with this we come to an end...

Justice Raveendran: She said this is my favourite subject. You know the price In have to way for giving lectures...and you will also...be very very careful in handling lawyers, some of them

can be vicious. You will know...when I retired from Supreme Court Judgeship, I wanted to learn to operate laptop which was with me for last 4 years but never operated. I asked my son how to go to what is that you tube or something. I said if you type your name all the news about you comes, is it so...yes yes. If you have done something new worthy your name will be there. I said my some to put my name there RV Raveendran. In my own childish, natural child way I wanted to see what people have said about me, so type....so..judge Supreme Court retired so and so...second, some blog or something the corrupt Supreme Court judge recues himself....next heading I was shocked. 56 of our judges were allotted sites in layouts in the year 1993 and I became a judge in 1993, I pays the amount in 93-94 and it was allotted in 200, no 1996. In 2010 someone has written that I am a corrupt judge because I was allotted that sight, I asked my son what is this I have never seen this, if I had seen this when I was a judge I could have taken an action. Leave it...internet anything and everything will come, he is entitled to his views, my son telling me he is a fellow who is towards that side, internet and freedom of speech and all...what he thinks he has written, why are you bothered, so this was because of some personal grievance that a lawyer had against me. Another lawyer, his name was recommended for High Court judgeship, I was unfortunately in the Supreme Court at that time, his name was rejected by the collegium. I had nothing to do with it. That lawyer thinks I am the reason for his rejection, he keeps on telling all kind of things. One day in some matter I recused myself from some matter of arbitration, he goes and pays in the newspaper to say the High Court unseats Justice Raveendran as arbitrator. I had said that I do not want to be the arbitrator and the court had accepted and I ask the newspaper and they were fair enough, they said it was wrong and they say the lawyer so and so has given this...i again said I should take action, my son said why are you bothered, you are retired person, why not enjoy life rather than litigating in courts. It appeared to be sensible advice. why I am saying that you will face risk even if you are doing good things., If you do good things also, if you are courageous to say somebody is bad, that person will not keep quiet, that is the system now. Earlier if name were considered and not accepted for High Court judgeship, no body will think to taking actions against collegium members or other members, now automatically, the allegations are made against the collegium. here again I ask why, here again collegium has acted in a certain manner which give room for this, so what we should guard against is against any individual instance of our behaviour giving room for anybody or everybody to attack, anybody or everybody. if you are behaving unreasonable the lawyer or the lawyer community or any particular section, does not attack you only, it attack he entire member of the judiciary, this is unfortunately the thing that is happening. We do not know how to this thing...I will give a simple example, in one the

recent case before the Supreme Court, one of the benches confirmed the review petition dismissed review petition. Is it in the bomb blast case? Yakub Menon case...it was midnight, hearing at 2 o'clock or something. See the logic is..I do not know how these things operate, the trial judge who gave the judgement, the appellate court which confirmed it or the Supreme Court who confirmed it, or the members of the bar....I mean the judges who dismissed the review petition none of them are threatened, but only this judge , the presiding judge get threat calls and is now given Z Security, therefore we do not know how will be the reaction, so the best is always be act in a just manner, in a manner where people will think there is nothing wrong with the judiciary. I remember one thing, I met some judges form Chhattisgarh, you know part of the Chhattisgarh is not under government control and it is part of the terrorist group. They said Sir no worry, judges will not be attacked. I asked Why, policemen are attacked, politicians are attacked. He said by and large judges are not corrupting this area or against Maoists in this area. They do not have enmity against judges It is the reputation that institution has built. The institution is fair and by and large has not acted against them. But if it comes to government they feel it has acted deliberately. That feeling should be there, some general feeling. As you said one part judges felt that the other part judges are not acting fairly, that why this bitterness came in High Court also. That should not happen, everybody should try to behave in manner that they are doing justice. If that general impression comes then it will be good. That is what we strive for and I feel all of you will contribute. Thank you...Se i am total illiterate as far as computer is concerned. The other day I purchased a laptop and I am not able to, I gave some password there and I forgot, so for last 3 months I have not done anything. I asked her yesterday to help me open,. she said what is your pass word, I said I do not know my password and it is hanging since last 3 months, you have to go to show and get it done, so I am happily out of Facebook and after seeing comment about me on you tube I am averse to internet, I don't open it at all. One judge I remember, that is Justice Kannan of Punjab and Haryana High Court, don't confuse with Karnan who is in he news, who is attacking the Chief Justice, not justice karnann of Tamil Nadu, Kannan of Tamil Nadu who is a judge in Punjab and Haryana High Court, he was blogging, giving his views and Supreme Court told him that, you cannot express your views other than your judgements. He was hurt a little and the last blog he gave was, I am going, will continue this after my retirement. I do not know, let us say you are blogger or twitter or something and you have a favourite film actress Madhuri Dixit or nower days...nower days who is the leading star

Dr. Geeta: Dipika from your state..

Justice Raveendran: Or Trisha or somebody, you appreciate their acting, no body will mistake,

but if you wish to comment on political or judicial matter which can become controversial. As it was pointed yesterday, we are not suppose to explain, enter into question and answer, is it not better to stay away, instead of participating, you can read and enjoy what others say. I do not say that about a movie, scene or a lecture, something which is totally unconnected. If you want you be on internet I do not see why you should not be , but comment on let us say as a judge you say something about Andhra Pradesh, certainly it will get an response, that kind of thing you should not do, but other things I am asking myself, you do not cease to be a human being because you have become a judge, you can eat , you can live, you can go to movies, you can do all these things, normal things, so long as it is not disruptive or destructive of then judiciary or judicial system, i think you can participate.

Dr. Geeta: Netherland had developed these guidelines for European Union, that how can judges of European Union can be on social media and what are the does and don'ts of being on social media

As I said our principles are completely different from the European Principles, examples I can give you the US, in US 75% of judges are elected, they make all kinds of promises, they say we will clear all kind of criminal elements from the society, we cannot do it, the systems are different.

Participant: There jury system is there, they just have to facilitate

Justice Raveendran: very happy position, they do not have to right any judgement at all, except short orders, they are also observers. I do not know...in UK it is common for a judge to travel with judge for having lunch or dinner, which is not imaginable here. So we need to have the rules, regulations, to suit the needs of our society and the perceptions of our society. may be when Bangalore principles were made may be these things were not there.

Dr. Geeta: No but these are in conformity with the Bangalore Principles. Bangalore Principles have been adopted by European Union for all 43 European state. There are certain things that are allowed and certain things which are not allowed, like they say you cannot go to a market place and click a selfie.

See my own feeling is when something is allowed and something is not allowed, instead of doing something and finding that it is not allowed, best thing is stay away. All of us have very small tenure. 62 it just comes like that, I still feel that I just became a judge, I have retired and four years have gone. time flies, so if you can avoid, you should avoid this is my feeling. Again if I have said anything which is not proper please excuse me because my intention is not to say anything about any a particular judge, or any judge form a particular community or stage, it was only to discuss the problems which the judiciary is having and to solve them.

Dr. Geeta: You all have filled that form?

Justice Raveendran: You have to do some introspection work

Dr. Geeta: yes five minutes only, I will do that....only 2 minutes i will take, this is just learning about where we went wrong, where we were right. You can let us know your concerns.

Participant: You ask to nominate two or more than two?

Dr. Geeta: Minimum two

Participant: But we find they nominate only one, may be there workings are different, that many be the reason. But because only one is nominated and that one withdraws there is a problem.

Participant: see I belong to a small High Court, so if smaller High Court can spare one judge, why not bigger High Courts

Participant: because of lack of strength also, Chief Justices are not ready, that is the reason probably because from our High Court only I was nominated

Dr. Geeta: If one comes from each High Court, it will be 24, it will still be like reasonable. That is one thing that smaller the group better learning takes place. Second thing is it is very voluntary, how can you make people forcibly come. Education can never be forced on people.

Participant: It is a learning place. It is wonderful, the arrangements are so good, everything is **at your disposal, you are not in a hired accommodation**

Dr. Geeta: Is there any other issue with your stay at NJA or your hospitality at NJA?

Participant: Wi-Fi

Dr. Geeta: We will do that

Participant: Gym

Dr. Geeta: we have given tender, tenders are given for gym, steam bath, thank you so much

