

NATIONAL JUDICIAL ACADEMY



**VERBATIM REPORT**

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WORKSHOP ON DEVELOPMENT OF SPECIFIC MODULES FOR THE SJAs

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**SESSION-1**  
**THEME ONE- JUDICIAL ETHICS TRAINING MODULES**  
**IMPORTANCE OF JUDICIAL ETHICS FOLLOWED BY GROUP DISCUSSION AND**  
**BRAINSTROMING**

**Prof Geeta Oberoi:**

Good morning to all of you,

Welcome to NJA, from all SJA many people have come except from Bihar no people have come, we don't have familiar faces and may be sir, yourself from 'Rajasthan', so Bihar and Rajasthan it continues (discussion). And yes there are some participants who are coming for the first time First, I know that is why I am saying apart from Bihar and Rajasthan I see all new faces today. Yes but all these participants are coming for the first time this academic year. (Discussion). No I am talking about this academic year. We are talking about calendar year. It's in the continuation, in continuation we have planned 4 programs, so i see only two SJA sending people, so that we are here, we follow up with each other with what happened. Otherwise I see new faces, this is what I am saying. And about this conference, what is the objective you know that we are meeting to design and finalize 4 curriculum,

- 1) Judicial Ethics
- 2) Commercial law, which will be tomorrow
- 3) IPR
- 4) Animal rights jurisprudence

So 4 modules we have to finalize and these 4 modules will be presented, there is a conference of High court Judges, where Judge in charge of Judicial education of every High court. They will be coming on 2 & 3 April and we will be presenting what we finalized through this program to them that these are the 4 modules which are adopted so that there is uniformity through country at least w.r.t. these 4 subjects. So this is the whole agenda and objective. So this is not about like anything learning but this is about doing something. This is a doing workshop. So you have to do something so, Ananya from west Bengal is also there, there is a continuity I see. So every day we should end up with one finalisation of the topic under discussion. Today there is Judicial ethics, this day should result in the end in adopting one final curriculum/ training module which can be represented to Judges and it can be adopted, so with this agenda I am now leaving you in the company of Hon'ble Justice Manju Goel, Former Judge of Delhi high court, to say about her, Mam knows what a training of trainers is all about, because she herself has undergone this training. She has been trained at University of ....for gender sensitization project under Indo British joint venture. So she knows what are methodologies apart from that she is went to almost every SJA of the country be it Sikkim or be it A.P or be it Tamlinadu be it Maharashtra at least during Mrs. Fansalkar's time, I remember mam coming over there so, she knows almost all SJA their composition, she is with NALSAR as well where she is a member of NALSAR she has also prepared a training prepared a

module that 'How they should be trained", it's a NALSAR module, so she knows, she has been in this field from many years so she will be right person today to interact with you and aid you to aid to understand i so that in the end you can come up yourself with a final module , so I leave it to madam and of course Paiker Fatmi is of course she is Paiker Nasir now, sorry, I am still stuck in the old name so paiker nasir is there and she is our research fellow, faulty over here and program coordinator. Any issue you have anything to do with respect to your state you can contact Paiker. She will let me know. So, thank you so much and let's meet. I will be moving now, whenever I get time i keep bumping up to all of you. Thank you so much.

### **Justice Manju Goel: (R.P)**

Good morning,

Now we are going to have an introduction session. Okay?

There are some slips, something is written inside, some secret word. See the magic word and try to find your partners I won't tell you how to find your partners. You can show it to your friends. Although it is secret now it is open, now that you have opened the slips. Find your partners. Please stand up, move around, find your partners, you have to find that. How do you find your partner if you don't know (discussion) Can team guavas come here? Where are the grapes.so we got 5 groups? Yes.

Now i have some activities here, you will take your activity. This activity you have to perform here without speaking a word. After completion of the activity, each one introduces yourselves. (Discussion) 2 minutes to plan your activity. (Participants discussing)

After 2 minutes: Who volunteers to be the first group? Come please. All three of you has to come. Use this space. Don't say what you are, we will say what you are doing. Can we chance to other group. We have identified who you are. Can I invite this group? Introduce yourself.

Group 1: Participants introduced. What kind of music you like...Nianatal is a very crowdie place now because naintal doesn't have any distinct glory any more.

Group 2: (enacted) It is railway station (participants).

Introduction by participants: Pratibha from A.P, do u like to cook (R.P). Yes.

(Introduction and discussion)

This is what i call icebreaking, now we know each other, we have move from our seats and we have made an atmosphere where we can freely talk and discuss things.

So, now we will begin with the session that has been given, lets us be little more serious, Judicial Ethics but it is a course for the training, we will talk about ethics and then to" how to talk about ethics "both things we will discuss. So by way of introduction, there are 2/3 points the points that i will go through quickly in 5 minutes are.

1) What is ethics?

You know writing on the board has certain aspects, you can't write in the way like in the exercise books. It has to be little in large so the person at the very end can also see.

2) Why ethics, it means why we are talking about ethics.

3) Judicial ethics

#### 4) How judicial ethics is different from ethics for other professions

We all know now the scope of the subject. Ethics to be very brief, is a set of rules and principles for good living, was something we are taught from our early childhood. Like Go to the temple bow, don't snatch from your younger brother, don't quarrel with the neighbor, don't steal tell the truth. Wash your hands. These are ethical principles which we are taught from the very childhood. Sometimes I ask can ethics be taught.

If i have not learned the principles of ethics in my early childhood, can i learn it? At this age? Yes and no, there can be both answers.

And why ethics? Why are we talking about ethics? Why didn't we talk about ethic say 40/50 years back? Why is the entire world talking about ethics? There is a conflict of old values with new values and very often we say our days were better, these were the rules for the ethics which they followed. But now we talk of ethics because we feel it's necessary to talk of ethics At one time it was noble to suffer in silence, no we say no no, that's not the good way of living, you must also live and if you have to protest please do protest, live a life, set an example for others. Suffering is not to be tolerated. These are her ethical principles have changed over a time. Something which was good sometime back is not good anymore. I read recently a book which was written about 40 years back, that was by seethal ragheys , auto biography, "My life ,law and other things "in which he describes how he appeared when he started his professionals junior of his father and later when he became the attorney general. His father appear as a junior how he appeared in the court of his friend Justice Khaniya and here the relationship of bench and bar was how he appeared in the courts of his friends Those ethical principles, these present day ethical principles were not raised at all because perhaps people have maintained a very high standard of living At one time it was noble to suffer in silence, no we say no no, that's not the good way of living, you must also live and if you have to protest please do protest, live a life, set an example for others. Suffering is not to be tolerated. These are her ethical principles have changed over a time. Something which was good sometime back is not good anymore. i read recently a book which was written about 40 years back, that was by seethal ragheys , auto biography, "My life ,law and other things "in which he describes how he appeared when he started his professionals junior of his father and later when he became the attorney general. His father appear as a junior how he appeared in the court of his friend Justice Khaniya and here the relationship of bench and bar was how he appeared in the courts of his friends Those ethical principles, these present day ethical principles were not raised at all because perhaps people have maintained a very high standard of living which means ethical living and so those questions were not raised. What is judicial ethics? Is ethics different for us? Every profession has its ethics. If you go to a doctor he has his ethics. Heart specialist will not behave like an ENT specialist. He will not prescribe medicines falling to another discipline. He has his own rules of ethics. Similarly Judiciary has its own ethics. But how is our ethics different from ethics for other professions. And why is it different. WE have to maintain a very high standard of ethics which is not required of other professions. You see the income tax officer is chasing Amithab bachan, nobody has anything to loose except Amitabh bachan. We love him all the same. He is allowed to act, But if a Judge is being chased by an Income tax officer that's is not acceptable

by the society. If a film star, again I am going to film star, because they are in the public domain we know their lives, if a film star has a wife at home and a girlfriend also and he is more devoted to the girl friend, no body questions. But as a judicial officer you should have only one wife and be devoted to her. Even if you look with pleasure at another woman, you will be criticized. This is so because we are Judging others and people are there for Judging us, am I a fit person to judge you. If the Judge comes to the court in an inebriated condition will he be accepted by the society? The moral standards required by a Judge is much higher than that of the other professions. Because we are judging others. And there are then situations of conflicts my friend was saying sometimes you are a lawyer

Sometimes you are a Judge, sometimes you are a father, grandfather or a son and sometimes these roles may clash. A role as a husband may clash with your role as a teacher. And it class with the role of a customer in a shop. So these conflicting situations appear in our lives very often. So we will deal will some of the conflicting situations. For this I will divide this group into 4. Can I by the grouping of the icebreaking?

Okay, mangoes and grapes who are mangoes?

In one group there are only 3 and we are five groups (discussion) can you 2 merge?

can 2 of you go there and make it 5, grapes are 3 so can 2 grapes go to the apples, mixed fruit juice and one grape can come here.

So these are group exercises or group discussions, whatever name you want to give, then, there are some rules of group discussion, while the questions are being given, please hear me for a while. There has to be a group leader to monitor the discussion. The role of the group leader is very important. The group leader must make everybody work. At the end there will be a presentation by the group. The group will try to arrive at a unanimous decisions, if not the dissent can be noted but the group's spokesperson will come and present the view of the group at the end. Okay?

Can this group move out to the adjacent room? (Discussion) that will be extreme and i have heard that such things do happen in certain places. An old friend has come, adjourn the court. the friend has come, so that means an extreme, this is another extreme if it is 10 means no body can step into my chamber at all, whoever you may be and the pragmatic view is that a minute or two can be given him.

Participant: another option is that can apply half a day leave, if so interested.

R.P: no, this is not acceptable, the court is ready, it is waiting for you, and you can't send a half day leave application.

Participant: a little there a next step madam, (discussion)

R.P: I remember, Justice Kurian Joseph saying, casual leave cannot be applied so casually. Who is from Kerala here, some body Kerala? Yeah I respect him highly for his own principles, he said casual leave should not be applied casually, this will be misuse of the provision for casual leave.

Participant: he should send either a message or a slip to that relative, please during the lunch hour,

R.P: look at another practical thing, you can instead of speaking at loud, we can send a slip, saying that sorry my discipline does not permit to see you, I hope you will understand.

Participant: give him the alternative that come during the lunch time, may be later? (R.P)

R.P: maybe he has come from another town and he may leave before u come back from the court.

Participant: then the Judge can tell him, we shall speak later on, I will call on you.

R.P: okay, we got all the possible answers. Let's proceed to the 2one.

Participant: (question reading). My answer is No. No matter whether he is a distant relative or near relative, but we should hear argument, Justice should not only be done, but seems to be done also and in my group we are two people who are having some different view that is we should inform the counsel and they r mentioned in writing that they are agreed. No objection (R.P) we should not hear the matter in spite of they have given in writing (discussion: we have to deliver Judgments without fear or favor so we can take the no objection)

R.P: so this is an issue in fact which, many of us have encountered. In our long careers, that some body is distantly related, I didn't know of the relation till the very end. And what do I do then. One thing is clear that I may not know the relationship but the party certainly knows. Then I am appearing in the court of a Judge who is distantly relate to me. second, don't assume others do not know, that relative certainly knows and others do know at least let us go with the perception that the others know and we cannot rule the possibility their hoping or the distant relative may not know the others who know that the relative, any have apprehension that the judgment is likely to favored the person related.

participant: one thing is there, when I use to come that this is my friend's or relative's case from then the hesitation started in my mind, situation is this, what to do , what not to do, If such a hesitation is there , better to transfer the case , otherwise it will be very difficult .(discussion).

participant: i will partially defend because, there may be facts , you have studied the facts of the case and very well you are fully equipped with the disposal of the matter, means I have already made up my mind. What is to be done? Issue is to be decided in favor of my relative I will defer it.

R.P: this is another practical way of looking at things, if it is against him, forget it, he may be relative, I will pass an order, and he will know that I have been impartial. But if it is going to be decided in his favor? So better not to tackle it. So this is yet another view (discussion)

I don't think that any cut and right answer can be given, but this is the issue, practical ethical issues which we encounter. The questions which I have given you are all practical questions, not imaginary questions, these ethical conflicts have been experienced either by me myself or by one of my colleagues, you see or somebody has narrated some even, which I have pooled in this questionnaire. So they are all practical questions it has happened with me and it can happen with you. And he says it has happened with him. (Discussion).

Participant: once a Judge comes to know that his distant relative, still he should maintain the independence that is important, to maintain impartiality. You should recuse.

Let him answer few, he will not answer all of them.

Participant: 3rd question is at the time of hearing of a cases, counsel from the one party makes an allegation of partiality, knowing fully well that you have already appreciated the matter and the verdict is going to be adverse to him. Will you send file to the hearing or transfer the case. our

answer is no. we should not transfer it, because we think that he should move if he has some preference's in his mind on us , then he should take it and we should not try. And second one is we should counter the allegation is the and say that I want to is this the common opinion?

(Discussion)

Participant: I believe that if I am clear to my own conscience I would not pay ear to any such fabricated issues and I will write whatever I have to in spite of getting into a tussle with them that if you have to do this, you have to do that. Go-ahead. I mean this is my personal opinion. If I have my own conclusion i will do accordingly.

R.P: the question itself includes that the lawyer is mischievous, it's not a genuine allegation. It is just to create a mischief. You know so that the Judgment is affected. So that the Judge may give in your favor and go. So why not differ it. There is a classic case, Mr. R.K.Anand, the senior advocate. He was facing this contempt thing many Judges accused because he was a very prominent lawyer he has lost his prominence now, because of the matter. And he is politically powerful. He was leader of the Bar, friendly with Judges. So many Judges who were elevated from the same Bar were his friends. Eventually it came to the Justice. Manmohan, who was there with Lokayukt? So he said that he is going to hearth matter. R. K. Annand came up with the list of allegations against Mr. Manmohan. Saying you were the member of bar with me and you were my rival for the elections against me. So Manmoham sir came up with a counter stating that we were all good, till now you have attended my court till number of times he has won cases and lost cases. Any kind of apprehension that he will not get in justice from my court, so he proceeded to hear the matter. Of course it is difference in stature. As a senior HC Judge, there is an opposition, as junior officer in the district court you have another opposition, but the method adopted may be some how different. If I was there I would say I have given you one day for making application to the HC for transfer of the case. I am firm in facing it off, I am not biased in it so. That's your perception and i am going to decide it. If at all you have any apprehension, it's for you to take steps.

Participant: question

R.P: right way I believe.

Just I will ask your friends to answer. You please take your seat because they have the same questionnaire. This question is actually given to me by one of my senior colleagues. He was from J&K. he was in the HC of Delhi. So he said one day in the, morning that Mr.X an advocate, an old time friend wants to see you for 5 mins. So before he comes to the court room, he allowed him for 5 mins and then he goes to the court hall, he finds the lawyer sitting in the front and has a case in his court. The Judge was furious and he expressed his anger in the open court, sometimes it may happen. I didn't imagine that this man has come from Kashmir for a case in my court and he wants to recall the old times and her wants to show his friendship. At least he could show that in the court

hall. Father appeared the court of the son, no questions asked. These days are very different. (Discussion) What is the opinion of others? Has anyone thought that senior coming before you You see if you allow the bail then this may be misunderstood and may be you would have been allowed have he not been your senior. This is again wrong. If it would have been anybody, you would have given bail but now that not as you want to demonstrate your impartiality, independence and all the acts sense of duty, then you reject his bail application. So behind him a person is suffering. We forget him, everybody forgets the accused who is behind the bar. So do justice to him. If you think by rejecting the bail you're working very honestly then your work is also not good.

Participant: question.

R.P: have you got the point? (Discussion)

First let me know did anyone has faced this situation. There is a difference between colleague and a friend, we are all colleagues here but some may be special friend with whom you are on the visiting terms. May be the family friends. So there you need to draw a line. But here i he said colleague please don't shirk. Because I have an exam plea in Delhi, the case of a judicial officer is not heard at all for 30 years. It was a divorce case, he was a young man when he filed it. By the time it is actually decided he was an old man and divorce doesn't matter him much. So please don't do this. Don't take care only of yourself while touching a case that's not good.

Participant: and judicial officer should have inner strength to deal this. He turns out to be a friend, if you not heard the friend? I am not hearing it ask them to decide to take it to some other court. But don't adjourn it for time and again.

Participant: Our assets are in the public domain, property statements are all there. It is known that I have some shares in the company if you know about it and I am not hiding anything about it, I can maintain the impartiality.

R.P: The situation is like this. Am i interested in the outcome of the case? If I hold a share bin the reliance I am not interested in the outcome of the case. I am a petty share holder. I don't have any stakes in the reliance, to borrow his language. If it is a labor matter for example, as labor dispute I adjudicate , it doesn't matter me at all. I am not concerned but let it be known that I am a shareholder and let it come on and i have not concealed. Let the parties say that doesn't matter please hear the matter. Because this actually happened in the SC of India. And the Judge didn't disclose perhaps he didn't bring it on the record and subsequently he was extremely annoyed. And he said don't raise it now, you should have raised it in the beginning. Because I told you in the beginning that In hold shares. We are running out of time.

You stop here, we will call the other group...

These two are very tricky questions. The first one is that you are running out of money. If it is so frequently then there is something wrong out of it. So I must not be subjected for that. Secondly, if I become unpopular because of my children then there is something wrong with them. The children of a judicial officer should know that this is the son of a Judge. This all happens because of peer pressures. I can talk about my son, who was unhappy with me and my husband. And some of his friends were very rich. But when he grew up he acknowledged. So they understand at least later after some time. Don't be afraid of that.

You have another set of questions? (Discussion)

Participant: questions universally applicable to the entire society because the Judicial officers are the citizens of India and thereafter.

When people are being judged, they can Judge the Judges....

R.P: conflict with virtues. (Discussion)

Participant: Should there be any restriction in attending party? If so what?

Our answer is one should be very careful and if you have to attend the party you should take into consideration that there might be litigants, lawyers may take advantage of that. Political people, police officials and others also in the party. So it is better to move with other judicial officers rather than solely attending the party.

Participant: what factors should these judicial officers mind while they are going to shopping?

They should go normally like any other person. Should not misuse their power. They can bargain without using their name but should not ask for discount for them specially by disclosing their identity. Judges should not go for judicial shopping. (Discussion).

Participant: question.

R.P: Giving and taking dowry, i know a gentle man who said that I was looking at for a match for my daughter where there is a good boy coming from a good family, he was asking for as much as dowry. In meanwhile he has become a judicial officer. Now his demand has doubled. It seems to be simple but if introspect, it is difficult question in real life and this is a real story. All these are real incidents. The old man said that he had an eye on this boy, now he has become a Judicial officer after clearing the exam now the demand has doubled .and it is very simple to say that it is against to law and no judicial officer should take dowry. I am not saying that is wrong, I am only giving my idea. About how it should happen in real life. It is sometimes you may not take dowry but it is difficult to not to give dowry.

Participant: It is a rate list now, for an IAS, Judicial officer and other civil servants. How much have to give.

R.P: yes there is a rate list, i saw it on a newspaper. And the IAS tops the list.

Now, this is break for tea. Let us break for tea and then come back. What is next?

When we come back we will discuss what a module is and how to make a module and post lunch a little exercise by all of you.

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## SESSION-2

### WHAT IS A MODULE AND HOW TO MAKE A MODULE?

#### Justice Manju Goel:

Welcome Back,

Not a long session, this is going to be a short one hour session, so take heart. We have just exercised one module. So this module was prepared with lot of effort over long period of time. It's not made last evening. It has taken several years for me to develop this module and it has been updated every time, this is actually used by people like you, every time I improve my module. And today's workshop is about preparing modules and some of you have sent your modules that you use in your own academies. Now we will discuss more as to how to make a module. It can be a whole module with in syllabus and classes divided and resource person and all. But this is a miniature module dealing with only one session of 90 minutes.

Now how to make a module, by practice you, you might have learned, perhaps now you can prepare a module of your own on ethics. And this is what you have to do after lunch. Module which can be used by every Judicial Academy.

As I was telling module has two parts.

1) Content and

2) Form

First comes content, what is that it's going to be discussed in the class. What is it that we are going to impart? The content again has 3 parts, knowledge, skill and attitude.

These are the 3 main areas of training. First let us decide are we going to teach something new law. What is the content going to be: is it law? Is it some social context? It's something about you in controversy? Is it about some observation? What is the content?

Here it is ethics. Ethics is about attitude, the 3 part. It can be knowledge, data, and information. And skill is where we apply our knowledge or information to work. And then we have attitude that runs through all our activities. Attitude, I think is very important, because it rules our very effort in being a good judicial officer. What is my attitude being in my court? And attitude in serious problems. It's easy to say that a judicial officer should have these virtues and this is the ethical principles. But throughout these ethical principles also, there is an attitude that we have not discussed here. Ethics itself is an attitude in an issue. Inherent attitude is required in all of us. Say humility. See, I am the master of the court. Does it mean, I give up my humility? So humility has

to be combined with confidence. Fearlessness has to be combined with circumspection, Independence has to be combined with discipline. Does it mean I have no discipline in my life? Pragmatism, has to adhere with some rules. Courtesy with firmness. Sometimes you will find conflict in with these attitudes. I am very firm. Does it mean I will lose my courtesy? So very often we have to say no. like no more argument, I have dismissed. My firmness will show that this is going to be dismissed but it has to be withheld. Keep a little bit of courtesy. You don't have to shout at the party when you to say that, your case is rejected. So, this also have been managed by the court. This also about attitude and ethics. How to convey, is it in are we going to discuss about POCSO or any law that has come into existence? Are we going to discuss about some skill, how to write it a judgment. How to pattern the evidence in a big case? These are matters of skill. Are we going to teach this? Or are we going to teach something about attitude. Now we have to do How to achieve this ended?

How to convey this? What are the different ways that in which we can convey this? The message or the content can be given. What do you think that are different ways this content can be conveyed to the participants by the R.P. Tell me what are the different methods that we experience?

Participants: Audio visuals, PowerPoint presentation, sharing of experience, group discussions, group exercise, coaching method, conduct of the faculty (discussion)

What is a power point? So it is a part of the lecture and we enhance our lecture through this. There are various methods how to make a power point. What is the best way to assist the speaker? For that you need an expert and whole class of lecture. I can take for 1 hr. lecture to make a best a lecture. Because there are so many ways to make best lecture like standing up and speaking. Then you need to understand the attention of the listeners. At what time you have to give the message. So all these have to learn to give a standard lecture. But on power point it is the part of the lecture. It has to enhance the points that the speaker wants to make. If the ppt distracts the listeners, so it is not a method it's a tool. Then you said group discussions, which we have just done. Group exercises is something which is similar. You sit together and do that exercise. Coaching method is another. But I don't think that it is very useful for judicial Officers. Then you have the faculty conduct. That is possible only in explaining the attitude. I use various other method and my favorite method is quiz. You prepare a questionnaire, distribute. It is something very similar to Socratic Method, which gives you answer already with the learner and the learner again question to come out with the his information or perception.

Participant: interaction

R.P: we use role plays, we are not opting that sequence. Don't think that this is the proper way of anything. So what also do we do? We use video clips. Of course that can be part of group exercise. It can be [part of brain storming. Now when we are doing this we have to remember, certain principles of adult learning and i invited Prof. Geetha to speak to us about adult learning. But

before I hand it over to Prof. Geetha, I want to ask you to look at page no: 129 of this book. See, this book, sorry page 13. It is given, you say you take out this cone of pyramid, it says our power of and behavior. What we hear, we remember only 20% of it and what we write we remember 30%. The next month later you will find i have not seen not at all. And then what we see and hear we say it audio visual or using ppt, we increase the level of retention. So remember 50 % of it what we say and write we increase the retention. 90%, you see this left hand side 90% of them what they say as they do and I have added to teach. Teaching is I think a great method of learning. By this I use which i call it reading followed by discussion. So i could have given you certain things to read last evening and discuss it in the class. You can call it as reading and discussion in the class. So these are the various ways you can convey or these are the various things you have to remember when you come to convey. That he should stand up and speak .the participants only retain 10% but if they write something then you can remember more. If they do something they will remember still more. And if they actually come prepare themselves for teaching in the class and then they will remember still more. So we have to make a module keeping in mind all these. There is another difficulty for this lecture in which i always feel when i hear a lecture that 90% of the speaker what she is speaking is already known to me. So by the time comes to that 10% which I have to gather I have already lost the interest in the lecture. But lecture method is very good, the most effective method when the subject that is being discussed be sort of but there are new things. Something I have not heard before. Some law that has been promulgated day, I don't know that law at all. So some body gives lecture it will be very efficient. I ask Geetha to tell me about certain things that how the adults learn the adults learn and why do not to do them.

Prof. Geetha Oberoi:

Can you come to pg no 57 the same book which the Ms. Paiker has prepared? This is part of my book judicial education. Of course you all must be knowing. The library has complimentary copies. Designing curriculum. This is for what all are we here. If you can go through it will be great. Because this will help you. You ought to have some agenda why you want to design. If you want now leave that page, come to pg. 3. Now come to para 2, it's of course in the context of another country but it's said that states are begin to requires Judges to take 3 hr course of ethic training for every 2years. And judicial trainers are begin to appreciate the need to provide ethical training for Judges. First of all when you are there for ethics training if you are thinking of developing a module you have to think about are there some problems. Are there some areas of concern W.r.t. ethical issues pertaining to Judges. In your state and jurisdiction. without actually naming that Judge, there will be such issues everywhere, now but you can't actually take names, these are issues and issues have to be that in the theoritised form so that nobody should feel that they are personally attacked and then if there is a need those problems how do you develop a theory about ethics. Which are principles, accordingly. taking care of and then developing a theory of course you have bang lore principles of ethics , those who have developed in 2002 /2003 they were adopted by other European Union Parliament and everyone but you also have Nolan Principle of public life , 2011. Ethics is

a universal phenomenon. There is no geographical boundary attached to it. But we have to be ethical because we are human beings. Whichever country we are placed it doesn't matter. Caste, religion, place doesn't matter. Ethics it has one dimension. So Nolan principles of Public life which was again developed by the House of Lords in 2011, for every public officer. And if you want you can go through the website or google out the principle, these are applicable to all public officers including judiciary. These are things that will form foundation. On the basis of which you will actually talk about or think about developing your curriculum. So first of all we should have some idea what are problems, on basis of which kind of problem you like to address Judges on ethical issues. That should be clear from one jurisdiction to another. Because every jurisdiction people behave according to their culture. So what may be ethical issues in west Bengal? It will not be same for west Bengal and Jharkhand there will be separate issues. We are reading on POCSO cases and we are finding that, you know the unique thing that evolved that people also decide separately depending upon the region. Region wise also you can divide these judgments on particular decision making process. Whole area of where you are surrounded also matters. It also matters in the decision making process. So that is why ethical issues will be different in each jurisdictions. You have to find out what are those ethical issues in your jurisdiction. If you are from A.P. or Karnataka the ethical issues would be different. So you think about those issues on the basis of, now you go and find out where the material is. What about other civil service rules / other circulars even from DOPT. There are so many government guidelines also they may not be applicable to us but at least they are applicable to other public officers. Even CVC guidelines sometimes actually important. About which we don't think very seriously. But they are important. So every judicial officer should know what CVC guidelines are. All these have to form as a basis. Its grounding, you develop your ground work, develop the whole material then on the basis of that then go and address the issues and how you develop on the basis of this, how you address your local issues. Material can come from international source to your state source. Material will come from three sides, but problem is very local the thing is how you apply this whole material to localize situation what you think. And therefore develop curriculum accordingly. So that Judges get a fair idea, this is what internationally also uniform expectation from the Judging or the profession as such. What are national standards laid down for that, and what about my own state also. what standards are expected out of main behavior, in communication, in conduct? But for all that there is so much literature. Now you come over here, same para hoe ever they are hampered here to do so, lack of teaching material and lack of persons and knowledge and expertise to teach the courses. Now very often we have lost, because we are all from one discipline, LAW. We always think that solution will always found in that discipline. But this is where we actually make mistake. Ethics are important for every profession. So we need not actually confine to that. Ok the solution can be given by a person from my discipline only. It is not like that. Ethics is a multi-dimensional, multi professional issue. Even medical officers have, doctors have ethics issues. Engineers have code of ethics, everyone has code. There are many experts in those areas, for example we have over here Ms.Parul Rishi, this lady madam comes from the Indian Institute of Forest Management and she is into study of organizational behavior and psychology. And she is really good resource person for ethics course.

Because she takes us and our judicial officers through stages of moral development. How person develops his ego stages in different points. You know at different point of time in your own life. I don't know how many have attended, I think you were there when Parul rishi was there. So there are experts not necessarily in your discipline. They may be available in other discipline. We have one person coming from CVC. He is a Dy. Director of CVC. An excellent speaker and he tells like , how , in small things like Provident Fund or other issues related to Judiciary or management of judiciary , ethical issues can arise. How that Ghaziabad PF scam happened. All these happens because we don't know the rules or we are not very careful about the rules. Actually that is also ethical issue. So this is how you have to call, as i said, when you say there is lack of experts. Well there may be experts in your field also but also you have to be careful that there are experts in other field also like in management, psychology, sociology and there are experts in other disciplines as well. Their own code of conducts are there. So I don't think this lack of discipline, I mean lack of experts is an issues any more. You should just need to be more, travel a bit wide than where you are. Then At the time Judicial ethics curriculum was proposed, there was this foundation WM tech foundation. The president of this NSJE reported that the states have no curricular to teach Judicial ethics other than two half video sessions produced by American Judicature society and also there is other thing called American Judicature society. So they have that means in YouTube or other such domains there are video tapes also. There are other institutions also which are into delivery of judicial education and there are tapes actually available. If you write to them, i mean they can give you free of cost. Its only you have to pick up your pen or email and just write to them. And they are, they will happily share it with you. You can see it yourself and may be you can replicate that in your SJA .so these are things that how we work about curriculum. Despite, of course this is another, I don't think there is a budget issue in our country coming back, and again you come to page number 4, which says that curriculum covers both judicial conduct on and off the bench. Whenever you are also thinking about designing the judicial education curriculum, especially on judicial ethics, you have to think about conduct and conduct has to include both behavioral. When you are actually presiding and when you are not presiding. That means even if you are sitting in a chamber even that conduct is important. Whom you are meeting. All those things you have to actually go into this. But then again I am saying, because most of the time what happens, people know someone has done something. And they try to portray that person as villain and vamp. Please stop, resist that temptation. Oh this man did this this, never do this, never actually attack anyone personally. You have to theorized by example and by making a, i mean you don't have to give a face to the issue or problem always . And even if a problem exists in some face / issues, you have to take that problem as a generalize problem from that phase. This is what actually curriculum means. Another issue if you come over here on pg.5, the curriculum package includes a primer, pg. 5 of same, your book. I mean you don't have to make notes. It is all there. Ms. paiker has compiled this for you, The curriculum package includes the prima that is distributed to Judges who participate in the program to provide background information in the course and to serve as a useful reference for the future. I mean this is important point that you are going to, I mean there should primer.

And that primer can be taken by Judges. What is the background information, why are you doing this. That is actually objective of the course. This is all you have to frame, i am sure. Isn't it. I am seeing no participation. I am feeling like I am talking to myself. Please ask questions.

Participant: (question)

R.P: yes, but you cannot be producing actually factory products. That all factory product will uniform. People of course will have their own choices and their own freedom and they will do what they actually think in the situation is right for them which can be wrong in the eyes of society. So your part as a training institution is not to monitor the life, your part as training institute is very limited. For example schools, all children are put into schools in nursery class or second class or 5th class, all children are there. some are bright , some are not bright, some learn slowly, lately, I mean its always there. there is no factory production going on.

Is that actually objective behind the setting up the training institution?

Participant:

That's not

R.P: yeah that's why you have to understand your limitations. There is nothing like that result oriented. that's what I am saying you have to understand, you don't have to give your product or output. Products? I don't think so, i am sorry. Education is never for creating products. It is for opening minds and you do your best. After that what happens. I mean this is your "karma: theory also. Do your work don't expect the result? That is going against our philosophy, our own mythology. I don't think you should actually worrying about, whether this judicial officer and whatever that judicial Officer do , see your work is like to actually create a space where he appreciates the importance of the subject being taught. See ethics, IPR or some other subject like commercial law, or family law jurisdiction or gender justice or child rights sensitization. Your task as a judicial educator is very limited. You just follow the mandate is given to .don't have bigger objectives in mind, oh the judicial officers whenever he is sitting he should actually follow just what I have given him the class instructions. They are free people. They will decide what they want to do. They are adults, after 18 you cannot do like that, even your own children you cannot do that. Your own child you said don't smoke. Okay? Hats is what you told your child now your son goes out. You tell him that look son if you do smoke then look at the advertisement, everyone and look at the cancer things whatever, it won't be good for your health. this much you can counsel the child. But after that he goes out, he smokes, it is his life. Similarly in the judicial officers also in your class you are doing the ethics course, you just tell them by examples and these are the conducts that I expect out of this profession. These are conducts that are seen as transgression and not good for the society and for the.. That much is your task....

How that can is possible

Justice Manju Goel:

Let me, I have been a judicial officer I can perhaps understand your dilemma when we are in this class, you are not trainers you are also judicial officers. And i speak on ethics I should have in my mind that you imbibe these principle. It should not go above your heads and this is your whole

idea on making a module. The whole idea of doing this exercise in the morning, going into the details of the day to day ethical situations in which we can walk in. the idea is that you can imbibe in. tomorrow when you face the situation you will know there would be a situation where you should discuss in the NJA and this was the common view that emerged. I discuss any ethical issue or any legal issue as an educator I never want to indoctrinate any one of you That will give a broad outline, my view will make you think make others think, make you interact and develop your own ideas. I will not interfere with you. . Let me continue. But why this idea taken you to the water is your business to drink. But if are not been able to take you to the water then it is my failure. So as an educator my duty is to open your minds to tell you what the things there are to learn. What are the things there for introspection.what are things in which you will find yourself Dharmasankat. You know ethical principles, we discussed about what is you're virtual, I can only open your mind and I will try my best that you imbibe. By making you to do this modules. That is why I give modules. Am i doing a quiz, am I doing a brain storming session, am i doing a role play, you see so that you imbibe. In a role play i played the role of a rape victim. And the idea was that I know where I am sitting as a Judge I know how difficult it is to answer some of the questions in the cross examination. And therefore as Judge if I imbibe that feel if I have learned something out of that role play when i am a Judge I will know what the prosecutrix is undergoing when she is under cross examination. What are the kind of questions should allow and I should not allow. That was the time when all these Judgments have not come. Above the cross examination of the prosecutrix. But I have learned that because I was given that role to play. So i can only help you to some extent as a trainer as an educator I will do my best to give full opportunity to the participants to imbibe all these ideas. But I cannot actually make you drink the water....

Prof. Geeta Oberoi:

That is not there only with your academy, that's there with every academy. Tell me something new that is happened. That is what I am saying just don't stick to one discipline . Be3come more multi disciplinary so that people know that it's not only to this profession but it is code in some other professions. Had they been doctor or engineer, even then they have to have some code of conduct we have to follow. No matter what profession you take. So these are certain issues, as mam said very well, you can take horse to the water, but you cannot put horse in the water and say drink it. Now because you are not drinking it and I want you to drink it. That is not allowed. You can only take the horse to the pond. So I don't think you should have such negative feeling that people are not learning.....Don't have such negative image about Judiciary. They do respect. don't say that what every you are saying is going everything above their head.

Participant:

With all respect we are discussing the module on ethical side. But as far as this ethical norms and standards are concerned where are norms at the international level, if you see 1948 UDHR with regard to a Judge, there is art19 that everyone is entitled to full equality and care and public hearing and independent impartiality. That is at the international level. WE have at the national level, The Constitution. Nobody is above the constitution that is our primary code of ethics. Then we go to

the regions and all that we are expanding it. It is very difficult to evolve the universal code of ethics. That is what we are and what to teach and how to teach....we have to evolve consensus before module making. The broader consensus about what to teach.

Prof. Geeta Oberoi:

Consensus should be there among all of you and exchange. You talk among yourselves, come to a one common view. That is to be submitted....You have to come up with the final document

Participant:

We are developing or imparting through module and after that, after being trained whatever manner, if they are not put into practice then what?

so but the thing is, what the answer is the mam has said, whether the horse will drink from the well or not. That is not our concern because we do not have a control on ones intrinsic and apparent properties. We should strive to give our best in preparing the module to impart them with the best of principles with the best of our ability. Whether they will imbibe that or not is their personal inner voice. So you have to strive on preparing a module which will be universally accepted, localized and will be at reach for every problem that is faced by all.

Prof. Geeta Oberoi:

Choices, freedom, liberties. Because all of you will come together. I am sure, you will also, when you will talk to each other.

Participant:

His concern is that, I am teaching but people are not following it.

R.P: Like a mathematics t6eacher he is teaching that class for 30 students, 1 is scoring 1005, the other is scoring 0 it's not the fault of the mathematics teacher. But surely some mathematics teachers are better .some students are in particular brighter than the students.

Prof. Geeta Oberoi:

At the same time I don't think you can blame a state Judicial Academy saying that Judges are not following ethics, so there must be something wrong in your teaching. i mean I don't think that is correct. You should owe that responsibility....yeah..Because..I don't think that you that responsibility what you is that you develop a professional Curriculum and a execute it as professional and in a way in which the learning is greater....

R.P: I never taught this as an issue. But you are showing me as an issue. This is what we have developed over time. How to behave with a senior? This is also an ethical issue.

Prof. Geeta Oberoi:

But when we tell our juniors then they will say that tell our seniors how to behave with us. All people come when the judicial magistrates come to us. We have civil judge junior division. We have given it up but whenever we had this senior JD omg! They state that these SJAs don't behave well, get ill treated. It is like a prison.

R.P: I also had discussion with Dr.Mohan Gopal, as to how give the message to the HC Judges as to how to treat the judicial officers. Do they know how to treat a judicial officer? Do they treat

judicial officers ethically. That is also something to be conveyed but that's not part of my curriculum. But maybe when you are having HC Judges, we should have been, not only how to control but they don't have the idea how to promote, how to encourage, understand their dilemmas. How to get more work from them, how to improve their performance. Is it in their handbook at all? The only thing is how to suppress, how to oppress. Those issues.

Prof. Geeta Oberoi:

Okay we understand the issues are very big, but after, I will bring you back to my small objective in my life. That is we have to come and we have to share with a module. Now you all go for lunch. My Idea is this.. When we have our food and when we come back we share with each other what we have designed as a curriculum. And why we have thought about that and then, may be one of you take responsibility to collect all the ideas and make one set of principles which form the part of bigger curriculum. I think the entire house must for exchange with each other and then.

R.P: i will give you some idea, I am just getting the idea right now, it's not that I have thought that last night, and there are two things Content and form. Content we have made it clear: we have the cannons of judicial ethics by Justice. Lahoti, somebody has given it, but justice is removed from that, we have bang lore principle, statements of judicial values, we can take Nolan's, and you can take it out from the website. This will form the content, Then we will think of the form and in thinking of the form we have already listed some of the methods, starting from lecture we have up to roleplays. So we can develop these things, we will give you the content, that can be compilation of these things and then we will give you the module how to deal with.

Prof. Geeta Oberoi:

How do you make module. Module is not program schedule. What is module?

Participant:

Madam, first we have to include principles of ethics, broader. Let us identify integrity, it is principle, it is very important. Independence.

Prof. Geeta Oberoi:

Let's go for integrity, which is something very important for every judicial officer and the system as well. Let's all go for it. What to include, when we have to do the integrity. Not now, you all sit together and come out with this and a material you can rely. Because everyone knows today's world is what the proof is. You have to give them some literature, some case laws where HC,SC of course you may have problem with that but our structure is like that, our discipline is like that. We have to be in this system. So, what does the system overall it says about the integrity and what does other system say about our integrity.

Participant:

Madam, three things independence, integrity and propriety are universal and very very important. If we concentrate upon these principles it will be concrete.

Prof. Geeta Oberoi:

You have food and come back, we all will discuss about integrity.

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### SESSION-3

#### FINALIZATION ON MODEL OF MODULE

#### **Prof. Geeta Oberoi:**

There is this one ethics training module. Which is prepared for Nigerian Judiciary, but by UNODC. What I will do, I will give copy of this, just 6 page document. Now, this is prepared by UNODC, and it is prepared in the context of one judiciary, Nigerian judiciary. What I want is you should go through this and when we are making this, there is some structure, frame work is there, but we have to add our things. Our things are missing from them. There may be certain things and also it was made here. I should give you year wise. This page cover page is missing. Year i don't know, more or less all Bangalore principles 6 principles are covered in this. you people go through this, I will advise you to do. This is the first thing, when I am asking module preparation, this is what i am asking but this is very basic document. I want all of you, first of all who also come up with their modules; some of you gave, to see that from have you got can be accommodated in this. We have actually strengthened this document; let's take this as the basic frame doc. And lets strengthen each one of ours. So when we come up in the evening, there is a good substantial document out of which as and when you want, when you are training for ethics , don't even only think about magistrate, we are training from magistrate to everybody in Judiciary. We also train ADJS, CJM. so also at the magistrate level when we do criminal division what kind of ethical issues are there, when they are deciding civil cases what kind of ethical issues be there. Because different courts have different ethical issues, when they are doing drugs cases, what kind of ethical issues are there? So taking all those things we have to incorporate in this. We have actually; I will say abridge this whole document by today evening. Is that alright? Are we on the same page?

Yes, so we work on this document, all of us and also please, 13 of you have worked already, so incorporate those also. Nothing should be missing, if there is extra even if the final document is little bit more bulky but when we are executing that in our SJA we can think for what level of Judges we are doing and we can accordingly manipulate, okay this content i will take for this course. This level of Judges, so Adjs are visiting so i will take this this...It should be comprehensive document. This is just a skeleton given to you. So can you actually give body, shape and soul to this document? Now we should divide into three groups. Because in each group there will be people who have brought their modules. Right?

There won't be any group in this, there are participants who have not at all worked on the module and then you strengthen those documents. We will meet after one hour. What things have been added by each group and finally we come out with final volume. Is that alright? This is skeleton I didn't give because I wanted to see what you think about, till mam had given you a discourse like about methodology. You can also in each content, this is the methodology. For example, in Judgment writing there is an integrity issue, for example there is something like hypothetical

ethical issues, stereo typing. How would you take stereo typing session. You can actually mention, this is what I am going to touch stereo typing but I am able to? Do I have exercises in mind? Do I have lecture? Do I have power point? Do I have experts who can be the good experts by on themselves, I can stand alone represent them in the class. This is all you have to do. So we divide ourselves. Would you like to select your group partners or? Because we are 18 and three groups we are thinking to formulate.....In your table who haven't given? About your tables, you have given? You have also given. So, there are always two persons have given. In this table, Chandigarh has given, Karnataka, Chhattisgarh, everyone has given. Maharashtra It has given on IPR and all, Okay You have given on ethics too, just now I have received. Kerala has given. So, I think on each table there are people, only now one of the tables will join with other 3 tables. Isn't it too much of a comfort zone?..We will take you to other rooms. Computer and all will be given to you. And inferential so if you want to go through other things. You have all the to set, you give me the document. One group can sit here. ....

R.P: Integrity and value of.... Content of the value and the principle derived there from. I think value and principle mean the same. It's like hypothetical ethical issues in private life. That means like, you are ill-treating the wife and doing domestic violence, you have got two children, you are taking care of them. Things like that to private life. Confounding to community standards, which means that how the community wants to look at him. You are up to the mark in the eyes of the community.

Prof. Geetha Oberoi:

It is a different here, if they are in the western society, the community standards are different. They expect their Judges to be normal, go here and there, Judges Mix with everyone. But in India they expect them to be more isolated. If Judge is dancing in some show, they were like what is this? In maturities one Judge wanted to dance, the chief Justice refused the permission. She is a trained kathak dancer, but then CJ said 'no'. Because the minister would be there in the show as chief guest and you cannot, a Judge cannot dance before a chief guest. These are issues. she was SC Judge.

R.P: I have seen a SC Judge dancing in a shaadi. Now he is a Sc Judge, at that timer he is a HC Judge Justice Sikri...

Prof. Geetha Oberoi:

It's made but UNODC, For the Nigerian Judiciary. ... (Participant)

Not adopt this model, you have to enrich this model, that we adopt UNODC model that will look very bad on my part. Transgressing the law is like , for example you are travelling in a cr and you want to overtake, and there is traffic violation and all that.

R.P: only thing I can understand that not to shout, when to stop, how to stop, how to conduct the case. Some hypothetical, ethical issues are here. ....

Prof. Geetha Oberoi:

Values and ethics what content they can form? What is the principle in integrity? They can be; like honesty, sincerity

(Discussion)

No body from Tamil Nadu? Trains are cancelled actually, due that agitation, so most of them not come. May be they will join. Tamil Nadu has three SJAs. So, in that case Maharashtra has two. now prosecutors. They have converted. So, we are three groups, who will?

Participant:

Good afternoon. From the discussion which we have comprising of senior faculty from Chandigarh academy, officer from Kerala, Chhattisgarh and A.P, and I am assigned the task of typing of and also some inputs. We have taken three parameters while preparing this module. First one is subjective, then content, third is methodology. Objective is: objective of judicial ethics training is to meet the expectation of the public at large because Judiciary is vested with the jurisdiction to adjudicate the disputes. Hence there is need to set up high ethical standards to justify the status and dignity of Judges. Because we have primary responsibility by the constitution to adjudicate the disputes, definitely higher standard and higher disposition is to be at higher position than compared to whims and prejudices of the general public. So, how to take out those prejudices by evolving ourselves in a dispute is the prime objective of the ethical training.

Then we come to content: these are contents, first is defining judicial ethics, then from the international standards we have not mentioned all the standards here, but here indicated that UDHR, Bangalore principles, other international norms which laid down the code of conduct for the disposition in public life will be an important component of ethics training. In the domestic standards the first is the Fundamental, Law of Constitution. The constitution includes all other fundamental rights, cases. the efforts that were undertaken by , there was tussle between the executive & the Judiciary. How the Judicial evolved itself into an independent organ of the democratic set up in this country. How there was a attempt to curtail the powers , these will be the features in the constitutional part. Then resolutions adopted in the chief Justices conference in 1999 and later we affirmed in Hague convention 2002.

In literatures in terms of lecture we will try to include writings of lord Denning, Justice Cardolzole, Francis berkon and all other books written by Former Chief justices and Judges of this country. Which contain anecdotes, in their lives how to deal with the matters and tackle the issues? These

will be forming the content in imparting training. So literature is one of them. Some, language in Judgment writing, trial court and appellate court. We have reported cases where SC has come down and appeal court even HC for use of intemperate language. While citing such decided Judgments, using a harsh language is not correct. So then how to employ temperate language in your writing a Judgment is also part of ethical component, we believe. There is apart communication. While writing your Judgment what is the nature of language we are using? Per instance I was reading the Judgment on.... if anyone of you have read the Judgment, it contains such Latin phrases , so verbose and such difficult in to read and understand the Judgment and should get a dictionary along with. That too not ordinary dictionary, it has to be some high standard one. This is also one of the ethical training. Effective communication skills understandable to all the stake holders. In the communication which also includes that when we are writing a Judgment we are actually proposing, we are appreciating the entire materials place before us and then we are supporting our conclusion with reasons. But whether those reasons are comprehensive or not those we also include a part of ethical standards. Then discretion. This is one area where the Judiciary has to resolve issues which are accused on. By applying the discretion properly , applying the discretion very liberally , pro bail charge, anti bail charge, this is one area, where, I will not say standardization but the norms of exercising discretion has to be a basis of ethical training. For instance in the specific relief act we have a chapter on specific performance on contracts but section 19 and 20, 21 tells us that these are also the chapters which deal with discretion ,here we have in specific relief act where the norms of the specific relief act are also prescribed not that this discretion is something which is universal and forces the Judge t decree or not to decree. So discretion is also very important, component of ethical training. Methodology: in this we make that there is a cognitive interaction in diligence to understand the multi dimensional issues of litigation. Walkways believe that in the standard terms of litigation. But how far our belief is based on rational factors that we only hear from people around us, why not directly coming into contact with litigation . This is for induction trainees particularly how, even sitting Judicial officers can also go to a different district and take. A contract with intelligence and not disclosing their identity and try to understand from them but why have they come to courts, why summons has compels them to come to court. Are they filing or defending cases. What are the issues they are facing, financial wise, time, delay aspects, all these aspects while dealing with the litigants in cognate matter. While disclosing our identity there is a possibility with them, they are not revealing the entire issue; this is one methodology which we propose. When the study method is, there are lot of case laws, dealing with issues of propriety, accountability and integrity. So we have listed those case laws, these are all the illustrative suggested by the participants, these are, which are used where the issues of propriety, accountability and integrity. That is the Judgments of the trial court, HC,Sc on lack of accountability and integrity issues. Some malafide issues of that these will also include a method of training. How to do with lecturing, because in the content, you have seen there are certain components which we cannot teach by without practical methods. So it has to be like, Bangalore principles, UDHR, background of these principles have to be dealt by lecture method only someone who has gone through the background by this convention, circumstances, like from

UDHR preceded World War 2. That scenario why this raise is felt, why these lives have been these methods, topics can be dealt with only by lecture method. We can take practical exercises which we deal in the morning, like any other issues, for instance we in the academy, we gave one problem, there is a there was a pro litigant who came to the court to answer a charge of 341/ 323 IPC . The Judge passed an order bailable offence and asked him to furnish a bond of 1 lakh rupees with surety of like amount. The man did not have that surety so the Judge sends him to jail because in default he has sent to the jail. So the situations like this when there is a provision in the Cr.P.C personal bond why this Judge has not exercised a personal bond, these are the circumstances which can be taught by practical exercises. Then fourth one is sharing of dilemma with peers. All other experiences of the participant Judges that they have faced not relating to Judiciary but otherwise also and how they have handled those issues and if some inputs can be gained out of those sharing of ideas. This will also include a method of ethical training.

This is what we have prepared anything else mam?

Prof. Geetha Oberoi: Is this possible, by the end of this program, these practical exercises, if it possible can you come out with them even two two exercises that you can come out then we will have exercises that can be used. If each participant to this training program likes each SJA if all of you come up with two different issues and we will a compendium. Ultimately you are going to take back in the module, its not me. is that it is possible.

(Discussion)If you could give that before 4th day then on 5th day we can compile that make a module and give you all topics.

R.P: Add in the dilemmas. This also you al give. If you give one Dilemma also there will be 21 dilemmas here and this is brainstorming to find out.

Prof. Geetha Oberoi: there will be some concrete document along with this or we will compile this and present it in a final document before you you go out after this program

Participant: First of all let me tell you the weekest part of our group. None of us knows typing so we have done some copy paste work.

Prof. Geetha Oberoi: that is bad. The judges should be e-friendly, e-judiciary,.

Participant: unfortunately none of us are well versed in typing. So I begin with the purpose of ethics. while discussing preparing the module, the reason why Judicial ethics is important and what are the challenges, that is the first thing which I have come up with because before coming to the discussions on Judicial ethics the literature available on it , the code of conduct which every state has its own or Judicial officers or for Public servants code of conduct, we are also having that code of conduct . It is important to impress upon all Judicial Officers what are the reasons, why Judicial

ethics is so important and what are the challenges I begin with this top seven most mentioned qualities in the order of frequency for a Judicial officer. The first one has gone out.

1. It was knowledge; Knowledge is the first important ingredient because before coming on to anything else if you want to be ethical you will have to have knowledge otherwise there is no substitute to that
2. Courtesy, obviously it is the courts we have here, out of court we have heard
3. Sympathy
4. patience
5. knowledge of law
6. intelligence
7. sense of fair play

so these are the seven things which have been categorized for the purpose of . These should be there in every judicial officer. And then I came out with the challenges. Objectivity is considered to be the most important factor for having a neutral Judge or what we can say, having ethical Judge But since the challenge is not objectivity. The challenge is having a balance between objectivity and subjectivity. Because we all are human beings and we can say that I am free from bias. Everybody is born with, grown up in an environment which carries us with bias. Solve a balance between these two objectivity and subjectivity. The biases which you have, identifying your biases and controlling them. This is an important factor for the purpose of, having a neutral and ethical practice in the court. The challenges with which I came up is it is a definition part, basic code of conduct for Judges, 1)no person can be a Judge of his own cause2)Judge must not fear to address the Justice. 3) parties to the dispute be treated equally and in accordance with principles of law and equity.4) distances may be maintained from friends and acquaintances, parties to dispute , too much of activity and participation in social functions to be avoided, media publicity to be avoided, need of restraintment , so and the I have quoted Socrates who said that the four important qualities to be Judge is to hear courtesy , to answer wisely , to consider soberly and to decide impartially.

Last one is not to yield to the procrastinate tactics of the liar. Which is one of the questions in the first session itself? The challenges that have come up are Judiciary vis a vis public .Constitutional values. Apart to this literature part is to be included that is the Bangalore principles, 1999 resolution of the chief justices conference. The 1997 charter of the SC in its full incorporating. Obviously these rules for every state for conduct of Judges. This is our module. Thank you.

Participant: No, sorry we didn't do ppt but because ours been a bit exhaustive one .Actually we thought to make a module more and more interactive and participation oriented. So, in the very inception we would give a introduction and objective of the training. It has been stated by John Marshall: The power of Judiciary lies not in deciding cases nor in imposing sentences nor in punishing for contempt but in the trust, faith and confidence of the common man. If Judiciary loses the trust, rule of law and democracy. So in this perspective keeping in mind the perception

we have framed in which we are first of all going to emphasis upon as to how to become a good Judge by justice Ravindran. Thereafter in the literature , in this we will include the cannons of Judicial ethics by Justice R.C.Lahoti, Bangalore ethics in , independence, impartiality , integrity, propriety , equality, competence and diligence. With its subheadings as has been delineated in the Nigerian concept that you have already given. The Nolan's principles of Public Life. Thereafter the state rules and service including Judicial misconduct, the disciplinary proceedings and how to deal with it and also the conventions and the chapters. There after we have included group discussions along with personal experiences on various topics like qualities of a Judge for effective decision making which includes integrity, reflection, rectitude , ability to develop, sympathetic detachment. Personal qualities which include humility, propriety, and courtesy. Integrity, tolerance and punctuality. Judge as a public servant, relationship of a Judge with other Judges, in SC, HC, District court and other officers such as the executive officers, advocates, prosecution, subordinate staff. Because in the administrative capacity it is an interaction which we all these departments. Just by pass all these stake holders so this is very important with dignity and preserving one's own ethical code of conduct has to interact with the administration for the functioning. Recusal, standard ethical conduct of Judges, Judicial Discipline which also emphasizes upon the eradication of intellectual dishonesty. Identifying and avoiding prejudices and biases , features of a user friendly and transparent accountable court with regard to anti corruption laws ,RTI, Judicial accountability. So, these topics will be disseminated within the groups and after that group leader will present their opinion after the discussion amongst the group along with their personal experiences any problems faced by them and there3 after they will be a convergence or summing up by the moderator, with regard to the problems that are place by them and offering solution to that which include practical problems as well as , which might crop up or they prevent or they have already faced. the n we have session of case study where certain cases of the Hon'ble Sc and HC will be distributed and the ethical issue which involved in Judgment writing will be discussed . Stay within their limits, within their Jurisdiction and not to go for an appellate court. Then the other session would be a role play, which would include the etiquette, the conduct, and the way a Judge profound inside the court room as well as outside the court room. We will give topic as to how you will deal with the clients in deed, liars, litigants, sitting at the back of the court.

Prof. Geetha Oberoi: what we can do, we have enough time, take 2/ 3days time and then (not clear)

(Discussion)

Go

2/3 persons can help you in typing. I will just go through my office and check, who are all available. and then those who have issues about typing they can dictate them But just stick to what we want, we want, I have given you structure on this how are we going to add on to it and for example, if you are playing role play, can you come out situation because has to be done in some situation, some context. Can you write 4 lines about that situation? Also then we have asked for

exercises, each one of you can give one exercise, we will have by tomorrow good compendium of exercises. And the dilemma. That you have. I want that solid document which we can present. This oral discussion will not actually lead us to anywhere. No need to give it to us. We understand you have lot of knowledge but that has to be put in paper. Mam and I know, we want to have this document. This is what we are actually assembled here for. I get stenographers but they will come and type it for you. Its quarter to five, you take a break, can you come at 5:15, there is a library, there are lot of computers, internet over there and persons are also available. It is a computer lab. Better thing is to today itself we will finalize rather than watching a movie. Just drop that. Because we didn't come out with any document. Let's sit together and let's make this.

(Discussion) okay directly you all. Then sir may be you can help- us. You have come out well so why don't you help us in consolidating and come out with one. But then all of you should be sitting like and, even sai can help you .Comprehensive well. You made it well in your structure you have to incorporate their group suggestions viewpoints then it becomes one solid document because... will be like no use actually...

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## SESSION-5

### THEME TWO-COMMERCIAL COURTS TRAINING MODULES

#### MODULES SHARING BY ALL SJAs

##### Prof Geetha Oberai:

A very good morning to all of you. Now we can come straight to business. Having finalized one module for ethics course, so who will present? Word document, can we have one copy

Sri Chaturvedi, Assam SJA Participant: (presentation) so, yesterday we had some discussion for the preparation of combined module on Judicial ethics. We have according to the inputs; this is what i could prepare.

we propose a training a 2 days program on Judicial training. And we start with an introduction quoting John Marshall: "The power of Judiciary lies not in deciding cases nor in imposing sentences nor in punishing for contempt but in the trust, faith and confidence of common man". Then we have given an introduction, where we have given the core issue which is concerned to Judicial Ethics. As complaints against individual Judges are increasing in standards is accountability and diluting, there is burden on the Judiciary to make honest effort to put its house in order. Lower courts are established for the contact of the common people all the time and they administer Justice to the vast majority of litigant public. As such the conduct of the Judges in subordinate courts is casted to public scrutiny in assessment. This makes it incumbent for trial Judges to be more and more professional in their positions and transparent in their dealings The core of ethics is not just Judges service conduct rules/ immunity provisions, it involves goals to Judges who wants to aspire individually to which the Judges have to aspire for individually and collectively to command public allegiance and judicial majesty, for, if judiciary loses the trust, faith and confidence of the common man that will be end of Rule of law and democracy.

##### **OBJECTIVES OF THE TRAINING:-**

The objective of judicial ethics training is to meet the expectation of public at large because Judiciary is vested with jurisdiction to adjudicate disputes hence there is need to adopt higher ethical standard to justify the status and dignity of Judges. This apart, the method of implementing judicial discipline and correcting erring judges should be fair and known to each and every member of judiciary. Keeping the ultimate values of independence of judiciary and the need for protecting the legitimate rights and privileges of judges, the course should aim at not only inculcating the principles of judicial ethics but also enhancing the satisfaction of judges which every professional should normally get.

We have proposed 6 different sessions, we have not mentioned the tea breaks and lunch breaks etc.

| CONTENT   | SESSION | METHODOLOGY   | TIME    |
|---|---------|---|---------|
| <b>Introduction:-</b><br>Definition and meaning of judicial ethics,<br>Law Society and Justice,<br>Ethics vis-a vis Judicial Ethics.  | 1       | Lecture/PPT   | 90 mins |
| <b>International Standards of Ethics: -</b><br>Universal Declaration of Human Rights, Bangalore principles, Nolan's Principles, Nigerian Judicial Ethics Training Manual etc.<br><b>Domestic Standards of Ethics:</b><br>Constitution of India,<br>Chief Justices Conference, 1999, 2002.                         | 2       | Lecture/PPT   | 90 mins |
| The behavioral aspect of Judges in and outside Court,<br>Qualities of Judge,<br>Inter personal relationship with colleagues,<br>Prejudices and Bias,<br>Judicial Discretion   | 3       | Incognito interaction with litigants to understand the multidimensional issues of litigation/ROLE PLAY/Group Discussion | 90 mins |
| <b>Literatures Reading and Discussion:</b><br>Literatures (Lord Denning, Justice Cardozo, Justice Lahoti's Canons of Judicial Ethics, Justice etc), Case Laws dealing with issues of propriety, accountability, integrity etc<br>Case law studies dealing with issues of propriety, accountability, integrity etc | 4.      | Reading followed extempore presentation   | 90 mins |
| <b>Ethics in judgment writing-</b> Trial Court, Appellate Courts  | 5       | Practical/Role play/Sharing of  | 90 mins |

|   |   |   |         |
|---|---|---|---------|
| Effective Communication Skills with all the stakeholders<br>Service Rules |   | dilemma with peer group/Group discussion                                |         |
| <b>Judicial Discretion</b>  | 6 | Practical/Role play/Sharing of dilemma with peer group/Group discussion | 90 mins |

As I shared yesterday,, one of the objectives of Criminal procedure code, 1974 was that the word poor comes on 3 occasions. It allows each of the Judges to be biased towards the poor in terms of relief within the ambit of law. If he is not able to furnish surety the court should allow him on personal bond. These are matters of jurisdiction, which will have part of discretion, which can be taught by methodology of practical problems and role sharing and experiences which the participants must have experienced in their life. So all these 6 programs sessions, we propound them.

R.P: what about exercises which I said y'day. Two exercises and the bank we have to build and one dilemma situation too. So we have role plays from at least A.P.SJA and dilemma by Bihar but we need from other judicial academies too. These all will be submitted to SC. Orissa has given only one practical issue yeah (discussion)

R.P: Allow me to make a comment, this two i think are too long for using lecture. 90 mins for the first session and the 2 session both you propose to be done by lecture method supported by power point presentation, you know as the studies go, our attention span is not that long and actually in hours time if the lecture lecture is of an hour, our attention span is limited to 20mins in second 20 mins, our attention fails. So, 90 mins cannot go on continuously. Perhaps in between there can be something to do some interaction. It has to be planned. It doesnt come automatically that's my experience. For that also the we have to plan.so could we include in the session 1 and 2 some introduction, so that we move from lecture to interaction and then lecture. You know can say of 30 mins and then 30 and 30 mins, so that your time is very effectively used and you carry back much more.

Participant: should we prepare it in a tabular form or usual session form?

R.P: you can do that.

R.P: that is for program schedule, that's not module. Y'day i have told that program schedule is different from program module. Schedule is prepared on basis on module. For example 1 this will be schedule, addressing magistrate. 1/2 day training in the induction or refreshing course on the

basis of that your program schedule will be vary. But program module is totally different from it. It never mentions about 90/30 mins. Then it will all depend upon person who is delivering or lectures it , giving to a resource person. What Mr. Chaturvedi has made y'day was actually that as a module. The participants contribution should go ion that way. This is program schedule.

R.P. can we include some quiz in it. in the methodology. Lecture, quiz and then lecture. or in the second one also include something.

Participant: yes mam I will include.

R.P: something, some exercise in between, fill in the blanks or something like that.

Participant: yes madam.

R.P: And again whenever we have lecture, we cannot go on giving lecture for 90 mins. I think these are the two.

Prof. Geetha Oberoi: Maximum lecture can be 45 mins.

R.P: 45 mins lecture sessions actually they are, actual lecture is of 30 mins if they are not wrong. Because the first introductory part takes some time and then after the lecture is over, some concluding part. So actual span in so design, design things like that. Geetha is not angry, Geetha is disappointed I think.

Prof. Geetha Oberoi: very disappointed actually.

R.P: Now we know at least what we have to do. So I think before we leave on , when do we leave?

Prof. Geetha Oberoi: 5th day

R.P: 5th day we will have the module ready, With the collective efforts.

Prof. Geetha Oberoi: But from Tamil Nadu, he will join. Sir, you can take the lead in preparing the whole module.

Participant: Yeah

Prof. Geetha Oberoi: yeah?

R.P: So, Geetha can you introduce our resource persons today, apart from me of course.

Prof. Geetha Oberoi: Ms. Priya Mishra is, of course she is Asst.Prof at National Law School Bangalore. She teaches commercial law there. This is her subject. I got her reference from one Justice. So, he said she is really good, you should try. I said I will try her because I have this seminar coming up. We have to think about developing a module on commercial law. So I thought great. About Mr. Navneet Sharma, as all of you know, he is a member of the committee, which suggested requirement of setting up of the commercial courts. More about him, of course Mr. Navneet Sharma will also introduce and PriyaMishra too because I know only very less about them. But I know that they are experts in the field we have called them for today i.e., developing commercial law module. So, I wish Mr. Navneet Sharma can introduce more about himself, and your background.

R.P: And about the institute from which you have come.

Mr. Navneet Sharma: sure

Prof. Geetha Oberoi: Yeah Institute of Corporate Affairs.

It comes under the ministry of Finance?

Mr. Navneet Sharma: Ministry of Corporate Affairs. Earlier it used to be same ministry, now they have carved out separate ministry.

Mr. Navneet Sharma: Thank you very much. Director of the NJA, Mrs. Goel and the panelist from NLSIU, Ms.Priya Mishra, distinguished Participants. It's a distinct honor for me to be hear this morning and be able to present my views before you and try and see how best I can assist you in development of this module, training modules for SJAs.

AS a matter of introduction, firstly let me say on thing which I am doing at Delhi, what I am. That I am not a qualified lawyer, I have not studied law, so therefore that's first thing I would like to tell you, But nevertheless, having said that because of my professional interests i have engaged law and lawyers very extensively. I am primarily an economist having word in University economic system , Government eco system, policy eco system and so on. Indeed having worked in Law Firm as an economist. So therefore my association with lawyers and laws has been very extensive, nut I am not primarily a trained lawyer . So to say therefore please pardon me in case of my legal language and mannerism is not what all you are accustomed to.

Indian Institute of Corporate Affairs is under the Ministry of Corporate Affairs. Primary functions of this institute at two fold , one is policy advise , to not only to the parent ministry i.e., Ministry of Corporate Affairs, but also to the other arms of the Government which include our Government ministries as well as we also now increasingly are interfacing with Judiciary now on competition and other matters. I personally Head the school of Competition law which is one of the schools in

the academy and the institute, other schools they function, one on corporate law which is the companies act, 2013 primarily. There is another school focusing on corporate Governance and one school on Finance. We are also an official trainee academy of a Government of India cadre called ICLS. These are the , this is the cadre which man's the registrar of company offices and official liquidators. So this is the cadre which is posted there under the MCA offices. This morning I was said with the most important thing that the the Director did not mention but I should mention to my own credit is that I have myself developed certain solid modules. I will try to try and demonstrate that, what the process I have undergone is. So that we can not only make best in your time available today but going forward how can we carry it forward so that in your respective places , this is something you should consider. I have a few slides just as matter offI am saying effect side of it, let's say, car manufacturers for example. There are 14 car manufacturers which were penalized by the CCI to that of 2500 crore rupees. The massive penalty. 11 cement manufacturers penalized to the tune of 6300 cr. A Very prominent builder DLF in Gorgon was penalized to the tune of 630cr, one single company. But what has happened now, the matter with DLF was that it was using unilateral; clauses in its contractual terms and condition. It's like if you as a house buyer, if you fail to pay me EMI, 18% is the interest. If I fail to deliver the house on time then no penalty. I can unilaterally change the map, unilaterlarily change the number of floors in the building and so on and so forth. At least 27 of them were arbitrarily unilateral. And poor house owner has absolutely no way to deal with it. In the case car manufacturer the point was that these car manufacturers would restrict the availability of diagnostic tools and genuine spare parts, only through their channel. There by the ordinary consumer, the effect is 10 yrs / 7 yrs back, when my car used to do to a garage, it will come back with a bill of something like Rs.5000. even for an ordinary service when it goes now, the minimum bill I receive is Rs.10, 000. Because of the restriction in the trade channel. but what has happened that law is working and then but somehow this writ petitions came and everybody is enjoying the extended protection and the poor consumer wish the consumer protection , competition act intended to help that person's has been temporarily withheld. Just to give you one example therefore I am urging that you should consider telling your trainees what not to do. That itself will be a great clarity to bring in the modules. No going forward I am not setting you module to read this entire long list of agreement which the act provided. Second point I want to mention for your consideration is that this law will have as any other law interaction, interface with other laws. As much as it will inform the other laws, it will be informed by other laws. So, therefore that kind of conversation between laws by way of jurisprudence or whatever you call it should something you should consider when you are designing. I have given just two examples here, one is the competition act where I am gonna show you very quickly the agreements part so that you can see how similar it could look like. The detail provisions in the competition act which enlisted in the section 3 , 19 and in the IP as I have said that couple of laws which again have very detailed provision and how will that interface the unfold is the question you should consider in inserting in your modules.

I will immediately switch now to the module development process which I have mentioned that I have done for considerable number of causes. Actually I have to show you the modules which I

have developed. It's just a process, just for an aid and assistance I have listed here. This is what I have followed as a module developer,. I first articulated the capacity that he needs of the target group I have in my mind. I have translated those capacity building needs in module objectives,

R.P: the points should come one by one, (not clear) I can see the faces they they are like whether to look at you or at the screen,

Mr. Navneet Sharma: this will be circulated mam.

R.P: I (not clear)

Mr. Navneet Sharma: let me make a very important announcement with the guidance of the madam that, please don't bother to take down the points, because this ppt I am going to hand over to her and she will circulate it to you and this may help you in any case. So I think lets establish the dialogue that whereby I can convey to you my own experience and see how best i can assist you in your Endeavour to develop the modules. First is the question of articulating the compatible needs, one has articulated this, and this has to be expressed in the form of module objectives. Exactly what you were showing in on of the modules, there is a module objective where you can achieve and then having articulated that objective one has to then present it in a detailed structure. What does it mean if you are saying that a Judge handling commercial matters should be aware about the independent regulatory regime in this country? What does it mean? It means we will have to list down independent regulatory organs which this country having in it domain. For example there is one in telecom sector, in airport, in insurance, in banking and so on and so forth there are at least 12 of them. One will have to break that down into a detailed structure so that coverage of the module could be systematic and exhaustive. Then my I think we are having good consultation here, but generally, back home also I would urge all of you to please do consider respective structure on the structure per se. You know lot of good of suggestions come out of structure and then once structure become pretty much full proof the entire process which is going to ensure there after becomes very helpful Otherwise if somebody makes a very structural comment it becomes very difficult i address at any point of time. Therefore it's a very good assistance one can expect form consulting details like having a detailed structure. Having finalized their structure rough module is to be produced I mean i really, we follow strictly, peer review process of each module we produce therefore, some senior people normally we request peer people to do review and they contribute very significantly to the module structures and the text and there after you finalize and then it becomes, there is a review also. I wanted to show you live one of the modules. Some helpful tips from my personal experience of module text. Normally we have endeavored to divide the module into two parts, the core text and the side text. Because the code text normally remains standard for very long period of time, I can reasonably say up to 5 years. But the side text can rapidly change. Possibly in an year time or two years time because important cases important jurisprudence emerges, so their back must be reflected in the module so therefore one can consider, dividing into two parts there by the upgradation becomes very easy, otherwise

the entire text as to undergo some amount of change. Similarly I have found that in two last point that, usage of flow charts, wherever one is presenting multiple concepts, multiple forum, multiple laws I think this is a small time help techniques can be a great help. And last pointy is that usage of associated disciplines such as economics, business strategies, statistics can be of great aid to the Judicial process. I think that's if, with the permission of the chair if I can say so, that's to my mind has the potential of evolving an entirely new era in the Judicial proceeding. So therefore if you can see the way some of the U.S. Judges, Brussels Judges, they carry out the, they are open and very happy to consider what economists report to them or what statastrations reduce some kind of imperial evidence. Of course this requires some appreciation of these subjects. But I think now we have an opportunity for these subjects could be given a measured dose. of course a Judge is not an economist they are not looking at converting a Judge into an economist. But placing the measure before, those of statistics, whenever there is question of pricing, discounting or any other commercial matter is coming up a Judge is able to appreciate what exactly is there and also Allow other disciplines to inform him or her while deciding matter. That's where why we required, rest of presentation, I will try to show show me my module which I have developed at my school. And this would be help to you because competition law very nature of the subject is very similar to the subject of this law. So there, we have developed 3 modules for a certificate course and so these are two review examples, all of there it is mentioned that who authored it, reviewed it and this is what I want to show you. Every module is divided into three units for the sake of uniformity and comprehensive coverage, in the first unit we are tempting to give our participants context of market regulation. How in our country markets are being regulated, So that one develops a perspective of regulation. In the second unit rather, one is about evolution of independent regulations and in the 3rd module, informing them about evolution of competition law and policy. This creates perspective in which all the entire commercial transactions are taken place and their disputes have to be resolved. Similarly in the second module, since all my participants, there are people from companies, they have never studied law. There are people from government who have absolutely have no formal exposure to law. So therefore there is module on fundamentals of law and a module of all corporate laws in India, So that one knows that completion operated in isolation. It's not an island in itself. It has to listen to and it has to speak to other laws. So therefore the other laws which are in format and it in turn inform. And third unit is about fundamentals of economics because that's a very very essential in the completion law proceedings. There is a famous saying which says that competition law is a product of a legal father and economics mother. That's a very famous saying in competition parlance. The third module you will see that has again 3 units, one is the substantive competition law then the procedural law and third is the investigation in the procedural techniques and the other is compliance, because every company is supposed to stay in compliance not just companies. so this is how just i am trying to exemplify this is all we have developed three modules for a three month long certificate course which because at the moment there is no formal training as such, not every law school has introduced the competition law specialization for instance but not everybody has done. That's where I will stop and then going forward I think I

may come and again in terms of specific structure which you may need to consider your modules, Thank you.

R.P: By way of some remarks from the law side, how important it is for us how these bodies function, with whom we deal on every day basis. Banks, for example how does a bank perform, how does a bank work, how does a bank earn profits and how profits earning by banks are important to the country. How it is wrong from the banks to loose, why it is wrong for the banks to not recover the non performing assets. For that give me some grounding on how a commercial banks functions. If we know that we will be careful when we deal with cases, in which banks are the plaintiffs. Where you often find the courts are very liberal and very popular in giving up the, rejecting the banks demand on interest. Interest is the core of banking, so when we say this is a.. Okay fine that is very insignificant amount, you might reduce the interest or but not the bank account close because we have some kind of discretion under sec 34 of C.P.C. But when the amount is big and in pecuniary jurisdiction is very very limited. big amounts I have been claimed so for which the bank has come with a suit and then if you are going to impose @9% he is something, 10%, there is huge difference and this huge difference is there on the health of the bank and consequently on the health of the economics of the country. So please take note or read for yourself how a commercial bank functions large chunks of compensation by the insurance company. Then you forget how the insurance company functions, from where does the insurance, generally in life insurance the amount is fixed but very often we are dealing with matters that the amount is not fixed. Gradually the law has fixed come to tackle care and has limited this amount, that we can grant that is limited now. But there was a time when the discretion was not so limited by the amendments in the motor vehicle act, by the said judgments in the SC. economically high amounts used to be granted because the Judges doesnot really understand where the money comes from. The judges only knew the insurance company has money. So, you know there was a time when they said no interest; there was time when they said leases interest on the insurance claims. We must know kind of things in our mind from which date we are giving incase to what person. These are the practical application of Dr.Sharma say in our, as District court Judges. You don't have writ jurisdiction and we may not deal with subjects which Dr.Sharma referred to which comes up only before the HC in writ jurisdiction. But even in the civil court jurisdiction and the district jurisdiction whatever you said is a good point. So can i open it to the floor any questions to Dr.Sharma?

Participant: The objective of setting up of this commercial courts it is lethargy, there was a delay and to attract the youngsters more and more. They are anticipating certain fundamental change, since we have not presided over these commercial courts. There can be fundamental changes in the litigation culture. That is one aspect and second is one when the law is action and the Judge presides over the objective of that it can be realized. What are the basic fundamental changes made under the rules? Which the presiding officer while dealing with the commercial disputes while realizing the importance of the disputes, while realizing the delay which is caused and while framing or formulating a module from our point of view because we have to realize the objective

of the act and the rules. That has to be kept in my mind. It is right that we can go to the history why it is, what it large chunks of compensation by the insurance company. Then you forget how the insurance company functions, from where does the insurance, generally in life insurance the amount is fixed but very often we are dealing with matters that the amount is not fixed. Gradually the law has fixed come to tackle care and has limited this amount, that we can grant that is limited now. But there was a time when the discretion was not so limited by the amendments in the motor vehicle act, by the said judgments in the SC. economically high amounts used to be granted because the Judges doesn't really understand where the money comes from. The judges only knew the insurance company has money. So, you know there was a time when they said no interest, there was time when they said leases interest on the insurance claims. We must know kind of things in our mind from which date we are giving incase to what person. These are the practical application of Dr.Sharma say in our, as District court Judges. You don't have writ jurisdiction and we may not deal with subjects which Dr.Sharma referred to which comes up only before the HC in writ jurisdiction. But even in the civil court jurisdiction and the district jurisdiction whatever you said is a good point. So can i open it to the floor any questions to Dr.Sharma?

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R.P: It's so happening to the enthusiasm in the subject. Is there any other question? Or comment or concern?

Participant: (not clear)

R.P: Okay. Any other question?

Participant: (not clear)

R.P: Can you speak in the mike please.

Participant: Debt recovery and all jurisdiction is there with DRT and commercial courts, how can us distinguish both of them.

(Discussion)

R.P: would you like to take the first question.

Mr. Navneet Sharma: In terms of what you mentioned that there is a macro view and objective is with the government is seeking and the preceding level officer how he or she can achieve it, basing on the frame work which is given to it and the role of module which they can play . I think the f1 and 2 question, my answer is that the training, quality of training is going to make all the difference. It is true to that the standard legal process, is what it is and we are all accustomed to it, courts are accustomed to it, the presiding officers may also accustomed to it. But one will have to by virtue of training rather repeated trainings one will have to sensitize them that this, the theory of law is quick solution. If that is, I mean what you mention in lok adalat cases, if that is, similarly we have mentioned about the ADR, I mean without passing any value Judgment has that helped the cause. The house may be divided. Has that brought the causes down, the house may be divided. i think that is where this entire exercise of doing of training, the training modules must cover not only the substantive part but also the process part, so that the objective can be achieved within the framework, how quickly to allow filing of complaint on a legal process of witnesses , cross examination, whatever it entails and then passing an order. How this entire process can be smoothed and structured. Would they will to achieve like shortening the time span, lessening the cost so that the business is not disrupted. If you disrupt a business agreement, which I have with my transporter if that is disrupted, if I say, I am mull I am not a milk operative. If my agreement with my transporter is disrupted my entire business is disrupted. If you don't do the justice in few days time or a few weeks' time, my entire membership which is the farming community is going to be adversely affected. So therefore the training bin structuring the entire process is of extreme importance to my mind.

R.P: Can I ask MS. Sharma to reply to other.

Ms.Priya Sharma: I think I don't need to over emphasis the reason why the commercial; courts are coming into existence. That's because we need to expedite the process ass sir has already pointed out that they reason we are having a commercial court is we need to make sure that the business runs smoothly and more and more investment comes into play as Modi Government has already promised. But in order to do that as sir is right in saying that there are 21 days for writing a written statement etc. But if we look at the purpose and if you look at the time period which is being given to the commercial courts, it is ample clear that they want to expedite the process much more and the catch for the commercial courts is that the specified value has to be more than Rs.one Crore or

more so below that the District court will have the jurisdiction or the HC if it has the original civil jurisdiction. It's only over 1crore that these matters will go to the commercial courts. and 2nd because this is a special platform for all the commercial matters, I think even the advocated and the law firms w3ill try to push it through and expedite the process, so that all the ad journals are not possible there is a specified timeline which has to be followed very strictly for commercial courts and here 90 and 180 days which makes it more expedient. And apart from that overlap of jurisdiction as sir has pointed will not be there. Reason, when it comes to DRT because it is only for secured creditors and for banks, SERFESI act is different but I am just talking about DRT act as such, so RDDBFI act or SERFESI or DRT act , only for secured creditors . So I don't think secured creditor will go to commercial courts for that purpose because it is generalized, It is only for agreements which are more than a crore and will affect the economy as such, will affect the the NBFIs if they are not secured creditors and in that case it is going to help otherwise no overlap of jurisdiction as I see it. It has been cleared that over 1 crore only and then the HC will have a commercial division as well which will again I think there may be problem , reason being that when the HC functions as a commercial court, the Judges have to be a little more cautious towards that. Do you people have Friday courts like we have in Karnataka HC, so how do commercial matters take place? Company matters are to be dealt on a particular day basis or it depends on the Judges how that take it up. (Discussion) when there is specified commercial division there has to be a dedicated Bench and dedicated Judge for that (Participant) May be there is original civil jurisdiction. So otherwise, commercial courts are going to be in the long run but we will still have to see it is the success as the sir pointed out that Lokadalats, may not have worked but we can see3 advocates and HC are going to for commercial courts as compared to other lok adalats and other things which only are substitutes or considered substitutes. Commercial courts are going to help this (discussion)

R.P: Instead of putting proof of that he is eating we will have to wait to see what extent the implementation has been possible and to what extent it has been useful. One thing that comes in my mind is the pendency, you see what is the work load for a commercial court, particularly for Dr.Sharma because you create a court as soon as where it is going to function very fast give this for 300 cases , I will see the speed, give me 3000cases and see the speed.

Mr. Navneet Sharma: It entirely changes and

R.P: the in Delhi particularly, because I worked there , how we function, If it exceeds 300 cases, so that the HC can take steps to reduce your pendency but for that the strength of the Judiciary , it was 100 where it required to be 400 but that's not possible in a day of in a month or in a decade. And by the time of decade you recruit more officers 3000 will become 5000, so this is very crucial to see. If a commercial court is there, if you want the commercial court to go in the speed of a bullet, please get down the work load, give a load with which this speed is possible. If you overview the commercial court it will be degenerating to any other court. Because you cannot go to any other court, the problem is the other courts are functioning perhaps you have unclutter those

courts and they have now kicked up speed. What you did here, now it's not going to go in that speed, it is going in a snail speed, you cannot now opt for the other court because jurisdiction from there has been eliminated altogether. You know giving jurisdiction to one court automatically means taking away the jurisdiction of the other court.

Participant: All the courts do not have the same bulk of matters also,

R.P: Then there is a tendency, you know if suppose there is a commercial court with this kind of tendency going very fast, the HC will say, well there are few courts too heavily loaded so take two hundred cases from this court and put it in commercial court side by side the court will also do this even that make things bad, so that is why I said proof of the thing, how it actually works is yet to be seen.

Mr. Navneet Sharma: I just wanted to show for half a minute, to show them this is how the competition law definition of agreement under sec3 also (participant) I am telling you from the litigants point of view they have this bad habit of forum shopping.

Ms.Priya Sharma: But forum shopping is not eligible. I think that's what sir is saying. The jurisdiction is completely barred even the companies act 2013 has taken away lot of powers of civil court and given them to the tribunal court. I don't think.(participant)

Mr. Navneet Sharma: this is what I want to show you in the slides

Participant: In their point of view the HC are in a better position to deal with all the transactions as you are talking about. Of course, the districts you generally don't get everybody has transactions. Stay back to that habit.

R.P: she wanted to say something else

Participant: Commercial courts are the civil courts, under sec9 C.P.C after setting up of commercial districts and..(Not clear) It is filtering the Munsiffs courts...

Mr. Navneet Sharma: May I draw your attention to (discussion)

Ms.Priya Sharma: So you have to look at the effect it has on the economy. So if it's beyond a crore it's not in normally an individual who is involved it's a bank or NDFC which is involved actually effects the economy on a larger scale and therefore they have to be , That's why we have the DRT and SERFESI act. Because we want to expedite the process since there huge amounts of money are involved. Because banks and NDFC forms the pillar for our institution for the economy as such . And therefore we are providing a better platform for them for the investors even if they are from foreign or domestic when they have a large amount of money involved which is left in dispute I think it's fair enough that they should have a more expeditious process.

Participant: (not clear)

Ms.Priya Sharma: But if you look at the filtering of the civil court as we have already discussed the the civil court jurisdiction being filtered and if it is beyond the crore it is going to be commercial courts. That also means that civil courts,

Participant: No it will not, because if even not lessening the, you have seen art 226 of the constitution it was only for the HC to take write, cases are being filed in the HC 5000 cases, what is the use. Basically when we are talking this, (discussion)

Mr. Navneet Sharma: that will have to be brought in the modules also, I just want half a minute to show you this definition of agreement which is listed in competition act because as officers presiding the commercial courts the very first question will be whether it is an agreement or not. And there is a teaser for you. Kindly take a look.

R.P: It is very different from contract.

Mr. Naveneet Sharma: There, which means two individuals having lunch together and thereafter in the market it there is an increment in the price, I can charge for the carton. That's what it means. It means that the definition listed in the contracts act where the intend in the language is much different and what , it may be written , unwritten, formal, informal whatever it is, if there is a effect in the market completion act can trigger.

Participant: (not clear)

R.P: no no contracts are also agreements, in the definition which is says it includes, meaning that there is an understanding not formalizing, even then it will be an inclusion.

Mr. Navneet Sharma: Absolutely mam. Can i just, kindly take your look at the sec?

R.P: they may charge so much. You may be big company and we somehow decide that we will not lower our price below this. None of us, we will not compete, that may be an agreement.

Mr. Navneet Sharma: look at section sec 3 cl1,2,3,4 we will find that what I have showed you in the presentation the number of our agreements, we will be huge revolution there in this particular section . All the commercial sections are covered there, in all the kinds of agreements, which you look at there are covered here. Section 3(3) is about the horizontal agreement and sec3 (4) is about vertical agreements. Horizontal means two people plays at a similar level at the value chair. The wholesaler-wholesaler, retailer-retailer, if they are coordinating, the market actions and are covered in section3. If a whole sale is coordinating with action in particular manner, the retailer or manufacturer in the domicile then it is a vertical. (Not audible)

A commercial court Judge should also be aware about the other modules of law, so that his orders are consistent with, that's the short point I am trying to say.

R.P: Did your question get answered?

(Not audible)

Can we now move to the presentation, last?

Participant: question (not audible)

R.P: okay, taken this comments very well, can we now move to next Ms. Priya's presentation. I think Navneet sir has clearly mentioned about commercial court ordinance. i wanted to have a discussion with you as to what you think should be included in the module itself, which will be helpful to you Judges, so we know that I may give discuss the statute but it won't make a difference. When you look at the commercial dispute and the nature of commercial dispute they are talking about agreements, IPR, movable property, immovable property , certain commercial disputes of other nature which the central government may prescribe etc.

Can we say that our Judges are well versed in these laws? Absolutely? Yes or not?

So, how can we make that possible through the limited module of commercial courts? So, we can teach them, statute is there, they know how to read the statute, that's not a problem, but how to make sure that these parts of commercial disputes as Navneet sir has rightly pointed out that its intersection between different laws. So while teaching those commercial courts, how to make sure that they also get certain knowledge about these aspects as well. For example, joint venture agreements. Mostly Joint venture agreements if you read that, you need to have proper knowledge of companies act. Knowledge of shares, all the kinds of instruments that are available in the market. What kind of Joint ventures can come into existence, what are the standard clause in the JV?

Special purpose vehicle in the first instance is a joint venture then is it a partnership or has the company been formed as a result of Joint venture. Those certain things have to be injected in to our Judgments. And they have to been done through this limited module. Because I don't think that they have that much of time to sit through and at the same time they have to become experts and more than advocates. Advocates say , for example, if a law firm will come in, they are experts , Judges need to know more than that and specially at the district level where question of fact is to be considered I think it is more important for our Judges to know better than what the advocates do. And for that matter how do you want to get them exposed to joint venture agreements. Do you want to?, may be have a sample joint venture agreements, talk about what are the warranties, what are force majeure clauses because, force majeure clauses in a JV agreement may be different from

standard agreement. When it comes to JV is it shares and debentures, is that been allocated to the different parties? Or is it that they are giving some technology transfer has taken place. Is that part of the joint venture agreement? All these things to be have to be informed to our judges before they take action with regard to a joint venture agreement. But this is only one thing, when it come to patents, designs, and copyrights. Are our Judges well versed with trademarks, copyrights, companies act, 2013? Because now for the time being, companies act, 1956 and 2013 both are going along. Some of the provisions have not been repealed. So, 1956 act still prevails. There is lot of confusion and advocates and law firms are taking advantages of that. Because of the confusion. So to what extent and how it is possible for our Judges to, in these laws, within a minimum time period dedicated for commercial courts. So i suggest that of a module on a commercial court, commercial courts statute should be taught of course. But commercial dispute, what kind of commercial disputes will be taken care of, they have to be taught with a little more intended. They have to take up samples, cases, then they have to take into consideration as to what kind of matters come with regard to joint ventures. So that when we have Judges, as part of commercial courts, they are experts in commercial markets. So let me have some insight as to,

Participant :( question)

Ms.Priya Sharma: for how long do we intend this module for, what is the duration? Minimum 3days? And what can be the maximum limit. Maximum 5 days? That all?

R.P: I t6hink this should be for one and half day to 3days. Generally that is the schedule that we start on Friday afternoon or you start on Saturday afternoon go up to Sunday evening. Generally these are the course durations. When you come to NJA, it is 5days. But NJA also runs courses for day and half and sometimes three days. But when you are here for 5 days, you are doing more than one topic. So we must carve out a course for three days at the maximum. For 5 days means at the end of the day you see that, only 50% of the subject is done. So, you have to design it accordingly. That this is going to be basic and next week there be refresher or after a year can be refresher but that can be, when you are planning it, it should be planned accordingly. Not that you plan it for 5days, deliver it for 3days and keep the other two days in reserve for an uncertain future.

Participant: (not audible)

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## Session-6

### Revising prepared module

**Justice Manju Goel:** During the tea break Ananya was asking me what is actually required in making the module on the ethics, sorry for them , I have to go immediately after lunch so I am taking this little time. So this is the first page of my module. Y'day I gave you the module on ethics, it was a module prepared by an individual. Now what Prof. Geeta Oberoi: wants is a module which is prepared with the inputs of all the Judicial Academies. When you see my module you can add this on the top. This is the 1st page of the module.

On the top it says Module for SJA on Judicial Ethics, This is of course my module, my name is missing, and Method I have written group discussions and roleplays. Now I have given the objective of the module to start with, to appraise Judicial Officers of the, concept of Judicial, Okay you correct it whatever, and to appraise Judicial Officers of various situations involving questions of ethical principles. What is the expected outcome when I have given, the image of Indian Judiciary will improve leading to confidence of Justice in the system. That is whole purpose of this discourse in ethics repeatedly so that and to the Judicial officers will be more confident in dealing with ethical problems faced by them in course of their work,. When I have written material needed, I have been using flip chart, white board, blue tacks. Because If I get more time, suppose if I have 2 hrs. I would put those flip charts everywhere. And then total time is 1:30 mins, introduction by R.P 5 mins which I used accordingly, G.D for 20 mins, Then whole GD for 40 mins then the further interaction 20 mins, concluding remarks 5mins. So that module is how I have been divided my time is also to be given in that how that 90mins is going to be used and i have allotted specially for group discussion or whatever you have, I wants to use quiz, debate, then I have to formulate the questions and all. But the program I have given, The R.P. have introduced the topic of ethics giving reasons for the importance of the topic and speaking generally about ethics so in 5 mins what the R.P is going to say that also has to be conceived . Then the participants will be divided into groups of and questionnaire prepared by the R.P will be given for the brain storming. The R.P. will explain how the GD is done. By now everybody knows but then in my module I have to include this the task of the R.P. and after the GD spokesperson for each group will give you view of the each group. The reactions from the other participants will be taken. The participants will be asked for share their experience regarding ethics which you did. This will be followed by discussion from the floor and then concluding remarks. So this is how the module is prepared. These steps in mind, prepare a module. But then what Goethe wants individually, all SJA together prepare this module.

Participant: What i have prepared 90% resembles what you have said.

Justice Manju Goel: But then give the details, so she wants the question bank, dilemmas to be pooled so that you will have a pool of 90 ethical issues which we have faced or somebody must

have faced. so let there be a stock of aids so that when, in promotive you can possibly take the session.

Mr. Navneet Sharma: I will just carry to make a small

Participant:

Justice Manju Goel: that's there in the schedule. I don't know, anywhere it can be put, be it 4th or 5th session. No, schedule is fine but then in between the schedule you have to give it the form.....Nigerian is there but we want something better. She has this module, give her something better.

Mr. Navneet Sharma: mam there was some remark in between about availability of experts on these subjects. NJA, SJA could consider creating a national pool of expert's at least zonal wise. I mean it would be quite difficult for any expert to travel from Bombay to Gauhati, but I am sure that somebody from Kolkata can drive because it is short travel and so on. The on suggestion I am submitting for consideration of all of you is creating a national pool of R.P i n all these matters. Second thing that I want to mention is that use of technology can also come to your aid, what I am using at my institute, because every day's travel cost. I mean to get an expert, it conveniently costs you somebody like 15 to 20 thousand rupees minimum. Which will may not be available, which sometime entrusts, sometimes experts are too busy. They may be happy to spend 3 hrs. at the desk but they have to travel to Gauhati or 5 Bombay is tedious so that may be little bit difficult so what we have to do is use a learning management system which a computer based system where all you need is a laptop and internet connection. That's all you need and that's what I am using. I will demonstrate before young the person's account an email arrives like this, what all I can show you here, there is an email l, link here right! and you click the link it prompts you to another where fee d your name and once when you do login and here in this, this kind of a class room where in the blackboard, there is a video expert who is speaking that is it, and there is a check box one can even ask many types of questions and seek answers. In the right side you can have a ppt so it is as good as a class actually.

Justice Manju Goel: We also have a video conference facility. I don't know whether we have a video room we have. I think you were there bigger that you if I have got on what you are speaking. That all required.

Mr. Navneet Sharma: the technical requirement is must, that is simpler to use and where ever I am this is special course, where senior officers run and Saturday morning for their breakfast to they are in the class. That's the fun of this Thank you very much.

Justice Manju Goel: Over to Priya at long last.

Ms.Priya Mishra: So right, as sir said that experts are needed and at one point of time you will need experts for your Judges. May I say just through associate with some of the contras that are built in academies itself as in or NLU also have it. Academies should have dedicated centers, for example, for NLSIU we have center for IPR law. Then other centers as well NUJS has good number of centers. NLU Delhi has. Who are ready to provide some research papers , works and I am not sure about the R.P. but they may have the pool of resources, Paiker may know about it. Apart from that the centers we provide you because already under some ministries , they may be ready to provide you services at a lesser cost or may be free of cost if they are in the vicinity of academies,. So you can take clues of that. Apart from that do encourage Judges to write some papers and understand that they have lack of time and lack of and more responsibilities. But if you ask them that or if you encourage them to write papers at least they will do some research work. Do you have online data basis?

Participant: we are proposing,

We have journals also

Ms.Priya Mishra: but how do you encourage a Judge. That's the problem. ..

Justice Manju Goel: we are talking about Judges only, there is facility online resources which is monitored by the academy, every academy has a journal, of course as ,

(Discussion)

Ms.Priya Mishra: But how do you assess the success of these refresher courses.

Participant: in fact in feedback form we collect what they have imbibed what is to be done next everything in that

Ms.Priya Mishra: Sir, I am given a feedback form i will always fill it 5, 5, 5, highest rating.

Justice Manju Goel: it's not that,

Ms.Priya Mishra: assessment as in do you ask them questions. There is a difference between assessment and feedback. How do you assist whether the Judges are actually imbibed?

Participant: In fact madam what we do in the last class we give them some subjects from the entire subjects taught. They are asked to give presentations. .

Ms.Priya Mishra: presentation is a good method mam. You are saying something

Participant: we conduct quiz

Ms.Priya Mishra: quiz is a good method because it takes lesser time and it requires preparation from your side instead of waiting or depending for the Judges.

Participant :( audible)

Ms.Priya Mishra: you can take that in the feedback form as well.

Participant :( not audible)

Ms.Priya Mishra: I understand that feedback is important, because it helps us to improve. Judges are taking something from the room itself so when Judges are there in the room it's not just us to have been judged but its Judges who should take something the institution.

Participant: (not audible)

Ms.Priya Mishra: Do you think lecture method works for you all? Problem solution method, I agree. So we should keep minimal lectures, or every subpart of the module should have lecture and then interaction. For example, if you look at the commercial disputes the definition, this is sec 2(c) commercial dispute means a dispute arising out of an ordinary matter ordinary transaction of a merchant, banker, financiers and traders such as those relating to mercantile document will be enforceable and interpretation of such documents . This is basic. Every Judgment will have it if they have basic knowledge of law, they will be able to clarify this. So for this we may provide them a reading material in advance. And may I suggest here that when they provide a reading material of this sort I may take it home but then it will get lost. Or If I am travelling it may again. I any not read it. Now also of universities and lot of centers use pen drives. But pen drives the problem is if I give them the reading material after a point of time, they may use it for some other purpose and they may delete that data. So there are methods to make sure that material cannot be deleted from that pen drive. You can do that. So that anywhere they are if they have the pen drive they can access it. Instead of giving them a hard copy. It saves paper of course and it gives in something to take away at least the Pen drive. Apart from that they are getting something handy to take home. Which helps. Again export or import of merchandise services, why I am taking out this definition is because that's what the need to know for commercial courts. WE will know how to run it, we will know what is the pendency and normal time limit it can be applied etc. That they can be told. Is the basic knowledge of what amounts to commercial dispute? And you have to provide them that knowledge within a period of three days a maximum. An export of import of merchandiser services this is related to sale of goods or otherwise we would know of it.

Issues related to admiralty and maritime law, Not all universities have this as a mandatory course and I think it may also have this experience that most of the Judges of the District court come from traditional universities and therefore maritime law and admiralty may not be part of them....5/3 year course I am talking about the universities they are not NLU at that time. It may be because

national law schools first prefer law firms etc. and then go back to Judiciary I am not saying that that's the case always but I am saying that coming to traditional universities they may not have had this course. Even for National Law schools for example we don't have it as a compulsory course, it only an optional course for them, so if they want to take it yes otherwise no. So they have to be in two of this. When it comes to maritime law, there are only few people who takes this and then the practical aspects of it. So may I suggest that to call in an expert in maritime law? Instead of dealing it with all the, the act is not the huge one, but the problem is that they need to have practical aspects at the end of the day. The issues transactions relating to craft, engines, its equipment, helicopter including sake, lease and financing of the same. So again somebody from the airport officer?

DJ of the airport need not ton know the operations. So there are number of acts related to these things, they should know when it comes to these things, when it comes to leasing and air crafts its mostly but at the same time these are mostly related to leasing and pronouncing and...not the charter agreement but they should have the basic knowledge of leasing and financing they need have an expert on this, that's all I am saying

Participant: there are people from the law firms who does this work.

Ms.Priya Mishra: maybe I think you should exploit law firm people by calling them for several purposes instead of just calling them for,

Participant: no not for that reason, I am talking about the draft of the joint venture agreements that you said earlier, they are taken care of.

Ms.Priya Mishra: But joint venture agreement is totally different from what we are talking about right now.

Participant: I said that in the other perspective.

Ms.Priya Mishra: Yes mam, if we are calling them for several purposes I think joint ventures would be an appropriate reason to call them. Carriage of goods, sale of goods act, they may be aware of that. Construction and infrastructure contracts, this is very important. Any questions, so constructions and infrastructure in contracts. For this they need to have a mock agreement which they need to discuss. Every infrastructure agreement will be different depending upon whether it is an apartment agreement or constructions or building of transfer agreements etc. For these purposes they need to have, even if you don't have an expert at least have the sample agreement. You need to make sure a list of these agreements which you need to provide in the sample agreement. And because it is only for 3 days, make sure that samples on the third day, at least you should provide them on the first day, so that they don't have excuse that you gave me a night before how do you expect me to read through. If it is possible give them beforehand. Infrastructure

agreement means, there are various parts of infrastructure agreement, depending on whether it is a green or brown project so green project is starting from scratch there is nothing on that side and start from the scratch. There is already something we have to do. Depending on that there may be demolishing and then may be development agreement. So all these infrastructure agreements. You need have access to at least a basic agreement.

Because you cannot give them individually you can divide them into groups beforehand and then allot an agreement to the beforehand. So if you allot them agreement on the first day they may not read on the third day but if you have it beforehand at least they will come prepared. Do they normally go out if someone else is presenting?

That's also a case, if I am presenting the other Judges may not be interested, that's not the area I don't say forcefully cases. They may not be interested. So you have to filter them if they sit for IPR you need to make sure that they have licensing or franchising agreement for them. So instead of interest it will be much more fruitful for them, and at the same time, they will be much more interested. So, you have to divide the group not on a random basis but on a basis of their choice and interest if you can know that or otherwise their area of practice.

Participant: some of the Judges are dealing with family matters we keep them....and any....because we, so all used to sit...(not audible)

Ms.Priya Mishra: But whop is the target group for this commercial courts?

(Discussion)

Participant: now matters above the 1 crore go to the district court.

Justice Manju Goel: here we are in academies, because we have to impart training today Judges, we are all Judges here but presently posted in the academies. Now they will pick up those who have been posted out of the Jurisdiction of a commercial Judge, they may be invited for specialized training on this. This is in addition to all the induction training, different resources would be gone through. We always have special courses for Family court Judges

Ms.Priya Mishra: We are calling only commercial court Judges, so I believe any topic will suffice them for you.

Then Joint venture agreements management and consultancy agreements. All these agreements need to be given a sample. Because otherwise it will.

Participant: so that they themselves prepare and come to interact with the R.P and keep vigilance of time and that will become more fruitful then...

Ms. Priya Mishra: I think they will be better prepared if you tell them that you have to present on these. Any questions. Shareholders agreement, what sort of them? Is it a shareholder purchase agreement? Is it a subscription agreement? Is it both? All these things need to be clarified. All these need to be given sample of. I think an idea choice would be giving the combination of this. There are lot of agreements include sale as well as subscription. A purchase as well as subscription. So you must include all these aspects. Subscription in investment agreements pertain to the services industry including, outsourcing services and financial services, mercantile agency and mercantile usage, partnership agreements, technology development, IPR relating to registered and unregistered trademarks, copyrights and patents. A live case would suffice for IPR. Agreements of sale of goods and services again they will be well versed with it. Exploitation of oil and gas reserves and other natural resources including electromagnetic spectrum. Very few universities deal with this aspect. Again very few SJA will require this to be a part of their curriculum, because where mining/ exploitation of oil takes place only for those academics it will be relevant. But for this it is a mandate that they should have an access to an agreement, reason being this is a very different type of agreement. Oil, gas reserves and other natural resources. So we are talking about mostly Rajasthan or may be some parts of UP, a little of Bihar may be, North east states, Karnataka, Jharkhand, may be MP to an extent, KG basin, but we need to make sure that they are well versed with it because if agreements of such sort come before the courts is difficult for them to assist because they will not have any kind of knowledge towards these things. Insurance and reinsurance, mam has already pointed out that they need to be well versed with insurance. I think you people are well versed with insurance. So one contract of insurance and a discussion on that,, what kind of standard warranties or standard clauses come into play for disputes, you can talk about them. Then contracts of agency relating to NuDF, think a contract of agency any lawyer, any advocate, any Judge will be well versed with. You need not tackle those things, such other things notified by the central government. So, more or less we need to have more of discussion on agreements. But there are so many agreements, how do you filter? Either you filter on what you state needs or basing on number of disputes that come before you. How do you intend to filter? The kind of disputes? Because in a three day workshop it's not possible for you to discuss all the agreements and even if you divide them into groups and give them to presentations on a particular agreement or disputes which arise related to an agreement, it will take the whole day or more than a day.

Participant: madam can we collect the data from the courts which type of disputes you are dealing and what type of training you require, so basically that I received from the functioning court we can give training on that.

(not audible)

Justice Manju Goel: I think he has made a very important point because I am now into arbitration and I find these commercial disputes main and they are all much more than this 1 crore, like 500/600 crores matters. What happens they have contracts between the parties, which runs into

100 pages , they have a dispute in respect of this, there is nothing in that contract, when the contract was drafted the parties did not know on what areas they may eventually get into conflict. And once now they have got into conflict may be others can take some light, that basing on area which we should have an agreement whatever we are drafting. I think this is very important for the Judges also to know that if there is a commercial dispute, these are the areas in which the dispute arise and if the dispute arise what is the law that resolves that dispute. What the joint venture is but when there is a joint venture when the dispute really arises and if a dispute arises whether there is a preexistence sample of such dispute. You know

Ms.Priya Mishra: I think you should get, reason being again these agreements and what kind of disputes arise, instead of taking it from the Judges who may or may not respond or who may take time to respond may not have time to provide you even if they have knowledge of that, it's better to have a dedicated cell which can research on these.

Justice Manju Goel: At least in know about Delhi there are researchers engaged. There are fresh law graduated, but then all the research that they do is sitting on the internet and taking the printouts. That type of research we don't have. Those youngsters who are there we have given them the designation of researcher but what he is talking about is that empirical research or you know, digging out data, going to places or firms , that type of research we don't do anymore. I think it's worth experimenting.

Participant: (not clear)

Ms.Priya Mishra: better to have a field study in this regard because as we said as mam said, that it depends from state to state, what kind of disputes arise and of course we can learn from Delhi and Mumbai what kind of Franchising for Joint venture agreements are disputed and what are the clauses which are disputed at the same time we need to know better about our own state which may be different from other state. So for example,

Participant: in the matter of interpretation of the document, any type of agreement may be, first we have to know the basic type of contracts of laws. What is a matter, damages, breach of contract, above performance of the act?

Ms.Priya Mishra: So a simple, i agree with you that when it comes to warranties and when it comes to promises made in the agreements, it depends upon the interpretation of the document at the same time it depends upon the contract law and the knowledge of the contract law that the Judge will have. At the same time when it comes to a simple case of conversion of compulsorily convertible Debentures into an optionally convertible debentures or vice versa or fully convertible into partially convertible or changing the nature of the equity by the equity agreements, all these agreements require a little special knowledge going beyond contract law. That's all I am saying and that's what we need to equip our Judges with. They obviously have good contract law

knowledge and good law of agency, sale of goods and all the traditional laws they have their knowledge what we need to equip them with is the specialized knowledge. That's why while talking about specialized agreements. Ultimately yes, it all deals about the interpretation of the agreements but if you don't know the technical term in the document which may be the whole essence of the agreement between the parties, how will you Judge that. And that's the trick which we must learn while coming to your refreshing or induction courses. all I am saying is a discussion of agreements if they are overlapping , every agreement w3ill have parties, warranties, force majeure clause, indemnity clauses, if there is exchange of shares, agreement of that affect or clauses to that effect. But the headings will be the same. But the nature will differ.

Participant: While recommending these courts, law considers study global practices also like Singapore and other things, we must also get a chance to see outside how these courts are commercial courts are functioning. From the youngsters point of view.

Ms.Priya Mishra: If you have a dedicated researcher or being yourself get into research work you need no to go all that part but if you want you have best practices, data available on the internet, reliable ones issued ones by the Govt of those countries. You need not go there. At the same time best practices is yes. At this point of time during a three day course you cannot appraise the Judge of what's happening outside and you cannot go. You may say that this also existing, Mauritius because we have this DTA agreements with them etc. That may be there but that's the end of it. We can say say that we have internationalized ourselves but that's it, at this point of time we do not meet to inject them with international standards which are required, which they didn't know of , for that you may just provide them with some reading material perhaps. That will suffice for them .Per suppose there is video conference, e-filing, computerization, audio visual recording, all these are global practices. These commercial courts are required, it's a procedure, they are different courts they are not ordinary courts.

Ms.Priya Mishra: can you know in video conferencing in a court?

Justice Manju Goel: there are E-courts in Delhi but this is not there. Everybody with a laptop and the court is going on, no file.

Ms.Priya Mishra: But that is injection of technology in the court, that's a little different from what we are talking about. What we are talking about is we need to know what globally stands at this point of time. But that's it. We need not tell them as to what is the difference between international standard and we have adopted in our law. And that's why coming back to that point field study is mandatory for any judicial academy. According to, anything which you want to provide it to your Judges, better knowledge we should know what they require. Practical approach mam. For that you need to have afield based study as to what kind of cases, what kind of disputes come to the forum. So that we are not giving them something that's completely unnecessary for them plus they also take interest. Because they know that when they go back to the court they need it. So for that

we need to have an empirical survey may be , to fill in a questionnaire as to what kind of cases have you come across any franchising agreements, any joint venture agreements, what kind of joint venture agreements,. What kind of problems do you face if that is not possible how a researcher for a contractual period of say 6 months or 1 year ask him to do that? Instead of giving, as mam said that this is nothing but sitting on internet and, they may not be as fruitful but particular period of time and hiring an agency to do it, obviously it will cost but if you want some customized knowledge I think hire a researcher and let him settle for 6 months or 1 year and let him have that kind of knowledge. So that you have more pin pointed more specialized courses. Another thing when it comes to commercial courts the procedure law remains the same apart from what changes will be made to CPC. Section 9 will apply, so for that period we need not clarify 12 Judges won't be need to do. What we need to appraise them of is how this will work and how to make it expedite? And they need to learn from the academy as to how to make it expedient instead of providing a hit and try experiment method where they may fail, they may obviously succeed but they need to learn it from the academy itself. Going for a specialized course they need to know why this law and how can it make more expedient. For that do we need, they should have access to some kind of expert as mam said, Paiker was somebody may organize a pool of resource persons but those should also have access to those experts formally or informally. So that they can gauge what's happening in their courts instead of waiting and reading, obviously they have to read from themselves. But for a period of short time, they have to be expedient at the same time they have to, they have some other administrative work as well. So how can they do that? Either have an expert at least for guidance to tell in which direction you should go, so that the Judge can on his own decide and need not depend on the advocates who are arguing before him. Any other thing that t=you may want to?

Participant: (discussion)

Ms.Priya Mishra: which can be included in the module for commercial courts? But I think when you talk about force majeure clause I think that may be included to an extent. Otherwise you can take into consideration, what you think that order for Advocates. ....Sale of goods and carriage of goods etc., we need to talk about specific relief act. In certain cases it's very much mandatory so, I think that the specific relief they would have already learnt. As part of any university course it is mandatory part of curriculum ....so when it comes to franchising agreements or transfer of technology agreements it is relevant. When it comes to commercial matters where contractual term has to be implemented or other remedies are available, specific relief act will be applicable.

Justice Manju Goel: when people come for injunction the first thing that they will rush is and then we have to be very careful when injunction can be granted and when it cannot be. Now this law of injunction has grown, the terms of injunction can be granted. They are very important to know. Don't grant a blank injunction. Put them to turn. Even in that money after reserving, don't check it from yahoo, if you read, everybody has read

As part of judicial academy we have to rely on authentic data, there may be lot of research papers who mentioned that these number of cases are increasing on these aspects but you have to collect on your own in order to make sure that its authentic.

Justice Manju Goel: So, over to Dr.Sharma

Mr. Navneet Sharma: Thank you mam. I have attempted to put together draft structure bring it to consider and finalize as per your respective needs and I have attempted to make it really broad enough so that we still have scope for as per your needs. As was watched by practically by everybody here that three day looks like an optimal duration to at least begin with, therefore I have termed this as an orientation 'training. Subsequently one is opined that to be reflective training. Refresher reorientation, whatever you term it. So for first orientation, this is a template form, training assuming that people will be from very diverse backgrounds, some have studied science, and some have studied some other. Very diverse background we find in the training rooms. So therefore assuming that put together this template. Day 1 immediately after the inaugural I think we may consider spending two sessions to provide primer on business management, so that people understand exactly this is how, this is created run , so that we , you have a for perspective of business, you understand where from he is coming. And it is not a discovery of something, therefore that is first thing I have suggested broadly we could cover some topics under business management. This is strategy, because large part of these eminent will emanate from the strategic decisions. Because I should buy coal not from coal India but from Indonesia. It's a strategy decision. I should buy XYZ input from some which is a strategic decision. In what are coastal price or territorial or strategic considerations a company may have. A judge should have appreciation of those which a company normally engages in. That could be in finance and financial; institutions because I anticipate a good number of cases well luminate in this area. So that could form part of the first half of the day. The second half could be primer on all corporate laws. Here they are discussing that there has to be a full idea of this law resemble the other laws, so that one can very clearly delineate the boundaries , whether I should take it this case or not .Is there any other appropriate firm for this case or not. But fundamental question of jurisdiction should be answered by Judge accepting a matter , in this have illustratively mentioned these laws which could be covered on the competition act , companies act, 2013, sale of goods, consumer protection, there are no.of contractual disputes have landed in Of late, Hc judge , therefore perhaps a consumer protection act order is also worth , contracts act is very fundamental for the entire discourse and sectorial regularity , so those could be covered, SEBI act in IP laws. This module of 15 to 20 laws could be covered in 2 sessions of 90 mins each. Its specifically a point age, we are dealing with experts so therefore one is not expecting to give them a very detailed sort of theoretical explanation. We should be presented with an enhanced topic. Day 2 one could consider spending one session on understanding commercial disputes. There we could cover broadly these 5 and add new categories. One is the finance side. How to rise money, from capital markets, how the agreements are signed, entire gamete of issues could form part of one segment.

Second could be the business structures part where different forms of incorporation under different laws, JVs, one person comes to partnerships, LLPs, all of these could be touched upon. Third could be production related agreements including the technology, licensing everything. The 4th thing could be saying supply, distribution, franchising, and the entire range of agreements on one side. The 5th could be business services and consultancy so probably we can add one or two more categories of commercial disputes could be touched upon after that we could have one session on commercial court proceedings so that we get a sense of the how to run proceedings smoothly so there we could cover the best practices from India and elsewhere and after that a remaining session one and half days, what I am proposing is all of them should be in our mock courts. The participant becomes not just passive listeners but active participants. I give you one exclusive fine example of an international workshop which is organized by ABA to, last was done in Rome and recently in Tokyo. What they do is they gave a keys and everybody is expected to roleplay that. So some body plays a role of a Judge, A business, Board, whether to inform about the cartel or not. If you don't inform you don't get leniency, those legal questions mind everybody is involved in this role plays. Once that happens extremely fine enhanced questions come up for discussion, otherwise which may not throw up regular ppt or lecture mode. So that roleplays what I am suggesting here that session 7 and 8 put it as a few hrs. Session basically, there could be a mock for example, shareholder agreement could be taken, because I expect cases would come from that side. Next day we can have first half mock court again on technology and license because that could also form again a part of number of cases. We could cover similarly mock court on franchising agreement, this could be one template of course one can always alternate, stuff it, to include once own specific areas. This could be the beginning point, not the end.

Justice Manju Goel: This will be a schedule, curriculum.

Mr. Navneet Sharma: this we could convey their

Justice Manju Goel:

to go into details, you want to be only lectures.

Mr. Navneet Sharma: That may not be necessary for the primer. Once you license it the patent..

Justice Manju Goel: Now that of we have done so much of labor time. Can you give us specific areas of these laws which the commercial courts should know?

Mr. Navneet Sharma: The idea is to even limit the scope in a manner that the Judge who is to supervises the matters in the commercial court. Is informed about other courts also. ....

Justice Manju Goel: And the only lectures you know , so much of lectures and we want to be away from lectures at least I know, all the time we are listening to those lectures only, hearing hearing so when we come here, less hearing is better it is.

Mr. Navneet Sharma: Apart this initial primers one possible format could be that, instead of 90 mins about 30 to 40 mins could be for a presentation and remaining should be for open discussion. Once that happens, we are very matured people there need not be any next to teach them, there is next, therefore mins of a ppt and then also open for a discussion and then we have clarity. I mean that's one successful work dealing with senior officials and experiment and had fruitful results.

Justice Manju Goel: So the other thing is, other things also which generally do not take in matter before the Judicial curriculum. Can you give us some R.P. if not the name, from which area we can pick him up.

Mr. Navneet Sharma: For instance almost every state capital has got an IIT and IIM many resource persons can get from IIM now and we could pick up one, similarly almost every state capital has got very good institutions. Some of them NLUs also, other institutions of Economics,

Justice Manju Goel: In business management which area you are referring to it. In other subjects I can say, business management is a 5/3 yrs. course. I am asking is that, what areas in business management we can taught.

Mr. Navneet Sharma: The point I had begun with tat a Judge should appreciate the life of a company, which is the point in which very beautifully narrated, how a bank operates, how an insurance co. operates. That appreciation in a most generic sense should occur in this perceptions where how a company is incorporated, then different, how it organically grows how inorganically grows. Therefore the question of measure, in the organic form you have this licensing and distribution agreements and how the company itself is executing its business.

Justice Manju Goel: Okay that is about the Business management, can we say in bracket that this is life of a company or something whatever way you want to say, the R.P. also will have to be told this is what we want to learn. If we give you in the business management, so let us given some specifically which we want to learn. What part business management would you like to convey to the special Judge.

Ms.Priya Mishra: why are we confining to just company because we are also dealing with partnership agreement, part5 of commercial dispute, it may be some other kind of entity as well. Management of a business entity or organization as such.

Mr. Navneet Sharma: I mean it's very generic, I have mentioned all partnership, LLP etc.

Justice Manju Goel: But you know what happens it's easy to understand the partnership it's very difficult to understand a company.

Ms.Priya Mishra:

If we are confining the scope of that discussion.

Participant: Sometimes there is problem that whether the MD or the company is responsible.

Justice Manju Goel: Lifting the veil as we say.

Mr. Navneet Sharma: from competition law side I can only confirm what you are saying that you can penalize a company but unless you reach out to individuals it doesn't work. Now therefore the competition commission what is it saying in one of the matters is that on based on the last three yrs. income tax returns, those individuals were penalized for crores of rupees. And in Kerala, there is a film maker's aggression, and they were not allowed to certain films to be distributed in Kerala. It was a repeat offence. So CCI said you will not associate with this organization for the next two years. So, almost all laws now, SEBI is catching individuals now. So then individual liability now is of extreme importance.

Participant: question

Ms.Priya Mishra: sir is talking about when it comes to franchising agreements or JV agreement there.(participant)

Mr. Navneet Sharma: sir despite that bar I can show you a Madras HC order which says that there is no provision of plea bargain out of court settlement, there is no provision as such , once the matter has been initiated it must be out to logical conclusion. Like you what you can do income tax act, in competition act there is no such provision. Despite that there is a madras HC order you say that please set it outside.

(Participant)

Mr. Navneet Sharma: somebody comes to you, oOne should know, whether jurisdiction lies or not otherwise we end up admitting matters which are purely outside your purview. What all to do. So it is actually true that develop that appreciation that this I should not entertain it.(discussion)

I am happy to supply those classic cases, absolutely..... I think my submission on that point is that strategy we should be using for every session. Wherever we are using this primer, it must inform we have classic cases from UK, US, European jurisdiction.

Justice Manju Goel: that will be an advantage, if we go to Delhi and get the experts.  
Mr. Navneet Sharma: Even organizer

Justice Manju Goel: and you have the patronage of the CJI, even the CJI is the patron for this academy also we are waiting for you Geetha.

Prof. Geeta Oberoi: i think it's time to say good bye as well as pay our gratitude and thanks to mam from all of your side<sup>3</sup> also, because mam has guided all of us in taking and discussing about this issues of curriculum and module, what is the difference between module and also program schedule and then we got to know about pedagogies, what methodologies in which you will deliver that module and also our expert Priya is also there with out and also Mr. Navneet Sharma who has helped us to understand how he prepared module for the course. You can take the clue and I think this is helpful to all of you because you also have to now throughout your Jurisdiction all over India these courts are going to be set up, district courts or may be different district courts are not set up but other special courts, some Judge already doing his existing work will also be given this additional charge so then for that how do we prepare that Judge, this talk is upon the SJA. And to deliver in that task and help you in that task, Mr. Navneet Sharma has given you useful points and tips and I am sure you got benefited from them. So we pay our thanks to both of you, mam, particular who has all chaired today and sir also. Give them a round of applause....

Mr. Navneet Sharma: I must place my gratitude to her for giving me this opportunity because getting this opportunity to interact with such an enlightened group itself is a great learning for myself and I think getting to know NJA better in certainly, it's my first trip and it's a fabulous campus and It speaks of the reputation it has and it is a great pleasure to be here. And in future I can,

Prof. Geeta Oberoi: even SJA are very beautiful.

Justice Manju Goel: My part must thank this academy and Prof. Geeta Oberoi and Paiker for givi<sup>9</sup>ng me one more invitation to come here every time I come here I learn more than I can convey and this time this has been an appraise to hear Dr.Sharma and Ms.Priya on a topic on which I am total knowledge. So I didn't leave last night just to stay and know something about this new law. I am the person to be benefited rather than to participants. So Special thanks

Prof. Geeta Oberoi: Mam always is very humble and down to earth always says she learns but actually as mam said teaching is the best way of learning. So, we will take a lunch break and assemble back at 2'o' clock.

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## Session-7

### Presenting of revised module

**Ms.Priya Mishra:** okay ladies and gentle men welcome back. How do you want to go about? You want us to discuss what we have received as of now and then prepare a module or then we discuss as to what will be the final module or you want time to discuss a draft module first. You want to draft your own module and then we discuss? ...One of the common things that I have seen in the modules that I have received is we have been focusing only on the act which should not be the case, reason being where the appeal is being filed, what is the jurisdiction of the court? What is the duration, pendency and even to an extent the procedure that can be dealt I say within 1 and half hr session. Is it not? Because it's just discussion of the chief features of these aspects. What we want them to know is what's not given in the statute and what they will not get out of a bare reading of the statute. Isn't it? Okay, some of the SJA mentioned that they need to discuss upon the objectives of the commercial courts and the ordinance thereof; do you think is it needed? I think it will be dealt in the introductory session itself as to why do we need it, so we need not dedicate a separate session or part of the session on the reasons why we have an ordinance. Then transfer of suits and procedure. Procedure I agree we need to have a separate unit in the module regarding procedure, that if there is any change in the procedure where the CPC modify provisions that have been made in the schedule, that can be discussed. To what extent the commercial courts procedure is deviating from the CPC and what changes have been brought there in? Then appeals and timeline. The timeline of litigation, you just need to be told, that can be included in the reading material itself, need not be discussed. Appeals again, you just have to tell them where the appeal will lie, isn't it? There are no disputable or debatable issues involved. An ideal discussion or ideal module will include more of grey areas more of debatable issues than what is already settled. Isn't it? You are sitting here and I am telling you what ever you already know or whatever you may gain by just accessing the internet would you come here. Certainly not. So we need to have extra for our clients or for that matter, for our Judges that includes some grey area, disputable issues so that they can take away some basic knowledge relating to the disputes that they may encounter in the courts. So most of you have very intelligently divided the entire act into provisions or into sections, for example jurisdiction, procedural aspects, ADR issues, interlocutory orders. That is one dedicated section of the module that should not be the entire module. We need not have the entire days session dedicated don't to the ordinance itself, we need to discuss aspects which are not present in the ordinance, for example commercial disputes, we need to make them understand, what all can be included in the commercial disputes/.we tell them the specified value, which is right now one crore but subject to be notified by the central government that change from time to time then we need to tell them what kind of commercial disputes they may be looking at, then we need to tell them what kind of contractual points that they will be looking at, The we need to tell them about, then our procedure will come. Apart from that we need to focus on what is not provided in the ordinance per se, by a bare reading what they will not get. ....so anybody wants a discussion on a specific module, yes /no/ not submitted? Okay, let's go by the format of the mam

has given me this morning. This is the format and the structure. The method, do you intend to include only group discussion and brain storming for this particular module, commercials courts.....lectures need to what extent you want to import knowledge through reading material. Which will be supplied beforehand. So, if you are providing definitions, introduction of the subject, commercial jargon, that changes from time to time, we can't give them any concrete thing. Plus there will not be any uniformity agree they may not carry, they keep, and there are ways to subject to evolution so we have a tendency to copy a lot from American statutes and agreements. For example they don't know have a president of a company, we have board of directors of the company but we still have president of the company shall do this, where is the president and vice president in our statute. WE have certain of those acronyms, meanings, usage of words, which don't have any relevance to the statute. But as sir said they me be useful in terms of business transactions. But problem is there is no uniform definition that you can find one internet. Second is been if you indulge in your research where you can find and deliberate on the basis of agreement part available to you, they will change over a year. So they need to know that, but I think we should leave that to them, we need not dedicate a particular session on that.

Participant: (not audible)

Ms.Priya Mishra: Again sir, they might give information, but there is no uniformity and therefore you will not be able to fine some authentic data on that, research papers on that, the jargons used and. So, That's my problem and you cannot provide Judges something that has been written by some X, Y,Z. So while providing them with agreements these jargons may be explained in the definition clauses itself. Emphasis on the definition clause must be given, when you are talking about agreements make sure that you tell them that definition clause is the defining clause of the agreement, yes. But at the same time the same definitions may change the look of the agreement itself. From notified dates, persons whom will be involved and in charged to certain other matters, This date the date here in these things, all these things to be taken note of , whole the Judges have already been exposed to agreements and related to agreements they would have already know about it. They would have already understood these concepts. But for the new fives it's necessary that they have, they should know what all to be included in the agreement, what all should be focused if it's a 100 g. agreement. I should know what warranty clauses and what indemnity, otherwise I will be reading warranties as part of indemnity clauses, which will take away the whole essence of the agreement. Indemnity is when something happens, warranty is what I am already declaring. Force Majeure clause are different for different agreements, for example we are talking about oil and natural gas exploration depending upon whether it is upstream or downstream exploration it will depend on that what are the definitions. It may be same for these, then exploration , definition may be same in the JV agreement as well but when read in context we can make different meanings. So our Judges need to be equipped with that kind of knowledge. I suggest that you should invite some experts so that some law firm people perhaps would deal in agreements or who make these. So that they have knowledge and they impart that kind of knowledge which is mooded by our Judges. So this browsing through the agreements they get to know what is the

essence of the agreement, what is the actual need of the agreement, what are the main clauses that we should look into. Even if it is not pointed by the advocates so if normally a law firm is again before, and there is an independent advocate again before us, the chances are that law firm has put in a lot of research into that and they may try to manipulate these things, but an individual advocate may not be able to point out those things. At that point of time our Judge should be equipped enough to make sure that he is not influenced or he is not effected by what the law firm is saying he should able to read on his own. So for all those cases we need expert, we need people who can tell our Judges as what you should look into when you are talking about the specific agreements. When you are looking into a joint venture agreement, first thing you should know what kind of entity is found, is it a partnership firm, and is it a company? Is it some other business entity that is been found, is it an LLP? All these things will be taken care of through a joint venture agreement. Who is getting what? Our warranty clauses lopsided are they favoring, inclination towards a single entity? Are they unfair? In nature? Are they strict in nature? Are they contingent contracts? All these things need to be pointed out. I may suggest in drafting your module, you should dedicate one part of the module to the entire ordinance and another part of the module to these commercial disputes. What will amount to commercial dispute? And then diving them looking and focusing on the special aspects? That is JV agreement and commercial courts intersection, Franchising agreements, IPR and commercial courts. So, intersection not just an overview of the act, we are talking about, If I write contract act in module, one it doesn't give away to the R.P. as to what he needs to do and second it gives out a very vague expression as to what is expected out of that workshop, if I write contract act it doesn't give what I want to deal with. So, I need to be very specific not just sections, it should be like intersection of various sections. If they are restrictive in nature it may be followed by no.of sections. It may have an intersection of say, specific relief act, companies act so therefore there we say franchise in agreement IPR and intersection with commercial courts and in the back ground they may take a look at companies act and other business entities roles in those aspects and we can sense? So we cannot look at the statutes in isolation that's all I mean to say. So contract act, IPR laws, I cannot given an overview of IPR law when you are talking about the module on commercial courts, can I? Because that will not solve the purpose, Our Judges need an interaction why we are dealing with IPR laws when we have come to study something about the commercial courts. We need to know that IPR in the context of if its trade mark what kind of, may be its a passing off, infringement, when we talk about copyright, infringement then we talking about patent, specification about patent, if there is a, there may be an intersection there of transfer technology agreement or its intersection in the commercial court aspect, that means to be told. So you are specifying to the resource person as to what am I looking at. Not a general overview. I want particular to this this aspect. Similarly when we are talking about leasing and financing we are looking at contract act, sale of goods act then if it is, we are looking at as we read about aircrafts. If we are talking about aircrafts then, if we are inviting a R.P. may be air service providers intersection. So as specific as possible and in very aspect we need to point out to the debatable areas, grey waters, the troubled waters. Overview of IPR will not give you anything. We need to tell them as to what is the problem there , where the disputes will arise.

That's only your franchising agreement, franchise at what cost will be common to all. Warranty and indemnity clauses will be there. But what so specific about a franchise agreement and not a general agreement. That you need to focus on. So, one we explain to them what the general clauses are in agreement and special features of these agreements and intersection with commercial courts and intersection with any other law taking place, (discussion)

Let's look at this primer on course design. Everyone has it? Okay. Let's look at the summary, the last page, let's go by this. Components of a module. So, first we will see the overview what is the overview what are we looking at if I have to give you an overview of a certain module you should be able to gauge whether is it useful for you and what all can I expect from this workshop. That will be the overview. So for commercial courts the overview will be

(Discussion)

Which is essentially tell our Judges what we will be looking at? To appraise the Judges and the proceedings of the commercial court and need for commercial court and they should have the knowledge of with regard to the commercial courts. That's why we are telling them about commercial disputes. It's not just to know about the ordinance, it's about knowing the structure, knowing the proceedings, knowing all about, so that they can equip themselves to take on proceedings in a commercial court. So it's equipping not just appraising. It's imparting knowledge to them, so that they can be equipped for commercial court proceedings. Anyone to differ, anyone has comment on that?

So we will have an overview then we will have a module learning objective. So objective, what is the objective with which you are making the module? But overview is what they should expect out of the training and objective is with the intention of us making it. Overview will include the objective as well as what is the entire structure, what all can I look at? .....why this particular commercial courts, 1) new one, 2) to make expedient the whole procedure and therefore equipping our judges. Then keyword and concepts. What will be the concepts that you will be discussing for the purpose of commercial courts? Then content, lectures, reading, assignments etc. so I think content we can put it as a, what are we looking at? For example, sub units of a module, what all will be included. So are you dividing it into sections, are you dividing it into units, all the same. But giving you more in pinpointed. As to what all will be included. As specific as possible. Additional resources. Supplement of complimentary materials relevant to the modules. That's is secondary, at this point of time we cannot discuss that but additional resources, sample agreements, research papers will be required from other countries for other institutes. Assessments and evaluations. Top refresh their memory as well as to give them a chance to put in their litigant skills to use. I hope that assessment at the end of each unit of module will be helpful. For example if I discuss and say commercial courts appeal and procedure and time line etc., all those procedural

law aspects and make them do exercises on that. So, if each module is attached with an assessment after by the end of every session or every two sessions. You need to don some home work on that but it will be more helpful. So for example if i keep telling you something after a point of time you .so in order to keep them on track and active you must ask something that they can be assessed on. And in order to make sure that your module is a success. Then summary and reflection it is more of a feed back. In fact if you take the assessment at the end of the whole module it will act like a summary.

(Discussion)

We will not detain you but at this point of time I think how about 20 mins. ....

Ms.Priya Mishra: Okay let's take 20 mins, one for each table, one module. So that what, (discussion) everybody agree with one. Anybody wants to make a separate one. Okay how many mins do you want..., 45 mins...for that. Of course for the content, the bullet points and then the detail of what you are expecting out of that bullet points, it should be specific but doesn't mean that you just give one or two words

(Discussion)

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## SESSION-8

### FINALIZATION ON MODEL OF MODULE-NJA

**Ms.Priya Mishra:** is that about sec 89.

(Discussion) (Participant)

Ms.Priya Mishra: section 89 says that if the Judge thinks it conducive he can refer the matter. There is nothing lie pendency is already there. Because that amounts to what, multiplicity of proceeding that's a different thing.

Participant: (not clear)

Ms.Priya Mishra: I think what you are talking about is reference?

.....In connection with commercial courts.....that is to be...

Ms.Priya Mishra: Yeah i am here for you.

Participant: So we have to split it in sessions?.. Yes.. How many days program sir this is? 3days.

Ms.Priya Mishra: you can put it before over view know, you can put duration. As 3 days... As first heading.

Participant: first session is that continuous

Participant: It should be day 1, objectives and .....

Participant: Yeah objective is for the whole training program.

Participant: yeah that has to be in the first session.

Ms.Priya Mishra: let's call it introductory session.so session 1 will be introductory. Let's start with the content. After content the first session. This is number of sessions I believe.

Participant: yes, previously we were only giving objectives and now we are going to plan the sessions. So in the first session we will introduce may be of lecture or something like that, that's why we have repeatedly said that we have to speak the sessions, duration for 1 day it has to be divided into particular number of hours. Session will be

Participant: introductory, pertaining to the overview.

Participant: duration? Okay, let's do that later. One and half hr.

Ms.Priya Mishra: Introduction of?

Participant: actually we have written the objective and that is also included in the introduction.

Participant: For making the participants aware and be prepared that can be the session. We are circulating it only, even before they are coming for the training. We have to interact with them about this session. Yeah. See these are all the materials, keywords regarding the subject which they have to be prepared.

Participant: in training program we are just making reference of what exactly is going to be taught, that is also included.

Participant: Normally we do not tell the whole day regarding the objectives, objective means for preparing the training and what we expect is the, regarding the key word we are going to circulate in this particular area which they have to be prepared.

Participant: Discuss.....

Ms.Priya Mishra: we don't have a dedicated session in keyword and components. Because it is completely irrelevant then you are just injecting the theory. That will not be the case. Key word and phrases and concepts of only there is for the reference of the participant.

Participant: These may be reference for the officers who are coming to training. ....yeah we are going to prepare it. Let's prepare. Introduction of the subject

Ms.Priya Mishra: And in introduction , which will include the need , significance, relevancy I think it will cover, what else do you want to tell about in the introductory session. Hmm, the practical aspect of the subject. Need not write.

Participant: Practical aspects of dealing commercial cases, shall I put that.

Ms.Priya Mishra: basically (discussion) need to cover Judges.

Participant: But that comes under the need. What is the need, importance, significance of the act that is covered?

Participant: session 2

Participant: How long the session sir, 90 mins,

Participant: regarding, second part is there and.

Participant: we will split no need

Participant: Introduction will be for half an hr or 20 mins? There after we will analyses the acts thread by in the second session.

Ms.Priya Mishra: Basically in the introductionof the subject should deal with what and why? What are we dealing with and why are we dealing with it?

Participant: This can be under duration right?

Ms.Priya Mishra: First decide the contents of the session and then the time.

Participant: Contents of the session is provisions of the commercial courts and under particular acts and procedures to be followed by the courts , jurisdiction and other allied acts, the amendments in C.P.C regarding ,

Ms.Priya Mishra: I think we have to sub divide it, because it's not..Let's put contracts, sale of goods, partnership act and carriage of goods act together.

Participant: First part should be the provisions of the commercial courts.

Participant: yes sir, that's what. That is the methodology to be adopted. First we have to introduce the act then we have to give them a case study and additional resource and the second time we will have group discussion and role play. That will be the proper methodology. So in this, regarding the briefing session, the act will be dealt with along with commercial.

Ms.Priya Mishra: Provisions of commercial courts, then we can put a hyphen and tell them what are all, so not all the provisions. Not all the provisions, chief features, have you put jurisdiction? Afterwards.

Participant: Yes I have put. What are the areas that are excluded and what are the areas included in the act.

Ms.Priya Mishra: Chief features, constitution and I was thinking lets decide , lets tell them about the chief features then talk about commercial disputes vis a vis all these laws and then come to procedure.

Participant: Instead of chief features put it salient.

Ms.Priya Mishra: Yeah that is the better word. Put Jurisdiction here itself because jurisdiction is not what is decided intersection. It is the definition of commercial dispute which is deciding the jurisdiction. Is not it? So let's put that which will say that commercial disputes and the specified value will be the criteria for having a jurisdiction. That's all we need to say. And in the next session we will talk in detail about commercial disputes.

Participant: Jurisdiction in pecuniary and territorial.

Ms.Priya Mishra: Ha, and then where ever when we are talking about constitution.

Participant: Parameters of commercial disputes.

Ms.Priya Mishra:?

Participant: External Jurisdiction.

Participant: Ha it comes under this; Jurisdiction included everything and that can be explained later.

Ms.Priya Mishra: Then in next session then we can discuss,

Participant: How long is the discussion?

Ms.Priya Mishra: I think one and half hr or so, will it take more than that?

Participant:!! And half hr continuously?

Ms.Priya Mishra: Tea breaks can be decided later on but let's put duration we can or else divide it according to Judges and their needs.

Participant: now session 3

Ms.Priya Mishra: yes. Commercial disputes and intersection of various legislations, I think then they can subdivide it into various, depending upon the nature of the statutes. "Commercial Disputes and intersection of relevant statutes".

Participant: intersection or interface?

Ms.Priya Mishra: Yeah interface is the better word I agree. Allied laws.....interface with relevant statutes or relevant enactments, because enactments include acts as well as rules and regulationsetc. Okay here we will divide it.

Participant: customs?

Ms.Priya Mishra: I don't think it is....

Ms.Priya Mishra: Powers and procedures heading remove that. Because we will discuss procedures later on. I think we will divide them into two or three so that under it we will divide and discuss all the agreements if you want.

Participant: So entire thing we will go. ..No...Commercial disputes interface with relevant enactments interface is the overall heading and what are the relevant enactments that are going to be discussed. In the same session or different sessions. We have to sub divide it?

.....

Ms.Priya Mishra: It may not suffice, two sessions, no. so let's group certain sessions.

Participant: If we keep going on lectures.

Ms.Priya Mishra: Not that

Participant: even we can say laws connected with the commercial.

Participant: Can we divide it like first half and hr, regarding the; lecture session and thereafter interaction and group discussion. So session 3 will be lecture .b what are the sub division's mam.

Ms.Priya Mishra: first we will put contract act, sale of goods act, and carriage of goods act and there is one more, no need SEBI and partnership act and put a dash, we wanted to be communicated as possible.

Participant: it comes under the money transactions. It can come, because regarding money transactions any document which is by way of negotiable instrument and exceeding 1 crore it may come.

Ms.Priya Mishra: Can we put partnership act in the second line so that sale of goods, carriage of goods and contract act can be taken by one R.P and partnership act will be a little different, so let's put it in a separate.. How can we make it more communicative to our R.P? When we give him this in the case of relevant enactments

Participant: let's specify them.

Ms.Priya Mishra: that's the problem mam; we don't have that much of time, contract act is taught in a semester all together,

Participant: See we need not give them definition of a contract, or of consent, acceptance and all we need not deal with them. We can straight away come to the implementation of a contract. (Discussion)

We can have simulation exercise.

Participant: can we see relevant provision and another hyphen discussion of agreements, sample ones, can we do that? when we have agreements they will be, we can take up any movable property related thing, agreements anything it may be, we need to clarify as much as possible so that we can hand it over to the resource person, he should know what exactly are you expecting, so he will not come with the ppt talking about offer, acceptance and relevant provision..... Let's not get the R.P....

Participant: That's there sir. We can restrict them from dealing with some basic things which are covered under the contracts act. That can be excluded. ....yes yes...there cannot be any quasi contract here.

Ms.Priya Mishra: Discussion through agreements when you take up an agreement he will be able to discuss damages , warranty clauses in agreements in relation to the contract act, so he should know in what relevance, context we want the contract act to begin with. Is everybody agreeable on this? So, let's put discussion through sample agreements. Relevant provisions with the help of partnership agreements. Because partnership agreement is what is mentioned in the commercial dispute definition. Sir, relevant provisions - through partnership agreements.

Participant: yeah it should be under discussion.

Ms.Priya Mishra: let's put the next one as mercantile agreements, documents which will include, put a: and construction and infrastructure contracts, agreements relating to immovable property. Exclusively under sale of property, this is also covered under T.pact.and say mercantile agency and usage. You are right if you say to come under contract but we should have specific discussion on that, that's problem, when you talk about the contract act only discussing it through a general agreement, we discuss the clauses, here we are talking about mercantile document, if there is overlapping then you can decide for yourself whether you want to skip it or otherwise. Then third can be think IPR.

Participant: session 3, and we will plan for 3,4,5, sessions, we have to decide it. We have to deal with companies act too.

Ms.Priya Mishra: so, before IPR we can put it company. Sale of goods is put with the contract act. Along, will you write IPR, let's just finish IPR. IPR laws, we can put a; and this is on franchising agreements, technology development agreements, this is right...

Participant: That is franchisee

Ms.Priya Mishra: this is right, technology development agreements. How about distribution and licensing agreements, where should we put it.

Participant: IPR

Ms.Priya Mishra: okay. Then next session,

Participant: three sessions over, 3,4,5

Ms.Priya Mishra: depending upon how much time we are emphasizing on IPR laws..Mam we will divide it into sub sessions making a list of how shall we divide,

Participant: grouping of the acts, what we can do is, divided in particular session, that will be given again.

(Discussion)

Madam next is?

Ms.Priya Mishra: corporate bodies are the next session.... here you can put Joint venture agreements, can we say business associations.

we cannot go into the too much of details this is a training session it is not like, we are not making them to get the very basic level of education.

Ms.Priya Mishra: Just about the intersection of Joint venture agreement and shareholders agreement. Problem is that is Joint venture agreement can be share holder agreement. when you put it into corporate bodies it's not right, because joint venture can be partnership as well.

Participant: So we can take the corporate bodies, we need not specifically mention that, we can deal with the agreements

Ms.Priya Mishra: Okay let's call this session as Joint venture agreements and share holder agreements and intersection with companies act and other investment agreements, and then - intersection with various laws. We are not confining with companies act.....

Participant: That's coming in the procedural laws right, we are dealing with substantive laws.

Ms.Priya Mishra: we just speak about commercial dispute as well. Now, intersection with variety laws, we can say companies act, partnership act and then so if we write just companies act, let us put just relevant clause, let the r.p ...

Participant: Yes arbitration clause, and again if arbitration clause is there how can.....so if there is arbitration clause whether the commercial courts will have jurisdiction but that may come before the courts to decide, jurisdiction issue. At that point of time...let it be discussed under jurisdiction. Years that will be added to jurisdiction. Now we are dealing with substantial laws which we need to know about the technicalities. There are definitions, amendments.

Participant: that is with regard to distinction and whether they decide to. ...but the question is that when we are talking on what are the clauses to be included in..

Participant: Jurisdiction, where do we talk about the drafting clauses?

Participant: We are presuming that the court has the Jurisdiction.

Participant: It is contributory to the clauses. And there has to be consensus. Then only agreements are to be there. In case of violation of any clause then only the dispute arises, then only you come to a court for the solution, that is why that's why clauses to be mentioned. Then we need to know the modalities and as to how the disputes arise.

Ms.Priya Mishra: Can you just put that relevant laws, will that suffice mam? so that the R.P. can himself emphasis

Participant: one thing I want to tell you y'day one Nigerian principles which speaks about ethics, this is that when we are doing the module, it should not be in each session. During that you need to exhaustible you need to prepare that a program or schedule, thereafter without including the needs.

Ms.Priya Mishra: what we are actually preparing is a schedule more than a module itself .It's okay.

(discussion).

Module also good schedule

The participants in the next session.

Let's put special agreements which will include aircrafts, oil and natural gas etc so that depending on time for example some of the state judicial academies will have more emphasis on mining and oil exploration. ..Lease will come into I think when we talk about contract law.

Participant: transfer of property act applies to lease.

Participant: But then dealing in terms of mining is..

Ms.Priya Mishra: mam when you put into, lease is a specialized agreement, we can ask the R.P to emphasis on certain agreements which are....special agreements example air craft related transaction, ..Sorry..Mam you were saying something.

Participant: (not audible)

Participant: That's what I said,see we already know the basic thing , we must concentrate on procedure and how they have to understand the new concept of commercial courts. That should be the matter of concern. If we go giving them lectures regarding what are an agreement what are the necessary clauses and other things, already we studied earlier. we read all the agreements, contracts.

Ms.Priya Mishra: that we can take up in contract law itself. When we are dealing with contract law, sale of goods and carriage of goods act then we can talk about common clauses, when we are talking about intersection with the agreement, I agree on that. So we can have smaller sections on JV agreements and other agreements so may be 2 sessions will suffice on the special and other specific agreements or just one session perhaps may be 2hrs of session for this specialized agreement. So I mean that example, air craft related transactions, oil exploration, so time is the essence....

Participant: Every clause will have its own significance, so that..

Ms.Priya Mishra: How about simultaneous sessions, so a lot of time what we have when we have conferences is we take simultaneous sessions which means if you are interested in Jv agreements and somebody is interested in just partnership agreements, they can have simultaneous sessions so that people can decide which one to attend.

Participant: If that is the case, there will be some people who won't attend anything.....

Ms.Priya Mishra: the agreements which i am talking about we only want the special provisions to be pointed out and not the entire agreement to be discussed.

Participant: That can be done by sample agreements. We can come out with reputed area and discuss a particular act. That too is subjective. If we have an act we will go through the provisions we will take a sample apply those laws to the agreement. Instead we will take that agreement go through they areas, identify them, apply which are applicable. Where the laws could be made applicable and it can be there in isolation, I have pointed out that IPR etc, but when comes to JV agreement ....that's what..Because we cannot say that when we are dealing with contract act and then we go to JV agreement.....exactly mam, be it a special provision or special features of that particular agreement may be pointed out. Not the entire agreement. Oil extraction agreements .should we put insurance here.....

Participant: Only the special provisions related to ...all of them are special clauses .we have to give the sample.

Ms.Priya Mishra: Force majeure will be different for different contracts for example mining an earth quake will be of relevance...

Participant: Force majeure can also be called as act of god.

Ms.Priya Mishra: But act of god apart from that may be dues to, negligence of a third party can also be a force majeure clause in certain agreements. Only the special clauses. Next session

Participant: we will put the number later.

Ms.Priya Mishra: Sir, wait for few minutes for our sake....Next session procedural aspects: procedure under the new act as well as changes made to C.P.C, yeah its amendments and other laws if any. So amendments we are talking about if it is affecting any amendment or it is getting any other laws that are the meaning.

Participant: Is there any other law related?

Ms.Priya Mishra: To an extent Arbitration in International commercial disputes it may effected.

Participant: We can specify to any other law?

Ms.Priya Mishra: any other relevant law. So that procedural aspect is being discussed.

Participant: regarding pending...

Ms.Priya Mishra: I think this ...in this session itself we can mention about reference of cases, transfer of cases, what else is the procedural part.

Participant: What about the execution part, in procedural aspects this needs to be included.

Ms.Priya Mishra: so in procedural part transfer of cases, execution of decree, interlocutory order,

Participant: Transfer of pending cases...

Participant: Only pending cases can be transferred.

Participant: See there is a category, pending cases. Application of summary procedure. That will be coming under the amendments of CPC.

Ms.Priya Mishra: Powers of High court and district court with regard to the act. Appellate court.

Participant: Original jurisdiction will be that of High court..

Ms.Priya Mishra: For Delhi HC has its original jurisdiction

Participant: yes we are dealing only with original jurisdiction, should our Judges know about it?

Ms.Priya Mishra: Then next session.

Participant: what about execution.

Ms.Priya Mishra: yeah execution. Anything else that we have to add. ...So you are adamant on leaving.....

Ms.Priya Mishra: After this next session, let's keep this session more interactive and more on the grey areas. So, we will discuss here. Challenges before commercial courts and, so for example, in Mumbai these are already have been established, we can take from them, see what the problem is, and Delhi also has it. ...And solutions. Frictions thereof. Then how to make these courts expedite. That's one dedicated part of the module that we must have. Instead putting as a question should we say expeditious disposal of the, making the disposal expeditious.

Participant:

Ms.Priya Mishra: Accountability, in what aspect mam. Can we put in procedural aspects, if you can go up, may be another laws including transfer of pending... here we can include. The termination of costs before execution. Anything else that we are missing out? Challenges of a commercial court and solution thereof. Making the disposal expeditious, and then....

Participant: Judgment part..

Ms.Priya Mishra: So should we have a session on writing the Judgments and orders but except commercial, the problem is.

Participant: see already in Judges...

Ms.Priya Mishra: There is nothing much difference.

Participant: The only thing is procedure is changing, that's it. Judgment writing is same.

Ms.Priya Mishra: What else is left? We can remove this, competition act gets.....that's the excessive writing mam, s we are not including it as of now. Anybody thinks, companies act when you talk about...should we put TP somewhere along with contract act. Sir can you put transfer of Property act,

Participant: It is there

Ms.Priya Mishra: Is it there, I don't think.

Participant:

Ms.Priya Mishra: we can have it as one session itself na. Discussion through sample agreements, can we put in brackets including leasing and financing. I just wanted a little more emphasis on that, that's what I want to say. Should we?

Participant: okay lease, license everything will come under the agreement as well as T.P act. Over emphasis them.

Ms.Priya Mishra: The last challenge before the commercial courts, can we also have a part discussion also inclusion of experts. Because this is commercial matter, should we include experts also?

Participant: Order 26 can be because that, here we can ask the expert here.

Participant: should we have CPC. Interlocutory applications and orders in that we can apply in it.

Ms.Priya Mishra: Because we have a dedicated session on the challenges, the new way of our let's put experts there because I don't think a lot of Judges opt for consulting with experts.....

Participant: It's their opinion how can you choose that expert? How to identify one?

Ms.Priya Mishra: let me have independent values which is the list created by the HC I believe.

Participant: Having a list is easy but getting them is another challenge....

Participant: Something like expert opinion in the mandatory.....

Participant: It is act if it is implemented, there will be a discrimination, which is under art 14 can be compared with other special courts constitutes. But those are discriminated on pecuniary Jurisdiction. Transactions regarding the particular area, business, money transactions etc. But the pecuniary aspect didn't come in. What about when there is a commercial dispute of a value 99lakhs...100 rupees less than 1 crore. So just because it is 100 rupees less, he has to face the delay trial.

Ms.Priya Mishra: He can file an amendment and stamp fees can be increased.....

Summary Judgments you will not get,

Participant: so that comes under the procedure...putting... conditional orders.....summary judgments on one crore dispute, what an amendment sir! Is it

what is the rationale behind that , these are the amendments ...

Ms.Priya Mishra: No that will have to be given, not all judgments to be given. Okay, yes, what else is left?

Participant: feedback and assessment, additional resources,

Ms.Priya Mishra: bare acts, that is the main resource. Quizzes...what else will be required as part of additional resources.

Participant: Manipur sey FAQs jyada hein.

Ms.Priya Mishra: we can also have what sir was pointing out in the morning, that jargons or the common terminology used.

Participant: That will be covered under keyword.

Ms.Priya Mishra: then we are not explaining them Here additional resources, as part of them. If we want to provide them with an additional list of for example, common terminology used, so list of technical terms,

Participant: Jargons

Ms.Priya Mishra: Assessment and evaluation. I think Assessment should be done either at the end of the day, instead of waiting for the three days to get over. Each day will be better. So at the end of each day we will keep a particular, for example, just 20mins, For certain sessions we can have sample agreements presented by certain persons and R.P. pointing out disputable areas. One can be that. We can put evaluation on each day.

Assessment is not group discussion. We can write presentations can be allotted

Participant: groups already divided.

Ms.Priya Mishra: Presentation by groups either on sample agreement or the disputable areas of it....What other exercises through which we can assess the participants. Quiz as it is pointed out be

Participant: disputes arising out of sample agreements.

Ms.Priya Mishra: So sample cases, quizzes as part of assessment as to know whether they have learnt or not. Additional resources are providing them with quizzes, that way I am talking about. How about group exercises where we give them a sample case on a particular agreement ...that is one way. For example if we have particular agreement, we are tend to point out the agreements, another point is that we give them a particular case,, so we have to be more specific on that and then they decide or they argue.

Participant: Group discussion or exercises on sample cases. What type of exercises.

Ms.Priya Mishra: should we make them argue? Or should we have a group, two arguing , one deciding.

Participant: Mock trial?

Participant: moot courts are only for arguments.

Participant: That is only for arguments, here we are Judges.

Ms.Priya Mishra: we can have sample cases where there is just the arguments or the whole trial through which we can assists them on the basis of the procedure whether they have understood or not.

Participant: trial procedures and decision making. Dilemmas, that one in ethics. Assessment is regarding the training but not regarding the act. So what will be the fate of commercial transaction having 99, 99,990/- Just because there is less than 10 rupees to 1 crore, he has to face the regular trial? Specified part will be mentioned. So you are concentrating on disposing off the cases expeditiously regarding karodpathies. Not bothered about poor people whose survival is very much necessary.

(Discussion)

Ms.Priya Mishra: You can blame Modi for that. At least we can have a revision of this? let's see what we have made. Ha reflection.

(Review)

Ms.Priya Mishra: After that expeditious and then summary of .....the entire module? Reflection is more of what they have learnt; here summary may be at the end of...Yeah kind of conclusion. Messages take on material. Take a message.

Participant: What they have learnt, what they are going to take home after this session. Execution ...anything else.

Ms.Priya Mishra: do you want feedback forms to be included in reflection?

Participant: yeah...

Ms.Priya Mishra: of course when we talk about contract act and the clauses there in , damages will be part of that.

Participant :( not audible).

Ms.Paiker Nasir: I have an announcement, we are going to show a movie at 7 O'clock in the auditorium, Life of Pie that will be followed by dinner.

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**SESSION-9,10,11,12**  
**THEME THREE- SENSITIZATION ON PREVENTION OF CRUELTY TO ANIMALS**  
**TRAINING MODULES**

**Prof. Geetha Oberai:**

Good morning to all of you, so, today we have to make module on Training of magistrates to sensitize them on Jurisprudence regarding animal welfare laws" .Now to prepare this module , i think you all have to do individual exercises, individual things with your names. And then later on we will compile everything and send it to the Supreme Court but with your names there, on your individual work and how to, because there are lot of things in the module. Now what I do, since all of you are over here, we will give you a bowl in which you randomly select one chit. Okay?

But see to it that from Bihar, 2judicial officers are there and so also from A.P. so you will only take one chit. One of you takes. We will have a SJA wise preparation now. Keep your no. with you. Finished?

West Bengal is absent? Okay let them be absent, no issues.

So who has A? Okay. Sir, you have to go to library and collect all substantive laws and sections, write down, you have whole day today. You will be just 2writing those sections which are necessary for this. We have paper from Tamil Nadu Judicial Academy, a whole paper on substantive laws and sections to be dealing with. Whole day you have sir.so you can go to the library, you have internet connection and everything is available. But you have to work yourself no assistant will be given.

Who has B? You have to do procedural laws, like Cr.P.C and other sections and even if within substantive law if there is a procedure law attachment of case property, maintenance of this property. Yeah you two go together. You all go to library because, books, bare act, whatever you want it are there.

Who has got c? Sir you have to work on social context behind animal rights. So basically you have to do research on social context, because all these disputes have some social context. So you work on that. Even in Rajasthan, there is this problem faced due to drastic decrease in the camel no from 2 lakhs to 20 thousand. There is lot of literature available on Google but you can go through other sources also.

D? Mam you have to see evidence appreciation issues, what are evidence appreciations issues in disputes relation to animal protection law, there is prevention of cruelty to you have to collect them, give your paper

E? sir you have to do scholarly work which is there, some of such work will be provided to you Mrs.PAIKER, so you have to make a brief that why should you include that in your reading material, so you have to write a summary of in scholarly work plus there is other work also book will also be given to you. You can go to library, we have library in the basement also and Hein online, west law, everything is there. So you just see if you are making a reading material of 300 pages then which 20 articles by Indians or foreigner will go and a gist of each article also you have to prepare.

F? Here you have to compile all the case laws from the Supreme Court on animals. So you can take the assistance of manupatra, SCC, everything we have in the library. So by evening you compile all those case law and give it to us a copy.

G? You have to see case laws from High courts. All the 24 high courts. For legislations you take help from Tamil nadu and those from manupatra, of course only high court. its not only citation but brief summary of each case.

h? Trial courts cases compilation. You can visit all district courts websites.

I? Sir, you have to do hypothetical on this law, what kind of situations arise from a case law , like that. A.P. has made very good hypotheticals on ethics, you can take example, but those are on judicial ethics but you have to do on the legislations, the cases that are coming up before the court. On that basis the cases that are coming up before the courts. on magistrates you have ask that these are the hypotheticals and how do you react on these.

J? Sir you have to frame important questions which are to be addressed to the course. You can refer Animal welfare board of India who has their own questionnaire. You can refer their website, but they don't have any lock up , You have to improve on your own as being Judicial officer you have because people there are from physics who has nothing to do with law.so you make legal questions.

K? Sir, its role play exercises.

L? You have to develop the questionnaire for participant before they come to the course and help that you can take is from all our newsletters. Have you seen them? we send you newsletters , I don't know whether you have received them from NJA ? We send it to all directors. so you should ask your directors to give you copies of our NJA, otherwise then you will be going to that place ,Library, then we will give you copy of newsletters. We make a pre training questionnaire for every course, we send it in advance. For example if High court judges are coming, in advance we send the questionnaire to the registrar on ethical in judiciary. We collect the information and compile. I think Ms. Paiker has also given you pre conference questionnaire. So you have example. That kind of questionnaire you to develop for all the magistrates through India, all India approach should be there. What kind of information you have about trainees before giving them training so that you would do sir.

M? Sir you have to do research about experts in the field from all over India. Who can be called to deliver their courses on animal rights? And you have to write a kind of brief about each expert. If you say Mr. from the state Y, so who is he what he has done, what is his contribution to animal right jurisprudence this lawyer has fought such cases. All these you have to say, because we are. You prepare a databank of 50 persons from all over India. So you have to do google research actually. You can also refer to case laws also where you can find lawyers who are fighting on which case.

N? Sir, you have to do Power point presentation out of article s which Ms. Paiker will be giving.

O? If we call you as a resource person to NJA to deliver discourse to magistrates, so you have to write 5 papers about your lecture.

Q? You have to do hypothetical situations on maintenance of case property because when buffaloes and all seized when all those are caught, there is like you can only carry these many buffalo. So, on those you have to develop hypothetical, questionnaire for Judges. You can take help of SJA of A.P they have examples.

R? Sir you have to do international conventions, treaties and laws in other countries should be compiled.

So all of you are given individual tasks, you have to act according to your number. It is here. If there is any confusion you can come. You have to go today here on your own. i expect paper by 6 ó' clock from each one of you on the task that we have given to you with your names.

Participants: can we submit in hand written?

R.P: no .because I have to submit today itself to the Supreme Court.

Participants: any typing assistance can be provided?

R.P: We don't have that facility sir. You can see, we ourselves also do by our own.

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## SESSION-13

### THEME FOUR-IPR TRAINING MODULES

#### MODULES SHARING BY ALL SJAs

#### **Prof Geetha Oberai:**

Good Morning to all of you, so this is what we have to send it to Supreme Court and all of you would be given CD of this, so now you have Comprehensive module. You can design 2day course, 20 days or 2 hrs course with the help of this module. You don't have to actually look into any other thing apart from this document now. Any kind of program schedule can be designed. You can even guide when some other High court Judge is coming to your academy, to deliver a session on this subject. This is how we all have prepared. So, it's all your work and this is called module.

Now am I very clear that what is module, it is something through which you can design a course for any number of Judges, any level of Judge and any duration.

Today we are going to prepare another module on IPR laws. But I must inform that because SJA mostly confine to training of district Judges. And they have Jurisdiction over Trademark law not copy right and patent.

#### **Mr. B.P.Singh (R.P-1):**

That has changed, in fact it has changed but only in respect to Delhi, because that too only as to pecuniary jurisdiction. As before the amendment Delhi High court had the jurisdiction over matters of 20 lakhs. Otherwise district courts in city civil courts they limited pecuniary jurisdiction. The only change is district court that is a court below it, in civil matters it is district courts and in criminal matters magistrates. so magistrate training on the criminal side only and I Will take up that.

Prof Geetha Oberoi: What type of module they have to prepare? Because these are directors of SJA and

R.P1:- It i will be so happy that the person here is involved in policy making, what it must come in and what not.

Prof: Geeta:

They all have their own training modules. They have to be said what type of module to be developed. So I will leave you with three experts today. You can take their help and then come out with the module of your SJA. You need national level module like thousand then it can be taken by each SJA. First Prof: GhayurAlam, Professor of IP law and also Chairperson of Science, Technology and law at NLU Bhopal. So first here he is to tell us about how must we go to prepare a module and what must be the content? After hearing all three experts, you prepare your module. The way y'day you did. For prevention of cruelty the module you have prepared I had given outlines y'day. Similarly on that way you have to take up area and then prepare. If you see say 6 hrs are put by each one of you, \*21. So many man hrs involved in preparation of this module. So 21 days of work was done y'day. So today also you to see that together and decode that I will do this like that at the end. And prepare the module. Am I making sense? Are we on the same page? or different pages of life.

R.P-1: It is on some page but different stages.

Prof.Geetha Oberoi: page matters, stage doesn't matter. So without wasting time

Prof. Ghayur Alhum, i welcome his to start.

Prof. GhayurAlam:

Thank you prof. Geetha for giving me this opportunity,. I was where before two years ago for attending some session to High court judges and all. So I began with this first slide, What for we are going to hold this program. What is there that after the successful completion, I am not saying at the end of the training program, I deliberately saying that after the successful completion of the training, the trainees will be able to, I have been to Delhi Judicial academy for two day I had been to this academy several times, and it my view and suggestion that the method of training is like class room setting. To my mind that's not the appropriate method. Y I am saying so, the person to whom we are going to teach are at least law graduates. They may be basics of law that they know. They have qualified an examination have gone through the interview process. So again the class room process. I say that the training should be like a train and the experts should be like the coaches. That either may be two ways, let the trainees may make their presentations and we have to make them available the reading materials that may be developed by any SJA or by NJA and then there should be experts that they listen to them. Or the trainees may be given a problem. We may be asked to identify issues and decide the case. So these 2 methods, I have seen in some of the cases the participants, they are very passive, so to make them active in the process instead of sitting like class room. Asking the, delivering lecture, explaining the concepts assuming that they don't know these, I consider it to be inappropriate method. The way training is conducted in our country, whether SJA or but I can say with confidence that, wherever I have gone, what I have seen is class room setting. And trainee should be asked to train. Experts at the end are asked to give suggestions.

So after identifying the objectives we have to know that for what duration, how many hrs we need to attain those objectives. We have to keep the Judges of training of average intelligence in my mind. Not the genius or below average. But the below average intelligence, no need, that's not the threshold limit in trade mark law. Like reasonable man threshold. We must know that how many days? We get it done. and how many hours on each day. I don't think any training can be done in 2mins or 2 hrs. WE had to be very practical. So how many hrs for reading. So any have understood that the first and foremost method of knowing law is reading. Nobody can be a genius in law without reading. but I am very genius that's Why I know the law. No sir law is common sense. But we know that in many instances that is common sense. Whether it is common sense or against common sense, we have to do what there law says. And I am not saying that the lawyer must answer to the question what is law, but the lawyer or the Judge or the Student must know what the law is. That the statutes, case law primarily. So trainees must be given adequate time providing the material the training, at least 1 month in advance. So that the trainees read and then they may also be given a task that the prepare a ppt on this point. Different topics may be given to different trainees. Then what will be the method in the class room. Discussion, lecture or trainees listening to the expert lecture. Either participants also listening And if can be more horizontal and less vertical that will be better. Because training modules generally is better method in Indian is generally vertical. Let it be horizontal as far as possible. Experts playing the role of coaches only intervening when the trainee is going wrong. Otherwise no . Exercise is a must. So many have read and that must happen before the traini9ng gets start. It doesnot mean that there will be training but no reading but most of the reading was the substantial reading must finish before the training starts.

Then classes, instead of classes if we can find a better term for that like practice, exercise, like we have moot court competitions. So I am not saying lets have moot court competitions in the academies but at least some exercise which involves more than one issue. I am very sure that I am teaching IPR to students for the last 15 years. I believe in that if fundamentals of law are clear there is not much difficulty in understanding IPR. Where ever we divide modules for any course including IPR and this is the terminology I am using that, MSC, must, should and could. That will depend upon the objective and the number of the days that we have. That work must be discussed and deliberated upon. That work is crucial, immutable and that must known to everyone got the purposes of IP, there are 7 IPs to choose in India. And the recognized by common law is trade secrets. There is no statute. It is recognise3d and enforceable by the course. Most of the times sec 27 of the Indian Contracts act which is used. All the supreme courts few decisions. Most of them are on trade marks. Followed by copy rights, patents and designs no decision on geographical indication so far. No decision on plant variety, and semi conductors. But the law of the land decisions, what happens that many courts commit error because either the case on the point decided by SC is not cited before or the Judge is also not aware of that. As in common law system It happens generally, if a case is not cited, a Judge may always say that , look I didn't know. This what happened in decision delivered by the Delhi high court. There was a charge of Plagiarism also and the Judge has to apologize and revise the Judgement. These points decides that , generally

these problems arise relating to jurisdiction. Issue of Jurisdiction is not related to IPR. Every law student is taught this basic proposition that a decision without jurisdiction is a nullity. And even if HC have committed error on this point District courts have committed. So these are the 7 IPs and then all the SC decisions and all the HC concerned Decisions. This is my tentative list not the final one. Because I got a call few days ago and I identify these points which are not particularizing or specifies. And at this should level, i am not talking about the statutes in a generic sense including that as well as rules framed under it. Then decisions of other HC on IPR and certain issues of conflict of opinion. One HC is saying yes and the other no, same statute, same issue. One law different treatment in different states. The question is that whether it is the denial of equality. Violation of Art 14. We can take international; statutes like WIPO, WTO and other conventions. but must level is 1) what is the meaning o the IPR, types. There are 8 types of IPR. 7 statutes, one common law. I have prepared that Is it? I will come to that.

So when we talk about the civil side, all the SJA also train Addl.District Judges, no court below not inferior to Dst.court. Criminal side only 5 statutes. Excluding patents and designs. There offences under these acts but infringement of patent or design are not an offence. Offences are some one makes or falsify the entries in the registrar and those are not offences but only civil wrong. Here I will make a point. Infringement of all the IPR is a tort. Each one of us first learns the tort. Nobody can say that he didn't learned tort. We were taught back that law of tort is not codified in India which is a too generalized statement; we can say that all law of torts is not codified. IP law is a law of tort as well as crime. Because here the duties are primarily fixed by law. They are not coming into existence by way of a contract. All the 8 types civil proceedings. All the five types' criminal side and here Metropolitan Magistrate or Magistrate as the case may be. How does IPR differ from property right? Because it is a property. We have all read property law. Property in the sense 1) bundle of right 2) a thing. In some cases the word property is used in the sale of goods act under sec 2(7) defines goods exchange, every kind of movable property . There it is thing. whenever it is used under sec 4 of Sale of goods act, when property in the goods is transferred from the seller to the buyer that means bundle of rights and when w2e talk about them there are 4 rights they are 1) right to possess

2) Right to use

3) Right to alienate

4) right to exclude others from using it. This point is very critical. That no doubt IPR is special use of property but it doesnot share all the attributes of the property rights. Right to exclude others from possessing, using and alienating others. It is negative right. All of us have been taught in jurisprudence and else here. These slides are relevant. Let come directly to IPR. its an umbrella term, term of convenience. We don't have an act known as IPR act. Some jurisdictions have a n act with name but we have no act like this. Entry 49 list 1 schedule 7 talks about IPR. It is listed with the parliament. And part two makes us residuary powers. I am not going into the details of

IPR because of we have limited time. Salient features of this are it is a exclusive right. Subject matter is intangible. Many people say that IPR are intangible coming to that matter all, rights are intangible. Only the subject matter is intangible and every IP is territorial. Some people say that copyright is international right but there is nothing like that International right. So far as territorial limit is concerned some IP are limited in time and some are unlimited. I will identify them in the slides. In some cases registration /grant is a condition precedent in some it's not necessary and its optional. Registration is a must, none of the rights under designs act, it is also a copy right, I used to say that copy right under the designs act and copyright under the copyright act to make that clear. So under the designs act there is no right without registration. Similarly under the semiconductor integration and circuits act no rights without registration and under the protection of the plant variety same here. Patent grant is must. Registration word is never used, but its grant. Copyright, trademark, I may exist with or without registered. Trade secret is a secret because I have kept it secret, it is practice. This is the list.

Items are enumerated here and I said 7 statutes. 2 of them, and the arrangement is chronological but not on any other basis. If we see one thing, all the IPR statutes are post independent statutes. It doesn't mean that during the colonial era there are no IPR. There we, but for the time being, when the law is defined, a law means a law for the time being in force in India. so all the laws in India IPR are those independent legislations. They have been amended. I am not going into them in detail. They act mentioned there 7, is the biological diversities act, is not an IP legislations, it does have certain provisions related to IPR, particularly sec6. That in case of patent an approval is to be obtained and is to be submitted to the patent office before grant. Though requisite amendments have not been made to the sec6. But purpose fully if we read that is what the meaning is. The wording is problematic in the sense that at one place it says all IPR, it says invention. Which is the subject matter of patents and no IPR has pretext of invention. And in case of a plant variety no need of prior approval of registration . but since there are certain provisions creating to the IPR under this act biological diversity act mention that the act mention at 9 is not an act. It's not even a bill. It is that the ministry of science and technology, it came up with a draft. And named it as draft National innovation act. may be that since it's a guess that's scientists were all in the draft and perhaps they didn't know the difference between the act, law etc. It is not an act. It has 2 objectives 1) to promote innovators in the country. and 2) to provide mechanisms for the production of confidential information. what we call trade secret though there is difference between confidential information and trade secret.

And this must be in the must list when we are doing the training program. I was there at the Delhi SJA. It was a 2 day program, it was intended that all the types of IPR will be covered. So it was rush rush. That if we do it lets has 1 training program on copyright specifically. My principle of life is either I should do it or I shouldn't do it. That's not for the sake of formality. That in the training they come they must return with something with them. now here what is that is protected by different types of IPR. The term used in copyright act is work. Not in the ordinary sense. Because whenever we talk about terminology law, we must know the meaning of that terminology

in the sense in which that word is used in that particular provision of the statute. the decision of the SC of India, *Burma Shell* in which, there was also decision of the SC of India relating to copy right *birendra bahadur v. gramophone*, where it was interpreted that the word import used in the copyright act, said that the same word naming different things in the different statutes. It was also mean different things in the same statute. So there is lots of meaning. Popular, ordinary, legal, technical meaning. in law there may be so many legal meaning of the same word. So work is defined in the copyright. And it defines work in 6 types. Sec2 (i) lists 6 types of work and it is to be read with sec 13, where it says that work means literary, dramatic, musical, artistic, cinematograph and sound recording. And the work is original. The meaning of original in copy right law sense. It is very important. In copyright law sense? In trademark and in patent law sense? Because senses are different which is not the common sense? Because in common sense what the meaning is, we concerned about only the legal sense and that legal sense is as given in the statute and as dictated by the court. If the court has interpreted the meaning of the authoritative word is the law declared under the sec 141 of the constitution of India. So work, original, It does not mean new / non obvious in the copy right law sense. It has two attributes, 1) it must originate from the author

2) It must not be a copy of some other work.

And each of one of us is unique. We know and even others know that in this. There are billions of people billions of size billions any come, I am not sure but this is the generally accepted belief, thumb impression of any two individuals is not same, so see the uniqueness. So if i say something on say subject, and you say something, necessarily there must be some difference. In copyright the most important thing is that originality has a limited meaning. Ideas are not protected by copy right law. In a sense ideas are not protected by IPR, we have to be cautious when I use we say so. When we go to patents and designs, this statement will not be whole truth completely; there will be some issues with that in copy right the originality relates to expression not to ideas. For that to explain the difference, something, same ideas, same story, same narration but expression different. So what copyright protects is that expression. *Deluxe film*, *IPR society* all these are leading case. *D.V.Modakcas*. one theme is that what copyright we have to take only expression not the idea though may be that expression with a new idea. You have here two experts from the patent law. Here again patents. What does it protect? It protects an invention. That too in India. If we go to the definition of the patent in 2(1) (m) patent means a patent granted for any invention under this act. That means there is procedure, requirements. Invention is defined in 2(1) (j) invention means new product or process in involving any inventive step and that will have industrial application. So there are some requirements that it must be new. Newness must relate to product or process. And that must involve inventive step and must be capable of industrial application. New is what defined in the act. But product or process is not defined in the act. 2(1) (l) i was reading the decision of the supreme court *UOI case* the Sc declared the provisions of 2(1) (l) as. I was surprised. Because there is a strong presumption. Every word used by the parliament or the legislature is necessary otherwise it would not have been used. Legislature is a body comprising of the reasonable man

doing reasonable things in a reasonable way. So we cannot just so there is a definition of invention which is defined under sec 2(1) (j) and it is anticipation. Two types of anticipation.

1) by publication 2) by use. Then there is a definition of inventive step in sec 2(1) (p) and it talks about inventive step which is the feature of invention. What is that feature? What is the technical advancement or has economic significance or both. The wording is necessary that it must not be obvious to a person skilled in that work. Difference between novelty and inventive step is an invention which is anticipated by a single prior art referring though it is not said in the act or said by any of the high courts to the best of my knowledge in India. This has been mentioned by U.S.court. Earlier there was a practice in the patent office and now that line has been deleted. That decision of the U.S. Sc may be used. Now, that is not there now. So if in the alleged invention is anticipated by one prior art that all the essentials of the alleged invention present in one prior art it is not new. But it is possible that one feature is present in one prior art and one is present in another prior art and the person is still in the art, and who is that person is skilled in the art. Law is not saying manageable in the art. Difference between knowledge and the skill, like I may have lot of knowledge in law, I may, so far as the practical side of the lawyers is concerned i never got an opportunity to prove my skills in the court and before the patent office that. So skill, knowledge no doubt they are different so skill here is taken away not in ideas. I may have a great idea. Patent law is interested in a tool or apparatus or a process that it will be a tool, then there should be new.

Participant: (not audible)

Dr.Ghayur Alam: Necessary connect between high pricing and patenting or half patenting medicines which are beyond the reach of an ordinary Indian, that he cannot even by half patent in his research, or in India when we have the party when people do what have the meals to afford one square meal a day so these are academic questions for the time being so as I see compulsory licensing mechanism is a fair mechanism and it does not compel to take away from you the , it says do it since you are not doing it let somebody else to do it. Any other point?

Participant :( not audible)

Dr.Ghayur Alam: so far as it's a very good question and in Bharat glass v. Bhopal glass work, Supreme Court of India. I let us see one practical side. In very city and district almost registration of same piece of land is registered in the name of more than one individual. So, in this case, i will be first to file the petition, if you are the second one. May be that both the applications are filed in the same office of same branch which are at different places. Or if you are willing, one of the requirements under sec 4 is that there must distinguishable. And if there is a procedure of cancellation under sec19 of patent act, one may go for cancellation. Say that look the conditions that I got it first and there is no distinguishing feature of the both the designs.

Chances of copying is very less. That on the same idea it is very difficult that the expression will be substantially same. In copy right law when the matter comes before the court the threshold is whether the two works are substantially same not identical and the test is that whether a reasonable reader ordinary reader, lay person will be confused. Or will consider one as a copy of the other and in R.G.Anand V. deluxe Film before new Delhi, drama homey Hindustani a special show was organized for the SC Judges top watch the movie they went to the court and then delivered the opinion that, and that Drama Homey Hindustani was all the idea provisional is that instead of calling myself as Indian I said that I am from BIHAR, U.P SO IN THE DRAMA THE GIRL WAS FROM madras AND THE BOY WAS FROM Punjab. In THE FILM ALSO SAME. Chetan Bhagat wrote a novel Two states again girl from madras and boy from Punjab. , Two states movie again. I donno always like this. Thank you so much. I have a class at 11:20 so I take your leave, hope to see you again.

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## SESSION-14

### REVISING PREPARED MODULE

**R.P: B.P.Singh**

**Namaskar,**

In the morning we have seen that Prof.Ghayur has given that a thought on different subjects in IPR, and its legislations in India. The prime objective of today our interaction is something in my opinion is a bit different. In the sense that we are sitting here. You are all Directors of Different Judicial Academies. We are in process of developing a module. So for time being it is not proper for me to tell that what are the legislations in the country that are open to public. Sever body is aware of it. You are all experts in the domain of law so to say. IPR is one particular field of Law, which may have some areas which are not that common. There could be somewhere we could elaborate something into why making a module and why developing it. I think my colleagues also will agree and that's why we are sitting together. What are the common things that a module must include in IPR and what are those things which we have to keep in traces attaching faces too. In the process I will take your opinion too. Because once you talk on vertical education we have to practice horizontal education. So I will take your ideas to assimilate that of mine ND COME out is precious. Ideas once get together sanitizes. And the effective thing in normal in patent we called two molecules mixed together they need affect, my colleague who is a pharmaceutical expert himself. I am looking at his patent. so it gives good view and enhances its ability So that is the whole approach of developing this module. One thought multiple thoughts. So that is my approach to look at it. General thing and this will certainly help us in developing a module. Structure, canvas of the module was reframed these ideas/ slide are much useful for all of us. That what is IP, Intellectual property is all the basics of IP is what? Anything which is created from the humane intellect be it patent, design, trademark, geographical application, plant variety, whatever you call but everything has been generated originated from the human intellect and there is a quotation in Hindi too. A property which has been originated from the intellect of an individual found almost everywhere in day to day life. You start your morning toilette soap, tooth paste, tooth brush, pen, pencil, books; mobile etc whole of your surrounding is IP .we need to go anywhere to search any of the things. Because many years ago we used to book traunkers to talk to a person there in Chennai. And after booking we have to wait 2/3hrs. When the trunk used to get we used to call you and you use run from somewhere. Today we are talking to somebody sitting the California even mid of the night. So this is the development in science has taken. While reading law we must have understood that science and law goes together. We don't know which takes lead or no. so is the law , it has gone3 without any leaps and bounds. We have developed that.

Now the question comes here that what a judicial officer of district level will required knowing about IP. I think you are not looking at anything beyond it. Or if I am looking anything beyond it

please let me know. (Participant), attach to it, imbedded in it not beyond it. Can somebody fire somebody? There are separate laws. Somebody slaps somebody. There are separate laws established. Criminal offences embedded in these laws .Of course yes. So I am talking the whole thing. So anything which is embedded in IP laws , a Judicial officer must look at it and in the way that as Mr. Alum was talking that monopolistic right we are giving from public domain this is right to some body. Just ones right to explain this idea to you.

One slide, this is though return for patent but applicable to almost alright. You see (a) anything which is in public domain is allowed area .Lets practically assume that all rights are there whatever things are there in the public domain, everybody is having knowledge of it. Now, as per your own human intellect you will develop something this means your human intellect or your contribution to that particular public domain knowledge is very important. After that you come out with something which can be your work or invention, as you were telling wort for copyri9ght, invention for patent, and mark for trade mark. Whatever you have developed here please I am allotted with patent, I am generalizing to you all IPRs. If it is a invention which is coming out of your human intellect. Then after that is termed as invention whether it is patentable invention or not is the subject matter of the existing statue or not here. Similar is the case with all IPRs anything we have listed earlier, whether you have added something to it and then you develop something now whether it is protectable under law or not. That got to be seen and if it is under law not debarred by law itself then you will have a patent on that otherwise you don't get a patent. So anybody now in front of you I must tell half of the audience wherever you deliver lectures they say, neem got its patent, turmeric patent is granted. Now those things I think after this interaction of each other that should go. Because anything which is available in nature, how can one take patent tell me. If this way you remember no patent can be taken when there is no human intervene. it is as simple as that. So what could be human intervene, you just COOKED up something and brought it. Neem seeds you brought it? is that your invention? It was a method of extraction of neem oil which was patented. And we wrongly confuse that neem, was patented. Earlier when the oxygen used to dry the neem, and meager amount of oil is to be extracted and there was modern method where 90% of oil was extracted. So why do they not deserve the patent. So no neem, haldi can be patented if the human intervention is not there. I will just end the slides.

So please read at the bottom read one: there is a very beautiful question and in your reply this idea came to my mind.

Abraham Lincoln has said this "whenever ther3e is a conflict between human rights and property rights, the human rights should prevail and so was the decision in Compulsory license in India", my PhD work also is associated to arts, how the IPR which are so called monopolistic rights serve public in a better way. This is upheld by all courts above it because any IPR statute gives you some right doesn't mean you that you are going to use that right. No right is absolute in nature neither it is given to you for misuse.

So Abraham Lincoln was right then and right today also. Because in India we practice also. The Judge while deciding a matter the first and for most background one must have that I am going to educate the right of this individual is the whole of the masses. if there is a damage or etc or if it is an adversary situation, there will you can have some view but if there is no adversary rather your rights are going to affect the whole of our nation. Then how you are going to educate them. If Mr. X and Mr. Y, two persons are there I take X's right due to Y, Y's right due to X hardly difference is going to be created but X right against the whole of India, where the rights are going to affect the whole of the society that matters. So that has to be borne in mind. This is the mindset of the, this somehow or the other in module we have to fix it, not directly you cannot write that, please do that or do this. You will have to develop something by which this idea percolates. Now ordering can suffice, I think you will have to convey this meaning somehow in your write up. Once you put your write up, this mind must be connected. Because matters to district judicial authorities will come for the adjudication only in infringement matters. May be that in other cases where the statute show rights that this statute also is an offence but rarest of rare cases such situation have not so far arisen., If you so permit may I take this?

So in the sense that today whatever,

Participant: can I make a submission? If we go through this time table, it is module sharing by all SJA then it is advising prepared module and it is presenting the revised module. First let me tell you with all respect, Dr. Ghayur Alum Have a lecture on the laws, but didn't give us any module or anything. Now the question is we should prepare a module. And after preparation of the module we can discuss these aspects, If sir you have any prepared module that you display it we can know the aspects.

R.P: I am very happy that you raised this issue. I asked this issue well in advance with the Nasir. I was under the impression that module development is not a one day work on IPR and that's why I am outlining because I was give the impression that you all have 17 have brought the ipr module. To my understanding there was that nothing is of a standard, today. So this means we are lacking the tender where the issue and what we should focus. And it is that knowledge of law is well in abundance with all of us, IPR may be an area where some confusion, ideas must be there. So we have to clear that. Ideally speaking I should sit there and you should present. And I should correct your points where ever you are done. But that is for 17 for 17 of you to present I think that will be a situation we will leave on to Ms.Nasir to do that. Broadly what should include in that module is that I am going to highlight. So if You all permit.(discussion)All you must have brought your modules. Whatever I am here to tell you is the content as desired by NJA. Yes, I coming on to that after this, because this is the first thing I am giving. Not schedule, he is coming on the content of the module. What should be there in that particular module?

Ms. Ananya:

Ms. Paiker Nasir, let me tell you one thing, the module that was prepared by West Bengal Judicial Academy on the IPR, not only the IPR law but all the 4 subject matters that you had asked us to prepare was presented before the Hon'ble committee of Good Governance in Superintendence. i mean which supervises the activities of the West Bengal Judicial Academy. Comprising of the Hon'ble Judges of the Calcutta High court 5 in number and after going through that it has been approved by the Hon'ble committee, so as to say that it must be having some standard. otherwise the Hon'ble committee wouldn't have approved it.

R.P: let's not, my idea is not to offend you all. Please excuse me if that has been communicated

Her plain reading was that this is the as per the NJA wants and this is the module which have brought so. No offences please, we are learners. As you said that it is approved by High court, with all due respects to the High court there are very few High court Judges these days who adjudicate these matters. In Delhi, justice Muralidhar, Justice Ravindra Bhatt are the names which can come to our mind. But very less Judgments. Justice Khanna. Slowly many people are coming. i am talking 10 years back hardly any. It is a different pattern, i means different fire of law which is evolving in the country. Still there are certain legislations on which there is no SC judgment these are almost any.

Ms.Paiker Nasir: Our experts think that you should make a main module on those lines. We have the module from West Bengal, A.P and from UP.

R.P-2:T.V.Madhusudhan:

Instead of lecturing now, as you rightly point out preparation of module is the most important, if you permit me just I will speak for 5 mins and then start do the action of. Okay?

The point what i mean to say is, speaking on the acts, interpretations has no relevance here. Case law studies also has no relevance. The only one point I want to make stress is that in fact just for 5 mins sake i have made small topic. generally what happens, the infringement cases comes to the court, and what IPR office will do, is where the cases go to the next level. If you look at patent office we have appellate board and from there to High court. District court does not come into picture at all.so there is no need to talk on that. When module especially for district court Judges is there no need to discuss all these.

R.P-1:-why i am interpreting is please, Our Judgment on appeal in appellate board and then to High court, District court does not come in being, we are talking infringement dear friend. i am sorry to differ my friend. We are talking infringement and role of judicial authorities. We are not talking about where my judgment is going too appealed.

R.P 2: which case goes into the level? That's what I want to say. The infringement comes not below the District courts. So when infringement comes before the district court what aspects to be looked into. So first is generally the technical problems, one has to understand this patent is a technical documents it has to be understood first. What is the criteria for grant of a patent right, the same is the basis for the opposition for the infringement. The four criteria novelty, inventive step and statutory exclusions. Okay. So what is novelty, it has been generally defined as a new. Newness is correspond with the date of disclosure. Which is the actual date of priority. One has to understand the date of priority and date of filing. Because date of priority is that a person, patent can be filed by a foreigner in India. It is not restricted to Indian citizens alone. Suppose a foreigner files in a foreign patent, it comes under the 135 section convention route then it is date of disclosure in own countries it can be called as priority. So the newness is linked with the first day of disclosure. So on or before that date should not be new, that's the criteria. Where the inventive step comes it is not obvious to the person ordinarily skilled in the art. As in the morning it was discussed, skilled person experience. Those difference we will not discuss that you can understand. So that is inventive step. When you say that when I am able to collect the information some different portion/part show the journals or magazines are come to know, if I conclude collectively, in such a case that fails inventive step. The interest applicable is that piece should have. It is multiple productions. Coming to statutory exclusions, where in the Indian Government said these are the inventions. But still i don't think that they are right. Let us not discuss these issues. These are the technical requirements. And then some legal issues may also come. Which come in the grounds of appellate. Next comes procedural problems, these also may not come at district level. This is how it is being understood time binding is very important. Because in general course and patent office there is vast difference as far as time is concerned. Time laps are very restrictive. It cannot be extended even by any one. Whereas the courts if you go for a reasonable .these are certain basics. Now whatever that is presented by different states, different modules just we have selected in my opinion they are properly made. Probably i will ask madam to distribute the topics. Those guidelines you can prepare the modules. I think that will be sufficient. Thank you very much.

Ms. Paiker Nasir:

So may be what we can do is after going through SJA modules, we can built up a structure that all what we want to incorporate in the module and like y'day after preparing that structure we can revise those

And we can do our work. Participant: (discussion)

R.P 1: the thing is we are in hurry to prepare the module and i agree that. Since you are in hurry to make the module, such ideas are always better, have you seen my module? Now it is coming to my hand just now, no comments. It is like Madurai temple, you go there and they ask that please write a comment. This means a gun is put on your shoulder that you please give a comment. It is

coming to me in my hand in front of you. We were to listen to this module today and leave the comment. Hence we came with a preparation to give a broader thing, this appears to be comprehensive one but one has to read. My friend has summed it up in 5 minutes. So we have understood that he has seen three modules in 3 minutes I am hats off. Now you please, you can give 10 mins, to tell you that what are the things in my opinion the module must contain. If was about to tell you the same thing if i wouldn't have been intervened. Because I already had inputs from you all in the tea break, I was focusing only to that the same line.so nobody wants today to build up a module try to understand their mindset, they do not want to make the module for today also. May are we go. Okay. So Why i ma telling that first thing is human rights and property rights are concerned. The 2nd thing that we call I am specific to patent, all legislations in India. Balance when we say monopoly right once we give to somebody whether or not we are going to justice the other community. In patent act itself there are n number of positions before grant one has to check. Pre grant position, post grant position. Making doubly sure that you are not going to infringement right or we are not going to de immune the right which someone has already had. Well, after grant also there is procedure to get it for registration etc. Now here comes the matter for the judicial officer. That the case may go tomorrow of course the revocation cases are not to go district level, as the patent act need to amended for that. Patent act says that suit of infringement can be suited in court not lower that district court but how ever if there is counter claim for a vocation that got to be necessarily go High court. This means i do not see a possibility of cases no advocate and being going to district court. But certainly infringement matters will be certainly pouring. Earlier it was only design which was going to district court but today the infringement of patents also will go and that of designs, trade mark, and copyright will also go. So there balancing the legislation in one word that somebody says that what is the job of Judiciary is? My answer is Judiciary is the only makes balancing. Balancing between two rights. Till now 2 rights of monopoly as well as the general public. Here we are talking on a specific context. I will skip this. why this objects are very important, emphasis and colors are added from my side this is quote of SC of India Judgment on novelty and inventive step in Pratap, Rajasthan, I think almost all of us are aware, if you are not aware such contents it cannot ignore incorporating in our module. Because this is the only judgment where you have seen that whether the person is skilled in the art. These are like, everywhere people are talking and wondering. Here the judge's way back in 1982 they have derived the phenomenon in a fascinating way. Again a specific I am giving that, these cases give you a total fund on to how the Judiciary should look at the cases. If at the grant of patents quid pro quo. Quid for disclosure that you are granting something, if a person discloses something you are giving him something. Remember back day doctors, he used to touch your nerves and tells that what are you affected with, and treat you. Y'day his son knew 50%, today his grandson doesnot know anything. Whereas the thing which is documented, today we are knowing much more than that which was disposed. So a whole thing which is on disclosure, this judgment is also very important. Why people are always telling that what should be waived and what should not be. I think you are aware of UDHR, from there the IPR has been derived. So in introduction you can always attach HR with IPR in introduction only I am talking. There is institute where i have

developed a module and the basis i am telling back, in introduction you put all these things that correlating HR and IPR. Art 17, 21 i have quoted in verbatim from there. So this should form the part in general introduction. It is having roots in property. Here you can see in R.C.Cooper case it's a normal connotation property of the highest right that a man can have which can depend curtailing others rights it includes one of the vested in incorporeal things. Now this is writ petition. I have quoted all those things. So this means IPR are no other rights very much a property right in itself. No different than here and there. If you are building the module.

#### Constitutional provisions to IPR:

Lot of research went inside to give this slide imbedding constitutional provisions. Exactly quoting from which schedule which line, from where this has been taken, how it relates to IP that has been told, judicial officer must notice. If judicial officer must know these. because if they do not know the constitutional; provision vis a vis what is the IPR, I think they're not going to study what is a patent, trade mark, appellate board nothing. These are the creation of a statute. This should also be include3d. These slides and write up should be different. You have seen the MSC approach. And in could approach international agreements and treaties was could approach. In my opinion all statute related provisions should come in must approach. As IPR rights are not isolated rights considering Vis a Vis the whole of the globe. There are certain rights which has got certain roots in some treaties today he say our complying with TRIPS. Because obligations are there to comply their law with TRIPS agreement as it is signatory to TRIPS. This means in legal provisions once we write introduction, in IPR what is the statute which is relating to the judicial officers must be written. So this means infringement and in certain aspects all laws have got certain penalties in the offences. Those things you want you can put. But that's what everyone do. But the statute which is relating to infringement must come beautiful, that this is the statutory requirements. We have all got to see this requirements and got to apply these requirements. This is separately available in all the laws but we are preparing a module where we are giving all time solution where in one word solution. Single window solution. Where different problems are there. They are going to prepare a module and give it to them. So this means they should have all statutory provisions national and international. So we have finished two chapters. Then we come to understand whether these statutory provisions how because commentary we are not going to write, because all Judicial officers qualified unto, to have your own commentaries in your own way. So what you are going to give them further case laws and case laws could be from apex court, from relevant high courts. In my opinion all High courts on same subject. I am also talking about the common law provisions which are equivalent to infringement. So in trademarks certainly you will have passing off. Minus passing off what are you going to write? So you will certainly wants to be but passing off is not with all the statutes. It is only with the trademark. So once you deal trademark after infringement you are allowed to do passing off also. And there will be a separate passing off judgment separately. Justice Rumapal's beautiful Judgment I believe that almost all my friends will be aware where she equated Sifi.com v. Sifi .com. It was a trade mark infringement act, the defendant was infringing the trademark, he said that no, it's not a trade mark, sifi .com has not been registered. A

different word was coined by the Supreme Ladyship there, she has equated the domain names to business identifier. Trademarks are business identifiers and domain names are business identifiers, hence both are equal. So see the intelligence of Indian Judiciary. So such judgments also look at, it's not that all Judgment should be included, relevant point give emphasis to your content at that particular aspect. So judgment of Justice Rumpal over sifi.com you can write if you so wish and if the board so allow. In trade mark means you do. All infringement were the statutory provisions internationally that also you can include. Because infringement are basically included. No appeal and no education and no matter, because we are framing the laws for district Judicial officers. Whatever he was telling. On each of them you should have a chapter. One chapter on cases of patent act, one chapter on each laws, I think, in my opinion, not more than one chapter.

Now burden proof is one aspect the judicial officers must be very critical. Suppose you bring a suit from infringement, who has the burden of proof from abusing the right? The plaintiff. In this case, patentee. In this case patentee told that Mr. X is infringing my right. So burden of proof is on patentee to prove that he has got the right. If this is the process patent, the patentee can escape by telling that I found out my process and I am not getting one process but my product is same. In that case the burden of proof shifts to defendant. These are the tricks where the judicial officer has to apply the mind. He cannot put on saying you have to prove. Evidence Act was amended way back in 2003 or 2005. And SC has given ruling in 2014/2015 to recognize that don't appeal ordinary document evidence rules, apply electronic rule. 15 years we take for the laws to get implemented. Electronic evidences are very much evidence act has been amended to accept electronic evidence sec 65, 66. Anwar case. It is an eye opener to all of us. Since they will apply this law or burden of proof, it is there in only patent law but nowhere else. Otherwise normal IPC, there the burden of proof is on the the person who is alleging. But here the burden of proof shifts and given in patent law only. That's why we have to be tricks. One has to look burden of proof is tricky so matter should not be understood accordingly. So this things should come, burden of proof is a separate portion after infringement you can just do.... We are going to put in module. Now infringements in IPR as last slide he also prepared this way that a summary seed, not all. Since one chapter is given all of you, this particular portion is given. How much it is given, how much he can go. Trade mark is one law which I appreciate always. And which gives enormous boundary to Judiciary. it says that minimum is so much maximum is so much but then Judge can decide and they can go minimum and to any amount, maximum to any amount. So these are the things which normally if you tell, You can say that look, it is three years infringement and 6 months/3 yrs or 50 thousand /2 lakhs the crux if you are not going to take in the provision in the trademark law that Judiciary has got this as well. So again we will be missing out certain points. So this will be that trademark that particular portion on to the level of the Judge. Once I will tell a chapter of the patents and all statutes, what it should contain. It should not contain at that particular aspect. So judgment of Justice Rumpal over sifi.com you can write if you so wish and if the board so allow. In trade mark means you do. All infringement were the statutory provisions internationally that also you can include. Because infringement are basically included. No appeal and no education and no matter, because we are framing the laws for district Judicial officers.

Whatever he was telling. On each of them you should have a chapter. One chapter on cases of patent act, one chapter on each laws, I think, in my opinion, not more than one chapter.

So this will be that trademark that particular portion on to the level of the Judge. Once I will tell a chapter of the patents and all statutes, what it should contain. It should not contain whole of patent act. Not required. Matter has already decided. Patent has already been granted, it has come for adjudication to me on infringement rights. What right a particular person had. Because I am going to defend it that only when I know what is the right. What right a patent holder possess after granting it. So a right of patentee sec: 48. In what circumstances how we should use his rights, sec 47. What are the things expected out of him after he has obtained this right in the public court. If he is not doing any of this could be challenged any time by anybody. These are the things which should incorporate in those things, infringement procedures and this. I believe, if you do this, we don't need to do anything further because the question of interpretation by every Judicial officer of its own. We have done our job, if we do this much. I think 10 mins i kept. In enforcement also C.P.C, CrPC I have told and this Delhi High court amendment i have quoted because in my opinion, some of your colleagues were telling me that different cases is different. I could understand, i am not going by that theory also. Because if parliament is enacting something it is for Public good. And the parliament has raised the limit of the lower court, it paper solved reported cost upon India that District courts have got the power now. Because of the raising of the jurisdiction. All these patent litigants who are there High courts and if their cases are started transferring to lower court they are all seeking, why, please give us some time, we need to reconsider the whole of the quantum of the monetary involved in this case, as whatever we had earlier was rough calculation. We will calculate a fresh and come. We will all raise this limit to 1 crore to get adjudicated to High court. That's the notion going on now. Thank you so much for your patient hearing. Now if you give me 2 mins again west Bengal and three slides have been made, modules have been given to me. On is West Bengal, A.P, U.P. roughly i will just read the content.

Concept of IPR and its jurisdiction, introduction, patent and its infringement, trademark, copy rights, industrial designs, geographical indications, protection of trade secrets, then again trade mark then the same. I think they must have expressed further along with that. Once approach patent complete it. And vice versa. Not that you take on get it, their infringement at one place. There is a beautiful book written by Sri. Ramakrishnan. He was a scholar of some National Judicial Authority/ NLU. I was involved in the opening of that book. There in GNLU. Infringement fall kinds in all statutes at one place. (Discussion)IT is not the subject matter of discussion.

In A.P. module economic justification, inter property statutes , nature of IPR, case laws and how does this copy right work of she has gone with her won copyright. Infringement she is talking on copy right only. Then comes jurisdiction and how it is related to C.P.C also. Those provisions I forgot to tell you but you can where ever there is linkages are there that even C.P.C., IPC can be brought in. In trademarks, registerable trade mark, distinctiveness, passing off, remedies. So this

is madam relating to copyright and trade mark and course curriculum from U.P SJA introduction, protection, subject matter, modern developments, need for protection. Who has come from U.P. okay he is not here. And author ownership under all IP laws, civil and criminal liabilities.

Primarily we should mainly focus on to trade mark, copyright and patent, GI. If you go in detail these four things you can just cover due the primary knowledge.....

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**SESSION-15 & 16****PRESENTING OF REVISED MODULE****R.P: B.P.Singh.:**

Are you talking about patent grant or patent infringement? Patent documents are related as largest technical documents in the world. Yes of course granting patent means commercial exploitation is permissible. There are less case laws. I have come with a slide where out of 600 cases 300 cases were decided in the favor of patentee. And patentee cross the bar cutting from all Global applicants. The heading is, which is written by SC advocate IPR needs a better PR. Because people say that in India there is no better protection for IPR. Judiciary interpretation is not right. It is not the case so. It is only that Indian Judiciary for better than in comparison to their counterpart. I had opportunity to interact with the Federal SC Judge of U.S. and their views and our views of certain HC retired Judges in Indian perceptive is far appreciable. The ruling given by the Indian HC judges' is far better than them in Indian context. U.S. Counter parts came to us and they were not allowed by all of us to join together with Indian speakers to deviate<sup>3</sup> from their Majestic and they went with distinct that they never thought that India is so higher at IPR footing. Similarly the case with the Judiciary also. Reasoned order, you open and go through the HC Judges orders. Justice Prabhasirdevan's, madras Hc Judgment is there, go through that. Now to we have such people and never before that adjudicated very good IPR. You can refer the IPR appellate board. Those Judges are ladyships and they are welcomed to this place. Justice Uma Paul has also come here. We derive knowledge from their Judgments on IPR. I really love to read such Judgments.

Ms. Paiker Nasir:

Allotment of topics to the participants for research and to come up with module.

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## SESSION-17 & 18

### CHALLENGES FACED IN PREPARING TRAINING MODULES AND IDENTIFYING BEST PRACTICES FOR PREPARATION OF TRAINING MODULES

#### **Prof. Geetha Oberai:**

Good Morning,

Today we have our last session. one first on challenges. You prepared all these modules, of course this ones is very good animal welfare. This is the best one which we are going to circulate. But let's in our practical challenges you face or example, Let me reframe the question. The question is that, you are into the SJA and whatever strength and infrastructure you have I Don't know. Whatever Human resources you have. And you are asked to prepare a module like this. So then what would be your challenges?

Participant: good morning madam, good morning to everybody and this situation has made us to refresh the subjects by preparing the module and to maximum extent we well conserved with the provisions of the acts which we have gone through to prepare about the learning.

R.P: no no I am not asking about learning/ take back message, I am asking about some different question asking. That you are at your SJA suppose you have made this on cruelty to animal. But this you make together all o you. But you are from Chhattisgarh, Karnataka. You know how many faculty you have full time, part time, how many administrative staff you have everything and you know what your Judicial Academy has, actually, whatever you are I don't know what you have, what you don't have, you know what you have, in that situation suppose you are asked to prepare this training module by yourself, not with the help of other SJA. This is made by 21 SJA. Alone yourself is asked to make this module. I mean your, suppose it was given to you. What challenges / difficulties you will face.

Participant: the difficulties in the sense you if the library is an important factor which a academy should have.

Prof. Geetha Oberoi: But your academy has sufficient

Participant: yes our academy has sufficient library and the other thing is regarding this technology at factor.

Prof. Geetha Oberoi: so, you should have good library, all types of technology

Participant: And the good R.Ps.

Prof. Geetha Oberoi: what is good..?

Participant: and also the staff who well acquitted with the norms, that is what is called as the subject which has been given,

Prof. Geetha Oberoi: Subject knowledge. Yes,

Participant: In subject knowledge we have to....and for that purpose time we require.

Prof. Geetha Oberoi: Time

Participant: In SJAs induction courses are going on and only two or three faculties are there,

Participant: There is no time for preparing comprehensive module.

Prof. Geetha Oberoi: So regular induction trainings and 7th less Human resources.

Participant: Dedicated people toward research. Do research work

Prof. Geetha Oberoi: First of all you will employee then only we can know whether they are dedicated or not dedicated.

Participant: Dedicated means they should not hold any different job.

Prof. Geetha Oberoi: So, exclusively for, research staff.

Participant: In our state we have sufficient staff but we are lacking....

Prof. Geetha Oberoi: But typists and stenographers cannot help you in preparation of the modules...then...it's not question of typing we have to know how to operate your computer, a typist cannot make a module for you. That you are forgetting.

Participant: we can adjust in typing

Prof. Geetha Oberoi: but you are saying you have so many officers.

Participant: yes we have officers not staff, directors, Addl.Directors etc.

Prof. Geetha Oberoi: Module making I don't

Participant: Otherwise we have all facilities, good library. We are in the process of...

Prof. Geetha Oberoi: What other challenges you face, secretarial staff, nobody is going to accept that,

Participant: identifying the....

Participant: NJA has prepared so many modules and we can share it with all the academies. Module for refreshing course for JNFC, NJFC, POCSO, these are known subjects and it will not take much time but if it's a new subject it takes much time. First we have to read the law and the case.

Prof. Geetha Oberoi: Now you have prepared one module all of you that is called professionally a module. Have you prepare a module in tune with this. You may prepare collection of case laws and collection statutes that itself is not a module, Module is quite a bigger project, it likes book which can be used exclusively only your Judicial Education institution. It can't be taken by anybody else and it is not useful for anybody else for law schools and NJAs it is not useful, Judicial educational institutions.

Participant: Budget problem

Prof. Geetha Oberoi: Budget? 15 crore is.....

(Discussion)

No, Actually I will tell you the truth is nobody has refused any money , now every penny, single penny, the new policy of the govt is every single pie you want you have to send them a justification why you want that and there are some technical experts may be from the government department CAG you can take help, CVC if you have state vigilance commission, those officers who engaged in the financial service, you can take help from their side, they can help you , may be you can take them as consultant on deputation, I mean these are bigger policies that you have to decide but money is not reduced but how you ask for money is definitely changed and how money is released is definitely changed. It's not like 13th finance commission and you have 15 crores and you can do what you want. Now at least you have to frame your budget and fight like we fight for our dissertation to award us Ph.D. you have to fight for your title, that's the only difference. Financial constraint. Any other thing you can think of.

Participant: See mam if SJA prepare a separate modules for themselves there will not be any uniformity in the modules,

Prof. Geetha Oberoi: We are never thinking of having something for uniformity, that is not objective, because yours and that is never been an actually idea. The idea is first of all you should know what is module, that is important. Now what you include in that module of course, there are lot of things to be included in the module, it's like a bible book. If you know, all of you know that what it means to make a module then over years that uniformity can be achieved. You just started

this process, at the first stage not, anyone can be expected to having like, it's not a factory product, as I always say, we should not aim at very factory product like things. No clowning business over here. The business is we should understand what we are making rather than clowning or copying it or making uniform, there is nothing uniformity in it, we should understand what it should be there. What should be the content of the module? So, you may make one module successfully all of you but then you realize when you make this module that look preparation of module will need the some knowledge resources that is called your library or technology. These are the sources where you get the knowledge inputs. The of course R.Ps will come very late, it has no relevance. I have noted down that good or bad R.P but it has nothing to do with module. Module...

Participant: On all sides he is good

Prof. Geetha Oberoi: No no, that is just a lighter side, don't take it to heart, even our place we have to decide, we have to make a bank of people where who are expert in that field should be included in the module. Now this would be also apart from, for example SJA invite Judges of their own HC other High courts, Supreme Courts and when these Judges come suppose they want to deliver lectures so you should be there with in them that module want them to be delivered. Many times R.P. comes over here and we tell them that this is the class, this is the objective and this is what we want. Y'day or day before y'day R.Ps came I said I don't want you to teach directors what is commercial law or what is IPR. I want you to help them understand, what could actually go into the content of the module they make or the syllabus that they make or curriculum that they make then they will do this training at their level. So you have to brief actually. And that briefing this document helps you that this is the curriculum on this particular subject and this is how you have to deliver. Delivery part you can leave it to R.P. some people have power point some people are extempore, good speakers some people want to divide into groups and do some group activity. That you leave it to person,. Because it is all teaching part is very personal. Every person takes his own you know the stand he can, that's what we want to do. People say we don't like giving lectures but in the end I think they end up with giving lectures. That also happens. So all these things are there. They say we will invite questions, i have seen all the people like that we will invite question. But if they invite questions then would like, you should never ask this question. That kind of issues also there. So module will guide that person. Module will give that person who so ever has come, a person may be in your higher and higher, above you. Whom you can't say much. But if you present a module your this dilemma of how to guide that person will also go away. Because you can say that this is the course content. This is what we want and I put this vey politely and diplomatically without offending anyone. Hierarchy of the position in the country. So module therefore is very helpful but yes, R.Ps you have no role play except that you decide experts. Here R.Ps because you don't have much actually freedom when deciding about R.Ps. Somebody must be visiting dignitary and we will ask them to give a lecture. So, experts yes, identification of experts that would be a big problem because you really have to study. I remember I have gone for Himachal Pradesh SJA , there is someone from H.P. Okay they are organizing this program on PCPNDT act whom to call who are new persons because very state is repeating same bunch of persons. Can we

have somebody apart from these people? So you have to actually have very wider bank of experts and that wider bank, which means and include national level. Rather than just your state or local level, I do not think if you want to do expertise to any one for example Cyber law I think you will be linked to explore him whole India right. Kashmir to Kanyakumari. That should be an idea. Subject knowledge, yes preparation of module will require subject knowledge and that will be major challenge that do we have the one or two areas, she may have one or two areas. Suppose we have 5 in Uttarakhand. I expect at the most 10 subjects expertise would be there. But law is like an ocean it never ends. This all is just a drop, not even a mug of water then subject knowledge and it cannot be gained over a night, believe me. That is major hurdle. Another major hurdle is time. Because if whole the time you are taking up conferences and big big shows and these induction programs, where is time left for study, reflection and preparation of modules. But one good idea can be we can engage consultants. Can you engage academic experts? Like y'day this person came Ghayur Alum, or day before y'day a person came that Mr. Navneet Sharma or that Ms. Priya Misra: Do you have, funds, have you made budgetary provisions for engagement of consultant. It's all related. Because if you have made budgetary provisions then you can engage consultant and they will do this task. You can also tie up for example Maharashtra Judicial Academy prepared for PCPNDT act, when I was there as additional; director Mrs. Joshi, now who is the High Court Judge, she had given a two united nations population fund, UNFPI. So can you engage with these agencies, do some and prepare module. Because they may have experts with them. May be you can contact your state, see the national commission for the protection of child rights is there plus this UNICEF.

Participant: in fact they are coming to us for these kind of programs and they are helping us out for organizing these kind of programs

Prof. Geetha Oberoi: Organizing it is alright. Giving experts to come and talk and give lectures to Judges is alright. I am talking about module preparation. Yes, but for that you have to tie up they are lot of things in between. Of course Time, regular induction, training, less HR, exclusively staff, research staff are not there but you can take model of Delhi SJA which has research staff. You can take our example we have so many interns. We pay interns like, sai. sai you are from which year;

Intern: I am from 4th year mam

Prof. Geetha Oberoi: 4thyr of LL.B. please sit down. Now look we always have 5 interns in every month with us like sai, from NLUs and three interns who are doing LLM with NLUs we pay them and give them all, we give them stay, food and everything. Isn't that sai?

Intern: yes mam

Prof. Geetha Oberoi: So they help us, they are quite helpful. I mean if you see our newsletter, one or two bright interns also have helped us in our report, now sai will be taking notes and giving us

report and all these we put on the website. So, there are innovative ways of thinking. You just need to think about it. You already have National Judicial Academies doing it. May be you can ask your High court also that sir, they have this facility, can we also replicate at a SJA. But then it is up to you. But you have to treat people well. One thing which you must understand is if you don't treat people well, then it's not so good. The message goes very badly and financial constraints as I said, there is no financial constraint except the fact you should know how to get your money. Getting your money is an art from the government. For that you have to engage experts who are at ministry of finance, your state department has always has Finance ministry. You can tie up with your finance secretary, chief secretary. And ask their help for preparation of module. So things can be there, challenges are there I do understand. Moving from that challenge, I want all of you are carrying this book which Paiker Nasir has prepared. There are certain questions which can be answered, if you open pg. no. 74, the first day you have asked me some questions and I didn't reply because answers are there already in this book. So I was wondering why I should answer. Let's open first page 74. All of us are on the same page. If you see last para the modular approach, can anyone read for me this Participant: The modular approach lies itself particularly where the short courses which have been developed for specific training purposes such as to provide specific training, relating to specific occupations or industries, for the most part driven by local demand in such cases the course content tends to be clearly defined and its views to provide the specific service rather than to be part of long term training , for broader professional development that is to say it tends to use to effect the , typo of already existing skills and knowledge. Currently however there is ample evidence that module & of courses are being widely used. They will develop skill and knowledge basis with block release and system in education, modularization often has been used in the recent past. It talks about advantage as well as some disadvantage there. in short term courses this may be good approach but if you want very long term effective learning then they are not very sure, whether modular approach is good or not. But at the same time if you any one can, sir can you take this paragraph?

Participant: there are major administrative advantages stating from the approach and educational provision perspective. Modular approach contain can readily be, hence recognition of prior.....The advantages of ....the self-content and nature of module in that there can be program more subject experts. Each presenting its specialty by other features/ trainers.....while problems may exist.....in other places where this is not....

Prof. Geetha Oberoi: So as you said content, this is actually about content. The same question that you raised. Who will say content of the module? But as this last line says that for very course actually it may not be that important to have very specially in Judicial education I understand it if it was a law college, legal education, it is very essential like you study first this and then you study that, it goes like we study, in spiral modularization. But that is not required in Judicial education because it is always a chunk based that all officers would be the some chunk of knowledge. You are not actually taking the same and also every time you have, example for refresher courses you have different people, same people are not repeated. Especially in bigger jurisdiction, of course I

can understand if it is uttarakhand or Manipur Judicial officers are bound to be repeated b, So you can have prefer modularized training as the Bruno says. But the other which are bigger with 1000 judicial officers or two thousand it may not make such big important consideration that what should be the sequence of learning. In that whole chunk of knowledge that we are thinking of giving over a time. Now if anyone can next para.

Participant: The association of modular course and behavioral approaches to compliment based training has been recognized for a long time. Inspection of range of modular courses currently employed in different specialist areas is likely to reveal a high proportion, heavily influenced by earlier behavioral theory. The continued influence of seems to have occurred because many modular course designers lack a thorough understanding of cognitive and effective elements. It's not been incorporated into more reason competency based learning positions to overcome the narrowness of the earlier to strictly behavioral approaches. That reflect very strong interest in cognition and problem solving and post for this organization and management systems which require the training or flexible and possess substantial problem solving abilities.

Prof. Geetha Oberoi: so we get from this paragraph is that it's we have to make persons or problems skill, we have to impart skill in problem solving issues then we have to have modular approach. The only thing is that over the time that I will get from the paragraph is, over the time, one of the basic disadvantage of module is that you cannot okay, I prepared it and it is kept and it can't be used over the years. You have to actually new issues you have to keep adding on it, the most challenging aspect of this would be that this document has to be re worked and added and subtracted after every 6 months or 1 year. So, this document has to be redesigned. IT has to be like a working document. Module, at least for adult learning, a professional development education has to be this. Because every year we will face a new problem that your system faces now we are all thinking about delay we are not actually able to come out with something which is above the delay , there are many other problems which we are not studying the system. And we have to see that those things are also0 incorporated otherwise you will be stuck in one thing delay, pendency. We should come out with other problem system are facing and accordingly design our module.

I want you to come to the page, there is one danger it is given, anyone can read next para itself?that there is a danger given despite the cognitive elements one.

Participant: Despite the cognitive elements, in more recent sophisticated statements on competency based ideals and they tendency to develop relatively narrow and behavioral , conceptualization, modularization is reinforced and likely to continue to assert itself unless replaced by guiding principles which are specifically oriented to cognitive aspects of training. This is because competence based training is essentially concerned with performance, there is also a need to recognize on account of its fundamental characteristics of division into smaller units has the inherent potential to fragment the information. it has need argued that there is a danger with vocational program driven by labor market may result in loss of theoretical general used

knowledge in favor of specialized knowledge applicable in occupational tasks not conceptually related to one another. The objectives of broader concepts.

Prof. Geetha Oberoi: Only this much, see basically the danger that this author is talking about is, do we want to make a thinking human being or do we want to make a human being like a factory product, who performs very well. Now I think Judging if you see it's a profession of very knowledge oriented profession. It's actually a lot of mental work is required. You know no physical work in Judging. So definitely when we are thinking about building good Judges, it's also about enhancing their cognitive skills, rather than performance skills. Performance skills can be enhanced by the management training it's not the work of a judicial academy. But of course now judicial academies or education has to go everything under the sun. But the basic and most important work of any judicial education institution should be that you have to be like thinking human being. You have to enhance the ability to think. Think wisely, broadly. So cognition is very important about which we should all be bothered about. Because, here the other para says, the literature in the cognitive psychology skill learning and developing of expertise providing clear principles to guide the course development. Yes there is this tendency to make more performance oriented people but if you take help of other literature then maybe we can actually help yourself from just, you know putting all our efforts into performance. It's not just about performance, its also about thinking ability. because the whole actually the business of adjudication is what, A said this, B said this but then what I said and what I hold moves right in the given situation but why I think so is more important and then what I say. The reasoning is very important so cognition is very important and therefore we must take help of other disciplines who can actually help us to come out of this approach performance. How many units, hours? Because Judge is not a ordinary bank or accounts officer who has to give oh this much is tallied, entered. He is not a typist how many pages you have done. A judge is much more a bigger profession. So you cannot. In your education of just performance oriented goal. Education has to be thinking oriented goal. How to make people think, differently and widely and therefore this, Thai why I am saying that we have to take help of other disciplines may be to come out with a better modularization. Otherwise we are stuck in how many units? What is performance?

Pg. 78, anyone can, match the problem, anyone can read this for me? Practical consideration.

Participant: Much of the research in to human learning, the cognitive skill learning prospective in they laces that learning does not always or often follow the strictly, logical analysis of proceed quickly. The complexity of human learning as for example the retention and forgetting and the development of the pattern skill learning. Nice, neatly packaged solutions, modular courses because that tend to be intensely concentrated particular in terms of time and content really have enough time allocated to ensure etiquette, practice and feedback. The author, could teach issues of modular courses to complain about the no. of students who have not secured the learned skills from previous modules, which are essential prerequisites for on the current module. Feed backs

and elements to essential to ensure a retention in long term memory and refinement of initial skill to more sophisticated levels to assess in the later problem solving. skill applications.

- Prof. Geetha Oberoi: See when you asked the first day you people were posing this question to me. Let me give training, we are not sure that they are applying their training. There is answer in this. This learning happens over a period of time. There is no quick, learning is not like something. learning is a long time process even if you say that I have learnt without any difficulties that you said, what are you people doing, Judges are doing like this. but there is answer that morality doesn't happen and also the Judge is a person, you are not the only source learning. That is most important for you to say that the such situation may arise .person is learning from peers, seniors, juniors, from everywhere from BAR, even from other stake holder./ There are so many other ways of learning, you can't be the actual only source to which the knowledge flows into his mind. That's just not possible. You will be actually discussing law. These are important questions, therefore the time and content law is issue. that when you make a module say you are going to make module for family court Judges, you have to think actually that can we include law? Because people are already have 10 years' experience. Then of course one essential that many modular courses do not process in effective learning that self-content chunks of information. But they as in says later on that successful learning is dependent of integration of units of information. So you have to even for example even if you design now this course, you have to design Let's talk about this course this most course cannot be delivered at one time, all of you would agree? at least with this. whether it is 2 day or 7 day it doesn't matter but it cannot be done once at a time,. So, it has to be divided, so you have to retake that, which should be included in this 2 day special course and when I should call back same magistrates again and take the second part of this course. May be it may divide your course in to parts. Over a period of 6 months or 1 year. So, the information cannot be given once at a time. It has to be divided into chunk of information and module actually, its not chunk of in everyone get its own power. Now coming back to pg. 84. I just want all of you have look into it. This is spiral curriculum, important to all of you. Anyone can read for me?

Participant: the effective learning is most likely to come from when longer exposed to subject content numbers by when the basic skills are returned to additional compensate the students develop and more students .....pursuing, real, learning and problem solving. Although ..Formulated through reference skill... it is particularly..for vocational education where effective theory is the objective.

Prof. Geetha Oberoi: So, the Bruna the spiral curriculum is like you deliver some chunk of information at one point of time in your life and again call the same person, give that knowledge which already gave or at least see what is happening whether that person has learnt or not and then who want the second part or see how much he retains, what you said and then you definitely follow in your induction training without actually knowing them. As a big knowledge over the existing

knowledge, Bruna's spiral curriculum is about building module alone but about building first and second part. And they have given the very nice example. But the..

Participant: point 1 conclusion you don't need. It is highly desirable that learning to learn skills are taught and asked her before students commence modular courses. 2) Modularization tends to fragmentation units of knowledge to overcome this different tendency course design is must. Allow time for adequate revision to overcome forgetting, plan to implement module knowledge with the work place. Have modules specifically design to integrate theory and develop problem solving skills. Concept of spiral curriculum provides sound guidance in course design and to ensure meaningful reputation, practice and assessment. Interns of guidance, offers to teachers in presenting courses. As a means of integrating desperate modules into meaning whole and providing evidence of consistent in skill application. Previous consideration must be given to ways of ensuring that adequate time is planned for practice and feedback before the submitting assessment takes place. Modular courses designed with due consideration of these factors and properly implemented we have the potential to ensure effective learning while skill returning all the advantages of organization.

Prof. Geetha Oberoi: This is all about the modularization that I wanted. All of you to think about. And this what we did. Coming back to next session. I would think that instead of. I think we have talked to each other enough. I was thinking, all of you are going back today right. Most of you will be flying today so you are here till lunch hour. so I was thinking that now you can take a break and of course you can say something that whatever you want to say, whatever feedback is there you can give me in 10 to 15 mins. After that you can take a, not lunch tea break and after tea break if you all of you can individually prepare those hypothetical situations for ethics training. So our policy is that we will give to , may be cancellation and recombination happens, changed nomination happens, so we give to , whom so ever you are nominating A,B,C please give it to him. This is nomination. (Discussion) Now we are going to meet only one more time, last time. For induction training. All of you are doing that induction training and do you think because that module if you remember was prepared by shetti commission in 2003. And we are in 2016, 13 years! Do we need to over on. This is a bigger question because new subjects have come and they scope computerization at that time, during the time of shetti commission to this extent it was not envisaged. The way we have progressed. So, therefore this is the question for which we are meeting. All of you can give suggestion and before that we will also have 2nd and 3rd we have meeting, of April. Director in charge, no, Judge in charge of Judicial education . From each High court. So we will be meeting them also. we will be presenting this module there and we will also take their inputs and they have some changes to suggest in that meeting. so that 2003 induction module should be revisited. Also in some SJA they have already mad their own amendments they can give it to us that we have changed. ours doesn't look like4 shetti commission. where this is something else. You give it to us we will discuss with this Judicial education. I know some have you have sent it. And that program is also shortened that I have to inform this also, we have retreat

of Supreme court Judges, because all Judges are coming over here. So we have shortened the length of your program. So it won't be from 18th to 22. It is 20 to 22.....

So you can give because you have given you the feedback form in which you can write that you feel like that it should be for three days. We have no issues. we can even give 1 day. Because we are also having so much work but when chief Justices and Supreme court decides in the meeting to give 5 days then we have decided to give for 5 days. But there are suggestions from participants that it should be 3 1/2 days. You can have some documents with you that help in reducing this Program length would be any way reduced in the next year. Anything else?

Participant: (discussion)

Prof. Geetha Oberoi: That is there, education and thinking and the background that we can't help it. Like High court Judges they are like, please don't calm any Judge for us. We want anyone but not Judge. Tomorrow I have stress management and I am having all doctors and psychologists and neuroscientists

Participant: Okay for those subjects it is fine.

Prof. Geetha Oberoi: No, even for other courses, For constitutional law, they don't want to hear. High court Judges don't want to hear Supreme Court Judges. They want to hear big experts. This is called ... We are having Summer retreat where not even one Judge is coming. We are having all international law. We are having RBI Governor that is why I am telling. See ...people are from particular background, then they also get from their background. Let you buy designer Rohit Bansari or you will buy Mangal bazar saree its your choice, its not my choice. I can't enforce my choices on you. It depends even on the mental framework of a person. A mental framework is according to your education.

Participant: On this subject we were also getting from different academies, and there I was talking to Delhi Judicial Academy and other Judicial Academies also, but the same field came, the Judicial officers are required at the district level that they preferred Judicial officers to share their experiences for, and that is the best part of the conference.

Prof. Geetha Oberoi: No, That is not the best part of training that is the worst part of the training. Because then you are producing a factory output. I did it this way, I gave injunction in this way, I gave bail and you also give bail. This is what happens, will you give bail or not give bail. poor Judicial officers they say I will give bail, I will not give bail, you people who gave bail are correct and you didn't give you are wrong because I gave bail in this case, this is my case. Is that the education, and that is not the education. That's training. That is what Prof. Mohan Gopal did, he said there is a difference between training and education. Now you have to make choices whether you want to train people and Justice S.B. Sinha was opposed to it, he said training happens

for animals in circus it doesn't happen for Human being. Human being, the education is a bigger word . You make people give people ability to think and let them think whatever they want to do in that situation. But training is so you do this. This is now 20 to 22, yes I am right. So I will be writing to all of you also about this, I am just informing whether most of you are here, except 3/4 judicial academies. So, I mean, You have to think what you want to make your Judges, you are actually in charge SJA at present. You are faculty member, diirector, Addl. Director, Joint Director, what evrr you are , but you are some say right, in which you should be expert. and just sharing, some time also one more thing that is happening , I am sorry to say about it, I find people very frustrated and then they give that frustration training to others also, system is bad, its horrible you also not be promoted. So, the poor judge from junior division , the moment he comes he is thinking whether I will clear probation or no then after 2 yrs. probation is cleared whether I will become SJC or not in 5 years. You are not able to think that there is a bigger purpose you being a Judge rather than this career avenue. its not just a career avenue, its much more bigger thing. And that cannot be given by Judicial officers because most of the time there are good experiences or so for every one of us and then bad experiences also./ But what we have to say when they come they only narrate their bad experiences. This is not the way. You have to think you have to, for example, you have sent your child to a school, now can you give child that much freedom which teacher should teach him. You will select the best school right. And you will say my dear son this is the best, because of the all the credibility that this institution has developed over number of years and so you go there. Now can you go and interfere and say this trencher you want or this teacher. there will be anarchy actually rather than education then. She is judge she get bail she was called for explanation in writing now why this actually, this is our system in problem. The moment High court or any District Judge calls for explanation suddenly we have this antenna out means something bad with us. It may be a routine explanation, every day7 I sit over here in my administrative capacity and I give 100 explanations for what I have done. But it doesn't make me some bad person. Explanation is part of your, so some where you have to train Judges in the cognitive ability to think that calling for explanation doesn't mean anything bad. The moment you are able to raise the root cause, just your fear factor will go. You have to see what the root cause is.

Participant: In Judiciary we don't call it as explanation.

Prof. Geetha Oberoi: So, what it is called?

Participant: directly they will (not clear)

Prof. Geetha Oberoi: but you are attaching the stigma to yourself . But why. Explanation is a part of life. You have to explain what you do.

Participant: Judges will give opportunity of hearing but they are not getting opportunity of hearing.

Prof. Geetha Oberoi: But then why you have, that is why, these young Judges ( discussion)

but there are people, experts who can help you to get out of that block. What ever that block is , psychological block the moment I called for explanation , oh what is happened? why what is happened , you have to be strong Human beings. What will happen, if you are right you are right . You should stand on your ground.

Participant: After getting many memos.

Participant: I am taking classes in my Judicial academy, huge people have lot fear, when the commission has called..

Prof. Geetha Oberoi: so, see this is what you are doing. Why you are poor Judges, why you are telling them explanations, why you teach explanations. why are you making Judges scared. Don't give them these issues. Thill them to work without fear and without favor.

Participant: What I am saying that we have seen (discussion)

Prof. Geetha Oberoi: Oh explanation can be called from me, oh I will see to it what I am writing. You are making him conscious. He will think 10 times before writing. What should i write or what should not I write. This is not, That ys why I am saying as a state Judicial Academy if you are there please understand that your task is to create a Judiciary which is as with out fear and without favor. Don't give them this kind of exaggeration. Explanations.

(discussion)

Big High Court Judges also will taker up these issues that young Judges are over burdened they have too much work, why the unit system is imposed on them. why there is so much fear, the bail issues which i have already taken up in many cases , you see our program schedule with High Court Judges, we have always taken your interest and consideratio0n . tomorrow also it will be that. Impact? Again don't talk about impact again I am not producing the factory products.

Participant: madam we have that session on impact assessment ,

Prof. Geetha Oberoi: It's not in that way, I think I never said impact assessment in that way, I said that whenever we call for session we should know what we are delivering, whether it is liked by person or not. the methodology of overall education assessment. That is totally different and I have given you different types of forms, that is impact of, like madam did that they gave one primer and then they can saw the judgments but anonymously, you didn't select those judges only whom you give training, Maharashtra Judicial Academy. POCSO cases. and after that you got the Judges. that is called impact assessment. Like if you, I mean think about these issues , I am leaving upto you, you people also thinki9ng people and you people know the best as far as but lets not give, I

remember one Judge came and we were doing leader ship program and she looked at the pictures of all CJs and he said , what leader ship look at these idiots or crooks. I mean I don't think that is really to be told. seriously you should not be doing this. What ever happens in life, good or bad both happens, whether personal or professional life. In professional life also it will not always be good. The GOD will give some time bad in life and we should prepared to face difficult currents also thats all. and so youngsters when they join the profession you should not intimidate them with these kind of examples. You know if you do this then explanation would be called. Its your luck, your part of life, you will deal with it personally or professionally. Don't spread a rumor there is lot of rumor mill also going. I have heard registrar vigilance when they come they have told us that, the moment we go to district court there is a big antenna out over there. we said we go normally, may be to attend someone's marriage actuallyand we just visit that as that is a court. Then everyone was like registrar vigilance has come, so that rumor mill o=is also mixed. I think with this , this is enough for discussion, we are again meeting anyways for three Days. Participant: I just would like to tell you a word, Thank you.

Prof. Geetha Oberoi: So we will meet again on 20th April

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