

SEMINAR ON MANAGEMENT OF RESOURCES



Verbatim For-

P-983

SEMINAR ON MANAGEMENT OF RESOURCES

29th April – 01st May, 2016

Submitted To:

SEMINAR ON MANAGEMENT OF RESOURCES

Dr. (Prof.) Geeta Oberoi

Director in – Charge, National Judicial Academy, Bhopal

Programme Coordinator:

Mr. Prasadh Raj Singh

Law Associate, National Judicial Academy, Bhopal

Prepared By:

Mohd. Aadil Chaudhary

B.A. LLB 4th Year

Institute of Law, Nirma University, Ahmedabad- 382481, Gujarat

SESSION-I

STANDARD SPECIFICATIONS FOR MODEL COURT ROOMS

SPEAKER: JUSTICE ANJANA PRAKASH

Justice Anjana Prakash: not bore as boring you know as the subject but unfortunately this Prasad has thought I was the only person who could if you know conducted this boring session, I don't know what to speak about but since anyway will make it a little interesting with the our collective efforts ok, that's a promise that I have to take from all of you because I really don't I can't rely on myself on this. What else and where are you all from...

Participant: Kerala

Justice Anjana Prakash: Ok

Justice Anjana Prakash: need not to stand

Participant: not audible

Justice Anjana Prakash: those were more interesting actually. Ha I was telling Prasad and read this article you don't need any discussion after that, still let's see something new we might come across.

Participant: not audible

Participant: Nagaland

Participant: Leh

Participant: Hazari bagh

Participant: Rajasthan

Participant: Haryana

Participant: Balaghat, M.P.

Participant: Chhattisgarh

Participant: Orissa

Participant: not audible

Participant: U.P.

Justice Anjana Prakash: ok, ok...

Participant: Andhra Pradesh

Justice Anjana Prakash: that's it, so we made an introduction , there was this one time I was arguing before the Chief Justice, Jharkhand HC and another smart judge from Tamil Nadu was also there at that time who had also done the Rajiv Gandhi murder case, so I argued one appeal he allowed it, the next appeal also he allowed it then the third appeal also he allowed it, then I had come to know that he was very quick you know, so I had seen how he wanted the lawyer to be prepared, so had gone and prepared as per his wishes so it was very quick then we were about to start the fourth appeal he said enough enough I have enough of your voice now, tomorrow (Laughing) so I guess you will also say the same thing at 12 o'clock enough enough now we heard you.

Justice Anjana Prakash: I dislike this sitting arrangement though it's not instructed but we should get out of old days that males sitting at one side and females at another. Would you people like to have some change, so let's switch places?

Participant: yes mam sure, why not.

Justice Anjana Prakash: I would say that every posture that we take you know are so deliberate you know, and only with a view to give message to the others that we meant business and nothing else. so sometimes it seem a put on an act but you know that was essential at that point in time to dispel the myth that can also work as men and we see that there has come a change and we need to go with that. I had never experience a problem with a client or at profession due to my gender, so you need to see yourself as a lawyer and the position you hold and nothing else.

Justice Anjana Prakash: let's start, I don't know the reading material whether you people have glanced through it, there is some material that how technology in the courtroom are changing the way we litigate (thik hai). now this something that I would locate it, it's in a completely western concept and you know it is NJA's figures that it must be your personal experience also that 97% of litigants in India are poor and illiterate on the one side all of you must be knowing this, so these western concepts do not subscribe you know to their needs, we have to think in terms of something which is more basic and essential for us and the quality also just doing things for the sake of doing I don't think that really is to be done, because unfortunately in our country what I find that I have grouse against everyone who does who does planning..

(Switched off the mic)

When we reached that place, we found the circuit House was so pretty and I could not understand that how a Govt. structure can be maintained so well as there were

curtains were so artfully placed and was made up khadi and was surprised so I asked a young boy (k yaha pe sdo tha k ye kaisxe hogya) so he replied that there is an officer from Kerala who put his mind and done all this (k jo local cheez hai usi ka istemaal kiya jaye na k bahar k) when we began talking then he said there are lots and lots schemes of govt. what happens is that when you do things in a very routine manner (ap apne hisab se uska implementation kr diya magar Kodarma me they took care k jabi b koi village ka scheme tha) so in that they use to sit with the villagers and then they use to take decisions accordingly, so that the villagers are involved so as to avail the facilities as per their own convenience. So that kind of involvement is required to understand and NJA should also take note of that that the stakeholders should be taken into confidence to understand what is the requirement and meaning of a model court, speaker asked questions to participants.

Participant: one which provides the basic facilities to the consumers

Justice Anjana Prakash: Yes yes..

Participant: not audible

Justice Anjana Prakash: Right, in western countries you know there is a concept of giving a chair to a person to sit (yha pe kuch nhi ap khade raho) here we have a huge difference to courts it is so unnatural k if you are sitting it does not mean it is enough difference. One is not ready to acknowledge that even a work of a worker or cook is also important and is as important as yours probably. This difference needs to be bridged, it is a basic facility. Can you not offer those (Witnesses) to sit?

Participant: yes I have done that many a times in my court

Justice Anjana Prakash: this is needs to be changed, unless you consider it as a problem there will be no change. people in places like Delhi for them it may not

amount anything but in places like Bihar and remote areas it means a lot, it is a disrespect to a person

Participant: A witness in a trial is most important person besides the infrastructure thing.

Justice Anjana Prakash: yes, they are the backbone of a trial, in Delhi the condition is altogether different and it's far ahead than other states.

Participant: Now we have functional witnesses depositions complex inaugurated recently and is the third one in Delhi.

Justice Anjana Prakash: so nice... Thank you. this a suggestion we can give that is what I was talking to Prasad and I was telling (k think h) you have given us very good reading material but after reading this article you don't need to look any further but that is you know this is not conducive to our condition. We need to ask all these stakeholders the judges that how do they feel about the deficiency and the witnesses should be accorded at least some space where he can sit and be in his right mental state

Participant: we have offered cold drinks to child witnesses

Justice Anjana Prakash: Saket is said to be a model court in India

Participant: we are providing support person to the witnesses.

Justice Anjana Prakash: who is the support person?

Participant: usually lawyers or a social workers, from a panel we make and is not limited to POCSO cases but for all cases

Discussion takes place but not audible

Justice Anjana Prakash: all of us can adopt this practice, there won't be a problem in that.

Participant: Recently in a TADA case of Abdul Kareem in Tihar Jail, one of the trial was there with me so every time he was to be brought to Rohtak and there use to be number of police officers to escort him and transportation expenses, so now the state has requested that the trial should be conducted with video conferencing now they have connected the Tihar jail with Rohtak jail so every time the witness is present I say record the evidence before the lawyer.

Justice Anjana Prakash: that is very good you know provided there is connectivity. So these are very good for places where you have reached a certain minimum level I would say but there are lots of states which have not reached that level. for example when I hear the cases I invariably ask for whether there is video conferencing available or not, because mostly in cases the scene is charged are not been framed because that person is an accused and he is lodged in some other jail. it is unfortunate that the judges they do not think that these things are within their control and they can do it, it's more like being exposed to it, where you are not stuck to CrPC where you are also exposed to the fact that this can happen. There is no exploration on this.

Participant: not audible

Justice Anjana Prakash: Right

Participant: Mam in Haryana also there is in case of rape of women as a victim, where an FIR has to registered, there are women lawyers are there as volunteers and at the time of FIR their presence is essential else FIR is not registered, so that the victim women can consult the lawyer as a support person and can register proper FIR.

Justice Anjana Prakash: in this context I will say that there was a women judges and lawyers Conference in Delhi at that point in time I had suggested that there should be a single window system for women should be there where all kind of problems can be solved in every village, suppose a BDO is not issuing a certain certificate, even that can be you know be redressed over there.

Participant: not audible

Justice Anjana Prakash: there can be made a list of women activist or social lawyers working for the women, they can be called in case of deficiency. There are lots of people who wants to help, only an initiative is needed to be taken. If a D. Judge goes to some district and he finds out which NGO's are working in which field, he can easily find out them and call them whenever needed by making a list of all of them as per their reputation.

Participant: Govt. has issued direction after Nirbhaya's case that only in presence a female social worker or police officer an FIR will be lodged.

Justice Anjana Prakash: from these social workers come who appoint them.

Participant: They volunteer and give their names to the authority, there is a panel of such workers.

Participant: In my place there was an NGO for children welfare but recently the case came up that against the head of that NGO a case as an accused for sexual harassment with children (girls)

Justice Anjana Prakash: Awww... This happened in Bombay also right. In remand home as well there is also so much of exploitation takes place a women, children been exploited because of that because of which they ran away. There is a

need of monitoring all these places and only then you will know what is really happening.

Participant: District Judge is the chairmen of a committee for Adivasi children home and under his supervision it is running.

Justice Anjana Prakash: District judges are supposed to do the visits to jails and NGO's but unfortunately visits are never made.

Participant: my only contention is lots have been said and everybody is adding up where there is some platform but what about that state where there is no platform, things are running above my head, because I don't have the basic courtroom facilities like no place for even lawyers to sit how can we think of witnesses, some of the states are well off but Bengal is far far far behind we are not having proper courts my lord, where do we accommodate even the judges, we have a wash-rooms but there is no water and maintenance of the same, the govt. is supposed to do this the financial autonomy be given to the judiciary and we are been pressurized that do this do that but how?

Justice Anjana Prakash: you are so right, I use to always say even in Patna I have a judicial magistrate sitting in a courtroom which was provisional under the stairs in absolute heat with that gown and coat now tell me how will that man will have any balance in passing any order and you go challenging in HC and think it is going to be an ideal order. What if you are been put in that condition, will you be in a position to even tolerate that condition for two mins. you will not be able to do it but have the option as a lawyer can just go and argue but what about that poor man, thus the basic infrastructure is not there and we talk about all about computerization and stuff but first you give them basic structures, give them residences and you talk about the construction of toilets, I will tell you when I use to argue I use to usually to go the judges thing only, the chamber which was attached there was never use to

be any water in that toilet, so what is the point of having a toilet which do not have water. So just to fill something that this courtroom have the toilet -yes tick mark, water tick mark etc... in old times in courts in all the old districts they always have big banyan trees and under which there were chabutra's that was such a cool place of course there were less accused less witnesses but the Britishers thought that this was a place where you need to provide so people can rest. There used to be always a well always in the court premises from you take water and what are we doing after the independence we treating our own citizens like this.

Participant: Yes my lord, we also been provided in our court rooms with mics and speakers in our courtroom though the premised is small enough that there was not a need of it.

Justice Anjana Prakash: what idiocy, right so that is why I say.. The practicality is missing if you ask to the railway minister to travel by train he will not he travel by flight and same is with finance minister.. They just take out the data and do not know the reality because what they give to us is Greek to citizen

Participant: Lordship because of SC directions Govt. has sent PC's to us thereafter a certain period of time it is obvious that due to wear and tear there is the need of maintenance but then the administrative staff says things in such a technical manner that we feel really it's a big thing will take time like AMC is not available and the same thing is never been done, it is forgotten. Now when we have started CIS how to deal with the situation, we become helpless and we then have to that work by our own sitting till 12 at night due to SC instructions like to bring the undated case down. And no one listen to us and registrar general say you will have to do it.

Justice Anjana Prakash: this is to be noted, we are not here for the frustration but for a cause for a change, these things are needed to be heard and sorted because this is ridiculous, mindless.

Participant: there has to be a system for the stress management for judicial officers because that's what is common and a biggest problem for better functioning

Justice Anjana Prakash: right

Participant: somebody should be there to keep a vigil, nobody is seeing into our requirements things are been said by SC but issue is what we are not having and what is the more required thing.

Justice Anjana Prakash: through a knee jerk no system works.

Participant: in Shahadra court there are all kind of basic and required facilities from litigants till judges and there is no issue of such material resources but manpower, there are so many cases pending that as per the average judge the burden is so high that it's impossible for them to deliver a wise judgement in appropriate time.

Justice Anjana Prakash: So that means give him RO water and tell him to faint.

Participant: we have worse bar in Haryana, sometimes there is no lawyer or the other is not there and we insist them then they say what is the interest of your lordship in this case only, can take up another case and if they make a complaint against a judge then the whole integrity is doubted by everyone.

Justice Anjana Prakash: yes, in some districts they are very aggressive as well. When I was travelling I met a lady judge who was transferred from Gujarat to Rajasthan and she come back to Gujarat now. She was saying about the strike in Rajasthan, when an advocate has stated that a bench is to be created in some place so the lawyers went on strike, the PM, CJI, Law minister all said that there is no such proposal and they all were on strike for 60 days. At the end of it she said if tomorrow if you people do not come I am going to dismiss the case and pass orders.

So the next day these lawyers have to come but still were adamant and said it does not work here then she said I will issue the contempt notice and she did that when they were taking her lightly and then they all started their work like before. Therefore you need to be firm enough.

Participant: Condolences are done at noon rather than in the evening and for so many days that it affects the functioning of courts.

Participant: Zonal judges in some districts it is been found that they are very active and places they are in inviting Zonal judges the administration so it creates a difference if is been done on regular basis then what is happening in District Court can come to the high court and through that to the SC.

Justice Anjana Prakash: right, in Bihar we do have a system of yearly inspection.

Participant: Govt. has sanctioned for the Gram Nyayalaya for the last two years they were not getting any building over there for it, when I reached there I asked and requested the administration the authority which handles it to allot place for Gram Nyayalaya and together we identified a place for it and now I have two buildings for that. This we can achieve by due deliberation.

Justice Anjana Prakash: it is to be seen that is it workable or not. We need to work together, there has to be the will to accomplish things, where is that. Many a times you will find that administrative officers do not cooperate but you need to request and even if not coming then adjourn the whole thing saying that person could not take out time for this thing and let him then answer the authority. We are part of a system so we need to take along every other department as well with us, so as to function in a smooth way. There cannot be a strait jacket formula one needs to cooperate and personal commitment alone works.

Justice Anjana Prakash: Model courtroom is not a utopian vision, it is achievable but efforts are needed to be put accordingly

Participant: best practices to be adopted and be appreciated

Justice Anjana Prakash: Right right it should be note that

Participant: not audible

Participant: not audible

Justice Anjana Prakash: the core of the problem is; it is Trust Deficit, we don't trust at our own officers, people have their ego with them to adopt good practices, they shy or feel bad to adopt it where it is in their own benefit, people all around the world do that.

Justice Anjana Prakash: I think its 11 now...

Discussion takes place - Speaker- I think there should be a uniformity in the infrastructure and where everybody is talking about the infrastructure we are still talking about the improvements

Participant: We don't have roof in the court and temporary measures are taken and then again in next season the condition is same. And they have put carpet to hide their own wrongs the PWD people, there is no proper floor and to hide that they have kept carpet on it and in monsoon it's all messy carpet is in water and smells.

Justice Anjana Prakash: who puts carpet in such a hot weather?

Participant: A judge should be a member of planning committee at the time of construction so that it can be put into consideration the views or convenience of judges as the premise is to be built for them only.

Justice Anjana Prakash: right, like in Bhopal airport, old one was so good and now we have to wait for so long for our luggage and it takes long and long and so long... what is the use of it. What are you providing us?

Participant: PWD comes up with an estimates which are so exorbitant that at the time of inauguration of court building in Hoogly, Hon'ble J. who was inaugurating said that you want 1 crore for this building, we have nothing to say it is between PWD and the Govt. in one of my district they have asked for coolers and a shed, and when I talked to PWD gave an estimate of making that shed that is 6lacs and I did not find it apt so as a district Judge I had to take responsibility and then through tenders from outside as I have certain amount for office expenses, it came down to Rs. 185000/- only

Justice Anjana Prakash: Imagine

Participant: this I was not supposed to do but I had to, it was supposed to be done by PWD and administration and what fund we have is restricted to particular head and we cannot make changes to it, it is not in our hands.

Justice Anjana Prakash: there is a need of some flexibility

Participant: PWD had removed the wooden beams and replaced it with the iron beams, what they wanted to do is to take that wood with them but I refused as it was courts property and not their and the same was utilized for making up chairs as there were no chairs available in courts to sit. It is an old saying in Bengali you are given no power but you are the Sardar of that place.

Justice Anjana Prakash: very good, great effort. Its time so let's go have tea and come back again.

SESSION-II

**MANAGEMENT AND MAINTENANCE OF PHYSICAL
INFRASTRUCTURE IN COURT ROOMS**

PEAKER: JUSTICE ANJANA PRAKASH

Justice Anjana Prakash: will start the session with what I have prepared and rest the discussion for what is a Model court room, who are the stakeholders the judges, the court staff, the lawyers and the litigants. No need to note down everything. For judges when we see it is the expectation of the judges and of others such as court staff, the lawyers and the litigants. So when we talk about the model courtroom we see both sides of the coin that what exactly a judge or a court staff or a lawyer expect but also what is the expected of them. So unless there is a balance between the two, I don't think any court can be a model court room. for ex. as you said in A.P. you have a model courtroom by way of an infrastructure but that alone is not a model court, the judges expectation is this that the work load should be such so that he can manage the work load. Now how do we balance it? Somebody has to put their thoughts together to see how we balance and create a model court room. Then there are various kinds of courtrooms, there are some where for example the family court where the entire family comes sometimes. A child comes, feeding mother comes and there are some court rooms where witnesses are led, evidence is led. So how do we prepare by way of infrastructure, the different court rooms are

there and different requirements this has to be kept in mind. at one time I was attending a session with family court judges and there was such a sensitive thing by one of the judges that madam what happens is that sometimes there are women and men who come for conciliation and the child is crying so much for milk and there is no place for her where she can feed her child. Now do we ever think of such details when we talking terms of model courtrooms? We don't and that is where actually the consultation and imagination of planner is worth reliance. Other it is completely of no use, like you said mikes are put Pc's are put without any connection, so unless everything is put on record we cannot have a model court room.

Participant: not audible

Participant: We are celebrating birthdays also in courtrooms.

Justice Anjana Prakash: But there has to be a space for this, so how do you manage that

Participant: In our court (Karkardooma) it is a regular court and two family court rooms are there and it provide facilities such as visiting rooms, feeding rooms, but the problem is that these are provided 1 km away from the court rooms, and lawyers went on strike to prescribe the HC to shift this place near to the courtrooms but High court denied the same.

Justice Anjana Prakash: what waste of expenditure imagine, public money gone down the drain.

Participant: not audible

Justice Anjana Prakash: what I had in mind was that when we are talking about under trial prisoners can it happen that the court itself is linked with that particular

place where people under trial are kept, but unfortunately in India there are so many so I don't know, it is a good idea or not. But suppose if there were some magistrate who were part of that jail premises where all that they did was in a past remand orders then there would be no difficulty in producing these under trials otherwise some excuses we have...

Participant: video conferencing is best for all courts

Justice Anjana Prakash: yes yes, video conferencing should be the ideal situation, then you can examine witnesses without bringing under trial to the court because the excuse they have for not bringing is we don't have handcuffs, petrol in van, not enough escort party, security is bad and so on.. Insensitive cases judges hold trial inside the court so you have something as radical as video conferencing, I think it should be the most acceptable form of remand or even of examination of witnesses

Participant: but there is a flip side to this, not in all situations and cases this can be adopted as there are times when the accused want to see the judge and try for personal request as this is also a right to him that who can better explain their situation better than themselves

Participant: they can in that case put a request at the time they are in remand home that they need to make a personal request.

Justice Anjana Prakash: right absolutely there is a flip side to this, and that we are not talking in terms of educated people, we are talking about the poor and the uneducated person who feels that he has no security in the authorities of the jail.

Participant: Principal District Judge every month visit jails

Justice Anjana Prakash: the thing is when you visit the jailer is there with you, so the prisoner is not itself personal hearing, he cannot take you into confidence at that

point in time. So when he comes to the court what happens is you have a personal hearing with him. When you have a personal hearing obviously that human touch is there. This the detail which is to be gone into you cannot have blanket kind of a thing that this works well in all situation.

Participant: Suggestion box system

Justice Anjana Prakash: again you are talking about an educated state which different from Bihar and Jharkhand.

Participant: In NDPS cases there are huge number of accused around 150 or more, so it takes more time in trial in commercial quantity as well as in intermediary quantity, what I am suggesting is for each district there should be separate NDPS courts

Justice Anjana Prakash: yes, there should be specialized courts in every district.

Participant: In Baroda we have a jail cell, where a lawyer. Panel of District legal service Authority, panel lawyer is in the jail everyday fore help or things and any of the prisoners can talk to him.

Participant: this done in our state also and is working very well.

Justice Anjana Prakash: this is really good, but this kind of system I don't think is there in Bihar, as I use to do lots of visits to jail and keep crying for the jail man dual there, there is a system of having jail visitors there the committee which is formed which is supposed to visit the jail. on the basis of their visits sometimes recommendations are made about the physical health of a person because sometimes if a person is like 80-85 and he can't without care do his daily ... in those situations the visitor is supposed to make a recommendation that he die in the comfort of his home, is so it was progressive and the jail manual was made in 18

century but unfortunately in most of the places there is no jail visitors list and this solely for the reason for what happened that people keep away from transparency. They think it's not a question of exposure to anything bad but the point is that exposure to a problem also they think that it is flaunt on their authority.

Participant: My lord fortunately your Hon'ble court has given us time of one month to do these visits.

Justice Anjana Prakash: great

Participant: we have jotted down around at least 16 points, let it be hygiene, cleanliness, any kind of any other thing. There are things in pints made that every judge visit should take care of all such things.

Justice Anjana Prakash: Progressive it is. I will tell you something very interesting on this, when our legal services Authority the desk came into existence I was still practicing J. Wadhwa had nominated me from the lawyers side, and justice Aftab Alam was there with me as the Chairmen, so I suggested that let's do a run of kind of jail works we have in the courts. so that we found out there were huge number of under trial prisoners in one particular Phulwari jail who were railway offenders now we found that railway offenders there were for 6 months and 8 months and so .. Without any information to anyone from Banaras, Hazaribad. Went there and had an interview, wrote letters and requested to send a judge there to visit and find out what is the matter. almost everybody among those prisoners pleaded guilty and they were all let off and before that I must say that Railway Board is the last priority where a judiciary is concern as of of you must be knowing. all the under trials offenders were sent to court but not the Railway offenders, then we tried to find out the reason which came out to be that in jail there were no workers to clean it, so railway offenders were kept for these works. See the

condition now. Is this what is supposed to be the condition. Such is the apathy now what the Railway Magistrate will do if the accused is not produced. So thus through video Conferencing to some extent may be it may be minimized

Justice Anjana Prakash: So when we talk about the judge's expectation according to me that where all the stakeholders are concerned there is requirement that the atmosphere must be such so that it is conducive for you to function, let it be the litigant or the accused. The basic needs are electricity, water, ventilation, cooling heating, sanitation, noiselessness etc. ... In addition I must say judges must have adequate law books, PC's, stationary and relevant forms. Along with the peace of mind to work, which the most essential thing I feel. On the other hand what is the expectation of an ordinary person from you?

Participant: Justice, Patient hearing...

Justice Anjana Prakash: I never allow them, all those who practice in district courts they argue dramatically and you can easily point out that who is an HC lawyer and who the other is.

Participant: Can I? I had one suggestion that the courtrooms should be disabled friendly.

S: Yes yes, even I was coming to that... not only disabled friendly but also Eco-friendly suitable to environment and things accordingly and not to follow the western culture blindly.

Participant: the carpet thing, it nothing but to cover up their left over work. I asked the workers to remove it, a in rainy season it becomes worse than ever so the person replied right now Mam you can at least walk, if this carpet will be remove you won't be able to manage that as well such is the condition beneath.

Justice Anjana Prakash: right right. Cemented floors use be so good but now they put tiles etc. which are very good and easy to clean but they are at the same time easily broken, so there is a need of things conducive to your atmosphere.

Participant: HC judge asked me, Why did you allow this (Bengal) building to be flooded with tiles, my lord what can I do, it's not in my hands, it is PWD, we are not even consulted.

Justice Anjana Prakash: these days we pay for more on visually and not as per the functionality. We talk about big big thing and forgotten basic things.

Participant: not audible

Participant: we are having an environment committee as well.

Justice Anjana Prakash: You see the Mayawati garden in U.P., what they have done is putted palm trees all over, now what is the use of it? What does it give you, Shade, fruits, anything? Why can't you plant Mango tree or any other which can even provide some resources to people in some or the other way.

Participant: Security issue madam

Justice Anjana Prakash: right abhi recently there has one incident took place.

Participant: Worse people in the police are put outside the courts for the security and they can't even handle the gun properly, so what to expect now.

Justice Anjana Prakash: absolutely, right. Even in Bihar, recently a lady was caught with some dynamite

Participant: In Hazari Bhagh court a well know criminal- Srivastava he had come for a hearing and was shot dead by another criminal through AK-47

Justice Anjana Prakash: There has to have a proper security plus equipment's else it's meaningless.

Participant: Recently in Haryana the gunmen run away and then the police and army they did not get any orders, we the judges got intimidation that our houses will be smoked, so we locked the houses came in the back under the apprehension that the houses will be set on fire. Then we sent the Message to Hon'ble Chief Justice, he talked to the DGP and only then some people from force came to our houses for protection.

Justice Anjana Prakash: Imagine the scare it must have created.

Justice Anjana Prakash: Now let's talk about that is what the expectation from a judge, somebody said quick justice, true but how to deliver quick justice.

Participant: In our place (Bihar, Bilaspur) there are orders from HC that condolence to be placed for after 4 in the evening but people there do it at 12 noon and when the evidences were going on in one magistrate's court, some group of lawyer came and started beating to that lawyer who was going through the evidence recording in front of the District Magistrate and when District Judge tried to help then they warned him, he then informed the police SP came and did not took any action and it was heard from people that let something happen because judges creates huge trouble for us.

Justice Anjana Prakash: Oh my god.

Participant: later in this case the District judge had to apologies from the Bar for this and within one month he was transferred.

Justice Anjana Prakash: what happened then, what actually happened can you see that, the whole system was demoralization of entire system, not just the judge

but the whole system. Who goes by the rule they suffer like this here. And we talk about justice to others what about the justice with judges.

Participant: Unless Advocates are controlled no no discipline can be maintained in system

Justice Anjana Prakash: that is why when we are talking about the model court room, we need to talk for both the aspects. That what is the expectation of lawyers and what do we want from the lawyers.

Participant: they want nothing but their interest to be fulfilled, like adjournments. The system has been totally reversed, now because now I have to if reject the adjournment I have to give reason unlike before.

Participant: same is the case with condonation of delay, it has happened with me, a delay of 4080 some days was not condoned by me, they had preferred an appeal before the HC, in reasoning they could not find any flaws and you won't believe that when I was a mini lawyer in the year 1992, I had appeared for one of those party and knowing that fact I have favored that party with this order of rejecting the condonation. I was aghast my lord. Am I to remember who all are party to cases I have dealt and the cases now coming to me? They asked me to give reasons, thankfully HC has dropped the matter after my reasons were given.

Participant: not audible

Justice Anjana Prakash: the HC should also be very clear on this thing that no hanky panky business and there are matters of 302, when applications are filed reexamination of witnesses because they openly say that they have compromised, obviously the district judge cannot allow that and then it come to HC and can you beat it, 302 & 307, k ab compro hogya hai lawyero ka, I said where is the law?

Participant: I say them myself, k take it, HC hoke aaye fir dekhenge.

Participant: HC says only one thing that Bar se adjust kar k chalo, be tactful. If cannot you don't have the capability to deal properly, it is your fault.

Participant: Public prosecutors, in even bail petitions no objection is placed, and when I asked then there is no material in the diary. Then I realized what is going on, in all cases he finds no material in the diary or what? Then I started seeing the diary myself, no more relying on him and he never assist you on any ground.

Participant: not audible

Participant: Mylord the PP is there till framing of charge, till framing of charge he will not give the brief to any work. Once that is been done then he disburses.

Justice Anjana Prakash: Arre that's where the main work starts, trial is the main thing..

Participant: not audible

Justice Anjana Prakash: the thing is lawyers think that they are the one permanent and judges are temporary and accordingly they behave and treat the way they want.

Participant: the lawyers are passing unanimous resolutions against the judges who are strict.

Justice Anjana Prakash: Yes yes, even I know a judge in Punjab and Haryana, the judge is extremely good and for some reasons what happened was he was sitting in hearing matters, and he said on priority I am going to dispose of these hearing matters, so the Bar went against him and they proposed a strike against him, and he said I felt so so demoralized and there was no one to whom I was could turn, so he

was basically from Tamil Nadu, so he caught up a good friend of his, he said you only think in terms of this whether you are right or it was wrong, if it was right don't feel demoralized as to what the Bar thought about you or other things and always think that whether you are a better person today then you were yesterday and that's about it, don't let others judge you for what you are. When I came to know this, I felt terrible.

Participant: In Orissa HC supported the judges and not lawyers.

Participant: not audible

Justice Anjana Prakash: I will you about my story, what happened was when I just joined, the transfer judges case it took place and in that transfer J. Wadhwa (When Chief Justice) and other took charge of the situation, as in Patna there were so many cases were pending, so what he did was he fixed admission matters of criminal appeal only till 12.30 p.m. and after that the judges will do hearing matters so the lawyers and he said without paper books and listed cases and said if any lawyers find a difficulty to argue without paper book you can come and mention before me and I'll adjourn the case, that was all listed, so the first day everyone went and said what 12.30 and all that. How then the admissions will take place, how the hearing will be done. The next day what he did was from 12.30 p.m. to 12 p.m. it was made, and after that everyone knew that he meant business and you cannot do anything and nobody could say to CJ that without paper book we cannot argue. So obviously you fall in line without paper book also people started arguing and this way 60's ka criminal appeal was ended and disposed of. So strong measures are needed to be taken.

Participant: not audible

Participant: they write anonymous letters to the HC.

Justice Anjana Prakash: anonymous here means that suppose if there is a letter which is unsigned by the applicant that's an anonymous letter but suppose that is signed by and the identity is mentioned then it is not.

Participant: I have also received letters with some name and in bracket it is written name changed.

Everybody laughing

Justice Anjana Prakash: Accha, then absolutely it is an anonymous letter.

Participant: we get it verified by whom it is been send.

Justice Anjana Prakash: that's what even we do, we ask the District Judge to make an inquiry for the complainant. An affidavit is needed nowadays. RTI can also be asked to us now regarding what is the complaint.

Suggestions for display boards, how effective are they in a judicial court.

Participant: there should be medical facility also in courts like first aid, like we are having a dispensary in our coming court building and one post office, also we use to arrange one medical camp for general check-up through legal aid.

Justice Anjana Prakash: Right the medical aid is very very essential in every HC they have an hospital nut similarly this should be in other courts also, because that is also a requirement and they require it more I would say because they have lesser options.

Participant: Like one Doctor and one staff nurse should be always available. As we need to check up the BP of even the officers

Justice Anjana Prakash: The BP of a witnesses before deposition.

Participant: not audible

Justice Anjana Prakash: The way we look at the judges is also needed to be changed, because when we say the judges should be aloof there is no doubt that they should be but they should not be indifferent. so just to break away between any dialogue between a lawyer and a judge I would say that there should be open meetings because see all of you are going to be stationed at that point only for three or four years, so you can't possibly built a relationship with any lawyer but suppose if the District Judge takes upon his side that all the judges sit on one side and go to the Bar Association and talk with them openly as to this is the problem and discreetly so what is the problem in that I am not been able to understand this. will tell you that as an inspecting judge I had gone to one of the my district and while inspection was going on I suddenly said we have time so why not go to the Bar, I went and met all the lawyers they talked to me and we said as an inspecting judge I am telling my judges is that all the old cases be eliminated anyhow, I told them to bring out the list of cases of all old one and put it in your knowledge and cooperate in disposal of the same. When people say tactfully I would say there is certain burden which has to be cast on them that it is there responsibility also that the District attains a reputation which is you know better than the rest. If such could be done may be I say may be there could be better results. Take your lawyers into confidence and try to make them part of this justice delivery system. They then accord a different respect to you.

Participant: not audible

Justice Anjana Prakash: right take the Bar in confidence as there is no harm in doing so.

Participant: In my court a lawyer use to take adjournments and adjournments only, then I imposed cost on him. He came back on track.....not audible

Justice Anjana Prakash: This is also a good practice, even on the date of judgement you come and argue, it's good to fix the date Ohh its time we already passed, itne boring subject ko interesting bana diye..

Chale...

SESSION-III

MANAGEMENT OF COURT RESOURCES

SPEAKER: JUSTICE ROSHAN S. DALVI

J. ROSHAN S. DALVI; Good Afternoon, now you are called PDJ's, so you are the kings and queens of your District and therefore you are in charge and control. Now this specific programme is to show you the infrastructural resources that our country has provided for you all to work to the best of your ... and your own heart and soul that you put into your work, which your country cannot provide which you have to provide, ok. so it is a matter of infrastructure and sensitivity, Now i have come here to talk to you about this zero budget infrastructure which I call sensitivity. Even if nothing is given. But if you have to work and you have to manage your court, so the two important words are court and management ok. so you are going to do case management tomorrow, so i am not going to touch case

management which is important. but when we are going to have the resources then what are those resources which are not structured in bricks but which you have and which you can exploit to the best of your ability to get the best result. that is what I am going to tell you about now when we talk of management you see we have got management institute everywhere in the country, have you noticed that engineers, army persons and scientists all come to management courts but lawyers and judges have not come, If we feel that we are in management and I dont mean managing as a manager which the court manager has to do because we have got that resource separate now so that work goes out but you have to do in our work to make it better and to be in control and if you are going to do that then they are going to start the cause for that also I am sure, but you can say that in a one or two hour, I will tell you about that cause which may be of use to you tomorrow morning itself, that is what I am about to do, I know that you know the law, also interpretation and application of it, so I am not going to tell you anything about a lawyer aspect, I am, going to tell you only about management aspects and that management is in all spheres, if you say your wife or your mother working in the kitchen she is managing it and if she does not manage it well you in for trouble you will have a lot of loss, you may have nobody with you but all that is held together by management even to make a recipe you require management so that you make it well, ok. So what we see is that animals birds as well manage their business and there is no reason why judges should not. now if you see penguins they manage how to hold the eggs of their children, in that cold they huddle together for warmth that is there management. The deer and langoor works together so that they see a tiger coming the langoor is on the tree top he gets out a whistle and the deer begin to ran, this is there management for survival. Ants we know, in summer time they come to our kitchen take their food for the winter and after that we dont find any ants, they have got there own stock. the leopards teach their children how to prey. And all this involves team efforts, now you all are at the top in your District but without others

you cannot work and that TEAM is Together Each Achieves More. It is a management principle everywhere now in management schools what you learn for theory of management is that it consist of 5 parts; Planning, organizing, directing, Coordinating and controlling. Even at NASA will involve these 5 parts in management of even a space shuttle, so you can imagine the intellect the team effort that has gone into such a huge activity. but if you have to post a letter you require all these 5 stages and it also requires planning of what is that you are going to write then you will have to organize your thoughts so it reads well then you have to direct your steno to type it and coordinate with your steno that have you send it has it reached and accordingly control that it has gone. So a very small thing but involves these 5 steps which I have mentioned. So when you have to manage you have to see what matters are assign you have to see how much disposal judges will take out how you have to take the judges with you and advocates with you all these involves these 5 stages. Will make you learn these principals mainly through stories as that is the way I learned.

Now there is this non value added items, so first principle this is our stumbling block now as i go on telling you please go on visualizing what happen in your court and then if you want take this list from a presentation when you go back home and try to make your notes as to really what is happening to your court. it's a kind of a feedback, so you will know these are our weak points of our system and how we can manage them to emerge. Now these non-value added items, a businessman wants value in everything because he wants to make profits and our profit is our time our disposal and not in rupees. so you will realize that so many things we do which don't give us any disposal and take our time and at the end of the day it's a job of a clerk sometime but if you are going to give one good fine judgment you see the satisfaction you get, people will talk about your judgment that is your profit so if you delete these non-value added items then you get value out of your work. That is the principle now suppose this bottle you remember in old times bisleri

bottles had that extra layer and we Because these company realized its a non-value added item and incurring so much of expense on it what is a profit I am getting out of it. Delete that expense, so the end is to seal the bottle the journey. Now let us see our courts procedures we have so many applications put it on board for ex parte decree and for dismissal. now why should Mr. A come and tell a judge put it for disposal he doesn't know that if the plaintiff doesn't come you have to put the suit for dismissal why do you have to wait for anybody to make that application and then I have seen judges say opponent to reply what will they reply the defendant says the plaintiff is not coming dismiss the suit CPC says you can dismiss it al right you put it on board for dismissal so you get notice fair enough the judge has to do that no need for an application even an oral application will do it. now all these if you don't do these are non-value added items, plaintiff dies you bring the heirs on the court the cause of action invariably succeeds in our civil litigation, so you will now realize that many many such applications which eat up our time you have to cut them short because it doesn't give any profit and you have to dispose it off because that will give you some profit. Now this big Rock the point i have written it is nice to know it's a very fine story; in a management class a Prof. goes with a big Jar with stones, pebbles, big stones, sand and gravel etc. now he tells his students that I have got this jar and i have to fill it up to the brim, so he takes the big stones puts them and asks his students is the jar full. They see rocks up to the top they say yes. He says no then he takes the small pebbles and he puts them in those intermolecular places which are available still between the big rocks, so the students says yes correct. Now is the jar full? students say yes, he says no no, he takes the sand and put it inside the jar wherever there was place it fitted and everything goes down, up to the top students says now it is really full, he says no. he puts up the jar of water and pours the water and lots of water goes in and now it reached to brim. So the students says now he is not asking us is the jar full. He asked the students what is the moral? Students said that no matter what you do there

is time and space to do still more. So he says this is a correct principle but this is not the moral of this story, here moral is that if you dont put in your big rock first you will never be able to put them in your jar at all. Now consider your court you have got people waiting to get justice the matters are part heard and kept or they are not even reached but they are ready for disposal. This is your main work so we get the judgement on law but if you do dismissal, remand, NPW etc.. you never reach either a criminal trial or a civil trial and that big rock will then never be able to put in your day. So what you do is you take up first those real good proper matters first put them on your board and tell everyone that this is what is going to start at 10.30 am tomorrow and start that first so you are doing qualitative work and you will say that now people are appreciating my work and then if you get the time quickly you can do other things, your JC can do so many things you can tell them whoever have not come now keep it on board for dismissal enough notice been given, thus small works comes last.

Now the next principle - of Core Competence in every company which is well managed there is core competence. nobody does the work which is not fitted best to do, why because the Co. wants profits but here what we do is you have to give assignments now you are PDJ's you will have to assign matters I have heard that some PDJ was told please give me only civil work and he assigned criminal work. Now this maybe your ego satisfaction but what are you trying to prove he is not going to give the best in your district and litigants are going to suffer but if you give him what he knows best ultimately it is good for all. Thus this is extremely important.

Time engagement, this might took up a whole day and i have to finish it in 5 mins. but the time management is usually the 80 & 20 rule as they say, generally it applies to every field, but in this we have to realize that we take up 80% of time to do the real core work of 20%. if you are going to these non-value added items, so your

20% of the time should be kept for that and 80% should be kept for the big matters. Then matters will be actually disposed of qualitatively. So this is your time management. how will you do it, as I earlier said that taking small things at the end it is time management, So you work in a time frame and keep that and soon lawyers will also realize that this is how the court is functioning, so they will run and come.

Now procedural simplification; exceedingly important and long each step of your CPC is required to be used for procedural simplification that you will do in your case management tomorrow. So under the court civil and criminal and under the rules which all HC have there should be procedural simplification your interpretation of those rules should be such that it becomes procedurally simple, now will give you some examples you have notice for service of summons, CPC says by any means you have to serve. but still at the most by registered post some courts will say courier, you can serve by email, and in all ways and now we can serve under phone also because people have their emails on there phones, there is no bar. But you must use those it becomes simpler and simpler. Now you will realize that if you allow that what happens is in 80% of the matters, defendants or respondent comes to court, in 20% he will not come even if it is served then maybe you have to take note, now you serve by registered post, and see the acknowledgement can be done for 20% of matters and not all. One important thing which I always followed in my court, no interim relief unless the other side is before me, you serve whichever way you want sorry, nothing today. Noo it is very urgent and this and that this is what they do even in appeal, writ petitions etc. In an matter petition came I said I want to hear both parties together as the one do not wanted to put notice to other party and expecting stay which can be extended or long, I denied. This is how you can deal with it.

Moons story is very nice, these Americans went to the Moon, and Russians also went to the moon. When the Americans went to the moon they realized that a ball

pen doesn't work in zero gravity, so they made a whole new project to find out which kind of ball pen will work on the moon, this went 250 Million dollars. Russians have also gone on moon what did they do? they have used the pencils, as simple as that. But if you want to show that you are somebody so big, you forget that small thing, and that is the rationale. So we also make all sort of documents, this and that get compilations etc ultimately we find out there is no difference. You can simplify many many things and SC says when there is no bar go ahead and do what you want. But we are so scared what will the HC say, so we follow as it is. Trial court is the backbone of our judiciary and enjoyed it the most.

Then there is this paradigm shift that is a very important business principle which we are not taking. Sometimes to get the same result we have to go through a different way, so we have a paradigm shift. Now for ex. we take up our matters in our court time, and then suddenly we realized that no there are something that come in the night also so somebody may say ohh, I am going to be arrested I want the court to be there, now in Maharashtra we have got this courts, like night and evening court. So one judge is always there for urgent works. What was that? that was a paradigm shift, we were not meant to do urgent works, but we are public servants we are suppose to be there for 24 hrs. if there is just one public servant he actually has to be there. So we say we are for 6 Hrs. then we are not, no we are judges in the evening also so therefore the HC says you do work in the evening sometimes you do sometimes other and so on.. Best ex. for it is that Swiss makes the best watches, Rolex Omega etc.. now one Swiss man said that all these watches have to be.. everyday now who has time to do that everyday? So he invented a watch which need not be wound and all the Swiss men laughed, they say how can you ever a Swiss watch without winding? Rejected the idea. the Japanese took it up and today we all have the watches we never wind, and now everywhere you can find it. there was one Co. which manufactured soaps now the soaps are in that box, one consumer complaint that the box is empty. Co. got the feedback and they had to improve. so

this Co. kept workers to see that the box do not remain empty and passed away, another Co. did that they put Fan at the same place so that the empty boxes will fly if are left out by the machine. Simple or not. So even in our work we need to see every time that how things are going and can be made easier.

then comes the Decentralization, in this CBI; Creative Business Ideas, in the business schools they teach you, so even a judge require some kind of a CBI for his own court, now decentralization there are certain things that you have to do yourself and other way round. like in case of judgement delivery and another like withdrawal of cases, these are two different jobs can be done differently. The judge has to do a real creamy job. now for ex. notice, I gave you the ex. how it can be served, you can tell all plaintiffs serve it whichever way you want show me the service that's all. CPC wants only this. this is what is Decentralization. Similarly your law clerks or managers, centralize that this this and this I will not do, you are not going to be smaller if your court manager does your management work. For Court building, you don't have time, ask your Court manager to do all those things. have law clerks if you can, because you cannot rely on advocates every time.

Now this is very interesting, Latest First; what we have is so many old suits, even 50 yrs. old as well, we need to see why we have these arrears. When we dispose off we find that above 65% are the one we are dismissing and in financial matters you find in 95% you are decreeing but suits for injunction, possession etc are frivolous suits. ok, identify the category of party, whether the one is involved in suit for the purpose of nuisance or false defenses, if you say I will take up the new matters first, so you will have to keep some judges assigned for old matters, and if you have one or two judges only to take new cases, hear an interim application get the return statement frame the issues and say go to trial, now under order 14 Rule 8, you can send it to the commissioner for recording cross examination also, so matter get ready for hearing ultimately. Now if this happens in a 5 or 6months period, they

will not find frivolous suits. it will come down, many will not take up false defenses and your new matters will not have that much of arrears. That is called as OODA LOOP, Observe Orient decide and Act, now we observe that these are the things happening. So we orient ourselves let me take up new matters first.

Now this Snake story again is nice story. When the British ruled india. They were always scared of snakes. And we are tropical agrarian country you know there were so many snakes in fields and everywhere. So the British in several states said. If you will kill cobra will give an award. So people started killing cobra. And started collecting awards and there was so many coming up killed so many cobras that were going on giving a watch. This is something is fishy. So they made their survey and research. And they found out that people are actually rearing cobra. To kill the cobra to get the award. So they stopped the awards. And there were as many cobras as there were earlier.

So our suits is also like that but they file false suits and they said ghoda jaisa kaam krne ka k ghada jaisa .. there is a distinction and the court which follow this OODA LOOP and will not let you make fun of court. if there is a team effort and you are a leader not a boss you tell all your judges also in your district just work like this.

Now sharing best practices it comes from all of this and that is always with interaction now see I am sharing there is very little time so only i am sharing but a ideal thing is you also share with me. always in your district you should have some kind of a meeting together and sharing that he does that what a good practice, and know what is happening in your court share, appreciate and ask others to follow if it is that good. People have conferences in Co. and they have to report their best practices, I was invited to the U.N because of one judgement as a

sessions judge it was not even reported, so it was a case of child sexual abuse and I had done it in my chamber, I dont believe in in camera trials in the court, so I made all the arrangements and girl was right in front of me, I gave her my hand and said beta teri baat sunna hai mujhe, I put the mother there and she was a complainant and evidence was already recorded and I put the prosecutor and defence counsel right next to her, so everything is soft and my typist was female and police was out, peon was out and the accused was right behind the girl, so the girl had not seen the accused till she had to identify and i said identification last, i just did my thing and there is nothing which the law prohibits. the accused must hear and must see the trial so i have to give him that right once that was given i said this is it. I realized that it was a meeting there of U.N for sharing best practices and there were people from all the sectors and not just the judiciary. Its extremely good to share best practices, its a short cut to success one don't have to derive the whole thing.

Then the systemic challenges, everywhere in everything we have got challenges, lets say of disposing off 5 yrs. old suits, so these challenges in business have what is called as circle of control, the inner circle of control is something which just has to be done, now what is our inner... that we get the evidence we hear the arguments we apply the law and we give the judgement we cant say no to any of this. but there is an outer circle of control which has got influence & concern if something we are influenced by, there in that outside circle we can make our changes and we can meet those challenges. that is how it works.

Now single and double loop thinking; Single loop is what? what is that I have to do. double is why? why is it that so many matters are coming up, can I reduce my matters? how can I? ok. So you think this my goal, I have to give 7 disposal everyday what is my task. there is this painter singer story; there was a father & a son, king called the father, said I want you to paint these ... the color of this room, it was very different blue color, so painter started making the combination of paints,

but it was not exact so he do not wanted to show it to the king, he was tired and went to sleep. next morning the color of both were same, he said father how have you done it, father said I painted the room. Now there was a singer and he was a terrific sitarist he had his student as sitarist, student gave a performance and the guru said bad, again was done, guru said no do it again, again he did. this way many times he did that but it wasn't coming. he said what can i do, this what can i do. Guruji said take the Sitar in your left hand start all over again, he realized that a particular thing cannot be done by the right hand by this man. he said take in left. so this is you know is the loop thinking. there is a goal and there is a task and if you cant do it this way do it that way. now can you say that a judge cannot do like this, I am hearing the plaintiff and the defendants and they are taking so much of my time. when I am hearing the plaintiff after half hearing I completely with the plaintiff you can say enough, will come back to you. you are the defendant what do you have to say in your defense? if the defendant tells something important ask the plaintiff again, so you are cut down on your time. atleast 50-40%. so now when you are with a particular advocate why you need to say yes yes, finish it.

Now there are these performance related promotions in our system, the business principle is called PRP, so in all it is to encouragements, but in our it cannot be money then let it be promotion only. This apply to you with your HC and similarly it can be applied by you to your subordinates. You have to say who works really.

then this Judicial Social Service, we have now CSR for Co. likewise here also and that is how by way of legal aid and legal service authority. Under that as well we can evolve, legal aid is given to all the accused why cant we give legal aid to victims, like in POCSO and under 378 proviso a victim can file an appeal. But what victim say is, in the trial nobody looks at us, and the trial gets over there is no evidence then what do we do in appeal. thus why not in trial only can represent.

But the judge if did so, will say no cannot hear you, where is the law? If he do so there is no bar, I have done it, under Vijay Waliya case. also in an dowry death case, a women was burn to death, the husbands case was accidental death and there was false dying declaration recorded, as husband had some connection with the police. They wanted to bring out that. I said must know the whole truth before me, so I allowed other party to lead evidence and they made hue and cry saying cant do that but I did it. Now in one case I had accused Harshad Mehta Scam, 1991 and it really brought down Indian economy. then there was special courts Act, HC was the special Court now these accused they are bank managers have lots of money and they filed for this legal aid, I said I am not going to give you this which I gave to a poor man, i said show me section-12 of legal services Act, and you have to fall under one of this, so he had to file an affidavit that he do not earn more than 9000, at my time, so he never filed that. I asked him what happened your application is pending, he said no mam i don't want.

Continuous Education; today we are in continuous education system only learning everyday. it started in America in 1937 & under the center for state courts. Now there is this education for all fields even for NASA also but we don't have but its time that we have it in our districts. lets say if on 1st Saturday of every month if all judges meet there is so much to discuss and learn from each other's experiences.

The last thing is TEAM as I have said, that if it be made between lawyers and judges along with your leadership training as well to even your staff members. there as well you work as a team, So that is management of your resources with zero budget, you dont have to tell the Govt. to provide anything. Therefore the ambit of this management is procedural and substantial and that requires infrastructures and sensitivity. I have dealt with sensitivity.

SEMINAR ON MANAGEMENT OF RESOURCES

One thing I would want to tell you quickly that there few very basic and latest amendments in CPC, especially for commercial courts, so you shall go through these slides and note if you want as these are very important and will help you in future. These are matter to be just read out so it is like this..

1. S. 35 - Actual Costs
2. O5 R1 - WS in 120 days
3. O7 R 2 A – Interest details
4. O8 R1 – WS in 120 days
5. O8 R3A – Denials with reasons
6. O11 R1 (4) – Disclosure with pleading+30 days
7. O11 R2 - Interrogatories
8. O11 R 3 – Inspection within 30 + 30 days
9. O11 R 4 - Admissions & Denials within 15 days with reasons for denials on affidavit
10. Costs for undue denials
11. Order on admitted documents, including waiver of proof & rejection of documents
12. O11 R 5 – Production of documents within 7 / 15 days
13. O11 R 6 – Electronic records proved by printout
14. O13A – Summary Judgment
15. O15 – Omitted
16. 15A – Case Management hearing
17. Time limits
18. Powers of court
19. Consequences of non-compliance
20. O18 R2 – Written arguments
21. O18 R4 – Affidavit of evidence of all witnesses together;
22. any affidavit may be withdrawn

23. O19 R4 – Court to control evidence & exclude evidence
24. O19 R5 – Court may redact or reject evidence if inadmissible
25. O19 R6 – Affidavit of evidence in prescribed format
26. O20 R1 – Judgment within 90 days

After this the requirements for effective management which includes;

1. Amendment to Orders in the CPC by the High Courts (CPC)
2. High Court Practice Directions (HCPD)
3. Judicial Training (JT)
4. Precedents
5. Court Administration (CA)

And at last the best ten two letter words; If it is to be, it is up to me..

Thank you

I think I have to go and catch my flight and if there is any doubt you can share with me..

PARTICIPANT: I really agree with the principle of TEAM work, it works for sure.

J. ROSHAN S. DALVI; So you are not a boss, you are a good leader.

PARTICIPANT: NOT AUDIBLE

J. ROSHAN S. DALVI; Very nice.. Now what I say is, if you are gone take these principles one by one and you are quite and alone, after you have done some work, see how you can apply it. And you can change it as per your requirement it would be nice.

Thank you

SESSION-IV

MANAGEMENT OF FINANCIAL RESOURCES

SPEAKER: MR. YASHWANT KUMAR

PRASIDH SIR; Welcome back everyone, now we are moving towards our next session that is Management of Financial resources and for that we have Mr. Yashwant Kumar Sir, Sir over to you.

MR. YASHWANT KUMAR; Good Afternoon, I belong to 1994 batch of Indian Audit and Accounts office, currently I am on deputation to Govt. of M.P. as economic advisor in finance department. Judiciary like any other organization has certain objectives, to perform its objectives it require certain resources broadly we have classify the resources required by the judiciary into any other organization into three broad categories, which may be Human resources, physical resources and Information resource. these are the associate which any organization judiciary performed its functions to achieve its objectives to acquire these three important resources one more resource is required and that is called financial resources. from this this proposition itself we come to that the finance is such a important thing that by which if we dont have this we cannot have any of those resources and we dont have sufficient resources the objectives of organization cannot be achieved to the desired extent. so in management of financial resources, we have three important functions 1st is acquisition 2nd is allocation and 3rd is monitoring; utilization of financial resources, through acquisition we come to know that this is done through

a process called Budgeting, same is the case with allocation along with the monitoring these all three are done through budgeting. The budgeting is a very important exercise in management of financial resources, the first important task in financial management is acquisition of it through budgeting and for that we prepare estimate of requirement of finance to perform our functions in a year in annual budgeting we make estimate of one year that how much we require the financial resources for the year. we make the planning process for a middle period for short period as well as long period also, as we prepare the plan for long period as well as middle and short period we make an estimate of requirement of financial resources of long period say 10 yrs. and for medium term say 5 yrs. also . so it depends whether we are preparing our plan for long term period or short. if we are preparing we have to make estimate of requirement of resources. But in annual budgeting exercise it where we have to make estimate of requirement of the financial resources of the coming year. As we have come to understand finance is required for having these three kind of resources to perform our functions and the finance done two functions one is acquisition of these resources as well as the other is maintenance of these resources, so for acquisition of human resources like judges and officers and staff, for our court, so acquisition we require finance for recruitment, training, placement of judges, officers and staff. Maintenance of HR, we have many expenditure relating to maintenance of HR, like salary payment, wages, allowances and all expenditure related to HR are all under this. In physical resources we can classify in two parts that is Permanent physical resources like assets for ex. court buildings offices, library etc are our permanent assets required for justice delivery current physical assets like the material for day to day like stationary etc. So we require fund for acquisition of resources of all kind. We require fixed cost and fixed expenditure for creation of our permanent assets and for day to day need as well we require some working fund. What are the maintenance expenditure for the permanent assets? they are the upkeep, watch and

ward, rent etc.. all these are maintenance expenditure which is required from physical assets. Now about information related assets are; hardware, software and data etc.. again for acquisition we require ... fund to acquire that hardware related software and usable data. for maintenance related expenditure related to information technology like annual maintenance, support services, annual network charges, etc.. these are the different types of expenditures we incur for acquisition and maintenance of various resources and for this we require finance fund, and we have to make budget for all these items.

For fixed expenditure like this we prepare a different kind of budget called capital budget. for creation of fixed assets like plant, machinery and for all other expenditure we prepare Revenue budget. So these are two important distinctions to be kept in mind while preparing budget for estimating our resources.

Any query in this?

PARTICIPANT; Next year budget has to be on the basis of previous year or not?

MR. YASHWANT KUMAR; Pardon madam

PARTICIPANT; Repeats.

MR. YASHWANT KUMAR; Yes that is what the basis on which the next year, right right. that is always in format the previous year, actual expenditure, current year budget expenditure, current year revived expenditure and the future year. So budget exercise is for the next year and this actual expenditure of previous year is a basis which help us. like previous yr we spent 100 crore and we have to divide it into two parts that how much for capital expenditure and how uch for revenue expenditure. Say 20 crore was the Capital expenditure and 80 crore was the revenue expenditure of the previous yr. Now in that expenditure how much of functions we

could perform, the living of operation like we could dispose off say 1 crore cases, by doing this much expenditure at the level of Human and physical and information resources at that time. Now what is our target for this yr, of disposal of cases ? Say we have target of 1.5 crore. So from this yr 50% more so naturally we will require more resources as the scale of operation has come to the 1.5 time of the previous level. So our resources..

PARTICIPANT; I could not really get that.. NA

MR. YASHWANT KUMAR; Sir, Sir..

PARTICIPANT; how the expenditure be more when the staff remains the same...

PARTICIPANT; Sir, No we have to analyses with the same level of manpower, as which we are having today and same level of infrastructure, can we dispose off these many cases? or we require increase in that, if we require increase in that then our budget has to go up.

PARTICIPANT; But practically how we do that? Manpower remains the same, same with infrastructure then how will I ask for more budget for the next year?

MR. YASHWANT KUMAR; We have to ask if we want to increase our output if we want to our ..

PARTICIPANT; But on what basis?

MR. YASHWANT KUMAR; On the basis of reverse calculation we have to do for that.

PARTICIPANT; If the budget of previous year is not spent completely and that is the reason the courts are getting less budget.

MR. YASHWANT KUMAR; No , that is some other thing that is called as bottle neck, that some bottle neck has to be analyzed.

PARTICIPANT; Started discussing, NA. My query was different.

MR. YASHWANT KUMAR; Yes yours was different and we will discuss both of them, now when we want to increase our performance it is our output of disposal of cases then we have to see that the resources how much required. the existing level of resources of manpower and infrastructure is not sufficient to dispose off the new target then we have to accordingly giving the justification that we want 50 lac more cases to be dispose off in the current yr because accumulated cases are more in current yr than the last yr.

PARTICIPANT; Sir manpower remains the same, we cannot ask Govt. that we want .. our resources remains the same, Discussion starts NA

MR. YASHWANT KUMAR; example is that recently you have seen in the conference CJI made a plea that we want more judge, ok. So same way we have to make a plea at each level because our pendency is increasing day by day, where see CBI is making a plea for increasing ...

PARTICIPANT; discussion among participants.. NA

MR. YASHWANT KUMAR; If our pendency is increasing so our annual output is also required to be increased and our output to increase our annual output then we require more resources, we have to make plea for that.

PARTICIPANT; Let me frame further, in how more real manner we can ask for the higher budget.

MR. YASHWANT KUMAR; Sir, Writing on board, we have to do a job analysis, time analysis as well as the trend of pendency as per the yrs. if we are seeing that the our tendency over the yrs is increasing then how are we going to dispose of the pending cases. if our at the beginning of the yr pendency was lets say 40 lacs during the yr we added another 50 lac cases then disposal say last yr was 50 lacs, the new tendency at the end of yr is 40 lacs. If the pendency is increasing means the disposal is less than the addition during the yr, then we have to make a ... for additional resource, how can we make a case for additional resources, we have to do our job analysis and this is say different kind of cases take different time for disposal say in criminal case takes 10hrs or so.. similarly civil cases say 5 hrs and commercial cases 5 hrs and total time available for all the judges during the yr is this much, this type of case say criminal case ... writing on board.

Ok, so we have to make this kind of analysis that time required for disposal of one case is this much for civil this much, criminal this much and so on.. we have say total 5000 hrs available in the month taking to allocate these types of cases how much case we can dispose in a month and in a yr. then we will arrive at whatever is the efficiency, improvement we can do and cannot go beyond say this much cases ok. So our tendency at the end of the yr instead of reducing it will going to increase. then we have to make case that to reduce the pendency to give justice in less time, the current time say time period of one yr or two yr or so and if we want to reduce that we require more human and infrastructural resources and this is our justification by analyzing the data of last 5 or 10 yrs. we can make case for it.

PARTICIPANT; In case of district judiciary this is not done, it is done at the HC level.

MR. YASHWANT KUMAR; No, but you have to give the data at the district level even you have to provide to the HC. The analysis the pendency mainly at the day

is at lower judicial level not at HC level , HC level also there is a lot of pendency but that is of different level, the major chunk of pendency is at District level or at subordinate level. So we have to make proposals and send to the Hc that this is our plan,. We are talking of budget but we should first talk of the short term and long term plan, we want to make 10 yr or 5 yr plan that after 10 yr we will reduce our the disposal time of criminal cases say 1 yr to 6 months. from 6 months to 3 months or like that. civil cases from 6 months to 3 months and so on.. to do this we have to ... more disposals if you want to do more disposals we require this much more resources but this kind of analysis HC they have sufficient data, the data has to be provided by the district court.

PARTICIPANT; We are providing this every month.

MR. YASHWANT KUMAR; But analysis also we have to provide, not merely the data because HC is having busy in lot of more work, HC is also doing..

PARTICIPANT; Registrars are there for that, we dont do that unless we are asked to do so, they are analyzing this thing, what the HC will do then.

discussion started among the participants. NA

MR. YASHWANT KUMAR; But there is no harm if you provide no.

PARTICIPANT; they make it very specific in that sheet that you are required to send, and these are the information we want.

discussion again began.

MR. YASHWANT KUMAR; Requirement is that you have to give estimation na, if they are asking the requirement then make an estimation of it.

PARTICIPANT; discussion started among the participants. NA

PROF. AMIT; Introduced himself, in this conference there we have placed this suggestion that autonomy hai and we be given the decision to decide for budget....
NA So that we can give concrete suggestion as our Hon'ble resource person has said, so that we can .. before the concern judge in charge of that state so that the key action can be taken and we are able to plan that model court as we are thinking. and we are placing that ... (there participants started talking)

MR. YASHWANT KUMAR; yes, in your feedback you can give suggestion that district judiciary may also be asked to give suggestions freely, if you are telling you are barred from giving suggestions then it is very difficult to bring improvement.

PARTICIPANT; NA

MR. YASHWANT KUMAR; But how to reduce the pendency of cases at district level judiciary, the initiative shall come from district judge in my view ok. but presently not allowing that. the situation at HC as well as at executive the final law ministry is not giving sufficient freedom to the district judiciary even to make suggestions then it is difficult to maintain justice. Because a district judge is at the cutting edge level. the real disposal of cases is at the district judicial system.

Writing on board.

MR. YASHWANT KUMAR; It means that the Capital budgeting exercise you are not making any contribution in that.

PARTICIPANT; No, we are making asking for our requirements.

MR. YASHWANT KUMAR; Ok, right So there is increase in the infrastructure the physical as well as you give suggestion for more information hardware as well

as software, by which we can improve our efficiency for disposal of cases. so these are the basic fundamentals and for the details we have the constitutional framework for the preparation of budget. these are the articles of the constitutions (showing PPTs) which have made a provision for budget. left hand side are the articles which I have made provision for budget making at the union level. and the 2nd column are the articles which have made provisions for preparation of budget at state level and the budget of the district and session court are part of the budget of the state Govt. now what we prepare is annual financial statement and that is called the budget of the state. Union Govt. or state Govt. the president give approval to the finance minister for presentation of budget before the legislator so it is the president and Governors requirement to present budget before the legislature of every financial yr. both houses of parliament or in state legislature and it is an estimate of receipt and payments of the that financial yr. we prepare the expenditure estimate in the classification voted and charged as explained in the PPT, revenue and capital as this I have already discussed. Voting and charged are certain kinds of expenditure of SC of India, all the allowances etc. are charged expenditure. these are discussed in the parliament and rest is voted on which there is voting on the demand for grant for each item of expenditure. Revenue and capital expenditure we have already discussed, under Article 113 and 203 gives procedure for submission of demands for grant for the ... departments budget estimates. Lower house has been given power for approval of the budget the higher house only can make suggestions, it cannot either approve or reduce the budget. After budget is discussed and in the form of demand for grant the appropriation bill which is consolidation of all the demand for grant is presented in the parliament or state legislature which is entire expenditure budget of the Govt. We have provision for supplementary grant and additional grant, supplementary when during the year if budget granted is found to be less than the requirement, whereas additional grant is for the new service of expenditure and excess grant at the end of the year if excess

amount has been spend for its regular excess grant for demand is presented to the legislature for regularization of excess of expenditure.

Votes on account is the if the process of budget passes takes around two months in this period the Govt. expenditure has to be done, so the advances approved by the legislature in the form of say 1/6 of entire budget is voted on account as an advance to be spent during the period in which parliament is discussing and approving the budget. Vote on credit is for an item of expenditure which is not very quantifiable and it is also an advance on expenditure and exceptional grant is for a grant of which no provision has been mentioned in the budget.

The process of budget is preparation of budget by the departments, so law department prepare budget for the judiciary and registrar Of HC is budget controlling officer that registrar compiles the requirements of expenditures of judiciary in state and after that is given to the law department and it include it in their demand for grant for approval. So after preparation there comes the Enactment and after that Execution of the budget and then the Parliamentary control, where the Audit report is presented to the legislature through the governor or president and is discussed in the legislature, this way the control takes place. This we have already discussed the format of budget preparation, (going through the slides) all these we have discussed and the budget is prepared according to the demand for grant and the major head wise for the judiciary like salary head in which we have further classification say salary of the staff, daily wages etc.

Any query? More contentious issue we have discussed that how to improve the performance of judiciary and how to make plea for allowing more fund so that we can improve our manpower as well as infrastructure.

PARTICIPANT; Is it permissible to change the head of some junior NA

MR. YASHWANT KUMAR; It is permissible and it is all depend upon the administrative department and ministry. Any other query? ok Thank you.

PRASIDH SIR; Thank you so much sir thank you so much, ok then we break for a day Sir we will meet tomorrow.

SESSION-V

**ROLE AND IMPORTANCE OF COURT MANAGER IN DISTRICT
JUDICIARY**

SPEAKER: JUSTICE DHARNIDHAR JHA

J. DHARNIDHAR JHA; You are yourselves District judges, I had been myself a District judge before my elevation to HC as a Chief Justice in Bihar for 5 yrs. So we are aware of the ... of the functions of the functions of the District judge and the burden which lies on his shoulders. He being the Head of the Department being the senior most officer in the District, has a lot of things to do besides judicial work, he has his own administrative problems, day to day he has to discharge his powers on the financial side on the administrative side, besides he has to handle huge correspondence from HC and different corners. In addition to that what has been added recently since coming into force of the Legal Services Authorities Act, is the assurance given to the weaker sections of the society about being provided with legal aid which is so vast that seldom a judicial officer has a time to look to his family also on Saturday and Sunday. This our duty being judge we most often forget about our household problems and the plate is so full with problems that most of the times we forget about the prompt compliance of certain letters, submission of statements and the picking up the further planning, you you are not properly sitting you may a bit properly, yes yes al right now its ok. We we on most of the occasions we lag behind our schedules as well as the planning for future actions on both judicial and administrative sides. The Court manager concept you all know, we are all here to discuss the role and importance of court manager, so in this concept on account of the HC and SC finding that the the one of the sacrifices on the account of the judicial actions of district judge by different judicial pronouncements advised

once when I was acting as in charge of secretary of Bihar state legal services, then my executive Chairman Justice Aftab Alam has told me that we have been been managers we have been sacked, we have been so bad managers. So he had his own views and Basic structural foundation was that the District judge was suppose to have planned everything and those schemes are to be handed over to clerical cadres of the administrative set up for implementation now we all know that the clerks mostly in those old times and now as per the population exposures and rise in literacy level the literacy has improved at clerical level, now they could understand the implications of what the wants to see or do, but in those days it was very difficult though some of those were very good and imaginative but not always, so this concept has been introduced to to put another tool in your administrative tool box so as to help you out in both side. there has been a criticism and beautiful article is written by one of the advocate that is Traits of Court Manager, by Suresh Babu it is the analysis of the dilemma which we are facing presently because there is a set of rules set down by the HC for discharging the day to day administrative and judicial functions. This scheme by framed rules but when we consider that particular rule this is almost consistent in all HCs, but the language of the rules is also the same. So when we consider the function of the court manager then what we find is there is some conflict because in certain matters confidentiality is most important and to be maintained by the Court managers but then .. the head clerk who use to be very close to District Judge in matters confidential letters he might be feeling deprived of some of the powers or or the access which was provided to him as per rules. So this is where we have to take very balanced view in assigning duty to the court managers. Like whether the filing section is properly done as per rules whether frivolous petitions are accepted by the filing sections of the court and he has to also find out whether the any particular scheme handed down to the district for implementation by HC whether that is being firstly implemented and whether the implementation of that particular scheme is with ... So these are on

administrative side he has to also consider the continuing the tempo of the ministerial cadre as well as the human resources which of the is competent to do which work and which is not performing up to the mark, he has to create a record of those things and place it before you for further receiving the guidance or action. On financial side we all know we have to plan the budgetary allocation have to be sent from law department that what could be the next financial requirement of you judges. So we are required to calculate the expenditure to be incurred in future in running the administration right from the salary of the employees on all expenditures on everything all heads, and we have also to make the assessment what could be the requirement as for space for sitting of more judges because we know the Shetty Commission had recommended increase in strength of judge, So we have to take a futuristic view and make futuristic planning as regards to the expansion of our space, if the building is deficient in space then what we are required to do is that we have to find out space, if not there then write down to Govt. and we need to process the letter for acquisition of land, and if it is already available then we have to chose a place for expansion of our buildings so these things require very finer expertise in an administration, we all know when we are expert of lawyer we are suppose to be experts of all experts but never an architect or we dont have those tools with us minds with us, still we use to act in past and pull up the officers who are known for there work, form a committee and sit with them advice them that what is the requirement and how things to be done. Now this use to take lots of time as the judicial work use to suffer and the officer had no time to look to his family. It is also required that being the head of department we we act as the head of the judicial family and so we also have to take care of comforts of our officers also. So this is one aspect where the Court manager has been given very specific functional obligation not only that he has to ensure and find out what statements are required to be submitted quarterly monthly half yearly and annually. What are the requirements in those statements which is to be submitted to HC or

any other authority. Then you have to see whether the report is been prepared properly or not. because you know our staff use to conceal many things, so this concealment in the submission of the data use to influence further planning at the national level. HC use to submit it to the SC and SC to law and justice department and then they use to plan things for judiciary. The national Data grade now that has been created that has many aspects one is the planning for judiciary other is assessment as well as the pendency of the cases, so the court manager has to ensure as to what statement are required to be submitted, whether those pertain to real state of things in the judgeship and he finds that the data do not reflect the reality then he has to suggest to all of us the corrective measures or requirement or the need what is to be deleted or added up. Then he has to examine the planning and construction but he is not the sole and he has to sit with all stakeholders, like the lawyers, etc. So the necessary meetings and sitting of District judges for these purposes those have been eliminated. These are some of the positive aspects of this concept. Now we are not burdened we are only to hand out if we have any of the District judge has any particular sketch of anything in mind then he is simply required to put it down either in writing or orally, so the court manager is completely under your subordination so the court manager has to be pointed out that what is the requirement, if you have anything in your mind. Lets say if the construction is going on there then the court manager is required to review and I do not remember any District judge, and I have to report many times when I took over the Chief Justice, that building is not up to the mark, it is not fit for shifting the court and I am not going to take over the charge of the building. So I had to write down, many suggested what should do and what not. If judge sits there and a big concrete piece of brick falls on the head that is more damaging. So no district judge use to see those activities now the court manager has to act on your behalf as a part of his official duties to supervise the work and report to you as he does not have the power to take up the defect or any deficit found in construction. I have my personal

doubts as well as the court manager might be a business management graduate but he does not have the feel of the judicial proceedings and he is never acquainted as to how judicial proceedings are been carried out. I could not say he does not no how he categories the cases, so in spite of these disqualifications of a court manager the scheme says that he has to find out the case row also in which particular case it is to be identified so as to be listed before a particular judge. If he is required to find out that what nature of cases are listed before which of the courts I am again in doubt that he would be able to do it, so here is the requirement of allocating the duties carefully. some of the duties we must not allocate because those duties could not be handled by him, as he is not a trained person on the judicial business of the courts. In case of inspection matters the court manager has nothing to do about that, what he has to say is to me, every HC rule has caste a duty upon all the District judges to not only hold inspection of his own court and offices but those offices subordinate offices, additional District judge perform inspection separately and they submit it to District judge and the district judge is also required to periodically inspect the court room, he has to in my state it was weekly that cash-book was put up before District judge for certifying the expenditures and to find out specially in those days now court fee is realize through machine by the postal department but in those days stamps use to be filed for court fee and there was a scam we all know .. that was a very important to find out what court fee have been filed and those use to be entered in the cashbook, so this is very serious duty cast upon the district judge so the court manager could not do it, he is not required to do under the rules as well but he has simply to find out whether inspections have been held? So he can simply request the concern authority to hold the periodical inspection of different establishments.

I have brought a paper a draft on functions on court manager, this is one page, could you circulate the prints of these. This will be given to all of you its not in your reading material. it is handy and just keep note of it when you function. So court

manager in fact if we look at the duties then it is a very useful addition to judicial administration. In order to saving time of judges from administrative functions. of District judge at each and every occasion of the happenings and the whole purpose , HC is there SC as well but the reality is that 2/3 of the litigation is being handled by the subordinate judiciary and that is headed by all of you. So virtually it use to be deflected upon the functioning of the District judge. So looking at the issue from that angle I feel that the court managers and its introduction is of utter help provided we are imaginative in allocating business to him and we take proper precaution and review the functioning of the Court manager because at the very outset I have pointed out that the employees of the civil courts who had been running the whole show might be feeling that they have been belittled there position has been lowered down they have been put under the administrative control of court manager, it is not like that so we have create an environment in set up by creating a sense of confidence in the functioning of the court manager so that he also gets the confidence of our support staff. If this does not happen then I doubt that the court manager could be successful in discharging its functions because there could be a clash every time whatever the court manager wishes to do as per the duties cast upon him maybe that there is a de.... from the concern staff of court and he may be finding it very difficult to carry out his duties so we have to create a very good balance between the functions. He is a tool and you should know how to use it, like allocation of cases of particular class, he if knows that the same can be dealt accurately by this judge then this is what is needed. At least I was very sensitive to this that the serious cases must be listed at least before the District judge or most competent additional judge, I use to do it as whenever there was a dispute a transfer petition is filed against the additional judge for any reason then I use to transfer the case to myself, I never transferred to any other because Chief justice I found doing this. So I learned from some corner that advocates are not allowing the judges dispose of the petitions, the HC advocates and mostly seniors people said it is

transferred to you now you will be facing problem, I said no no the problem should end and I directed the registrar to list it at the top of the list and I use to have division bench and we sat at 10.15 am and single only only for this petition and within 5mins I disposed off the petition there are very serious case I dont want to go into that so sometimes J. Lodha his lordship was the CJ of Patna HC, He sent all concerned matters and J. Deepak Mishra when he was the CJ in Bihar you might be knowing there is a special courts Act, taking care all the properties ... by public officers through corrupt means, and provision is to confiscate the properties on prima facie evidence on affidavit and that allocation appellate was given to me.

PARTICIPANT; Not Audible

J. DHARNIDHAR JHA; So confidence of officers and judges are there but efficiency and putting your foot strong that also requires in cases, hearing the matters in your own quick manner very quickly putting down the points to the across to the counsel and couple of reply for disposing off. So these things happen so if the court manager confidentially reports to you don't take ill of it, because you yourself do not have any other means because you cannot scan the cases, I doubt that the court manager could also do it, as I have pointed out he is not trained in judicial proceedings. that article in that there was a suggestion that they the court managers should also be sent for training.

PARTICIPANT; In our state.....

J. DHARNIDHAR JHA; Yes yes they're training na, he also suggested that it should be done. It is a very good article, circulate it. And he has pointed out this deficiency which I was been talking about that previously. The court manager could find out barely by looking at this paper that this case requires priority hearing that I doubt that he will unless he has a database to create it and now we have the software are coming up they are already created to find out what is the core issue

concerning a particular case and if he scans the cases then it will be very useful that he suggest to the district judge that you make the hearing of this case this important and it will be a good suggestion. The other paper that is Hon'ble J. P. Sathasivam had delivered a lecture in Tamil Nadu Judicial academy this is also a good paper.

PARTICIPANT; that is there in reading material.

J. DHARNIDHAR JHA; Al right then, so the court manager has to be very imaginative, because ultimately running of the administration is reflects upon our capacities. I very sincerely request you as an elder brother to all of you that Do strike a balance and do leave certain things in the hands of the court manager also. There was an initial skepticism about the Lok Adalat system also one of the ... antagonist to system was myself and was then CJ J. V.N Agarwal he drafted me from so many officers choosing me only from 263 cadre there and handed me to establish the Bihar State legal Services. I was an antagonist but when I went through and met people and people came to meet me who had suffered who wanted legal aid and wanted suggestions, I use to receive letters and I have made an habit that when I use to because when I was discharging a post where judicial opinion could be given, legal aid so I use to reply to each and every letter as I felt it was part of legal aid, and use to give suggestions on legal issues that this could be your remedy. Show this to your counsel this is the referral judgement or if you require further assistance then come back to me and then I could find out the problem that what a problem it was! Legal aid providing what a necessity and a Lok Adalat what a tool and ultimately it got reflected in attempts, ADR everything So we might have some skepticism towards scheme but we should firstly receive those with some positivity because every scheme has some positive aspects they have been created by the HC or SC only when they have access the functioning of the court manger in other states like international jurisdictions, in this paper you have all the Prasad has done a good job, he has shortly briefly pointed out that in which of the country what is

the position of court manager and yes in Britain it is very futuristic in these things you know they assess all judges of all courts the court managers, would you tolerate, we won't tolerate we immediately fire you, but in Britain this is one method it is just opening your ears so what you can do is it improves your function. It is not always abusive if you hear your own criticism then you find out where is the flow which is required to be removed. This is human aspect, what is law, it is human aspects daily human problems with some human imaginations. So if you hear once J. Sinha we have been sent for training like you are sent here and his lordship was putting a question that what are the traits of a good judge. So in that I pointed out to him that a judge should have a very open ear he should receive his own criticism also then he told me to elaborate upon it, I said yes if my actions are been criticized by the Bar by my brother judges by my litigants, then I must hear and collect those criticism also and find out the reason and then come down to myself, for realizing those things. So how does it help you, it helps in improving your functioning and being really positive. So that is why let the court manager give his suggestions. It may sometime appear to be as an encroachment upon your freedom but there is no harm. Assess it with some positivity and if we assess that I trust that this would be of great help. It is a due tool and every due tool is received with some skepticism. Must go through that article. So it is a good scheme and worth experimenting. Ha yes, there has to be certain areas where the court managers could not have the access so much so that the confidential files and the rules also do not provide that and whatever matter he has reported to you has to remain confidential and between you and him only he cannot leak that, these are the checks to be put ad if you find him leaking then do call him all alone in your chamber and do advise him by pointing out the defects which you have found at the first occasion, and make him understand specially when he is speaking about certain integrity of your officers that you cannot do and you must not allow anyone to do

it. Now its upto you again I am saying how you use it. Thank you very much because you have been very very patient in hearing me and any questions doubts?

PARTICIPANT; I am Jayshree Banerjee from W.Bengal my lord the problem that I have faced is in wanting the court manager to assist me first and foremost is education level where there is clerks head clerks, so to hide their inferiority the court staff is sort of is always in conflict, I am sitting there for law clerks as you pointed out as he has no knowledge of how the court functions so for each and every step that I assign him to do anything he has to take the assistance either of some or the other staff, and there they refuse to help, that they feel there importance is lessen so this is..

J. DHARNIDHAR JHA; That's what I was pointing out in my own way, here was the need of striking the balance the court staff must be feeling that as a man who is not a judge as they can tolerate a judge but a man he is lording over them so it is really a problem so here is the need to sit down sometimes with the staff also senior staff call them, performing staff also and then point out the need that he is there to point out to you also the defect which has been kept into your record because the court manager does not have duty only to find out the wrongs but firstly find out the defects. So tell the staff that he is not your lord, he is also one among you and come to assist you also and he is not a fault finder but defect, so can be sent for removal. If by mistake you have committed some error so he is there simply to find out that error and nothing else. There is no snatching of position. Its only his duty as per the rules of HC he is performing like you people are performing yours. And ask the staff to cooperate with him for helping you out in functioning. Not to shout at them but to make them understand the value. Believe me when I joined District judge for the first time my judges were not performing well, were disposing off just 12 or so cases per month. Very poor, I did not state anything of such nature but asked about the comfort of the officers and I went to every house and then I found

out that what are the problems, nobody share his personal problems simply so he opened up stated that my peon is not cooperating he is not taking my children to school not fetching vegetables etc.. these are very simple things then I use to call that particular peon and I told him no no this is not good, you don't love your officer, he is the man on account of whom you are getting your salary if you don't love him and serve him then I may stop your salary. And believe me things have changed the same peon was serving and the judge who was disposing 12 cases was disposing 36 cases. A managerial aspect of District judge very very good person you have so much of powers, God has created trust in you that you examine the will of dead person.

PARTICIPANT; Problem is the survival of this tool is in doubt.

J. DHARNIDHAR JHA; No no, once the rules have been framed by the HC the rules have to be sent to the legislative assembly for their approval and once they are been approved no one could snatch that tool from you. Its you who have to deal everybody equally. It was per chance that I became District judge and came to HC, its God who provided me and the same is with you. Get friendly with your officers and see the difference ask them what they want and accordingly deal with their problems or wishes and see. You have so many works and this scheme is launched for your convenience. Any any other query. Tea? Ok thank you everyone.

SESSION-VI

**MANAGEMENT OF COMPLAINT AND DISCIPLINARY ENQUIRY
FOR JUDICIAL OFFICER**

SPEAKER: JUSTICE DHARNIDHAR JHA

J. DHARNIDHAR JHA; In this session which is handed down to me Management of complaint and disciplinary enquiry for judicial officers. So basically the issue which is covered by that particular topic is that how do we because on account of being District Judge you might be receiving a lot of complaint petitions against your own officers and confidential letters from the HC and the allegations on the integrity of different officers. There could be allegation petitions received from the HC also which may not be infringing upon the integrity of the officers but may be related to certain ... you might have found it like he dismissed my complaint petition or so and so forth now these things performing of duty without the allegation that hamper justice to me does not appear of any merit. If you receive the application from HC of same content then you write to the HC that yes it was received by me also but because the allegation was not of merit according to me as it did not impart any judicial impropriety on the part of officer. In fact I remember J. Naveen Sinha who is presently CJ of Chhattisgarh came to me to congratulate that when I received an allegation petition that he dismissed my complaint petition under so and so. and not a single word about impropriety of the officer and wrote down the petitioner had judicial remedy the court cannot arrogate to itself judicial powers on administrative side. For this Naveen has come to me ohhh ho for the first time a HC judge has generally we send it for comments. This sending for comments

simply demoralizes. I remember one of the finest judicial officers Lallan Lal Shrivastav, I was District judge that time and there were three subdivisions and in two sub divisions the SDM was virtually the CJM they were enjoying all power of CJM. Lallan was posted as SDM at Pupri and it is a very big Sub division. Quite some good with heavy litigation I dont know other places but in U.P and M.P cast plays very eminent role in our administrative actions also some advocates of the Bar belonging to particular class was only invited him because Shrivastav was a Shrivastav. They started writing allegation petitions against him and Shrivastav was such a good officer that I called him and told him that 498 case me why do you reject bail you should have at the first instance issued notice and admit him interim bail accept the bond provisionally issue notice and call the parties to your chamber then try to resolve the dispute it is more a compatibility problem then a criminal problem. He really acted and lots of many cases were disposed off with all compromise in few days. But the advocates also don't like cases to be disposed off, Present day advocate has changed the attitude is completely changed and those advocates who don't have honest means they get affected. the first allegation petition Lallan rushed to me and said that look here you have told me to do and I started doing things and now this is the result. I said what happened I am your District judge I have to make a report so why do you fear he said al right but how will I function this way, I said why are you worried of it. Then I sent the comments with my concerned things the next allegation petition quite voluminous in nature came up and Lallan was flabbergasted again came rushing see now you have said, I said what can I do they have asked me for comments and why again you are. He said how could I function and right with this on head how could an honest man can? Then I wrote to the HC at the end of my comment that in my estimate and also the statement of the Bar officer is the man of great integrity if such frivolous petitions are sent to me for obtaining his comments so the officer will get depressed and his judicial functions will be suffered. So I requested the HC to stop it. And from then

on the HC did not send any application. So what I want to impress upon you is that if the officer in your opinion and in the opinion of the Bar as the Bar is the judge of judges and feedback comes from Bar. So first duty of the District judge is to protect a good officer to any extent. He might have fallen in error because I would have taken a view on account of many reasons, sometimes an advocate is so very erratic that the very appearance stabilizes your balance. There is an Advocate in Patna HC a senior, a bail petition was rejected by some judge and that judge retired the matter was listed before me so I found certain observations in the previous rejection order relating to the material in the case diary and he was making submissions contrary to those observations then I thought k let me have the case diary so I passed orders. He was gone and came back said the Hon' Judge is wrong there is nothing as such, so I started reading out the case diary then his junior counsel said that judge is right so he started sorry I am this that. I made a very strong statement warning him if again you behave in this way I shall proceed against you that was my failure and from next day when his petition use to be listed before me I use to delist it my failing I admit it I should not have done it and when I realized then I heard. So certain reasons are there for you to pass a particular order. When you find a real allegation coming what you have to do, the HC has the whole power so they send you to obtain comment from that officer and along with your opinion and accordingly disciplinary proceedings may be initiated against him or may put him under suspension or may not be. In case of judicial officers the appointment section of the HC or confidential section of HC in Allahabad there is an officer for this purpose in Patna HC there is vigilance section and then the registrar vigilance sends to appointment section and to then full-fledged charge sheet is drafted and that draft is never they provide the draft but that goes to administrative committee for their approval and only when the draft is approved the charge and whole records everything is sent to District Judges. So we have not much to do when the proceedings have been initiated against a judicial officer but we have to be³ very

careful that relevant materials must be allowed to be brought in the court and disciplinary proceedings virtually impedes the career of a judicial officer to some extent. So it is concluded with ad hoc. In some cases where the officer is supposed to be promoted but in case of allegation they don't do it. They may keep a seat reserve for that officer and only when the matter is clear his promotion will be from the due date. So presenting officer be there fine but you be the enquiry officer also have a serious look at the record and find out what is the allegation who are required and take steps seek the record and examine it and must give the officer an elaborate opportunity of cross examination in some of the states they have framed rules for holding departmental proceedings. As soon as the charges and allegation papers are received a copy of the same is handed over to the officer and he is required to submit his written statement of defense within a particular period. The officer replies to each and every charge and is required to point out to enquiry officer whether he was willing to examine the witnesses in his defense. a departmental proceedings is to find out the correctness of an allegation of misconduct and it could be initiated when the action of officer is either a judicial misconduct or infringing upon moral .. like conflicting decisions on almost similar facts. In moral if a judge is not found behaving in a manner he should be beholding him not good in that particular stream. But any attempt by a delinquent officer you find that in a real case of proper enquiry he may be evading adopting measures to not to allow you finally dispose of proceedings quickly. Kindly be cautious of that you have a duty and the HC sees the whole judiciary through your eyes and hears from your mouth and if you are soft on instances of corruption then what are you doing? you are giving officers to indulge more in corrupt practices and public confidence which we have earned only because of the character of the judges in the sub ordinate courts very little people see HC or SC very few get opportunity to meet HC and SC judges. I was first posted in west Champaran there people are very simple there still and I find there that even when there a person is sentenced to rigorous imprisonment of life and so and they

will bow down and no constable in those days there were no, so what it is it is submitting the respect judiciary has earned so if you have the tolerance for misconduct will not be a good indication. If the officer is desirous of producing witnesses he must be allowed. Whether he could engage a counsel then yes he could but only if you find that the counsel is impeding your proceedings then you can say not to proceed. In judging the charges even if there is a probability then you may go ahead but only when you have good reasons and not otherwise also then it becomes easy for HC to grant decisions on merits of the allegations. This is what you are supposed to do in the departmental criminal proceedings. In proper cases you must not fumble I used the word fumble because in writing that the officer is innocent because I have handled enquiries where many officers came and when he met him they came to me and told me that officer is add. Munsif here the HC has started proceedings and reduced him, but sir he is such a man sir and really he was really and what had happened that a District judge he was the chief judicial magistrate somewhere, so the District judge was pressurizing him to pass bail orders in favor of certain accused and that he was not ready to do and see the result and rather he passed bail orders objectively because all bail orders where sent to me and when I came to learn that he is such a good officer I wrote to the HC and I said where is the enquiry and took up and wrote to HC that to obtain all records and merely because 395 section is there the man is FIR is against unknown the man has been in custody for 6 months how can a conscious judge could give bail to that accused then I wrote down the order taking up each and every order and reported to HC that the officer has passed good order of bail and the charge is frivolous and then the career of the officer was saved. Now this is the one aspect what which we have to be and must not known to you. So first assume that the officer is honest this is the juncture we have to take initiative because the evidence has to come and we could find rebuttal of our assumptions only from them as only an enquiry has been initiated that is not justified. The HC rely upon the the opinion of District Judge

very heavily. There was a phase in Patna HC where many judges were posted ahead of senior officers and as soon they were posted ahead of good senior officers they started doing many things there I produced an order k in administrative committee and that particular officer was great officer and was known for his integrity J. S.N Jha he initiated the fodder scan investigation in Bihar he also said that he is a very good judge, I said it is very difficult for me to rebut your statement then I cited certain examples he said arree ohh he did these things and when I produced that order in committee one of the brother judges told me from where did you bring it and I said how how could you pose this question to me you are so I am also member of committee am I empowered to seek any record. Difficulty is that you people support corrupt officers and immediately he was reverted back. But he succeeded after my transfer to Allahabad so there could be pressure on you also from judges. I will tell you being fair honest and never causes any concern because if that has happened I could never been a HC judge I had a reputation of an officer who wont hear anyone one of the judges told me k sab kuch to thik h apke bare me bolte h crazy h ap.. I said could you cite an example he was silent, so I said should I, he said yes that the craziness is that I don't hear you lordship so fighting corruption is necessary but protecting good officers is more necessary. we know HC has enormous powers under sec-227, 226, Patna HC sat in revision and in spite of the case running in trial directed the statement of particular person to be recorded under 168(4) and then recorded evidence and ultimately the evidence and still the judge was acquitted there was no evidence then the administrative judge made a report tha the is a corrupt judge so he was put on suspension and enquiry was handed over to District judge Patna wrote a report and the matter was dropped but before the matter was dropped after 6 months or 1 yr the condition of the officer you can imagine the degradation not only of him of his family members or relatives but the system. You cannot measure the impact of these statements on the credibility of officer which comes out after the enquiry is completed the matter is dropped till

then he has suffered a lot. So it is all the more necessary to be very positive and to be free from all prejudices. Principle of natural justice is only mark on which a proceeding is based. When an officer is with you one thing that k the officer has been suspended and is under you then he is entitled to TA and DA everything so never hesitate in paying that besides the subsistence allowance he is getting, this was the procedure followed in proceedings. Any question from you?

Participant; Sir the comments when given by the judge NA

J. DHARNIDHAR JHA; You can give

Participant; Suppose the complaint comes with many allegations we generally forward it to the Hon'ble HC so that way we dont get into the we do not generally give our comments but if you find that the allegations are frivolous then we could enquired into that allegations are not true think h and keep it with you and if the same petition comes to you.

Participant; How to conduct discrete inquiry?

J. DHARNIDHAR JHA; In these matters you know your officers and will suggest to you is that I might have envy to an officer but when it comes to its integrity that thing must not come onto it.

Participant; Is it obligatory to send report.

J. DHARNIDHAR JHA; No not, simply write from records and other sources and if HC sends the same thing then you send this report.

J. DHARNIDHAR JHA; The present day the Bar have no screening measurement now he who does not get any job out of frustration joins the Bar and then he starts promising that will get this order from that court and so on this results into conflict

when he do not get that so he creates drama in your court rooms. Have faced these things. A revision petition was pending for three years and a stay order has been issued by the session judge merely because the petition has been rejected that it was not a case under sec-307 it was 323 & 324 case. The magistrate dismissed the petition and a revision was filed and district judge has passed a stay order 3 yrs. ab now you know your statement to the HC is containing that particular case also and you are not in fault when that petition came no one turning up so when a stay is granted so before granting it you should be very cautious and grant a stay only till appearance and if you grant a stay then the petitioner are disappeared then I called out then i sent my order to call and the Add. Public prosecutor was sitting said this has happened that etc, said alright tomorrow the advocate did not come was a senior the petitioner appeared with the petition asked kaun h bhai? He stated my advocate does not want to come and I dont want to engage another so you transfer the case, I said no this is not a reason and I started my order from that petition and within 20 days an allegation petition was sent to HC k this judge is arbitrary he does not hear anyone and all that. I sent the copy of that order without any comment. So in matters of these petitions now you have to see that your time is not consumed on frivolous petitions. Anything more?

Participant; NA There was a lady judge she Baroda under my District she complained against another judge that she was sexually harassed and she wanted a transfer for that case so the District judge told that you dont take this reason and just say that for my children sake I want to transfer and I am telling you I will transfer you so she she did that and was transferred then subsequently there were some other more serious allegations against that judge so under that report enquiry was made witnesses been examined and this women who changed her cause also recorded evidence against him now the very first incidence is not on record because the then D. Judge did not put it so it now on me I have no record of that so what to do?

J. DHARNIDHAR JHA; You dont have the record so you could mention that she has made this allegation and fresh statement has been made but is difficult for me to verify the truth, it might be true but might be. Allegations are very serious indeed and if the HC directs holding enquiry then it would be on the function of that particular judge also and not before you as you are not given notice to hear and you cannot also as that is outside the purview of your proceedings. So just mention that these facts has come on record but there is no verifiable facts before me so I am placing this before the HC, things are happening that way but judiciary is suffering from many problems.

Participant; perhaps that District judge might believe that it is true or not so he asked to do so.

J. DHARNIDHAR JHA; What happens is he wanted and he must have been in the consideration for the elevation to the HC once you are in the consideration you become very soft it was an exception that I am not praising myself I was walking with J. C.K Prasad so he told me in hindi k brother apne jis Thasse se District Judgyy k kisi ne nahi k that you administered the District with very heavy hand and indeed I did not meet any judges of the HC any of the judges unless I was officially required this was what I understood so I never thought that after Add. Judge I will be made District judge and when I was made District judge I shall be elevated to the HC I never thought I tell you what is there and I minded my business I mean I dont know the officer if his record does not support allegation then why should I punish him? So in this case the District Judge was purchasing peace for himself and not acting in the right spirit if she is a lady staff she is my daughter she has as equally respect I attach to my daughter a lady officer she is under my protective wings and for all purposes and we are suppose to behave that way this where we are having instances of failure in duty.

Participant; NA

J. DHARNIDHAR JHA; Yes yes, the enquiry will be hold by you two things we are the controlling officer of the judicial officers subordinate to us. We could hold enquiry against the add. Judges also if the HC has directed by appointing us an enquiry officer. we hold enquiry only after HC has appointed us. It is a delegated power of HC which we are discharging. so the Session comes to an end, ok there is lunch break after this.

Participant; Local Authority... NA

J. DHARNIDHAR JHA; Ye apne pucha hai me english me bolunga taki baki sab bhi.. I was the inspecting judge of Dehradun so the District judge was J.K Sen and he made a report of monitoring committee meeting and it is a very elaborate meeting includes all development in judiciary of every aspect. What turn out from that was that District judge has lamented the non-cooperative attitude of the building construction department as regarded as the maintenance of official building and residential building. I had the experience of doing this in my own way whenever such work use to be carried out in my tenure what I use to do was to form a committee of good officers after what was reported completed by engineers and use to tell engineers that the committee shall have round of ste and will report to me that what % of work been done, they said 70% of work has been done so completion certificate only for 70% This I use to do at that time when that minutes were reported i directed the let the District judges requested to direct the Nazir to obtain the work certificate from the concern engineer of the building department as to what amount of money was received by him as per square carpet value in occupation officially or residentially by the judiciary and if at all the any maintenance work has been done who has issued the work completion certificate upon which the bills were passed if the engineer is not in a position to furnish the

information as to whom had given certificate then the Nazir shall be directed to file a FIR and it was a policy decision of HC and must be brought in knowledge of CJ so i recorded that before it is done let it be placed before the CJ for information. He took it and was damn happy for the first time and it issued a letter. So if you find someone dont treat them with disrespect but dont give them undue respect and never allow SP or District Magistrate to parity with your officers. If they are not coming there are permanent members of certain committees then you adjourn the meeting dont allow any deputy or assistant to participate on behalf of Superintendent or DM or Civil Surgeon, no simply adjourn and write to the HC that this monitoring meeting could not be held on account of the non appearance of so and so and you see what happens write to the HC and that it will take up the matter with the state the man shall either be issued explanation letter or maybe that he is transferred so it is not easy to bypass the fire yes do give them due respect as human being but no undue respect. for good reasons not take such actions but for when you see that one time second and third then you react. Good relationship is necessary but not at the price of your administration actions which is more important. Thank you everybody it was nice to be with you . Amit ji..

PRASIDH SIR; Thank you so much for your time sir its always pleasure to hear you sir.

SESSION-VII

MANAGEMENT OF HUMAN RESOURCES

SPEAKER: JUSTICE U.C. DHYANI

J. U.C. DHYANI; Good afternoon and welcome everybody I am from Uttarakhand HC earlier I was in U.P when it was a joint state I was part of U.P Judicial service then and when the state came into being on 9th November 2000, I was allocated Uttarakhand and thereafter my journey was in Uttarakhand Started as a Munsif Civil judge junior division so welcome everybody, this programme is on court governance and court management in nutshell and the topic allotted to me is Human resource and its management and thereafter case management and normally the participants and I am speaking for myself also sleep after the lunch but I will make an endeavor that you will not sleep and will try to make it interactive so that it is a lively session more based on the exchange of ideas. Training programme have some objectives and to my mind the objectives of this programme is to help the participants you did not write anything the case laws which we will cite will provide you and just hear me and if you think that it is worth sleeping then please sleep, so i was on that to help the participants acquire improved professionalism in judicial decision making and interaction on court management. The basic job of a judge is what? Adjudication everybody know you all know this is the primary job. In management vocabulary it is known as judicial decision making, decision making everybody takes decisions even the gardener working outside making decisions even the receptionist but they are not necessarily based on reasons maybe but may not be also. So judicial decision making is as per law based on reasons and whenever you write the judgements they are speaking orders needless to say they are not bald orders and the moment you write such orders the appellate court you

are also appellate court you are also a one you say that it is a bald order non speaking order please pass an speaking order so our job is judicial decision making in accordance with law. JDM it is a very tuff job outwardly it seems that it is a very easy job but you asked the judges and they will say it is a very tuff job in the sense that while the others avoid taking decisions Prof. Panikker in his book has said that yes whereas the others avoid decision making judges are bound to take decisions good or bad, negative or positive may not be good but then he has to take the decision and needless to say it is a divine duty performed on this earth by the mortals so it is judicial decision making then comes to the management, what is professionalism and management what is a professional whenever we speak in terms of professionalism why this training why this training and workshop? In order to boast the professionalism, professional you are you have inculcated the qualities of JDM but this the the opportunity for interaction gives a boast to that professionalism which is based primarily on knowledge and then skill skill means which is an applied knowledge and then finally attitude. Somebody as direct SJS officers they come direct from the Bar and when we teach them in the legal academies we say that yes you might be knowing better law than us but now you have to sharpen your skills and then attitude of a judge earlier an advocate was responsible for a client he is also responsible to the court in the sense that officer of the court he has to assist the court but primary duty of a lawyer in the lower court is to take care of interest of his client but the same person in Higher judicial service or direct recruitment becomes a judge he has to shed that attitude and what is that? Yes that you have to acquire the professional skill of a judge adjudication of dispute so in a nutshell knowledge we acquire in the law classes and this applied knowledge is skill and applied skill is attitude in a nutshell psychological conditioning of mind in terms of job preference. As a judge psychological conditioning of mind in terms of that is the job of a judge. So in order to inculcate that professionalism and harness that these workshops are organized and the result at the end of the day 3 may not

be anything concrete but then there is cross fertilizations of ideas, interaction is there you meet your colleagues and that is the positive result of visit to NJA. Then I come to what is management and what is the difference between management and administration whereas there is an element of coercion, it is not so in management as it means optimum utilization of resources you have. Suppose as a District judge the strength of class three employees is 40 and then you have to work with only twenty so how to cope about with it, the recruitment will take time sometimes the HC does not approve of your scheme of things then how to do, you cannot say yes I will not become the judge also please get me transferred to another place but then at another place when you go you find the situation worse as against 15 person there are only 5 persons then how to cope about it, optimum utilization of the resources that you have you know that there are 4-5 stakeholders in the judicial system you have to go by it, one is judge himself, so if I go on CL the whole entire system will collapse then another is lawyer plaintiff defendant appellant respondent is one of them give adjournment what will happen? the case will not proceed .. under order 18 you have fixed the case for final hearing for plaintiffs evidence and the plaintiff is not there he says that yes my witness is there but then you put the question that presiding officer that you cannot produce any other witnesses unless you seek the position of the court there is a provision in CPC unless the court permits any other witness cannot permitted to be examined. Plaintiff first defendant first then only any other witness so the case is adjourn witness in criminal cases there is prosecutor and witnesses they are there and last but not the least staff registry of the court staff I mean in some of the civil judges junior division court if you are having less staff even the presence of one person the reader or court clerk is important suppose only one person is attached to you and then he goes on leave what will happen? You have no options but to write to the District judge, So the district judge of course have good man power with him, so optimum utilization of resources that you have you have to cope up with it as I have said that some great juris has said that " Is it

the cost of freedom we fought for.. Too many laws and too little justice, too much administration and too little governance". So we have to govern as a presiding officer we have to render justice as an administrator because you are not only a judge you are head of the judicial administration in the District everything revolves around you, you have better hierarchy then District Magistrate and SSP and everybody else. So you're the head. So when it comes to the management and everybody has knows about the word judicial activism what it is? this is a legal jargon. Management is also a legal jargon why this case management this is a product of decisions of SC in Salem advocates Bar association will highlight, the SC in this case said that case flow management draft rules should be formulated by the SC and thereafter the SC formulated and thereafter with minor amendments every HC has framed the draft rules for the HC as well as for the Subordinate courts also and you will be surprised to know that the word management has a humble ancestry, in good old days the word training was used for the training of horses kept in the stable and then it percolated down to the judicial circles as also the administrative circles and that is how the term derived which had earlier very different meaning now it is a very sophisticated word people are proud that they have joined the course on management and I am going for training to Academy. So friends whenever will be talking about the promotion of the staff but then first and foremost to my mind is time management unless you manage the time everything will go ... Somebody has said yes that "Yesterday was a cancelled cheque, tomorrow is a promissory note, today is ready cash use it, so best available resources that we have we have to utilize them, as I have said that a District judge cannot say to the HC that yes I am left with the only 3-4 persons and I cant work in this District because the condition in other place is as i said all the more worse. So time management punctuality you should impress upon the subordinates before you that yes you have to be punctual on the dice sometimes it happens that in those areas where the pendency is very low then the presiding officer dont sit on the dice

before 11.30 am. They should be told they are to be impressed upon punctuality. HC wants it, while the presiding officer should go through in the meanwhile study frame issues normally the tendency is that the counsels are asked yes what issues do you want to frame? and on the basis of those issues are framed. Where it is the duty of presiding officer to do that. So my request is that yes impress upon all the officers that they should maintain punctuality time management is because earlier what happened earlier the lawyers and witnesses use to dictate the courts, whereas the objective of court management is that you should dictate the terms of the litigants and lawyers. That's why you have seen that you have there is curtailment in the opportunity of adjournment in the orders 17 only three opportunities are there. but that is mostly observed by breach everywhere the pendency is so much the cause list is so much that the presiding officer has no option but to give the adjournment what to talk of three adjournment I mean yesterday I was hearing the writ petition where there were 26 opportunities has been given to a defendant to adduce the evidence and then the presiding officer had no option but to close the defendants evidence and defendant came before me as petitioner the other side was also there I said that enough is enough 26 opportunities are more than enough from where you could get these many opportunities and I said that I am fixing a date on that date the defendant will adduce the evidence file his affidavit and it has to be concluded by Saturday so I mean you have to be assertive and SC has said that in one case that while recording the evidence the presiding officer not to remain as a silent spectator and is not the Umpire as was the concept earlier he has to be a referee like who controls the proceedings and not like an umpire to say no or yes.

So apart from this time management personal management then nerves control everybody will try that your BP shoots up and you destroy your health that is detriment to you as well as to your family while imparting justice we have to maintain our health as well otherwise what for we are doing I mean we are earning

wages we have joined this service to earn some wages for maintaining our families so this is one part and then. Can you show Ajay Hasiya's Case? In every HC and subordinate courts the rules are there for recruitment of subordinate staff everybody maybe of different names and just wanted to highlight that can you give the print of this to them, Ajay Hasiya case that whenever rules are but the marks in the interview should not exceed 15% interview means discussion and power tends to corrupt and absolute power corrupts absolutely. So the SC has minimize the role of the viva and interview. Yes will you please read it for me.

Participant: Reading the SC guidelines Renu Case 5 points;

- All the high courts are requested to re-examine the statutory rules dealing with the appointment of staff in the high court, as well as in the subordinate courts and in case of any rule is not in conformity and consonance with the provision of article 14 and 16 of the constitution, the same may be modified;
- To fill up any vacancy for any post, either in high court or in courts subordinate to the high court, in strict compliance with statutory rules so made. In case of any appointment is made in contravention of the statutory rules, the appointment would be void ab initio irrespective of any class of the post, or the person occupying it;
- All the high courts are requested to re-examine the statutory rules dealing with the appointment of staff in the high court, as well as in the subordinate courts and in case of any rule is not in conformity and consonance with the provision of article 14 and 16 of the constitution, the same may be modified; To fill up any vacancy for any post, either in high court or in courts subordinate to the high court, in strict compliance with statutory rules so made. In case of any appointment is made in contravention of the statutory rules, the appointment would be void ab initio irrespective of any class of the post, or the person occupying it;
- Each high court may examine and decide within six months from today as to whether it is desirable to have centralized selection of candidates for the courts

subordinate to the respective high court and if it finds it desirable, may formulate the rules to carry out that purpose either for the state or on zonal or divisional basis:

- The high court concerned or the subordinate court as the case may be, shall undertake the exercise of recruitment on the regular basis at least once a year for existing vacancies or vacancies that are likely to occur within the said period, so that the vacancies are filled up timely, and thereby avoiding any inconvenience or shortage of staff as it will also control the menace of ad hocism.

So this ruling you might have noticed that under the Constitution of India so far as the recruitment of the HC are concerned the CJ has full say but the Constitution itself says that yes in the financial matters the even CJ has a recruiting authority shall not violate Article 14&16 they are equally binding on them. Those who have some idea of CJ conference it was held last week also there is a continuous demand from CJs that they should be given power to re appropriate the funds, suppose say 10 crores is given to HC and I asked CJ don't want to be spent on say stationary I want to divert it for wages then there is a continuous demand for the last 7-8 years. I was LR and then onwards I have been looking thereafter also became Registrar General in each and every conference this demand has been raised, but the Govt. has not exceeded to it. So what I wanted to say is that there is no financial autonomy to the HC courts even though the CJ may be the appointing authority of all servants in HC and Renu has said that you cannot violate the provisions of 14&16. Recently much debated television news on CJI, that emphasizes the importance of human resources. Had he be robots then why the Hon'ble CJI has lamented there are not enough judges because we are unable to deliver goods and he make the Govt. plea that yes judges should be appointed that I likes the importance of human resources, it is must but as usual as judges are not there we are coping with them we have to deliver the goods but the expectation of the people is very high they dont want to excuse anybody they want there matters should be decided at the earliest although laws delays are ... and for as old as the

law itself. One jurist has written in his book that a grossers shop is better managed than a Munsifs Court. It is his comment on freedom of speech and expression, so and there is an author .. he wrote a book on future shock he says that you have to manage the change otherwise the change will manage you , so you have to come up with terms with the changing situations like law is an instrument of social change and when you require social change law is taken to parliament and it meets the needs of society.

B. Cardoso you might have read he says that yes in the long run it is the personality of a judge which matters. Why? You are the presiding officer you are heading some District possibly that earlier another bright judge might have presided over that court and excelled you possibly that when your successor came your name is remembered by the lawyers that yes here was a man who used to deal excellently but now to our bad luck this another has come and then demands are raised before the HC that yes the another judge should be transferred why is it so? Ultimately it is the personality of a judge which matters law is the same but the interpretation is according to law somebody fast tracks it somebody is very slow, then the results are bad. True that you can't please everybody but then if you are satisfied that I have delivered aptly that is the ultimate thing. When you go in the evening to your house and feel satisfied that is the ultimate thing, So far as this public servants are concerned very difficult to get the work done. I mean anybody you must have noticed, you can do it yourself but very difficult to get them done from others. I am reminded of the words of Peter Pan, Psychologist he says that public servants are mad caps they are born with horns on their head and thorns in their chest. J. Bentham he says that yes public servants are mad caps they are like defective clocks they will remain as it is and you push a thrash and blow so they will start working so I am not saying but then there are different theories also. McGregor has propounded two theories, X & Y. Theory X says that yes there is an innate goodness in a man, basically a man is good. But then theory Y says yes unless you give him that push he will not work and he himself says that yes in my estimation a mix of X and Y will make a good policy, like

taking disciplinary proceedings is not the ultimate result you have to give them love and affection. Promotion also, I have said that there is a shift from administration to management. It means try to get work done without coercion with the resources available with you in a way that you get the optimum. Don't bother the superiors don't make complaint to the superiors that this is the problem in my district but get the work done. Concept of Management is this only, I am again reminded of Alexander Pop he said that for forms of Govt. let the fools contest, that debate was going on at the period of Atal Bihari Bajpayi on form of Govt. So he says whatever is best administered is best and so my advice to you also the same. You are the best judge of the District of the situation, so the show must go on. And before I request you to put questions if any there are three ego states in every person. One is Parent ego the other is Child Ego and the best is Adult Ego. You might have seen hindi movies in that Rajkumar kaise bolta tha koi btana.. Rajkumar k.. Jani hum is Mulk k Badshah Hai.. I am everything that is parent ego and a person is who behaves like a child whispering. Complaining to others and the adult ego is yes the ego which a reasonable common man will behave in a situation, when Taurus was arrested and brought before Alexander He asked him, what do you deserve from me? a behavior which a king will give to a king, this is adult ego. So we have to work in adult ego since it is a discussion on behavioral science therefore I am speaking these all these things before you and yes resources, had it be Robot it would work best as it is our servant but you replace it by a man and see how difficult to get a work done. So I am highlighting the importance in this session so if there is any questions you may?

Participant: I just wanted to state that this was not my judgement as everybody was looking at me so just for fun I said it for a lighter moment.

J. U.C. DHYANI; Yes yes it is not your action the decision is known as Renu v. Tis Hazari.

Participant: You have mentioned about the punctuality, one of the major problem I have faced in my case in Assam where judges sit on time, so in different cases I adopt different tactics, in one case I have dismissed it..

J. U.C. DHYANI; No no dont dismiss it never, I faced such problems I use to sit on the dice complete my presiding officers diary the cases which are not been updated I updated them, I did not call out the cases the only thing is that I sat on the dice, once twice thrice and for a month when I did so and lawyers noticed that the judge will keep on sitting on 10.15 am, and case is not been called out and his time is been wasted then they started coming I did not call out, suppose some presiding judge as a trial court I took out the file framing of issues determination of point wise you know called the steno these issues are framed and then show it to the lawyers who came later on and ask them suggestions and like this 5-7 files use to get completed instead of banking upon them or instead of waiting for them to tell the issues without applying mind and this is what I taught in the Ujala these are two academies uttarakhand. Don't proceed Ex parte against anybody or dismiss it gradually some of the people will come, when I was in Barabanki 28 km from Lucknow and most of the lawyers use to go to practice in Lucknow HC they wanted there matter to be taken up earlier those Barabanki lawyers who preferred to go to Lucknow they wanted this. And then when I sit at 10 O'clock they use to come. Sir now I have come take up my matter hear me and when other party comes hear them and pass orders accordingly. So they had no grudge whatever the order is passed they accepted that makes a different to my mind. Yes anybody? It is good to receive anybody rather than received by others, it would be very embarrassing for presiding

officer and instead make them embarrassing but only sensible person will feel that not others.

Participant: My lord most of them are very insensitive for one hour from 10.30 to 11.30 nobody will come so as the lordship said similarly works civil matters I take.

J. U.C. DHYANI; Dictate your work till the time they dont come you complete the other work on the dice when there is nobody then no breach of even confidentiality.

Participant: Public prosecutor says that there is this circular from the HC that there is this judge has to examine 8 witnesses in a day so if I dont bring these witnesses how will you?

J. U.C. DHYANI; there is another side of the coin also I said that why dont you get this witnesses discharged he said that if I discharge these the department will take action against me the DGC will ask me why have you discharged these witnesses so better the witness comes and let the presiding officer record whatever he says at least I am absolved of my responsibilities, so that's why they don't. Yes anybody or you can share your experience if you do not have to ask.

Participant: Sir in delhi if you come to Tis Hazari at 10 you will find the whole court is functioning and its full of work from then onwards.

J. U.C. DHYANI; yes yes I know

Participant: Yesterday and today I may say have said Delhi is to be discussed separately

J. U.C. DHYANI; Hahah.. So far as HC is concern the HC are very punctual everybody will be there before you start and join the dice but in district judiciary i have worked in Lucknow and it depends on place to place, and in Lucknow they will not come before 11.30 am.

Participant: In some place they cannot find public transport like in hilly area so they cannot reach before 12 or so.

J. U.C. DHYANI; Right in hilly area in Uttarakhand their is no jail in each and every Dsitrict. So if somebody has to be tried from one place then the morning the police will take and bring to another district so it will take time. Yes anybody please.

Ok then we resuming our discussion for tea we have to go there or here only? Ok

Thank you

SESSION-VIII

CASE MANAGEMENT

SPEAKER: JUSTICE U.C. DHYANI

J. U.C. DHYANI; Good afternoon please please be seated, give me my file of cases ok, Peter Drucker is known as Management Guru if you have read the book best book on management and then he also says one thing many a times

recommendations be made to you give the slip that take this man in class 4 or 3, he says that learn to say NO, that is the greatest asset of that book every time you dont have to say yes I will do it, sometime a plain in speaking is better than inviting trouble all through your life that is always better and once the image of an officer is that he goes by the rule even the administrative judge will hesitate to recommend to you anything when I became I was the founder Director of Uttarakhand Academy earlier I was D. Judge in Nainital, one fine morning my CJ told me that you have to establish a new academy because J. Balakrishnan has to inaugurate the academy then virtually in a way I was thrown out of D.Judges bungalow, another D. Judge was posted there since the academy was to be established therefore no house no car, no driver, I had Maruti 800 I use to somehow with great difficulty manage a house for me, small type 3 house in which the ADM was earlier living it was a horror house electric wires no nothing but then I had no option travel to the academy 11km self-driven and then the class 3 & 4 employees were to be recruited class 4 I recruited no judge recommended me anything no judge others recommended but that were thrown in dustbin judges did not, I said the poorest of the poor people should be given employment those who never thought in their dreams that they will be getting public employment and then when they were appointed the next step was to appoint the class 3 staff. How to go about it, only clerk which I had on deputation from civil court I asked him a press release free of cost through information officer that the examination will be conducted on such an such date for these posts that was got published then the problem was 10000 applications hoe to go about it there was no place in the hill then I contacted the principle of Senik School an army school having big campus so he said yes then he said that my invigilators will be available I said that they will be but they will be asking for money and I don't have it. So what I did was those class four employees which were appointed I asked them to remain standing on the door of each every class room and candidates thought that they are invigilators and the examination was conducted from 9-12 O'clock and at

12 I gave solution to the question paper on the gate of notice board the key answers were placed. then I sent a man from civil court to Noida and Delhi to get those OMR sheets checked that man went there he informed me on telephone that this roll number has scored this marks and so on. and I noted down in my office was all alone and he said that sir I am coming tomorrow by bus from Noida to Nainital I said that take your time I found as to who is in merit list and 10-12 vacancies were there the highest 1-12 I wrote down and went to the bungalow of CJ and said that yes Sir this is the result I have come to you for approval he approved it same evening same press release to newspaper and within 24 hours the examination result was declared then I rang up to each and every selected candidate said you have been selected come to Ujala tomorrow give your joining who are you Sir.. Cut. how are you concerned who am I. So such types of problems are faced. CJM Dehradun had a complaint against one its employees I was D.Judge there in the lunch hours I called the person that employee I said that what is your problem and CJM was sitting there. CJM said that he passed remarks on him Sir he is a useless fellow then he replied Sir I am not useless the only thing is that I am used less. I mean what do you say? Sir no work has been given to me and important work has been given to other employees and I had been given the work of consignment I am so and so meritorious student and I don't find favor with the CJM the bogus work has been given to me. So his complaint was answered. Then I asked CJM that please give him some other work he is a good person. Sometimes the problem of staff is they are not granted audience that is the problem if the D.Judge is receptive and somebody have any problem you hear him 3/4 of his grievances are addressed you find solution is different thing but once you hear him it is a big thing.

So friends now I am coming to some of case laws print will be given to you the first is Salem advocate Bar Association I have told that this case management rules every HC has framed but that is on the basis of draft rules framed by SC everybody has adopted them so they are known as case flow management for subordinate

courts rules and one is for HC rules. Before that some important case laws on the point and I have told you in the earlier session that the genesis is from Salem case, so those who have read it will find it is a complete law on S.89 of CPC ADR mechanism in fact this decision has given a boost to S.89 and various directions were given. So two cases on Salem case and the next is Sidharth Kumar is again on delay of disposal of old cases, delay in disposal of cases causes hardship to the parties presiding officers duty bound to take up the decide old cases power of HC to control inferior courts and tribunal. My CJ was telling me a story two days ago he says that when the courts were inspected in Kerala the presiding officers were not deciding the old cases the reason time consuming they were taking lot of time and enough units were not provided for disposal of those cases so probably Kerala has done that they have doubled the units of old cases and Delhi HC also. that is good because otherwise

Participant: Most of the HC have done this.

J. U.C. DHYANI; otherwise nobody will say I am also in CBI in my state and you know two hundred three hundred witnesses and each witness ranging between 40-50 pages in only the examination in chief and then comes the cross examination. And by the time the case is decided the case instituted in 70s will be decided in 90s by that time accused might have died and the case is abated and still no unit because it is termed as uncontested cases. Believe me I have not seen any case in which the CBI has arrested anybody trap cases the arrest is necessary otherwise the whole story will be disbelieved

Participant: A 1985 case I decided it in the year 2010 and gave conviction.

J. U.C. DHYANI; You have done a commendable job otherwise very difficult to decide. When I was CBI magistrate at Lucknow long back one MLA was arrested with narcotics huge.. came before me remanded bail refused up to session and HC

then what happened was CBI could not submitted the charge sheet within the stipulated time again its compulsory bail application statutory bail I was bound to grant the bail the same person same judge this also happens. CBI will never arrest if arrested they will not file charge sheet in time and if not arrested they will not arrest and simply file the charge sheet at the moment you issue summons to accused he will say that I have responded to summons kindly grant me bail.

Participant: The CBI also do not object.

J. U.C. DHYANI; Yes they do not, Judge has to decide even if the staff or any is not in favor of conducting the case as I said that judge has no option but to decide. When I was in the secretariat I there was four Ds Delay, Delegate, Dump and Do, Do comes at the last my Chief Secretary told Mr. Dhyani there are certain files which need not be disposed off they should be kept pending you dispose off very quickly please some of the files must be kept on the files. He said Do is the last.

Participant: And they ask to seek opinions.

J. U.C. DHYANI; If the Law Secretary gives the opinion against them then they will seek opinion by from the Advocate General is there nominee so they obtain what they like. This is on 227 also power of HC to supervise and control the judicial officers read with 235 under which this HC circular letters. So this is about Sidharth Kumar, it was authored by J. O.P. Dutt Allahabad HC. Then next is Makhan Lal case is on election petitions it says that yes the election petitions should be disposed off decided at the earliest because suppose in your gram pradhan is 3 yrs and it so happens when the next election comes, within the tenure of the person because if he is elected by your verdict he should enjoy the fruits of his post so the SC has highlighted this in this case. The next is Ramchandra Rao on speedy trial earlier you might remember that two judgements were there common cause and then

sharma Raj Dev Sharma which was later overruled by SC and the SC has time and again said that yes to the HC caution that you cannot say that decide it within 6 months that has been ridiculed by the SC for that amounts to acquitting the accused in the absence of evidence so SC has said that HC should not pass such an orders. But as D. Judge you cannot ignore that but the HC use word preferably within 6 months and then best course is move a miscellaneous application to the HC for extension of time. If not done he will move a contempt petition yes. At least you are safe. Many a times I have received the contempt petitions I have said to them I have used the word preferably only I had to drop it but then you never know what is been argued over there. Notices are been issued and the presiding officer will not be able to sleep for 2 days. Then again on speedy disposal Rajender v. Prem Mai, the relevant paragraph I am reading the SC expressed its anguish at the delay in disposal of cases in law courts, the present case is a typical illustration a suit filed in 1957 as rolled on for half a century it remind case so and so . In Charles Dicken novel Bleak House which had rolled on for decades consuming litigants and lawyers alike people are simply disgusted with this state of affairs and are fast losing faith in the judiciary because of the inordinate delay in disposal of cases. The authority concerned are requested to the needful in the manner urgently to ensure speedy ... Dr. Vijay Kumar you have been to mysore there is a Hotel there below the guest house I think Hackman.. Pending for hundred years it was, then ultimately the then CV V.K. Gupta directed D. Judge to decide within 6 months although such a direction it is debatable that such a direction could be given or not. But then it yielded results and the Hackman case pending for 100 yrs was decided. Then came the Indian Bank Association v. UOI; It says that in Negotiable Instruments Act cases the presiding officers should not write the oral statement of the complainant instead the same should be done by way of affidavit.

Participant: In NDPS cases...

J. U.C. DHYANI; You have reminded me NDPS cases also in murder cases there is a provision in CrPC that Asst. Director or any officer who has given the report and who is above Asst. Director need not be examined 294 of CrPC. One problem is that in each and every Central legislation Act, NI Act, Domestic Violations Act, Family Court Act, Hindu Marriage Act you will find a provision that yes the presiding officer is deciding within 6 months or 1 yr the Central Govt. when enacting a legislation does not forget that enough structure infrastructure is not there in the state and gives the direction without giving direction to states that enough courts should be established for that purpose so this is on Indian Bank case. Then one important just give me few seconds.. Then as Mam was saying that the was able to finish the CBI trial and the SC in this case Makhan Lal case which I already highlighted the statement of 18 witnesses examined by the parties have been placed before us in 18 volumes some of which run into about a hundred or even hundreds of pages each we are told that 120 days were consumed in recording the evidence the learned counsels were agreeable that if only the conducting the examination chief and cross examination would have been effectively controlled the recording of evidence could have been concluded in less than half of the time than what has been consumed and the bulk of the evidence could have been reduced to 1/3 or 1/4th of what it is the reason behind giving such long rope in examining and cross examining surprisingly enough that we were told that in trial of election petition the atmosphere is surcharged conducting counsel get over jealous and it is not advisable by court to interrupt the conducting of examination by counsel we are not amused at all curtailing delays is essential to expeditious disposal of the cases speedy disposal is the cry of the day, courts cannot act as a silent spectators when evidence is been recorded judges must have full control over the file and effectively conduct proceedings keeping in view that no litigant has any right to waste the precious time of the court.

Participant: I would like to say sir in that case that was the charge sheet of 1995 and so it was a full proof charge sheet everything was included so entire matter was based on evidence, so no oral evidence so I only gone through the certified evidence and those were admitted by them so I passed the orders and then disposed off the matter.

J. U.C. DHYANI; Here he was kind enough to admit otherwise most of the presiding officers are frightened not to commit a contempt of court. So we have taken up all the ruling then little discuss on the rules, I have told you that from Salem case it has been framed through that so I take for example that there should be categorization of cases, suits/Cases/Appeals/Revisions and other proceedings into Tracks that is track I,II and III. Track I will be matrimonial matters custody of children maintenance appointment of guardian and wards etc. Now the Track II is Original suits other than mentioned in Track I, Suits for trademarks, copyrights, patent, intellectual property right and land acquisition references that also takes time, S-18 reference. and the third Track is which are not included in one and two. then there is a direction that presiding officer shall endeavor to dispose off cases in track I within 1 yr. And track II and III within 2 yrs from the date of appearance or deemed appearance. Only these are rules guidelines but ultimately when I hear the 227 jurisdiction I tell in the open court that CPC is not within my hands whenever any execution order is passed the petitioner counsel says that the proceedings might be stayed I said that ... of the year 1997 ultimately it has been decided now execution is pending if the degree holder is not able to taste the fruit of his degree what is the use? But he says that sir kindly be stayed I said that ask your client to open order 21 you have moved this application under sec-47 now open order 21 file an application under order 21 rule 1 and there are 125 rules everyday file a frivolous application under one rule then next get it dismissed by the D. Judge then come to this court then go through SLP to SC there is it will be dismissed, then order 21 rule 2 similar application knowing it fully well that it will be rejected same parade upto

rule 125. How much time will be consumed he said yes that is the object of yours judgment debtor to stall the proceedings of the decree. So that was in the lighter way I speak to all the advocates that ask your client to open order 21.. and consume the time. There was a lawyer in Lucknow for JD and he use to say that during your lifetime and during my life time I will see to it that the decree is not executed. So CPC is not within our hands. This is the practical problems only a trial or D.Judge can understand. If you ask me and give me powers I will simplify the CPC and reduce the pages from say 200 to 50 but then I am not the lawmaker and even if I am lawmaker the lawyers will not permit me to do so, just it has happened in 115 in CPC, what has happened. Earlier it was curtailed in U.P but then the lawyers went on strike then broadest possible 115 was again introduced pass any order and then file revision if one goes in revision as it could be used only once so then one party if exhausted it the another party will come for it, so I mean the provisions are misused then it is a duty presiding officer shall at intervals of every month monitor the stage of each case allotted to him. So these are the guidelines. The summons notices issued in suit shall take maximum of 30 days, it is given in CPC also then procedure on grant of interim orders that is already there in 39 rule 1&2, then Referral to Alternate Dispute Resolution, Procedure on the failure of Alternative Dispute Resolution, Appointment of Commissioners for recording of evidence and the procedures newly introduced section in CPC that instead of recording the evidence and procedures, Cost, Proceedings for Perjury then Adjournment; you will see that you continue to call the case from morning till evening the client will come the counsel will not come what happens in order 18 plaintiffs evidence plaintiff will come sure please record your evidence counsel is not there defendants counsel is there then defendants counsel will take your leave sir I am going to some other court because counsel is not there then after some time the plaintiff will come with his lawyer by that time the defendant counsel will be gone and if you start the recording of the plaintiff in the absence of defendants

counsel he will make hue and cry sir in my absence, I was there on time and now you have started his evidence in my absence I will see that many of the questions are frivolous inadmissible, so this is the problem he will come he will vanish and the presiding officer like a helpless spectator has no option but to take and if all are present then they will move petition for adjournment and at times they say reject it then they will go before the HC if nothing is available then 151 this is the problem the bearer only knows and units are been given cases are been disposed off the casualty is first quality and second the old cases which deserve more attention we are not able to give them that attention and then the Miscellaneous Applications.

Participant: I would say we make the cases old and then we decide.

J. U.C. DHYANI; Yes yes I mean I have been a presiding officer you see the old file and then god willing any adjournment is moved by somebody and if one is due for transfer within 6 months you will say that yes somehow I have to pass then the burden will shift to successor. So these are hard facts which we are sharing.

Participant: NA

J. U.C. DHYANI; Yes true, you have left with no time to hear at the end because of this musical chair as I told you earlier.

Participant: One problem my lord I faced while disposing old matters that they are listed notice is given to the Bar Association these are the matters which are been listed on so and so date, my lord what happens is this that ultimately when I am going to the records I find that most of the matters are been stayed by the HC and now as old as 1988, he show computerized slip that matter is pending in HC i said ok fine tell me whether there is a stay order or not? If such order is not placed before this court maybe it was stayed at initial stage but thereafter? so I said that if there is stay order then it should be presented and if not then I will pass necessary orders

and I have started one thing that not all appeal I have started dismissing the matter at the threshold..

J. U.C. DHYANI; That is good good..

Participant: A person is expecting that he will be served with notice here because he contempt the HC order as he has passed an order in one of such cases where it is claimed that HC has put stay.

J. U.C. DHYANI; One should take time and put the matter before their CJ.

Participant: My lord I give them time not like out front disposing off but the time of one week to show his point whether it is pending with stay or not.

J. U.C. DHYANI; Yes yes, they manipulate the court and sometime the matter is admitted without stay. So ..

Participant: In our state the HC sends list of stayed matters every month.

Participant: Such is not the case here in our state my lord, their things are smooth but you come to W. Bengal you will see the condition and you are pressurize to do everything. We are trying to out out the situation and has selected a day and my subordinate are as well cooperating and following it.

J. U.C. DHYANI; yes yes, hmm But this enthusiasm of you and your officer is been appreciated by the court or not?

Participant; My lord we do not expect anything I dont know about the HC but my Zonal judge has appreciated it and that was enough for me.

J. U.C. DHYANI; Good, right that is self-sufficient. I will tell you about Allahabad HC even if the stay is vacated that will not be communicated to you. There you

need to write to Deputy Registrar Judicial he will hardly reply for years whereas the stay has vacated but then the presiding officer is unable to proceed with the case.

Participant: We use to get the reply in one week.

J. U.C. DHYANI; As Mam has said that you are a civilized state Gods own country.

Participant: I heard 30 yrs old cases and did all the proceedings and everything was almost done and at the last moment the HC granted stay, so now what to do.

Participant: One another thing we face problem in disposing of sec-5 application my lord I am taking up old appeals then I found that it has not been admitted I felt how come? There were so many adjournments that was and I disposed of that application as there was unexplained delay of 3000 days lordship the matter had gone before the HC and there is again saying that if you cannot make out any case then you make out a case against a judge and it was done it was that in 1992 when I had pleaded in this case from side of one party and therefore I am inclined towards that party and rejecting the delay. And I was asked to explain why the proceedings shall not be drawn up against you, I said come on who looks into the matter that who pleaded at that time, but these things are demoralizing.

J. U.C. DHYANI; I will tell you an instance when I was civil judge young there was a client who use to contest a case on his own, and he knew CPC than any of us could know, he use to institute the cases against the Govt. departments so he ADGC will seek adjournment then he will say strongly opposed then he will come with another application which is already prepared 2nd the court has awarded only 15 as cost whereas my expenditure are as below from ram nagar to kashipur so and so . . . exemplary cost under 35B, the presiding officer will loose his temper said that rejected the order has already been passed the same cannot be quantified by another

application and so rejected then with another application and so on.. And one day I dismissed 6-7 application of him so I thought he is useless let me teach him a lesson so instead he taught me a lesson, in the last application was that I have no faith in this court all my applications which I have filed have been rejected without hearing the other side therefore my case be transferred from this court to another court. I again dismissed it because I said that authority lies only with the District judge better you go to D.judge and move this. Then he went to for transfer the transfer was rejected but then what the presiding officer will do? I wrote that although the Judge has rejected the application but then it will be proper on my part not to hear this case and therefore this case will be transferred to another judge. So she is saying is the ultimately transfer application be moved and then the proceedings will be stalled that is the problem. Yes anything else please because I dont want to stand between you and your tea. This is human resource management anything. So we had a wonderful day thank you for cross fertilization of ideas.

PRASIDH SIR; Thank you so much Sir you come down all the way from Nainital to Bhopal, Thank you so much for your time and sharing your knowledge and experience with us.

SESSION-IX

MANAGEMENT OF BAR & LITIGANTS

SPEAKER: JUSTICE K.J. SENGUPTA

J. K.J. SENGUPTA; Good Morning to everyone, I hope everyone is fine. Yes Now this all of you are experience now by this time you have understood what is the mindset of the member of Bar and also litigants, there are some litigants who are really regular visitors particularly corporate sector. In management of Bar and litigants there are two things one is you are all principle district judges so the insight in your case in your court and also the courts of the learned judicial fellow brothers as you are the leader of the district and manager of the district So naturally you are to take the stalk of the situation of the insight of the court and then outside of the court but within the court premises and sometimes the action of the court ... spills over outside the court premises and among the public at large. So my small experience as a judge for 18 yrs of HC and also as lawyer in HC and challenges faced by the courts that this 20 yrs. ago is something different from the challenges we are facing today which no one dispute and deny, as far as the democratic rights among the Indian subjects and Indian people is also one of the challenging task of our courts. Mind that in our constitutional system as far as executive and legislature has concerned this is a quasi-federal in nature meaning thereby a federal Govt. can interfere in the affairs of the state administration in executive side and legislative

side but in case of judiciary each and every state is independent absolute federalism and SC cannot interfere in the administrative side and takes up the judicial side because sub ordinate courts are guided by the HC under Article 227, 234, 233, 234A and 235. This is the direct administrative control and also judicial control naturally District judges has a very important role and district judges are the backbone of our state judiciary one has to mind that. Now management of Bar and litigant what is that? Before that I will have the self-introduction and I will give two mins. time that what is the problem you are facing while managing the Bar and litigants. Will start from that this side, please you yes..

Participant; NA

Participant: NA

Everybody said their name and District (But not on mike)

J. K.J. SENGUPTA; Yes please

Participant: NA

J. K.J. SENGUPTA; Yes please...

J. K.J. SENGUPTA; I think the introduction is over, now just I will ask you what problem do you face within one or two mins.

Participant: I did not face any problem.

J. K.J. SENGUPTA; You do not? ok.

Participant: Generally my lord ... NA

Participant; Strike ok, and sometimes they abstain from..., ok let me see all the problems because problems vary from place to place. Yes.

Participant: My lord the lawyers are more concern about the client and indiscipline in conduct basically. lack of knowledge and are more personal have personified themselves and equated with the clients and then the Bar is more taken over by the outsiders like politicization in the Bar.

J. K.J. SENGUPTA; Yes please..

Participant: Similar Sir and they are not appearing on time.

J. K.J. SENGUPTA; yes..

Participant: Similar problems but the lawyers use complaints and pressurizing tactics.

J. K.J. SENGUPTA; Yes please.

Participant: There are some groupism and it not that there is one group

J. K.J. SENGUPTA; If there is one group it is easier to deal

Participant; They have conflicting interest so it creates a problem.

J. K.J. SENGUPTA; Yes please.

Participant: Sir, NA

J. K.J. SENGUPTA; Yes please, do we have a handset mike so that it is easier, carry on and dont worry ..

Participant: Yes please.

Participant: Every lawyer have three duty, towards their own client, counsel of other party and towards the court but I saw in many cases the lawyers forget that they owe some duties and involve as if it was their personal case.

J. K.J. SENGUPTA; Yes please.

Participant: My juniors face problems and the junior judges when they come they are very forceful so there that is a lot of clash in fact right now in one place there is a strike going on for the last one week against the behavior of a particular lady judge, now she is only going by the rules she is punctual but lawyers are not so there is this.

J. K.J. SENGUPTA; Yes please.

Participant: Constant adjournments in the court and ethics are deteriorating, new advocate demand relief and if we dont give that relief we become very unpopular and another problem is pendency is granted and nobody has reported in the HC..

J. K.J. SENGUPTA; Yes please.

Participant: Similar problem

J. K.J. SENGUPTA; Yes please.

Participant: Same problems Sir.

J. K.J. SENGUPTA; Yes please.

Participant: If you are too strict with the dress code and punctuality they are offended and want them to be going the way they are.

Participant: No problems but in some areas there is this problem of where Lawyers are passing unanimous resolutions against good judges and if the HC are not giving proper support to such officers later on this becomes a big issue.

Participant: No problem Sir

J. K.J. SENGUPTA; Yes please.

Participant: Sir so far as the Bar is concerned it is the worse Bar in state and the lawyers have fixed for sub division days like one day in this court and another in that, every time matter is called one or the other advocate is not available then on cast agitation lots of rioting and all takes place openly the shops have been burned and even the security of judicial officers the gunmen and police had run away so we had to lock our houses and come out in the open park under apprehension that now our houses will be set on fire. In case where the lawyers personal matter is involved I have not seen the single matter in which the complaint of judicial officer is not been made they just want the issue be decided in their favor.

J. K.J. SENGUPTA; Yes please.

Participant: The litigants want speedy trial my lord, but the lawyers delay it so much that we are helpless and then they show to the clients that they are doing it as much speedy as possible and for that take the decree from HC for speedy trial but again they file some or the other application which causes delay.

J. K.J. SENGUPTA; Yes please.

Participant: In my station there are four Bar, I am little bit strict in disposing off the bail petitions but the Bar people do not like my practice so they decided to boycott my court as well as all the courts so they have given a resolution so I conveyed a meeting with my officers and said you do uniformly and pass the orders

as per law. So I had 150 bail application to dispose So I dismissed all applications because no representation so like wise it was done, so they next to next day all Bar people came and surrendered.

Participant: same but one is that the non practioner lawyers they are more dominating the Bar then the practitioner lawyers and the junior lawyers are dominating the more then the senior lawyers and senior lawyers having no problem because they want to go by the law but the junior they by hook or crook they want things to be done.

J. K.J. SENGUPTA; Yes please.

Participant: Similar problems

Participant: No problem sir.

Participant: They want to redress their other problems other than judicial business.

Participant: Majority of Bar thing they are the party.

Participant: Same Sir, juniors are facing problems.

Participant: Same conflict of state bifurcation.

J. K.J. SENGUPTA; Is their any aggravation as I know the scene in Hyderabad, ok.

Participant: Values are degrading everywhere. The main problem is the Bar president is elected through unethical means and senior advocates or good persons not coming forward to elections.

J. K.J. SENGUPTA; Yes please.

Participant: Same.

Participant: I am from M.P Sir and the Bar here is the best Bar I should say.

J. K.J. SENGUPTA; Now you all have said this is nothing new to me and I have seen and have faced more worse situation than these, will give you example that in W. Bengal there is one district I will not name that place, In court compound a lot of eatery and Xerox machine and this was run by all unauthorized occupiers in court premises and lawyers. One day one District judge wanted to take measures there come up boycott and pressure and what not. In this situation the HC was compelled to transfer so he wanted to take steps in accordance with law, so this a problem. As you say they are the non-practicing lawyers that is why they are diverting their work in trade and commerce. So when I became the administrative judge of the District how did I do this. what I use to travel incognito for the purpose of legal aid, my scheme was like this there is a boundary wall in that court premises ok, I noticed and I also asked the D. Judge dont take any action directly it has to be done diplomatically and systematically. Problem is this that what we feel that this should be done and this should not be done, you cannot expect that everyone should feel the same and there is the problem difference of opinion difference of mind set. So gates were also there but were not having proper locks. one day i went to the court at 7 in evening and entered in an Italian restaurant asked for their services and its timing as a litigant and he informed me that they start there working here at 7 am and we bring all raw material and everything and the lunch is ready by 9 o'clock and dinner by 8 as we are here till 8 pm, so what i did was identified the stalls which do not belong to lawyers and first targeted them the non-lawyers and assess the political force behind them, first thing is that this force is to be removed then you call the man behind and talk politely that this is the report, so what you would like

to do either to discontinue or law and order take it in court because this is not in my hands its in HC and central intelligence, tell them lies for good cause its justified tell them and he will be terrorized naturally. Then you serve a notice 30 days notice remove everything failing which everything will dismantled and removed and cost and expenses will be recovered from your property as on public demand. So non lawyers and lawyers are classified and eliminated because lawyers say we are not touched they will be happy that more customers will come and hold a meeting because you see so many outsider has come the stalling does not look nice we are going to take steps please support me and they will for sure as far the lawyers are concerned if you go directly then you know what happened. What then I did in that case was I just secured the locks of the gates and marked fencing next I guided the District judge that all the gates will be opened not before 9.30 am as I know that background so they will not be able to make preparation and the gate will be closed except one gate which was for only human being and no car, to be closed at 7 o'clock and judges be having the separate way and for no one else that be permitted, so this made a huge impact and in some days some lawyers came up and I said to them run it no problem why dont you take the license from the District judge and till then you close it and in fact automatically they have closed because they could not get supply due to the locks So isolated you will get supported.

Now come to court that they if not get order passed shout slogans and all so you see in the first day you cannot tackle the problem, so when you join a station so have a meeting of your officers that who are the problem creating lawyers identify those persons ok, and then when they will appear do not spare any more words particularly talk to those who are prepared to listen about the law and who loves law and not to others as they dont have any practice, they are not prepared to learn anything else, see who has not learned at this age of doing these many years they will never learn this is the psychology. So what you do suppose in bail petition moved by such lawyers, strategically deal with it they may make pressure and all

when you find this take precautionary measure that no noisy atmosphere is created, you hear it and do not pass order on that date, what he feels that he will anticipate that if not passed will do this and that so place it on some other day and his mind will neutralize by then because he comes with agitation and this will have an impact on mind and on next day when you will pass the order at 4 pm last so with this you reject it with the reasons because at the very first day they come with group which will not remain every time they come and with this I have got result in my HC. There are lawyers who do not have any case at all and might be coming from HC and high profile lawyers with the bad case he goes on arguing repetitively to show the client, so you have to do psychological exercise in that case ask them better than me, that what sort of order should be passed in this matter and just praise him very high so with this say that you want to argue more I have many cases we keep it for some date and part heard, then next day give 10 mins time and one fine day he will finish. these are the one they have ambitious values but tackle them do not teach them scold them but deal them with mind and hold the patience and temper under any situation and dont take actions which may revert back. Many a times those who are appointed fresh they really cannot control.

Participant; can I share my experience.. once the...

J. K.J. SENGUPTA; Let me complete I am interacting then we will come to you definitely, ok. Next is any litigation or member of the Bar this is also a great problem unless you do pass orders particularly junior judges are facing this problem because in HC once one of the retired judge was arrested by the police the subordinate court refused to grant bail of course that judge went to portfolio judge that tomorrow this case is suppose to come to me so what should I do, he did not take the risk and says I am sending you to CJ with my permission and you may talk to him and you know the CJ always sometimes becomes diplomat what he has in his mind he will not speak out but he will say that what is the law he says that

you do it in accordance with the law why are you coming treat everybody equal this is said by everyone but in practice no one something has to be done so you have to strike a balance so this fellow what he did was he remanded a jail custody for 7 days first remand so lawyer has no problem in repetitive remands because first of all he knew that he was not the judge of that court but of HC, so there is a superiority inferiority complex among the lawyers and also the judges also and that order came to HC in HC there is lots of lawyers and all made a pressure upon judge in division bench one judge was not inclined to grant bail and another was inclined to grant and thumping of table and pressurizing and extracted the bail. Right there may be such situations, do one thing that take courageous steps and media flowed by shouting slogans etc, so nobody will be in your support except your true friends your act and conduct with the element of rationality and also the reasoning, when sensational case is going to come there is a possibility of making a trouble by the litigants and others first thing to do is to with the help of the SP or Police Commissioner you ask him to invoke S.144 and take a decision inside court except the appearing lawyers no one will be allowed entry litigant and lawyers only for the interest of justice because with this atmosphere court is small so many cannot be accommodated so it is necessary. Once you do this then message will be sent then you hear it and dont put any questions nothing absurd as silence then say will pass necessary orders but with reasons for next day passing order and the next day you will find the crowd is disbursed so the energy in first was high and in next no pressure so have some solution to tackle the problem. this is the way you can do. As I can remember that when I was doing one probate matter came before me Birla Lodha matter so all prominent lawyers all over the India came before me, my court room was very small, media and all came so one of the lawyer appear before me I dont want to mention the name and he is one of the cabinet minister now he just tell your lordship should sit in a larger court room because it is this litigation has international ramification and is of international standards so all people should have

a privilege of hearing this matter, I gently told him Mr. so an so its a very good idea excellent I engross personally but unfortunately allotment of the courtroom is not within my hand, you can persuade the CJ and I am prepared to sit not even in a court but in a ground with a tent or if not possible then I can even sit in the lawn in HC with tent and many people can come and only thing I require the approval of CJ you kindly go, so he ... Next day the room size was small automatically the crowd reducing so what is required is with some humor and smiling face and you do it.

And next what you say with the juniors that adjournments, suppose the senior do not come and is engaged and sends the junior am I right and since the juniors are not prepared for arguments ok so in that situation what to do, the junior comes then you say Ohh you are his junior are you attending his chamber, he will say yes. I find you very bright and brilliant this is the chance you are getting to argue the matter start and I will help you ask for papers if he says no then give him your own file and say read it from row by row I am listening because once you read I can understand go slowly the moment you take this measure the message will be sent to his senior and when his senior finds that his request not exceeded by the court he will get angry naturally the moment he comes before he open his mouth just tell him Mr. you should be proud of your learned junior how you have groomed just amazing I wish I could have been at my time in your chamber but now when you have come you take sit and the junior will proceed. Would you like to proceed he will say no my lord come prepare tomorrow part heard. Yes please see to that the junior is paid fees from that client and he also get prepared. And next day without fail I have seen this works nicely. And in case of lawyers, politicians what you will do? Do this thing and see troubleshooters are few and not all. Identify as I have said and deal with them. Another thing I will tell you when there is a very ... person when I have come earlier in Bhopal in this Academy one judicial officer from Allahabad at that time talking of the yr 2008 said to me that my lord what happened

an elder brother of a collegium judge and who is also a portfolio judge of my district comes to me to move the court and one of the officer did not pass any order he placed the transfer immediately and we are afraid of him how we can tackle the situation? And then I did not tell anything openly because situation was such it could have been embarrassing I told him come to my room I will give some tips. The tips I gave the moment any lawyers matter and any high ended action Govt. has taken any stand that it should be victimize the lawyers if the case merits requires justice you have to control the situation like this, you call the leader of the Bar and then you tell him please ask friends to move the matter peacefully if the matter deserves merit obviously court will pass appropriate orders dont worry, why are you afraid of this assure them and if you notice that this matter is a frivolous matter they wants to have an injunction for public purpose then if it is dismissed then there will be boycott and all but no one will see the reasons for paralyzing but everyone will see the paralyzing of the court because this is wrong handling of the District judge that will impatient everybody and will carry so why to allow such situation to go on, in that situation when there is a matter in a merit place ask what are you feeling then manage the situation then if he says yes if he passes appropriate orders this may happens so unofficially just tell him to give the reasons that for my personal reasons I am not taking this matter because of such a pressure and then the matter will come before you right and place on some other judge and then ask that judge to convey his experience to that judge in house and put that on record just do it and will pass on everybody will do like this periodically right, then no court available what can I do? this is the problem so you move better to HC for transfer of this although the state is in some extent cowardice but a maintain the system then the member of the Bar will come and what can be done? If the people will feel that because of lawyers it is getting you better have it transferred and then after some times, HC will take up the matter when nobody is ready to, from your District you

transfer it to another district. under S.24 of CPC I sue moto transfers this matter, this can be done law is there.

So far as juniors are concerned let me tell you dont say do this do that just you simply ask him if not properly dressed that I cant see you? Politely my lord what is the problem? explain him that suppose if you go to temple and if the priest put on jeans and jacket and all offering pooja, what will be in your mind then? tell him I am adjourning the matter for few minutes you can come back in proper dressed or is your litigant present ask him tell him ok yes you be remain present so you start hearing the litigant. Listen lawyer cannot have any right to be hurt lawyers are nothing but recognized agent under CPC and so long he will be discharging a duty as an officer of court you will give him the privilege but with the polite manner. say he has given you fees not just for arguing but to put on proper dress also. So juniors will be tackled in that way. Ask for the chamber you attending if say no then explain him that it is necessary to put on all these. or other way can be that ignore him, just dont look at his face and hear him and after done ask do you have any client I want to ask questions from him not to you then he will be humiliated, it is called intellectual humiliation no one is prepared to shallow his ego to accept the humiliation. So create a situation and create this advantage and tackle it. It does not matter how knowledgeable you are it is important how you apply that in particular situation. In SC in Captain ... directed all the HCs under S.34 of the Advocates Act to frame a rule to discipline now no longer it is with the HC it is with the but SC has directed to and indirectly HC can you see the S.34 and I dont know if any HC has framed in Calcutta HC i adopted the rules and make it ready but it was not published it wasn't followed. It is difficult as well for state like Allahabad.

Now in case of strikes and boycott, strikes are of two types one upon the acts of judicial officers strike and another is political based. In political based you cannot

do anything as in Hyderabad you seen not in your hand what you can do is you can prepare a report and send it to HC. In case of not political and there is no justification to resort to strike call the member of Bar understand the problem then persuade them if there is a problem on part of our officer you just tell them I will see to them so it may not occur then what you will do is ask the officer concern to come at tea and tell him that they are saying this I don't believe all these but what I feel is that there is no difficulty to say I am sorry if you sat it that does not injure your body and health rather once you say it then you are upgrading yourself psychologically and mind as well. If I accept the humility then the counter is also committing scene you allow him to and then you call the member of the Bar you go to meet his chamber and say forgive and forgave and handle the situation this way. But if you find persistent obstructions then the officers are to be protected then what happened I told him one thing that you make statement of case and this is obstruction and interference in the administration of justice under S. 14 of the contempt of court Act and you make a reference to HC for contempt of court issue a show cause as to why the matter should not be referred to the HC. At the same time administrative side also submit a report to the HC and once it is done then it is taking a sue moto criminal contempt then what I did I issued a notice to all members of the Bar and did not initiate any contempt proceedings I just said why the contempt proceedings should not be drawn up against you all. All the members I use to have a dancing attendance every day, hearing everyday alright tomorrow I shall hear from distant places coming so one day the HC lawyers very politically based leader lawyer he apologized my lord enough is enough my client are losing in all terms. Ok very good you have realized the law now give an undertaking of all advocates and also go to the court concern and provide apology and that court will report to me then I will stop all this.

Will just end telling my one experience in Hyderabad what happened was on 15th Aug, one District judge has gone to host the national flag while going there he found

that some were.... outside the court compound attached to court boundary wall. So have been furious D. Judge asked the Municipal chair that why are they.. remove them, there District Judge is very respected i found, so Municipal chairmen came and passed an order they were removed immediately. And the local MLA young with 1st time MLA high degree of ego came who dares to remove my voters without my permission from this. Somebody said D. Judge he who is he, came to him and said how have you done this. Judge said I have done rightly. D. Judge what he did was with some members of the Bar took note of it adopted a resolution insult of judiciary and in order to tackle the situation they called a strike. See the reason. Report was submitted they made a presentation to me I asked my registrar to go and have an enquirer and submit the report. He submitted a report and in the meantime D. Judge in court on the following day started a proceeding for referring the matter to HC has to why this should not be done, and that fellow MLA.. The show cause notice came before our bench that what is the illegality asked the lawyers he has exercised his powers rightly wrongly we issue a show cause you go and now having dismissed he gone down thereafter the lawyers somehow started proceedings and then said I apologize and so then D. Judge what he did was instead of referring the entire matter to HC what he did was he usurps his jurisdiction. He said Gandhian philosophy should be followed and forgiveness is greatest then I dropped the matter then and there but I found that he has done illegality because contempt is not in relation to individual it is an institutional feelings represented by the officers that power has not given to him, then in administrative side I took sue moto action against that MLA then I took the he said your apology is now essential then he was very adamant so that was the 1st time I awarded punishment in my life for conviction and award of Rs. 50,000 as fine and cost wasting the courts time, another 50,000/- He deposited and last day their leader Chief Minister came personally before me that the recording is extending a lot, i said ask him to file a application for review ask for apology after paying the fine, you know that by this

time what should be the litigant friendly. Don't give proportionate time to lawyer to any level , your impartiality not only be preached it should be practiced in real sense as I said a renowned lawyer came, for example Harish Salve comes before you so what you feel, you feeling to give respect some judges rising and they say k Name him that he has come, on the other side you don't know the name of the lawyer you say yes Mr. Counsel , even this is discrimination you are not to be moved treat equally all of them, else the litigant of other side may feel that this judge is impartial, so make note of that. I remember one litigant threw a shoe on judge, normally what a judge would do, he may contempt immediately but what the judge did, he just stand and asked the officers to ask him why he did so. officer inquired and he said that my case is pending from last one month and coming from a village far away from here and matter is coming everyday but is going down in list instead of going up and today is the 38th day I am coming I have exhausted all my resources that is why this person has done it. Judge realized the reason and did not took any action against him and ask him to come tomorrow to mention the matter and it was mentioned and out of turn it was taken by the judiciary, its not the pressure its the real reason one has to understand the real reason of problem and litigants is another important thing. there is a feeling that order of subordinate courts are not good and carried out by police, so you have to see that you must exercise the power in such a manner that the people have confidence to go to you. Suppose you have your personal case now will you go to your for this case? No because I will see the matter will settle or I will suffer, I will not go to court this is the situation. I think this session was good enough for management of litigant and Bar.

Thank You

PRASIDH SIR; Break for tea.

SESSION-X

**TRANSFER POLICY & CHANGE MANAGEMENT FOR EFFECTIVE
ENVIRONMENT**

SPEAKER: JUSTICE K.J. SENGUPTA

J. K.J. SENGUPTA; Yes come back please now before I start I switch over to the next our subject matter I just give you one decision regarding lawyers problem strikes ans SC has taken note of this and please write down the judgement if you do not know, this has been Captain Harish Uppal v. UOI, reported in 2003 (2) SCC 45. This is very few lines is good enough for you, this starts with two sentence that will give you a good idea all these petitions raise th question whether lawyers have

a right to strike and a give a call for boycotts of courts in all these petitions that the strikes and a call for boycott are illegal this is the sum and substance and if you go through the judgement you will get some idea but you all remember that in court delivering a judgement is one thing but if the judgement is found to be impossible to be carried out then very difficult but nonetheless we are to follow the SC pronouncement and understand. One thing I take a note of our programme coordinator has provided that two different groups of lawyers Bar to different groups how to manage them as HC in Hyderabad I have faced a similar situation so what I use to call the leaders of the two groups to discuss the problem and remember if the leaders are given little importance with cup of tea one day call this group and next day call another and ask them for the proposals and take them into confidence give this is the psychological treatment like who is the judge doing well actually all are suffering from ego so this is all over about that.

Now next come to transfer policy, in this actually it is controlled completely by the HC and different HC has formed different rules altogether but there I find uniformity is there in station maximum three years one has to be transferred routine transfers, one is for administrative reasons another for punitive reasons, ok. Routine transfer takes place every year 31st March or April and for the officers to make their plan, so every HC has what is the system. So there is one HC where the officers given choice of a District under the norms in W. Bengal what happened if one judge is transferred to another district he will not be given same post in same district, so there are two stations one is an island station there the duration of a district judge is for a maximum two years. But what I feel a transfer policy has to be followed because of to ensure independence etc, and is good for officers as well for experience. Even at HC judge is liable to be transferred. So this transfer what is the problem of transfer policy can you tell us how do you suffer and all?

Participant: In my state my lord some schools and others have general have CBSE where exams are held in March and April and some schools are under state board where exams are held in December, so this creates a if the transfer takes place in December and children are in CBSE so it is the thing..

J. K.J. SENGUPTA; Therefore what I understand that it is there some sort of misapplication of transfer policy may be due to some reasons or other supposing this one particular officer he always get transferred in a very good place this is one of the issues but you know the question of liking disliking and administrative reasons and so many things are there. I know one officer who is very vociferous outspoken so he is frequently subject to transfer in different area this happens. In a transfer policy actually as far as possible if it is governed by the rules strictly then there will be no problem. I had been in three HCs and in A.P. and other areas what they propose they get the option you are liable to be transfer to these stations so he can chose, supposing before transfer takes place when I was the Chief J in Calcutta HC I was acting CJ so when the representation is made on the health ground particularly I remember one officer as an additional District Judge he was supposed to be made principal district judge he has to be transferred and has to be promoted on transfer so he made an application on the ground on medical ground because his wife was suffering from some problem so according to him please post me around Hyderabad so that he can get medical facilities properly so in that situation sympathetically it is considered but it is always avoided that same place same district and same officer as far as possible but when after supposing you are junior civil judge in a district then after travelling so many districts and so many stations now you are supposed to be made principle district judge you may go to the same station in W. Bengal it happens but in some states they are very careful not to place any officer in the same district at any stage so this transfer policy it can't be helped we have inherited from old system and also constitution also provide but not for district and is there for HC framing rules for District. How will you face a problem

on a transfer policy something what you will do? That is also one of the issues. Because you cannot see whatever orders have been passed what gross injustice has been made and you find that there are other persons who are favored are getting, how this situation can be run?

Participant: In HC there is a provision for representation and if the same is frivolous then disciplinary actions to be taken.

J. K.J. SENGUPTA; That is.. Representation everywhere it is there but representation expect that in a just cause he will get relief but disappointment occurs suppose without any reason it is rejected sometimes for administrative reasons if it is allowed then everybody will come and ask for the same relief either just or not. So in a situation of this nature I can just give you a friendly advice when you get an order of transfer dont say no, dont resist in a representation you say I am ready then you say if the HC considers and get the problem with the document suppose somebody has got transfer choices and got good place and where you are discriminated dont point out in your report never do that you just mention that I am facing this problem frequently transfer from one place to another and focus on your problem and thereafter what you can do that you can have appointment your portfolio judge then orally tell him after giving the representation your problem first then after judging his mood and mind then you can say that sir I am not that lucky like that officers, diplomatically put it or have your association and then can have an appointment with the CJ or the senior judges otherwise there is no way out. So transfer policies when you face representation you make it and it works alright if doesn't works then you have to accept the situation until some judgement comes of SC or HC and SC take control of everything and it cannot be implemented then there will be lots of problem for ex. SC passed a judgement in 2012 for filling up of the ministerial staff vacancies SC has said do this do that now problem is that if once advertised then several lacs

apply for the same and you cannot reject the application of other stations like suppose if Kerala has advertised and from Bihar people may come now just see the practical problem when he is selected but will he be able to serve in Kerala without a person knowing Malayalam language at all. So these are the problem. Today in transfer these are the problems, if I am required to transfer this officer to this station there are lots of problems he cannot manage the district though there is no allegation of corruption or misconduct nothing but he has to be transferred for administrative reasons but this abrupt transfer is very very demoralizing for a judge. So all the HC also concern with this but what I feel whenever you face this transfer policy of so you have to make representation and at the most you can through your association can seek some relief, every state has it right. But one thing I agree perhaps that a sessions judge he has he is going on a trial of a sensitive case particularly a rape victim case and examining witness and watching and has made everything ready then immediately transfer orders comes so he has to get shifted the next person who comes their justice is the casualty. So I think according to me indeed when I was in Hyderabad when transfer policy I use to take the stalk of the situation what are the cases which are about to write judgement so when I find any matter pending before any judge case of grave nature in that cases I use to pass orders but order of transfer shall not take place maybe for three months. So the transfer policy has to be formulated in the interest of the litigant and not in interest of HC. I have seen so many lawyers have said please do not transfer this judge at this moment and also have strike for it, is a public cause. I think you also make transfer of your judges you must be having your own policy so when you make a transfer so in cases when you pass transfer in penal measure dont forget to give him a chance of hearing as a penal measure dont transfer immediately you give him a show cause telling this is your allegations against you this and respond to this that why appropriate legal measures shall not be taken then you hear him as a quantum of punishment you pass order of transfer give 7 days' time rather this matter can be challenged in HC

or any court even in your court only it can be challenged its not that there is HC monopoly or SC monopoly. And never do that in the camouflage of administrative reasons you cannot make a penal order else it will have an adverse impact on your administration as you are supposed to resort to an fair way not unfair way. So one not have to cover the real reason and your mind and actions should be same. Suppose you never know that he might have great personal problem but you pass an order and after joining he may represent so the hearing in these cases is must.

Participant: NA

J. K.J. SENGUPTA; In case of minor penalty no enquiry required but in case of major it is necessary. If your rules says that only if under the rules it say then only as a punitive measure one can else not. I dont know about all the HCs, so see to it in your rules first. I am talking about the general jurisprudence. Another one thing I tell you that transfer should be followed particularly who are the bench clerks who has the direct public connection with the litigant, bench clerk transfer is required what I feel there is lots of source of corruption so before you make a transfer of your bench clerk what you do that prepare a second hand at least 6 months before and engage him on ad hoc basis and once he is trained up and after completion of 3 months you transfer with the process of transfer and ensure that a clean administration and court management is managing the court. Another thing you have to take note of that the court inspector is there he is source of great corruption and injustice if you notice that you draw attention of the authority concerned though it is not in your hand but it is your duty to get him transfer and this from another one thing I think you dont have any power to depute a judge within your district you cannot unless HC does it. But what you have in there transfer suppose you find in this station lots of cases are pending ok, so he is sitting over the matter and not performing properly so you are recording him of course what you can took out cases out him and reallocate to other though not transferring from station but transferring

from the work so rational distribution. you follow the guided by the HC policy and do you know that the HC has no power and jurisdiction to supervise the staff of this district judge, D. Judge alone is competent HC as a guidance keeps it but with this process of HC has taken over the powers of the District Courts why this has happened? Because some D.Judges were not interested to administer properly that's why HC has taken charge of similarly our judicial recruitment in officers was not regular so they approached the SC and SC taken control of the matter naturally any lapses on your part as an administrator or leader of a District. In your administration the management staff is very important particularly for litigant who are stranger so i think you must have taken measures. And another one thing this staff who are responsible in taking bail bonding matters who are directly involved so i think this staff should be transferred on the 6 monthly basis within the same district. He cannot complaint it is not a transfer but a change in duty. as they have nexus with lawyers.

Participant: In Delhi we in our district to make inter district transfer of one district to the other there are the guidelines laid down by the HC and committees are formed at District level so that comprises of headquarters and other so three district judges sit together and then decide that where the staff could be transferred they also keep in mind what are the representations of the staff and considered and what are the request of the judges and convenience of the staff also then the transfers are made.

J. K.J. SENGUPTA; Its a very good idea hmm, it is possible in Delhi and apt for it as it is a small place so one thing can be done that at the time of making the transfer policy for staff and management you can call all officers in your District and sit together so that you can rationally distribute the staff. So this is over the transfer any doubt or on any other subject matter?

Participant: NA In anticipatory bail how to deal with it?

J. K.J. SENGUPTA; See in anticipatory bail there are two things 498A maximum, so i was in Calcutta HC you have to do two things in this offence the punishment is not much but because of it being cognizable that is the problem will tell you in Hyderabad there was a judge who was accused of it and he passed an order that in case of 498A no one should be arrested by the police and it is to be taken as non-cognizable offence which was contrary to law, and all officers started following this pronouncement but it can't be so its a per in curium but it is unless overruled by SC it is binding upon any D. Judges so there was a problem. So the police came before me that what to do in such a case, will tell later now see in 498A you see the case diary suppose if it is said by the victim physical injury and see whether Dr. report is there or not and if you find that yes it is been then find out the nature of injury and if the nature is grievous then you will not grant bail but if the same is not then you may with conditions you all know what, ok also consider the age of father and mother in law. As the police cannot do anything they as i said are confused what to do, even if we know the person is innocent we have no powers so I suggested that produce that person before Magistrate early in the day so that he can be released by him and formalities do not take that much time so he had to go to jail. Actually police is not guided by any judgement they goes by the old concept, it is we who are aware of it but not all as they dont have the capacity to differentiate as he asked me, so approach of police is like this. Another ex. I will give you the professional offenders you know what they do is particularly Dacoit they are regular and have good connection with the jails as well as police officer so when those criminals are behind the Bar on preparation of committing dacoity in those cases case diary is produced is unlist what happen you carefully examine seizure list and is asked for anticipatory bail and dont go by the FIR alone and if you find that not any deadly arms may be lathi or so you have to grant bail but when you find that yes recovery is arms etc and bombs so you will have to refuse depends upon the seizure and the same has to be scrutinized carefully as in one case I found

this seizure list was prepared in connection with another real case same things were produced twice how he come to know the lawyers he has also good connections with the other police officers that has leaked that this was brought by the lawyer that my lord do one thing adjourn the matter and place it for tomorrow I am saying this that the seizure list is fictitious as it is in another real case been produced case number so and so. I just asked for production of original case diary from SP and then I compared it and that is why you must be very careful.

Participant: NA

J. K.J. SENGUPTA; So a veteran criminal is more than loyal will give you ex. have heard it in old days there is this Mukhtiyar who use to be appointed for bail only and they are well versed in evidence, Cr.Pc and IPC. So there was a bail matter and he was a very ill mouth and use to accuse anyone and everyone. So he had one standing criminal client you know the Dacoits are their season starts from just after end of Monsoon when harvesting starts and continues upto May end this is their season they earn a lot during this time so there was a one so called police officer and demanded money he did not pay them and then he was put behind the Bar so he had very good repo in jail also so he was in jail custody so the jailer said how is this this time you are confine how it is? So he asked the jailer to let him go and seek help from my lawyer and I will be back on time he never betray. So he has gone to that Mukhtiyar and said first you pay or else I will not pay you previous money is pending along the interest. He said this is nonailable offence how will I? He said you are my.. How will I survive. He was paid and in the morning he approached with the petition my lord you have read Cr.PC I have also but my client does not know. I have told him first time and he has promised me that he will never approach you with the similar petition next time in future for the first time kindly excuse him for the time being grant bail. And the Magistrate granted bail. So this is the

SEMINAR ON MANAGEMENT OF RESOURCES

criminals have there words, see that the innocence is not victimized at the arrest stage this would be an approach.

So I think we should call it a day Thank You