

# **NATIONAL JUDICIAL ACADEMY**



## **Annual National Seminar on Functions of (Registrar/Inspection) in Different High Courts**

**[P-999]**

5<sup>th</sup> and 6<sup>th</sup> November, 2016

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### **Introduction**

A two day Annual National Seminar on “Functions of Registrar (Vigilance/Inspection) in different High Courts” was organized by the National Judicial Academy, Bhopal on 5<sup>th</sup> and 6<sup>th</sup> November 2016. The conference was attended by High Court Registrar (Vigilance/Inspection) of different states, in total there were 18 participants. The seminar provided a forum to discuss the role and responsibilities of registrar vigilance and inspection. And seek guidance from Hon’ble judges of Supreme Court and High Court on basic principles to be followed to fulfill their duties in various High Courts across the country.

### **Speakers**

Hon’ble Mr. Justice P.P Naolekar, Former Judge, Supreme Court of India

Hon’ble Mr. Justice S.J. Mukhopadhyaya, Former Judge, Supreme Court of India

Hon’ble Justice, Vikramaditya Prasad, Former Judge, High Court of Jharkhand

Hon’ble U.C. Dyani, Judge, High Court of Uttarakhand.

### **Participants**

<b>S. No.</b>	<b>Participant (s)</b>	<b>Designation</b>	<b>High Court</b>
1.	Shri. Anil Kumar-IX	Special Officer (Vigilance), High Court Allahabad	Allahabad
2.	Sri. Nalin Kant Tyagi	Joint Registrar(Judicial) (Inspection), High Court Allahabad	Allahabad
3.	Sri. V. Venkata Prasad	Registrar(Vigilance) High Court A.P	Andhra Pradesh
4.	Shri U. B Shukla	Registrar, (Vigilance -II), High Court of Bombay	Bombay
5.	Sri. Avni Pal Singh	Registrar(Vigilance /Protocol ), High Court, Appellate Side, Calcutta	Calcutta
6.	Mrs. Rajni Dubey	Registrar (Vigilance), High Court of Chattisgarh	Chhattisgarh
7.	Mr. Sanjay Sharma	Joint Registrar(Gazette)	Delhi

8.	Shri. M.A. Ali	Registrar (Vigilance ) Guwahati High Court	Guwahati
9.	Shri Arvind Malhotra	Registrar(Vigilance), High Court of H.P, Shimla	Himachal Pradesh
10.	Shri. Abdul Rashid Malik	Director, J& K State Judicial Academy	Jammu & Kashmir
11.	Shri. B. A. Patil	District Judge, OOD, Registrar( Vigilance), High Court of Karnataka	Karnataka
12.	Sri. R. Narayan Pisharadi	Registrar (Vigilance), High Court of Kerala	Kerala
13.	Sri Dharminder Singh	Registrar( Vigilance), High Court of M.P, Jabalpur	Madhya Pradesh
14.	Ms. R. Poornima	Registrar(Vigilance), High Court of Madras	Madras
15.	Smt. R. K. Memcha Devi	Registrar(Vigilance), High Court of Manipur	Manipur
16.	Shri. D. Nayak	Registrar(Vigilance ), High Court of Orissa	Orissa
17.	Shri. Jhammam Ram Chauhan	Registrar(Vigilance), High Court of Punjab & Haryana	Punjab & Haryana
18.	Shri Brijesh Kumar Dangara	Registrar( Vigilance), Rajasthan High Court Bench, Jaipur	Rajasthan

### **Outlines of the Programme**

#### Day 1

**Session 1**– Understanding ‘Judicial Integrity’, ‘Discipline’, ‘Accountability’ and Conduct Unbecoming of a Judge’.

**Session 2** – Conducting Discreet Inquiries: Role and Responsibilities of Registrar (Vigilance)

**Session 3**- Preliminary/ Fact Finding enquiry and Departmental Enquiries: Role and Responsibility of Registrar.

**Session 4**- Use of Police by High Court vigilance wing; Issues and concerns.

#### Day 2

**Session 5**- Utility of Inputs from Inspection Report to the Vigilance cell

**Session 6**- Cognizance and Investigation of Anonymous Complaints

**Session 7**- Impact of Transparency and Accountability of Vigilance cell on performance appraisal

## **DAY -1**

### **SESSION 1**

#### **UNDERSTANDING 'JUDICIAL INTEGRITY', 'DISCIPLINE', 'ACCOUNTABILITY' AND CONDUCT UNBECOMING OF A JUDGE'**

Hon'ble Justice P.P. Naolekar started the session by quoting Lord Atkin's saying that '*power corrupts and absolute power corrupts absolutely.*' If the power is unwritten it can be misused. He further stated that public perception of judiciary is very important. Judiciary is respected by the public and is respected the most. Therefore accountability of judges is important.

Justice Naolekar observed that lower judiciary does not have uncontrolled power but they have power to pass an order which cannot be challenged on the basis judicial misconduct. Filing an appeal and correcting of judgement is another process.

Disciplinary proceedings can be conducted if he has favored somebody or it is against the settled law and it is against the principle of justice. Entire conduct of lower judiciary is subject to disciplinary proceedings.

Hon'ble Justice Naolekar said that your accountability is dependent on yourself, consciously follow your understanding of what is right and what is wrong. Registrar (Vigilance)'s role is very important. He suggested the Registrar Vigilance's to go the residence of judicial officers, to check whether he is living beyond his source of income. He said that the departmental inquiry does not require that strict standard, go to different judge's place even when there is no complaint against them. Registrar vigilance should be vigilant about entire judiciary and for that he should put extra efforts.

Hon'ble Justice Mukhopadhyas observed that quality of judge does not go with the retirement, it goes only with his death. I always try to understand these

words judicial accountability, discipline, misconduct etc. Y. K. Sabharwal in his speech as part of MC Setalwad Memorial Lecture coined 52 words that needs to be integrated in a judge. The oath taken by the judges at the time obliges them to be faithful to the Constitution of India. They shall uphold the sovereignty & integrity of India and to truly and faithfully perform the duties of their officers without fear or favour or ill will. The judge must be even handed. His approach must be consistent. He is to sit with open mind. There can be no room for personal idiosyncrasies. His personal whims or caprice can have no role to play. In order to do justice the first and foremost expectation of a judge is his life must be one open to probity. He has to be morally right. A judge has to be fair & impartial. He has to be exact. He has to be merciful. He has to be decisive. He has to be upright and resolute. The above straight away takes us to the concerns about consistency. A judge will always execute the duties of his office diligently and faithfully. These norms are designed so that he remains independent and uninfluenced. His job is to hear the parties in the open court. He has to shun social interactions. It is based on the principle of transparency. Compliance with the procedure established by law. Judge must be in full control and command of the court. He has to be full committed to the task assigned to him. The judge must be studious, thorough prepared and well conversant with the factual or legal nuances of the litigation he is handling. A judge utilizes his judicial time to the optimum. He would studiously protect harassment of the litigants in general and witness in particular. A judge can never be unjustifiably absent from duty. He has to be available & accessible to the people at large. Judge has to be punctual & regular in adhering to court hours. He would not abdicate his duties or unconsciously refuse to use his jurisdiction to do justice.

Hon'ble Justice Mukhopadhyaya broadened the term honesty and said it should be in one's thinking, writing and delivering a judgement. He said corruption is not only taking money, mental corruption is more dangerous. He said it's like virus entering the mind and it corrupts, we (judges) develop our own perception and believe that I am very fair.

On judicial integrity, he said accountability of you (judges) is one part and accountability of institution is another part, by giving an example he said it's like a one dark spot on white shirt. People will not look at the white shirt but one dark spot and that dark spot one has to be clean. Actual work of registrar vigilance is that the judicial integrity of members of judicial fraternity is not corrupted. He quoted a Bengali saying - "*A Ghost inside a master.*" If ghost enters master then who will correct it. If registrar vigilance is himself not correct who will correct him. He said an open mind is the character of a person. In a film, hero's role is such that their character comes out of it. Therefore similar way these are the qualities which we develop by taking the role. These character are developed from time to time. If senior is corrupt junior may also develop that character.

He quoted from the study material J. Krishna Iyer's article on code of conduct for judges, Justice Iyer wrote- "*The judge is the symbol of justice itself and therefore, we cannot have dissection of private life and judicial life of the 'brethren'; both must become the sublime office.*"

In the end, Justice Mukhopadhyaya talked about *code of inner conscience*. He asked participants whether you want to be priceless or with price tag. 'Values are part of ethics and try to imbibe them', he said.

## **SESSION: 2**

### **CONDUCTING DISCREET INQUIRIES: ROLE AND RESPONSIBILITIES OF REGISTRAR (VIGILANCE)**

Hon'ble Justice Vikramaditya opened the session with his prefatory remarks on significance of internal vigilance. He said, whether he sits at his desk, give proper hearing or always in a hurry, does not behave properly, whether he is acting independently or not, has to be ascertained regularly.

Justice Vikramaditya said that it is relevant to understand the real meaning of the word *discrete*, what it in essence means if you go to different dictionaries,

‘discrete’ means consider separate or distinct in form or concept, it also means independent of or apart from other.

Responding to a question on the longevity of the discreet enquiry, Justice Vikramaditya suggested that it is not possible to give definitive answer, there are possibilities that discreet enquiry may conclude in a day, it is quite possible that discreet enquiries were limited to a few phone calls and it may also extend for few weeks. The participants were requested to maintain brief records showing the different timings (dates) when the discreet enquiries were made, mentioning the categories of persons contacted etc.

### **SESSION- 3**

#### **PRELIMINARY/ FACT FINDING ENQUIRY AND DEPARTMENTAL ENQUIRIES: ROLE AND RESPONSIBILITY OF REGISTRAR**

Justice U. C. Dhyani said role and responsibilities of Registrar Vigilance is very tough. Suppose if High Court Judge has to take any action against lower judiciary it is very easy, but, if your close friend becomes a District Judge it is very difficult to play a role of registrar vigilance and to initiate discrete enquiries him. Lot of confusion arises. You have to be extra cautious i.e. judge plus something else. When you have to rise above all, you have to be extra independent in your job. About departmental enquiries he said we should look at service jurisprudence.

Justice Dhyani referred to Article 309, Article 310 and Article 311 of the constitution and concluded that nobody shall be removed and reduced in rank without due enquiry.

The constitution provides that no shall be punished with major penalty unless a regular enquiry is held. Suppose in a case under section 409 of IPC an FIR may be launched. If anybody challenged it on the basis of violation of double jeopardy, whole proceedings will fall.

Justice Dhyani referred to *Tulsi Ram Patel case*, wherein it was laid down by Supreme Court that if it is not reasonable or practical to conduct departmental enquiries, the authority may done away with, after recording reasons to do so.

In the second segment of his presentation Justice Dhyani talked about Principles of Natural Justice.

1. Nobody should be condemned un-heard (Principle of *Audi Alterum Partem*).

3. Absence of Biasness

He remarked that registrar vigilance has to keep in mind that he has to follow the rule of reasonableness enshrined under article 14 and not to act arbitrarily. Reasonableness should be reflected in your proceedings, he said.

He added that the object of holding a departmental enquiry is not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. In all cases of misconduct wherever the employer desires to take action against the employee, initiation of inquiry into his misconduct is *sine qua non*.

Justice Dhyani asserted that if there is dishonesty then only Registrar Vigilance can initiate proceedings after taking Chief Justice in confidence. Disciplinary authority will decide on the basis of gravity of the alleged misconduct.

In the end it was concluded that a preliminary enquiry is mainly held to ascertain the veracity of allegations made. At this stage, resources must be devoted to collect necessary material in support of the allegations, and thereafter to decide whether there is justification to embark upon departmental action. There is no prescribed procedure for conducting a preliminary enquiry, and a suitable procedure can be followed. It may be held *ex parte* behind the back of the employee and it is not necessary to obtain impugned officer's explanation unless it is considered necessary for any purpose. During the preliminary enquiry, evidence both oral and documentary, may be collected. However, the material collected in the course of preliminary enquiry cannot be



the basis for taking action of arriving at a finding on the charge or imposition of a penalty, therefore it must not be confused with the regular departmental enquiry.

#### **SESSION-4**

##### **USE OF POLICE BY HIGH COURT VIGILANCE WING: ISSUES AND CONCERNS**

Hon'ble Justice Mukhopadhyaya started the session with a question – whether Police can be used for the purposes of internal vigilance? Thereafter he stated that in Madras high Court this practice is being followed, but in my view police cannot be part of our enquiry, the charge is relating to 'misconduct' therefore the question of police does not arise, he said.

With reference to use of police, the principles laid down and views expressed in *Shamsher Singh v. State of Punjab* were discussed at length. Justice Neolokar argued that by using police for the purposes of enquiry malign the judiciary.

The bottom line of the discussion was that the High Court shall ensure that this practice (of using police) shall not impede the judicial independence. And it was agreed that Police Officers (of any rank) working with the Vigilance Cell shall be within the exclusive locus of control of the High Court.

#### **DAY -2**

#### **SESSION -5**

##### **UTILITY OF INPUTS FROM INSPECTION REPORT TO THE VIGILANCE CELL**

Commenting on the utility of inputs from various types of inspection reports it was emphasized by Justice Vikramaditya that the object of inspection is to satisfy that the courts are functioning efficiently and presiding are officers working promptly and regularly. During inspection, all sections of the court and registry will be scanned through the lenses of accountability and transparency. When some discrepancies were found at the time of inspection remedial measures will be suggested. The Vigilance Cell, as and when a complaint is

made, which indicates irregularity or mismanagement of courts or gross indiscipline, has to look into inspection notes and remarks made thereunder and such probe may concede a clue, which would help in collecting material in support of the allegation. It was elaborated that *vigilance* is not only punitive but also preventive. Preventive vigilance entails keeping the eyes open and appreciating the inputs from all the sources from *vigilance angle*.

He opined that surprise inspection will help to ascertain,-

- Whether you are utilizing your time in proper way.
- Disposal of cases
- On the spot records verification
- Office Cleanliness, etc.

He suggested certain ways to inspect for Registrar Vigilance/Inspection to inspect against the judicial officers.

Special emphasis were laid on inspection of court library. It was said that best source of corruption is the library where same type of books are purchased again and again. In High Court judges are members of purchase committee and they have no time to check the delivery of all that is ordered. Library must be a point of suspicion, he said.

## **SESSION 6**

### **COGNIZANCE AND INVESTIGATION OF ANONYMOUS COMPLAINTS**

Harping on the anonymous and pseudonymous complaints it was observed by Justice Dhyani that an honest and strict judicial officer is likely to have adversaries. It is necessary that the High Court should ignore ill-conceived or motivated complaints made by unscrupulous persons. The resource person also beheld that subordinate judicial officer's work mostly in a charged environment, the possibility of committing errors are high but improper motives should not be attributed to the repeated errors. In case, where an intolerable error is brought forth, it must be corrected in a manner befitting the dignity of a judge. However,

just because the complaint is anonymous it must not be discarded out rightly, where the creditable and verifiable information substantiating the allegations are found the complainant can be asked to follow the procedure prescribed.

In the second segment, Justice Dhyani referred to landmark judgements of Supreme Court, namely-

- *Iswar Chandra Jain v. High Court of Punjab and Haryana*: AIR 1988 SC 1395.
- *K.P. Tiwari v. State of Madhya Pradesh* 1993 CriLJ 1377.
- *Kashi Nath Roy v. The State of Bihar* 1996 CriLJ 2469.
- *Lunjarrao Bhikaji Nagarkar v. Union of India* (2000) ILLJ728SC.
- *Braj Kishore Thakur v. Union of India* (1977)2SCR420;
- *Alok Kumar Roy v. Dr. S.N. Sharma* (1968)1SCR813.
- *Ramesh Chander Singh v. High Court of Allahabad and Anr.* 2007(3) SCALE 559.
- *Rahul v. The State Maharashtra*, MANU/MH/0066/2012.

## **SESSION 7**

### **IMPACT OF TRANSPARENCY AND ACCOUNTABILITY OF VIGILANCE CELL ON PERFORMANCE APPRAISAL**

Justice Vikramaditya Prasad opened the session with a statement that when you occupy the Registrar vigilance post the lower judiciary looks at you and once you have got reputation that you're fearless and transparent, things will fall in line automatically. Therefore, your transparency and accountability is vital, he said. Whether you fulfil the demand of this chair or not. When you submit a report you must should not be suspect, this can only happen when your integrity is unquestionable, said Justice Vikramaditya. He cautioned the participants by saying, 'your slight negligence may cause harm to the judiciary'. Transparency in your orders (notes), judgements and orders must be recorded properly and once you pass the judgement you cannot add even a coma in that. Registrar vigilance is accountable to the High Court and to the Chief Justice, he said.

In the end it was concluded that for vigilance to be effective and decisive in the fight against the unscrupulous and insincere, it is very important that vigilance cell must establish an institution-citizen interface, which must be transparent and responsive. Transparency in the working regulatory framework (Vigilance Cell) shall reflect on the performance of the judiciary as an institution, for this purpose Vigilance cell should be manned by persons of impeccable integrity, who must also be patient, courteous, preserving and open to public access.