SPEECH OF HON'BLE THE CHIEF JUSTICE MR.D.K.JAIN

I am indeed grateful to my brother Hon'ble Mr.Justice K.S.Garewal, Chairman Training Programme Committee and other members of the Committee for giving me this unique opportunity to be amidst you this morning.

Having put in a quite number of years in judicial service, many of you must be wondering why you have been asked to attend this course. I am confident that after listening to the learned speakers on various subjects on these two days, you would perhaps realize the importance and utility of the refresher course for discharge of your duties as Judicial Officers.

The Subordinate Judiciary is the bedrock on which stands the entire edifice of justice. It is undoubtedly the foundation of a `judicial system. Being situated at the grass root level of the society, it symbolizes the epitome of justice.

As members of the judicial service, you perform a sacred duty of dispensing justice and therefore, it has to be religiously performed consistently with the principles of ethics and in accordance with law. To be a Judge is a privilege and we have to remember that the authority to govern has certain duties and obligations attached to it. The first and the foremost attribute you must inculcate as a Judicial Officer is the necessity of conducting yourselves in such a manner, both inside and outside the Court, so as not to provoke any critics. You should not be carried away with the importance of your position and the power you wield. You must bear in mind that the power you hold is limited and circumscribed and must not be exercised beyond jurisdiction. The conduct of a Judicial Officer has to be above reproach. It needs little emphasis that a Judge has to be punctual, patient, courteous, impartial and fearless. He has to be firm but not rude.

Friends, you have inherited a legacy of

huge arrears and therefore, your job is highly demanding and indeed strenuous. You have to grapple with the problem of mounting arrears and think of remedial measures to deliver speedy justice to a common man. Our justice delivery system is bursting at the reams and unless timely measures are adopted, it may collapse any time and that would be the collapse of the rule of law. Therefore, it is imperative for all of us to take a serious note of this alarming situation and for this purpose, all of you have to concentrate on docket management. In addition, you have to a\devise and experiment with the case management techniques, including alternate dispute resolution mechanism, like conciliation and arbitration. You are required to make an effective use of Section 89 inserted in the Code of Civil Procedure w.e.f. 1.7.2002. and at the stage I may also mention and I think that most of you, if not all, must have got an opportunity to go through judgment delivered by the Supreme Court in **Bar Associations'** case which

effectively deals with that what is the purportive scope of Section 89 and what we are required to do. If you have not read it please read it very carefully. There are certain directions, there are certain lines of guidelines which have been indicated there and I would also try to have it analysed and circulated to our judicial officer for their guidance. I must add here that our desire to dispose of a case quickly has not to be at the cost of injustice to a litigant. We must remember that we may have thousand of cases in our hands, but a litigant has only one case in which he expects a patient hearing and quick justice.

Since you are going to be enlightened with the words of wisdom from my brother Judges and other eminent speakers, I would not like to take more of your time and shall close by quoting what has been said by the Supreme Court **in the matter of K. Judicial Officers**. And here I again would expect that if you have not read this judgment please go through it and if you want to have the citation it

is (2001) 3 SCC 54. I would expect all our judicial officers to kindly go through it because this case had arisen from Delhi and though the issue was to trivalent but at one point of time it assumed a very serious implications and in fact there were almost confrontation with the administration and the judiciary. One of our officers, a very bright officer, I must say, have the Court room in which perhaps she felt was not befitting a judicial officer. She called the, you can take it he or she, because I don't want to disclose the identity of the officer. She is really a bright officer, upcoming officer. So she called the PWD people and suggested that you have my room made like this so they did something, I don't know what happened reluctantly or willingly, one doesn't know. But when they did something, she found that perhaps her place of sitting was little too high and if she was to sit there perhaps it might touch the ceiling so she asked them to do something again that. Instead of doing that, their

PWD did certain furnishing which I don't mention here and naturally any officer, that too having put in only about 4 or 5 years and first posting being also as a Magistrate and that too in a metropolitan city of Delhi. She couldn't take it line low. She issued contempt notices plus various other notices and perhaps lodged an FIR under certain provisions of the IPC. Dealing with the so many things so in that context, now, the officers concerned of the PWD filed a petition under Section 482. High Court, set it aside, notices were quashed and the officer which I want to emphasize again, the officer went to the Supreme Court challenging the order passed by the High Court. Now, in the light of these facts, because I have just narrated the facts, so that you can straightway go the judgment and you can appreciate what must have happened. Has the Lordships of the Supreme Court have said certain things, which directly touches the conduct of the judicial officer, the conduct of the appellate authorities, which include all of us. So

if the judgment is to be read by the judicial officer, it has also to be equally read by all of us. Because there are certain things said in that also so while dealing with the appeals what do we say and what we should not to say. So I just close with quoting a paragraph of that judgment and I quote:

> "A Judge entrusted with the task of administering justice should be bold and feel fearless while acting judicially and giving expression to his views and constructing his judgment or order. It should be no deterrent to formation and expression of an honest opinion and acting thereon so long as it is within four-corners of law that any action taken by a subordinate judicial officer is open to scrutiny in judicial review before a superior forum with which its opinion may not meet approval and the superior court may upset his action or opinion. The

availability of such fearlessness is essential for the maintenance of judicial independence. However, sobriety, cool, calm and poise should be reflected in every action and expression of a Judge."

I have some instances but I am not going to name any officer, when I visited a few of the offices. I came across certain cases where as many as 93 opportunities have been given for evidence in rebuttal. 39 opportunities were given to the prosecution in a NDPS case to start evidence. 53 opportunities were given to an applicant to argue his application for interim relief. I can tell you on behalf of all my brother Judges but it may be very difficult for us to accept this way of working. I am sorry I am started with early in morning. There is little embarrassing for me to say but I want to convey this message to all our judicial officers and through you that this type of conduct will not be accepted and I am just forgetting I want to share

something. A few words on behalf of that committee, in particular the Chairman of the Judicial Training Programme. I welcome you all and I am very confident that all these deliberations in two days would be very useful for all of you for the purpose of discharge of the judicial functions.

Thank you.

SPEECH OF HON'BLE MR. JUSTICE J.S. NARANG ON THE TOPIC OF "ETHICS".

Hon'ble Mr. Justice K.S.Garewal, Justice Kiran Anand Lall, Registrar General Mr. Bedi, District and Sessions Judge Vigilance and ladies and gentlemen today we are together to enter into discussion on two subjects. I think we all are aware you have read this also. The subjects are the Judicial Ethics and the art of writing of a judgment. When I thought of addressing you on this subject I thought what will I tell you. You are involved in this Judicial system for the last so many years. You have gone through these judicial ethics, you have read also and you are grown up persons as far as the ethics are concerned ethics of life have also been seen by you. Various teachers have taught you on this subject. Now what I have to tell. Probably you have come with the mind that I am going to tell you these judicial

ethics one, two, three, four, five and these have to be adhered to and you have to said with the open mind you should do this, you should do this. Do's and don'ts we have learnt over the years. I would not like to enter into discussion with you with regard to do's and don'ts. Therefore, we dealt on the subject of judicial ethics, it is very necessary for us to know that what is Ethics. From where it has carved. Have we given ethics to ourselves on one fine day or from where it has been thrown on us, it has been imposed on us. Now everything has its history and so also this word Ethics. Ethics is a word which was coined by the philosophers when they wanted to govern the society. If we look back upon ourselves we find that we were not educated we did not have any language, we did not have any principles of governance. Gradually the society taught each other first the language, then living habits, governing habits and then ruling each other. First in the first instance there was a leader, who has to rule

everybody then came to monarchy system, then came the Roman Empire system, then came the democratic system but as far as the Ethics are concerned they have also developed day by day from time to time and every time depending upon the needs, the circumstances, the requirements. As far as the Ethics are concerned, Ethics these are basically taken as synonymous with morality. There are moral obligations which are given to us by the Society. When a person takes birth the first moral value starts by the mother. It is the accepted rule or fact that mother is the first teacher of a mankind. She tells the child you have to tell the truth this is right, this is wrong, you should not do this and gradually the child grows. Understanding certain moralities now both moralities they are again thrown on the child by the teacher also when he goes to the school. Telling this that you have to be honest, don't tell a lie, don't hate anyone, don't do this, don't do that but do what, that is told in a very very methodical and little

manner that is not what which is told by our teacher or anybody. What we have to do after we educate ourselves and then we start doing everything. So the philosophers what they said Ethics is a term which is synonymous with Moral Philosophy and it is a study of mankind. Then you act in how many ways. The Philosophers say that there are generally three heads under which the action of the human mind they are analysed. One is the voluntary action, the other is involuntary action and the other action is when you do something intentional. Now the voluntary actions generally fall within the ambit of "Ethics". That is you are learning something, you are doing something voluntarily. You are not criticising it, you are not objecting to it, you are accepting it. Like some details that you have to be honest. Now this is absolutely voluntary somebody tells that we have to be honest, we have to be honest. Why we have to be honest that depends on you, that comes a morality. Because Ethics are such they are

static. Morality is variable that will depend on you.

Now moral obligations are such that if you act in a dishonest manner what people will say. What society will talk. This is fear sychosis which is acting on you to remain honest. But Ethics is that you have to be honest. You have to do something which is right. Don't do anything which is wrong. But analyse what is right, what is wrong. That again depends upon individual behaviours to analyse it that under what circumstances the thing can we accept it as right and under given circumstances the same thing may be wrong. Now these are the analysis which we are required to examine and accept. Now as far as the actions are concerned when we come to project those actions, apply those actions upon ourselves. In other situation which arises is that whether we should accept bribe that is the question which is asked. Now the insantaneous answer will be what. What will you say all of you. Obviously no. Now this is ethic

which has come to you that accepting bribe no way no question. But is diluted by your moral values. When it comes to morality it is individual act. Somebody is accepting bribe, somebody is not accepting bribe. Now morality will come in at that time. Now another comparison which the philosopher has given is that if you compare this with that how should we treat our children. Is there any ethic for treating children. Now this philosopher says that as far as treatment to the children is concerned that will depend on person to person, family to family, circumstances to circumstances, environment to environment and these factors collectively will give out the ethics or every family. Now that is why we see that as far as the character of a person is concerned it is different from different from A,B,C,D why the quality, the morality and ethics are different from bringing up a child in a different family, in different circumstances. That is why a child is different, a person is different from

each other. That is why we find that man is good, the man is bad, the main is excellent, acceptable. Now these are the circumstances which will bring us what we are today and what we will become tomorrow. Now as far as the ethicians are concerned the rules of ethics they have particular interest and moral character of voluntary actions. Now the Ethicians want to know what makes them right or wrong and what gives them moral quality. Now these were the things which were in the mind of the philosophers when they were growing with the society. Now they have under gone the changes also. They have provided certain things which today we may not accept but at that time they were accepted. Because at that time if you look back into the history there were two kind of times which were prevailing at that time one was the Roman Empire, the other was the helenstic age there was lot of social unrest at that time and because of the social unrest what was projected was that you must do something so that people can act in a

peaceful manner. They can have some kind of consolation for themselves and as far as they are concerned they will be able to acquire personal strength and they shall be able to govern each other in a friendly manner. They shall be able to live in a regimental fashion. Now this is where that Age provided all these things. Otherwise if you look back if I say that you have to be honest from where I have heard the word honesty honesty is diagonally opposite to what is dishonest. A person became dishonest than the person said that you have to be honest. Now honesty came in as the Ethic for us. So there has always been a fight between the morals, moralities and ultimately moralities when they solitified they take the form of Ethics which are prescribed by us for ourselves sometimes by way of instructions, sometimes by way of rules, sometimes by way of legislation or whatever. But when the Ethics they are put in these kind of dispensations now what is to happen if you violate them if we do not follow the society provided

punitive action also. This is where if too the shape of legislation also. Legislatively we provided punitive action against ourselves if a person is dishonest if a person is seen accepting bribe we always punish him two years, three years, four years whatever. Now this again is the projection of the Ethics in the legal system. Now legally we have accepted but then can we put all Ethics in the legal system. Can we say this at every time whenever you have to act, you have to be judged, you have to be charged, you have to be examined by virtue of the legalistic values which are provided not necessary. We can give you the guidelines we can legislate also but there is some domain which is left for you to conduct yourselves. In this yourself is the great area which falls within your domain. Supposing we have provided legislation for accepting bribe for for being dishonest that is for which person the person who accepts the bribe , the person who does not accept the bribe he is even not bothered about this

punitive method which is provided. But there are certain self constraints restraints which are provided by ourselves that I would not like to act in this manner. Now if we analyse the bribe what is our level. One person comes and tells the person that here is 5 lakhs please do this work. I would not like to accept I am not a corrupt person. Is as alright you are not accepting 5 lakhs, take 50 lakhs. Now he is subdue he says what are you talking I take 50 lakhs is that alright I give you 1 crore. He says what are you taking. Alright I give you 5 crores. Now 5 crores he accepts. Now see the change in the character of the person Ethics are the same but morality has changed because of the quantum of money which has been offered. This is where we draw the distinction between the Ethics and the morality. Moral values can be sacrificed but Ethics there would remain and when you follow Ethics without any punitive measure this is where you control yourself you guide yourself. This is where you accept

yourself that as far as you are concerned you are not to get away from this. Now like another example which comes to my mind that as far as honesty is concerned honesty is not only this that don't accept money. You are a very honest person everybody says that he does not accept money. Now that is not the only thing which is required out of you. General society yes but as judicial officers when you adore the seat of justice this is where another things which comes to you and that would be what. That would be intellectual honesty and that would be your judicial honesty. There are two things judicial honesty and intellectual honesty. Intellectual honesty is that sometimes you acquire the intellect which is limited but you have acted that is not dishonest. Because you have certain limitations you have accepted you have educated yourselves. But you have given a wrong judgement. Can we call it that the judicial officer is dishonest. Answer would be no but ethically yes. Morally no. Ethically he is wrong

because he has not educated himself. He has not made any efforts . Now judicial dishonesty will be that when he knows that is provision is before him and the provision is incorrectly applied and with intention to do so to cause harm to a person. Now this would be judicial dishonesty at the asking of somebody or because of having some perversion in your mind or that you react to somebody or you react to a particular face that he is a useless person I am going to teach him a lesson. Now here the perversity comes in. Now that would be called judicial dishonesty. Because when you sit on the chair to give justice it is at that time you have to be inseclusion in your mind not that (Sanyas le lena), that is required when you want to give a balanced judgment when ethically also you are strong. Now when you are ethically strong you would be strong in conviction also. Then nobody can change you nobody can push you nobody can say anything to you. Now supposing somebody tells you supposing I am the person you consider that he is

the judge of the High Court and if I tell you that kindly look into this. This is the manner in which you have to decide. Now that affects your psychology also. That affects your dispensation or judicial mind also. When you are going to take a decision but can we call it dishonest answer would be no. It cannot be because you are influenced by so many things when you are working in a particular field on a particular post. So, as far as you are concerned Ethics I do not have to spell out what has been told to you what are contained in book. But this bookish Ethic will remain in the book but when you really educate yourself you raise yourself to a particular level then you do not need any book you do not need any Ethic because Ethic flows itself. Supposing if I educate myself then I am not going to tell a lie. I am not going to be dishonest. I am going to give the judgment in the right and correct perspective. If I am conducting myself everyday under these formulations, I do not need to learn anywhere, I do not need to open the

book what are Ethics. Basically, Ethics are what you how you control yourself in the right and the correct direction that is what is Ethic. You may read any book you may read 20 books you may say that I know what are the Ethics you may learn them by heart like a parrot can spell out all those things. But will that make you a person with good Ethics, answer would be no, but take another situation where we were talking about telling truth, the oath is also given to us that we have tell the truth decide the matter also truthfully. But if I am at a given place I don't tell a lie but at a given place I see that if I don't tell a lie the man would be embarrassed, the man would be suffering and if I tell a lie the person to whom I am telling a lie is not going to suffer anything. To avoid this, I tell a lie. Morally speaking I have done some favour to the person but ethically I am incorrect. Ethics are so strong but they have to be diluted with your own conduct so that it does not cause any harm to anyone. So you have to draw

the lines yourselves, my endeavour to tell you this is that you don't have to put yourself into what a tight compartment. You have to open, you have to live in this world intermingled with the people also yet remain inseclusion yet remain firm on your conviction. You would be firm on your conviction only when you know what are your Ethics, what are the moralities, what are the moral values? You would be able to control everything. It is blissful thinking when you know that ethically you are absolutely right. Don't you think when you are writing a judgment and you have written a judgment correctly and in a rightful manner you have the bliss, you have the happiness and this happiness comes from where again, from the ethics which you have been following unknowingly. You don't have to know them at all. You don't have to learn them everyday. Now if we look back and compare the ethics with our religion also religion contributed a lot in our life because religion we have many kinds of religions

here but the basic principle is the same of every religion and Ethic also if we compare them with each and every religion they come up to be the same. There is no difference between them. Every religion tells you that you have to tell the truth. Every religion tells you that you have respect the person, you have to respect the God, you have to give proper reverence to the elders also. Ethically also it is the same thing which has been told. So religion is also one thing which we have been able to over the times, at least I feel that way that over the times we have been able to get away from the religion. Religion is one thing which you keep it there but it should not come into it because when you are sitting on that high chair where people repose confidence in you, repose faith in you, now you forget everything. I am reminded of one question which I asked from my father during my childhood. My father was a doctor and I was probably at that time 10 years and at that time I had become aware that what is Hindu what is Muslim

what is Sikh what is this what is that? I asked my father, I said when you operate a person on the operation table, the man is a Hindu, Sikh, Christian (Isai) or anything does it come in your mind. Is it what are you asking. I said what I am asking that a person is on the table, the patient is there you have to operate on him. Does it ever cross your mind so and so is a Hindu, so and so is a Muslim, so & so is an Isai. He says never. He says that for a medical man me it is a human body. It is the blood which is being seen by me, it is the heart which is being seen by me and that thing still I remember today and this is what I want to pass on to you. As far as you are concerned, you are the judicial officer this is very high pedestal which is given to you by the grace of God. When you are sitting there you should never ever cross your mind that you are looking at the person Hindu, Sikh Isai or anything. Human being is there, human values are there and these are the values which we have learnt from our Ethics and judicial ethics is

nothing else. This is what is judicial Ethics. Judicial Ethics we create a component out of ethics only but bigger component is Ethics. Ethics is again what the moral values are. That I have told you moralities they can change but Ethics can never ever change. Now as far as the history is concerned, history of the word Ethics is basically I tried to do some research work also on this. Ethic was the word which was governed by Aristotle when he wrote the “Nicomacin Ethics” book because he was dealing with the Medieval times and at that time it was required that the language must show some principles or some some guide-lines and in this book, he wrote about this that how you can become a man of strong conviction. Those were the tabulated forms which were dealt with. Those tabulated forms have undergone a sea change because we have to have acceptability the changes which are true. Every part of education changes you. It is not thus the legal education will make you a good gentleman or woman or a good judicial officer the

other language also, the other aspect of life also. Now why we are taught all the subjects when we go to the school English, Mathematics, history, geography, science every subject is taught to us why because the i-que raised to that level so that we understand what is life, what is happening and what is nature. We should be able to analyse everything. This i-que is increased as I understand the Medical Science what they say that the best Age when the i-que develops and gallops is from one year to five years. Four years is the time which is medically said that you develop your i-que the highest. But then this i-que which is acquired by you has to to chizlled by virtue of the education and that is why we always say first teacher is the mother and second teacher is in the school. Today also if you look back if you are in your offensive mood and your thinking always be reminded by your teacher what he taught you and likewise I will share with you what I was taught by one of my English teacher. Now he was teaching as the

subject of English. It has nothing to do with the Philosophy. But he said we were in the class only. He said if you want to educate yourselves then three principles which have to be accepted by and you must follow one is observe, second is read, third is write. Now if you analyse these three words, observation is first thing which comes in your mind. Because you see through your eyes and through your eyes what are you doing, you observe it. If I am doing something in a good manner you adopt it, you accept, if I am doing something bad which you don't like which you consider it not correct, could not acceptable to the Society, you would reject you will never ever like to repeat but if I am doing something good you might like to follow. This is by the principle of observation that you would be able to educate yourself, you would be able to enhance your ability, you would be able to enhance your i-que also. Then comes reading. Now reading does not mean that you have to read only law books. You have to read CPC, you have

to read Cr.P.C you have to read IPC or you have to read any legalistic book of course it is required because that is your profession. But there is general reading also which is required out of you which may chizzle you in a different manner. Because when you are deciding the cases as judicial officer, now there are so many things which may be relating to science. Now if you have read that book you will be able to appreciate it in a much better way. Now there also and science also have so many ethics now you will teach yourself ethics of science also, ethics of medical field also, ethics of engineering also. Now Ethics are not restricted only to the legal system. Now as far as we are concerned, of course, I would not like to narrow down that you may restrict yourself only for the judicial Ethics but try learn Ethics all around. Now one example which my friend is a Golfer again and we have been playing Golf together and when we were playing Golf another thing which came to my mind and of course if you have played

bridge also and if you are fond of playing bridge you know how bridge is played and how golf is played. Golf is one game which you play against yourself there is no opponent. Put the ball, hit it and you have to go the green and put it into the hole it may be four strokes or sometimes three strokes or like that or may be five strokes. And we have to put it in four strokes. I reach there in seven, I am going here and there he is playing here, he reaches in five and I reach in seven. Now nobody is seeing. He is not watching me. We are playing the game. He does not know that how many strokes I have taken for reaching the hole. I felt that I have reached in five because I have seen that he has also reached in five. Why I am saying give, I do not want to lose. I don't want him to win. But here my Ethics are given good bye to him. My Ethics are I should not tell a lie, I should be honest. Now he knows and I am thinking that he has not seen but he has seen. Now when I tell him I have reached in five he also said, yes,

I have also reached in five, he never ever says anything. A good gentleman, he says what kind of man he is. He is telling a lie against himself. Can he be trusted. Answer would be no. This is where I sacrificed my Ethics, I sacrificed my morality and this is where I say ladies and gentlemen it is a game which has to be played, you have to play methodically, correctly, honestly and ethically also. If you are able to achieve to play the game ethically the highest you will be the person with the greatest conviction for yourself and then you will be able to write a judgment in the best possible manner. That is one thing which has to be achieved by you when you are talking about the Ethics. Now the rightful decisions which are taken by us sometimes are lost because of the ethics which are given goodbye by us. Now another thing which I compare generally because my father was a medical man so I am always impressed by the medical dispensation also. Now like for a doctor it is accepted ethically, morally also that when he is

dealing with the human body, he is tinkering with the human body. He is under an oath that he will do his best. He will see the reaction/actions of the body and he not be dishonest in saying that what has happened, what has not happened. The doctors inside the operation room/ operation theatre, he is there but he knows that he had committed some wrong and because of his wrong, the patient has died. Now will it be honest for him that he goes and tell them that yes, I have committed this mistake. Shall we hang him? He does not want the patient die. Yet the action and reaction of the body was not controlled by him because of his may be lack of ability, lack of experience or one thing or the other. Now when this man is bound under the medical ethic he would come and say this that yes the mistake was committed but it was not intentionally and yet other judicial officer you will give him the benefit and you will tell that yes, it was not done intentionally and so we will not punish him. Likewise in our judicial ethics

also, there are two components which are there in our judicial system, one is the lawyer and the other is a Judge. The person, who is in difficulty will first go to the lawyer and it is expected of a lawyer that he should tell truthfully what is right, what is wrong. Now he is also bound by the ethics. He is also bound by the morality but what he does he tells the right thing and he says yes you have the right and takes him before you. You are likewise equally bound by the ethics and it is at that time that you are required to act honestly and when you act honestly, I am sure you will never ever commit any wrong and you will come to the right conclusion and right judgment always and if you follow this principle, there is no problem at all. You will always be right thinking person, right approach and right decision. There will be nothing wrong in it. But another thing which comes to my mind and that is, when you have written a judgment may be because of lack of ability or lack of your effort or may be the intellect is not so

fine, the judgment has gone wrong. Now it is tested we have the hierarchy it is tested Appellate Court and it reaches the highest Court. It is upheld. Can we still call this a bare and honest judgment. By one thing or the other it has reached it has gone through the test. At least my answer would be no. If I am still given the right to examine it and that is why you find that so many times the judgments are over-ruled. They have read it because we realise that mistakes later on. Now here the judicial ethic the intellect will come. Now you have to be very firm in this because its a very very technical thing but we don't have to be afraid of it. This is gradually you apply it and then you gradually come into it and then you forget about. There is the general stream, the stream which is to flow it. Then you are not required to really examine these things again and again. Now one thing I will tell you now my advice to you as member of the judicial family and as an elder brother, I would request you that

raise yourself ethically to the height, ethically to the height I am saying morally it will depend because it is very so that the evil does not reach so that the shadow of evil does not come near you and when the evil does not come near you really effected by the shadow of evil. Then comes the sacrifice. It is the field of sacrifice for all of us because a lawyer sacrifice why I am saying sacrifice. A lawyer charges fee to the extent of Rs.50,000/- for a case. You are being paid may be Rs.15,000/-, Rs.20,000/- or Rs.30,000/- can you equate yourself with him. Your domain is much higher. Your responsibility is much higher. You are at a higher pedestal but there is an element of sacrifice. By that of course I am getting less money that is immaterial. The responsibility is much higher, the duty is much higher. We are living in the stream of sacrifice but sacrifice is one thing which is required for achieving the highest and for achieving high things sacrifice is no beginning and the top is always

there. You would always reach the top with the sacrifices and with your convictions. If you follow the ethics, follow the moralities or keep your moral values straight you will be able to enjoy the life you will have the happiness, bliss everything. Bliss does not cost money, bliss does not require money. Now if I have to eat in a five star hotel then what I am going to eat. I am going to eat the same kind of meat,I am going to eat the same kind of Allu, I am going to eat the same kind of Dal which I eat at home. Costing less enjoying more. This is where you have to restrain yourself, control yourself and once you are able to control yourself nothing is like that. Now when you are ready with this that you are rubbished with your conviction and you can raise yourself to a higher level of exactitude, it is at that time you are ready to write the judgment. Now we talk about what is art of writing judgment? I do not have to tell you how you have to write a judgment. A,B,C,D you have been writing judgment all the years. What is

the judgment. You have read C.P.C. You understand C.P.C. very well. Judgment is nothing but a decision under the legal system and we accept that is that is a judgment? Today I am not accepting this speaking for myself I would not accept this only as a decision. No according to me subject to of course I am open to conviction. Judgment is a conclusion which is arrived at by you under the facts and circumstances disclosed before you. When you conclude something, conclusion is one which is arrived at we have termed it as “judgment”. But when you have to conclude something then you have to be very strong in your convictions. Ethically you have arisen very high, you are strong in your conviction then you sit down to write your judgment. For writing judgment according to me, there are two things which are necessarily required. First is understanding, you must understand what is the subject before you and once you have understood it with your moral conviction with your ethics everything high with you then you

start thinking what to do, how to write and for these two things when you combine these two things then comes the abstraction. Abstraction is again tainted with the aids, memoids, memoids which are provided. We call them this statutory laws, statutory dispensations which are available to us for taking a decision. Then as far as statutory decisions are concerned, the laws are concerned, they are there then you examine everything as per the law. If you analyse a fact by virtue of law of evidence i.e documentary or oral, these are the aids which are provided in the society for you to come to a correct conclusion and it is at that time that you analyse to understand and then you start writing. Now if we read a judgment sometime we come across a very good judgment. you are the officers who have written excellent judgments. At least speaking for myself, I have read some of the judgments of you, they are very well written judgments,very balanced, very nice judgments but you are supposed to write a descriptive judgment.

You are at the run, you rising the steps. Descriptive judgment is one which describes everything deals with the matter, nook and corner everything. You don't leave anything. You take a decision on every aspect that will be called a descriptive judgment. Other kind of judgment is descriptive judgment. When you come to this side,i.e my Lord Justice Uma Nath Singh, my Lord Justice Garewal and, Justice Kiran Anand Lall, it is at this stage that you come and start writing a descriptive judgment. Not only this that you describe everything but then you give the mind, projectable through the provisions of law. This where the prescription come with. Prescription would be what? You prescribe something through your judgment, which becomes law after that. That is very very difficult to prescribe something as medical prescription. When a doctor gives a medical prescription, he gives on what basis? He has learnt the field of medicines. He is writing something prescribing something for you body when

you keep something that will relieve you of the ailment. This is what the judgment is when we write a prescriptive judgment, then we relieve a person not only once but for all times to come and tell them that this is how you have to follow. It becomes a prescriptive judgment. Now when you write the judgment prescriptive or descriptive, there are three four things which I would like to share with you and that is that judgment has to be analysed under three-four heads. One is necessary judgments. Now necessary judgments would mean what? A judgment which has to be given. Now mathematically I would say what will be answer of 2+2. You will say 4. So, this is the necessary judgment which has to be given. There are certain aspects, the facts which are disclosed. You come to this that I don't have applied mind at all. Necessary judgment is determined, decided. So you give that judgment, you don't apply mind. you straightway say that this is the issue `ABCD' issues. This is necessary

judgment, so this issue is decided necessarily. Then the other things come, i.e., the another example, which I would like to give you and i.e., when you have to decide something fire is hot, can you draw any other conclusion. Fire has to be hot, is hot, cannot be called cool. There is no confusion at all. It has to be hot so necessary decision is taken. Then comes another kind of judgment, the decision which is taken by you i.e., contingent judgment. The contingency is there where you decide and this contingent judgment is such that there is a concept opposite to concept which you have arrived at, i.e. One concept which is in your mind, your ability your intelligence you have come to a particular conclusion. But this concept which you have reached which you have arrived is also open there can be a contrary concept by another person. So, this kind of judgment which is given by you to be the contingent judgment, and the third kind of judgment is the belief judgment. Normally you have seen that we

used this word I believe it to be correct. The verification in the affidavit is given believed to be true. This is my belief it may not be determinable because of `ABCD' but I believe it to be correct because there are attendant circumstances which show it so. Like in a criminal case, when you are convicting a person, these are attendant circumstances, attendant facts, which are seen by you. There may not be a son, who is eye-witness, yet you convict him because you believe him to be guilty because of certain circumstances, which have been disclosed before you. Now believing it to be true, it is again open to change because when another person applies mind, he may not believe it to be true. But if the circumstantial evidence, circumstances are strong that you believe it, you accept it there is no conclusion, but to believe it. Like take for example, when I say that there is God, you all believe, you have believe in God, all of you have belief. Why do you believe? Have you seen God?

Where is God? Answer comes God is within. God is here, God is nature, God is this. Seeing the nature, seeing myself that I have grown to be an old person, Trees have grown into big trees from this much of seed. I put the seed and get the vegetable . Who is doing it? How it is happening? These are circumstances which cause belief in me yes there is God. I believe there is a God. So this is belief judgment, which is sometimes given by you when the circumstances are put up before you and you believe them to be correct and you can arrive at the conclusion. There is no problem at all. Then comes another kind of judgment and i.e., opinion judgment. Now sometimes, you may have read in so many judgments where the Judge says in my opinion, I feel `this this.....'. Now from where you found this opinion? Now opinion is one which is form on the basis of the facts which are accepted by you but drawing absolute conclusion is not possible. Sometimes it is not mathematical calculation which is there for an Hon'ble Judge or

for a lawyer. Sometimes you have to form an opinion when you form an opinion then you spell out your opinion that why I am forming this opinion. Now this opinion judgment also can vary. You may form one opinion and you may form another opinion but this opinion has to be based on strong conviction again. Conviction where we raise ourselves to that height that we are firm, we are convinced and this opinion would be further subjected to a test and these tests are where the Appellate Court and you further go to the Supreme Court and we have created the system that ultimately whatever is said by the Supreme Court that will be the opinion. That opinion will take form of judgment also. You have formed the opinion the appeal comes, the High Court upholds it then the Supreme Court also upholds. This opinion ultimately has taken the shape of laws. Where there is great, where there is absolute law, there is no problem. You can take a decision, you can decide. But as far as opinions are concerned they crystalised only at a particular

place. But you are the first person form the opinion. Now I am always amused, always impressed by the first Court which takes the decision forming the judgment. You are lucky ones or I would say that you are the responsible officers where you record the evidence also. While writing judgment it always comes on your mind the meaner of the witness. The person you have seen deposing before you and it is at that time when you have been able to analyse whether he told a lie or whether he told a truth and sometimes while recording the evidence you record it in the evidence also. The meaner of the witness is doubtful. Now this is one indication which becomes handy for the Appellate Court because before the Appellate Court the witness is not there. So, this is one factor which becomes handy for you to formulate your opinion then ultimately the Judge. Now judgment is again I would put it like this the judgment is based on three four things again the ability, experience, training and wisdom. As far as ability is concerned

I have shared with you that you raised your i-que the highest, the ability also arises everyday, the graph is rising everyday. Ability is not important what a type compartment. Ability is not one thing which can be digested or it can be taken like a glass of water. Ability is acquired by passage of time when you are keeping your eyes, ears open. You add it to your ability. How do you become able person because you have made the efforts. You kept your eyes, ears open in the Society. Not inseclusion in the Society yet inseclusion mindwise. Mindwise you are not polluted. This is where you reach the highest test form of ability while writing the judgment and then comes the experience. Experience is one when you will go and face things when you deal with things more, the experience is always added. Why do we ask for so and so post, experience three years, five years what for because of his experience, because of his mistakes, he has gained likewise ability, experience also everything. You must have seen

yourself that the first judgment which must have been written by you and the judgment which you write today you must have found the defence yourself. So,here we are sharing each other's thought. This is also part of training. Training is when you attend something, hear something, learn something, you see something, you train yourself and because of these three things ability, experience and training come the last i.e. Wisdom. Now wisdom is one which can never ever be taken. If you have acquired the wisdom, then it would remain with you. But don't keep it with yourself. Share it with us. Thus, it is because of your wisdom, the training would be there. The experience would also be there. Experience is because your wisdom is shared by him or his wisdom is shared by you. This is here to teach yourself the experience is also gained. Now all these four things which are complementary to each other where you have to write a good judgment. I think I have gone quite away from this. My Lord Mr. Justice

Garewal has also said that I think that enough is enough but the last thing which I would like to share with you would be that which judgment you call a poor judgment. Mind you I may be writing a poor judgment. How you assess it that this is a poor judgment. Now poor judgment would reflect three things one is faulty reasoning, second is lack of facts and three is prejudices. Now as far as faulty reasoning is concerned it would project what that you have not educated yourself. You are not ready to write a judgment. You have no convictions within yourself. You have not acquired the conviction for the faulty reasoning and the second is lack of facts which I told you earlier understand digest the facts. Now who is the successful lawyer. Successful lawyer is he, who digests the facts the highest the best and in a meticulous manner. He will be able to present his case the best the same day he will be able to write the best judgment when you have acquired the facts the best and the maximum. The moment you loose the

facts the mistaken judgment be always there. You have to examine it that the facts should be correctly projected. Whatever the law has to apply that is the material that is a second reason. But first thing is that you must digest the facts then pour them out in your judgment correctly. What supposing gift that the appeal has to go against the order we assuming a fact that the facts have been correctly spelled out in the judgment. If they are not my first impression would be that the Judge has not written a good judgment. That will be the first thing. Last is the prejudice. Never ever sit with the prejudice. If you are prejudiced then you are bound to write a wrong judgment. Supposing if you don't like a lawyer, the lawyer has misbehaved with you and you are writing a judgment back up mind, you would be thinking that this man misbehaved with me and I am going to teach him a lesson. Now where what have you done, you have gone wrong. It is not the case of the lawyer, it is a case of the person who has come before you, who has

faith in you, reposing confidence in you. As I shared with you like the doctor when he operate does not see who is he, who is you. Similarly, in your mind also there should be no prejudice. This is where if you leave the prejudices you have seclusion in your mind. Then you will be able to write very fair and honest judgment. Now these three things must keep in your mind. Anyway the last thing which I would like to say is that there is a big responsibility on your shoulders which has been casted whenever you adore this Bench, the chair. Now this responsibility has to be shouldered by you in a very meticulous manner, it is a very onerous duty which has been casted and the honest judgment would speak for itself. It will be reflecting you straightway. There is no second opinion. If the judgment is good it reflects the author straightway. Then it becomes a referrable document and when it is referred who reaches the higher pedestal. You, who is the author of the judgment. My advice is that please conduct

yourself, control yourself and then sit down and write the judgment in all fairness without any prejudice, without anything you should not be influenced by anything, anyone. Not that you should not be influenced because somebody has influenced you. Influence is that in-between those have to be taken out of heart. That is what I am trying to say.

Thank you.

SPEECH DELIVERED BY HON'BLE MR.JUSTICE S.S.SARON

Good Morning to all of you and welcome to this session which you are having on the workshop The intention of the session just point out at the outset is to have more interaction between the High Court and the subordinate officers. It is not in any manner to brush you up the law because most of you are having more than 10 years of experience as judicial officers know the basics what an FIR is, what are its antecedents, what proclamation is and what remand is? So, the idea to get down the thing is to share our experiences with each other know where we have been deficient and how we can bring about more and better functioning in our system of Administration of justice. Trial Magistrates are the very basis of our judicial system and they occupy a very pivotal role in the Administration of

Justice because they are all at the grass root level where they direct come in contact with the litigants those wanting justice and criminals and they are in a better position to see the demenour of the witnesses and examine the evidence and scrutinise the judgments. So the topics which I have, are not such where you are unfamiliar or where I need to dilate on the point of because after all as I have said you are not law students. Let us discuss first information and commencement of investigation. All of you are well aware that Section 154 provides for registration of F.I.R that is to be recorded by the in-charge of the police station. Now the role of the trial Magistrate has also come about to quite an extent in while exercising jurisdiction under Section 156 (3)of the Cr.P.C in the light of the judgment in Madhu Bala Vs. Suresh Kumar 1997 Supreme Court 3104. So any of you would feel things before you have had some difficulty or something which you want to share which can be shared by all because

this is a programme where we intend to interact and not to primarily lecture you. Registration of FIR is something very serious and it affixes the credibility of a person and it is not to be resorted to as a routine. Many of you must have come across complaints with the person says that despite my going to the police station the FIR is not being registered. Many of you come across the situation where the police themselves say that we are helpless you get an order from the Court and we will do something. These situations are there in a practical working. One suggestion which had seldom been invoked is that there is a provision which also provides for where there is refusal by the SHO or the in-charge of the police station to register FIR and it can be registered the person can approach the Senior Superintendent of Police. So if you have any doubt it is after all the judicial satisfaction of the Magistrate which is to be exercised and the Magistrate in a situation may not be able to have the entire circumstances which the

in-charge of the police station or the SHO may have. So, it is a 154(3) Cr.P.C. If any person aggrieved by refusal on the part of the officer or in-charge of the police station to record the information referred to in Sub-Section 1 may send substance of the information in writing by to the Superintendent of Police concerned, who is satisfied that such information discloses the commission of cognizable offence shall either investigate the case himself or direct an investigation to be made by any police officer or subordinate officers. If in any case where a Magistrate has a doubt of not invoking jurisdiction under Section 156(3) Cr.P.C one of the way out is to ask the complainant to approach the Superintendent of Police under 143 Cr.P.C. This is one thing wherever you have doubt we cannot lay strait-jacket formula this is to be applied in a case or this is not to be applied. After all it is the your satisfaction while exercising powers of judicial Magistrate Ist Class or Additional Chief

Judicial Magistrate. That this jurisdiction is to be invoked. So wherever you have a doubt this is one way which should be resorted to of asking the complainant to approach under Section 154(3) Cr.P.C. The person may be wanting to get a false case registered. He realising that he can not do it, approaches the Magistrate under Section 156 Cr.P.C. Now that is the acid test for the Magistrate to exercise his jurisdiction. He has to act in accordance with his or her conscious to see how to best get away in a best manner to exercise jurisdiction and rightly this difficulty does arise before the Magistrate because the Magistrate is handicapped of not being having the direct or first hand information which in-charge of the police station does normally having. I just want to bring to your notice that control the investigation if you read the judgment in Bhajan Lal's case AIR 1992 Supreme Court 602, State of Haryana vs. Bhajan Lal, you will find that the Magistrate is to be kept in the picture at all

stages of the investigation. He cannot interfere but wherever the investigating agency fails to investigate or transgresses the circumscribed limits jurisdiction the Magistrate can interfere. Please be careful don't have disgress the Magistrate cannot interfere the judgment in Bhajan Lal's case is very clear on this that the Magistrate is to be kept in the picture at all stages. If this jurisdiction is exercised at the grass-root level of taking resort to Bhajan Lal's case. What happens is that many a person who come to the High Court of complaining of non-performance of the IO not taking investigation, can be curtailed. See what happens, the High Court passes an order of registration of an FIR or of further investigation, there is very little scope for correcting that error. If a Magistrate passes an order for that error can be corrected by the Sessions Judge, Addl. Sessions Judge or even by the High Court. But the reverse it becomes very difficult. So therefore in the hierarchy of our

administration this object is this that wherever an error is committed by any one then the higher Court is able to correct that error. In this respect, if you read Bhajan Lal's case very very carefully, you will realise that when they say that you have no jurisdiction to interfere in the investigation I would give my opinion the Magistrate does have the power to investigation. Where there has been failure to investigate and or that the investigating authority transgresses, its circumscribed limit of jurisdiction. These are very very clear words in Bhajan Lal's case and you must all read it effectively enforce it. We want you all to interact each other so that we can have a uniform system of administration and also that there is consistency and the least and the best possible administration. FIR in a case is more or less is already registered. They need not be further registration of FIR in this respect. Counter FIR wherever the Magistrate feels he has the jurisdiction on the basis, there is no bar to

it and insofar as investigation is concerned,yes, you are right the Magistrate cannot go to the spot and carry out the investigation. It is the function of the police. So in a pending FIR, a direction can be given to follow this procedure. Again this celebrated judgment in Bhajan Lal's case, if you read it very-very carefully, it deals with almost every aspect of registration, the power of investigation and also the jurisdiction of the Magistrate. You just go through it. The objective is that what happens that Bhajan Lal's case cited more often in the High Court for the purposes of quashing the FIR having jurisdiction under Section 482 of the Cr.P.C. But it is seldom use of cited for the purposes of effective and properly investigation. This is the difficulty. This is the important function which the Magistrate performs and this is the grass root. See what happens if the Magistrate does some wrong, that wrong can be corrected by the additional Sessions Judge. Supposing the High Court was to

order registration of FIR in the first instance, that will not be able to go to Supreme Court. So therefore the object what the Supreme Court did in Madhu Bala's case, it gives the jurisdiction to the Magistrate to order registration of FIR. But if you read All India Institute of Medical Sciences case, there they say the High Court does not have jurisdiction to order registration of FIR. A layman would say it is very strange that Magistrate can order of registration of FIR and the High Court cannot. It looks strange, but the object, if you understand the purpose and object of both the decision of the Supreme Court is that if a Magistrate commits a wrong, it can be corrected by the Higher Court, but if the High Court orders the registration of the FIR, it cannot be corrected by the subordinate Courts. So this seems to be to my mind underlying object. You have to carry out your function very very sensitive, grave and remanding. There is a case of rape, medical report is there, doctors evidence is there. The complainant comes

and says that FIR is not being registered, despite the medical report. Magistrate can straightway file an order that this is a serious case and FIR should be done. Assuming there is an allegation, there is a false report, somebody just comes, there is no medical, there you can say alright, show some medical evidence, show some ground reality. So this is you have to exercise your judicial discretion in the sound principles and carry out this task. The object by earlier prior to 1997 is that High Court always held that Magistrate has no power to order registration of FIR. But this power has been given so that the Magistrate does exercise the jurisdiction. It is a very onerous function on the Magistrate which he has to perform. If you see the provisions of Punjab Police Rules, those themselves provides for certain guidelines on the basis of which FIRs are registered. Then this aspect you can send all the document to the SHO that these were the evidence please conduct investigation and submit a report of registration

of a FIR. There is absolutely no difficulty and there should be no problem. See that cognizance by the Magistrate I may just tell you when is the cognizance taken. See cognizance is always taken if you read AIR 1959, supreme Court 1118. Cognizance is always taken when the Magistrate applies his judicial mind to the case. It is normally when the charge is framed. It can normally be even when the case is committed to the Court of Sessions in a case which is not triable by a Magistrate, but triable by a Court of Sessions. So the word cognizance, it is understood, its application is different in different situations. It is not uniformally that only when charge is framed. A police officer comes, and files a report under Section 173 Cr.P.C you take the report and just sign it, there is no application of mind at that stage. Application of mind comes alright the case is triable by the Magistrate, Court of Sessions it has to be committed. For committal proceedings, there is application of mind. For at

the time of framing charges. So when the Court applies its mind, it is generally at that stage, if you go by AIR 1959 supreme Court 1118, that the Court is said to have applied mind and taken cognizance. It is not mere filing of the complaint. You see complaint is filed, evidence is recorded, there is no application of mind at that stage. So whenever it is not static, it is cognizance, when the Court applies its mind. Now latest judgment is when you come across under 138 of the Negotiable Instruments Act, many cases come under. The latest judgment which has followed 1959 supreme Court 1118 in relation to taking cognizance. At the very first stage when you record the evidence, you take them and issue the summons and that is the stage where cognizance, you can say has been taken. A preliminary enquiry is contemplated by the 1962 Supreme Court , which says that the preliminary enquiry, even a Magistrate or a police officer in-charge can conduct of a preliminary enquiry and specially in

the cases related to corruption against public servants. The vigilance bureau invariably conducts preliminary enquiry before registration of a formal FIR. This aspect is there. Now in relation to arrest, I just want to tell you that the two latest judgments which have there on the Supreme Court. You must be all aware of D.K.Basu vs. State of West Bengal in which the Supreme Court has laid down elaborate guidelines. What happens that Supreme Court issued guidelines and they remain only on the reports and there invariably not follow the grounds and grass-root level. So I must remind every one that under Article 141 of the Constitution, law laid down by the Supreme Court is binding on all the Courts. There is no dispute at all. If some efforts must be made so that these guidelines of the Supreme Court which has been laid down almost eight years ago have rarely being followed. There must be an endeavour on her part that these guidelines should be followed and because the directions of their Lordship of the Supreme Court

that this decision should be made available, should be sent to all the Superintendents of Police and they in turn to all the police stations. But somehow most of you must be getting complaints of medical examination under Section 154. Memo of all the documents is required to be sent to the Illaka Magistrate. Copies of all the documents including memo of arrest should be sent to the Illaka Magistrate. Directions of the Supreme Court in D.K.Basu's case AIR 1997 Supreme Court 610 and some of them are there in Joginder Kumar Vs. State of U.P. AIR 1994 Supreme Court 1349 are followed and then this very recent case in Raj Kumari Vs. SHO Noida AIR 2003 4693 Raj Kumari was the leader of CITU and she was arrested on the ground of leading a mob of workers and inciting them to show their strength by beating the employees one who came in their way. She was arrested and she filed a contempt petition in the Supreme Court complaining of non-compliance of the decision in D.K.Basu and Joginder Kumar's case. But the affidavits that were

filed before the Supreme Court showed that the lady constable who arrested the petitioner Raj Kumari. So this aspect I would emphasize that most of you should try and follow. The allegations are generally made that this check is there. See normally what the person do is send a telegram of illegal detention as soon as the person is arrested. Sometimes the persons, who are quiet hard and tough, send them in anticipation. You may come out you see but the point 11 which has been laid down in D. K. Basu's case. It says that a police control room should be provided at all District and State headquarters where information regarding the arrest and place of custody of the arrestee shall be communicated by the officer the arrest within 12 hours of effecting the arrest and at the Police Control Room. It should be disgraced on a conscpicuous notice board. This is one aspect where you can ensure the compliance of the directions of the Supreme Court so that this aspect is taken into account and duly accounted. It is generally

the Supreme Court in relation to Section 167 most of you know State of U.P. Vs. Ram Sagar Yadav AIR 1985 Supreme Court 416. I request all of you must read Bhajan Lal's case AIR 1959 SC 118, D.K. Basu's case and State of U.P. Vs. Sagar Yadav. Please go through them so that you are more conscious of your rights of their duties that are to be discharged in this manner. It says that remand paper should be passed by the Magistrate on proper application not mechanical. Now I can understand of the shortage of officers, a number of cases the civil functions that are to be discharged that the Magistrates are under pressure. So just go through it because remand is not something which should be done mechanically. It does require some judicial discretion and some application of mind. At least there should be some semblance of justice that the person who is getting remand. That when the police officer approaches seeking remand for 10 days general tendency of the police is to ask for higher number of remands for 1 day so that the

applications which they file seeking remand should be well drafted and they ask them to please specify the reason for what remand is sought. It should not be mere mechanical exercise. They must tell them to get to the grass-root and take these remand papers as well. You have to be set aside on your judicial conscious which because of the time constraints, we invariably carry out in a mechanical exercise and it gives a very wrong signal because the judicial system we must uphold. What the police does, we are not concerned with arm of the judicial wing. We must be able to identify clearly where we are doing what and now that is the object of producing the accused before the Magistrate. Otherwise one could just send the papers before the Magistrate, the purpose of producing the accused before the Magistrate is so that the Magistrate can look at him or her and apply his or her judicial mind independently and carelessly in the interest of the administration of justice for the investigation and also in the

interest of justice. This is where most of the emphasis and conscious to be exercised by all of you. Before the High Court, the accused are never produced it is only the papers that come up before the High Court. Before the Magistrate, the accused always produced so this gives the Magistrate a very very added advantage of what the Appellate Court of Session and revisional lower Appellate Court of High court is deprived of. So it is the impression which the Magistrate records which are most important and that is what the grass root of our criminal administration justice. We are having because of paucity over number of cases our system is suffered but still we are unable to maintain some semblance and this refresher course is only to instil in you and your other colleagues from whom you will be interacting with. To get the system to get this work in your most independent fearless end. The object is that the accused persons appearing before the Magistrate is that he has to be produced before the Magistrate within 24 hours

of his arrest. The object is that the Magistrate satisfies himself after looking at the accused. It is a very very sensitive and onerous function. It affects the liberty. He may be under a false case. Where you have to strike a balance between the investigating process and also the right of the accused. We are not to be influenced by media reports. Media reports can be distorted. Unless those media reports come in the Court and they are established by credible evidence. In the case of confession order let the investigation make the tapes part of the evidence tendered them in evidence and produced them on record and it get them admitted in accordance with the provisions of Evidence Act. If the report comes in the press, the author of the report must be examined. He should get himself subject to cross-examination. If there is a confession before the media and that confession comes before the Magistrate and if tendered in evidence, there is a Delhi High Court judgment I cannot recollect. Whether the video

tapes were taken into account during the rights that were held and they were relied upon unless they come before the Magistrate the courts are not to go into them on their personal viewing because if they are not part of the court record then I definitely would feel that there can not be. It does amount to interference in judicial functioning but this is now becoming more or more effected lawyers are going on to the media voicing their distinct. The Magistrate's function is to confine himself to the records. Don't be influenced by the press conference. We are not controlled by the press. So one can at that point of time ask him to file a complaint in accordance with the whatever law which has been violated? If he feels it amounts to administration of justice he has his remedy for applying for contempt. Criminal contempt which he can file, if the Magistrate finds that yes, there has been interference in the administration of justice, he can refer it to the High Court. We are not to guide the lawyers of what they have to do.

They are to get the guidance from the lawyers. But definitely you are not to be influenced by the media what it does or says? Just one last thing of our agenda is that proclamation and attachment. These provisions are there in CPC and all of you are aware now-a-days. Most of those who are serving as Judicial officers besides in the area of Jalandhar, Nawan Shehar, Phillaur, Nakodar must be coming across difficulty is there. The accused suddenly disappears and the police is unable to get them declared as proclaimed offender. This aspect most of you have come across and seen and any question regarding that anybody wanted to be.

Thank you very much and I hope you are very trusting interaction and go back with happy memories.

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SPEECH DELIVERED BY HON'BLE MR.JUSTICE S.N.AGGARWAL

Dear brothers and sisters, I welcome you to the refresher course and happy to share my thought with you on some of the topics of criminal law which all of us deal with them daily in the performance of our duties. Before we take up discussing the topics, I may just state that judiciary is the last hope of the public. We are lucky to belong to the judicial family where we determine the fate of fellow human beings in almost all the fields of their lives. Not only that, we also enjoy the total liberty in taking and making decisions in the cases coming before us. There is none on this earth who can command us to decide a case this way or that way. If there is any who can command us, it is the God or God's attorney i.e. Our conscience. That is our duty. That is what the

people expect from us. That is what is our religion. When we fail to uphold these ideals, we individuals suffer, the institution suffers above anybody else. As my Lord Hon'ble the Chief Justice had narrated in the morning there is a certain norms stated for the Judges by the Hon'ble Supreme Court that we all know. It was stated a Judge entrusted with the task of administering justice should be bold and feel fearless while acting judicially and giving expression to his views and constructing his judgment and order. It should be no deterrent to formation and expression of an honest opinion and acting thereon so long as it is within the four corners of law that any action taken by a subordinate judicial officer is open to scrutiny in judicial review before a superior court with which its opinion may not meet approval and the superior court may upset his action or opinion. The availability of such fearlessness is essential for the maintenance of judicial independence. However, calm and voice should be

reflected in every action and expression of every judge. Judiciary is a strong pillar in our democracy. People look up to us for the redressal of their grievances and you being the grass root Judges are the first hope of the people. A substantial part of litigant public end upto district judiciary. Few of them try their luck before us and still fewer to them go up to the Hon'ble Supreme Court. Therefore, the orders passed by you go a long way to meet the aspirations of the general public. The Hon'ble Supreme Court says the Judges' Bench is a seat of power not only to Judges have the power to make binding decisions their decisions legitimate the use of power by other officials. The Judges have the absolute and unchallengable control of the Court but they can not misuse their authority by intemperate comments undignified or scathing criticism of counsel parties are witnesses. We concede that the Court has the inherent power to act freely upon its own conviction on any matter coming before it for

adjudication. But its general principle of the highest importance to the proper administration of justice. The interrogatory remarks ought not to be made against person or authority whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to annim on their conduct. Now we will discuss the topics of bail, framing of charge on the accused, discharge of the accused, criminal complaints, burden of proof, resumption, sentencing and perjury. I misstate that we speak about the experiences which we had and which we have prepared on the basis of law authorities but while taking decisions you have to consult with law books or the judgments of this Court or of the Hon'ble Supreme Court to support your decision which you make. Therefore, our speech is just a token of advice to look into the matter and decide the case as the facts command. For example we cannot grant bail in every case nor we would reject it in every case. It depends upon case to case. The Hon'ble Supreme Court has

observed while deciding the cases on facts more so in the criminal cases the Court should bear in mind that each case must rest on its own facts and the similarity of facts in one case can not be used to bear in mind the conclusion of the fact in another case is also a well established principle that while considering the ratio laid down in one case the the Court will have to bear in mind that every judgment must be read as applicable to the particular facts proved or assumed to be true since the generality of the expressions which may be found therein are not intended to be expositions of the whole of the law but are governed and qualified by the particular facts of the case in which such expressions are to be found. Bail has so many aspects to be taken care of. When admitted to bail, we must check up thoroughly that the bail bonds are properly filled. The addresses and particulars of the surety and of the attesting witnesses are properly given. After the acceptance of the bail bonds, the release warrants must be

despatched without delay so that the liberty of an individual is not curtailed after bail.

While passing the bail orders, so also for rejecting the bail applications, we must give the reasons which will reveal our mental application to the matter before us. Once it is so done, we are relieved out its result in higher courts. Different parameters are applicable while considering the bail of a woman or a child or an ailing person. We have to look to the nature of the offence and its gravity. We have to examine the cry of the Society in a given case. We have to examine the earthy realities and have to give a human touch. In petty offences, we may be liberal in granting bail but in heinous crimes, we have to be very conservative. The trial of a person in custody must be expedited.

Another provision of bail is contained in Section 167(2) when the challan is not presented within the statutory prescribed period i.e. 90 days in offences punishable with death or life

sentence and 60 days in other cases. In a case under Section 304-B IPC, the bail was granted after the expiry of 60 days while actually the requirement was of 90 days.

Bail applications can be filed by the accused one after the other but once rejected it should not be accepted expect in changed circumstances. Then again all the accused in the same case have to be treated similarly if there role is similar in the commission of the crime. It is only the subjective satisfaction of the Court which is to be reflected by a well-reasonsed order it will determine the fate of an accused.

That this is not the end of the matter. Once released on bail, the accused has to maintain peace and abide by the conditions of the bail orders. If the accused violates the same, it can result in cancellation of the bail application where the accused threatens the prosecution witnesses or delays the trial of the case or frequently remains absent from Court proceedings.

These may be good grounds for cancellation of bail. Different parameters are applicable for the grant of bail and for cancellation of bail. These are only few situations but numerous and unforeseeable facts come up for decision. We may read the relevant reasons, see the case law, apply our mind and the response flowing from within would be the correct answer. We have to be humane.

Coming to the next topic. Chapter XVII from Section 211 to Section 224 Cr.P.C deal with the framing of charge. While Section 228 deals with the framing of the charge in a sessions case and section 227 deals with discharge. Similarly, Section 240 relates to the framing of charge in a warrant case. Section 239 says about the discharge of the accused. All these provisions are well known to you. One must be careful while framing the charge and it should be so done after examining the facts of each case because whole structure of prosecution evidence depends upon it. Although sufficient precautions have been taken by the

Legislature to ensure that a case does not fail for an error in the charge sheet but the accused also tries to encash on the mistake in the charge-sheet and ultimately the rules of fair trial weigh with the Courts. We should avoid such errors. The Hon'ble Supreme Court was pleased to observe in a recent judgment the same brought principles of justice and fair trial, fair play must be brought to bear when determining a matter of prejudice as in adjudging guilt. But when all is said and done what we are concerned to see is that whether the accused has a fair trial whether he knew that he was being tried whether the main fact is sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself. Although reasons are required to be given in every order passed by the Court but in a recent judgment in Lalu Parsad's case the Hon'ble Full Bench of Patna High Court says that in the order of discharge, full reasons must be given, although the order framing the

charge need not be detailed one. Now coming to the criminal complaint matter, proper care has been taken by the legislature to meet a situation where a case is not registered. Cognizance of an offence can be taken by a Magistrate even on the complaint of an aggrieved party. Section 200 to 203 Cr.P.C deals with the subject under Section 156 (3) Cr.P.C investigation can be got done through the police although the complaint should be filed promptly. But in a given case even the delay in filing the complaint may not matter. In a recent judgment in K.P.S. Gill's case, the Hon'ble Supreme Court upheld the conviction although the complaint was filed after the delay of three months by observing that the delay was explained and the delay in itself is not sufficient to reject the version of the complainant that where the delay is coupled with the other circumstances it may become fatal. Judicial process in complaints should not be used for harassing a party matters purely a civil nature should not be allowed to be settled. In

criminal complaints, the process of summoning the accused should not be issued mechanically it should be to do justice and uphold the dignity of law. The complaints should not be dismissed in default in routine amendment in complaint is not permissible. It cannot be restored but a second complaint on the same facts is permissible in the exceptional circumstances. The object is to do justice and uphold the majesty of law. While discussing the burden of proof, the Hon'ble Supreme Court was pleased to observe in the recent famous judgment in IMDT case that “Though in a criminal case the general rule is that the burden of proof is on the prosecution but if any fact is especially within the knowledge of the accused, he has to lead evidence to prove the said fact. In Shambhu Nath Mehra v. The State of Ajmer, AIR 1956 404, it was held as follows. Section 106 is an exception to Section 101. The latter with its illustration a) lays down the general rule that in a criminal case, the burden of proof is on the prosecution and

Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible or at any rate disproportionately difficult, for the prosecution to establish facts which are especially within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word “especially stresses that. It means facts that are pre-eminently or exceptionally within his knowledge.”

In another judgment the Supreme Court was pleased to observe that “Before proceedings we may point out that expression may presume and shall presume are defined in Section 4 of Evidence Act the presumptions falling under the former category are compendiously known as actual presumptions or discretionary presumptions and those falling under the later are legal presumptions or compulsory presumptions. Then the expression shall be presumed which is employed in Section 41 of the 1947 Act in Section 20 of the Prevention and Corruption Act. It

must have the same import of compulsion. When the sub section deals with the legal presumption it is to be understood in the tone of the command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or for bearing to do any official act etc. If the condition envisaged in the former part of the Section is satisfied the proof of the facts depends upon the degree of probability of its having existence. The standard required for reaching the supposition is that of a prudent man acting in any matter concerning him prove does not mean proof of rigid mathematic demonstration because that is impossible. It must mean such evidence as would induce by reasonable man to come to a particular conclusion. It was also observed that presumption is an inference of certain facts drawn from other proved facts inferring the existence of facts. From another the Court is only applying a process of intelligence reasoning which the mind of a prudent man would be

under similar circumstances presumption is not the final conclusion to be drawn from other facts but it could as well be final if it remains undisturbed. Later presumption is a law of evidence as a rule indicating the stage of shifting the burden of proof from a certain fact of facts the Court can draw an inference that would remain until such inference is either disproved or dispelled. The presumption of abetment under Section 113 of the Evidence Act when suicide is committed by a woman so also presumptions under Section 114-A are raised to serve the purpose of justice. Sentencing a person after holding him guilty is equally important. Under Section 235(2) Cr.P.C the convict has to be heard before the sentence is awarded to him. On the point of sentence also recently a numerous judgments have come down from the Hon'ble Supreme Court guiding us about the factors which must govern us while determining or awarding sentence to the persons held guilty by us. Again the sentence will depend

on facts and circumstances of each case. The Hon'ble Supreme Court narrate in the latest judgment was pleased to hold the facts and given circumstances in each case nature of the crime the manner in which it was planned or committed motive for the commitment of the crime. The conduct of the accused, the nature of weapons used and all others attending circumstances which are relevant facts which would enter into the area of consideration. For instance a murder committed due to deep seated mutual and personal rivalary may not call penalty of death but an organised crime or mass murders of innocent people would call imposition of death sentence and deterrence. It will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts to give the lesser punishment for the accused would be to render the justicing system of the country suspect. The common man will loose faith in courts in such cases he understand and appreciate the language of

deterrence more than the reformative agenda. Therefore undue sympathy to impose inadequate sentence would do harm to the justice system. To undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of the every court to award proper sentence having regard the nature of the offence in the manner in which it was executed or committed. The criminal law adheres in general to the principles of proportionately in prescribing the liability according to the culpability of each kind of conduct. It ordinary allows some significance discretion to the Judge in arriving at a sentence in each case presumably to permit sentence that reflect more certain consideration of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime yet in practice sentences are determined largely by other considerations sometimes it is corrrectional needs of the

perpetrator that are offered to justify a sentence. Sometimes our desirability of keeping him out of circulation and sometimes even tragic results of his crime. Inevitably, these considerations cause a departure from just desert as the basics of punishment and create cases of apparent in justice that are serious and widespread. Proportion between crime and punishment is a goal respected in principle and in spite of errant notions it remains strong influence and determination of sentence. The practice of punishing all serious crimes with equal severity is now unknown in its law of society but such a radical departure from the principle of proportionality as disappeared from the law whole in the recent times. Even now for a single grave infraction drastic sentences are imposed anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is warrranted and unwised. But infact quite apart from those considerations that make punishment unjustifiable when it is out of

proportion to the crime uniformly disproportionate punishment has some very undesirable practical consequences. Therefore, the sentence has to be in proportion to the crime committed of the offence of which the accused has been held guilty regarding perjury you know giving of false statements on oath in the Courts or filing of false affidavits amounting perjury. The procedure is laid down in Section 340 Cr.P.C that enquiry must be held before we file a complaint against a person. These days people in general tell lies only a microscopic of them speak the truth. If we resort to these provisions it will increase our work. Therefore, we have to close our eyes and take it as a general way of life of the people. It is very rare that we invoke this provision. Now speaking generally about our duties in the performance of criminal cases though justice is depicted to be blind folded, as popularly said it is only a vain not to see who the party before it is while pronouncing the judgments on cause brought before it by enforcing law and

administering justice and not to ignore or turn the mind and attention of the Court away from the truth of the cause and lis before it. In disregard to duty to prevent to miscarriage of justices. Courts have always been considered to have an overriding duty to maintain public confidence in the administration of the justice. Often referred to as the duty to vindicate and upholding majesty of law. Due administration of justice has always been viewed as a continuous process not confined to determination of the particular case. Protecting its liability to function as a court of law, in the future as in the case before it. When an ordinary citizen makes a grievance against the mighty administration, any indifference inaction or lethargy shown in protecting his rights, guarranted in law, will pretend to paralise by such inaction or lethargic action of courts and erode in stages the faith inbuilt in the judicial system. Ultimately destroying the very justice delivery system of the country itself. Pointing a doing

justice is the paramount consideration and that duty cannot be abdicated or diluted and diverted by manipulated red hearings. Courts have to ensure that accused persons are punished and that the might or authority of the State are not used to see itself or its men. It should be ensured that they do not wheeled such powers which under the Constitution have to be held only in the interest of the public and society at large. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the obvious deficiencies, course have to deal with the same with an iron hand appropriately within the framework of law. It is as much the duty of the prosecutor as of the Court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice. It is one of the salutory principles of administration of justice that justice should not only be done but it should seems to be done. However a mere allegation that there is

apprehension that justice will not be done in a given case or that there are general allegation of a surcharged atmosphere against a particular community along does not suffice. The Court has to see whether the apprehension is reasonable or not, the state of mind of the person who entertains the apprehension, no doubt is relevant factor but not the only determinative or concluding factor. But the Court must be fully satisfied about the existence of such conditions which would render inevitably, impossible, the holding of a fair and impartial trial, uninfluenced by extraneous considerations that may be ultimately undermine the confidence of reasonable and right thinking citizen in the justice delivery system. The apprehension must appear in the Court to be a reasonable one. A criminal trial is a judicial examination of the issues in the case as purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact issue and obtain proof of such facts which the

prosecution and the accused have arrived by their pleadings. The controlling question being the guilt or innocence of the accused. Since the object is to meet out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not about over technicalities and must be conducted under the such Rules as will protect the innocent and punish the guilty. If a criminal court is to be an effective instrument indispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine, by becoming a participant in the trial evincing intelligence, active interest and eliciting all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both the parties and to the community it serves. Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to the proceedings, even if a fair trial is still

possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators. So as I stated in the beginning, these are just guide-lines for you but whenever a matter comes before you, you have to consult the books, you have to consult law and not depends upon the lawyers' submissions alone. You have to examine it whether those submissions are correct or the prosecution case is correct. That's all what I want to say.

Thank you.

SPEECH DELIVERED BY HON'BLE MR.JUSTICE K.S.GAREWAL

My Lord Justice S.N.Aggarwal, Mr.Sullar, Registrar General, Mr.Jagroop Singh, Sessions Judge, Jalandhar, Mr.Mehndiratta, Sessions Judge, Punjab State Administrator Tribunal, Mr.B.M.Bedi and friends, we will now be come to the end of Refresher course which my colleagues and myself has designed in such a way that we brought together all the Additional Civil Judges (Sr.Divn.) who have about 10 years of service and are now on the threshold of assuming senior responsibilities like Chief Judicial Magistrate, then move over to the superior judicial service and their fresher days and junior days are behind them. They have experience, they have knowledge but sometimes even they require some refresher course to upgrade on certain developments have taken place. So, the course was designed in such a way that one day was

criminal and one day was civil. Criminal day was yesterday and we have the benefit of the first course that was not a criminal topic but still is very relevant topic. So that was a general topic on the first day and you heard Justice Narang describing Judicial Ethics and I have the honour to listen to that extremely learned this course on Ethics, morality and how a Judge, who practices ethical behaviour in his life also is able to write a good judgment. If a Judge is not ethical in conduct his judgment is also of not a good quality so that is a very important aspect of Ethics. Justice Saron gave us an over view on FIR starting point of every criminal case and My Lord Justice Aggarwal when told all of you what an accused should do when he is arrested and asked for bail and when can he expect for grant of bail,rather when should he be granted bail and such other subjects. Then we have forensic people coming in, the DNA profiling was very interesting, the speaker identification tape of authentication,

these are new fields now, emergent fields. So, I think that gave us the introduction on the subject of technology which is available and although it is rarely used, but sometimes, it can be the clinching evidence if some tape recording is available and the speaker is identified accurately then he can't get out of it. I am sorry we miss the computer forensics but that was for the reason that time was running out and then we have Hon'ble Mr. Justice M.M. Kumar, who gave us an overview on statement of witnesses, police statements, confessions, hostile witnesses. But I am very disappointed that we did not have much interaction. That is a very important aspect of the refresher course because we would like to know from you what the difficulties are and so this can only be known if you frankly come up and stand an express your doubts, express your views and then provoke us to respond. It is family kind of environment, it is not anything more than that. I just happen to be little older. That's all. But we all appreciate my

colleagues on the Bench, Hon'ble the Chief Justice in his inaugural speech, he also emphasized, how important your role is. So we all know that in the years to come, I will be retired, I will be old, and all of you will be in senior positions. So really you all what a long way to go, so you have to get involved in this whole process of learning and sharing your experiences. Any way, so this morning we Hon'ble Mr. Justice Nijjar, who gave us an over view of public interest litigation and deduction of arrears because if public interest litigation starts right earnest and not as a private interest litigation but truly as a public interest litigation may be our work will go up and he did quite clearly say that we might expect even a civil suit can be filed where a case of writ of mandamus, party can ask for decree of mandatory injunction, which is really the same thing. So when as awareness grows, you can expect civil suits coming up, so we have to be very clear about what to do and what not to do. I think that is most

crucial aspect of a Judges' job, he should know the limits of jurisdiction, but within this jurisdiction he should really do justice because then he should not hesitate but if he is certain, he can exercise jurisdiction in a particular area in a particular manner and the requirement of justice is that he should pass a certain order, and he must pass it because not doing so would be depriving the victim of relief and the benefit of law. And Justice Goel, had given an over view of the civil procedure Code, latest amendments which have come out, recording evidence on affidavits, precedent and so on. Mr. MMS Bedi spoke about Transfer and Property Act and specific performance suits. Hon'ble Mr.Justice Rajive Bhalla on some very important aspects of civil law, resjudicata, adverse possession, injunction and executions, these are very very important because you got to be sure of first principles, you got to be sure of case law and that only comes with deep study. Lawyers are very cunning. You see lawyer will not

present you the whole view, he will only present the view which suits him and very often lawyer comes to go my Lord latest ruling is this. You just read the head note, rush of work and you pass it and later you say that he attracts you. So, adverse possession, resjudicata, these are settled laws. Law is quite settled but sometimes law you can speak in something which is not quite correct. Mr. Jagroop Singh gave you a lot of case law and that is why I said that what he had mentioned then now becomes court property. Even I would like to have a copy and no how what the latest rulings are. That's are very useful. Mr. Mehndiratta had spoken about juvenile justice Act and Commercial Justice and Negotiable Instrument Act. I would say perhaps we should have termed Negotiable Instrument Act this topic as commercial Justice because this is really playing havoc to the business community, party promises. And pay you 10,000 rupees so the other man is expecting it and he says that sorry, give my some more time, so that

is the form of commercial justice. Therefore, Mr. Mehndiratta, it was also part of justice, juvenile justice, general justice and commercial justice. Now, I don't intend to give a long speech. I had prepared a topic of criminal justice system. And I feel that Criminal justice system is a getting us no where. It is very unfortunate a man who is arrested once he enters the criminal justice system but when does he leave. He can only leave on acquittal or if he is convicted on completing the sentence sometimes he gets discharged, sometimes charges are quashed but release on bail is not the leaving the criminal justice system it is just keeping the sort of final way of conviction or acquittal putting it of, so this that will be all there circulates, it will be circulated. I don't intend to read it because it takes a long. Anyway thoughts are that a court room is actually a classroom because all of you sitting as Judges in a Court room are exposed to such a wide variety of litigation so much law is presented every day so

many situations arise that you all the time learning and changing informing your views and opinions but you must have to be more self reliant on yourselves on your own research and on your own study. Do not depend so much on lawyers, some lawyers are good, they present you both points of view but they say Your Honour this is the latest judgment but some are tricky only present one point of view, the other point of view you may not have. So in justice results, you must improve yourselves by reading constantly researching and there is really no short cut to it all Judges we all read and study case law decided cases all the time at it so you must make it a habit constantly improving yourselves. Has anyone read or heard of a writer call ad de novo, a person who teaches, who give courses on thinking, so in fact companies and governments invite him to address officers and us he has his own programmes and he encourage people to think because feeling his theory is that we have lost the art of thinking. We have to start

expanding on minds and think but for instance if the bona fide had been here he would have done this and I know in one of his books I have read he picks up a glass of water and ask the participants how may uses can you put the glass too. Now you can do this exercise, let's do it. So how many uses can there be. Name one use of a glass of water. Drinking, washing one's face, brushing teeth, breaking the head, preparing tea, cold tea. O.K. Anything else. Let us slightly more serious. What are the similarities between criminal justice system and the civil justice system. We always talk about the criminal justice system but there is also a civil justice system. So, I start by giving one example. Civil justice system starts by the plaintiff presenting a plaint. Criminal Justice system starts by the complainant going to the police and lodging an FIR or going to the criminal court to lodge a complaint. So that is one. Let's have some more similarities between civil and criminal justice system. In civil you frame issues

and in criminal you frame charges. So in civil case you got the judgment and decree and in criminal the judgment and sentence. But there is another important one which everyone knows and that is temporary relief. Temporary injunction in civil cases and bail is also temporary relief in criminal cases. Ultimately, one has to keep on and on and on. Life goes on. You will in five years' time become senior and then further senior but let me say this that future is not very bright. Because as long as there is injustice and as long as people are trying for justice and that try is going to get louder. It is not going to go away. Please do not think. At least I do not have any illusions about this that this great thing of economic globalization, development and advancement and all is going to actually remove the injustices. I think it is only going to magnified the people on the top may get material benefit and may become well known, rich, might be driving better cars, having all the fancy material in his house but the

injustices will only grow. So it is future is going to have different forms of injustices coming up so, therefore, all of you must be prepared and prepare well on our part in High Court we know the difficulties and problems which are being faced by the District judiciary, subordinate judiciary. Quite aware that increasing work load is the major factor in delivering the justice, its too much work, criminal quality work. It is a big problem but let me assure you that Hon'ble Chief Justice and my colleagues are very well aware of the difficulties and the problems and we are taking all steps to help those judicial officers. There are more judicial officers coming in so that infrastructure improves. Now I think that court rooms are quite well appointed but computerisation is one field that we think also deserves to be done. So at end here, I think all of you have been very patient and attending this Refresher Course and I am very happy that you come and you have time to interact and meet old and new friends. That is

also part of the Refresher Course. So, with these words I will end.

Thank you very much.

SPEECH DELIVERED BY HON'BLE MR. JUSTICE M.M.KUMAR

Good afternoon, ladies and gentlemen, my Lord Justice Garewal, my Lord Justice Uma Nath Singh, Mr. M.S. Sullar, the Registrar General, it gives me immense pleasure to share my experiences and my view on an area which is put to use day-in and day-out. The whole Chapter 12 of the Criminal Procedure Code is devoted to investigation by police. In morning session, my Lord Justice Saron and my Lord Justice Aggarwal have taken care of area of FIR, bail, arrest and removal proclamation and attachment etc. etc. However, I would be concentrating on statements recorded under Section 161 Cr.P.C., their evidentiary value under Section 162 Cr.P.C., confessions and other statements recorded under section 164 Cr.P.C, cross-examinations of witnesses, hostile witnesses and if the time constraint is not there then

under Section 313 Cr.P.C and the appreciation of evidence in criminal cases. It is well known indeed that the main function of the police is to collect evidence when the FIR is recorded the investigation commences only after the FIR is recorded. The evidentiary value of FIR, therefore, has to be emphasized. FIR can be used for the purposes of contradiction as well as for the purposes of corroboration whereas statement recorded under Section 161 could be only used for the purposes of contradictions that too when the maker of the statement is appearing as a witness of the prosecution. The Code has classified the offences in two categories cognizable and non-cognizable offences. That classification is also very essential to be kept in mind because the more serious offences which are in the list of cognizable offence under Schedule 1 attached at the end of Criminal Procedure Code those are given for the investigation to the police but the less serious offences which are in the area of private

norms they have been given to the private individual to pursue or not to pursue and I may share with you that the offences which are in the area of private rounds in country like England are in the area of tortious liability. I can quote the example of wrongful confinement which in England may not even be treated as penal Act, it would be under the tortious liability. There a suit can be filed for claiming damages rather than prosecuting a person committing that wrong. So the necessity is to keep in mind this classification which the Code has adopted and the classification in respect of offences listed by the Indian Penal Code is available in the Ist Part of Schedule 1 and the classification of offences other than the Indian Penal Code is available in Part and the broad classification is on the quantum of punishment i.e offences which carry sentence of imprisonment of three years or more have been kept in the category of cognizable offences which carry the sentence of imprisonment less than three years is in the list

of non-cognizable offences. That is why if you study the petty offences rules framed by State of Haryana no rules have been framed by the State of Punjab as yet there and for the petty offences only two years where the punishment provided is two years those are considerable as petty offences for which Special Magistrates have been appointed, those are Executive Magistrates. I thought that I better mention something fundamental and something cognizable and non-cognizable offences reason is number of times a complaint comes from a citizen that the police is not registering FIR. But once the police does not find the commission of a cognizable offence then the police is bound to tell a citizen that you do not have a case. Although provision has been made for such a person to go to the Superintendent of Police and make a complaint that my FIR is not being registered. Superintendent of Police may tell the officer to register the FIR if there is a commission of a cognizable offence on the face of the facts disclosed or the

Superintendent of Police may ask him to go and file a complaint under Section 190. So the missionary of criminal justice may be set in motion according to the nature of offences. The relationship of judiciary with the police is also need to be noticed. The relationship of police with the judiciary is not overlapping it is complementary. Magistrate is kept in picture at all stages of investigation but Magistrate is not to interfere with the mode of investigation but at the same time the police report is not the final word. The Magistrate still enjoys vast power to issue process even if the police has said no case is made out. Examples can be given of the cases from Abhinandan Jha Vs. Dinesh Mishra 1968 Supreme Court, H.S.Bains Vs. U.T.Administration, Chandigarh 1980 Supreme Court. In both these cases, the police has submitted a report particularly in 1980 Supreme Court, police has said that the officer against whom allegations have been levelled was not available at the place where the offence is alleged

to have been committed. He was at a place it was not possible to be reached, therefore, plea of elbye was put by the police but the Magistrate at Chandigarh still is in process and Supreme Court upheld the issuance of process by the Magistrate by ruling that the Judiciary has the final word and the police does not have the final word. If the Magistrate comes to the conclusion that there is adequate evidence or the Magistrate bonafide believes that process can be issued, should be issued and it is requirement of justice then nothing stops him from doing so. So, I would also like to mention judgment of Privy council in King Emperor Vs. Khwaja Nazir Ahmad 1945 Privy Council 18 where Privy council had emphasized that the police as well as the judiciary are two parallel stream running side by side but their water do not mingle. Meaning thereby that nobody interfere in the sphere of the other. But still the final word is with the judiciary so then during investigation the police has been given vast power to call any

person to make a statement if he is familiar with the facts and circumstances of the case. However, there is one embargo on a police officer. He is required to send a letter in writing to such a person. Woman and children below the age of 15 are not to be called to the police station. Under Section 160 (2) there is a embargo on the police not to call the woman and children below the age of 15 to the police station. That provision appears to have been made in order to check the indignities which might be imposed or the woman at the time of their examination. So, when the FIR is lodged and offence there is investigation to be undertaken by the Investigating Officer, the process of collecting evidence starts. Any person who is supposed to be tainted with the facts and circumstances of the case can be orally examined by a police officer investigating the case. It includes even the accused person. After the remand to the judicial custody even when an accused person can be questioned by the police with the permission

of the Magistrate at any place and in a manner which would not amount to police custody. A person, who is being questioned by the police, is required to answer truly all the questions put to him by such officer. However, not bound to answer such questions, the answer to which would have a tendency to expose him to a criminal charge or to a penalty or a forfeiture. If a person is refusing to answer he may be liable to prosecution under Section 179 IPC or if he gives false statement, then he may be liable to prosecution under Section 193 IPC. Those are the essentials against making false statements or refusal to make statement however, who is accused of an offence, he is not bound to answer all the questions. He can refuse to answer those questions which have tendency to expose him to a criminal charge. Therefore, the rule of self-incrimination which has been adopted by Article 20 (3) of the Constitution has been incorporation by Section 161 (3), therefore, the accused has been accorded protection by the framer

of the Code not to make self-incriminatory statements, which would have tendency to to expose him to a criminal charge. Now the interpretation of this provision was taken up by the Supreme Court in Nandini Satpati's case 1978 Supreme Court there certain guide-lines have been issued by the Supreme Court with regard to the accused making a statement which have tendency to expose to a criminal charge in later proceedings. The guidelines are during interrogation such an accused can have his lawyer by his side. Such a lawyer can be within the sight of the police but with a adequate distance so as to avoid hearing of conversation of the accused and his lawyer by the police. Secondly, the police must warn the accused of his right of violence. Thirdly, after examination if the lawyer is not available, the accused must be taken to a Magistrate or a doctor where he can unburden himself. However, Supreme Court after laying down these guidelines stated that these are not binding rules these are only prudent policy for the police to adopt. Later

on in D. K. Basu's case also, the Supreme Court has reiterated these principles. The statement made by any person to the police during the investigation of an offence may be reduced to writing. There is no mandatory rule that they must be reduced to writing. Reason for this provision appears to be that an Investigating Officer has to go through so many persons for examination and it is not every statement that he is supposed to reduced to writing. Only relevant statements of relevant persons are to be reduced to writing. The other which are irrelevant, he may just ignore. Secondly the persons making statement are also not required to sign such statement because this provision has been made that the police may resort to abuse of power by obtaining such signatures of such persons. Even otherwise, statements made under Section 161 are to be used for a limited purpose i.e for the purposes of framing charge or at the time of trial if the maker of the statement is produced as a prosecution witness for the purposes of

contradiction. Under Section 162 the evidentiary value of the statement made under Section 161 has been discussed. The statements under Section 161 are neither made on oath nor they are tested by the weapon of cross-examination, therefore, such statements have to be weighed in the absence of these tests which ensure the veracity of the statements. Under Section 162 it is provided that only purpose to which statement recorded under Section 161 could be put to is that statement made to the police officer during the course of investigation of an offence can be used at the trial if such a person is called as a prosecution witness. Therefore, if a person is not called as a prosecution witness even for purposes of contradictions, statement can not be used. If such a person is called as a prosecution witness, the defence can use the statement as for the purposes of contradicting that in the statement made before the police, he has stated something different but he is now stating before the trial Court. The re-

examination can also take place in view of the cross-examination only. The statement for contradiction, the prosecution can re-examine the same witness in order to explain the contradiction which has been brought out by the defence. When the Court call such a witness and its own witness even then the statement made by such a witness under Section 161 can not be put to any other use. The Bar also applies under Section 162 the bar of using the statement for any other purpose also applies to enquiry or trial in respect of any other offence which might not be under investigation at the time when the statement was made. It is the bar applies only in respect of that offence which was under investigation not in respect of any other offence. It also applies to charge based on police report or charge based on a private complaint. If the Magistrate has referred the matter to the police for investigation on the basis of the private complaint and the charge emanating from such investigation would also attract the bar of Section

162. Then there are two exceptions engrafted by the Court i.e in the form of Section 27 Evidence Act and dying declaration in the form of Section 32 (1). Statement made to a police officer even under Section 161 could be relevant under Section 27 if to the extent they have led to the recovery of incriminating Articles and if the maker of the statement has died in the relevance of that statement, is needed then under Section 32 (1) it would be treated as dying declaration. Therefore, to that extent the statements recorded under Section 161 are accepted. These two clauses exceptions have been created by the Court. Then there is one explanation added. Can it be treated as a contradiction? It would depend on the facts and circumstances of the case as has been held by the Supreme Court in Tehsildar Singh's case 1959 Supreme Court. It is no straight-jacket rules could be laid down for the purposes of determining whether omission to state a fact could be considered as a contradiction in itself. Then

under Section 163 there is a mandate given to the police not to expect statement by inducing threat or promise as it is prohibited by Section 24 of the Evidence Act. Any statement made to a police officer under Section 24 of the Evidence Act is not relevant therefore, the police officers are discouraged from exerting any pressure undue inducement,threat or promise to a witness making statement during investigation. Now under Section 164 elaborate procedure is prescribed for recording the statements which are in the nature of confession. They may actually not be confession but statements even in the nature of admission can be recorded under Section 164 Cr.P.C. The statements are required to be recorded only by a metropolitan Magistrate or by a judicial Magistrate. Any Executive Magistrate is not or a police officer who is designated as Executive Magistrate is not entitled to record any such statement. The further provision has been made if the Magistrate before recording any confession is required to explain to

the person making it that he is not bound to make such a statement and that if he makes it then it would be used against him at the time of trial. The Magistrate shall not record any such confessional statement unless upon questioning the person making it he has reason to believe that it has been made voluntarily. The Magistrate is required to administer warning to him. He is also to ensure he is making the statement voluntarily and he is not under any duress threat or promise. If he has come from police custody and Magistrate would like to give him time to reflect and think before he records his statement after giving him warning. If the Magistrate is not after giving warning and after giving time, convinced that the statement has been made voluntarily then the accused can be sent even to the judicial custody for a day. But he has to ensure that the statement has been made voluntarily, it is not undre any undue stress, influence or any instruction from police custody. Now it further says that

confessional statements are required to be recorded in accordance with the provisions of Section 281. There is a declaration which is required to be given by the Magistrate after recording the statement. The declaration is in the following words.

> "I have explained to the name of the person making the statement that he is not bound to make a statement and that if he does so any confession he may make, may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing and was read over to the person making it and admitted by him to be correct and it contains a full and true account of the statement made by him."

Therefore, the necessity is to ensure that a number of times you might have experienced, the police officer brings a person and put it before the

Magistrate and hurriedly the statement is recorded but there is a legal obligation to warn such a person before recording the statement because this type of statements under Section 164 are not required to be recorded by a Magistrate having jurisdiction over the case. It may be recorded anywhere. Therefore that Magistrate, who is recording the statement, must ensure that the statement is being made voluntarily and the accused is coming from police custody he is given adequate time to think and reflect. If after giving time Magistrate still feels that adequate time has not been given, he is still under the influence of police pressure, no statement should be recorded because there are serious consequences which will throw after suffering such a statement by a person. Now after recording such statements are required to be forwarded to the Court of competent jurisdiction where trial etc. is going on. There are two cases which are leading cases on the question, one is the case of Mathmular Vs. State of Assam 1978 Supreme

Court and 1985 Supreme Court 823. The other is nearer home from Rajasthan Shankarya Vs. State of Rajasthan but the accused was from Bathinda. He was a rickshaw puller. He would go to across the border. He would go a train, kill a person, come back with Buti and committed three or four murders. There this point was argued that the confessional statement of Shankarya was not recorded by following the principle laid down in Section 164 Cr.P.C. If the accused is handcuffed then the Magistrate is under obligation to direct the removing the handcuffs. The Magistrate should also ensure the accused that he should not worry about any torture etc. at the hands of the police. The Magistrate should also require why he wants to make confession. If the answer comes that somebody from the police have asked him to make the statement or he is under some undue duress then such a statement cannot be considered voluntary. The more serious consequences more elaborate procedure is required to be followed then the Magistrate can also follow

the procedure of question and answer rather than ask him to make the statement without that form. There can be cases where an educated accused or a witness might like to make a statement in writing those cases may be all right but in cases where statement is to be recorded then best form recommended by the Supreme Court is to follow question and answer form. The existing mental condition of the accused must also be pertained then written confession has been considered to be the best. There is a famous old Supreme Court judgment 1962 Puthadholas's case where varies were challenged. It is also imperative on the Magistrate to explain the accused that he has constitutional rights under Article 22 Clause 1 of the Constitution. He should also explain that he can keep quiet his right of silence is also there. Those who are enable to engage a lawyer, should also be informed that they are entitled to a lawyer and the lawyer can be provided from the Free Legal Services. These are certain safequards with

regard to recording of statements under Section 164 Cr.P.C. Oath is not required to be administered while recording such like statements. If the statement is found to be confessional in nature then the obligation is more and more on the Magistrate. Then the question of hostile witnesses comes while discussing Section 161 Cr.P.C. I have already mentioned that a statement recorded by a Police Officer under Section 161 Cr.P.C. if comes into conflict with the statement made by the prosecution witness when such a witness appears again at the trial as a prosecution witness then such a witness can be confronted with regard to contradiction that you had made a different statement before the police when your statement was recorded under Section 161 but now you are saying something entirely contrary. Then the prosecution gets a right to seek declaration that this witness is hostile. It would depend on the nature of contradiction whether the contradiction is such as to conclude that the witness has been

won over. Under Section 144 of the Evidence Act the declaration of the hostile witness can be granted in favour of the prosecution which would result into cross examining its own witnesses so the declaration of the hostile witnesses can be granted in given case if the contradiction is such as to come to the conclusion that the defence has won over the prosecution witness. Then under Section 313 Cr.P.C. the statements of accused is required to be recorded ordinarily the procedure followed is after prosecution evidence is over. The statement of accused is recorded under Section 313, it is mandatory. Although the Court provides that at any stage the accused can be asked by the Court to make a statement with regard to evidence appearing against him but Section 313(2)Cr.P.C. only is more practicably followed after the prosecution has closed its case and at that stage the accused is asked to explain the circumstances against him. At such a stage, the accused is not required to be under oath, he may keep silent, he

may also be given warning that you are not required to make a statement if you don't want to make it. But he should not be penalised for making such a statement. This is also provided by the court he is not to be penalised for making such a statement under Section 313. These are the small comments which have to offer. The rational of making sure that the statements are correct, there are various ways. One is cross-examination, if a witness is subjected to detailed cross-examination you can conclude that whatever emerges after cross-examination is the true version. There is another way why dying declaration is regarded as correct because a person who is dead is unlikely to tell a lie. Although Section 32(1) of the Evidence Act has incorporated a broader principle than the classical definition of dying declaration. In England dying declaration is considered to be only that statement which is made by a person in the apprehension/expectation of death because he impending fear of death would ensure the

veraciousness of the statement, that is the sanction behind the dying declaration to be considered as a veracious statement, a true statement but in India if you go to the case of Pagla Narayana Swami there the man has made a statement to his wife that he is going to such and such place and he will come back after recovery of his debts. But he never comes back. The statement was considered dying declaration. Why? Although he did not make a statement in the apprehension of death, he made the statement just like that I am going I will be back. Section 32(1)of the Evidence Act incorporate this principle but the Indian Courts have adopted the English doctrine in a different ways. Statements of dying declaration which are not made in the apprehension of death are required to be corroborated whereas statements which are made in the apprehension of death, they need not required to be corroborated they can be considered substantive evidence. That is how if you take up the case of Indira Gandhi's murder case

where one accused was represented by Mr. Jeth Malani, this argument was carried for days before the Supreme Court, but Supreme Court still did not agree for confining Section 32(1) by reading it down to the parameters of English Law i.e. Classical statement of law of dying declaration. English Law purely and simple is when a person is dying and he knows that he is likely to die his statement is made in that state of mind then it is considered as dying declaration. But Indian law is liberal but staining results are sought to be achieved by introducing corroboration in respect of statements which are not made in expectation of death and the other which are made in expectation of death then it is considered as substantive evidence.

Let us understand the nature of statement made under Section 161 and the statement made under Section 313 . Even statement under Section 161 for that purpose we will have to read Section 145 of the Evidence Act which clearly specifies

any previous statement it does not say only 161 statement. If you read Section 145 which deals with any previous statement, cross-examination as to previous statement in writing. A witness may be cross-examined as to a previous statement made by him in writing or reduced into writing and relevant to matter in question without such writing being shown to him or being proved but if it is intended to contradict him by writing his intention must therefore before the writing can be proved be called to those parts of it which are to be used for the purposes of contradicting it. It is not confined to Section 161 any other previous statement whether under oath or not under oath. Ordinarily no opportunity is granted for recording statement second time. That is the law as we understand no opportunity is granted whether the offence has been compromised or not whether the prosecution and defence connived together for the purpose of avoiding Section 320 and 321 Cr.P.C.

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SPEECH DELIVERED BY MR.RAJIV GIROTI, JSO (BIO), C.F.S.L.CHANDIGARH

DNA it started in 1996. Since then technology has changed a lot. In this 20 years from manual we have gone almost to automatic analysis of DNA and with this go through the things that how exactly we are analyzing so that you give a better feeling of it. Someone calling it as DNA finger prints, someone calling it as DNA profiles so what exactly they are. These are interchangeable words DNA finger prints and DNA profiles. But what are they exactly. If we are considering the technology that we are using today the DNA profiles are nothing but these are the repeated sequences of DNA that vary from individuals to individuals and how they vary that I have shown. I have tried to translate it as much as possible in English. The sequences are like that in our genom, which we

commonly call as Gata and this sequence is if I translate into English. If there is a sentence cat ran very very very very fast. If a particular person at the crime scene is giving sample at crime scene. I analyse the blood sample which I am getting from the crime scene and the sequence in blood sample reads that cat ran very very very fast. That is at one locus. I get blood sample of the individual to suspect and I am getting a profile again that cat ran very very very fast. Three times that repeat is coming. So I say its a match. Likewise all individual sitting no idea at one particular locus there will be highly totally different profile. I am reading different chromosomes. So based on these chromosomes, I am generating a profile and this profile comes out to be a unique one. How that will select one? That is how I perform analysis. This rather than reading or analysing one single blood group for example, I am analysing genetic marcus which we commonly called genetic marcus at different chromosomes and

based on this particular chromosome analysis which exist in two pairs because one is coming from the father and one is coming from the mother so every child is having a pair and I get a profile like this. The cat very very fast. A person might have eight repeats which he must have got from the father or the person with have three repeats which he has got from the mother. So I type that person with three and eight. So if you see my reports because that is the first thing which reaches the lawyer or Judge. Report is a first thing from the liberty that is reaching rather than the technology. If you see my report there will be some achievable, we will be designating particular locus and that locus will be designated as Type 3 or 8. So what exactly that 3 and 8 is that it is just sequence which is repeated again and again. A picture just to show you that every individual on the earth is different is having different number of repeats and that is why every one is unique. Now once we have DNA from the crime scene or we have

DNA from the suspect or any individual victim there is a technology called PCR. You must know about these things that what is PCR? It is polymerace chain reaction. Because these things are repeated over and over again in our laboratory. So PCR is polymerace chain reaction and what exactly it is. Because we get a very few amount of sample sometimes or sample that is degraded because we don't have control over the sample. We have to make copies of the DNA. So, PCR is nothing but its like a zerox machine which is making copies of the target DNA which we want to study. So once we amplify the DNA we are copies of DNA and our DNA which is present in sub-analytical level after amplification it comes to analytical level so that we can analyse the sample. Just a small glimpse of the instrument that how it works and what sort of profiles we are getting. This particular slide will show you that our amplified product lies there in the tube and we are using automatic sequence and how it works is that once

electric current is passed DNA molecule being a charged molecule it moves under the influence of electric current which is called electroforesis. So under the influence of electric current this DNA molecule moves and how it moves. To the fragments of DNA molecule they move and they pass through the prism and we get a profile of this sort. The cat ran very very fast, the cat ran very very fast so these sort of tips we are getting for each and every individual. This is just to show graphical representation but this is how a complete profile from an individual looks like. At different loss, we get repeats. So this particular individual at this locus D8S11879 is having 12 repeat and 14 repeats. The cat ran very very fast again you should recall that and 12 times and the cat ran very very fast 14 times. So this one 12 he has got from the mother either mother or the father or this he has got either father or the mother. Its a complete profile. Now the question comes which part of body gives us DNA and what sort of exhibits we

are analysing? So, these are all the body parts like blood, semen, body tissue, bone, hair, hair roots, uric, nucus and that is what the advantage of the technology. When we are using conventional one like blood grouping, we were absolutely relying on the blood sample. If you are getting bone sample at nail clippings crimes in, we were not able to look blood grouping and that is why we failed. But with this technology we are able to analyse all the material biological fluids and materials and we are able to get a profile. But where lies the importance of DNA as an evidence. That is more important. Still I would like to clear one thing that even today the whole of forensic science is a science of comparison. That if you are having a questioned sample found at the crime scene, you need a control sample to compare it for comparison and that is the job we do in DNA profiling also. Its not that if you are having a sample at crime scene in you are just get a profile from the any sample that you have got from the crimes in and you

can project it that who is the person. Qua that we need a controlled sample either from the suspect or from the victim to reach some conclusion. So how we do is that once we have profile, we compare that profile with the questioned sample and the reference sample. What are the cases that we are analysing now? We have forensic cases for matching suspect the evidence, we are doing paternity testing for identifying the father, we are doing missing persons' investigations and we are doing mass disastrous cases, of course in the last one that data basis we don't have but I would like to talk about later on that how it has to be done. But then again coming back to say thing that when I have talked about DNA, PCR all these words. I still feel that though I have made by maximum attempt as simple as possible. I feel that there is no common language between us and what I feel that two cases which I went talk about now will help both of us to understand what exactly DNA is. How the system works? So, I have two cases that

we have analysed in the laboratory. Now this is a case from Manimajra. A lady was sexually assaulted and then murdered. She was working in a shop and in the pretext of marrying her, the owner of the shop repeatedly assaulted her and finally that person refused to marry her. The lady committed suicide. Her body was sent to P.G.I. Hospital, Chandigarh and where they have found a foetus in her body. The aborted foetus was sent to our laboratory for analysis and we have got a profile for the foetus. We have got a DNA profile from the father and we have got a zean sample from the mother also and as you can say this particular locus, the foetus is 10 and 15 was the father is 15. So, definitely this particular obligatory allil the father has passed on to the child. Likewise for other lossie the father has passed on respective allils to the child and this particular person we were not able to exclude at any of the lossie that we have taken. I had appeared for this case six times in the Court and what happened is

that the last feedback that I have got from the lawyer, the Public Prosecutor that in this case even the mother of the lady, she turned hostile and its onward DNA test which is standing in the Court. This was the only evidence that is going to the Court will be able to convict the criminal. It is not a very clear picture what I have shown you. This is a sexual assault case from Chandigarh. Now there was a lady and she very oftenly used to visit a Tantrik. One fine day the Tantrik intoxicated her and then sexually assaulted her. What I have got on the garments is a stained material which I was not knowing who is the contributor. But then I have performed DNA analysis and when I did DNA analysis on the particular exhibit I have got a profile of this salt as you can see and in the beginning I have told you that as per genetic laws a particular person should get 50% from the father and 50% from the mother that is how DNA is coming. But in this case as you can say rather than instead of two peaks for one peak there are three peaks at

locus. So definitely there are two contributors to this particular stain on this exhibit so who are the contributors? For that I have got profile from the suspect i.e. the Tantrik. This is a profile from the victim and this is a profile from the Tantrik Rashid Ahmed and as you can see again over year that the perfect match that this particular tantrik he cannot be excluded as one of the contributors of the genetic material found on this cloth. So it was a perfect match. This is a case of child abuse in Chandigarh. A six years old girl who was assaulted by a domestic servant and what we have found on the garment and what happened at the time of assault when he was trying to commit this crime he was caught red handed and by chance what happened that when he was committing the crime his genetic organ it got cut and it was profusely bleeding and the blood has come on the undergarment of the victim. This blood we have identified, we have gone for profiling a complete profile and we have gone for perfect match. Rarely different sort

of cases that we are getting now a days swapping in the hospitals. It has become very common now. We have preferences for sons. No one wants a female baby. If they are able to commit foeticide they will do it. If it is born they don't want to accept it. In the hospital when a female baby was born, the couple alleged that the nurses have done the swapping job. They have done some malpractice. They have swapped their baby and the nurse had told that a male baby was born but in the morning she was giving or handing over a female child to them. So this particular case came to our laboratory form Chandigarh again and this is the third or fourth cases of this nature which I am analysing and in coming days we are likely to get an epidemic of this sort of cases. So what I have done over years is again a DNA profile and as you can see we have shown with the DNA profile that there was no malpractice as such the weight was alleged and the female child belonged to the same couple who were alleging that there was some malpractice and there

was some swapping. So that is the story about the cases but when the report comes to you how you have to understand the report i.e. how you have to understand the scientific interpretation. Our usual report in this format is a table of form whereby we show the lossi i.e. different sites on the chromosomes that we are analysing and these are having names. Now this particular “D” stands for DNA in each of this locus, No.8 stands for 8th number of chromosomes since there are 23 pairs of chromosomes in human beings and this have been given numbers. So right from 1st to 22nd and 23rd is 'X' and 'Y' chromosome that determines the gender. So we are having number of chromosomes and on these chromosomes we are having marcus and this marcus we are analysing so if there is exhibit 10/13 it means that this particular person is of type 10/13 of this locus and on this thing Exhibit 2 the person is of the type of 10/14. So this is again a paternity case from Himachal Pradesh and this was a baby sample, this is father sample as you can see

over a year the particular father has contributed the particular alil to the child likewise he has contributed alil No.30 at locus 21S11 and later on we calculate the paternity index. Now what is paternity index. All of our reports will have some weight in the form of statistics. How we perform the statistics for paternity cases and how we do it for criminal cases like murder or sexual assault i.e. these are two different things. But in paternity cases we go for paternity index i.e. the odds ratio. What are the chances of this particular person being father of this child Versus what are the chances of random person being the father of this child and once this comes to 1.31 lac is sort of value we get and finally we get a value of 8,32,571 which is a very high value. We just multiply all this at different loci to get a cumulative paternity index and what it infers. The chances of this particular person being father of this particular child is 8,32,571 times more than any other person selected at randomly process from

the population. So its a very high value something like that one in time, one in hundred, one in one thousand, one in one billion and that sort of index we are getting over. So this index says that it is this many times likely that this particular person is father and that means its a unique thing that no one else on this earth or at least in this particular population which I am analyzing can be father of this child. Now when we do interpretation we do some submit three types of results or that is what three types of interpretations are possible. There can be an exclusion. We can exclude a person from being a father or we can exclude a person from being the contributor of the genetic material. There can be an inclusion or our report can also be an incognizable. If there is an exclusion we do not have to give any statistics. Exclusion means the person is totally excluded. It does not need any further analysis. However, if its an inclusion it indicates some sort of indication between the sample found at the crime

scene and the suspect. So if its an inclusion we can say that the samples have originated from the common source or there is a similarity between the two samples is just a co-incidence or the similarity is just an accident. We are again repeating the same thing that if exclusion is there this is an absolute exclusion where we don't require any statistical interpretation. If we see that for example the blood at the crime scene and that of the suspect is matching itself is not sufficient and as told earlier that we have to provide some weight to our report and how we do it. In paternity cases, I have already told you that we go for odds ratio that what is the likelihood of this particular person suspect being the father Versus the ratio of some random person from the population being the father but in crime cases we have a very different interpretation like this. What is the probability that this blood came from that person. If its the match question may be asked that what is the probability that this blood

came from this person. If I say that both the blood belong to 'B' group the weight that is given over year that a match based on fact that both suspects blood and the blood at the crime scene contains hemoglobin for example it is meaningless. If I see the both blood groups are of 'B' group because every 10 person i.e. every one in 10 is having a Blood group 'B' which is a unique one. It depends on how common or how rare the profile. I think that information is sufficient for the Court to understand that it is almost a unique profile. So when the estimated frequency of the shared profile is very low. Some labs, they state that there is scientific certainty that there is match. So when can a DNA profile be considered to a unique one when the probability of chance match is one out of thousand or even more than that. And as I told you when we are doing analysis on laboratory we are getting this probability of one and one billion. So I gave a statement that we have done 16 loci, that a 16 marcus we are

analysing out. The probability of match is one and one billion and that is enough to say that no one else has the same type of DNA. So I come with this statement that your Honour this profile is unique to a reasonable degree of scientific certainty. But it might so on very objective to the Judge. So he will ask what do you mean by the profile is unique. So my answer to this is that when you have been eliminated the impossible. When you have eliminated the impossible whatever remains however, improbable must the truth. But before that thus few words from sexual assault victim that we have a technology now a very powerful technology in DNA we have to make a miximum use of it and this sexual assaulted victim is no one other than the wife of a police officer in U.K. She was sexually assaulted and she herself has fought the case for her based on DNA analysis and this were her words that we have to utilise the powerful technology to its maximum for that we should have successful programmers. We should come together,

the law enforcement, the judicial and laboratory. This is just a primer for us what we have started. In fact I would like to show you how defence lawyers have to deal with the DNA analysis how Public Prosecutors have to understand our reports but since time is very less and this was just a start a beginning of the thing. I have made maximum attempt to make it clear as much as possible.

Thank you very much.

SPEECH DELIVERED BY DR.C.P.SINGH, JSO, CFSL, CHANDIGARH

I will continue to introduce the another technique of identification. Mr.Giroti has talked about DNA profiling you see identification. I will talk about speaker identification followed by very new emerging area which is tape authentication. Can we link to the speakers so when we talk about voice of a person it contains a frequency patterns which is a complex mixture of space frequency. This particular unique match comes from the anatomical structure of human colloquial mechanism as well as the originating cavities which is composed of two tracks one is the oral cavity, another is the nasal cavity. In combination,it produces a unique originating frequency pattern in the voice of a person. So what important is this

technique the speaker identification is in these cases. For example in rivalary cases, kidnapping for ransom, call girl rackets then obscene telephone calls, threat calls, false telephonic message, false utters like they producing tape recently happened in Salman Khan's case. So in these cases the only evidence we could get is the recorded the conversation from where we can establish the link with the actual speaker. What is the principles behind this speaker identification is the same words uttered by different speakers are apparent to listeners. Speak something it is linked to the particular speakers when we listen somebody's voice from outside room we could make out who is speaking from outside room if it is in the long term memory of our brain so this variability arises mainly from anatomical differentiation vocal trade and every person experimentally develop and individual or unique process of learning to speak. When we start learning to speak we learn from our mother then

from our brother, father, environmental friends, then from school and from the region where belong to, that give rise to the regional accent and features and later on, an individual develop its own way of speaking. Then we have inter speaker variabilities. There are two variabilities in speech. If I speak twice a word, it will be different because of the intra speaker variability. When this arises due to the psychological condition and the mode I have, the way I use the word say if I want to express asserted sentence in the form of questioning so the wording, the productions' style got changed. So, this is known as intra speaker variability and the variability among the people is known as inter speaker variability. What do the expert consider is inter speaker variability is always greater or different than the intra speaker variability regard less of this parametre involved in this variability. So always the inter speaker variability is more or different from the intra speaker variability within the individuals. So, in

this technique disguise very crucial problem in this but this is not a problem for identification process because experts are trained to detag the disguise, if the sample is found to be disguised and we could identify “O.K., this one is disguised, so disguise of the voice of a person may produce significant variation in his speech sample however, this variation in disguise voice can always be detected by an expert and experts are trained to disregard or discard the distorted disguise suspicion. So imitated sample also comes into this category. So, the methods involved in this technique is upto today – there are three across we have, one is the oral method of examination that was very old before the invention of spectograph then next is spectographic methods we displays the speech's samples into visual graph, the vertical axis shows the frequency component of the speech and the horizontal axis shows the time axis and the degree of darkness on the spectogram is the intensity pattern. So, by seeing this spectogram

how the intensity is distributing along the frequency the band we are seeing is known as a formal band, so, the distribution of this formal band is different from individual to individual. Here I am showing the spectogram of one to three and one to three for the same person. So, you can see the intra speaker variability here the first this two and this two differs in the duration part. So, in the first part, the duration taken by the speaker is more than the second one. One is spoken like one, two, three, other is spoken by – one-two-three. So, the gradient when we look into this, the way it is taking this gradient, it is similar in this portion. Though the entire line got changed we see at a particular point that is known as the quasi stationary point where the anatomical structures took very peculiar shape which is similar to the specimen samples production. So, that particular point we choose and we compare this pattern on that point. So, the last method is semi automatic or automatic methods.

Someone call it as automatic methods, the exact demarcation is not always there but we can call it as automatic methods. So, this we can speak the spectogram. We have that the spectogram in three dimensional form one is horizontal axis and degree of darkness as intensity, so, it is a three dimensional graph produced in a two dimensional plan. Then we have wide band filters which produce resolution of the speech pattern along the horizontal axis and the narrow band filters that produce a resolution along the vertical axis. The technique for speaker identification is very complex in the sense that the anatomical features reflected in the form of frequency pattern which we have to link with the anatomical features. So, it is indirect reproduction unlike the finger prints the voice print technique is different. It is like a handwriting comparison where the signature is used from hand which is biometric part. So, I will cite some of the cases examined in our laboratory with the distorted disguised attempted speech

samples. This is a case from Orissa of sex scandal case in which the lady who supply the girls from the inmate of the hostel in which the lady is the Superintendent though she used to supply to hotel or something like that, one innocent girl was sent to the hotel and he locked inside the bathroom and she started shouting. So, she could escape from the custody of that fellow and then complained to one social worker. So, social worker called the Superintendent of the hostel and she confessed it to the social worker. Then confession statement was recorded with a hidden recording device and it was circulated in the public. So, one of the lawyers, he collected one recorded cassette and filed a PIL in the court so it comes as a CBI enquiry. So, this was the confessional. So, she was with emotional stress and confessing this thing. This is specimen sample she has given to the CBI that she has been trying to disguise her voice. CBI tactfully tell a small lie that your voice has been matched, so, you cannot escape. In

the meantime, she expressed like this. The way she speak is very much auditarily similar with the confessional statement, otherwise, she has been disguising during the specimen speech recording. So, with these I could analyse the pattern of the disguisee has been trying to raise the pitch level of speaking. So, I eliminate the pitch characteristic features and compare the others and I could match the voice with this speech small clue like this. So, this is the filament ethic is in which Gilani's voice was matched, Gilani's speech recording was so noisy, the other laboratories refused to examine the case on the plea that this is very noisy and distorted sample. So, we could filter it out and enhanced the speech and submitted to the court . Later on, it comes to the court that nothing related to the ethic was spoken in the conversation. So was the history behind that. So, this is the sample, this is how the recording speech was, it was so noisy upper enhancement listen at least what words have been spoken and we

take out the sample as specimen for comparison of the speech pattern. This is one of the case which is not clear in projection. So, in one of the case from Madras, one Ex MLA Mr.M.K.Baalan was kidnapped and murdered. So, after that his body was cremated by the kidnappers. Neither the body nor any other clue was available for the police to establish this fact but in another kidnapping case of similar kind, the dead body was recovered. So, through that body some clue to link the criminal was established and the criminal's custody was raided by the police. So, in that process the recorded cassette was recovered, one from the accused and another from the co-accused. Both the cassettes were having the recording of M.K.Baalan's statement. So that can use this cassette for fodder extortion from the family members of Mr.Baalan. So, in this situation Mr.Baalan's voice was sent for comparison with the previously recorded some Mahila for Hindu Fund was there to speak into the public system. That recording video

cassette from that we got the speech sample and compare and we could establish the matching pattern of Mr.Baalan. In the meantime, in the court Baalan's son refused to identify that this voice was not of his father but the Secretary to Mr.Baalan was convinced with the court's finding. So, it was supported with my report. The 16 were convicted for the murder of Mr.Baalan. In speaker identification, we arrived to the conclusion, out of this 9 scale factors, this is known as probable scale for speaker identification. Probability scale we could achieve with the clear speech sample with no. of words more than 20 or 20 words setman is reached and the three foreman pattern is matched. So, we could establish the positive identification but the other level of identification like possible identification probable identification and identification with high probability. These all are identifications with certain level of probability. Possible identification means that a particular person is

not the speaker. It is the speaker but we need more samples, more clear samples or the equation sample may be not that much sufficient to arrive to a positive identification. This is the situation in this technique because in order to reach the international criteria for identification at the positive levels we need a sample that has got that much sufficient and the clear from both the equations and specimen. Sometimes, equation sample is very clear sample but the specimen is with the low band wit of recording as well as the less duration. So, for the perfectly matching to be established, we need sufficient amount of recording, similar text etc. So, limitation in this technique is, we need as I told you, sufficient sample required and channel distortion is one of the problems we face and different texts in one of the case from Kharar Court, an IAS Officer is accused of taking bribe. He gives very few words in isolated words like in the conversation he speaks like a poor but he speaks in

the specimen sample like Adalate, like that, the word which he has not used in the specimen sample. He has used the words in Hindi or in other regional language. So, it is the main problem for different texts and the disguise in the mimicry also is a problem in this. So, some of the cases we could establish even though the specimen samples is disguised. Some of the other problem is say, I told you about this, so this is an ideal recording and where the far and nearer speakers are producing very good speech samples and this is a very noisy sample and this is samples which is clear for the nearer speaker and far end speaker is having very low intensity. So, when we blow up the noise contents which was very small in intensity will be blown up along with a speech signal. So, the police has recorded the specimen samples by making the complainant as well as the accused to talk through telephone. This is a complainant who is speaking near by the telephone mike and then the accused, he used to speak by keeping the mike of

telephone little bit farther so the intensity became very low in this case. See, this is sample from one of the case involving Bablu Shriwastava from Delhi. This was the original sample. It was so noisy like this I was given to enhance this and as well as for speaker identification. So when we use one type of filter we could achieve enhancement upto this so with this filter only we used to do speaker identification. But other filters if I apply other say parametric equaliser into the samples the speech characteristic got distorted. So this is the another form of filter in addition to the previous one and this is again lastly for speeches recognition purposes we apply number of filters and then we could achieve such type of enhancement. Thus, we could enhance the speech sample though there is lot of limitation in to this. So another application of speaker identification by air witness like eye witness you can establish the identity of a person by air witness if the victim listens the sound not seen if

the crime is committed in the dark or something other than that. Then say for example the crime is committing outside the house when she is hiding somewhere so the sound we listen can be used to link the identity of the person. This is generally applied in western countries very beautifully arranged lined up processes. So in general it is rejected but in order to confirm the earlier identification this particular lined up air witness is used so it is possible to detect the vast majority of false identification with this technique and detection is possible if properly designed lined up all the members is having equal probability of false identification. So, there are three groups of experts in speaker identification. Actually speaker identification is by expert so expert criteria is also fixed in the international platform. So there are three groups of people who is practising this speaker identification. First group is phonetic approach by trained phonetician and this technique of speaker

identification is followed generally in Germany, the BK expert, private practice in U.K., America and in Germany. The next method is auditory in respect of its approach. It is a combination of auditory, listening, characteristic and the spectrographic approach. To this is generally the international accepted technique generally followed.

This tape may come say from this way that way or this way. So, it may be digital recording produced, reproduced into analogue form by re-recording into another analogue recording device. So, this is the way we can picturise in our mind that this could have been done through this. So what important lies in the tape authentication. You know this case. This is water scandle case in which one recorder tape of the White House. Telephone operator to record all the incoming calls of the White House. She tells that particulars deleting was happened due to the accidental, she has placed put pedal lighter. But is it possible to

have several times accident into a particular recording where is the other recording is not having a single accident. In that tape it was suspected that the link of those people who install the recording device into water get hotel in which the democratic party meeting was going on. So Mr.Nickson who was President has link with this tape. This particular tape having several times count of alteration with deletion is non smoking gun, so with this finding he was forced to resign from the President seat. Now you may heard about the Mayawati BSP case one recorded tape was submitted to the Governor and it was all sort of after doing all sort of manipulations on the sound track and the all negative sentence got changed into positive and positive became negative sentences all the sort of things have been happened and it was sent to us for examination. So what we obtain is obscuring the some portion, so this is the obscure, so you see the noise pattern here. So here the end of the obscure portion. This

the portion where it is deleted. Some portion has been deleted into sound track where as the video tape was running. So we could get this from sound track. So I will introduce some of the recording device. These are the recording devices used for audio recording , this is full time recorder, this is pocket size, voice activator recorder, this is digital recorder, small pen size, this is telephone and pollution recorder and this pocket size normal cassette recorder. This is some of the taping device which produced transmit the sample. If it is install here the audible speech in this room will be transmitted and this is type telephone transmitter so clip in the telephone line, after cutting one of the lines. You can make transmission from the telephonic conversation receiver audibly telephone calls coming into particular number will be transmitted and somebody can listen or record and this is pocket type transmitter and this is socket extension code transmitter this is socket form three pins type,

this is credit card size transmitter. So these are the receivers, these are video capturing devices, this is pen size, one could put pen and it can do instinct operation like this, this is a receiver, and this is screen that can produce and we can record signal also and in Tehlka operation some of the video camera that has been used and video camera installing this CCTV into this bag where is the small hole inside, this was the briefcase used by Tehlka people to record the Tehlka tapes is one of the lady bag, this is a type where there is reporter. All these tape recorder where cassettes recorded with this. These are some of the recording gadgets for her video with the transmitter system this is in the form of mobile, this is in the form of button, this is in the form of pen camera with monitor, this in the form of spectacles, this is in the form of cigarette packet and this is teddy bear recording in Natrajan case in which teddy bear was used to fit camera and this is receiver this is a recorder. In combination with

one of the transmitter and receiver and then come recorder, we can do instinct operation. These are the formats for video recording. One of the formats can be used for video recording. We have many other video recordings. So these are the cassettes. So when we talk about authentication, authenticator recording one starts at the beginning and stops at the end should not be ending into pause or stop in between. So one start and one stop is the authenticated one otherwise it should be declared by the operator that there is accidental stop or there is pause in between. So these are the questions asked for authentication purpose whether is a copy or whether is compilation of other tapes whether it is a tape. So alteration is of five types deletion, addition, transformation, obscuration and sentences. Sentence is the production of speech sound so what actually is falsification, unintentional interruption, accidental interruption and operational interruption are not falsifications. These are the

falsifications. This is a critical listening we use for first step, oral examination, then physical inspection, magnetic development spectrum analysis. These are the techniques. So these are the points we used to see the video recording.

Thank you very much.

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SPEECH DELIVERED BY HON'BLE MR.JUSTICE RAJIVE BHALLA

You see, you are referring to a situation where damages are unliquidated. Therefore, obviously court fees has to be decided later. There is no claim for damages as such. If the claim is liquidated, you will have to go into the realm of liquidated and unliquidated damages. Because if there is unliquidated damages which have been determined during the course of trial then you may be in a situation where you might shut out a case at the very outset by going to assess the damages yourself, there is no question of Local Commissioner. The entire controversy would arise liquidated/unliquidated. If the damages are provided for in the agreement that is the case you insist on for the court fees.

Without standing on any formality or welcoming all of you, you have probably been welcoming a lot of times since morning and since yesterday, I have been given responsibility to

address you people on large number of topics which I think in the limited time is not possible. What I have taken is adverse possession and probably a little bit on injunction because in my opinion in the field of adverse possession somehow causes a lot of confusions in the trial Courts, even in the Appellate Court even in the High Court. So it is not as if we are all absolutely aware of what happens or what does not happen? So, therefore, I have taken a little liberty and given you this little compilation of about 7-8 pages. I don't know probably you would not have the time to go through it right now but I have tried to put down what is the entire theory behind adverse possession because we actually don't understand the entire theory behind adverse possession. You would probably not be able to understand modus of proof, the onus of proof, how it is to be proved. So, I am just briefly taking through this. I have given it a name called legal sanction on a pioritical right or a statutory demise of a right of ownership. This is

for all the Judges to think. There is the law putting legal sanction on a pioritical light of a person who enters into possession or is it by the statute of limitation that the ownership is demised or comes to an end. As you all know I don't think I needn't say much you know a little bit about what the ownership is? Originally ownership moreover in possession of whatever was the owner. Gradually over a period of time ownership revolved or developed into what we know as ownership today and this concept we have basically got from the Anglo Section law of ownership in our country before the British came ownership was a very fluent scenario. Somebody could be owner today, the other person could be the owner tomorrow, there was no such thing as ownership as such. Of course we had our own Hindu Law, co-parcenery is there, joint holdings are there, Muslim Law provides for different forms of ownership and of course primarily custom. Today as we know ownership it is entirely on Anglo Section Law the concept of

ownership. Now what is the theory behind. I would like to just read all this. Because my repeating this little may take up a little time but still just go through what is the theory behind adverse possession you will be in a position to understand exactly. I do not like to read it. You see modern statutes of limitation operators rule of Law. Not only the cut of ones right to bring an action for recovery of real property which has been in adverse possession of another for a specified period but also to vest the decesser with a title. These enactments rest on a wise public policy. With regards litigation with disfavour and aims at the repose of conditions which the parties have suffered to remain unquestioned long enough to indicate there acquiescence thereof. Please note to very important word which generally you may not come across, a doctrine of adverse possession based upon acquiescence, acquiescence by the real owner. Normally you may not come across the word acquiescence but it is basically the right is

ousted by acquiescence. Now this is important sentence which will give you an insight in the second para itself. The intention is not to punish one who neglects to err his right. But to protect those who have maintained the possession of land for the time specified by the statute under claim of right or colour of title. This may be something that may end of confusion somebody colour of title. I will explain to you later on because probably we all understood that a person who enters possession, must not have some title to the property. Now again a few lines rule or doctrine of title by adverse possession with or without colour of title rests upon presumption which is often purely a fiction. Now again this is very important sentence. This right is based upon a fictional right. A demise of true ownership based upon a fictional understanding of the facts. Its not as a somebody is transferring its ownership its not as he is putting even in possession. Its a fictional right that the owner of the recorded

title has abandoned land to the present claimant land, property whatever it is whichever depending upon whatever case comes before you. Now it is also called the doctrine of maturing title. Why I am giving you all these words is normally in the normal rumble tumble of your work. You people probably don't have in fact none of us also any time to even go through these things. Look at these things and think about them also. So the whole idea behind is to put these words to you, put these phrases to you, so that you are in a position to think. The idea is to make you all think what I am saying may not be entirely incorrect or correct either way. But you have to think for yourself. All right now let's come to the next. Now the another doctrine or another phrase is adverse possession is commenced in wrong and is aimed against right. Can anybody explain this to me commenced in wrong aimed against right. But if aimed against right the right of ownership. So first thing commenced in wrong aimed against right,

right does not means that he is upright and he is right. It means aimed against is right his title, his ownership. Let's come to page 3. Another very important thing if you would just quickly go through this paragraph at page 3. Before I confuse you any further on the other parts what is the most important thing adverse possession is intention. Intention does not mean mere intention to enter the land. It means hostile intention, animus is the actual word. Hostile animus is the word. Possession without hostile animus would never commence adverse possession. So therefore, it has been very clearly understood hostile animus is a significant aspect which must be established I will go into that later. Now there is a Latin phrase which if you read the judgments of the Supreme Court and various courts which is very often used come to bottom of the page . This is neck why, neck claim, neck precariae. I did explain it there peaceful, open and continuous. Adequate and continuity in publicity and an extent

to show that possession is adverse to the true owner. Now these are the Latin phrases you see English is not a very precise language Latin is. These three phrases you noticed go into three lines one explain in English. So what is the important thing. Peaceful, open and continuous. Adequate and continuity in publicity and in extent to show that possession is adverse to the true owner. Now let's come to I have intentionally reproduced a judgment of the Supreme Court which incaspulates in my opinion you may all have some better judgments in mind. But I think this is one judgment which in one paragraph and incaspulates the entire law with respect to adverse possession and if you read it carefully there is no confusion ever on adverse possession. I would not read it because you were free to read it whenever you are, whenever you go back or if you feel like. I request you all please don't throw these papers read them. Now let's come to page 6. This is again the reason why I am repeating this again and again is this is the basis

of adverse possession. Adverse possession is the species of possession where a stranger to possession enters possession by an vert act excludes the true owner from its user and enjoin it, exercises complete dominion over property with hostile intention to oust the true owner, and thereafter remains in continuous possession for a period of 12 years or more to the knowledge of the true owner. Now this 12 years obviously you all know, is introduced by the Limitation Act. Therefore, the first words I told you about the theory about the public policy. That is where public policy comes in. Its not as if the parliament rewards somebody who is in unauthorised possession that is where public policy comes in and is made a law by parliament which you and we as Judges are bound to implement. That is where public policy comes in. So these are the parameters. All right this is again repetition. Now the third paragraph because this does cause a lot of confusion sometimes as to whether the

possession is legal, illegal or what type. I tried a little bit to put it in respect the act of entering possession must not relate to a legal right. This is very important. That is possession must be emanate from tenancy. Lease, mortgage, co-sharer etc. I have purposely put the words etc. There may be situations which today you, I and all of us are unable to visualise. Law is never meant to serve today. It meant to serve tomorrow also. So, therefore the word etc. Another is a word of caution after that. Though even this category of persons can in given circumstances claim adverse possession after the expiry of the legal right of possession provided to establish the assertion of overt act that would lead the parameters of adverse possession. This in essence may a look to contradict to. I think I put as simply is very clear a tenant upon the expiry of his tenancy does not vacate the premises and its is a lease which is not covered by the Rent Act. You would be a tenant to holding over on the transfer of Property Act.

But there may be situation very assert title over the property. The fact of the tenant holding over also comes to an end and the man just does not bother acquiesces that is why the significance of the word acquiescence. Acquiescence is not anti phrase used or word used. It is a very significant word in this case. Therefore, once he acquiesces in his possession the legal right to possession comes to an end the adverse possession commences. Now another thing which probably all of you know I am just repeating for the sake of clarifying it. Mere possession for howsoever long will not be adverse to the true owner. Unconscious possession now this is another problem which is arising I think on daily basis and very escorts where somebody says look I am the owner of land measuring so much as per my sale deed bounded by bounded because you all are cities are expanding and places and roads and becoming houses now and places which were parks had become houses now. So what happens in those situations is somebody says look I am the

owner of two kanals of land. The other person says that I am the owner of 12 marlas of land. Another dispute you will certainly find as a Judge what you pointed to the Local Commissioner and the man has already mapped out the entire thing. That man's 2 kanals say 10 marlas is in his possession is the fellow the owner of 12 marlas so what you do in that situation. He says that I am the owner of adverse possession. In that situation, you would have to very simply put. You will have to look at animus intention to occupy. It its an unconscious occupation, if its an occupation without intent, no question of adverse possession. Lot of us not making an exception, not pointing fingers at you people anybody even in the High Court even in the Supreme Court this mistakes sometimes is made and if you go back to the older judgments of 1920's and 1930's, you will find a judgment of Rangoon where on the basis of unconscious possession, they have decreed a suit for adverse possession and whenever as counsel one of you had relied upon the

judgment and decree in the suit. Please not meant to point anything or anybody but somebody cited and obviously if a Judge is not told the other side of the picture. He is bound to decree. So, therefore, animus to possess the land by way of an overt act. These are very significant things which I have to be established. So, therefore, if a person does not know that he is in possession of certain piece of land, there is no question of adverse possession. You have to know that you are in possession then only you would have animus then only you would be overt act. Now take a situation a person is the owner of a certain piece of land. Adjoining owner. This man constructs a house on the part land owned by the person. He would definitely say no animus, he did not know that he was in possession. In that situation, what is the Court to do? Is it to order demolition of that man's house. That is the only you will do. You will compensate him to that and now you have another tool with you. Please remember in such like

situations and these are tricky situations, arises almost on daily basis in every court. You have Section 89 of the Code of Civil Procedure. Probably you have given a lecture on Section 89 all of you. You have Section 89 of CPC, you have the judgments of the Supreme Courts Salem Bar Association. Please feel free to utilise the judgment in such situations. I am not saying that you should not order demolition of the man's house or possession but we are given the situation you feel a little cause injustice. You will obviously send the parties to something or compensation. Now compensation is another matter in which once the court enters invariably the Court also ends up being in trouble how to assess, what to assess, Local Commissioner, objections, one party, second party, objections, revisions, back again, its a never ending process because nobody ever satisfied with compensation received or assessed. So, the best thing I think in the present scenario will be Supreme Court judgment would be started invoking

Section 89 as much as possible in these cases also. Now who is to establish the onus. You see basically the law of limitation is a shield and not a sword. This, I think everyone must have heard this that the law of limitation is a shield and not a sword. So that once you say its a shield and not a sword, the person, who is facing the sword is got to put up the shield. So, it is for him to establish by clear, cogent pleadings, unambiguous in all particulars. Number 1 the ownership of the landlord, he has to admit the ownership and then of course enumerated the A B C D at the last page. Now these are the morals taken out from various compilations of the Supreme Court. I did not have time to put down large number of judgments. I got some of them if anybody is interested, you are welcome to take the citations. I would not like to read them out within Section 64/65, you all know, Section 65 is the Limitation Act is there. Now, another significant point courts in India are not Courts of equity, the lower courts. Equital

jurisdiction is exercised by the High Court. Your courts confined by the Civil Procedure Court the Evidence Act and where equity permits only there you can exercise equity and a person in adverse possession has no equity in his favour. You must remember this. There are no equities in favour of a person, who is adverse possession and for that again you will have to go back to the title of this pyritical right. Though pyritical right has always been used in the context of pre-emption. Most of you may not have done probably the people from Judges from Haryana may have done pre-emption matters but Punjab pre-emptions over long I do not think any of you would have done pre-emptions cases. So pre-emption was the original pyritical right. Now, I personally feel the law in its wisdom this parliament in its wisdom has sanctified another pyritical right and that is the right of adverse possession. So, therefore, no equities in favour in my opinion, I advise please do not exercise equities in favour of person, who is in

adverse possession and adverse possession in some judgments of the Supreme Court in this Court you will find is a pure question of fact. In others, you will find its a mixed question of fact and law. All that is up to you to decide in what circumstances, in case there is mortgage, the mortgage comes to an end, you may have a mixed question of fact and law. In case of a simple question of possession, it will be a pure question of fact. So, its for you to decide as Judicial Officers whether its a question of fact or its a question of law or a mixed question of fact and law and the issues must be framed specifically, clearly and categorically on this point and the onus will always be on the person, who is alleging, claiming adverse possession never on the person, with due respect to you all, there has always been catch all issue that every Court tends to frame whether so and so is owner in possession that I am sorry in such cases is not acceptable. You must be very specific, very clear that the issue is with respect

to adverse possession. Otherwise this catch all issue leads to ambiguity, leads to evidence not being lead properly so, therefore, in my opinion adverse possession I given out whatever is there. The judgments if you are required in any way, I can hand them over to you and give you the citations. Not before I, there is another point but there is no much time, another point which I personally as a Judge also and as a Lawyer also which I would like to invoke both my experiences have always been very concerned about the fact that lot of Judicial Officers including High Court Judges everybody when faced with the tricky situations regarding possession or something always say status quo. Please do not take the easy option. Write an order if you think the party is in possession,please do not say status quo right or wrong is for the Appellate Court to decide. Give your reasons, right or wrong reasons nothing to be worried about. Reasons must be there. Now, what happens in a situation like status quo and you all have this

experience. First 145 proceedings, which in essence are not maintainable because a civil suit is pending but since we do have some sort of system where people are able to reach the SDM or the Police then application under Order 39 Rule 2A, then an FIR under trespass, then an anticipatory bail in the High Court, then the quashing petition in the High Court saying civil suit is pending. Now, look at how much mischief an order of status quo causes out of one small little two words that you used status quo you end up sending the party probably five or eight or nine litigations so, therefore,please till you are thoroughly confused do not use the word status quo. I used the word thoroughly confused. As Judicial Officers you are not supposed to confused and least of all thoroughly confused. I hope you all get what I am trying to say. Status quo we all try to in fact beg the issue, alright why should I look at it. Now, I have to look at these 20 Jamabandis, khasra girdawaris etc and then it may not be right the

Appellate Court may send the summoning against me, but look at the difficulty you caused the litigant and whatever we hear primarily because of and for the litigant. None of us is here because we are what we are. We are here because of the litigant, we are nothing if the litigant is harassed, we are in serious problem. So, status quo is one order, which please with due deference to all your understandings and all the years you all put in as Judicial Officers. Try as much as possible to avoid otherwise the High Court frankly speaking, is flooded with revisions, quashing petitions, appeals all sorts of things and then of course, you all know also this leads to very famous word breaking of Acts. Everybody uses status quo is directly proportion to breaking of Acts so if you think, you want to encourage breaking of Acts then please continue giving orders of status quo while injunctions but for heaven sake try your best to decide and decisiveness I think is more important then you see a draw is permissible in Cricket not

in the Judiciary so don't have this draw with the match stands draw. Anything else anybody would like to ask. There is not much time, I cannot cover other topics.

We are now governed by the Rent Act also. Basically the concept of tenant holding over has gone. Once a tenant is always the tenant. That is the basic rule. The ideas I gave you these, put these ideas in your mind, was when faced with such a situation you would at least have something to fall back upon. You would be able to think. In a given situation, it is eventually depending on the facts of the case. The overt act, the animus, hostile animus it will all depend on that and coupled with acquiescence. Now if the owner himself is not bothered, tenancy can also be converted into if a co-sharer can be during 1962 Punjab a Full Bench judgment of this court plus reiterated in 2003 or 2000 with respect to injunction matters whether injunction can be issued in favour of a co-sharer or not. If you read

those two judgments this point will be amply clear. Sixty two judgment itself is based on older judgment. Sixty two Punjab is a Division Bench or Full Bench. So, therefore, the stage at .. will become would be the question of fact. You can not possibly say in every case it will be done moment tenant holding over if he stops paying rent that will be an overt act. No. If it says that landlord does not come for 12 years to take rent so why I am not putting anything into straight jacket. This moment I put it somebody is bound to misunderstand it. That with due deference to all of you is also the duty of law and the difficulty of law. But Sir, what is the overt act that the tenant holding over should do that so as to assess the period of beginning that years. I can give you an example. Now there is a tenant its a Khokha. After the period of tenancy he constructs a huge building over there. The landlord doesn't bother. The landlord visits the place everyday sits with him. In given circumstances it can be an overt act

removes the khokha, on law in all are towns there is khokha everywhere. I do not mere reduce now, builds a huge building over there. Would not that be an overt act? He was a tenant over Khokha, the Khokha seems to exist. If there is no overt act, there is no animus. When the principle once a tenant, is always a tenant or when the tenancy ceased there had no animus, no overt act. That is why I am repeatedly saying animus, over act are very significant. What happens is normally, you will find in the written statement, protester has been in possession since 1956 reflected in the jamabandi from such and such to such and such date, therefore, you will have to insist on the overt act, the animus, the intention to oust. These are the important things. We all tend to discard. Otherwise basically the principle of tenant always being a tenant of lessee, always being a tenant, mortgage continuing with that status is the paramount principle. These are only exceptions. Its not as if every tenant, who does not leave the

premises can claim adverse possession. Please don't understand it in that way. You are taking it isolated thing building an argument. Alright. Its not as if every tenant can claim this right. It will be a very isolated a very rare situation. It is not to be going.

Thank you.

SPEECH DELIVERED BY HON'BLE MR.JUSTICE A.K.GOEL

Hon'ble Chairman of the training programme Mr.Justice Garewal, brothers and sisters, I have been asked to discuss the topic of amendments in the Code of Civil Procedure recording of evidence on affidavits, law of judicial precedents, appreciation of evidence in civil cases. Well, I feel that during the course of your working, you are quite conversant with these topics because you are dealing with them day-to-day. In fact you are dealing with them more than what we deal here. Now there has to be a procedure whether it is civil law or criminal law and the object of procedure is to give fair opportunity. There should be fair procedure for determining rights and the duties of the parties. The procedure should be simple so that it can be easily followed by the Presiding Officer by the litigants and the lawyers. The procedure should result in expeditious disposal, they are three main objects of any procedure. Fair

opportunity, simple and should result in expeditious disposal we took up our Civil Procedure Code mainly from the procedural law as was prevalent in England and it was a result of recommendations of Law Commission headed by Macaulay. The first CPC which was enacted was in 1869 which was succeeded by 1908 CPC. Even at that time after freedom it was found that the Civil Procedure is quite complicated though it was enacted after great research. It was generally thought that the civil cases as was observed even if you win you are a looser. There was a great debate how to simplify, how to make it quick. After independence Law Commission headed by Mr. Setal Ward to review all the laws in the country including Civil Procedure and Criminal Procedure. After recording evidence in different courts throughout India, 14th report was submitted by Law Commission which was quite comprehensive and I will only refer to one aspect which is of eternal value, which was emphasised. It is not the one

provision or the other provision, it is the person administering the procedure, person who is master of the Procedure, who is more important. You modify the Procedure this way that way, the person who is controlling the Procedure unless he is able to administer it properly the objective will not be achieved. Before 14th Report could be acted upon, more comprehensive Report 27th Report then 41st Report was submitted in 1968, a Bill was also introduced in Parliament which was referred to select Committee thereafter, 54th Report was submitted in 1973 and based on these various Reports, a Bill was introduced which was enacted as Act 104 of 1976 which is known as 1976 CPC Amendment which came into effect w.e.f. Ist February, 1977. But still if you asked to a common man that Civil Procedure Code is very complicated and a common man feels if you simplify one old senior citizen met me when I was Advocate why this Civil Procedure is taking so much time. I have devised a Procedure you adopted in Courts

everything will be simple. I said what is the Procedure, he says whenever a person comes he should bring all his documents file his case, he should be asked to serve notice when the other side come he should bring pleadings, all his documents, all his witnesses, in two days the case will be over, that is the perception of common man. In fact that is what it should be, but there are you know more than what I know reasons why we cannot adopt this Procedure. Prime Minister had to intervene and that Act 46 of 1999 was not in force immediately. It has reconsidered and then Act 22 of 2002 was passed which came into force with effect from Ist July 2002. It is just I am giving little historical background. Now what are the amendments, exhaust your amendments in 1976 but those who are dealing with Civil Procedure, they don't feel much effect and that's why I started by saying that's its not the procedure you make one provision or the other. It is the person, who is administering justice adopt a procedure. Having

this object in mind that it should be fair, it should result in expeditious disposal and it should be simple. Now the latest amendments since we have to administer the law, we have to be conversant with what is the statutory amendment. We can not act contrary to law. Certain amendments have now been brought into force. There are four or five features of these amendments. One is quick service of notice that is one part by which they also provided you can serve notice by courier. You are all aware at notice stage itself cases remain pending for a long time. I think this is a correct, this is a justified area of reform. But we should be able to ensure service quickly and our traditional service of process server, its a draft whatever the reasons over work whatever, is partly responsible for such a great dealing. The second area is alternative dispute resolution. All cases are not fit for being tried according to traditional procedure nor everybody can wait for such a long time which is taken in the

adjudication, then the hierarchy of Courts, appeal, revision etc. There are certain areas which are simple disputes but involve a person throughout the life. That cannot be priority. Litigation cannot be priority of a person throughout the life. Its a great injustice that person is not taken out of that litigation. So that appears to be the concern of those who have recommended this and enacted this that a Judge should be proactive. The focus is on the Judge, the focus is on the Presiding Officer. He has to be proactive only then any procedure can be successful. Then only it can be expeditious. Section 89, I will refer to that a little later, makes a decision for alternative dispute resolution. The Court has to make assessment how best it can be tackled. If you think it is not necessary to go by adjudication, you have jurisdiction now. Unlike earlier we use to think that why Judges suggest settlement. Now it is duty and right to suggest a settlement also suggest other means. Don't continuing this litigation here

it may be in your interest adopt this or the other methods which are statutorily now indicated. The third is recording of evidence. It is yet to be seen now in practical sense, how far we are able to achieve the objectives by these amendments but an attempt has been made to make provisions by which delays can be cut. So the Court can record evidence itself or where the Court think that the time can be shortened, delay can be curtailed, Court can appoint Commissioner, Commissioner can record evidence that will save lot of time and expense of the parties repeatedly coming witness is coming, going back as the Court has no time to record evidence. The fourth category is General category, its a purely procedural like filing written statement quickly within 30 days which can be extended up to 90 days, production of documents right in the beginning and permission of the Court if they are to be produced later then curtailing the amendments which were earlier too liberal leading to fresh trials at one stage, then again

amendment then another fresh trial. These are brought the arrears wherein these CPC amendments which have been recently introduced. Now I may not tell you, you must have already come across the Supreme Court judgments. There are two Supreme Court judgments which deal with this subject. The first Salem Advocate Bar Association Case deals with the validity of the amendments which were challenged in the Supreme Court. That judgment is AIR 2003 Supreme Court Page 189. The amendments were upheld, the amendments were held to be having loadable object of cutting down the delay. Certain fine tuning was done wherever the other difficult area by judicial interpretation that was, those confusions were removed and a Committee was constituted by the Supreme Court to see how the amendments can be effectively implemented. The observations which were made in this judgment are well known to all that the period of 30 days for service is not mandatory, immediately steps should be taken within 30 days is as far as possible which

can also be extended further then it was also observed that in certain countries 90 % cases are being settled out of Court. Then power of rejection of complaint it was also held it is not mandatory it is only after giving an opportunity to rectify the facts that this power should be used. The object is the procedure should remain fair, it should not be harsh to anybody though delay should be curtailed. Then evidence about affidavits, this was also explained that where a witness is not in the hands of the party, there this procedure will not apply. Then you have a discretion partly to record evidence yourself or partly to have it recorded by the Commissioner. Then about additional evidence Order 18 Rule 17-A CPC it was held that deletion will not change the legal position. Filing of appeal that procedure that you filed appeal before the Court against whose decision you are filing appeal that was held to be directory. Now this Committee, it is important to study the recommendations of the Committee if you have not

yet come across those recommendations are published in the subsequent Supreme Court Judgment with the same party name which has been delivered on 2nd August 2005, **2005-06 SCC 344.** Now this was a Committee headed by Justice Jagan Nath Rao, Chairman of Law Commission with certain eminent lawyers and other persons associated with that. They have submitted report which is in three parts. Which has been extensively reproduced in the judgment also. They have touched upon the procedural aspects in the Part-I requirement of filing affidavit with the plaint. They have observed that there is no difficulty in doing it. There was a plea that since verification is already there then why require affidavit being filed. Second is about appointment of Commissioner. Certain areas have been indicated if a witness is to be declared hostile only Court can declare. Supreme Court said that where witness is to be declared hostile, then it is for the Court either to declare a witness to be hostile and then allow

the Commissioner to proceed or to record evidence itself. The other problem is of handing over original record so it has been observed that you can hand over the original record if the case is to be deferred for a long period by the Commissioner then he can return the record and again collect it wherever required. There was lot of debate about the question that written statement is not filed within 90 days what is to be done. Earlier there were some judgments one way or the other and last time I was asked to explain that. Now it has been authoritatively laid down that it is not mandatory. The spirit is it should be done as far as possible within 30 days or in the extended period of 90 days but if it not done for a reason beyond anybody's control, you are not powerless in extending the time. Then power of amendment, this provision has been upheld now it has been said that you have to show after trial commences that you did not seek amendment in spite of due diligence. Prior to amendment, you were more

liberal and there was certain decision which said you should always grant amendment liberally if the other side is compensated by costs. Mere delay should not be ground to refuse amendment even at appellate stage. Now there is a change in this legal position that a person cannot seek amendment as a right unless he shows that he acted with due diligence and in spite of that he could not seek earlier. The other question was unnecessary adjournments now, there is a restriction on granting adjournments under Order 17 CPC and you cannot give more than 3 adjournments that also now Supreme Court says that this provision has to be given effect to but at the same time if you think any undue hardship will be caused then even beyond three, you can give adjournment. The other is a matter about Section 80 a direction has been issued that a person should be nominated by every authority in respect of which there is a provision for giving of notice as a condition precedent for filing of a suit and that person should be held

responsible by way of costs or otherwise. The other concept which has been introduced is the requirement of judicial impact assessment by legislature whenever law is made which gives eyes to litigation then the assessment must be made by the legislature as is done in some other countries as to what will be the cost of litigation and what provisions are made for providing Courts. More and more laws are being made, courts are being set up, provisions are being made for interference by the courts but courts remain the same with a result that pendency is increasing. Now direction has been issued make an assessment of the impact under judicial system. If you are putting more burden the judicial system then create more courts. With every legislation to be introduced there has to be a provision and with regard to CPC also, a direction has been issued thats for the first time to the Central Government to give judicial, to make a judicial impact assessment within four months is by 2nd December. This is with regard to these CPC

amendments, procedural aspects. Then there are two other reports which have been submitted by the Committee these are in Section 89 CPC apart from arbitration, mediation, Lok Adalats there is also provision for conciliation and we have the law in the form of Arbitration and Conciliation Act, 1996. We have Legal Services Act, 1987. We don't have law in certain areas like what procedure will be followed prior to making of reference. For that draft rules have been drafted which have been set out in this judgment, fully quoted in this judgment. About eligibility of mediator, procedure to be followed by mediator, appointment of mediator, impanelment of mediator. This is area which is perhaps not much touched upon so far. So, it will grow slowly as and when you think you can suggest alternative dispute resolution by the method which has been mentioned in Section 89 CPC and High Court has also to frame Rules by December which will be notified and sent to you. The third report relates to case flow management Rules. We

have been doing it in our own way so far case flow management Rules provide for our own internal discipline. We should in each case have a time management plan particular suit has come within how much time we have to decide the suit. We have to decide right in the way and also indicate the stages. The service will be completed up to such and such time, evidence will be concluded by such and such time, judgment will be given by such and such time. This is the case flow management Rules. Model Rule has been drafted which suggests how you should manage particular civil trial or a criminal trial and what type of priority you should give to different type of suits or different type of criminal trials, which are the cases we should take up early. This basically deals with the management of your own Court, your own list or the different stages in a particular trial. So, this is all that I wish to say about this subject. There is another subject which is not a new subject is the appreciation of evidence in civil cases I find one

of the topics mentioned here. Now, Rules for evidence for appreciation of evidence in civil cases are by and large the same because the Evidence Act is same for civil cases as well as criminal cases. There is slight difference. In criminal cases that is by way of interpretation, the Courts have authoritatively now held that in criminal cases the case must be proved beyond reasonable doubts so degree of proof required in a criminal case is higher, is different than a civil case. In a civil case, if you believe by preponderance of probabilities, by weighing the probabilities, I should hold this way or that way that is enough even if it is not proved beyond reasonable doubts, you may be having some doubt but you think probabilities go this way. So, this is the main difference in appreciating the evidence in civil case and criminal case. The other difference is about the burden of proof. In criminal case burden of proof is always on prosecution unless it is indicated to the contrary. In a civil case

burden of proof is on the person who is alleging etc. Rules are laid down in Section 101 to 104 and thereafter. So, in civil case we cannot say that the case must be proved beyond reasonable doubt, if you are satisfied on probabilities even if there is a doubt, there is nobody to whom you have to give benefit of doubt, you have to go by the broad probabilities on a issue and going by the burden of proof for which there are separate provisions. I find one more topic here is the judicial precedents. There is another problem we are now coming in across, we have adopted the system of precedents. We have not only the statute law, we have also the judge made law. At one time, there were no statutes, it was only common law of judge made law. Even now, in various areas, there is no statutory provisions. The judgment itself is a statutory provision, is read as a statute. Classic judgments which are followed in those areas. There are certain principles of law of precedents which have to be kept in mind. The

object of having the law of precedents is that there should be certainty, there should be uniformity. Its not that I am taking, you are taking another view. The public is entitled to know what the law is, the law is certain, the law is one, interpretation is same whether you go before X Court or Y Court. Some amount of discipline, some amount of uniformity that is required so that the public is not confused, the litigant is not confused. But even then, can we say that there is uniformity. Particularly, judicial officers at the grass root are faced with a dilemma everyday. There is one judgment going in one direction, there is other judgment going in other direction. How that dilemma is to be resolved for that we should have some clear ideas in our minds but before going into technical aspect, I will first give some practical suggestions. The practical suggestion is first of all see where does the justice lie according to your own interpretation. Don't see the case law before analysing the facts No.1,

slight difference in facts can make lot of difference, second is according to you where does the justice lie. Once you are clear in your mind with these two things, then read the precedents. Now, I will indicate two-three settled principles for dealing with a judgment which is cited before you. One principle is a judgment of a higher court is binding as against the judgment of a lower authority. You have a Supreme Court judgment, you have a High Court judgment, then you are bound by the Supreme Court judgment, you are not bound by the High Court judgment to the contrary. This principle is well-known to all. Then, there is a conflict of interpretation then you are bound by the Punjab High Court judgment compared to any other High Court. Before Punjab High Court, Lahore High Court was predecessor of Punjab High Court. Article 372 of the Constitution says that whatever was the Law in India or any where or any area before enactment of the Constitution continues unless altered so when Constitution came into force

prior to that whatever is the law, in this area was governed by the High Court whichever was the High Court for this area that judgment remains binding unless that judgment is altered or changed. The judgment is also a Law or Privy Council judgment before Supreme Court was established, was Law here. Federal Court in hierarchy Privy Council was the highest then Federal Court then the High Court. Now, Supreme Court is the highest under Article 141 of the Constitution. So, If there is a direct Supreme Court judgment that is the final Law. Then, there conflicting judgments of the Supreme Court itself in the larger Bench see the composition whether two Judges,two Judges is the minimum Bench in the Supreme Court, there may be two Judges' Bench, three Judges Bench or five Judges' Bench or still larger Bench. Then the larger the Bench, it will have more binding force. If any contrary view of a smaller Bench that will not bind. Then the latest judgment and the earlier judgment. If the earlier judgment is of larger Bench it may be later

judgment you are not bound. If there is a later judgment of a smaller Bench, which refers to the earlier judgment then you are bound. That is the interpretation laid down by the Supreme Court itself after referring to the earlier judgment then it remains bind. Then supposing a judgment does not refer to the statutory provision or there is statutory provision after the judgment then that judgment ceases to have binding effect to that judgment. Then judgment is a precedent for the proposition laid down expressly now by inference, not what logically follows from that judgment for the proposition laid down. Then there is also a principle of sub silent show, there is no discussion certain observations are made. If you can say that it has been made without being conscious of a statutory provision then you are not bound by that judgment. That judgment is called, those observations are called sub silent show of per incuria. If a previous judgment is overlooked and subsequent judgment given by a smaller Bench

then that judgment will be per incuria. If there is a High Court judgment given without noticing the Supreme Court judgment, those observations will be per incuria, that will not be binding. Then there is one more important aspect, is that under Article 142 of the Constitution Supreme Court has certain powers, certain jurisdictions is to lay down, is to give a decision on individual facts which may be in conflict with the certain law that is a constitutional jurisdiction conferred on the highest Court for doing justice to pass any order which may be considered in the interest of justice. It may even be against settled Law. I do not know how far you are facing this difficulty, we are facing, the High Court is facing this difficulty number of cases. Supreme Court's order will be cited. Those judgments are not Laws, those judgments are not precedents. Supreme Court itself has made it clear don't follow those judgments, those are the orders passed in facts and circumstances. They don't over-rule the law as it

stands besides the law as it stands independently of a decision rendered under Article 142 of the Constitution. So, you have to see whether its a judgment of uniform application, universal application or its a judgment rendered on facts by virtue of power under Article 142 of the Constitution. So, this is broadly the concept of law of precedent. Sometimes one judgment is rendered and subsequently another judgment over ruled. Naturally once the judgment has over-rule any judgment which follows a judgment is over ruled, is not a valid precedent. There is also one topic I find here although I think that is only with reference to CPC amendments recording of evidence and affidavit. We all know that under Section 1 of the Evidence Act that affidavit is not evidence. Definition of evidence specifically excludes affidavits. But the certain statutory provisions which permit affidavits to be taken by way of evidence. Section 30 Clause C Order 19 Rule 1 CPC with regard to matters which are in personal

knowledge and in support of interlocutory the applications you can take evidence by affidavits. Section 139 CPC lays down how affidavit is o be attested and verified then annexure appendix A to the Oaths Act and Section 3 of the General Clauses Act also deal with the same subject. Then there are certain provisions which make affidavit per-se admissible in evidence like Section 295 to 297 and Section 407 of Criminal Procedure Code. Certain types of affidavits by way of link evidence etc. are permissible. Then Order 38 Rule 1 CPC, Order 7 Rule 11 then Section 123 of the Evidence Act, these are certain provisions which statutorily prescribed affidavits to be filed by way of evidence. Except these provisions the evidence has to be taken in court the affidavit itself can not serve as evidence. With regard to other provisions of evidence by affidavits have already indicated the CPC amendments in Order 18 which permit affidavits in place of examination in chief to be admitted in evidence and that can be recorded before the Court

and the Court can allow affidavits to be filed in respect of the witnesses who are examined by the parties themselves. So, this is the scope of topics which I could understand if you have any questions etc. you are welcomed. You are referring to Order 18 Rule 17 A CPC, this was added in 1976 and in both the judgments Salim Bar it has been specifically observed that this was added in 1976 by way of clarificatory amendment. Prior to 1976 whatever was the position is now restored that means wherever it becomes necessary in the interest of justice to allow additional evidence you can still allow. It has been expressly provided in the Supreme Court judgment which is a direct authority for this purpose. Practically it becomes difficult for court to discard the statement through affidavit by an illiterate person who is not aware about the facts narrated in the affidavit. What would be the fate? Its very difficult for the Court a person, who is illiterate filing affidavit, he is not aware about

the facts whatsoever narrated in the affidavit. Its not a person may be illiterate but you cannot say he is not aware of the affidavit. He is aware of the contents of the plaint. Its on his instructions, it is drafted and ultimately the interpretation given by the Supreme Court it is your discretion. You may not allow affidavit to be taken as examination-in-chief that can require the statement to be recorded. If it saves your time you do it. If you think it is necessary to record evidence of the witness himself, you are not debar from doing it. Parties are bound to in litigation when parties are there fortunately or unfortunately the attitude is hostile, attitude is to prolong, attitude is to both parties then a person is coming to Court. Either he has been harmed or he wants to harm the other. The attitude of parties is not necessarily fair, attitude of the bar or Advocate who is mainly representative of the party though under the professional ethics duty first is to Court and to justice. But in practical terms, he

is representative of the party. He is at the instance of the party to be unfair. You have to control it. You have to be on the driver seat don't allow the driver seat to be taken over by anyone. However, clever he may be you have to be one step ahead and you have to see no injustice or no unfairness is done by anyone. You have to be fair and you have to ensure fairness. Even if it is recorded outside asking leading question is not permissible. In civil case ultimately what is affidavit ? What is evidence or what is examination-in-chief. It is repetition of the plaint. So if to that extent to some extent you think impliedly is to some extent will be done that makes no difference. The policy of law remains the same. He can't the person who is bringing the witness can't cross-examine that witness, can't asking leading questions, can't dispute the answers. In 125 that two stages one is interim maintenance. For interim maintenance for interlocutory even interlocutory stage CPC also

makes a provision. And affidavit can be permitted by Court to be taken for determining whether interim maintenance is to be awarded or not and how much ? But that affidavit can't be basis of a final judgment in maintenance proceedings. Section 89, a similar provision is made in Order 10. and that provision is that you will take a decision as per Section 89 only after you have recorded the statement of parties under Order 10 CPC before the issues. About the costs in this latest judgment Supreme Court has made it very clear that the cost should reflect the actual expenses of the parties. There should not be nominal. We say 30 rupees cost, 300 rupees cost, nobody is bothered about that and having regard to a given situation you can impose such cost as you consider representing the actual cost, actual hardened to the party for cumutive costs. All these concepts are there in 35, 35 A, 35B etc. in CPC which have been discussed in the latest Supreme Court Judgment. How many of you have read the latest judgment. Because this is most

important, this is law of the land if you do not read the judgment yourself, you will not be able to appreciate the impact of amendment and how to deal with this. Please do go through both these judgments. The first one I have given you is of 2003, and the second is of 2005. The judgments you must understand, you go through and understand first then only you will able to apply the amended CPC. Neither of the judgments is a binding precedent and it is your choice whichever you think advances justice whichever interpretation appeals to you. Lordship Order 38 Rule 5 at the advance stage of case is mandatory in recovery suits ? Order 38 Rule 5 your jurisdiction to attach, its enabling provision you can attach property before judgment. My question is, is it mandatory on part of court to polite ? No, its your jurisdiction to attach property under certain condition which are laid down therein if you think that the defendant will dispose of the property will frustrate the decree that may be passed will transfer for

extraneous consideration or malafide then you can attach the property before judgment. Normally, attachment will follow the judgment in execution. This is the provision even before Judgment, you can attach the property wherever you think that the defendant may transfer the property which may render the judgment or decree unexecutable. Order 18 CPC amendment itself is the rule. The rules which are yet to be framed are how to select the Commissioner. In absence of rules, you can select any. The rules are framed then you have to adhere those rules. That this will be two observations have been made by the Supreme Court. That Commissioner can be advocate, Commissioner can be other than advocate. They should be given training in the procedure then their antecedents should be checked, they should not be litigant, they should not be insolvent, they should be competent to do their job. These various module rules are already framed which are reproduced in this judgment that's why I am suggesting that please go through this

judgment which laid down the rules and each High Court has been required to frame rules upto 2nd December, 2005. So that is the job of High Court which High Courts have to do and notify. Until then, these model rules are there which lay down a guideline, who will be the commissioner, how he should proceed, who will pay the cost. Now recommendations have been made, the Government should pay the cost till then it will be governed by court's order, who will pay the cost of recording evidence. Financial Commissioner's judgments are not binding, they are not precedents. Some times, those are cited before you is for your own information how interpretation has gone, what view has been taken? It is just an interpretation before you or a sort of submission before you. If you think it is correct, you can follow it, you can accept it. If you do not agree, you can reject it. In the hierarchy of Courts Financial Commission does not figure anywhere for the civil court. There are various areas of delay. Certain areas of

delay have been addressed or suggestions have been made or provisions have been made like. No doubt the delay of execution is one aspect not the only aspect. Execution will come after the decree. Decree will come after the service and appearance of the party. So the first delay is in serving the party. Then after service, filing of pleadings, after pleading, leading of evidence, after leading of evidence hearing of arguments and then decision. So certain areas, these amendments have been made and as I said in the beginning it is the person, who is administering the law, he is most important and he himself can expedite the things according to his own notion without violating the law. There is enough flexibility also available. To the extent, we can curtail the delay. If we look, we play pro-active role to a great extent, I think delay can be curtailed. If Order 21 is not amended, let it not be amended. It is a long order because it deals with so many situations. Therefore, Order 21 is not necessarily an obstacle in expeditious

execution. There is no restriction or no circular or direction or rule, you can directly provide. I am not fully acquainted with this aspect as to what procedure is being followed. If it is not specifically provided then you can yourself direct. You can give a direction yourself if there is no Provision in the High Court Rule. Execution will not be by party execution will be by Court even after their filing. Exhibit is under Order 12 CPC. The Court itself is to sign and put the exhibit.

Thank you.

SPEECH DELIVERED BY MR.M.M.S. BEDI, DISTRICT AND SESSIONS JUDGE, CHANDIGARH

Worthy Registrar Mr.M.S.Sullar, District and Sessions Judge, Vigilance Haryana Mr.B.M.Bedi, Joint Registrar Mr.H.S.Madan and all the judicial officers attending this Refresher course I mean to say very good morning to all of you. The objective of this refresher course is not merely to refresh a statutory provisions of law or to recapitulate the legal definitions but its objective to ponder over certain legal prepositions which frequently crop up before a Judge, which are often required to be discussed to clarify the concept in the light of judicial precedents and the various practices adopted in the Court. I have been entrusted with the duty to discuss the topic pertaining to Transfer of Property Act as applicable to Punjab and Haryana specific performance of agreement and to deal with few provisions of Civil Procedure Code that is set off counter claim, suits, by or against

the minors or persons to disability, rejection and return of plaint and earnest endeavour will be made by me to touch the relevant topics, which are frequently raised before the Courts for adjudication. The first topic i.e. Transfer of Property Act as applicable to Punjab and Haryana whenever the Court is to apply its mind regarding the applicability of a particular Act, the first thing which is required of the Court or any judicial officer or any Advocate is to see what is the preamble, what is the extent of its applicability. Quite often, a judicial officer is seen to be in dilemma on the point whether the provisions of Transfer of Property Act are to be applied strictly or to stay his rans away in view of the command of Section 1 of the Transfer of Property Act which clearly lays down that it shall not be applicable to the State of Punjab which of course includes State of Haryana reading of statute and its interpretation is what I feel is not very common with the Judges of trial Court but it is an

important requisite art which we need to practise. So if you have got a copy of the Transfer of Property Act, I would like you to read Section 1 of the Transfer of Property Act. First line of the Act says that an Act while dealing with its applicability I will be using the words which have been used in this Act. An Act further, the word `further' to amend the Transfer of Property Act, sorry, this is an Act to amend the law relating to the Transfer of Property Act of parties. Objective is to amend the Law relating to the transfer of Property Act of the parties. So this deals with the act of the parties. Then so far as applicability is concerned, let's read Section 1. This it shall have commencement, this it shall come into force on the first day of July 1982 extent this is important. It extents in the first instance to the whole of India except the territories which immediately before Ist November 1956 was comprised in Part B State or in the States of Bombay, Punjab and Delhi. So, the State of Punjab and Haryana of course they fall

within the exceptions. So, this Act as per the statute is not applicable to the State of Punjab. Now the peculiar features of this Transfer of Property Act is that the scope of this Act is very limited which is not a complete quote of Transfer of Property Act and it covers only a specific mode namely Transfer of Property between living persons because the word says property by act of parties. So, transfer which is between the parties by the act of the parties. So, this Act deals with the property of living beings. The limitation is also with regard to the territorial jurisdiction of the Act because it specifically says it is not applicable to Punjab. So, it has no uniform application in all parts of the country. This Act is not exhausted as it does not contain complete law for all kinds of transfers in India that does not incorporate Rules for all modes of transfer of property in every kind even the Preamble of the Act itself makes it clear that the main purpose of the Act is to define and amend certain parts. It says

to define and amend certain parts of pre-existing law of Transfer of property by act of parties. So, for example the easementary rights are the proprietary rights but the Transfer of Property Act is not applicable to the easements. Another peculiar feature of the Transfer of Property Act is that it does not apply to the transfer by operation of law. Transfer by act of parties is a transfer between living persons which takes place by express or implied agreement between such living persons. However, transfers like automatic transfers by inheritance that is transfer by operation of law does not fall within the ambit of this Act. The devolution of property upon legal heirs or legatees under the Will is also transfer by operation of law. This transfer takes place by operation or working of the law of inheritance or law of Wills. Such transfers have specifically been excluded and not touched in this Act, so, an important aspect is that some transfers are done with the orders of the Court. These are also the transfers by operation of

law but in this case the parties are not made onus of the property by the act of the parties. So it is made by the Court of Law, so the transmission of the property in case of insolvency, forfeiture of sale in execution of court's decree are transfers by operation of law which are not included in this, will certainly touch these aspects. Transfer of Property Act deals mainly with the transfer of immovable property except certain provisions of Sections 5 to Section 37. So, we reach a conclusion now that this Act is not applicable to all the territories including the State of Punjab but it was made applicable to different territories of India on different occasions. For instance by virtue of notification dated 1.4.1955 the provisions of Section 54 i.e. regarding sale deeds 107 pertaining to leases and 123 tickets were extended to the entire State of Punjab and to the pepsu area of the said State from 15th May, 1957. Then Section 59 of the Transfer of Property Actwas extended to the whole of Punjab w.e.f. 10th June,

1968. The Provisions of Sections 59 and 58 F of the Act were extended to the State of Haryana w.e.f. 5th August, 1967 and 1972 respectively. The perplexity of a judicial officer regarding the uneven application of the provisions of the Transfer of Property Act can always be imagined when a judicial officer is told that quit notice under Section 106 of the Transfer of Property Act is not necessary because of summary remedy or the special forum in a fortified enactment is available in the shape of Punjab Rent Act or Haryana Rent Act. So, in these cases now the Supreme Court I hope you all know in Venkateshwra Rao's case reported in AIR 1976 Supreme Court page 869 has held that before seeking eviction of tenant the mandate of termination of tenancy under Section 106 of the Transfer of Property Act, will not be applicable. The cases for this is that whenever there is a special enactment, it will have an over-riding effect over the general act but a judicial officer further gets confused when, I will you an instance

similar question came up before higher courts whether the provisions of Special Act i.e redemption of Mortgages Act laying down provisions for mortgagors' right to redemption would apply to Transfer of Property Act. For this, I hope you know that Section 60 or 68 of the Transfer of Property Act provides for, may I ask few of the persons who are sleeping to get up and they have tension to be. So, this question came up before the Hon'ble Supreme Court and it was held that the principles of Transfer of Property Act would be applicable. The said case stands reported in **Harbans Singh Vs. Guranditta's case 1991 PLJ 312.** Judicial Ofricers will certainly be confused as to how in one case the general provisions of Section 106 of the Transfer of Property Act have been made inapplicable because there exists a special provision in the State and in another case the provisions of the General Act i.e. Transfer of Property Act have been held to be applicable despite the fact that there is a special provision

of redemption of Mortgages Act. So, in view of the conflicting principles a judicial officer has to look into the history regarding the applicability of different provisions of the Transfer of Property Act to different proceedings. So, I have tried to dig out the entire case law regarding the applicability of the Transfer of Property Act which includes certain important cases. When I will deal with those cases, I will be dealing to the principles of equity, good conscious and justice. So the concept of what is equity, what is good conscious. I hope this concept or the word equity which is frequently used in our judicial system or in statutes or in judgments is clear to you or if you want me to touch it within short time I can touch this because before we say that the principles of equity are applicable one has to understand what is an equitable right. so I hope you recollect what is equity or equitable law or concept of equitable ownership or should I touch i. I am saying equity, the equitable law, or the

concept of equitable ownership. Anyway I will take two minutes to touch it. The law of equity as you know is not statutory law but it was based on the equitable principles. In order to explain the principle of what is equitable ownership because this term equitable ownership it has to be understood. So as per the original English law the concept of equitable ownership it meant the duty of a person whom property had been conveyed for certain purposes to carry out those purposes. What was the concept of equitable ownership that duty of a person whom property had been conveyed for certain purposes to carry out those purposes. I will explain it with an example. A conveys his land to B making B the legal owner. On understanding that it is to be used by X so user word is important for the law of equity. Now the common Law Courts recognise only the right of B as legal owner. They say only B is the legal owner. They ignore the understanding which should have obliged B to hold the land for the benefit on

behalf of X. So interests of the X were not recognised by the common law. Then came the Chancellor's Law, then what the Chancellor did I am talking about the histroy of law. Then Chancellor interposed his jurisdiction and while recognising B as the legal owner made an order by which he compelled B to hold property for the benefit of X because X was an actual user. X was using the property. So keeping in view the concept of user, it happened that at common law B had the ownership, so he was known as the legal owner. As per the common law B was declared as the legal owner but while in equity the X had similar rights and was known as equitable owner, so this is how concept of equitable ownership emerged so the legal ownership was restricted by the practice of Chancellor recognising equitable ownership and was rendered destitute for beneficial enjoyment of B. This is an example for creation of equitable because use was the main factor. On the basis of example which I have given you, use was the main

factor which was taken into consideration by the Chancellor's Court saying that he is the beneficial owner. X is the beneficial owner B is the legal owner. This concept was given by the law of equity,this is equitable so recognizing right of that person X who is the beneficial owner is the law of equity. Thereafter, I may touch background of the history of law, what happened Old Courts were abolished by the Judicature Act of 1873 and 1875 and was replaced by the High Court of Justice which comprised of 5 divisions i.e. Chancery division, Queen's bench, Common Pleas, Exchequers and Probate so ultimately the common law Courts recognise the right but did not grant remedy. Were the common law Courts did they recognise the right but did not grant remedy. The equitable rights, equity rights were not recognized. They were recognised but the relief was not granted. So the relief under Specific Relief Act and the relief of Injunction, they come under the said category. Then there came the period of auxillary jurisdiction

when the common law litigants required the aid of equity in assertion of the legal rights. So with this background now when we know that what is law of equity. These were the principles. I gave an example regarding the equitable ownership vested in a person who is in use. Keeping in view the recognising these principles of equity because when I will be touching the applicability of the Transfer of Property Act, will be dealing with the law of equity, the equitable rights because a number of times we find that judgments of the Higher Court saying that lower court judgment is set aside because it is highly unequitable and unjust. So, the word unequitable, what is law of equity has to be the concept of the law of equity, has to be clear in mind. When we touch the provisions of the Transfer of Property Act. So, with this background as I told you that the provisions of Transfer of Property Act, they specifically say not applicable to Punjab. Then few provisions which have been adopted. Now again read

the objective. Preamble says there has it is expedient to define and amend certain powers of law relating to Transfer of Property by act of parties it is hereby enacted as follows. Now that is the Transfer of Property Act came into existence in 1982. So, before that the transfer of the immovable property in India were governed by the principles of English Law, common law, English Law and equity. So, this was the deviation from the pre-existing practice prior to 1882. The question referring to the case law regarding the applicability of the principles of Transfer of Property Act. I would in brief like to refer to few cases. There is a famous case **Musammad Bhagwan Devi reported in 1902 Punjab Records 348** in which it was laid down by the division Bench that although the provisions of Transfer of Property Act are not applicable to Punjab. The Punjab Courts when deciding cases in which principles of law dealt with by the provisions of these Act are involved, may adopt those provisions as embodied in law applicable to

the case especially when the law enunciated therein coincides with the principles of equity. So, when this law is to be adopted when it coincides with the principles of equity, good conscious and justice for which there is no statutory law applicable to Punjab. So, in that case it was held that the case which I referred to Musammad Bhagwan case so it was held that the mortgagor in possession had no authority without the consent of the mortgagee to do an act which was likely to prove destructive or permanently injurious to the property mortgaged. There was another case subsequently Safdar Ali Vs. Ghulam Mohammad Din reported in 1915 (1) Punjab Records 405 where the Full Bench had held that the doctrine of clogging would be applicable as per the provisions of the Transfer of Property Act consistently the doctrine of equity, good conscious and justice. Similarly in **Miyan Nizamdin Mohammad's case AIR 1938 Lahore 286** the principles contained in Section 101 of the Transfer of Property Act were held to be applicable

to the Courts in India. In Milkha Singh Vs. Shankari reported in AIR 1947 Lahore a Full Bench of five judges applied the doctrine of part performance as a defence as the said Section is based upon the equitable principles which were previously applicable in whole of India, though the Transfer of Property Act first it was not applicable. Similarly in Ram Gopal Dulla's case 1955 Punjab 215 the provisions of Section 6 of the Transfer of Property Act were held to be applicable on the doctrine of equity, good conscious and justice. Again in Atma Singh's case reported in ILR 57 Punjab the provisions of Sections 58, 92 and 100 and doctrine of sargogation was held applicable in Punjab. Thereafter, in Ganeshi Lal's case 1953 Supreme Court Reports 243 the principle of partial predemption of mortgage was held applicable. In Harbans Singh and another, Guranditta's case which I referred just now reported in 1991 PLJ 312 the Hon'ble Supreme Court held that despite there being the special

provision in the Redemption of Mortgages Act a civil suit for redemption of mortgages will be applicable and following the provisions from Sections 60 to 68 of the Transfer of Property Act. So, ultimately despite the fact that this Act is not applicable to Punjab, the principles of transfer by austensible owner in Section 41, principles of transfers by co-owners and joint transfers under Section 44, 47 the principles of lis pendence as enshrined in Section 52, the principles of part performance in Section 53-A, the provisions of sales in Chapter 3 of Section 54, the provisions of mortgage of immovable property in Section 57 and the provisions of rights of mortgagor to redeem Section 60, these have been held the principles enshrined in these Acts have been held to be applicable for the adjudication of the cases which come up before our Courts. So, ultimately we can arrive at a conclusion that though the Act is not applicable, but the principles of equity are on the basis of

those principles the provisions of Transfer of Property Act are applicable. There are certain cases of transfer which are not covered by the provisions of the Transfer of Property Act then in those cases, High Court at the court of equity is entitled to administer the principles of equity as laid down in the English and Indian cases, which are not distinctly prohibited by the statute. So, few of the principles of Transfer of Property Act which have been laid down by the Courts are validity of the transfers made by the Court. So, I hope you recollect the case of Bhoop Singh, reported in 1996 Supreme Court 196. In that case the opinion of the Supreme Court is that whether it is a case of consent decree or a comprise decree or blending of two the decree shall be registerable if consent or compromise concerned amounts to extinguishing some rights, title or interest of value of Rs.100/- or upwards from one party and creating it for first time in favour of other party. The transfer of rights by consent decree

have been upheld by the Supreme Court in a case whether a Court declares the pre-existing rights by consent or compromise decree. So, on number of occasions judicial officers must have found at the questioning as to why a decree is to be registered, what is the effect of registration? Though it is not the subject now but I just want to make up side reference to this that a decree can certainly be registered. We are not on the point whether consent decrees should be granted or not because we are on the transfer of the property, so transfer can be by an Act of the Court by passing a decree but when the pre-existing rights are recognised by a Court then the decree requires registration and few factors which the Supreme Court has laid down to be taken in consideration are that it should not be a malafide act and there should not be an attempt to evade the stamp duty. So, the Registration Act will take care of because there are provisions of Section 23 of the Registration Act which provides that a copy of

decree or order may be presented within 4 months. Then there are provisions of Registration Act Section 32 which prescribes the procedure how the decrees are to be registered the stamp duty cannot be evaded, the stamp duty has to be on the basis of the value of the property which is transferred. So, transfer by co-owner which is subject matter of Sections 44 to 46, has also come up before the Courts on number of occasions for that the rights of a co-owner because in a number of cases in litigation it comes to the notice of the Court or the preposition before the Court is what is the right of co-owner who has sold his share in the joint property. Then what will be the right of subsequent purchaser, so the rights of the vendor and vendee, who are co-sharers, this has been finally settled by a Full Bench, which probably you must have been using frequently that is Bhartu Vs. Ram Singh reported in 1981 PLJ 205. This is based upon old Full Bench judgment Sant Ram, Nagina Ram Vs. Daya Ram Nagina Ram AIR 1961 Punjab 528 so the

rights of co-owner, I hope I need not refer to what are the rights of co-owner as per the said law basically the concept of the basis or the foundation of the judgment is every co-owner has a right to use the joint property in husband like manner not inconsistent with the similar rights of the other co-owners. So, where a co-owner is in possession of separate parcels under an arrangement consented to by the other co-owners it is not open to anyone to disturb the arrangement without the consent of other except by filing a suit for partition. The remedy of co-owner not in possession or not in possession of a share of joint property is by way of suit for partition or for actual joint possession but not for ejectment. Same is the case where a co-owner sets an exclusive title in himself. So next very often for the purpose of grant of interim injunctions, the right of a co-owner to raise construction of co-owner in possession when he wants to raise construction on any person not in possession wants to stop it. So,

there were contradictory decisions in this respect but finally it has been now settled in Maman Chand Vs. Kamla 1995 PLJ where the principle of law has been laid down for the purpose of granting interim injunction regarding raising of construction it has been held in the said judgment that in case a co-sharer in possession of the property is prevented from raising construction, it would be an abuse of the process of the Court. So, in this context the reference can be made to Bachan Singh Vs. Swaran Singh 2001 ILR page 340 which is also relevant and ultimately in other case Akshay Kumar Vs. Rakesh Kumar which is reported in 2001 (1) PLR 314 it was observed in that case that a co-owner who is not in possession of any part of the property is not entitled to seek an injunction against the other who is in exclusive possession of the common property unless any act of the person in possession amounts to ouster. The another job which has been entrusted to me is the topic on Specific Performance of agreement. The subject regarding the

specific performance of agreement is covered under Chapter-II of the Specific Relief Act. To compel a party to perform his part of the contract when damages recoverable at law were not an adequate remedy. The remedy is special and extra ordinary in its character and Court has a discretion either to grant it or to leave the parties to their rights at law. While deciding a suit for specific performance many a times Court has to opt between the two reliefs i.e. for specific performance of the agreement or to grant the alternative relief of pecuniary compensation or damages. The discretion with the Court is not an arbitrary or capricious discretion has to be exercised on fixed principles in accordance with the various authorities laying down the law on the subject and a Judge must exercise its discretion in a judicial manner. If a contract is within the category of a contract which specific performance will be granted is valid in form has been made between the competent parties and is unobjectionable in its nature and course

even though the Judge may think, it is very favourable to one party and unfavourable to other unless the defendant can rely on one of the recognised equitable defenses. So certain equitable defenses have also been incorporated in the Specific Relief Act. The conduct of the plaintiff such as delay, acquiescence, breach on his part or some other circumstances outside the contract may render it inequitable to enforce it or the contract itself may fall example on the ground of misdescription be such that the court will refuse to enforce it. Section 9 of the Specific Relief Act which is a substitute of earlier Section 28 of the Specific Relief Act, it permits a defendant to plead by way of defence any ground which is available to him under any law relating to the contracts. So the defendant by virtue of Section 9 has been given liberty to take all types of defence available under law on the earth to defeat the rights of plaintiff who comes to the Court for seeking the relief of Specific

Performance of the contract. So the biscope of Section 9 would include all legal defence so the relevant guidance which I feel has been provided to a court is under Section 20 of the Specific Relief Act regarding the use of the discretion. This I feel lay provides a guidance to the courts to exercise discretion one way or the other because certain illustrations have also been appended to this Section, who in nutshell if we refer to the Section 22 of the Specific Relief Act. So,as per the said Section there are few cases in which the Court may properly exercise its discretion to not to decree specific performance so few of those are where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract though not voidable gives the plaintiff an unfair advantage over the defendant. These where the performance of contract would involve some hardship on the defendant which he did not foresee

where its non-performance would involve no such hardship on the plaintiff. Where the defendant entered into the contract under circumstances which though not rendering the contract voidable makes it inequitable to enforce specific performance. So, keeping in view the scarcity of time, it will not be possible to minutely discuss the scope of each provision of Section 20 but on the basis of certain precedents and the applicability of Section 20, I would like to refer one or two cases in **Dalbir Singh** Vs. **Dalbir** AIR 2001 P&H in a suit for specific performance between one Aarti and a poor farmer, it was held that fiduciary relationship exists between the buyer and the seller and, as such, the alternative relief was held to be an appropriate remedy in a suit for specific performance. Similarly, in another case **Gurbax Singh** Vs. **Labu Ram** 1995(3) PLR 546 where it was a case of loan but it was converted into a case of agreement of sale by giving it a different shape.

The remedy of returning the amount was held to be appropriate so in nutshell we can conclude by saying that as and when there is case before a court whether a court is in dilemma to grant a decree for specific performance or to grant relief of compensation or alternative relief of return of the earnest money so the court should first see what are the terms of the contract whether the contract has been actually established, what is the status of the parties, what was the actual contract between the parties at the time of entering into the particular agreement. Then, what are the circumstances at the time of entering into the agreement, whether the contract is voidable, whether the plaintiff had been given an unfair advantage by the defendant in any manner, whether the performance of the contract would cause some hardship to the defendant which he did not foresee, whether non-performance would involve no hardship to the plaintiff whether it will be inequitable to enforce specific performance so there is catena of

case law which says that the specific performance should be ordered, this should be the general law and granting the alternative relief is an exception. For that you must be aware of number of cases in which certain factors like continuous, readiness and willingness on the part of the plaintiff which is a condition precedent to grant the relief of specific performance. This circumstance is always required to be considered. So, see the conduct of the plaintiff prior to and subsequent to the filing of the suit along with the other attending circumstances. The factor of availability of the funds with the plaintiff at the time of the filing of the suit, at the the time of entering into the agreement till he filed the suit because it is not the law that a person should have money in his pocket but the funds should be available with him and it should come on the evidence so right from the date of execution till the date of decree, he must prove that he has been ready and willing to performance his part of the

contract. The next subject which has been entrusted to me is pertaining to the provisions of CPC regarding the law of set of counter claims. The relevant provision regarding putting up a set of or counter claim by the defendant in the written statement are Order 8 Rule 6-A to 6-G and Rule 7. So all of you are conversant with the fact of set of and counter claim so without going into the details keeping in view the paucity of time, I would like to say that a set of and counter claim are not the same in one sense both are cross actions. Set of is a ground of defence and if established it affords an answer to the plaintiff's claim wholly or protento the counter claim is really a weapon of defence. For the applicability of the Rules of set of there are certain conditions which can be enumerated as that the suit must be for recovery of money. Set up can be only raised in a suit for recovery of money the claim demanded to be set of, must be an ascertained sum of money. It must be legally recoverable from the plaintiff, it

must not exceed the pecuniary jurisdiction. Both parties must fill the same correct as they fill in the plaintiff's suit. The claim must be made at the first hearing unless permitted by the court to do afterwards. So far as the counter claim is concerned, it is wider in scope and it has got the same effect as the cross suit so as to enable the court to pronounce an order both on the original suit and the counter claim. When a counter claim is raised, the plaintiff is at liberty to file a written statement in answer to the counter claim and the counter claim is treated as a plaint. In view of the amendment of CPC in 2002 it is necessary to emphasise, I feel that it should again be touched, that as per the provisions of Order 8 Rule 1-A it is now the duty of defendant to produce a list of documents along with the documents or copies and to deliver a copy of the said document to the plaintiff. So many a times, it is found that separate issues on the counter claim are not framed and it is generally ignored that when a defendant

sets up a counter claim, same may be proceeded with even if suit of the plaintiff is stayed discontinued or dismissed. In case the said provision is kept in mind it will avoid the delay in adjudication of the matters and it would avoid the remand of the cases by the Appellate Courts. The another subject which I am required to touch is the return and rejection of the plaint. In this context, the reference has to be made to Order 7 Rule 11 CPC which lays down cases in which a Court has the jurisdiction to reject the plaint. As per the said rule, a plaint can be rejected where it does not disclose cause of action, where the relief claimed is under valued and the plaintiff on being required by the court to so correct the valuation within time to be fixed by the court fails to do so where the relief claimed is properly valued but plaintiff has insufficiently stamped it and plaintiff on being required by the Court to supply the requisite stamp papers within time to be fixed by the Court fails to do so. So where the suit

appears from the statement of the plaint to be barred by any law in that case also the plaint can be rejected or by virtue of the amendment of 2002 2 sub-Rules E and F have been added to Rule 11 which say where it is not filed in duplicate when a plaint is not filed in duplicate, the plaint can be rejected. F says where the plaintiff fails to comply with the provisions of Rule 9, meaning thereby that in case the plaintiff does not present the requisite copies of the plaint for the defendant and within 7 days along with requisite fee for the service of the defendant, the plaint can be rejected. The stringent provisions of statute have to be complied with by the plaintiff to avoid rejection of the plaint. The abovesaid provisions should be applied by the Court to reject the plaint in order to enforce the statutory mandate of the amended statute. The most important thing which a judicial officer is required to note is that when a plaint is rejected, the Judge has to record an order to that effect with reasons as

required under Order 7 Rule 11 CPC. The rejection of the plaint will not preclude the presentation of the fresh plaint as per Rule 13 of Order 7. So in view of the liberal attitude of the Legislation that presentation of fresh plaint will be permissible. So all the judicial officers should henceforth carefully scrutinise the record and in case there exists any violation of the conditions as prescribed in Order 7 Rule 11 CPC, reject the plaint of course by passing a speaking order. The Order 7 Rule 10 deals with the return of the plaint, so in some circumstances you have to return the plaint and not reject the plaint for that the relevant provision is Order 7 Rule 10 CPC. It is the statutory duty of the Court while returning the plaint endorsed thereto the date of presentation, the date of return and name of the parties presenting it with statements of reasons of returning it. The plaint generally returned for presentation of the same in Court in which the suit should have been instituted. So, sometimes a Court

comes to the conclusion after the written statement is filed by the defendant that the suit should have been filed before another Forum. In view of Order 7 Rule 10-A, the Court can fix a date of appearance in the court where the plaint is to be filed after its return but before doing so, the decision has to be intimated to the plaintiff. So in case the defendants already put in appearance and the plaint is returned on the application of the plaintiff, the defendant will be deemed to have notice of appearance in the court to which the plaint was returned. So, it is pertinent to note that the power is vested in a court to return a plaint at any stage of the suit. For presenting the same in the court where the suit should have been presented, this can be done even by Appellate Court as per the CPC. There is another subject which is required to be touched that is the suits by or against the minors or the persons under disability. The time awarded to me has already expired, so another subject on which I am supposed

to refer is suit by or against the minors or persons under disability. The relevant provision regarding a suit by and against the minor or persons of unsound mind are contained in Order 32 Rule 1 as well as in High Court Rules and Order Volume I, Chapter I, the basic objective of enacting the procedure is to safeguard the interest of the minor and persons of unsound mind, a minor can sue through next friend in case the suit is instituted on behalf of minor without next friend. The defendant may apply to have the plaint taken of the file with costs to be paid by the pleader or other person by whom it is presented. Order 32 Rule 3 enables a Court to appoint a person to be a guardian for the suit for such minor according to High Court Rules and Orders, a minor being legally incapable of acting for himself, the law requires that every suit by or against such a person should be conducted on his behalf by a person, who has attained majority and is of sound mind. Any person, who institutes a suit on behalf of the

minor and no permission of the Court is necessary for the purpose, the court cannot proceed or pass an order or decree ex parte against any minor. An application for the appointment of a guardian ad litum of minor and the affidavit filed thereof should contain certain specific things which are mentioned in the Code. Those thing which are required to be mentioned are whether or not the minor has a guardian appointed under the Guardian and Wards Act, 1890 and if so, his name and address. The name and address of the father and other natural guardians of the minor, the name and address of the person, in whose care the minor is living, a list of relatives and other persons, who prima-facie are most likely to be capable of acting as guardians for the minor and as to how the person sought to be appointed guardian and next friend is related to the minor and that the person sought to be appointed guardian or next friend has no interest in the matters in controversy in the case adverse to that of minor and that he is the fit

person to be appointed and whether the minor is less than 15 years of age. So, no order should be made appointing a guardian ad litum unless notice is issued to the guardian of the minor appointed or declared by a Court or where there is no such guardian to the father or other natural guardian. It should be remembered that no person can be appointed to act as a guardian ad litum without his consent. So, whenever you are making an order appointing a person as guardian of minor obtaining his consent is necessary so consent may however be presumed unless it is expressly refused. When a court official or a pleader is appointed to act as a guardian, the Court has power to direct the plaintiff or any other party to the suit to advance the necessary funds for the purpose of defence, the court official or a pleader should be required to maintain and produce accounts of funds so provided and these should ultimately be recovered from such a party as the Court may think it just to direct after the result of the suit. The next friend or

the guardian ad litum can not enter into any compromise or agreement with reference to the suit without the leave of the Court expressly recorded in the proceedings. The court should be satisfied after applying its mind to all the circumstances of the case that the compromise is really for the benefit of minor and should record its opinion to that effect and a failure to observe these directions may result in the compromise or the agreement being avoided at the instance of the minor. So, the job entrusted to me to deal with the provisions of Transfer and Property Act, the Specific performance of the agreement, the suit by the minors, return and rejection of plaint as per my knowledge have been discussed. So, I hope as and when the questions crop up before you regarding the applicability of Transfer and Property Act or the question regarding the exercise of jurisdiction to grant the relief of specific performance or to grant the alternative relief or when minor is before you. So, these bit guidance would be helpful

to you to administer justice to the litigants.

I think when we were students of law, first lesson of Contract Act was came then first difference was taught to us was difference between an agreement and a contract. The agreement is prelude to the contract I hope the main basic things that how the agreement came into existence. There is an offer and when that offer is accepted then it becomes an agreement and subsequently when it is finalised, the ripe form of agreement is contract, which is enforceable. In case has it come to you in any judicial decision or a test cropped up anywhere in case where you can put that preposition so that we can solve it for you. If you have read Bhoop Singh's case in para 16, 17 and 18 the guide-lines have been laid down for the Courts to arrive at a conclusion, the objective behind the consent decree. So your question regarding the definition of family because when you are seeing the rights of parties, the co-owners of the persons who are before you, it is not necessary

for you to see whether they are members of the family. The main thing which is required to be seen is whether they have got a right in the property because rights are to be settled when you pass a consent decree. I am not mistaken you want to clarify this fact whether a consent decree should be granted Order 12 Rule 6 should be applied only where the parties are the family members. No, this can be applied qua a stranger also depending upon the facts and circumstances of the case. Precedent has to be applied keeping in view the facts and circumstances of a case in hand. That is why you probably notice in all most all judgments of High Court as well as the Supreme Court, there will always be a line in view of the facts and circumstances of the present case depending on the peculiar facts and circumstances of the case so that the idea is that nobody should be bound handfoot a mouth to give a judgment in the circumstance which is even different. So, eventually the discretion is yours and how do you

exercise discretion? If you blindly apply that law in every case you will have to decree of suit for redemption saying that since the other party was in possession if the period of limitation you can go by law. So, this is a very judgment given in context to the peculiar circumstances there so in each case apply the principles of statutory law, apply the principles of the Act as we have just have discussed and see whether the period of limitation in that case will be applicable or not. How can we close a rise to the Statute which provides a limitation ? Look the law originates from the Statute from the common law or from the judge made law, so you have to apply your mind to the facts of the particular case applying the dictum of judge, the statutory provisions and of course the common sense. This would reflect the caliber of the judge who had entertained the suit throughout without looking into the facts and circumstances.

Thank you very much.

SPEECH DELIVERED BY MR.B.S.MEHNDIRATTA, Presiding Officer, State Transport Appellate Tribunal (District and Sessions Judge, Pb.)

Hon'ble Mr.Justice K.S .Garewal, Registrar General, District and Sessions Judge (Vigilance) Haryana and my dear friends, the topics on which I am to address you are Juvenile Justice, Negotiable Instruments Act and Gender justice. Keeping in view the constraint of time, I will briefly speak on each and every subject. Juvenile Justice – the Children are the real wealth and future of a nation. Their condition, health and care is the strength of a nation. They are our future and they are also the future of a better world. In 1924 the safe the Children fund International Union promulgated certain rights of the child popularly known as declaration of Geneva. In the same year, the League of nations also made an attempt to

fortify the basic conditions to which the children were entitled to in the Society. On November 20, 1959 declaration on the rights of the child was adopted by the United Nations to make the States obligation towards children binding. In the year 1966 some covenants were adopted. In the year 1989, United Nations convention on rights of child was held in its certain substantive Articles were adopted regarding the rights of the children. The general assembly of the United nations also proclaimed the year 1979 as International year of the child. Our own Constitution lays down a number of guidelines and directions for welfare of the children. The Indian Parliament has from time to time enacted a number of legislations in this regard. Prior to that also under the British Rule, a number of Acts were framed to guard against child labour. However the topic of our discussion here is Juvenile Justice that is how to deal with the crime committed by a Juvenile. The first legislation on the point was the Juvenile Justice Act, 1986. It

has now been replaced by the Juvenile Justice Care and Protection of Children Act, 2000. The salient features and distinction between the two legislations in brief are as under:

"Earlier in the 1986 Act under Section 2-H, a boy below the age of 16 years and a girl below the age of 18 years were termed as Juveniles. Under the new Act as per the definition given under section 2-K every child whether male or female is termed as a Juvenile if he is under the age of 18 years." The crimes committed by the Juvenile under the old Act were dealt with by a Juvenile Court in its place now a Juvenile Board has been replaced. Under Section 4(2) of the new Act the Board consists of three members i.e a metropolitan Magistrate or a Magistrate Ist Class and two social workers one member of whom must be a woman. As per section 4(3) the Magistrate should have special knowledge or training in child psychology or child welfare and the social worker member should have been actively involved in

Health, Education or welfare activities pertaining to children for a minimum period of seven years. Earlier the Juvenile being dealt with by the Juvenile Court was termed as delinquent Juvenile. Now he is termed as Juvenile in conflict with law. The object of segregating the trial of a Juvenile from that of other criminals is to save him from trauma and atmosphere of ordinary trials and trial Courts and to prevent his company from adult and hardened criminals. Ordinarily he is to be granted bail even in heinous crimes such as murder and rape unless it is apprehended that release on bail would expose him to the Company of non-criminals or to moral, physical or psychological danger or would defeat the ends of justice. The provision of bail is contained in Section 12 of the new Act. As per the law laid down in 'Ramesh Vs. State of Haryana' latest case law 2005 (1)Recent Criminal Reports,65. Bail to a Juvenile cannot be refused except in the case of exceptional circumstances enumerated in Section 12. The Hon'ble Rajasthan High Court in

2004(3) Recent Criminal Reports, 551 refused bail to a Juvenile arrested for an offence under the Narcotic Drugs and Psychotropic Substances Act when it was apprehended that he may join the gang of such criminals and may repeat the offence, if released on bail. For the day to day working of the Juvenile Board no chorum is prescribed but at the time of final decision at least two members must be present, majority opinion is to prevail in case of conflict of opinion and when there is no majority then the opinion of the Principal Magistrate is to prevail. The Magistrate member of the Board is called Principal Magistrate. In this connection you may refer to Section 5 of the Act. Section 6(1) of the Act says that only the Board and not the ordinary Court can deal with the crimes committed by the Juvenile. Under Section 7 a Juvenile produced before a Magistrate not empowered to exercise the powers of a Board must forward him to the Board and the Board is then to enquire into the allegation of commission of offence against him.

Section 49 requires the Board to determine the age of the persons supposed to be a Juvenile immediately after he is brought before it. For this purpose evidence can also be collected. The age determined by the Board is to be deemed to be the true age of the person concerned and the order determining the age is not invalidated by the subsequent proof that the person was not a Juvenile. Certain case law on the point I may tell you in 'Partap Singh Vs. State of Jharkhand 2005 (1) Recent Criminal Reports 836 the Apex Court held that reckoning date for determination of the age is the commission of the offence and not the date of production of the accused before the Board or Court. So date of commission of offence is the relevant date. If the Juvenile ceases to be a Juvenile before conclusion of the enquiry must be completed assuming that he continues to be a Juvenile even if he becomes major during the course of enquiry the proceedings are to continue in the Juvenile Court. An accused not a Juvenile

under the 1986 Act would come within the definition of 2000 Act also provided he was facing trial and was below 18 years of age on Ist April,2001 when the 2000 Act was enforced. In Tinku alias Gopal Vs. State of U.P. 2005 (2) Recent Criminal Reports 369 Allahabad High Court has held about the criteria for determination of valuation of evidence where the medical evidence says that the age of the Juvenile was about 17 years and below 20 years this you must be dealing in some other cases also. At the time of incident a margin of two years has to be given to the accused and thus he can be said to be even of 15 years of age and is to be treated as a Juvenile. In Shashi Kant's Case 2005(1) Recent Criminal Reports 436 the Hon'ble Madhya Pradesh High Court has held that where the accused produces an over written or manipulated evidence regarding date of birth from the school record and declines the ossification test he cannot be held to be a Juvenile. You can apply this authority to other cases where this medical evidence is

required. Balkar Singh Vs.State of Punjab 2005 (1) Recent Criminal Reports 577 our own Hon'ble High Court has held that school record is the next best evidence of age in the absence of any entry in the office of Registrar (Births and Deaths) where there is no evidence to show that the record is not genuine in the absence of any other material on the point it should be accepted in proof of date of birth. 2004 Recent Criminal Reports 95 Surinder Vs. State of Haryana our own Hon'ble High Court has held that entries about age in the register of Co-operative Society and in the ration card made on the basis of age given by the accused and his father and which are relevant pieces of evidence should be relied upon. In Sanjeev Vs. State of U.P. 2004 (4) Recent Criminal Reports 146 the Hon'ble Allahabad High Court has held that where no Juvenile Board has been constituted the Trial Court can determine the age. It also lays down that school leaving certificate should be given precedence over the medical record. In Munshi Khan

Vs. State of Rajasthan 2004 (4) Recent Criminal Reports 721 , the Hon'ble Rajasthan High Court has held that burden of proving the age is not on the juvenile, it is the duty of the Court to determine his age after holding an enquiry. The plea that he is a juvenile can be taken by the person concerned at any time even in appeal. For the transit custody of the juvenile, social juvenile police unit and designated police officers have been nominated and they are report about the arrest immediately to the Board. Under Section 13 the Station House Officer or the Special Juvenile police Unit, they are duty bound to inform the parent or guardian of the juvenile about his arrest and about the Board or Court before him he is to be produced. Arrest is also to be reported to the Probation Officer. You must be knowing that proceedings against a juvenile are not called a trial but these are called an enquiry. These are not termed as a trial. The enquiry has to be completed within four months of commencement under Section 14 and this period can

be extended only by recording special reasons after a juvenile is found guilty by the Board the manner in which he is to be dealt with by the Board gives several options to the Board. The first option is that he can be let of after giving advice or admonition and counselling to him and his parents. Secondly he can be directed to join in group counselling and similar activities. He can be asked to perform community service if he is above the age of 14 years and is earning he or his parents can be directed to pay a fine. He can be released on probation of good conduct on surety bonds of parents, guardian or any other fit person. After release on probation, he can be placed under the care of a fit person for a period not beyond three years. He can be directed to be sent to a special home up to a period of three years if between 17 and 18 years of age and up to to the age of 18 years in any other case. Period of stay however can be reduced. Lastly he can be placed under the supervision of a Probation officer for a period

extended up to 3 years and in that period in case he is reported not to be of a good behaviour then he can be sent to special Home. One important thing to be noted is that he cannot be sentenced to death or life imprisonment or imprisonment in default of fine or in default of furnishing surety bonds. Under Chapter 8 of the Criminal Procedure Code, you must be knowing that persons can be bound for peace and good behaviour. These proceedings cannot be taken against a juvenile. As per Section 19, disqualification attached to a conviction is not to be attached to a juvenile when he is found guilty and all papers concerned being him are to be removed by the Board from the records under certain conditions under Section 19. If the proceedings against the juvenile are pending from a Court other than the Board then on the commencement of the Act then that Court is to conclude the proceedings find him guilty and the post conviction proceedings record is to be sent to the Court concerned for proceedings in accordance with Section 15. Under

Section 47 because these are interim proceedings which are also important the attendance of a juvenile can be dispensed with during the course of enquiry if not but essential for that purpose. As per Section 59 he can be released for the purpose of his education and training for some useful trade or calling. He can also be temporarily released for special occasions like examination, marriage or death of a relation etc. In no case the juvenile is to be kept in a ordinary jail. He is to be kept in a Observation Home or special Home as provided by Section 8 and 9 of the Act. Section 18 prohibits joint trial of the juvenile with other criminals that you must be knowing many officials. It is also to be noted that proceedings of the juvenile must be conducted not in the ordinary Court room but at some other place to avoid the awe and fear of ordinary trials in him because of his tender mind and impressionable mind. So that is all about Juvenile Justice Act. Now I will take up the topic of Negotiable Instruments Act for our purpose in

our Courts it is not but necessary for us to refer to all the provisions of the Negotiable Instruments Act, 1881. We are concerned mainly with Chapter 17 of the Act consisting of Sections 138 to 147 which deal with the penalty and procedure of trial. The object of bringing Section 138 of the Act on the Statute Book is to generate faith in the ethic AC of banking operations and credibility in transacting business on Negotiable Instruments. Even though parallel civil remedy of recovery of money due on a cheque is available yet the purpose of Section 138 is to provide deterrent to prevent dishonesty on the part of its drawer so that it does not issue a cheque without sufficient funds in his account maintained by him in a bank and induce the payee or holder in due course to act upon it. As per definition given in Section 6 of the Act, a cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. With the advent of electronic Age, the definition of a cheque now includes the

electronic image of a truncated cheque and a cheque in the electronic form. I think you must read of that. When a cheque is returned by the bank uncashed with endorsements such as referred to drawer, exceed arrangement, no instructions and other such endorsements, it amounts to its dishonour within the meaning of Section 138 of the Act. There are certain judicial pronouncements in which some other instances have also been held to come within the mischief of this Section 138. Payment stopped by drawer even where sufficient funds are available in the account even if the funds are available invites the mischief of Section 138. 2005 (3) latest judgment, Recent Criminal Reports 931. One specific instance of cheating is cheque issued on closed account. The Supreme Court has held that it also invites the mischief of Section 138. 2004 Recent Criminal Reports 466. You are aware of the conditions under which we can proceed under Section 138, the payee must present the cheque to the bank concerned within 6 months

from the date of drawal or within the period of its validity or whichever is earlier. In case the cheque is received dishonoured the payee or holder in due course of the cheque must issue a notice in writing to the drawer of the cheque within 30 days of the receipt of information of dishonoured from the bank concerned. The third condition is that drawer should fail to make payment of the amount of the cheque to the payee or the holder in due course of cheque within 15 days of receipt of the notice. I could now refer to certain case law regarding notice. Refusal amounts to receipt of notice complaint can be filed within one month of the date of refusal and not one month of the date of receipt of refused by the complaint. 2005 (3) Allahabad 411 all the rulings are from Recent Criminal Reports. Endorsement of refusal by postman is presumed to be correct unless proved otherwise. Registered cover received back with postal endorsement not found informed is not legal defect in the notice, it is deemed to be served.

2005 (3) RCR Punjab and Haryana High Court 584. Endorsement such as not met, they say that only the issue of notice is necessary personal service of the notice is not necessary. Punjab & Haryana 385. There is not prescribed form of notice. It should contain demand in clear terms. Delhi 304 where the addressee managed to get the notice returned with postal remarks “not available in the house, house locked and shop closed respectively” notice must be deemed to be served. **Supreme Court 2004 (4) RCR 933,** where the first notice is not served but the second one is served cause of action would arise from service of second notice. 2004 (4) 306 AP, notice is not valid if demand is more or less than the amount of the cheque. It must equal the amount of the cheque. 177 AP 2004 (4), notice is also not valid if some amount of cheque has been paid before its presentation or before its notice and still cheque is presented before its presentation to the Bank and still cheque is presented to the bank for whole of its amount. You see that amount

should have been deducted. Notice received back with report of house locked complaint can prove that accused had managed to get an incorrect postal endorsement. In such a case, notice would be deemed to be served. SC 933 2004 (4). Section 139 of the Act lays down that unless contrary is proved it shall be presumed, it raises presumption of that cheque has been issued for the discharge of debt or liability involved. Therefore, onus is on the drawer of the cheque to prove that the cheque was not issued for the discharge in whole or in part of any debt or other liability. Section 140 says that it is not open to the drawer of the cheque to take a plea in defence that at the time of issuance of the cheque he had no reason to believe that it might be dishonored on being present4ed for the reasons mentioned in Section 138. Section 141 contains provisions regarding liability of the company. I would tell some case law on the point. The Director of the company who did not sign the cheque, cannot be prosecuted,

unless he was incharge and responsible to the company for conduct of its business. This provision is contained in many Acts. 2005 (3)RCR 763 AP. Prosecution of directors of company only is not illegal if company itself has not been prosecuted. The plea cannot be taken because the company has not been prosecuted we can also not be prosecuted, only the Directors can be prosecuted. AP 375 2004 (4). Under Section 142 when a cheque is dishonored cognizance of the offence can be taken by the competent Court only upon a written complaint by the payee or holder in due course of the cheque. Such complaint must be filed within one month of the date on which cause of action arises i.e. When on receipt of notice the drawer fails to make payment of the amount of cheque within 15 days. The complaint can thus be filed after the expiry of the period of 15 days but within 30 days of the date of such enquiry. However, the cognizance can be taken even after the aforesaid period if the aggrieved person shows

sufficient cause for not making earlier. There is some case law on the point whether attorney can file complaint. This is 2003 (3) RCR 37 MP, 2005 (3)RCR 693 Madras. Complaint can even be filed by a pleader. 2005 (3) RCR 483 Rajasthan, wherein complainant dies during the pendency of the complaint and they say that complaint was filed by an attorney. The legal heirs and not attorney of the deceased can make an application for continuation of the proceedings 2004 (4) RCR 100 SC and there is also on the point 2004 (4) RCR 440 Punjab and Haryana. In some cases sometimes the complaint is filed by a person who is not authorised to file it due to inadvertence or hurry. They say that in such a case company can rectify the defect by sending authorised person to the court. 2004 RCR 318 AP. You must be knowing that the complaint can be tried by a metropolitan Magistrate or the Magistrate of 1st Class. This is an important section 143, all offences under the Act are to be tried summarily as per the procedure

laid down in Section 262 to 265 of the Code of Criminal Procedure. In summary trial a Magistrate can pass a sentence of imprisonment of one year and can impose fine up to Rs.5000/- that you must be knowing. However, if at any stage before pronouncement of judgment he thinks that in the circumstances of the case imprisonment up to one year would be insufficient or that it is otherwise not desirable to try the case summarily after giving an opportunity of hearing to the parties, the Magistrate can pass an order in that regard and that the case should be tried as per the normal procedure. But if some witnesses have been examined earlier those must be recalled. Even though it is not being followed Section 143 not for your fault. Section 143(2) says that trial must be continued day-to-day and if the complaint is to be adjourned beyond the following day reasons for so doing must be recorded and under Section 143(3) the trial must be concluded within six months but six years of passing from the date of institution of the

complaint. So that is the law. The Banks slip or memo the noting that the cheque has been dishonoured raises the presumption that it has been dissolved. The other party must rebut it. The accused must rebut it and one last thing you know that the offences under the Act are compoundable as per the procedure of Section 147. Sometimes the number of dishonoured cheques is more than one. The Law is that joint trial of more than one dishonoured cheques issued by the same accused is valid. This is Kerala 2004 (4) RCR 452. Of course withihn a limited period not more than one or two years. There is one other important ruling which may be helpful to you in other cases also someone cases. Earlier in this case K.N. Methew vs. State of Kerala, the law laid down by the Supreme Court law must be knowing many of you that on an application to the Magistrate, he could recall his summoning order and discharge the accused. But now two separate decision of Supreme Court three Bench decision they have held overruled that ruling and

say that the Magistrate cannot recall the summoning order. He must proceed with in accordance with law if the other party feels aggrieved he must approach the Hon'ble High Court under Section 482 of the Cr.P.C. The rulings are Adalat Parsad vs. Roop Lal Jindal 2004(4) RCR 1 and 2004 (4) RCR 349 both of Supreme Court. So this is all about Negotiable Instruments Act. My last topic is gender justice which is more theoretical than practical, I would read it. I believe in it practical aspect is I don't say because some of the questions involved in it are that only the Courts cannot solve them. I will read though in general terms, the term gender justice means that there should be equality in every sphere between male and female humans yet in the Indian context, the term means justice and dignified living for our women folk. Therefore, the subject of this topic is the condition of women in India and what steps have been taken by the Government or Society? Daropati, she was tried to be disropped but was saved by Krishan Bhagwan.

Earlier she was confined to the four corners of her house alone with the advance of civilization and availability of education facilities. The women has now come into the open. Except for the Muslim women the wearing of veil other woman is not a thing of the past there is now much interaction between men and women of different categories in the society especially in the work sphere that has further exposed women especially the working women to sexual exploitation and lustful advances by the male. Before the enactment of our Constitution, the concept of equality between male and female was more or less unknown to the society. Preamble of our Constitution does however, declare its aim of securing for its citizen including women justice social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and opportunity etc. In practice however, our society is miles away from securing this above aim of founding fathers of the Constitution. That is why time and again legislation has been adapted

for upliftment of this important and inseparable section of the Society. Guru Nanak Dev was the first seer to speak on behalf of women folk. He declared why should women who gives birth to Kings, Emperors, Rulers, administrators, saints, partisans and Judges and men and women be condemned insulted and deliberated. We are gone through women without marriage to a woman, the life of a male is incomplete. Woman is the trusted confident of a man. Without woman the circle of life and very living is incomplete and useless. When his woman dies the husband starts search for another female, the perfect bond of a male is only with a female. If there is no female there is no progony, she is first a daughter, then a sister, then a wife and then herself a mother. It is an irony of fate that despite such indispensability for the man the woman is still even worse than a play thing for him. Realising this mistreatment of the women folk United Nations Organisations and the world nation individually have been framing rules and

regulations and enactments to ameliorate her lot and to provide her the place of honour and dignity to which she is entitled in the Society. In Article 11 of the convention on the elimination of all forms of discrimination against women 1979 and Beijing Declaration, it was recommended that to promote equality in employment it should be ensured that by the member States of U.N.O. that women were not subjected to gender specific violence such as sexual harassment in the work place. Sexual harassment was defined to include such unwelcome sexually determined behaviour as physical context and advances sexually coloured remarks showing pornography and sexual demands whether by words or actions. It was observed that such conduct can be humiliating and might constitute health and safety problem it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment including recruiting or promotion or when it creates a hostile working environment. It

was recommended that to avoid it effective complaints, procedures and remedies including compensation should be provided. The International covenant on economic, social and culture rights contain several provisions important for women. Article 7 thereof recognises the right of women to fair conditions of work and directs that women shall not be subjected to sexual harassment at the place of work which may be shared the working environment. The Apex Court has numerous cases stressed that core principles embodied in the international conventions and instruments must be followed and implemented by the Government of India. In landmark judgment in Vishakha Vs. State of Rajasthan AIR 1997 SC 3011 it was held that meaning and content of the fundamental rights warranted in the Constitution of India are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or reduce independence of judiciary forms a part of Constitutional scheme. The

International convention and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency in between them. It was held that it is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law where there is no inconsistency between them and there is a void in the domestic law. In this ruling, the High Court laid down declared guidelines and declared this a law under Article 141 of the Constitution of India. That the no enacted law on the subject of sexual harassment in India, the Apex Court in the aforesaid case law laid down certain guidelines and norms for due observance at work place of other institutions until legislation was enacted. It was further emphasised that this would be treated as law declared by the Apex Court under Article 141 of the Constitution. The gist of the guidelines is the same as in Article 11 of the 1979 convention I have already read just now. In addition the

employer was directed by the Supreme Court to initiate criminal proceedings under the law when offending conduct of the male colleague amounted to a criminal offence. He was directed to take disciplinary action under the Rules against the offending employee and to create a complaint mechanism and a complaint committee to hear and decide the complaints of sexual harassment. Apart from it in India various legislations have been enacted to impart gender justice to save the female from male chauvinism. Section 498 of the IPC was inserted to punish her husband and his relation for any mental or physical cruelty caused to her. All of you are dealing with that. Section 304 of the IPC provides for deterrent punishment for dowry death of a bride. Section 376 of the IPC contains provision for punishment of a person guilty of committing rape. Gang rape is punishable under Section 376 (G) of the IPC. Section 354 IPC makes culpable the acts of outraging modesty of a female. Section 125 of the Cr.P.C. ensures for a wife

including a divorcee the right to maintenance. Section 24 of the Hindu Marriage Act enables her to seek maintenance as pendente lite in matrimonial cases. Hindu Adoption and Maintenace Act 1956 ensures for a wife permanent liminie and maintenance till life from her errant husband. Certain grounds for divorce in Section 13 of the Hindu Marriage Act, 1955 are available only to the wife and not to the husband. Muslim women too have been granted the right of maintenance by the enactment of Muslim Women Protection of Rights on Divorce Act, 1986. Laterally the protection of women from domestic Violence Act, 2005 has been enacted. There are some other provisions in the IPC also which punish some other offences committed against women. This latest Act the sailent features are:

"Any harm injury to health, safety, life, limb or well being or any other act or threatening or coercion etc. by any adult member of the family constitutes domestic violence. Any woman, who is or

has been a domestic or family relationship, if she is subjected to any act of domestic violence can complain, aggrieved or effected woman can complaint to the concerned protection officer, police officer, service provider or Magistrate.” These terms are defined in the Act. Aggrieved woman has the right to be informed about the available services and free legal services from the Protection Officer etc. Shelter home and medical facilities can be provided to her. Aggrieved compensation is also available to her. Proceedings of the complaint are to be held in camera. Every aggrieved woman has a right to reside in shared household. Protection order by Magistrate can be given in her favour. He can also be provided monetary relief to meet expenses or losses. The offence under the Act invites imprisonment up to one year or a fine up to Rs.20,000/- or both for breach of protection order by the opposite party. That are its sailent features. On the civil side the latest instance of a step towards removing

gender bias against Hindu women is the passing of the Hindu Succession Act, 2005 by the Indian Parliament. By this amending Act various Sections of the Hindu Succession Act, 1956 have been amended granting property rights to the Hindu women. Section 6 of the Main Act has been substituted to make a Hindu daughter as a co-parcener just like a male. In a Joint Hindu Family governed by the Mitakshra Law as she has been given the same rights as she would having the Joint Hindu Family property she being a son. In the Schedule to the principal Act under the sub heading Clause 1, certain other heirs of the deceased female have been included to remove this gender bias. However, the aforesaid another legislation now discussed here are still not enough to improve the law of India at social and religious levels also much has to be done to educate the mind of the male and to inculcate to him a feeling of respect, love, care and equality for the other sex by reminding him that the one whom his eyes' with lust is none but

like his own daughter, sister or mother. With the change of the age the media especially the visuals on T.V. Channels displaying vulgar and naked scenes are also mostly responsible. Obscene offensive scenes arouse baser feeling in the male and then make them loose their entire sense of proportion. It is suggested that women especially career women like actresses should do some introspection and just for the sake of money should not indulge in the exhibition of their bodies. They should realise that such acts on their parts are causing much damage to the honour and dignity of their own fellow women. The women body should come forward and lay down moral and dress codes for their own will. Males too are their sons, brothers and father and while exposing themselves, they should keep this important thing in mind.

Thank you.

SPEECH DELIVERED BY HON'BLE MR.JUSTICE S.S.NIJJAR

Good Morning everybody. First of all I would like to share with you my thought about coming here today and specially auspicious and Justice Garewal must have thought about it very well because today is Bapu Ji's Birthday and he has got assault to gather here to discuss the ways and means by which we are going to take justice to the litigants. The topics what have been assigned to me are both of tremendous importance and I shall try in the very limited period I have because in 45 minutes I can only touch the surface. I can't do much more that. We gave ourselves to the Constitution. In the Preamble of the Constitution I should like to writ you if it is not too boring,it has made certain promises to ourselves when we

gave ourselves the Constitution. We said **“We the people of India have been solemnly resolved constitute India into a sovereign, socialist, secular, democratic republic and secure to all citizens.”** Now this is very important. First and foremost comes justice. Justice, what kind of justice. Justice social, economic and political. The next thing that we promised ourselves was a liberty of thought, expression, belief, and faith. And next equality of status and of opportunity and last but not least fraternity in other words unity assuring the dignity of individual and unity and integrity of the nation. We gave ourselves the Constitution on 26th of November, 1949. Before reaching this watershed we had gone through turmoil for two hundred years. But surprisingly, having given ourselves such a beautiful document and with a very profound Preamble we all forget about it. What happened post 1947 is that the rich became richer, poor became poorer, there was casteism,

there was communalism. Whatever we had promised ourselves we went exactly opposite the direction. We declared ourselves socialist, republic, we had on the one hand huge industrialist and on the other hand we had bonded labourers, illiteracy, lack of food, most of that still continue. We are concerned with only one brunch of Governors and that is delivery of justice. Now as judges many view now must have put in large number of years and all of you are dealing with a litigant that comes with a cause, he comes and complains to you I have been injured by so and so injury may be physical may be mental or may be any kind of injury could be economic could be social so he will come and present his case before you through a lawyer. You will have some remedies available to you by which you can perhaps make him feel little better or make him feel that he has managed to get some justice or compensation for the injury he has suffered. But all of you know that all cases have to commence at the lowest run of another and they have to reach

the highest court before finality so what does that mean? It means that individual or a group who has money power at his disposal he can drag on the litigation. He can drag it on for years. That it is a traditional way of doing justice i.e. We look at the litigant we ask him what is the injury caused to you and what we can do for you. But as time advanced Judges enlighten ones at least into realise that this litigation is only part of the problem that is facing in society, major problems are at macro level not at micro level. In other words the injury and insult which is inflicted on an individual can also be looked at from a wider perspective that we could see as to why it is happening, who is responsible for it and they started asking questions. In America this public interest litigation system is well known, it is called common cause litigation and it has now been called as Pro bono Publico. Here of course in our Supreme Court the judges reduced it to Pro Bono but it is Pro Bono Publico. It means a cause espoused

in the interest of the general public. Damages were sought not for any particular individual, they sought for the whole community and in America they have done human service in cleaning of the rivers in providing pollution free environment all through is common cause litigation. Although we have the Preamble with this we had the ideas with us but India did not wake up to this concept which is called public interest litigation till quite some time later. It develops through the Constitution, we amended the Constitution some time in 1976 and we introduced into Article 59-A. I just read it. It says " **equal justice and free legal aid. How many of you are aware of this Provision that every individual where there is a legal aid system in existence or not, is entitled to legal aid."** Every poor litigant when he comes before you whether it is in public interest, private interest or whatever interest you can insist on aid. You must provide this man with legal aid. I shall read the Article

and not making apt myself it is provided in the Constitution. The State shall take steps to organise, the State shall secure that the operation of the legal system promotes justice on the basis of equal opportunity and shall in particular provide legal aid by suitable legislation or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. This one Article with one stroke opens up the doors of our Courts to all the so called disadvantaged people, people who did not have money, people who did not have the literacy, people who were not aware of their rights. This was necessary to preserve a civilized way of life. It was put in very telling words by Justice Brenon of the Supreme Court of U.S.A.. He said nothing distresses a person more when he feels that injustice has been done. It is for this that public interest litigation system was developed. He says nothing wrankles more in the human heart than a

brooding sense of injustice. Unless illness we can put up with but injustice makes us want to pull things down . In other words the huge revolutions of the countries necessarily just come hunger and poverty and lack of opportunity. Till that you feel as human being that you have been treated less than a human being. And when you put this together you find out that this feeling of injustice for that you don't need to be a so called civilized society, civilized nation or civilized anything. I have brought for you a judgment of the Supreme Court where a hotel was going to be built in middle of Calcutta and some public spirited persons filed writ petitions saying that this would destroy the park in which the hotel is going to be built is in AIR 1987 SC 1109. If anybody is interested in reading it I am not going to read this judgment to you for what I found interest in it was as I said earlier on that sense of injustice is not felt only by the educated or the so called cultured. It is felt by

everybody, it is felt by animals as well as human beings. In this judgment is a Court given by Justice Chennapa Reddy J. who was one of the pioneers of the public interest litigation. He starts of his judgment with a Court from Indian Chief in America. He writes a letter to the American President. The American President had made a request to the Red Indian that we want to take over the American land and he wrote that we will consider your offer to buy your land. If we decide to accept I will make one condition . He says the white man must read the beasts of this land as his brothers. He goes on to given a very long lecture. I read it all but then I will be here with only 25 minutes. I will be reading this only and my time will be up. But I request you all to please read this speech. He goes on to say what is a man without the beast. If all the beasts were gone man would die from great loneliness of spirit now he says there is uneducated and unlettered man but he is also feeling that injustice is going to

be done and he gives long lecture to so called civilized and cultured persons. So civilization and culture do not necessarily bring along with it a sense of justice. In fact some time it makes those people even more ruthless. At one time he was asked to define cultured people and he put it very rudely what I am going to state and tell you so that we can keep our feet on ground. He said cultured people is the glittering scum which rises to the surface of the deep river of production. Let us not become that glittering scum let us get to grips with the problems that people are facing. Now realising this the English Judges who are usually traditionalist even they started developing the theory of judicial review of administrative action or executive action. It was no longer now being limited only that we will look into the executive action only if you are injured. And first such judgment was given by Lord Diplok reported in Weekly Law Reports. So I don't think any of you will have axis to any of this. But the individual

citation is 1981 (2) Weekly Law Reports – 722. But in this country we had no shortage of crusading judges. They have crusaded because they have realised that even after 20-30 years of independence we are still nowhere. I will name some of them, Justice V.R.Krishna Ayyar, P.M.Bhagwati, B.A.Desai, Chinnapa Reddy and our very known Justice Kuldeep Singh. We shall have more time but I can only skin through. This is what happened when you have you know enemies in the guise of friends. They give you such loose topics to describe in 10 minutes and now I understand what would you mean by this you know phrase. If I have more friends like you I have no need for any enemies. So, if we put in such a spot I have got so much to say but I do not know where to put an end and where to start, where to go. The judgments here I have got all sort of material but I think we will need at least much longer period than what he has allotted to me. Now these Judges realised that the plight of a poor in this country is really really bad, so they go on

to a small article in the Constitution. It is only two lines but it has done so much to transform our society. The article which I should read, it is Article 21 and it says “protection of life and personal liberty”. No person shall be deprived of his life or personal liberty except according to procedure established by law. Initially this Article 21 was interrupted in a very very narrow manner. It meant only that they will protect the state was required to protect only the life and limb of the individual. In other words, you could move for Habeas Corpus if there is police torture, police brutality, unlawful detention these kind of things. One of the first cases on the topic is **Janardhan Reddy Vs. State of Haryana AIR 1951 Supreme Court 217 .** Now this case pertains to the interpretation of Article 22 and 19. That said that no person who is arrested shall be detained in custody without being informed as soon as may be of the grounds for such arrest nor shall he be denied the right to consult and to be defended by a legal

practitioner of his choice. But as he said earlier, Judges at that stage were traditional minded. They were still under the influence of the mother country, the legal system had come from England, the attitudes had come from England. So, therefore, so they interpreted this to mean that lawyer he must arrange for himself, only when he will be given an opportunity to have a lawyer of his choice. He can pick anybody else. Then along came a great Judge Krishna I.I. J. He pronounced in a very famous case, which is popularly known as the Horoscope case 1978(3) SCC 544. In order to widen the scope of Article 21, widen the scope of meaning of life, he took aid of Article 14, 22(1) and 39A and he said that the State is obliged to provide legal aid. State must not only give a choice to the individual to have a lawyer of his choice. State must provide a lawyer and that lawyer must be of his choice and for this he says we will not hear you, the State we will not hear you say, that we don't have the money, we don't have the funds, we

will not hear you, say that. From where then we developed an ultimately in Hussain Aara Khatun's case P.N.Bhagwati 1981 SCC 98. This right was actually lifted upto a fundamental right. A Constitutional right initially before that only a legal right but by 1980 we have entered an era, where we said that look whatever may be the causes but we are not going to let the poor, sent to the gallops without a proper defence. This was promptly followed by a Khatri's case 1981 SCC 627 where again it was reiterated that the financial condition of the State is totally irrelevant. You must put in place a legal aid system not only that they went further and this is something which all of you must remember that it is the duty of a Judge. This is said so by the Supreme Court in Khatri's case. It is duty of a Judge to inform every accused of all his rights. In England, they have much further gone because as soon as the arrest police must tell the accused persons of his rights but here since without expect you see most

violators of personal liberties or civil liberties have police then it has been put on the Judges to make sure that the individual knows what his rights are and how he is going to defend himself. In one particular case its **Sukhdas** Vs. **Union Territory of Arunachal Pradesh** 1986(2) SCC 401, Supreme Court declared the trial void. There is no trial why because a Judge did not tell the accused of his rights to have. (1) Legal Aid, lawyer of his choice so that was so far as I mean I could go on, because still in Angoori and all others, I am not able to touch on all that what I but there is a lot to be read under Article 21. Now, this was so far as the criminal law was concerned but then there was so many atrocities being committed all over. Then again we took aid of Article 21. Unless in the rarest of rare cases that was the extension of right to life. Then ultimately, we have now come to a definition, where says “right to life under Article 21 means anything which will give a meaning

to life, which includes health, care, education, clean environment, right to food.” All these have been taken care of by numerous judgments of the Supreme Court and again if I start then I will carry on and on but the important thing is that whenever you find that there is a breach of any of these fundamental rights, which I have talked to, don't at all hesitate. Don't hesitate under any circumstances in granting a relief. High Court will pay you for it. You have to rise above these limitations of locus standi. The locus standi is very nice, is very good for western society where everybody has money or have a well-defined legal aid system. But we have to go along and develop things ourselves. As I said the expanse of Article 21 has gone from one extreme to another, I am looking at the time also because I had brought for you two or three judgments of this Court. One in which we have declined to interfere, one in which we have interferred. I wanted to go through if possible a Full Bench decision of this Court in

Anil Sabharwal Vs. State of Haryana reported in 1997 Volume-II PLR 7 . In this judgment Justice Singhvi has traced virtually all the history of public interest litigation you need not read the judgment but please read the preface. It will give you an idea about what is public interest litigation. Where can you help the victim. In what circumstances can you help the victim. This was a case which pertains to allotment of discretionary quota plots by HUDA to all the very high officials and it was set aside and was ultimately upheld by the Supreme Court also. Another judgment which sets out these very parameters is a Division bench judgment in **2003 Volume II ILR 476.** I am giving you reference of this judgment because I have private interest because I wrote this judgment. So, I am not giving it to you in public interest, I am giving it to you in private interest. But here also, you will find that I have summed up at the beginning you need to

read the rest of the judgment but you can read the preface which describes as to how the public interest litigation commenced and how it has culminated and here ultimately we declined to interfere it was a case about shifting of stone crushers in Haryana surrounding Faridabad. We declined to interfere because we found that the public interest litigation in fact was not public interest litigation, it was private interest litigation. That was the reason why I said that the reasons why I am citing the judgment is because of private interest and not because of public interest. But you have to become aware and learn how to distinguish between a bonafide and a genuine public interest litigant and public interest disguise, private interest disguised under public interest and this you will face more and more because with liberalisation people have setting up all sorts of different kinds of outlets like petrol outlets, you must be dealing with many cases of injunctions. Sometimes they will be genuine,

sometimes they will just be a fight between two groups. You must never permit and obliquely motivated public interest litigation to succeed no matter how attractive may scene but you must always lift the veil and try to find out what is really underneath the litigation which is sought to be brought about in the form of a public interest litigation. Now I could go on and on but it is already 9.40. The other topic which I was asked to speak on was the arrears or some reduction of arrears. I think you will hear enough of that from the other Speakers but here also we have a few myths which need to be exploded. One of the main things which is sort of said for mounting arrears of cases is that the public have all of certain become very litigious minded. Well I have gone through some facts and figures and it is not at all correct, its not sort of litigation was going from 1947 till 1980 likewise and then all of sudden like a quint like that. Not like that. What I have noticed is that there has been a gradual increase

is shortage of Judges, procedural laws are all there but then lawyers have been able to manipulate and manage them. Now so far as that is concerned you are now obviously helped by the amendments which have come in the procedural law 1999 and 2000 and please make liberal use of it. I do not think there is ever going to be any situation where we are going to be able to say that we will have cured this problem of arrears. This just cannot happen. We will not be in 1977 there were 14.15 suits being filed per thousand of the population but this decrease to 12.94 in 1996 but yet there is an increase in the case law and arrears. Population increased from 683 million to 954 million but the increase in the suits were only from 9 million to 12 million. So actually the litigation per capita per thousand has come down and yet arrears are increasing. Arrears are increasing because the Judge case ratio is not matching. At least it is not matching the western society. The National Commission was set up and they recommended that the

Judge case ratio which was at present 10.5 should be raised to 50 per million and we are nowhere near achieving that. So, I will not try to give you a picture that in near future your case law will come down, it is not going to come down. So what we really have to find is we have to find the real solution. And the real solutions are now provided to you under Section 89 of CPC on which I think you are going to get a detailed lecture little later, so I will not say much about that. Its all about alternative dispute redressal, Lok Adalats etc. etc. how even to deal with it. Now it brings me to 9.45, I should say thank you and leave it to open discussion now.

Thank you.

SPEECH DELIVERED BY MR. JAGROOP SINGH, DISTRICT AND SESSIONS JUDGE

Mr. M.S. Sullar, Registrar General, Punjab and Haryana High Court, Mr. M.M.S. Bedi District and Sessions Judge (Vig.) and my friends. I think you have been very much enlightened and there may not be much for me to tell you but even then because the High Court has deputed me to touch service matters then award of interest under Section 34, disposal of misc. applications and writing of ziminie orders. So I will share with you as to how a presiding officer should proceed to deal with these matters. As regards service matters, it is generally seen that a suit for declaration for correction of the date of birth is filed at the end of career and then a request is made for staying the retirement. Normally, under the CSR, it should be filed within two years of joining and subsequently the Government can correct the date of birth if there is some proof, solid proof about it.

The Government can correct the date of birth at any time against the interest of officer. So ordinarily no stay can be granted against the retirement in such cases. Some times, suit for permanent injunction is filed by an employee against his transfer. For that purpose he has to allege malafides against the person, against the authority who is effecting the transfer. If you feel that malafides alleged by him are genuine or have some force then there can be some remote chance of staying the transfer otherwise there can not be any stay, should not be any stay on transfer. We have also seen that a person says comes to the Court that he has been selected, appointment letter has also been issued to him but he is not being appointed to the post and therefore they come for mandatory injunction to allow him to join the service. The appointment of a person to any post is the prerogative of the Government. The Court cannot issue any mandamus requiring any authority of the Government to appoint a particular person to a

particular post. So ordinarily, I am using the word ordinarily intentionally. There may be remote cases one in 1000 where we may be issuing it but we are discussing ordinarily what a Court is caused to do. So ordinarily no mandamus can be issued and the authority on that point is **Hardev Singh and ors. vs. State of Punjab 1995 (4) SLR 274.** In this series, suits are filed by employee seeking promotion, fixation of seniority, payment of arrears and interest thereof. In every case, whenever such suit is filed it has been ordinarily seen that the Presiding Officer does not even go through or does not even write the relevant rules under which the service is governed. Every service under the government is governed by one or the other set of rules which are called service rules concerning a particular service. So at least, the service rules relating to that service should be seen before proceeding further in the case. These are the promotion supposing one asks for promotion. There is a criteria fixed under the rules itself as

to under what of the requirements for allowing the promotions. There may be a specific number of years which has to put in by the Government servant before he can be promoted then there can be that he should get good reports. Some times it is that a 50% of the A.C.Rs should be good or in some Service Rules, there may be a provision just like when PCS Executive Officers are put on the select list for promotion to the IAS that if a person if an officer has outstanding reports, he surpasses adults. So we are to see what are the service rules, what are the requirements under the service rules and then whether the case falls under the Service Rules or not. Even in that case, supposing you feel everything is fine, he should be promoted, even then the promotion order cannot be passed by the Court. We have to ask the Government to consider him for promotion. Ultimately he is to be considered by the Government. If a junior is promoted then you can be having some solid base to order that since the junior has been promoted the

service record is better or at least at par with that officer that in remote cases, we may order that he should be deemed to have been promoted from a particular date but ordinarily it is not. In a Court of law one has to succeed even in service matters on the basis of his legal right. Sometimes a person comes that such and such person has been granted two increments. He has similar been placed. He has been this benefit, I should be given. It cannot be given. Two wrongs never make a right in the Court. Everybody has to succeed on the basis of his legal right. If he has a legal right to get a particular benefit, he would get it. If he does not have a legal right to get a benefit, others may have got it. They may have get it wrongly. It can be withdrawn from that man but that man cannot get it. If he has to prove his legal right before getting anything in the Court. There is one set of relief with respect to pension, gratuity and DCRG. Sometimes two persons can joint together and file the suit praying that this portion should be given

to this man. This portion should given to me and pension should be given to that man. It is not a booty to be divided among the person willing to share that. For granting pension, there are specific rules. It is also provided as to who is entitled to get pension? It is not the choice of person or the contestants that I should get this pension and he should not get the pension even if they come to a compromise that the pension should be granted to this man if he has no right under the rules to get pension it can not be granted to him. Similarly, DCRG, there is specific purpose behind every grant or every relief which has been granted by the Government. So if he is entitled to DCRG, he satisfies the conditions for which or on the satisfaction of which it can be granted to him then he will get it. If he does not satisfy the criteria fixed by the government then he cannot be granted pension or gratuity, DCRG even if two persons joint together one to forego his rights and other to get it. There is one another relief with respect to GPF

, arrears of pay, salary, leave encashment. This is the property of the Government employee. He is entitled to pay during the period, he served the Government. GPF is his own contribution to a specific fund floated by the Government. Similarly, arrears, leave encashment is also his property. These are to be given to the legal heirs. It has been generally noticed that when somebody comes to the Court to claim a relief we don't even go through the CSR as to within what period the paymnt of the GPF is to be made by the Government and thereafter at what rate of interest the amount is to be released. A specific period is mentioned under the CSR under the GPF rules within which the payment should be made and it is also mentioned thereafter what rate of interest, he would be entitled. So we must go through the relevant rules the basic thing is that we must go through the relevant rules whenever a case comes before you with respect to that particular relief. There is another aspect regarding the policy. Rule 12.21

Punjab Police Rules, a constable if he is found not likely to prove an efficient officer he may be discharged by the Supdt. Of Police. It is mentioned in the rule itself that no appeal lies against that order. He has to immediately come to the Court within three years if he wants to challenge it. The modus-operandi adopted by such person is send a representation, wait for three years, after four years, it is dismissed again send reminder then a reply comes that it has been dismissed or rejected then he comes to the Court. There are authorities like 1975 PLJ 293, 1987 PLJ 248 that the suit to claim a relief should be filed when the first cause of action arises to him. Subsequent denials of the cause of action will not extend the period of limitation. In this respect, there is another fallacy that when an order of dismissal or punishment is challenged by an employee he raises certain objections about the merits of the case also and the Courts start writing evidence on merits. We are not the Court of Appeal we

ordinarily should not write any evidence with respect to merits of the case. Supposing regarding absence, it has to be seen by the Enquiry Officer. If you are not satisfied set-aside the order. Ask the Enquiry Officer to proceed further and then find out whether the order is perfectly valid or not, it has been passed validly or not. We are to see whether there is any violation of the rules. Violation of the fundamental rights or any such violation committed by the Enquiry Officer or an Enquiry authority due to which a prejudice has been caused to the delinquent. So ordinarily, evidence on merit is not to be recorded. There is another aspect that when employee comes to the courts, he seeks certain reliefs which are available to him under the Industrial Disputes Act and in many cases the Courts have been allowing the same reliefs which could be allowed by the Industrial Tribunal of the Labour Court. To my knowledge, the authorities are, he has to choose between the two. Either to approach the Labour Court, Industrial

Tribunal or the Civil Court. If he chooses to approach the Civil Court, then the Civil Law will be enforceable. If he approaches the Industrial Tribunal, then Industrial Disputes Act would be applicable. So what we are doing is? He comes to a Civil Court. We grant him those reliefs which can be granted only by the Industrial Tribunal. So, please go through that also. If there is overlapping in the relief that they can also grant the Civil Courts also grant then you can grant it otherwise it should not be.

The next topic would be interest under Section 34. Interest can be granted by the Courts at such rate as it deems reasonable in the case. The reasonable rate of interest has to be assessed in accordance with the various acts supposing Loan Acts, interests act etc. or the agreement between the parties. If the agreement is against public policy then even agreed rate of interest, it is not necessary for the Court to allow agreed rate of interest. It can be reduced also. Future interest

can be allowed upto 6% ordinarily in the other cases can be lesser than that. If the Court decides or the Court determines or deems it proper that it should be at this rate then at that rate. But in case of commercial transactions, it can be upto the agreed rate provided you feel that agreed rate is not exorbitant. The other day, I was deciding an Arbitration Application under section 34, what they do is, the total loan amount interest at the rate of 16% charged thereon and if the person commits any default then on that amount the interest @36% and the argument was that since we have decided ourselves therefore, the Court cannot interfere. Such argument cannot be allowed. If he pays him everything, we are not bothered. But if he comes to the Court, we are to apply the law as it is. In case you don't mention about the interest whether it has been allowed to him or not while passing the decree then it will be presumed that you have disallowed interest to the party and no further suit lies to claim that interest. My topic is too

short that it may be finished early and if we finish it early, I have brought certain other material, General Authorities which may be beneficial to you regarding grant of succession certificates. Succession Certificate is a summary procedure so all the heirs are to be joined the application if anybody does not available, doesn't want to become the applicant then he is to be joined as a Respondent. What we have seen is that while recording evidence, the statements of all the applicants are recorded there is no need. If you are satisfied that the statement of one applicant and some witness is necessary is enough that should be enough. Not necessarily that the statement of every person should be recorded. Succession certificate can be granted only in respect of movable property, no immovable property and then if the succession certificate is claimed on the basis of will then at least one attesting witness of the will should be produced. In the succession certificate specific amount or specific property

has to be mentioned and if it is interest that interest should be mentioned that amount would be payable to that man along with interest. Normally the applications for succession certificate are unnecessarily delayed. A man comes adjourned for six months that should be avoided because money is involved, summary procedure should be on the basis of speedy trial should be there for these applications. Supposing somebody has deposited the money, some money is lying deposited in the Court will the succession certificate be needed to withdraw the amount from the Court. It is not needed at all. The citation is **Chanan Singh Vs. Union of India 1992 CCC 478** application by legal representatives for withdrawal of money lying deposited in the Court, no succession certificate is required. Any doubts about these two aspects. Do we have any authority to direct the SDM to pay the money, then why should he come to the Civil Court that this amount is lying give it to the Court. The habit of the officer in adjourning the

cases for such applications, the lawyers exploited. I have seen applications continuing for months and years and if I say a frivolous application continuing for seven years, we should not be amused of it. For seven years if suit was pending just for the disposal of an application, no proceeding in the case. It should be avoided. Even there may be cases in which an application may not be that way concerned to stop that procedure which should continue in the main suit. Supposing an application for temporary injunction is moved, the case is fixed for witnesses' evidence, you stop evidence. Come up for reply, reply not filed then for arguemnts, arguments, arguments, the case is gone. Nobody will bother that it was fixed for evidence, evidence should be recorded. It has no concern with the temporary injunction. Temporary injunction and evidence can continue together. Additional evidence, he can be asked to produce an additional evidence, he can be asked to produce another evidence. Apart from that evidence, which he seeks

to produce the other evidence should be taken. So keep in mind that the case which is going in a particular way for a particular purpose should continue as far as possible. While allowing ex parte injunction, a notice is generally issued to the defendant for a particular date supposing 3rd of October. Stay granted up to 3rd October, issue notice and if 3rd October incidentally is declared a holiday or the officer proceeds on leave due to any such reason then injunction comes to an end. If we go through Rule 1 of Order 39, it says that the injunction should be enforced until the disposal of the suit or until further orders so on the very first date we can order till further orders and the day you want to dispose of it, you can dispose it of. Then there are applications moved under Order 32 Rule 4 CPC also for impleading the LRs. The Hon'ble High Court has simplified it to a great extent that no need for moving any application at all. The decree passed in the case shall be binding on the legal representatives but what we do is

defendant No.3 has died, come up for application on that date. If he does not file the application to bring legal representatives on file, be filed on such and such date. If he does not file, again adjournment. It is dragging a man the court to file the application, which is not required at all. No application is required ordinarily. So, we should not adjourn the cases for filing the applications. Similarly I may not forget it later, an execution application is supposing filed and notice is issued to the defendant-JD, he comes present. He asks for adjournment for filing objections, what will you do. Adjourn the case, it should not be. There is no provision in the CPC to permit an adjournment, asking him to file objections. It is his choice, you were to proceed if warrant of possession, warrant of possession, if warrant of attachment, warrant of attachment. No adjournment for that purpose. If he files objections, it can proceed. So, it has been noticed that adjournments are granted in the execution for filing objections

even. Now reverting to that Order 22 Rule 4 CPC, the filing of an affidavit along with the application would be enough. So getting reply or framing issues that is I think now the matter of past, he need not go through that ordeal in bringing the legal representatives. Then comes Order 23, if a compromise is filed on behalf of the minor, we require three things. One is an application on behalf of the minor for leave to compromise, second is an affidavit of the next friend and the third is a certificate from the pleader. These three things are needed and these should be to the effect that compromise proposed is in his opinion, in their opinion for the benefit of the minor or such other person. It is on that basis that Court has to apply its mind and give a finding that yes, it is in interest of the minor or it is not in the interest of the minor. Supposing there are several plaintiffs. One of them compromises with the defendant. He comes to the Court seeking permission to withdraw from the suit.

Can you do something. You cannot do. One of the several plaintiffs cannot withdraw from his case. He cannot compromise. Either it should be compromised along with the other plaintiffs or not at all. Then an application for local Commissioner for inspection of the spot is filed. Broadly what are the requirements for appointment of a local Commissioner. Some times we appoint the local commissioner to go to a vacant place and to report who is in possession cannot be. If the local commissioner has to contact somebody collect information from somebody then no local commissioner should be appointed because that information which he collects at the spot it is given by those persons who have not been examined and they are not subjected to cross-examination . Their authenticity cannot be challenged. So where the local Commissioner is to collect the evidence at the spot should be avoided because you cannot delegate that authority to the local Commissioner to collect evidence at the spot in favour of one

party or the other. Supposing you are to appoint the local Commissioner to find out whether there is a house or not. What are the dimensions, what is the nature. He is not to consult anybody. He goes there and finds out it is locked. He gets the lock opened finds out what is placed inside the house. It should be entirely his observations, entirely his opinion without any assistance from anybody else local Commissioner should be appointed. The moment you feel he would ask somebody else then no. Is a notice necessary to the opposite party before appointing local Commissioner it is not. Supposing there is an application in a rent case that he is misusing it , he is running a particular type of business in those premises that he has changed the user and you give a notice to him. He will remove it before the local Commissioner comes there. The very purpose, the very object of the appointment of the local commissioner would be defeated. So in appropriate cases not everywhere that you appoint

because there are authorities that if you appoint the local Commissioner on the back of defendant then he will not be read in evidence. These authorities are also there. You are to see as to where the appointment should be made and why should be made like that. Then supposing a notice is to be given it can be given in two ways. One is you fix a date. The local Commissioner will visit the spot on 3rd of October, 2nd of October at 2.00 p.m. Both the parties should be directed to remain present at the spot. The second is that notice has been given to local Commissioner. His appointment has been made and he is directed that before proceeding to the spot, supposing you have not fixed time for his visit, then he can be directed that he will issue a notice to the parties before he goes to the spot. Then it is his responsibility in demarcation cases because you do not know on which date the local Commissioner of the Tehsildar/ Kanungo will go to the spot. He has not paid the arrears. `A' was not at all entitled to

it. He files. In this suit, should `A' be made a party? `A' also comes. He should be made a party. The real contest is between `A' and `B'. Tenant has already paid. Otherwise, he will paying successively to everybody whosoever comes. So we have to see what is the real dispute and whether that person who is seeking to become a party whether his presence is necessary or not? If his presence is necessary, he can be made a party. If his presence is not necessary and he is trying to establish his own rights then he can file a separate suit. Sometimes, the application is filed before you that you have issued an injunction order but it is not being obeyed by the opposite party or they are trying to flout it. Do we have any remedy to protect it? Can we ask the police? We can ask. There is an authority **Sher Singh vs. Zamir Singh 1990-1 PLR 631**, the police can be directed not to flout the order. Applications under Section 125 3 Cr.P.C. to recover the arrears of maintenance allowance. If the property is moveable, you can

recover the arrears by attaching the property, may be moveable or immoveable. What has been seen is that a warrant of attachment is issued regarding immoveable property by the Court. It is attached then a notice under order 21 Rule 66 C.P.C. is issued to the owner or the husband then it is put to save by the Court itself, it cannot be. You cannot sell immoveable property of the husband for recovering the arrears of maintenance allowance. It shall go to the Collector. Whether the Collector can sell moveable property. If moveable property, you are to sell. Whether he can also sell moveable property to recover the arrears, he can also. It is your choice. So far as moveable property is concerned, whether you attach it, you sell it, recover the arrears or you ask the Collector to recover it as arrears of Land Revenue by selling his moveable property also. So far as immoveable property is concerned, it is entirely for him to recover to sell.

Recording of Zimini Orders: When I was preparing

this brief, I have written that Zimini Orders not only the index of the case but these are the index of the working of the Presiding Officer. Your entire working can be found out from the Zimini Orders. Whether you are lethargic, whether you are paying attention to your cases, whether you are cryptic or you are thorough, it can be seen from your Zimini Orders. While mentioning the presence of the accused, the name of the lawyer is not mentioned who is representing which accused. Sometimes, even this is not mentioned whether the accused is represented by a lawyer or not, present accused on bail. On the next date, he absents and files an application under section 430 Cr.P.C. Sir, I am illiterate, I was not represented by a lawyer. I thought, I have been granted a date 10th of October but later on, I came to know that it was in September but if you write with Counsel then the Higher Court will notice, no you are telling a lie. Your Counsel was present. Bring the diary. What date has been mentioned? So always right, if he is

represented by a Counsel, then Counsel and which Counsel. Sometimes, it is mentioned present as before. These are cryptic orders. So sometimes a proxy appears for the Counsel for the accused but is mentioned present proxy counsel for the accused. Which Counsel, tomorrow the question arises, who appeared, nobody knows who appeared or sometimes we write, Counsel for the accused. Which Counsel he brings the data that I was not even present at this station when I have been marked present and he may be involved in some case tomorrow. You have marked him present so it should be written as to who is present? Supposing, a person is being summoned in a Civil case, he is not being served, he is avoiding service. What the order should be that I am satisfied that he cannot be served in an ordinary manner, personally served in an ordinary manner but normally it is not written, it should be written because the law says you can effect the service by substituted means only if you are satisfied that he cannot be served

in an ordinary manner. Similarly, in Criminal cases if you are to issue a proclamation under Section 82 Cr.PC you are to write that he is avoiding service and therefore, cannot be served personally but nobody writes. Warrants have been received back unexecuted now issue a proclamation. Where the law says that you can do a particular thing, a particular act after this process is over. Then we are to satisfy that provision of law only then we can proceed further. When the service is to be effected by publication, it should be ensured that the paper in which you are issuing publication should have circulation in that area. One thing more that the bills of the newspapers are not paid promptly. I devised a method when I was posted at Sangrur actually some newspapermen came that he has not been paid the bills, when I called the records, the reports were there with me. The statement sent by the concerned Court that no bill is pending. So then I devised this that the Reader should be directed to prepare the payment voucher on the day

on which case comes before you. Supposing you have fixed the date for service of the defendant on 2nd of October. File will be put up before you on 2nd of October. Newspaper publication is with you. On the same date, he will fill up the payment voucher and put it in the case, you will sign it, it goes to the Ahlmad then to Nazir, thereafter, when the files go. It goes to the Nazir for payment. On the next date, you will come to know that he will then report that complaince made or not. On the next date, the bill will be paid before that date and by the way we at Sangrur, at Jalandhar also, I have started one thing Mr.Rajinder Aggarwal must be very unhappy with me due to that, that there is a disposal register in each Court. What is there, Jalandhar is very peculiar about these things so the Ahlmad consigns the record. Now how many cases you have disposed of, and how many files have been consigned to records, nobody knows. Whether every file has been consigned to record or not, the Presiding Officer cannot come to know. I have

started there that on the disposal register, the consignment particulars shall be written. It is with the Reader, so any time you can take up the disposal register and find out this file consigns, this consigns this remains and you can see four times, five times, every month. What the requirement is issued by the Hon'ble High Court that the particulars of the consignment are to be entered in this Civil Register No.1. Civil Register No.1 is with the Ahlmad. One case pertains to 2003, the other to 1998, the third to 1997 and then you are to shuffle the pages to find out which has been consigned or which not. So the only answer to this is that you ask him to mention the particulars of consignment on the disposal register and then your entire work is over. You will come to know which files are pending and then consigned it. In the decree sheet sometimes it is mentioned that the suit of the plaintiff is decreed as prayed for. Specific order what has been decree, should be mentioned there. When cross-examination of a

witness is to be deferred then reasons therefore, should be mentioned in the ziminie order. Actually with due deference to the Hon'ble High Court, whatever you do, whatever order you pass, I am telling them if you are to give your explanation along with it, High Court is asking you why you did like this. In every order, you give your explanation whether it is asked for, may be asked subsequently give before hand. Give reasons why you are doing it? Why you adjourned the case? Why you have issued warrants? Why you have not issued warrants, so every order is your explanation consider it like this that I am to justify my order. In every order reason should be given. Then I think it may be easy for you. There is another order which is generally passed, accused is absent, the bail bonds are cancelled and forfeited to the State. You have first cancelled the bail bonds and then order that it should be forfeited to the State. When once you have cancelled, you cannot forfeit it. Either you can cancel it, cancellation

has to be for specific reasons, if he does not have the property, if the surety withdraws it, if you find some other reason he wants to run away from the jurisdiction of the Court that is the cancellation. It is forfeiture, if he violates any of the conditions of the bond, it has to be forfeiture of the bond because you are to recover the bond from him. If you don't forfeit the bond, you cannot recover the penalty. So, it should be avoided. Bail bond, bail order you can cancel if he violates. So, bail order is to be cancelled and bail bonds are to be forfeited. These are to be segregated not should be taken together. One more thing is there that when you sign the signatures are not legible. After a year, you will not even be able to recognise your signatures. It is useful also. One or two orders you have not signed the Reader will sign it and you will not be able to deny these are not your signatures. In any manner, he may forge the signatures you will say yes it is. I have signed it. So, that apart wherever you sign,

you make it sure that your name is at least written there. So that the Appellate Courts, in High Court they may come to know who is this, who passed this order. I have asked them I did it at Sangrur also that don't sign anywhere where your name is not written and may be just for a few days that you will face the problem that what is this. Everywhere name has to be written but every statement of the accused every ziminie order. First write name then sign it. It would be very convenient for the Appellate Courts to refer to those orders. There is another aspect that the evidence or the orders are written on the back page of the margin also, then these are tagged. I am just going astray because to me only ziminie orders have in told to be discussed here but is in part of ziminie orders we can stretch is to that because I am saying only about ziminie orders. When you write the ziminie orders or evidence, the margin has to be left on a particular portion. Supposing this side this is margin. On the back also, this

should be left blank. What is seen is that margin on the front on this side and on the back on this side. With the result, that the evidence or the orders are written here also, these are tagged and then penned and ultimately after some time when these are needed to be read nothing is left there to be read. So that portion should be left blank. Similarly, when you are writing the orders yourself should be neat and clean. When I joined at Jalandhar, incidentally, I started my career from Jalandhar, there was a Reader. Mr.Balbir Singh, my colleague, he had a Reader. He used to write the evidence and when it was to be read, first it was to be ascertained, whether it is in Punjabi or Urdu. So he has to be called then. Can you read it? He is unable to read it. Similarly, the hand-writing of some of our Officers is remarkably illegible so I do it myself. After some time, I take a four lined copy write ABCD on it and to my good luck I am having, I should not praise myself, I am having very good writing even now.

Because when you write with fast speed, it goes hereby so you can in order to improve the hand writing, people say hand writing is the index of mind,so improve it. Have good hand writing. When the evidence is to be closed in civil cases, it should not be closed without giving the party a last opportunity. Cost can also be awarded. When there is stay order from the higher Court, it should be gone through whether the stay is with respect to the passing of the final judgment or it is with respect to further proceedings. If it is regarding further proceedings then you are to lay your hands nothing doing. But if it is you have been restrained from passing final order, you can continue with the entire procedure. Only final order is to be left arguments may not be heard. While deciding the civil cases the fee of the lawyer should be mentioned in the decree sheet. You must be knowing you can award Rs.5000/- as counsel fee in every case. One more thing never prepone a case to decide it. Don't do it at all. You can

prepone the case for doing anything else, for recording the statements, for taking up the decision of the application, for giving notice to the opposite party but don't finally decide it. Decision should be on the date already fixed. In some criminal complaints, supposing on a particular date, the complainant does not turn up, then a notice is issued to the complainant to come present and unfortunately if he is served then does not come present then you know warrants have to go. If bailable warrants he executes and does not turn up, then non-bailable warrants will go. At Ferozepur in a case, the poor complainant had to appear before the Inspecting Judge that I do not want to pursue my complaint but I am being dragged to the Court. So, there is no need to issue a notice to avoid it further because thereafter, you may not be able to see or you will not see it. You will simply pass an order notice served, he is not issued warrants. So, to nip the evil in the part do not issue notice to him unless the case has come to you on transfer and

you want to inform it. But make sure that you should go through it that warrants are not sent to force his presence in Court.

One other type of criminal cases in which the number of accused persons more than one. I remember at Kapurthala there was a criminal case in which there were 47 or 48 accused persons and on every date, one or the other accused used to remain absent. I used to send him in it don't allow bail for two months, three months no bail. But the absence did not decrease. They used to be absent. Five-seven in, others out again. Then I asked them you bring applications for exempting your presence. They were done happy. I exempted the presence of all the accused. They were told to make their own arrangement. The one day this will come, the other day he may come and then the proceedings will start otherwise no progress in the case. So in appropriate cases you feel the presence of the accused can be exempted because otherwise also Law is we don't want to crowd our court with accused

or complainants. We do not need them. So, only three things are needed. If you exempt the presence of an accused, you require three things from him. Firstly that he has no objection if the evidence is recorded in absence. Second is that he does not dispute his identity. Tomorrow he will not say I was not present, I was not identified, therefore, it does not apply that he does not dispute his identity that should be written by you. Third is that his lawyer will appear for him and whenever he is directed or he is ordered he will appear. So, these three things can be there. My topic which was given to me is over. If you wish, there are certain authorities which may be useful to you. If you don't feel bored, you have not felt bored as yet. Then we can discuss those also. In criminal cases, the objection may be that the Radiologist was not examined and the injury which is on the face of it or is visible to the naked eye, should not be declared as grievous, should not be held as grievous. So in that respect, the authority is

Gorkha Singh Vs. State of Punjab 1999 (2) RCR Criminal 531 that the doctors are experts by referring a patient for X-ray examination. They seek supplementary opinion as to whether the injury was grievous or not. Even otherwise also supposing the arm is broken, it is hanging from the shoulders no X-ray is needed in that case provided it is visible to the naked eye. I had every unique case at Sangrur, it was a revision petition. There are authorities that because the oil in which chips are fried is adulterated but the main product that is not adulterated. Therefore, the man cannot be prosecuted or punished. So, I put a question to the lawyer who was supporting that there is no adulteration. Though the oil was adulterated in which it was fried, I put him that a man is preparing Samosas he has a container containing oil or ghee. He has placed it on one side. The dog comes, starts eating it or drinking it and then you go there you ask for a Samosa, he says yes, take it. Whether that Samosa is adulterated or not

though we have authorities that it is not adulterated. Then I tried to search the law and I could find out **Vinod Kumar Vs. State of Haryana 1998(4) RCR Criminal 516** it was held in this case that sale of a constituent of a finished product in which the accused was dealing would amount to sale of adulterated products. Similarly in proceedings under the Hindu marriage Act, supposing the wife has filed an application under Section 24 of Hindu marriage Act for interim maintenance i.e. dismissed. Thereafter, the petition is also withdrawn by the husband or the wife. Again another petition is filed between the parties in which also a similar application under Section 24 is filed whether that would be barred by res judicata or not. What he feels, it should not be. It will not be barred by res judicata. It is an exception. The subsequent application under Section 24 even if the earlier one is dismissed will not be barred. There is then that parties divorce each other in the Panchayat through a

compromise and on its basis they say they can re-marry and it should be considered as their divorce. The law is that the Panchayat has no authority to pass a decree for divorce and, therefore, it cannot be considered the marriage or the agreement itself is illegal. It is contrary to law and public policy. In that respects, **1996(2) LJR 409**. If the wife had entered into an agreement with the husband not to claim maintenance that we part each other, we will not claim maintenance. That agreement also is contrary to law and cannot be enforced because that is her statutory rights. In this respect, **2004(2)RCR Criminal 760.** There can be one more controversy about the right of maintenance to the daughters who are major because Section 125 says anybody son or daughter if major not entitled to maintenance. But there is an authority Noor Saba Khatoon Vs. Mohammed Kasim, 2002(1) 459. The Supreme Court says the major daughters till they get married are entitled to maintenance. Supposing tomorrow an application under Section 125(3) comes

to you for recovery of the maintenance allowance for paying maintenance, which is allowed by you that the husband will pay interim maintenance. The husband does not pay. Can the defence be struck off for not paying the maintenance allowance. There are conflicting evidence. One is a criminal court has no authority to strike of the defence but their authority is also **Gurwinder Singh Vs. Murti 1990 Civil Court Cases 428** that he has no authority to strike of the defence. The opposite authorities are **Kapil Dev Aggarwal 2001(1) CCC 432** and then 1991 CCC 770, 1999(3) CCC 615 it was held that primarily these proceedings are quasi civil in nature though placed in the Criminal Procedure Code and the defence can be struck of, defaulter will not be allowed to file written statement and if already filed, it will be taken of the record. Similarly the authorities are that a Magistrate holding an enquiry and taking cognizance of an offence if an application under Section 319 Cr.P.C.

is filed, the accused has no right to be heard at that stage. It is 2001 (3) RCR Criminal 681. Similarly if you are to file a complaint, if the Court is to file complaint and before that the Law says that an enquiry under Section 340 Cr.P.C. is to be held. It should be held. But supposing it is not held by you and you feel that there is no need of enquiry, it is apparent on the face of it. Then the authorities **Pritish Vs. State of Haryana 2002 (1) RCR Criminal 92** even if in a given case the enquiry is not held the complaint cannot be taken of the record. Generally it is argued that independent witness has not to be joined. Who is an independent witness. The Supreme Court says that every citizen of India must be presumed to be an independent person unless it is proved that he was a dependent of the police or other officials for any purpose whatsoever. It is 1998 (1) Judicial Reports Criminal 245. There are authorities under Section 311 Cr.P.C. A witness cannot be recalled on the ground that he did not tell the truth when

he appeared earlier. Then if the application is moved at a belated stage, prosecution can not be frustrated by unjust methods and victims of the crime cannot be left in lurch. There is a confessional statement made by the accused. It runs like this that I am wearing that pant which I was wearing after commission of the offence. Then he said I can get the looted property recovered. The objection was after commission of the offence and looted property. These are hit by Section 25 of the Evidence Act. The Supreme Court said no this is not a confession, it only relates to the property, what type of property it is. So that is **AIR 2001 Supreme Court 979**. We may be facing some times these objections that onus of a particular issue has been placed on one party or the other or should have been on the opposite party. The authorities are that when once then parties have led evidence knowing fully well their case then placing of onus on one party or the other is immaterial. So, there are three or four

authorities. Once a suit was filed against the Government of Assam. The defendant was Govt. of Assam through Chief Secretary. It was dismissed should be against the State of Assam. The Supreme Court said no it is enough. Technicalities should be suit against the Govt. of Assam. Chief Secretary impleaded as defendant in his capacity as representative of State of Assam. It was held that there was substantial compliance with requirements of Section 79 otherwise you know the difference between State of Assam and Government of Assam. Government is an executive body one of the wings of the State, one of the pillars of the State out of the three. If there is conflict between old and new jamabandies which will you prefer. Old jamabandi writes one thing the new demonstrates something else. Old jamabandi is to be preferred unless there is material for change or incorporation of that entry in the new jamabandi. If there is conflict between two doctors one who conducted the MLR and the other supposing who

subsequently conducted the radiological examination of the post mortem report. The law says first one, who conducted the MLR because he had the opportunity of seeing the injuries. Then there are authorities that when some occurrence takes place it is not necessary that every person should react in a particular manner. Some people just they go down and confined to themselves don't tell to anybody else. It is with respect to that that after the occurrence he did not tell anything to anybody else. So in that respect there are certain authorities. These are **2003 (3) RCR Criminal 294** then **1999 (2) Judicial Reports 722** then **1999 (4) RCR Criminal 508** and **1999 (4) RCR Criminal 246, 2002 (1) All India Criminal Law Journal 497.** Supposing a case is registered against somebody he absconds. Subsequently he is heir and files a suit that in view of Section 107 or 108 of Evidence Act he should be declared as dead. The Punjab and Haryana High Court has held in AIR 1957 Punjab 316

that if a person is absconding to evade trial, there is no presumption of death because he did concealing himself to avoid trial/prosecution. Then there are authorities that if a blank cheque or blank pronote is given to the plaintiff in which the particulars are not mentioned but it is duly signed, duly stamped. There are some authorities which say it was not a pronote or a cheque at all and if subsequently something is written in it, it is interpolation but the opposite are by reference to Section 20 that a person signing a blank pronote holder of pronote has authority under Section 20 to fill it up and negotiate the instrument. Holder in due course can recover any amount specified therein. It is 2003 (2) RCR Civil 450. There is another that a person signing on blank paper and affixing stamp thereon in accordance with law related to Negotiable Instruments gives authority to holder to whom such paper is delivered to convert such blank in quite instrument into Negotiable Instrument for specified amount. It is

1998 (1) CCC 238 and 2002 (3) CCC 249. You must be experiencing that the accused submit certificates about their illness. There are Medical Council of India Regulations which require as to what type of record a doctor is required to maintain. He is to maintain an OPD register in which name of the patient, his full address then his marks of identification, the treatment or the diagnosis and then his signatures or thumb impression, those are to be mentioned. Similarly when medical certificate is issued in that also these particulars are to be given. So if you want to corner some accused whom you feel that he is trying to delay it then you can take use of this. So with this I thank you all. You have been hearing me with patience.

Thank you very much.