REPORT BY JUSTICE G. ROHINI, HEADING THE SUB-COMMITTEE CONSTITUTED FOR MAKING THE STUDY ON ELEMENTS OF OBJECTIVES 1 & 2 READ WITH CHAPTER-9 OF THE POLICY & ACTION PLAN OF NATIONAL COURT MANAGEMENT SYSTEMS.

C O N T E N T S

PREFACE

The Elements of Objectives 1 & 2 and Chapter-9 of the Policy & Action Plan of National Court Management Systems (NCMS) are as under:

"Elements of objectives:

(1) A National Framework of Court Excellence (NFCE) that will set measurable performance standards for Indian courts, addressing issues of quality, responsiveness and timeliness.

(2) A system for monitoring and enhancing the performance parameters established in the NFCE on quality, responsiveness and timeliness.

Chapter – 9 :

9.1 Hon'ble Supreme Court of India, in the matter of ALL INDIA JUDGES' ASSOCIATION v. UNION OF INDIA [(2002) 4 SCC 247] observed as under:

> "25. An independent and efficient judicial system is one of the basic structures of our Constitution. If sufficient number of Judges are not appointed, justice would not be available to the people, thereby undermining the basic structure. It is well known that justice delayed is justice denied. Time and again the inadequacy in the number of Judges has adversely been commented upon. Not only have the Law Commission and the Standing Committee of Parliament made observations in this regard, but even the Head of the judiciary, namely, the Chief Justice of India has had more occasion than one to make observations in regard thereto. Under the circumstances, we feel it is our constitutional obligation to ensure that the backlog of the cases is decreased and efforts are made to increase the disposal of cases. Apart from the steps

which may be necessary for increasing the efficiency of the judicial officers, we are of the opinion that time has now come for protecting one of the pillars of the Constitution, namely, the judicial system, by directing increase, in the first instance, in the Judge strength from the existing ratio of 10.5 or 13 per 10 lakh people to 50 Judges per 10 lakh people. We are conscious of the fact that overnight these vacancies cannot be filled. In order to have additional Judges, not only will the posts have to be created but infrastructure required in the form of additional courtrooms, buildings, staff etc., would also have to be made available. We are also aware of the fact that a large number of vacancies as of today from amongst the sanctioned strength remain to be filled. We, therefore, first direct that the existing vacancies in the subordinate courts at all levels should be filled, if possible latest by 31-3-2003, in all the States. The increase in the Judge strength to 50 Judges per 10 lakh people should be effected and implemented with the filling up of the posts in a phased manner to be determined and directed by the Union Ministry of Law, but this process should be completed and the increased vacancies and posts filled within a period of five years from today. Perhaps increasing the Judge strength by 10 per 10 lakh people every year could be one of the methods which may be adopted thereby completing the first stage within five years before embarking on further increase if necessary."

9.2 The above observations of Hon'ble Supreme Court of India made on 21.03.2002 still require attention and Judge-Population ratio requires to be narrowed down. Sufficient Court Rooms, Buildings and staff are yet to be made available. States are required to act in this regard.

9.3 While examining this, it may be important to keep in mind the actual amount of litigation and other relevant factors in various States to determine the Judge-Population Ratio."

Having been associated with the Hon'ble Sri Justice C. Praveen Kumar, Judge, High Court of Andhra Pradesh, Sri V. Seetharama Avadhani, Director (FAC), Andhra Pradesh Judicial Academy, Hyderabad and Sri C. Balajee, a practising advocate in the Subordinate Courts and High Court of A.P., an elaborate study has been made by the sub-committee on the above mentioned Elements of Objectives 1 & 2 read with Chapter-9 of the Policy and Action Plan and the following report is prepared touching various aspects and proposing performance standards for enhancement of the performance of the Courts both quantitatively and qualitatively. The valuable assistance rendered by Sri G. Butchaiah Sastry, Personal Secretary and Sri N. Chandrasekhara Rao, Section Officer, Judges' Library, High Court of A.P., Hyderabad for preparing this report within the timeframe fixed is hereby acknowledged.

Justice G. Rohini

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CHAPTER – I

Background:

JUSTICE – social, economic and political sought to be secured by the citizens of India while adopting, enacting and giving to themselves the Constitution of India on 26th November, 1949 is not mere justice but expeditious justice without sacrificing the quality.

This is explicit from the following observations made by Justice R.C. Lahoti, the then Chief Justice of India, in his key note address delivered at the conference of Chief Justices of High Courts and Chief Ministers at Vigyan Bhavan, New Delhi on the topic - Envisioning Justice in the 21st Century:

> "The seekers of justice approach the courts of justice with pain and anguish in their hearts on having faced legal problem and having suffered physically or psychologically. They do not take law into their own hands as they believe that they would get justice from the courts at the end and on some day. We owe an obligation to them to deliver quick and inexpensive justice shorn of complexities of procedure. **At the same time, it is to be remembered that sheer quantum justice without quality would be disastrous. The elements of judiciousness, fairness, equality and compassion cannot be allowed to be sacrificed at the altar of expeditious disposal. The hackneyed saying is that justice delayed is justice denied. But justice has to be**

> **imparted: justice cannot be hurried to be buried. We have to 'decide' the cases and not just 'dispose them off'.** (*emphasis supplied*)

The problem of huge arrears and backlog of cases in all courts, right from the Apex Court to the Magistrate Courts is not new in the system of administration of justice in our country. The Harris Committee in West Bengal (1949), the Wanchoo Committee in Uttar Pradesh (1950), the Satish Chandra Committee (1986) and the Arrears Committee (Malimath Committee) (1989-90), had extensively dealt with the issue relating to the delays in justice delivery system. The list of causes identified in the reports of the said committees[1] for accumulation of arrears of cases in the courts are as under:

(i) Litigation explosion;
(ii) Radical change in the pattern of litigation;
(iii) Increase in legislative activity;
(iv) Additional burden on account of election petitions;
(v) Accumulation of first appeals;
(vi) Continuance of ordinary original civil jurisdiction in some High Courts:
(vii) Inadequacy of judge strength;
(viii) Delays in filling up vacancies in High Courts;
(ix) Unsatisfactory appointment of judges;
(x) Inadequacy of staff attached to High Courts;
(xi) Inadequacy of accommodation;
(xii) Failure to provide adequate forms of appeal against quasi-judicial orders;
(xiii) Lack of priority for disposal of old cases;
(xiv) Failure to utilise grouping of cases and those covered by rulings;
(xv) granting of unnecessary adjournments;

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[1] Sourced from the Article by Pradip Kumar Das, Lecturer, Bengal Law College, Santi Niketan, West Bengal.

(xvi) Unsatisfactory selection of government counsel;
(xvii) Population explosion;
(xviii) Hasty and imperfect Legislation;
(xix) Plurality of appeals and hearing by division benches;
(xx) Inordinate delay in supply of certified copies of judgments and orders;
(xxi) Indiscriminate closure of courts;
(xxii) Appointment of sitting judges on Commissions of Inquiry.

In spite of various attempts such as reforms in Procedural Laws, Tribunalisation, adoption of Alternative Dispute Resolution Mechanism, establishment of Fast Track Courts and constitution of Special Courts under different statutes, the reduction of arrears in the courts and extending timely justice to the litigant public continue to be the major challenge to the Indian Judiciary.

Justice delayed is justice denied and **justice hurried is justice buried** are the two mutually divergent propositions that are often heard in the legal arena throughout the world. It is now well accepted by all those concerned with the justice administration system that a procedure avoiding the two extremes must be adopted so as to extend expeditious justice to the litigant public without compromising with the quality of the justice rendered.

Well performing courts should be expected to excel in terms of both timeliness and quality as suggested in the report

of the National Center for State Courts and the American Prosecutors Research Institute with the support of the National Institute of Justice (NIJ) and the State Justice Institute (SJI)[2].

However, the speedy administration of justice is not in the hands of the judiciary alone. There are numerous reasons for the delay and first among them is the dearth of sufficient number of judges and courts on par with the steep increase in the institution of fresh cases. There are also other problems like lack of supporting staff, lack of essential infrastructure in the courts, shortcomings in the laws and procedural hurdles.

As pointed out by the Apex Court in *All India Judges' Association v. Union of India* [(2002) 4 SCC 247] the existing judge-population ratio is 10.5 or 13 per 10 lakh people. The observations of the Supreme Court in the above decision about the need for narrowing down the judge-population ratio and providing better infrastructure and manpower could not be implemented by the State so far.

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[2] Report on Efficiency, Timeliness & Quality: A new perspective from 9 State Criminal Trial Courts. (sourced from Internet, Judges Library, High Court of A.P.)

Despite these shortcomings, it is the duty of the judiciary to ensure timely and quality justice to all those who approach the Courts by better utilization of the existing resources.

In this background, the concept of Court Management has gained importance and is proposed to be adopted by the Indian Judiciary.

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CHAPTER - II

Adoption of Court Management for enhancement of performance standards of Indian Judiciary

What is Court Management has been succinctly explained by Justice S.B. Sinha, the former Judge of the Supreme Court of India in his paper on "Access to Justice"[3] as under:

> "Court management and administration is a science of beneficial utilization of available human, time and financial resources in the justice delivery/dispensation system. It deals with the active role of the Judicial officers regarding the control of the workload with "Case Management" as priority. According to the Federal Justice Center, Washington D.C., the role of a judge in court management is 'to anticipate problems before they arise rather than waiting passively for matters to be presented by the Counsel. Because the Attorneys may be immersed in the details of the case, innovation and creativity in formulating any litigation plan may frequently depend upon the Court" (Manual of Complex Litigation, 3rd, 1994 quoted in Lord Woolf's Interim Report, Chapter V, para.20). Though the definition of "court management" emphasizes the role of the Judicial officer, the concept of court management deals with the comprehensive management of the litigation monitored by the Judicial officer with the help of lawyers, litigants and other administrative staff."

To put it in a simple way, Court Management is the process by which the courts i.e., the judges and the supporting staff and the court users i.e., the litigants and the advocates representing them organize and control the progress of a case at every stage, right from filing till it is disposed of.

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[3] Sourced from Internet, Judges Library, High Court of A.P.

The Court management which includes case management comprises both of quantitative and qualitative aspects. Whereas the quantitative aspects address the issues of disposal of the cases in a timeframe as well as the clearance of the backlog of cases expeditiously, the qualitative aspects address the issue of enhancing the efficiency of all the stakeholders involved in the system of administration of justice in performing their respective roles so as to ensure quality justice to all the litigants.

There are several stakeholders in the system of administration of justice and for achieving the excellency in performance by adopting the court management, each one of the stakeholders has a specific role to play.

The stakeholders in the Justice Administration System may be broadly identified as:

(i) the Judges
(ii) the Bar members
(iii) the litigants
(iv) the Court staff and the staff in the Registry
(v) the police
(vi) the public prosecutors

The quality and professionalism in the functioning of all the stakeholders is required to be improved for effective court management.

However, the techniques and elements of Court Management invariably differ from one jurisdiction to another. For instance, criminal litigation and civil litigation are governed by different Procedural Codes and a remarkable difference is there in the complexity of cases and hierarchy of remedies available in civil litigation and criminal litigation. Consequently, there is bound to be a difference in the average life cycle of cases in civil and criminal litigation and therefore different strategies have to be evolved to suit each legal system.

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C H A P T E R – III

Criminal Litigation

1.1 The criminal law is set into motion either by lodging a report with the police or by way of filing a private complaint under Section 200 of Cr.P.C.

1.2 Barring certain procedural differences, the stages in all the types of cases, be it a Summons Case or a Warrant Case or a case triable by Court of Sessions from the date of complaint till the judgment is rendered are identical and they can be identified broadly as under:

- Registration of a crime on the basis of FIR or on the basis of a private complaint under Section 200 of Cr.P.C.

- On production of accused before the Magistrate, in exercise of powers conferred under Section 167 (2) of Cr.P.C., the accused will be remanded to judicial custody.

- In appropriate cases the accused will be enlarged on bail pending investigation.

- After completion of the investigation by the police, the police officer shall file the charge-sheet before the concerned Magistrate as provided under Section 173 (2) of Cr.P.C.

- Issuance of summons to the accused and after the appearance of accused, if necessary, the matter will be made over to the concerned court having jurisdiction.

- If the matter is exclusively triable by Court of Sessions, under Section 209 Cr.P.C. the Magistrate shall commit the case to the Sessions Court concerned.

- Then a fresh date will be fixed for the appearance and examination of the accused and he will be informed the substance of the accusation.

- If the Court considers the charge against the accused to be groundless, he would be discharged. Similarly, in the event of the accused pleading guilty, the accused will be convicted. If not, the matter will be posted for trial.

- In the first instance the prosecution witnesses will be examined as per the schedule fixed and thereafter the accused will be examined under Section 313 of Cr.P.C. and if the accused opts for producing defence evidence the opportunity will be given to him to lead evidence on his behalf.

- After completion of examination of the witnesses of the prosecution as well as the defence, the arguments will be heard and the judgment will be rendered.

1.3 Certain cases both summons cases and warrant cases which are relatively less serious may be tried summarily. Chapter-XXI of Cr.P.C. provides for such summary trials. For trial of such cases, the procedure is the same i.e., summons cases are tried according to the summons case procedure and warrant cases are tried according to the warrant case procedure, but elaborate recording of evidence is not necessary. However the Magistrate shall record the substance of the evidence and the judgment should contain a brief statement of the reasons for the finding.

1.4 So far as summary trials are concerned, as they are related to petty offences and generally not contested, there may

not be any scope for delay and therefore the question of pendency does not arise.

1.5 Cases instituted under Section 138 of the Negotiable Instruments Act, 1881 constitute a large number of cases pending in the Courts of Magistrates. Strictly speaking, the State is not a party to these cases and virtually it is a dispute between two private parties. However the summons are to be served on the accused through police and the experience shows that many cases are kept pending only for want of service of notice on the accused. If the summons are served on the accused soon after the complaint is filed in the Court, probably the matters can be concluded without any delay since the said cases are to be tried summarily.

1.6 The other cases which are pending in large number in the Courts of Magistrates include the offences punishable under Section 498-A of IPC to which invariably the maintenance cases under Section 125 of Cr.P.C. are tagged on and the offences punishable under Dowry Prohibition Act. Though these cases are triable following the same procedure contemplated for warrant cases, in many of the cases there is scope for amicable settlement if appropriate steps are taken at

the preliminary stage itself by resorting to counselling through the trained counsellors.

1.7 Yet another type of cases with which the Magistrate Courts are overburdened are the cases filed under Protection of Women from Domestic Violence Act, 2005. Though the Act is mainly aimed at protection to the victim rather than punishing the perpetrator, for want of Protection Officers and other stakeholders involved in the scheme of the Act, the Courts are unable to conclude the cases.

1.8 So far as the Summons Cases and Warrant Cases including the cases exclusively triable by the Court of Session are concerned, the delay in concluding the cases is mainly for the following reasons:

i. **Delay in completing the investigation by the police resulting in non-filing of the charge-sheet in the court.**

ii. **Failure of the police to produce the accused in custody (undertrial prisoners) before the court whenever his presence is required for reasons such as lack of escort.**

iii. **Where the accused who is enlarged on bail abstains from the Court and evades service of summons for appearance, though NBWs are issued, the police are unable to execute the same, resulting in stalling the whole process of the case.**

iv. **Failure of the prosecution to produce the witnesses before the Court resulting in repeated adjournments.**

v. **Non-availability of public prosecutors.**

vi. **Stay of proceedings by the High Court or the Supreme Court.**

vii. Lengthy call work which consumes considerable quality time of the court.

viii. Inability of the presiding officer of the court to take up the trial/hearing for short of time.

ix. Lack of supporting staff and the essential infrastructure.

x. Lack of coordination between the Bench and the Bar.

xi. Lack of trained counsellors who are the essential stakeholders for deciding the cases under Section 498-A IPC, cases under Dowry Prohibition Act and DVC Act.

1.9 With regard to the quality, the areas that are required to be concentrated are expediting the investigation by the police and enhancing the efficiency of the prosecutors to conduct the prosecution case.

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C H A P T E R – IV

Enhancement of Timeliness & Responsiveness in Criminal Litigation:

1.1 The important factor for the delay in completing the investigation by the police is the lack of separation between the Law & Order Department and the Investigative Department of the Police. Referring to 154th report of the Law Commission of India and the 4th report of the National Police Commission which recommended that the Investigating Agency be separated from the Law & Order Department of the Police, Hon'ble Sri Justice S. B. Sinha in his Article titled "Access to Justice" summed up some of the advantages as under:

- It will bring the investigating police under the protection of the judiciary and will greatly reduce the possibility of political or other types of interference.

- With the possibility of greater scrutiny by the court, the investigation is more likely to be in conformity with the law than at present, which is often the reason for failure of prosecution in the courts.

- Efficient investigation will reduce the possibility of unjustified and unwarranted prosecutions and consequently of a large number of acquittals.

- It would result in speedier investigation and consequently quicker disposal of cases.

- It will increase the expertise of investigating officers.

- It will help foster more scientific investigation of cases with the help of emerging technologies such as DNA finger printing.

1.2 Provisions of plea bargaining were introduced under Chapter XXI (A) of Code of Criminal Procedure, 1973. Section 265-A to 265-L deal with the said aspect. The Courts, more particularly, the Magistrate Courts should try to inform the accused about the said provisions thereby enabling the accused to take benefit under the said provisions. In fact, Section 265-C contemplates issuance of notice to all the parties including the aggrieved party to participate in a meeting and to work out a satisfactory disposition of the case. However, the court has to ensure that the entire process is completed voluntarily by the parties participating in the meeting. By resorting to the provisions of Chapter XXI-A of the Criminal Procedure Code, the subordinate courts can settle the disputes between the parties at the inception itself thereby saving the time of the Court and also time and money of the litigant public.

1.3 On several occasions, the cases would be adjourned due to non-production of the accused on the date of trial. Though remands are being extended on video-conferences, the same cannot be done during trial. Lack of police force is one of the reasons and the other reason is in

some cases where the offences are grave in nature and the offender is a person of notorious character, the police force is not in a position to provide proper security to the accused. To get over such problem, a provision can be made to hold or conduct trial within the premises of the jail compound at least once or twice in a month.

1.4 In most of the criminal cases, witnesses refrain from coming to the court on the day on which they were supposed to give evidence and it is often said by the witnesses that the cases will not go-on on the day when they are called. This practice should go and the judges should ensure that the witness who is summoned to give evidence will not go back without being examined.

1.5 As per Section 309 of Cr.P.C. which contemplates postponement or adjournment of the proceedings once examination of witness starts, the Court has to continue the trial from day-to-day until all the witnesses in attendance have been examined. If for any reason, it would not be conducted, the Court has to give reasons for deviating from the said course. However, it is almost a common practice and regular occurrence that the trial courts flout the said mandatory provision and the cases are adjourned on flimsy reasons.

1.6 In *Thana Singh v. Central Bureau of Narcotics* (Criminal Appeal No.1640 of 2010, dt. 23.01.2013), the Apex Court had taken note of the fact that though a crucial amendment to Section 309 (2) by inserting the fourth proviso was made by Section 21 (b) of Act 5 of 2009, the same still awaits notification and observed that the said *lacuna* is interfering with the fundamental right of speedy trial.

1.7 Just like in Sessions Cases, Warrant and Summon Cases also should be tried on day-to-day basis without adjourning the matters after examination-in-chief. In fact, experience shows that once the matter gets adjourned after chief-examination, in many cases the witness is either won–over or it is seen that he does not turn up for cross-examination. This can be avoided if the trial is conducted on day-to-day basis.

1.8 A provision akin to Section 19 (3) (b) & (c) of the Prevention of Corruption Act, 1988 which prohibits grant of stay of trials by revisional courts may be introduced in Code of Criminal Procedure particularly with regard to the offences of serious magnitude like Sections 302, 304-B, 306 of IPC.

1.9 Whenever an appeal is preferred by the victim under the proviso to Section 372 of Cr.P.C. against an order of

acquittal of the accused or conviction for a lesser offence or in an appeal preferred by the complainant in cases arising out of private complaint, the hearing in many of the cases is being delayed due to non-service of notices on the accused. Similar problem is being faced in appeals against conviction by the accused in cases arising out of a private complaint. There is need for a suitable provision in Criminal Procedure Code or Criminal Rules of Practice for service of notice by other effective alternative methods in such appeals.

1.10 The guidelines laid down in *Thana Singh v. Central Bureau of Narcotics* for simplification of the process in trial for offences under the NDPS Act, 1985 so as to ensure expeditious disposal of the cases since the accused are normally not released on bail and thus languished in prison as under-trial prisoner should be scrupulously followed.

1.11 Non-bailable warrants are pending unexecuted and the warrant is not returned in a large number of criminal cases for a long time in many Courts. Even in P.R.C. and Sessions Cases, many cases are being adjourned from time to time for the said reason. In all such cases, Section 82 of Cr.P.C. which provides for publishing a written proclamation should be resorted to without much loss of time since the fact that a

warrant is pending for a long time unexecuted itself is sufficient to show that the accused has been absconding. In such cases, the Court can direct the police to return the warrant and initiate action against the accused under Section 82.

1.12 When there are more than one accused, the Court should split-up the case and proceed with the trial with the accused who are present before the Court.

1.13 Similarly, where the accused is evading to attend the Court and the Court is compelled to issue a Non-Bailable Warrant, for execution such NBWs, a separate cell has to be created in the Police Department.

1.14 A separate establishment must be there for service of summons and one officer shall be appointed for monitoring the service of summons and execution of NBWs for the entire district on day-to-day basis.

1.15 The Courts can also direct in such cases payment of costs by the prosecution as provided under the Explanation-2 to Section 309 of Cr.P.C. while adjourning a case on the ground of non-service of summons or non-execution of NBWs.

1.16 It is also necessary to evolve more formidable solutions for reducing the pendency of NBWs.

1.17 Holding a Court periodically in jail premises for speedy disposal of cases of those under-trial prisoners who are involved in petty offences and are willing to confess their guilt shall be made mandatory.

1.18 Till the charge-sheet is filed by the police, the case should not be treated as a pending case on the file of the court since the actual role of the Court would commence only after the charge-sheet is filed.

1.19 Timeframe should be fixed under law for disposal of summary trial cases since these trials are generally followed for petty offences and the procedure is simple and short.

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C H A P T E R – V

Quality in Criminal Litigation

1.1 Quality of justice rendered in criminal litigation depends upon:

(i) Proper investigation and filing of charge-sheet without any delay from the date of offence.

(ii) Efficiency of the public prosecutors in conducting case.

(iii) Proper coordination between the I.O. and the prosecutor.

(iv) Recording of 161 of Cr.P.C. statements properly ensuring that the person who gives the statement immediately after the offence does not go back from his own statement during trial. Because of such incidents, the courts are compelled to declare many of the crucial witnesses as hostile resulting in acquittal of the accused.

(v) Efficiency of the judicial officers in conducting trial and decision making.

(vi) Efficiency of the supporting staff in the Court and the staff in the Registry since they are responsible for proper maintenance of the records and also for docket management.

1.2 Many deficiencies are existing in the justice administration system as of today in the areas identified above and the same have been adversely affecting the quality of justice.

1.3 In many of the cases there is inordinate delay in completing the investigation and filing the charge-sheet. Till the investigation is completed and the charge-sheet is filed, the cases are kept pending at crime stage in the Court having jurisdiction and they are merely adjourned from time to time awaiting charge-sheet. At that stage, the Court has no role to play except considering the bail applications moved by the accused. However the courts are always blamed for the said delay.

1.4 The success of prosecution case to a large extent depends on quality of investigation and competency of public prosecutor in conducting the case. However there are no sufficient number of public prosecutors and there is also a serious criticism about the performance of most of the prosecutors.

1.5 It must be ensured that every Court dealing with the criminal cases is assisted by a Public Prosecutor. That apart, independent status for a Director of Prosecutions should be given to ensure the independence and efficiency of the prosecution agency.

1.6 Though the police have to act on their own during investigation without outside influence, it is necessary to have

proper coordination between the investigating officers and the prosecuting machinery during trial and the same is lacking in many Courts.

1.7 The selection and appointment of public prosecutor should be strictly on merit basis since the prosecution case to a large extent depends on the efficiency of the prosecutor.

1.8 Appropriate mechanism should be constituted to ensure that there is proper coordination between the public prosecutor and the investigation officer during the trial of a case and that the prosecutor shall have the full grip over the prosecution case by having access to the entire case record.

1.9 The Director of Prosecutions shall assess the performance of the public prosecutors periodically on the basis of the feedback from the concerned judge and in case the prosecutor is not competent enough to conduct the prosecution case there should not be any hurdle to change the prosecutor.

1.10 It must be ensured that investigation officer is available for examination on behalf of the prosecution in all the cases.

1.11 Forensic Science Laboratories with sufficient manpower and apparatus shall be established in every District

and it must be ensured that the F.S.L. reports are received without any delay.

1.12 Of late, there is a serious criticism that the rate of conviction in almost all the cases has drastically come down. One of the main reasons pointed out by the judicial officers in the periodical conferences held by the High Court to assess their performances is that the crucial prosecution witnesses turning hostile.

1.13 Sophisticated technical methods should be adopted while recording Section 161 Cr.P.C. statements by the police during investigation to ensure the identity of the person giving statement and also the authenticity of such statement. By adopting such procedure, the person who gives the statement cannot go back from his own statement during trial. Consequently, the instances of crucial witnesses turning hostile will come down.

1.14 It is also necessary to ensure that the judicial officers are well-equipped with the basic principles of law and are in a position to control the trial proceedings particularly to curb prolonged examination of witnesses by putting irrelevant questions by the public prosecutors/defence counsel. By this, the contingency of bulky evidence, most of which is irrelevant

for deciding the case and on the other hand gives scope for missing the crucial aspects while appreciating the evidence can be avoided.

1.15 The quality time of judges in the forenoon is being consumed by call work. Appropriate steps shall be taken to entrust the call work to a non-judicial officer and only those cases in which a judicial order is required should be placed before the judge.

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C H A P T E R – VI

Civil Litigation

1.1 The Civil litigation is mostly in the form of money suits, injunction suits, declaratory suits, suits for specific performance, matrimonial cases, motor accident claims and land acquisition cases.

1.2 The law relating to the civil proceedings is contained in the Code of Civil Procedure, 1908. Various amendments have been brought from time to time to C.P.C. and more important changes have been made by Amendment Acts 46 of 1999 and 22 of 2002 which are aimed at speedy disposal of cases within the fixed timeframe. The said amendments included fixing a timeframe for the steps to be taken at various stages of the suit, enabling the plaintiff to serve summons by post, fax, e-mail, speed post, courier service or by such other means as may be directed by the Court, reference of disputes for settlement by resorting to ADR Mechanism curbing the unnecessary adjournments so on and so forth. Strict compliance with the said provisions curtails the delay to a large extent.

1.3 That apart, since pleadings are extremely important in civil cases, the Courts must carefully and critically examine

pleadings and documents in the preliminary stage itself. By this, the Court can reject the claim if the plaint does not give sufficient details or pass a decree on admissions, if any, in the written statement.

1.4 The controversy involved in the matter should be identified and narrowed down at the earliest stage.

1.5 The Court shall also take a serious view of putting forward a false claim or defence in the pleadings and thus creating controversy where none exists and heavy costs shall be imposed.

1.6 The trial judge should have greater judicial efficiency and should be in a position to control the entire trial process.

1.7 Prior preparation of the advocates, parties and also the judges shall be ensured, so that lesser time would be consumed and causing waste of court time would be prevented.

1.8 Continuous video recording of the trial proceedings may be adopted to avoid mis-statements and misleading submissions.

1.9 Time limits should be set for disposal of interlocutory applications filed during the pendency of the suit or appeal.

1.10 Soon after the issues are settled, firm dates shall be given for trial depending upon the complexity of the questions involved and each Court should maintain a mechanised planner so that there will not be any overlapping of the dates fixed for trial and the schedule fixed is adhered to without fail.

1.11 Possibility of assigning a case from filing to conclusion to an individual judge has to be considered since it would enable the judge to become thoroughly familiar with the facts and legal issues. This will also enable to fix up the responsibility on the individual judge.

1.12 After the pleadings are complete, a date shall be fixed to hear the counsel for both the parties for identification of the factual and legal issues in dispute and to find out whether there is any possibility for settlement by ADR procedures. If such settlement is not possible, then the issues should be settled by the judge and a schedule for trial should be fixed up with the consent of both the parties. This will not only enable to identify the issues in dispute at an early stage but also to dissuade the advocates seeking adjournments at the stage of the trial.

1.13 This will also enable to draw a distinction between simple cases and medium or more complex cases and by

segregating them appropriate dates can be fixed for trial. In other words, early dates can be fixed for simple cases and they can be disposed of within a maximum period of three months. For more complex cases involving number of witnesses, long dates can be given to afford the parties to prepare their case and also to suit the convenience of the litigants and the witnesses. For the purpose of such categorization, it should be made mandatory on the advocates to file a brief note along with the plaint and the written statement formulating the points that arise for consideration.

1.14 It is often noted that during the course of trial objections are raised with regard to admissibility of the documents marked in evidence. After passing of order of the trial Court, whenever the matter is carried to the higher forum, trials are getting delayed. In *Bipin Shantilal Panchal v. State of Gujarat & another* [(2001) 3 SCC 1] it was held that:

> "Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the Court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a

document the Court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.

The above procedure, if followed, will have two advantages. First is that the time in the trial Court, during evidence taking stage, would not be wasted on account of raising such objections and the Court can continue to examine the witnesses. THE witnesses need not wait for long hours, if not days. Second is that the superior Court, when the same objection is re-canvassed and reconsidered in appeal or revision against the final judgment of the trial Court, can determine the correctness of the view taken by the trial Court regarding that objection, without bothering to remit the case to the trial Court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses."

1.15 By following the above procedure, delay of cases at the trial stage can be successfully avoided.

1.16 While disposing of the interlocutory applications, sufficient reasons should be assigned by the judges in support of their conclusions, in which event the interference by the appellate/revisional courts would be minimal since such orders would reflect the application of mind by the judge to the issue in controversy.

1.17 One of the important reasons for delay in disposal of civil cases is repeated adjournment of cases. It is no doubt true that the basis of an adjournment rests upon the right of a party to have a reasonable opportunity to present his case upon its merits. However, it invariably results in

rescheduling the court process and disrupts the progress of the case.

1.18 In Order 17 of C.P.C. which deals with adjournments, the expression used is 'hearing' and this leads to some ambiguity.

1.19 Though in some cases adjournments are sought due to unavoidable reasons, in most of the cases the adjournments are sought casually without there being any justifiable reason and there are also instances where the adjournments are sought intentionally to scuttle the proceedings.

1.20 The Court should be in a position to control such adjournments which are sought on unreasonable grounds and one of the methods may be imposing heavy costs payable to the opposite party.

1.21 The provisions of Order 17 of C.P.C. by and large compels the Court to exercise its discretion while granting adjournments and because of this the Courts are not able to tackle the problem of adjournments effectively. May be, more specific provisions are necessary in C.P.C. governing adjournments.

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C H A P T E R – VII

NATIONAL FRAMEWORK OF COURT EXCELLENCE

1.1 Enhancement of performance of the Courts both quantitatively and qualitatively is possible only where all the stakeholders in the system of administration of justice ensure that the adversarial process goes on at a proper pace and in a more efficient manner aiming at conclusion of the proceedings in a timeframe but without compromising with the quality of justice.

1.2 Matters should be no longer left to the litigants or the counsel representing them to determine the pace of litigation, but the judges, the litigants and their advocates should work as a team to narrow down the issues in dispute and if possible to explore the avenues for settlement by ADR.

1.3 Among all the stakeholders, the judges are required to play the most active role of coordinating the functions of all the stakeholders and formulating a litigation plan depending on the workload in that particular Court.

1.4 To increase the judicial management skills among the judges, they should be given periodical training by experts in that field.

1.5 Apart from the managerial skills, for becoming a good judicial officer, the judge is required to know where law lies and how to apply it. He is required to understand the needs of the litigants and how to extract work from the bar.

1.6 By updating their legal knowledge from time to time, the judges will be in a position to dispose of the matters expeditiously at the same time maintaining the quality of the decisions. For this, it is necessary for them to have a grip over the basic principles of law so that they can have total control over the proceedings and the advocates can be restrained from prolonging the trial by examining irrelevant witnesses, by putting irrelevant questions to the witnesses and beating around the bush while advancing the arguments.

1.7 Periodical Refreshing Courses should be conducted to them by the State Judicial Academy in which they should be updated about the latest amendments to the Statutes and the development of judge-made law. They should also be provided an opportunity to share the best practices and to get their doubts, if any, clarified with regard to the procedural aspects. It should be impressed upon the judges by the unit head and also the High Court from time to time that they should not commit

avoidable legal errors like passing orders without assigning reasons.

1.8 The judges must also make it a practice to read the file in the first stage of the case itself and note the essential facts upon which the case is based upon. By this, they can frame the charges themselves without entrusting it to the supporting staff. This would enable the judges not only to proceed in right direction but also to assess the complexity of case and to identify the compoundable cases which can be referred to Lok Adalats for settlement at the earliest point of time. This will also enable the judges to categorize the cases pending on their board and grouping them.

1.9 By this, the judges will also be in a position to resort to the provisions of Chapter XXI-A of Cr.P.C. (Plea Bargaining) effectively which in turn may result in expeditious disposal.

1.10 Expeditious disposal of cases is possible only with the mutual co-operation of the bench and the bar. Efficient bar is always an asset to the judiciary since their knowledge of the subject, drafting of cases, formulation of points by highlighting the issues in controversy and particularly the presentation of the case by citing the relevant statutory provisions and the

case-law would assist the court to a large extent to arrive at a right conclusion without loss of time. For this, the Bar Council of India as well as the Bar Councils of the States should conduct continuing legal education programmes and it should be impressed upon the Bar Members about their accountability for expeditious and quality justice since they are one of the important stakeholders in the justice administration system.

1.11 Awareness should be created among the litigants about the benefits of the ADR Mechanism and the litigants shall be motivated for settlement of disputes since it gives a quietus to the dispute.

1.12 The matter should not be left to the litigants and the advocates representing to determine the pace of the litigation, but the judge should be able to manage the litigation and the adjudication process by setting time limits at every stage of the case.

1.13 Specialized Courts should be encouraged. In other words, the cases should be separated according to the nature of the dispute like civil, criminal, tax, commercial, family and etc., and the judges should be allowed to choose their area of preference and specialisation. By this procedure, handling of

each case from start to finish may also be made possible. Moreover, there will be consistency in the judgments rendered.

1.14 The supporting staff in the court and also the staff in the Registry should be properly trained to enhance their efficiency particularly in the functions like processing and numbering the matters at the stage of filing, docket management during the trial process and documentation like drafting of decrees in civil maters. Their performance should be assessed periodically and their skills for optimum utilisation of the Information Technology should be improved.

1.15 The process serving agency, certified copy delivery section, accounts section and etc., shall be provided with all the necessary infrastructure and sufficient manpower to meet the needs of the litigants.

1.16 Law Clerks should be engaged to assist the judges in preparing brief of the case highlighting the issues involved. They should be well versed with the use of advanced Information Technology to make the necessary research on the legal issues in controversy so as to extend the maximum assistance to the judges to arrive at the right conclusion.

1.17 Court Managers should be attached to each and every Court. The present system of appointing one Court

Manager for each district does not serve the purpose. That apart, the Court Managers should have the required technical knowledge of law and original thinking to innovate new case management systems. Their function should include clubbing of cases containing identical issues and finding out the reasons as to why the old cases are not ripe for trial. Similarly, they can also identify the cases relating to compoundable offences which are pending and the cases where the ADR measures can be implemented.

1.18 There has been a steady rise in the number of legal cases against Government and its Departments in all the Courts. Since Government litigation process is very slow, generally there is abnormal delay in filing the written statements/counters which in turn delays the entire court proceedings. Many times, this also results in *ex parte* orders against the Government leading to multiplicity of proceedings in the higher forums. Hence there should be a mechanism at the level of each district to monitor the cases instituted/pending by or against the Government in any Court in that district.

1.19 Institution of many of the cases against the Government is on account of the Government's failure to respond to the request of the citizens for redressal of their

grievances. For instance, in almost all the civil suits against the Government the mandatory notice under Section 80 of C.P.C. is issued. However, in most of the cases, the Government fails to respond and therefore the litigants are compelled to approach the Courts. Formation of Grievance Redressal Mechanisms at different levels in the Government specifically to deal with the grievances of the citizens may reduce the filing of cases against the Government.

1.20 Such Grievance Redressal Mechanisms can also take care of the cases pending in the Courts at the initial stage itself thereby ensuring expeditious disposal of cases.

1.21 The Law Commission of India in its recommendations in Report No.230, dated 5.8.2009 stated that the State Government or the Central Government which are the biggest litigants in the Courts should approach the Courts or contest cases only if necessary and not just to pass on the buck or contest for the sake of contesting.

1.22 The power to award costs against the unsuccessful party should be exercised by the Courts more often since it would be a serious deterrent against institution of frivolous cases or raising unreasonable defences.

1.23 The costs that are awarded must be realistic and it should cover all expenditure, direct and indirect that a reasonable person would have to incur. Even punitive costs could be imposed where legal process has been abused. This issue was considered in detail by the Apex Court in *Salem Advocates Bar Assn. (2) v. Union of India* [(2005) 6 SCC 344], *Vinod Seth v. Devinder Bajaj* [(2010) 8 SCC 1], *Ramrameshwari Devi v. Nirmala Devi* [(2011) 8 SCC 249] and *Indian Council for Enviro-Legal Action v. Union of India* [(2011) 8 SCC 161].

1.24 By following this procedure, the motivation for delaying litigation among the litigants and the advocates would be reduced to a large extent and the delays in the court proceedings can be successfully tackled. This will also reduce a lot of frivolous litigation.

1.25 The same procedure can be adopted even in Civil Revision Petitions before the High Courts since our experience shows that most of the Revision Petitions are filed not because there is reasonable prospect of success, but because 'admission and stay' would cause continuing injury to the opposite party and that he will be coerced to get the matter settled.

1.26 A central legislation should be enacted consolidating the law relating to all the civil courts in the

country so that a uniformity can be brought out in the pecuniary jurisdiction conferred on the Courts as well as the appellate/revisional remedies. This will also enable to have a common nomenclature to the cases filed in the Courts throughout the country.

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C H A P T E R – VIII

A system for monitoring and enhancing the performance parameters.

1.1 Case Management should also include effective monitoring of the progress of the litigation.

1.2 Such monitoring can be entrusted to the Court Manager who should be well acquainted with the case management and Court administration.

1.3 The progress of the case from filing to disposal shall be monitored by such Court Manager taking aid of the Information Technology. The workload of the courts, progress of cases, the inactive cases if any and the reasons therefor should be identified periodically and systematically and the corrective measures should be proposed by him without any loss of time.

1.4 Sections 122 & 126 of C.P.C. empowers the High Courts to make rules to regulate the procedure of the Civil Courts. Every High Court shall make rules in exercise of the said power and the rules should include a system for monitoring and enhancing the performance parameters.

1.5 The High Court of Andhra Pradesh has recently made such rules providing for case-flow management in

Subordinate Courts. A copy of the said rules are annexed to this report for reference.

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ANNEXURE

In exercise of powers conferred under Sections 89, 122 and 126 of the Code of Civil Procedure, 1908, the High Court of Andhra Pradesh frames the following Rules.

1. Title, application and commencement.- (1) These Rules shall be called the **Andhra Pradesh (Case Flow Management in Subordinate Courts) Rules, 2012.**

(2) These rules shall apply to the suits and other Civil Proceedings instituted or pending before the Civil Courts or Tribunals subordinate to the High Court of Andhra Pradesh.

(3) These Rules shall come into force from the date of publication in the Official Gazette.

(4) These Rules shall be supplemental to, and not to the exclusion of the existing provisions under different enactments and subordinate legislation; that have any bearing on the subject.

2. Definitions – In these rules, unless the context otherwise requires –

(a) "Ministerial Officer" shall mean, the Senior-most Officer in the Andhra Pradesh Ministerial Service Rules functioning in the concerned Court, or the Tribunal, entrusted with the functions under these Rules through specific or general orders issued by the High Court.

Summary of Policy recommendations prepared by Justice G. Rohini, heading the Sub-Committee constituted for making the study on Elements of Objectives 1 & 2 read with Chapter-9 of the Policy & Action Plan of NCMS with regard to performance standards for Indian Courts addressing the issues of quality, responsiveness and timeliness.

- Enhancement of strength of the judges/courts, supporting staff and infrastructure.
- More simplification of procedural laws.
- Increasing the use of Information Technology.
- Adoption of ADR Mechanism.
- Promoting specialised judges.
- Sharing of the best practices i.e., the best practices in one court should be disseminated rapidly across the entire judicial system.
- Able assistance from Bar particularly the prosecutors and the advocates representing the Government and the Statutory bodies.
- Coordination among all the stakeholders i.e., judicial officers, advocates, the members of Registry, public prosecutors and litigants.
- Imparting necessary training at regular intervals to all stakeholders.
- Since a great deal of litigation is against/by the Government, a mechanism should be created at the Government level for proper understanding of laws, maintaining transparency in their activities and enhancing the responsiveness which in turn would help to reduce the incidence of litigation.
- Formation of Grievance Redressal Mechanisms at different levels in the Government.

- Creating a system of impact assessment on workload of courts before legislations are introduced and for making provision in the financial memorandum for increasing the court strength and estimated cost involved in implementing the legislation.
- Assistance to Judges by Court Managers/Judge's clerks right from the Magistrate Courts so that the judicial officers can utilise their time for judicial functions.
- Assessment of the complexity of cases and proper time management in respect of each case by the judge himself.
- Maintaining a list of cases designated as complex cases and cases where one of the parties is trying to delay the proceedings and allotting a specific schedule for such cases in consultation with the counsel for both the parties.
- Fixing priorities among the pending cases
- Better infrastructure for courts.
- Awarding costs against the unsuccessful party which would be a serious deterrent against institution of frivolous cases or raising unreasonable defences.
- Establishment of Courts/appointment of Judges shall be on the basis of the institution/pendency of cases but not on the basis of the population.
- Inclusion of more specific provisions in C.P.C. governing adjournments.
- Enactment of a Central Legislation consolidating the law relating to all the Civil Courts in the country instead of leaving it to the States to have their own legislations determining the jurisdiction conferred on the Subordinate Courts.

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