REPORT OF THE SUB-COMMITTEE

HEADED BY JUSTICE DIPANKAR DATTA ON

'HUMAN RESOURCE DEVELOPMENT STRATEGY'

CONTENTS

PRELUDE

The National Court Management Systems Committee in its 2nd meeting held on 16th December, 2012 constituted various sub-committees. It was decided in such meeting that the sub-committee on 'Human Resource Development Strategy' would examine Element 6 of the 'Elements of Objectives' read with the subjects identified in Chapters 5, 7 and 8 of the 'Policy and Action Plan' of NCMS and submit a report by 15th February, 2013.

In furtherance thereof, the sub-committee headed by the undersigned associated Hon'ble Justice Joymalya Bagchi, a Judge of the High Court at Calcutta and Mr. Ranjit Kumar Bag, Registrar General of the High Court at Calcutta and one of the members of the NCMS, for preparation of the report. The Director, Indian Institute of Management, Joka, Kolkata was requested to make available the services of a management expert from its faculty to assist the sub-committee. The Director of the Institute recommended Mr. Amit Dhiman, Associate Professor, who was inducted in the sub-committee. Mr. Ramesh Babu, another Associate Professor of the Institute was also inducted in the sub-committee considering that he was a Law graduate and could contribute for preparation of the report. The undersigned acknowledges the valuable assistance rendered by Prof. Dhiman as well as Prof. Babu, both of whom worked together to submit proposals on some of the topics to be dealt with by the sub-committee.

Element 6 of NCMS requires it to evolve *"A Human Resource Development Strategy* setting standards on selection and training of judges of subordinate courts". *"Personnel"*, *"Annual Confidential Reports"* and *"Investigation and Enquiries"* are the subjects identified in Chapters 5, 7 and 8 supra respectively. Based on the system requirement of Qualities, Attitudes, Skills and Knowledge (QASK) of the bench, bar, ministerial staff, executive agencies and litigants, the key challenge is to develop and implement a comprehensive Human Resources Management System for selection, training and performance management system of judges and the ministerial staff and concerned support functions, bar admission and effective mechanisms for ethics and conduct of advocates with accountability system, comprehensive system of ethics and conduct applicable to judges and court staff with accountability system, and quality of legal education.

In course of the 3rd meeting of the NCMS Committee, its Member-Secretary had placed a letter dated 1st February, 2013 received by her from Mr. A. K. Gulati, Joint Secretary in the Department of Justice and one of the members of the Committee. What is important for the sub-committee to note from the said letter is that the Department of Justice had reviewed the progress made by the NCMS Committee and in regard to manpower requirement for the judiciary, the need to lay down the 'norms' for personnel required per Judge in subordinate courts for being followed uniformly across the courts in the country with due regard to local specific requirements, if any, was considered necessary by it. The issue has been given the attention it required.

The scheme of NCMS, which is directed towards enhancement of timely justice, envisages establishment of comprehensive Court Management Systems to enhance quality, responsiveness and timeliness of courts. Bearing in mind the provisions in the Constitution of India, it has been felt that the federal structure of the Indian Union ought not to be disturbed by imposing any suggestion or proposal and the individual High Courts may be left free to decide whether to proceed on its own policies or to accept the proposals of the NCMS for achieving the purpose of making the system 'five plus free'.

A draft of the policy framework formulated by the present sub-committee, seeking to identify the problem areas and attempting to suggest solutions, is presented for gracious consideration of the NCMS Committee.

(DIPANKAR DATTA)

CHAPTER - I

NEED FOR HUMAN RESOURCE DEVELOPMENT

With the number of pending cases in the various courts all over the country exceeding three crore, the Indian judiciary is faced with a serious problem of clearing the backlog. Causes of delay and finding out solutions to clear as many cases as expeditiously as possible are matters of frequent discussion and one would start feeling weary of the same. The Supreme Court has been in the forefront of judicial reforms and under the able guidance of a number of former and sitting judges has taken bold steps to improve the efficiency and quality of the justice delivery system. NCMS is the latest and one of the most visionary reform proposals amongst them. However, the success of any reform initiative depends on the people who manage the system sought to be reformed. Thus, it is essential that the judiciary's human resources are well capacitated to address the demands of implementing the envisaged judicial reforms. Human Resource Development, therefore, is at the core of judicial reforms, both as an end and as a means of attaining other reform objectives.

CHAPTER - II

SELECTION OF JUDGES

At present, the Judicial Officers at the lowest level are recruited in the cadre of Civil Judge (Junior Division) from amongst law graduates through competitive examination conducted mostly by the High Courts and in some States by the respective Public Service Commissions. These officers are considered for promotion to the rank of Civil Judge (Senior Division)/CJM/ACJM and thereafter for promotion to the cadre of District Judge. Provisions also exist to fill up 25% posts of the cadre of District Judge by way of direct recruitment from the members of the Bar who have completed at least seven years of practice and 10% of the posts of the cadre of District Judge through limited competitive examination from the judicial officers holding the rank of Civil Judge (Senior Division) for a minimum period of five years to seven years, depending on the rules framed by each High Court.

The Law Commission of India recommended in favour of formation of All India Judicial Service in its 116th report in the year 1986. The historical background for establishment of Indian Judicial Service and the decision for setting up Indian Judicial Service have been discussed in detail in the said report of the Law Commission. Article 312 of the Constitution was also amended in 1976 for the purpose of establishment of the Indian Judicial Service. The Shetty Commission was established to make recommendations for improvement of working conditions of the Judicial Service, for providing appropriate perks and financial benefits to the members of the Judicial Service and for feasibility of creation of All India Judicial Service. The Supreme Court monitored the implementation of the report of the Shetty Commission, though the recommendation of the Shetty Commission for establishment of Indian Judicial Service was ultimately not accepted. Recruitment in the cadre of District Judge through All India Competitive Examination will definitely give opportunity to the young and meritorious advocates to join Judicial Service having prospect of longer promotional

avenue. National Judicial Academy may be initially entrusted with the duty to prepare the ground work for recruitment to the cadre of District Judge through All India Competitive Examination. The necessary changes in the laws and rules may also be recommended by the National Judicial Academy.

It is of paramount importance for the justice delivery system that men/women of quality are appointed as judges. The distinction between 'eligibility' and 'suitability' must always be borne in mind while recruiting judges. The process that is followed for recruiting judges is often found to be a process to fill up vacancies by elimination rather than a process of selection to identify the worthy. This is mainly because of dearth of good number of eligible law graduates, who could be considered suitable for recruitment. Lack of experience of how the courts function also becomes vital. Although the scales of pay and other benefits have increased, not too many are found interested in joining the judiciary at the first instance. After graduation from the law schools, the tendency of the majority is to join the corporate sector. Securing enrolment for commencing legal practice is the second choice. Joining the judiciary seems to be the last choice. Those not too confident of making a mark in the field of legal practice or unsuccessful in the profession, look at the option to serve as judges of the subordinate courts. The other group interested in joining the subordinate judiciary comprises of those law graduates who intend to carry on the family tradition. Experience has also shown that nowadays one who ponders as to whether he ought to join the judiciary is more concerned about what he would receive as pay and allowances rather than what he can contribute for the benefit of civil society. Commitment to serve the people is sadly lacking. The insistence on practice either in the subordinate courts or the High Courts for a minimum of three years is bound to do a world of good for the prospective judges. The system needs men/women of character, who are prepared to sacrifice their personal interest and keep the interest of others first. Merit, integrity, honesty and strength of character are inseparable qualities that a prospective judge must possess and, therefore, every process of selection must be aimed at recognizing the most talented and deserving from amongst the aspirants and picking them up for judicial service, instead of embarking on an attempt to weed out of the zone of consideration the absolutely worthless from a group of worthless aspirants and to anyhow fill up the vacancies by recruiting them. If in a given year certain vacancies are likely to remain unfilled due to dearth of

suitable candidates, the system ought not to be clogged with sub-standard judges. It would be prudent to wait for a year and then select the worthy.

The duties, both judicial and non-judicial, that a judge has to perform are quite demanding. It is not the usual 10.00 a.m. to 5.00 p.m. work. A judge who has the knack of indulging in research would utilize the rest of the hours. The nature of hard work would necessarily require the judge to have a healthy body. It is, therefore, of utmost importance that the selectors give due weight to the health of the aspirant, apart from those referred to above.

Although quite a few of the High Courts in the country are presently conducting the process of recruitment in the subordinate judiciary, the Public Service Commissions of the other States have been entrusted to select judges based on competitive examinations conducted by them. They seem to be over-burdened. The delays in the process make the system unworkable. It would not at all be a bad idea to entrust a committee, by whatever name called, with the task of recruitment at all levels of the courts subordinate to the High Courts. The committee of each State, to supervise and monitor the recruitment procedure, may comprise of two/three puisne Judges of the High Court, and an expert nominated by the Hon'ble the Chief Justice of that High Court. It should be the earnest endeavor of each player in the system to provide support to the committee for engaging men of merit, viz. retired judges, academics, retired bureaucrats, etc., for conducting the process of selection viz. setting of questions, evaluating the answers, moderation of results, and holding personality tests. Support staff with impeccable character traits ought to be made available to the committee, since the process is bound to involve impartiality and confidentiality of the highest standards but at the same time has to be fair and transparent. Selection by such committee would be in line with the directions passed by the Hon'ble Supreme Court on 4th January, 2007 in Civil Appeal No. 1869 of 2006 (Malik Mazhar Sultan and anr. v. U.P. Public Service Commission and ors.) wherein reference was made to a decision taken in a conference held between the

Chief Justices and the Chief Ministers that selection of the subordinate judicial officers at all levels ought to be entrusted to the High Courts.

Vacancy at all levels of the judiciary is regarded as one of the important causes for the mounting arrears. It is of utmost significance, therefore, that the process of recruitment commences and concludes, as far as practicable, in line with the schedule fixed by the Supreme Court in Malik Mazhar Sultan (supra).

Although increasing the number of courts, inter alia, is considered to be a panacea for treating the ills from which the system suffers, attention must be devoted to fill up the existing vacancies first within the shortest possible time frame so that no court is vacant, albeit by men/women of quality, as stressed above. The system is bound to benefit if the courts are allowed to work with its full strength. Increasing the strength of judges without provision for commensurate infra-structure and support staff would hardly be of any effect and frustrate the object of making the system 'five plus free'.

Insofar as direct recruitment to 25% and jump promotion to 10% posts of the cadre of District Judge are concerned, it has been experienced in the past that while the former quota remains unfilled, suitable candidates far outnumber the latter quota. This has a two-pronged adverse effect on the system. First, the system has to work without adequate number of judicial officers manning the Additional District and Sessions courts, and secondly, those who qualify in the examinations conducted for the purpose but are unfortunate in not being promoted feel morose and lose the interest and vitality to perform, at least till they overcome the shock. It would be in the best interest of the system if the unfilled posts of the 25% quota for a particular year are filled up from amongst the in-service candidates found suitable but who are unable to secure a promotion having regard to the limited number of vacancies.

CHAPTER - III

TRAINING OF JUDICIAL OFFICERS/STAFF

"Knowledge is power" is a saying which is acknowledged by all. The need to impart training to judicial officers at every level, - both prior to assigning independent charge of a court as well as thereafter - to improve performance and efficiency cannot be over emphasized. Judicial training is, therefore, an essential element of an efficient justice delivery system, which helps to ensure the competence of the judiciary. In an age where increasingly complex and sensitive issues are left to be settled by judicial intervention, the need for judicial training is greater than ever. At its grass-root level, judicial training would provide the information and the tools that the judges would require to effectively perform their duty. That apart, training and education could address and equip the judges to better manage the cases before them so as to make the life of a litigation shorter either by applying innovative techniques or by persuading the parties to resolve their dispute through the alternative dispute resolution mechanism. It is important for a judge to develop an understanding of wider social context in relation to the litigation at hand and to render 'nyaya' i.e. justice in accordance with 'niti' i.e. the rules.

The Judicial Academies have been playing a stellar role in imparting education to the judges. Judges of the higher judicial service having an academic bent of mind ought to be preferred for manning the Academies. The emphasis should be to accustom the newly appointed judges with the long drawn procedures that inevitably choke the system and to provide the key to tackle every individual case with promptitude. However, programmes of unduly long duration would obviously result in the judges losing out on precious judicial hours and, therefore, care and caution must be exercised to fix the calendars in a manner that the right balance is struck.

Quite a few High Court judges are role models for the subordinate judges and their participation in the programmes tend to encourage and motivate them to a great extent. However, at times, they are overlooked. It needs no reiteration that the Judicial Academies ought to approach such High Court judges who are willing to contribute to the system by their erudition and acumen.

The need for judicial training had been considered in great detail by the Law Commission. The 117th Report of the Law Commission (November, 1986), providing good guidance, had recommended setting up of Judicial Academies and it has been acted upon.

In India, the appointment of judicial staff is largely controlled by the Governments. The number of staff per court is fixed by the Government. Needless to say, these personnel form the backbone of the judicial system. However various factors like lack of infrastructure, lack of clarity regarding career growth and absence of any specialized training act as a barrier for these staff and prevent them from making use of the latest technology and devices. Hence it is absolutely essential that training and development of technical and intellectual faculty of these personnel go hand in hand with that of judges. At the same time, there is urgent need of maintaining ACRs for these staff also. At least in West Bengal, the system is not in vogue. An efficient judiciary must have efficient people, with scope for rewarding the worthy.

The proposal of the management experts in respect of training for judicial officers and staff, marked "A", is made a part of the report.

CHAPTER - IV

TRANSFERS & POSTINGS AND ACRs OF JUDICIAL OFFICERS

A sizeable number of judicial officers all over the country are often found demoralized, disillusioned and disgruntled, because of reasons that are nor far to seek. It is of absolute necessity that the mental peace of the judges, who are manning the courts subordinate to the High Courts, is ensured to the fullest extent possible. It is common experience that proper judging is not possible if a judge, while sitting on the chair of a judge, is lacking in peace of mind. His performance is closely relatable to the mindset prevailing at the time of discharge of judicial duty. Affectation of performance is bound to occur for a brooding judge. There is a general discontent amongst the judicial officers due to shabby treatment meted out to them by the High Courts. Such discontent arises out of (i) alleged unfair transfer and postings (Delhi, because of geographical reasons, being an exception), (ii) grievances relating to ACRs, and (iii) non-disposal of representations in respect of either (i) or (ii) or both.

PART - I

In quite a few High Courts, written transfer policies are conspicuous by its absence. For ensuring a fair and transparent process, there ought to be a written transfer policy rather than unwritten norms and guidelines providing for transfers after three years and two years from comfort zones and difficult zones, as the case may be. A section of judicial officers all over the country have the blessings of persons wielding influence and are often found to be posted in zones in and around the principal seat of the High Court or even in their home district and are seldom posted to difficult zones. Considering that the tenure of a judicial officer who is not elevated to the High Court as a Judge would ordinarily be between thirty and thirty five years, a uniform

policy could be evolved identifying various zones (very difficult, difficult, not so difficult, comfort) and posting officers thereat taking into consideration their choice, if any, so as to ensure optimum utilization of their services. This could be achieved in the manner suggested by the management experts in their proposal on transfer policy, annexed hereto and marked "B".

Although an order of transfer before expiry of the normal period of posting could be made in the exigencies of service, one has to concede that transfer before expiry of the normal period ordered as a measure to discipline an officer is not an incident that rarely occurs. It is difficult, if not impossible, for an officer to prove that the transfer is penal. One would not dare to approach the court of law questioning the same. The judicial officer suffering such an order, finding no other option, has to comply with the same. An injustice is thus perpetrated. Since the judiciary is the harbinger of justice, the judicial officers would feel encouraged if there is complete cessation of such penal transfer order and transfers are ordered as far as practicable in accordance with the written policy. If at all any officer commits misconduct or indulges in indiscipline and the need to discipline him arises, recourse to disciplinary proceedings must be had rather than adopting a method that borders on dubiousness.

PART - II

There can be no two opinions that writing of ACRs of the judicial officers plays a very important role in shaping their future career.

The role of Inspecting Judges and the manner in which they are to assess the work of the judicial officers were considered by the Supreme Court in High Court of Punjab & Haryana v. Ishwar Chand Jain, reported in (1999) 4 SCC 579. It was observed therein as follows:

> *"32. Since late this Court is watching the spectre of either Judicial Officers or the High Courts coming to this Court when there is an order prematurely retiring a judicial officer. Under Article 235 of the Constitution the High Court exercises complete control over subordinate courts which include District Courts. Inspection of the subordinate courts is one of the most important functions which the High Court performs for control over the subordinate courts. The object of such inspection is for the purpose of assessment of the work performed by the Subordinate Judge, his capability, integrity and competency. Since Judges are human beings and also prone to all the human failings, inspection provides an opportunity for pointing out mistakes so that they are avoided in future and deficiencies, if any, in the working of the subordinate court, remedied. Inspection should act as a catalyst in inspiring Subordinate Judges to give best results. They should feel a sense of achievement. They need encouragement. They work under great stress and man the courts while working under great discomfort and hardships. A satisfactory judicial system depends largely on the satisfactory functioning of courts at grass-roots level. Remarks recorded by the Inspecting Judge are normally endorsed by the Full Court and become part of the annual confidential reports and are foundations on which the career of a judicial officer is made or marred. Inspection of subordinate court is thus of vital importance. It has to be both effective and productive. It can be so only if it is well regulated and is workman-like. Inspection of subordinate courts is not a one-day or an hour or a few minutes' affair. It has to go on all the year round by monitoring the work of the court by the Inspecting Judge. The casual inspection can*

hardly be beneficial to a judicial system. It does more harm than good. As noticed in the case of Registrar, High Court of Madras v R. Rajiah, reported in (1988) 3 SCC 211, there could be ill-conceived or motivated complaints. Rumour-mongering is to be avoided at all costs as it seriously jeopardizes the efficient working of the subordinate courts."

In High Court of Judicature at Allahabad v. Sarnam Singh, reported in (2000) 2 SCC 339, the aforesaid important observations were held to constitute important guidelines for assessing the work of a judicial officer, which indicated the attitude with which the Inspecting Judge should objectively consider the work and conduct of judicial officers who sometimes have to work under difficult and trying circumstances.

The importance of ACRs was again highlighted in Bishwanath Prasad Singh v. State of Bihar, reported in (2001) 2 SCC 305. After considering the decisions referred to above, the Court held:

*"*****Suffice it to observe that the well-recognised and accepted practice of making annual entries in the confidential records of subordinate officials by superiors has a public policy and purposive requirement. It is one of the recognised and time-tested modes of exercising administrative and disciplinary control by a superior authority over its subordinates. The very power to make such entries as have potential for shaping the future career of a subordinate officer casts an obligation on the High Courts to keep a watch and vigil over the performance of the members of subordinate judiciary. An assessment of quality and quantity of performance and progress of the judicial officers should be an ongoing process continued round the year and then to make a record in an objective manner of the impressions formulated by such assessment. An annual entry is not an instrument to be wielded like a teachers' cane or to be cracked like a whip. The High Court has to act and guide the subordinate officers like a guardian or elder in the judicial family. The entry in the confidential rolls should not be a reflection of personal whims, fancies or prejudices, likes or dislikes of a superior. The entry must reflect the result of an objective assessment coupled with an effort at guiding the judicial officers to secure an improvement in his performance where need be; to admonish him with*

the object of removing for future, the shortcoming found; and expressing an appreciation with an idea of toning up and maintaining the imitable qualities by affectionately patting on the back of meritorious and deserving. An entry consisting of a few words, or a sentence or two, is supposed to reflect the sum total of the impressions formulated by the Inspecting Judge who had the opportunity of forming those impressions in his mind by having an opportunity of watching the judicial officer round the period under review. In the very nature of things, the process is complex and the formulation of impressions is a result of multiple factors simultaneously playing in the mind. The perceptions may differ. In the very nature of things there is a difficulty nearing an impossibility in subjecting the entries in confidential rolls to judicial review. Entries either way have serious implications on the service career. Hence the need for fairness, justness and objectivity in performing the inspections and making the entries in the confidential rolls."

Despite the caution sounded in the aforesaid decisions, writing of ACRs leaves a lot to be desired and this concern has been expressed by the Supreme Court in its recent decision in Registrar General, High Court of Patna v. Pandey Gajendra Prasad and ors., reported in (2012) 6 SCC 357.

The formats maintained by several High Courts of the country (Andhra Pradesh, Bombay, Calcutta, Chattisgarh, Delhi, Gujarat, Jammu & Kashmir, Jharkhand, Karnataka, Madhya Pradesh, Punjab & Haryana and Orissa) in which the opinion of the Inspecting Judge is recorded have been looked into. Qualitative assessment of judgments written by a judicial officer appears therefrom to be one of the duties of the Inspecting Judge and a judicial officer has to be graded in the manner specified therein. It is indeed surprising that a judicial officer's capability to write quality judgments is assessed only on the basis of a certain number of judgments written by him, which are either selected by him and transmitted to the Inspecting Judge for perusal or selected at random by the Inspecting Judge himself. The procedure, to say the least, is fraught with problems and is bound to pose difficulties in proper assessment. Assessment only on the basis of reading judgments reflects a subjective view. There cannot be objective consideration unless the records

and evidence are examined. The judges of the High Courts, barring a few, hardly look into the trial court records in course of assessment. Time constraint is one of the factors. To a judge, a plain reading of a judgment may lead to formation of an opinion that it is perfect and the judicial officer entitled to grade 'A'. However, consider a situation where it is shown that a vital piece of evidence escaped the notice of the judge and hence was not adverted to in the judgment or a situation where a substantial point raised by counsel for a party has been erroneously not recorded and hence not dealt with by the judge. In both situations, the judgment becomes thoroughly vulnerable and liable to be upset by the higher court. If it could be proved that the outcome of the case, which the said judgment brings about, would have been otherwise had the judicial officer not committed the mistake of the nature referred to above, it defies logic as to what purpose is served by this flawed process of assessing a judicial officer. Absolute objectivity cannot be ensured by mere reading.

The practice of evaluation on the basis of judgments provided by the judicial officers themselves is archaic and having regard to the present day problems, ought to be discontinued immediately. Instead of the subjective view on the quality of the judgments written by the judicial officers, there is an urgent need to formulate a system for objective evaluation. In course of assessing a judgment written by a judicial officer, it is not the duty of the Inspecting Judge to examine as to whether it is a correct judgment. On the contrary, opinion has to be recorded as to whether the guidelines specifying pointers to evaluate quality are satisfied or not, viz.

1. Facts are fully and correctly set out.

2. Evidence has been properly recorded and appreciated.

3. Appreciation of law in context of pleadings and evidence.

4. Ratio has been correctly deduced and applied.

5. Final decision flowing from judicial reasoning as set out in 1-4.

6. Lucidity, brevity and logic reflected in language.

If one were inclined to genuinely ascertain whether points 1 and 2 supra have been correctly adhered to, the records of the trial court meaning thereby the pleadings and the evidence that has been adduced have to be looked into. The High Court, to which I belong, to the best of my knowledge, has no more than two judges (I am not one of them) who look into the records and then lay their opinion on the grade that the officer deserves.

However, the utility of looking into the records and then evaluating the quality of judgment is not considered by many judges to be always the best way. They argue that if quality of a judgment could be evaluated by looking into the records and reading the judgment without hearing arguments, there would be no need for lawyers to assist the court. The necessity of oral arguments from the bar helping the judge to reach the correct decision cannot be under-estimated. The reasoning is sound, and thus merits acceptance.

How does one solve the problem?

The role of a sitting High Court Judge is increasingly becoming varied day by day. Initially, on elevation as a High Court Judge, a judge's task is to hear the rival claims, frame the issues that arise for decision and decide the same according to his best judgment. With growing seniority, such a judge has to shoulder additional responsibilities. He is inducted in various committees for proper administration of the High Court. In due course of time, he has to play diverse roles like inquiring authority (in connection with disciplinary proceedings), question paper setter and examiner (in connection with recruitment examinations of judicial officers), policy formulator and strategist (like the present assignment) to name a few. The pressures of work in Court together with these functions have the potential of rendering justice a casualty. In the discharge of judicial duty, it is common experience that the

quality of a reserved judgment is always a pitch higher than judgments dictated in open Court. With less time at a judge's disposal, the tendency is not to reserve judgments but to deliver the same immediately after the arguments are over. No doubt immediate dictation shortens the life of the proceeding but quality is bound to take a back seat in the circumstances. A bit more research at home and some extra time to deliberate definitely go a long way to enhance the quality of a judgment. Exceptions apart, the administrative duties gradually tend to stifle a High Court Judge.

It is in the fitness of things that I propose that a High Court judge should be relieved of evaluating the quality of judgments on the administrative side. A better result could be achieved if the evaluation is made on the judicial side. Judgments/orders of each and every judicial officer, at one point of time or the other, are carried in appeal before High Court or subjected to revision. The opinion of the judges on the judicial side must be preferred to the opinion on the administrative side. It is true that the decision of the High Court on the judicial side while dealing with a matter judicially may not be final since it is subject to the decision of the Supreme Court, if a party chooses to take the matter before it and the decision is reversed. However, on the same analogy, the present system may not hold good and has to be termed flawed, for, judgments of the judicial officers that are perused for evaluation of quality might have been upset by a higher court subsequently, not to the knowledge of the assessing officer. If a judicial officer had been given grade 'A' or 'A+' for a judgment that is ultimately reversed, it cannot be regarded as a proper assessment. What could be done in the peculiar circumstances is without commenting on the merits of the judgment of the subordinate judicial officer, the judge(s) of the High Court hearing the appeal or revision may be required to give his/their opinion separately (not to be divulged to the litigants) as to whether the impugned judgment/order satisfies the six-point guidelines based whereon the quality of the judgment is to be evaluated. This may serve a dual purpose. Apart from being an objective decision given by a judge on examination of the judgment on the judicial side after hearing arguments of the rival parties and therefore being credit-worthy, a lot of time of the Inspecting Judge as well as that of the

District Judge (who evaluates the judgments written by his subordinates) would be saved in the process (reading of judgments consumes much time), and also, it would no longer be open to the judicial officers to provide outsourced judgments for evaluation. Once the judicial officers realize that outsourced judgments would no longer play a vital role in shaping their career, the tendency to indulge in such misdemeanor would definitely cease.

In Pandey Gajendra Prasad (supra), the Supreme Court stressed on the need to revamp the system of recording ACRs noticing from experience that ACRs are written hurriedly after long lapse of time and lack objectivity. The proposal for evaluation of judgments by judges on the judicial side would advance the cause of objectivity and save precious time of the judges, which could be devoted for other better purposes.

Since it is the prime objective of the NCMS to make the judicial system 'five plus free' by addressing the cases that are more than five years old, one needs to encourage the judicial officers to dispose of the older cases earlier. Experience has shown that some old cases, pending for 10 years or more, are allowed to gather dust because the issues therein are complicated and there is a growing tendency amongst judicial officers to avoid decisions on complicated issues. Awarding additional units to the judicial officers for disposing of the old cases may act as an incentive to achieve the object for which the NCMS has been brought into existence.

The framework for transforming the ACR process prepared by the management experts, annexed hereto and marked "C", provides novel ideas for assessing the performance of the judicial officers. Although it may not be feasible to implement all the suggestions, those that are implementable may be considered for removing subjectivity and promoting objectivity.

PART - III

Another area of concern is the long pendency of undisposed of representations received from the judicial officers. If the system allows a judicial officer to ventilate his grievance on any matter, care must be taken not to unduly prolong his agony. There must be a meaningful consideration of such representation and the officer told as to whether it is devoid of merit. Since opportunity of hearing is not required to be extended, brief reasons in support of such conclusion would be in furtherance of the interest of the officer, since he would get to know why a particular action taken against him was considered justified in the circumstances or what exactly the deficiency is, which he must strive to remove. Selective placement or non-placement of representations for years before the appropriate committee for consideration by the registry serves no good. If the system expects the judicial officers to deliver, this malady has to be removed for good.

CHAPTER - V

INVESTIGATIONS AND ENQUIRIES

The need for a disciplined and corruption free system is the call of the day. However, in most of the States, the present set up of Vigilance Cell lacks the required infrastructure to deal with complaints received against the staff members and against the judicial officers. The proposal of the management experts to set up Judicial Accountability Office and Judicial Accountability Committee for ensuring that the members of the judicial service function within the bounds of their authority, being an annexure to this report marked 'D', could be considered for implementation to either get rid of the delinquent from the system or to discipline them.

Substantial part of judicial time is lost either because the judicial officers are not punctual or prone to rise early. They must be told loud and clear that unless there are exceptional reasons, failure or neglect to adhere to the timings would be treated as dereliction of duty and might attract disciplinary proceedings. Any laxity in exercising disciplinary control would encourage indiscipline, which is sure to be counter-productive for the system.

Similarly, the net of disciplinary control over the staff of the subordinate courts must be spread to send the message of minimum tolerance. Acceptance of bribes by the court staff is rampant. The wood-peckers inside the system are more dangerous than those outside and to prevent further damage, a no nonsense approach has to be adopted for ensuring credibility.

CHAPTER - VI

TRAINING PROGRAMME FOR PUBLIC PROSECUTORS/GOVERNMENT PLEADERS

The Public Prosecutors play a pivotal role in the administration of criminal justice. In Manu Sharma vs. State (NCT of Delhi) reported in (2010) 6 SCC 1, the Apex Court elucidated the role of Public Prosecutors in the criminal justice system as follows:

> *"The Public Prosecutor is a statutory office of high regard. He does not represent the investigating agencies, but the State. He has wider set of duties than to merely ensure that accused is punished, the duties of ensuring fair play in proceedings, all relevant facts are brought before court in order for determination of truth and justice for all parties including the victims."*

UN GUIDELINES ON THE ROLE OF PUBLIC PROSECUTORS:

The UN Guidelines on the role of Prosecutors read as follows:

"Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.
In the performance of their duties, prosecutors shall:

(a)Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;

(b)Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;

(c) Keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise;

(d) Consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.

Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.

The self-same guidelines lay down specific provisions for_Empowerment of the Public Prosecutors to ensure that professional responsibilities are independently carried out along with the entitlement to do as follows:

- to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability;
- together with their families, to be physically protected by the authorities when their personal safety is threatened as a result of the proper discharge of their prosecutorial functions;
- to reasonable conditions of service and adequate remuneration, commensurate with the crucial role performed by them and not to have their salaries or other benefits arbitrarily diminished; to reasonable and regulated tenure, pension and age of retirement subject to conditions of employment or election in particular cases;
- to recruitment and promotion based on objective factors, and in particular professional qualifications, ability, integrity, performance and experience, and decided upon in accordance with fair and impartial procedures;

• to expeditious and fair hearings, based on law or legal regulations, where disciplinary steps are necessitated by complaints alleging action outside the range of proper professional standards;
• to objective evaluation and decisions in disciplinary hearings;
• to form and join professional associations or other organizations to represent their interests, to promote their professional training and to protect their status; and to relief from compliance with an unlawful order or an order which is contrary to professional standards or ethics."

The appointments of Public Prosecutors in India are made under Section 24 of the Code of Criminal Procedure. The Central Government or the State Government, in consultation with the High Court, may appoint one for every High Court. In the case of appointment of public prosecutors in the districts by the State Government, the same has to be preceded by consultation with the Sessions Judge. The Supreme Court in its decision in State of Uttar Pradesh and another vs. Johri Mal, reported in (2004) 4 SCC 714, has elaborately dealt with the subject of appointment of an incumbent independently and on an objective basis.

In the 197th Report of the Law Commission of India (July 2006), the necessity of appointing public prosecutors and additional public prosecutors from a regular cadre of prosecuting officers was emphasized.

In 2009, Section 25A was introduced in the Code to create a Directorate of Prosecution consisting of a Director of Prosecution and a number of Deputy Directors of Prosecution for heading the prosecuting agency in the State. It is therefore important to formulate a scheme of training and educating the Public Prosecutors in consonance with that of the Code of Criminal Procedure.

ORGANISATIONAL STRUCTURE

The State may notify the Director of Prosecution and the Deputy Directors of Prosecution as the Nodal Agencies for the purpose of imparting training and education to the Public Prosecutors in their respective jurisdictions. The Director of Prosecution shall frame a policy for training of Public Prosecutors in the State on a periodic basis. Reports of such training programmes be sent to the Home Secretary under whose administrative control the Director of Prosecution functions. The Directorate of Prosecution and the Deputy Directorate of Prosecution must be connected via internet access to the offices of each Prosecutor in every sub-division and the aforesaid information be electronically transferred through such internet access to the Prosecutors.

Participation and/or performance of the Public Prosecutors in the training programmes shall be assessed by a panel of independent experts who may even recommend award/citations for the outstanding performance by the members of the prosecuting panel.

AGENDAS TO ACHIEVE

The contents of the training of Public Prosecutors may contain various aspects including matters of substantive law, procedures and other relevant issues. The Public Prosecutors may be trained by attending seminars/group discussions through classes on, inter alia, the following issues:

(a) Offences affecting human body;
(b) Crime against women;
(c) Crime against human trafficking;
(d) Offences against property and forgery;
(e) Cyber crime and cyber law;
(f) Basic principles of the Evidence Act;
(g) Provisions relating to investigation of crime;
(i) Trial in criminal cases and recording of evidence including video conference;
(j) Maintenance of electronic records and its management;
(k) Forensic medicine and toxicology;
(l) Ballistic evidence;
(m) Terrorism and offences against the State;

(n) Tracing/Attachment/Confiscation of proceeds of crime and Money Laundering Act;
(o) Withdrawal of prosecution under section 321 of the Code;
(p) Sentencing;
(q) Environment Laws;
(r) Narcotic Laws;
(s) Offences against Scheduled Castes and Schedule Tribes;
(t) Training and proficiency in use of computers;
(u) Corruption cases and offences by public servants;
(v) Protection of the whistleblowers;
(w) Recognition of corporate crimes;
(x) Extent of Fundamental Rights e.g. right to expression, right to information, right to private defence, etc.
(y) Tortuous liability; and
(z) Use and security of public property.

Such discourses may be imparted through a panel of retired judicial officers, senior police officers and other experts in the relevant fields.
In addition to academic training, experience in handling complicated or important cases may be shared by Prosecutors through group discussions. Reference materials including recent developments vide case laws and/or recent legislative changes may be provided to each Prosecutor from the office of the district.

TRAINING MECHANISM OF GOVERNMENT PLEADERS

The Government Pleaders of each district could also be requested to attend seminars relating to recent developments in civil laws particularly in the area of Alternative Dispute Redressal Mechanism such as mediation, arbitration, conciliation and IPR related laws, matrimonial disputes and custody cases with emphasis on the rights of child and specific needs and expectations of the weaker sex. Regular training of all Prosecutors/Government Pleaders can also be given in computer.
Collaboration and association of the Public Prosecutors and Government Pleaders with the Non-Governmental Organizations and institutional agencies through interactive sessions and inter-disciplinary exchange of outlook to observe an issue, would endow a viewpoint to methodically sharpen

Government Pleaders and Public Prosecutors skills to accomplish the agendas from end to end with intense perceptive. Similarly, in-person visit to police stations, remand and correctional homes and juvenile and women centers' would be in addition to administration of criminal justice through first person observations.

The crucial effect of the training and the agendas on board would be making certain to the masses fair, efficient and just recognition of their rights and civil liberties owing to effective law enforcement.

CHAPTER - VII

Manpower Requirement in Subordinate Courts

The employees attached to the subordinate courts perform various administrative works like issuing process, complying with direction of the court for making the case ready for hearing e.g. calling for record from the lower court, calling for documents from other offices, issuance of warrant, proclamation and attachment in criminal cases. If proper steps are not taken in due time, the case will not ripen for final hearing before the court. The Bench Clerk of the trial court is required to give number on exhibited documents and prepare the list and put up the same before the judge for verification and obtaining signature. Two Bench Clerks can effectively handle 500 cases in the Courts of Additional District & Sessions Judges, whereas they may be in a position to deal with 1000 cases in courts of Civil Judge (Senior Division) and 1500 cases in the courts of Civil Judge (Junior Division). Similarly, one Stenographer is not capable of taking the entire workload of the court of the Additional District & Sessions Judge.

The court of the District Judge or Additional District Judge is partly trial court and partly appellate court, apart from exercising jurisdiction to deal with cases of adoption, guardianship, probate, etc. As the Presiding Officer of the trial court, the Additional District & Sessions Judge will have to record the statements of witnesses in both civil suits and sessions cases, apart for hearing the criminal appeals, civil appeals and civil revision and criminal revision applications. Accordingly, it would be extremely difficult to deal with more than 500 main cases with the assistance of the minimum unit staff. Thus, there is minimum requirement of two Bench Clerks, two Stenographers, two Group-D employees in every Court of Additional District and Sessions Judge or special court dealing with 500 cases. There is need of additional requirement of staff namely Bench Clerk and Group-D employee for increase of every 250 cases in such type of courts. The special courts or the courts of Additional District and Sessions Judges accepting the filling of the cases need additional staff depending on the number of cases filed in such type of courts. The requirement may vary from additional three to five Clerks, one Data Entry Operator and two to three Group-D employees.

The court of Civil Judge (Senior Division) or the court of Chief Judicial Magistrate or Additional Chief Judicial Magistrate also need at least two Bench Clerks, one Stenographer, one Data Entry Operator and two Group-D employees for dealing with 1000 cases. There is need of additional requirement of Clerks, Group-D employees for increase of every 500 cases. There is need of additional requirement of two to five Clerks and two to five Group-D employees and one Data Entry Operator in such type of courts which are accepting filing of cases.

There is need of two Bench Clerks, one Stenographer and two Group-D employees in each court of Civil Judge (Junior Division) or Judicial Magistrate, who are dealing with cases upto 1,500. There is need of additional requirement of Clerks, Group-D employee for increase of every 500 cases. Moreover, the courts accepting filing of cases may need additional staff including Data Entry Operator depending on the number of cases.

It is relevant to point out that the administration of a District Courts is run by Civil Judges (Junior Division), Civil Judges (Senior Division), Chief Judicial Magistrate, Additional Chief Judicial Magistrates, Special Court Judges, Additional District Judges and the District Judge. In every court of District Judge, there is an English Department dealing with the administration of the District Court, Accounts Department dealing with the Accounts, Nazareth Department dealing with cash and serving of process, purchase of articles, Record Room for preservation of records and Copying Department dealing with supply of copy, etc. The requirement of staff strength for running the administration in each court and also in the court of District Judge will depend on the number of pendency of the cases, number of Judicial Officers posted in the District and other relevant factors.

<u>Middle Level Officers for running administration</u>

It has been discussed in the meeting of the NCMS Committee that there is need of creation of middle level officer cadre for running the administration of the Courts at the District and Sub-Divisional levels. The standard for recruitment of such officer may be similar to the standard of Group-C officers of State Civil Service, so that they may not have any hesitation to work even under a Civil Judge (Junior Division) for running the administration of the Court. The minimum educational qualification for such recruitment ought to be graduation in any stream. At present the L.D.

Assistants recruited with minimum qualification of School Final (Class X) get promoted to the senior rank and hold the post of Nazir, Head Clerk, Sheristadar/ Superintendent for running the administration of the Court. The District Judges are also dependant on these staff members for running the administration of the Court, as they are not in a position to afford sufficient time for the administrative work after completion of judicial work every day. The number of such middle level officers may be initially five for any District having 15 Courts and for every 5 additional Courts number may be increased by one. These middle level officers may have promotional avenue up to the rank of Registrar of the District Courts or Joint Registrar of the High Court.

CHAPTER - VIII

REVAMPING OF THE REGISTRY OF THE HIGH COURTS

The registry of each High Court comprises of senior judicial officers who are given charge of a particular department after serving the subordinate judiciary mostly in excess of 30 years. Without meaning any disrespect to the members of the registry, it would be a better idea if the task of the registry is performed by personnel trained in management skills. The jobs that the registry officials perform in the High Court are clearly at variance with judicial duties and, most often, quite a few of them are found to be all at sea. With the frequent change in the members of the registry, it becomes all the more difficult for the new incumbents to get themselves accustomed with the system and to deliver according to the needs of the institution and commensurate with their capability. The service of the senior judicial officers could be better utilized in the districts rather than foisting a responsibility on them in an environment with which they are unfamiliar and in the absence of wherewithal to deal with the daily problems.

Many view the induction of the judicial officers in the registry as a kind of promotion, thereby making way for the officers subordinate to them to occupy higher positions in the district judiciary. With the ever-increasing load even in the High Courts and the urge to look for quality coupled with the fact that the competent must be rewarded, there is an urgent need to revisit the policy for elevating judicial officers in the subordinate judiciary as High Court judges based only on their seniority. Merit must be given primacy thereby encouraging the officers to put in the little bit of extra effort that is required in the present day circumstances to cope with the huge arrears. This would resultantly ensure weeding out the dead wood at the district level, instead of such officers being allowed to occupy the seat of High Court Judges for any period between two years and above without making any effective contribution to the system worth the name.

CHAPTER - IX

CURBING THE MENACE OF ADJOURNMENTS

Causes/factors behind adjournments are not unknown. It is hardly relevant to discuss the same in the report. What is of importance is to find ways and means to curb its menacing proportions. The tendency to grant adjournments on the mere asking of the parties has to be discouraged. Every judge must be diligent and ought to exercise discretion in granting an adjournment only if the prayer for the same appeals to him/her to be absolutely warranted in the interests of justice and to preempt any litigant nursing a grudge that his cause has not been heard. It is quite common that the court grants a prayer as a last chance, but thereafter adjourns hearing once again as a last chance. The perception that there can be no end of last chances must yield to the pressing needs of the system to ensure timely decision. As a rule, there cannot be a last chance after a last chance. The judicial officers, in course of training programme or otherwise, have to be told to be strict in granting adjournments. At the same time, the superior courts ought to be slow in interfering with orders refusing adjournment. Strictness at the trial stage followed by leniency at the appellate/revisional stage ultimately has the effect of prolonging a litigation further rather than reducing its life.

At this juncture, it would be relevant to take note of the very recent decision of the Supreme Court in Noor Mohammed vs. Jethanand, reported in (2013) 2 SCALE 94, dilating on the corrosive effect that adjournments can have on a litigation and how a lis can get entangled in the tentacles of an octopus. If the system has to survive, it is the judges who must be proactive and ensure that on every date of hearing, effective progress takes place.

CHAPTER - X

NEED FOR INTROSPECTION

The schedule for holding recruitment examinations for filling up the vacancies in the subordinate judiciary has not escaped the attention of the Supreme Court and the directions in Malik Mazhar Sultan (supra) may be made part of the recruitment rules by the respective State Governments, if not already acted upon, to ensure that fewer vacancies remain unfilled at the end of the year. One must remember that while proceeding to achieve judicial reforms, futuristic goals are set which are realistic and capable of being accomplished. One must not be swayed by the manner of functioning of foreign courts like the ones in USA, UK, or Singapore. The population in the aforesaid three countries is much less in comparison with a densely populated country like India and hence number of litigation is also less. The facilities made available for the judges there and the facilities made available to the judges in the country cannot be equated. The work culture is also different. Therefore, no attempt ought to be made to judge our judges based on figures of such foreign countries. Going by simple arithmetic, the number of pending cases qua the judge-population ratio of the country, when compared with the statistics of the said three countries, is not too alarming. It has to be borne in mind that one must not look for procedural solutions that are worse than the existing procedures. Also, goals ought not to be set bigger than what can be accomplished. People of the country still trust the judiciary and the system should not be disturbed.

It is needless to emphasize that judicial time is precious and the judicial officers must make full use of it. There are complaints from the litigating public that often the courts do not function in the second session. Non-cooperation of the lawyers and lethargy on their part to argue cases are cited by the judicial officers as excuses. The judicial officers may not be totally wrong, but by not taking seats in the second session sends a wrong

message that the judicial officers are prone to shirk work. Even if the lawyers do not cooperate, the judicial officers have no business to rise before the scheduled time. The time could be utilized by them by completing pending judgments. Should there be no case where judgment is pending at his end, the time could be utilized by perusing the judgments of the Supreme Court and the High Courts, which are all available on the laptops provided to the judicial officers. This would not only enhance their own knowledge but would also make them adept to deal with the laptops and to find out judgments answering the issue(s) even in course of hearing of individual cases that are before them.

It is not always possible for the Inspecting Judges to pay surprise visits to the District Courts under their charge to find out as to whether timeliness in taking seat and rising is being maintained by the judicial officers or not. The vigilance cell of the High Courts must be revamped with adequate number of officers who could be asked to pay surprise visits to the District Courts and to report back to the Inspecting Judges on his queries. A disciplined and corruption free judicial system is what the litigant public would expect and all out efforts in this direction might result in achieving what we dream about. The vigilance cell could also be utilized for the purpose of ensuring that the ministerial staff in the District Courts are kept within their bounds and do not dare to indulge in malpractices. Reports in this respect furnished to the Inspecting Judges must be dealt with sternly and disciplinary action taken against the erring officials to make the system clean and pure.

Having regard to rampant corruption in the strata of ministerial staff, it is all the more necessary that the individual High Courts formulate transfer policies for posting of ministerial staff to districts other than the one from which he hails. Transfer and postings of the ministerial staff would definitely be welcomed by stiff resistance, but the same has to be dealt with with iron hands. If some court hours are to be sacrificed the system may not bother, for that would be beneficial in the long run. Ministerial staff may have to face stern disciplinary action if they care little to abide by such policy. The

objective of ensuring quality, responsive and timely justice would remain a distant dream should the ministerial staff be allowed to function in the manner they have been functioning presently.

One other aspect that deserves attention is the number of pending references in each High Court. The concern was shared by learned judges who were present in the recently concluded conference at Bhopal. Decisions on the references do not seem to be rendered quickly, with the result that not only the case of the parties to the reference does not proceed but also hearing of similar other cases stand stalled on the track. Litigants are hardly bothered as to how the law is settled by the High Court, they are interested in having a decision on the merits of the rival claims. Constitutionality, consistency and certainty are considered to be the hallmarks of a sound judicial system. An aggrieved litigant after knowing the law settled by the High Court may not even venture to institute a fresh case. Prompt decisions on references, therefore, must be endeavoured.

Each High Court has an Administrative Committee comprising of five to seven senior judges. Since elevation/transfer/retirement of the senior judges happen quite frequently, the composition of the Administrative Committees also tend to change frequently. This, in turn, tends to bring about a lack of continuity. The role of the Administrative Committee is significant in the justice delivery system and, therefore, it may be considered as to whether each Administrative Committee could include a judge from the middle rung having at least ten years' service as a High Court Judge left in him.

All the High Courts do not maintain ACRs for the ministerial staff. There is an urgent need to introduce the same where it is not in vogue for the overall benefit of the system. The performance of each employee must be evaluated around the year and bearing in mind that number of accomplished young aspirants, having good degree of training in computers, are waiting in the queue. The incompetent, the lethargic and the tardy could be asked to make way for the former. Some of the High Courts have already appointed Court Managers while the rest are in the process of such appointment.

Depending on the performance and utility of such Court Managers, the Courts may be empowered to appoint additional personnel particularly in the light of the fact that the number of courts is likely to double in the near future. Entrustment of managerial duties to Managers rather than judges would allow the latter to devote full time to discharge of judicial duties which, in turn, would enable the judiciary to accomplish the task of making the judicial system 'five plus free'.

CHAPTER - XI

Conclusion

If the proposed judicial reforms aimed at improving the justice delivery system has to materialize, there is no doubt that it has to be accompanied by better equipped and intellectually developed judges and support staff to face the challenges of a changed socio-economic scenario where the citizens will be more aware of their rights and demand more accountability from the courts. The judiciary needs to make the transition from self-accountable institutions to institutions accountable to the citizens at large. It is needless to say that such a transformation can only be made by inspirational leadership of the High Court Judges. Apart from delivering motivational speeches to the judicial officers, they have to be trained on procedural aspects and made aware of the technical nitty-gritties of law and conscious of various other facets like judicial ethics, transparency, the latest developments in the legal world, etc. A pat on the shoulder of a judicial officer acknowledging his commitment to the system would inspire him to deliver more than what he perceives he can give to the society. The support staff also needs to be trained to make use of information technology to achieve the objective of computerization of courts and hence achieve the targets of improving the efficiency of the courts and clearing its backlog. If justice is really to serve the ends it is meant to be, then the emphasis should be on the quality of judgments and not mere numbers. A fine balance between quality and quantity has to be maintained at all times. Even though the system has to be made 'five plus free', it must always be the paramount duty of the justice delivery system to 'save the dying' rather than 'burying the dead'.

(DIPANKAR DATTA)

“TRANSFER POLICY FOR JUDICIAL OFFICERS”

A PROPOSAL

Submitted on Feb 28th, 2013

To

Hon’ble Justice Dipankar Datta,

Judge, High Court Calcutta

PROPOSAL PREPARED BY

Prof Amit Dhiman, Associate Professor (HRM), IIM Calcutta

Prof. Rajesh Babu , Associate Professor (Public Policy Group), IIM Calcutta

Transfer Policy for Judicial officers

Preamble

Transfer policy for judicial officers will form a critical policy, an integral component of comprehensive human resource development plan envisaged under NCMS. It serves to fulfil following objectives:

1. At the judicial system level in the state, it should promote objective of equitable access to society of high quality judicial personnel.

2. At the system level, it should promote integrity, a fundamental principle of justice dispensation, and facilitate removal of bias by way of, for example, preventing Bench – Bar nexus.

3. At the administrative system level, it should promote merit.

4. At the individual personnel level, it should promote professional development of judicial officer by way of varied experiences and challenges.

5. At the individual personnel level, it should provide equitable access to opportunities to judicial officer. It should also provide choice to officers wherever possible.

6. At the individual personnel level, it should also take into account individual exigencies which needs to be addressed, save otherwise these exigencies may have negative influence on morale of judicial officers.

With above objectives in view, following transfer policy is proposed:

1. **Zones:** The states can be divided in 4 zones- A, B, C and D, clubbing the stations based on geographical contiguity and zones ordered in order of preference for posting among the judicial officers.

2. **Posting for training on first appointment:**

   I. As it is in the policy document.

   II. The training period can be specified, e.g., 6 months to 2 years. It can be 6 -12 months for practising advocate, and could be 12 – 18 months for new entrant.

3. **First posting after training:**

   I. The first posting as a presiding officer of a court after training, hereinafter referred as 'first posting,' in the case of a new entrant to the service may preferably be made within the zone where he/ she got training, including home district.

   II. The judicial officer, including new entrant if he/she refuses option in (I) above, will be given choice of first posting as per following rules

II.i. The first posting cannot be in the home district.

II.ii. This choice will be exercised by officer giving three options of stations in order of preference from the list of vacancies available as per the procedure described in clause 9 *of* the policy.

Explanation: For the purpose of this policy;

I. Home zone means the zone in which the home district of judicial officer falls.

II. Home district and home station mean the district and station where the officer has permanent residence or where he was practicing as an advocate before his/her appointment.

4. **Tenure of stay:**

I. No judicial officer will be retained in a zone for more than 3 years at a stretch, unless administrative exigencies require otherwise. This rule applies to even first posting after training.

II. However no officer should spend more than 3 years in any station at a stretch, 2 years in case of zone D, even though they may have to spend more than 3 years in the same zone due to exigencies as in (I) above.

III. An officer whose home zone is either C or D, will be allowed to remain in these zones upto a maximum tenure of 6 years at a stretch, but they ordinarily should not spend more than 3 years at a stretch in the same station.

IV. In calculating the length of stay of an officer in a zone, the period of his/her training shall be excluded where such period is less than 6 months.

5. **Transfer from one zone to other:** Transfer from one zone to other on completion of minimum tenure as in 4 above will be effected by using following decision framework:

I. Rotational transfer (the pattern as specified in clauses 6(i) a, b, c, and d can be retained as it is suggested based upon the assumption that there exists following preference order - ABCD, among officers for the zones).

II. As a principle, each judicial officer should complete postings in first round of transfer in all zones atleast once as per pattern in 5 (I) before repeat posting in the zones are considered, except for

exigencies mentioned in 4(I) and clause (8) and situation mentioned in 4(III) .

III. The second round of transfers will also be effected in the same sequence as followed in the first cycle for an officer, except that in case of consistently good performance in the first round across four zones, an officer will be given an additional opportunity to choose a station in zone A or B instead of working in zones C or D. However, this option should be exercised so that 4(I) is not violated as far as possible. In case of non-availability of vacancies 4(I) could be relaxed and such an officer can be allowed to continue in the same zone but different station, however the total period in that zone should not exceed 6 years at a stretch.

For the purpose of this clause, consistently good performance would mean minimum average ACR rating of 4 (out of scale of 5) across four zones.

IV. Exception to above pattern of transfer and posting can be made in case of promotions because of non-availability of appropriate vacancy in specific zone.

V. Within zones the choice of stations will be given to eligible officers based on available vacancies. This choice will be exercised by the officer giving three options of stations in order of preference from the list of vacancies available as per the procedure described in clause 9 *of* the policy.

6. **Married Couples**: As far as feasible, married couples, both in judicial services will be posted in the same station.

7. **Alternative posting on civil and criminal side:** As far as possible, the judicial officer will be posted in civil and criminal sides alternatively after each transfer.

8. **Exigencies and Exceptions from 4 and 5:**

I. Deputation posting

The postings open for deputation will be informed to the judicial officers, and eligible and interested officers can apply. In recommending names of .....basis of merit-tempered by-seniority,.....who do not have good service record. Specifically,

those eligible for posting will be ranked in order of merit after their application is received. Merit will be decided by considering mean average ACR rating score of each officer in the last three years.

There cannot be any transfer from one deputation post to another successively on completion of tenure in first post. The tenure in deputation post or non – judicial post cannot exceed 3 years at stretch, and cannot exceed 6 years throughout the service, except in the case of registry of high court where the officer is going to retire within a period of less than two years.

II. The exceptions to rules in 4 and 5 can be considered, on request by judicial officer, for retention/ transfer/extension to home zone/ home district/preferred posting on following grounds:

II.i. Children /wards studying in career classes $11^{th}/12^{th}$.

II.ii. Age of parents is more than 75 years and/ or they are ailing from medical condition which requires regular attention of judicial officer.

II.iii. The concerned judicial officer or spouse requires continual medical treatment which is not feasible at anyother place.

II.iv. The judicial officer is physically challenged which makes it infeasible for such officer to serve in certain areas like hilly regions.

In order to justify their request the officer has to provide necessary supporting document/evidence e.g., doctor's recommendation in case of certain medical condition of self or parents.

Explanation:

For the purpose of this rule, the word 'parent' would mean and include Father / Mother and Father-in-law/ Mother –in-law, if they are wholly dependent on Judicial Officer.

9. **Calling for choices / option/ interest under 3, 5 and 8**

I. The process of calling option/ choices from officers for transfer/ extension/ retention shall be completed on- line. The registry will display on the website the likely vacancy (stationwise/ cadrewise).

II. The officer can fill up form asking for options or make request for extension/ retention/ transfer on forms available in the website.

10. **Power to change rules.**

I. The high court registry reserves the right to change rules as it deem fit. However a comprehensive review of the rules will be conducted every 5 years where views of all officers will be invited and considered.

11. Annual General transfer (AGT) Schedule

I. An officer whose tenure of stay in any station or zone is completed after AGT, shall ordinarily be included for transfer in the next AGT.

II. The registry shall follow the following schedule to effect transfers or processing requests and representations:

Last date for calling options	31st January
Date on which transfer list is displayed	31st March
Last date for on line representation/request, if any	10th April
Decision about final posting/ transfers	15th May
Incumbent to join on transferred post	On reopening of courts after summer vacation

12. Prohibition of Canvassing

Canvassing of any kind shall not be entertained in any circumstances whatsoever and will invite disciplinary action.

13. Rotational Transfer of Ministerial Staff

The ministerial staff will also be covered in the ambit of rotational transfer policy similar to this policy for judicial officers. A separate policy document with minor changes in the current policy will be made.

14. These administrative guidelines are subject to administrative exigencies and public interest and do not confer any right on any Judicial Officer to be posted/ transferred to a place of his/her choice. The decision of high court registry in the matters of posting/ transfer under these guidelines will be final and abiding.

References

- Existing transfer rules High Court of Calcutta Guidelines.

- Existing transfer rules High Court of Maharashtra Guidelines.

“TRAINING OF JUDICIAL OFFICERS & MINISTERIAL STAFF IN SUBORDINATE COURTS”

A Proposal

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To

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PROPOSAL PREPARED BY

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TRAINING OF JUDICIAL OFFICERS & MINISTERIAL STAFF IN SUBORDINATE COURTS

1.0 Preamble

The subordinate court is the firmament on which the judicial edifice is built, and the subordinate court judge is the sentinel of justice at the initiation. They represent the face of judiciary to the society and bear the burden of experiencing the expectations, pain, and tribulations that citizens carry. It is imperative that their capability to deliver justice at the frontlines is commensurate with the challenge of ever changing societal expectations.

The training at the institutional and individual level is critical to enhance this capability. There is need to prepare the judicial officer for a “career” before they enter it, and there is a need to augment their capability while they serve it. The document makes an attempt to suggest a skeletal policy framework for implementation of a training and development plan for judicial officers in subordinate courts. The proposed framework is in alignment with the National Framework of Court Excellence (NFCE) which specifies “development and implementation of comprehensive Human Resource Management system for selection, training and performance management of judges and ministerial staff” aimed towards developing appropriate qualities, attitudes, skills and knowledge (QASK) of Bench (Ref. NFCE doc, 2012).

2.0 Pre-Service Institutional Training

Article 233 of the constitution prescribes minimum of 7 years of bar experience before advocate becomes eligible for entering service at the level of District Judge. However, Law commission in its 117th report noted that this experience has n’t been found to be particularly adequate for preparing advocate to perform the role of a Judge. Today a fresh law graduate can appear in the state public service commission examination and directly enter at the lowest rung of the judiciary in the subordinate court. Then the incumbent can rise through the levels based on merit-cum- seniority criteria. Today both routes are open to a law graduate aspiring to pursue judging as a career. However, the fresh entry is the predominant mode. It is then imperative that the training policy should incorporate different processes for both kinds of entrants.

2.1 Fresh Law Graduate Entrant

The common best practice across different professions, which depend largely on the entry level fresh recruitment for their human resources, is to make the entry itself very competitive and rigorous so as to attract and select high quality human resources. Stand out examples consist of Defence organizations including Indian defence, Indian Administrative Services, Best Performing OECD countries

in Primary School Education[1] and so on. Law commission in its 116th report also recommended constitution of Indian Judicial Service, to which predominant mode of entry would be through an All India Competitive Examination for fresh Law graduates. However, that recommendation has to yet see light of the day. Nevertheless, entry of fresh law graduates to judicial service at the state level happens through state level public service examinations conducted by respective states.

2.1.1. Institutional Format

The Law Commission's 117th report noted that graduate degree in law can only impart rudimentary knowledge of law. However rendering justice is also an art which requires faculties to evaluate fair evidence, to perceive falsehood, to appraise relative claims, to be sensitive to societal needs and constitutional goals. Further day-to-day work in court requires skills to handle bar, effectively dispose of frivolous evidence, understanding decision making process in a judgment, recording of evidence, writing judgment and so on. These capabilities are not fully developed in the law school. Thus intensive training on these matters needs to be imparted to prepare fresh law graduates for judicial career. For such intensive training to be imparted the training model should be a right mix of class room inputs and experiential inputs in form of workshops, observation, and apprenticeship. The academies at the central and regional levels need to play an instrumental role to fulfil the objective of training the fresh entrants (Law commission 117th report).

2.1.2. Training System Elements

The duration of such training for fresh law graduates varies 9 months to 3 years across countries[2]. Law commission in its report suggested a duration of 2 years as minimum time to prepare fresh graduates for judicial career. This training would compensate the lack of bar experience for fresh entrants.

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1 (Mckinsey Report, 2007). In a study conducted among OECD countries by consulting firm McKinsey to identify countries doing better in school education, the study found that the better performing countries like Finland, South Korea invariably managed to attract best of the talent because of very rigorous and competitive examination process at entry level. These countries were not the highest salary paying countries.

2 Thomas, C. (2006) Review of training and education in other jurisdictions. A report prepared for Judicial studies board U.K.

Multi jurisdictional International studies[3] have identified following broad areas of curriculum for judicial training:

- Substantive Law
- Social Context
- Legal Skills ("Judge Craft")
- Judicial ethics
- Judicial skills (management, media, technology, languages)
- Personal welfare

Class Room Academy Training[4]: The class room inputs need to be comprehensive and shall include subjects of substantive and procedural law, sociology, economics, humanities, psychology to understand litigants and witnesses, decision making process and modern management methods (117 th law commission report). The pedagogy, apart from lecture, will include workshops on judgment writing, discussion on case laws, simulation of courts and handling cases and so on. They will also be given inputs on new developments in law related to special categories of legal issues including white cyber crimes, disaster management act, Juvenile justice act, and so on. They will be exposed to procedures adopted by important partners e.g. police investigation, FIR filing, coordination between police and prosecution[5]. The trainees will be evaluated based on examination at the end of every module. They will also be evaluated during workshops and court simulations and feedback given one to one by the evaluator.

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3 *ibid*

4 These sections have been drawn largely from 117th Law commission report and the above reference.

5 Sourced from Training module for newly appointed Assistant District Attorneys (Induction course), Training manual prosecution department Himachal Pradesh 2012 -13.

Court Room Training[6]**:** After a period of 6 months to 1 year of class room inputs, the judicial officer will undergo the practical training. This focus of this component would be application of law, judicial processes, understanding advocacy role, judge craft, court management and so on. The trainee will be attached with different levels of courts and courts focussed on civil and criminal side. During their stint in a court the trainees will sit through all phases of trials and record their evidence, write independent judgement, and listen and analyze arguments. These judgments and orders written by the trainee will be evaluated by district judge after getting comments from the presiding judge for the case.

2.2. Experienced Entrant – Modularised Training

The training plan for an entrant who has been practising as an advocate will be different. As a principle it needs to focus on the training in the academy and there is no need to focus on court based practical training as much. An entry level assessment process can be designed to find out the individual areas where an experienced entrant needs to be given inputs. This will expedite the process of inducting the experienced entrant as a judicial officer. The training can be modularised so that only those inputs are given to the experienced entrant where he/she is found deficient. The modularization can be broadly done based on the six different areas identified earlier or any other suitable categorization can be followed. The duration of such training can range from 6 to 36 weeks.

3.0. In- Service Training- Continual Judicial Education

In an era when the society is increasingly demanding a responsive judicial dispensation, issues have become increasingly complex owing to exploding expectations of fast evolving society, visibility has increased manifolds due to media and non- governmental activism, and there is increasing need felt for new legislation and reforms in the old ones, it is imperative for the judges to continually update their capability to meet these challenges. This is all the more expedient for subordinate and district level judiciary as they directly face key social participants in the judicial process. The in- service training process will have following features.

- Institutional training in form of refresher courses and workshops for specific cadre of officers.

- Individual training based on specific needs identified during the ACR process or as expressed by the officer himself/ herself.

- Self development based on self directed learning programs wherein online web based distance learning will be critical.

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6 These sections have been drawn largely from 117th Law commission report (1986)

- Annual conference or workshop organized for state judiciary.
- Knowledge management system including knowledge portal.

3.1. Training Plan Administration- Training and Development Committee (T&DC)

In order to plan, lead and ensure implementing of the training and development plan, a committee will be formed at the High court level chaired by Chief Justice and including atleast 2-3 high court judges, registrar general, court manager, and with adequate representation from subordinate courts - judiciary and registry. The T&DC need to have external representation also from academia, e.g. management institutions or law schools of repute. The committee will be responsible for following:

- Planning and strategizing the training and development initiatives in alignment with NCMS framework.
- Allocating budget for annual training plan and finalize the annual training calendar.
- Identifying institutional level focus areas every year where the training initiatives should focus.
- Enforcing accountability for implementation on administration and registry.
- Coordinating with other committees e.g., IT committee for augmenting the training infrastructure including online web portal or knowledge management system.
- Identifying partner institutes for conduct of training program in specialised areas including forensics, management, IT and so on.

3.2 Training Needs Assessment

The need for in-service training will be identified at two levels- institutional and individual. At the institutional level needs will be identified by T&DC committee. The committee will meet at the beginning of the year after summer vacation to deliberate on various topics and subjects which need to be covered in next one year where a cadre of subordinate judiciary and administrators will be given training. Specifically, the committee can use following methods to generate list of topics and relevant subjects which needs to be covered in a specific year.

- The committee can also organize a workshop with the help of an external facilitator to bring out the issues which need to be covered for judicial officers in the training calendar.
- The committee can ask registry to conduct an internal survey among various courts to seek suggestions on the possible areas of training from various stakeholders of bench, bar, and other key stakeholders.

- The committee can also seek direction from higher judiciary including Supreme court as part of NCMS plan.

- The committee can look at the complaints and grievance data base to get ideas about what areas can be improved upon.

There is a need to put in place a process wherein individual needs of judicial officers also are identified. While making the annual training plan, the T&DC committee can direct the registry to collect information from judicial officers as to what training inputs they will need. Another possible source of such information could be ACRs where the sample judgments are evaluated by reviewers. If any aspect appears as a systematic shortcoming, that can be incorporated in the training plan.

3.3. Training Resources and Forum

The training will be provided by various resources both internal and external.

National and State/ Regional level Institutional Academies: The national and state/regional academies will be important resources for conducting refreshers courses directly related to evolving issues in law matters. These academies will have faculty from bar and academia, mainly law schools. There have been few examples of regional and state academies running successfully e.g. North Eastern Judicial Officers Training Institute at Guwahati (Law commission 117th Report).

Universities, National Law Schools, Specialist Institutes: These will be important partners wherever it is felt that such subjects will be better handled by academic institutions rather than the regional/ national academies. Examples could be Forensic laboratories, management institutes, law schools and so on. Prosecution department in Himachal Pradesh jurisdiction is taking extensive help of HP Institute of Public Administration (HIPA).

Internal Knowledge Management Systems: IT is great enabler for online and self directed learning as it is easy to access, provides flexibility, has extensive reach, and is an open, dynamic, and democratic medium which keeps on evolving with changing needs of knowledge in an organization. It is self – perpetuating as the knowledge seekers also are the knowledge creators as peer community contributes and learn from each other. An organization like court and community like judiciary will benefit immensely as jurisprudence is driven by law, precedence, interpretation, and social context with varying degrees of emphasis at various levels. Of course, the issue of security are important, but today technology is capable of providing enough security measures where this access remains with a closed community.

National and State Level conferences: The academia has benefitted greatly by way of knowledge sharing in conferences, symposia, and workshops organized at both national and international levels. Law commission in its 117th report lamented that such kind culture and practices do not exist in judiciary. There is reservation which the commission noted in terms of court's fear that

judges cannot be exposed in a public forum. The judiciary has to come out of this fear and organize these events more frequently.

4.0 Training for Ministerial Staff[7]

The courts will remain handicapped in their capabilities if the ministerial staffs including "dealing hands" are not properly trained on all aspects of knowledge, skills, and attitudinal requirements on the job. The T&DC committee can form a subcommittee at the high court registry chaired by registrar general and including court manager, and having adequate representation from subordinate courts. T&DC committee will allocate a separate budget for this subcommittee to implement the training plan for ministerial staff. This committee will be entrusted with the task of training needs assessment, making and finalizing the training plan, and implementation. These trainings will be of mandatory kind and will be institutional rather than at the individual staff level, at least to begin with.

Rest of the elements of the training framework discussed for judges will remain more or less same for ministerial staff as well.

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7 The training manual (2012-13) of Himachal Pradesh Prosecution department extensively lists down the training programs planned for ministerial staff to be organized at HP institute of public administration as well as through other resources.

“PERFORMANCE MANAGEMENT SYSTEM FOR SUBORDINATE COURT JUDGES”

A FRAMEWORK FOR TRANSFORMING THE ANNUAL CONFIDENTIAL REPORT PROCESS

Submitted on Feb 28th, 2013

To

Hon’ble Justice Dipankar Datta,

Judge, High Court Calcutta

PROPOSAL PREPARED BY

Prof Amit Dhiman, Associate Professor (HRM), IIM Calcutta

Prof. Rajesh Babu, Associate Professor (Public policy group), IIM Calcutta

PERFORMANCE MANAGEMENT SYSTEM FOR SUBORDINATE COURT JUDGES

The role of a judge in the justice delivery dispensation is challenging, critical and complex. Any attempt to "judge the judge" is fraught with the possibilities of "assessor" being overwhelmed with the multidimensionality of the role, subjectivity of the performance information, and monumental expectations from the "*learned lord*" as paragon of fairness bordering just short of "*being divine*" (emphasis added). The following sections is an attempt (an attempt by an outsider) to look at the role and the context in which judges function. It will be erroneous to isolate role from context if a fair attempt is to be made to understand the performance assessment of a judge.

1.0 The context

The National Court Management Systems (NCMS) policy document states "five plus free" as one of the desired objectives to streamline the judicial system, by addressing cases which are 5 years and more old constituting 26% of all cases. With increasing literacy and enhanced awareness in the society the number of cases filed in the courts in the last 5 years amount to as much as 74%. Moreover, there are enhanced expectations among the public for faster disposal of cases, an acknowledgement made in the NCMS document with stated objective of reducing the "case disposal cycle time".

Apropos the above vision, It becomes Imperative for subordinate courts to enhance their effectiveness in justice delivery as these are the points where the common man and judicial system come face-to-face first time and may be only time in majority of the cases. It is at this interface the real test of "equality of opportunity" and "accessibility of justice" will be tested. However, a merely quantitative perspective will be erroneous because speed and quality are intertwined, where poor judging in lower courts may just increase the average time for a case in the system.

2.0 Subordinate courts and role of Judge

Subordinate courts play a different judicial role compared to high court and Supreme Court. It is a hierarchical system. "Subordinate court is court of facts" [1]. The judge ascertains the facts of the case and is guided by statutes and case laws as it is for appreciation of evidence. At this level the judge is rarely involved in innovative interpretations or fresh examination of legal theories [*ibid*]. However, facts and its appreciation are not only important to shape their own reasoning of judgment but also will lay foundation on which the appellate court will be dependent later on. This approach also means that subordinate court judges will be driven more by the procedural technicalities rather than the context to ensure the predictability of the judicial process- an important feature for judicial system's credibility.

However, NCMS framework recognizes that the focus of judicial system needs to shift to “quality” (including efficiency and timeliness) from mere “disposal” orientation currently existing , more so in the subordinate courts. Quality focus may also mean that mere collection of facts and mechanical application of law and technicalities to dispose of cases, without appreciation of facts and law to build judicial reasoning, will be insufficient.

3.0 Annual Confidential Reports (ACR)

3.1. Alignment of Judicial System objectives and Judge’s work at subordinate court level

NCMS policy document lays down the roadmap for reforms in court management. It identifies the mission of enhancing the quality, responsiveness, and timeliness of judicial process. To achieve these objectives NCMS document identifies six elements to promote court performance accountability and excellence, and development of court infrastructure and personnel. The National framework of court excellence (NFCE) provides the foundational framework of NCMS. NFCE provides dimensions and parameters which need to be worked upon and monitored to implement the NCMS policy. As per the draft NFCE document, the court’s effectiveness can be enhanced by increasing the court’s accountability to society (PAVE framework, the demand side) and also augmenting the court’s capability in doing so (ROKMMA framework, the supply side). In management language NFCE provides the “strategy map” to implement NCMS mission.

While the NFCE roadmap is laid, it needs to be implemented at various levels in judicial process. Judges will play the central role in implementation of this roadmap and their efforts need to be aligned with the NFCE framework. One of the core mechanisms to achieve this alignment is to design the performance evaluation system (ACR) along the dimensions identified in the NFCE framework. Specifically, the PAVE framework provides the accountability dimensions and parameters and ROKKMA framework provides developmental dimensions and parameters which need to be incorporated in the ACR or broader performance management system.

3.2. The Assessment and Development Framework for Subordinate court judges

The performance assessment information can be used for multiple purposes from the perspective of appraisee (Murphy & Cleveland, 1985). These can be broadly divided as administrative decisions including, promotions and salary increments, and developmental uses including providing regular improvement feedback and training needs identification. However, to meet these purposes there are certain procedural conditions which need to be met e.g., to give meaningful feedback the information should be fairly objective and process needs to be transparent. Therefore, when organizations have appraisal processes which are not as transparent e.g., annual confidential reports, it will not be suitable for

developmental feedback processes. Thus, it becomes imperative to understand the organizational and job context in which the appraisee's performance is evaluated even before the purpose is set.

The twin purposes of performance evaluation stated in the last paragraph, in essence, aim at achieving the accountability objective and capability building objective outlined in NFCE. **Thus it can be safely assumed that the ACR process needs to be made suitable for achieving the twin objectives - accountability and development, in case of judge's performance. In fact the term ACR itself is inappropriate given the broadening of the objectives and the changes which are required in the process. It may be called "performance management process" which is an ongoing process rather than end of the year annual ritual as epitomized by term ACR.**

However, to achieve above objectives, the subordinate court's context and role of trial judge will have to be understood better to appreciate the constraints and opportunities such context furnishes.

3.2.1 Dimensions of Judge's Performance

As stated earlier, the NCMS document recognizes that the orientation of judges in subordinate courts needs to move from mere "disposal" to "quality". The legal system conventionally has charted a procedure which gives centrality to fairness over speed, e.g., code of civil procedure [1]. However, while quantity is easy to establish, quality has to be understood and defined in order to make judge accountable to achieve it.

Further, nature of judge's accountability is multidimensional - to litigants, to bar, and to bench itself [1]. How far the system needs to go to enforce this accountability explicitly through mechanisms like ACR needs to be understood.

Current Quantity Measurement: The current disposal oriented assessment of subordinate court judge's performance is based primarily on the "units" earned. Units earned by a judge in a year are calculated by dividing the *number of cases disposed* in a year by number of days employed. Further, for various judicial officers in the subordinate courts, standard norms are set for minimum units to be earned and also various levels of performance excellence achieved, typically ranging from poor to outstanding on 4 or 5 point interval scales.

Comment: The current system based on units earned can be followed to enforce accountability to achieve quantitative or efficiency objectives as envisioned in PAVE framework. However following issues need to be properly sorted out for existing "unit" focused assessment:

1. What all judge's work constitutes a unit[1]? The judge may be involved with many courts in a particular year and may be involved in many different types of cases. For example can similar norms of efficiency be applied to civil versus criminal cases. And if these should be different then how the weightage should be decided. This should be borne in mind that these decisions go beyond simple mathematical- mechanical simplicity of calculation and influences appraisee's behavior. These weigtages should be decided keeping in mind what needs to be signaled to a judge so that more desirable behavior and action is promoted.

2. A closely related issue is about deciding standards of excellence on the "units" defined in 1. As per the current norms absolute standards have been identified for different levels of units achievement[2]. The standards need to be carefully decided and should be seen by majority of judges as achievable with some stretch. While it is relatively easier to set floor level standards and identify absolutely outstanding performance, the problem of differentiation typically lies in the middle categories, and sometimes it is done arbitrarily.

3. However any elaborate system based on units earned will be cumbersome to implement because the units earned have to be recorded on day to day basis for all judicial officers. The courts need to take into account the administrative cost and time involved in implementing these systems. It is suggested that the judicial officer themselves are entrusted the task of maintaining these records helped by administrative staff in the lower courts.

4. A simple adage explains the influence of these instruments- "what gets measured gets done!" , because these measures also influence outcomes like career advancement. Case disposal is an outcome parameter of binary quality (disposal or no disposal) and thus easy to measure once it is decided that what a unit is. On the other hand, the quality of legal processes and inputs, which are critical to these outcomes, are difficult to define and measure. And often is left unmeasured as appraisers find themselves at odds to do the job because of unavailability of information, subjectivity involved, and pressure on their time.

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1 The unit based assessment system followed in West Bengal jurisdiction defines these units elaborately listing all different activities judicial officer is involved and allocating certain points or weights to these activities.

2 In the state of West Bengal the standards defining level of performance are also set based on cumulative units earned by a judicial officer.

5. While the current unit based system gives weightage to the type of cases disposed, it does not gives cognizance to the old cases which need to be disposed urgently. It is proposed that a higher weightage be given to cases which are old. The definition of old can be drawn from NCMS document which envisages 'five plus free' vision, by giving 20% additional unit weightages to cases which are 3- 7 years old; 30% additional for those which are 7-10 years old; as much as 50% additional weightages to cases 10 years and more old.

Current Quality Measurement: The current guidelines [2] on evaluating the quality of judging refer to code of civil procedure and code of criminal procedure for civil and criminal trials, appeals, revisions, and matters like adoption, guardianship, probate etc and of matters of bails. Specifically, the guidelines specify following pointers to evaluate quality:

1. Facts are fully and correctly set out.
2. Evidence has been properly recorded and evaluated.
3. Application of law in context of pleadings and evidence.
4. Ratio of High Court and Supreme Court decisions has been correctly deduced and applied.
5. Final decision flowing from judicial reasoning as set out in 1-4.
6. Lucidity, brevity and logic reflected in language.

The guidelines also specify weightages to these five dimensions (1-10%, 2-16%, 3-20%, 4-10%, 5-14%, 6-30%). For every judge atleast 5 judgments are recommended for evaluation on quality dimensions.

Comment: The framework for measuring quality parameters of judgment seems to capture important dimensions of procedural and substantive quality. However, following points need to be considered:

1. There are various aspects of judge's work which needs to be assessed for quality. And each of these aspects will need different criteria. For example the quality of prejudgment, timeliness of disposal (*modification in unit system already suggested*), trial process, quality of decision making process, and quality of judgment. The above 6 points do not seem to take all of these into account.
2. By its very nature the quality dimensions more often than not are subjective and difficult to accurately assess and justify. This factor becomes a big deterrent in implementation of such parameters in any appraisal.

3. The above 6 points do not seem to include all aspects mentioned in PAVE framework for which subordinate court judge will be accountable.

Way Ahead (alignment of both quantity and quality aspects with PAVE framework): The following points are illustrative as of now suggesting the direction only at this stage:

1. Public Trust and confidence (P):

    a. Assess "Right Protection Index" (evaluating 1% judgments ex-post to assess rights that should have been protected vs rights which were protected) **[Quality dimension of substantive outcome**].

    b. Grievance mechanisms for litigants against judges undermining the judicial process **[indirect measure of quality dimension of judicial procedure or trial].**

2. Access to Courts (A):

    a. Responsiveness Index – assess interpretation of law and appreciation of facts **[Quality dimension of decision making process].** However, subordinate court judges are not expected to interpret law.

    b. Docket exclusion

3. Core Judicial System Values (V):

    a. Consistency and Accuracy index: Random sample of cases (5?) [**Assessed for both decision making process and substantive quality**].

    b. Quality of judgment index (CRITICAL) - (Constitutionality just, reasoned and rational, implementability, timely, innovative, communicative, legally sound). [**Assessed for both decision making process and substantive quality**].

4. Expedition, Efficiency and Efficacy of court proceedings (E):

    a. Compliance with time standards, productivity norms [**Quantitative dimension]**

    b. Court date predictability and certainty.

Combining Quantity and Quality for overall summary assessment: Current guidelines give more weightage to the quality achievement than quantitative achievement in assessing judge's overall performance. This is in alignment with the objective of shifting focus on qualitative aspects from unit driven quantity aspects

currently. However, what will be the appropriate combination needs to be understood and decided.

Other Assessment dimensions: Due weightage needs to be given to personality characteristics including treatment met to internal and external stakeholders, knowledge of law and so on[3].

3.2.2. Development of Subordinate Court Judge

This is new terrain where the performance management system (ACR) has to tread if the NCMS objectives have to be achieved through NFCE framework. The supply side of framework (ROKMMA) identifies the need to develop court and personnel capability. The performance management process (ACR), hitherto focused only on enforcing accountability, is a potent process that can be used to develop judge's capabilities.

The assessment of quality dimensions of judicial process, decision making, and judgment quality will provide information on development and improvement of judge's capability. These dimensions were discussed in the above discussion on PAVE framework. Typically, developmental processes associated with performance management include regular feedback by superior judge (or peers) and identification of training needs and making of training plan.

The above will require more rigorous and honest evaluation of quality dimensions, a departure from disposal oriented process.

Comment: The critical issues in enforcing such developmental processes are twofold- availability of objective information on these subjective parameters, and availability of time with the judges of superior courts to conduct feedback processes. Also the current ACR system is confidential in nature and to implement processes like feedback and training needs identification the judicial system needs to bring some transparency and openness in these processes.

3.3 Different Sources of Evaluation and Assessment information

3.3.1. Role of Bar

As mentioned above, the NFCE framework recognizes the need for broadening the accountability of courts to outside stakeholders- may be litigants, bar and so on. Also, the performance management objectives, as discussed above, can be better fulfilled if system incorporates evaluation information from other stakeholders. For example in the current ACR system, the ACR is the sole responsibility of the higher judiciary. However, as envisaged above if the dimensions such as quality of trials

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3 High Court of Gujarat, ACR document

are to be assessed, the final judgment cannot be the only source of information to the appraiser judge. Probably for such dimensions bar members may be in a better position to assess judge's performance. Summary evaluation based on a simple survey done with bar members involved in the cases presided by the subordinate court judge can be useful to assess quality of trials itself. However, feasibility needs to be studied because accountability should on impinge on judicial independence.

3.3.2.Role of peers

As was stated in the last section, as the performance management system becomes wider in its scope the effort and time needed to implement it will also be more. It may not be feasible for superior court judge to assess the performance of subordinate court judges given that every appraiser judge might have to evaluate more than 15-20 judges (conservative estimate). And when it comes to question of assessing quality, the task will be onerous. The Supreme Court observation (Registrar General Patna High Court v. Pandey Gajendra Prasad and others, 2012) is damning pointing the causal, hurried, and delayed implementation of even the existing ACR processes. So what will happen to more extensive performance management process is anybody's guess!

Academic world which functions in more collegial fashion has found a way to evaluate an academic's most critical aspect of work performance- research, which is equally difficult to evaluate in terms of quality. An extensive process of blind – peer review is followed to assess the research paper quality for publication and acceptance in conferences. Despite its limitations and criticisms, the system works even though there is huge volume of research work generated.

Can such a system be implemented in assessment of quality of judgment at the subordinate court level? To make process really blind, the courts have to hide as much as possible the identification information about the court and judge. One way to implement such system is to start interstate evaluation of 2-3 randomly chosen judgments of a judge. Such assessment can be combined with superior court's assessment to come up with more reliable assessment about judge's performance. The benefits are three fold- saves appraiser judge's time, provides relatively bias-free assessment information (can be used for final rating or development), and creates an ongoing ecosystem of learning among judge's community by reviewing the work being done across different states.

However, feasibility of such a system needs to be tested on ground because there are many impediments to begin with. The foremost being the use of regional languages at the level of subordinate courts which will make the interstate peer evaluation feasible in only groups of few states e.g. Hindi speaking states.

3.3.3. Self Appraisals

Judges are the guardians of justice and driven by decision making processes of judgment where their own internal sense of "justice" plays an important role. By the

very nature of the task of judging, the judges experience a strong sense of self-accountability of being “just”. It is then but expected that they can be trusted to be candid and forthright in writing their own assessments, sharing about their failings and successes with their worthy superiors. It is strongly suggested that judges be asked to fill up a self appraisal report assessing themselves on the quality of judicial processes they have followed.

3.3.4. ACR Committee

Another possibility is to form an independent committee comprising of senior district levels judges and headed by 2-3 High Court judges, who can evaluate the performance of judge after information is collated from different sources as explicated above. It will enhance the fairness and accountability in the process.

3.4. IT Infrastructure and Personnel support needed

In order to implement such a performance management system, the courts need to augment the court infrastructure – the IT and personnel both. This is well recognized in the NCMS policy roadmap. Unless such a resource is created, the collection of information, analysis, setting standards, and implementing developmental processes will be almost impossible. The role of court managers as well registrars will also be critical to coordinate and implement such a process.

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"INVESTIGATION AND ENQUIRIES"
(DISTRICT AND SUBORDINATE JUDICIARY)"

A DRAFT DOCUMENT

Submitted on Feb 27th, 2013

To

H'onble Judge Dipankar Dutta,
Judge Kolkata High Court

PROPOSAL PREPARED BY

Prof Amit Dhiman, Associate Professor (HRM), IIM Calcutta
Prof. R. Rajesh Babu , Associate Professor (Public Policy Group), IIM Calcutta

1. Judicial Independence

Judiciary independence, impartiality and autonomy of the judicial functions are at the heart of our democratic edifice. An independence judiciary is of supreme importance in upholding the Constitution, protecting the constitutional rights guaranteed to the citizens and in ensuring the delivery of equal justice without fear or favour. The judicial institutions and judicial officers are thus privileged with immunity from acts said or done in the exercise of judicial functions. In the words of Lord Denning

"Ever since 1613, if not before, it has been accepted in our law that no action is maintainable against a Judge for anything said or done by him in the exercise of the jurisdiction which belongs to him. The words which he speaks are protected by absolute privilege. The orders which he gives and the sentences which he imposes, cannot be made subject to civil proceeding against him. No matter that the Judge was under some gross error or ignorance or was activated by envy, hatred and malice and all uncharitableness, he is not liable to an action… of course, if the Judge accepts bribes or been in the elastic degree corrupt, or has perverted the course of justice, he can be publishable in the criminal courts. That apart, however, the Judge is not liable to an action for damages. The reason is not because the Judge has any privilege to make mistakes or to do wrong. *It is so that he should be able to do his duty with complete independence and free from fear.*"

[1] (*emphasis added*)

The Constitution of India endorses the essence of the doctrine of separation of power by stating that 'the State shall take steps to separate the judiciary from the executive in the public service of the State' (article 50).

2. Balancing Judicial Independence with Judicial accountability

Judicial independence is often perceived to run counter to the democratic principles, as unlike other branches of government, judiciary as a democratic institution is not directly accountable to the public. The Judiciary themselves are largely responsible for the internal management of judicial institutions, and controls the appointment, transfer, promotion, and disciplinary actions against the members of the judicial establishment. Thus, balancing judicial accountability vis-à-vis judicial independence, and more importantly, appearance of impartial and objective internal administration of judiciary becomes critical.

Indeed, judicial independence is not absolute and could go hand in hand with judicial accountability. Like all other public institutions in a democracy, the judiciary must also be accountable to the citizens for their actions and inactions. Judges who sit in judgement of others much be accountable for their judicious and injudicious conduct. Given the higher constitutional stature and privileges enjoyed by the judiciary and judges, the touchstone of

judicial accountability must be at a higher pedestal than other branches of governance. "... Judges, like Caesar's wife, should be above suspicion ...".[2]

The Constitution of India has attempted to carefully maintain the balances between safeguarding the independence of higher judiciary and judicial officers against arbitrary and unjust interference of other branches of government (the executive and the legislature) and the need for accountability in judicial institutions in a constitutional democracy.[3] The Judges (Inquiry) Act, 1968 and the proposed the Judges (Inquiry) Bill 1995 (makes significant departures from the 1968 Act), for instance, attempts to strengthen such balance by providing procedural recourse against misbehavior or incapacity of a Judges of the higher judiciary, the Supreme Court or the High Courts. This Act or the proposed bill, however, does not extend its coverage to matters relating to subordinate judiciary.

The administration and control of the Judicial Officers of the subordinate judiciary is primarily the responsibility of the concerned High Court with the power of superintendence (Art 227). The Constitution (Article 235) vests in the concerned High Court, the administrative / disciplinary control over the members of subordinate judiciary with the supportive of the respective State Government.[4] In other words, the control and administration of the lower judiciary is the sole responsibility of the High Court and no other. The State Government rarely intervene in the internal aspects of the judicial administration of the subordinate courts. The onus is thus on the High Court to establish an effecting institutional mechanism which balance with need for independent and accountability.

Subordinate judiciary is the kingpin in the hierarchical system of administration of justice. As the Supreme Court notes:

> It needs little emphasis that the subordinate judiciary is the kingpin in the hierarchical system of administration of justice. It is the trial judge, who comes in contact with the litigant during the day to day proceedings in the court and, therefore, a heavy responsibility lies on him to build a solemn unpolluted atmosphere in the dispensation of justice which is an essential and inevitable feature in a civilized democratic society.[5]

Thus the role and function of the subordinate judiciary in the judicial hierarchy and justice delivery cannot be overemphasized. Since subordinate courts are the root of the judicial structure, it is imperative that a foolproof system based on independence, transparency and accountability is put in place. The legitimacy of the entire structure shall be vulnerable if not based on strong foundation. The Supreme Court notes that:

> "The Judges, at whatever level they may be, represent the State and its authority, unlike the bureaucracy or the members of the other service. Judicial service is not merely an employment nor the Judges merely employees. They exercise sovereign judicial power. *They are holders of public offices of great trust and responsibility. If a judicial officer "tips the scales of justice its rippling effect would be disastrous and deleterious". A dishonest judicial personage is an oxymoron.*" [6] (*emphasis added*)

Indeed, it is also at this level that the judiciary is the most susceptible to external and internal pressures. Ensuring the judicial functioning without fear or favour is the key at his level. The existing legal framework provides that the judges shall not be liable for official acts done in good faith, for acts done or ordered to be done by him in the discharge of his judicial duty.[7] Further, the Judges are immune for any civil or criminal proceeding for any act, thing or word committed, done or spoken in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.[8] The immunity under the Judges (Protection) Act, 1985 extents to official and judicial duty or function, whereas, the Indian Penal Code (Sec 77) and the Judicial Officers' Protection Act, 1850 limit the same to only judicial function.

3. Judging the Judges

'*Quis custodiet ipsos custodes*'.[9] Who will guard the guards? The conduct of the judges both within and outside the court room has wider ramification on the functioning of the judiciary as the upholder of the constitution as well as the delivery of the justice mechanism. Judicial accountability is about making the judges responsible for personal and professional misconduct, without undermining the need to protect the judges for their official or judicial acts done in good faith. The current system place the onus of judging the judges for misconduct on the on higher judiciary. The burden is thus on the High Court to maintain the balance between independence (immunity) and accountability (misconduct), with the public perception of accountability inbuilt in the task. The endeavor must be to create institutional setup which is infallible both in the internal administration and external pulls and pushes of lesser loyalties like politics, religion, cast, personal bias, gender and the like.[10].

3.1 Strengthening 'Open Justice'

The judicial functions in most countries, including India, are conducted in full glare of the public. Jeremy Bentham famously said: "Where there is no publicity there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge, while trying, under trial."[11] Publicity automatically brings in self-accountability and the courts must not fear publicity. "If the way courts behave cannot be hidden from the public ear and eye this provides a safeguard against

judicial arbitrariness or idiosyncrasy ....".[12] Publicity or public scrutiny of the judicial function is the surest means of meeting the demand for accountability. By hearing of almost all matters in open court, by the freedom of the media to report on such proceedings, by the 'critical view of academic commentators, and by the possibility of being overruled by higher courts' the demands of accountability are met.[13]

Open justice is integral to the Indian judicial process. The principles of open justice have been articulated as one of the most fundamental rules of our legal system.[14] Open justice have different facets. Some of them include:

- **The public nature of judicial process:** Hearings, trials and rulings are open to public scrutiny, so justice is seen to be done. Public scrutiny of the judicial process has its foundation in "the principle that justice must not only be done but it must be seen to be done".[15]
- **Reason for the judgement:** The decisions or judgement of the judges are subject to reason, which must be recorded in the judgement. The obligation of the court is not only to provide reasons to the parties, but also publish reasons for its decision.[16] In addition to adding credibility and legitimacy to the decision and the decision making process, this would go a long way in ensuring and enhancing the quality of judicial reasoning and fairness in decision-making (complements the ACR). Even the loser of as case must be convinced that his part has been heard and justice has been rendered.
- **Judicial reasoning open to criticism:** The Judicial system must ensure that the citizens, the media and the academia could discuss and criticize the work of the courts (not the judge personally). Accountability is inbuilt in the public criticism and part democracy structure.
- **Appeal to higher courts:** Though the lower judiciary is bound by precedent, they are free to come to their own conclusion on facts, aided by their appreciation evidence in a case.[17] A capricious departure from the precedent must be justified by fact and evidence, the lack of which may upset predictability of the legal system. However, a judge's ruling can be appealed to a higher court and, if an error has been made, a new trial will be ordered or the decision could be corrected or even could carry the criticism of the higher court which is a public record.

Most of these principles are inherent in our judicial process, however, attempt must be to promote and strengthen these principles in the justice delivery. These principles not only

grantee a strong mechanism of accountability, but makes the whole process transparent. By ensuring and strengthening these elements of open justice in the justice delivery, public confidence in the administration of justice is maintained and practiced on a daily basis.

Often, there is a tendency to take this principle for granted. The judges falter in providing reasons for the decision or addressing public critique through power of contempt of court.[18] Such an approach undermines the authority and legitimacy of the judicial institutions in a democratic setup. The principle of open justice, in its various manifestations, ensures judicial accountability and must not be undermined at any cost, as undermining open justice would mean undermining democracy accountability. Emphasising the relationship between the principle of open justice and judicial accountability Chief Justice Gleeson said:

> The corollary of the obligation of judges to conduct their business in public, and to give reasons for their decisions, is that they are exposed and are regularly subjected, to public comment and criticism. The practical importance of this should not be underestimated, especially in an age when attitudes towards authority are no longer deferential, and are frequently the opposite. Being a judge is not a suitable occupation for the thin skinned.[19]

The principals must be practiced and reasserted by the subordinate judiciary, under the strict supervision of the higher courts. The principles must be cooperated with the performance of the judges while evaluating their career advancement schemes and elevation to higher offices and responsibilities.

2.2 Personal Conduct of Judges

The judges are expected to maintain high moral and ethical standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. Judges are human, not divine and fallible. The open justice system to a large extend ensure maintenance of judicial etiquette. The open justice system, however, may be inappropriate of address all misconduct of judges, inside and outside the courtroom. For instance, an error in judgement can be appealed and the error rectified, whereas the moral turpitude or corruption by a judges may go unnoticed. Such personal misconduct may include violation of Code of Ethics of the Judges,[20] verbal insults, racist remarks or sexist language in courtroom, action demeaning the judicial office, political activities of judges, using the judge's office to obtain special treatment for friends or relatives; accepting bribes, gifts, or other personal favors related to the judicial office or inappropriate behaviour outside

the court such as a judge using their judicial title for personal advantage or preferential treatment or personal favours. These conducts demand an administrative recourse under the direct control of the High Court.

However, complaints against personal conduct of the judges must be kept away from public glare. Such a investigative mechanism must endeavour to provide substantive and procedural due process which balance and preserve the interest of the judicial officers on the one hand, and at the same time redress the grievance of those genuinely affected by the judge's conduct, both inside and outside the court.

As noted above, the Constitution empowers the concerned High Court ('Full Court') the authority to control and undertake disciplinary actions against the district judges and judicial officers of the subordinate judiciary. Such control may extend to

- Disciplinary jurisdiction, subject only to the power of the Governor in matter of appointment, dismissal, removal and reduction in rank[21]
- Hold inquiries and impose punishment in accordance with the provisions of Article 311(2);
- Inquiry into the conduct of a member of the subordinate judiciary and his suspension from service can be held/ordered by the HC alone;
- Transfer, promotion and confirmation of the members of the judiciary inferior to that of district judge;
- Compulsory or premature retirement of the judges of the district courts and subordinate courts.[22]

As per the current practice, any matters relating to investigation and enquiries against judicial officers are handled by the office of the Registrar General of the High Court [23] or by the Registrar (vigilance) of the High Court.

[24] As per the recent data published by the Supreme Court a total of 305 departmental inquiries are pending against the lower judiciary across 21 High Courts (2010-11).[25] There seem to be divergence in approach toward departmental and disciplinary action taken by the HC. The process is confidential and public participation or public knowledge of the process is minimal (*not clear on the current redressal mechanism*).

The proposal is to move towards a uniform disciplinary and redressal mechanism in all the high courts. The disciplinary and redressal mechanism must cater to both the disciplinary actions initiated internally as well as based on a compliant originating from outside the systems. Internal complaint system should also include, reporting by the supervising officer to the High Court, whistle-blowers provision and *sue motto* initiation of action by the High Court. For accepting external complaints – from public at large (litigants, advocates, public) – a complaints mechanism (including e-complaint) must be established.

It is proposed to have a uniform approach towards departmental action against judges of subordinate judiciary, an institutional mechanism based on the right balance between confidentiality and fairness.

2.3 Judicial Accountability Office (JAO)

It is recommended the creation of a Judicial Accountability Office (JAO), an independent unit with the High Court administrative structure which shall be the one point contact for all complaints against judicial misconduct within the High Court's jurisdiction. The JAO shall be managed by either of the following ways:

Option 1: Justice of High Court (on a rotational basis every two years). The Hon'ble Justice shall report to the full court, through the Chief Justice of the High Court.

Option 2: An independent office reporting preferable not from the district or subordinate judiciary (not part of the High Court hierarchy). Preference is expressed for a non-serving official of subordinate judiciary as there may be conflict of interest or bias. The JAO shall report to one of the Judge of the High Court.

The JAO shall investing misconduct of the subordinate judiciary, the district judge and Registrars of the High Court. A Judicial Accountability Committee (JAC) shall be formed to evaluate and investigate all complaint registered with the JAO. JAC shall be purely a judicial committee, composed primarily of one judicial member (judge of the High court). In misconduct of serious nature more than one judge would sit in the JAC. The JAC shall have the power of recommendation, which shall be adopted by the Full Court. In case of proven misconduct, the JAC shall recommend appropriate action against the impugned official. Depending on the gravity of the offence, the JAC may the recommend the following disciplinary actions:

- Censure or Private Reprimand (oral or written, recorded in ACR – not publicised)
- Public Reprimand (written, made public)
- Higher sanctions, such as suspension, reduction in rank, suspension of annual increment, punishment transfer to disadvantageous areas, removal from office etc. (with appropriate approval as set in the constitutional framework)
- In more serious cases like corruption, along with removal of the judge from office, his licence to practice may also be revoked.

Confidentiality of the proceeding and due process of law shall be kept. The recommendations of the JAC shall usually be adopted by the Full Court. Information on the action taken report shall be sent to the Supreme Court and shall be published, which is imperative for bringing in

a strong perception of transparency and internal accountability. The action of the High Court must be a public record.

1Endnotes:
Sirros vs. Moore and others, (1975) QB 118

2 *Leeson v The General Medical Council* (1889) 59 LJChNS 233 at 241.

3 The Constitutional provisions to ensure independence of the judiciary are - Security of tenure (article124,217); Salary of judge fixed, not subject to vote of legislature(article125,221); No discussion in the legislature on the conduct of the judges(article121); Parliament can extend, but cannot curtail the jurisdiction and the power of the Supreme Court(article138); Power to punish for its contempt(article129,215); Separation of the judiciary from the executive(article50); Judge of the Supreme Court are appointed by the Executive with the consultation of legal experts (article 124(2), 217); Appointment of officers and servants of a high court shall be made by the chief justice of the court(article229); Prohibition on practice after retirement (article124(7),220)

4 In exercise of powers conferred under proviso to Article 309 read with Articles 233 and 234 of the Constitution, the State Government frames Rules and Regulations in consultation with the respective High Court.

5 *Registrar General, Patna High Court vs Pandey Gajendra Prasad & Ors.* Supreme Court of India, CIVIL Appeal No. 4553 0F 2012

6 *High Court of Judicature at Bombay vs. Shashikant S. Patil & amp; Anr.* (2000) 1 SCC 416

7 Section 1, The Judicial Officers' Protection Act, 1850.

8 Section 3, The Judges (Protection) Act, 1985. Such immunity is only subject to the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge." Under Sec 77 IPC - Protection to Judges - Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

9 Latin phrase traditionally attributed to the Roman poet Juvenal from his *Satires* (Satire VI, lines 347–8), which is literally translated as "Who will guard the guards themselves?"

10 Madhava Menon, *Adjudication in Trial Courts*: p. 38

11 *Chu Kheng Lim v Minister for Immigration Local Government & Ethnic Affairs* at 27, also at 53

12 *Russell v Russell* at 520, in Seen to be Done: The Principle of Open Justice, Keynote Address by Honourable J J Spigelman Chief Justice Of New South Wales, To The 31st Australian Legal Convention Canberra 9 October 1999 http://www.lawlink.nsw.gov.au/lawlink/supreme_court/ll_sc.nsf/vwPrint1/SCO_speech_spigelman_091099

13 H. Corder, 'Seeking Social Justice? Judicial Independence and Responsiveness in a Changing South Africa', in P.H. Russell *et al.* (eds.), *Judicial Independence in the Age of Democracy*, 2001. See also F.K. Zemans, 'Public Access: Ultimate Guardian of Fairness in Our Justice System', 1996 *Judicature* 4

14 Seen to be Done: The Principle of Open Justice, Keynote Address by Honourable J J Spigelman Chief Justice Of New South Wales, To The 31st Australian Legal Convention Canberra 9 October 1999 http://www.lawlink.nsw.gov.au/lawlink/supreme_court/ll_sc.nsf/vwPrint1/SCO_speech_spigelman_091099

15 *R v Sussex Justices; Ex parte McCarthy* [1924] 1 KB 256 at 259.

16 Kitto "Why Write Judgments?" (1992) 66 ALJ 787.

17 Madhava Menon, *Adjudication in Trial Courts*: p. 38-39

18 The exceptions to this fundamental rule are few and must be "strictly defined". Wright "The Open Court: The Hallmark of Judicial Proceedings" (1947) 25 *Canadian Bar Rev* 721 at 74-75; Publicity is the authentic hallmark of judicial as distinct from administrative procedure." *McPherson v McPherson* [1936] AC 177 at 200.

19 Murray Gleeson "Judicial Accountability" (1995) 2 *The Judicial Review* 117 at 123-124

20 Guidance on judicial misconduct could be taken from the following code of conducts for judges. Most of these statements are address to the higher judiciary, however, could be modified and adjusted to the lower judiciary also. See Restatement of Values of Judicial Life adopted by the Chief Justices' Conference of India, 1999; The Bangalore Principles of Judicial Conduct, 2002

21 The Governor acting in consultation with the High Court and the State Government

22 N. R. Madhava Menon, D Banerjea, N, vol. 8, *Criminal Justice India Series*, page 258

23 High Courts in Uttar Pradesh, Delhi, Karnataka, Kerala, Orissa, Bihar, Punjab and Haryana, Sikkim, Uttarakhand. Supreme Court of India, Data Regarding Administrative/Disciplinary Action Against Judicial Officers Period From 1/4/2010 To 31/3/2011. http://www.sci.nic.in/outtoday/action.pdf

24 High Courts in Andhra Pradesh, West Bengal, Chhattisgarh, Gujarat, Guwahati (Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram, Arunachal Pradesh), Himachal Pradesh, Jammu and Kashmir, Jharkhand, Madhya Pradesh, Tamil Nadu and Maharashtra (Registrar, Special Investigation Department). Ibid.

25 Of this, major penalties have been imposed on 38 judicial officers and minor ones on 35 others. The probation was extended in the case of 325 judicial officers (170 from MP and 104 from WB) because of unsatisfactory performance.