



The High Court & Subordinate Courts

BUILDING SYNERGIES

Constitutional scheme for HC's power of superintendence and control



Article 227: Power of superintendence of High Courts over subordinate Courts



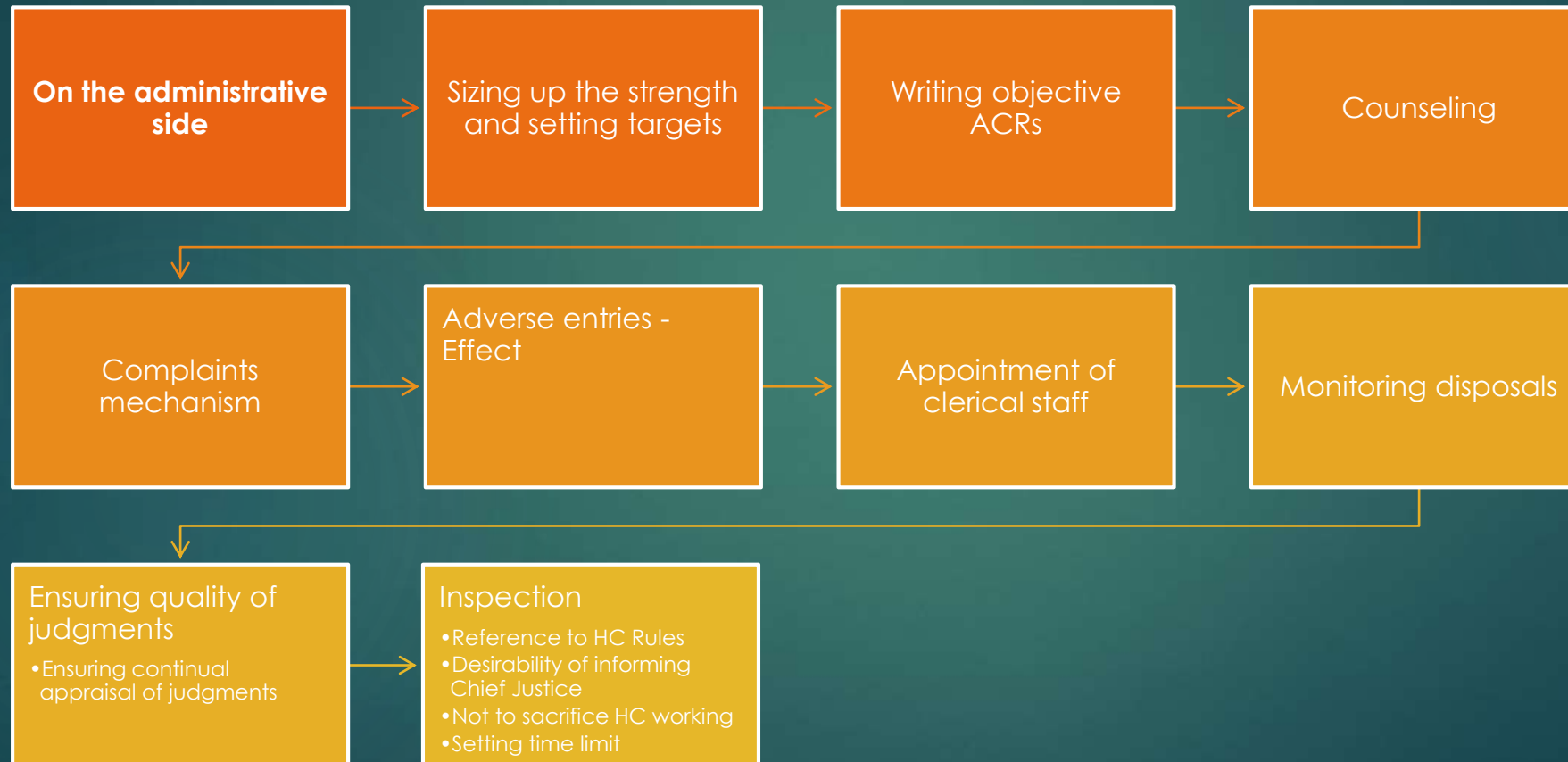
Article 235: Control over subordinate courts

The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law

Power of
appointment
of Judges, as a
determinant of
the position of
subordinate
courts vis a vis
HC

- ▶ 233. **Appointment of district judges** (1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State
- ▶ (2) A person not already in the service of the Union or of the State shall only be eligible to be appointed as district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment
 - ▶ Service means judicial service (*Chandramohan v UP (1966)*)
 - ▶ If in judicial service, 7 years experience in bar is not necessary (*Satyanarain Singh v UP (1985)*)
 - ▶ The term 'has been..for 7 years' means the service immediately prior to recruitment; includes service as District Attorney or government pleader.' (*Deepak Aggarwal v Kaushik (2013)*)
 - ▶ *Dheeraj Mor v HC of Delhi (Reference to 5 member Bench by judgment dated 23.1.18)*
- ▶ 234. **Recruitment of persons other than district judges to the judicial service:** Appointment of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State

Extent of power of superintendence



Recording of ACR

- ▶ Purpose of ACR – not to purvey or peek through key hole but to improve standards and administer counselling for better performance
- ▶ An ongoing process; not an year end exercise
- ▶ Not just not top down view but a 360 ° view – gathering better details as complementary to performance appraisal

What is 360 Degree Feedback?



- Is a process in which employees receive confidential, anonymous feedback from people around them
- Includes, Peers, Subordinates, Court Reader, random pick of lawyers and litigant
- Is developmental in nature
- Gives a better insight into the strengths and weaknesses

Purpose

Developmental Tool

- ❖ *Highly effective tool*
- ❖ *Anonymous feedback*
- ❖ *Gives an insight into how others perceive them*
- ❖ *Gives an opportunity to adjust behaviours and develop skills*

Performance Appraisal Tool

- ❖ *Common practice*
- ❖ *Focuses only on the behavioural traits and not job skills or performance objectives*
- ❖ *Most effective when incorporated into a larger performance management process*

Use of technology for regular dialogues

- ▶ Video conferencing for monthly appraisals
- ▶ Identifying areas where parties access to justice could be improved for recording evidence and for facilitating *e-filing*
- ▶ Helping parties settle without full fledged trial in accident compensation cases
- ▶ Collecting judgments bank that aid certainty in propositions of law and keeping it updated periodically from the judgment of the Supreme Court and the High Court
- ▶ Keeping communications through all modern gadgetry and software that enable speedier modes of communication in preference to snail mails



SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION & REDRESSAL) ACT, 2013



HC COMMITTEES AND HC RULES



SETTING UP COMMITTEES IN EACH ADMINISTRATIVE DISTRICT.



SECTION 10 MAKES POSSIBLE CONCILIATION BETWEEN PARTIES, PROVIDED MONETARY COMPENSATION COULD NOT BE MADE AS A TERM OF SETTLEMENT.



COMPENSATION IS OTHERWISE POSSIBLE IF THERE IS A CONVICTION UNDER S 509 IPC

Sexual harassment

No shaming game

- ▶ Passing strictures without setting forth the exact reasons why it is being administered
- ▶ Circulating orders of reprimand of certain judge to all other judges
- ▶ Circulating the alleged faulty order to other judges
- ▶ Summoning the judge to higher court to explain himself/herself
- ▶ Doubting discretionary orders



Bail Matters

Hussain and anr. vs. Union of India Crl. Appeal No.509 of 2017 dt 9th March, 2017

- ▶ Bail applications be disposed of within one week.
- ▶ Magisterial trials be concluded within six months where accused is in custody.
- ▶ In other cases within two years.
- ▶ 5 year old cases be disposed of by the end of the year. If undertrial has completed period of custody in excess of the sentence likely to be awarded, he must be released on personal bond. The courts must make such assessment from time to time.
- ▶ Timelines will be touchstone for assessment of performance in ACRs. Bail applications before the High Court must be decided within one month and criminal appeals within five years.
- ▶ CrPC amendment be considered to enable proceeding against absconding accused on the pattern of Bangladesh CrPC amendment for trial in absentia.

Judicial re- engineering of tiers of adjudication

- ▶ Judgment of *Supreme Court in Krishnakant Tamrakar v State of Madhya Pradesh*: **2018 SCC OnLine SC 304**
 - ▶ Appointment of Judges in the higher judiciary
 - ▶ Mechanism to plan and oversee the best management practices, including employment of technology for optimum performance and righteous conduct
 - ▶ Non-binding directory guidelines for subordinate judges for disposals within a time frame
 - ▶ 245th Law Commission Report; Need for in house mechanism manned by experts for taking action against erring judges.
 - ▶ Malimath Committee recommended use of 2 year time frame as the norm. All cases pending for more than one year be categorised as backlogged. All cases backlogged in 3 years to be decided in one year.
 - ▶ Chief Justices Conference in April 2016: While prioritising the disposal of cases pending in the District Courts for more than 5 years, additional incentives for the judges of the District Judiciary be considered where feasible
 - ▶ 8th April 2017 at the SC : Court of appeal to be set up between HC and District Court; More than one member with one drawn from among senior district judges and another by direct recruitment

Desirable model of self governance

Rights based

Self esteem on ability and selection on merit

constant updating of knowledge in case law

peer review and discussion among colleagues

honing skills in every aspect of trial work by handling evidence of witnesses, decision making and judgment writing

Based on administrative rules

Minding structural hierarchy

Understand principle of seniority without surrendering prestige and esteem

Recognise the Chief as only 'first among equals'.

Based on relationships

Civility in inter relationships

Trial/Court room manners

Knowledge of ADR processes and directing timely interventions

Institutional coherence

Need to check with others for uniformity in approach