

PERFORMANCE ASSESSMENT
FOR JUDICIAL OFFICERS:
ENSURING OBJECTIVITY

BY

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INTRODUCTION

- In all states, judicial officers are expected to fulfil certain quantitative targets in terms of the work they do.
- Typically, they are known as 'Norms,' 'Yardstick' or 'Criteria for Assessment of Work Done'.
- There is great variety in the manner in which Norms have been prescribed in different states.
- In majority of the States a list of specific entries is provided in relation to different categories of judges.
- Each entry is attributed a quantitative weightage.
- The entries can be in the form of description of cases, other judicial work or even administrative work of a judge.
- Thus, for each category of judges mentioned in the Norms, a separate list of entries with quantitative weightage is applicable.

DISPARITY IN ENTRIES AND DETAILS

- There is also a substantial disparity in the number of entries and the details of entries across different States.
- For example, while in Delhi, there are a total of 102 entries, there are 69 entries in Odisha.
- In Odisha, all Sessions Cases are given the same quantitative weightage.
- On the other hand, different kinds of Sessions cases are given separate quantitative weightage under different entries in states like Chhattisgarh, Maharashtra and Madhya Pradesh.
- While Sessions Cases have been divided into 2 types in Maharashtra, it has been divided into 5 types in Madhya Pradesh and into 7 types in Chhattisgarh.

DRAWBACK OF CATEGORY WISE ENTERIES

- This approach of category wise distribution of entries with quantitative weightage has a drawback.
- Quite often it results in the same or similar entries being repeatedly mentioned under different categories of judges.
- At times, the same or similar entries for different categories of judges carry different quantitative weightage.
- However, more often, such entries carry the same quantitative weightage.
- For example, in Gujarat, the disposal of a Session Case carries a quantitative weightage of '3.00 working days' for both Judges of the City Civil Court and District and Sessions Judges.

BEST PRACTICE IN ARRANGING ENTERIES

- Best Practice In terms of arranging the entries, the approach adopted in Tamil Nadu provides a more neat structure.
- In Tamil Nadu, a total of 95 entries are divided into the following 4 categories which apply to all judicial officers:
 1. Proceedings relating to Criminal Laws
 2. Proceedings relating to Civil Laws
 3. Proceedings relating to Special Laws
 4. Other Categories

A similar approach has also been adopted in Uttar Pradesh. With a conceptually segregated list, there is no scope of redundancy in the entries.

NATURE OF NORMS FOR ASSESSMENT

- Nature of Norms refers to the quantitative description of the entries.
- In this respect, the Norms followed for assessment of work done by Judicial Officers in different States can be divided into 3 types:
 1. Units System
 2. Working Day System
 3. Case-Conversion System.

UNIT SYSTEM

- This system is followed in Delhi, West Bengal, Chhattisgarh, Madhya Pradesh, Assam, Manipur, Tamil Nadu & Maharashtra.
- In this system, each entry in the Norms is described as a unit, number of units or some fraction of a unit.
- The work done by a Judge is then assessed in term of the aggregate of units earned by him in a day, month, quarter or a year.
- For example, in Chhattisgarh, a judicial officer in Higher Judicial Service is rated poor if his daily output is less than 5 units.
- In Delhi a judicial officer is rated 'Inadequate' if his quarterly output is less than 300 units.

WORKING DAY SYSTEM

- Working Day System is followed in the following States:
 1. Gujarat
 2. Odisha
 3. Uttar Pradesh
- In this system, each entry in the Norms is described as a working day, number of working days or a certain fraction of a working day.
- Judicial officers are expected to accomplish work equivalent to the prescribed number of working days.
- For example, in Odisha, a judicial officer is expected to achieve work output equivalent to 240 working days in a year.
- In Gujarat, a judicial officer is expected to produce work equivalent to 24 working days in a month.

CASE-CONVERSION SYSTEM

- This system is followed in Karnataka.
- In this system, entries are described in the form of a conversion ratio of base case. For example, for District and Sessions Judges, the basic case category is Sessions case.
- As per the norms, each sessions case is equivalent to five criminal appeals, twelve criminal revision petitions etc.
- In a month, a District and Sessions Judge has to dispose of 10 Sessions cases or equivalent number of criminal appeals or revision petitions etc.
- For some categories of judges, the nomenclature of 'unit' has also been adopted.
- However, even in such situations, entries are detailed in the form of a conversion ratio.
- For example, for judges of Chief Metropolitan Magistrate Courts in Bangalore city, the expectation is of 10 units per month wherein 1 unit is deemed equivalent of 5 IPC cases by considered judgements, 12 criminal cases under other laws etc.

BEST PRACTICE

- The manner in which the quantitative weightage is expressed is not fundamental to the assessment of the workload of judicial officers.
- The number of entries which are identified for quantitative weightage, the manner in which such entries are structured and the amount of weightage awarded to different entries is of greater importance.
- Whether the entries are expressed as 'units' or 'working days' does not make a core difference at the time of assessing the work of a judge if the weightage of similar entries is equalised.
- However, it would be ideal if there could be uniformity in this respect.
- Thus, keeping line with the practice in majority of the States, a Units system could be preferred to define the quantitative weightage.
- This would ensure that comparison of the Norms in the States would be less complicated than it is at present.

THE RATING SYSTEM

- The rating system refers to the evaluation parameters in relation to the quantitative workload of judicial officers.
- The rating system prevalent in a State prescribes the quantitative benchmark that is expected of judicial officers and how they are rated for the workload achieved by them.
- There is variance in terms of the time-span in relation to which a rating system is expressed.
- For example, the rating system in Chhattisgarh mentions the daily workload of a judicial officer.
- In Odisha, the annual workload of judicial officers is mentioned.
- A monthly workload is mentioned in Tamil Nadu whereas in New Delhi, a quarterly workload is mentioned.

RATING SCALE

- While some States (Odisha, Karnataka, Tamil Nadu) only prescribe a specific quantitative benchmark the judicial officers are expected to achieve, other States usually provide a ratings scale with different gradings for different degrees of quantitative achievement.
- For example, in Tamil Nadu, a monthly quantitative benchmark is prescribed and judges are expected to achieve that benchmark. There is no specific prescription to deal with the possibility of a judicial officer performing well above that benchmark.
- So when the quantitative benchmark is 15 units a month, there is no official prescription to separately acknowledge a judge who has earned 16 units and a judge who has earned 22 units.
- On the other hand, in Delhi 4 separate benchmarks have been mentioned on the basis of which a judicial officer may be rated Inadequate, Good, Very Good or Outstanding.

VARIATION IN RATING SCALE

- There is variation in the details of the ratings scale as well.
- For example, while the 4 point ratings scale of Delhi has the gradations of (i) Inadequate, (ii) Good, (iii) Very Good and (iv) Outstanding, the 4 point ratings scale of Madhya Pradesh has the gradations of (i) Poor, (ii) Average, (iii) Good and (iv) Very Good.
- The most elaborate scheme of rating is followed in the State of Gujarat.
- While most States adopt a 4 point, 5 point or 6 point ratings scale, in Gujarat, judicial officers are graded on a 8 point ratings scale of (i) Poor, (ii) Inadequate, (iii) Just Adequate, (iv) Adequate, (v) Good, (vi) Very Good, (vii) Excellent and (viii) Outstanding.

SINGLE OR MULTIPLE RATING SCHEME

- While some States, have a single rating scheme for all the judicial officers, in other States, separate benchmarks are prescribed for different categories of judicial officers.
- For example, the 8 point ratings scale in Gujarat is applicable to all judicial officers in the State. Thus, if a judicial officer has achieved 100%-125% of Norms, he/she will be rated as Adequate.
- Two ratings scheme have been prescribed in Chhattisgarh; one for officers of Higher Judicial Service and other for officers of Lower Judicial Service.
- An officer of a Higher Judicial Service will get a rating of Good if his daily output is between 6 to 7 units. On the other hand, an officer of Lower Judicial Service will get a rating of Good if his daily output is 7 to 8 units.
- The most elaborate scheme of Multiple Rating Scheme can be found in Tamil Nadu. Specific quantitative benchmarks have been separately prescribed for 45 categories of judicial officers.
- In West Bengal, separate benchmarks have been specified for 14 categories of judicial officers.

BEST PRACTICE OF RATING-SINGLE/MULTIPLE

- In terms prescribing Single/Multiple rating schemes, the best practice can be seen in Delhi and Maharashtra.
- Providing different quantitative benchmarks for different categories of officers without accompanying explanations is not ideal as the reasons behind the differentiation in benchmarks are not necessarily apparent.
- Multiple rating schemes also make the official policies highly cluttered.
- It makes more logical sense to define a common quantitative benchmark for all the officers and then prescribe concessions and relaxations wherever necessary by way of general principles.
- This will ensure that the reasons behind the relaxations or concessions are transparently articulated.
- Thus in States like Delhi and Maharashtra, after a prescription of common quantitative benchmark for all categories of judicial officers, concessions have been granted to certain categories of judicial officers having additional administrative responsibilities.

RATING SCALE-BEST PRACTICE

- In terms of the range of the rating scale, the best practice can be seen in Manipur which has 5 point rating scale of Poor, Average, Good, Very Good & Outstanding.
- A 5 point rating scale provides a reasonable range to categorise the different performance levels of judicial officers.
- On the other hand, 4 point ratings scale fall slightly short of covering an adequate range of performance levels.
- For example, after Inadequate, the next rating in Assam is Good which does not satisfactorily cover performance levels which should not be attributed a rating of either Good and Inadequate and fall somewhere in between. In such cases there is no appropriate middle level of performance.
- The problem with a 6 point (Maharashtra) or 8 point (Gujarat) rating scale is that such an elaborate rating scale becomes cumbersome.
- A 5 point rating scale provides the facility of a Middle rating of satisfactory performance with two ratings dedicated for below satisfactory performance and two ratings dedicated to above satisfactory performance.

POLICY OF ADDITIONAL CONDITIONS FOR QUANTITATIVE BENCHMARK

- In many States, additional conditions have been prescribed to be eligible for a rating apart from achieving the required amount of quantitative weightage.
- In some States, these conditions have been prescribed for certain categories of judicial officers and in other States, for all categories of judicial officers.
- Typically, these conditions are of three categories:
 1. A mandate that a certain proportion of cases (civil and criminal, main and miscellaneous) be maintained in the overall disposal of cases.
 2. A mandate that the overall disposal should include certain number of disposals of one or more particular categories of cases.
 3. A mandate that the overall disposal should include a certain number of contested disposals.
- A variety of such conditions are prescribed in all States apart from Delhi, Uttar Pradesh and Tamil Nadu.
- In Delhi, Uttar Pradesh and Tamil Nadu, there is no express provision of this nature in any of the official policies.

POLICY REGARDING NON-DECISIONAL JUDICIAL WORK

- While the primary duty of judicial officer might be to render judicial decisions, they discharge a variety of other judicial functions.
- Conducting a test identification parade, recording statements or confessions under Section 164 of Cr.PC, examination of witnesses, framing of charges are various examples of such other judicial functions.
- These can be broadly categorised as Non-Decisional Judicial Work.
- Though these functions by themselves need not result in a judicial decision, they do require substantial application of time from the judicial officers.
- While the Norms for judicial officers mostly focus on attaching quantitative weightage to the judicial decision making in different category of cases, it is also necessary to recognize and credit the non-decisional judicial work of the judicial officers.

PREVALENT PRACTICE IN STATES

- The policy in different States in this respect is varied.
- States usually include such work in the list of entries for which quantitative weightage is attached.
- Thus, judicial officers are allowed to earn quantitative weightage for specified non-decisional judicial work in the same way they earn quantitative weightage for decisional judicial work.
- For example, in Assam, Officers in the cadres of CJM, ACJM, JMFC, SPL JMFC are awarded 1 unit for every 10 statements recorded under Section 164 of Cr.PC.

BEST PRACTICE FOR NON-JUDICIAL WORK

- The best practice in this respect can be seen in the state of Uttar Pradesh and West Bengal.
- The norms in West Bengal accommodate more categories of non-decisional judicial work than other States and the same has also been expressly taken into consideration while prescribing quantitative benchmarks for officers in the cadre of judicial magistrates.
- In Uttar Pradesh, a general rule has been prescribed that the actual number of days for which an officer has done miscellaneous work will be excluded from the total number of days for which he has to show quantitative output.
- However, there is no detailing of the quantitative weightage attached to different functions.
- Thus, there are no definite guidelines on how many days of concession should be actually due to a judicial officer for the miscellaneous work done by him.

POLICY REGARDING ADMINISTRATIVE RESPONSIBILITIES

- In addition to the judicial functions, judicial officers usually are also entrusted with a variety of administrative responsibilities.
- The administrative responsibilities can be of a wide range and can also vary according to the cadre of judicial officers.
- These responsibilities can range from organising legal literacy camps to inspection of courts. They also include conducting departmental inquiries and being part of various administrative committees.
- The Norms in the States address the issue of administrative responsibilities of judicial officers in different ways and to different degrees.
- In some States, certain administrative responsibilities are explicitly included in the list of entries carrying quantitative weightage.
- For example, officers in Higher Judicial Service in Madhya Pradesh are awarded 4 units per court for annual inspection.

BEST PRACTICE FOR ADMIN. RESPONSIBILITIES

- The best practice in this respect can be found in Maharashtra and to a certain extent, in West Bengal.
- In Maharashtra, weightage is attributed to specified categories of officers having administrative responsibilities in a structured manner.
- It presents a more logical and clear approach. The calculation involved is simpler.
- Awarding weightage to specific administrative work is cumbersome as the range of administrative responsibilities cannot be adequately predefined.
- Apart from some predictable work like inspection of courts, there might be many administrative responsibilities in terms of being part of committees and being in charge of specific assignments which cannot always be reflected in the list of entries.

POLICY REGARDING DISPOSAL OF OLD CASES

- One of the biggest problems in the Indian judicial system has been the pendency of cases over long periods of times.
- Clearing the huge backlog of cases has been one of the most important objectives.
- States have sought to address this issue by incorporating some special provisions in the Norms regarding disposal of old cases.
- The issue has been addressed primarily by three alternative ways or by a combination of the three ways:
 1. In some States, additional weightage is given to specific categories of old cases. Thus, while a normal disposal of a case would carry a certain quantitative weightage, an old case of the same type would carry additional quantitative weightage. Example of such a policy can be seen in Delhi and Assam.

OLD CASES POLICY

2. In some States, a blanket additional weightage is given for cases belonging to a broad category. In Tamil Nadu, 2.5 extra units are awarded for disposal of contested regular civil appeals pending for more than 10 years. In Karnataka, Additional weightage of one unit is given for disposal by a considered judgement of each suit in every case pending for more than 5 years.

3. Another approach in this respect is to specify that a proportion of the total disposals by a judicial officer must consist of old cases. In Karnataka, there is a mandate that in relation to the District and Sessions Judges, Civil Judges (Sr. Dn.), Civil Judges (Jr. Dn.), JMFC, CJM and Judges of Small Causes Courts in Bangalore City that 25% of overall disposal shall be of oldest cases pending on the file.

BEST POLICY FOR OLD CASES

- The best practice in this respect can be seen in Gujarat.
- Three complimentary strategies have been adopted in Gujarat for encouraging greater disposal of old cases:
 1. Firstly, a mandate has been made in relation to different cadres of judicial officers that a specific percentage of their total disposal must consist of old cases.
 2. Secondly, additional weightage has been prescribed for old cases of 6 categories ranging from cases which are 1 year old to cases which are more than 10 years old.
 3. Thirdly, it has been specifically mentioned that failure to dispose of the required proportion of old cases would result in the downgrading of the rating which the officer would otherwise have been entitled to.

The policy in Uttar Pradesh also adopts this methodology of combining rules of minimum disposal and incentive weightage for promoting disposal of old cases.

WP (C) 3157/2015

SUJATA KOHLI VS. RG- DELHI HIGH COURT

- This case was filed by one judicial officer in respect of her grading and other issues. It was recommended to High Court:

This court is of opinion that to inject greater uniformity, objectivity and also some measure of transparency as well as predictability in ACR grading, the following should be kept in mind by the appraisal evaluation authorities:

- (i) The concerned judicial officer should be award of marks/points for a maximum of 100.
- (ii) The 100 marks to be awarded shall be divided as follows:
 - (a) 20% shall be earmarked for quality of judgments (with sub-heads, if possible for clarity, analytical skills, and application of law etc).
 - (b) A maximum of 25% may be awarded for the institution/disposal ratio.

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(c) A maximum of 20% may be awarded for the total number of final judgments delivered in contested matters.

(d) Every judicial officer claiming disposal targets, based on a maximum of 10% may be awarded for timeliness, promptness in delivery of judgments, disposal of old cases, not taking leave or clubbing leave with vacations.

(e) The balance 25% may be awarded by the appraising High Court judge/Committee on the basis of interaction/ inspection.

- Some allowance may be given wherever the judicial officer is assigned burdensome administrative tasks, such as membership of committees, co-ordination for events, conducting disciplinary enquiries if any of staff.
- Likewise, where there are peculiarities of jurisdiction, such as where the judicial officer handles CBI courts, or other jurisdictions which have their special characteristics, separate criteria needs to be devised.

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- No officer should ordinarily be subject to appraisal of any one judge or committee for more than two consecutive years. This would eliminate unconscious biases in favour and against the officers.
- Instructions may be also issued requesting all appraising judges/committees to forward instances of outstanding judgments and extremely poor judgments of any given judicial officer, which they may come across in their normal judicial functioning to the High Court registry, with further instructions that such judgments may be placed before the concerned inspecting Court judge/committee for due consideration and input for the ACR appraisal of that judicial officer.

THANKS

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