Advisory Council

National Mission for Justice Delivery and Legal Reforms

Agenda for the Seventh Meeting of the Advisory Council of the National Mission for Justice Delivery and Legal Reforms

AGENDA 1: CONFIRMATION OF THE MINUTES OF THE MEETING HELD ON 26TH AUGUST 2014

A copy of the minutes of the meeting of the Advisory Council of National Mission for Justice Delivery and Legal Reforms held on 26th August, 2014 is attached at **Annex I** for confirmation.

AGENDA 2: ACTION TAKEN REPORT ON THE MINUTES OF THE MEETING HELD ON 26TH AUGUST 2014

The following action taken on the minutes of the meeting held on 26th August, 2014 may be noted.

S. No.	Recommendation made by the Advisory Council	Action Taken
1.	Hon'ble Minister of Law and Justice stressed the need to connect prisons to courts through video conferencing.	The e-Court Mission Mode Project includes provision of Video Conferencing (VC) facility between Courts and prisons inter-alia facilitate hearing of the under-trial prisoners at 500 locations across the country. At present, the Video Conferencing facility has been rolled-out at the following five locations: **Court Complexes:** (1) District & Sessions Judge Court Complex, Darrang, Mangaldai, Assam, (2) District Court, Haridwar, Uttarakhand, (3) District Judge's Court, Berhampore, West Bengal, (4) District Court complex Janipur, Jammu, (5) Principal Junior Civil Judge, Machhilipatnam Court Complex, Krishna, Andhra Pradesh. **Jails**: (1) District Jail, Mangaldai Darrang, Assam, (2) District Jail, Haridwar, (3) Berhampur Central Correctional Home, (4) Central Jail Kotbhalwal Jammu, and (5) District Jail, Gandhi Nagar, Vijayawada. The process of rolling out of the Video Conferencing facility at the remaining 495 locations is underway.

2.	Information and data relating to prison inmates especially under-trial prisoners should be computerized and regularly updated.	NIC has developed an e-Prison software to enlist the types of offences that under-trial prisoners are charged with, the date of completion of the maximum sentence, the date of completion of half the maximum sentence, whether the individual is already imprisoned for a period in excess of the half maximum sentence, and is thus eligible for bail under Section 436 A of the Code of Criminal Procedure. This software is already functioning in Tihar Jail in Delhi and in 17 prisons of various states but has not been implemented across the board yet. Based on the decisions taken in the Advisory Council meeting, the Home Minister has written to all the Chief Ministers asking them to revise Prison Manuals and use the software to generate a list of under-trial prisoners. The Minister of Law and Justice has written to all Law Ministers to immediately deploy the e-Prisons software and implement Section 436A of the CrPC. He has also written to all the Chief Justices of the High Courts requesting them to advise the subordinate judiciary to use data generated through software on under-trial prisoners.
3.	Minister of Law and Justice expressed concern over the inordinate delay in property cases, rent cases and matrimonial disputes. He felt that such cases could be settled through mediation or conciliation. He observed that High Courts should consider giving judicial officers additional credit points in their performance appraisal for settling long pending civil disputes through mediation / conciliation.	The Hon'ble Minister of Law and Justice has written to Chief Justices of all High Courts to consider giving additional credit points to judicial officers / judges in their performance appraisal for settling disputes through ADR mechanism and share their views in the matter along with guidelines, if any, being followed by their High Court. Positive response is being received from various High Courts in this regard.
4.	Minister of Law and Justice expressed the view that the pendency of data of Subordinate Courts across the country should ideally be available to the public through NJDG. Data relating to case status in High Courts and Supreme Court also	The eCommittee is considering to make the NJDG accessible to public and at present a guest login has been allowed for NICNET users on experimental basis. Further, the national eCourts portal (http://www.ecourts.gov.in) has been made operational. The portal provides online services to litigants such as details of case registration, cause list, case status, daily order and final judgment for

	needs to be integrated in NJDG.	all the courts computerised under eCourts project. The websites of the Supreme Court and all the High Courts have also been linked with national eCourts portal and data in respect of cases disposed of and pending in these Courts can also be accessed by general public through this portal. Currently, litigants can access case status information in respect of over 3 crore pending and decided cases in more than 11,000 courts.
5.	The proposal to initiate audio-video recordings on an experimental basis in the Courts was re-iterated. It was also mentioned that the recordings of the proceedings shall be only available with the courts. Minister of State for Home Affairs agreed with the views and felt that matter be discussed at appropriate fora with the Judiciary.	Audio-video recording of court proceedings was proposed in the Policy and Action Plan Document for Phase II for the eCourts Mission Mode Project. However, in the meeting of eCommitee held on 8th January, 2014, the issue was taken up and Hon'ble the Chief Justice of India advised deferment of audio-video recording as it required consultation with Hon'ble Judges of Supreme Court and High Courts.

AGENDA 3: <u>ADDITIONAL COURTS - RECENT DEVELOPMENTS</u>

The issue of increasing courts and judicial manpower in the country has been deliberated in several forums, including in the Advisory Council Meeting of National Mission on Justice Delivery and Legal Reforms held in May, 2012 and Conference of Chief Justices and Chief Ministers held on 7th April, 2013. It was resolved in the Conference that in order to improve the judge-population ratio, State Governments, in consultation with the Chief Justices of respective High Courts, will take necessary steps to create additional posts of judicial officers at all levels and provide them with support staff and the adequate infrastructure.

Creation of additional courts involves the creation and filling up of posts and provision of necessary infrastructure. In July 2013, the Minister of Law and Justice wrote to all the Chief Justices of High Courts to prepare a 'Vision Statement and Court Development Plan' laying out their requirements of additional courts and infrastructure for clearing backlog of cases. As a follow up, eleven (11) High Courts[1] have submitted their Vision Statements and Court Development Plans.

As per the directive of the Supreme Court in *Imtiyaz Ahmad v State of Uttar Pradesh*[2], the Law Commission of India submitted its 245th Report titled *Arrears and Backlog: Creating Additional*

[1] Allahabad, Andhra Pradesh, Kerala, Madras, Madhya Pradesh, Sikkim, Tripura, Manipur, Delhi, Bombay and Meghalaya

[2] *Imtiyaz Ahmad v. State of U.P. and Ors.* (2012) Criminal Appeal No.s 254-262/2012

Judicial (Wo)manpower with regard to the measures to be taken in terms of creating additional courts and other allied matters, including providing a rational and scientific definition of 'arrears' and 'delay'. The Law Commission suggested a scientific approach based on the 'Rate of Disposal Method' to calculate the number of additional judges.

The Sixth meeting of the Advisory Council of National Mission held on 26th August 2014, took note of the recommendations of the Law Commission in its 245th report on creation of additional courts. During the deliberations, the Secretary General, Supreme Court of India informed that the National Courts Management System (NCMS) committee is also looking into the various recommendations given by the Law Commission including the 'rate of disposal' method for calculation of additional judicial strength.

a) Recent Supreme Court Orders

The matter of determining the additional courts and adequate judicial strength at the subordinate court level is presently under the active consideration of the Supreme Court in the *Imtiyaz Ahmad* case. As the subject matter of creation of additional courts and filling up of judicial vacancies in subordinate judiciary falls within the domain of State Governments in consultation with the respective High Courts, the recommendations of the Law Commission have been forwarded to them. Supreme Court has directed State Governments and High Courts concerned to file their response in the matter before them. Details of the orders issued by the Supreme Court in this regard are as follows:

- Vide order dated 1st May, 2014, the Supreme Court has issued notice to the 14 States[3] covered in the Law Commission's report and the 12 High Courts[4] asking them to file their responses to the report including the method adopted by the Commission for determining the need for creating new courts and the time frame within which they would be able to achieve the target. It has also asked the High Courts to examine location of the additional courts and the available infrastructure that would be required. The Court further asked the Law Commission to formalize its recommendations with regard to the remaining States.

- Subsequent to this, the Law Commission has submitted its recommendations relating to 4 more States, namely, Madhya Pradesh, West Bengal, Orissa and Rajasthan, as noted in the Supreme Court's order dated 20th August, 2014. Further, the Supreme Court also requested the NCMS Committee to review the recommendations of the Law Commission and furnish their views on the same.

- Recently, the Supreme Court in its order dated 12th November, 2014 directed the High Courts of Uttarakhand, Bihar and Jammu &Kashmir to file their responses by the next date of hearing. The Court further directed the NCMS Committee to submit their views on the recommendations of the Law Commission before the next date of hearing.

[3] Andhra Pradesh, Bihar, Delhi, Gujarat, Himachal Pradesh, Jammu and Kashmir, Jharkhand, Karnataka, Kerala, Haryana, Punjab, Maharashtra, Sikkim and Uttarakhand.

[4] High Courts of Andhra Pradesh, Bihar, Delhi, Gujarat, Himachal Pradesh, Jammu and Kashmir, Jharkhand, Karnataka, Kerala, Haryana, Punjab, Maharashtra and Uttarakhand.

The DoJ has been corresponding with State Governments and High Courts on the subject of additional courts. The recommendations of the Law Commission were also circulated by the DoJ to the State Governments and High Courts requesting their comments.

- Vide letter dated 8th September, 2014 the Registrar Generals of High Courts and Law Secretaries of the State Governments were requested to indicate the views of the High Courts and the State Governments along with action being taken/ proposed to be taken on the recommendations of the Law Commission in its 245th report.

- Further, vide letter dated 22nd September, 2014, States covered under the Law Commission's report were also requested to furnish a copy of response submitted by the State Governments to the Supreme Court in this matter.

So far, views of Sikkim, Calcutta, Bombay, Gujarat, Himachal Pradesh, Karnataka, Bihar and Tripura High Courts have been received. Responses have also been received from the Government of Jharkhand, Kerala, Himachal Pradesh, Maharashtra and Lakshadweep Administration. As regards the copy of affidavit, the Government of Himachal Pradesh, Bihar, Punjab, Jharkhand, Haryana and Delhi have forwarded the same. Kerala Government conveyed the facts submitted before the Supreme Court.

The inputs shared by the various High Courts show that mostly High Courts agree with the scientific formula i.e. Rate of Disposal Method for calculation of additional number of judges in the subordinate judiciary. However, High Court of Himachal Pradesh, Gujarat, Bihar, Karnataka, Kerala, Jharkhand, Sikkim and Punjab & Haryana have already initiated appropriate action for determining the additional number of subordinate courts required and also for the filling up of judicial vacancies in view of the decision taken in the Conference of Chief Ministers and Chief Justices in April 2013. The High Court of Punjab & Haryana has agreed in principle with the views of the then Chief Justice of India to increase the strength of judicial officers by 20% with furnished infrastructure and ministerial staff during the year. The Gujarat High Court has stated in the report that shifting from Judge-Institution ratio to Rate of Disposal Method requires a thorough study and will take at least six months. As per the Patna High Court, the assessment of judicial officers has been made taking into account the disposal of cases in five years as the time period of three years would be too short considering the additional requirement of infrastructural facilities. The Karnataka High Court stated that as per the recommendation of the Advisory Council of National Mission the High Court has already resolved for the establishment of 250 courts as per Judge Population Ratio.

With reference to the other recommendations of the Law Commission, the Patna High Court has mentioned that it is not in favour of the establishment of morning/evening courts for dealing with traffic/police challan cases since the traffic/police challan cases are negligible in that State. As regards the uniformity in data collection, the Committee of the Gujarat High Court was of the view that the conditions and requirements of each High Court are unique in its own way and therefore it may not be advisable to standardize the data collection methods. It was further stated that even if they are to be made uniform, the same can be done only after consulting various High Courts and then evolving a common method which may be adopted by all the High Courts.

As stated in the Affidavit of Haryana Government the Committee formed to look into the recommendations of the Law Commission has regretted its inability to accept the rate of disposal criteria as the sole basis for determining the need for creation of additional courts. The

Committee has prescribed factors to be taken into consideration besides rate of disposal method for determining the need of additional posts of judges. These factors are inflow of cases, total pendency and rate of institution and disposal, sanctioned and working strength of judicial officers with actual number of working courts, timely as well as qualitative disposal of cases, nature and life cycle of various categories of cases and expeditious disposal of certain prioritized categories of cases. The Government of Himachal Pradesh has stated that in view of the topographical and weather conditions, it is not possible to hold morning and evening courts in the State. The summary of all the responses received from the State Governments and High Courts is placed at **Annex III**.

b) Increase in the Judge strength of High Courts

In April 2014, the Chief Justice of India gave 'in principle' approval to increase the sanctioned strength of High Courts by 25% of the existing strength. High Courts and State Governments were requested to convey their consent to the proposal keeping in mind the existing vacancies, as also the requirements of additional court room infrastructure, staff and budget. So far, the judge strength of High Courts of Delhi, Himachal Pradesh, Jammu & Kashmir, Jharkhand, Karnataka, Orissa, Punjab & Haryana, Rajasthan and Uttarakhand has been increased with the approval of respective State Governments. For the remaining High Courts the matter is under consideration. With this, the sanctioned strength of High Courts as of December, 2014 stands at 984 judges.

c) Challenges in establishment of Additional Courts

The creation of new courts would require adequate infrastructure facilities along with additional manpower and operationalization costs. The actual availability of judicial officers against this increased sanctioned strength will take time based on the recruitment process in various States. Therefore, the addition of courts will be an incremental exercise to be completed over a period of five years or more.

Infrastructure Gaps

Infrastructure needs for court premises and residences for judicial officers are already being met by State Governments through their own resources as well as financial assistance being received through the Centrally Sponsored Scheme for Infrastructure for subordinate judiciary. Under this Scheme, the Central Government has, as of 31st December 2014, released an amount of Rs. 3,024 crore to the State Governments and UT administrations under the revised funding pattern from July, 2011. As the present scheme is expected to continue till the end of the current plan period (March, 2017), it is hoped that substantial addition to judicial infrastructure will take place at the subordinate court level during this period.

As per the information collected from High Courts as of June, 2014, the actual working strength of judges is about 15000 in district and subordinate courts and there are 15,400 court halls/ court rooms available at present. In addition to these, 1000 court rooms are available in rented premises. Comparing these figures it is noted that adequate infrastructure is available for the current judicial manpower. Moreover, there are about 2,250 additional court rooms under construction in States and UTs to take care of immediate increases in the working strength of judges in district and subordinate courts on account of filling up of vacancies. However, the data shows that the number of residential units presently available for judges (10,143) is below the

current working strength of judges. This issue is being remedied through the construction of additional residential units.

The matter of development of infrastructure for judiciary in subordinate courts is monitored by a committee chaired by the portfolio judge of the High Court as per the directions of the Supreme Court in *All India Judges Association* case.[5] A monitoring mechanism has been set up by formation of Monitoring Committees at the Central, State and District Levels. In the Joint Conference of the Chief Ministers of States and the Chief Justices of High Courts held in April, 2013 it was decided that this mechanism should be made a permanent feature at State and district level and the Chief Justices of High Courts should actively utilize the said mechanism for ensuring timely proposals for creation, furnishing, maintenance and development of infrastructure of court buildings and residences. It was further decided that the State Governments shall allocate adequate and suitable land/ sites for the purposes of court complexes and residential quarters on priority basis.

Creation and Filling up of Vacancies of Judicial Officers

During 2013 the States/ Union Territories have created about 10 per cent additional posts in subordinate judiciary taking the sanctioned strength to 19,518 from 17,775 in 2012. The shortage of judges/ judicial officers is on account of the large number of vacancies in district and subordinate courts. As against the sanctioned strength of 19,518 there were 15,115 judicial offices in position at the end of 2013. A statement indicating the sanctioned strength and working strength of judicial officers in various States and Union Territories at the end of the year 2012 and 2013 is at **Annex IV**.

Vide a letter dated May 26, 2014, the Registrar Generals of all High Courts were requested to indicate the bottlenecks which might be hampering the process of recruitment of judges and judicial officers in district and subordinate courts. The Minister for Law and Justice wrote to the all Chief Justices of High Courts in June, 2014 highlighting the issue of high pendency of cases in courts at all levels and requesting them to take necessary actions for operationalising all sanctioned courts and filling up the vacant positions of judicial officers, which would contribute immensely to reducing the overall pendency of cases.

Various High Courts have responded to the letters referred to above sharing details of the status of current vacancies, the action being taken by them for filling those vacancies and the bottlenecks faced by them in the recruitment process. Majority of the High Courts have pointed out that they have already initiated appropriate action for the filling up of vacancies in judicial posts at all levels. Some of the High Courts, namely Allahabad, Andhra Pradesh, Bombay, Himachal Pradesh, Jharkhand, Kerala, Manipur, Orissa and Sikkim have stated that they do not face any bottlenecks in the process of filling up vacancies. In other cases, specific bottlenecks have been pointed out by the High Courts, The inputs shared by the various High Courts show that one of the main difficulties faced by them is that of finding suitable candidates who satisfy the eligibility conditions and are able to clear the written examinations. Delays are being caused due to litigations that are filed in courts challenging the recruitment process. Another issue that has been raised by some High Courts is that of procedural delays caused at the end of the State Public Service Commissions and difficulties in coordination between the two bodies. Further, it has been pointed out by the High Court of Allahabad that despite the on-going exercise of timely recruitment of Judges, a commensurate number of courts cannot be

[5] I.A. No. 279 in W.P. (C) No. 1022 of 1989.

operationalised at the same pace on account of the mandatory requirement for all newly selected Judges to undergo a training program. Following this, a letter was sent by the then Minister of Law and Justice to the Chief Justices of High Courts with a list of actionable points that may be adopted to address the various issues identified by the High Courts in the filling up of vacancies in subordinate courts.

d) Actionable Points in Establishing Additional Courts

Infrastructure does not merely include buildings but also includes furnishing and facilities which include computers and libraries. As stated in the Policy Document of NCMS, there is need for greater allocation of funds for planning, creation, development and maintenance of judicial infrastructure. To achieve best results, High Courts will have to put in place strict monitoring systems such as an Infrastructure Bench. There is also a need to have systems for proper budgetary planning by courts which will help in better allocation of funds for infrastructural development.

Further to create an enabling environment for the additional judicial strength, in terms of providing court rooms and residential facilities, it is important to prepare a statement of expected increase in judicial strength over a period of five (5) years. The High Courts should lay down standard staffing pattern for the subordinate and district Courts. There is a need for setting up of a mechanism for regular coordination between High Courts and State Public Service Commissions to periodically monitor the progress of the recruitment process. Further, if there are any States which do not already have a dedicated recruitment cell in the High Court, urgent steps need to be taken for setting up the same.

Therefore, a systematic process of formulating Five (5) year court development plans as well as annual item-wise budgets taking into account infrastructure, manpower and operationalization costs should be adopted by the courts to ensure that adequate funds are made available by the Government for the development and operation of additional courts. Further, there is a need to create appropriate accountability mechanisms to monitor the utilization of the allocated funds and the progress made using the same.

Advisory Council is requested to take note of the above developments and provide further guidance for improving manpower and infrastructural facilities for the judiciary.

AGENDA 4: **SCOPE OF PRE-TRIAL HEARING UNDER EXISTING PROCEDURAL LAWS**

Long delays in disposal of cases has resulted in huge arrears and a heavy backlog of pending cases in various courts in the country. The delays in the disposal of cases-both civil and criminal and its resultant impact on the cost, effectiveness and efficiency of the justice delivery system has been a major cause of concern.

Adopting effective case management strategies is one of the key factors that can contribute in resolution of the problem of pendency and delay in dispensation of justice. Case management involves management and scheduling of the time and events in a suit as it progresses through the justice delivery system. It helps the court to establish managerial control over the case by setting the time schedule for the predetermined events and by supervising the progress of the suit as per the time schedule. Adoption of effective case management system results in curtailing the delays and improving the quality of the trial.

The system of pre-trial hearing is an important component of the case management process. A pre-trial hearing or conference is a scheduled meeting between the litigants and their counsels conducted prior to trial before a judge or a judicial authority. The object of pre-trial conference is to identify clearly the issues in dispute so as to facilitate expeditious disposal of case through proper case management and to promote amicable settlement of the dispute.

The objectives sought to be achieved by introducing pre-trial hearing are manifold. Firstly pre-trial hearing may help in ensuring expeditious disposal of cases by assisting the courts in establishing managerial control over the cases and keeping a check on undue delays being caused during trial. Secondly it helps in defining and clarifying the scope of the trial and helps in keeping the focus on the real issues in dispute. Thirdly such an exercise of clarification and discoveries has potential to assist parties to better understand their case and assists the court in timely dispensation of justice by conducting a smooth and hassle free trial. Lastly pre-trial hearing may prove to be of great help in facilitating a settlement of dispute by way of an amicable compromise between the parties.

The concept of pre-trial conference is common in several countries such as the United Kingdom and the United States of America. In India the system of pre-trial hearing is not clearly identified as a distinct feature of our judicial process although both the Civil Procedure Code and Criminal Procedure Code contain certain provisions that are akin to pre-trial hearing procedures. In any event, the existing provisions in the procedural codes both civil and criminal that are relevant for the pre-trial preparation of a case are rarely used in practice.

Of late a need has been felt to introduce an organized system of pre-trial hearing in India to effectuate proper case management and timely resolution of disputes. As has been aptly observed by the former Chief Justice of India Justice Y.K. Sabharwal:

> *'It is necessary to make an express provision in the Code of Criminal procedure for holding pre-trial hearing for dealing with the matters such as admission and denial of documents; to explore the possibility of taking evidence on affidavits, to identifying the question of law, if any, relating to maintainability and jurisdiction, to decide the order of examination of witnesses, to assess the time required for recording the evidence, to fix the dates for examination of witnesses and to explore the scope of settlement without trial such as a compounding in appropriate cases.'*[6]

a) Provisions in Civil Procedure Code and Criminal Procedure Code relevant in the context of pre-trial hearings

Though the system of pre-trial hearing is not separately incorporated in our procedural laws there are certain provisions in the law which can be used to satisfy the objectives of a pre-trial hearing. Some of the important provisions are discussed as under:

Relevant provisions of Civil Procedure Code:

- Order X of Civil Procedure Code: Order X of Civil Procedure Code provides for the examination of the parties by the trial judge before the issues are framed. The purpose

[6] Justice Sobhag Mal Jain Memorial Lecture on Delayed Justice by Hon'ble Justice Y.K. Sabharwal

of the examination under Order X is to ascertain precisely the matters which are in dispute between the parties. The object behind such an examination is to get admission or denials of the allegations of fact made in the pleadings. Such an examination eventually results in narrowing the issues and limiting the scope of inquiry and focusing the attention on the real points in dispute.

- Order XI of Civil Procedure Code: Order XI of Civil Procedure Code makes provision for discovery of facts by the examination of opposite party by delivering interrogatories in writing. The rules also provide for the discovery and inspection of documents by a party to a suit.

- Order XII of CPC: Order XII contains the rules for admission or denial of documents and facts of the case.

The provisions relating to examination of parties, discovery and inspection of facts and documents and admissions or denials contained in Orders X, XI and XII of the Civil Procedure Code come prior to the stage of framing of issues under Order XIV. These provisions represent the pre trial hearing in our justice dispensation system. Order XIV, Rule 1 requires that the framing of issues should take place only after the examination of the parties under Order X, Rule 2. It may also be pertinent to refer to Order XIV, Rule 6 which allows the parties to agree on the question of law or fact that needs to be decided between them. The court may then proceed to record and try the issue as if the issue had been framed by the court. Most of these rules however, are discretionary in nature and it is not binding on the court or the parties to follow these procedures before the commencement of trial. Resultantly, in practice, these provisions are rarely used.

Relevant provisions of Criminal Procedure Code:

There are stages in the criminal litigation process that fall under the category of pre-trial stages such as lodging of FIR, arrest, investigation, bail, plea bargaining, framing of charge etc. The Code of Criminal Procedure contains the provisions that regulate these pre trial proceedings. The relevant provisions that are contained in chapters V to XVII of the Criminal Procedure Code mainly govern the procedures for arrest of a person, investigation of offence, provisions related to bail, recording of plea or charge. These provisions mainly relate to the pre-trial hearing stages involved in a criminal trial. The Code contains certain provisions that safeguard the rights of the accused to a fair investigation and trial such as the right to be represented by the counsel, the right to speedy trial, the right to silence etc. The Code of Criminal Procedure also sets certain rules regulating the procedure of arrest, search of a person and that of the place of offence, seizure of property used in the commission of offence, supply of copies of investigation papers to accused etc.

- Section 294 of the Criminal Procedure Code: Section 294 of the Code of Criminal Procedure provides for the admission and denial of the documents filed before the court. Where the genuineness of any document is not disputed, such document may be read in evidence without requiring proof of signature of the concerned person.

- Sections 295 and 296 of the Criminal Procedure Code: Sections 295 and 296 of the Code make provision for taking evidence of certain witnesses on affidavit.

- Plea Bargaining: Plea bargaining was introduced in the Code of Criminal Procedure, 1973 through the Criminal Law (Amendment) Act, 2005. The provisions related to plea bargaining are contained in Chapter XXI-A of the Criminal Procedure Code. Plea bargaining is a system devised to work out a mutually satisfactory disposition of a criminal dispute which may include payment of compensation and other expenses by the accused to the victim. A large number of cases involving petty offences pending in the courts can be resolved expeditiously if the system of plea bargaining is used effectively.

The concept of pre-trial hearing as a distinct process is however new to our criminal justice administration system. There is no express provision in the Code of Criminal Procedure that recognizes pre-trial hearing or pre-trial conference as a distinct judicial process. The Code does not contain the provisions to define and regulate the role of various key players in the process of pre-trial hearing.

b) High Court Rules relevant for the purposes of pre-trial hearing

Section 122 of the Civil Procedure Code empowers the High Courts to make rules for regulating their own procedure and the procedure of the Civil Courts subject to their superintendence. Such rules framed by some High Courts go to a large extent in attaining the objectives of the pre trial hearing.

c) View of the Supreme Court

The Supreme Court with reference to civil cases has recommended certain steps in *Ramrameshwari Devi v Nirmala Devi*[7] case that has potential to reduce delay and help the courts to drastically improve the existing system of administration of civil litigation. The recommendations inter-alia state that trial courts should use case management techniques

- to carefully scrutinize, check and verify the pleadings and the documents filed by the parties immediately after the filing of civil suits; and
- resort to the discovery and production of documents and interrogatories at the earliest according to the object of the CPC.

It further observed that civil courts should prepare a complete time schedule and fix dates for all the stages of the suit and strictly adhere to the said dates and timetables as far as possible.

d) Views of the Law Commission

The possibility of introduction of pre-trial hearing into the Indian judicial system was considered by the Law Commission in its 14th, 27th and 77th Reports. In its 14th Report Law Commission considered at length the introduction of the provision for incorporating the concept of pre trial conference in the Indian judicial system. The Law Commission observed that the object of the pre-trial conference system is to define the scope of the dispute and ascertain the true issues which arise. The Law Commission examined the working of the pre-trial conference procedures in other jurisdictions such as the United States. On the applicability of the similar procedures to pre trial hearing in the Indian context the Law Commission observed that the pre trial hearing already exists in the shape of provisions relating to examination of parties and discovery and inspection under Order X, XI and XII of CPC and that that the rules of Civil Procedure Code amply provide for all the matters covering the pre-trial hearing. It was, however felt that the

[7] (2011) 8 SCC 249

conditions in our country were not ripe enough for the introduction of the innovative concept of pre-trial conference.

The Law Commission in its 27th Report considered the issue of pre trial conference and summons for direction. It compared the situations in the countries like UK and US and observed that the relevant provisions contained in Civil Procedure Code and mainly Order X which is to ascertain precisely the matters which are in dispute between the parties, is sufficient to serve the purpose of pre-trial conference. The Law Commission recommended that in order that the provisions of Order X may be effective and achieve the object in view, the examination of the parties by the court should be made mandatory. Order X Rule 2 of the CPC was amended in 1976 making it obligatory on the part of the court to examine the parties to the suit.

In its 77th Report the Law Commission reiterated its earlier views and re-emphasized the need of proper compliance of Order X of CPC. It was felt that many causes of delay would be eliminated if proper attention is paid to ensuring compliance of provisions of Order X of Civil Procedure Code The Law Commission recommended that the provisions of Order X, XI and XII of Civil Procedure Code are sufficient to deal with the situation in India, and it is not necessary to transplant the pre-trial system with all its amplitude on the Indian soil.

e) Best practices from international experience

The experience of other countries shows that holding pre-trial conference can very often help in saving valuable time of the court. The system has proved to be effective in assisting the court in fair and timely administration of justice by narrowing the focus of the trial on the real issues in dispute.

Position in USA:
Federal and State Courts in USA use the pre-trial conference in criminal cases to decide such preliminary matters as what evidence will be excluded from trial and what witnesses will be allowed to testify. Criminal defendants enjoy more procedural protections than do civil defendants and the judge or magistrate has to be careful to protect those rights. The denial of a pre-trial conference is regarded as an unconstitutional denial of due process rights. The defendant in the criminal trial may raise the defences and objections based on defects in the indictment or formal charging instrument, requests regarding discovery or disclosure of evidence etc. Similar requirements are imposed on prosecutors. The prosecutors must tell the defendant prior to trial of its intention to use certain evidence, such as evidence obtained as a result of a search or seizure etc. In some jurisdictions, courts have bifurcated the pre-trial conference into dispositional conferences and trial management conferences. The trial management conferences are scheduled to discuss administrative aspects of the case, such as scheduling. The courts also schedule a dispositional conference in which the parties may discuss the possibility of a plea bargain or settlement. The use of the system of Pre-trial Conference has resulted in cost and delay reduction and in enhancing the quality of justice administration.

Pre-trial and case conference in Canada:
Pre-trial conference in Canada is a preliminary hearing to assist the parties in determining the witnesses to be examined and issues to be dealt at preliminary inquiry. A thorough and meaningful Crown-Defence case conference is to be held before any judicial pre trials are

scheduled. At such case conferences, counsels strive to resolve the case, narrow or define the issues for trial and determine whether a judicial pre trial would be of benefit.

Pre-trial conference in Singapore:

To facilitate the just and expeditious resolution of cases the pre-trial conferences are held in Singapore. The system of pre-trial conference was introduced in Singapore judicial system in the year 1990 and has had a major impact on administration of criminal justice. By encouraging a culture of frank discussion between parties, the system has significantly reduced the number of cases fixed for trial and has led to expeditious case disposal.

Pre-trial conference in Australia:

Pre-trial conference in Australia is a compulsory meeting between the parties to a case before a Registrar. It is incumbent on the Registrar to list a case for a pre-trial conference within 14 days of the defendant's filing the response to claim indicating an intention to defend the claim. The object of pre-trial conference is to bring the parties to a settlement which will prevent the need to go to a trial.

The increasing backlog of cases and the inordinate delays being caused in the disposal of cases has imperatively necessitated adoption of case management systems, which could include mechanisms for holding pre-trial hearings. At present the pre-trial hearing proceedings in our system are not properly structured - the proceedings have to be carried out before the same judge who presides over the trial; there is no separate forum for the conduct of pre-trial hearing; and no distinct mechanism has been devised for carrying out the pre-trial hearing. The introduction of a well defined system of pre-trial hearings could therefore help in the reduction of pendency and curtailing delays in the disposal of cases.

The Advisory Council may provide guidance on whether the possibility of introducing a concept of pre-trial hearing should be explored in further detail, the issues that need to be taken into account in this regard and the suggested next steps.

AGENDA 5: TIMELY ENFORCEMENT OF COMMERCIAL CONTRACTS

Improving the ease of doing business in India is a priority area for the Government. The Make in India campaign launched by the Prime Minister aims to bring about an economic transformation by focusing on increased investments and manufacturing in the country. In order to achieve this we need a conducive policy, regulatory and judicial environment that allows businesses to germinate and prosper and commercial arrangements to be effected with ease.

Timely enforcement of contracts is one of the indicators used to assess the ease of doing business in an economy. Therefore, ensuring the availability of appropriate dispute resolution processes for the enforcement of commercial contracts in a timely and cost effective manner is crucial for improving the ease of doing business in India. This can help in building certainty and confidence in commercial relationships which in turn will spur more investments and economic growth. At present, one of the major challenges faced in enforcing contracts in India is the time taken in the litigation process coupled with high costs. Further, delays in the enforcement of judgments passed by the courts also present a roadblock. Addressing these issues is in line with the strategic goals of the National Mission of reducing delays and arrears in the system, re-engineering of procedures and promotion of alternative methods of dispute resolution.

The effective resolution of commercial cases is without doubt intrinsically linked to the effectiveness of the judicial system as a whole, for which a number of notable actions are being taken by the judiciary as well as the Government. However, in addition to pursuing the measures aimed at reducing the backlog and pendency of cases and overall improvements in justice delivery, it may also be useful to identify the specific measures that can be taken to bring about better enforcement of commercial contracts. While doing so it is necessary to be mindful of the need to strike a balance between any specific measures for commercial cases and the overarching goal of ensuring access to justice for all.

In order to examine the steps that need to be taken to improve the enforcement of commercial contracts we first need to identify the different types of cases that would fall under this category. Guidance on this issue can be obtained from the rules made by certain High Courts which refer to "commercial causes" or "commercial cases". The Delhi High Court rules define "commercial cases" to include "*cases arising out of the ordinary transactions of merchants, bankers and traders; amongst others those relating to the construction of mercantile documents, export or import of merchandise, affreightment, carriage of goods by land, insurance, banking and mercantile agency, mercantile usage, and infringements of trademarks and passing off actions and debts arising out of such transactions*".[8] A similar definition is also seen in the rules made by the Bombay High Court.[9]

In its 188th Report titled 'Proposals for constitution of Hi-tech Fast-Track Commercial Divisions in High Courts' the Law Commission of India suggested that the definition of "commercial disputes" should be made broader to also include commercial disputes that involve the recovery of or other action relating to immovable property as well as disputes that are otherwise not of a commercial nature but involve immovable property that is used in trade or put to commercial use.

a) Designated courts or judges for hearing commercial cases

One way to ensure the expeditious disposal of commercial cases is through having dedicated courts or judges to look into such matters. Very often, cases relating to commercial disputes involve complex issues of specialized nature that demand special knowledge of commercial laws. Having judges who are trained and experienced in commercial matters look into such cases can therefore result in more timely decision making.

In the Doing Business 2015 survey conducted by the World Bank, it was found that 95 of the 189 economies covered in the study had some form of specialized commercial jurisdiction, which may be by way of dedicated stand-alone courts, specialized commercial sections within existing courts or specialized judges within a general civil court.

In the Indian context, the Law Commission had in its 188th report submitted in 2003 recommended the creation of specialized commercial divisions in High Courts to deal with high value commercial cases rather than having these cases go through the ordinary civil court procedure. It was proposed that these commercial divisions should operate on a 'fast track' basis using high-tech facilities of video-conferencing, online filing, etc. and dispose of cases within a maximum period of two years. Further, it was recommended that the enforcement of

[8] Delhi High Court Rules, Chapter 1, Part K, para 10.
[9] Bombay High Court (Original Side) Rules, Chapter XV, para 228.

decrees relating to this category of cases should also be through the commercial division of the High Courts and not by subordinate courts. The Law Commission suggested that the commercial divisions should consists of as many benches as are necessary and if required, retired Judges may be appointed under Article 224A of the Constitution of India for this purpose.

As the power of creation of divisions is the function of the High Court and the power of allocation of judicial work is vested in the Chief Justice of the High Court, the Law Commission found it necessary to ensure that the above proposals do not adversely impinge on those powers of the High Court or the Chief Justices of the High Courts. Based on a review of the relevant provisions in the Constitution, including Article 255 (*Jurisdiction of existing High Courts*), Entry 78 of List I (*Constitution and organization of High Courts*) read with Entry 11A of List III (*Administration of justice*) of the Seventh Schedule, the Law Commission concluded that it was well within the powers of the Parliament to make such a law in accordance with the provisions of the Constitution.

A proposal for having specialized commercial divisions to deal with high value commercial cases was initiated through the Commercial Division of High Courts Bill, 2009. The bill was passed by the Lok Sabha and then introduced in the Rajya Sabha. As per information received from the Department of Legal Affairs vide letter dated 10th July, 2013, the then Minister of Law and Justice had while replying to the debates on the bill in the Rajya Sabha sought more time so that appropriate amendments could be brought to address the issues raised by the Hon'ble MPs. Therefore, the consideration of the said Bill was deferred. The matter was then re-examined by the Department of Legal Affairs and it was felt that various provisions of the proposed Bill, particularly the scope of "commercial dispute" needed to be revisited. For this purpose, a reference has been made to the Law Commission on 7th March, 2013 requesting them to make a fresh study and give their views on the proposed legislation.

A similar mechanism of having designated judges for hearing commercial cases can also be considered at the level of district and subordinate courts in jurisdictions having a large number of commercial cases. Under the Constitutional framework, matters relating to the jurisdiction and powers of all courts, except the Supreme Court, with respect to matters relating to civil procedure fall under the Concurrent List by virtue of Entries 46 and 13, List III of the Seventh Schedule. Article 227 entitles the High Courts to exercise the power of superintendence over all courts in the territories under their jurisdiction, including the power to make general rules and prescribe forms for regulating the practice and proceedings of subordinate courts. Further, Section 122 of the Code of Civil Procedure, 1908 (CPC) provides that High Courts may from time to time make rules regulating their own procedure and the procedure of civil courts subject to their superintendence.

Reference may be made in this regard to the Bombay City Civil Court Act, 1948 which provides for the setting up of a civil court in the Greater Bombay area by the State Government though a Gazette notification. Section 7(c) of the Act provides that the principal judge of the civil court may from time to time make arrangements for the distribution of the business of the court among the various judges.[10] Similarly, Section 34 of the Punjab Courts Act, 1918 that is also applicable to the Union Territory of Delhi provides that "*Notwithstanding anything contained in the Code of Civil Procedure, every District Judge may by written order direct that any civil business cognizable by his Court and the Courts under his control shall be distributed among*

[10] Section 7(c), Bombay City Civil Court Act, 1948.

such Courts in such manner as he thinks fit."[11] Other States also have similar legislations governing the constitution of civil courts in their jurisdictions.

The Hon'ble Minister of Law and Justice has recently, vide letters dated 27th November, 2014, written to the Chief Justices of the Delhi and Bombay High Courts, which represent the hub of commercial activity in the country, to consider having specified judges at the subordinate court level to hear commercial cases. In addition, these High Courts were also requested to consider adopting e-filing of cases and e-service of summons for the expeditious disposal of commercial disputes. If these High Courts find it feasible and appropriate to adopt the suggested measures in the cities of Delhi and Mumbai, they could become a good example for other larger cities in the country.

b) Alternate means of resolving commercial disputes

Extensive use of alternative dispute resolution (ADR) mechanisms is seen as an effective way of reducing the burden of courts while at the same providing parties with a timely and efficient remedy. As compared to court processes, ADR mechanisms such as arbitration and conciliation provide parties the benefit of having a much higher degree of control over the proceedings, ranging from selection of the presiding officer, choice of applicable rules and agreed timelines for the dispute resolution process.

Use of ADR is particularly suited for "*all cases relating to trade, commerce and contracts*", as noted by the Supreme Court in *Afcons Infrastructure Ltd.* v. *Cherian Varkey Construction Pvt. Ltd.* (2010) 8 SCC 24. The Court classified the following types of disputes as being covered under this category: arising out of contracts (including all money claims); relating to specific performance; between suppliers and customers; between bankers and customers; between developers/builders and customers; between landlords and tenants/licensor and licensees; and between insurer and insured.

In the abovementioned case the Supreme Court clarified the process using which a reference under Section 89 of the CPC is to be made by a court for the resolution of civil disputes through any of the following ADR mechanisms – arbitration, conciliation, mediation, Lok Adalats or judicial settlement. While a reference to arbitration and conciliation can only be made with the consent of both parties, courts can direct the parties to use any of the other three ADR mechanisms, namely mediation, Lok Adalats and judicial settlement, as deemed suitable.

It may be pertinent to note that Section 89 of the CPC comes into play after a case has been filed before a civil court. There are however a number of other avenues that can be explored by the parties to a commercial dispute prior to or instead of approaching regular civil courts. Disputes between consumers and providers of goods and services can be resolved under the Consumer Protection Act, 1986 through the quasi-judicial bodies that have been set up at the District, State and National level. Similarly, grievance redressal and ombudsman services are provided by regulatory authorities such as the Reserve Bank of India, Securities Exchange Board of India and the Insurance Regulatory and Development Authority to address the grievances of consumers against the entities regulated by them.

In addition to this, various trade and commerce chambers in the country also facilitate the resolution of commercial disputes through ADR mechanisms. This may be in the form of

[11] Section 34, Punjab Courts Act, 1918.

industry-specific associations or bodies such as the Arbitration and Conciliation Tribunal of the Federation of Indian Chambers of Commerce and Industry that facilitates the resolution of disputes between its members as well as other parties who may be interested in availing of its services.

Very often parties may be able to resolve the contractual differences between them through direct negotiations, without resorting to any formal or informal dispute resolution mechanisms. The Law Commission of India made a pertinent recommendation in this regard in its 221st Report on the Need for Speedy Trial. The Commission referred to Section 80 of the CPC which requires that a litigant who proposes to initiate legal proceedings against the State or a public officer must give two months' advance written notice to the concerned party and suggested that a similar provision should be introduced for all categories of civil cases. A provision of this nature is already seen in Section 138 of the Negotiable Instruments Act, 1881, which provides that a claim for dishonour of cheque can only arise after the claimant has issued prior written notice to the drawer of the cheque and the drawer has failed to make the payment of the relevant amount within fifteen days of the receipt of the notice.

Adopting such a provision with respect of all civil cases, or at least all cases of a commercial nature, will help in curtailing unnecessary litigation as many parties may choose to settle the cases even prior to the initiation of formal legal proceedings. A provision of this nature would however need to be subject to an exception for urgent matters where the Court can dispense with the notice after hearing reasons for the urgency.

c) Increased use of electronic case management and filing systems

Adoption of electronic case management systems, automation of court proceedings and introduction of electronic case filings are important tools for achieving the timely enforcement of contracts.

Significant efforts are being made towards the adoption of information and communication technology in district and subordinate courts under the eCourts Integrated Mission Mode Project. Further, as part of its strategic initiative to re-engineer court procedures, the National Mission for Justice Delivery and Legal Reform has been examining the possibility of reducing delays in the service of summons. Specific emphasis has been placed on the use of Information and Communication Technology (ICT) tools in order to increase the efficiency of serving process, thereby reducing the time taken to adjudicate a case. The Supreme Court E-Committee has also highlighted the importance of this issue in its Policy and Action Plan Document for Phase II of the e-Courts Project. As per this document, Process Re-engineering Committees have been set up at the High Court level. The goal is to ultimately make the process of service completely automated; using what is referred to as the established mechanism of acknowledgement for e-mails in the form of a delivery and read receipt.[12]

d) Other measures

Besides the specific measures referred to above, some of the other general steps that would help in improved contract enforcement through the judicial machinery, include, (i) overall process re-engineering in the judicial system; (ii) enhanced implementation of existing

[12] http://www.supremecourtofindia.nic.in/ecommittee/PolicyActionPlanDocument-PhaseII-approved-08012014-indexed_Sign.pdf at p.65

provisions in procedural laws that are aimed at expeditious disposal of cases, such as limiting the number of adjournments, imposition of costs for delays, improved means for service of summons, etc; (iii) training of judges and judicial officers on commercial laws and issues arising under them; and (iv) weeding out of laws that have become outdated and are no longer found to be relevant.

It will also help to take specific measures to address the large number of cases arising under Section 138 of the Negotiable Instruments Act, 1881, as discussed in the following agenda item. Any targeted measures to deal with commercial cases may not yield the desired results unless specific steps are taken to address the excessive litigation emanating from this provision.

The Department of Justice has been corresponding with officials of Department of Industrial Policy and Promotion in relation to improving India's performance in the enforcement of contracts parameter of the Doing Business index. The Advisory Council may take note of these actions and provide guidance on the issues referred to above as well as the other measures that may be taken in order to create an enabling environment for better contract enforcement in the country.

AGEND 6: LEGISLATIVE INITIATIVES IN THE AREAS PRONE TO EXCESSIVE LITIGATION

The National Mission is looking into the areas of law that are prone to excessive litigation for suggesting suitable policy and legislative measures that may be adopted to curb such litigation. For instance, a large number of cases relating to dishonor of cheques are currently pending before courts under the Negotiable Instruments Act, 1881 (NI Act). Currently out of total 1 crore 85 lakh pending criminal cases, 22 lakh (13%) cases are under the NI Act. Similarly, Motor Vehicles Act, 1988 (MV Act) is known to generate excessive litigation contributing to the large pendency of cases in courts. As of June 2014, over 3 lakh accident cases were pending before the various High Courts and over 10 lakh cases related to motor accidents claims were pending in District and Subordinate Courts. Therefore reforms in these legislations are essential to reduce pendency of cases in courts.

The process of revisiting the provisions of the law relating to arbitration is underway following the recommendations made by the Law Commission in its recent report. Promoting the widespread use of Alternative Dispute Resolution (ADR) mechanisms such as mediation, conciliation, arbitration and lok adalats is an effective means of settling disputes without resorting to the formal litigation process. This can help ease the burden of courts, reduce pendency and ensure speedy delivery of justice.

a) Negotiable Instruments Act

An Inter- Ministerial Group (IMG) was constituted to make suggestions for necessary policy and legislative changes to deal with the large number of pending cheque bounce cases. The IMG made the following suggestions with respect to the NI Act

I. Suitable amendments should be made to the NI Act to make it compulsory to use ADR mechanisms.
II. A summary procedure for dealing with cheque bounce cases should be incorporated as a schedule to the NI Act.

III. A provision should be incorporated in the NI Act to enable High Courts to make necessary rules for conduct of trial in cases under the NI Act.
IV. The court fee may be made ad-valorem to act as a deterrent for indiscreet and vexatious complaints.
V. Provision may be made for defaulting party to bear the cost of litigation in cheque bounce cases.

In 2014, the Department of Financial Services drafted a bill containing amendments to be introduced to the NI Act and the Legal Services Authority Act,1987 in line with the recommendations of the IMG. This draft Bill proposes to introduce measures for reference of disputes relating to Section 138 to ADR mechanisms. The Bill provides that any dispute arising under Section 138 should in the first instance be referred to a Permanent Lok Adalat. If parties are unable to reach a settlement before the Permanent Lok-Adalat, the matter could then be taken to a criminal court. For pending criminal proceedings under Section 138, the Bill provides power to the court to refer such cases to arbitration, conciliation, mediation, or Lok Adalat.

The Bill further proposes that courts dealing with Section 138 cases should follow a summary procedure for trial of such cases and introduces a Schedule of Procedure to be inserted to the NI Act. It also empowers High Courts to frame appropriate rules to prescribe the manner of conducting prosecutions of Section 138 cases. It also proposes to add an explanation to Section 138 to clarify that dishonour of a cheque, which is not issued for any specific amount of debt or liability but as a security for any future debt or liability shall not be an offence under that Section. The proposed Bill also introduces corresponding amendments to the Legal Services Authority Act for the introduction of "*banking and other financial services in respect of any matter relating to dishonour of cheques under Section 138 of N.I.Act* " as a category of public utilities for which Permanent Lok Adalats are established under that Act and to clarify that the limit on the value of the property in dispute for determining the jurisdiction of Permanent Lok Adalats would not be applicable to offences under Section 138 of the NI Act.

The DOJ has given its concurrence to the above mentioned draft Bill after being satisfied that all the key recommendations of the IMG have been incorporated in the Bill. The matter is now pending with the Department of Legal Affairs / Legislative Department. The implementation of these proposals for amending the NI Act to promote the use of ADR mechanisms to deal with cases related to dishonor of cheque can go a long way in reducing the burden of courts.

b) Motor Vehicles Act

The National Mission has been corresponding with the Ministry of Road Transport and Highways (MoRTH) to bring necessary legislative changes to introduce alternative mechanisms for collection of fine in traffic challan cases without resorting to litigation and for timely payment of victim compensation in motor accident cases.

Recently, the MoRTH has prepared a draft **Road Transport & Safety Bill 2014** with a vision to provide a framework for safer, faster, cost effective and inclusive movement of passengers and freight in the country. The draft Bill on Road Safety suggests several legislative changes to ensure that motor challan and accident cases are disposed of expeditiously. The Bill provides for the creation of a National Vehicle Regulation and Road Safety Authority (National Authority) that will prescribe the national standards and guidelines for electronic monitoring and enforcement for road safety by introducing mechanisms such as speed cameras, CCTV cameras, speed guns and other similar progressive technology to achieve the objectives

specified by the National Authority. The use of these technological solutions for monitoring and enforcement of traffic violations will increase transparency and at the same time reduce scope for invalid contestation of challans by traffic violators. This, coupled with the creation of systems for online collection of fines for violation of traffic rules, will result in speedier disposal of traffic challan cases. The Bill also provides for compounding of offences punishable only with fine before or after commencement of the prosecution and summary disposal of cases.

The fines and penalties for violation of traffic offences have been enhanced in the draft Bill to deter people from committing traffic rules violations. The Bill also proposes to introduce a system for allocation of penalty points for commission of offences, in addition to fine or imprisonment. The procedure for awarding penalty points is to be specified by the National Authority. The Authority may also develop incentive schemes to encourage safe driving behavior.

Some of the other key changes sought to be introduced through the Bill are as follows:

- National Unified Information System for driving licences, motor vehicle registrations, insurance, vehicle data from manufacturers, permits, data on road accidents, offences and penalties.

- Streamlined system for reporting, investigation, settlement and expeditious disposal of motor accident cases. Investigation of accident cases should start immediately upon receiving information of the accident. Particulars of the accident should be communicated within twenty four hours to the Claims Tribunal and insurance company and Detailed Accident Information Report is to be completed within 15 days.

- If the insurance company finds that a claim is payable it should confirm the same to the Claims Tribunal within 30 days following which the Claims Tribunal will record the offer of settlement, if found acceptable by the claimant.

- The minimum premium including for third party insurance and the maximum liability of an insurer in relation to such premium for an insurance policy shall be as prescribed by the Central Government in consultation with the Insurance Regulatory and Development Authority and the National Authority.

- Introduction of enhanced protection for victims of motor accidents by providing a provision for payment of a fixed sum of compensation in case of hit and run motor accident cases, which will be fixed by the Central Government
- Creation of a scheme for cashless treatment of victims of road accidents during the “Golden Hour” creation of a fund called the Motor Accident Fund for the purpose of providing compulsory insurance cover to all road users in the territory of India and compensation to victims of road accidents.

c) Arbitration and Conciliation Act

The promotion of ADR mechanisms has been a thrust area for achieving the goal of timely delivery of justice. In the year 2001, the Government made a reference to the Law Commission of India to undertake a comprehensive review of the Arbitration and Conciliation Act, 1996 (the 1996 Act) in view of the various shortcomings observed in its working and various representations received by the Government in this regard. The Commission after an in-depth

study of the Act made some recommendations for bringing amendments in the Act in its 176th Report.

As a follow up, the Government introduced the Arbitration and Conciliation (Amendment) Bill, 2003 in the Parliament. The bill was studied by the Justice Saraf Committee on Arbitration in 2005 and was then referred to the Departmental Related Standing Committee on Personnel, Public Grievances, Law and Justice. The Standing Committee noted that the provisions of the Bill were not able to adequately address the main concern of achieving minimal intervention by courts in the arbitration process. It was therefore recommended that the Bill be withdrawn and a fresh Bill be introduced based on the recommendations of the Committee.

Subsequently, the Ministry of Law and Justice issued a Consultation Paper in April, 2010 inviting suggestions/comments from various stakeholders on the proposed amendments to the 1996 Act. The Ministry then requested the Law Commission to undertake a study of the amendments proposed to the 1996 Act. Simultaneously, this matter was also discussed in the Fifth Advisory Council meeting of the National Mission held on 29th October, 2013 where it was discussed that there was a need to revamp the existing arbitration/mediation mechanism for resolution of commercial disputes and establishment of industry specific ADR centres.

After conducting extensive deliberations, discussions and in-depth study, the Law Commission submitted its 246th Report on "Amendments to the Arbitration and Conciliation Act 1996". In its report the Commission has recommended various amendments to the 1996 Act, which need to be considered on an urgent basis to achieve minimal court intervention in arbitration matters and enhance institutional arbitration.

Taking into account the recommendations made by the Law Commission and the policy of the Government to introduce reform in Arbitration Law for improving ease of doing business Department of Legal Affairs has formulated the **Arbitration and Conciliation (Amendment) Ordinance, 2014** to amend the Act. The proposal has received its approval of the Central Government. This Ordinance aims to improve the legal framework relating to arbitration to enable arbitration process to be expeditious and effective. The major amendments introduced to the Act by the Arbitration and Conciliation (Amendment) Ordinance, 2014 are as follows:

1. Amendment of the definition of the term 'Court' to give exclusively jurisdiction to High Courts over all matters arising from international commercial arbitrations and enforcement of foreign awards. This provision will ensure that cases relating to international commercial arbitrations involving foreign parties and awards passed by tribunals seated outside India are exclusively heard by High Courts and expeditiously disposed.

2. Amendment of Section 2(2) of the principal Act to empower Indian courts to exercise its jurisdiction to provide interim relief in arbitrations having its seat outside India unless expressly excluded by the parties in the arbitration agreement.

3. Insertion of a new provision to provide a time-limit of 9 months for making an award by arbitration tribunals from the date of first hearing. It states further that if the award is not made within a specified period, arbitration proceedings shall stand terminated and on application filed by a party, Court may decide as to whether the arbitrator or arbitrators are entitled to any fees. The Court has been also empowered to debar an arbitrator from

taking any fresh arbitration for three years if after enquiry the Court finds that the delay is caused due to the arbitrator, for his personal benefit.

4. Insertion of a new provision to provide that arbitrators shall charge a composite fee for disposal of cases and not on the basis of per sitting.

5. Amendment of Section 9 to provide that arbitration proceedings shall be commenced within 90 days from the grant of interim measures by Court and after commencement of arbitration Courts shall ordinarily not entertain application relating to granting of interim measures under Section 9.

6. Amendment of Section 11 to the effect that while considering an application for appointment of arbitrator the court shall prime-facie examine the existence of a valid arbitration agreement and no other issues. Also insertion of a new sub-subsection to Section 11 to provide that applications for appointment of arbitrators are disposed of ordinarily within 60 days from the date of service and court can fix the fees of arbitrator in consultation with the parties at the time of appointment.

7. Insertion of a new sub-section 3 to Section 17 to recognize that an order for interim measure granted by an arbitral tribunal is treated as an order of a court and is automatically enforced under the Code of Civil Procedure.

8. Amendment of Section 34 to limiting the ground of 'public policy' for setting aside an arbitration award to

    a. only where making of award was induced or affected by fraud or corruption
    b. where the award is found to be in conflict with principles laid down by the Constitution of India or basic notions of morality and justice.

9. Amendment of Section 34 to provide that an application to challenge an award is to be disposed of by the Court within 1 year from date of filing.

10. Amendment of Section 36 to provide that mere filing of an application under Section 34 for setting aside an award does not operate as an automatic stay on the enforcement of the award. The unenforceability of an award will be only in the occasion of granting of stay by a Court.

There was an urgent need to take necessary steps to bring reform in this crucial area for improving investor-friendly, cost effective and expeditious mechanism for resolution of commercial disputes. The **Arbitration and Conciliation (Amendment) Ordinance, 2014** is an important step towards achieving that objective and making India a hub of International Commercial Arbitration.

The National Mission has also identified the Electricity Act as one of the areas that is contributing to excessive litigation. Similarly, cases under various State laws also add to the large number of cases pending in courts, particularly on account of challan cases under State laws. In cases where the State Government is a party to the proceedings, this issue can be addressed to a large extent through proper implementation of State Litigation Policies. Advisory Council is requested to provide guidance on the next steps that may be taken in this regard.

AGENDA 7: STRENGTHENING JUDICIAL TRAINING FOR EXPEDITIOUS DISPOSAL OF CASES

Judicial education is an essential element of any efficient justice delivery system, which helps to ensure the competence of the judiciary. There is a need to impart training to judicial officers at every level, at induction as well as thereafter. Having a well-trained cadre of judicial officers presiding in the courts at every level is critical to the judicial system and would significantly contribute to the level of effectiveness and efficiency of the judicial system.

a) National and State Judicial Academies

With the above objective in mind National Judicial Academy of India (NJA) was set up in Bhopal on 17th August 1993, by the Central Government under the superintendence of Chief Justice of India. NJA seeks to enhance the quality of our judicial system and catalyze its development to meet current and emerging needs of the country. State Judicial Academies (SJA) have been also set up by State Governments in 22 States. SJA's are involved in imparting induction training for newly recruited Judicial Officers, direct recruit to Higher Judicial Service; refresher courses for Civil Court Judges, Judges of Family Courts and Public Prosecutors in cyclic order.

Regular professional training and orientation hones the adjudicatory skills of judges. A beneficial training programme takes into account the needs for the future and also helps judges overcome some of the challenges faced by the judiciary today, such as the high pendency of cases. To address this, judges have an important role to play, along with initiatives such as modernization and computerisation of courts and the use of Alternative Dispute Resolution (ADR) mechanisms. To this effect, the participation of judges in such refresher training programmes focusing on the subject areas which will ultimately reduce pendency and lead to the expeditious disposal of cases is very much needed and should be encouraged.

Several methods may be used to provide holistic training to judicial officers. First, a Human Resources Development Strategy may be adopted, which would create a set of uniform professional standards for judicial training at the subordinate court level. Instituting the same would likely result in high quality judgments, which would then reduce the number of revisions and appeals being filed. Ultimately, this would reduce the lifespan of a case.

The curriculum for the judicial academy should include a special awareness progrmme on the existing pendency in various courts in the country with the special emphasis on the pendency in the respective State to which the judicial academy belongs. The course to include special training on the areas prone to delay, causes of delay in trial of a case, ways and means to curb delay by using appropriate provisions available in procedural laws. The course should also include the aspect of low rate of conviction in our country and include a research oriented study to be done by the participating judges.

The High Courts may wish to adopt the National Judicial Education Strategy (NJES), which was established in 2006 by the National Judicial Academy. NJES puts in place a national level system of judicial education focusing on a less traditional 'solution driven' approach. The vision of the NJES is 'judicial education enhances the timely delivery of justice', which is most apt for purposes of expeditious disposal of cases and speedy justice delivery.

Also given the rising cases of crimes against women, and citizens' focus on social justice for women, judges must also be sensitized on gender related issues. In the Joint Conference of Chief Ministers and Chief Justices held in April 7th, 2013 it was decided that there is an urgent need for sensitization of judicial officers on gender issues. The judicial academies in consultation with the High Court are required to develop appropriate course curriculum and materials for this purpose taking into account the recent developments in the area of gender laws and international best practices.

b) Recent legislative, policy and judicial initiatives

The Department of Justice has also recently taken several steps to collaborate with the Judicial Academies to promote judicial education in the country. The National Mission has prepared a brief note summarizing the recent legislative, policy and judicial initiatives targeted at reducing pendency and improving the justice delivery system in the country. This note was circulated to all judicial academies requesting them to stress upon these provisions in their training curriculum for judges and judicial officers for the expeditious resolution of court cases. This note has been further updated and circulated to Chief Justices of High Courts for sensitizing the judicial officers to implement these provisions strictly. Some of the key points discussed in these notes are as follows:

Amendments to procedural laws

A series of amendments have been made to procedural laws in the recent past to enable the expeditious disposal of criminal and civil cases. These include the introduction of provisions for limiting the number of adjournments granted in a case, service of summons through courier and electronic means and use of audio-video means in investigation and trial processes. Further, the provisions of the CrPC have been amended to rationalise the list of compoundable offences and introduce a new chapter on plea bargaining. In civil cases, Section 89 has been added to the CPC to encourage parties to settle cases by using one of the alternative modes of dispute resolution, such as, arbitration, conciliation, mediation or lok-adalats.

It would also be pertinent to refer to Section 436A that has been inserted in the CrPC to provide that undertrial prisoners who have undergone half of the maximum period of imprisonment specified for an offence (except for those punishable by death) will be released by the court on their personal bond with or without sureties.

National and State litigation policies

The government is the largest litigator before the courts. To bring reforms in government litigation and transform it into an efficient and responsible litigant the Ministry of Law and Justice has prepared a draft National Litigation Policy. All States have also framed their State Litigation Policies. The State Governments have also constituted Empowered Committees at State and District level to monitor the progress of the implementation of the litigation policies. The role of the Empowered Committees involves identifying cases which have become ineffective and infructuous with passage of time. Simultaneously, the High Courts have advised the judicial officers and judges to invoke relevant provisions of law such as Section 258 of CrPC, which relates to the power to stop proceedings, to remove the deadwood from our judicial system. The proper implementation of these policies at the National and State level can help in significantly reducing the number of pending cases in courts.

Reforms in service of summons

Delay in service of summons is a major hurdle in the speedy delivery of justice. The National Mission had requested High Courts and State Governments to consider measures such as a one-time collection of process fee, clubbing of process fee with the court fee, and the use of ICT systems for service of process. Several High Courts have responded positively to the suggestion on collection of one time process fee. It is noted that a majority of High Courts are yet to formalize and adopt ICT tools for the purpose of expediting process service. The High Courts of Madhya Pradesh, Bombay, Punjab & Haryana and Tripura have however already taken positive steps towards the use of ICT systems.

Relevant judicial pronouncements

The note also highlights the recent decisions of the apex court directing the High Courts and Subordinate Courts to take necessary steps to address delay in completion of trial, ensuring speedy disposal and encourage ADR mechanisms. The Supreme Court in *Thana Singh* v. *State of Central Bureau of Narcotics*[13] issued directions for restrictions on grant of adjournments and for creating an environment that encourages witnesses to come forward and give testimony, which are applicable to cases under the Narcotics Drugs and Psychotropic Substances Act, 1985.

In the context of civil trials, the Supreme Court has issued a very important set of directions in the *Ramrameshwari Devi* case[14]. These directions includes obligation of the trial judge to carefully scrutinize, check and verify the pleadings and the documents filed by the parties; imposition of heavy costs would also control unnecessary adjournments by the parties and framing of complete schedule and fix dates for all the stages of the suit, right from filing of the written statement till pronouncement of judgment and the courts should strictly adhere to the said dates and the said time table as far as possible.

In the context of Section 89, CPC the Supreme Court has in *Afcons Infrastructure Ltd.* v. *Cherian Varkey Construction Pvt. Ltd.*[15] laid down detailed guidelines for the referral of matters to the ADR methods under Section 89.

In September 2013 the DoJ has notified a Plan Scheme for supporting Action Research and Studies on judicial reform. The scheme aims to promote research and studies on judicial reforms and capacity building of judicial academies, legal education/ research institutions for this purpose. Several judicial academies have actively responded to the scheme of action research proposal. Maharashtra Judicial Academy has submitted a proposal for a study with the objective of quantifying the amount and causes of pendency in different types of courts and in different categories of cases and to suggest remedies for reducing pendency and delays. This study proposes to collect data on pendency of cases, analyse it, and conduct an impact analysis of the alternative methods that can be adopted for mitigating pendency.

[13] (2013) 2 SCC 603.
[14] *Ramrameshwari Devi* v. *Nirmala Devi*, (2011) 8 SCC 249.
[15] (2010) 8 SCC 24.

c) Exposure visit to Canada

The DoJ through the GoI-UNDP Access to Justice Project facilitated an exposure visit for the Directors of the National Judicial Academy and a few State Judicial Academies to the National Judicial Institute (NJI), Canada in November 2013. The main objective of this visit was to improve the institutional capacities of key justice service providers, particularly the judiciary, to enable them to share the international best practices through improved judicial education.

The participants recognized and appreciated how important judicial education is in ensuring that high standards are set for judicial performance and for the stringent rule of law. It was agreed upon that respect for constitutional values and judicial independence must be the underlying basis of all judicial education.

The following were the lessons learnt from the visit that may be considered for replication in India as programmes and courses for judicial training are developed:

1. Planned courses should be developed based on the needs of judges on various levels such as:
    a. Content of judging (what do they need to know)
    b. Craft of judging (what skills are required)
    c. Social context judging (what do they need to understand about the litigants)
2. A needs based assessment for judicial training must be undertaken before programs are framed, and the curriculum must be constantly upgraded
3. Courses for judges should be planned *by* judges which will make them most effective
4. Developing judicial faculty by:
    a. Teaching judges how to design and deliver quality, skills-based education that uses effective adult education methods
    b. Shifting focus of learning to the learner, not the teacher
    c. Framing policies to free up judges for education
5. Put in place accreditation processes for the performance and standards of judicial education and the institutions and programmes conducting the same by an independent authority on an annual basis.

Essentially, a high standard of judicial performance and support for the rule of law can be ensured through judicial education. Expeditious disposal of cases falls under this, because justice delayed is justice denied. The members of the Advisory Council may provide further guidance on the need and contents of the different types of training programmes and recommend what other possible measures can be adopted for strengthening judicial training for expeditious disposal of cases.

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Annex-I

Minutes of Sixth Meeting of Advisory Council of the National Mission for Justice Delivery and Legal Reforms held on 26th August, 2014.

The sixth meeting of the Advisory Council of the National Mission for Justice Delivery and Legal Reforms was held on 26th August, 2014 at Shastri Bhawan, New Delhi under the Chairpersonship of Shri Ravi Shankar Prasad, Hon'ble Minister of Law and Justice. The meeting was attended by Shri Kiren Rijiju, Hon'ble Minister of State for Home Affairs; Justice (Retd.) Ajit Prakash Shah, Chairman, Law Commission of India; Shri Ranjit Kumar, Ld. Solicitor General of India; Smt. Anita Kaul, Secretary, Department of Justice; Shri P.K. Malhotra, Secretary, Legal Affairs; Dr. Sanjay Singh, Secretary, Legislative Department; Professor (Dr.) Balram K. Gupta, Director, National Judicial Academy; Shri Ravindra Maithani, Secretary General, Supreme Court of India; Shri Biri Singh Sinsinwar, Chairman, Bar Council of India. Prof. N.R. Madhava Menon, Jurist sent his comments on agenda items which were placed with Agenda Notes.

Smt. Anita Kaul, Secretary, Department of Justice welcomed the Hon'ble Minister and members of the Advisory Council. She requested the Hon'ble Minister of Law and Justice to make his opening remarks.

Minister of Law and Justice highlighted the important developments that have taken place since formation of the new government at the Centre in May this year. The passage of the Constitution (121st Amendment) Bill, 2014 for setting up of National Judicial Appointment Commission in both Houses of Parliament unanimously was a significant milestone. He affirmed the resolve of the government to protect and respect the independence of the judiciary and felt that the new mechanism for appointment of judges in High Courts and Supreme Court would bring greater transparency and fairness in the system.

Minister of Law and Justice also informed the members that an '*in principle*' decision has been taken to enhance the sanctioned strength of judges by 25% to tackle the problem of pendency and backlog of cases in High Courts. State Governments and High Courts have been requested to convey their consent to the proposal. Concurrence of the State Governments with respect to five High Courts, *namely*, Delhi, Himachal Pradesh, Jammu & Kashmir, Madhya Pradesh and Punjab & Haryana have been received, and consequently the sanctioned strength

of judges in these High Courts has been increased. In the case of other High Courts, State Governments have been requested to expedite their concurrence. A significant increase in the judge strength of district and subordinate courts has also taken place during last year. However, the existence of large number of vacancies both in High Courts and District Courts is an area of concern. Minister of Law and Justice stated that he has taken up the issue of timely filling of these vacancies with High Courts and State Governments.

Minister of Law and Justice observed that computerization of courts and information and communication technology (ICT) enablement can ensure easy access to data on pendency of cases, allow greater control to courts on case management and delivery of citizen centric services. He highlighted that significant progress has been achieved under the e-Courts project with 13,227 courts against a target of 14,249 courts across the country having been computerized as of March, 2014. He noted that the National judicial Data Grid (NJDG) is also operational and over 11,000 courts are uploading data on the NJDG. Minister also made a mention of significant improvements having been brought about in the infrastructural facilities of district and subordinate courts. The share of Central Assistance to the States for infrastructure development of subordinate judiciary has been enhanced and sum of Rs. 3,500 crore has already been released to the State Governments and Union Territories under the Centrally Sponsored Scheme (CSS) since its inception in 1993-94.

Hon'ble Minister stressed the need to connect prisons to courts through video conferencing. Information and data relating to prison inmates especially under-trial prisoners should be computerized and regularly updated. He informed the members that he has taken up the matter with Home Minister to review the Prison Rules / Manuals and include mandatory provision for disclosure of data on under-trial prisoners in the public domain so that a process is set in motion for release of those under trial prisoners who have already served half of the maximum sentence for the offences they have been charged with.

With these opening remarks he requested Secretary, Justice to take up the agenda for discussion.

Agenda 1: Confirmation of minutes of the meeting held on 7th November, 2013

The minutes were confirmed.

Agenda 2: Action Taken Report on the minutes of the meeting held on 7th November, 2013 and overview of progress of initiatives of the National Mission.

Mission Director, Shri Anil Gulati gave an overview of the National Mission for Justice Delivery and Legal Reform, established with the twin objectives of increasing access to justice by reducing delays and arrears; and enhancing accountability through structural changes and by setting performance standards and improving capacities. The National Mission is pursuing five strategic initiatives to attain these objectives.

To bring about structural reforms in the judiciary, the Parliament has already passed the Constitution (121st Amendment) Bill and the National Judicial Appointments Commission Bill. Government plans to re-introduce Judicial Standards and Accountability Bill to strengthen the mechanism for judicial accountability. Intervening in the discussion Minister of Law and Justice mentioned that during a recently held consultation with eminent jurists it was felt that there were a number of issues in the previous bill which required greater deliberation and wider consultation. As such this matter needs a fresh look before it is placed before Parliament.

Mission Director elaborated on the proposed legislative and policy changes to reduce pendency in areas prone to excessive litigation. An Inter-Ministerial Group (IMG), constituted to recommend amendments to Negotiable Instrument Act, 1881 (N.I Act), had given its recommendations last year. Subsequently, Department of Financial Services, Ministry of Finance has prepared a draft Bill to amend the N.I. Act in line with the recommendations of the IMG. Further, the National Mission has requested the Ministry of Road, Transport and Highways to consider amendments to the Motor Vehicles Act, 1988 to introduce an alternative mechanism for collection of fines relating to traffic challan cases and victim compensation without resorting to litigation. Chairperson, Law Commission, intervening in the discussion, mentioned that the Commission is examining the present system of victim compensation and plans to propose a comprehensive alternative to the same. This report would be submitted shortly to the Government.

National Mission has been regularly communicating with the High Courts to introduce process reforms to address the existing procedural bottlenecks and curtail delays in court procedures. Mission Director mentioned that the Mission has written to High Courts requesting them to consider collection of a one-time process fee and use of ICT for speedy service of court process. Responding positively to the suggestions, some High Courts have already amended their rules to collect one-time process fee and make necessary provisions for speedier process service in electronic mode. Mission Director mentioned that a brief overview of legislative, policy and judicial initiatives to expedite disposal of criminal and civil cases was shared with Judicial Academies and High Courts with a view to enable them to prepare a training module on the subject. Intervening in the discussion Secretary (J) informed that process re-engineering exercise is also underway under the e-Courts Project, and the e-Committee of the Supreme

Court has requested the Law Commission to examine Process Re-engineering reports received from High Courts and give its recommendations on best practices that can be implemented in all courts. Chairman, Law Commission stated that this exercise is already underway and that the Commission will shortly provide its detailed recommendations to the e-Committee on the subject.

Mission Director stated that the Supreme Court has established the National Court Management System (NCMS) to introduce necessary reforms in courts and case management systems. Minister of Law and Justice requested Shri Ravindra Maithani, Secretary General, Supreme Court of India to appraise the Council members on the current initiatives of the NCMS. Secretary General, Supreme Court stated that the NCMS was established for preparing policy guidelines for development a National Framework of Court Excellence (NFCE). Several sub-committees, headed by senior judges of the High Courts, were constituted. Majority of the sub-committees have submitted their reports, which are currently under consideration. He emphasized the need to establish greater linkages and coordination between the National Mission and the NCMS and suggested that a joint meeting of these bodies should be convened at least biannually. Chairman, Law Commission supported this view and suggested that the joint meeting should also include the Law Commission as the three bodies had overlapping mandates, and a coordinated approach would prove to be more productive. Hon'ble Minister agreed with the suggestion.

Agenda 3: Establishment of Additional Courts:

Mission Director stated that the Hon'ble Supreme Court in the All India Judges Association case in 2002 had observed that the judge-population ratio in India requires to be increased to 50 judges permillion of population. Further in the Brij Mohan Lal case in 2012 the Supreme Court ruled that an additional ten per cent posts should be created in subordinate judiciary. This decision is being implemented by States. Currently at the level of subordinate courts, there are about 16 judges per million population (national average). However in some States like Delhi, Gujarat and Goa the ratio is over 32 judges per million population. Advisory Council of the National Mission in its meeting held in May, 2012, had recommended that the number of judges and courts in the subordinate judiciary should be doubled in the next five years. This decision was endorsed by the Supreme Court and the then Chief Justice of India had written to the Chief Justices of all High Courts in February, 2013, to take it up with the State Governments. In the Conference of Chief Ministers and Chief Justices of High Courts held in April, 2013, it was resolved that in order to improve the judge-population ratio, State Governments in consultation with the Chief Justices of the respective High Courts will take necessary steps to create

additional posts of judicial officers at all levels and provide them with support staff and requisite infrastructure.

Mission Director further stated that the Law Commission in its 245th Report titled Arrears and Backlog: Creating Additional Judicial (wo)manpower has recommended a scientific approach to calculate the number of additional judges. Using the rate of disposal formula proposed by the Law Commission, the Department has made an approximate estimation that an additional number of 2,708 posts are required to be created over and above the existing sanctioned strength of 19,421 posts of judges / judicial officers to clear the total backlog of cases over a period of three to four years. The Chairman, Law Commission observed that formula proposed by them is based on a pragmatic and realistic approach under the existing circumstances. Minister of Law and Justice commended the Law Commission for recommending a pragmatic approach.

Minister of Law and Justice also observed that a uniform procedure is not being followed for recruiting judicial officers for Subordinate Courts. Solicitor General of India mentioned that though norms for recruitment for Subordinate Courts are presently being framed by State Governments in consultation with High Courts, however, uniformity in such norms can be introduced by way of an amendment to Article 234 of the Constitution laying down the procedure for initiating the process of recruitment of judicial officers. Chairman, Law Commission observed that the Government may consider creation of an All India Judicial Service (AIJS) and 50 per cent of vacancies can be filled up through AIJS. Minister observed though idea of AIJS is worth consideration, but there are apprehensions about its impact, which need to be addressed. He however, re-emphasized the need for State Governments and High Courts to work out a better system of recruitment for subordinate judiciary so that large number of posts do not remain vacant for long period.

At this juncture Chairman, Bar Council of India expressed the view that Government is not associating Bar Council in the reform process. He also made a mention of lack of proper facilities for the Bar in High Courts and District Courts. Minister acknowledged the concerns expressed by Chairman, Bar Council, and suggested that a separate meeting be convened to discuss the issues relating to Bar in detail.

Agenda 4: Proposal for the 14th Finance Commission for improvement in justice delivery:

Shri Atul Kaushik, Joint Secretary initiated the discussion and informed members that Department of Justice has submitted a Memorandum to the 14th Finance Commission for improvement in justice delivery. The proposal was guided by the need to ensure easy access to

court services and enhancing public confidence in the court system. He informed council members about the initiatives supported under the 13th Finance Commission award, the financial utilization of the funds made available and the physical progress of the activities. He pointed out that utilization under the morning / evening court scheme has not been encouraging. Secretary, Justice mentioned that out of the total grant amount a mere 14 per cent has been utilized by States under the 13th FC grants.

Joint Secretary elaborated on the proposals submitted to the 14th Finance Commission. To tackle the problem of pendency DoJ has proposed the establishment of:

- 373 additional courts in districts where pendency is higher than the national average.
- 1,800 Fast Track Courts (FTCs) to deal with cases relating to heinous crimes, cases of senior citizens, women, children, disabled and disputes involving land acquisition and property / rent disputes pending for more than five years has also been proposed. These FTCs may be set up for a period of five years, *i.e.* during the period of the award of the 14th Finance Commission.
- 460 Family Courts in districts with a population of one million or more, where these courts are not already present, has also been proposed.

On the issue of FTCs a view was expressed that fast tracking certain categories of cases results in slowing tracking other categories. Chairperson, Law Commission suggested that a more holistic approach be adopted for pendency reduction. Solicitor General of India while agreeing with Chairman, Law Commission felt that the problem of pendency in High Courts is more serious than in trial courts.

Minister of Law and Justice expressed concern over the inordinate delay in property cases, rent cases and matrimonial disputes. He felt that such cases could be settled through mediation or conciliation. He observed that High Courts should consider giving judicial officers additional credit points in their performance appraisal for settling long pending civil disputes through mediation/conciliation.

Concluding the discussion, Joint Secretary informed that the other proposals submitted to 14th Finance Commission include, re-designing of existing court complexes to make them litigant friendly; review of court procedures, promotion of ADR mechanism for resolution of disputes; empowerment of marginalized communities through legal aid; and capacity building of judicial officers, public prosecutors, mediators and lawyers through training programmes. The total financial requirement for the initiatives proposed to be funded by 14th Finance Commission award is estimated at Rs. 9,568 crore.

Agenda 5 : Computerization of Courts under e-Courts Project

Joint Secretary mentioned that as of March, 2014, 13,227 courts against a target of 14,249 courts across the country have been computerized. The e-Courts portal is operational (http://www.ecourts.gov.in) and provides information on case filing, case status, orders, and judgments to litigants and citizens. The National Judicial Data Grid (NJDG) has also been made fully operational. Over 11,000 courts are uploading data on the NJDG. Statistical information on NJDG can be used for judicial management. On the issue of video-conferencing facility between prisons and courts, he stated that a pilot has been launched in five districts under the supervision of the e-Committee. After finalization of the appropriate technology, video conferencing will be rolled out in 495 locations across the country.

Minister of Law and Justice asked the Joint Secretary to prepare a note on the video-conferencing facility and its progress. He expressed the view that the pendency of data of Subordinate Courts across the country should ideally be available to the public through NJDG, data relating to case status in High Courts and Supreme Court also needs to be integrated in NJDG. Chairman, Law Commission of India mentioned that at present Supreme Court collects such data from High Courts and publishes it, but the process of compilation and publication is slow. Secretary, Justice informed that at present only 11,000 courts are uploading the data. However with the progressive increase in connectivity and linking of all courts there would be significant improvement in the availability of pendency status under the NJDG. Minister of Law and Justice observed that autonomy of the Supreme Court and High Courts needs to be respected but it is also a priority that judicial statistics are made available in the public domain and updated on a regular basis.

Agenda 6 : Setting up of Model Courts

Joint Secretary stated that the scheme for Model Courts was proposed by the Department of Justice under the 12th Five Year Plan. The focus of this scheme was to create model courts that will adhere to minimum standards in terms of building construction, ICT enablement, staffing, training and functioning. The Sub-Group on Model Courts has recommended setting up of Model Courts on a pilot basis under six High Courts, *namely*, Calcutta, Bombay, Gauhati, Madhya Pradesh, Madras and Punjab & Haryana. It has further recommended an allocation of Rs. 23.5 crore for each of the five High Courts and Rs. 12.5 crore for the Gauhati High Court. The proposals will be obtained from six High Courts for implementation of Model Courts Project under their jurisdiction.

Solicitor General suggested that the model courts proposal should include a provision for audio-video recording of the court proceedings on an experimental basis. Chairman, Law Commission of India mentioned that this was discussed in the last meeting of the Advisory Council. Many countries in the world record their trial proceedings. Nonetheless, the Supreme Court has not yet given its go ahead and High Courts are also not comfortable with this proposal. He expressed the need to discuss this matter with the Chief Justice of India with a proposal to initiate audio-video recordings on an experimental basis in the Model Courts. However, he mentioned that the recordings of the proceedings shall be only available with the courts. Minister of State for Home Affairs agreed with the views of Chairman, Law Commission and felt that matter be discussed at appropriate fora with Judiciary.

Agenda 7: Release of Under-Trial Prisoners through use of Information Communication Technology

Joint Secretary informed that as per the data of National Crimes Records Bureau, under-trial prisoners constitute 66 per cent of the total prison population. Most under-trial prisoners are found to be from the marginalized sections of the society. As per Section 436A of the Code of Criminal Procedure, 1973 (CrPC), under-trials other than those accused of an offence for which the death penalty is prescribed, must be released if they have been detained for more than half the prescribed period of imprisonment for the offence that they are accused of. This amendment was introduced in 2005. However its proper enforcement is still lacking.

The matter was also discussed in the previous Meeting of the Advisory Council. The Council had suggested the use of e-monitoring of prisons as well as a review in the existing prison rules to include a provision that would make disclosure of data on under-trials mandatory. In relation to e-monitoring, the National Informatics Centre (NIC) has developed software that computes the probable date of release of every under-trial prisoner under Section 436A of the CrPC. This software can help in better implementation of bail provisions under Sections 436 and 436A CrPC, resulting in the timely release of those undertrial prisoners who have been detained beyond the statutory limit.

Joint Secretary informed that the Department of Justice has examined the software and also facilitated a meeting between NIC, Tihar Jail, Ministry of Home Affairs, National and State Legal Services Authority (NALSA), and the High Court. The software is currently functioning optimally in Tihar Jail and is also in operation in select prisons across 17 States. However, since the subject matter is dealt with by the Home Ministry, active cooperation and coordination of the Home Ministry is needed before the software can be universally operationalised across the country.

Minister of Law and Justice requested the Minister of State for Home Affairs to look into this matter and expedite issue of necessary instructions to States from Ministry of Home Affairs. Minister of State for Home Affairs agreed with the suggestion. It was decided that a joint meeting between the Department of Justice and Ministry of Home Affairs would be convened shortly to work out suitable mechanism for timely release of under-trial prisoners as provided under the law.

Concluding the discussion, the hon'ble Minister of Law and Justice expressed his happiness at the fruitful deliberations during the meeting. The meeting ended with a word of thanks to the Chair.

Annex-II

Progress on the Action Plan of National Mission for Justice Delivery and Legal Reforms

Strategic initiative: 1: **POLICY & LEGISLATIVE CHANGES**

Action	**Agency responsible**	**Action Taken / Progress**
National Litigation Policy & State Litigation Policies	DLA / State Governments.	States have notified their respective Litigation Policies. Implementation of litigation policies by states is being monitored. Department of Legal Affairs (DLA) are in the process of finalising revised National Litigation Policy.
Judicial Impact Assessment	Mission Directorate	A Committee of experts under the Chairmanship of Prof. (Dr.) Srikrishna Deva Rao, Vice-Chancellor, National Law University, Odisha has been looking into the practicability of methodologies suggested by the Task Force for Judicial Impact Assessment. The Committee has submitted its interim report. Final report is awaited.
Retirement age of HC Judges	DoJ	A Constitutional Amendment Bill was introduced in the Parliament. The same has lapsed. The matter is being reviewed.
All India Judicial Service (AIJS)	DoJ	A comprehensive proposal for formation of All India Judicial Service was formulated and approved by Committee of Secretaries. The proposal was discussed in the Conference of Chief Ministers of States and Chief Justices of High Courts held in April, 2013. It was decided that the issue needs further deliberation and consideration. Views / suggestions from State Governments / High Courts are being

		obtained. Most of the High Courts who have responded have not favoured the proposal.
Judicial Accountability Bill	DoJ	The bill introduced in Parliament has lapsed. The matter is being reviewed.
Reforms in the present Collegiums system of appointment to higher judiciary	DoJ	121st Constitutional Amendment Bill and Judicial Appointment Commission Bill have been passed by both Houses of Parliament.
Legal Education Reforms	DLA	On the recommendation of Advisory Council Bar Council of India has broad based its Legal Education Committee by including eminent jurists and professors to hasten the reform process in Legal Education.
Amendment in N.I. Act	MoF	An Inter-Ministerial Group (IMG) constituted to suggest necessary amendments to the Negotiable Instruments (NI) Act along with other policy and administrative measures to check increasing litigation relating to cheque bounce cases has given its recommendations which, inter alia, include use of Alternative Dispute Resolution mechanism, codification of summary procedure to be followed in such cases and encouragement to be given for transactions through electronic mode of payment. Department of Financial Services have moved the proposal for amendment of Negotiable Instruments Act. Simultaneously, Legal Services Authority Act is being proposed to be amended to provide for Permanent Lok Adalats in respect of banking services.

Amendment in Arbitration & Conciliation Act, 1996	DLA	A comprehensive review of Arbitration and Conciliation Act, 1996 was undertaken by Law Commission to make India a hub of international arbitration. The recommendations of the Law Commission have been broadly accepted by the Government and an Ordinance for amendment to the Arbitration and Conciliation Act, 1996 has been approved.

Strategic initiative: 2: **RE-ENGINEERING PROCEDURES & ALTERNATE METHODS OF DISPUTE RESOLUTION**

Action	**Agency responsible**	**Action Taken / Progress**
1. Identification of bottlenecks. 2. Procedural changes in court processes. 3. Statutory amendments to reduce and dis-incentivize delays. 4. Improving criminal justice system.	DLA / Law Commission / concerned Ministries / Departments	Law Commission has been requested to undertake comprehensive review of legal framework of Criminal Justice System. Simultaneously a note on roadmap for improving the Criminal Justice System has been submitted to Ministry of Home Affairs. A note on implementation of statutory amendments made to Cr.P.C. and C.P.C. in recent past has been circulated to Chief Justices of High Courts by Hon'ble MLJ. A research note has been circulated to High Courts for improving the process service in civil and criminal matters.
Fast Tracking of procedures 1. Case Management	1. NCMS 2. E-Committee	National Court Management Systems (NCMS) set up by Supreme Court in May, 2012 constituted a Sub-Committee under the Chairmanship of Justice A.M.Khanwilkar to

2. Process reengineering		streamline the court processes and case rules for expeditious disposal of cases. The Sub-Committee has submitted its report which is under consideration in Supreme Court. Simultaneously, process re-engineering exercise is going on under the guidance of E-Committee.
Appointment of Court Managers	High Courts with guidelines prepared by NJA / DoJ	Guidelines have been issued. 448 Court Managers have been appointed. Further appointments are in process.
Alternative Dispute Resolution	NALSA / SLSAs / High Courts	243 ADR Centres have been established under the 13th Finance Commission award. First Mega Lok Adalat was organised involving cases from Supreme Court to Taluka level Courts on November 23, 2013. Second National Mega Lok Adalat was held on April 12, 2014 and the last Mega Lok Adalat has been held on December 6, 2014.

Strategic initiative: 3: **FOCUS ON HUMAN RESOURCE DEVELOPMENT**

Action	**Agency responsible**	**Action Taken / Progress**
Additional Courts	DoJ for superior courts and State Govts. / HCs for Sub. Courts	State Governments / High Courts are working on Court Development Plans. Vision Statement / Court Development Plans have been received from Eleven States / High Courts. The sanctioned strength of Judicial Officers in subordinate courts has increased from 17775 at the end of 2012 to 19726 on 31st March, 2014. The sanctioned strength of High Court Judges has increased from 906 in the beginning of 2014 to 984 at the end of 2014.

Strengthening State Judicial Academies.	High Courts / State Govts. / NJA	Grants being released under 13th Finance Commission award. Judicial Officers are being provided training through induction and refresher course.
Training of Public Prosecutors and ICT enablement of public prosecutors offices.	State Govts. / Dte of Prosecution	Training for Public Prosecutors and other court functionaries being arranged by High Courts / Judicial Academies through the grant of 13th Finance Commission. 9832 Public Prosecutors trained so far.
Strengthening National Judicial Academy as a resource / research centre for Judicial Reforms.	NJA – Governing Body, DoJ	Non Plan grants being sanctioned by DoJ.
Training of Mediators	SLSAs / High Courts	11379 mediators have been trained so far. Further training programmes are underway under 13th Finance Commission grants.

Strategic initiative: 4: **LEVERAGING ICT FOR BETTER JUSTICE DELIVERY**

Action	**Agency responsible**	**Action Taken/ Progress**
Implementation of the E-Courts project – Phase I	DoJ with E-Committee and the NIC (implementing agency)	13,323 courts have been computerised by the end of October, 2014.
Implementation of subsequent phase of E-Courts project	DoJ with E-Committee and the NIC (implementing agency)	Necessary approvals being obtained.
Integration of ICT in the judiciary and use in criminal	DoJ, MHA, NIC and State	Pilot Project being launched.

justice delivery	Govts.	
National Arrears Grid	Mission Directorate / E-courts project / NIC.	The eCommittee is considering to make the NJDG accessible to public and at present a guest login has been allowed for NICNET users on experimental basis. Further, the national eCourts portal (http://www.ecourts.gov.in) has been made operational. The portal provides online services to litigants such as details of case registration, cause list, case status, daily order and final judgment for all the courts computerised under eCourts project.

Strategic initiative: 5: **IMPROVING INFRASTRUCTURE**

Action	**Agency responsible**	**Action taken / Progress**
Improving physical infrastructure of the District and subordinate courts	State Govts. and Mission Directorate	An amount of Rs.3024 crore has been released to the States / UTs under the modified scheme during the last three and a half years. As per information made available by High Courts 15400 court halls are available for subordinate judiciary and 2250 are under construction at present.

Annex-III

Views of the High Courts along with Action Taken/Proposed to Take on the Recommendations of the Law Commission 245th Report for Locating Additional Courts

The responses received from the State Governments and High Courts providing their comments on the 245th report of the Law Commission and also the affidavits submitted by them before the Supreme Court are summarized below:

1. **Himachal Pradesh** - The Himachal Pradesh High Court has informed that a comprehensive proposal to double the number of judicial officers over a period of five years has already been sent to the State Government vide letter dated 28th November 2013 in view of the decision taken in the joint conference of the Chief Ministers and Chief Justices in April, 2013. According to this plan, 92 additional courts are required which includes 15 Additional District and Sessions Judges, 39 Courts of Civil Judges (Sr. Division) and 38 Courts of Civil Judges (Jr. Division). In addition, the High Court has noted that the creation of courts for Traffic/Police Challan is also required to be considered and simultaneously, the necessary infrastructure and manpower will also be required.

   Responding to the recommendations of the Law Commission the Government of Himachal Pradesh has informed that the comprehensive proposal for creation of 92 additional courts received from the High Court is under consideration. It further stated that in view of the topographical and weather conditions, it is not possible to hold morning and evening courts in the State. The matter regarding setting up of Special Traffic/Police Challan courts in the State is being examined in consultation with the Finance Department. It further informed that with a view to reduce pendency of cases in various courts, the State Government has created 12 new courts along with support staff in the year 2013. New posts wherever required are being created and vacant posts are being filled up in a time bound manner.

   Further, in the affidavit dated 18th September, 2014 submitted by the State Government it has been noted that the total sanctioned strength of judges indicated in the Law Commission report is 132 which includes 9 Fast Track Courts. After closure of the scheme of Fast Track Courts, the State Government has sanctioned another 12 new courts. The required posts of Presiding Officers and supporting staff for the same have also been sanctioned. The Government has sought five months time to take a final decision on the issue of establishing 92 new courts in the State in phased manner.

2. **Maharashtra** - As per the response received from the Bombay High Court, the recommendations of the Law Commission were placed before the Committee for consideration and the report on the same has been submitted to the Supreme Court. As per the said report, the total number of additional judges required for District Judiciary in the State of Maharashtra will be 212 for Higher Judicial Service and 160 for Subordinate Judicial Service to clear the backlog of cases in three years time frame. Adequate

provision is required to be made for staff and infrastructure for the working of the said courts. As regards increasing the age of retirement of subordinate judicial officers, it has been decided to re-employ the retiring District Judge till the age of 62 years based on the vacancies available in the cadre of District Judge and their service record for assessment of continued utility of individual office. It has been decided to assign Traffic/Police Challan cases to the Morning and Evening Courts. In Maharashtra, already 192 Morning Courts and 187 Evening Courts are functioning. Further, it has been decided to constitute Periodic Judicial Needs Assessment Committee of Hon'ble Judges.

The Government of Maharashtra has informed that their response on the aforesaid subject is being processed in consultation with the respective High Court and will be forwarded later.

3. **Gujarat** – The Gujarat High Court forwarded the copy of the report dated 14th August 2014 on the recommendations of the Law Commission and further informed that the copy of the said report has already been placed before the Supreme Court.

   In the Said report, the Committee opined that shifting from Judge-Institution ratio to Rate of Disposal Method for calculating adequate judge strength requires a thorough study and will take at least six months. The Committee further informed that various steps have already been initiated by the High Court of Gujarat for filling up existing vacancies and also for creation of additional vacancies as well as for appointing Fast Track/Adhoc Judges. At present in the State, Government has sanctioned total 100 posts of Additional A.D.J and 600 posts of Senior Civil Judge and J.M.F.C in Swarnim Gujarat Project. Further, construction of 350 courts is going on. According to the Committee, the availability of infrastructure such as court buildings and other paraphernalia like additional manpower could present a bottleneck. However, these issues can be sorted out in consultation with the State Government. There has been a suggestion for centralized recruitment for filling up the staff in the Subordinate Judiciary and in case of Additional Courts, the posts can be filled up operating the waiting list. The Committee accepted the recommendation of engaging fresh law graduates for a short term duration to deal exclusively with traffic related offences, which involve only fine. The Committee recommended the constitution of permanent Committee by the High Court for the assessment of periodic judicial needs on continuous basis. As regards the uniformity in data collection, the Committee was of the view that the conditions and requirements of each High Court are unique in its own way and therefore it may not be advisable to standardize the data collection methods. The Committee fully agreed for the system wide reforms and also agreed with fixation of non-mandatory time frame for resolution of different categories of cases.

4. **Karnataka** – The Karnataka High Court has informed that Government of Karnataka has sanctioned creation of 4 posts of Special Metropolitan Magistrate. Further, the High Court has also in principle approved for establishment of Evening/Morning Courts in the State. Special courts for disposal of traffic cases and other petty cases are already established. The High Court of Karnataka has taken all possible steps to provide infrastructure facilities to the Subordinate Judiciary. Three Committees have been constituted to monitor the infrastructural works in respect of Court Buildings and Judicial Officers quarters in the State. These committees are monitoring the progress of the work for construction of 43 Court Buildings and for construction of 205 Judicial Officers quarters, in various Talukas and Districts. Presently, work for 13 Court Buildings and 139

Judicial Officers quarters have been completed. As regards to establishment of Additional Courts, already steps have been taken for establishment of 205 Courts at present (i.e. 48 District Courts, 67 Senior Civil Judge Courts and 90 Civil Judge and JMFC Courts) as per the recommendation of the Advisory Council of National Mission. In view of all the steps taken above, the High Court is of the opinion that it is not necessary to take steps on the directions made by the Law Commission of India in its 245th report. The High Court of Karnataka already has uniform data collection and data management method to collect data from District and Taluka Courts.

5. **Jharkhand** - The State of Jharkhand has informed that vacancies are being filled up and creation of Additional Courts is under progress. Jharkhand Government has requested Registrar General, Jharkhand High Court to give their comments.

   Vide Affidavit dated 5th November 2014, the Jharkhand Government has stated that Law Commission in its Report has taken into account the data pertaining to sanctioned strength of Judges till December, 2012 while determining creation of additional posts of judges in Jharkhand State. It further stated that after December, 2012, 32 posts of ADJ, 12 posts of Civil Judges (Sr Div) and 25 posts of Civil Judge (Jr Div) have been created and total sanctioned strength of Judges in subordinate judiciary is 206 ADJ, 111 Civil Judge (Sr Div) and 261 Civil Judge (Sr Div). As per the resolution of the Advisory Council of the National Mission , the Jharkhand High Court has proposed to double the sanctioned strength of Judges in subordinate judiciary in the next five years. It has been proposed to increase the sanctioned strength by 50% in the first year, 20% in the second year and 10% each in subsequent 3 years. The State Government after obtaining report on pending cases from High Court has calculated the requirement of Judges on the basis of yardstick given by the Honb`le High Court of Jharkhand based upon the "Rate of Disposal method" i.e. one District Judge per 200 cases, one Civil Judge (Sr Div) per 250 cases and one Civil Judge (Jr Div) per 600-700 cases. Thus, State Government is prepared to create 27 additional posts of Judges in Superior Judicial Service and 60 additional posts of Judges in Civil Judge (Sr Div) phase-wise. In the first phase 14 additional posts of Judges in Superior Judicial Service and 30 additional posts of Judges in Civil Judge (Sr Div) are proposed to be created. High Court has been requested to provide list of places where aforesaid posts is required to be created.

6. **Bihar** - Patna High Court informed that considering the requirement of additional posts of Judges and infrastructural facilities like Court Rooms, residential quarters, office accommodation etc. to be provided to these officers, it appears that a time frame of three years would be too short for getting the above posts of judges sanctioned and making the infrastructural facilities ready. Therefore, the assessment has been made taking into account the disposal of cases in five years. The Court while assessing the need/requirement of additional courts, in the light of recommendations of the Law Commission of India, also assessed infrastructure like court rooms and residential quarters for additional courts/judges as well as for the old court. From assessment, it appears that 1100 additional courts are required in five years to bring pendency to negligible level in 7 years. Further, 1251 court rooms and 1450 residences for Judicial Officers are required. For that additional land is required for construction of court rooms and residential quarters in such a large number, which is not readily available due to change in the Land Acquisition Act. Apart from the above, large number of additional supporting staff is required for the additional courts. For assessment of requirement of

supporting staff, the High Court is already working on standard staffing pattern for the Civil Court in Bihar and also working on new staff rules.

Further, Government of Bihar in its affidavit has agreed with the Rate of Disposal method for calculating number of judges required to clear backlog of cases. However, financial assistance from Central Government is needed to make arrangements for disposal of cases. State has raised a demand of Rs. 3837.66 crores before the 14th Finance Commission. This amount would not be sufficient to fulfill the recommendations of the Law Commission in its totality. Government has not agreed with recommendation to increase the retirement age of judges. Bihar Government has agreed with the recommendation for establishment of Special Courts for disposal of traffic and police challan case, establishment of additional courts, staff and necessary infrastructure and has agreed to strengthen the judicial system. Government in the proposal submitted to 14th Financial Commission has given year wise requirement of Judicial Officers, Staff and expenditure required.

7. **Tripura** - The High Court of Tripura agrees with the recommendations of the Law Commission regarding recruitment of new judges to dispose of the backlog in three years. However, so far the State of Tripura is concerned, there is no need to increase the present strength of Judicial Officers as Judge to population ratio is on the higher side. Regarding the recommendation of making the adequate provision for staff and infrastructure for the working of additional courts, it is informed that wherever any additional court will be set up, the same will be considered. The High Court further informed that Holiday Courts are being organized on regular basis to deal with traffic challan cases and setting up of morning/evening courts at present is not required. The matter of making necessary arrangements for online payment of fines and employment of law graduates for short duration to preside over special traffic courts for offences for which prescribed punishment is only fine the matter is under consideration of the High Court. Regarding carrying out Periodical Judicial Needs Assessment to monitor the institution and disposal of cases, direction has been issued to all the District and Session Judges to review the progress of their respective district and submit monthly reports and to further hold quarterly meetings to review such progress. Regarding uniform data collection and data management, different type of statements are being collected from the district courts on monthly, quarterly and annual basis and after evaluating such reports from time to time suitable directions are given to the district judiciary to accelerate the disposal rate of the old pending cases. The High Court has already fixed timeframe to dispose of different types of old pending cases in time bound manner and the method of ADR is also being adopted.

8. **Punjab**- Punjab Government vide their affidavit dated 16th August 2014 stated that after considering the recommendations of Law Commission at length and after adopting the procedure, decided to increase the existing strength of Judicial Officers and Officers of Superior Judicial Services along with necessary infrastructure and ministerial staff by 20% at both levels for the year 2013-2014. Thus, 25 new posts of ADJs and 80 post of Civil Judge cum Judicial Magistrates (JD) have been added to present sanctioned strength of 128(ADJ) and 403 (CJ). The proposal for such increase during the financial year 2014-2015 is under active consideration of the State Government.

9. **Kerala**- State Government of Kerala has informed that through the 13th Finance Commission grant, Government sanctioned 27 Special Judicial First Class Magistrate

Courts in the State, which have started functioning. Government has made 38 Fast Track Courts as Additional District and Sessions Court. 8 Family Courts were established in the State and State Government has sanctioned 3 courts for Atrocities against women and Children. The State Government in recent years has established sufficient number of courts in the State. As per G.O. (Ms.) No. 86/2011/Home dated 01/3/2011 Government have accorded sanction for the establishment of 30 Gram Nyayalayas in the State. In this matter, State Government has decided to utilize the available constructed building/space in the Panchayats located for starting the Courts. Government has already identified constructed buildings in 8 locations for starting the Village Courts. In the meeting of the Additional Chief Secretary (Home & Vigilance) with officials of concerned departments held on 28th June 2014, specific directions were issued to Local Self Government Department and Revenue Departments to transfer the possession of the readily available buildings to the Registrar, High Court of Kerala, for starting the new Courts. With regard to identifying constructed space/buildings for housing rest of the 22 courts, directions have been given to the officials concerned for identifying the same within a time frame. Further, the Kerala Government has mentioned that the abovementioned facts have been submitted in form of the affidavit filed before the Hon'ble Supreme Court. .

10. **Sikkim** - Sikkim High Court has stated that the requirement of judges as indicated in the report has been achieved. At present there are only 15 Judicial Officers in place out of which 8 of them belongs to Sikkim Superior Judicial Service and the other 7 to the Sikkim Judicial Service. Of the 8 members of the Sikkim Superior Judicial Service, the District Judges of the respective 4 Districts are also required to discharge additional responsibilities as Special Judge, Family Court, President, District Consumer Redressal Forum etc. and at present the Civil Judge-cum-Judicial Magistrates are also performing other functions such as the Principal Magistrates, Juvenile Justice Boards etc. The High Court of Sikkim in its proposal for the 14th Finance Commission has proposed creation of 5 posts in Sikkim Superior Judicial Service, 9 posts in Sikkim Judicial Service along with 11 Ministerial posts in Sikkim Judicial Academy. In order to complete the judicial hierarchy in the District Court, there is an urgent need for sanction of 2 posts of the Chief Judicial Magistrate-cum-Civil Judge for the North & West districts of Sikkim. The High Court has given details about filling up posts of judges but has not commented upon specific recommendation relating to rate of disposal method, increase of retirement age of judges.

11. **Haryana** - Government of Haryana in their Affidavit dated 07th November, 2014 stated that in the cadre of Haryana Superior Judicial Service the sanctioned strength is 194 and in the cadre of Haryana Civil Service the cadre strength is 450. The selection is conducted on yearly basis by the High Court of Punjab & Haryana. It further stated that for the year 2013-14 14 selected candidates have already been appointed. A meeting of the committee for judicial reforms was held on 23/07/2014 to take steps for creation of additional court of judicial officers with requisite infrastructure for clearing the arrears. The committee after considering the rate of disposal method has regretted its inability to accept that criteria which should not be the sole basis for determining the need for creation of additional courts. The High Court of Punjab & Haryana has agreed in principle with the views of the then Chief Justice of India to increase the strength of judicial officers by 20% with furnished infrastructure and ministerial staff during the year 2013-14. It was agreed in the meeting that no increase in the existing cadre be made in the present financial year and the same would be reviewed after one year. The

committee has prescribed factors to be taken into consideration besides rate of disposal method for determining the need of additional posts of judges. These factors are inflow of cases besides total pendency and rate of institution and disposal, sanctioned and working cadre strength of judicial officers with actual number of working courts, timely as well as qualitative disposal of cases, nature and life cycle of various categories of cases and expeditious disposal of certain prioritized categories of cases. A total of 90 posts of Haryana Superior Judicial Service and 282 posts of Haryana Civil Service have been created since the year 2007 on the recommendation of the High Court as per the directions of the Supreme Court in Malik Mazhar Sultan case.

12. Delhi - Delhi Government vide its affidavit dated October 2014 stated that the High Court has already placed the matter regarding calculating adequate judge strength for subordinate courts based on the Rate of Disposal Method before the Committee and the same is being examined by the High Court. The Government will place the recommendations of the High Court before the Hon`ble Lt. Governor of Delhi for approval as and when received from the High Court. The recruitment process of judicial officers of the Delhi Judicial Service is undertaken by the High Court of Delhi and the Lt. Governor of Delhi gives its approval to the recommendations/proposal of Delhi High Court. The High Court of Delhi has already initiated the process for filling 80 (55 General, 8 SC and 17 ST) vacant posts in Delhi Judicial Service and 14 (10 General, 1 SC and 3 ST) vacant posts in Delhi Higher Judicial Service. The sanctioned strength of Delhi Judicial Service is 482 and the sanctioned strength of Delhi Higher Judicial Service is 276. However at present there are 271 unfilled vacancies in both the cadres, including 41 vacancies in the DJS cadre. The process of creation of 22 additional posts of DHJS and 38 additional posts of DJS has also been initiated. As regards increasing the age of retirement of Subordinate Court Judges, it is stated that the matter can be considered by the Government of NCT of Delhi on the recommendations/ proposal of the High Court of Delhi. The matter regarding creation of special courts for traffic/police challan cases is being examined by the Administrative and General Supervision Committee of the High Court of Delhi. This Government will place the recommendations of High Court before the Lt. Governor of Delhi for approval. The Affidavit details the steps taken to create infrastructure in various District courts of Delhi. The other recommendations such as periodic need assessment by High Courts and need for system-wide reforms are being actively considered by the High Court of Delhi.

Annex-IV

Statement indicating Sanctioned Strength and Working Strength of Judicial Officers in various states at the end of Year 2012 and 2013

State	Sanctioned Strength of Judges as 31.12.2012	Sanctioned Strength of Judges as 31.12.2013	Increase in Sanctioned Strength	Working Strength of Judges as 31.12.2012	Working Strength of Judges as 31.12.2013	Increase in Working Strength	Vacancies as on 31.12.2013
Uttar Pradesh	2108	1922	-186	1782	1738	-44	184
Andhra Pradesh	840	962	122	716	816	100	146
Maharashtra	2026	2049	23	1755	1771	16	278
Goa	49	52	3	42	43	1	9
Diu and Daman and Silvasa	7	7	0	7	6	-1	1
West Bengal	933	985	52	836	845	9	140
Andaman & Nocobar	9	9	0	9	9	0	0
Chattisgarh	295	328	33	266	286	20	42
Delhi	628	778	150	465	484	19	294
Gujarat	1028	1958	930	897	1242	345	716
Assam	389	390	1	239	251	12	139
Nagaland	29	27	-2	23	26	3	1
Meghalaya	36	39	3	20	26	6	13
Manipur	32	37	5	27	30	3	7
Tripura	92	102	10	68	67	-1	35
Mizoram	65	65	0	33	31	-2	34
Arunachal Pradesh	5	16	11	2	15	13	1
Himachal Pradesh	132	137	5	119	131	12	6
Jammu & Kashmir	206	244	38	184	226	42	18
Jharkhand	503	572	69	398	407	9	165
Karnatka	1090	1079	-11	751	714	-37	365
Kerala	415	427	12	387	397	10	30
Lakshadweep	3	3	0	1	1	0	2
Madhya Pradesh	1317	1421	104	1158	1227	69	194
Tamil Nadu	899	972	73	867	873	6	99
Puducherry	21	21	0	12	11	-1	10
Orissa	628	657	29	535	567	32	90
Bihar	1487	1494	7	930	892	-38	602
Punjab	531	671	140	446	436	-10	235
Haryana	528	644	128	437	481	44	163
Chandigarh	20	30	10	20	20	0	10
Rajasthan	1082	1145	63	726	849	123	296
Sikkim	17	18	1	10	12	2	6
Uttararakhand	265	257	-8	185	185	0	72
TOTAL	**17715**	**19518**	**1803**	**14353**	**15115**	**762**	**4403**