

**Minutes of Ninth Meeting of Advisory Council of the National Mission for Justice Delivery and Legal Reforms held on 16<sup>th</sup> February, 2016.**

The Ninth Meeting of the Advisory Council of the National Mission for Justice Delivery and Legal Reforms was held on 16th February, 2016 at Jaisalmer House, New Delhi under the Chairpersonship of Shri D. V. Sadananda Gowda, Hon'ble Minister of Law and Justice. The list of participants is attached.

2. In his opening remarks, Hon'ble Minister of Law and Justice while welcoming the Members of the Council, stressed on the need for adoption of a collaborative approach by the Central Government, State Governments and Judiciary for realising the constitutional objectives of Access to Justice. Hon'ble Minister observed that a number of legislative initiatives have been taken in the recent past by the Government for reducing the backlog of cases. He made a particular reference to the enactment of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 which would help resolution of high value commercial disputes in a time bound manner. The recent amendments made to the Arbitration and Conciliation Act, 1996 and the Negotiable Instruments Act, 1881 would also help in reducing the pendency of cases in our courts.

3. While emphasising the need for a proper judicial database in the High Courts for appropriate policy formulation, the Hon'ble Minister appreciated the efforts made by several High Courts for bringing about their annual reports which, inter-alia, include judicial statistics and performance indicators. He dwelt upon the need for States to increase their investment on Justice Sector on account of enhanced devolution of funds to them on the recommendations of the 14<sup>th</sup> Finance Commission. He informed the Members that necessary communications have been addressed by him as well as Hon'ble Prime Minister to the Chief Ministers in this regard.

4. The Hon'ble Minister appreciated the initiatives taken by the Chairman, Bar Council of India and Professor Madhava Menon for establishing the first academy of Continuing Legal Education at Kochi as a collaborative project of M.K. Nambiyar Memorial Trust and the Kerala Bar Council. He felt that Bar Council needs to play its important role for bringing about the necessary reforms in the spheres of legal education and continuous skill development of the legal practitioners throughout the country. The

Hon'ble Minister thereafter gave a brief outline about each of the agenda item slated for discussion and requested the Members of the Advisory Council to give their valuable suggestions.

5. The Secretary, Department of Justice thanked the Hon'ble Minister and the Members of the Council for sparing their valuable time. She felt that though a number of steps have been taken in the recent past for fast tracking the dispute resolution mechanisms in civil cases but the need to undertake urgent measures to reform our criminal justice system cannot be over-emphasized. Making specific reference to the recent interactions, she had with Parliamentary Committees, she reflected on the concerns expressed by the Hon'ble Members on the various aspects of the functioning of our criminal justice system in general and the plight of undertrial prisoners in particular.

6. Secretary (Justice) highlighted the need for early implementation of an integrated criminal justice information system in the country. This would enable integration of different stages of criminal proceedings from the commencement at a police station through the process of investigation, prosecution, judicial determination, sentencing and appeal in a seamless electronic format. She observed that an inter-department Committee headed by Justice Madan Lokur of the Supreme Court is looking into the possibilities of integrating Crime and Criminal Tracking Network and System (CCTNS) being implemented by Ministry of Home Affairs with eCourts and ePrisons in order to facilitate exchange of information and data among the various institutions concerned with criminal justice system.

7. The Hon'ble Minister of State for Home Affairs intervening in the discussion informed the Council that Hon'ble Home Minister has taken up the issue of under-trial prisoners with the Chief Ministers of the States to streamline the process for their timely release under specific provisions of the Code of Criminal Procedure, 1973. He agreed that further steps are required by all stakeholders to improve the system and he would like to hear suggestions / recommendations from the other members on this issue. The representative from National Legal Service Authority (NALSA) recounted his experience from Nagpur and Jodhpur jails where on account of shortage of police personnel the prison authorities were finding it difficult to take under-trial prisoners for court appearances.

8. Registrar, Supreme Court stated that the time has come to integrate the information networks of police, prosecution and the judiciary. There should be an end to end IT connection between these stakeholders because if one of them is dis-connected, the entire system comes to an abrupt halt. He felt that for criminal matters relating to petty offences such as Motor Vehicle Challans, the entire process needs to be automated. He was informed that such exercise has already been undertaken in several major cities of the country.

9. Secretary (Legal Affairs) informed the members that a representation was received by Hon'ble Minister from female under-trial prisoners stating that they were not being released as they were not in a position to furnish the bail bond. The matter was forwarded to NALSA and they have taken up this matter under their legal aid programme. Simultaneously, the Hon'ble Minister has asked the Law Commission of India to undertake a review of the entire bail law in the country. The Hon'ble Minister observed that once the Law Commission of India is constituted, the review should be completed within six months.

10. With regard to an integrated criminal justice system, the Secretary (Legal Affairs) stated that Justice Madan Lokur had organised a meeting on this subject on February 15, 2016. At this meeting the integration of systems was discussed and it was observed that the process of integration has begun in certain areas. However, some departments / agencies were reluctant to integrate as they do not want to share their information. Secretary (Legal Affairs) was of the opinion that there is a need to sensitise these agencies that sharing of information will facilitate the necessary improvement in criminal justice system.

11. Chairman, Bar Council of India emphasized on the need for change in attitude of judges in the matter relating to grant of bail. He cited the example where an accused was denied the bail for fourteen long months due to delay in court proceedings and ultimately the Supreme Court had to intervene in the matter. He supported the proposal for enacting a specific law on bail at the earliest.

12. Professor Madhava Menon had three broad observations on the reform of criminal justice reforms. He stated that the remaining recommendations of the Malimath Committee Report need to be processed and implemented. He felt there was a need to

ensure that when a person is available for interrogation by issuing notice, there should be no cause for arrest. This procedure should be binding norm because arrest as a first step leads to a lot of harassment. He further mentioned that we need to re-evaluate the rationale and feasibility behind completely separating the investigation and prosecution wings. According to him, prior to the 1973 amendment of the CrPC, Maharashtra had a conviction rate of 63%, however, after the amendment the conviction rate has come down to 33%. There has to be better co-ordination between the investigation and prosecution agencies.

13. Professor Madhava Menon thereafter elaborated upon the concept of 'restorative justice'. He mentioned that this concept is gaining ground the world over. Explaining the concept, he stated that even before the investigation is initiated, the parties may negotiate and settle the dispute. The victim has to be brought into the process and if the victim gets adequate satisfaction through a negotiated process and the public interest is protected, then such a system should be brought into our criminal justice.

#### **Agenda 1: Confirmation of the minutes of the meeting held on 15<sup>th</sup> July, 2015**

14. While confirming the minutes of the previous meeting, Prof. Madhava Menon congratulated the Bar Council for establishing the first academy for advocates. He emphasized that lawyers are an integral part of the judicial system and that their capacity building cannot be sidelined if judicial reforms were to be accomplished. He appreciated the Bar Council's suggestions to amend the Advocate Act, 1961 to introduce some filtering before law graduates start practicing in courts. Some of the other reforms suggested include a mandatory training like the old apprenticeship system or an organized training course as suggested by the Bar Council. With these observations the minutes of the meeting held on 15<sup>th</sup> July, 2016 were confirmed.

#### **Agenda 2: Action Taken Report on the minutes of the meeting held on 15<sup>th</sup> July, 2015**

15. Deliberating on the action taken report, Prof. Madhava Menon presented a note prepared by him regarding the expenditure by States in the justice sector. He observed that in the last three years, in 10 states there was almost 100% increase in the capital expenditure whereas in 8 states there was a steady decrease during the period. On the revenue side the expenditure has increased marginally. He mentioned that some States

such as Kerala were making much less capital investment in the justice sector than the revenue they had collected as court fee and fines. In Kerala, the State had collected Rs. 203 crores by way of court fee and fines, but had invested only 4 crores on capital expenditure. Tamil Nadu had collected Rs. 200 crores by way of court fee and fines but spent only Rs. 70 crores as capital expenditure on state judiciary. He urged the Hon'ble Minister of Law and Justice to ask the State Governments to invest the revenue collected by way of court fee and fines for improving judicial infrastructure in the State.

16. Adding to the discussion on capital expenditure, the Mission Director informed the Council that the Central Government had spent more than Rs. 3,600 crores in the last five years on judicial infrastructure in different States. This could be reflecting in total spending by the States on justice sector as the central assistance is channelized through state plans. He also mentioned that the current working strength of the judicial officers in the country is around 16,000 and that matching number of court rooms / court halls are available to District and Subordinate Courts as per the information received from the High Courts.

17. The Chairman, Bar Council of India raised his concern that while discussing infrastructure for court campuses, the need for making provisions for the bar is often neglected. He gave examples where lawyers in many States have to sit outside in the open under temporary arrangements. He reiterated that lawyers are also part of the system and their needs should be included in Court Development Plans.

18. The Mission Director apprised the Advisory Council regarding the efforts of the National Court Management System Committee set up by the Supreme Court in this regard. A sub-committee headed by Justice Badar Durrez Ahmed of Delhi High Court looked into the concept of a model court building. The model court building suggested by the sub-committee includes provisions for everybody in the court system, including the lawyers.

19. At this juncture Secretary (Justice) clarified that the Centre provides funding based on the plans submitted by the State Governments. Therefore, the Bar Council should approach their counterparts in the States to ensure that provisions for the Bar are included in the plans for court infrastructure being prepared by the States. Hon'ble

Minister of Law and Justice observed that court infrastructure is a key issue and shall be discussed in the forthcoming Conference of Chief Ministers and Chief Justices.

### **Agenda 3: Specialisation of Courts**

20. Moving on to the third agenda item, the Mission Director underlined the role of specialised courts in improving the justice delivery mechanism in the country. He shared his experience at a recent conference in Singapore where he learnt that Queensland State in Australia has merged 23 tribunals into one single tribunal. This tribunal's dispute resolution mechanism is strictly based on mediation and conciliation process unlike India where the tribunals more or less follow the provisions of Civil Procedure Code. This practice has contributed to pendency of cases even in Tribunals. He requested inputs from the Secretary (Legal Affairs) on issues concerning tribunals and special courts and the choice between the two.

21. Secretary (Legal Affairs) informed the members that during his visit to Australia he realised that the concept of Tribunals in Australia is different from the understanding in India. In Australia, the members of the tribunals are selected through an All Australia Tribunal Service which is headed by a judge and the members of the tribunals are appointed in a uniform manner. He also explained that during the process initially only the applicant is called and informed about legal provisions. If the applicant is not convinced with the solution offered, the other side is then called for a discussion. Only if the parties fail to reach an amicable resolution, the adjudication process will begin. He said that approximately 80% of their disputes are settled through mediation.

22. Secretary (Legal Affairs) also pointed out that in India we have created tribunals sector wise and the Government is of the view that there are too many tribunals. While some tribunals have sufficient work; there are others where investment has been made for the infrastructure and staff, but the work is not adequate. The Department of Legal Affairs has undertaken a study to see whether it is possible to merge certain tribunals with identical or similar functions. The preliminary study has already been conducted and comments are awaited from various ministries and departments on the same. After receiving comments and feedback, the Department of Legal Affairs shall look at merger of tribunals without compromising the principles of specialization of a particular subject. As far as specialised courts were concerned, based on the deliberations and report of the

Law Commission, Commercial Courts have been established. While setting up the Commercial Courts, two important aspects were considered, firstly that the judges assigned to this bench would have had exposure to commercial law and secondly that the process will have to be supported by large scale changes in the Civil Procedure Code so that the disposal of cases referred to these courts are conducted in a time bound manner. He said that these changes have the potential to alter the civil litigation process in the country. It may be desirable to wait and assess the success of the newly introduced commercial courts system before replicating similar processes for the other civil litigation.

23. Commenting on the subject, Prof Madhava Menon stated that the issue is intimately connected with two things namely, the recruitment policy in the judiciary and the personal disposition of the judges. If a person is put on a specialised job in which he has an interest and aptitude, he is bound to develop expertise in the topic and over a period of time the output will improve. He clarified that his suggestions were solely for specialisation of trial court judges as trial courts have a larger case load. He cited the example of an accident court in Delhi where a particular judge with the approval of the High Court had framed specific rules and guidelines for determining accident/compensation cases. The Judge had listed the main aspects that he would look into each claim, for example, the nature of injury, medical evidence in support of it, particulars for calculation of damages and limited adjournments. The Judge was able to show a three fold increase in disposal of cases which was applauded by the High Court and the other courts were recommended to follow similar processes. Prof. Menon reiterated that if Judges in the trial courts were given sufficient time to develop their strategies and allowed to continue in one jurisdiction for at least 10 years without assigning additional tasks, it would result in improved efficiency and reduce delay in the procedure.

#### **Agenda 4: Judicial Accountability**

24. Initiating the discussion on Judicial Accountability, the Mission Director pointed out that in common law countries certain parameters /modalities are followed to ensure both judicial independence as well as judicial accountability. He explained that during the International Conference on Court Excellence held recently in Singapore, many countries from the developing and developed world gave an account of different mechanisms followed by them to strike a balance between judicial independence and judicial

accountability. He was of the view that in India the scope of Judicial Accountability is being confined to the issues relating to judicial ethics and judicial mis-conduct. He felt that if we follow the framework of court excellence, it may widen the scope and bring in the issues of efficiency and transparency in our court processes.

25. Professor Madhava Menon was of the view that the Accountability Bill which was earlier presented to the Parliament needs to be strengthened with a view to streamline procedures and include productivity and efficiency parameters. He mentioned that though trial court judges have some level of accountability but as you go higher the level of accountability declines. He suggested that creation of a data-base of cases is useful for measurement of performance. At this juncture, Joint Secretary (AK) drew attention of the members to the National Framework for Court Excellence being considered by the National Court Management System Committee of the Supreme Court. Secretary, Legal Affairs observed that the work being done by National Court Management System Committee is similar to the basic principles of International Framework of Court Excellence (IFCE). The Registrar, Supreme Court informed that we are not signatory to the IFCE. Secretary (Justice) mentioned that this issue has been taken up with the Supreme Court.

#### **Agenda 5: Pre Litigation Dispute Resolution**

26. Prof. Madhava Menon expressed his agreement on the need for a separate law for mediation at both pre and post litigation stages. He opined that mediation requires a different code of ethics, approach and procedures and the existing provision of civil procedure code have not allowed mediation to gain much traction. Chairman, Bar Council of India intervened in the discussion and felt that the task of pre litigation resolution of disputes must be entrusted to the members of the bar and social activists. The Judiciary's role must come only after the mediation fails. The Member, Bar Council observed that mechanism for post litigation ADR already exists in the form of Section 89 of the Code of Civil Procedure, 1908. He was of the view that Legal Services Authority Act, 1987 needs to be revisited as the work being undertaken by the judges under this Act actually falls within the domain of the lawyers. He further stated that they have prepared a proposal in this regard.

27. Secretary (Legal Affairs) was in agreement with the need for a separate law on mediation. He agreed with the Chairman Bar Council of India's view that advocates and social activists/ NGO's should have a proactive role in mediation. At present in the absence of a standalone law on mediation, mediation centres have been opened by the courts and are being monitored by the Judges. There is a need to have trained mediators as the skill sets required for mediation are completely different from the ones required for adjudication and arbitration.

28. The Registrar, Supreme Court gave an example of the system prevalent in Australia, where 80% of the matters are decided before entering the formal judicial system. Once the matter is filed, it goes to the court annexed mediator. If the mediator fails, then the matter enters the formal court system. Intervening at this stage, Prof. Madhava Menon stated that an advocate who is a litigator cannot be a mediator. Secretary, Legal Affairs agreed with this view and felt that some member of the bar may specialise in mediation work.

29. Concluding the discussions, Hon'ble Minister thanked the participants for their valuable suggestions. He observed that brief notes will be prepared on the issues discussed in the meeting and some of the matters will be taken up in the Joint Conference of the Chief Ministers and Chief Justices of the High Courts in April this year.

30. The meeting ended with a word of thanks to the Chair.

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**List of participants of Ninth Meeting of Advisory Council of the National Mission for Justice Delivery and Legal Reforms held on 16<sup>th</sup> February, 2016**

1. Shri Kiren Rijiju, Hon'ble Minister of State for Home Affairs
2. Ms. Kusumjit Sidhu, Secretary, Department of Justice
3. Shri P.K. Malhotra, Secretary, Department of Legal Affairs
4. Prof. N.R. Madhava Menon, Jurist
5. Shri Manan Kumar Mishra, Chairman, Bar Council of India
6. Shri Bhoj Chander Thakur, Member, Bar Council of India
7. Shri Dinesh Bhardwaj, Additional Secretary, Department of Legal Affairs\
8. Shri Chirag Bhanu Singh, Registrar (Judicial), Supreme Court
9. Shri CSSV Durga Prasad, Secretary, Law Department, State Government of Andhra Pradesh.
10. Dr. Pawan Sharma, Secretary, Law Commission of India
11. Shri A.K.Gulati, Joint Secretary/Mission Director, National Mission, D/o Justice
12. Shri Rajinder Kashyap, Joint Secretary (J-I), D/o Justice
13. Shri Atul Kaushik, Joint Secretary (J-II), D/o Justice
14. Shri Anil Kumar Singh, Joint Secretary, D/o Justice
15. Shri Rajesh Kumar Goel, Director, NALSA