Advisory Council

National Mission for Justice Delivery and Legal Reforms

Agenda for the Eighth 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 21ST JANUARY 2015.

A copy of the minutes of the meeting of the Advisory Council of National Mission for Justice Delivery and Legal Reforms held on 21st January, 2015 is attached at ***Annexure - I*** for confirmation.

AGENDA 2: ACTION TAKEN REPORT ON THE MINUTES OF THE MEETING HELD ON 21ST JANUARY 2015.

The following action taken on the minutes of the meeting held on 21st January, 2015 may be noted.

S. No.	Action Points	Action Taken Report
1.	Chairman, Parliamentary Standing Committee suggested that Minister of Law and Justice may convene a meeting with his counterparts in States to seek their cooperation in implementing the agenda of judicial reforms and to assist the States having lack of financial resources to implement the same.	The Joint Conference of Chief Ministers of States and Chief Justices of High Courts was convened on 5th April, 2015 to discuss the broad agenda of judicial reforms. With the enhanced devolution of funds to the States on the recommendations of the 14th Finance Commission it now falls on the State Governments to increase investment in justice sector. It was accordingly resolved that Chief Justices and Chief Ministers shall institute a mechanism for regular communication among themselves to resolve issues particularly those relating to infrastructure and manpower needs and facilities for the judiciary.

2.	Minister of Law and Justice requested Secretary (Justice) to write to the States and High Courts to know their concern and priorities to ensure that proper action plan is in place for the utilization of the grants of the 14th Finance Commission.	Separate letters have been addressed by Minister of Law and Justice to Chief Ministers of States and Chief Justices of High Courts with a view to address the concerns highlighted by them during Joint Conference. The Hon'ble Prime Minister in his letter addressed to the Chief Ministers has inter-alia called upon them to initiate a campaign to strengthen the judicial system by meticulously implementing the recommendations of the 14th Finance Commission.
3.	Vice-Chairman, Bar Council of India felt that although Judicial Academies are engaged in providing training to judiciary, there is a very little facility available to the advocate for professional training. He mentioned that infrastructure of judicial academies can be utilized to provide training to advocates as well.	During the Conference of Chief Justices of the High Courts held at New Delhi in April, 2015, it has been inter-alia resolved that State Judicial Academies shall also provide necessary assistance for conducting programmes for training to other stakeholders in the justice delivery system such as Government Pleaders, Public Prosecutors, Lawyers, Police Officers and other Public Officers discharging judicial and / or quasi judicial functions. The above resolution has been conveyed to judicial academies for proper implementation.
4	Chairman, Parliamentary Standing Committee suggested that amendments to Arbitration and Conciliation Act are extremely necessary and the legislative framework needs to be made at par with other major international	Based on the recommendations of the Law Commission, Department of Legal Affairs have prepared an exhaustive legislative proposal for amending the Arbitration and Conciliation Act, 1996. The matter is under active

	jurisdictions to make India a hub of international arbitration	consideration of the Government.
5	In the context of undertrial prisoners, Learned Attorney General stressed upon the need for review of the scope and applicability of Section 436A of the Code of Criminal Procedure. He emphasised the need to amend the Code of Criminal Procedure to cast a duty on the court at the stage of framing of charge to scrutinise the chargesheet and ensure that there are credible materials available prima-facie to support the sections under which charges are framed against the accused.	The Law Commission is currently undertaking a comprehensive review of the Criminal Justice System which, inter-alia, include making recommendation for suitable changes to Code of Criminal Procedure, Indian Penal Code and Indian Evidence Act. The report of the Law Commission is expected shortly.
6	Chairman, Law Commission observed that a proposal may be considered to undertake audio-video recording on pilot basis in some district courts because such a step can enhance transparency in the justice system.	E-Commitee is being requested for reconsideration of issue relating to audio-video recording of court proceedings.

AGENDA NO. 3: COMPREHENSIVE PROPOSAL ON JUDICIAL REFORMS FOR TIMELY DELIVERY OF JUSTICE

I. Background

It is the responsibility of all organs of the state to ensure access to fair, timely and cost-effective justice for all. The Government and the judiciary have therefore been working in tandem to achieve the goal of timely delivery of justice. In October 2009 a Vision Statement and Action Plan setting out a roadmap for judicial reforms was adopted at the National Consultation for Strengthening the Judiciary towards Reducing Pendency and Delays. The participants in the National Consultation included the Chief Justice of India and other members of the judiciary, the Minister for Law and Justice, law officers, members of the Bar, representatives of the Ministry of Law & Justice and members of the public. The resolution adopted at the consultation meeting laid down a list of strategic

initiatives to be achieved in areas such as adoption of the National Litigation Policy, re-engineering of procedures, judicial management and case management, human resource development and leveraging information communication technology.

In order to realize the objectives set out in the Vision Document, the National Mission for Justice Delivery and Legal Reforms (National Mission) was set up under the Department of Justice in August 2011 with the twin objectives of (a) increasing access to justice by reducing delays and arrears in the system; and (b) adopting structural changes for enhanced accountability and improving capacities. The importance of this reform agenda was also reflected in the grants made by the 13th Finance Commission. Recognizing the need to improve judicial outcomes and the financial support needed for the same, the 13th Finance Commission approved a sum of Rs. 5000 crores to be released to the States for reforms in the judicial system. These funds were to be utilized by the States for the specified objectives of (a) operation of morning/evening/shift courts; (b) establishment of ADR centres and training of mediators/ conciliators; (c) holding of Lok Adalats and Mega Lok Adalats; (d) provision of legal aid; (e) training of judicial officers and prosecutors; (f) providing support to State Judicial Academies; (g) creation of posts of judicial officers; and maintenance of heritage court buildings.

In the four years of its existence the National Mission has pursued a number of policy, legislative and administrative measures to achieve the goal of timely delivery of justice. This agenda note seeks to provide a brief overview of the reform initiatives that have been undertaken thus far by various stakeholders and the further steps that need to be taken for holistic reforms in the area of justice delivery. It also takes into account the suggestions and recommendations made by the Law Commission of India, various expert committees as well as the inputs received from lawyers, interested citizens and civil society organizations working in this field. The agencies responsible for undertaking each of the actions have also been identified. The objective is to seek the guidance of the Advisory Council on the core areas of reform that must be pursued by the National Mission in its remaining term.

II. Human resource development for the judiciary

a) **Increasing judicial strength and filling up of vacancies**

Lack of adequate number of judges to handle the large number of cases pending in courts is often cited to be one of the main reasons for delays. The problem of shortage of judges is being addressed through a two pronged strategy. Firstly, by filling up the large number of existing vacancies in the judiciary and secondly, increasing the sanctioned strength of judges. It would be pertinent to note that as per the Constitutional framework the selection and appointment of judges in subordinate courts is the responsibility of State Governments and High Courts.

The Supreme Court has delivered a series of significant decisions on the subject. These include the *All India Judges' Association*[1] case where the Supreme Court directed that the number of judges should be increased, in the first instance by filling up the existing vacancies followed by an increase in the judge strength in a phased manner. In the *Malik Mazhar Sultan* case[2] the Supreme Court devised a process and time schedule to be followed by the High Courts and State Governments for the filling up of judicial vacancies. In April, 2012 the Supreme Court issued a direction in the *Brij Mohan Lal* case requiring that 10% additional posts should be created in the subordinate judiciary.[3] Issues relating to increasing judicial strength and filling up of vacancies have also been discussed extensively in the Joint Conference of Chief Ministers and Chief Justices of High Courts held in August, 2009, April, 2013 and in April 2015 and during meetings of the Advisory Council of the National Mission. Following this, several communications in this regard have been exchanged with the State Governments and High Courts.

On account of the concerted efforts made by all stakeholders there has been a gradual increase in the sanctioned strength of the subordinate judiciary over the past few years. It has increased from 17,715 at the end of 2012 to 20,214 in December, 2014. In case of the High Courts, the Chief Justice of India gave an 'in principle' concurrence in April, 2014 to the joint recommendation of the Chief Ministers and Chief Justices Conference to increase the sanctioned strength of High Courts by 25 per cent. Several

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[1] *All India Judges' Association* v. *Union of India*, AIR 2002 SC 1752.
[2] Order dated 4.1.2007 in *Malik Mazhar Sultan* v. *U.P. Public Service Commission*, available at http://judis.nic.in/temp/186720065412007p.txt.
[3] *Brij Mohan Lal* v. *Union of India*, (2012) 6 SCC 502.

States have already accepted this proposal, as a result of which the sanctioned strength of High Courts has increased to 1017 judges as of June, 2015, as against 906 in March, 2014. The judge-population ratio in the country, taking into account judges at all levels now stands at about 17 judges per one million of the population.

However, it is noted that despite the gradual increase in sanctioned strength, there still remain a large number of vacancies in subordinate courts. As of 31st December, 2014, there were 4,580 vacancies in the posts of judicial officers, representing about 22.66 per cent of the sanctioned strength. In case of the High Courts, 371 of the 1017 posts, representing 36.47 per cent of the sanctioned strength, were vacant as of June, 2015. Recently, in the Conference of Chief Justices held on 3rd and 4th April, 2015 it was resolved that the Chief Justices of the respective High Courts shall take effective and speedy steps for making recommendations to fill up all the existing vacancies.

Some of the reasons for delays in filing up of vacancies, as indicated by the High Courts, are inability to find suitable candidates, pending court cases challenging previous recruitments and difficulties in coordination between High Courts and State Public Service Commissions. Based on these responses, the then Minister of Law and Justice had written to the Chief Justices of all High Courts with a list of actionable points that might be considered to address each of these issues. This issue was also raised at the 7th meeting of the Advisory Council of the National Mission where it was discussed that there may be a need for adding some flexibility in the recruitment rules for subordinate court judges to allow multiple sources for direct recruitment of eligible candidates. Recently, in the Conference of Chief Justices held in April 2015 it was resolved that it would be left open to the respective High Courts to evolve appropriate methods within the existing system to fill up the vacancies for appointment of District Judges expeditiously. Following this a letter on this subject was sent by the Minister of Law and Justice to the Chief Justices of High Courts requesting them for information on the action being taken by each High Court to make the recruitment process more broad based to fill up the existing vacancies of judges and judicial officers.

Further, it has been noted by some High Courts that finding suitable candidates who satisfy the eligibility conditions and are able to clear the written examinations is one of the main difficulties faced by them in the timely filling up of vacancies. To address this, the

High Court and State Public Service Commission, may coordinate with judicial academies and law universities to impart necessary skills, knowledge and continuing legal education to fresh graduates and practicing advocates interested in appearing for judicial service examinations.

The matter relating to determination of adequate judicial strength at the subordinate court level is presently under the active consideration of the Supreme Court in the case of *Imtiyaz Ahmed v. State of Uttar Pradesh.* The Supreme Court had directed the Law Commission of India to examine this issue,[4] pursuant to which the Law Commission submitted its 245th report titled "Arrears and Backlog: Creating Additional Judicial (Wo)manpower" before the court containing important suggestions on the manner of determining the required judicial strength in district and subordinate courts. In its subsequent orders the Supreme Court has asked all concerned States and High Courts to file their responses to the Law Commission's recommendations and the Court is expected to issue appropriate directions in this regard upon receiving comments from all stakeholders. With the implementation of these measures it is expected that appropriate mechanisms will be adopted to make sure that the sanctioned strength of judges and judicial officers is adequate to deal with the current requirements. This is however dependent on immediate actions being taken to fill the current and additional judicial posts, as and when they are created.

The Government has brought into force the 99th Constitutional Amendment Act, 2014 and Judicial Appointment Commission Act, 2014 with effect from 13th April, 2015 paving the way for a broad based participative and transparent mechanism for appointment of Judges in the High Courts and Supreme Court. The constitutional validity of the above Acts is presently being looked into by the Supreme Court.

***Suggested actions and responsible agencies*:**

- *In order to facilitate the selection of eligible candidates as judicial officers, High Court and State Public Service Commission, may coordinate with judicial academies and law universities to impart necessary skills, knowledge and continuing legal education to fresh graduates and practicing advocates interested in appearing for judicial service examinations.*

[4] *Imtiyaz Ahmad* v. *State of U.P. and Ors*, AIR 2012 SC 642.

- *State Governments and High Courts are responsible for taking actions relating to increase in judicial strength and filling up of vacancies in district and subordinate courts. High Courts need to put in place a streamlined mechanism for identification of current and anticipated vacancies in subordinate courts, as per the process suggested by the Supreme Court in the Malik Mazhar Sultan case. State Governments, State Public Service Commissions and High Courts will then need to take the necessary steps for the timely filling up of the identified vacancies.*
- *The bottlenecks faced in the timely filling of vacancies need to be addressed jointly by the High Courts and State Public Service Commissions. Recruitment rules for subordinate court judges could be revised to add flexibility in recruitment process.*
- *All newly selected judicial officers are required to undergo a training program as a result of which a commensurate number of courts cannot be operationalized despite on-going recruitment exercises. Creation of adequate number of posts for 'training reserves' can help in addressing this issue. High Courts may assess the appropriate number of training reserves required at different levels following which action for the creation of those posts may be taken by the State Governments.*
- *National Judicial Appointment Commission has to frame regulations which will ensure timely filling of vacancies in High Courts and Supreme Court with appropriate candidates.*

b) **Training of judicial officers and other stakeholders**

Having a well-trained cadre of judicial officers presiding in courts at every level is critical to improving the overall effectiveness and efficiency of the judicial system. Specific training in areas such as criminal laws, commercial laws, intellectual property laws, etc. is needed to ensure that the judges hearing such cases are aware of the latest developments in these fields. The National Judicial Academy in Bhopal and various State Judicial Academies have been set up for this purpose of undertaking judicial education programmes. The responsibilities of the National Judicial Academy include providing a forum for judges from across the country to jointly identify the main hurdles to the efficient administration of justice and developing appropriate solutions.

The Department of Justice has also taken several steps to collaborate with the judicial academies to promote judicial education in the country. Under its Access to Justice Project, the Department of Justice prepared (a) training manual for judges on Laws and

Issues related to marginalised communities and (b) training module for judicial officers on Anti-Human Trafficking in 2012. Copies of these training manuals / modules have been provided to all judicial academies for use in their training programmes. The National Mission circulated a brief note summarizing the recent legislative, policy and judicial initiatives targeted at reducing pendency and improving the justice delivery system in the country to all the judicial academies. Following this, the note was updated further and shared by the Minister of Law and Justice with the Chief Justices of High Courts vide a letter dated 19 December, 2014. The High Courts were requested to circulate the same to judicial officers in their jurisdiction so that they may take recourse to the available provisions and mechanisms for expediting trials in both civil and criminal cases.

Recognizing the importance of imparting managerial skills on judicial officers, it was decided in the Conference of Chief Justices held in April, 2013 that the National and State Judicial Academies would take steps for imparting training to judicial officers on managerial skills. It was also agreed that High Courts may consider sending judicial officers in batches to Indian Institutes of Management (IIMs) for imparting such training. In the 7th Advisory Council Meeting of the National Mission it was discussed the infrastructure of judicial academies could be utilized to also provide training to other stakeholders in the judicial system, such as advocates, prosecutors, investigators, etc. Further, it was felt that there is a need to focus on the capacity building of the judicial academies and to attract well-trained faculty members. A suggestion was made in this context to have a specialized academic program on the subjects of judicial management, judicial administration, research and training to help create a pool of trained judicial trainers and professional court managers.

In order to impart effective training to judicial officers and other court functionaries the Conference of Chief Justices held in April, 2015 resolved that:

(a) State Judicial Academies shall prepare comprehensive training modules with broad-based syllabi and multi-disciplinary approach, impart training on an interactive basis and also provide practical training in conducting court proceedings, including case management and court management;

(b) State Judicial Academies shall impart training to judicial officers and staff members at different level. They shall also provide necessary assistance for conducting programmes for training other stakeholders in the justice delivery system such as

Government Pleaders, Public Prosecutors, Lawyers, Police Officers and also other public officers discharging judicial and / or quasi-judicial functions; and

(c) The High Courts shall also make an endeavor to see that the State Judicial Academies and their existing infrastructure and resources are effectively utilized at optimum level for imparting training and refresher courses.

***Suggested actions and responsible agencies*:**

- *The High Courts and National and State Judicial Academies should implement the decisions taken in the Conference of Chief Justices held in April, 2015 relating to preparation of comprehensive training modules, providing training to all stakeholders in the judicial system viz Judges/Judicial Officers, Public Prosecutors, Lawyers and Police Officers* to *ensure that the available infrastructure of Judicial Academies is effectively utilized for imparting training courses.*

III. Judicial infrastructure and budgetary planning

The primary responsibility of infrastructure development for the subordinate judiciary rests with the State Governments. The Central Government augments the resources of the State Governments by releasing financial assistance under a centrally sponsored scheme for the development of judicial infrastructure. The scheme has been in place since 1993-94, and was revised in 2011. It covers the construction of court buildings and residential accommodation of judicial officers. As of March, 2015, the Central Government had released an amount of Rs. 3,131 crore to the State Governments and UT administrations under the revised funding pattern from 2011-2015. This represents a significant increase over the sum of Rs. 1,245 crore that was provided by the Central Government in the initial phase of the scheme from 1993-2011. During the last financial year (2014-15), an amount of Rs. 933 crore was released to the States.

As per the information collected from the High Courts, as of June, 2014, there were 15,419 court halls / court rooms available for district and subordinate courts. In addition to these, 1003 court rooms were available in rented premises. Comparing these figures against the working strength of about 15,634 judges as on 31st December, 2014 reported by these High Courts, it is noted that adequate infrastructure is available for the current judicial manpower. Further, there are about 2,251 additional court rooms under construction in States and UTs to take care of immediate increase in the working strength

of judges in district and subordinate courts on account of filling up of vacancies. The data however shows that the number of residential units presently available for judges is below the current working strength of judges. This issue is being remedied through the construction of additional residential units.

Provision of adequate judicial infrastructure is closely connected with the need for proper budgetary planning for the judiciary. In the Chief Justices' Conference held in April, 2013 it was decided that Vision Statements and Court Development Plans should be drawn up for all High Courts and District Courts, covering matters relating to infrastructure, computerization, human resource development, setting measurable performance standards, performance parameters, enhancing user friendliness of the judicial system, etc. A communication in this regard was also sent by the Minister of Law and Justice to the Chief Justices of High Courts in July, 2013. Following this, several High Courts have formulated their Vision Statements and Court Development Plans, which were also submitted to the 14th Finance Commission.

Department of Justice had submitted a comprehensive proposal to the 14th Finance Commission which inter-alia provided for setting up of additional courts in districts with high pendency of cases, re-designing existing court complexes to make them more litigant friendly, enhancing access to justice and capacity building of judicial manpower. The Finance Commission noted that proposal amounting to Rs. 9,749 crore has been arrived at after an extensive consultation process with the State Governments and merits favourable consideration. The Finance Commission has endorsed the proposal and urged the State Governments to use the additional fiscal space provided by them in the tax devolution to meet the requirement of additional infrastructure and manpower for judiciary. The details of the proposal are indicated in the ***Annexure-II*****.**

During the Joint Conference of the Chief Ministers of the States and the Chief Justices of the High Courts held on April 5, 2015, it was resolved that the Chief Justices and the Chief Ministers shall institute a mechanism for regular interaction among themselves to resolve issues, particularly those relating to infrastructure and manpower needs and facilities for the Judiciary.

***Suggested actions and responsible agencies*:**

- *High Courts are responsible for the preparation of timely proposals for the maintenance and development of judicial infrastructure. State Governments bear the primary responsibility of infrastructure development for the subordinate judiciary and the Central Government augments the resources needed for this purpose.*
- *State Governments and High Courts need to implement the decision taken in the Joint Conference of the Chief Ministers and Chief Justices in April, 2015 relating to the creation of a streamlined mechanism for regular interaction and co-ordination between them, particularly on infrastructure and manpower issues.*
- *High Courts need to activate State Court Management System Committees for inter-alia laying down standards for infrastructure of district and subordinate courts and residential accommodation of judicial officers.*
- *High Courts may be requested to factor in the elements of judicial exclusion and access to justice, while preparing their Vision Statements and Court Development Plans.*
- *To ensure the proper development of detailed plans, appropriate training programs for the officers of the High Courts and lower courts may be organized by the Judicial Academies through prominent institutions dealing with issues relating to planning and public finance.*

IV. Computerization for process automation and effective court/case management

The adoption of information and communication technology (ICT) in the administration of justice is an important tool for judicial management and monitoring, ease of availability of information on case status, cause lists and judgments and providing services to litigants and lawyers. To achieve this, the eCourts Mission Mode Project has been implemented with the objective of providing designated services to citizens as well courts by ICT enablement of all district and subordinate courts. Phase I of this project focused on the computerization of subordinate courts, which will be followed by the setting up of centralized filing centres, digitization of documents, adoption of document management systems, creation of e-filing and e-payment gateways in Phase II of the project that was approved by the eCommittee of the Supreme Court in January 2014. Simultaneously, process re-engineering of courts is also being pursued. As per the order of the eCommittee of the Supreme Court, process re-engineering committees have been set up in High Courts. The role of these committees is to undertake judicial process re-

engineering by streamlining and improvising current court processes, eliminating redundant processes and designing new processes with respect to making court processes ICT enabled.

Another suggestion that has often been made and has also been discussed at meetings of the Advisory Council of the National Mission is that of allowing audio-video recordings of court proceedings. Allowing such recordings can contribute to transparency of court processes by allowing a precise record of the proceedings and at the same time discouraging improper conduct in courts and wastage of court time. The efficiency of courts can also be enhanced by maintaining standard system generated formats of routine judgments and orders, particularly in civil cases, which may be used by courts for quick delivery of judgments.

The subject of computerization of courts was discussed at the Conference of Chief Justices in April 2015. It was inter alia resolved at the meeting that all High Courts would take necessary steps for digitization of court records and dispense with the printing of cause lists except for the bare minimum copies required for the purposes of the court. High Courts also agreed to make an endeavour to promote e-filing and video conferencing in the existing courts system. Further, it was also resolved that all High Courts would take necessary steps for framing rules and issuing directions/ guidelines with regard to the production and use of electronic evidence. This exercise was found to be necessary so as to allow courts to equip themselves with necessary infrastructure and trained manpower to meet the challenges of fast changing technology and the possibility of tampering of electronic evidence.

***Suggested actions and responsible agencies*:**

- *The Department of Justice, National Informatics Center and the Supreme Court e-Committee are the nodal agencies for the eCourts Mission Mode Project. The actual implementation of the computerization and digitization initiatives is however being done by the High Courts. Further, as discussed in the Conference of Chief Justices in April 2015, State Governments must be impressed upon to provide such financial assistance for computerization works undertaken by the High Courts in their respective States, including having adequate technical manpower.*

- *Judicial process re-engineering needs to be done by High Courts by streamlining and improvising current court processes, eliminating redundant processes and designing new processes with respect to making court processes ICT enabled. High Courts also need to implement the decisions made in the Conference of Chief Justices in April 2015 relating to digitization of court records, dispensing with the printing of cause lists, promoting e-filing and video conferencing and making rules for use of electronic evidence.*
- *Procedural laws / rules may also need to be amended to incorporate the suggestions of having audio-video recording of court proceedings and maintaining standard system generated formats of routine judgments and orders.*

V. Judicial data and statistics

The lack of comprehensive and accurate data relating to cases from courts across the country poses a hurdle to efficient policymaking. This issue has been noted by the Law Commission of India in its 245th Report as well as in the Action Plan of the National Court Management System set up by the Supreme Court. There is therefore an urgent need to evolve uniform data collection and management methods for our judicial system. Resolution on nomenclatures was passed by Chief Justices Conference, 2015. Online information about case filings, case status and electronic copies of orders and judgments from courts that have already been computerized is available through the e-Courts portal. However, we are still some way from ensuring online real-time access to complete pendency data and statistics through the National Judicial Data Grid (NJDG). This requires support from the High Courts to complete the data entry of all pending cases of subordinate courts so that information gets updated on the NJDG servers on a regular basis. In order to promote uniformity in judicial data and statistics, it was resolved at the Conference of Chief Justices held in April 2015 that for statistical purposes the High Courts will count the main cases only towards pendency and arrears. Interlocutory applications will continue to be separately numbered in original proceedings before the High Courts exercising original jurisdiction.

While on the one hand judicial statistics are important for decision-making by the judiciary and the government on the other hand it is equally important to place this information in the public domain so that the key stakeholders like advocates, litigants, researchers and the public at large can be better informed about the state of the judicial

system. The Minister of Law and Justice has time and again raised the issue of requirement of better availability of judicial data and statistics for reporting purposes. Recently, in his concluding remarks at the Joint Conference of Chief Ministers and Chief Justices held on April 5, 2015 the Minister of Law and Justice requested High Courts and State Governments to provide statistics and other information that is requested by the Central Government for replying to Parliamentary questions and for fulfilling assurances given to the Parliament. He also requested that courts in the jurisdiction of all High Courts need to ensure that complete case data is uplinked to the NJDG.

The successful completion of the ICT initiatives and adoption of uniform data collection practices will facilitate better identification and classification of cases, reduction of paperwork, efficient monitoring and time management and improved tracking of overall pendency trends. It will also relieve judges and other court staff from administrative duties and allow them to focus on judicial functions. Real-time online data would also enable High Courts to exercise proper supervision and control over subordinate courts.

***Suggested actions and responsible agencies*:**

- *Real-time online availability of judicial statistics will go a long way in enhancing transparency and accountability in our legal system. It will also encourage more insightful research and studies on various issues relating to judicial administration. High Courts need to work towards this goal by completing the data entry of all pending cases of subordinate courts and updating the information available on the National Judicial Data Grid on a regular basis. Data relating to pending cases in High Courts and subordinate courts should be made available on their websites on a real-time basis.*
- *High Courts need to give effect to the decision taken in the Conference of Chief Justices held in April 2015 that for statistical purposes the High Courts will count the main cases only towards pendency and arrears.*
- *The Government may consider legislative proposals to introduce requirements relating to collection, maintenance and disclosure of judicial statistics as well as audio-video recording of court proceedings.*

VI. Pre-trial hearing and case management systems

The issue of having time limits for various stages of a trial has come up before the Supreme Court on several occasions. In *Abdul Rehman Antulay* vs. *R.S. Nayak* the Supreme Court held that it is not possible to lay down any time schedules for conclusion of criminal proceedings. This is because the time taken in the disposal of a case depends on a number of factors, such as, the nature of offence, the number of accused, the number of witnesses, the work-load in the particular court, means of communication and other circumstances. Following this the Supreme Court laid down in the *Common Cause* and *Raj Deo Sharma cases*[5] that trial in pending cases would be terminated if specified time limits were not adhered to. The matter was finally settled through the decision in the *P. Ramachandra Rao*[6] case where a larger bench of the Court concluded that the bars of limitation created in the abovementioned cases were impermissible because (i) it amounted to the creation of legislation by the judiciary, which was an activity beyond their powers and (ii) the creation of such bars was contrary to the law laid down by the Constitution Bench in *A.R. Antulay'*s case. Even in cases where certain time limits have been statutorily provided the view of the Supreme Court has been that these are meant to be directory in nature and not mandatory.[7]

Even though it may not be feasible to prescribe strict time limits for the disposal of cases, the adoption of better case management strategies can help in the timely dispensation of justice. Case management includes 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.

The system of pre-trial hearing, which is common in several countries such as the United Kingdom, Singapore and the United States of America, 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

[5] *Common Cause* vs. *Union of India* (1996 (4) SCC 33), *Common Cause* vs. *Union of India* (1996(6) SCC 775), *Raj Deo Sharma* vs. *State of Bihar* (1998(7) SCC 507) and *Raj Deo Sharma (II)* vs. *State of Bihar* 1999 (7) SCC 604).
[6] *P. Ramachandra Rao* vs. *State of Karnataka*, (2002) 4 SCC 578.
[7] *Salem Advocate Bar Association* vs. *Union of Indi*a, (2005) 6 SCC 344.

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.

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.

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 can be utilized for this purpose. The Supreme Court in the case of *Ramrameshwari Devi v Nirmala Devi*[8] had also recommended certain steps that trial courts should follow to improve the system of administration of justice in civil cases. This included, carefully scrutinizing the pleadings and documents filed by parties immediately after the filing of civil suits; resorting to the discovery and production of documents and interrogatories at the earliest; and preparing a complete time schedule for all the stages of the suit and strictly adhering to the said dates as far as possible.

These issues were discussed at the 7th meeting of the Advisory Council of the National Mission and it was felt that the possibility of introducing a concept of pre-trial hearing in our procedural laws should be explored in further detail. The Law Commission of India in its 253rd Report on "Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015" recommended certain special procedures to be followed for the conduct of commercial cases by amending the Code of Civil Procedure, 1908 (CPC) so as to improve efficiency and reduce delays in disposal of commercial cases. These suggestions have been incorporated in the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 that was introduced in Rajya Sabha on April 29, 2015. The procedural changes proposed in the Bill

[8] (2011) 8 SCC 249.

in relation to commercial cases include stricter timelines, separate procedure for "summary judgment", case management hearing, time-bound oral arguments and time bound delivery of judgments. Similar recommendations may be considered in respect of all civil cases. In case of criminal cases, the Law Commission will be looking into the issue of pre-trial hearings as a part of their comprehensive review of the criminal justice system that is currently underway.

***Suggested actions and responsible agencies*:**

- *The Department of Legal Affairs and the Legislative Department are vested with the responsibility of looking into issues relating to Civil Procedure. They may therefore be requested to consider the procedural changes in the CPC proposed in the Law Commission's 253rd report and explore the possibility of extending these suggestions to all civil cases.*
- *The Law Commission is currently carrying out a comprehensive review of the criminal justice system. Any changes that may be required to the law based on their recommendations will be the responsibility of the Ministry of Home Affairs and the Department of Legal Affairs.*

VII. Criminal justice reforms

Pursuant to a request made by the Department of Legal Affairs on the recommendation of the Ministry of Home Affairs, the Law Commission of India is undertaking a comprehensive review of the criminal justice system covering all aspects of criminal laws. The Law Commission is currently in the process of undertaking this review and is expected to submit its report in the coming months.

Some of the areas for reform include adding provisions for pre-trial hearing, strengthening provisions relating to compounding of offences and proper implementation of plea bargaining provisions. The proper use of these mechanisms can help courts to focus their attention on offences that are of a more serious nature. Further, it would also be useful for judges to be encouraged to actively take up the duty of scrutinizing the suggested charges at the time of framing of charges.

On the issue of timelines for the disposal of criminal cases the Supreme Court has held in the case of *P. Ramachandra Rao v. State of Karnataka*[9] that it is neither advisable, nor feasible, nor judicially permissible to prescribe any outer limits for the conclusion of all criminal proceedings. It was however noted by the Court that criminal courts should exercise their available powers under the Code of Criminal Procedure, 1973 (CrPC), such as those under Section 309 (postponement or adjournment of proceedings), 311 (power to summon material witnesses or examine persons present) and 258 (power to stop proceedings), to effectuate the right to speedy trial. There are however some cases where given the gravity of the offences involved expedited timeframes have been indicated in the law itself. For instance, Section 173, CrPC requires that investigation in relation to rape of a child may be completed within three months from recording of the information and Section 309 provides that inquiry or trial of offense relating to rape should as far as possible be completed within a period of two months. The CrPC also contains provisions for the summary trial of petty cases, which if used extensively can be of great use in the speedy disposal of such cases.

Besides the judicial system, prosecution and police are the two other important components of the criminal justice system. In recent years, several committees and expert bodies, including the Malimath Committee on Reforms of Criminal Justice System[10] and the Law Commission[11] have expressed their views on the limitations in the existing investigation and prosecution processes and the need for reforms to ensure fair and speedy criminal trials. As per these reports, the investigation process is hampered by factors such as lack of expertise by investigating officers, understaffing, lack of modern investigation tools and scarcity of forensic facilities.

Similarly, the prosecution wing also faces a number of issues such as large vacancies in the posts of public prosecutors, improper selection procedures and lack of adequate care and supervision in the conduct of trials by prosecutors. There is therefore an urgent need to restructure the prosecution system in a manner that will allow the prosecution to function in an efficient and independent manner, while at the same time allowing for necessary coordination with the police. There is also a need to create

[9] AIR2002SC1856.
[10] Committee on Reforms of Criminal Justice System headed by Dr. Justice V.S. Malimath, March 2003.
[11] Law Commission of India, 239th Report on "Expeditious Investigation and Trial of Criminal Cases against Influential Public Personalities".

systems for the interoperability of the criminal justice system by connecting courts, forensic laboratories, police and prisons using web services. The creation of such a system would also be useful for securing the timely release of undertrial prisoners who have completed their minimum prescribed sentence, in accordance with Section 436A of the CrPC.

***Suggested actions and responsible agencies*:**

- *The Law Commission may be requested to expedite their work on criminal justice reforms so that appropriate legislative measures to bring about reforms in the criminal justice system can be adopted at the earliest.*
- *The Ministry of Home Affairs may be requested to take up the cause of creating a system for achieving interoperability among the various components of the criminal justice system, namely courts, forensic laboratories, police and prisons*.

VIII. Civil justice reforms

a) Improving the enforcement of contracts

Recognizing that timely enforcement of commercial contracts is one of the main factors that influence our ranking on the ease of doing business index, the Government has accorded a high priority to improving India's performance in this area. Some of the measures being undertaken on priority basis for ensuring the timely and effective enforcement of commercial contracts involve exploring the possibility of setting up of specialized fast track courts/ tribunals at the subordinate level and specialized commercial divisions at the High Courts level to deal with the commercial cases and encouraging arbitration to resolve contractual disputes. This is in addition to the proposals that are being pursued for the adoption of information technology solutions and court and case management systems for handling such cases.

The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 was introduced in Rajya Sabha on April 29, 2015.[12] This Bill has been prepared on the basis of the recommendations made in the 253rd report of the Law Commission of India. The Bill provides for the creation of Commercial divisions in High

[12] The Bill is available at http://www.prsindia.org/uploads/media/Commercial%20courts/Commercial%20courts%20bill,%202015.pdf

Courts which exercise ordinary original civil jurisdiction and the setting up of specialized commercial courts in other areas. It also provides for the creation of a commercial appellate division in all High Courts. In addition to the creation of commercial divisions, commercial courts and commercial appellate divisions the Bill also provides for substantive changes to the provisions of the CPC in their application to high value commercial disputes. The proposed amendments inter alia relate to detailed norms for imposition of costs, disclosure and inspection norms, case management hearings and other provisions for time bound disposal of commercial cases.

Pending the passing of this Bill some High Courts like Delhi and Bombay have already taken the initiative to set up commercial benches in their High Courts. Vide letter dated 22 April, 2015, the Registrar of the Bombay High Court informed the Department of Justice that the Chief Justice had designated specific benches of the Bombay High Court as Commercial Appellate Benches, Tax Benches and Commercial Division Benches with effect from 1st April, 2015. Similarly, a letter dated 28th May, 2015 was sent by the Delhi High Court informing the Ministry of Law and Justice that the High Court has designated two benches of the High Court as commercial courts in the original jurisdiction and two benches in appellate jurisdiction with effect from 26th March, 2015. The letter from the Delhi High Court also mentions that so far as district courts in Delhi are concerned, a commercial court at that level was created way back in 1990s. Subsequently, one court in each district of Delhi was designated to deal with commercial disputes and the same are functioning as of today as the Courts of Commercial Civil Judges in all District Courts under the jurisdiction of the Delhi High Court. These Courts of Commercial Civil Judges have been designated as “Commercial Courts” by order dated 24th March 2015. Other High Courts may also consider whether the case load in particular subordinate courts in their jurisdiction justifies the need for having designated judges to hear commercial cases.

While adopting any measures aimed at ensuring the expeditious disposal of commercial cases 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.

***Suggested actions and responsible agencies*:**

- *The passage of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 will create a systematic mechanism for expeditious disposal of high value commercial cases. High Courts may be requested to examine whether the case load in particular subordinate courts in their jurisdiction may justify the need for having designated judges to hear commercial cases that are below the specified value stipulated in the Bill.*

Settlement of disputes at pre-litigation stage

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 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.

***Suggested actions and responsible agencies*:**

- *The Department of Legal Affairs and Legislative Department may explore the possibility of introducing legislative changes to introduce a requirement of mandatory notice to the opposite party before initiation of legal proceedings. This will help in curtailing unnecessary litigation as many parties may choose to settle the cases even prior to the initiation of formal legal proceedings.*

b) **Promoting use of ADR mechanisms**

Promoting the widespread use of alternate dispute resolution (ARD) 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. The organization of Lok Adalats for the amicable settlement of disputes in a timely and cost effective manner is the responsibility of the National Legal Services Authority and State and District Legal Services Authorities that have been established under the Legal Services Authorities Act, 1987.

The concept of ADR has now become an integral part of the CPC with the insertion of Section 89. In this context, it would be pertinent to refer to the decisions of the Supreme Court in *Salem Advocates Bar Association* v. *Union of India*[13] and in *Afcons Infrastructure Ltd.* v. *Cherian Varkey Construction Pvt. Ltd.*[14] Through these decisions the Court held that after referring a matter to the admissions and denials, courts should direct the parties to opt for one of the modes of ADR specified in Section 89. Courts may mandatorily refer certain categories of matters for resolution through ADR, namely, mediation, judicial settlement and lok adalats.

In October, 2014 the Minister for Law and Justice wrote to the Chief Justices of all High Courts in October, 2014 stressing on the need for effective utilization of ADR mechanisms in civil cases. He *inter alia* suggested that High Courts may consider giving additional credit points to judicial officers/ judges in their performance appraisal for settling disputes through ADR mechanisms. Further, the National Mission has also written to the High Courts requesting them to share detailed information regarding the extent to which courts in their jurisdiction are utilizing Section 89 of CPC, the available infrastructural facilities for this purpose and any bottlenecks being faced in this regard. The feedback received so far indicates that only a small percentage of cases in District and Subordinate Courts are being resolved through ADR under Section 89 of CPC.

Recently, the Law Commission of India undertook a comprehensive review of the working of the Arbitration and Conciliation Act, 1996 (Arbitration Act) to encourage speedy

[13] AIR 2003 SC 189.
[14] (2010) 8 SCC 24.

disposal of civil matters especially commercial matters through arbitration with minimum cost and intervention.[15] The Commission has recommended various amendments to the Arbitration Act aimed at ensuring that the arbitration process is conducted expeditiously and effectively. Following this, the Ministry of Law & Justice has prepared a Bill to amend the Arbitration Act and it is proposed to be introduced in the Parliament shortly.

***Suggested actions and responsible agencies*:**

- *High Courts need to be urged to promote the use of Section 89, CPC by district and subordinate courts in this jurisdiction so that more and more cases can be resolved without resorting to the formal adjudication system.*
- *Amendments to the Arbitration Act need to be brought about at the earliest possible.*

c) **Reforms in service of summons**

Delay in service of summons is a major hurdle in the speedy delivery of justice. Certain amendments have already been made to the CPC to address this issue. In addition to the legislative changes, 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 Information Communication Technology (ICT) systems for service of process. Several High Courts have responded positively to the suggestion on collection of one time process fee by stating that they have either implemented or are in the process of considering such measures.[16] As regards the suggestion on adoption of ICT, it is noted that a majority of High Courts are yet to formalize and adopt ICT tools for the purpose of expediting process service. There are however certain exceptions, such as the High Courts of Madhya Pradesh, Bombay and Tripura that have already taken positive steps towards the use of ICT systems. Given that the efforts to make courts more ICT enabled have been ongoing for several years now, there is an urgent need for States and High Courts to act expeditiously on this issue.

[15] 246th Report, Law Commission of India, "Amendment to the Arbitration and Conciliation Act, 1996".
[16] Bombay High Court has already amended its process fee rules to charge a one-time process fee. The proposal is also under active consideration by the High Courts of Rajasthan, Allahabad, Delhi, Karnataka, Himachal Pradesh, Patna and Allahabad.

***Suggested actions and responsible agencies*:**

- *High Courts may be requested to urgently adopt systems for use of ICT in the service of process and to consider other measures such as one-time payment of process fee that can help in the expeditious disposal of cases.*

IX. Proper implementation of procedural laws

A series of provisions have been introduced in procedural laws to enable the expeditious disposal of criminal and civil cases. These include, amendment of Section 309, CrPC to discourage unnecessary adjournments; amendment of Section 320, CrPC to rationalise the list of compoundable offences; insertion of a new Chapter XXIA on plea bargaining; insertion of Section 436A for release of undertrial prisoners who have undergone half of the maximum imprisonment; and amendments to Sections 161(3), 164 and 275 of CrPC to allow use of audio/video technology in criminal cases. In case of civil trails, relevant amendments to the CPC include provisions to impose limit on the number of adjournments that may be granted to each party to three times and imposition of costs for adjournments;[17] allowing service of summons using courier services or directly through the plaintiff;[18] providing for dismissal of suit where summons are not served in consequence of plaintiffs' failure to pay costs; [19] and limiting the time limit for filing of written statement by the defendant.[20]

It is noted that the desired impact of these legislative changes has not yet been fully realized on account of the non-implementation of these provisions by subordinate courts. Observations of this nature have also been made by the Supreme Court in various cases. In the case of *State of Gujarat vs. Kishanbai*[21] the Supreme Court expressed its concerns on the glaring lapses observed in the investigation of the case as well as the inconsistencies found in the evidence produced by prosecution. In its judgment, the Supreme Court gave certain directions to streamline the procedure for criminal investigation and prosecution. In the context of civil trials, the Supreme Court has issued a very important set of directions in the *Ramrameshwari Devi* case[22] to prevent the abuse of

[17] Order XVII Rules 1 and 2, CPC.
[18] Order V Rule 9 and 9A, CPC.
[19] Order IX Rule 2, CPC.
[20] Order VIII, Rule 1, CPC.
[21] Criminal Appeal No. 1485 of 2008.
[22] *Ramrameshwari Devi* v. *Nirmala Devi,* (2011) 8 SCC 249.

the judicial system by filing of frivolous applications and to guide trial courts on the steps to be taken while dealing with civil cases.

Besides the delays caused at the trial court stage, the problem of indiscriminate use of writ jurisdiction and multiple levels of appeals also leads to delays in the final disposal of cases.

***Suggested actions and responsible agencies*:**

- *As the administrative control over subordinate courts vests with the High Courts, monitoring the implementation of the provisions aimed at expeditious disposal of cases and fixing accountability for delays fall within the domain of judiciary.*

X. Addressing areas prone to excessive litigation

The National Mission is looking into the areas of law that are prone to excessive litigation and considering 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). An Inter-Ministerial Group (IMG) was constituted to suggest measures to deal with the large number of pending cases of this nature, which suggested measures such as, promoting the use of ADR mechanisms; adoption of summary procedure by courts dealing with these cases; and encouragement of electronic modes of payment to reduce the overall number of disputes. The Negotiable Instruments (Amendment) Ordinance 2015 was promulgated on 15 June 2015 to clarify the jurisdiction where dishonour of cheque cases may be filed and provide for transfer of cases to the appropriate jurisdiction and consolidation of multiple cases filed in different courts. Consultations are now being held with the Ministry of Finance to bring cases relating to dishonor of cheques and other banking services within the ambit of Permanent Lok Adalats.

Policy and legislative changes are also being considered to tackle the large number of cases that are pending under the Motor Vehicles Act, 1988 (MV Act) and to actively promote computerised systems for payment of challans. Recently, the Ministry of Road Transport and Highways has prepared draft Road Transport & Safety Bill 2015 with a vision to provide a framework for safer, faster, cost effective and inclusive movement of passengers and freight in

the country. The Bill provides for the use of technological solutions for monitoring and enforcement of traffic violations, which will increase transparency and at the same time reduce scope for 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.

In its 245th Report the Law Commission has noted that special courts may be established for dealing with traffic and police challan cases involving fines only. These special courts can function in morning and evening shifts and as much of their work is likely to require very little judicial involvement, they can be presided over by recent law graduates appointed on ad-hoc basis instead of regular judges. Further, the Law Commission noted that providing online facilities for the payment of fines or separate counter facilities in court premises for this purpose will also help in easing the work load of these courts.

***Suggested actions and responsible agencies*:**

- *Consultations are being held with the Ministry of Finance to bring cases relating to dishonor of cheques and other banking services within the ambit of Permanent Lok Adalats. This will need to be followed by the issuance of appropriate orders/ notification/ amendments to give effect to this change.*
- *The Draft Road Transport and Safety Bill, 2014 proposes the use of electronic means for the enforcement of road safety and traffic regulations. Better enforcement coupled with computerised systems for payment of traffic challans will help in reducing the number of traffic violation related cases pending before courts.*

XI. National and State litigation policies

As the Government and its various agencies are the pre-dominant litigants in most court cases, prioritizing the cases to be pursued by the Government and the manner in which those cases are conducted can significantly contribute towards saving valuable court time. With this objective, the Ministry of Law and Justice drafted a National Litigation Policy in 2010 to guide the Government in acting as an efficient and responsible litigant but this draft could not be notified. The Department has now reformulated the draft National Litigation Policy 2015 with broadened objectives and scope and the same is going to be

placed before the Cabinet soon for their approval. Similar Litigation Policies have also been formulated and notified by the State Governments for reducing government litigation.

The proper implementation of these policies at the National and State level can help in significantly reducing the number of pending cases in courts. In this regard, a ten-point action plan for effective implementation of State Litigation Policies was evolved during the National Consultation with State Governments and High Courts in December, 2013. States have accordingly been requested to undertake a Mission Mode Campaign for the reduction of government litigation and to share details of the success of this campaign.

In addition, many States have adopted Right to Service legislations that guarantee time bound delivery of public services and help in increasing transparency and public accountability. The grievance redress mechanisms contained in these laws allow citizens to file complaints against non-delivery of service and to that extent are beneficial for reducing the burden that would otherwise be case upon civil courts. A bill titled The Right of Citizens for Time Bound Delivery of Goods and Services and Redressal of their Grievances Bill, 2011, which sought to create a similar mechanism at the central level was introduced in the Parliament but has since lapsed.

***Suggested actions and responsible agencies*:**

- *Proper implementation of National and State litigation policies will contribute towards reducing litigation and saving valuable court time. It is therefore important that the National Litigation Policy be approved and implemented at the earliest. This matter is in the domain of the Department of Legal Affairs.*
- *States that have not yet given proper effect to their litigation policies should be motivated to do so. The impact of State Litigation Policies on reducing government litigations will also need to be assessed.*

XII. Bar reforms

Our litigation system is largely advocate driven rather than being driven by the courts. While on the one hand this needs to be addressed through proper training and sensitization of judges, on the other, there is also a need to bring about appropriate reforms in the Bar. There is therefore an urgent need to engage with the Bar for bringing

about reforms to improve the standards and practices of the Bar and to make it more service oriented and transparent.

A robust regulatory mechanism to monitor the conduct of members of the legal profession will help in the proper implementation of the legal provisions aimed at expeditious disposal of cases. Department of Legal Affairs needs to engage with the Bar Councils so as to identify the required reforms in relating to the Bar, including developing a comprehensive code of conduct for legal practitioners.

Members of the Bar also have a very significant role to play in improving access to justice for all members of society, particularly those belonging to disadvantaged and marginalized groups. Article 39A of the Constitution requires that the legal system should operate in a manner that promotes justice on the basis of equal opportunity. In particular, this includes the directive to provide free legal aid so that citizens are not denied the opportunity for securing justice on account of economic or other disabilities. Towards this end, the Legal Services Authorities Act, 1987 has been enacted to provide free legal services to socially and economically weaker sections of society. The categories of persons entitled to free legal services are specified in Section 12 of the Act to inter alia include, women, children, Scheduled Castes, Scheduled Tribes and persons with low income. The overall implementation of the Act vests with the National Legal Services Authority (NALSA) in addition to which State and District Legal Services Authorities (SLSAs) have also been constituted under the Act.

In addition to the institutionalized mechanisms for legal aid created under the Legal Services Authorities Act, 1987, all members of the legal profession have a responsibility to strengthen access to justice through voluntary pro bono activities. Countries like United States, Australia, South Africa and Argentina have adopted a range of initiatives to encourage and incentivize pro bono work, which are in most cases spearheaded by the concerned Bar associations and societies. These include requirements for each lawyer to dedicate a minimum number of pro bono hours in every year and the setting up of clearing houses or referral agencies to connect persons in need of legal advice with advocates. The relevance of such mechanisms in the Indian context as well as other available options to promote pro bono work need to be considered through active engagement with the Bar Councils.

In addition, other stakeholders like law universities, law firms and civil society organizations also have a major role to play in this regard. Many law schools have already set up legal aid centers and clinics that allow law students to provide voluntary legal services. The working of these clinics and the extent to which they encourage a broad segment of law students to participate in pro bono programmes need to be analysed. The financial or technical assistance required for the efficient functioning of these clinics also need to be considered. In the memorandum of the Department of Justice endorsed by the 14th Finance Commission, a provision of Rs. 50.50 crore was made for assisting 100 Government Law Schools in the country for running Legal Aid Clinics. The State Governments need to implement this provision by providing the necessary budgetary allocations.Law firms can also play a major role by adopting internal processes that recognize pro bono activities and give advocates credit for the same. For instance, pro bono services may be considered as a favorable factor in performance evaluations and in promotion schemes. Finally, the role of civil society organizations should also be recognised as they can play a very useful role in identifying potential recipients of pro bono services and connecting them with lawyers.

***Suggested actions and responsible agencies*:**

- *The Department of Legal Affairs may be requested to engage with the Bar to identify the required Bar reforms, including developing a comprehensive code of conduct for legal practitioners.*
- *Active engagement with the Bar Councils is necessary for developing systems to encourage and incentivize voluntary pro bono lawyering. In addition, other concerned stakeholders such as the law universities, law firms and concerned civil society organizations also need to be consulted in order to develop broad based strategy to promote pro bono legal work.*

XIII. Rationalization of court fees

As per the specific entry on Court fees mentioned in Entry 3 of List II (State List) of Seventh Schedule to the Constitution of India, the subject of court fees payable in all courts (except the Supreme Court) is a State subject and only State Legislatures are

competent to enact or amend any law on Court fees payable in High Courts and Subordinate Courts.

The Law Commission of India has undertaken several studies in the recent past on the subject of 'Court Fees'. The Law commission of India in its 189th report on 'Revision of Court Fees Structure' observed that the Court Fees Act, 1870 is an antiquated legislation and the rate of court fees payable has not been revised since a long period of time even though the value of rupee has considerably declined. The Commission was of the view that ad valorem court fees need not be revised in as much as the court fee will be paid in proportion to the value of the claim which in any event would reflect the enhanced value of the claim after inflation.

The Law Commission in its 220th Report on 'Need to Fix Maximum Chargeable Court Fees in Subordinate Civil Courts' recommended that there should be some measure of uniformity in the scales of court-fees. There is no justification for any differential treatment of different suitors. The Commission recommended that the Government should seriously consider the feasibility of a fixed maximum chargeable court-fee.

***Suggested actions and responsible agencies*:**

- *State Governments need to be encouraged to rationalize their court fee structure.*

XIV. Committees in High Courts

Over the last few years the High Courts have undertaken periodic pendency reduction campaigns to prioritize the disposal of long-pending cases. Special campaigns have also been resorted to for dealing with specific categories of cases, such as those under NI Act, MV Act and cases that have pending for more than five years. In addition, Lok Adalats and Mega Lok Adalats are being organized periodically as a mechanism for pendency reduction. As a result of concerted efforts made by various stakeholders the overall trend of increasing pendency has been checked.

To continue these initiatives, it was resolved at the Conference of Chief Justices held in April 2015 that each High Court shall establish an Arrears Committee, if not already established, and shall prepare an action plan to clear the backlog of cases pending for

more than five years. It was also resolved that the State Court Management Committees constituted in High Courts shall endeavour inter-alia to evolve workable solutions for clearance of arrears.

XV. Way forward

Reducing pendency and ensuring the expeditious disposal of civil and criminal cases requires the adoption of a holistic set of legislative, administrative and policy initiatives coupled with the creation of a conducive environment for judiciary to meet those goals. Many of initiatives suggested in this note fall within the domain of judiciary and State Governments for which regular interaction is required at appropriate levels. It is therefore important for all the stakeholders, such as Courts at all levels, Ministries and Departments at the Central and State Governments and members of the Bar, to work in tandem for carrying out the reforms aimed at the timely delivery of justice. It may be useful to consider and adopt a broad based mechanism to facilitate regular interaction with stakeholders and to oversee the implementation of decisions relating to judicial reforms. Advisory Council is requested to provide necessary guidance in this regard.

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ANNEXURE - I

Minutes of Seventh Meeting of Advisory Council of the National Mission for Justice Delivery and Legal Reforms held on 21st January, 2015.

The seventh meeting of the Advisory Council of the National Mission for Justice Delivery and Legal Reforms was held on 21st January, 2015 at Jaisalmer House, New Delhi under the Chairpersonship of Shri Sadanand Gowda, Hon'ble Minister of Law and Justice. The list of participants is attached.

Secretary, Department of Justice welcomed the Hon'ble Minister and members of the Advisory Council and thanked them for their valuable guidance and continued support to the National Mission. She mentioned that the National Mission since its inception has been working ceaselessly towards achieving its goals by focusing on infrastructural development of courts, increasing strength of judges and judicial officers, identification of areas prone to excessive litigation and pursuing a string of other policy measures to address the problem of pendency and delays in courts. She also highlighted some of the key initiatives pursued by the National Mission since the last meeting of the Advisory Council in August, 2014 which include providing inputs to the Home Ministry on the preparation of a blueprint on fast tracking of the criminal justice system; circulation of a note on legislative, policy and judicial developments for expeditious disposal of cases to the High Courts by the Honourable Minister of Law and Justice and co-ordination with Department of Industrial Policy and Promotion for improving India's performance on the '*enforcement of contracts*' parameter. She then requested the Hon'ble Minister of Law and Justice to make his opening remarks.

Hon'ble Minister of Law and Justice in his address stated that the new government has taken several initiatives to facilitate ease of doing business in the country. These initiatives are intrinsically linked to the improvement of the investment climate in the country and for the success of 'Make in India' campaign launched by the Hon'ble Prime Minister. Judiciary is one of the important stakeholders and its support is crucial for timely enforcement of contracts in the country. He informed the members that it has been suggested to the High Courts of Bombay and Delhi to consider setting up of specialized fast track courts / tribunals to deal with commercial cases at the subordinate level. Other measures being considered are encouraging the use of ADR mechanisms for resolution of commercial disputes, besides initiating legislative and policy measures to fix timelines for disposal of cases. The Government is committed to providing the necessary support and assistance to the judiciary for this purpose.

Minister of Law and Justice informed the members that the Constitution Amendment Bill and National Judicial Appointments Commission (NJAC) Bill which were passed by the Parliament in August, 2014 have been ratified by the requisite number of States and have also received assent of the President. These would be put into implementation after the rules and regulations for this purpose are in place. Minister of Law and Justice observed that enhancement of strength of judges / judicial officers in High Courts and Subordinate Courts is essential for overall improvement of the judicial system. However he raised concern on the huge number of posts of judges / judicial officers lying vacant in High Courts and Subordinate Courts. He stated that filling up these vacancies is a matter of priority across the country.

While referring to the figures related to the available judicial infrastructure including court rooms / court halls available for the actual working strength of the judiciary, the

Minister observed that adequate infrastructure is available for the current judicial manpower and there are about 2,250 additional court rooms under construction in States and UTs. These substantial additions to judicial infrastructure will take care of immediate increases in the working strength of judges in district and subordinate courts on account of filling up of vacancies. He further informed that e-courts mission mode project has made significant progress and 93% of courts out of the total 14,249 subordinate courts covered under Phase-I have been computerized.

The Minister of Law and Justice mentioned that the Government is keen on the promotion of ADR mechanisms as a tool to tackle the pendency problem and ensure speedy disposal of cases. He informed the members that the Government has approved the proposal to amend the Arbitration and Conciliation Act. The bill for amendment of the Act will be introduced in the Parliament in the next session. The amendments are aimed at improving the legal framework relating to arbitration to ensure that the arbitration process is expeditious and effective.

The Minister also mentioned that steps have also been initiated to reduce pendency in the areas that are prone to excessive litigation. He stated that proposal to amend the Negotiable Instruments Act to introduce measures to resolve cases arising under Section 138 through ADR mechanisms is currently under consideration. Similarly the draft Road Transport and Safety Bill, 2014 prepared by the Ministry of Road Transport will introduce provisions for reduction in traffic challan cases and resolution of traffic cases without resorting to litigation as well as expeditious disposal of motor accident claim cases.

Further, he informed the members that the Government is also taking effective measures to reduce government litigation. He mentioned that all States have framed their litigation policies. A National Litigation Policy was earlier drafted by the Department of Legal Affairs with major emphasis on effective handling of government litigation but this draft could not be formalised. The Department of Legal Affairs has now reformulated the National Litigation Policy with broadened objectives and scope and the same is going to be placed before the Cabinet soon for its approval. He mentioned that the revised policy aims to curb unnecessary and avoidable litigations by taking appropriate steps at the pre-litigation stage, operationalise mechanisms to reduce filing of cases against the Government and to make the Government an efficient and responsible litigant.

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 26th August, 2014.

The minutes of the sixth meeting of Advisory Council were confirmed.

Prof. Madhav Menon raised his concern over large number of under-trial prisoners languishing in jails. He mentioned that it is the function of the Legal Services Authorities to collect the data regularly from the jail authorities and assist the judiciary to take necessary action to release the under-trials. He emphasized the need for the utilization of the services of legal aid clinics in law schools *especially* the National law Schools by Legal Services Authorities for this purpose. The Hon'ble Minister welcoming his suggestion observed that after the recent direction of the Supreme Court in *Bhim Singh vs. Union of India* steps have been taken for release of under-trial prisoners. However he highlighted

that currently there is a problem with availability of accurate data on court cases and under-trials, which acts as a major constraint.

Intervening in the discussion the Attorney General suggested that there is a need to cast a duty by law on every District & Session Judge to collect complete information relating to under-trial prisoners in his / her jurisdiction on a regular basis and share the same with the High Court and Government. Agreeing with the suggestion, the Chairman Law Commission of India stated that currently a software is installed in Tihar Jail for collection and monitoring of data, but it is necessary to develop a system for constant monitoring of the status related to the under-trial prisoners in the manner suggested by the Attorney General. The Chairman, Parliamentary Standing Committee noted that every District Judge is also the Chairman of the District Legal Services Authority. He suggested that District Legal Services Authority should collect the data of the prison population within its jurisdiction and share it with the State and National Legal Services Authority on a regular basis. The National Legal Services Authority should create a web-site and provide this data. This can solve the current problem with respect to availability of the data on under-trial prisoners. The Secretary General, Supreme Court mentioned that if jails and judiciary are integrated by use of technology, timely sharing of the data will become much easier.

Secretary, Justice observed that as per the information collected in the course of the implementation of the directions of the Supreme Court in the *Bhim Singh* case not many under-trial prisoners are eligible to be released under the provision of Section 436A Code of Criminal Procedure. The Chairman Law Commission said that this is because of the limited scope of operation of Section 436A. He expressed the need to re-consider the condition related to completion of period of 50 percent of imprisonment as provided in Section 436A and the types of offences to which this provision is applicable. He further noted that the action being taken under the *Bhim Singh* case and the data collected under it should not be a one-time exercise. Instead, we need an institutionalised mechanism to monitor this on a continuing basis.

The Attorney General stressed upon the need for review of the scope and applicability of Section 436A. In his opinion, if necessary, the requirement of completion of 50 percent period may be reduced. He also emphasized the need to amend the Code of Criminal Procedure to cast a duty on the court at the stage of framing of charge to scrutinize the charge-sheet and ensure that there are credible materials available *prime-facie* to support the Sections under which the charges are framed against the accused. The Chairman Law Commission mentioned that the Commission is currently undertaking a comprehensive review of the Criminal Justice System and it is examining Section 436A and related issues. The Commission will shortly provide its recommendations in this regard. Minister of Law and Justice requested the Chairman Law Commission to prepare their report on the subject at the earliest keeping in view the grave concerns raised by the members. He requested the members to give their suggestions to the Department of Justice in this regard which will be referred to the Law Commission for their consideration.

Prof. Menon expressed his concern on the low utilization of the funds provided to States under the award of Thirteenth Finance Commission. Secretary, Justice mentioned that the Department has been pushing for the utilization of the available funds, however, there are constraints on the part of States and High Courts in this regard. The Chairman, Parliamentary Standing Committee inquired about the major constraints leading to the lack of utilization of the funds. Secretary, Justice informed that a sum of Rs. 2,500 crore was

earmarked for creation of the morning-evening shift courts. However, this could not be implemented in the most States. Secretary General, Supreme Court observed that there was lack of proper co-ordination between the State Governments and the High Courts. He mentioned that there were instances where the State Governments denied the release of funds on technical grounds. Secretary (Justice) mentioned that it needs to be ensured that the experience of the Thirteenth Finance Commission is not repeated for the grants which may be available under the Fourteenth Finance Commission. Minister of Law and Justice requested the Secretary (Justice) to write to the States and High Courts to know about their concerns and priorities to ensure that a proper action-plan is in place for the utilization of the grants of the Fourteenth Finance Commission, once the information is available.

The Chairman, Parliamentary Standing Committee suggested that the Minister of Law and Justice may convene a meeting with his counterparts in the States to seek their co-operation in implementing the agenda for judicial reforms and to assist the States having lack of financial resources to implement the same. He also stressed upon the need for continuing with fast track courts at subordinate judiciary for at least next five years to ensure timely disposal of cases. Minister of Law and Justice mentioned that with the completion of the e-Courts project timely collection of data and increased integration of judicial system with the aid of technology will be possible.

Agenda 2: Action Taken Report on the minutes of the meeting held on 26th August, 2014 and overview of progress of initiatives of the National Mission.

Joint Secretary (Mission Director), Department of Justice gave a brief overview of the major initiatives and achievements of the National Mission in the past three years. He informed that a major step in bringing about structural change in the procedure for judicial appointments in the higher judiciary has been undertaken with the enactment of the law on National Judicial Appointments Commission. Major changes in the Government's litigation policy have been introduced with the formulation of National and State Litigation Policies with the objective to curb government litigation. High Courts have taken cognizance of the state litigation policies and their implementation is insisted upon when grievances against governmental agencies are brought before the courts.

The Mission Director stated that the Supreme Court has established the National Court Management System (NCMS) to *inter-alia* introduce necessary reforms in court and case management systems, to introduce common nomenclature for classification of cases and to standardise the norms and facilities for court complexes. Under NCMS, 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. The rules and procedures in High Courts are also undergoing change. The Supreme Court eCommittee has requested the Law Commission to look into the process engineering of courts from the point of view of automation of court processes. To curtail the delay caused in the service of the court process necessary amendments were brought in Civil Procedure Code to allow service of process by electronic means, by courier, fax *etc*. Most of the High Courts have amended their rules. The concept of one-time payment of process fee has gained acceptance and is being implemented / contemplated by several High Courts.

Available data shows that sufficient court halls are available although there is a need for improvement in standards. The Mission has requested the High Courts to prepare their Court Development Plan (CDP) both in terms of infrastructure and manpower

requirement. There has been substantial increase in the number of judicial posts in the recent past. The initial data for year ending 2014 indicates that the sanctioned strength may go beyond 20,000. However, the working strength is likely to be around 16,000.

Some of the major bottlenecks in this area as pointed out by High Courts are non-availability of qualified personnel to fill up the judicial posts *especially* those of Additional District and Sessions Judges through direct recruitment, lack of co-ordination between the Public Service Commission, State Government and High Courts. National Mission has also been communicating with the National and State Judicial Academies to develop a specialized curriculum for the training of judges for expeditious disposal of cases.

Agenda 3: Establishment of Additional Courts:

The Mission Director stated that the Supreme Court has taken cognizance of this matter in the *Imtiyaz Ahmed* case. As per the direction of Supreme Court, Law Commission of India has suggested Rate of Disposal Method for calculating the requirements for additional courts. State Governments and High Courts have been asked to file their response in the matter. The recommendations of the Law Commission were also circulated by the Department of Justice to the State Governments and High Courts requesting their views on the matter. The response received from the State Governments and High Courts has been incorporated in the agenda notes. Secretary General, Supreme Court elaborated that NCMS has agreed with all the recommendations of the Law Commission *except* the one relating to creation of morning / evening courts. Mission Director further stated that acceptance of recommendations of Law Commission will create an institutional mechanism for increasing the judge strength in the subordinate judiciary through the Court Development Plans.

Intervening in the discussion, Chairman, Law Commission raised his concern on the issue of vacancies in the subordinate judiciary. He stated that the major problem of vacancies in the subordinate judiciary is on account of lack of suitable candidates. He informed the members that there was a proposal in the Chief Ministers and Chief Justices Conference for creation of All India Judicial Service. It was informed that there is divergence of opinion among State Governments and High Courts on this matter. At this juncture, Prof. Menon suggested campus recruitment for the subordinate judiciary. He cited the example of Karnataka High Court agreeing to allow the fifth year LL.B students to appear for judicial service exams and be recruited as Civil Judge Junior Division subject to their results being out by the time of joining. The Mission Director observed that the vacancies can be filled up adequately by following such a process, however, the High Courts and State Governments would have to amend the recruitment rules for subordinate judiciary.

The Vice Chairman, Bar Council of India observed that candidates should have practiced for at least one year before they are appointed to judicial posts. He also raised his concern on the lack of proper infrastructure for the bar. Secretary (Justice) observed that while preparing a blueprint for infrastructure of courts the needs of all the stakeholders like litigants, judiciary and lawyers should be considered. She felt that common blueprint for courts being worked out by NCMS should take into account these basic requirements. Minister of Law and Justice acknowledged the concerns expressed by Vice Chairman, Bar Council and agreed with the suggestion made by Secretary (Justice).

Chairman, Parliamentary Standing Committee raised the issue regarding enhancement of court fees and suggested to make it more rational at all levels in judiciary. He felt that increased revenues collected through court fee can be utilized for higher expenditure on judiciary.

Agenda 4: Scope of pre-trial hearing under existing procedural laws

Mission Director initiated the discussion by stating that pre-trial conference is an important mechanism for the speedy disposal of both civil and criminal cases. He stated that the Hon'ble Minister has suggested formulation of indicative time frame for disposal of various type of cases so that it acts as a broad parameter for judges / judicial officers to determine whether the trial is being prolonged beyond reasonable time frame. He mentioned that there are certain provisions in both civil and criminal procedures which can be used to satisfy the objectives of a pre-trial hearing. He requested the Law Commission to separately incorporate additional provisions on pre-trial hearing in the Criminal Procedure Code as the Commission is already reviewing the same in the context of criminal justice reforms.

Chairman, Law Commission mentioned that the Commission has prepared its report and a draft Bill on creation of commercial courts. The Bill includes extensive recommendations to expedite speedy trial of civil and commercial cases. He mentioned that the report suggests adopting simplified procedures for timely completion of the trial of these cases. Pre-trial hearings have been dealt with extensively in this report as the system of pre-trial hearing is an important component of the case management process.

Minister of State for Home Affairs desired further details on how pre-trial conference can expedite of conclusion of commercial litigation. Chairman, Law Commission explained that with reference to commercial courts it is necessary to introduce proper case management tools which include holding pre-trial conference between parties to fix dates and a calendar to enable monitoring of time-schedule. This provides opportunity to the court to follow strict time frames for disposal of these cases. In some jurisdictions like United Kingdom there are elaborate procedures for pre-trial conference which are laid down in relevant statutes. This facilitates speedy disposal of these cases. He stated that these practices if adopted by commercial courts will provide them the opportunity to exercise greater control over case and the trial procedure including witness examination.

Prof. Menon observed that pre-trial conference can be used for the speedy disposal of both civil and criminal matters. He stated that pre-trial conference will help in speedy trial of cases and minimize the work load of courts. He noted that the Civil Procedure Code and Criminal Procedure Code do not come in the way of holding of pre-trial conferences but at the same time there are no positive provisions that make it mandatory for the courts to use pre-trial conference. He suggested that the Law Commission should add a new chapter on pre-trial. Law Commission Chairman informed that the Commission has already recommended adding a new Order on Case Management in CPC in its report. He further informed that the Commission has also examined the best practices followed globally for speedy trial such as summary judgement procedures. Prof Menon requested the Bar Council of India to hold discussion with bar associations and lawyers and state their position on this issue. In response to this, Vice Chairman, Bar Council of India stated that he would consult the bar associations on this issue and will send their views within two months.

At this junction, Mission Director observed that the provisions in the Code of Criminal Procedure for compounding of offences and plea bargaining are not being used in the absence of specific provision for pre trial conference. He requested the Law Commission to consider incorporating the concept of pre trial conference in the Criminal Procedure Code. Chairman, Law Commission informed that that they are already looking into this issue and will be releasing their interim reports. He noted that plea bargaining is only for petty cases and very few cases are compounded. He observed that one of the reasons for minimum use of plea bargaining provision is the fear of conviction stigma. Commission is, therefore, examining the possibility of revamping plea bargaining provisions. Mission Director suggested the use of plea bargaining for charge bargaining as well. This suggestion was endorsed by Prof. Menon and Attorney General.

Agenda 5: Timely enforcement of commercial contracts

Mission Director stated that the Hon'ble Minister of Law and Justice in his opening remarks has stressed upon the need for improving the ease of doing business in India which 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, a conducive policy, regulatory and judicial environment is required to be created that allows businesses to grow 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, he noted that availability of appropriate dispute resolution mechanism processes for the enforcement of commercial contracts in a timely and cost effective manner is crucial for improving the country's position on ease of doing business index. He mentioned that 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 in a timely manner 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 rules framed by some of the High Courts such as Delhi and Bombay already contain provisions necessary for dealing with the commercial cases. Further the Law Commission is working on the enactment which will provide commercial benches at the High Courts as well as for commercial courts at the subordinate level. The facilities such as e-filing and e-payment of courts fees are already in place in some High Courts. The second phase of the e-Courts project proposes to extend these facilities to the subordinate courts level. These developments have been brought to the notice of Department of Industrial Policy & Promotion (DIPP).

Chairman, Law Commission informed that the Commission has finalized its recommendations relating to creation of commercial division in five High Courts of Bombay, Calcutta, Delhi, Madras and Himachal Pradesh having original civil jurisdiction and the report will be submitted to the Minister shortly. He mentioned that the proposal of the Law Commission includes specialized commercial division in these High Courts and in other areas commercial courts can be established in consultation of the Chief Justice of the respective High Court and State Government. He however, mentioned that merely designating a court as commercial court will not be sufficient because current procedural law has become outdated and therefore by using the current procedures it may not be possible to expedite the disposal of the commercial disputes. He explained that the Law Commission has examined the procedures used in United Kingdom, Singapore and other

major jurisdictions related to disposal of commercial matters and has suggested adopting rules and procedures which are favourable to effective functioning of such courts. He mentioned that the Commission has also made recommendations with respect to the infrastructural requirements of commercial courts; extensive amendments to be introduced to the Code of Civil Procedure to be applicable to commercial disputes being dealt by commercial courts; and increase in the pecuniary jurisdictions of High Courts having original civil jurisdiction. He further mentioned that there are three more aspects that need to be taken care of, *namely*, ensuring that these commercial courts are presided over by judges having expertise to deal with commercial disputes, adoption of simplified procedures and timely compliance of decisions by parties.

Chairman, Parliamentary Standing Committee inquired whether the Law Commission agrees with the position that appeals arising from the decisions of tribunals should be heard by High Courts. Chairman, Law Commission explained that as per their recommendation writ petitions or any other judicial proceedings filed from a decision of a tribunal dealing with specialized commercial disputes may be referred to the commercial division in High Courts, where such commercial divisions are setup. Chairman, Parliamentary Standing Committee informed the members that the committee is currently examining the terms and conditions of appointment and benefits of presiding officers of tribunals. He requested the members to provide them valuable suggestions in this regard. The Attorney General mentioned that the practice of appointment of retired judges to preside over various tribunals requires reconsideration and suggested that amendments should be brought in the respective Acts to the effect that tribunals should be presided by any persons who are experts in the relevant fields. Chairman, Law Commission agreed with this suggestion and mentioned that this will make the tribunals function more effectively. The Secretary, Legal Affairs observed that this trend of having retired judges in tribunals was on account of jurisprudence developed by the apex judiciary.

On the issue of video-recoding of court proceedings the Secretary General, Supreme Court of India mentioned that the Hon'ble Court has recently dismissed the petitions seeking approval for video recording of judicial proceeding. The view was that our court system has not reached at the level where the video recording of court proceedings can be permitted. Chairman, Law Commission observed that a proposal may be considered to undertake audio-video recording on a pilot basis in some district courts because such a step can enhance transparency in the justice system. Joint Secretary (Justice-II) observed that the proposal to include audio-video recording in Phase-II of the e-Courts Project was placed before the e-Committee of Supreme Court in its meeting held on January 8, 2014 but it was decided with the approval of the Chief Justice of India that video recording should not be included in Phase-II of the e-Courts Project. It was decided to write to the e-Committee to explore whether video recording can be taken up on a pilot basis in some district courts.

Agenda 6: Legislative Initiatives in the Areas prone to excessive litigation

Mission Director elaborated on the proposed legislative and policy changes to reduce pendency in areas prone to excessive litigation. He mentioned that certain legislations like the Negotiable Instruments Act, Motor Vehicles Act, Electricity Act are responsible for the bulk of litigation and it was felt that legislative and policy measures needed to be introduced to resolve these cases outside the formal justice system. Accordingly National Mission has been pursuing the matter with the concerned ministries and departments to introduce the necessary legislative and policy changes.

To this end, an Inter Ministerial Group (IMG) under the chairmanship of Secretary (Justice) recommended amendments to the Negotiable Instruments Act, 1881 (N.I. Act) for referral these cases to ADR mechanisms for their speedy disposal. A draft Bill has been accordingly prepared by the Department of Financial Services, Ministry of Finance to introduce amendments to the N.I. Act and the Legal Services Authority Act in line with the recommendations of the IMG. Attorney General observed that proliferation of cases under N.I Act is matter of concern. He mentioned that as per the current system there is an imbalance as a drawer of a cheque has very little deterrence if his cheque is dishonoured. It is a liability for the creditor because to recover the amount he has to undergo long drawn litigation process. He suggested that as under the law there is presumption that when a cheque is issued it is for some consideration; therefore it can be proposed that the defaulter has to pay half of the amount before he is granted an opportunity to contest. The Chairman Law Commission was of the view that such a provision can be included in the civil proceedings where such suits for recovery of the sum are filed in civil courts. The Secretary, Department of Legal Affairs informed that they had already given their inputs on the draft Bill to amend N.I. Act and the matter was now with the Legislative Department.

Additionally the National Mission has collaborated with the Ministry of Road Transport and Highways to bring necessary legislative changes to introduce alternative mechanisms for collection of fine for traffic offences and adoption of a simplified procedure for expeditious resolution of motor accident claim cases. The Ministry of Road Transport has formulated the Road Transport and Safety Bill, 2014 which has provisions for resolution of traffic challan cases without resorting to litigation. It has also streamlined procedure to achieve speedy disposal in motor accident claim cases.

The Chairman Law Commission observed that courts are currently unnecessarily burdened with petty offences such as traffic and police challan cases. It is necessary to take these petty cases out of the formal court system because they require very little judicial involvement. He mentioned that the Law Commission in its 245th Report has suggested the creation of special courts officiated by executive magistrates to deal with these cases so as to remove these cases from the purview of formal courts. Further he also suggested the need for introducing online collection of fines for traffic offences to reduce the number of these cases coming to courts.

The Attorney General expressed the view that system of pre-deposit could also be considered for arbitration cases. Chairman, Parliamentary Standing Committee suggested that amendments to Arbitration and Conciliation Act are extremely necessary and the legislative framework needs to be made at par with other major international jurisdictions to make India a hub of international arbitration. Chairman Law Commission observed that making India a hub of international arbitration will not happen till our system is brought in line with international standards and best practices. For example, currently under the Arbitration and Conciliation Act the grounds to challenge an international arbitration award are too broad. To make Indian law at par with the international practice there is a need to limit the grounds to challenge an international arbitration award.

Agenda 7: Strengthening judicial training for expeditious disposal of cases

The Mission Director mentioned that judicial education is an essential element of the human resource development strategy for the judiciary. He invited the Officiating

Director, National Judicial Academy to provide her inputs on the subject of judicial education.

The Officiating Director, National Judicial Academy (NJA) gave an overview of the current training programmes being undertaken by the NJA and State Judicial Academies. She mentioned that the academies are undertaking regular programmes for High Court and Subordinate Court judges on various important matters including court and case management and use of information and communication technology to improve judicial functions. She further informed the members that the NJA also hosts regional level conferences to provide a platform for interaction among the judges from the region to share best practices.

Vice Chairman, Bar Council of India felt that although the judicial academies are engaged in providing training to the judiciary, there is very little facility available to the advocates for professional training. He mentioned that the infrastructure of judicial academies can be utilized to provide training to advocates as well. Secretary General, Supreme Court of India mentioned that a request can also be made to the judicial academies to undertake the training programmes for the presiding officers of the tribunals because they also complement the formal justice system. Prof. Menon suggested that the facilities of the judicial academies can be improved to cater to the training requirement of all the stakeholders of the judicial system who are involved in the dispensation of justice and that there should be some combined training programme. The suggestion of Prof. Menon was supported by other members of the Advisory Council.

Mission Director mentioned that there is a need to have well qualified and experienced faculty in the judicial academies. He mentioned that such faculty should ideally be selected from amongst the judges and academia to provide a mix of practical and academic inputs to the trainees. Prof. Menon mentioned that currently all the judicial academies are starved of competent faculty members. He stressed the need to create a pool of trained judicial manpower who can be appointed as faculty with the various judicial academies. He stated that a proposal in this regard was discussed in 5th Meeting of the Advisory Council to introduce a Masters Program on Judicial Administration or Judicial Education and Training. He mentioned that this would help create a cadre of persons trained in judicial management, judicial administration, research and training who can be largely be drawn from the existing pool of judicial officers, bar members and academics. These trained persons can then be appointed either as faculty members in the Judicial Academies or as court managers in courts. He mentioned that he has prepared a detailed proposal in this regard which he will send to the National Mission for sharing the same with other stakeholders. The Secretary (Justice) noted that this was a very useful suggestion and requested the NJA to work on the same.

Concluding the discussion, the Hon'ble Minister of State for Home Affairs was requested to expedite necessary reforms in criminal justice system relating to investigation, prosecution and prisons which are under the purview of his Ministry. The Hon'ble Minister affirmed his resolve to take up these issues with all concerned. He expressed his gratitude to all the members for the fruitful deliberations during the meeting. The meeting ended with a word of thanks to the Chair.

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List of participants of Seventh Meeting of Advisory Council of the National Mission for Justice Delivery and Legal Reforms held on 21st January, 2015

1. Shri Kiren Rijiju, Hon'ble Minister of State for Home Affairs
2. Dr. E.M. Sudarsana Natchiappan, Hon'ble Chairman, Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law & Justice
3. Justice (Retd.) Ajit Prakash Shah, Chairman, Law Commission of India
4. Shri Mukul Rohatgi, Ld. Attorney General of India
5. Prof. N.R. Madhava Menon, Jurist
6. Ms. Kusumjit Sidhu, Secretary, Department of Justice
7. Shri P.K. Malhotra, Secretary, Department of Legal Affairs
8. Shri V.S.R. Avadhani, Secretary General, Supreme Court of India
9. Shri Bhoje Gowda, Vice Chairman, Bar Council of India
10. Shri Anil Kumar Gulati, Joint Secretary (MD), Department of Justice
11. Shri Praveen Garg, Joint Secretary (J-I), Department of Justice
12. Shri Atul Kaushik, Joint Secretary (J-II), Department of Justice
13. Shri J.R. Sharma, Secretary, Bar Council of India
14. Dr. Geeta Oberoi, Acting Director, National Judicial Academy, Bhopal
15. Shri Narayan Reddy, Law Secretary, Government of Andhra Pradesh.

ANNEXURE - II

Proposal of Department of Justice (Govt. of India) to Fourteenth Finance Commission for Grants-in-Aid

(Rs. crore)

S.No.	High Court	Name of the State	Additional Courts	Fast Tack Courts	Family Courts	Re-designing Existing Courts	Technical Manpower Support	Scanning & Digitization	Law Schools	Lok Adalats	ADR Centres	Mediators	Capacity Building	Total State-wise Fund Required
1	Andhra Pradesh	Andhra Pradesh	23.03	108.21	0.00	71.5	14.40	15	0.86	3.19	0	9.75	15.39	**261.35**
2		Telengana	18.42	85.18	0.00	55	14.17	12	0.66	2.31	0	7.50	11.84	**206.64**
3	Gauhati	Arunachal Pradesh	11.51	0.00	0.00	0.5		20	0.00	0.06	12	13.16	0.42	**69.54**
4		Assam	48.35	82.88	55.26	30	12.086	31	1.01	0.80	19	20.90	11.07	**300.76**
5		Mizoram	18.42	16.12	9.21	4		9	0.00	0.09	5	6.19	1.84	**70.12**
6		Nagaland	25.33	6.91	20.72	1		13	0.00	0.09	4	8.52	0.76	**79.62**
7	Patna	Bihar	87.49	338.43	11.51	25	45.93	44	5.05	5.88	27	29.42	42.29	**662.06**
8	Chhattisgarh	Chhattisgarh	48.35	64.46	18.42	30.5	9.37	31	2.02	1.94	19	20.90	9.28	**255.74**
9	Bombay	Goa	4.61	11.51	0.00	7.5		2	0.00	0.75	0	1.55	1.47	**29.70**
10	Gujarat	Gujarat	39.14	400.59	36.84	116	28.10	38	1.52	6.56	18	25.55	55.42	**765.72**
11	P&H HC	Punjab	13.82	115.11	50.65	30	10.12	25	3.03	1.34	16	17.03	22.25	**304.50**
12		Chandigarh	0.00	4.61	0.00	0.5				0.13				**5.23**
13		Haryana	13.82	110.51	34.53	21.5	10.12	24	2.02	1.41	6	16.26	15.26	**255.42**
14	Shimla	Himachal Pradesh	6.91	29.93	0.00	19.5	4.83	14	0.00	1.25	9	9.29	3.88	**98.04**
15	Jammu & Kashmir	Jammu & Kashmir	25.33	48.35	0.00	38.5	9.37	25	0.51	0.63	0	17.03	6.91	**172.04**
16	Jharkhand	Jharkhand	55.26	115.11	6.91	36.5	16.32	28	2.53	2.94	12	18.58	16.19	**310.21**
17	Karnataka	Karnataka	34.54	218.72	29.93	91.5	25.38	35	2.02	5.88	1	23.23	30.40	**497.69**
18	Kerala	Kerala, Lakshadweep	9.21	94.39	0.00	64	12.99	16	1.01	3.31	10	10.84	12.08	**234.02**
19	Madhya Pradesh	Madhya Pradesh	59.86	306.20	46.05	88	39.88	59	3.54	8.56	27	39.48	40.22	**717.89**
20	Bombay	Maharashtra, D&N, Daman & Diu	41.44	469.67	50.65	228	60.13	40	3.03	12.00	25	27.10	56.52	**1014.00**
21	Manipur	Manipur	16.12	6.91	11.51	7	1.21	10	0.00	0.25	6	6.97	26.05	**92.84**
22	Meghalaya	Meghalaya	25.33	9.21	0.00	0.5	0.30	13	0.00	0.13	8	8.52	26.10	**90.66**
23	Orissa	Odisha	52.95	145.04	32.23	57	14.81	35	2.02	3.69	21	23.23	18.60	**405.67**
24	Rajasthan	Rajasthan	20.72	214.11	11.51	121	26.89	38	2.53	5.13	0	25.55	32.41	**497.99**
25	Sikkim	Sikkim	9.21	2.3	4.61	2	1.21	5	0.00	0.13	0	3.10	0.51	**27.68**
26	Madras	Tamil Nadu, Pudicherry	18.42	204.91	41.44	130	27.50	37	1.52	5.63	23	24.77	28.1	**542.13**
27	Tripura	Tripura	4.61	20.72	11.51	6.5	2.12	9	0.00	0.50	6	6.19	27.89	**95.00**
28	Allahabad	Uttar Pradesh	87.49	488.08	0.00	56	61.94	87	10.61	9.06	3	58.06	54.40	**915.20**
29	Uttarakhand	Uttarakhand	16.12	64.46	18.42	15.5	6.95	15	0.51	1.94	9	10.06	7.27	**165.55**
30	Calcutta	West Bengal, A & N Islands	23.03	216.42	39.14	45.5	23.57	22	3.03	7.06	14	14.71	28.13	**436.11**
31	Delhi	Delhi		145.05	0.00			0.00	1.52	1.00	0	0.00	22.02	**169.58**
		Grand Total	**858.83**	**4144.11**	**541.06**	**1400**	**479.68**	**752.50**	**50.50**	**93.61**	**300**	**503.44**	**624.98**	**9748.71**

Note: The grand total includes allocations to Union Territories.

Annexure - III

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

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

Action Point	Action Taken / Progress
National Litigation Policy & State Litigation Policies	States have notified their respective Litigation Policies. Implementation of litigation policies by states is being monitored. Department of Legal Affairs have finalized the National Litigation Policy. Approval of the Cabinet being sought.
Judicial Impact Assessment	Feasibility of Judicial Impact Assessment has been looked into by a Committee of Experts. Report of the Expert Committee has been circulated to High Courts and State Governments for their views.
All India Judicial Service (AIJS)	There has been no consensus among the States and High Courts on formation of All India Judicial Service. A resolution has been passed in Chief Justices Conference held on 3rd and 4th April, 2015 where in High Courts have been asked to review the existing mechanisms to fill up the vacancies expeditiously.
Reforms in the present Collegiums system of appointment to higher judiciary	99th Constitutional Amendment Act, 2014 and Judicial Appointment Commission Act, 2014 have been notified. The matter is subjudice in Supreme Court.
Amendment in N.I. Act	Necessary bill for amendment of NI Act, 1881 has been introduced in Parliament by Ministry of Finance.
Amendment in Arbitration & Conciliation Act, 1996	A bill to amend Arbitration and Conciliation Act has been formulated based on the recommendation of the Law Commission. The bill is likely to be introduced in the next session of Parliament.
Amendments to Motor Vehicle Act, 1988	Road Transport and Safety Bill has been formulated by Ministry of Road Transport and Highways. The bill is likely to be introduced in the next session of Parliament.

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

Action Point	Action Taken / Progress
1. Procedural changes in court processes / case management.	Process service was identified as a major bottleneck for timely delivery of justice. Detailed research was conducted on the subject. A research note was prepared and circulated to High Courts for improving the process service in civil and criminal matters. A positive response has been received from several High Courts on the suggestions made in the research note High Courts are in the process of amending their rules. The subject matter of re-engineering of court processes and case management is under active consideration of the National Court Management System (NCMS) of the Supreme Court. Detailed guidelines are being worked out based on the reports of the Sub-Groups constituted by NCMS. Process re-engineering exercise is also being carried out under eCourts Project.
2. Improving criminal	

justice system. 3. Promoting Alternative Methods of Dispute Resolution	A note on road map for improving the criminal justice system has been prepared and shared with the Ministry of Home Affairs. Law Commission has been requested to undertake a comprehensive review of Code of Criminal Procedure and Indian Evidence Act for statutory amendments to reduce and dis-incentivize delays. ADR centres are being set up in all new court complexes at District and Taluka Level. About 300 ADR centres in the old court complexes have been set up under 13 FC award. High Courts have framed necessary rules for referral of civil disputes to arbitration, mediation, conciliation and judicial settlement through Lok Adalats in terms of Section 89 of the Code of Civil Procedure. High Courts have been requested to promote dispute resolution through ADR by allotting higher units in performance appraisal to judicial officers.

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

Action Point	**Action Taken / Progress**
Increasing sanctioned strength of subordinate judiciary and filling up of posts.	The sanctioned strength of Judicial Officers in subordinate courts has increased from 17,715 as on 31-12-2012 to 20214 as on 31-12-2014. The working strength of subordinate courts has increased to 15634.
Legal Education Reforms	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.
Bar Reforms	Law Practitioners (Regulation and Maintenance of Standards in Profession, Protecting the Interest of Clients and Promoting Rule of Law) Bill, has been formulated by Department of Legal Affairs.
Strengthening Judicial Academies.	Research on Judicial Reforms is being promoted through Action Research Scheme. A compendium of legislative, Policy and Administrative initiative taken by the Government and Judiciary to expedite disposal of cases has been prepared and circulated to Judicial Academies.

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

This strategic initiative is being implemented through eCourt Mission Mode Project.

Strategic initiative: 5: **IMPROVING INFRASTRUCTURE**

Action Point	**Action taken / Progress**
Improving physical infrastructure of the District and subordinate courts	An amount of Rs.3131 crore has been released to the States / UTs under the modified scheme during the last four years as against Rs. 1245 crore released during previous 18 years. 16,422 court halls are available for subordinate judiciary. 2251 court halls are under construction at present. 10,143 residential units are available for judicial officers. 1799 residential units are under construction. State Governments / High Courts are working on Court Development Plans

Pendency Reductions

A **pendency reduction** campaign was initiated for the first time in July, 2011. High Courts were requested to prioritise disposal of cases that had been pending for a long duration, particularly those relating to senior citizens and marginalised sections of society. In 2012 the focus of the campaign was to make the judicial system free of cases that were over five years old. Pendency reduction campaign in 2013 focused on weeding out ineffective and infructuous cases from the judicial system.

As a result of concerted efforts made by various stakeholders for reduction of pendency and delays in the disposal of cases, the overall pendency in subordinate courts has declined marginally from 2.77 crore in 2010 to 2.64 crore in 2014.