Advisory Council

National Mission for Justice Delivery and Legal Reforms

Agenda for the Ninth 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 15th July, 2015

A copy of the minutes of the meeting of the Advisory Council of National Mission for Justice Delivery and Legal Reforms held on 15th July, 2015 is attached at ***Annexure - I*** for confirmation.

AGENDA 2: ACTION TAKEN REPORT ON THE MINUTES OF THE MEETING HELD ON 15TH JULY, 2015.

The following action taken on the minutes of the meeting held on 15th July, 2015 may be noted.

S. No.	Action Points	Action Taken Report
1.	States to increase their investment in justice sector on account of enhanced devolution of funds on the recommendations of 14th Finance Commission.	The Minister of Law and Justice has written to the Chief Ministers of States requesting them to take early action on the similar decisions taken during the Conference of Chief Ministers of the States and Chief Justices of the High Courts, held in April, 2015.
2.	The issue of lack of adequate data on investment by States in justice sector was raised during the meeting.	The information about the revenue and capital expenditure incurred by the States on judiciary during the last three years and the court fee collected by them has been obtained. The Statement indicating the details is placed at ***Annexure -II.***
3.	The issue regarding lack of proper judicial data base in the High Courts was raised in the meeting.	The Minister of Law and Justice has written to the Chief Justices of the High Courts for compiling Annual Reports and making online availability of judicial statistics on the website of the High Courts. The High Courts of Delhi, Himachal Pradesh, Jammu & Kashmir,

		Jharkhand, Kerala, Madras, Sikkim and Tripura have responded positively.
4.	Professor (Dr.) Madhav Menon wanted the National Mission to interact with DAKSH, an NGO, who have initiated '*Rule of Law*' project by collecting relevant data from High Courts and District and Subordinate Courts.	Several interactions have been held with the DAKSH team and their research project on '*Comparative analysis of causes for pendency in six High Courts and six District Courts in India*' has been approved under the '*Scheme Action Research and Studies on Judicial Reforms*'.
5.	Chairman, Bar Council of India observed that they are ready to discharge their responsibility for improving the standard of legal education in the country and for providing a comprehensive mechanism for training and skill development for the members of the Bar.	A comprehensive proposal from the Bar Council of India in this regard is awaited.
6.	Learned Attorney General and Professor Madhav Menon stressed on the need for specialisation on the part of the judicial officers as well as judges in the High Courts.	The recently enacted Commercial Courts, Commercial Division and Commercial Appellate Division of High Court Act, 2015 provides for specialisation of judicial officers / judges to deal with the high value commercial disputes.
7.	A number of recommendations made by Malimath Committee for reforms of Criminal Justice System are still to be implemented.	A comprehensive review of the Criminal Justice system has been undertaken by the Law Commission. Their report is awaited in the matter.

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Advisory Council

National Mission for Justice Delivery and Legal Reforms

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Agenda 3: Specialisation of Courts:

Introduction:

Specialised courts and tribunals are a rapidly growing trend across the world. Specialisation is a not a new phenomenon and there are many examples of judicial specialisation all over the world and across different legal systems. One of the earliest examples of a specialised court is the '*Delaware Court of Chancery*', established in 1792, which focuses mainly on business and corporate law. [1]Studies have indicated that particularly in developed or recently developed countries, the current trend is to create specialised courts for improving delivery of justice in certain areas such as environmental, taxation, corporate governance and crime against children. The logic behind the creation of specialised courts or tribunals is that specialisation leads to better access through more effective processing of litigation which, in turn, helps quicker contract enforcement and improved investment climate. The degree of specialization in either system tends to increase as economic development and the legal framework evolve. The more complex and specific the legal framework becomes and the more sophisticated the economic environment, the greater the calls for specialization.[2]

In India, specialised courts and tribunals are established under a particular statute to decide disputes arising with reference to the subject matter of the statute, *for example*, family courts have been established under the Family Courts Act, 1984, to ensure speedy settlement of disputes relating to family and marriage affairs, the Armed Forces Tribunal has been set up under the Armed Forces Tribunal Act, 2007 for the adjudication of disputes with respect to commission, appointments, enrolment and conditions of service in respect of the Armed Forces, labour courts have been established under the Industrial Disputes Act, 1947 for speedy adjudication of labour disputes and the Central Administrative Tribunal has been established for adjudication of disputes relating to

[1] "Developing Specialised Court Services-International Experiences and Lessons learned", Heike Gramkow and Barry Walsh, World Bank (2013)
[2] ibid

recruitment and condition of services of public services personnel. Recently, the Parliament passed "*the Commercial Courts*, *Commercial Division and Commercial Appellate Division in the High Courts Act 2015*" (***Commercial Courts Act)*** whereby the Commercial Division of the High Court or the Commercial Court as the case may be, shall have exclusive jurisdiction in relation to all Commercial Disputes wherein the value of the subject matter is Rs. 1 crore or more. The Act has also made substantive amendments to the CPC, such as detailed norms for imposition of costs, disclosure and inspection norms, case management hearing, procedure for summary judgment, other provisions for time bound disposal of commercial cases. The Commercial Court, the Commercial Division and the Commercial Appellate Division are required to maintain a monthly updated list of pending cases, the status of such cases and the number of cases disposed of. The State Government may also in the consultation with the High Court, establish necessary facilities for training of judges who may be appointed to such courts.

The Supreme Court has also created a special bench known as the Social Justice Bench to deal *especially* with social matters. In fact as far back as in 1984, the Law Commission had in its 95th Report on "*Constitutional Division within the Supreme Court-A proposal for*" recommended that the Supreme Court be segregated into two divisions, *namely*; (a) Constitutional Division; and (b) Legal Division. The Constitutional Division would deal with every case involving a substantial question of law as to the interpretation of the Constitution and the Legal Division would deal with all non-constitutional matters.

Issues:

One of the issues for consideration while considering the necessity and feasibility of creating specialised courts or benches in High Courts is to evaluate whether there is any special requirement to establish specialised courts or whether the existing trend of establishing tribunals as an alternative forum for dispute resolution is sufficient?

The Income Tax Appellate Tribunal was the first tribunal set up in India way back in 1941. Ever since then there has been a slow but steady proliferation of tribunals across the country to cover more and more areas of dispute resolution. As per a report by the Vidhi Centre for Legal Policy (***Vidhi***), between 1996 and 2013 at least 18 new tribunals

were set up by the Central Government[3]. Articles 323 A and 323 B of the Constitution of India empowers the Parliament to establish tribunals for the adjudication of administrative disputes or for any other matter and to exclude the jurisdiction of all courts, *except* the jurisdiction of the Supreme Court under Article 136. However, the Supreme Court in the case of *L. Chandra Kumar v. Union of India*[4] while upholding the power of the Parliament to establish tribunals held that the writ jurisdiction of the High Court under Article 226 of the Constitution of India is part of the basic structure and therefore it cannot be excluded by any law. Therefore, as the law stands today, tribunals have both original and appellate jurisdiction and the decision of the appellate tribunal may further be appealed against before the High Court and finally before the Supreme Court.

As far as the establishment of courts is concerned, Article 247 of the Constitution empowers the Parliament to establish certain additional courts. Under the said Article, Parliament has the power to enact a law for establishing additional courts for better administration of laws made by Parliament or for any existing law made by Parliament on any matter enumerated in the Union List.

As per judicial pronouncements[5], some of the main differences between courts and tribunals include; (i) courts are exclusively manned by Judges whereas tribunals can have a Judge as the sole member, or can have a combination of a Judicial Member and a Technical Member who is an '*expert'* in the field to which Tribunal relates; and (ii) courts are governed by detailed statutory procedural rules, in particular the Code of Civil Procedure and Evidence Act, requiring an elaborate procedure in decision making, whereas tribunals generally regulate their own procedure applying the provisions of the Code of Civil Procedure only where it is required, and without being restricted by the strict rules of Evidence Act.

The freedom given to the tribunals to formulate their own rules of procedure and not be bound by procedures laid down in the CPC or the Evidence Act combined with the fact that members of the Tribunal consists of judicial members as well as technical member appears to make tribunals a more attractive provision than establishing separate specialized courts. However, as per the report prepared by Vidhi, stakeholders have

[3] "State of the Nation's Tribunals", Vidhi Centre for Legal Policy
[4] AIR 1997 SC 1125
[5] (2010) 11 SCC1

raised various concerns regarding the functioning of tribunals, *namely*, that though tribunals are not required to follow the procedure laid down in the CPC, they seem to nevertheless follow the same provisions, leading to delays. On the other hand, one of the issues that flows from the freedom of the tribunal to determine their own rules of procedure is the issue of lack of uniformity across tribunals.

Further, as tribunals do not operate under a nodal ministry and are established under different Ministries / Departments, there is no uniform means to gather information regarding their functioning. This in turn leads to complete disarray in dissemination of any form of data or information regarding the working of the tribunals. As a result, the quality of data regarding the cases pending before the tribunals is poor and often inadequate. However, if we are to analyse the data of the two tribunals, *i.e.* the Debt Recovery Tribunal and the Industrial Tribunal, it may be inferred that the stated objective of reducing the pendency has not been achieved. For example, in 2013, there were 51,349 cases pending before the Debt Recovery Tribunal, an increase of 8,482 cases from the previous year. Similarly, there were 13,740 cases pending before the Industrial Tribunal / Labour Court in 2013. However, it is pertinent to note that even in cases of specialised courts, there is a high pendency of cases. For example, there were 6,617 cases pending before the CBI courts in 2013. Similarly, as regards Family Courts are concerned, the number of pending cases range from 31,075 cases pending in Maharashtra (as on January 31, 2015) to 52, 541 cases pending in Kerala (as on December 31, 2014).

Due to differences in composition and eligibility requirements for members, the performance of the tribunals is difficult to measure. In *Union of India v R. Gandhi, President Madras Bar Association*[6], the Supreme Court held that tribunals have not achieved full independence as when the tribunals are formed, they are mostly dependent on their sponsoring departments for funding and infrastructure. The statutes constituting tribunals routinely provide for members of civil service from the sponsoring departments becoming members of the tribunals. Subsequently, the Supreme Court[7] has been pursuing the larger issues of uniformity of service conditions of Chairpersons and Members of tribunals. By an order dated February 8, 2013, the Supreme Court directed the Government to take a decision on the issues relating to the uniformity of tenure, age of retirement and condition of service of Chairpersons and Members of tribunals. In

[6] (2010) 6 S.C.R 857

[7] *Rajeev Garg v Union of India* W.P. (C) No. 120/2012

pursuance of this order of the Supreme Court, the Government constituted a Group of Ministers on March 13, 2013 to "*consider and examine all issues relating to uniformity of retirement age, conditions relating to the tenure of appointment and re-appointment and provisions concerning residential and office accommodation for quasi-judicial / regulatory bodies / tribunals etc. manned by the sitting / retired judges of the Supreme Court / High Courts keeping in view all related aspects including the issues that have arisen in different cases before the Supreme Court and functions entrusted to such bodies".* Subsequently, the Government introduced the *Tribunals, Appellate Tribunals and other Authorities (Condition of Service) Bill, 2014* ("***Tribunal Service Bill, 2014"***) in the Rajya Sabha on February 19, 2014. The Tribunal Service Bill seeks to establish uniform conditions of service for the chairpersons and members of tribunals and authorities. These conditions of service include term of office, reappointment, age of retirement, allowances, and leave entitlement for chairpersons and members of the tribunals. It sets the age of retirement for chairpersons and members who are: (i) former Supreme Court judges at 70 years; (ii) former Chief Justices or judges of the High Court at 67 years; and (iii) any other person at 65 years.

The Tribunal Services Bill was referred to the Parliamentary Standing Committee on Law and Justice on February 26, 2014. The Parliamentary Standing Committee submitted its report on February 26, 2015. Some of the salient recommendations of the Committee were:

- *Creation of three different categories of Tribunals for the purposes of determining uniform service conditions: (i) tribunals headed by a Supreme Court Judge and where appeals against the order of the tribunal lies to the Supreme Court; (ii) tribunals headed by a Supreme Court Judge or Chief Justice of High Court and tribunals whose order is appealable to a High Court; and (iii) tribunals headed by a District Judge with certain experience or one qualified to be a District Judge. Those tribunals which do not qualify in the strict sense, including regulatory bodies, should be excluded.*
- *Uniform retirement age of 70 years should be fixed for the chairperson as well as members.*
- *The Tribunal Services Bill provides for five year tenure for members of a Tribunal. The Committee recommended that a term of seven years may be provided so that knowledge and expertise of members may be better utilized.*

- *The grounds for removal of Chairman and members must be made uniform and should be included in the Bill*.
- *The Tribunal Services Bill permits reappointment for a term of five years. The Committee noted that a similar provision in relation to the National Tax Tribunal was struck down by the Supreme Court in 2014. The Supreme Court had held that a provision for reappointment would undermine the independence of the members. It recommended that the provision relating to reappointment be omitted.*

In light of the above, it may be inferred that specialised courts and tribunals complement each other. It may be more feasible to establish specialised courts for areas, which do not necessarily require a technical expert to be a part of the bench and in which the issues do not require the members of the bench to have any special technical knowledge. On the other hand, areas which require technical and certain specialised skill and knowledge may be more suited for adjudication by a tribunal, which will have a technical member on the bench.

International Experience

I. **United States of America**

The United States has a number of specialised courts [8]both at the federal level as well as the state level. These include:

- ✓ **U.S. Tax Court**: The court consists of 19 judges, including a chief judge, appointed by the President with the advice and consent of the Senate for a 15 years term. Although the Court is physically located in Washington, D.C., the judges travel nationwide to conduct trials in various designated cities[9].
- ✓ **Bankruptcy Courts**: There are 94 federal bankruptcy or insolvency courts across the country. These courts have the mandate to handle both corporate as well as individual bankruptcy claims. Appeals from the decisions of the bankruptcy courts lie with either the district court or the Bankruptcy Appellate Panels (if such a panel has been established by the circuit's judicial council).
- ✓ **US Court of International Trade:** The court has nationwide jurisdiction over civil actions arising out of customs and international trade laws of the United States. The

[8] Overview of Specialised Courts", Markus Zimmer, International Journal For Court Administration, August 2009
[9] https://www.ustaxcourt.gov/about.htm

subject matter jurisdiction of the court is limited by the U.S. Constitution and specific laws enacted by the U.S. Congress.

In addition to the aforementioned specialised federal courts, there are also **certain specialised state courts** *such as* Family Courts, Environmental Courts, Workers Compensation Courts, Land Courts *etc*. Further, certain States such as New York, Nevada, North Carolina, Delaware, Chicago and New Jersey have established commercial courts (or divisions / benches within the existing courts).

II. **South Africa-** South Africa has a number of specialised courts / tribunals such as Children's Court (Jurisdiction includes adjudication upon matters involving the care and well-being of children, paternity of a child and adoption of children *etc.*), Companies Tribunal, Consumer Commission and Tribunal, Income Tax Court; and Land Claims Court.

III. **Spain-** Spain also has a number of specialised court such as :

- ✓ **Commercial Courts-** Jurisdiction includes dealing with insolvency issues, unfair competition, intellectual property and advertising. They also have the jurisdiction to recognise and enforce foreign sentences and other legal and arbitration rulings;
- ✓ **Courts with special duties in the matter of criminal sentencing-** Jurisdiction includes enforcing custodial sentences and security measures and control over the disciplinary power of the sentencing authorities; **and**
- ✓ **Courts dealing with violence cases against women –** Jurisdiction includes investigation into homicides, abortion, battery, sexual crimes. It can also hear cases involving paternity disputes, divorce or annulment of marriage.

Advisory Council may deliberate on the aforementioned issues and provide us with the necessary guidance.

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Advisory Council

National Mission for Justice Delivery and Legal Reforms

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Agenda 4: Judicial Accountability:

I. Introduction & Rationale:

Judiciary is one of the main organs of democracy and just like all other branches of the State should be accountable to the general public it serves. The most common argument that comes forth while discussing judicial accountability is that it would interfere with judicial independence and its function to maintain an unbiased approach to uphold the Constitution and Laws of the country. The foundation of judicial independence is rooted in people's trust in the system and to sustain the trust it becomes imperative to conduct oneself with the highest standards of integrity and be held accountable to them. Judicial accountability refers to the accountability under democratic Government of those who govern to those whom they govern—as well as to the rule of law.[10]. Mere transparency in the functioning of the judiciary cannot compromise its independence.[11]

In India, the debate between judicial accountability and judicial independence has existed forever and is often characterized by the judiciary's continued reluctance to supervision and regulations. If judges or court personnel are suspected of breaching public's trust, measures to detect, investigate and sanction such practices have to be in place. In the existing system, scope to raise concerns against the judiciary or its officers is extremely narrow and avenues limited. In the above context, it becomes pertinent to analyze the existing mechanisms, its drawbacks and examine whether there is a scope for improvement.

II. Current Situation

The Constitution of India provides for a single hierarchical judicial system with the Supreme Court standing at its apex. While explaining the nature of our judicial system, Dr. B. R. Ambedkar said in the Constituent Assembly that, "…*the Indian federation, though a*

[10] Judicial Accountability, Fairness, and Independence, Roger K Warren, Court Review, The Journal of the American Judges Association, 2005, Available at: http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1043&context=ajacourtreview
[11] Judicial Accountability or illusion , The National Judicial Council Bill, By Prashant Bhushan, Available at: http://bharatiyas.in/cjarold/files/judicial_acc_or_illusion_pb.pdf

dual polity, has no dual judiciary at all." The High Court and the Supreme Court form one single integrated judiciary having jurisdiction and providing remedies in all cases under the Constitutional Law, Civil Law and the Criminal Law."[12]. While the Constitution explains the establishment, structure and scope of courts, it is vague on mechanisms to enforce judicial accountability *especially* when it comes to higher courts.

Article 235 of the Constitution of India provides for '*control*' of the High Court over the subordinate judiciary clearly indicating that the provision of an effective mechanism to enforce judicial accountability is a part of our constitutional philosophy.[13] It is considered that entrusting power over the subordinate judiciary to the High Court will preserve the independence of judiciary, and respect the directive principle of separation of judiciary from executive.[14]

The Supreme Court and the High Courts are regarded as the custodians and watchdog of the fundamental rights and freedoms of the people and their constitutional rights. While the makers of the Constitution placed such elevated responsibility with the courts, they did not visualize the need for any method for enforcement of judicial accountability on higher courts, other than by the process of impeachment [Articles 124 (4) and 217 (1) proviso b] for proved misbehaviour or incapacity.

A. Judges (Inquiry) Act, 1968

The process as contemplated in Article 124 (5) was formulated and laid down in the Judges (Inquiry) Act, 1968. It provides the procedure for the investigation and proof of misbehaviour and incapacity of Judges of the Supreme Court (including the Chief Justice of India), the Chief Justices and Judges of the High Courts, where reference is made by the Speaker or the Chairman to a three-Member Committee after admitting a Motion initiated by a specified number of Members.[15]

The first case which went up to the Supreme Court in connection with an inquiry under the Judges (Inquiry) Act, 1968 was the case of Justice V. Ramaswami,[16] former

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[12] C.A.D., Vol. VII, at 36.
[13] Note: Re: Mechanism for Judicial Accountability, Justice J S Verma, Former Chief Justice of India, Available at: http://bharatiyas.in/cjarold/files/mechanism_jud_acc_verma.pdf
14 Ibid
15 195th Law commission Report, 2005, at p.3
16 (1991 (3) SCC 655)

Judge of the Supreme Court. In that case, a motion to impeach the Judge was moved in the Lok Sabha in December 1991. However, the motion for removal did not secure the requisite majority and, therefore, it failed.

B. In-house procedure

In the case of certain allegations against Justice A. M. Bhattacharjee, (the then Chief Justice of Bombay High Court), the Supreme Court in 1995 held, in a public interest litigation case, that an In-House "*peer review*" procedure can be laid down by the judiciary for correcting misbehaviour or deviant behaviour and that where the allegations do not warrant removal of a Judge by address of the Houses, it is permissible for the in-house mechanism to impose minor measures.[17]]. In this very decision, the Supreme Court highlighted the need for imposition of certain minor measures in the event of the proved misbehaviour or incapacity not warranting removal.[18]

The Supreme Court in 1997 appointed a committee consisting of three Supreme Court Judges and two senior-most Chief Justices of High Courts[19] to lay down the "*in-house procedure*", for taking suitable remedial action against Judges, who by their acts of omission or commission, do not follow the accepted values of judicial life, including the ideals expressed by the Supreme Court in the "***Restatement of Values of Judicial Life***". This report of the committee was adopted with certain amendments, in a Full Court Meeting of the Supreme Court held in December, 1999.[20]

The adoption of the In-House Procedure was done with a view to enable a complaint against a Judge being dealt with at the appropriate level within the institution.[21] The procedure is said to serve a dual purpose. In the first place, the allegations against a Judge would be examined by his peers and not by an outside agency and thereby the independence of the judiciary would be maintained. Secondly, the awareness that there exists machinery for examination of complaints against a judge would preserve the faith of the people in the independence and impartiality of the judicial process.[22]

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17 C. Ravichandran Iyer v. Justice A.M. Bhattacharjee 1995 (5) SCC 457
18 Ibid
19 Justice S.C. Agrawal, Justice A.S. Anand, and Justice S.P. Bharucha, and two senior-most Chief Justices of High Courts, namely, Justice P.S. Misra of the Andhra Pradesh High Court and Justice D.P. Mohapatra of the Allahabad High Court
20 In House Procedure for Inquiry into complaints against Supreme Court and High Court Judges, Dr. Ashok Dhamija, December, 2014, Available at http://tilakmarg.com/opinion/in-house-procedure-for-inquiry-into-complaints-against-supreme-court-and-high-court-judges/
21 Report of the Committee on In-House Procedure, Available at: http://supremecourtofindia.nic.in/FileServer/2014-12-31_1420006239.pdf
22 Ibid.

Procedure for initiating a complaint under the as per the 'In-House Procedure'

The complaint in this process is received by the President of India, Chief Justice of India or the Chief Justice of the High Court. An inquiry committee shall be constituted for reviewing the complaint. The nature of inquiry by the committee shall be that of fact finding wherein the Judge concerned would be entitled to appear and have his say and that there will be no formal judicial inquiry involving the examination and cross-examination of witnesses and representation by lawyers.

Based on the findings of the committee if the allegations are found to have sufficient substance and the misconduct disclosed is so serious that it calls for initiation of proceedings for removal of the Judge, the Chief Justice of India can either (a) advice the concerned Judge to resign or seek voluntary retirement; (b) if the judge is unwilling to resign or seek voluntary retirement, advice the Chief Justice of the concerned High Court to not allocate any judicial work to the Judge concerned and inform the President of India and the Prime Minister that this has been done because allegations against the Judge were found to be so serious as to warrant the initiation of proceedings for removal (copy of the report by the committee to be attached).

If the committee finds that there is substance in the allegations but the misconduct is not so serious as to call for initiation of proceedings for removal of the Judge, the Chief Justice of India shall call the Judge concerned and advise him accordingly and may also direct that the report of the committee be placed on record.

It can be argued that the in-house mechanism is lopsided as the process of enquiry is not open to the complainant and is one-sided. There have hardly been any inquiries even though there have been many reports and complaints of judicial misbehavior. Further, it has also excluded any procedure to explore allegations if they were to be made against the Chief Justice of India. This self-accountability is akin to a judge sitting to decide his own cause, something which has been declared by the courts to be in violation of the principles of Natural Justice.

C. Recent proposed legislative measures

In 2006, the Judges (Inquiry) Bill, 2006 (***Inquiry Bill***) was introduced to replace the Judges (Inquiry) Act, 1968. The Bill was referred to the Parliamentary Standing Committee (***PSC***) on Personnel, Public Grievances and Law and Justice for examination and report. On the recommendations of the PSC, it was proposed that the Inquiry Bill be withdrawn and a revised Bill titled "*The Judges (Inquiry) Amendment Bill, 2008*" be introduced in the Parliament for *repealing* the Judges (Inquiry) Act, 1968. This Bill was to provide for (a) the establishment of a National Judicial Council; (b) empower it to investigate complaints against the Judges of the higher judiciary; and (c) recommend suitable action after following a prescribed procedure. However, due to dissolution of 14th Lok Sabha, "*The Judges (Inquiry) Amendment Bill, 2008*" could not be introduced.

Meanwhile, another Bill titled "*The Judges (Declaration of Assets and Liabilities) Bill, 2009*" (***Judges Assets and Liabilities Bill***) was prepared. This Bill provided for every Judge of the Supreme Court and the High Court's including the Chief Justices, to make a mandatory declaration of his / her assets and liabilities, including those of his / her spouse and his / her dependent children. There was opposition to this Bill and therefore, it was decided to defer the introduction of the Judges Assets and Liabilities Bill and prepare a comprehensive law, incorporating salient features of the Inquiry Bill and the Judges Assets and Liabilities Bill.

A comprehensive Bill titled "*The Judicial Standards and Accountability Bill, 2010*" (***Judicial Accountability Bill***) was introduced in the Lok Sabha in 2010 with this objective. It aimed to achieve the objectives of creating a '*statutory mechanism*' for enquiring into individual complaints against Judges of the High Courts and Supreme Court and recommending appropriate action, enabling declaration of assets and liabilities of Judges and laying down judicial standards to be followed by Judges. The Bill sought to replace the Judges Inquiry Act 1968 while retaining its basic features.

The Judicial Standards and Accountability Bill was passed by the Lok Sabha on March 29, 2012. In the meanwhile, based on consultation with the forum of retired Chief Justices, it was proposed to make a few official amendments, so that the Judicial Standards and Accountability Bill finds greater acceptance among the judiciary. Accordingly, some official amendments were made. Most of the Judicial Standards

included were derived from the Supreme Court approved "*Restatement of Values of Judicial Life*". As such, the Restatement of Values of Judicial Life was added as Part 2 of the Schedule to the Judicial Standards and Accountability Bill. It could not be taken up for consideration in the last session of the Parliament and lapsed due to dissolution of the 15th Lok Sabha. The matter was further discussed in the meeting of experts / eminent jurists on July 28, 2014 along with the proposal for setting up of a Commission for Appointment of Judges in higher judiciary wherein all members felt that the Judicial Standards and Accountability Bill in its present form needs to be modified and re-drafted.

Judicial Accountability Mechanisms in Other Countries

Judicial accountability and answerability of Judges is not a recent concept. Several countries have established procedures and incorporated provisions in their Constitutions to ensure accountability of judiciary. This is to prevent concentration of power in the hands of a single organ of the State *especially* in countries where judicial activism interferes with and invades into the domain of other organs.

United Kingdom[23]

In the United Kingdom, the Lord Chief Justice (head of judiciary) and the Lord Chancellor (member of cabinet) are jointly responsible for considering and determining complaints about the personal conduct of all judges in England and Wales. The Judicial Complaints Investigations Office (earlier known as the Office for Judicial Complaints (OJC)) was established in April 2006, to handle these complaints and provide advice and assistance to the Lord Chief Justice and Lord Chancellor in their performance of this joint responsibility.

All complaints are made, or referred, to the Judicial Complaints Investigations Office, which then assesses whether the complaint falls within the system.

Complaints about judicial conduct are considered by a nominated judge, who will either make a recommendation straightaway to the Lord Chief Justice and the Lord Chancellor, or refer the case to an investigating judge. Ultimately a recommendation will be made to the Lord Chief Justice and Lord Chancellor, who will have to decide what

[23]This section is a brief description of the process for judicial accountability available at the UK government website for Courts and Tribunals Judiciary, details available at https://www.judiciary.gov.uk/about-the-judiciary/the-judiciary-the-government-and-the-constitution/jud-acc-ind/jud-conduct/

action, if any, to take. The judge who is the subject of the complaint has a right to make submissions at every stage and, if he or she is not content with the decision, can refer the case to a Review Body.

The Lord Chief Justice has the right to give a judge formal advice, a formal warning or a reprimand, or to suspend them from office in certain circumstances. The vital principle is, however, that none of these actions can be taken unless the Lord Chancellor and the Lord Chief Justice agree on it. ***For a government minister to be involved in this way in judicial discipline may appear to strain the principle of judicial independence. However, the procedure helps to dispel any suspicion that judges would not wish to take action against a fellow judge, and also provides a safeguard. Equally, making the responsibility for discipline a joint responsibility of the Lord Chief Justice and the Lord Chancellor ensures that the suspicion cannot arise that judges can be disciplined on political grounds: a further safeguard of judicial independence and the rule of law.*** The fact that both have a role ensures that the independence of an individual judge is not improperly infringed, either by the executive, or internally by another more senior member of the judiciary.

Complaints against magistrates follow a different course as they are considered by Advisory Committee of Magistrates, which recommends the appropriate action to the Lord Chief Justice and the Lord Chancellor. It is also possible to ask for the Judicial Appointments and Complaints Ombudsman to review any decision made by the Office for Justice Complaints, thus providing a further route of appeal for those dissatisfied with a judge's personal conduct.

United States of America:

Judiciary is established as an independent third branch of the Government under Article III of the US Constitution which gives it the power to hear and adjudicate all cases arising out of Constitution and laws of the USA with impartiality. Article III also states that a federal judge can only be removed through impeachment by the House of Representatives and conviction by the US Senate for "treason, bribery or other high crimes or misdemeanors". Short of removal, federal judges can be disciplined for violations of the

Code of Conduct for United States Judges - a set of ethical principles and guidelines adopted by the Judicial Conference of the United States.[24]

In the United States, Judges, judicial employees, and federal public defender employees nationwide are bound by ethics laws and prescribed codes of conduct. These govern the proper performance of official duties and limit certain outside activities to avoid conflicts of interest. Most States have adopted the Model Code of Judicial Conduct compiled by the American Bar Association in 1990, which governs judges' conduct during judicial proceedings, as well as speech, business activities, civic, charitable, political and other associations. The detail of the actual complaints procedure at federal district level is set out in the Judicial Councils Reform and Judicial Conduct and Disability Act. [25]

Under the Judicial Conduct and Disability Act, Chief Judges and circuit judicial councils, and the Judicial Conference of the United States when appropriate, investigate and resolve any submitted claim that a Judge "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" or "is unable to discharge all the duties of office by reason of mental or physical disability." [26]The Judicial Conduct and Disability Act establishes a process by which any person can file a complaint in federal court alleging that a federal judge has engaged in "conduct prejudicial to the effective and expeditious administration of the business of the courts" or has become, by reason of a temporary or permanent condition, "unable to discharge the duties" of the judicial office. This process cannot be used as a means to collaterally attack a judge's rulings.[27]

Federal judiciary oversight mechanisms are also in place in the United States to deter and prevent fraud, waste, and abuse, and address mistakes should they occur.[28] Oversight mechanisms also promote compliance with ethical, statutory, and regulatory standards. By statute, responsibility for administering the Third Branch rests with the Judicial Conference of the United States, regional circuit judicial councils, the individual courts themselves, and, in specified areas, the Director of the Administrative Office of the

[24] Constitution, Article III, Legal Information Institute, Cornell University Law School, Available at: https://www.law.cornell.edu/constitution/articleiii
[25] http://www.legalindia.com/%E2%80%9Cjudicial-accountability%E2%80%9D/
[26] United States Courts, About Federal Courts, Administrative Oversight and Accountability, Available at: http://www.uscourts.gov/about-federal-courts/judicial-administration/administrative-oversight-and-accountability
[27] Ibid
[28] Ibid

U.S. Courts (AO). Internal safeguards exist at the local, regional, and national levels to deter waste and wrongdoing, and enable detailed performance assessments.[29]

III. Recommendations

1. *A mandate therefore, to inculcate independence, impartiality and accountability among judges should be considered without delay. This could be done by reintroducing a modified 'Judicial Standards and Accountability Bill'*.
2. *The Bill could be further strengthened by answering questions such as, whether it would be feasible to penalize frivolous complaints that are confidential, whether the scrutiny panel should have judges from the same High Court and whether having non-judicial members in the oversight committee will be acceptable to judiciary. Clarity regarding the process of inquiry, power to impose punishment (minor measures), the extent to which the minor measures are enforceable etc. will also give teeth to the pending legislation*.
3. *The Bill envisaged a three-tiered structure comprising of the National Judicial Oversight Committee, the Scrutiny Panel and the Investigation Committee for the purpose of investigation based on a report of the scrutiny panel. The National Judicial Oversight Committee was to comprise of 5 members. The composition of the Oversight Committee and the Scrutiny Panel gave rise to many debates. India being a common law country derives most of its modern judicial framework from the British legal system.[30] If one were to take a cue from the English system of judicial accountability a simpler yet comprehensive system could be suggested.*
4. *A discernible mechanism giving due consideration to the principles of common law would be to propose an oversight mechanism with equal representation from all arms of democracy. A National Judicial Oversight Committee for Judicial Accountability could be established comprising of the Chief Justice of India, representing the Judiciary, the Minister of Law and Justice representing the Legislature and an Eminent Person representing the Civil Society. The National Judicial Oversight Committee could then develop its own procedures and make rules for creation of similar structures at the State Level as well.*

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[29] Ibid

[30] KG Balakrishnan, An Overview of the Indian Justice Delivery Mechanism,2008, http://www.supremecourtofindia.nic.in/speeches/speeches_2008/abu_dhabi__as_delivered.pdf

Advisory Council

National Mission for Justice Delivery and Legal Reforms

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

Agenda 5: Pre Litigation Dispute Resolution

I. Introduction

The Constitution of India under Article 39A mandates the State to secure that the operation of the legal system promotes justice on the basis of equal opportunity and ensure that the same is not denied to any citizen by reason of economic or other disabilities. Article 14 guarantees equality before the law and the equal protection of the laws. While the Constitution seeks to provide every citizen, equal access to justice, the quality of justice and the delay in resolving cases negates this ideal. The high pendency of cases is well known and this has an obvious direct impact on the quality and speedy of resolution of cases. Further, another important facet which needs to be considered is that there is a significant part of the population which has little or no access to any form of justice due to the cost and time involved in initiating legal action.

The Supreme Court in *Sheela Barse v. State of Maharashtra*[31] had emphasised that legal assistance to a poor or indigent accused whose life or personal liberty is in jeopardy is a constitutional imperative mandated not only by Article 39A, but also by Articles 14 and 21 of the Constitution. The court also observed that the absence of legal support may result in unfairness and inequality.

Access to speedy justice is not only the fundamental right of every citizen but it also mandatory for administration of justice. Delay in disposal of cases has not only reduced the faith of every citizen; it has also defeated the concept of equal access to justice. So, there is an urgent need to develop and strengthen alternate mechanisms of grievance redressal.

[31] 1983 AIR 378

The need for quick and effective disposal of cases had been observed by the Supreme Court in *Salem Bar Association vs. Union of India*[32] pursuant to which the Alternative Dispute Resolution and Mediation Rules, 2003 (***ADR Rules***) were framed. As per the ADR Rules, the court has to provide the necessary guidance to the parties for them to choose the most appropriate mode (as far as time and expense is concerned) of the Alternative Dispute Resolution (***ADR***) from the methods specified in Section 89 of Code of Civil Procedure (***CPC***).

The courts have by and large followed the procedure prescribed under the ADR Rules and resorted to the provisions prescribed in Section 89 of the CPC. However, these provisions come into the picture only after the institution of the litigation; they do not address the requirement of ADR mechanisms at the pre-litigation stage.

The Law Commission in its 222nd Report[33] had mentioned that it is the duty of a welfare state to provide judicial and non-judicial dispute-resolution mechanisms to which all citizens have equal access for resolution of their legal disputes and enforcement of their fundamental and legal rights. In the meeting of the Chief Justices and Chief Ministers on 7th April, 2013, the need of ADR techniques in disposal of the cases was also emphasized and it was resolved that Section 89 should be tapped fully to reduce the pendency of the courts and that the ADR mechanism shall also be developed for settlement of disputes at the pre-litigation stage. Further the States need to take necessary steps to resolve the disputes at a pre-litigation stage so that citizens are not compelled to go to the courts; only those disputes should reach the court in which there is a significant legal question to be addressed.

Mediation at the pre-litigation stage as an important tool of access to justice has been given judicial recognition by the Supreme Court of India. In *K. Srinivas Rao vs. D.A. Deepa*[34] Justice Desai observed as follows:

The idea of pre-litigation mediation is also catching up. Some mediation centres have, after giving wide publicity, set up "Help Desks" at prominent places including facilitation centres at court complexes to conduct pre-litigation mediation. We are informed

[32] *AIR 2005 (SC) 3353*
[33] 222nd Report of The Law Commission of India; Need for Justice-dispensation through ADR etc.
[34] (2013) 5 SCC 226

that in Delhi Government Mediation and Conciliation Centres, and in Delhi High Court Mediation Centre, several matrimonial disputes are settled. These centres have a good success rate in pre-litigation mediation. If all mediation centres set up pre-litigation desks / clinics by giving sufficient publicity and matrimonial disputes are taken up for pre-litigation settlement, many families will be saved of hardship if, at least, some of them are settled.

II. Lok Adalats

Lok Adalat is a forum where the disputes / cases pending in the court of law or at pre-litigation stage are settled / compromised amicably. The Lok Adalat has been given statutory status under the Legal Services Authorities Act, 1987 (***LSA***). Under the LSA, the award made by the Lok Adalats is deemed to be the decree of a civil court and is final and binding on all parties and no appeal lies before any court against its award. However, only compoundable offences can be referred to Lok Adalats. The basis of power of Lok Adalats is conciliation and the promotion of conciliation culture is one of the most important objectives of the Lok Adalat movement.

Lok Adalats have resulted in disposing off a number of cases and has emerged to some extent as a viable alternative mode of dispute resolution. However, the system is still by and large and adversarial system and hence the parties to the case have a limited role in negotiating a resolution which is favorable to both sides.

III. Mediation

Unlike Lok Adalats, mediation is one ADR mechanism where the parties are encouraged to directly participate in the process where the discussion consists of both the applicable law and the underlying interest of the parties. Mediation which is by definition non-binding, and encourages the parties to voluntarily reach an agreement that meets all the parties' needs. Pre litigation mediation, therefore, is an extremely important aspect from the point of view of both, the parties and the judicial system.

Giving parties an option of to explore resolution through mediation at the pre-litigation stage without invoking the jurisdiction of the courts would be beneficial in terms of time, money and preservation of relationships. Such pre-litigation mediation may be

conducted by any institution or *ad-hoc* mediators and a range of alternatives in this arena are available in the country.

One such initiative is the Delhi Dispute Resolution Society (Regd.) as part of the Department of Law & Justice, Government of NCT Delhi, which provides the platform for the parties to settle their disputes with the help of neutral mediators. The statistics as mentioned by the Society states that between 2009 till March 31, 2015 a total of 10,865 disputes have been resolved of the 27,997 cases received. Further cases at the pre-litigation stage are also been instituted and dealt with at various mediation centres and clinics set up by the High Courts and District Courts of various States.

IV. International Perspective

i. United States of America

The National Conference of Commissioners on Uniform State Laws collaboration with American Bar Association Section of Dispute Resolution, adopted in 2001, the Uniform Mediation Act (amended in 2003), the purpose of the Act is to promote the use of mediation as an appropriate dispute resolution mechanism while protecting the rights of the parties involved in the process.

ii. Australia

Federal and State Parliaments of Australia have introduced legislation requiring parties to attempt mediation before commencing proceedings in certain contexts. The Civil Dispute Resolution Act 2011 aims "*to ensure that, as far as possible, people take genuine steps to resolve disputes before certain civil proceedings are instituted*"

V. <u>Issues / Concerns</u>

Despite the growth of mediation at the post litigation stage and the appreciation of pre litigation mediation centres and clinics, the experience of pre-litigation mediation has not been very encouraging. The reasons for the slow adoption of pre-litigation mediation include:

(i) No legislative / statutory backing

There is no legislation to back the mediation process in the country and the entire mediation process is carried out in the country through the Mediation and Conciliation Project Committee established by the Hon'ble Supreme court of India. Also all mediation activities are being managed and headed by the High Court of the respective States where only the court annexed mediation process is available.

The lack of any statutory backing to the mediation process is a cause of concern / apprehension in the minds of the parties regarding the validity / enforceability of the outcome of the mediation process. Therefore, some parties may prefer the lawyer-dominated, formal, and evaluative judicial process.

(ii) ***Applicability of mediation to different areas of law***

In addition to these concerns, many stakeholders have been skeptical of the applicability of mediation and its techniques to the diverse Indian caseload at the pre-litigation stage. The apprehension of the effective application of mediation at the pre litigation stage beyond matrimonial disputes and family matters and implementing the same in property, partitions, landlord-tenant, industrial disputes, cases containing elements of a crime is always present.

VI. Conclusion

1. *ADR Centres are being set up in all new court complexes at district and taluka level. About 300 ADR Centres in about 300 ADR centres have been set up in the old court complexes from the funds provided under the 13th Finance Commission.*

2. *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 CPC. However, it is felt that mediation should be given statutory backing by enacting a standalone law on mediation.*

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Advisory Council

National Mission for Justice Delivery and Legal Reforms

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

Agenda 6: Streamlining Court Processes

Access to justice encompasses multiple variables which includes quality, availability, accessibility, impartiality and accountability of justice systems and is central for realization of basic rights guaranteed by the Constitution of India. A quick resolution / disposal of cases is a main component of access to justice. Experts have identified a variety of factors that contribute to delay in disposal of court cases which, *inter alia*, include shortage of judges, inadequate infrastructure, lack of court management systems, frequent adjournments, strikes by lawyers, accumulation of first appeals, indiscriminate use of writ jurisdiction and lack of adequate arrangement to monitor, track and bunch cases for hearing.

Although efforts to modernise and strengthen court processes to improve access to justice have been made in the recent past, the justice system continues to be plagued by costly, time consuming processes and inefficient court and case management systems. In this regard, a close examination of why cases are delayed in the first place followed by planning and implementation of recommended steps to address delays along with focus on disposal are all essential to strengthen the ability of the judicial system to deliver quality justice. This requires introduction of set of reforms linked to improving judicial efficiency and court productivity through process reengineering and improved case management systems coupled with the increased use of information and communication technology (ICT) methods that can help in the exchange of information and reducing time to dispense justice.

1. ***Information and Communication Technology (ICT) Methods***

Use of technology in court system will make access and the delivery of court and legal services more efficient, fair and effective. The e-Court Integrated Mission Mode Project (IMMP) was launched with the objective of improving access to justice with the help of technology. Phase 1 of the eCourt project witnessed significant results which, *inter*

alia, includes ICT infrastructure up gradation of subordinate courts, launch of national e-court portal and constitution of process reengineering committees by High Courts. Phase II, which is currently in progress, aims at setting up of centralized filing centres, digitization of documents, adoption of document management systems, creation of e-filing and e-payment gateways. The pending targets and objectives of Phase I which could not be accomplished due to time lag and other operational issues are also set to be achieved in Phase II.

Court processes have been amended and expanded in various High Courts to provide for more expeditious resolution of cases. The e-Committee has received reports from the process reengineering committees of various High Courts and has requested the Law Commission to look into the process reengineering of courts from the point of automation of court processes.

A 2012 study of the Supreme Court[35] indicate a data gap in the number of regular matters disposed by the Court and the number of reported judgements on court website. There is also considerable evidence to suggest that data and court information are not updated online on a daily basis. Unpublished decisions results in breakdown of precedent rule and in the current scenario litigants are likely to make fresh appeal even when their claims involve settled points of law.

While efforts are being made to provide case status information to the litigants, it is equally important to ensure that legal information is made available in a user friendly manner *especially* for litigants having no or low computer literacy skills. The services made available must be user friendly, innovative and tailored to meet the needs of the litigants.

The Law Commission of India in its 245th Report[36] as well as National Court Management System (NCMS)[37] set up by the Supreme Court in their Action Plan have highlighted the problem relating to absence of reliable and uniform data. Urgent attention

[35] Nicholas Robinson, A Quantitative Analysis of the Indian Supreme Court's Workload, 10 Journal of Empirical Legal Studies 570 (2013)]

[36] Arrears and Backlog: Creating Additional Judicial (wo)man power, Report No. 245, July 2014, Law Commission of India, Government of India. *Available at* http://lawcommissionofindia.nic.in/reports/Report_No.245.pdf

[37] National Court Management Systems: Policy and Action Plan. *Available at* http://supremecourtofindia.nic.in/ncms27092012.pdf

must be paid towards developing national level uniform data collection practices and management methods for our judicial systems with due regard given to local diversity of courts. A first step in this direction has been taken by National Court Management System which is working on a National System of Judicial Statistics that will provide a common national platform for recording and maintaining judicial statistics from across the country. At present the National Judicial Data Grid (NJDG) which is a part of the e-Courts Integrated Mission Mode Project, provides summary of pending, pre redistricted and disposed cases at the District and Subordinate court level. However, in addition to what is a presently available, periodic report on the courts in a format that allows for the assessment of judicial productivity and congestion rates must also be published. Categorisation and assignment of cases through case management system will help to ensure that the matter is disposed of without delay. Grouping of cases need to be undertaken as ongoing continuous exercise so that cases arising out of the same subject matter and involving the same question of law can be assigned to one Judge. Improved categorization will enable courts to adhere to pre decided timelines. In this regard rules of High Courts must be suitably amended to incorporate this mechanism.

Although several important and innovative initiatives are in place to improve upon the existing court processes to meet the challenges of fast changing technology, there is also a significant room for further work as indicated above. The High Courts in this regard must take strong leadership role in actively promoting a shift towards higher efficiency in the implementation of the project. Further research in the area of court simplification should also be encouraged to assess if the litigants are benefitting from various initiatives. This will help in evaluating what is working and what else could be done. ICT initiatives if successfully completed will ease day to day management of courts and enable the Judiciary to achieve the constitutional promise of providing fair and speedy justice for all.

2. *Case Management Systems*

Many courts across the world are increasingly using case management tools to varying degrees with the general view towards improving court efficiency. Case management refers to various processes involving settling issues; encouraging parties to resort to alternative dispute resolution; fixing time schedule for specific steps; examination and standardisation of the current rules of procedures.

The Supreme Court in *Salem Advocates Bar Association v Union of India*[38] called for the constitution of a committee to devise model case management formula as well as rules and regulations which should be followed while taking recourse to the Alternate Disputes Resolution (ADR). With an aim to enhance a judge's efficiency and reduce the mounting backlog of cases, the 13th Finance Commission also recommended sanctioning of Rs. 300 crores to appoint professionally qualified *'court managers'* in order to improve the efficiency of court management and in turn expedite disposal of cases.

National Court Management System (NCMS) was established at the initiative of the Supreme Court in 2012 to introduce necessary reforms in court and case management system. Several sub committees have been constituted and a majority of them have submitted their reports. A sub-committee of the NCMS headed by Justice Khanwilkar had prepared a report on framing standardized processes for effective management of courts and cases through extensive use of ICT methods. The system of case management has been evolved keeping in view the procedural laws incorporated in the Code of Criminal Procedure and Code of Civil Procedure as well as High Court Rules relating to case flow management. The Indian Judiciary Vision statement (2015-2020) prepared by NCMS has identified main priority areas for accomplishing its mission of providing access to justice at affordable cost and accelerated pace within a span of 5 years. These include institution of Management Information Systems to identify bottlenecks in court processes and provide for automatic bye-pass at various stages of blockage along with creation of 24*7 virtual courts providing access to administrative side of all courts which will be made available throughout the year among various other initiatives.

3. Service of summon:

Delay and complexities in service of process, aggravated by delay in payment of process fees is one of the major factors for pendency of court cases. Necessary amendments have been made in the Civil Procedure Code to curtail delay in the service of court process by allowing of process via electronic means via, fax, courier *etc*. However in criminal cases the service of summon continues to be made through process server resulting in frequent adjournments on account on non-service of summon for several reasons.

[38] *Salem Advocates Bar Association* v. *Union of India*, 2005 (6) SCC 344

The Central Government has suggested implementing a one-time payment of process fees, and a number of High Courts such as Allahabad, Delhi, Karnataka, Himachal Pradesh, Patna and Rajasthan have responded positively to the proposal and are actively considering the proposal.

Automation of process serving is one of the initiatives proposed in the Phase II of the e-courts project.[39] It is further proposed to provide all process servers with a service authentication device like a GPRS-GPS enabled PDA.[40] This will be helpful in ascertaining the location of endorsement made on the court process along with image proof in certain cases. Available records show that despite efforts being made to make courts ICT enabled, a majority of High Courts are yet to formalize and adopt ICT tools. In this regard the High Courts must take strong leadership role in actively promoting a shift towards higher efficiency and encourage court staffs to actively work together towards the implementation of the project.

4. *Amendment of relevant Legislative Provisions for Procedural Reforms*

Various amendments to Code of Civil Procedure (CPC) and Code of Criminal Procedure (CrPC) to ensure expeditious disposal of cases have been made.

The amendments under CPC, *inter alia*, include provisions related to:

- Limiting the number of adjournments to three times and imposition of costs for adjournments, *except* in exceptional cases[41]
- Service of summons using courier services or directly through the plaintiff[42]
- Dismissal of suit where summons are not served in consequence of plaintiffs' failure to pay costs[43]
- Time limit for filing of written statement by the defendant.[44]

Amendments have also been made to CrPC to enable the expeditious disposal of criminal cases which include:

[39] Brief on e Court Project. *Available at* http://www.wbja.nic.in/wbja_adm/files/Brief%20on%20e-courts%20Project.pdf
[40] Supra note 1
[41] Order XVII Rules 1 and 2, CPC.
[42] Order V Rule 9 and 9A, CPC.
[43] Order IX Rule 2, CPC.
[44] Order VIII, Rule 1, CPC.

- Day to day hearing in trial proceedings until all the witnesses have been examined[45]
- Increasing the list of compoundable offences[46]
- Addition of new Chapter on Plea Bargaining for those offences for which maximum punishment is seven years.[47]

It is pertinent to note that the Parliament has recently passed The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 and the Arbitration and Conciliation Act (Amendment) Bill, 2015. The basic thrust of both these Acts is to streamline procedures with respect to commercial disputes as well as arbitration in order to ensure speedy resolution of disputes.

In the light of these continued efforts to improve upon the prompt resolution of claims, the goal going forward must involve continued scrutiny of existing provisions and examination of potential amendments that promote better access to justice. A good first step would be to support research in this area.

Recommendations:

Against the above backdrop the following suggestions may be considered to improve court processes:

- *Undertake systematic analysis of actual operation of judicial system and processes to achieve research and evidence led policy making in the area of judicial reform.*
- *Timely completion of deliverables under Phase II, while also ensuring that the gaps in the existing system is addressed and that litigants and citizens are provided with user friendly tools to access legal database and case information. Ensure resources are made available in the vernacular language of the litigants as much as possible.*
- *Evolve a mechanism for settlement of cases through mediation at pre litigation stage*

[45]Section 309 of Criminal Procedure Code
[46]Section 320
[47]Chapter XXIA, Criminal Procedure Code

- *Establish Help Desk in every District Court and High Court for litigants to avail information about out of court processes. Information about out of court settlement process and various schemes available under State / National Legal Service Authority Schemes to be made available to all citizens / litigants in their vernacular language.*
- *Establish customer service centre of all case related information to citizens and litigants who are not computer literate.*
- *Periodic reports on the courts in a format that allows for the assessment of both judicial productivity and congestion rates to be published on their website. Various innovations brought about by High Courts should be indicated on their website so that best practices in this regard can be replicated by other Courts.*
- *Constitution of Monitoring Committees at the District Court and High Court level to carry out periodic review of bottlenecks hindering timely and effective access to justice.*
- *Court processes must be streamlined and a few of them may even have to be done away with and many new processes shall have to be designed.*

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Advisory Council

National Mission for Justice Delivery and Legal Reforms

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

Agenda 7: Judicial database for policy formulation:

Introduction:

The availability of reliable and accurate data is a pre-requisite for informed policy-making. At present, quarterly statistics relating to the total number of civil and criminal cases pending before the Supreme Court, High Courts and District & Subordinate Courts are made available by the Supreme Court on its website. In addition, the e-Committee of Supreme Court has also launched the National Judicial Data Grid (***NJDG***), which provides data on cases pending in the district courts across the country. The data is segregated into civil and criminal cases and further broken down on the basis of the number of years the cases have been pending. The NJDG website also disseminates information about the institution and disposal of cases in a month. As the data available on NJDG does not cover all courts across the country, the Department of Justice periodically collects the data on pendency of cases from High Courts and Supreme Court.

As per available data on the NJDG website as on December 31, 2015, there are a total of 2,00,60,998 cases pending across the district courts in the different States in India. The following table gives a break-up of the cases as per the number of years they have been pending:

Particulars	Civil Cases	Criminal Cases	Total Cases	%
Cases Pending over 10 years.	633694	1548674	2172411	(10.83%)
Cases Pending (Between 5 to 10 years).	1074596	2575734	3630282	(18.1%)
Cases Pending (Between 2 to 5 years).	1977654	4052123	5983862	(29.83%)
Cases Pending less than 2 years.	2971388	5395707	8300462	(41.38%)

A. Issues

(i) Lack of a benchmark to evaluate pendency

One of the biggest problems facing policy makers in this field is the lack of any benchmark to determine when a case should be considered delayed[48]. For example, if a case is not disposed of within a year of it being instituted, will it be considered to be delayed? The lack of a clear criterion to determine what constitutes delay poses a hurdle to determine the policy changes needed to address the issue. The usual attempts to reduce pendency include increasing the number of judges or creating additional benches, and while there is no disagreement that the number of judges does need to be increased, this cannot be the only measure to reduce the pendency. A linear formula applied across the different States without taking into consideration the actual reasons behind the delay as well the socio-economic factors of the different States is not going to be too effective in reducing pendency.

(ii) Inconsistencies in the collection of data

Lack of uniform data collection methods compounds the problem of lack of quality data. Different States count institutions, disposals and pendency differently. Some include bail, interlocutory applications, committal proceedings and even traffic challans into their calculations[49]. Similarly, different States have different practices of categorising cases.

The Law Commission of India, in its 245th Report titled "***Arrears and Backlog: Creating Additional Judicial (wo)manpower***" observed that lack of scientific collection, collation and analysis of statistical data remained a serious constraint. The Commission noted that it faced serious constrains while preparing its report due to the lack of scientific collection, collation and analysis of data. It also observed that High Courts were using a multiplicity of approaches in tabulating the data. A single case may be counted multiple times in some High Courts which record interlocutory applications or committal proceedings as separate cases. This multiplicity of data collection prevents analysis of issues plaguing the system. *For example*, in the High Courts of Delhi, Andhra Pradesh, Bombay, Karnataka and Madhya Pradesh, interlocutory applications are not counted

[48] "The State of Judicial Statistics in India", Aparna Chandra, February 10, 2015 available at http://blog.dakshindia.org/search?updated-min=2015-01-01T00:00:00-08:00&updated-max=2015-07-31T03:08:00-07:00&max-results=26&start=18&by-date=false

[49] ibid

separately. In the High Courts of Punjab and Haryana, Jharkhand and Calcutta, the practice of counting or not counting differs from district to district. Similarly, while Karnataka does not count traffic and police challans as part of the institution, disposal and pendency figures, most other High Courts do. Therefore, a single case may be counted multiple times in some High Courts. Thus, the number of cases pending, instituted or disposed of by the Courts may be smaller than the overall pendency, institution or disposal figures would suggest. Further, another important issue that needs to be addressed is the need for regularly updating the data either on a weekly basis or on a monthly basis. The data regarding the pending cases should be regularly updated on the website of the High Courts and Supreme Court, *however*, that is not the case. It is also pertinent to note that the data on the websites of various courts is not easily accessible and the websites are not very user friendly.

The Annual Report of each High Court can play an important role in highlighting the work of judiciary as a public institution. Information was recently obtained from various High Courts about preparation of periodic reports on the functioning of the courts. It was observed that while almost all High Courts are bringing out some report, the contents and periodicity of these reports differ from High Court to High Court.

B. Measures undertaken to address the issue

In December 2004, Mr. Fali S. Nariman, had introduced a Private Member's Bill titled the Judicial Statistics Bill, 2004 (Bill).[50] The Bill proposed the creation of an Authority on Judicial Statistics at the national, state and district level to collect statistics about the cases filed in courts national, state and district level respectively. The proposed function of the Authority included collecting the data on the nature of the dispute, the outcome, number of hours taken, adjournments granted, interval between filing of cases and hearing and time taken for delivery of judgment after the hearing. The Bill proposed that the statistics collected by the authorities and the trends appearing from the same would be published in an Annual Judicial Statistics Report.

The National Court Management System (NCMS) of Supreme Court is in the process of creating a National System of Judicial Statistics (System) that will provide a common national platform for recording and maintaining judicial statistics. The goal of this system is to enhance transparency and accountability through systematic analysis of data

[50] A copy of the Bill is available at http://164.100.47.4/BillsTexts/RSBillTexts/AsIntroduced/XII_2004.PDF

across courts and for different types of cases. The information collected by the NCMS Sub-Committee on Judicial Statistics from the High Courts also highlighted the differences in the manner in which courts are counting cases for the purposes of recording institutions and disposals.

In the Joint Conference of Chief Ministers and Chief Justices held in April 2015, it was agreed to adopt a uniform nomenclature of cases across the country for better monitoring of the specific areas which are more susceptible to litigation. Further, during the Chief Justices Conference which was also held in April 2015, it was resolved that the High Courts will endeavour to evolve a uniform nomenclature for all categories of cases in co-ordination with the e-Committee. In addition, for statistical purposes, it was resolved that the High Courts will count only the main cases towards pendency and arrears. Interlocutory applications will continue to be separately numbered in original proceedings before the High Court exercising original jurisdiction.

Though as indicated above, efforts have been made to address the issue and provide better (both quantitatively as well as qualitatively) data, but they have not been sufficient. Experience has shown that data uploaded on the webpages is either static or not being updated at regular intervals or non-uniform or inaccurate. As stated earlier, the NJDG has been established to provide all critical data of subordinate / district court cases. However, the NJDG in its present form is far from complete and requires several improvements to its present structure. The National Informatics Centre (NIC) was requested to provide real time online data on certain items such as providing the pendency of various categories of civil and criminal cases, number of adjournments being granted on an average, number of trials held up on account of stay granted by Superior Courts and the number of writ petitions / PILs being filed and disposed of in each High Court. However, the NIC has expressed its inability to provide such data in respect of District and Subordinate Courts due to non-uniformity of master in feeding of data. Also, the NJDG does not provide data for the cases pending at the level of the higher judiciary. It is necessary that the NJDG is upgraded and revised suitably to provide desired data in respect of District and Subordinate Courts and also integrate with High Courts.

Suggested Action and responsible agencies:

This matter was discussed in the 8th Meeting of the Advisory Council. It was *inter-alia* recommended that the data relating to pending cases in High Courts and Subordinate

Courts be made available on their websites on a real time basis. Further, it was also recommended that High Courts should give effect to the decision taken in the Chief Justices Conference held in April 2015 regarding the fact that for calculating arrears and pendency only the main cases should be included.

In addition to the actions suggested at the 8th Meeting, the following suggestions may also be considered:

1) *Each District court and High Court should update the data regarding pending cases on a regular basis. The information should not only include the aggregate number of pending cases, but should also provide more granular information on age and category wise pendency of cases, the number of adjournments being granted on an average in civil and criminal cases and trial of criminal and civil cases held up on account of stay orders granted by Superior Courts.*

2) *The District Courts need to be made responsible in collecting and recording data for all the matters handled by courts within their jurisdiction.*

3) *The High Courts need to supervise the District Courts within their respective jurisdiction, with the database preparation. Additionally, the High Court need to take the responsibility for gathering and recording judicial data relating to all matters being heard in the High Courts.*

4) *The data regarding the cases pending in the various High Courts should also be integrated into the NJDG.*

Advisory Council may provide necessary guidance on further measures to be taken for improving the quality and availability of judicial data.

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ANNEXURE - I

Minutes of Eighth Meeting of Advisory Council of the National Mission for Justice Delivery and Legal Reforms held on 15th July, 2015.

The Eighth Meeting of the Advisory Council of the National Mission for Justice Delivery and Legal Reforms was held on 15th July, 2015 at Jaisalmer House, New Delhi under the Chairpersonship of Shri D. V. Sadananda Gowda, Hon'ble Minister of Law and Justice. The list of participants is attached.

The Hon'ble Minister of Law and Justice welcomed the Members to the eighth meeting of the Advisory Council. He thanked them for sparing their valuable time to support the cause of judicial reforms. He informed the members that the agenda placed before the Council encompasses a broad range of topics all of which have a crucial role to play in ensuring timely delivery of justice, a goal that Government and the Judiciary have been jointly working to accomplish. The Hon'ble Minister gave the members feedback on the deliberations which took place during the Joint Conference of the Chief Ministers and Chief Justices of the High Courts in April this year and informed them of the decision relating to setting up of a mechanism for regular interaction between the Chief Minister and the Chief Justice of the High Court to resolve issues relating to infrastructure, manpower and other facilities for the judiciary which are required to tackle the problem of pendency and backlog of cases.

The Hon'ble Minister dwelt upon the need for the States to increase their investment in Justice Sector on account of enhanced of devolution of funds to them on the recommendations of the 14th Finance Commission. The Members of the Advisory Council were informed that Hon'ble Prime Minister has written to the Chief Ministers *inter-alia* calling upon them to initiate a campaign to strengthen the judicial system by meticulously implementing recommendations of the Finance Commission relating to Justice Sector.

Hon'ble Minister observed that several initiatives that are necessary for timely delivery of justice require the cooperation of diverse set of stakeholders, *such as* Courts at all levels, Ministries / Departments of the Central and the State Governments and Members of the Bar. All stakeholders need to play their respective roles for creating a conducive environment for the efficient functioning of justice delivery system. The Hon'ble Minister specifically highlighted the issue relating to time bound delivery of justice. Referring to the land mark decisions of the Supreme Court, he observed that a procedure which does not ensure timely conclusion of trial cannot be regarded as reasonable, fair or just in the context of Article 21 of the Constitution. The Hon'ble Minister requested the members of the Advisory Council to share their views on the need for prescribing time frames for disposal of various categories of cases and the mechanism through which this objective can be achieved. With these opening remarks he asked the Joint Secretary and Mission Director to proceed with the agenda of the meeting.

Agenda 1: Confirmation of the minutes of the meeting held on 21st January 2015.

The minutes of the seventh meeting of Advisory Council were confirmed

Agenda 2: Action Taken Report on the minutes of the meeting held on 21st January 2015

The Chairman, Law Commission felt that it would not be appropriate to ask the Judicial Academies to train not only the judges but also government pleaders, public

prosecutors, lawyers, police officials and other state functionaries as the available infrastructure and manpower with the judicial academies would not be able to cope up with the work load. He observed that State Governments can create adequate training facilities for police officers and public prosecutors and if need be Judicial Academies can be asked to depute their faculty members to impart them training on relevant subjects. He mentioned that in other countries it is the responsibility of the Bar Council to provide legal / professional training to the members of the Bar and requested the Chairman of the Bar Council to consider taking necessary initiatives for setting up separate training academies for members of the Bar at Central and State levels.

Chairman, Bar Council while agreeing with the views of the Chairman Law Commission felt that leaving aside government pleaders and public prosecutors, members of the Bar in general may not want to attend training programmes at Judicial Academies. He supported the idea of continued education of members of the Bar and wanted that necessary provisions should be incorporated in the Advocates Act so that regulations framed by the Bar Council in this regard are not struck down by the Courts. He mentioned that several requests have been made in the past to the Government by the Bar Council for setting up of lawyers academy headquartered at Delhi with branches at States. However, no financial support is forthcoming from the Government in this regard. At this juncture, Secretary, Department of Legal Affairs gave the examples of Institute of Chartered Accountants and Institute of Cost Accountants which have been created under the law passed by the Parliament but are not being given any financial support by the Government for providing training facilities to their members.

Ld. Attorney General observed that training needs of the lawyers who enrol with the Bar Council after graduating through various institutions may not be the same. While students graduating from National Law Schools are ready for legal practice the day they enrol themselves with Bar Council, the students who come from various other institutions may need varied levels of guidance depending upon the areas they choose to specialise in legal profession. He felt that a lawyer and the judge may not feel the same way about the objective of timely conclusion of trials. Hence it is essential that initiative for change in attitude in this regard must come from the judiciary which should not allow frequent adjournments in the interest of timely completion of trials. While agreeing with the Ld. Attorney General, the Hon'ble Minister of Law and Justice requested the Chairman, Bar Council to work with the members of the Bar to change their mindset so that necessary cooperation is received by the judiciary from the Bar for timely delivery of justice.

Agenda 3: Comprehensive proposal on Judicial Reforms for Timely Delivery of Justice

Initiating the discussion on timely disposal of civil cases, Prof. Madhav Menon felt that Section 89 of Code of Civil Procedure is not being implemented the way it was designed. He said that all civil cases are going for trial whereas they ought to be first referred to Alternative Dispute Resolution mechanisms provided under the law. He observed that different professional skills and aptitude are required on the part of the Bar to settle cases through mediation, conciliation and negotiations. He felt that due to inadequate training and professional skills even the provisions relating to plea-bargaining in the Code of Criminal Procedure are not being made use of appropriately.

Secretary, Department of Legal Affairs intervening in the discussion felt that Bar Council should also work on improving course curriculum of the law colleges other than National Law Schools. He felt that the law graduates after their enrolment with the Bar

Council must make up their mind to specialise in one of the branches in law so that specific training courses could be designed for them in that area for imparting necessary skills. Chairman, Bar Council observed that they are ready to discharge their responsibility for improving the standard of legal education in the country and for providing a comprehensive mechanism for training and skill development for the members of the Bar. However, to achieve this purpose, some changes would be required in the existing provisions of the Advocates Act for which they will send the requisite proposal to Department of Legal Affairs.

Coming back to the main issue relating to providing a specified timeframe for conclusion of civil and criminal trial, Ld. Attorney General felt that we may adopt step by step approach in this regard. We may begin with fixing timeframe of three years for conclusion of criminal trials relating to petty offences. In case the judicial magistrates are not able to complete the criminal trials relating to petty offences within a time span of three years, the matter should be reported to the Chief Justices of the High Courts indicating the reasons for abnormal delays. Intervening in the discussion, the Hon'ble Minister for Law and Justice pointed out that Supreme Court has not found it practical to fix mandatory time limits for conclusion of criminal trials.

Chairman, Law Commission was of the view that this matter can be examined by the Law Commission and necessary recommendations can be made as the Commission is already in the process of finalizing a comprehensive review of criminal justice system. Prof. Madhav Menon observed that as we are suggesting the members of the Bar to specialize in a particular field of law, similarly the judiciary should also follow a personnel policy which encourages specialization on the part of the judicial officers in the subordinate courts as well as judges in the High Courts. Giving an example of judicial officers presiding over the Motor Accident Claims Tribunals he felt that it takes the presiding officer about a year or two to understand the complete mechanism with regard to functioning of these Tribunals. However, once the judicial officer is familiarised with the law and the procedure of the accident claim case he is transferred to another assignment. This prevents the judicial system from taking maximum advantage of the skills developed by the judicial officers in a specialised field of law.

Agreeing with Prof. Madhav Menon, Ld. Attorney General felt that Income Tax Tribunals are able to dispose of a larger number of cases as compared to an ordinary court as the members of the Tribunals are not liable be to transferred to the other wings of the judiciary. He felt that in a similar manner judiciary should follow a personnel policy which focuses on creating competent cadre of judicial officers and judges in varied fields. Chairman, Law Commission felt that the Chief Justices of the High Courts have the authority to formulate a policy with regard to specialization of judges in different fields. Hence, matter can be taken up with them. At this juncture, Ld. Attorney General observed that in most of the High Courts a roster system is followed and judges are transferred from one branch to another in about 10 to 12 weeks. He felt that for specialized cases the tenure of the judge should be at least three years so that he gets well versed with the subject matter to dispose of the cases relatively in a shorter span of time. Prof. Madhav Menon said that he will prepare a paper on the subject which can be shared with Chief Justices of the High Courts.

Initiating the discussion on the reforms of criminal justice system, Chairman Law Commission informed that they are dealing with this complex subject. A comprehensive review of the criminal justice system has already been undertaken, however, he would like to discuss this matter with the Hon'ble Minister and Secretary, Department of Legal Affairs

so that requirements of the Law Commission in terms of the resources are met to enable them to complete the task in a specified timeframe. Pointing out some recent developments, the Chairman Law Commission felt that matters relating to arrest and bail in criminal law have acquired added urgency for reforms. Supporting the observations of the Chairman, Law Commission, Ld. Attorney General observed that whatever be the nature of the offence, the arrested person has to wait at least 15 to 30 days to get a bail. He said the matters in which the bail could have been given in three days may take six months and during this period the case may have to travel from the district court to the Supreme Court. He said the fear psychosis among the subordinate judiciary in this matter is understandable but what is more serious is the casual manner in which the arrest is being made merely because the law empowers the police to arrest accused in certain circumstances.

Intervening in the discussion, Prof. Madhav Menon observed that even after obtaining the bail, a large number of arrested persons are unable to get out of prison for lack of sureties. Prof. Madhav Menon requested the Government and the Law Commission to look into the remaining recommendations of the Malimath Committee as after 2006 these recommendations have not been processed any further. In particular he wanted the recommendations of the Committee relating to curtailing the powers of the police to arrest be implemented without any further delay. At this juncture, Joint Secretary (MD) drew the attention of the members of the Advisory Council to the observations of Ld. Attorney General in the last meeting for casting a duty on the Court at the stage of framing of charges to scrutinize the chargesheet and ensure that there are credible materials available to support the charges. Chairman, Law Commission observed that this issue needs to be taken on priority basis and if need be the Law Commission can give an interim report on certain urgent matters.

Initiating the discussion on the need of audio-video recording of court proceedings, the Hon'ble Minister of Law and Justice informed the Council that he has written a letter to Chief Justice of India in this regard. Ld. Attorney General and Chairman Law Commission supported this proposal. Ld. Attorney General observed that the Supreme Court could allow telecast of proceedings in cases of national importance such as the National Judicial Appointment Commission case which was heard recently. Chairman, Law Commission felt that the record of the proceedings will remain with the Court itself and it will help where members of the Bar are showing aggressive attitude. He observed that in some cases the reports of mis-behaviour have come on the part of the judicial officers / judges as well. Joint Secretary (J-I) gave an example of the Supreme Court in the United Kingdom where court proceedings of some of the cases are televised and audio-video recordings are made available on the website of the Court. The representative from the Supreme Court said that the communication from the Hon'ble Minister of Law and Justice has been received in this regard and shall be processed appropriately in the Supreme Court.

Prof. Madhav Menon raised the issue of lack of proper judicial data base in High Courts which is coming in the way of meaningful research on judicial reforms. In this context, he gave a brief accounts of the efforts made by Daksh, an NGO based in Bangalore who have initiated 'Rule of Law' project by collecting relevant data from ten High Courts and a couple of District Courts. The issues that have been covered under the project include the processes that are in place in judicial administration for budget preparation, infrastructure development, human resources and the role of legal profession. They have also analysed the process of judicial decision making by looking at the lifecycle of case in Subordinate Courts and High Courts. They have identified the bottlenecks which are coming in the way of timely disposal of cases as well as the issues of Access to

Justice which affect the capacity of citizens to access the judicial system. They have evaluated the quality of the services offered by the Courts including socio-economic follow up of certain matters after judicial decisions. They have prepared a State of the Justice Report which is remarkable. He wanted National Mission to interact with this NGO and get more details about the work being done by them. He requested, Chairman Law Commission to invite this NGO for making a presentation of State of Justice Report. The Hon'ble Minister of Law and Justice agreeing with the suggestion of Prof. Madhav Menon observed that an interaction with the NGO and Registrar Generals of the concerned High Courts can be arranged after the monsoon session of Parliament.

Chairman, Law Commission raised the issue of large number of vacancies of judicial officers / judges in district and subordinate courts. Joint Secretary (MD) explained that the matter regarding filling up of vacancies in subordinate courts is being monitored by Supreme Court in Malik Mazhar Sultan case. In the Conference of the Chief Justices held in April this year, it was *inter-alia* decided that High Courts will look at the existing mechanism for filling up the vacancies in subordinate courts and take necessary appropriate action for removing the bottlenecks coming in the way. Hon'ble Minister has written to the Chief Justices of the High Courts in this regard and we are receiving encouraging response. At this juncture, Prof. Madhav Menon raised the issue of lack of adequate data on investment by States in Justice Sector. Joint Secretary (MD) informed the members that relevant details about the expenditure incurred by the State Governments on judicial administration in the last three years has been called for and the same shall be presented before the Advisory Council in its next meeting. Intervening in the discussion, the Hon'ble Minister of Law and Justice observed that a large number of questions are being received on various aspects of judicial administration, however, the relevant details are not forthcoming from the High Courts and the State Government well in time. As a result of this a large number of parliamentary assurances are pending fulfilment for want of requisite information.

Representative from the Supreme Court pointed out that data on pending cases and various other judicial statistics need to be continuously updated however, the same is not adequately happening under the existing eCourts Project. Intervening in the discussion, Joint Secretary (J-II) mentioned that as per information received physically from the High Courts about 2.64 crore cases are pending in district and subordinate courts. However, the National Judicial Data Grid has information about 1.74 crore cases. The information about cases which are already on the data grid can be accessed easily but the information relating to cases in district and subordinate courts under the jurisdiction of High Courts of Gujarat, Madhya Pradesh and Delhi has not been uploaded on data grid because their software programme is different and eCommittee is working on this aspect.

Chairman, Law Commission felt that this matter must be taken up with the Chief Justices of High Courts. He observed that High Courts are not forthcoming to share the relevant details on the public platform. In particular, request must go to the Chief Justices of the High Courts that the information called for in respect of Parliament Questions be furnished on priority basis. At this juncture, Joint Secretary (MD) informed the members that a request has already been made to the Chief Justices of the High Courts to put real time data with regard to pendency on various category of cases in the High Courts and district and subordinate courts under their jurisdiction on the respective websites of these courts.

Chairman, Bar Council of India raised the issue regarding working of the State and District Legal Services Authorities. He mentioned that though huge funds are being

allocated to the State and District Authorities, the legal aid is not reaching the needy and the poor. He observed that most of the members of the bar are unsatisfied with their working and are unwilling to take up the cases. He felt that the Bar should have a major role as far as the working of the Legal Services Authority is concerned. Intervening in the discussion, Joint Secretary (J-I) informed the members that in the United Kingdom the funds for legal aid flow to law firms and not to the individual lawyers. He felt that there was a need to reform the present system. Joint Secretary (J-II) pointed out that in South Africa the 10% of the work of a law firm need to be done on pro-bono basis. Supporting the proposal for reforms in the law relating to legal aid to the poor, Chairman Law Commission expressed the need for better participation of the Bar and civil society in legal aid programmes. The Hon'ble Minister requested the Chairman Bar Council to send his suggestions in this regard for initiating necessary amendments to Legal Services Authority Act.

Concluding the discussions, the Hon'ble Minister observed that members of the Advisory Council may send their suggestions in all areas of judicial reforms included in the agenda note so that appropriate action is taken by all concerned to achieve the goal of timely delivery of justice. 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 15th July, 2015

1. Justice (Retd.) Ajit Prakash Shah, Chairman, Law Commission of India
2. Shri Mukul Rohatgi, Ld. Attorney General of India
3. Shri P.K. Malhotra, Secretary, Department of Legal Affairs
4. Shri Manan Kumar Mishra, Chairman, Bar Council of India
5. Prof. N.R. Madhava Menon, Jurist
6. Shri Anil Kumar Gulati, Joint Secretary (MD), Department of Justice
7. Shri Praveen Garg, Joint Secretary (J-I), Department of Justice
8. Shri Atul Kaushik, Joint Secretary (J-II), Department of Justice
9. Shri Chirag Bhanu Singh, Registrar (Judicial), Supreme Court representing Secretary General, Supreme Court.
10. Dr. Geeta Oberoi, Acting Director, National Judicial Academy, Bhopal

ANNEXURE - II

DETAILS OF CAPITAL AND REVENUE EXPENDITURE INCURRED BY STATE GOVERNMENTS / UT ADMINISTRATION ON HIGH COURTS AND SUBORDINATE COURTS AND AMOUNT OF COURT FEE / FINE COLLECTED IN LAST THREE YEARS (2012-13, 2013-14 and 2014-15) (Rs. In Crore)

Sr No.	Name of State / UT	Capital Expenditure Incurred on Administration of Justice			Revenue Expenditure incurred on Administration of Justice			Total Expenditure incurred on Administration of Justice (Cabinet + Revenue)			Amount of Court fee / fine collected		
		2012-13	2013-14	2014-15	2012-13	2013-14	2014-15	2012-13	2013-14	2014-15	2012-13	2013-14	2014-15
1	Andaman & Nicobar	2.10	1.25	2.27	5.30	6.02	6.28	7.40	7.27	8.55	1.03	0.82	1.68
2	Andhra Pradesh	25.02	35.92	18.12	588.76	632.91	584.10	613.78	668.83	602.22	35.83	51.20	18.50
3	Arunachal Pradesh	11.55	15.09	2.26	4.61	6.62	23.22	16.16	21.71	25.48	0.20	0.07	0.20
4	Assam	47.26	53.32	41.34	123.49	137.37	155.74	170.75	190.69	197.08	10.30	7.21	7.63
5	Bihar	46.44	49.46	83.86	510.88	558.90	794.06	557.32	608.36	877.92	35.40	45.09	178.00
6	Chandigarh	30.38	24.86	20.53	0.00	4.88	5.07	30.38	29.74	25.60	7.53	8.88	13.32
7	Chhattisgarh	0.00	0.00	13.00	148.79	240.49	386.64	148.79	240.49	399.64	10.86	12.04	25.43
8	Dadra and Nagar Haveli	0.65	0.04	0.00	1.31	1.35	1.47	1.96	1.39	1.47	0.08	0.10	0.09
9	Daman and Diu	0.00	0.00	0.00	1.48	1.38	1.43	1.48	1.38	1.43	3.04	0.16	0.53
10	Delhi	77.26	70.30	130.59	483.93	531.80	605.09	561.19	602.10	735.68	92.15	87.02	92.44
11	Goa	0.00	0.00	0.00	5.17	5.78	6.05	5.17	5.78	6.05	0.23	0.33	0.44
12	Gujarat	25.30	41.83	92.46	365.10	431.22	470.01	390.40	473.05	562.47	26.80	29.98	35.77
13	Haryana				269.65	300.11	371.51	269.65	300.11	371.51	0.57	1.05	0.39
14	Himachal Pradesh	11.04	12.66	2.38	97.07	103.48	118.67	108.11	116.14	121.05	5.98	5.08	6.20
15	Jammu and Kashmir	37.00	39.55	33.07	113.01	119.25	133.91	150.01	158.80	166.98	28.77	35.73	116.25
16	Jharkhand	11.07	41.72	58.24	203.88	224.50	263.12	214.95	266.22	321.36	43.02	39.93	42.17
17	Karnataka	178.48	232.28	329.81	556.29	616.22	696.61	734.77	848.50	1026.42	98.42	128.64	215.48
18	Kerala	1.61	6.95	4.29	349.87	403.14	459.82	351.48	410.09	464.11	146.41	181.62	203.94
19	Lakshadweep	0.00	0.00	0.00	1.00	1.08	1.42	1.00	1.08	1.42	0.00	0.00	0.00
20	Madhya Pradesh	26.71	25.05	27.27	408.31	467.49	530.51	435.02	492.54	557.78	65.20	85.60	97.43
21	Maharashtra	493.53	466.53	192.92	1071.28	1193.78	1265.14	1564.81	1660.31	1458.06	155.64	170.85	157.85
22	Manipur	0.58	0.17	0.74	6.29	6.27	8.87	6.87	6.44	9.61	0.24	0.22	0.30
23	Meghalaya	1.86	15.58	33.79	8.83	18.32	14.20	10.69	33.90	47.99	2.86	3.51	3.23
24	Mizoram	0.00	7.65	18.98	18.76	22.15	22.47	18.76	29.80	41.45	0.54	0.14	0.27
25	Nagaland	21.71	24.47	27.23	12.91	6.53	27.16	34.62	31.00	54.39	0.72	0.25	0.45
26	Orissa	51.81	71.39	46.11	30.96	39.23	46.71	82.77	110.62	92.82	14.54	10.73	17.44
27	Puducherry	0.00	0.00	0.00	10.30	11.14	12.64	10.30	11.14	12.64	2.12	2.26	2.39
28	Punjab				315.49	326.22	373.46	315.49	326.22	373.46	23.19	21.85	22.60
29	Rajasthan	56.00	104.11	137.63	465.99	542.53	665.73	521.99	646.64	803.36	168.50	133.03	186.48
30	Sikkim	0.00	0.00	0.00	0.0147	0.0172	0.0185	0.0147	0.0172	0.0185	0.00	0.00	0.00
31	Tamil nadu	66.11	91.71	70.24	596.19	657.60	756.64	662.30	749.31	826.88	163.32	193.41	200.04
32	Telengana			2.43			185.95			188.38			17.50
33	Tripura	12.43	8.91	24.88	13.44	16.29	25.26	25.87	25.20	50.14	1.56	1.83	2.06
34	Uttar Pradesh	403.67	474.18	599.57	1134.17	1245.15	1281.88	1537.84	1719.33	1881.45	118.98	84.88	102.04
35	Uttarakhand	14.17	10.17	13.46	84.47	94.58	106.95	98.64	104.75	120.41	9.75	13.03	14.71
36	West Bengal	26.47	29.13	52.52	427.84	437.50	436.91	454.31	466.63	489.43	64.73	72.77	65.73
	Total	**1680.21**	**1954.28**	**2079.99**	**8434.83**	**9411.30**	**10844.72**	**10115.04**	**11365.58**	**12924.71**	**1338.51**	**1429.31**	**1848.98**

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 finalised the National Litigation Policy. Approval of the Cabinet is 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	The Memorandum of Procedure for appointment of Judges in the High Courts and Supreme Court is being revised in terms of judgment of the Supreme Court dated 16th December, 2015.
Amendment in Negotiable Instruments Act	Necessary amendments have been made in the Negotiable Instruments Act, 1881.
Amendment in Arbitration & Conciliation Act, 1996	Necessary amendments have been made in the Arbitration and Conciliation Act, 1996.
Amendments to Motor Vehicle Act, 1988	The matter is under active consideration of Ministry of Road Transport and Highways.

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.	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.
3. Promoting Alternative Methods of Dispute Resolution	ADR centres are being set up at District and Taluka Level. 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 20,358 as on 30-06-2015.
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	The Bar Council of India has framed necessary rules which *inter-alia* provide for curbing frequent strikes by the members of the bar.
Strengthening Judicial Academies.	Research on Judicial Reforms is being promoted through Action Research Scheme. A compendium of Legislative, Policy and Administrative initiatives 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	As of December, 2015, an amount of Rs.3,674 crore has been released to the States / UTs under the modified scheme of infrastructural development of judiciary since 2011-12. 15,558 Court Halls are available for Subordinate Judiciary against the working strength of 15,360 judicial officers. 2,679 Court Halls are under construction. 10,843 Residential Units are available for Subordinate Judiciary and 1,712 under construction.

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