REPORT OF THE SECOND NATIONAL JUDICIAL PAY COMMISSION

VIGYAN BHAWAN ANNEXE
NEW DELHI

FEBRUARY - 2022
PART - IV
(WORK METHODS AND WORK ENVIRONMENT)

SHRI R. BASANT
Former Judge High Court of Kerala
MEMBER

JUSTICE P. V. REDDI (Ltd)
Former Judge Supreme Court of India
CHAIRMAN

SHRI VINAY KUMAR GUPTA
District Judge, Delhi
MEMBER-SECRETARY

SECOND NATIONAL JUDICIAL PAY COMMISSION
VIGYAN BHAWAN ANNEXE
NEW DELHI

30.04.2021

CORRIGENDUM-II

At para 19.14 page 99 Chapter-II, Vol.I, relating to 'Pay Structure' of Part-I of the Report, the date 01.02.2019, be read as 01.01.2020 as stated at item no. 16(i) page 186 of Chapter-II, Vol. I, Part-I of the Report.

V.K. GUPTA
MEMBER SECRETARY
SNJPC, New Delhi

INDEX

TERM OF REFERENCE (D) – A CLARIFICATION

1. As a prelude to the discussion on the subject, we would like to refer to the relevant term of reference and point out the element of ambiguity that has crept in by virtue of the language employed therein.

1.1 The term of reference (d) is couched in the same language as the term of reference to FNJPC[1] as framed by the Government of India in the year 1996. The said term of reference to FNJPC is extracted below;

> "(d) To examine the work methods and work environment as also the variety of allowances and benefits in kind that are available for Judicial Officers in addition to pay and to suggest rationalization and simplification thereof with a view to promoting efficiency in Judicial administration, optimizing size of the Judiciary etc."

The only difference is that the term of reference to this Commission as per the Order dated 09.05.2017 of the Hon'ble Supreme Court in WP (C) 643/2015 contains the additional words: *"and to remove anomalies created in implementation of earlier recommendations"*.

1.2 It may be noticed that the said term of reference to FNJPC itself is not happily worded and the aspects relating to allowances and other benefits "in addition to pay" which are within

---

1 First National Judicial Pay Commission

the purview of the first two terms of reference (a) and (b) are combined in this term of reference (d). Then, the words "suggesting rationalization and simplification thereof and removing anomalies created in implementation of earlier recommendations" are apparently with reference to the allowances and other benefits in kind in addition to pay. This Commission has already made recommendations in the main report with reference to (a) and (b) and dealt with allowances and other benefits too (see Part-I, Vol.I to IV of the Report). Further, this Commission also pointed out certain anomalies in regard to pay structure and some allowances which arose post-Justice Padmanabhan Committee's report.

1.3 Perhaps, realizing the ambiguity in the structure of the sentence, FNJPC has summarized this term of reference covered by (d) as follows; (vide para 24.11, p.1165 of the FNJPC Report)

> "The term of reference to our Commission *inter alia* required us to examine the work methods and work environment in courts to promote efficiency in judicial administration."

Of course, optimizing the size of the judiciary is also an issue connected with the work methods and work environment which has bearing on achieving efficiency in Judicial administration.

1.4 Therefore, this Commission also would like to proceed substantially on the same lines as the previous Commission did vis-à-vis this term of reference (d). With this clarification, we proceed further.

2. WORK METHODS AND WORK ENVIRONMENT

2.1 The subject is quite comprehensive covering multiple issues related to justice delivery system. Yet, at the present juncture, it is a much-trodden field. The topic covers several aspects relating to Judicial as well as administrative matters, **Case** and **Court management** with special emphasis on old cases (especially the Criminal cases in the States in which the institution and pendency thereof is high); Alternative Dispute Resolution (**ADR**) **process** and legal services, **infrastructure** including provision of facilities for the users of the Court; ensuring timely and qualitative **recruitment** process so as to create congenial working atmosphere; effective use of **information technology** tools; **qualitative training** for Judicial officers as well as ministerial staff; effective exercise of powers under **Article235** of the Constitution – inspections & supervision and timely **evaluation of performance**; establishing proper **grievance redressal** mechanism for the staff as well as Judicial officers – these are broadly the aspects that are relevant to the topic under consideration.

2.2 The First National Judicial Pay Commission (FNJPC) dealt with the topic of Work Methods and Work Environment in Chapter 24 of Volume III. Information Technology in the administration of justice was dealt with in Chapter 25. Recruitment of Civil Judges and District Judges, Judicial Education and Training were discussed in Chapters 8 to 11 and 13 of Volume-II.

2.2.1 Now, we would like to advert to the subjects/ issues discussed by FNJPC in Chapter 24 under the head "Work Methods and Work Environment".

2.2.2 In the opening remarks at Para 24.2, the FNJPC aptly observed: "The proper work method and work environment in any Court largely depend upon the Judge who presides over the Court. Those who preside over the Court should be able to proceed without delay or hesitation on matters of evidence and procedure. He must have the ability to control the Court and should command the respect of those who appear before him/her....Without these qualities of the presiding Judge, it would be impossible to provide speedy and satisfactory justice to the litigant public".

2.2.3 The second important aspect is the Judge should have a Court with proper facilities, assistance of the personnel and other Court staff (para 24.3).

2.2.4 Third and equally important aspect is that the proceedings require the presence of parties and their counsel if they are represented and the presence of the witnesses (para 24.4).

2.2.5 In para 24.6, the Commission emphasized the need to recruit the right kind of persons with attractive service conditions and to establish Judicial Training Institutes for imparting induction training and refresher courses to Judicial officers.

2.3 To these introductory observations of FNJPC, we would like to add:

2.3.1 The manner of functioning of a Judge should be such that a message should go to all concerned that the Judge means business and securing adjournment is not an easy or routine process. (S)he shall convey the impression that the Judge goes through the case record. Extending courtesy to all concerned and exhibiting tact in conducting the proceedings will of course help the Judge in enhancing her/his image. Preparation of qualitative judgments (free from mistakes and meeting all the relevant points) after proper study is expected of a Judge. Then, where there are multiple Courts in the same location or complex, uniform practices should be evolved aimed at discouraging attempts at prolongation of cases on account of sheer indifference or deliberate attempts on the part of those involved in the justice delivery system. There shall not be a feeling that one Judge is harsh and the other is liberal.

2.3.2 Above all, this Commission would like to point out that the Judges should not be subjected to too much stress and strain and there should be genuine realization of the practical problems they face and realistic assessment of the capacity to do the work. Unrealistic targets of disposal and imposition of heavy burden of work will have an adverse effect on the quality of justice, which is equally important.

2.3.3 What Mr. Joseph Addison said in 17th century is quite apposite:

> "To be perfectly just is an attribute of the divine nature; to be so to the utmost of our abilities is the glory of man".

2.3.4 Therefore, what is expected of Judiciary is to demonstrate that in spite of several constraints, the Judges have been discharging the functions conscientiously and to the best of their ability.

2.3.5 As pointed out by Dr. (Prof.) G. Mohan Gopal, the then Director of NJA in the paper presented by him in March 2007- **"Balancing the Scale: A New Approach to Strengthening Administration of Justice"**, what society needs from the public service of justice delivery by the judicial system are:

(i) timeliness and

(ii) access to and quality and responsiveness of justice.

Broadly speaking, the work methods and environment shall be such as to be responsive to such needs of the society.

2.4 **Vast developments** have taken place in the country since the FNJPC's report given more than 20 years back. These developments relate to: Court and Case Management processes with special emphasis on clearance of backlog of old cases and prioritization of disposals of certain types of criminal cases; establishment of Judicial Training Institutes/Judicial Academies in

almost all the States with National Judicial Academy acting in collaboration with the State Academies; extensive and intensive use of information technology; augmenting the infrastructure facilities; improvements in and expediting the process of recruitment; creation of additional Courts including special Criminal Courts; promoting the Alternative Dispute Resolution Processes with emphasis on Lok Adalats, Mediation and Conciliation; a separate mechanism for Legal Services; streamlining the process of performance appraisals; improvement of service conditions of the members of District/Subordinate judiciary and so on. We shall refer to such developments briefly later. However, we would like to point out at this stage that the attempt at improvements and achievements though substantial, the problems do persist and the age-old causes for the delays and accumulation of arrears linger on. The work load in each Court has considerably increased. The mounting pendency of old cases in spite of measures taken does create a sense of dissatisfaction and concern. Plans are not lacking, the effort and determination to do better is not wanting and the initiatives on the part of the Judges to cope up with the situation are not lacking, yet the problems relating to backlog and arrears coupled with inadequate infrastructure and staff support do remain. The scenario is such that more and more suggestions, recommendations, framing of rules and instructions have not improved the matters substantially, though we cannot underestimate the ongoing efforts on the part of the Judiciary. An

improved work culture and work environment has certainly emerged, though inadequacies and problems do remain to be tackled. The recent epidemic menace persisting for more than a year has led to further accumulation of cases and also given rise to problems related to access to justice.

2.5 Now, we shall revert to the **FNJPC report** and the recommendations/observations of the said Commission vis-à-vis the subject relating to Court/Case Management.

2.5.1 The FNJPC engaged the services of Indian Institute of Management at Bangalore to examine and suggest improvements relating to Court work methods and work environment. The Commission extensively referred to the study undertaken by the Commission and the suggestions made by IIM Bangalore (IIMB).The IIM Bangalore having noted delays at several stages starting from the service of summons, emphasized the need for enforcing the **Time Tables** and IIM Bangalore also pointed out the need to follow the provisions of Orders X to XII of the Civil Procedure (Amendment) Bill 1997 [which led to enactment of CPC (Amendment)Act, 1999].So also with regard to criminal cases, the delays that were rampant were pointed out and it was suggested that at least one police officer attached to every police station shall be deputed to attend the Court related work every day. FNJPC requested the High Courts to take up this matter with the Government (now such a practice

exists though sufficient number of police personnel to cope up with the increased work load are not being deputed).

2.5.2 Recommendations by IIM Bangalore in regard to infrastructure, staff facilities and working environment were then referred to in Para 24.22.

2.5.3 After extensively referring to IIM Bangalore suggestions including those relating to infrastructure and ADR and the Code of Civil Procedure (Amendment Bill) 1997, the Commission observed that *"if the bill is passed, several observations contained in report could be deemed to have been fulfilled."* Further it was observed *"while making improvements in the process, we would like to stress that an automated system should supplement manual efforts"*. Then, the following suggestions were made in general terms under the head 'Process Improvements':

a) Ensuring service of summons in time and taking stern action in case of deliberate delays; simplification of language in the process forms.

b) Presence of witnesses (in criminal cases): Court's intervention to secure the presence of atleast material witnesses by issuing coercive process, the prosecution and defence getting maximum two opportunities to produce the witnesses.

c) Frequent adjournments due to dilatory tactics should be curtailed and the reasons for adjournment should be clearly recorded by the Judge; cases not to be adjourned if witnesses

are present; a ceiling on the number of interlocutory applications so as to curb frivolous applications; provision to limit adjournments by prosecution and defence to two only; imposition of heavy penalties for seeking adjournments on frivolous grounds.

d) Time limit for oral arguments, followed by written submissions.

e) Posting of cases should be done on assessing the reasonable quantum of work which could be handled in a day; time for calling work to be curtailed; Judge to act as an arbiter to identify the problems of coordination among Judges, prosecutors, defence lawyers and Investigating Officers (IOs); monthly meetings to discuss Court management and Case management aspects to be held.

f) Pleadings should be in complete form and should contain bare minimum facts and not matters of evidence.

g) Discovery, inspection and admission should be insisted upon at initial stage itself.

h) Duty of presiding officer in regard to framing of issues.

i) Presiding officer to exercise greater control in expediting the execution of the decrees and issuance of certified copies.

2.5.4 At Para 24.23, the Commission lamented that the lawyers who are required to facilitate speedy disposal of cases are seeking adjournments and the judicial officers readily accept such

requests. This is considered to be a major contributing factor for delay. Secondly, the Commission commented *"we tend to overlook the existing provisions in the Procedural Code meant for speedy disposal of the cases"* and suggest reforms and amendments. *"It is like a local saying that a dancer who does not know how to dance properly complaining about the defect in the stage."* Then the Commission highlighted provisions of Orders X, XI and XII of CPC which afford largest opportunity for lawyers to exercise their procedural skills in the conduct of cases and in ensuring speedy trial as well. The said provisions have been dealt with under the heading 'Pre-trial'.

2.5.5 After referring to the responses received from High Courts/Judges' Association, the Commission observed at 24.66 that pre-trial procedures are not followed by Courts primarily due to non-cooperation of lawyers and litigants and also for the reason that the Court is overburdened with the work-load.

2.5.6 At para 24.68, the Commission pointed out that pre-trial is a process which is simple, speedy and inexpensive as in the case of entering default judgment or obtaining a consent order. No doubt, it involves a good deal of energy and industry on the part of the practitioners and Judges.

2.5.7 Para 24.69: *"In the premise, we **recommend** that the provisions relating to pre-trial should be made mandatory against*

heavy sanctions for not observing it. If necessary, amendment in this regard may be made to Code of Civil Procedure".

2.5.8 It was observed at para 24.66 that pre-trial procedures were not followed by the Courts due to non-cooperation of lawyers and litigants. The other reason is that the Courts are overburdened with the work-load. This Commission would like to say that the same reasons prevail even now.

2.5.9 Then, under the heading "**pre-trial** and **Alternative Disputes Resolution**", the Commission dealt with mediation/ conciliation and Lok Adalats which were not much in use at that point of time. Then the recommendations were recorded in 24.112. They are: *Conciliation and Lok Adalat Courts must be annexed to Civil Justice System; provision similar to Order XXVII Rule 5B CPC to be introduced requiring the Court to handover the Case to settle the matter in dispute at the pre-trial stage; Conciliation Court and Lok Adalat Court may be assisted by trained mediators or reputed persons. Once the case is referred to the said Courts, it must not revert back to the original Court for trial but must end in settlement and be given the status of a decree.*

2.5.10 Thereafter, the Commission dealt with the subjects relating to **language** of the Court; **written arguments**, **false** and **frivolous cases** – invocation of Section35-A of CPC; introduction of summary trial for giving **false evidence** in civil cases, imposition of fine on **witnesses** for not appearing before the Court etc.

2.5.11 **The Court working hours/holidays/vacation** was dealt with from Para 24.134 onwards. Curtailment of vacation, working six days in a week, reduction in number of public holidays have been suggested.

2.5.12 Under the head – **'Infrastructure, Staff Facilities and Working Environment',** the general suggestions of IIM Bangalore were referred to in para 24.22. They are: training and development of Human Resources to attain higher efficiency levels, Court facilities to be upgraded significantly, provision of dictating machines, computerization of Record Rooms, scanning of documents etc.

2.5.13 Then **pendency in Courts** was dealt with from Para 24.209 onwards. The details regarding Judge strength in each State were also furnished. In Para 24.246 it was commented that *"increase in number of Judges has not kept pace with increase in the number of cases as evident from the above table."* During the period between 1985 and 1995, the Judge strength increased by 15.4% as against the increase in pendency of cases to the extent of 62%.

3. Now, it is necessary to take stock of the various developments that have taken place during the last two decades especially from 2005 onwards having direct bearing on **work methods and work environment.**

4. The first and foremost relevant to the topic is the **Case/ Court Management**.

4.1 The ever debated issues relating to pendency and backlog of cases, the modalities to expedite disposal of cases, facilitating easy and effective access to justice and ensuring qualitative performance – all these fall within the realm of this topic. The other connected issues **such as** ADR processes, adequate number of Courts, infrastructure, timely recruitment etc. are discussed separately.

4.2 "Case Management is a comprehensive system of management of the time and events in a law suit as it proceeds through the justice system from initiation to resolution. The two essential components of case-management system are the setting of a timetable for pre-determined events and supervision of the progress of lawsuit through its timetable" (See Chapter 5 para 18 of Sir Harry Woolf's Interim report on Judicial Reforms submitted to the Lord Chancellor in 1996 – quotation from Ontario report furnished to the Attorney General of Ontario)[2]. The specific objectives of Case management were enumerated in para 17.

4.3 Mr. Gopal Subramanium, Senior Advocate, acting as *Amicus Curiae* in the case of *Krishankant Tamrakar v The State of*

2 https://webarchive.nationalarchives.gov.uk/ukgwa/20060214223445/http://www.dca.gov.uk/civil/interim/chap5.html

Madhya Pradesh (2018) 17SCC 27 set out the ingredients of Active Case Management as :

(i) the early identification of the real issues;

(ii) achieving certainty as to what must be done, by whom and when, in particular by the early setting of a time table for the progress of the case;

(iii) monitoring the progress of the case and compliance with directions;

(iv) discouraging delay, dealing with as many aspects of the case as possible on the same occasion so as to avoid unnecessary hearings;

(v) encouraging the participants to cooperate in the progression of the case and

(vi) making use of technology.

Reference was made to "Case Management - Criminal Procedure in England and Wales".

4.4 There is a mass of material on this subject in the form of analytical reports, publications, research papers published by institutions/organizations-both public and private, including the publications of academic/training institutes. There has been intensive deliberations at seminars/workshops organized by National Judicial Academy from time to time. Further, on the judicial side also, there are directives/observations which have bearing on the subject of case management and clearing backlog. Case Flow

Management rules have been framed by almost all the High Courts right from 2007. High Courts have been issuing Circulars/Practice directives for facilitating the expeditious disposal of cases. Causes for delay and accumulation of arrears have been identified from time to time and possible solutions suggested, though the remedies/solutions suggested are quite often couched in general terms without regard to the ground realities and practical problems. However, there can be no gainsaying that some of them do contain practical/useful suggestions for improvement. Further, the High Courts have been taking positive steps in the direction of clearing backlog of old cases and in improving the work culture to the extent possible. Occasional advice of the Chief Justice of India and his colleagues at the Conferences etc., has no doubt inspired the High Courts in intensifying their efforts.

4.5 In this context, the following **publications**, research papers and reports deserve notice.

4.5.1 A comprehensive paper was presented by the then Director of National Judicial Academy, Dr. G. Mohan Gopal in March 2007 which bears the title: **"Balancing the Scale - A New Approach to Strengthening Administration of Justice"**. Then, a 'Draft Background Paper' was prepared by Dr. G. Mohan Gopal in April 2009 which formed the basis for discussion organized by NJA on 15/16th April 2009 on the subject "**Challenges facing the Indian Judicial System: Towards a New Vision**". This Draft

Background Paper titled as "**Strengthening the Indian Judicial System: Outline of a Conceptual Framework**" is almost on similar pattern as the paper authored by him – **"Balancing the Scale"**. These well-researched Papers formed the basis for preparation of "**Action Plan for Management of Courts and Cases**", as a part of National Court Management System (NCMS): Policy and Action Plan, which was released by the Chief Justice of India on 27.09.2012. The NCMS Committee was chaired by Dr. G. Mohan Gopal, and other members were also nominated by Chief Justice of India. Chapter 6 deals with "**Management of Court and Cases**".

4.5.2 "The Anatomy of Judicial Pendency (Civil Litigation)" was published in March 2018 by Maharashtra Judicial Academy in collaboration with Gokhale Institute of Politics and Economics, Pune. It is an excellent report which *inter alia* deals with the topics of delay, pendency and reasonable time-lines for disposal after going through an elaborate process of collection of data, personal observations and interviews/responses from a large number of trial Judges of various Courts. Various practical suggestions are found in the publication. Quite rightly, it was pointed out that the remedies should be acceptable to those who run the system and the remedies must ideally emerge from within the system. **In other words, the identification of problems and solutions should ideally come from the very Judges and staff**

who **are anxious to counter delay and pendency.** The findings and recommendations including certain amendments to CPC are recorded in Chapter VII of the said Report.

4.5.3 **"National Judicial Education Strategy - an overview"** prepared by NJA in July 2010 sets out the vision/goal for Judicial Education and it refers to six crucial factors that determine the quality of judicial system. They are:

a) Role of Courts;

b) Organizational effectiveness;

c) Knowledge, Skills, Attitudes & Qualities;

d) Method of decision-making;

e) Management Systems and

(f) Access to Justice (ROKMMA 'for short').

Each component has been further sub-divided into specific measurable criteria for measuring timeliness, quality and responsiveness of justice.

4.5.4 The above factors have been restated while discussing the topic **"Defining quality of a system of Justice Administration"** which finds place at page 21 of the Paper **"Strengthening the Indian Judicial System: A Conceptual Frame work (2009)"** prepared by Dr. G. Mohan Gopal as Director of National Judicial Academy (NJA). 5 year Court Development plans/Judicial systems Development plans were suggested. Various aspects relating to Court/Case load management were discussed.

"Absence of a systematic, planned institutional approach to addressing Delays and Arrears" was highlighted. While pointing out that there is no accepted/common definition of much used terms 'delay' 'arrears' and 'pendency', it was observed that the 3 crores pending cases cannot be treated as delayed cases.

4.5.5 After analysis of the pending cases of more than 1 year old in 2007, Dr. G. Mohan Gopal commented: "The above analysis shows that the problem of "delay" (unreasonable time taken for processing cases in the judicial system) does not affect the whole of the 3 crores pendency of Indian courts as popularly believed, but, rather, pertains to some 30% of the total number of cases processed – 90 lacs (being 30% of 3 crores) are more than 3 years old; and in particular, to some 15% of the cases - 45 lakhs (15% of 3 crores) that are more than 5 years old. Other key terms such as 'arrears' and 'pendency' do not also have an agreed definition (these terms are often used inter-changeably to refer to 'delayed' cases). **There is little clarity on what is the optimal capacity of a court**, it was observed. Some reports have suggested 800 cases per court as an appropriate case load, although the basis for this figure is far from clear. Cases vary substantially depending on the facts and circumstances of each case and a "one-size-fits-all" approach would not be appropriate. While broad guidelines and parameters for measuring efficiency are useful, one of the lessons that has emerged from the NJA Workshops is that such a framework

needs to be developed based on the unique circumstances of each case and each court, not imposed "top down". This is because in Indian conditions, the circumstances of courts and cases vary very widely. Judges rightly emphasize that quality of judicial work is as important as quantitative disposal of cases. "However, it is very difficult to assess whether quantitative expansion of judge strength and infrastructure will necessarily result in a positive impact on quality."

4.6 Now, we refer to other **Publications**:

4.6.1 Publications by DAKSH:

- State of the Indian Judiciary, a Report by DAKSH (2016)
- Approaches to Justice in India, a Report by DAKSH (2017)
- Role of the Judiciary in the Ease of Doing Business (2017) – a research project undertaken with the grant provided by Niti Aayog
- Creating Order from Chaos: study of case management in courts (together with Analysis and Finding, Features and Ideal case management module set up)
- Calculating Judges' Strength in India: A Time-Based Weighted Caseload Approach (August 2020).

4.6.2 **Zero pendency Court project** - Final Report on the pilot project by **High Court of Delhi** –

Section II sets out the objectives of the project. Some of the objectives are:

Objectives 3 and 4: to assess and stipulate norms for realistic time-lines for disposal of cases of different kinds.

Objective 5 is stated to be to assess the realistic timelines required for various stages of the "flow of Cases" in different jurisdictions.

4.6.3 Video Recording of Court proceedings (NJA Study material for the program No.607, Feb 2018). Some other useful articles/papers:

a) Court and Case Management : Justice Roshan Dalvi

b) Case Management and its Advantages (www.lawcommissionofindia.nic.in) – by Justice M. Jagannadha Rao

c) Case Management and Court administration: Justice Madan B. Lokur

(The above articles are published in NJA Reading Material for programme 316, April 2010 – National Judicial Workshop on Court, Case load & Case Management).

d) Hand-books and Guides for District Judiciary are published by some High Courts.

4.6.4 Other useful articles by Judges & Lawyers:

a) Court Management for Docket Control; Delay in Civil Litigation - Justice Mohit S. Shah.

b) Solutions to clear Backlog in Courts - Justice M. Jagannadha Rao, Chairman, Law Commission of India.

c) Delay in Justice Delivery System on Criminal side in District Courts - Causes and Solutions - Justice J.P. Singh.

d) Delay in Disposal of Cases in Subordinate Courts - Vital causes & Remedies - Mr. Kashinath Pandeya, Advocate.

The above articles are found in the Booklet published by Supreme Court Bar Association in connection with the All India Seminar on Judicial Reforms with special reference to Arrears of Court Cases (April 2005).

4.6.5 Some research papers/project reports prepared by Academic Institutions and submitted to Department of Justice, Government of India pursuant to the Scheme for Action Research and Studies on Judicial Reforms initiated by Department of Justice are also quite informative and useful.

a) "A study of Court Management Techniques for improving the efficiency of subordinate Courts" - Faculty of NALSAR University of Law, Telangana;

b) "Study on Court processes and Re-engineering opportunities for improving Court efficiency for Justice Delivery in India" (Prof. Rajesh Babu & other Professors of IIM, Kolkata);

c) "Performance Indicators for Subordinate Courts and suggestive policy/procedural changes for reducing Civil Court Pendency" a project Report prepared by Faculty of Centre of Excellence in Public Policy and Government, Indian Institute of Management, Kashipur

are the other useful publications on the subject.

4.7 This Commission has referred to these publications and research papers only to highlight that on the subject of Case/Court Management, there is plethora of material containing suggestions and recommendations for improvement and plugging the loopholes. May be, they are overlapping and conflicting suggestions and they may not have taken realistic view. Different approaches are reflected in them. However, we do not mean that all of them are highly useful or practicable or that the present practices and procedures evolved by the High Courts and being followed by the District Judiciary are insufficient. The Commission would only like to suggest that they need to be studied, analyzed and filtered in order to pick up the best of suggestions therein. Such a study can be undertaken by a team of Judicial Officers – serving or retired.

4.7.1 The moment the workshop/seminar is over, they are relegated to oblivion and no attempt is made to study, analyze and consider these suggestions. The reports sent by Department of Justice for consideration of High Courts which are placed in the website of the Department of Justice are seldom given attention.

The articles or publications of institutions of excellence, experienced lawyers and Judges, Judicial Academies (National or States) and voluntary organizations engaged in legal research projects are virtually kept aside. They remain in cold storage.

4.7.2 What we would like to emphasize is that there must be a process by which High Courts bestow their thought and attention rather than ignoring all this material - useful at least to some extent. The duty of the High Court is not completed with the framing of Case Flow Management Rules or issuing Circulars to comply with the Judicial directives on some aspects of Case Management. As observed earlier, it is for the High Courts to set up a study team as a regular feature to bestow time and attention to take stock of the salient points and suggestions put forward in such publications/ reports. Such study team may consist of Director/Addl. Director of Judicial Academies/Training Institutes, an Official of Registry who served as District Judge and one or two District Judges. The points which, according to the study team, deserve due consideration ought to be placed before the Committee of Judges of High Court. On due consideration to the extent necessary, appropriate Circulars/ practice directives or amendments to the Rules can be thought of.

5. Before we proceed further, we would like to refer to some details relating to institution, disposal and pendency of cases.

5.1 As on 01.04.2021, there were about 1.03 crores of civil cases and 2.80 crores of criminal cases pending in various District and Subordinate Courts in the country. The pendency position at the end of July 2021 is: Civil cases – 1.04 crores and Criminal cases – 2.88 crores (total 3.92 crores). The pendency has reached an all time high probably on account of pandemic situation. As regards criminal cases, about 10% of them may be taken as traffic challan cases and other petty offences. Even after excluding them, the criminal cases are about 2.6 times more than the civil cases at present. In Bihar, Uttarakhand, Jharkhand and Delhi, the range of difference between the civil and criminal cases is 4 to 6 times. There are quite a number of other large and medium sized States in which the criminal cases are at least three times more than the civil cases. However, in Tamil Nadu and Andhra Pradesh, the pendency of civil cases is slightly more than the criminal cases. By the end of July 2021, there are about 15.52 lakhs of Execution Petitions pending in the Courts. Appeals – civil & criminal in District Courts are about 8.80 lakhs.

5.1.1 Towards the end of the year 2016, there were 85 lakhs civil cases and 1.97 crores criminal cases pending (total about 2.82 crores). The number increased to 3 crores roughly by the end of 2018 (civil – 87 lakhs, criminal 2.13 crores) and by the end of June 2019 the number of pending cases further increased to 3.16 crores (89 lakhs civil cases and 2.27 crores criminal cases). As mentioned

earlier, the present pendency is 3.92 crores. Thus, there has been steady increase in pendency during these 5 years.

5.2 Among the pending civil and criminal cases in trial courts, the share of cases pending for **5 years** and more is about 23%, i.e. Civil cases - 22.4% and Criminal cases - 24.3%. NCT of Delhi and Kerala are two States in which the percentage of 5+ year cases is less. Such old civil cases are about 9% and the old criminal cases are about 11% in Delhi, as per the statistics of April 2021. In Kerala, about 9% of 5+ year old civil and criminal cases are pending.[3]

5.3 It is noticed that in most of the States, the number of cases disposed of are less than the number of cases instituted as per the data found in the **Court News** published by the Registry of Supreme Court of India in 2019 (upto June). However, it is clear from National Judicial Data Grid (NJDG) figures that the cases disposed of during 'Covid' period (2021) have been much less than the institutions. Normally, the performance standards of Courts are judged by the norm whether the number of cases disposed of keeps pace with the number of cases instituted in the relevant quarter/period. This is the minimum standard. It will be an ideal

3 PN: The statistics given in paras 5.1 and 5.2 are gathered from National Judicial Data Grid (the e-link is given in the Annexure-I to this report) and the figures given in para 5.1.1 are found at page 10 of 'Court News' - published by Supreme Court (website/e-link is given in annexure to this report) which were compiled by the Registry of Supreme Court on the basis of figures furnished by High Court.

situation if about 20% more than the number of instituted cases are disposed of, in view of the present work-load.

6. The **Judgments**/Orders of the Hon'ble **Supreme Court** having bearing on **Case/Court** management and curbing the delays may now be noticed:

6.1 In *Salem Advocates Bar Association v Union of India* (2005) 6 SCC 344, the Supreme Court appointed a Committee headed by Justice M. Jagannadha Rao (former Judge of Supreme Court & the then Chairman of Law Commission of India) in order to devise a model case management formula. The Committee prepared the draft of 'Case Flow Management Rules'. The Supreme Court, by the Judgment dated 02.08.2005, forwarded the said report to High Courts with the observation that the same may be adopted with or without modifications. Thereafter, almost all the High Courts have framed **Case Flow Management** Rules between 2005 and 2016. Two major High Courts are now in the process of framing the rules.

6.2 According to the inputs received by the Commission, it is doubtful whether the said Rules have served any practical purpose. The Rules are incapable of implementation in letter and spirit in actual practice. However, they may serve as broad guidelines.

6.3 In the Rules framed by Andhra Pradesh High Court in 2012 and incorporated as Chapter XXI of Civil Rules Practice, Rule

66 thereof deals with "preparation and publication of Special List". Sub-rule (2) envisages that "Special List" of ready cases shall be prepared at the beginning of every month and the final list for next month shall be drawn up on 10th of previous month after rearranging the cases in the light of representations made. The cases in the said list shall go on without adjournments unless there are compelling reasons. In the case of *B. Vijayalakshmi v Umalakshmi* (2018) 1 ALT 323 the A.P. High Court, after referring to the relevant Rules and Circulars relating to case management, deprecated the practice of reopening the cases for arguments after having reserved the Judgments.

6.4 Provisions for the preparation of advance list are also found in the Rules/Circulars issued by some other High Courts with an emphasis on old cases. For instance, Rule 99 of Odisha General Rules and Circular/Orders enjoins that at the beginning of each quarter, all officers shall draw up a plan for disposal of old suits and cases chronologically and dispose them of by giving top priority. The District Judge should oversee whether departure from the said requirement was justified. The request for adjournment in such cases should be properly examined. In old cases, the Court should inform the lawyers in advance that the Court would take up those cases on particular dates. In Kerala Civil Courts (Case Flow Management) Rules 2015, Rule 3 requires the Court officer to categorize the suits, appeals etc. in three tracks – Track-I, II & III – at

the time when they are instituted, as per the guidelines laid down in the said rules. The modalities regarding calling of cases and the procedure regarding disposal of I.As are laid down in Rules 5 and 6. It appears that in Kerala too, the system of preparation of advance lists in civil cases is in vogue and adherence to the same is being kept up with the cooperation of the members of Bar.

6.5 In *Ramrameshwari Devi v Nirmala Devi* (2011) 8 SCC 249, the Supreme Court enumerated a series of steps to be taken by Courts in order to curb the prevailing delay in civil litigation and to discourage frivolous litigation. They are set out in A to J of paragraph 52:

A) It is the bounden duty of trial Judge to carefully scrutinize and check the pleadings and documents soon after the suit is filed.

B) At the stage of filing the plaint itself, the trial Court should prepare a complete schedule for the progress of suit from beginning to the end.

C) Court "should resort to discovery and production of documents and interrogatories at the earliest" with requisite care.

D) There must be serious endeavour to resolve the problem giving rise to suit within the frame-work of law.

E, F & G) Court should be extremely cautious in granting *ex parte ad interim* injunction and in case it is granted, the application to be taken up for further hearing expeditiously and order to be passed on merits on priority basis. The party who obtained *ex parte* interim injunction on the basis of false pleadings and forged documents to be adequately punished. The modalities to be followed while granting *ex parte* injunction were also indicated in para 44.

H) The principle of restitution to be fully applied in a pragmatic manner.

I) As regards the award of mesne profits, "a realistic and pragmatic approach" must be adopted.

J) Imposition of actual, realistic or proper costs and/or ordering prosecution is necessary to check the tendency of filing false pleadings and fabricated documents. Imposition of heavy costs would also control unnecessary adjournments.

6.6 It may be seen that many of the above guidelines are couched in general terms, keeping in view the ideal situation. In a way, the steps/guidelines indicated by the Hon'ble Court are in reiteration of what is laid down in or envisaged by the existing procedural provisions. Whether from a practical point of view, they

can be translated into action by overburdened courts grappling with the foremost problem of clearance of accumulated cases is one question that looms large. Yet, the Judgment conveys the message that there must be an earnest effort to discourage frivolous litigation and deliberate attempts to delay the proceedings. Such work culture should be infused into the system through greater effort.

6.7 The main stress in the Judgment of *Ramrameshwari Devi* (supra) is the imposition or award of adequate costs. In this context, it may be mentioned that in the earlier three Judge Bench decision in *Salem Advocates Bar Association v Union of India* (2005) 6 SCC 344, while considering the various amendments to CPC, the subject of costs was dealt with at paras 36 and 37 and it was observed that the costs have to be "actual reasonable costs including the cost of the time spent by the successful party". The practice of awarding nominal costs or no costs (without spelling out the reasons) was disapproved. High Courts were requested to make requisite rules or issue Practice directions so as to provide appropriate guidelines for the District/Subordinate Courts.

6.8 The modalities of enforcing Section 89 of CPC – "Settlement of disputes outside the Court" were dealt with in detail in **Salem Bar Association** Case (No.2) of 2005 [reported in (2005) 6 SCC 344]. The relative scope of Section 89 and Legal Services Authorities Act, 1987 was explained. As regards the service of summons, the Hon'ble Court while taking note of avoidable delays,

laid down certain guidelines. In the same case, various amendments to CPC (in 1999) were referred to and interpreted. *M/s. Afcons Infrastructure Ltd. & Anr. v M/s. Cherian Verkay Construction* (2010) 8 SCC 24 is another leading case which interpreted Section 89 and the ambiguities in the provisions were cleared. Certain provisions prescribing time-limits were read down or clarified. The suggestions given by Justice Jagannadha Rao Committee were considered. The subject of recording of evidence through electronic medium and by availing the services of advocate-Commissioners was discussed in Salem Bar Association Case (No.1) (2003) 1 SCC 49. In the same case, the constitutional validity of the amendments to Civil Procedure Code introduced in 1999 and 2002 were upheld.

7. Then, in *Hussain & Anr. v Union of India* (2017) 5 SCC 702, the Supreme Court vide Judgment dated 09.03.2017, while emphasizing the constitutional responsibility of the State to provide necessary infrastructure and of the High Court to monitor the functioning of the Subordinate Courts to ensure timely disposal of cases, observed that the first step in this direction is preparation of an appropriate action plan at the level of the High Court and "thereafter, at the level of each and every individual Judicial Officer". Having thus observed, the Supreme Court formulated the steps to be taken by the High Court by issuing directives to the Subordinate Court in the following matters:

1. Bail applications to be disposed of normally within one week.

2. In the case of accused in custody, magisterial trials to be normally concluded within six months and the sessions trials within two years.

3. **Efforts be made to dispose of all cases which are five year old by the end of the year (i.e. 2017).**

7.1 In para 29.1.4, it was observed that if an under-trial has completed the period of custody in excess of the sentence likely to be awarded in case of conviction, the under-trial must be released on personal bond. In para 29.1.5, it was observed "the above timelines may be the touchstone for assessment of judicial performance in annual confidential report".

7.2 Soon after this Judgment, the High Courts promptly issued circulars directing the District Judiciary to dispose of 5+ year old cases by the end of the year and to send the compliance/ progress reports. Circulars were issued thereafter also at regular intervals.

8. At the Conference of Chief Justices held in April 2015, it was resolved that the High Courts should give top priority for disposal of cases pending for more than five years. Further, it was resolved that efforts shall be made to strengthen the Case-flow Management Rules.

8.1 It is not as if the High Courts have not been taking initiative to monitor the disposal of 5+ year old cases. In fact, disposal of a minimum number of such cases has been one of the

factors that was being taken into account for assessing the performance of Judicial Officers. Further, the observation in para 29.1.5 of **Hussain** (supra) that 'the above timeliness may be the touchstone for assessment of judicial performance' is not very clear. Does it mean that those who are not in a position to dispose of the 5+ year old cases by December 2017 or the custody cases within the said timeline should be downgraded irrespective of overall performance? It may not be. Otherwise if the said observations are construed in that manner, it would affect the morale of the Officers. The idea is only to emphasize that all possible steps should be taken to dispose of the 5 year or more old cases and incentives in the form of additional weightage for the disposal of old cases ought to be given – a practice which was being adopted since long.

8.2 It may be seen that the guidelines set out by the Hon'ble Court are couched in general terms, keeping in view the ideal situation. In a way, the steps/guidelines indicated by the Court are in reiteration of what is laid down in or contemplated by the existing procedural provisions. Whether from a practical point of view, they can be translated into action by overburdened Courts grappling with the problem of clearance of accumulated cases is one question that looms large. Yet, the Judgment conveys the message that there must be an earnest effort to discourage frivolous litigation and deliberate attempts to delay the proceedings. Such work culture

should be infused into the system by undertaking sustained efforts imbued with pragmatic approach.

9. Then the big question is whether in spite of the directions and vigorous efforts made, the pendency of 5+ year old cases was substantially wiped out. The answer is obviously in the negative, though it may be said that year by year since 2017, there has been gradual reduction in 5+ year old cases, both on civil and criminal side. It is seen from the India Justice Report of 2020 prepared by DAKSH, the cases pending in Subordinate Courts for above 5 years have decreased in the last two years. However, the share of cases pending over 5 years had increased by 5% and 1.2% in two major States. The level of decrease in some of the States is as follows

Uttar Pradesh	36.8 to 35.8%
Gujarat	27.2 to 22.2%
Maharashtra	23.1 to 20.8%
Rajasthan	22.0 to 18.8%
Andhra Pradesh	9.20 to 6.3%
Bihar	39.5 to 36.7%
Tamil Nadu	16.8 to 15.8%
Chhattisgarh	10.3 to 3.9%
Tripura	21.9 to 10.9%

9.1 It is mentioned in the said Report, vide Figure 9: "Comparing Lower Court pendency", that atleast in 8 States, such cases still amount to over 20% of pending cases. Thus, the problem of backlog of large number of old pending cases persists despite the

special measures being taken. Perhaps it is inevitable so long as the problems of inadequate number of Courts, vacancy position and heavy workload for the existing Courts, continue.

9.2 The average percentage of cases pending for more than 5 years or more is about 23% (in the first quarter of the year 2021). Kerala and NCT of Delhi are two States in which the percentage of old cases (above 5 years) is much less. In Kerala, it is about 9%. In Delhi, 11% of Criminal cases and 9% of Civil Cases are more than 5 years old.

10. Now, we would like to refer to the decision of Supreme Court (three Judge Bench) in *Asian Resurfacing of Road Agency (P) Ltd. v CBI* (2018) 16 SCC 299 which has relevance to Case management and delays. Taking note of the large number of cases held up in the trial Courts on account of stay of proceedings at the initial stages, the Hon'ble Court gave certain directions in order to ensure that stay orders shall not remain for unduly long time. In all pending matters before the High Courts or other courts relating to the PC Act or all other civil or criminal cases, where stay of proceedings in a pending trial is operating, stay will automatically lapse after six months from today unless extended by a speaking order on the above parameters. Same course may also be adopted by civil and criminal appellate/Revisional Courts under the jurisdiction of the High Courts. The trial courts may, on expiry of the above period, resume the proceedings without waiting for any other

intimation unless express order extending stay is produced. It is observed that the High Courts may also issue instructions to this effect and monitor the same so that civil or criminal proceedings do not remain pending for unduly long period at the trial stage.

11. SPECIAL CRIMINAL COURTS

11.1 Hon'ble Supreme Court having taken note of the enormous delays in the trial of criminal cases pending against MPs/ MLAs (former or sitting) in Writ Petition (Civil) No. 699 of 2016 – *(Ashwini Kumar Upadhyay v Union of India)* directed the Union Government to prepare a scheme for setting up of Courts exclusively to deal with 1581 criminal cases pending against elected MPs/MLAs (vide the order dated 1st November 2017). Accordingly, a Scheme was prepared by the Department of Justice and the same was approved by the Supreme Court on 14.12.2017. The Union Government decided to allocate a specified amount for the year 2018-19 for operational expenditure for the said Courts. During the further hearing, on considering the report of the learned *Amicus Curiae* Mr. Vijay Hansaria, Senior Advocate, the Court gave certain directions as regards the cases to be handled by the Special Courts, the location of Courts etc. One of the latest orders on this subject was passed by the three Judge Bench on 10th September 2020 (2020 SCC OnLine SC 1043). The suggestions given by learned *Amicus* including witness protection and monitoring by High Court were

referred to and the Court observed that appropriate orders will be passed on these suggestions subsequently.

11.2 Then, directions were given by the Hon'ble Supreme Court in *suo moto* Writ Petition (Crl.) No.1 of 2019 for creation of exclusive Protection of Children from Sexual Offences (POCSO) Courts to dispose of pending cases of rape and other offences against children under the provisions of POCSO Act. The Order in this regard was passed by the Supreme Court on 25.07.2019 (2020) 7 SCC 97, after considering the submissions of learned *Amicus Curiae* Mr. V. Giri, Senior Advocate, the learned Solicitor-General Mr.Tushar Mehta and Mr. S.S. Rathi, Registrar of the Supreme Court. Pursuant to this order, the Government of India (Department of Justice) has formulated a Scheme for "setting up of 1023 Fast Track Special Courts for Expeditious Trial and Disposal of Rape and POCSO Act Pending Cases" pursuant to the implementation of the provisions of the Criminal Law (Amendment) Act, 2018. It is seen from the D.O. letter addressed by the Secretary, Department of Justice to the Chief Secretaries on 05.09.2019 that the Scheme will initially operate for one year, spread over to two financial years. The Central Government has decided to provide funds to the extent of 60% (which has been worked out as Rs.16.20 crores). The expenditure per Court per year was estimated as Rs.75 lakhs. Each Court will have a Judicial Officer and seven staff members as per the Scheme. It is stated in the letter: "The Courts can be started in

rented premises if Government accommodation is not available and retired Judicial Officers and staff can be hired on contract basis wherever required." Further, the budget of FTSC Scheme provides for a flex-grant to the extent of Rs.8.10 lakh p.a. to each Court. In many States (especially in Maharashtra), such Courts manned by retired Judicial Officers have become functional. The reports to the Hon'ble Court regarding the progress made in setting up such Courts State-wise are being submitted by the learned *Amicus* periodically. There was further consideration of the matter on 16.12.2019 (2020) 7 SCC 112. After reviewing the position State-wise, the Hon'ble Court gave suitable directives to each State to make such Courts functional at the earliest. Presently, in almost all the States, the POCSO Courts have been set up though as a temporary measure.

12. CRIMINAL CASES - SOME MORE ASPECTS

12.1 It is well-known that considerable number of cases rising out of the complaints under Section 138 of the Negotiable Instruments Act (cheque dishonor cases) are pending – mostly in the cities and major towns in many States. In order to grapple with this situation, exclusive Courts of Judicial First Class Magistrates are designated by the High Courts to try the offence under Section 138 of N.I. Act. In few States, Fast Track or Special Magistrates' Courts presided over by serving or retired Judges conferred with the powers of JFCMs are also trying these cases.

12.1.1 **Order of the Supreme Court** in SMWP (Crl.) No.2 of 2020 (2021 SCC OnLine SC 325), In *re* "Expeditious trial of cases under Section 138 of N.I. Act":

Concerned over the pendency of large number of criminal cases arising out of Section 138 of N.I. Act, the Supreme Court, in the course of hearing of a SLP (Crl.), directed *suo moto* Writ Petition to be registered and appointed Mr. Siddarth Luthra, Senior Advocate and Mr. K. Parameshwar, Advocate as *Amici Curiae* to assist the Court. A preliminary report was prepared by the learned *Amici Curiae* which was sent to the High Courts and other functionaries of State and Central Government. Many of the High Court, the DGPs and the Reserve Bank of India have sent their responses/ suggestions. The Indian Banks' Association has also intervened in the matter.

12.1.2 The matter was finally heard and disposed of by a Constitution Bench because the correctness of the ratio in some of the earlier Judgments was to be considered. By the order dated 16.04.2021, the Hon'ble Supreme Court (5-Judge Bench) recorded the conclusions and issued directions aimed at avoiding delays and procedural wrangles. The issues decided by the Hon'ble Court relate to the preliminary stages of dealing with and trial of complaints U/s 138; amendments to be carried out regarding trial of the same accused for multiple offences under the said section and in regard to service of summons in such cases. The Constitution Bench has affirmed the principle laid down in *Adalat Prasad* (2004, 7 SCC 738) and held that there is no inherent power to review or recall the issue of summons, though the Trial Court can revisit the order of issue of process in appropriate cases by virtue of power vested in it under Section 322 of Cr PC. Then, it was held that Section 258 of the Code of Criminal Procedure shall not be applicable to the complaints U/s 138 of the N.I. Act and the decision to the contrary in *Meters and Instruments* (2018 1 SCC 560) does not lay down the correct law. Then, the amendments required to empower the trial Courts to reconsider/recall summons in respect of complaints U/s. 138 and other aspects relating to expeditious disposal of such complaints shall be considered by the Committee constituted by the Order of the Court dated 10.03.2021, it was observed. The matter was

directed to be listed before 3-Judge Bench thereafter. The Supreme Court also observed that in respect of pending appeals/revisions arising out of complaints U/s 138 of N.I. Act, efforts shall be made to settle the disputes through mediation.

12.2 Quite a number of compoundable cases are being identified from time to time by the Courts in coordination with District Legal Services Authorities and they are being either disposed of by the same Court or settled through Lok Adalats and Mediation.

12.3 Dearth of Public Prosecutors (esp. APPs), non-attendance of accused or witnesses, pendency of large number of non-bailable warrants and delays on the part of the police in filing charge-sheets with all the details and documents – these problems continue to haunt the Criminal Justice system in many States. Whether or not dedicated police teams supervised by a senior officer shall be put in place to attend to Court-related duties is one aspect which deserves due consideration by High Courts and State Governments.

12.4 SMM (Crl.) No. 1 of 2017 – Directives reg. certain procedural aspects of Criminal trials.

The Commission would also like to point out that the Supreme Court has *suo moto* taken up for consideration the subject relating to issuance of "Certain Guidelines reg. Inadequacies and

Deficiencies in Criminal Trials" in SMW (Crl.) No. 1 of 2017. The Hon'ble Court having noticed certain deficiencies in the existing practices in the conduct of criminal trials and the format of judgments in criminal cases, (while hearing Criminal appeal No.400 of 2006 etc.,) appointed Senior Advocates - Mr. R. Basant, Mr. Siddarth Luthra, and Mr. K. Parameshwar, Advocate as *Amici Curiae for* suggesting the introduction of specific provisions in Criminal Rules of Practice and other measures to be adopted. The *Amici Curiae* have prepared Draft Rules of Criminal practice after circulating a Consultation Paper in this regard. A Colloquium was also convened to have deliberations on these draft Rules. After considering the suggestions emerging from the Conference, the draft rules were placed before the Court for consideration. The Hon'ble Court thereafter sought responses from the High Courts. By the Order dated 20.04.2021 (2021 SCC OnLine 329), the Supreme Court, after taking into account the responses received from the High Courts, approved the draft rules and also directed the addition of a rule regarding the timelines to be adhered to in the course of trials. Taking note of the contention that it is difficult to implement the requirement of day-to-day trials, the Supreme Court has laid down that at the beginning of criminal trial i.e. soon after framing the charge, the Court shall hold a preliminary case management. The procedure to be followed to ensure continuity in trial was also indicated.

12.4.1 We may briefly refer to the contents of draft Criminal Rules of Practice submitted to the Court by the *amici curiae*. They relate to :

(i) certain aspects of investigation viz., annexures to medico-legal / postmortem certificates; photographs/ videographs of postmortem process; spot panchnama; supply of documents under sections 173, 207 and 208 of Cr.P.C. and the need to specify the documents/ material objects not being relied upon by prosecution;

(ii) trial related procedures such as preparation of charge, recording of evidence, the manner of marking of material objects, confessional statements, the manner of reference to statements under section 161 and 164 Cr. P.C. and certain aspects relating to the contents of Judgment;

(iii) period of time for disposal of bail applications;

(iv) separation of prosecutors/investigators;

(v) directives related to expeditious trials.

12.4.2 As regards the objections to the line of questioning in cross-examination, the Hon'ble Court ruled that the 2001 Judgment in *Vipin Shantilal Panchal* "should not be considered to be binding" and the Presiding Officer should decide objections to questions

during the course of the proceedings or at the end of the deposition of the concerned witness. 'Directions' were then issued to High Courts to take expeditious steps to incorporate the said draft Rules, 2021 as part of the rules governing criminal trials and ensure that the existing rules, orders and practice directions are suitably modified. The State Governments and Union of India were directed to carry out consequential amendments to the Police and other Manuals. With the said directions, the *suo moto* W.P.(Crl.) No.1 of 2017 was disposed of.

12.5 Abnormal delays in the disposal of cases by the Courts constituted for trying the criminal cases instituted by Central Bureau of Investigation are quite common. Voluminous documents and examination of large number of witnesses are some of the reasons for the protracted trials. It is felt that there is need to designate more number of Courts to try such offences. The High Courts may take appropriate steps in this regard.

12.6 Though Chapter XXIA was added to the Code of Criminal Procedure in 2006 introducing 'plea bargaining', the provisions of this Chapter are seldom availed of. The reasons for not taking resort to plea bargaining are often put forth in the Seminars and Workshops for Judicial Officers. However, no serious follow-up action is set in motion. According to the informal inputs received, the advocates also do not encourage the plea bargaining process. The

Commission feels that there must be an ongoing effort to promote plea bargaining.

12.7 Important amendments to Cr.P.C. have been made in Criminal Procedure (Amendment Act) of 2008 (Act 5 of 2009), whereby better and more effective provisions have been made to promote the victims rights and remedies. These amendments cast heavier responsibilities on the judges while dealing with certain criminal matters.

Then, Sections 41 and 41A of Cr.P.C. dealing with the provisions relating to arrest were amended by Act 41 of 2010 apparently to accommodate the views of members of legal profession.

13. COMMERCIAL COURTS

13.1 Pursuant to the enactment of "The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act 2015" (as amended in 2018), the High Courts have issued Notifications constituting the Courts for trial and disposal of 'commercial disputes' as defined in Section 2 (c) of the Act. Such Notifications were issued in the year 2016 and thereafter. So also, notifications were issued constituting Commercial Division/Appellate Divisions in the High Courts. In major cities where commercial disputes are large in number, one or more Courts have been designated as Commercial Courts and they have been exclusively dealing with the commercial disputes of a specified value including the matters arising under the Arbitration & Conciliation Act, 1996. Further, in some States, the Court of the Principal District and Sessions Judge has been designated as Commercial Court and the District Judges dispose of such cases in addition to their regular work. According to the inputs received by the Commission, the Courts exclusively meant for disposing of the commercial disputes are **not adequate in number in many cities** where such litigation is voluminous. Moreover, in view of the time consumed having regard to the complicated nature of such cases and the heavy stakes involved, it is necessary to notify more number of Commercial Courts (presided over by the District Judges).

otherwise, it is felt that the purpose of constituting such Courts cannot be achieved.

14. GRAM NYAYALAYAS

14.1 The Parliament enacted the Gram Nyayalayas Act 2008 (Act 4 of 2009) to provide for establishment of Gram Nyayalayas at the grass-root levels for the purpose of providing access to justice to the rural citizens at their doorsteps so as to ensure that such access is not denied by reason of socio-economic or other disabilities. Section 3 of the Act lays down that the State Government after consultation with the High Court may establish Gram Nyayalayas for every Panchayat at Intermediate level in a District or for a group of contiguous gram panchayats. 'Panchayat at intermediate level' is the term used in Article 243B of the Constitution. It is declared in sub-section (3) of Section 3 that the Gram Nyayalayas shall be in addition to the Courts established under other laws. Every Gram Nyayalaya will have a Nyayadhikari who is an officer eligible to be appointed as Judicial Magistrate of First Class and the salary and other allowances and terms and conditions of service shall be such as may be applicable to the Judicial Magistrate of First Class. Under Section 9, the Nyayadhikari is required to periodically visit villages falling under her/his jurisdiction and conduct trial or proceedings at any place which (s)he considers is in close proximity to the place where the parties ordinarily reside. Further, the Gram Nyayalayas can hold Mobile Courts in which case, the vehicle shall be provided

by the State Government. The Gram Nyayalayas are empowered to exercise civil and criminal jurisdiction in the manner and to the extent provided under the Act. Offences under the Indian Penal Code which can be tried by Gram Nyayadhikari are specified in Part-I of the First Schedule. Part II enumerates the offences under Central Acts which can be tried and the reliefs that can be granted in accordance with the said Acts. The Second Schedule specifies the suits of civil nature viz., property and other disputes/claims which fall within the jurisdiction of Gram Nyayalayas. The reliefs that can be granted under specified Central enactments are also specified. The powers of and procedure to be followed by Gram Nyayalayas are laid down in the Act.

14.1.1 At the Conference of Chief Justices of the High Courts and Chief Ministers held in August 2009, it was resolved to take steps for the establishment of Gram Nyayalayas. The following decisions were taken at the Conference:

> *"(a) The State Governments, in consultation with respective High Courts, will establish Gram Nyayalayas for every Panchayat, as envisaged in Gram Nyayalayas Act 2008, in order to provide speedy, inexpensive and substantial justice to the citizens of rural areas at their doorsteps.*
>
> *(b) In case the operationalization of Gram Nyayalayas cannot take effect for every Panchayat in the State on the date to be notified, it may set up the same in phased manner.*
>
> *(c) The State Governments may also consider the desirability of establishing Gram Nyayalayas in some Districts as a pilot project and making them*

functional on a prospective date to be notified as part of the implementation schedule."

14.1.2 Substantial funds are shared by Central Government. As per the existing guidelines, the Central assistance for meeting the non-recurring expenditure is limited to Rs.18 lakhs per Nyayalaya and 70% thereof is released to the State Governments as advance payment for meeting the cost of setting up Gram Nyayalaya. Recurring expenditure to the extent of Rs.3.20 lakhs per year is also met by Central Government.

The present position:

14.1.3 Many States do not have Gram Nyayalayas. Wherever they are established, there is no separate cadre of Gram Nyayadhikaris. The Judicial Officers in charge of regular Courts are empowered to act as Gram Nyayadhikaris. Though, in some States, sanction has been accorded pursuant to the proposals sent by the High Court, the same are not functional, may be by reason of some practical difficulties such as infrastructure, vehicles and shortage of Judges.

14.1.4 There are at least **four States** in which Gram Nyayalayas in large number are functional. They are Madhya Pradesh, Rajasthan, Kerala and Odisha. In Madhya Pradesh, it appears that 89 Gram Nyayalayas are functioning. The Civil Judge (Jr. Div.) who is also of the rank of Judicial Magistrate of First Class acts as Gram Nyayadhikari. Such regular Judicial Officers attend to

the work of Gram Nyayalayas in addition to their regular duties. There is no daily sitting. The Courts are conducted generally at the Gram Panchayat buildings or at times, Mobile Courts are held by making use of the vehicles.

14.1.5 In **Rajasthan**, all the 45 Gram Nyayalayas sanctioned are functional. The regular Judicial Officers (Civil Judges of Jr. Div./ First Class Magistrates) are posted and such posting is ordinarily for two years. The Gram Nyayadhikaris in Rajasthan attend to the work regularly on daily basis and the officers posted in Gram Nyayalayas are not assigned any other duty. Permanent buildings with necessary office facilities seem to be available for most of the Nyayalayas.

14.1.6 **Kerala**: In the State of Kerala, 30 Gram Nyayalayas were sanctioned and it appears that all the 30 Nyayalayas are presently operational. The Gram Nyayadhikaris are Judicial Officers (JMFC rank) working regularly in all days in a week. It seems, 28 are functioning from Government buildings and 2 from the buildings in the control of Judicial Department.

14.1.7 **Odisha:** In the State of Odisha, 23 Gram Nyayalayas have been sanctioned and 19 are presently operational. The Nyayalayas are presided over by regular Judicial officers invested with the posts of JMFC. They work on all the working days from the temporary buildings provided by the Government or in rented accommodation. 2 or 3 are located in the buildings of Judiciary.

position in **other States**:

14.1.8 **Uttar Pradesh**: It appears that 36 Gram Nyayalayas are now functional and it is expected that 6 more will be added within short time. They are presided over by regular Judicial Officers of the rank of Civil Judge (Jr. Div.)/JMFC who are entrusted with this work on regular basis. Efforts are being made to raise the infrastructure in some places. Presently, the Gram Nyayalaya is functioning from a portion of the Government building such as Tehsil office.

14.1.9 In **Maharashtra**, 36 Gram Nyayalayas were sanctioned. It seems 23 are operational at present by holding the Nyayalayas **once in a week** at a Government building or a rented premises. Judicial Officers attend to this work in addition to their regular Court work.

14.1.10 **Jharkhand**: 6 Gram Nyayalayas have been so far constituted. But, at present, only one Nyayalaya is functional and it appears steps are being taken to make two more Gram Nyayalayas functional soon. They are presided over by the Civil Judges (Jr. Div.)-cum-JMFC belonging to regular cadre. Presently, the Nyayalaya is located in a Government premises.

14.1.11 In **Punjab and Haryana,** it appears that two Gram Nyayalaya are functional, one in Punjab and one in Haryana. The regular Civil Judges (Jr.Div.)/JMFCs are given additional work of Gram

Nyayalayas. It is learnt that the sittings are held for a few days in a month in the premises of Market Committees.

14.1.12 In **Karnataka**, two Gram Nyayalayas presided over by Civil Judge (Jr. Div.) are functional for two days in a week. The Office accommodation and infrastructure is provided by the Government.

14.1.13 In the State of **Telangana**, pursuant to the letter sent by the Secretary-General of Supreme Court on 13.12.2016, the Registrar of the High Court addressed a letter to the State Government requesting for sanction to be accorded for establishing 55 Gram Nyayalayas. The Government of Telangana (Law Department) issued an order on 01.02.2019 according sanction for establishing 55 Gram Nyayalayas. However, they are not yet made functional. In the proposals sent by the High Court on 28.12.2016, the High Court proposed the appointment of Gram Nyayadhikaris by direct recruitment, by transfer and by appointment of retired Judicial Officers in the ratio of 3:1:1 respectively. However, either the recruitment of or the entrustment of work to regular or retired Judicial Officers as an interim measure has not been done so far.

14.1.14 In **Tamil Nadu**, it appears that there are no designated Gram Nyayalayas, but there are Taluqa courts wherein Civil Judges (Jr. Div.) are deployed. There are about 55 Taluqa courts and these courts are held on regular basis and only civil cases are heard in such Courts. They are functioning in rented premises or Government

building wherever available. It appears that infrastructure is being developed now for such Courts.

15. Parliamentary enactment designed to achieve lofty constitutional goals, judicial directives emanating from the highest Court, resolutions of Chief Justices and Chief Ministers, Central Government's initiative to fund liberally - all these have become futile in many of the States as Gram Nyayalayas are either not constituted at all or they are not made functional. The proposals initiated by some States soon after the said Conference are lying in cold-storage. It appears that there has been no serious effort on the part of some High Courts too to take necessary follow up action to make Gram Nyayalayas functional. Many State Governments have not been prompt or responsive. The initial enthusiasm following the 2010 Judgment and the Chief Justices/Chief Ministers Conference has evaporated in course of time. A full decade has not seen the emergence of these courts at the grass roots level except in 5 or 6 States. Even where they are constituted (on paper) after protracted correspondence, the Gram Nyayalayas are not made functional. No infrastructure is available except in a few States. Occasional correspondence and the files making rounds between High Courts and the State Governments – and nothing beyond that, has happened. The four States – Madhya Pradesh, Rajasthan, Odisha and Kerala are exceptions. Considerable number of Gram Nyayalayas are put in place in the said States and the efforts to

improve the systems and infrastructure are going on. Uttar Pradesh is another State where notable progress has been made in the recent years.

16. SOME OBSERVATIONS

16.1 According to the inputs received by the Commission on informal enquiries, it appears that the problems related to the creation of separate cadre of Gram Nyayadhikaris, the practical difficulty in deploying regular Judicial Officers of JMFC rank in view of heavy workload they have, lack of suitable venue and facilities for the sittings of the Court and lack of vehicles for Nyayadhikaris are some of the issues that are coming in the way of High Courts taking pro-active steps in this regard. Further, the State Governments' initiatives and collaborative efforts to make Gram Nyayalayas functional are utterly lacking.

16.2 This Commission would like to make the **suggestion** that the High Courts and State Governments should take all necessary measures without further loss of time to make Gram Nyayalayas effectively functional. Functioning of Gram Nyayalayas in some of the four States mentioned above can also be studied by the Registry officials or others deputed by the Chief Justice of the High Court. At the same time, the Commission **would like to point out** the obvious - that there must be proper working environment for the Gram Nyayalayas and Nyayadhikaris. The present *ad hoc* arrangement of working from a Gram Panchayat building/Market

Committee premises/Tehsil Office or from a Vehicle shall be given a go-bye. Development of infrastructure including modest residential accommodation to the Nyayadhikaris needs to be prioritized. The Nyayadhikaris ought to be provided with vehicles with sufficient fuel. These aspects may have already engaged the attention of High Courts and we are only reiterating the same. **Further,** in view of the service problems that may arise by reason of creation of separate cadre of Gram Nyayadhikaris or by reason of *ad hoc* appointments (as proposed by some High Courts), the High Courts may seriously consider whether additional strength of regular cadre of Judicial Officers should be put in place to cater to the requirements of Gram Nyayalayas. To us, that appears to be the ideal situation.

16.3 The Commission would also like to remind the functionaries of **Legal Services authorities** of the need to closely coordinate with Gram Nyayadhikaris and to extend their helping hand to the villagers intending to approach Nyayalayas.

17. LAWYERS' STRIKES/BOYCOTT OF WORK

17.1 This has become a matter of concern for the judiciary. In spite of the Judgment of Supreme Court in *Harish Uppal v Union of India* (2003) 2 SCC45 holding that the lawyers have no right to go on strike or give a call for boycott and abstain from the Courts, such calls are often given by Bar Associations concerned **or** a group of lawyers take an active part in organizing the strike or boycott.

17.2 A sincere and well prepared advocate is an asset to the judicial system. Many lawyers forget that they are considered to be officers of Court and partners in the justice delivery system. They have an independent status and an elected body of their own to protect their rights and regulate their conduct under a Parliamentary enactment. The strikes and boycotts - quite often without semblance of justification, undoubtedly result in institutional damage.

17.3 Pursuant to the Order of the Supreme Court in *Mahipal Singh Rana v State of U.P.* (2016) 8 SCC 335, the Law Commission of India submitted 266th Report titled - "The Advocates Act (Regulation of Legal Profession)". The Law Commission found that such conduct of advocates affects the functioning of Courts and becomes a contributory factor for pendency of cases. Instances of lawyers going on strike/boycott of work for weeks and months have been taking place frequently. The Law Commission noted that the strikes

for such long period or their abstinence from the Court were not for any justifiable reasons.

17.4 In the case of *Krishankant Tamrakar v State of U.P.* (2017) 18 SCC 27, the Supreme Court observed that on account of frequent strikes, the public are denied access to justice. By every strike, irreversible damage is caused to the consumers of justice. Having then observed that the strikes were in violation of the law laid down by the Supreme Court and the office- bearers of the Association who give call for the strikes cannot disown their liability for contempt, directed the Ministry of Law & Justice (at paragraph 50 of the Judgment) to present a quarterly report on strikes/abstaining from work, loss caused and action proposed so that the matter can thereafter be considered by the Supreme Court in its contempt or inherent jurisdiction.

17.5 The Commission is of the view that instead of bringing the Department of Law & Justice into the picture, **this is an issue which ought to have been left to the High Courts to tackle having regard to the nature and enormity of the problem**. We do not think that the apex court will be able to monitor on a continuous basis and initiate contempt proceedings against the erring office-bearers of Association or individual advocates. However, the Judgment conveys the message that strong action is called for to enforce the law laid down by the Supreme Court in *Harish Uppal* case (supra) and the frequent strikes and boycotts by

the lawyers who are often described as 'officers of the Court' ought to be curbed by promptly initiating such measures as the situation requires.

18. ALTERNATE DISPUTE REDRESSAL SYSTEMS AND LEGAL SERVICES

18.1 Alternative Dispute Resolution Processes (ADR) coupled with the Legal Services to the poor and needy have become an adjunct to our legal system. Presently, the most prevalent method of ADR process is the resolution of disputes by **Lok Adalats** mostly presided over by retired Judges. Conciliation is another ADR mode that is being resorted to. The short training courses on Conciliation for the Advocates are being periodically held. Some are sent to specialized Mediation/Conciliation Centres in Delhi etc. Section 89 of the Civil Procedure Code which was introduced in the year 1999 (effective from 01.07.2002) gave statutory recognition for the settlement of disputes outside the Court. Section 89 *inter alia* envisages reference of a pending dispute by the Court to Lok Adalat, Mediation, Conciliation etc. for amicable settlement. The newly incorporated provisions of Section 89 which lacked in clarity in some respects was interpreted by the Supreme Court in *Salem Bar Association Cases* (2003) 1 SCC 49 and (2005) 6 SCC 344. Again in *M/s. Afcons Infrastructure Ltd. & Anr. v M/s. Cherian Verkay Construction* (2010) 8 SCC 24, there was elaborate consideration of Section 89 and Order X Rule 1A CPC. The Hon'ble Court after adverting to certain anomalies arising from some draftsman's error

indicated the correct course of action to be adopted by the court in order to effectuate the objective of the provisions. It was further held that it was mandatory to have a hearing after completion of pleadings to consider recourse to ADR process.

18.2 The State Legal Services Authority (SLSA) which has a District Judge as full-time Secretary and a High Court Judge and other officials and non-officials as members is functional in almost all the States. The State Legal Services Authority (SLSA), District Legal Services Authority (DLSA) and Taluk Legal Services Committee (TLSC) are constituted in accordance with the provisions of the Legal Services Authorities Act, 1987. Lok Adalats are also the creatures of the said Act. One significant development is that since long, the District Legal Services Authority functions on a full-time basis with an officer of the rank of Senior Civil Judge as its Secretary. Further, permanent Lok Adalats are functioning in many States with Retired District Judges as Presiding Officers. The funds for Legal Services Authorities in the States come from the State Governments. Quite often, the Courts direct the costs imposed to be deposited to the credit of State or District Legal State Authority, as the case may be. That apart, funds are received from National Legal Services Authority (NALSA) for specific purposes such as promotion of schemes aimed at socio-economic justice and legal awareness. However, it appears from information informally received by the Commission that the legal aid availed by eligible persons has been

quite low and substantial quantum of funds earmarked for this purpose remain unutilized in most of the States.

18.3 At the all India Level, there is National Legal Services Authority funded by Union of India. In many instances, the Supreme Court has been directing the payment of costs imposed to the credit of NALSA. The NALSA has launched a series of legal aid and awareness programs. National Lok Adalats are held at periodic intervals and a sizable number of cases are settled at such Lok Adalats.

18.4 Most of the cases settled through Lok Adalats fall in certain identifiable categories viz., Motor accidents compensation cases in which the Insurance Companies are parties, low value money suits filed by Banks and Public Utility Undertakings, maintenance cases, cases under Section 138 of Negotiable Instruments Act and other compoundable criminal cases. Some cases falling within the purview of Family Courts Act are being settled with the help of Conciliators. At times, the land acquisition compensation matters are also settled through Lok Adalat. However, the cases involving property disputes which constitute the core of civil litigation are not being settled through Lok Adalat or conciliation excepting few of them. The High Courts may consider **intensifying the efforts** for identification of cases (especially property and commercial disputes, succession etc.) which rarely go

before Lok Adalats. Perhaps, a dedicated team in which the Court Managers are also associated can be thought of for this purpose.

18.5 The objective behind **Section 89 of CPC** ("Settlement of Disputes outside the Court") is not being achieved to the desired extent for want of requisite cooperation and effort on the part of the learned advocates. The Presiding Judges are also not in a position to devote much attention at the pre-trial stage as envisaged by Section 89 on account of pressure of work and paucity of time. Quite often, consideration of the question whether the case is fit to be referred to ADR is treated as a mere formality.

18.6 As regards **legal services**, there is one area which, according to this Commission, needs to be improved and strengthened. That is about pre-litigation advice and help by the DLSAs who come in direct contact with the poor especially from the rural areas. The Secretary, DLSA does not find much time to understand the grievance and to give necessary advice. They are only sent to one or the other panel lawyers many of whom are quite inexperienced. Thereafter, the Secretary, DLSA rarely meets the person concerned. There is no real effort made to put the party on the right track by explaining the pros and cons. Grass root level justice being important, the DLSAs should devote more time and attention for the purpose of interacting with the common people who approach the DLSA for redressal of grievance. The Commission feels that in order to do justice to this important task, the Secretary,

DLSA should have the assistance of regular Judicial Officers in turns to help the Secretary in this regard. If we turn to Legal Services organization at lower level, the position is much worse because the Civil Judge who attends to the work hardly finds time to understand the grievances of such persons and to suggest remedial measures. This is one area which the Commission feels the High Courts and State Legal Services Authority (SLSAs) ought to devote more attention.

18.7 There are quite a number of lofty **Schemes sponsored and funded** by NALSA such as legal services to disaster victims; scheme relating to victims of trafficking and commercial sexual exploitation; legal services to workers in the unorganized sector; legal services for child welfare; legal services to mentally disabled persons; protection and enforcement of Tribal rights' scheme; legal services to senior citizens scheme; legal services to victims of acid attack scheme; legal services to victims of drug abuse etc.

18.8 **Other services** extended by SLSA: In the Judgment of the Supreme Court of India in *R.D. Upadhyay v State of Andhra Pradesh & others* in [W.P. (C) No. 559 of 1994], reported vide AIR 2006 SC 1946, series of guidelines and directives were issued with regard to the treatment of pregnant women prisoners and the children of female prisoners. *Inter alia,* it was directed that the child should not be treated as under-trial/convict if his/her mother is in jail. The child is entitled to food, shelter, clothing, medical facility,

education and recreational facilities as a matter of right. In para-12, it was directed that the State LSAs shall take necessary measures to periodically inspect the Jails to ensure that the directions regarding the children are complied with in letter and spirit. Accordingly, the SLSA and DLSA functionaries are undertaking visits to the Jails.

18.9 Further, in the Judgment of Supreme Court reported in (2016) 3 SCC 700, In re: **"Inhuman conditions in 1382 Prisons"**, while reiterating the right of the under-trial prisoners to legal aid, directions were issued to the State Legal Services Authority to ensure that adequate number of competent lawyers are empanelled to assist the under-trial prisoners. The Secretaries of District Legal Service Committees were directed to explore the possibilities of compounding the offences with which the under-trials are charged. The Secretaries were directed to attend every meeting of the 'Under-trial Review Committee' and to take appropriate steps for the release of under-trial prisoners and convicts overstaying in jails.

18.10 In the same case, Hon'ble Supreme Court examined the subjects relating to custodial violence, prisoners' welfare and the improvement of conditions in prisons and issued certain directions by the Judgment dated 15.09.2017 [vide (2017) 10 SCC 658].One of the directives was that the State Governments in conjunction with State Legal Services Authorities and Police Academies should conduct training and sensitization programmes for senior officials of the prisons. Further, SLSAs were directed to conduct a study in

respect of the overall conditions in the prisons and are required to assess the impact of the schemes framed by NALSA relating to prisoners.

18.11 Thus, the activities and responsibilities of Legal Services bodies have been steadily expanding. They have become vibrant instruments for achieving the goals set out in the Legal Services Authorities Act and in promoting the constitutional goal of access to justice. There has been phenomenal growth in their activities aimed at creating legal awareness and promoting the welfare of poor and needy sections of the Society.

19. USE OF TECHNOLOGY

19.1 Tremendous developments have taken place in judiciary during the last two decades in the development of Information Technology (I.T.) Infrastructure by way of computerization and setting up of e-Courts. The entire working methodology in the Courts both on the judicial and administrative side has undergone a sea change. Till 2005, in most of the States, computers were being used in the Courts as alternatives to type-writers.

19.2 The e-Courts' Committee has been set up by the Supreme Court of India in the year 2005 and the said Committee has been acting in collaboration with the Departments of Government of India, especially Department of Justice and the Department of Information Technology and Finance Commission and the funds required by the Committee are provided by the Central Government. The National Policy and Action Plan for Implementation of Information and Communication Technology (NPAPIICT) in Indian judiciary was formulated by the e-Committee in 2005 and approved by the Chief Justice of India. The e-Courts project which commenced in 2007 made steady progress. The e-Courts project is an Integrated Mission Mode project being implemented under the National e-Governance plan. It is currently in the second phase and is on its way to enter the third phase.

19.3 In the first two phases of e-Courts project, almost all the Courts in the country have been computerized. Phase-I was

dedicated towards the supply of Computer infrastructure. Hardwares such as computers, printers, scanners and LAN network have been installed. Support systems such as power back-up, High Speed Internet connectivity have been deployed. Supply of laptops and laser printers to Judicial Officers took place in Phase-I. Training to Judicial Officers & staff of Subordinate Courts was imparted. Broadband internet connection was also provided to home office of Judicial Officers and the Courts were provided with Virtual Private Network (VPN) over Broadband connectivity for network connection.

19.4 Under Phase-II, more Computer hardware was provided for replacing the Phase-I Computer systems with new Computer systems. Multi-function printers, information kiosks, Display Boards & Monitors, VPN systems etc. were provided to the District Courts.

19.5 The notable achievement in Phase-II was in the development of Unified National Core Application software known as 'Case Information System' or CIS. The said software has been upgraded subsequently to make it more user-friendly. The CIS software allows parties to file their cases electronically. The Courts can receive record, scrutinize the same and register cases electronically. The system even allows digital service of process through the National Service and Tracking of Electronic Processes Software.

19.6 Integration of the other stakeholders such as police, prosecution and prisons into e-Courts project had also begun with

the implementation of Interoperable Criminal Justice System (ICJS). Through this process, the Crime and Criminal Tracking Network and System (CCTNS) used by the police to digitize their investigative process has been integrated into the Case Information System used by the Courts, thus facilitating seamless transmission of FIR, Charge Sheet and other documents to the Courts from the police stations. This enables electronic filing, scrutiny and registration of criminal cases. The data entered into the CIS is made accessible to the general public through e-Court's website 'https://www.e-courts.gov.in'. This allows the public and the advocates to access information about the status of cases, daily orders, Judgments, cause list etc. Further, the data is collated and published in real-time in the National Judicial Data Grid (NJDG) website. This enables the monitoring of filing and disposal of cases as well as pendency. It appears that this information had a salutary effect on the analysis of the case load on Indian Courts. For instance, it was revealed after NJDG went online that a significant percentage of cases were pending due to non-service of summons or non-execution of warrants.

19.7 The CIS software and the data generated therein facilitate Court management by allowing the Judges to plan their calendar through the **'JustIS'** mobile application which was developed for Judges of District and Subordinate judiciary. CIS

Software enables the Courts to generate statistical information as required which enables the High Courts to monitor case disposals.

19.8 Appliances have been developed for digital payments by the parties. The Judicial Service Centers have been computerized. Video conference facilities have been installed in all Court complexes and prisons to facilitate production of under-trial prisoners through such conference.

19.9 Laptops have been provided to the Judicial Officers to enable them to access and utilize the e-Courts systems. Training programs have been and are being conducted to familiarize the Judicial Officers with the working of the e-Courts project and also make them proficient in the various tools provided to them by the CIS software.

19.10 The computers provided to Courts are being used to record deposition of witnesses, to prepare Judgments etc. The video conference equipment is provided to the Courts and Prisons for production of under-trial prisoners for considering remand extension and other related purposes.

19.11 The daily proceedings of the Courts can be accessed by the advocates and parties using e-Court's website. They can also access the same at the Judicial Information Centres.

19.12 Absence of sufficient number of trained technical staff and the vacancies remaining unfilled, lack of refresher training to

the officers and staff of Courts and poor internet connectivity in some areas – these problems are however noticed. Further, according to the inputs received by the Commission, one problem that remains in many States is the maintenance of physical records such as Registers and again entering the data into the software, thereby resulting in duplication of work. This is a consequence of non-integration of the CIS with the working of the Courts. The entire administration of the Courts in India is paper based. A number of registers have to be maintained in accordance with the applicable rules. CIS has not been able to completely replace the paper based processes. Therefore the ministerial staff are required to feed data of court processes into the CIS and also simultaneously maintain physical records. To address this issue, a comprehensive 'Process re-engineering' exercise is required to be undertaken by the High Courts.

19.13 Digitization of pending and disposed records has commenced in various High Courts and Subordinate Courts. Such digitization has made much progress in Delhi. Digitization of record rooms if expedited will go a long way in removing the present mess in records room maintenance. The third phase of the E-courts project envisages utilization of Artificial Intelligence. Digitization of all Court records is necessary for using Artificial Intelligence in Court processes.

19.14 The report of sub-committee of NCMS on 'Court Development Planning System' headed by a senior Judge of Delhi High Court, Justice B.D. Ahmed (since retired) gives an elaborate account as to how road map for computerization and setting up of e-Courts could be drawn up.

20. INFRASTRUCTURE

20.1 It needs no emphasis that adequate infrastructural facilities are essential to ensure proper working environment for the Courts and the users of Courts. The creation of additional Courts and even recruitment to the full sanctioned strength cannot be achieved without proper and adequate infrastructure i.e., the Court complex and the residential facilities for Judicial Officers. In many places, the Courts have been working in rented buildings and in congested atmosphere. Taking note of the lack of infrastructure for the existing Courts and for the additional Courts that are required to be created from time to time, the Supreme Court of India started taking stock of the existing facilities and issuing directions on the judicial side for improving the infrastructure in a phased manner.

20.2 Infrastructure concerning Subordinate Judiciary was first taken up for consideration in AIJA case (W.P.(C) No.1022/89) and Interlocutory Application No.279/2010 was devoted to this subject. The assistance of Mr. Fali S. Nariman, Senior Advocate was taken in this regard. In the Order passed on 12.07.2010 (2010) 14 SCC 718, the pertinent observations made in AIJA (review) case of 1992 regarding the state of infrastructure available to the Judiciary in the Districts were referred to. The pathetic condition of infrastructure for the Courts and the related facilities was noticed by the three Judge Bench and it was decided to "revisit the infrastructural problems faced by the Subordinate Courts" by hearing the matter periodically.

Committees of officials at various levels were constituted for the purpose of getting the required inputs, as suggested by the learned *Amicus* and the status reports were called for. The orders dated 12th July and 19th July are reported in (2010) 14 SCC 718 and 716. The next order was on 13th September 2010 by the Bench led by successor CJI. In the said order reported in (2010) 14 SCC 705, it was observed that "Judicial infrastructure is the cornerstone of justice delivery system without which the rule of law in this country would fail". The Hon'ble Court went ahead with the process of obtaining information regarding infrastructure concerning Court halls and residential quarters of Judges of District Judiciary. State by State monitoring process on judicial side went on thereafter, as seen from the order dated 24th January 2011 (2011) 12 SCC 629. However, such monitoring did not take place between 2013 and 2017. It was however revived in 2018 and pursued in 2019.

20.3 It was observed in the decision of Supreme Court in *All India Judges Association v Union of India* (2018) 17 SCC 555 that "it would not be wrong to say" that some of the Courts (especially those in interior parts of the country) "are just on the ventilator" and "a decrepit or crumbling Court infrastructure inevitably results in causing impediment in access to justice". "Thus, strengthening of Court infrastructure requires immediate attention in the form of planning, enhanced budgeting and structured implementation or execution of the plans". The Supreme Court then observed: "We

deem it extremely necessary to declare that it is essential to provide basic infrastructural facilities, amenities, utilities and access oriented features in all Court complexes around the country". Then, it was observed that Court Development Plan should comprise of three components - a short term or annual plan; a medium term plan for a 5year period; and a long term plan (10year plan)." Further, "while focusing on judicial infrastructure, due regard has to be given to adequate and modern Court buildings, furniture, Judges' chambers, record/file storage, adequate seating and recreation arrangements for staff and officers, sitting/waiting rooms for litigants and Bar members, latest gadgets and technology." Then, the components of the Court complex have been set out in detail. Further, it was observed that the Court premises must have sufficient number of functional case display systems with the feature of automatic update in every 10 seconds.

20.4 The latest order passed by the Supreme Court in the course of monitoring of infrastructure is in the case of *Malik Mazhar Sultan v UPPSC* (2019) 5 SCC 619. The funding for infrastructure of District judiciary by the Central and State Governments and the modalities of disbursement of the Central Government's share of funds to the States were dealt with in the said order. The Court accepted the report submitted by the learned Senior Advocate and *Amicus* Mr. Vijay Hansaria in regard to the short term measures that

have to be adopted and as regards the long term measures, the matter was directed to be listed later.

20.5 No doubt, considerable progress has been made in regard to the provision of infrastructure. Yet, there is lot more to be done. It is reported that the Central Government's share of funds is not being utilized to the full extent by some States by reason of the fact that the release of funds to be borne by the State is not being done promptly. According to the latest funding pattern, the Central Government's contribution is to the extent of 60%. However, for some small sized States such as North Eastern States and those situated in hilly areas etc., the funding by the Central Government is to the extent of 90%. As per the revised guidelines issued by the Government of India on 16.05.2018, a High Court level monitoring committee has to be constituted to review the physical progress and the financial aspects related to the construction of Court halls and residential quarters every six months. The responsibilities of the said Committee have been set out. As per the information received from some High Courts, the issues regarding the ongoing construction of Court halls and residential units are being reviewed from time to time through video conferencing etc. This might check the existing delays in execution of works related to judicial infrastructure. Quality of construction is another important aspect to be addressed by the High Courts.

20.6 Establishment of a separate organization or setting up a dedicated team of Engineering Officials and staff for exclusively attending to the Works related to judicial infrastructure and for coordinating with the Registry of High Courts deserves serious consideration of High Courts and State Governments and needs to be put in place at the earliest. In some States, it appears that such arrangement is already in place though on a limited scale.

20.6.1 Though, a separate undertaking/corporation to cater to the infrastructural requirements of judiciary has been off and on coming up for discussion in some High Courts or at conferences of CJs, it has not taken a concrete shape so far.

20.7 As stated earlier, the funds of Central Government are being made available to the States at a prescribed percentage. The quantum of Central assistance varies from 60% to 90% subject to the release of finances by the State for the remaining portion.

20.8 The details of central funding for Court buildings and residential units upto July 2021 as furnished by the Department of Justice is annexed to this report as Annexure-II. In the O.M. dated 18.01.2019 addressed to this Commission, the Department of Justice stated that a sum of Rs.6624 crores has been released since 1993-94 under the Centrally Sponsored Scheme. By the beginning of the year 2019, there were 18731 Court halls and 16539 residential units for the District and Subordinate Judiciary.

21. INCREASE OF JUDGE STRENGTH / CREATION OF ADDITIONAL COURTS

21.1 In *All India Judges Association v Union of India* (2002) 4 SCC 247, the Supreme Court having taken note of the views of the Law Commission in its 120th Report (Manpower Planning in Indian Judiciary, 1987), directed at para 25 that a Judge to population ratio of 50 Judges per million be achieved within a period of five years and not later than ten years in any case. A demographic approach was suggested by the Law Commission for the fixation of Judge strength. However, not much of progress was made in implementing these directives of Supreme Court.

21.2 In *Brij Mohanlal v Union of India* (2012) 6 SCC 502 (wherein the question of continuance of Fast Track Courts was the issue involved), a direction was issued for the creation of additional posts in the District Judiciary to the extent of 10% of the total regular cadre within a fixed period. In actual practice, it appears that this norm is being applied, by and large.

21.3 In a report prepared by the Centre for Research and Planning of the Supreme Court of India titled 'Sub-ordinate Courts of India: A Report on Access to Justice 2016', a detailed analysis was made regarding pendency of cases in District Judiciary [this has been referred to in para 21 of the Judgment in *Imtiyaz Ahmad v State of Uttar Pradesh* (2017) 3 SCC 658]. The table showing the figures of institution, disposal and pendency during the years 2013,

2014 and 2015 were given in the report. It was stated in the said report that the statistics of 2013 to 2015 revealed that the judicial system was able to tackle the flow of cases because the disposals in those years slightly exceeded the number of cases instituted. It was also noted in that report of 2016 that the Subordinate Judiciary had a sanctioned work force of merely 20558 officers and the working strength of 16126 officers. Therefore, it was pointed out that the existing strength of Judicial Officers was not sufficient to keep pace with the existing requirement. The data from the National Crime Records Bureau was also analyzed in the Report.

21.4 In the case of *Imtiyaz Ahmad v State of Uttar Pradesh* (2012) 2 SCC 688, the Supreme Court, taking judicial notice of long pendency of serious criminal cases due to stay orders of the High Courts and stressing the need for a fair and speedy criminal trial, passed an order that the Law Commission of India should undertake a study and submit its recommendations in regard to the immediate measures that need to be taken by way of creation of additional Courts and other allied matters (including rational and scientific definition of 'arrears' and 'delay') keeping in view the goal of elimination of delays and speedy clearance of arrears. At the same time, it was stressed that in doing such exercise, the qualitative component of justice must not be lowered or compromised.

21.5 The Law Commission of India submitted its 245th Report titled 'Arrears and Backlog: Creating Additional Judicial (Wo)man

power'. The Report submitted in July 2014 suggested the Rate of Disposal Method to calculate the number of additional Judges required to clear the backlog of cases as well as to ensure that new backlog is not created. Para 27 explained the methodology of calculating the number of Judges required in each cadre. This report has been referred to in extenso by the Hon'ble Supreme Court in *Imtiyaz Ahmad v State of Uttar Pradesh* (2017) 3 SCC665.

21.6 The Supreme Court, by the Order dated 20.08.2014 in *Imtiyaz Ahmad v State of Uttar Pradesh* (2017) 3 SCC 658 requested the National Court Management Systems Committee (NCMSC) to examine the report of the Law Commission and to formulate its recommendations and submit the same to the Court. Dr. G. Mohan Gopal, the then Chairperson of NCMS Committee had submitted a 'Note' for calculating the required Judge strength for the District Judiciary, while also formulating his response to the rate of disposal method suggested by the Law Commission. Certain flaws in the rate of disposal method were pointed out in the said 'Note'. The Chairperson of NCMSC proposed an interim approach which augments the disposal rate method of the Law Commission with the prevailing unit system of the High Courts to attribute a weightage to cases based on their nature and complexity [vide para 32 of the Judgment in (2017) 3 SCC 665]. Dr. D.Y. Chandrachud J, speaking for the Bench of three Judges made certain pertinent observations in paras 33 to 35 of the said Judgment highlighting certain

considerations to be kept in view. *Inter alia,* it was observed that the units prescribed for disposal should provide adequate incentives for disposal of complex and time-consuming cases. The first direction given by the Court was that until NCMSC formulates a scientific method for determining the basis for computing the required Judge strength of the District Judiciary, the Judge strength shall be computed for each State in accordance with the interim approach indicated in the Note submitted by the Chairperson, NCMSC. The final report submitted by NCMSC was directed to be placed for consideration before the Conference of Chief Justices. The High Courts were required to take up the issue of creating requisite additional infrastructure for meeting the requirement of existing sanctioned strength **and** the enhanced strength in terms of the interim approach suggested by the NCMSC Chairperson by addressing the State Governments. It was clarified that the directions given in the Judgment were subject to the ultimate decision taken on the receipt of final report of NCMSC. Direction was also given by the Supreme Court regarding the steps to be taken for the effective utilization of funds made available under the 14th Finance Commission Scheme. It is seen from the Judgment that the 14th Finance Commission approved the proposals of Department of Justice concerning pendency reduction, Court complexes, augmenting technical support to Courts, digitalization of Court records, training and capacity building.

21.7 In Annexure-I to the Final Report of the NCMS Committee (referred to in the subsequent paragraph), the details of '**additional** Judge strength' calculated by the High Courts as per NCMS interim methodology based on current unit systems have been furnished. In the previous column, the number of existing Subordinate Courts in respect of which NCMS interim methodology was applied by the High Courts has been shown State-wise. The number of existing courts mentioned in the first column of Annexure I are 16137 (excluding Kerala) which was the position at the end of 2015. The details relating to Kerala were not given for the reason that the process of fixing units afresh for each court was under consideration. If about 430 Courts in Kerala are added, it works out to about 16567. The **additional** Judge strength calculated by the High Courts as per the NCMS interim methodology (given in the second column of Annexure-I to the Final Report) works out to 22700 (excluding Kerala). Thus, there is steep rise in the revised Judge strength when compared to the then existing sanctioned strength of about 21000 courts. More than cent percent **increase** was required as per the interim methodology of NCMS. It is noteworthy that in some States, the increase suggested based on the aforesaid methodology is very high. For instance, in Uttar Pradesh, the increase works out to 375% (vis-à-vis the working strength). In Maharashtra, it is about 150%. In West Bengal, the increase is about 122%. In Meghalaya, the increase is as much as 500% and in Madhya Pradesh, the increase is 130%.

21.8 In the year 2019, the NCMS Committee headed by Justice (Retd.) A.K. Sikri has submitted the Final Report on "Computing required Judge strength of the District Judiciary for each State". The Committee suggested modifications to the methodology/criteria adopted by NCMSC in the Interim Report and left it to the High Courts to arrive at the Judge strength needed by taking guidance from the methodology indicated by the Committee. It appears that many of the High Courts have done the exercise of re-calculating the judge strength accordingly.

21.8.1 The Committee observed in the report that they were proposing a 'scientific methodology' for

(i) co-relating units to Judicial hours;

(ii) estimating the judicial hours required for various categories of cases; and

(iii) on that basis, computing the final required Judge strength.

In part I, the 'Key Principles' kept in view are set out. It was observed : "As discussed in the interim NCMSC paper, the conversion of unweighted cases into weighted 'units' sets a new base for calculating the required Judge strength for each court, based on the types of cases being handled by the concerned court, their number and the number of units allocated by each High Court for each case type. The key concepts underlying the change in the assessment of Judge strength have been summarized from paragraph 9 to 30. The approach of the Committee as reflected in

Para 29 is that the Judge strength ought to be assessed and allocated Court-wise rather than for the entire District or State. Annexure II to the report contains examples of conversion of un-weighted head-count case numbers into units and in this context, the assessment is made for each Court in a District. Part-II of the report gives further details of the suggested methodology for calculating the required Judge strength.

21.9 The fact remains that in spite of the concern expressed by the Supreme Court and the directives given or observations made in various cases starting from 2002 *AIJA* case viz., Brij Mohan Lal (2012), Imtiyaz Ahmad (2012 and 2017), *AIJA* case (of 2018) etc., the increase in Judge strength/ creation of additional courts has not been anywhere near the expected level.

21.10 We would like to refer to some statistics in this regard. By the end of December 2012, the sanctioned strength of Judges of Subordinate Judiciary in the country was 18000 and the working strength was 14300 (to put it in round figures). By the end of 2015, the sanctioned strength was 20600 and the working strength was about 16200, (as per the details found in the Judgment in *Imtiyaz Ahmad* (2017) 3 SCC 658). Then, coming to the years 2018 to 2020, the following is the position:

As on	Sanctioned strength	Working strength
01.04.2018	22800	17400
01.07.2019	23400	18200
01.10.2020	24200	19200

(Figures are rounded off nearest hundred).

21.11 Thus, in a period of eight years or so, the sanctioned strength has increased only by 4000 (the average increase per year between 2013 and 2020 is about 4.5%) and at any given point of time, there was deficit of Judges by more than 20%. For some reason or the other, the vacancies have not been filled up, in spite of the timelines specified by the Supreme Court in *Malik Mazhar Sultan v UPPSC* (2008) 17 SCC 703 in respect of the recruitment process. However, it must be said that the efforts in this direction have been stepped up. One of the reasons for the tardy pace of increase of Judge strength seems to be that if the sanctioned strength is increased to the desired extent, it is difficult to find Court complexes and other infrastructure required. As per the informal inputs received by the Commission, if all the vacancies are filled up by large scale recruitment, it would be difficult to find suitable Court buildings and supporting staff. Thus, the addition to the strength of Judges is inextricably linked up with recruitment as well as infrastructure including staff requirement. **A holistic view has to be taken of these related issues and proper planning has to be done.** That seems to be the exercise which is being undertaken by the High Courts and it needs to be intensified.

21.12 The Commission is of the considered view that the concentration shall be on filling up the existing vacancies to the maximum extent **and** to simultaneously develop proper infrastructure sufficient enough to facilitate the functioning of

existing as well as new Courts to be established. Otherwise, a steep increase in sanctioned strength as per set formula will not serve the intended purpose. The building up of judicial infrastructure (to cope up with the increase in the number of Courts), even if it is expedited, takes time for various practical reasons. In the meanwhile, with the sanction of large number of additional courts in one-go, the vacancies will accumulate inter alia for want of sufficient infrastructure. For instance, in Uttar Pradesh, the number of courts required to be increased as per NCMSC criteria laid down in the interim report, will be as many as 8300 (as against the working strength of 2178 at the end of the year 2015). Enormous effort is required for providing all the requisite infrastructure and staff to make the Courts functional effectively even if the increase is confined to 50% thereof. Hence, the Commission would like to stress the obvious that the process of creation of additional Courts/increase in sanctioned strength ought to be done in phases commensurate with the infrastructure available. It is learnt that the High Courts have in the recent years, stepped up the efforts in augmenting infrastructural facilities.

22. DEARTH OF PUBLIC PROSECUTORS

22.1 This is another connected issue which needs to be tackled by the State Governments with a sense of urgency. That is about the large number of **Public Prosecutor's** posts' (especially Addl. PPs and Assistant PPs) remaining vacant on account of non-recruitment for years together. Placing an APP in additional charge of another Court or Courts has become almost a regular feature in most of the States. With the heavy workload on hand, the APPs keep moving from one Court to another (often located at different places). The administration of Criminal Justice System is bound to suffer if adequate number of prosecution officers are not available. Further, the standard of tests conducted for recruitment and the quality of training is equally important. The **Commission suggests** that the High Courts should play their due role in ensuring timely recruitment/appointment of competent PPs/APPs.

23. STAFF APPOINTMENT - DELAYS

23.1 It is obvious that the requisite ministerial and Group-D personnel as well as the technical staff such as Computer operators, Data processors are essential for the functioning of Courts. While the High Courts have been addressing the Governments to increase the staff strength to cope up with the workload, the regrettable situation is that in many Districts, the vacancies remain unfilled for considerable time, not to speak of the sanctioned strength being inadequate. There has been inordinate delay in conducting the selection process. Filling up such vacancies is wholly within the domain of the Judiciary. In quite a number of States, it appears that there is hesitancy on the part of the District Judges to initiate and finalize the process of recruitment for the reasons which are unacceptable. In some States, in order to spare the District Judges of the embarrassing situation they face, the selection for the purpose of recruitment of staff has been centralized at the High Court level. It is for the High Courts to consider how best to ensure timely recruitment to the vacant posts and to counsel the District Judges to proceed with selection without any hesitancy. Normally, a written test is held for the purpose of selection of staff. The Commission would like to emphasize that the evaluation shall be done by the nominated Judicial Officers promptly by means of spot evaluation spread over two days while at the same time ensuring that valuer-Judges devote utmost care in ensuring proper evaluation. In other

words, the process of evaluation shall not be slip-shod and it shall be done in utmost secrecy. The marks in the written test are and ought to be much higher when compared to viva-voce marks. That is why the written test assumes importance. Whether it is expedient to divest the Principal District Judges of the process of selection and to create a centralized selection process at the High Court level is a matter which deserves to be considered by the High Court after due consultation with a panel of District Judges. The problems or loopholes ought to be tackled by the Registries of the High Courts and a foolproof system of selection should be evolved on the basis of objective criteria. Otherwise, a wrong message will go that the Judiciary is unable to fill up vacancies in Subordinate Courts with promptitude and this is one of the contributory factors for the delays and adverse work environment. It is learnt that in the State of Kerala the recruitment of staff is done by the Public Service Commission. The **best practices** prevalent in some of the High Courts to ensure prompt and objective selection of staff can be ascertained and they may be adopted to the extent possible.

24. RECRUITMENT PROCESS

24.1 Taking judicial notice of the delays in recruitment process and the vacant posts remaining unfilled, the Supreme Court, in the case of *Malik Mazhar Sultan v UP Public Service Commission* (2006) 9 SCC 507, observed that it was absolutely necessary to evolve a mechanism to fill up the vacancies of Judges at all levels and to take timely steps for determination of vacancies, issue of advertisement, conducting of examination/interviews, declaration of final results and issuance of orders of appointment. The State Governments/UTs and High Courts were asked to give suggestions in this regard and requested Mr. Vijay Hansaria, Senior Advocate to assist the Court. On considering the responses received from these authorities and the suggestions of the learned *Amicus*, the Supreme Court passed an elaborate order on 4th January 2007 (2008) 17 SCC 703. It was observed at paragraph 5 that it was necessary to arrive at a consensus as regards the selection process to be conducted by the High Court itself or by the Public Service Commission under the control and supervision of the High Court. Now, the position is that even where Public Service Commission conducts selections in some States, the Judge nominated by the High Court is associated with the Selection Committee. The time-schedule was fixed by the Hon'ble Court for filling up the vacancies in the cadre of District Judge by various modes and for appointments to the posts of Civil Judges (Jr. Div.) by direct recruitment. For promotion to the cadre of

Civil Judge (Sr. Div.) also, the time-schedule and criteria were laid down. The Chief Justices of each High Court were requested to constitute a Committee of Judges and monitor and oversee that the timely selection and appointment of Judicial Officers is made. Further, the Chief Justices were requested to constitute a Special Cell for selection and appointment in the High Courts. The appointment letters were directed to be issued by the State Government within a month after the receipt of recommendations by the High Courts/Public Service Commissions. It is learnt that every year the reports regarding recruitment are being sent to the Registry of Supreme Court. Though the directions given by the Supreme Court have certainly helped in avoiding unnecessary delays in recruitment, yet the vacancies to the full extent remain unfilled and they are carried forward to the next year. It could be on account of sufficient number of successful candidates not being available and the backlog increasing year by year. **Further, it is noticed that the process of promotion as Senior Civil Judges or District Judges is quite often getting delayed and the Judicial Officers have a genuine grievance on this account.**

24.2 In AIJA case (2010) 15 SCC 170, as regards the cadre of District Judges, the Supreme Court directed that hereafter, there shall be 25% of seats (vacancies) for direct recruitment from the Bar, 65% of seats to be filled up by regular promotion and 10% seats shall be filled up by means of limited departmental

competitive examination. The then existing service Rules were directed to be suitably amended accordingly.

25. The concept of **Central Selection Mechanism** (CSM) was suggested by the Arrears' Committee of Supreme Court in April 2017. Thereafter, the Department of Justice, Government of India addressed a letter dated 28.04.2017 to the Secretary-General of Supreme Court suggesting that the idea of CSM deserves to be considered. The said letter was treated by the Chief Justice of India as *suo moto* Writ (Civil) No.1 of 2017 (*Central Selection Mechanism for Subordinate Judiciary in re).* Mr. Arvind P. Datar, Senior Advocate was requested to assist the Court. The learned *Amicus,* in continuation of his earlier report, gave a detailed Concept Note on the CSM pursuant to the order of Supreme Court passed on 28.07.2017 (2017) SCC OnLine SC 1694. Some High Courts have opposed the idea of CSM while many supported it.

25.1 The idea of Central Selection Mechanism for the **recruitment of District Judges** has been advocated to reduce the disparities in the standards of examination among various States including evaluation, to reduce the delays in taking various steps in recruitment and to select sufficient number of candidates to fill up the vacancies. It is designed to be an All India Examination conducted annually.

25.2 We shall briefly refer to the features of the said concept. The learned Senior advocate having noted that "Central Civil

Services are able to attract highly capable individuals each year and an important reason could be the selection process itself" observed: "To put it succinctly, with quantity-comes-quality; the larger the pool of aspiring candidates, the higher the probability of getting the top candidates for State Judicial Services". In para C2, it was explained:

> "The main reason for setting up a CSM is to provide a regular pool of meritorious candidates to recruitment and selection bodies for State Judicial Services across India. It is indeed distressing that several vacancies for district judges are not filled due to the lack of qualified and meritorious advocates. This is perhaps due to the absence of a regular/ periodic examination system. In most States, the examinations are held in an *ad-hoc* fashion. There is no syllabus to enable candidates to prepare in advance. The uncertainty and irregularity is what the District Judges Recruitment Examination (DJURE) aims to eradicate. Under the CMS, such candidates would be able to write a single common examination, namely the DJURE, and be considered for selection in all the States for which they fulfill the eligibility criteria."

25.3 Then it was emphasized in para D1 – "The DJURE as a Central Selection Mechanism, does not, in any way, impinge upon the powers of each High Court under Article 233 of the Constitution... This has been made abundantly clear by the Order of the Supreme Court dated 10.7.2017". Then, it was emphasized that "the proposed DJURE would not compromise the autonomy of the States in regulating the terms of recruitment or the conditions of service." and "this is what distinguishes the DJURE from an All India Judicial Service". "The proposed mechanism only seeks to centralize preparation of merit list based on performance of a candidate in a

written examination." The prerogative of appointment to the State Judicial Service would continue to remain with the Governor of a State as prescribed under the Constitution. "The DJURE will neither recruit nor appoint candidates as District Judges. It will merely present a pool of candidates from whom Judges can be recruited". It is then pointed out there is no change in the existing eligibility criteria and no change in reservation criteria. The requirement for specialized knowledge regarding the State laws/language remains. The candidate who wishes to be considered for appointment in a particular State Judicial Service must secure the requisite marks in the common papers of law and also in the papers specific to that State. Dealing with the suggested structure for DJURE in para (E), it was mentioned that there will be four papers. One of the papers (**Law-IV)** will be a paper of local laws, customs and practices and local languages. The examination syllabus, it was pointed out, will be designed keeping in mind the nature of work to be discharged by the successful candidates appointed as District Judges. Additionally, the syllabus also factors in the importance of knowledge of local laws/ language(s) and customs. It was then suggested at para E (4) that Law Papers I, II and III should "ideally be in the English language only". The rationale thereof was set out. The DJURE being an All India examination, a Central Selection Committee has to be constituted with a Secretariat and the role of Secretariat has been defined in the concept note. The interview Boards, it was pointed out, have to be constituted from time to time and adequate

representation to be given to the High Courts therein. Funding of the Secretariat shall be done by the Central Government keeping in view the All India nature of the examination. In conclusion, it was stated thus:

> "The DJURE is the first step towards creating a regular annual examination for selecting a meritorious pool of candidates from which appointments can be made to District Judiciary. As mentioned above, this will generate a tremendous opportunity to younger members of the Bar to systematically prepare for such an examination. Presently, as proposed, the DJURE should be used for appointing District Judges alone. In order to improve the quality of lower subordinate judiciary, the Supreme Court may also direct High Courts to conduct annual examinations for the same, along the lines of the DJURE."

25.4 Earlier to the 'Concept Note' prepared by the learned Senior Counsel Mr. Arvind Datar, the subject of CSM was considered by the Hon'ble Supreme Court in SMW (C) No. 1 of 2017 on 10.07.2017. The Supreme Court pointed out in para-2 of the Order that "the exercise being carried out by the Court would not affect rules and regulations as are presently in vogue in different States with regard to appointment". Then at para 3, it was observed thus – "The instant exercise is only for centralizing the selection process, so as to make recruitment a regular recurring feature, which would result in filling up judicial vacancies at the earliest, to a time-bound mechanism". Since the process of selection is proposed to be centralized, it would, if implemented, allow a candidate to apply for more than one State, through a singular selection process.

25.5 High Courts will however retain the power of interviewing the candidates. Further, some questions on the laws relevant to a Region are also set to test the knowledge of candidates supposed to be familiar with those laws. It is pointed out that the High Court's power of selection and appointment is not really diluted, rather it facilitates the High Court to select the right candidates. The full details of the scheme set out in the report of Senior Advocate and *Amicus curie* Mr. Arvind P. Datar are not available. Few High Courts have opposed the idea of Central Selection Mechanism.

25.6 After the Concept Note was circulated to the High Court, it appears that the matter has not yet been taken up for hearing. However, in the case of *Krishankant Tamrakar* (2018) 17 SCC 27 at para 34, the Supreme Court referred to the Central Selection Mechanism for District judiciary and observed that "it will go a long a long way in having timely appointments of best available talent. The step in this regard may be taken by the authorities concerned without delay so that timely and quality appointments can be ensured." Thereafter, the matter was not considered by the Supreme Court. However, it was tagged on to *Malik Mazhar Sultan v UPPSC* (2019) 5 SCC 619. SMW (C) 2 of 2018 regarding filling up vacancies has also been added to the case referred to above.

26. THREE YEARS STANDING AT BAR FOR RECRUITMENT AS CIVIL JUDGE (JR. DIV.):

26.1 In the recent years, whether requirement of three years of practice at the Bar for recruitment to the lowest rank of Judicial service – as Civil Judge (Jr. Div.)/Magistrate of First Class has become a contentious issue in judicial circles. Whether or not to revive the three year rule of practice at the Bar is the question that is being debated, though informally.

26.2 Following the emphatic observations of the Supreme Court in the Second AIJA case (1993) 4 SCC 288 which was reiterated in another case – arising from the I.A. filed in AIJA matter AIR 1994 SC 2771, all the States prescribed three years of practice at the Bar as one of the requirements for recruitment as Civil Judge (Jr. Div.). In AIJA review case of 1992 (reported in (1993) 4 SCC 288, the Supreme Court laid down that there should be minimum practice of 3 years as lawyer as a necessary qualification for recruitment as Civil Judge (Jr. Div.). It was observed that the recruitment of law graduates without any training or background of lawyering has not proved to be a successful experiment. Neither the knowledge derived from the books nor pre-service training can be an adequate substitute for the first-hand experience of the working of the court system. It was emphasized that unless the Judicial Officer is familiar with the administration of justice, his education and equipment as Judge is likely to remain incomplete.

26.2.1 After referring to the views of some of the High Courts, the State Governments, the views of retired Chief Justices of India as well as the different views expressed by the Law Commission of India, the I NJPC was of the opinion that three years standing at the Bar as the minimum qualification for entering into judicial service was unnecessary in view of the Commission's recommendation on the institutional training for the selected candidates. (The I NJPC recommended the induction training courses for one year). It was then observed at para 8.35 :

> "If intensive training is given to young and brilliant law graduates, it may be unnecessary to prescribe three years practice in the Bar as a condition for entering the judicial service. It is not the opinion of any High Court or State Government that "induction into service of fresh law graduate with brilliant academic career would be counter-productive".

In the AIJA 2002 case (2002) 4 SCC 247 at para 32, this issue was dealt with. The Supreme Court, in modification of its earlier view, accepted the recommendations of the FNJPC and held that it should no longer be mandatory for an applicant desirous of entering the judicial service to be advocate of at least 3-years standing. In para 32, it was observed :

> "with the passage of time, experience has shown that the best talent which is available is not attracted to the judicial service".

26.3 It was not possible for the Commission to ascertain the latest views of the High Courts as the Commission felt that there

would be hesitancy on the part of the High Courts to express their views in response to the queries of the Commission. Further, the Commission thought that the principle will be settled on the judicial side by the Hon'ble Supreme Court in W.P. (C) No. 1479/2020 as the notice was issued in the said matter which challenged the legality of the Andhra Pradesh High Court's Resolution to reintroduce the requirement of 3 years minimum practice. However, pursuant to the request made by the petitioner therein, the petition was allowed to be withdrawn by the Hon'ble Court by an order dated 17.02.2021. It may be mentioned that in the said Writ Petition, the Bar Council of India filed the application for impleadment while strongly advocating the view that 3 years practice as an advocate was desirable as a pre-requisite for recruitment as Junior Civil Judge. Presently, the Bar Council of India is holding an examination for the advocates enrolled and the enrolled candidate shall pass the tests within the specified time limit.

26.4 The Commission would like to observe that the relevance of reasons given by the FNJPC and the Hon'ble Supreme Court in the AIJA 2002 case (supra) are being questioned in many quarters having regard to the experience gained during the last two decades. The induction training course has not been continuous and the attendance at the Courts or lawyers' chambers as part of the clinical training course in the Law Colleges has become more or less an empty formality. Graduates from National Law Schools (NLS

Bangalore was referred to by the FNJPC) are still not joining in adequate number notwithstanding the fact that the rule of 3 years practice has been dispensed with. Further, the late entry into service by reason of the requisite experience at the Bar as prescribed by the earlier rules was one of the considerations taken into account by the apex Court for treating the Judicial Officers different from other civil service officers. It is commented in many circles that those law graduates who can afford to take the coaching at the private institutes are able to secure higher marks in the written examination and the candidates who joined the Bar are suffering a disadvantage in this respect. As stated earlier, the Commission has not been in a position to make an in-depth study on the subject though the Commission strongly feels that this issue needs to be examined afresh in the light of further experience gained. Hence, the Commission **suggests** that the judicial acceptance of the principle that the grass root level inductee need not have any bar experience at all needs to be carefully revisited.

26.4A In this context, the Commission would like to quote what Shri R. Basant has added:

Complaints/grievances are rampant that such recruitees (with no experience at the bar) are not able to comprehend the nuances of the subtle and sublime judicial process at the grass root level. They do not understand the importance of rules of procedure, the

relevance of cross-examination as a great engine for discovery of truth - the mechanics and dynamics of the difficult process of bringing out truth and falsehood through cross-examination; (that they do not really perceive the relevance of the bar in the truth and justice ascertainment process and more importantly they sometimes assume, due to want of exposure, that the rules of procedure, the institution of the bar, and even the system of cross-examination are only unnecessary impediments in the expeditious completion of the trial process). This is indeed alarming. The prudent person standard expected from a court under Section 3 of the Evidence Act also perhaps assumes that the court is familiar with the nuances of the trial process. That assumption is often proving to be empty, unreal and illusory now, it is complained. To competently traverse the long distance between 'admissible' evidence and the 'acceptable' evidence in the trial also, at least elementary familiarity with the system is essential and unavoidable, it is felt by a sublime section of the legislators, members of the bar, judges, as also members of the civil society.

26.5 The Commission therefore emphasizes the need to take a decision at the appropriate level after ascertaining the views of the High Courts, Bar Councils, senior district judges, experienced academia and senior faculty members of judicial academies as well. Incidentally, the Commission would like to point out that until a decision is taken finally in this regard, those with experience at the

bar could be given weightage for their bar experience for every year of practice – by addition of appropriate number of marks to those secured in the written test/viva-voce test – may be 3 marks for every completed year, 6 for 2 years and 10 for 3 years or more of practice. Further, the question papers for the test need to be set with emphasis on testing the practical knowledge.

27. TRAINING

27.1 Training and skill improvement is of course essential for the Judicial office-holders. Judicial Academies/Judicial Training Institutes play an important role in improving the quality of justice dispensation. The foundation for judicial career is laid at these Judicial Training centres. Apart from shaping the career of new recruits, the training/interaction courses in the Academies augment the abilities of the in-service officers as well. Even the experienced senior judicial officers are benefited by the workshops and interactive sessions organized by the State Judicial Academies (hereafter referred to as 'SJAs'). The academies provide the platform for exchange of ideas and for clearing the doubts. Application of law with right attitudes and approaches is the core of justice dispensation and the SJAs prepare the ground for developing these qualities. Sensitizing the Judges to adopt approaches which will further constitutional goals is one of the themes of the training courses/workshops. A Judge is a continuous learner. The process of learning has more beginnings than endings. The SJAs provide congenial atmosphere for such learning which in turn, facilitates skill improvement. Almost all the States (except few small size States) have full-fledged SJAs/JTIs. The SJAs/JTIs in many States have excellent infrastructure including large Conference halls, library and hostel facilities.

27.2 The State Judicial Academies are administered by the High Court. A Committee of Judges is constituted by the Chief Justice of High Court. The Director of the Academy is, in most of the States, a Senior District Judge rank officer. According to the inputs received by the Commission, sufficient care is bestowed in selecting the right person as Director and the other members of the faculty. In some States, the Institution is headed by retired High Court Judge or eminent law professors. Retired High Court Judges and District Judges, Professors, Medico-Legal Experts, experts in Computer technology and other specialists are invited for participation in the programs. The State Judicial Academies prepare annual calendar of various programs such as induction training, refresher/orientation courses, professional advancement courses etc. The calendar drafted by SJAs is sent to the Director of National Judicial Academy for suggestions and comments if any. Special programs are organized for the Judges presiding over the courts constituted under special enactments such as Family Courts, Special Judges exercising jurisdiction under the Prevention of Corruption Act. The National Judicial Academy at Bhopal which functions under the overall supervision of Supreme Court of India and in coordination with the Department of Justice, Government of India has a place of pride in the judicial history. The Director of the Academy so far has been an eminent Professor in Law with vast experience, a scholarly retired Judge of the High Court and presently, a retired Chief Justice of the High Court. Throughout the year, they have programs for the

members of District Judiciary and for the newly appointed High Court Judges as well. Judges from neighbouring foreign countries have also been participating in the courses offered by NJA on many occasions.

27.3 One of the problems faced by the State Judicial Academies is the lack of permanent faculty of legal academicians. Such permanent faculty can certainly play a complementary role in improving the standards of Judicial training. The posts have to be sanctioned by the State Government and adequate remuneration needs to be provided for to attract talented Professors/Associate Professors/Asstt. Professors.

27.4 We may now point out few issues which may be relevant in organizing the courses - Firstly, with regard to the spells of induction training imparted to the newly recruited Judicial Officers especially the Civil Judges (Jr. Div.). No doubt, they are required to undergo one-year training at the Judicial Academy, but in many Academies, such training is being imparted in short spells of three months or so and then they are given postings and thereafter, again, they come back for further training. It would be appropriate if they are given regular postings atleast after six months of training and further, it needs to be ensured that the gap between the earlier period and the second phase of training shall not be too long - preferably not more than three months. Secondly, there is a feeling that special guidance and individual advice to the Judicial Officers

who are found to be deficient in certain respects is not forthcoming. It is desirable that the Director or the Additional Director of the Academy shall have occasional personal interaction with such candidates so as to guide and advise them suitably.

27.5 The lack of proper hostels and recreational facilities in the Academies seems to be another area of concern at some places.

27.6 Another area of importance which needs to be given **greater attention** is imparting practical thrust or content to the training programs. For this purpose, the material in the form of illustrative examples and problem solving exercises, mock trials need to be carefully selected and revised from time to time. **There is a need for more intensive training on the topic of appreciation of evidence specially in criminal cases where the distinction between admissible evidence and acceptable evidence assumes importance quite often. Though such programmes are organized by the Academics, the Commission is of the view that there shall be more concentration of these aspects.** Judgment – writing exercises too are very important and the trainees shall be adequately guided in this respect.

27.7 In National Judicial Education Strategy (a subject forming part of 'NCMS policy and action plan' which was released on 27.09.2012), the need for a systematic research agenda aimed at

promoting inter-disciplinary skills was stressed in "National Judicial Education Strategy" (included in "Policy FAWOA Plan" of NCMS).

28. STAFF TRAINING

28.1 Competent and courteous ministerial staff posted in various sections of the Court is an asset to the Judicial system. The newly recruited staff should acquire basic knowledge of the justice system and the functioning of courts. They need to be trained and guided to equip them with the requisite knowledge and perception of the work they are called upon to undertake from time to time. According to the inputs received by the Commission, there is no organized training course for such newly appointed staff. One of the District Judges and/or Administrative officer of the Court will only have a few interactive sessions with the newly appointed ministerial staff. In the Judicial Academies, no programs are being organized for training the ministerial staff, may be on account of constraints of time and faculty. It appears that some training programs are organized now and then for Administrative officers on specialized topics. The Commission is of the view that the training programs atleast for a month or two shall be organized at the initial stages of the career of the newly appointed staff members. The District Judge and other nominated Judicial Officers of the District and the senior Administrative Officers of the Courts and even experienced advocates can participate in such training programs of the ministerial staff. It is also necessary to organize periodical refresher courses too. Further, they can be sent to the institutions of excellence set up by the State Governments in some of the States.

29. PERFORMANCE APPRAISAL

29.1 The evaluation of performance and qualities of the members of District/Subordinate Judiciary is an important function of the High Court and an integral part of administrative control vested in the High Court under Article 235 of the Constitution. Such assessment is so important that it may make or mar the career of Judicial Officer. Therefore, it is imperative that High Court performs this task with promptitude coupled with care and objectivity. The performance appraisal has two components. One is about the quantum of work turned out by the Judicial Officer and the quality of Judgments. Certain norms are prescribed by the High Court for grading the Officer. The second component is assessing the conduct and qualities of Judicial Officer. The Annual Confidential Roll (ACR) reflects both these elements. The High Courts have been taking fresh look periodically at some of the norms and the ratings prescribed for disposal and making necessary changes. It is essential that best practices prevalent in the High Courts across the country shall be studied and applied by the High Courts in order to evolve a proper methodology of assessment. It needs to be a continuous process.

29.2 A Committee constituted by the Department of Justice, Government of India was entrusted with the research project titled as 'A Comparative Analysis of Performance Appraisal Mechanisms and Schemes of Promotion in Relation to the Judges of Subordinate Judiciary in Different States in India'. The work was entrusted to

National Law University, Odisha and the Committee was headed by then Vice Chancellor, Prof. Mr. Krishnadev Rao. The Committee analyzed the existing policies/practices in twelve States and submitted the Report under the following heads;

(1) Analysis of norms of disposal
(2) Analysis of ACR system
(3) Analysis of schemes of promotions

29.3 The objectives of research were stated to be:

(1) to conduct a comparative analysis of performance appraisal mechanism and schemes of promotion of subordinate judiciary

(2) to identify the prevalent best practices and model mechanism of performance appraisal and schemes of promotions of subordinate judiciary.

The Committee stated in introductory chapter that "the endeavour has been to assess the degree of objectivity in the policies which are prevalent in different States." It is further stated that "the systems of performance appraisal in different States have been analyzed from two perspectives: norms of disposal and performance assessment through Annual Confidential Records." The Committee stated that the recommendations (based on the best practices identified in different States) ought to be adopted to improve the efficiency and transparency of Performance Appraisal Mechanism in each State.

29.4 Chhattisgarh High Court has framed specific Regulations known as "Judicial Officers (Confidential Rolls) Regulations 2015".

Jharkhand too has the rules on the subject bearing the title "Judicial Officers Work Disposal (Grading Rules) 2015". Further, the format of Confidential Rolls has been prescribed by many High Courts.

29.5 While on this subject, this Commission would like to point out certain aspects which deserve the attention of the High Courts.

29.6 It is a known fact that there have been delays in completing the work assessment which forms the basis for ACRs as well. The files are held up in the chambers of the Hon'ble Committee Judges for months together. As the qualitative performance needs scrutiny of the Judgments, naturally, it takes some time for Judges to do this part of the work. The quantitative assessment is comparatively easier. The out-turn of the work in the light of the existing norms is shown by the Registry and the explanation of the officer for shortfall is also put up before the Committee. The process of perusal of Judgments to evaluate the capacity and approach adopted by the Judicial Officers demands more time from the learned Judges of the Committee, if evaluation process has to be made meaningful. The Hon'ble Judges, with heavy judicial work on hand and various other items of work on administrative side, naturally find it difficult to devote sufficient time for the perusal of Judgments and forming the opinion. It is not out of place to mention that at times, there is mechanical endorsement of the assessment made by the colleague Judges without further consideration. These

issues arise on account of constraints of time, as already stated. Once the evaluation of the work done by the Judicial Officer in terms of disposals number and quality gets delayed, it naturally leads to delays in the finalization of ACRs. Instances are galore that without latest ACRs, the performance of the Officer is judged by reference to the material/record related to earlier years. How to overcome this situation is a matter to be seriously addressed by the Hon'ble High Courts. The process of evaluation of quality of Judgment can perhaps be entrusted to the Judges at the junior level who have comparatively less administrative work, especially in the matter of evaluation of judicial work of the Junior Civil Judges who are large in number. Another solution could be that the requirement of all the Judges in the Committee going through the Judgments can be modified by allocating the assessment relating to specified Districts to two members of the Committee. It need not pass through the hands of all the Judges of the Committee – 4 or 5 in number in many States.

29.7 Another suggestion the Commission would like to put forward is that the Committee or some Judges thereof (to whom the Districts are allocated for assessment) can take the assistance of suitable retired District Judges for the purpose of assisting them in evaluating the quality of Judgments of Civil Judges (Jr.& Sr. Division). Such retired District Judges may be paid such honorarium as may be fixed by the High Court.

29.8 Then, in regard to remarks in the ACRs on the aspects touching the qualities and conduct of the Judge, a high degree of care and objectivity is required. There have been many instances in which discreet enquiry is ordered or a report is called for from the District Judge in respect of the complaints received by the High Court some of which are anonymous/ pseudonymous petitions, though it is an accepted practice that such complaints need not be acted upon unless they contain verifiable allegations. Moreover, the contents of such petitions can as well be checked by going through the case record if it relates to judicial work. The District Judge if necessary can be orally consulted. A balanced approach is required in such matters. However, the fact remains that some of the Hon'ble Administrative/Inspecting Judges call for the remarks of District Judge in a routine manner. There are many instances in which the District Judges take their own time to furnish the reports. The assessment of the officer's work/conduct is then deferred with the result that the ACRs are delayed. This is an area in which the Hon'ble Chief Justices may have to bestow their attention.

29.9 One more aspect which we would like to point out is that the reasons for not achieving the targets fixed should be carefully considered keeping in view the explanation of the Officer concerned. Genuine difficulties should be duly taken into account. Mathematical calculation of the number of cases may not always yield correct results to judge the performance.

30. INSPECTIONS

30.1 Periodic inspection of the Courts in the District by the High Court is an integral part of the administrative control vested with the High Court under Article 235 of the Constitution. The inspection is of two kinds: First is, occasional visits by the concerned portfolio/inspecting Judge of High Court and holding conference in the District Court complex with the Judicial Officers working in the District. Work review is, of course, the most important part of such meeting. The Hon'ble High Court Judge will also have a first-hand idea regarding the working environment in the courts and the administrative or other problems faced by them. Normally, the High Court Judge also meets members of the Bar and interacts with them and the ideas for improvement are exchanged. Occasional video-conferences are also being held with Principal District Judges mainly aimed at getting updates regarding the work turned out by the Judges in the District and giving necessary suggestions from a practical point of view.

30.2 The **second type** of inspection is comprehensive in nature, mostly confined to the District Judges' Courts. On this occasion, there will be review of work of all Sections apart from the review of judicial work especially of District Judge level Officers. The proper upkeep of records and maintenance of registers, case property disposals, action taken on the grievances of the court-users, the facilities which need to be augmented in the Court

complexes - all these engage the attention of inspecting Judge on this occasion. An inspection team headed by an experienced officer of the Registry of the High Court is sent in advance i.e. about two or three weeks prior to the scheduled date of inspection of the High Court Judge. The remarks and observations of the inspecting team are made available to the Principal District Judges in advance. The High Court Judge will study the same and make visits to some Sections in the Court office and give suggestions/directions or initiate such remedial measures as may be required.

30.3 In the long past, may be up to 1990s, such comprehensive inspection by the administrative/portfolio Judge used to be a regular feature. Unfortunately this type of inspection by the High Court Judge has become an event of the long past. Presently, such inspections are not being undertaken, not even once in two years. **It is necessary** to revive the practice atleast of bi-annual inspections of the District Courts by the concerned Judge of the High Court.

30.4 The Commission also **suggests** that steps ought to be taken by the High Court to put in place dedicated inspection team(s) with staff and officials well-trained in this regard. A thorough inspection will certainly reveal the facts relating to the working of District Courts which would not have come to light in the normal course.

30.5 Further, one suggestion which the Commission would like to give for the consideration by the High Courts is that the services of Retired District Judges can be taken by the Hon'ble High Court Judges to assist them in the course of inspection. The retired District Judge may go in advance and coordinate with the inspection team as well as meet the District Judge(s) so that (s)he will be in a better position to effectively assist the High Court Judge at the time of inspection.

30.6 As far as the Courts of Civil Judges (Jr.& Sr. Division) are concerned, the Principal District Judge or a District Judge deputed by him/her conducts the inspection and prepares the report.

31. COURT MANAGERS

31.1 The appointment of Court Managers had started with 13th Finance Commission Scheme (Grant-in-aid scheme-2010). Now, in most of the States, Court Managers (who are MBAs – some of them are also Law graduates) are in place. They are required to have experience in IT Systems Management/Human Resources or Financial Management. There are Senior Court Managers, in addition to Court Managers in many States. However, in most of the States, there are quite a number of vacancies remaining unfilled for years. According to the inputs received by the Commission, it appears that the services of Court Managers are not being fully utilized in some Courts in order to subserve the purpose for which they are appointed. The duties and responsibilities of Court Managers are laid down either in the Rules or the Circulars issued by the High Courts. Rules or Orders are in force in various States governing the qualifications, recruitment and conditions of service.

31.2 The need to avail the services of professionally qualified Court Managers was stressed by the apex Court in the case of AIJA (2018) 17 SCC 555 and a direction was given to regularize the services of Court Managers already working. In this context, para 12.9 of the Order passed by the Hon'ble Supreme Court is relevant.

> "12.9. Professionally qualified Court Managers, preferably with an MBA degree, must also be appointed to render assistance in performing the court administration. The said post of Court Managers must be created in each judicial district

> for assisting Principal District and Sessions Judges. Such Court Managers would enable the District Judges to devote more time to their core work, that is, judicial functions. This, in turn, would enhance the efficiency of the District Judicial System. These Court Managers would also help in identifying the weaknesses in the court management systems and recommending workable steps under the supervision of their respective Judges for rectifying the same. The services of any person already working as a Court Manager in any district should be regularized by the State Government as we are of the considered view that their assistance is needed for a proper administrative set-up in a court."

31.3 Incidentally, we may mention that there is an informative and analytical paper prepared by DAKSH with the title "A study on the Role of Court Managers in Indian Judiciary" (2020). NALSAR University of Law at Hyderabad, in the report submitted to the Department of Justice on the subject - **"A Study on Court Management Techniques For...Subordinate Courts"** (2016), stressed the need for efficient Court Managers.

31.4 In most of the States, the **regularization of services of Court Managers** has not taken place in spite of long passage of time. The directive of the Supreme Court remains unimplemented though the High Courts have been addressing the State Governments in this regard. They continue to work either on a consolidated pay, the maximum of which is perhaps Rs.70,000/- (in the State of **Telangana**) or the inadequate pay provided for in the Rules. Either there are no allowances or the allowances fixed are quite low. For instance, in **Maharashtra**, the Court Managers are

appointed on contract basis for a period upto 5 years. The fixed pay of Senior Court Manager is Rs.51,500/- plus allowances (total Rs.64,000/-) and the Court Manager gets Rs.52,900/- (including allowances). There is a provision to increase fixed pay by 6% per annum if the service is satisfactory. In Maharashtra, the Court Managers of all ranks are almost in full strength. In **Rajasthan**, out of 35 Court Managers' posts sanctioned for District Courts, 29 are presently working. Their pay is Rs.40,000/- p.m. with a provision for increase by 10% every year. The regularization process seems to be under consideration.

31.5 In **Gujarat**, the Court Managers who are appointed on contract basis get consolidated annual salary of Rs.7 lakhs in the 1st year and from 2nd year, (s)he gets 10% incentive for 'effective work'. In **Tamil Nadu**, as per the Rules of 2012 framed by Madras High Court under Article 229 of the Constitution, the temporary posts of Court Managers carry the pay scale of Rs.15600-39100 with Grade Pay (GP) of Rs.6600/-. The same pay pattern is in force for the Court Managers in the States of **Punjab** and **Haryana**. In the State of **Chhattisgarh** (where Rules have been amended to provide for regular cadre of Court Managers), the pay of Senior Court Manager and Court Manager respectively is Rs.15600-39100 plus Rs.5400/- Grade Pay (GP) **and** Rs.9300-34800 plus Rs.4800/- Grade Pay (GP). It is not clear whether they get any allowances.

31.6 The Rules of 2018 framed by the State of **Assam** are quite comprehensive and provide for better pay benefits. Scale of pay – Rs.30000-110000 with grade pay of Rs.14500/- and annual increment of 3%. More importantly, they are eligible to get all the allowances admissible to Government servants placed in the said pay scale. In the State of **Assam**, the Gauhati High Court (Appointment and Conditions of Service of Court Managers for the State of Assam) Rules 2018 contemplate appointment of Court Managers on regular basis with the provisions for probation and confirmation.

31.7 In **Kerala**, the Court Managers appointed on contract basis are working in 8 District Courts, the sanctioned strength being 14. It appears, the process for regularization is under active consideration of Government. Presently, they get the pay of Rs.42500-87000 (pre-revised).

31.8 The Commission submits that in view of the *ad hocism* in conditions of service prevailing in various States, it would be appropriate if the Hon'ble Supreme Court issues a **supplemental directive** to the State Governments regarding creation of regular cadre of Court Managers and regularization of services of Court Managers appointed on contract or *ad hoc* basis. In any case, in whatever capacity they are appointed, there is every need to give them the benefit of **higher pay** with reasonable quantum of allowances. The Commission suggests accordingly.

32. GRIEVANCE REDRESSAL

32.1 The Constitution, by Article 235, enjoins that the control over District and other Subordinate Courts vests with the High Court. The exercise of supervisory power of High Court is thus a constitutional mandate. The inspecting/administrative/portfolio Judges for one or more Districts or local areas are designated by the Chief Justice of the High Court. The High Court Judges are aptly described as 'guardian Judges' in many Jurisdictions. The power under Article 235 carries with it the responsibility to act as monitors as well as mentors. Prompt action and response on the representations made by the Judicial Officers to the High Court is their legitimate expectation. Ways and means of strengthening the grievance redressal mechanism ought to be a constant endeavour on the part of the High Courts. Permitting personal representations in appropriate cases through video-conferencing or otherwise, may also be needed. The feeling that no purpose will be served in making the representation and it will lie over in the Registry for months needs to be dispelled. Further, the Judicial officers (at any level) should be encouraged to give their suggestions in respect of work methods and work atmosphere including the Court management problems faced by them and the same deserve to be duly taken note of. We are making these observations based on the inputs received at some of the Conferences.

33. PERIODICAL CONFERENCES OF JUDICIAL OFFICERS

33.1 At present, holding of periodical Conferences of the Judicial Officers' Association is only happening in few States. Such Conferences wherever held, take place with the permission of High Court and the cost of travel is reimbursed. The High Court administration in collaboration with Government officials extends some facilities for stay. Only in a few States (Karnataka is one such State) such Conference is an appropriate platform for frank discussion of the problems – judicial, administrative or service, faced by them and to share the views with participants in order to suggest practicable remedial measures to the High Court. It is suggested for the consideration of the High Courts to facilitate such Conference at least once in two years. The participation of the Hon'ble Judges of High Court should be minimal at such Conferences. May be, at the inaugural session, the Chief justice and other dignitaries may address them. The proposals made by the Association pursuant to such Conference ought to receive due consideration by the High Courts.

33.2 According to the limited information available with the Commission, the Conferences are being held in the following States:

Uttar Pradesh	Judicial Officers 'Association conducts three days Conference once in 2 years with the permission of High Court.
Karnataka	Judicial Officers' Association conducts the conference once in 2 years (with the permission of High Court) and the State Government sanctions funds for the conference.

Madhya Pradesh	M.P. State Judicial Officers' Association conducts a Colloquium for 3 days (Last held in Feb.2021)
Rajasthan	The Conference of Principal District & Sessions Judges only is held periodically. The last conference was held in 2019.
Andhra Pradesh (the then composite State)	The last Conference of Judicial Officers all over the State was held in 2016 after a long gap. State Government sanctions funds for this purpose.

34. SERVICE ISSUES:

34.1 The question whether the Commission shall proceed to consider and make recommendations relating to the service issues adverted to by AIJA in the representations received in November 2020 and January 2021 has engaged our attention. The Commission feels that an in-depth consideration of service issues relating to promotions, *inter se* seniority, cadre review, better opportunities for promotee officers for elevation to High Court etc. even if they fall within the scope of the expression – improvements to work environment with a view to promoting efficiency in judicial administration, it is a long drawn process and further, it is inappropriate for this Commission to undertake a study of some of these issues without specific reference by the Hon'ble Court. In this context, we may mention that there was a specific term of reference to FNJPC regarding recruitment and allied aspects. Accordingly, FNJPC made certain recommendations *inter alia* to provide better opportunities to in-service judges in matters relating to promotion. Several aspects of importance have been dealt with by FNJPC especially in Chapters 10 and 12. By and large, they hold good even now. Though it has been pointed out in the representations that some of the recommendations of FNJPC have created certain anomalies/adverse effects on the career prospects of Judicial Officers, it has not been specified as to what those anomalies are.

34.2 As regards the *inter se* seniority between direct recruit persons and promotees - which is one of the issues adverted to in the representation, the same is settled by judicial decision of apex court. The FNJPC also made recommendations in this regard (vide paras 12.101 to 12.123). As regards the proportion between Bar and Bench members for the purpose of elevation, such issues are resolved through high level policy decisions taken at the Chief Justices' Conference etc. In matters of such nature, this Commission considers it inappropriate to express any view especially in the absence of specific reference. Incidentally, the Commission would like to point out that quite a number of subjects dealt with in our Reports have a specific bearing on the betterment of service conditions.

34.3 It is not to say that the Judicial Officers have no legitimate grievances as regards improving their career prospects. For instance, the delays in promotion and the long waiting period (ranging from 15 to 20 years) for a Civil Judge (Jr. Division) to become District Judge is one of the issues pointed out in the said representations. The said grievances are partly related to implementation problems i.e. administrative delays in undertaking the exercise of promotion/elevation promptly. Further, with the expected increase in number of Courts, stagnation may not persist and there may be better opportunities of promotion. The Commission is not inclined to say anything more on these issues. If

any specific identified problem in this regard, has to be resolved, the same perhaps be referred to a high-level Committee constituted by the Supreme Court.

35. CONCLUDING WORDS

35.1 Years rolled by since the FNJPC gave its report in 1999. Vast developments have taken place since then which have bearing on the subject under discussion. We have narrated them in some detail, though not exhaustively. Certain systems, practices and methodologies have been evolved or strengthened since then. With these marked developments spanning over 22 years, some of the suggestions/recommendations of FNJPC have lost relevance. Yet, some of the salutary suggestions in the report still hold good. Further, useful suggestions from various sources have emerged touching court/case management issues. Various publications/ research papers on the subject have been referred to in this Report. Judicial intervention on every important aspect with a view to set right the things has become all-pervasive. There has been constant endeavour to improve. Yet, problems persist. The reasons for delays and backlog are often laid at the doors of judiciary, though many of them are beyond the control of judiciary. Certain practical problems relating to implementation and more importantly, all concerned in the system not playing their due role seem to be the main contributory factors for the judiciary not being in a position to clear the backlog of cases as per the targets. Further, as mentioned earlier, the filing and pendency is bound to increase for various reasons such as steady increase in population, literacy and legal awareness, phenomenal rise in the price of properties, the trend of

disharmony among family members, rise in crimes of various kinds – partly poverty driven. All these have become contributory factors for the growth of litigation. Quite often, the courts are blamed for the delays without knowing the actual state of affairs. The filing and pendency of large number of cases in District and Subordinate courts in spite of various measures taken has therefore become an inevitable feature. It needs no emphasis that there shall be continuing efforts on the part of the Judiciary to strengthen and improve the systems and processes. The best practices prevalent in other High Courts need to be studied as a part of such exercise.

35.2 The Commission has highlighted the practical problems and certain areas which need improvement and given suggestions for consideration of the Hon'ble High Courts. The Commission has however refrained from making specific recommendations as the Commission felt that it would be a redundant exercise to substantially reiterate the recommendations/suggestions which are already in place coupled with the Judicial directives of the apex Court on many subjects. The plethora of material available on the nuances of case/Court management has been referred to by the Commission. Various plans of action for systemic and process improvements already exist. If, however, the Commission has to make any recommendations to further improve the systems and practices, the Commission has to undertake an extensive study in some Districts of each State with the help of research teams.

Further, a good deal of information is to be shared with the High Courts and District Judges and they may be hesitant to do so and in any case, it would be a time consuming process. No purpose will be served in making recommendations in general terms and by way of exhortations. Keeping all these aspects in view, the Commission considered it inappropriate to formulate specific recommendations while dealing with the term of reference (d). Yet, the Commission has dealt with every topic relevant to the subject and narrated the developments. It is hoped that the High Courts will take due note of the suggestions/observations of the Commission and take necessary action.

*****End of the Report*****

SHRI R. BASANT
Former Judge High Court of Kerala
MEMBER

JUSTICE P. V. REDDI
Former Judge Supreme Court of India
CHAIRMAN

SHRI VINAY KUMAR GUPTA
District Judge, Delhi
MEMBER-SECRETARY

Annexure-I

Website link

1. NJDG- https://njdg.ecourts.gov.in/njdgnew/?p=main

2. The Anatomy of Judicial Delays - https://doj.gov.in/sites/default/files/Maharashtra%20Judicial%20Academy%20 Part%201.pdf (Part-1)

   https://doj.gov.in/sites/default/files/Maharashtra%20Judicial%20Academy%20 Part%202.pdf (Part-2)

3. Study of court processes and Re-engineering Opportunities for improving Court efficiencies for Justice Delivery in India –

   https://doj.gov.in/sites/default/files/Ilm%20Kolkata.pdf

4. From Order to Chaos : Study of case flow management in Courts :

5. Role of Court Managers in Indian Judiciary : Past, Present and the way ahead

   https://dakshindia.org/

6. Calculating judicial strength in India

   https://dakshindia.org/calculating-judges-strength-in-india/

7. Sir Harry Woolf's Interim report on Judicial Reforms

   https://webarchive.nationalarchives.gov.uk/ukgwa/20060214223445/

   http://www.dca.gov.uk/civil/interim/chap5.htm

8. Supreme Court Website Link

   https://main.sci.gov.in/

ANNEXURE II

STATEMENT GIVING GRANTS RELEASED UNDER CSS SCHEME FOR INFRASTRUCTURAL FACILITIES FOR JUDICIARY

(Rs. in lakhs) -Status as on 24.11.2021

Sl. No.	State	1993 to 2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	Total (1993-94 to 2021-22)
1	Andhra Pradesh	15964.45	0.00	0.00	0.00	0.00	1000.00	2000.00	1028.00		19992.45
2	Bihar	5550.37	4909.35	0.00	5000.00	4290.00	6204.00	8762.00	6572.00		41297.72
3	Chhattisgarh	5004.47	2176.60	0.00	0.00	0.00	1968.00	1983.00	784.00		11916.07
4	Goa	799.93	0.00	0.00	0.00	0.00	315.00	406.00	380.00	320	1900.93
5	Gujarat	25264.42	10000.00	5000.00	5000.00	5000.00	1502.00	1649.00	1350.40		54765.82
6	Haryana	9286.42	0.00	5000.00	0.00	1500.00	1191.00	1406.00	2200.00		20583.42
7	Himachal Pradesh	2313.00	0.00	0.00	819.00	0.00	408.00	572.00	550.00		4662.00
8	Jammu & Kashmir	8722.60	3429.00	1325.00	2104.00	1000.00	1901.00	1000.00	[redacted]		19481.60
9	Jkhand	5099.52	3044.00	3044.00	0.00	5000.00	959.00	1374.00	905.00	600	20025.52
10	K'taka	27491.85	16370.00	5000.00	5000.00	5000.00	3812.00	4404.00	2972.00	2700	72749.85
11	Kerala	6087.30	0.00	0.00	0.00	2500.00	3082.00	1582.00	1300.00		14551.30
12	MP	18972.04	6141.00	5000.00	0.00	5000.00	7942.00	6690.00	4560.00	5500	59805.04
13	Maharashtra	39966.86	9975.00	5000.00	4975.00	5000.00	1058.00	6109.00	2311.00	1800	74394.86
14	Odisha	9024.27	0.00	0.00	0.00	0.00	2250.00	3569.00	0.00		14843.27
15	Punjab	22579.92	9805.00	5000.00	4800.00	5000.00	2647.00	3978.00	1647.60	1650	55457.52
16	R'than	6402.51	0.00	5000.00	4374.00	1734.00	1741.00	6421.00	2990.00	4150	32812.51
17	TN	15131.46	0.00	0.00	5000.00	0.00	609.00	3871.00	1817.00		26428.46
18	T'gana	0.00	0.00	0.00	0.00	0.00	1000.00	565.00	1600.00		3165.00
19	UK	4508.11	3559.05	0.00	0.00	2500.00	2202.00	2850.00	586.00		16205.16
20	UP	55129.57	12531.00	5000.00	5000.00	7500.00	12806.00	16966.00	11100.00	11900	126032.57
21	WB	8953.46	2000.00	0.00	0.00	1734.00	3522.00	6143.00	3107.00		25459.46
	Total (A)	292262.53	83940.00	44369.00	42072.00	52758.00	58119.00	82300.00	47760.00	28620	703580.53
	NER										
1	Aru.P	2163.44	1000.00	1593.00	0.00	0.00	0.00	269.00	500.00	409.00	5934.44
2	Assam	11771.30	0.00	0.00	0.00	2000.00	3209.00	3654.00	2500.00	2740	25874.30
3	Manipur	2141.71	2000.00	2000.00	0.00	0.00	887.00	966.00	500.00		8494.71
4	Megh..	1771.00	1709.00	2037.00	2000.00	863.00	1482.00	2285.00	771.00	1150	14068.00
5	Mizoram	2617.29	1085.00	0.00	0.00	2000.00	594.00	524.00	500.00	450	7770.29
6	Nagaland	4779.64	2016.00	0.00	2000.00	2000.00	321.00	342.00	500.00		11958.64
7	Sikkim	4630.39	0.00	0.00	0.00	0.00	257.00	278.00	295.00		5460.39
8	Tripura	5503.45	1550.00	0.00	0.00	0.00	0.00	1882.00	774.00		9709.45
	Total (B)	35378.22	9360.00	5630.00	4000.00	6863.00	6750.00	10200.00	6340.00	4749	84521.22
	UTs										
1	A&N	895.55	0.00	0.00	259.68	0.00	131.00	16.79	35.36	83.76	1422.14
2	Chdgrh	3900.95	0.00	0.00	0.00	0.00	0.00	0.00	0.00		3900.95
3	DNHaveli	706.25	0.00	0.00	0.00	0.00	0.00	0.00	0.00		706.25
4	Daman & Diu	190.00	0.00	0.00	42.43	0.00	0.00	0.00	0.00		232.43
5	Delhi	7897.06	0.00	6040.32	5000.00	2500.00		4852.21	4500.00	3000	33789.61
6	Lakshadweep	51.25	0.00	0.00	0.00	0.00	0.00	0.00	0.00		51.25
7	Puducherry	3146.88	0.00	259.68	2500.00	0.00	0.00	331.00	0.00		6239.56
8	J&K	[redacted]						500.00	664.64	2000	3164.64
9	Ladakh							0.00	0.00		0.00
	Total (C)	16789.96	0.00	6300.00	7802.11	2500.00	131.00	5700.00	5200.00	5083.76	44423.07
	Grand Total (A+B+C)	344430.71	93300.00	56299.00	53874.11	62121.00	65000.00	98200.00	59300.00	38452.76	870977.58