NCMS BASELINE REPORT

on

HUMAN RESOURCE DEVELOPMENT STRATEGY

REPORT OF THE SUB-COMMITTEE HEADED BY HON'BLE MR. JUSTICE DIPANKAR DATTA

Each Hon'ble High Court determines and applies standards for Court Management for itself and its Subordinate Courts as it may consider appropriate. This Report sets out suggestions gathered from various High Courts across the country, as well as suggestions from concerned subject matter experts and comparable global experience, on what may be considered minimum national common standards on Court Management Systems. The Report is purely advisory in nature and may be considered by the respective State Court Management Systems Committees of High Courts if they deem appropriate in accordance with the circumstances and needs of each State. It is a dynamic working document and will be revised and updated from time to time as needed based on feedback received from State Court Management Systems Committees of High Courts and NCMS experience and guidance. It is intended to facilitate a dialogue amongst National and State Court Management Systems Committees on minimum national common standards for Court Management Systems at a policy level. Suggestions from judges and subject matter experts are therefore welcome through the respective State Court Management Systems Committees. The contents of this report do not necessarily reflect the views of the Supreme Court of India, members of the NCMS Advisory Committee or members of the NCMS Committee in their individual capacity.

REPORT OF THE SUB-COMMITTEE
HEADED BY JUSTICE DIPANKAR DATTA ON
'HUMAN RESOURCE DEVELOPMENT STRATEGY'

CONTENTS

PRELUDE

The National Court Management Systems Committee in its 2nd meeting held on 16th December, 2012 constituted various sub-committees. It was decided in such meeting that the sub-committee on 'Human Resource Development Strategy' would examine Element 6 of the 'Elements of Objectives' read with the subjects identified in Chapters 5, 7 and 8 of the 'Policy and Action Plan' of NCMS and submit a report by 15th February, 2013.

In furtherance thereof, the sub-committee headed by the undersigned associated Hon'ble Justice Joymalya Bagchi, a Judge of the High Court at Calcutta and Mr. Ranjit Kumar Bag, Registrar General of the High Court at Calcutta and one of the members of the NCMS, for preparation of the report. The Director, Indian Institute of Management, Joka, Kolkata was requested to make available the services of a management expert from its faculty to assist the sub-committee. The Director of the Institute recommended Mr. Amit Dhiman, Associate Professor, who was inducted in the sub-committee. Mr. Ramesh Babu, another Associate Professor of the Institute was also inducted in the sub-committee considering that he was a Law graduate and could contribute for preparation of the report. The undersigned acknowledges the valuable assistance rendered by Prof. Dhiman as well as Prof. Babu, both of whom worked together to submit proposals on some of the topics to be dealt with by the sub-committee.

Element 6 of NCMS requires it to evolve "*A Human Resource Development Strategy* setting standards on selection and training of judges of subordinate courts". *"Personnel"*, *"Annual Confidential Reports"* and *"Investigation and Enquiries"* are the subjects identified in Chapters 5, 7 and 8 supra respectively. Based on the system requirement of Qualities, Attitudes, Skills and Knowledge (QASK) of the bench, bar, ministerial staff, executive agencies and litigants, the key challenge is to develop and implement a comprehensive Human Resources Management System for selection, training and performance management system of judges and the ministerial staff and concerned support functions, bar admission and effective mechanisms for ethics and conduct of advocates with accountability system, comprehensive system of ethics and conduct applicable to judges and court staff with accountability system, and quality of legal education.

In course of the 3rd meeting of the NCMS Committee, its Member-Secretary had placed a letter dated 1st February, 2013 received by her from Mr. A. K. Gulati, Joint Secretary in the Department of Justice and one of the members of the Committee. What is important for the sub-committee to note from the said letter is that the Department of Justice had reviewed the progress made by the NCMS Committee and in regard to manpower requirement for the judiciary, the need to lay down the 'norms' for personnel required per Judge in subordinate courts for being followed uniformly across the courts in the country with due regard to local specific requirements, if any, was considered necessary by it. The issue has been given the attention it required.

The scheme of NCMS, which is directed towards enhancement of timely justice, envisages establishment of comprehensive Court Management Systems to enhance quality, responsiveness and timeliness of courts. Bearing in mind the provisions in the Constitution of India, it has been felt that the federal structure of the Indian Union ought not to be disturbed by imposing any suggestion or proposal and the individual High Courts may be left free to decide whether to proceed on its own policies or to accept the proposals of the NCMS for achieving the purpose of making the system 'five plus free'.

A draft of the policy framework formulated by the present sub-committee, seeking to identify the problem areas and attempting to suggest solutions, is presented for gracious consideration of the NCMS Committee.

(DIPANKAR DATTA)

CHAPTER – I

NEED FOR HUMAN RESOURCE DEVELOPMENT

With the number of pending cases in the various courts all over the country exceeding three crore, the Indian judiciary is faced with a serious problem of clearing the backlog. Causes of delay and finding out solutions to clear as many cases as expeditiously as possible are matters of frequent discussion and one would start feeling weary of the same. The Supreme Court has been in the forefront of judicial reforms and under the able guidance of a number of former and sitting judges has taken bold steps to improve the efficiency and quality of the justice delivery system. NCMS is the latest and one of the most visionary reform proposals amongst them. However, the success of any reform initiative depends on the people who manage the system sought to be reformed. Thus, it is essential that the judiciary's human resources are well capacitated to address the demands of implementing the envisaged judicial reforms. Human Resource Development, therefore, is at the core of judicial reforms, both as an end and as a means of attaining other reform objectives.

CHAPTER – II

SELECTION OF JUDGES

At present, the Judicial Officers at the lowest level are recruited in the cadre of Civil Judge (Junior Division) from amongst law graduates through competitive examination conducted mostly by the High Courts and in some States by the respective Public Service Commissions. These officers are considered for promotion to the rank of Civil Judge (Senior Division)/CJM/ACJM and thereafter for promotion to the cadre of District Judge. Provisions also exist to fill up 25% posts of the cadre of District Judge by way of direct recruitment from the members of the Bar who have completed at least seven years of practice and 10% of the posts of the cadre of District Judge through limited competitive examination from the judicial officers holding the rank of Civil Judge (Senior Division) for a minimum period of five years to seven years, depending on the rules framed by each High Court.

The Law Commission of India recommended in favour of formation of All India Judicial Service in its 116th report in the year 1986. The historical background for establishment of Indian Judicial Service and the decision for setting up Indian Judicial Service have been discussed in detail in the said report of the Law Commission. Article 312 of the Constitution was also amended in 1976 for the purpose of establishment of the Indian Judicial Service. The Shetty Commission was established to make recommendations for improvement of working conditions of the Judicial Service, for providing appropriate perks and financial benefits to the members of the Judicial Service and for feasibility of creation of All India Judicial Service. The Supreme Court monitored the implementation of the report of the Shetty Commission, though the recommendation of the Shetty Commission for establishment of Indian Judicial Service was ultimately not accepted. Recruitment in the cadre of District Judge through All India Competitive Examination will definitely give opportunity to the young and meritorious advocates to join Judicial Service having prospect of longer promotional

avenue. National Judicial Academy may be initially entrusted with the duty to prepare the ground work for recruitment to the cadre of District Judge through All India Competitive Examination. The necessary changes in the laws and rules may also be recommended by the National Judicial Academy.

It is of paramount importance for the justice delivery system that men/women of quality are appointed as judges. The distinction between 'eligibility' and 'suitability' must always be borne in mind while recruiting judges. This is mainly because of dearth of good number of eligible law graduates, who could be considered suitable for recruitment. Lack of experience of how the courts function also becomes vital. Although the scales of pay and other benefits have increased, not too many are found interested in joining the judiciary at the first instance. After graduation from the law schools, the tendency of the majority is to join the corporate sector. Securing enrolment for commencing legal practice is the second choice. Joining the judiciary seems to be the last choice. The other group interested in joining the subordinate judiciary comprises of those law graduates who intend to carry on the family tradition. Experience has also shown that nowadays one who ponders as to whether he ought to join the judiciary is sometimes more concerned about what he would receive as pay and allowances rather than what he can contribute for the benefit of civil society. Commitment to the people is often sadly lacking. The insistence on practice either in the subordinate courts or the High Courts for a minimum of three years could do a world of good for the prospective judges. The system needs men/women of character, who are prepared to sacrifice their personal interest and keep the interest of others first. Merit, integrity, honesty and strength of character are inseparable qualities that a prospective judge must possess and, therefore, every process of selection must be aimed at recognizing the most talented and deserving from amongst the aspirants and picking them up for judicial service, instead of embarking only on an attempt to weed out of the zone of consideration the absolutely worthless. If in a given year certain vacancies are likely to remain unfilled due to dearth of suitable candidates, the system ought not to be clogged with sub-standard judges. It would be prudent to wait for a year and then select the worthy.

The duties, both judicial and non-judicial, that a judge has to perform are quite demanding. It is not the usual 10.00 a.m. to 5.00

p.m. Work. A judge who has the knack of indulging in research would utilize the rest of the hours. The nature of hard work would necessarily require the judge to have a healthy body. It is, therefore, of utmost importance that the selectors give due weight to the health of the aspirant, apart from those referred to above.

Although quite a few of the High Courts in the country are presently conducting the process of recruitment in the subordinate judiciary, the Public Service Commissions of the other States have been entrusted to select judges based on competitive examinations conducted by them. They seem to be over-burdened. The delays in the process make the system unworkable. It would not at all be a bad idea to entrust a committee, by whatever name called, with the task of recruitment at all levels of the courts subordinate to the High Courts. The committee of each State, to supervise and monitor the recruitment procedure, may comprise of two/three puisne Judges of the High Court, and an expert nominated by the Hon'ble the Chief Justice of that High Court. It should be the earnest endeavor of each player in the system to provide support to the committee for engaging men of merit, viz. retired judges, academics, retired bureaucrats, etc., for conducting the process of selection viz. setting of questions, evaluating the answers, moderation of results, and holding personality tests. Support staff with impeccable character traits ought to be made available to the committee, since the process is bound to involve impartiality and confidentiality of the highest standards but at the same time has to be fair and transparent. Selection by such committee would be in line with the directions passed by the Hon'ble Supreme Court on 4th January, 2007 in Civil Appeal No. 1869 of 2006 (Malik Mazhar Sultan and anr. v. U.P. Public Service Commission and ors.) wherein reference was made to a decision taken in a conference held between the Chief Justices and the Chief Ministers that selection of the subordinate judicial officers at all levels ought to be entrusted to the High Courts.

Vacancy at all levels of the judiciary is regarded as one of the important causes for the mounting arrears. It is of utmost significance, therefore, that the process of recruitment commences and concludes, as far as practicable, in line with the schedule fixed by the Supreme Court in Malik Mazhar Sultan (supra).

Although increasing the number of courts, inter alia, is considered to be a panacea for treating the ills from which the

system suffers, attention must be devoted to fill up the existing vacancies first within the shortest possible time frame so that no court is vacant, albeit by men/women of quality, as stressed above. The system is bound to benefit if the courts are allowed to work with its full strength. Increasing the strength of judges without provision for commensurate infra-structure and support staff would hardly be of any effect and frustrate the object of making the system 'five plus free'.

Insofar as direct recruitment to 25% and jump promotion to 10% posts of the cadre of District Judge are concerned, it has been experienced in the past that while the former quota remains unfilled, suitable candidates far outnumber the latter quota. This has a two-pronged adverse effect on the system. First, the system has to work without adequate number of judicial officers manning the Additional District and Sessions courts, and secondly, those who qualify in the examinations conducted for the purpose but are unfortunate in not being promoted may feel morose and lose the interest and vitality to perform, at least till they overcome the shock. It would be in the best interest of the system if the unfilled posts of the 25% quota for a particular year are filled up from amongst the in-service candidates found suitable but who are unable to secure a promotion having regard to the limited number of vacancies.

CHAPTER – III

TRAINING OF JUDICIAL OFFICERS/STAFF

"Knowledge is power" is a saying which is acknowledged by all. The need to impart training to judicial officers at every level, - both prior to assigning independent charge of a court as well as thereafter - to improve performance and efficiency cannot be over emphasized. Judicial training is, therefore, an essential element of an efficient justice delivery system, which helps to ensure the competence of the judiciary. In an age where increasingly complex and sensitive issues are left to be settled by judicial intervention, the need for judicial training is greater than ever. At its grass-root level, judicial training would provide the information and the tools that the judges would require to effectively perform their duty. That apart, training and education could address and equip the judges to better manage the cases before them so as to make the life of a litigation shorter either by applying innovative techniques or by persuading the parties to resolve their dispute through the alternative dispute resolution mechanism. It is important for a judge to develop an understanding of wider social context in relation to the litigation at hand and to render 'nyaya' i.e. justice in accordance with 'niti' i.e. the rules.

The Judicial Academies have been playing a stellar role in imparting education to the judges. Judges of the higher judicial service having an academic bent of mind ought to be preferred for manning the Academies. The emphasis should be to accustom the newly appointed judges with the long drawn procedures that inevitably choke the system and to provide the key to tackle every individual case with promptitude. However, programmes of unduly long duration would obviously result in the judges losing out on precious judicial hours and, therefore, care and caution must be exercised to fix the calendars in a manner that the right balance is struck.

Quite a few High Court judges are role models for the subordinate judges and their participation in the programmes tend to encourage and motivate them to a great extent. However, at times, they are overlooked. It needs no reiteration that the Judicial Academies ought to approach such High Court judges who are willing to contribute to the system by their erudition and acumen.

The need for judicial training had been considered in great detail by the Law Commission. The 117th Report of the Law Commission (November, 1986), providing good guidance, had recommended setting up of Judicial Academies and it has been acted upon.

In India, the appointment of judicial staff is largely controlled by the Governments. The number of staff per court is fixed by the Government. Needless to say, these personnel form the backbone of the judicial system. However various factors like lack of infrastructure, lack of clarity regarding career growth and absence of any specialized training act as a barrier for these staff and prevent them from making use of the latest technology and devices. Hence it is absolutely essential that training and development of technical and intellectual faculty of these personnel go hand in hand with that of judges. At the same time, there is urgent need of maintaining ACRs for these staff also. At least in West Bengal, the system is not in vogue. An efficient judiciary must have efficient people, with scope for rewarding the worthy.

CHAPTER - IV

TRANSFERS & POSTINGS AND ACRs OF JUDICIAL OFFICERS

It is of absolute necessity that the mental peace of the judges, who are manning the courts subordinate to the High Courts, is ensured to the fullest extent possible. It is common experience that proper judging is not possible if a judge, while sitting on the chair of a judge, is lacking in peace of mind. His performance is closely relatable to the mindset prevailing at the time of discharge of judicial duty. Affectation of performance is bound to occur for a brooding judge. Concerns of Judicial Officers affecting their performance often arise out of (i) alleged unfair transfer and postings (Delhi, because of geographical reasons, being an exception), (ii) grievances relating to ACRs, and (iii) non-disposal of representations in respect of either (i) or (ii) or both.

PART - I

In quite a few High Courts, written transfer policies are conspicuous by its absence. For ensuring a fair and transparent process, there ought to be a written transfer policy rather than unwritten norms and guidelines providing for transfers after three years and two years from comfort zones and difficult zones, as the case may be. Considering that the tenure of a judicial officer who is not elevated to the High Court as a Judge would ordinarily be between thirty and thirty five years, a uniform policy could be evolved identifying various zones (very difficult, difficult, not so difficult, comfort) and posting officers thereat taking into consideration their choice, if any, so as to ensure optimum utilization of their services.

Although an order of transfer before expiry of the normal period of posting could be made in the exigencies of service, one has to concede that transfer before expiry of the normal period ordered as a measure to discipline an officer is not an incident that rarely occurs. Since the judiciary is the harbinger of justice, the judicial officers would feel encouraged if there is complete cessation of penal transfer order and transfers as far as practicable in accordance with the written policy.

PART - II

There can be no two opinions that writing of ACRs of the judicial officers plays a very important role in shaping their future career.

The role of Inspecting Judges and the manner in which they are to assess the work of the judicial officers were considered by the Supreme Court in High Court of Punjab & Haryana v. Ishwar Chand Jain, reported in (1999) 4 SCC 579. It was observed therein as follows:

> *"32. Since late this Court is watching the spectre of either Judicial Officers or the High Courts coming to this Court when there is an order prematurely retiring a judicial officer. Under Article 235 of the Constitution the High Court exercises complete control over subordinate courts which include District Courts. Inspection of the subordinate courts is one of the most important functions which the High Court performs for control over the subordinate courts. The object of such inspection is for the purpose of assessment of the work performed by the Subordinate Judge, his capability, integrity and competency. Since Judges are human beings and also prone to all the human failings, inspection provides an opportunity for pointing out mistakes so that they are avoided in future and deficiencies, if any, in the working of the subordinate court, remedied. Inspection should act as a catalyst in inspiring Subordinate Judges to give best results. They should feel a sense of achievement. They need encouragement. They work under great stress and man the courts while working under great discomfort and hardships. A satisfactory judicial system depends largely on the satisfactory functioning of courts at grass-roots level. Remarks recorded by the Inspecting Judge are normally endorsed by the Full Court and become part of the annual confidential reports and are foundations on which the career of a judicial officer is made or marred. Inspection of subordinate court is thus of vital importance. It has to be both effective and productive. It can be so only if it is well regulated and is workman-like. Inspection of subordinate courts is not a one-day or an hour or a few minutes' affair. It has to go on all the year round by monitoring the work of the court by the Inspecting*

Judge. The casual inspection can hardly be beneficial to a judicial system. It does more harm than good. As noticed in the case of Registrar, High Court of Madras v R. Rajiah, reported in (1988) 3 SCC 211, there could be ill-conceived or motivated complaints. Rumour-mongering is to be avoided at all costs as it seriously jeopardizes the efficient working of the subordinate courts."

In High Court of Judicature at Allahabad v. Sarnam Singh, reported in (2000) 2 SCC 339, the aforesaid important observations were held to constitute important guidelines for assessing the work of a judicial officer, which indicated the attitude with which the Inspecting Judge should objectively consider the work and conduct of judicial officers who sometimes have to work under difficult and trying circumstances.

The importance of ACRs was again highlighted in Bishwanath Prasad Singh v. State of Bihar, reported in (2001) 2 SCC 305. After considering the decisions referred to above, the Court held:

*"*****Suffice it to observe that the well-recognised and accepted practice of making annual entries in the confidential records of subordinate officials by superiors has a public policy and purposive requirement. It is one of the recognised and time-tested modes of exercising administrative and disciplinary control by a superior authority over its subordinates. The very power to make such entries as have potential for shaping the future career of a subordinate officer casts an obligation on the High Courts to keep a watch and vigil over the performance of the members of subordinate judiciary. An assessment of quality and quantity of performance and progress of the judicial officers should be an ongoing process continued round the year and then to make a record in an objective manner of the impressions formulated by such assessment. An annual entry is not an instrument to be wielded like a teachers' cane or to be cracked like a whip. The High Court has to act and guide the subordinate officers like a guardian or elder in the judicial family. The entry in the confidential rolls should not be a reflection of personal whims, fancies or prejudices, likes or dislikes of a superior. The entry must reflect the result of an objective assessment coupled with an effort at guiding the judicial officers to secure an improvement in his performance*

where need be; to admonish him with the object of removing for future, the shortcoming found; and expressing an appreciation with an idea of toning up and maintaining the imitable qualities by affectionately patting on the back of meritorious and deserving. An entry consisting of a few words, or a sentence or two, is supposed to reflect the sum total of the impressions formulated by the Inspecting Judge who had the opportunity of forming those impressions in his mind by having an opportunity of watching the judicial officer round the period under review. In the very nature of things, the process is complex and the formulation of impressions is a result of multiple factors simultaneously playing in the mind. The perceptions may differ. In the very nature of things there is a difficulty nearing an impossibility in subjecting the entries in confidential rolls to judicial review. Entries either way have serious implications on the service career. Hence the need for fairness, justness and objectivity in performing the inspections and making the entries in the confidential rolls."

Concern on writing of ACRs has also been expressed by the Supreme Court in its recent decision in Registrar General, High Court of Patna v. Pandey Gajendra Prasad and ors., reported in (2012) 6 SCC 357.

The formats maintained by several High Courts of the country (Andhra Pradesh, Bombay, Calcutta, Chattisgarh, Delhi, Gujarat, Jammu & Kashmir, Jharkhand, Karnataka, Madhya Pradesh, Punjab & Haryana and Orissa) in which the opinion of the Inspecting Judge is recorded have been looked into. Qualitative assessment of judgments written by a judicial officer appears therefrom to be one of the duties of the Inspecting Judge and a judicial officer has to be graded in the manner specified therein. It is indeed surprising that a judicial officer's capability to write quality judgments is assessed only on the basis of a certain number of judgments written by him, which are either selected by him and transmitted to the Inspecting Judge for perusal or selected at random by the Inspecting Judge himself. The procedure, to say the least, is fraught with problems and is bound to pose difficulties in proper assessment. Assessment only on the basis of reading judgments reflects a subjective view. There cannot be objective consideration unless the records

and evidence are examined. The judges of the High Courts, barring a few, hardly look into the trial court records in course of assessment. Time constraint is one of the factors. To a judge, a plain reading of a judgment may lead to formation of an opinion that it is perfect and the judicial officer entitled to grade 'A'. However, consider a situation where it is shown that a vital piece of evidence escaped the notice of the judge and hence was not adverted to in the judgment or a situation where a substantial point raised by counsel for a party has been erroneously not recorded and hence not dealt with by the judge. In both situations, the judgment becomes thoroughly vulnerable and liable to be upset by the higher court. Absolute objectivity cannot be ensured by mere reading.

The practice of evaluation on the basis of judgments provided by the judicial officers themselves is archaic and having regard to the present day problems, ought to be discontinued immediately. Instead of the subjective view on the quality of the judgments written by the judicial officers, there is an urgent need to formulate a system for objective evaluation. In course of assessing a judgment written by a judicial officer, it is not the duty of the Inspecting Judge to examine as to whether it is a correct judgment. On the contrary, opinion has to be recorded as to whether the guidelines specifying pointers to evaluate quality are satisfied or not, viz.

1. Facts are fully and correctly set out.
2. Evidence has been properly recorded and appreciated.
3. Appreciation of law in context of pleadings and evidence.
4. Ratio has been correctly deduced and applied.
5. Final decision flowing from judicial reasoning as set out in 1-4.
6. Lucidity, brevity and logic reflected in language.

If one were inclined to genuinely ascertain whether points 1 and 2 supra have been correctly adhered to, the records of the trial court meaning thereby the pleadings and the evidence that has been adduced have to be looked into.

However, the utility of looking into the records and then evaluating the quality of judgment is not considered by many judges to be always the best way. They argue that if quality of a judgment could be evaluated by looking into the records and reading the

judgment without hearing arguments, there would be no need for lawyers to assist the court. The necessity of oral arguments from the bar helping the judge to reach the correct decision cannot be underestimated. The reasoning is sound, and thus merits acceptance.

How does one solve the problem? Set out below is a possible approach that may be considered by High Courts, with any needed modification and if practicable and appropriate to their respective needs and circumstances.

The role of a sitting High Court Judge is increasingly becoming varied day by day. Initially, on elevation as a High Court Judge, a judge's task is to hear the rival claims, frame the issues that arise for decision and decide the same according to his best judgment. With growing seniority, such a judge has to shoulder additional responsibilities. He is inducted in various committees for proper administration of the High Court. In due course of time, he has to play diverse roles like inquiring authority (in connection with disciplinary proceedings), question paper setter and examiner (in connection with recruitment examinations of judicial officers), policy formulator and strategist (like the present assignment) to name a few. The pressures of work in Court together with these functions have the potential of rendering justice a casualty. In the discharge of judicial duty, it is common experience that the quality of a reserved judgment is always a pitch higher than judgments dictated in open Court. With less time at a judge's disposal, the tendency is not to reserve judgments but to deliver the same immediately after the arguments are over. No doubt immediate dictation shortens the life of the proceeding but quality is bound to take a back seat in the circumstances. A bit more research at home and some extra time to deliberate definitely go a long way to enhance the quality of a judgment. Exceptions apart, the administrative duties gradually tend to stifle a High Court Judge.

It is in the fitness of things that I propose that a High Court judge should be relieved of evaluating the quality of judgments on the administrative side. A better result could be achieved if the evaluation is made on the judicial side. Judgments/orders of each and every judicial officer, at one point of time or the other, are carried in appeal before High Court or subjected to revision. The opinion of the judges on the judicial side must be preferred to the opinion on the administrative side. It is true that the decision of the

High Court on the judicial side while dealing with a matter judicially may not be final since it is subject to the decision of the Supreme Court, if a party chooses to take the matter before it and the decision is reversed. However, on the same analogy, the present system may not hold good and has to be termed flawed, for, judgments of the judicial officers that are perused for evaluation of quality might have been upset by a higher court subsequently, not to the knowledge of the assessing officer. If a judicial officer had been given grade 'A' or 'A+' for a judgment that is ultimately reversed, it cannot be regarded as a proper assessment. What could be done in the peculiar circumstances is without commenting on the merits of the judgment of the subordinate judicial officer, the judge(s) of the High Court hearing the appeal or revision may be required to give his/their opinion separately (not to be divulged to the litigants) as to whether the impugned judgment/order satisfies the six-point guidelines based whereon the quality of the judgment is to be evaluated. This may serve a dual purpose. Apart from being an objective decision given by a judge on examination of the judgment on the judicial side after hearing arguments of the rival parties and therefore being credit-worthy, a lot of time of the Inspecting Judge as well as that of the District Judge (who evaluates the judgments written by his subordinates) would be saved in the process (reading of judgments consumes much time).

In Pandey Gajendra Prasad (supra), the Supreme Court stressed on the need to revamp the system of recording ACRs noticing from experience that ACRs are written hurriedly after long lapse of time and lack objectivity. The proposal for evaluation of judgments by judges on the judicial side would advance the cause of objectivity and save precious time of the judges, which could be devoted for other better purposes.

Since it is the prime objective of the NCMS to make the judicial system 'five plus free' by addressing the cases that are more than five years old, one needs to encourage the judicial officers to dispose of the older cases earlier. Experience has shown that some old cases, pending for 10 years or more, are allowed to gather dust because the issues therein are complicated and there is a growing tendency for courts to delay decisions on complicated issues. Awarding additional units to the judicial officers for disposing of the old cases may act as an incentive to achieve the object for which the NCMS has been brought into existence.

PART - III

Another area of concern is the long pendency of undisposed of representations received from the judicial officers. If the system allows a judicial officer to ventilate his grievance on any matter, care must be taken not to unduly prolong his agony. There must be a meaningful consideration of such representation and the officer told as to whether it is devoid of merit. Since opportunity of hearing is not required to be extended, brief reasons in support of such conclusion would be in furtherance of the interest of the officer, since he would get to know why a particular action taken against him was considered justified in the circumstances or what exactly the deficiency is, which he must strive to remove. Selective placement or non-placement of representations for years before the appropriate committee for consideration by the registry serves no good. If the system expects the judicial officers to deliver, this malady has to be removed for good.

CHAPTER - V

INVESTIGATIONS AND ENQUIRIES

The need for a disciplined and corruption free system is the call of the day. However, in most of the States, the present set up of Vigilance Cell lacks the required infrastructure to deal with complaints received against the staff members and against the judicial officers. The proposal of the management experts to set up Judicial Accountability Office and Judicial Accountability Committee for ensuring that the members of the judicial service function within the bounds of their authority, could be considered for implementation to either get rid of the delinquent from the system or to discipline them.

Substantial part of judicial time is lost if judicial officers are not punctual or prone to rise early. They must be told loud and clear that unless there are exceptional reasons, failure or neglect to adhere to the timings would be treated as dereliction of duty and might attract disciplinary proceedings. Any laxity in exercising disciplinary control would encourage indiscipline, which is sure to be counter-productive for the system.

Similarly, the net of disciplinary control over the staff of the subordinate courts must be spread to send the message of minimum tolerance.

CHAPTER - VI

TRAINING PROGRAMME FOR PUBLIC PROSECUTORS/GOVERNMENT PLEADERS

The Public Prosecutors play a pivotal role in the administration of criminal justice. In Manu Sharma vs. State (NCT of Delhi) reported in (2010) 6 SCC 1, the Apex Court elucidated the role of Public Prosecutors in the criminal justice system as follows:

> *"The Public Prosecutor is a statutory office of high regard. He does not represent the investigating agencies, but the State. He has wider set of duties than to merely ensure that accused is punished, the duties of ensuring fair play in proceedings, all relevant facts are brought before court in order for determination of truth and justice for all parties including the victims."*

UN GUIDELINES ON THE ROLE OF PUBLIC PROSECUTORS:

The UN Guidelines on the role of Prosecutors read as follows:

> "Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.
>
> In the performance of their duties, prosecutors shall:
>
> (a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;
>
> (b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;

(c) Keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise;

(d) Consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.

Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.

The self-same guidelines lay down specific provisions for Empowerment of the Public Prosecutors to ensure that professional responsibilities are independently carried out along with the entitlement to do as follows:

- to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability;
- together with their families, to be physically protected by the authorities when their personal safety is threatened as a result of the proper discharge of their prosecutorial functions;
- to reasonable conditions of service and adequate remuneration, commensurate with the crucial role performed by them and not to have their salaries or other benefits arbitrarily diminished; to reasonable and regulated tenure, pension and age of retirement subject to conditions of employment or election in particular cases;
- to recruitment and promotion based on objective factors, and in particular professional qualifications, ability, integrity, performance and experience, and decided upon in accordance with fair and impartial procedures;

- to expeditious and fair hearings, based on law or legal regulations, where disciplinary steps are necessitated by complaints alleging action outside the range of proper professional standards;
- to objective evaluation and decisions in disciplinary hearings;
- to form and join professional associations or other organizations to represent their interests, to promote their professional training and to protect their status; and to relief from compliance with an unlawful order or an order which is contrary to professional standards or ethics."

The appointments of Public Prosecutors in India are made under Section 24 of the Code of Criminal Procedure. The Central Government or the State Government, in consultation with the High Court, may appoint one for every High Court. In the case of appointment of public prosecutors in the districts by the State Government, the same has to be preceded by consultation with the Sessions Judge. The Supreme Court in its decision in State of Uttar Pradesh and another vs. Johri Mal, reported in (2004) 4 SCC 714, has elaborately dealt with the subject of appointment of an incumbent independently and on an objective basis.

In the 197th Report of the Law Commission of India (July 2006), the necessity of appointing public prosecutors and additional public prosecutors from a regular cadre of prosecuting officers was emphasized.

In 2009, Section 25A was introduced in the Code to create a Directorate of Prosecution consisting of a Director of Prosecution and a number of Deputy Directors of Prosecution for heading the prosecuting agency in the State. It is therefore important to formulate a scheme of training and educating the Public Prosecutors in consonance with that of the Code of Criminal Procedure.

ORGANISATIONAL STRUCTURE

The State may notify the Director of Prosecution and the Deputy Directors of Prosecution as the Nodal Agencies for the purpose of imparting training and education to the Public Prosecutors in their respective jurisdictions. The Director of Prosecution shall frame a policy for training of Public Prosecutors in the State on a periodic basis. Reports of such training programmes be sent to the Home Secretary under whose administrative control the Director of Prosecution functions. The Directorate of Prosecution and the Deputy Directorate of Prosecution must be connected via internet access to the offices of each Prosecutor in every sub-division and the aforesaid information be electronically transferred through such internet access to the Prosecutors.

Participation and/or performance of the Public Prosecutors in the training programmes shall be assessed by a panel of independent experts who may even recommend award/citations for the outstanding performance by the members of the prosecuting panel.

AGENDAS TO ACHIEVE

The contents of the training of Public Prosecutors may contain various aspects including matters of substantive law, procedures and other relevant issues. The Public Prosecutors may be trained by attending seminars/group discussions through classes on, inter alia, the following issues:

(a) Offences affecting human body;
(b) Crime against women;
(c) Crime against human trafficking;
(d) Offences against property and forgery;
(e) Cyber crime and cyber law;
(f) Basic principles of the Evidence Act;
(g) Provisions relating to investigation of crime;
(i) Trial in criminal cases and recording of evidence including video conference;
(j) Maintenance of electronic records and its management;
(k) Forensic medicine and toxicology;
(l) Ballistic evidence;
(m) Terrorism and offences against the State;

(n) Tracing/Attachment/Confiscation of proceeds of crime and Money Laundering Act;
(o) Withdrawal of prosecution under section 321 of the Code;
(p) Sentencing;
(q) Environment Laws;
(r) Narcotic Laws;
(s) Offences against Scheduled Castes and Schedule Tribes;
(t) Training and proficiency in use of computers;
(u) Corruption cases and offences by public servants;
(v) Protection of the whistleblowers;
(w) Recognition of corporate crimes;
(x) Extent of Fundamental Rights e.g. right to expression, right to information, right to private defence, etc.
(y) Tortuous liability; and
(z) Use and security of public property.

Such discourses may be imparted through a panel of retired judicial officers, senior police officers and other experts in the relevant fields.

In addition to academic training, experience in handling complicated or important cases may be shared by Prosecutors through group discussions. Reference materials including recent developments vide case laws and/or recent legislative changes may be provided to each Prosecutor from the office of the district.

TRAINING MECHANISM OF GOVERNMENT PLEADERS

The Government Pleaders of each district could also be requested to attend seminars relating to recent developments in civil laws particularly in the area of Alternative Dispute Redressal Mechanism such as mediation, arbitration, conciliation and IPR related laws, matrimonial disputes and custody cases with emphasis on the rights of child and specific needs and expectations of the weaker sex. Regular training of all Prosecutors/Government Pleaders can also be given in computer.

Collaboration and association of the Public Prosecutors and Government Pleaders with the Non-Governmental Organizations and institutional agencies through interactive sessions and inter-disciplinary exchange of outlook to observe an issue, would endow a viewpoint to methodically sharpen

Government Pleaders and Public Prosecutors skills to accomplish the agendas from end to end with intense perceptive. Similarly, in-person visit to police stations, remand and correctional homes and juvenile and women centers' would be in addition to administration of criminal justice through first person observations.

The crucial effect of the training and the agendas on board would be making certain to the masses fair, efficient and just recognition of their rights and civil liberties owing to effective law enforcement.

CHAPTER – VII

Manpower Requirement in Subordinate Courts

The employees attached to the subordinate courts perform various administrative works like issuing process, complying with direction of the court for making the case ready for hearing e.g. calling for record from the lower court, calling for documents from other offices, issuance of warrant, proclamation and attachment in criminal cases. If proper steps are not taken in due time, the case will not ripen for final hearing before the court. The Bench Clerk of the trial court is required to give number on exhibited documents and prepare the list and put up the same before the judge for verification and obtaining signature. Two Bench Clerks can effectively handle 500 cases in the Courts of Additional District & Sessions Judges, whereas they may be in a position to deal with 1000 cases in courts of Civil Judge (Senior Division) and 1500 cases in the courts of Civil Judge (Junior Division). Similarly, one Stenographer is not capable of taking the entire workload of the court of the Additional District & Sessions Judge.

The court of the District Judge or Additional District Judge is partly trial court and partly appellate court, apart from exercising jurisdiction to deal with cases of adoption, guardianship, probate, etc. As the Presiding Officer of the trial court, the Additional District & Sessions Judge will have to record the statements of witnesses in both civil suits and sessions cases, apart for hearing the criminal appeals, civil appeals and civil revision and criminal revision applications. Accordingly, it would be extremely difficult to deal with more than 500 main cases with the assistance of the minimum unit staff. Thus, there is minimum requirement of two Bench Clerks, two Stenographers, two Group-D employees in every Court of Additional District and Sessions Judge or special court dealing with 500 cases. There is need of additional requirement of staff namely Bench Clerk and Group-D employee for increase of every 250 cases in such type of courts. The special courts or the courts of Additional District and Sessions Judges accepting the filling of the cases need additional staff depending on the number of cases filed in such type of courts. The requirement may vary from additional three to five Clerks, one Data Entry Operator and two to three Group-D employees.

The court of Civil Judge (Senior Division) or the court of Chief Judicial Magistrate or Additional Chief Judicial Magistrate also need at least two Bench Clerks, one Stenographer, one Data Entry Operator and two Group-D employees for dealing with 1000 cases. There is need of additional requirement of Clerks, Group-D employees for increase of every 500 cases. There is need of additional requirement of two to five Clerks and two to five Group-D employees and one Data Entry Operator in such type of courts which are accepting filing of cases.

There is need of two Bench Clerks, one Stenographer and two Group-D employees in each court of Civil Judge (Junior Division) or Judicial Magistrate, who are dealing with cases upto 1,500. There is need of additional requirement of Clerks, Group-D employee for increase of every 500 cases. Moreover, the courts accepting filing of cases may need additional staff including Data Entry Operator depending on the number of cases.

It is relevant to point out that the administration of a District Courts is run by Civil Judges (Junior Division), Civil Judges (Senior Division), Chief Judicial Magistrate, Additional Chief Judicial Magistrates, Special Court Judges, Additional District Judges and the District Judge. In every court of District Judge, there is an English Department dealing with the administration of the District Court, Accounts Department dealing with the Accounts, Nazareth Department dealing with cash and serving of process, purchase of articles, Record Room for preservation of records and Copying Department dealing with supply of copy, etc. The requirement of staff strength for running the administration in each court and also in the court of District Judge will depend on the number of pendency of the cases, number of Judicial Officers posted in the District and other relevant factors.

Middle Level Officers for running administration

It has been discussed in the meeting of the NCMS Committee that there is need of creation of middle level officer cadre for running the administration of the Courts at the District and Sub-Divisional levels. The standard for recruitment of such officer may be similar to the standard of Group-C officers of State Civil Service, so that they may not have any hesitation to work even under a Civil Judge (Junior Division) for running the administration of the Court. The minimum educational qualification for such recruitment ought to be graduation in any stream. At present the L.D.

Assistants recruited with minimum qualification of School Final (Class X) get promoted to the senior rank and hold the post of Nazir, Head Clerk, Sheristadar/Superintendent for running the administration of the Court. The District Judges are also dependant on these staff members for running the administration of the Court, as they are not in a position to afford sufficient time for the administrative work after completion of judicial work every day. The number of such middle level officers may be initially five for any District having 15 Courts and for every 5 additional Courts number may be increased by one. These middle level officers may have promotional avenue up to the rank of Registrar of the District Courts or Joint Registrar of the High Court.

CHAPTER - VIII

REVAMPING OF THE REGISTRY OF THE HIGH COURTS

The registry of each High Court comprises of senior judicial officers who are given charge of a particular department after serving the subordinate judiciary mostly in excess of 30 years. Without meaning any disrespect to the members of the registry, it would be a better idea if the task of the registry is performed by personnel trained in management skills. The jobs that the registry officials perform in the High Court are clearly at variance with judicial duties and, most often, quite a few of them are found to be all at sea. With the frequent change in the members of the registry, it becomes all the more difficult for the new incumbents to get themselves accustomed with the system and to deliver according to the needs of the institution and commensurate with their capability. The service of the senior judicial officers could be better utilized in the districts rather than foisting a responsibility on them in an environment with which they are unfamiliar and in the absence of wherewithal to deal with the daily problems.

Many view the induction of the judicial officers in the registry as a kind of promotion, thereby making way for the officers subordinate to them to occupy higher positions in the district judiciary. With the ever-increasing load even in the High Courts and the urge to look for quality coupled with the fact that the competent must be rewarded, there is an urgent need to revisit the policy for elevating judicial officers in the subordinate judiciary as High Court judges based only on their seniority. Merit must be given primacy thereby encouraging the officers to put in the little bit of extra effort that is required in the present day circumstances to cope with the huge arrears. This would resultantly ensure weeding out the dead wood at the district level, instead of such officers being allowed to occupy the seat of High Court Judges for any period between two years and above without making any effective contribution to the system worth the name.

CHAPTER - IX

CURBING THE MENACE OF ADJOURNMENTS

Causes/factors behind adjournments are not unknown. It is hardly relevant to discuss the same in the report. What is of importance is to find ways and means to curb its menacing proportions. Any tendency to grant adjournments on the mere asking of the parties has to be discouraged. Every judge must be diligent and ought to exercise discretion in granting an adjournment only if the prayer for the same appeals to him/her to be absolutely warranted in the interests of justice and to preempt any litigant nursing a grudge that his cause has not been heard. It is quite common that the court grants a prayer as a last chance, but thereafter adjourns hearing once again as a last chance. The perception that there can be no end of last chances must yield to the pressing needs of the system to ensure timely decision. As a rule, there cannot be a last chance after a last chance. The judicial officers, in course of training programme or otherwise, have to be told to be strict in granting adjournments. At the same time, the superior courts ought to be slow in interfering with orders refusing adjournment. Strictness at the trial stage followed by leniency at the appellate/revisional stage ultimately has the effect of prolonging a litigation further rather than reducing its life.

At this juncture, it would be relevant to take note of the very recent decision of the Supreme Court in Noor Mohammed vs. Jethanand, reported in (2013) 2 SCALE 94, dilating on the corrosive effect that adjournments can have on a litigation and how a lis can get entangled in the tentacles of an octopus. If the system has to survive, it is the judges who must be proactive and ensure that on every date of hearing, effective progress takes place.

CHAPTER – X

NEED FOR INTROSPECTION

The schedule for holding recruitment examinations for filling up the vacancies in the subordinate judiciary has not escaped the attention of the Supreme Court and the directions in Malik Mazhar Sultan (supra) may be made part of the recruitment rules by the respective State Governments, if not already acted upon, to ensure that fewer vacancies remain unfilled at the end of the year. One must remember that while proceeding to achieve judicial reforms, futuristic goals are set which are realistic and capable of being accomplished. One must not be swayed by the manner of functioning of foreign courts like the ones in USA, UK, or Singapore. The population in the aforesaid three countries is much less in comparison with a densely populated country like India and hence number of litigation is also less. The facilities made available for the judges there and the facilities made available to the judges in the country cannot be equated. The work culture is also different. Therefore, no attempt ought to be made to judge our judges based on figures of such foreign countries. Going by simple arithmetic, the number of pending cases qua the judge-population ratio of the country, when compared with the statistics of the said three countries, is not too alarming. It has to be borne in mind that one must not look for procedural solutions that are worse than the existing procedures. Also, goals ought not to be set bigger than what can be accomplished. People of the country still trust the judiciary and the system should not be disturbed.

It is needless to emphasize that judicial time is precious and the judicial officers must make full use of it. There are complaints from the litigating public that often the courts do not function in the second session. Non-cooperation of the lawyers and lethargy on their part to argue cases are cited by the judicial officers as excuses. The judicial officers may not be totally wrong, but by not taking seats in the second session sends a wrong

message that the judicial officers are prone to shirk work. Even if the lawyers do not cooperate, the judicial officers have no business to rise before the scheduled time. The time could be utilized by them by completing pending judgments. Should there be no case where judgment is pending at his end, the time could be utilized by perusing the judgments of the Supreme Court and the High Courts, which are all available on the laptops provided to the judicial officers. This would not only enhance their own knowledge but would also make them adept to deal with the laptops and to find out judgments answering the issue(s) even in course of hearing of individual cases that are before them.

It is not always possible for the Inspecting Judges to pay surprise visits to the District Courts under their charge to find out as to whether timeliness in taking seat and rising is being maintained by the judicial officers or not. The vigilance cell of the High Courts must be revamped with adequate number of officers who could be asked to pay surprise visits to the District Courts and to report back to the Inspecting Judges on his queries. The vigilance cell could also be utilized for the purpose of ensuring that the ministerial staff in the District Courts are kept within their bounds and do not dare to indulge in malpractices. Reports in this respect furnished to the Inspecting Judges must be dealt with sternly and disciplinary action taken against the erring officials to make the system clean and pure.

To control and prevent corruption in the strata of ministerial staff, it is all the more necessary that the individual High Courts formulate transfer policies for posting of ministerial staff to districts other than the one from which he hails. Transfer and postings of the ministerial staff would definitely be welcomed by stiff resistance, but the same has to be dealt with with iron hands. If some court hours are to be sacrificed the system may not bother, for that would be beneficial in the long run. Ministerial staff may have to face stern disciplinary action if they care little to abide by such policy. The

objective of ensuring quality, responsive and timely justice would remain a distant dream should the ministerial staff be allowed to function in the manner they have been functioning presently.

One other aspect that deserves attention is the number of pending references in each High Court. Decisions on the references do not seem to be rendered quickly, with the result that not only the case of the parties to the reference does not proceed but also hearing of similar other cases stand stalled on the track. Litigants are interested in having a decision on the merits of the rival claims. Constitutionality, consistency and certainty are considered to be the hallmarks of a sound judicial system. An aggrieved litigant after knowing the law settled by the High Court may not even venture to institute a fresh case. Prompt decisions on references, therefore, must be endeavoured.

Each High Court has an Administrative Committee comprising of five to seven senior judges. Since elevation/transfer/retirement of the senior judges happen quite frequently, the composition of the Administrative Committees also tend to change frequently. This, in turn, tends to bring about a lack of continuity. The role of the Administrative Committee is significant in the justice delivery system and, therefore, it may be considered as to whether each Administrative Committee could include a judge from the middle rung having at least ten years' service as a High Court Judge left in him.

All the High Courts do not maintain ACRs for the ministerial staff. There is an urgent need to introduce the same where it is not in vogue for the overall benefit of the system. The performance of each employee must be evaluated around the year and bearing in mind that number of accomplished young aspirants, having good degree of training in computers, are waiting in the queue. Some of the High Courts have already appointed Court Managers while the rest are in the process of such appointment. Depending on the performance and utility of such Court Managers, the Courts may be empowered to appoint additional personnel particularly in the light of the fact that the number of courts is likely to double in the near future. Entrustment of managerial duties to Managers rather than judges would allow the latter to devote full time to discharge of judicial duties which, in turn, would enable the judiciary to accomplish the task of making the judicial system 'five plus free'.

CHAPTER - XI

Conclusion

If the proposed judicial reforms aimed at improving the justice delivery system has to materialize, there is no doubt that it has to be accompanied by constant enhancement of excellence of judges and support staff to face the challenges of a changed socio-economic scenario where the citizens will be more aware of their rights and demand more accountability from the courts. The judiciary needs to make the transition from self-accountable institutions to institutions accountable to the citizens at large. It is needless to say that such a transformation can only be made by inspirational leadership of the High Court Judges. Apart from delivering motivational speeches to the judicial officers, they have to be trained on procedural aspects and made aware of the technical nitty-gritties of law and conscious of various other facets like judicial ethics, transparency, the latest developments in the legal world, etc. A pat on the shoulder of a judicial officer acknowledging his commitment to the system would inspire him to deliver more than what he perceives he can give to the society. The support staff also needs to be trained to make use of information technology to achieve the objective of computerization of courts and hence achieve the targets of improving the efficiency of the courts and clearing its backlog. If justice is really to serve the ends it is meant to be, then the emphasis should be on the quality of judgments and not mere numbers. A fine balance between quality and quantity has to be maintained at all times. Even though the system has to be made 'five plus free', it must always be the paramount duty of the justice delivery system to 'save the dying' rather than 'burying the dead'.

(DIPANKAR DATTA)