Judicial Education

NJA

Newsletter of the National Judicial Academy

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FROM THE DESK OF THE DIRECTOR

This newsletter reports academic activities of the Academy during the period January through March, 2017. This period was very productive, satisfactory and witnessed a robust participation; in terms of the number of participating judicial officers and active exchange of views and experiences witnessed during the sessions.

Besides two Regional Conferences for the North and South Zones organized in January and February, the Academy organized thirteen other programmes. These include national seminars on the working of Courts dealing with CBI and Prevention of Corruption cases; of Courts dealing with Motor Accident Claims; functional issues pertaining to Registrars (Judicial) of High Courts; of Courts adjudicating Industrial and Labour disputes; of Courts dealing with POCSO issues; and on functions of Registrars (Administration) of High Courts. In the last week of January a colloquium was organized for High Court Justices on developments in the area of Constitutional Law and in the third week of March a colloquium to evolve parameters for Judicial Performance Assessment. Workshops on the use of Court Managers at the District Court level and on sensitizing Magistrates to the domain of Animal Rights Jurisprudence were organized towards the end of January and March of this quarter. An orientation programme for Magistrates covering critical issues that arise in the course of implementing provisions of the PC & PNDT Act was conducted in the first week of February.

The feedback received from participant officers, on the academic experience and the facilities provided during their stay at the Academy, was of uniform satisfaction. A majority of participant judges suggested that the duration of the sessions should be extended to a minimum of three days, preferably commencing on a Friday and concluding on Sunday. This suggestion will be submitted for consideration by the National Judicial Academic Council, the body constituted to frame the Annual Calendar for the Academy.
As experienced during the previous quarter, during the current period as well, the Academy had the benefit of guidance and mentorship for our academic sessions, from Hon'ble Judges of the Supreme Court and High Courts, both serving and former; and domain experts drawn from appropriate disciplines relevant to the several sessions, who generously contributed valuable time and invaluable experience and knowledge to enrich judicial knowledge and operational skills. The Academy places on record its gratitude to these resource persons; and to the judicial officers who participated with enthusiasm and went from here, enriched and stimulated by the experience.

Justice (retd) G. Raghuram
Director
National Judicial Academy
Signing of MoU
for Academic and Faculty Synergies between
NJA-Bhopal and SVP NPA-Hyderabad on 23.03.17
A 2-day regional conference on the theme 'Enhancing the Excellence of Judicial Institutions: Challenges & Opportunities' was organized at Chandigarh on 7th & 8th January, 2017 by the National Judicial Academy, Bhopal in collaboration with Punjab and Haryana High Court and Chandigarh Judicial Academy. The participants were 20 High Court Justices and 67 Judicial Officers from 6 states. The objective of the Conference was to provide a common platform to facilitate exchange of experience and sharing of knowledge on various issues ranging from ethics, integrity, vigilance, social context judging & use of technology, to consequences of corruption on the institution and public perception. The Conference provided an opportunity to discuss several crucial issues relevant to the particular region.

Following issues were highlighted and deliberated upon during the Conference:

**Importance of Ethics, Integrity and Discipline**

- The basic ideals of our Constitution such as Justice - social, economic and political, equality of opportunity and status and the dignity of individuals are valuable and needs to be preserved and protected while dispensing justice.

- Part IV of our Constitution is much more important than Part III of the Constitution. That is to say, it is not just the fundamental rights guaranteed by the constitution which needs to be protected but it becomes even more important to adhere to and conform to the directives issued by the Constitution wherein there is command for the judiciary as well. Therefore, while delivering justice it is essential that it is in consonance with Part IV read along with the Preamble to our Constitution.

- Much of the time is consumed in assisting the have's of the society rather than the have nots. For this reason, it is necessary that judges become lawyers as well as adjudicators for the poor. Even under normal circumstances, a judge must always give a patient hearing to the advocate arguing the case
before him for the reason that the advocate is not there representing his own case but that of someone else who is aggrieved.

**Strengthening Internal Vigilance Mechanism as response to rising Judicial Indiscipline**

- Self-introspection is the best mechanism, that is to say one should conduct oneself in such a manner that there does not arise any need of internal vigilance mechanism.

- A judge must never hear an advocate dispassionately and objectively. He must always try to make room even for arguments not acceptable to him. The judicial officers were advised that they must always pass orders as per their wisdom but at the same time hear the counsels and the litigants patiently. This is important because most of the time the altercation is not of being aggrieved by the order but not of being heard properly.

- Another issue which was deliberated upon in this session was as to whether judicial indiscipline will decrease if we have audio visual recordings in the court. The view expressed was that it would not be conducive for free and profound decision making. Reference was made to the manner in which the parliamentary proceedings are conducted in our country despite being recorded.

- There was another significant issue raised in this session as to how can we spread best practices regarding co-ordination between High Court and District Court judges. The response to it was by providing training to the district level judges which would be sort of an in-house training where the district judge could be placed as an observer in the High Court. The instance of Delhi High Court was cited where they follow the practice of placing a newly appointed judge with a senior judge on division bench. However, the problem in such a case is that there is a possibility that the junior judge develops the habits and traits of the senior judge with whom he is associated.

**Impact of Media on Public Perception regarding vitality of Justice Delivery**

- A stool of three legs is not as strong as that which stands on four legs. It is the media which acts as the fourth leg for our democracy. Media has a vested interest in democracy, economical or commercial. Thus, if there is anyone who really wants the establishment of democracy it is the media, the reason being that media could only function effectively when there is democracy in place. A common man understands a particular matter when media explains it in simple terms. Therefore, we can always use the media to tell the people that judiciary is there to address the issues faced by them. Public confidence is most critical to the administration of justice. There is marriage between media and judiciary. Judiciary thinks of media as more efficient than other pillars of democracy. The same is true vice-versa. These are the two pillars that the people of our country trust the most.

- Media’s role is merely to provide facts or briefs. However, they often go beyond that and become judgmental over certain issues which is very dangerous as it not only goes on to create a public perception but there is every chance that the subconscious mind of the judges be influenced by such reports. Because of the excessive influence of media, the integrity of the trial process is under siege. However, setting aside all the negative influence that the media trials have, the administration of justice delivery system gets strengthened at times because of the involvement of the media. It also plays a positive role in bringing some buried cases alive.

- In order to combat the issue of incorrect reporting of the court's orders or procedures, every High Court should have a spokesman for the court who can correct things which have been reported incorrectly.
Relationship between High Court and District Judiciary

- Drawing out the difference between Articles 226 and 227 of the Constitution it can be said that the higher courts should only in rare cases keep the subordinate courts within the boundaries of their authority.

- The relationship between the district judiciary and the higher judiciary also comes to light with respect to the power of contempt since such a power can be exercised by the lower judiciary only upon a successful reference to the High Court.

- There is lack of communication between the district judiciary and the higher judiciary. The core issue then is how to bridge this gap. In this regard the role of district courts is vital. They have the responsibility in bringing the issues and concerns faced by the courts under them to light. Ideally the relationship between the higher and district judiciary should be that of a parent and child. But does such a relationship exists in reality was the core issue.

- In order to improve the relationship between the higher judiciary and the district judiciary there is need to bridge the trust deficit between them. For years promotions are not made to the senior division level for the reason that there are not enough recruits to serve the junior division level. This issue needs urgent attention. Freedom should be given to the lower judiciary to speak to the high court judges any time on any legal matter.

Social Context Judging (SCJ) as principle for exercise of Discretion and application of SCJ in given case studies

- While judging a case, the social context or the trends of the society cannot be altogether ignored. The reason being that society is changing so law cannot remain static. Gender justice is one of the major components of social justice and this can be seen by the changing role of women in society as well as the developments made in respect of endowing right to property on women, increasing presence of women in the employment sector etc. However, there is also another side of the aspect when we consider the social context and that is the kind of stereotypical attitude towards the dress, male friends, drinking and smoking habits of women which are often given much more significance than the real issue at hand.

- Further, reference was made to the rights of the unemployed as against those who are in employment. There was also discussion with respect to violence against women, rights of construction workers, right to free legal aid, violence against people from North-East, hate speech etc. as vital aspects of social context judging. Such changes in society need to be recognized and catered to by the judges and that the social context in which the case is presented must always be analysed before a judgment is made.

- Apart from social justice, the aspect of political justice was also discussed with reference to the transparency and accountability features in the political sphere as having made a notable impact upon the societal context as well. The issue at hand could not be concluded without deliberating upon another significant aspect of economic justice in the social context. Sometimes it is very difficult to ascertain economic justice between the stakeholders involved such as in case of construction of a dam when people of that area are displaced there is uncertainty as to whether we are looking at economic justice from the point of view of such people or that of development of the state. The issues of medical care and environmental concerns were also referred to in this context. Almost everything today has to be looked at from the context of the society. The reason being that
we are not only looking into the needs of the present generation but for the future generations as well.

- Sometimes the need for interpreting law with the changing needs of the society is felt. For instance, earlier we did not have much regards for the 'victim' in our system. Much of the protection was accorded to the benefit of the accused. But with change in societal structure there came demands which led to the evolution of another branch called 'victimology'.

- It is a well-known fact that penal statutes have to be interpreted strictly and if there is room for two opinions, benefit must be given to the accused. The reason behind this is that no innocent person should suffer. Drawing from the same logic, if in a particular case there is a party belonging to the weaker strata of the society discretion should be exercised in their favour.

**E-Justice: Re-engineering the Judicial Process through effective use of ICT**

- Participants were informed about the technological advancement made in the functioning of the Punjab and Haryana High Court through effective use of ICT. Various positive changes that have been brought about by the introduction of technology in the day to day functioning of the court system, some of which are the use of dragon speech software, introduction of e-court fee, medico legal reports, personal information system, online leave application and approval system, online publication of notices, according digital signature to the judicial officers and court staff and an attempt towards full digitalization of subordinate courts (through which about 3.52 lac sq. ft. of land would be reclaimed from record rooms), etc.

- A reference was also made on the use of ICT with regard to the advancements made in this respect in the Delhi High Court. The ease and efficacy which has been brought about by adopting technology were pointed out, such as the entire record of decided cases upto the year 2012 have been digitalized, 40,000 sq. ft. land has been vacated due to digitalization, certified copies of digital records with digital signature is available within 15-20 minutes of the order, installation of kiosks for information, and introduction of the system of e-court fee, digital display boards in and outside the courtrooms, e-cause list etc.
The NJA organized a 2-day “Annual National Seminar on Working of the CBI Courts and Prevention of Corruption Courts” on 14 & 15 January, 2017. The seminar was attended 35 presiding officers of CBI Courts and Prevention of Corruption Courts. The seminar aimed at discussing various issues arising in relation to disputes to be adjudicated by judges of such Special Courts in India and to strengthen the capacity of presiding officers of CBI Courts and Prevention of Corruption Courts. The sessions included deliberations on issues related to Investigation in Corruption Offences: Role of Judges, Arrest & Trial of Public Servants, Appreciation of Electronic Evidence, Cyber Crime, Trial of Economic Offences and Extradition of Fugitives: Role of Judges.

**Major Highlights and Suggestions from the Seminar**

- Deliberating on the role of judges in corruption cases, the issues that were discussed included role of judge during remand of accused person, scrutiny of complaints, scrutiny of documents, abetment for commission of corruption offences, attachment of property in disproportionate asset case and renewal of attachment after lapse of one year, ensuring timely and careful investigation, precautions in granting bail to prevent interference of evidence and witnesses and preliminary enquiry to be conducted by the investigating officer in cases involving influential persons.

- It was highlighted that corruption cases remain pending in courts up to fifteen to twenty years just because the proceedings are not carried on day to day basis. Whenever crucial evidences and witnesses are produced before the court, the presiding officer must not adjourn the proceedings. All witnesses need not be examined but judges may give instructions to examine specific witnesses. There is a need to reduce inconvenience and threats to witnesses. The steps to be taken by the court in situation of witnesses turning hostile were deliberated and it was suggested that court must look into corroborative evidences to determine the matter at hand. Prompt payment of expenses to witnesses should be ensured.
Cases were discussed regarding aspect of sanction to be given by the disciplinary authority for prosecution of the public servants and how a delay or refusal to grant such sanction affects and delays the trial.

It was highlighted that it is not the duty of the sanctioning authority to put up a parallel inquiry to that of the investigating authority. However if during the proceedings new evidences are produced, the sanctioning authority may initiate a parallel enquiry. Moreover the sanctioning authority must always apply its mind before granting or refusing sanction.

In cases where a public servant is involved in a bribery case along with several co-conspirators and no sanction is granted by the Government, then it will have to be seen that a case has been made out under the Indian Penal Code, 1860 for which all accused persons should be prosecuted. In such a situation no sanction is required.

The issues related to money laundering were discussed. The discourse included concept of money laundering, objectives, scheme and defining features of the Money Laundering Act, 2002, procedures for attachment of property under the Act, role and functions of special court established under the Act and amendments under the Act. The discussion also included attachment of property of liquidated company, freezing of bank account and jurisprudence of the Supreme Court on disproportionate assets.

On appreciation of electronic evidence the issues deliberated were significance of Section 65(B) of the Indian Evidence Act, 1872 dealing with admissibility of Electronic Evidence and the jurisprudence of the Supreme Court and high courts on preservation of electronic evidence and arrangement of preservation of electronic evidence. The three step test for the purpose of admissibility of electronic record was also discussed. Various features of electronic evidence such as hard disk, IP address and hash value and issues surrounding certificate under section 65 (B) (4) were also deliberated.

Various aspects related to cybercrime were discussed in the seminar. The targets of cyber-crime such as Cloud Computing, Infrastructure (Stuxnet, DuQU), Mobile devices (Wallet fraud in Bangalore), Automobile access (tracking devices), Credit card theft, Phishing attacks, Malware/Ransomware, Medical devices and State sponsored hacking were explained to participants. The concept of darknet and bitcoin were also explained.

For effective investigation of cyber-crime it was suggested that under the forensic examination performed by the investigating agency there is a special need to properly look into the role played by proxy servers. Awareness regarding the misuse of technology must be promoted. The features of various applications and web pages that play an active role in data theft must be disabled and prohibited. The Indian Computer Emergency Response Team (CERT) must take active steps to minimize any breaches of law committed using technology.

In adjudication of economic crimes the state counsels face tough competition from defence. The offender hire resourceful and influential advocates who attempts to abuse the process of law. In such situation proper legal assistance should be provided to state counsels. The police requires adequate latest technical infrastructure to do proper and timely investigation in economic crimes. In order to obtain proper cooperation from accused person, the court must give him a fair treatment. The judges must always ask counsels to earmark most important documents and submit written synopsis. Other issues of concern were constant need of knowledge updating by judges and prosecutors, technology
driven facilities in court, management of documents produced in evidence and strictness in granting adjournments.

- While discussing about bank frauds, the issues included fabrication of documents, lack of sincere effort to trace absconding accused person, accused person resorting to quashing of proceedings under Section 482 of Cr.P.C. and conditions for quashing of proceedings under Section 482 of Cr.P.C.

- The discussion on extradition of fugitives and role of special courts focused around need of extradition treaties, initiatives taken by the international community with respect to extradition, the evolution of extradition law in India, general conditions for extradition, reasons for refusal of request of extradition, process of request for extradition, procedures according to the Extradition Act, 1962 and jurisprudence of the Supreme Court on issues relating to extradition.
National Judicial Academy organized the Annual National Seminar for judges presiding over the Motor Accidents Claims Tribunals in India with the objective of discussing crucial issues in the functioning of the MACTs. The Seminar provided a forum to discuss recent trends in Motor Vehicle law and the adjudicatory challenges faced by the MACTs. Justice J.R. Midha, Justice Mridula R. Bhatkar, Justice Indira Banerjee, Justice U. Durga Prasad Rao, Justice M. Seetharama Murthi, Justice K.J Thaker, Ms. Sonia Mathur, Mr. Y.V. Ramakrishna, Mr. S. Srinivasa Raghavan and Prof. S.P. Srivastava guided the discussions as resource persons. The seminar was attended by 49 judges.

The discussions in the seminar focused on the interplay between sections 140, 163A and 166 of the Motor Vehicles Act, the function of the MACTs in awarding compensation as a crucial element of Justice Dispensation, the issues in determining functional disability by the MACTs, the determination of just compensation and the liability of third party insurance in MACT cases.

The major issues that were discussed in the seminar are—

- The basis of motor accident claims is negligence. The motor vehicle law in India is influenced by the motor vehicle law in United Kingdom and is based on the law of torts.

- The Motor Vehicles Act operates on the basis of the use of the motor vehicle as per Section 140 of the Motor Vehicles Act, 1988. The 'use' of motor vehicle encompasses all activities that occur in the course of the operation of the motor vehicle including incidents that occur when the vehicle is not in motion. The word 'use' has a wider connotation to cover the period when the vehicle is not moving and stationary, became immobile due to breakdown or mechanical defect or accident. The accident should be connected with the use of the motor vehicle. The connection need not be direct and immediate. The expression used enlarges the field of protection made available to the victims and is in consonance with the beneficial object underlying the enactment.
- No Fault Liability under Section 140 of the Motor Vehicles Act, 1988 provides for compensation of victims of road accident and encompasses both road accident injury cases as well fatal accidents. In no-fault liability there is no requirement to plead fault on part of the owner/driver, and fault of the victim is not a defense that can be taken.

- The defenses available to insurance companies under Section 140 include the defenses under Section 149 and also that the owner of the vehicle committed wilful breach of the conditions of the policy. Mere violation of conditions of policy by insured is not sufficient reason avoid to the liability by the insurer. The insurer must prove that the insured is guilty of negligence and failed to exercise reasonable care in fulfilling the conditions of policy. The burden is on the insurer to establish willful breach. The breach of conditions of policy must be so fundamental as are found to have contributed to the cause of the accident. The rule of 'main purpose' and concept of 'fundamental breach' have to be kept in mind in interpreting the policy conditions and the defenses available to the insurer.

- "Just" compensation under Section 166 means compensation which makes good or restores a person in the position he must have been but for the loss of suffered by him in event that has occurred. The attempt is to compensate the person to the highest extent possible in terms of money and for this, damages are categorized as: pecuniary damages and non-pecuniary damages. Pecuniary loss is loss of earning, livelihood, medical treatment, cost of attendant incurred or will have to be incurred, etc. The compensation awarded has to be just, neither too little nor a lottery.

- The 'percentage of loss' applied in cases of injury is to be assessed by assessment of disablement. The test for it is not the disability certificate of medical issued but the functional disability.

- Under Section 166, the basic things to be considered before granting a compensation in favour of a claimant is wrongful act on part of owner or driver of vehicle i.e. negligence, and damages are actually suffered or not i.e. pecuniary loss.

- On hit and run cases, the Supreme Court has taken up a PIL. But now in every insurance policy now a charge of 5% of the premium is kept as solatium fund which is to be paid in hit and run cases. However, not a single victim is awarded with such money.

- The delay in disposition of Motor Accident claims is also because the police are not filing the evidence in reasonable amount of time. Though law has ordained in Section 166 that within 1 month, they have to file the accident report and all necessary particulars as laid down in form 54, but there is violation of it throughout the country.

- While dealing with injury cases, 2 kinds of compensation are to be determined - pecuniary and non pecuniary or special damages. Pecuniary is the material loss, in terms of money; non-pecuniary does not have a scale some hypothesis, guess work and even conjunctures are permissible to assess non-pecuniary loss.

- Total permanent disability affecting the person's ability to perform his avocation is functional disability. Functional disability depends upon the age, occupation, effect on working hours with reference to kind of livelihood, loss of amenities etc.
The National Judicial Academy (NJA) organized a “Colloquium on Commercial Laws for High Court Justices” from **28-29 January, 2017** at the NJA, Bhopal. About 26 Hon'ble High Court Justices from different High Courts participated in the colloquium. The aim of the colloquium was to facilitate effective adjudication of commercial disputes, strengthening enforcement and combating Economic Crimes.

The discussions critically addressed the issues in the Intellectual Property Rights (IPRs) regime, emerging Company Laws issues, Securities Laws, Tax Laws and other major contemporary issues to assist judges in handling commercial disputes more effectively.

The colloquium was divided into six sessions over the duration of two days on following themes.

**Tax Laws related challenges of Digital Economy**

The distinguished speaker discussed 'what Digital Economy is And what are the current domestic laws on digital economy.' He also discussed about the International scenario regarding digital economy and by some current issues relating to the taxation of digital economy. Following issues were highlighted:

- Mobility of digital economy is having negative consequences on the tax policies such as base erosion.
- Rules regarding tax policies on digital economy.
- The challenges of Non-digital economy.
- International Treaty Laws on digital economy.

**Intellectual Property Rights: Genesis, Benefits and Importance**

At the beginning, it was explained why there is a need to tighten IPR laws and to capture new opportunities. The book called “Justifying Intellectual Property” by Robert P. Merges was cited to
highlight 5 universally accepted principles in favor of Intellectual property in the following order:

- Traditional utilitarian formulation
- The non-removal principle
- Principle of Proportionality
- Dignity Principle
- IP seen as Property

The link between IPRs and long term growth was explained so as to create incentives for people to put in money for research and development and at the same time legal protection is required to enable people to work in R&D and creation of technology.

The concept called 'Fire in Belly', was also explained, means that the creative domain consisting of artist, inventor, authors, lyric writer, music composer follow a predictable pattern. Initial fire in the belly will not stop at creation whether there is high incentive or low incentive but if they find that their product has been copied and they are unable to stop the wrong, deep frustration will set in and the fire will be doused.

The importance of I-4 pathway (Incentives, Invention, Investment and Innovation) in IPRs was discussed with the participant justices in details through various examples.

It was also highlighted that there should be right balance between Incentives & Access, Creators & Owners, Consumers & Users, Individual & Collective Benefit, Rights & Obligations and lastly Private & Public Rights.

The genesis of Intellectual Property was also discussed through brief historical account of treaties and conventions. In context of India, it was explained that India has always been an innovative society but lacks awareness regarding the importance of IPRs. The example of the Mangalyaan mission was cited as one of the most cost effective Mars Mission ever done in the world but we did nothing to protect our cost effective technology.

On importance of Intellectual Property, followings areas were highlighted.

- Intellectual Property stimulates creativity and innovation
- Intellectual Property rights are marketable financial assets and an economic tool
- Intellectual Property promotes advancement in science and technology, arts, biodiversity, etc.
- Intellectual Property provides competitive advantage in commercial activities by Preventing unauthorized exploitation by third Parties.
- Intellectual Property protection provides a guarantee with respect to the safety and quality of goods
- It enables technology transfer – licensing, assignment
- Intellectual Property is an intangible asset that helps some get financing loans, investments etc.

**Intellectual Property Rights regime in India: Government policies and practices**

The distinguished speaker stated that there is need of fine balance between public right and private right with regard to the Intellectual Property. He discussed total eight issues relevant for implementing government policies and practices -

- Ever greening
- Compulsory Licensing
- Working of a patent
- Data exclusivity
- Patent Linkages
- Standard essential patents
- Online copyright privacy: Enforcement issues
- Geographical indications and traditional knowledge

The National Intellectual Property Rights Policy was highlighted as major step by the Government to regulate IPRs regime in India. It was mentioned that cell for IPR promotion and management was created as a professional body to effectively implement National IPR policy and is also engaged in various awareness programme in 18 states. It also undertakes sensitization of police and customs in order to have effective enforcement.

With respect to enforcement it was highlighted that a toolkit has been prepared by the government for police officers and other enforcement agencies, primarily focusing on two laws trademark and copyright.

**Role of Judiciary in Effective Enforcement of Intellectual Property Rights**

Attention was drawn to some of the landmark cases of Supreme Court and High Courts on Intellectual Property Rights to address the major issues pertaining to effective enforcement of IPRs Laws. 253™ Law Commission Report on setting up of Commercial Court in 2015 was also cited as a reference. The significance of Commercial Court Act was emphasized in light of its expeditious disposal and fully implementation of cases. It was highlighted that the designation of commercial courts helps in two ways; firstly, it results in delineation of commercial cases and non-commercial cases. So, once the resource allocation is divided it helps the court in following the process and timeline for commercial courts under Commercial Courts Act and non-commercial courts under Civil Procedure Code, it would reduce the dilemma in judges' mind and secondly, it ensures that the Commercial Courts Act is fully implemented in its letter and spirit.

**The Development of Corporate Jurisprudence in India: A way forward**

This session began with the discussion on recent changes made in the company legislation and leading judgements of last few years which makes the substantial changes in corporate world. The significance of Company Act 2013 was explained particularly in context of creation of National Company Law Tribunal which has succeeded the other judicial bodies such as:

- Power of Company Law Board;
- Power of Board of Industrial and Financial Reconstruction for revival and rehabilitation of sick industrial companies;
- Appellate Authority for Industrial and Financial Reconstruction and;
- The provisions relating to amalgamation, restructuring, reduction of capital and winding up will no longer be under the jurisdiction of the High Court.

It was mentioned that the new amendment in the act reduced the power of high court to hear appeals, which are now being heard by the National Company Law Appellate Tribunal (NCLAT), however, it was also stressed whether these amendments will have any significant effect or not.
Salient features of some important legislations such as Prevention of Money Laundering Act, 2002, Arbitration and Conciliation (Amendment) Act 2015 along with some of landmark judgement of Supreme Court and High Court were also discussed.

**Some Contemporary Issues Pertaining to Commercial Laws for Effective Adjudication of Commercial Disputes**

The session commenced by raising issues regarding interplay between Securities and Exchange Board of India Act, 1992 (SEBI Act) and Prevention of Money Laundering Act, 2002. One example was cited that circular under Prevention of Money Laundering Act required to be authorised by RBI for banks and SEBI for capital market intermediaries, failure of reporting the suspicious transaction have a consequences under Prevention of Money Laundering Act. Therefore, this interplay between two legislations raises the question of double jeopardy because the same action could be punished by the same authority under multiple statutes e.g. same action could be punished under the Securities Contract Regulation Act, 1956 (SCRA) and SEBI Act by the same authority under the two separate penalties.

Thereafter, some of the M&A/shareholder related disputes that often end up in Courts even after arbitration and exercising the jurisdiction of NCLT were highlighted as follows;

- Disputes over shareholder Agreements
- Dispute over alleged breach of company law
- Disputes with interplay of Takeover Regulations
- Dispute over Share Purchase Agreements
- Dispute on corporate family settlements
- Dispute with regulators
- Dispute over Jurisdiction

The issue of insider trading was also highlighted. It was mentioned that Indian law on prohibition of insider trading is very stringent because onus is on the person who is possession of unpublished information to prove his innocence and the punishment on communication of unfair practice of sensitive information is very stringent under the SEBI Act, no provision of penalty with fine. Similarly, the fraudulent and unfair trade practices regulation sometimes trapped the people who have bonafide belief.
The National Judicial Academy organised a 2-day Workshop on the use of Court Managers at the District Court Level on January 28th and 29th, 2017. It was attended by Court Managers and PDJs with five years' service remaining in the judiciary. The workshop addressed the importance of Court Managers, their role in case management system and in the implementation of E-Court Project at the district court level. The workshop also discussed Human and Financial Resource Management by Court Managers. Following points emerged from the deliberations made during the course of the workshop:

- With respect to the regulatory framework for court managers by high courts, it is important to know whether performance standards for the court managers have been fixed by the high courts or not. If not then it is difficult to achieve the objective for which the court managers have been made to work. It was also pointed out that while making rules it is important to see whether the functions that are required to be performed by the court manager are feasible to be performed or not. On the contrary everything has been put under the court manager's hat. Need assessment of district courts is usually not done and at the same time it is believed that the court manager would be rendering assistance to the district judge in all the areas without the court manager having any idea of the courts functioning and district judges having no idea what a court manager can do. In other words, due to the lack of standards, the responsibilities for which the court managers have come into existence is not achieved.

- It was suggested that regulatory framework can be evolved by the existing court managers if they are given a free hand to examine the systems with the management perspectives, carry out some time motion studies in the courts and be allowed to come out with reports. It is then that performance standards could be fixed. For instance, service of processes is the biggest problem in the courts with the corruption involved in it and because of which the judiciary gets a bad name. Studies on such aspects will eventually put the regulatory frameworks in place.
Most of the court managers initially did not have any idea as to why they have been appointed except for the huge nomenclature that means the persons manages the courts. Most of the court managers with five years of management experience do not understand that court is not an industry and therefore regulating their work is a big task. While on the other hand, the judges feel that an alien has come into the system and trying to disturb the age old arrangements. Therefore, it is necessary for the high courts to prescribe job task inventory i.e., identification of exact tasks for the court managers. It is only then that the office of court manager will become more responsible and responsive. For instance, the job task inventory under the Karnataka High Court gives domain knowledge to court managers so that they have a sound understanding of the various departments and their functioning. This will aid them in understanding the staffing pattern that exists and the kind of skills each person has, including job description for each of them. A survey report on all such tasks will be of great help to court managers in understanding the requirements of court management.

One of the foremost concern with respect to the role of Court Managers is that he is a person who does not have relevant knowledge of law. For him it would be certainly challenging to find all applicable directives of the superior courts, to establish performance standards be it for the judges, court staff or for registry officials, to know which directives are latest and which are old ones and which one to be applied and which one to be cast off when there are so many conflicting judgments/reports on all these aspects from different High Courts and the Supreme Court. It is for these reasons, High Courts which are appointing LLB and MBA degree holders as Court Managers can delegate them with some role in policy making responsibilities for the reason that they will know from where to find out directives of the superior courts in areas of timeliness, efficiency, court performance, infrastructure, human resource and access to justice etc. Person not qualified in law cannot be the right person therefore to take this kind of research, let alone checking for compliance.

Court managers are expected to learn about all process and procedures and evaluate them with the standards developed by the High Court that too in a period of one year. At the same time most of the court managers are employed on yearly or contractual basis. On the other hand court managers with only MBA degrees and no legal qualification are bound to take more time to learn about various processes and procedures, minimum 5 years at least. In such situations how a court manager can ensure compliance with standard set up by the High Court. Invariably it is pertinent to know as to what tools, authority and level of access to internal workings are given to court managers.

For court managers to oversee, manage and improve e-court systems, human resources and financial resources they must understand the fundamentals. Job analysis is critical. When court leaders understand what the court staff do, they can oversee the evaluation of actual against desired performance. This will help the court structure jobs, departments, and workflow; develop job descriptions; design recruitment and selection procedures; evaluate positions to ensure equitable compensation; and organize performance management systems.
The National Judicial Academy organized a “Colloquium on Developments in the Area of Constitutional Law” for newly elevated Judges of High Courts on 4th & 5th, February, 2017. The colloquium aimed at augmenting the perception of the Constitutional vision of justice, boundaries of judicial review, sounds and silences of the Constitution, contours of public interest litigation, and the nature of supervisory role of High Courts over subordinate Courts.

The colloquium was divided into five sessions. 31 newly elevated justices from various High Courts participated in the two-day colloquium. Hon'ble Dr. Justice D. Y. Chandrachud, Hon'ble Mr. Justice P. V. Reddi, Mr. P. P. Rao, Mr. Arvind P. Datar and Mr. N. Venkataraman were the resource persons.

The theme of the first session was “The Constitutional Vision of Justice”. Major discussions and deliberations are as follows:

1. It was remarked that all three organs of the government, i.e. the legislature, executive and the judiciary are expected to work together for achieving the objectives laid down by the Constitution. However, historically there has been a disconnect between the political leadership and the judiciary. It was reflected that Constitution is a political, social document and a blueprint for governance.

2. The Constitution recognizes that the liberties are not to be exercised only in an individual sense, but have to be exercised in a collective sense as well, recognizing the need for expression of liberty by collective groups of citizens, particularly in a pluralistic society as in India.

3. It was emphasized that Part III and Part IV of the Constitution are not disconnected segments, instead, they are to be viewed together as a composite whole, representing social dialogue which the Constitution seeks to create in achieving social mobilization, which is one of the fundamental tenets of the Constitution.

4. It was remarked that the Constitution could be said to be seeking to establish a regime of social, economic and political justice through institutional governance.
5. Constitutional notion of justice was discussed. Emphasis was laid on the debate in the U.S.A. as to whether the constitutional vision of justice ought to be given originalist interpretation or, an evolving and organic notion of justice ought to be adopted. Reference was made to the position in India in this regard, wherein judiciary considers the Constitution to be an organic document, constantly evolving in the manner expounded by judicial interpretation.

6. It was stated that there are two aspects of the Constitutional vision of justice, firstly, what is the vision set out by the Constitution, and secondly, what are the mechanisms devised to implement the vision. It was stated that the judiciary is a mechanism or instrument that has been devised to secure vision of justice, which is evident from the fact that no other Constitutions in the world contains such elaborate provisions.

7. It was opined that the entire vision of justice as set out by the Constitution is contained in the Preamble.

8. It was remarked that the vision of the Constitution essentially denotes the vision of the founding fathers of the Constitution, laying emphasis on the Constituent Assembly Debates acting as a window enabling us to peep into the minds of the members of the Constituent Assembly, as to what they had in mind while framing the Constitution.

9. It was emphasized that large areas of dispute are being shifted from the jurisdiction of Courts to the jurisdiction of tribunals.

10. It was suggested that the judiciary should try to avoid getting into polycentric disputes, leaving it to the legislature to address polycentric disputes by suitable legislative action. It was stated that the good or bad fortune of a nation depends on its Constitution and the way the Constitution is made to work.

11. It was remarked that the Indian Constitution is a unique in view of the fact that the framers of the Constitution scrutinized the Constitutions of various countries of the world, and those provisions which were best suited to our polity and society were adopted, in their original or modified form to suit the needs of the nascent nation.

12. It was noted that people have a plethora of rights derived from the Constitution, and by judicial activism, width and content of fundamental rights have been expanded while addressing the issues touching quality of life, good governance and problems of government inaction and arbitrariness.

13. The independence of the judiciary was highlighted for having been instrumental in enhancing credibility and utility of the judicial system. It was opined that the confidence and faith of public in judiciary is best reassured by rising to the occasion and redressing genuine grievances of the people and by infusing the Constitutional vision of justice in the adjudicatory process.

The theme of the second session was 'Separation of Powers – Boundaries of Judicial Review'. Following points arose from the discussions and deliberations:

1. It was strongly indicated that judicial review under Indian Constitution does not imply the power to usurp powers and functions of another arm of the government. Articles 13, 32 and 226 of the Constitution were cited as source from which the Constitutional Courts in India derive the power of judicial review.

2. The phenomenon of the Supreme Court and the High Courts transforming into 'Good-governance Courts', seeking to ensure good governance within the nation, under the umbrella of judicial review.
was also highlighted. It was also observed that judicial intervention in matters of policy-making must be mitigated to the greatest extent possible, whereas matters of governance and policy-making must be entrusted to the executive, who are subject to popular accountability to the electorate.

3. The role of the judiciary is to compel the executive to give effect to its functions and duties, rather than taking over its functions and duties. The judiciary ought to endeavour towards strengthening the institutions of democratic governance, instead of weakening them by assuming powers which were never entrusted to the judiciary under the Constitutional scheme.

4. It was remarked that the function of the legislature is law-making, the function of the executive is administration, policy-making and implementation of laws, and whereas the judiciary is entrusted with the function of resolving disputes, interpreting the Constitution and the other statutes. The practical difficulties crop up in drawing the boundaries between the functions of these three wings.


The theme of the third session was ‘Interpreting the Sounds and Silences of Constitutional Speech and Silence’. Following were the broad discussions and deliberations:

1. Silence was explained as a state of equilibrium or a state of calmness. Silence of the Constitution has to be interpreted with a view to redress the issues or problems which arise before the Courts.

2. Reference was made to the five cardinal principles propounded by Laurence Tribe regarding the matter of dealing with the silence in Constitution, prescribing that the first endeavour of every judge faced with an issue pertaining to silence of legal provisions, should be to ascertain whether there is silence in the provisions or avoidance in the provisions with regard to a certain issue. Secondly, if it is evident from the legal provisions that there is a silence, the next step should be to assimilate the silence and interpret it as close to reality as possible, while being cautious that the interpretation should be as close as possible to the actual purpose it was intended to serve. Thirdly, there has to be cognizance of the possibility of silence coming in various forms and perspectives. Fourthly, interpretation should be objective, eliminating any kind of subjectivity as far as possible. Lastly, it was opined that the legal culture of a society is dependent on the way the Courts of such society interpret silence. Reference was also made to various categories of silence in legal provisions, as distinguished by Laurence Tribe which includes Door-opening and Door-closing silence, Structural silence and silence on individual rights, general silences and Rules of constitutional interpretation.

3. Two modes of interpretation of constitutional silence were highlighted, namely textual interpretation, as distinguished from contextual interpretation. A textual interpretation would be aided by the tools of historical interpretation and literal construction. Contextual interpretation would be aided by the tools of purposive and progressive interpretation and harmonious construction, and would better serve the needs of changing times.

4. To reflect the question on sounds and silences of the Constitution it was observed that the sounds are that which the Constitution expressly states, and the silences are constituted of firstly, that which is implied by the provisions of the Constitution or which can be read into the Constitutional
provisions, and secondly, that which the framers of the Constitution could not have contemplated, but had they contemplated it, they would have included similar provisions.

5. It was observed that in context of the Indian Constitution, there was absence of an uniform approach towards interpretation of the silences of the Constitution. A. K. Gopalan v. The State of Madras, AIR 1950 SC 27, Shankari Prasad Singh Deo v. Union of India, AIR 1951 SC 458, I. C. Golaknath & Ors. v. State Of Punjab & Anr., AIR 1967 SC 1643, Kesavananda Bharati Sripadagalvaru and Ors. v. State of Kerala and Anr. (1973) 4 SCC 225, Satjil Singh v. State Of Rajasthan, AIR 1965 SC 845, R. C. Cooper v. Union of India, [1973] 3 S.C.R. 530, Maneka Gandhi v. Union of India, Air 1976 SC 597, R. D. Shetty v. International Airport Authority of India, AIR 1979 SC 1628 and E. P. Royappa v. State Of Tamil Nadu & Anr. AIR 1974 SC 555 were also highlighted and discussed as apt examples where the silences of the Constitution have been interpreted by the Supreme Court by way of reading essential Constitutional values into provisions which were silent in context of these essential values.

6. It was observed that the Constitution has to be operated and interpreted in light of established conventions. Since the Indian Constitution has adopted the British parliamentary form of government, therefore the working of the Indian Constitution is to be guided by British conventions.

7. Attention was also drawn to the question as to the relationship between the fundamental rights and the directive principles of state policy, which came up for consideration in The State Of Madras v. Srimathi Champakam Dorairajan, AIR 1951 SC 226 and was finally set to rest by the decision of the Supreme Court in Kesavananda Bharati Sripadagalvaru and Ors. v. State of Kerala and Anr. (1973) 4 SCC 225 wherein it was held that both fundamental rights and directive principles of state policy are elements constituting the basic structure of the Constitution, and thus, ought to be harmoniously constructed as complimentary and supplementary to each other.

The theme of Session 4 was Defining the Contours of Public Interest Litigation and its Enforcement. Following were the broad highlights and discussion:

1. It was stated that often people whose rights are infringed might not get access to justice. The purpose behind evolving and vitalizing public interest litigations, is to discharge the constitutional obligation towards protecting and enforcing the fundamental rights as well as other statutory rights of the people who are not in a position to redress their grievance.

2. Public interest litigation has been devised as a means of providing effective access to justice, through public-spirited individuals or organizations. It was opined that the judiciary has to necessarily play an activist role in ensuring effective redressal of infringements of rights of the people and also ensure that their rights, especially those pertaining to social welfare are made available to them.

3. The areas where Courts have been granting remedy in exercise of Public Interest Litigation jurisdiction are human rights issues particularly pertaining to personal liberty, issues concerning environmental protection and matters of public accountability of the State over arbitrary exercise and abuse of power, to name only a few.

4. The Courts ought to apply the doctrine of necessity while exercising Public Interest Litigation jurisdiction, to ensure whether the case before them warrants intervention by the Court. It would be considered a pragmatic judicial enforcement of rights.
5. The Courts will have to distinguish between inability and unwillingness on the part of the state to
give effect to rights of the people through appropriate policies. It has to be found out in every case
invoking public interest litigation, whether state is capable of giving effect to a particular policy or
not. If in spite of being capable of executing a policy, the state is still unwilling to do so, then the
Courts can and should intervene on the ground of public interest.

6. The Courts must be vigilant that Public Interest Litigation is kept confined to public interest
litigation, and must not be adulterated into ‘political interest litigation’ or ‘publicity interest
litigation’.

The Theme of session 5 was “Supervisory Powers of High Courts over Subordinate Courts - Mentor or
Monitor.” Following were the broad highlights and discussion:

1. The difference between Articles 226 and 227 of the Indian Constitution was enunciated. The areas
wherein the High Courts have had the opportunity of exercising their supervisory powers under
Article 227 of the Constitution were enumerated which includes non-following of binding
precedents and delivering of stereotyped decisions/orders by the subordinate Courts; non-
adherence by subordinate courts to the directions issued by the High Court; orders being passed by
quasi-judicial bodies in utter disregard or ignorance of the law; when it is clearly evident without
going into the depth of arguments that apparent injustice has been done to the aggrieved
party/person; when matters before the subordinate Courts purely involve a question of law which
does not necessitate long-drawn arguments; Interlocutory orders which do not provide scope for an
appellate mechanism.

2. It was expressed that High Courts are appellate as well as Constitutional Courts. It was opined that
to maintain independence of the judiciary, which is an essential and inalienable feature of a
democratic Constitution, power of control over the subordinate Courts has been vested in the High
Courts by way of Article 227, which confers power of judicial supervision and control over
subordinate Courts, as well as by Article 235, which confers power of administrative control over
subordinate Courts.

3. It was observed that the subordinate courts are the face of the judicial mechanism to the common
public of the country. The overall efficacy of the judiciary is assessed by the yardstick of the
performance of the subordinate Courts, which necessitates the High Courts to effectively exercise
the supervisory powers granted by the Constitution, discharging the role of both a mentor and a
monitor to the subordinate Courts. The need to conduct periodical reviews and inspections from
time to time was emphasized as a prerequisite to exercise effective control.

4. It was stated that there is a need to extend appropriate advice and guidance to judicial officers of
subordinate Courts whenever they face with any issues while discharging their functions and
duties, as well as the need to extend protection to judicial officers who are sincere and honest in the
discharge of their functions and duties, was highlighted.

5. The need of intensive review of the functioning of subordinate Courts, from judicial officers to
ministerial staff in the Courts, was also emphasized so as to achieve efficacious functioning of the
judicial mechanism.
The National Judicial Academy (NJA) organized an “Orientation Programme for the Magistrates for implementation of the PC&PNDT Act (Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994)” from 04-05 February, 2017 at the NJA, Bhopal. The aim of the workshop was to increase the competence and efficiency of magistrates for better implementation of provisions and expeditious disposal of cases under this Act.

The workshop provided a platform for discussions, inviting ideas from experts engaged in implementation of the Act including judges, advocates, civil society organizations and government authorities. The workshop also considered social context of the Act, grey areas between medical termination of pregnancy and sex-selection, role and functions of authorities under the Act, trial processes and appreciation of evidence under this Act.

About 57 Judicial magistrates nominated from High Courts participated in the orientation programme. The orientation programme was divided into six sessions over the duration of two days on following themes.

**Jurisprudence on Implementation of the PC& PNDT ACT**

- Discussion took place on how the diverse social conditions prevailing in different parts of India provide for diverse legal scenarios.
- It was highlighted that the PC & PNDT Act aims at preventing and mitigating not only sex determination of the foetus during the course of the pregnancy but also sex selection at the pre-conception stage by using artificial insemination and in-vitro fertilization (I.V.F.) procedures.
- The question as regards the right of the foetus to be born conflicting with the right/liberty of the couple to determine the composition of their family and to choose between a male child and a female child was also deliberated upon.
General behavioral trend of preference to a male child over a female child was indicated as the reason which necessitates the P.C. & P.N.D.T. Act in India, in order to protect and preserve the Constitutional promise of gender equality, as guaranteed under the fundamental right to equality in Article 14 of the Constitution, and to give effect to certain Directive Principles of State Policy, namely Article 39 as well as to secure the fundamental duty of citizens under Article 51-A, that is to renounce practices that are derogatory to the dignity of women.

A brief historical account was provided of legislations concerning regulation of pre-conception and pre-natal diagnostic techniques, commencing from the enactment of *The Maharashtra Regulation of Pre-natal Diagnostic Techniques Act, 1988*, which was the pioneering legislative endeavour in this respect in India, also highlighting the deficient implementation of *The Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994*, and eventually leading up to the landmark judgement of the Supreme Court in *Center for Enquiry into Health and Allied Themes (C.E.H.A.T.) Vs. Union of India. (2001) 5 SCC 577*

Subsequently, attention was drawn towards another dilemma that the Courts were faced with, which stemmed from the absence of a complainant/aggrieved person in such cases, who would file a complaint regarding the misuse/abuse of these pre-conception and pre-natal diagnostic techniques, which necessitated provisions in the PC & PNDT Act laying down certain presumptions in order to deal with the crisis created by the absence of a complainant person who would file a complaint on the basis of which the investigation and prosecution would be conducted.

*Supreme Court Judgement in Voluntary Health Association of Punjab v. Union of India and Ors. 2016 SCC Online SC 1244* was discussed in detail quoting that the Constitutional identity of a female child cannot be mortgaged to any kind of societal norms or concepts that has developed to be prevalent in the society, allowing no room for any kind of compromise and only permitting affirmative steps that are constitutionally postulated. Attention was drawn to the directions that have been issued by the Supreme Court in the present case, in addition to the directions that had been issued in earlier cases.

**Cultural, Social and Economic Factors that Promote Gender Bias**

At the very outset, the distinguished speaker proposed to conduct an interactive session which would be fruitful for the exchange of ideas and perceptions among the participants. The deliberations were commenced by posing a question to the participants as to what is meant by gender bias.

- It was opined that to construe what is 'gender bias'; one has to understand what 'bias' is in a general sense of the term. It was observed that bias stems from prejudice or pre-conceived opinions harbored by people, which are not based on reason or actual experience.

- Various examples were cited by the speaker by way of questions posed to the participants, to illustrate as to how each and every person possesses certain pre-conceived notions that create an unintentional bias in their thinking process.

- It was emphasized that a judicial officer cannot afford to allow any sort of a bias to creep into his/her judicious mind, and must at all times base his/her perception on a thorough perusal of the facts and circumstances in each and every case.

**Medical Termination of Pregnancy and Sex Selection – Grey Areas**

- The distinguished speaker started out by defining 'sex ratio', which usually refers to the population
sex ratio that denotes the number of females per thousand males in the overall population.

- It was highlighted how the population sex ratio is not just determined by pre-birth elimination of female fetuses, but also affected by other factors such as migration and differential mortality.
- It was mentioned how the technologies of ultra-sonography and amniocentesis, which were originally intended to detect genetic abnormalities and congenital disorders, have been used rampantly between 1980-90 for the purpose of female foeticide; thereby diminishing the sex ratio of the population.
- Reference was made to statistical data to illustrate the trends followed by the sex ratio in the country over the past few decades, also citing reasons that were instrumental in impacting the sex ratios.
- Parts and regions of the country that vary in their geographical locations, socio-economic conditions, predominant characteristics of the population living in those areas were contrasted in order to portray the declining patterns of sex ratio in the country, with inference being drawn as to greater instances of sex-selection at birth being practised by the socio-economically well off regions/communities and affluent families, thereby resulting in a declining sex ratio in these areas.
- It was also highlighted that in areas/regions where women have greater access to economic resources, women exercise greater liberty in decision-making as regards giving birth to a female child, resulting in better sex ratio in those areas, which indicates the effect of economic empowerment of women on the sex ratio.
- It was also pointed out that the decline in sex ratio is widespread across all religions, communities, castes and sections of the Indian population without any exception.
- Instances of medical clinics rampantly carrying on sex determination were narrated to illustrate the gravity of the situation, even after more than a decade has passed that the PC & PNDT Act has been enacted and brought into force.
- The apathy and indifference on the part of the administration towards effecting strict implementation of the Act and bringing to task, the individuals acting in violation of the provisions of the PC & PNDT Act was also highlighted.
- Attention was drawn to the abuse of the drug 'misoprostol', which is to be administered under medical supervision but is widely available across the country, and is being used to cause illegal abortions after sex determination of the foetus.
- It was observed that the provisions of the MTP Act (The Medical Termination of Pregnancy Act) and the PC & PNDT Act are in line with each other, and in the interest of efficacious implementation of both the legislations, either of them should not be looked into in isolation from the other, rather integrated implementation of the legislations ought to be carried out to facilitate corroborative evidence to strengthen implementation of the legislations.
- The need to distinguish the basis of the two legislations was emphasized, while it was observed that the purpose of the PC & PNDT Act is to prevent sex selection and sex determination, while the MTP Act is aimed at preventing unsafe abortions and to promote safe abortions.
- It was also remarked that any communication addressing sex selection should not be such as to jeopardize a woman's right of access to safe and lawful abortion, neither any other of her reproductive rights.
Trial Processes under the P.C. & P.N.D.T. Act

- It was discussed that the rights of women were hailed to be inalienable, non-transferable, non-negotiable, and also a part of Human Rights. Every effort ought to be made to protect these rights, and as far as India is concerned, they are also considered to be Fundamental Rights, the constitutional rights which cannot be compromised at any cost.

- The significance of a purposive interpretation in implementing the provisions of the PC & PNDT Act was emphasized in the light of its poor implementation even after two decades of its enactment in 1994, which is evident from statistical data as regards the few cases of offences or violations of the provisions of the PC & PNDT Act that have been filed, and the even fewer cases which have reached the stage of trial.

- The significance of the role of the Judge of a trial Court was highlighted in the light of the fact that very few cases under the PC & PNDT Act eventually reach the High Court, or further to the Supreme Court in appeal, while observing that the responsibility to ensure that the Act is interpreted in a proper sense and the trial of a case under the Act proceeds in the correct direction, has been bestowed on the shoulders of the Magistrates presiding over the trial courts.

Appreciation of Evidence under the P.C. & P.N.D.T. Act

- Attention was drawn to one of the most essential elements in cases of prosecution under the P.C. & P.N.D.T. Act, which is the 'panchnama'. It was observed that how even though it is one of the most essential elements of the case, yet in practice, it is not taken seriously by the persons responsible for drafting the 'panchnama'.

- Subsequently, it was remarked that during the course of inspections at hospitals/clinics, the appropriate authority must ask for birth registration register, as it would reveal the actual number of births that have taken place within a specified period, thereby indicating whether the hospitals/clinics have been practicing sex determination or not.

- The detailed records pertaining to use of ultra-sonography machines must be maintained by the hospitals/clinics, which must be produced before the appropriate authority during inspections. Failure to produce such records and non-maintenance of such records being a major offence ought to be strictly dealt with.

- The definition of documentary evidence was discussed with mention being made of the inclusion of all electronic records produced before or inspected by the court, within the definition of electronic evidence. Thereafter, emphasis was laid on the very purpose of appreciation of evidence. It was observed that the primary purpose is to find out whether alleged or asserted facts are relevant facts and ought to be proved or not.

The need for the amalgamation and coordination of medical knowledge with legal knowledge was expressed, prescribing seven aspects that must be borne in mind during inspections by appropriate authorities, which are as follows:-

- Whether a board displaying that sex determination is a punishable offence, has been put up or not outside the hospital or clinic and the sonography room.

- Whether the proper registration certificate was displayed or not.
• Whether the consent of the woman has been obtained by the medical professional (doctor/radiologist) or not.
• Whether the declaratory signature of the woman has been obtained or not.
• Whether the declaratory signature of the medical professional who will be performing the test has been obtained or not.
• Whether the forms required to be filled in and maintained as records are being maintained or not.
• Whether a Referral Slip has been produced or not.
A 2-day seminar on functions of Registrar (Judicial) in different High Courts was conducted by the National Judicial Academy for the Registrars of High Courts. The workshop was attended by 24 Registrars (Judicial). The Registrar (Judicial) is entrusted with the duty to assist High Court judges manage their workload in a reasonable way, without compromising the independence or quality of judicial decision making. They ensure coordination between different branches of the High Court and act as a link between the High Court and judicial officers to improve judicial administration. They also perform supervisory role to achieve timely compliance of judicial orders and disposal of cases.

The programme was structured with the abovementioned themes at the background. The seminar included sessions on common functions of the Registrar (Judicial) like maintenance of court records, inter-section coordination amongst different sections of judicial branch, listing and categorization of cases, computerization and implementation of e-courts project, case management and sessions on interdisciplinary themes. The agenda of the seminar was to bring about uniformity in understanding the role of Registrar (Judicial) by providing the participant Registrars an opportunity to discuss their individual challenges and good practices followed in different jurisdictions.

The seminar was divided into 6 sessions over a period of two days which were presided over by former justices of the Supreme Court, sitting and former justices of the High Court and management experts.

- **On Inter-section coordination amongst different sections of Judicial Branch**, it was highlighted that judicial branch is the heart, soul and spine of the High Court Registry. The core function of Judicial Branch consists of receiving and processing case files by the litigants, listing them, ensuring the compliance of orders passed by judges, giving copies, communicating stay orders to parties, preparation of paper-book, managing receipts of court fee, sending summons to parties, preparation of decree, judgement, delivery of judgement etc. The coordination between the judicial branches is necessary because failure of one branch results in failure of whole branch. This could be achieved through good leadership qualities, better communication skills and monitoring discipline among
the staff. The focus was put on how to make litigant friendly courts by improving filing section through use of computerization and making scrutiny section efficient. Coordination must be transparent and this could be achieved through use of ICT and conducting periodic meetings both at intersectional and at intra-sectional level.

- On Management of Judicial Records in the High Court, major areas discussed included maintenance and chain of custody of court records, destruction/reconstruction of Judicial Records, loss/ misplacement of records and timely placing of files in the court. It focused on issues pertaining to handling of court records. Participants pointed out that there are many instances where files are deliberately lost or misplaced. It was suggested that e-tracking system of files must be adopted by the courts. Some solutions recommended for management of records included timely destruction of records on regular basis, digitizing the important documents filed in courts, updating soft copy and hard copy of the records. Also it pointed out that quality of the person who are best among the staff must be worked upon while giving them the court files.

- The session on Computerization at various levels of the High Court & subordinate courts, focused on two aspects - Role of Registrar (Judicial) in Implementation of e-courts Project and digitization of Court Records. It was pointed out that transparency can be achieved through computerization and each High Court must try to update their website which must include details about roaster, filing instructions, list of standing counsels etc. Model filing sheet issued by NIC must be initiated in the courts and e-stamping system must be introduces in High Courts where it is not yet started.

- On Court Management, the speaker highlighted that judges have to manage the court as a whole and not only as a judge. Thus, Registrars play major role in management of courts and assisting the judges which requires managerial skills. Five steps of management were discussed upon which included planning, organizing, directing, coordinating and controlling. It was pointed out that if any one step is not followed then there would be chaos. Other recommendations made in the sessions included, big and important matters should be taken up first but also give time to do the small tasks, essence of time management and need for paradigm shift i.e. shift in the entire though culture. Some business principles were also discussed with their implementation in the judicial management like principle of hula hoop – observe, orient, decide and act, principle of blame storming and principle of double look thinking. Some of the issues that emerged through discussions were lack of staff in the judicial branch and inadequate infrastructure. Two important suggestions given by the speakers were 'self-management' and 'positive way of thinking' to overcome the difficult situations.

- The session on Best practices and procedures followed in different high courts with regard to court proceedings, was based on discussion among participants whereby each participant Registrar (Judicial) shared the best practices followed in their respective High Court with regard to court process and procedures. The session was in pursuance to the Resolution No. 6(v) adopted in Chief Justices Conference 2016. Some of the innovative ideas and best practices included – placement of common objections on screen at the filing counters followed by Karnataka High Court, listing of old cases starting from the oldest practiced by Allahabad High Court, bench is constituted on every Thursday to handle five year old cases in Gujarat High court, provision of standby list for emergent situations is prepared in Chhattisgarh and Patna High Court. It for suggested that there is a need to have uniform rules on court process and procedures for all the High Courts and training must be imparted in this regard.
The last session dealt with *Relationship Management*. The speaker stated that one must not have expectations in a relationship as it often leads to frustration and anger. Discussions were made on the following core areas – symptoms of relationship breakdown like communication gap, distress, loss of concentration, lack of coordination, demotivation and negative workplace behavior which can often have direct impact on work, key factors affecting 'behavior' like belief system, value system, motive personality, work environment etc. It was pointed out during discussions that values are nothing but preferred mode of conduct in the word. Three basic interpersonal needs of an individual were highlighted which included, 'inclusion' i.e. need to establish and maintain interaction with others, Control – need to maintain satisfactory relation between oneself and others with regard to people and influence, lastly 'affection' i.e. need to establish and maintain a satisfactory relation with respect and love. Thus it was suggested that to maintain peace in a relation one should always think before act.
The National Judicial Academy organised a 2-day Annual National Seminar on the Working of Labour Courts and Industrial Tribunals in India on 18th and 19th February 2017. The Seminar was attended by presiding officers of Labour Courts and Industrial Tribunals from all over India. The objective of the programme was to acquaint participants with recent legal developments in the areas of labour laws viz. Contract and Outsource Labour, Unfair Labour Practices, Domestic Inquiry, Retrenchment, Lay-off, Reinstatement, Back wages and Workplace Injury Compensation.

Labour welfare legislations in India are inspired by constitutional mandates of social justice, equality and freedoms guaranteed under part-III of the Constitution vis-à-vis Directive Principles of State Policy under Part-IV. The seminar was inaugurated with an invigorating discussion on the Constitutional vision of Social Justice: Role of Labour Courts in the Evolving Economic Environment. While deliberating on the topic, Justice K. Chandru opined that “[W]e have the lengthiest labour legislation in the world. Both the Federal (Union) government and various states have been empowered by the Constitution to make laws regarding labour. But today, vast sections of the organised labour are not covered by any worthwhile labour legislation. Even the areas where legislation operates, a large number of outsourced labour are unable to get any legal protection. While the Trade Unions are seeking for a comprehensive labour legislation, their employers are seeking more and more deregulations (exemptions) from those laws. The Special Economic Zones (SEZ) have allowed industries with special incentives with a view to export goods are hardly regulated by these labour laws. This has set in a large scale demoralisation of the workforce. These developments have also sometimes led to individual violence against officers/managers. The enforcement machineries have become utterly corrupt and look the other way when a serious breach of labour legislations takes place.” He further opined that the prevalent multi-tier appeal system allows litigations to start from Labour Court / Industrial Tribunals and in appeal cases reach High Court (Single Bench and then to Division Bench) and then ultimately end up in the Supreme Court. This has stymed the fruits of labour legislations from reaching working class. Justice Chandru referred to
Article 14, 15, 19, 21, 23, 24, 37, 38, 39, 39-A, 41, 42, 43, 43A and 51-A of the Constitution and observed that not only the High Court and Supreme Court but also the labour courts are under constitutional obligation to uphold social justice.

Contract and Outsourced Labour: Issues and Challenges was the theme of the second session. Justice Chandru presented a history of contract labour practice in India. In the course of deliberations, he observed that the practice of employing labour through contractors for doing work inside the premises of the primary employer has become an accepted practice. He also said that of late there has been a noticeable tendency on the part of big companies including public sector companies to get work done through contractors rather than through their own departments. It is a matter of surprise that employment of contract labour is steadily on the increase in many organised sectors including the public sector, which one expects to function as a model employer. He pointed out that as a presiding officer of labour court and industrial tribunal it is relevant to bear in mind that industrial adjudication generally does not encourage the employment of contract labour. In modern times whenever a dispute is raised by workmen in regard to the employment of contract labour by any employer, it would be necessary for the tribunal to examine the merits of the dispute apart from the general consideration that contract labour should not be encouraged, in a given case the decision should rest not merely on theoretical or abstract objections to contract labour but also on the terms and conditions on which contract labour is employed and the grievance made by the employees in respect thereof. The contract, in a given case is a bona fide contract would not necessarily mean that it should not be touched by the industrial tribunals. If the contract had been *mala fide* and a cloak for suppressing the fact that the workmen were really the workmen of the company, the tribunal would have been justified in ordering the company to take over the entire body of workmen & treat it as its own workmen. Justice R. V. Ghuge speaking to participants on the subject observed that Contract Labour (Regulation and Abolition) Act, 1970 has serious flaws. He gave an example of 'automatic absorption' and said that there is nothing in the Act as a remedy to workmen in case the contract proved to be shame or bogus. He opined that in an industrial dispute brought before labour court/tribunal by any contract worker in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder.

The third session of the seminar was on the Unfair Labour Practices. Justice S. J. Mukhopadhaya was the speaker. The Discussion on unfair labour practices mainly revolved around Schedule five of Industrial Disputes Act 1947. Resource person stressed on the need for protecting the trade unionism in India and he said that economic liberalization will have a huge impact on the trade unions and big business entities are more sceptical about unionisation and collective bargaining. The cases of an employer showing partiality or granting favour to one of several trade unions attempting to organise his workmen or to its members and also the tendency of establishing employer-sponsored trade unions of workmen are on the rise. He also talked about unfair practices of the employer in relation to domestic enquiry and domestic proceedings. Advised the participants that Schedule (fifth) to the Act is wide in scope, if wisely used by the presiding officers it will remedy many problems of worker and employers. In the course of discussion landmark decisions viz. *Umrala Gram Panchayat v. The Secretary, Municipal Employees Union & Ors.*, *Bhuvnesh Kumar Dwivedi v. Hindalco Industries Ltd.*, *Bennet Coleman Co. Ltd. v. State of Bihar and Ors.*, *Siemens Ltd. and Anr. v. Siemens Employees Union and Anr.*, *Durgapur Casual Workers Union v. Food Corporation of India* and many other judgements were discussed at length.
Issues relating to Domestic Enquiry were also discussed in the fourth session. Justice S. J. Mukhopadhyaya and Dr Sudhir Kumar Jain were the speakers. The session was chaired by Justice K. Chandru. Speaking on the topic Dr Sudhir Kumar Jain emphasised the importance of Principles of Natural Justice. With the help of decided cases he explained the foundational principles of Natural Justice namely (i) Nemo judex in causa sua - No one should be made a judge in his own cause or the rule against bias (ii) Audi alteram partem - Hear the other party or the rule of fair hearing or the rule that no one should be condemned unheard. Justice S. J. Mukhopadhyaya observed that there are exceptions to the principles of natural justice—where the procedural aspects may defeat ends of justice, the principles of natural justice may be overlooked. Justice K Chandru elaborately discussed various aspects of domestic inquiry, namely-

1. Framing of charges
2. Confession / Admission of charges
3. Appointment of enquiry officer
4. Appointment of Presiding Officer
5. Appointment of defence representative
6. Whether lawyer can be engaged to defend
7. Adjournments
8. Defence evidence
9. Findings
10. Show cause notice on the findings in case the enquiry officer is different from disciplinary authority.
11. Final order
12. Nature of Evidence
13. Subsistence allowance.

Prof. B. T. Kaul addressed the participants on Law of Retrenchment and Layoff. Talking about the evolution of the concepts of Retrenchment and Lay-Off, Prof. Kaul observed that laissez-faire era saw employee and employer relationship mainly on the basis of informal contracts— which enabled the employer to discharge workmen at his will. This exposed workmen to intermittent but grave hazards of unemployment. But with the erosion of laissez-faire and because of State intervention, temporary lay-off became inevitable. Prof. Kaul also deliberated on conceptual intricacies of both Retrenchment and Layoff. Statutory prerequisites for invoking lay-off and retrenchment compensation, rights of employee retrenched/laid-off and prohibition of lay-off (Section 25M) were discussed in detail. In his comprehensive presentation, Prof. Kaul emphasised the impact of inconsistent judicial precedents on the interests of both employer and employee.

Justice K. Chandru guided a session on Reinstatement and Back Wages. While commenting on Session-11A (Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen) of Industrial Disputes Act 1947, Justice Chandru observed that the object of introducing Section 11A as found in the objects and reasons appended to the Bill was that the Labour Courts/Tribunals must have the power to interfere with the quantum of penalty imposed by an employer. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of
the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. Labour Court has the power to interfere with the penalty if it is satisfied that the penalty was not justified & can direct reinstatement with consequential benefits. Alternatively, the Labour Court can also impose a lesser penalty. Responding to the questions of participants Justice Chandru remarked that ever since the section (11A) was notified (i.e. 15.12.1971) the Labour Courts/Tribunals were exercising their powers and most of the times, their awards were upheld by various High Courts and by the Supreme Court. But since late 2000, the decision of the Supreme Court has taken the law backwards virtually by putting an embargo on the power and almost denied such a power to the Labour Courts by their judicial interpretation. In the course of discussion many landmark judgements were discussed viz., Mahindra and Mahindra Ltd v. N.B.Narawade., Karnataka SRTC v. Lakshmidevamma., LK Verma v. HMT Ltd., R.M.Yellati v. Asst. Executive Engineer., Rajasthan State Ganganagar S Mills Ltd. v.State of Rajasthan & anr., Municipal Corporation, Faridabad v. Sirinivas etc.

*Workplace Injury Compensation: Recent Legal Developments* was the last session of the seminar. Prof. S. Surya Prakash was the resource person. Prof. Prakash observed that injuries at the workplace are common but socialist country like ours needs to take care of impaired workforce. Rapid industrial and service sector growth in India has added many legal complexities to injury compensation laws but unfortunately, we are still governed by archaic colonial legislation: The Workmen Compensation Act, 1923. With the change in socio-cultural context, public perception of injury has changed drastically but the Act is lagging behind and it takes care only of basic life requirements only. The Act lacks provision to take care of inflated living cost, educational, medical and family expenses of injured workmen. The Resource Person suggested the participants to adopt a lenient approach in construing total disablement.
Mr. Prasidh Raj Singh & Ms. Nitika Jain, Law Associates

The National Judicial Academy, Bhopal organized a 2-day South Zone Regional Conference on Enhancing Excellence of the Judicial Institution: Challenges & Opportunities in collaboration with High Court of Madras at Chennai. The conference deliberated upon vital issues relating to importance of ethics, integrity and discipline, impact of media on public perception regarding vitality of justice delivery, strengthening internal vigilance mechanism as response to rising judicial indiscipline, relationship between high court and district court, reengineering the judicial process through effective use of ICT and social context judging as a principle for exercise of discretion and application of SCJ in case studies. The conference was attended by 12 High Court justices and 55 Civil Judge Junior Division from the subordinate judiciary.

The conference witnessed profound deliberations on each of the above themes. Starting from the first theme that is ethics, integrity and discipline it was deliberated that some uniform guiding principles with regard to judicial conduct could be adopted for better functioning of the judiciary. The conference further discussed the Bangalore Principles of Judicial Conduct which are universally adopted by many countries and holds valuable pillars of competence and diligence.

During the conference the importance of internal vigilance mechanism was discussed to control rising judicial indiscipline. The conference further deliberated upon the Chief Justices Resolutions, pointing out that no complaints against any judicial officer could be entertained if the same is not attached with an affidavit disclosing the identity of the complainant. It was also brought to notice that on many occasions fake complaints are being filed by lawyers to mentally harass the judicial officers. The resource person gave insight on how to deal with such fake complaint. In the session it was suggested by the participant that to overcome difficulties and provide an equitable opportunity for fair trial and speedy disposal of corruption cases there is an urgent need for setting up a robust vigilance cell in all the high courts.

In the next session it was discussed that media plays a very vital role when it comes to supply of true and factual proposition of any event. The conference further deliberated that on many occasions the media reports sub-judice matters which directly or indirectly affects the outcome of a particular case. The conference further discussed the law commission report based on media trial and recommended the possible solutions to overcome and tackle such cases.

The overall aim of the next session was to bridge the gap between higher and lower judiciary so as to maintain a cordial relationship between High Court justices and subordinate judges. During the discussions it was pointed out that subordinate judiciary can approach their parent High Court as and when
required for their guidance. The resource persons along with the participating High Court Justices shared their experiences and gave suggestions to deal with difficult situations judges face in the legal profession.

In the next session, resource persons highlighted the importance of social context judging through practical case studies and citing their own experiences they have come across while adjudicating the matters relating to social context judging. Further, Justice Prabha Sridevan deliberated upon the applicability of Social Content Judges principle in matters relating to women and children.

The last session of the conference was Re-engineering the Judicial Process through effective use of ICT which dealt with emerging issues relating to technology in courts and provided a practical insight of various websites initiated by Government of India to promote e-court project. During the course of discussion Justice Madan B. Lokur deliberated upon various effective measures to promote paperless court by showing the participants use of etaal, National Judicial Data Grid and e-court websites.
A two day National Seminar on Working of the Special Courts established under the POCSO Act, 2012 was organized on March 4th and 5th, 2017, attended by a total of 42 judicial officers representing 21 High Courts of India. The Seminar provided a unique platform to share experiences and assimilate 'best practices'.

The seminar provided a forum to participant Judges to discuss how POCSO effectively addresses sexual abuse and sexual exploitation of children and also some issues regarding Child - Friendly POCSO Court, Recording & Appreciation of Evidence of Victim in Cases of Child Abuse, Judicial Discretion of Special Courts, Challenges in Adjudication by POCSO Courts, Presumption & Burden of Proof under POCSO Act, Obligation for Reporting of Child Abuse under the POCSO Act and Child Pornography & POCSO Law etc. The intention to have a platform for sharing experiences, especially bottlenecks, and success stories was insightful and enriching. The sessions involved break out group exercise and encouraged participatory approach to forward the concept of shared learning.

The theme of Session 1 was Creating a Child - Friendly POCSO Court. Speaker Justice Roshan Dalvi emphasized that to treat a child differently is a Constitutional mandate under Article 14. The notion of “Lesser the Number – Greater the Attention” must be applied by the POCSO judges was underscored by explaining the fact that the heinous offences of abusing children, which could otherwise be dealt generally under the Indian Penal Code, 1860 (hereinafter IPC) have been specifically defined under the Act along with much stringent penal provisions, therefore with this much focused approach provided under the Act, it is expected to deliver faster and qualitatively better results. Stating that the child sexual abuse is a trans-legl issue or rather a socio-legal issue and hence, can be attended to with a 'partner in system' approach with an object of culture change, wherein, the partners need to have a two pronged approach, i.e.:

1. Awareness creation (for victim needs) - it include Parents, Teachers, Friends, NGOs.
2. Attitudinal change (for State goals) - it include Medical Officers, Police Officers, Legal Officers Judicial Officers, Criminal Justice Agencies.
The indelible mental impact of sexual abuse on a child victim leading to detrimentally effecting her/his personality and mental cohesiveness was discussed. It was stressed that during the procedures of police investigations, medical examinations, trail etc. the child literally undergoes re/secondary-victimization. Hence, it becomes imperative to create a child friendly POCSO Court. The importance and role of corroborative evidence in establishing the charges against the accused was reflected upon. For fostering a child friendly atmosphere the criminal justice system requires a) Infrastructure b) Interpretation of sentencing policies and c) Sensitivity. The “Infrastructure” includes Victim Support Centers, Victim Examination Suites, Video recording of statements and Video recording of evidence etc. “Interpretation” of the sentencing policy is a key factor which enable the judges to encourage a child friendly atmosphere.

“Sensitivity” must be exhibited at three different stages i) while granting bail, ii) at evidence stage wherein the same must be done while “recording evidence” as well as while “appreciating evidence”. iii) While giving the decision. It was deliberated that, “judicial sensitivity” is an enabler in creating a child friendly Court climate. This can be achieved at various stake holder level as well as stages of the trial such as; creating exclusive special court rooms, prioritization of disposals, fixation of dates/time for trial sacrosanct without compromise, frequent break, victim support, victim representation, no contact with the accused, Court room conduct i.e. victim confidentiality etc. The oft misunderstood word “in camera” was explained wherein the dictionary meaning of the word meant “in chamber, in room” etc. It is not merely closing the room with indiscriminate attendants present in the Court Room.

In Session 2 titled Recording and Appreciation of Evidence of victim in cases of Child Abuse, the speakers deliberated the insufficiencies of the provisions under Indian Panel Code, 1860 i.e. Sections 354 and 376, and how the POCSO Act filled up the gaps. The objects of the POCSO Act, emphasized and explained as:

- To incorporate child-friendly procedures for recording of evidence, investigation and trial. Therefore, child's right to privacy and confidentiality should be protected by each and every stages of trial.

- To safeguard best interest and well-being of the child at every stage of the judicial process. Therefore recording of evidence in chamber or any other place must be adopted in each stage.

Section 33 of the Act was discussed while recording and appreciation of the evidence under the Act. The vital points such as routing the questions through the judges, pros and cons of frequent breaks to the child victim during the process, allowing the family members or guardians to be present during the trial, vigilance of the judge to ensure strict abstinence of tutoring or influencing the victims, etc. was discussed. Discussing Section 35 relating to expeditious hearing it was debated upon the effective compliance to the deadlines under the serious limitations of huge pendency of cases, infrastructure, practices such as adjournments, etc. Section 36 (child should not to be exposed in any way to the accused) was discussed in the view of usage of video-conference or though utilizing single-visibility-mirror or curtain. Scope and best practices as in camera trial under Section 37 was discussed. It was suggested that it must be ensured while recording the evidence in camera that, only one counsel is allowed avoiding a crowd consisting of juniors etc. It was suggested that the Court must facilitate the child to help the victim explain their statement what had happened. A detailed list of other measures essential and vital for recording the evidence were discussed which included assessment of the competency of child to record evidence, pre-trial visit of the child and support person to the Court to familiarise them with the layout of the Court and procedures, appointment of Guardian ad litem, providing of legal assistance, separate waiting areas, congenial Court room atmosphere etc. The sensitivity of a judge while recording and appreciating evidence was explained by the speaker Justice Shalini Phansalkar Joshi.
Session 3 was on the topic Contours of Judicial Discretion & Special Courts, the speaker pointed out that the victim representation is a unique feature of the Act which does not feature under the Cr.P.C. (except Section 301), therefore using judicial discretion a judge can take the leverage. Other areas where the judges must use their judicial discretion includes allowing of frequent breaks (disallowing adjournments) etc. Discretion must be exercised to allow only reasonable questions or put a check upon the unreasonable questions. It was pointed out that since there is no express provision mentioning the form of routing a question via the judge, (s)he may order questions to be provided in writing to him/her using discretion, thereby further limiting the scope to unsettle the child victim. Judge can use their discretion in streamlining the procedure of recording the evidence, allowing objections only at the end of questioning and answers and not intermittently. The other cases where judges of the POCSO Court may apply their discretion includes, differentiation between the Statutory Rape and Actual Rape and must be done by the POCSO judge and cases relating to actual rape must be given priority using discretion; judge must apply the discretion to record any appropriate mode for recording of evidence (such as recording evidence considering gestures made by the victim); special court judge must exercise discretion to refer the victim for counselling and rehabilitation. It was further insisted by the speaker that while in real rape cases bail must not be granted, but in the case of statutory rape a POCSO Court judge must grant bail at the first available opportunity using his/her discretionary power. There is a real need for sensitization on the part of judges in this matter.

Session 4 was titled Challenges in Adjudication by POCSO Courts. The speaker Ms. Prita Rani Jha, classified “silence” in case of a child sexual abuse is the biggest hurdle, because often in such cases the family don’t support or the police don’t report the cases etc. She supported her argument with data referred from various original sources. Cases are not reported because of cultural norms, fear of stigmatization specially in rural areas. Rule 2(f), provides that the CWC can appoint a support person (NGOs, Social Worker, Probation Officer and any other person found fit by the CWC) who follows the case from beginning to end. Though many States do not have such designated support persons on one hand and moreover, in some cases CWC is not even informed. Therefore, the law is unable to work effectively and lacks proper implementation. It was suggested by Justice Dalvi that, every jurisdiction should make a list of NGOs, Social Worker, Probation officer, who can be contacted for as a support person for the child and judgment must essentially include directions to such support persons for rehabilitation of the victim child. The Rule 4(2) provides for child friendly procedure to transform and develop a police and child relationship, it was argued that the prescribed procedures are not being properly implemented by the police. Therefore, there is a need to sensitize such stake holders in order to comply with the object and the provisions of the Act. Limited implementation or sometimes ignorance of Section 357A of Cr. P.C. was discussed, wherein every State has a Victim Compensation Scheme, if the trial Court at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendations for compensation, provided under section 357(3) of Cr.P.C. Moreover, the provisions in the POCSO Act relating to ‘interim compensation’ was discussed, underscoring the fact that it is not just at the conclusion of trail but compensation is to be as an interim measure too as per Rule-7, to meet the immediate needs of the child for relief or rehabilitation at any stage after registration of the First Information Report. Reference to Section 33(8) was made, wherein it has been provided that Special Court may direct compensation for any physical or mental trauma caused to him or for immediate rehabilitation of such child. It was emphasized to sensitize victims about such provisions relating to victim compensation for the implementation of the POCSO Act in letter and spirit. The Session was concluded.
with the observation that, the infrastructural support created by the Act is not there. Therefore, urgent steps
needs to be taken at each special court level within available limitations to best suit for proper
implementation.

Session 5 was on *Presumption and Burden of Proof under POCSO Act*. The Session was activity based, in
which the participating judges were divided into five groups. Each group was provided with a hypothetical
case (with same facts) with instructions. After the groups arrived at their collective unilateral or
differential opinions, they were requested to make a brief presentation elaborating upon the reasons
leading to a certain conclusion. The exercise revealed the variety of differences which judges in a group
relied upon to base their judgments upon. It was discussed as to how to reduce the differences in
application of the same law, in order to rope-in uniformity may be done. However, there was a point of
contest as to opposing the idea of uniformity of opinion. It was argued that every judge interprets the law
according to circumstances and condition of particular case. Hence, in that situation difference of opinion
are bound to arise and is unavoidable.

Session 6 dealt upon the subject matter *Obligation for Reporting of Child Abuse under the POCSO Act*.
The speaker Ms. Geeta Ramaseshan introduced the concept of mandatory reporting of cases of child abuse
by referring to the international practices and the premises of such reporting such as definitions as to who
must report (teacher, family member, doctor etc.), consideration of the state of mind of the reporter,
consideration of the extent of harm caused etc. Section 19 of POCSO Act which provides for mandatory
reporting of offences was discussed. Other provisions related to the same were referred such as Section
19(7) of the Act, which provides that no person shall incur any liability, whether civil or criminal, when
person report in good faith; Section 21 which says that if any person fails to make a report or record the
information, shall be liable to be punished with imprisonment and Section 22 provides for false complaint
and false information. Complexities with the mandatory reporting such as: what should doctors or NGOs
or activist do, when he/she while carrying out his/her professional duty and bound under professional
ethics fail to report a case. Moreover, when parents of child do not want to report a case because of reasons
such as apprehension of social stigma attached, fear of perpetrator, fear of police harassment during
investigation or inadequate support etc. The conflict between *moral v. statutory* responsibilities was
discussed as an area of perpetual concern which serves as a serious impediment in implementation of the
provision of the Act. A serious debate on the contours and significance of the idea of mandatory reporting
was felt as a area which needed legislative attention. Discussing the implications under Section 7 which
provides that any kind of sexual touch would amount to an offence under the Act, may not justify a case of
a love affair particularly where the parents don't like their relationship. Often under such a situation
parents indiscriminately file police report under Section 19. It was underscored that there is a necessity to
differentiate between the 'sexuality of young people' (between 16-18 year) and 'sexual violence' because
the mandatory reporting under Section 19 should not be allowed in case of sexual relation between young
people, which may be some day challenged as violative of their fundamental rights. It was opined by one
of the speakers that it should be a duty of professionals to report the matter even if family refuses to report
the case. The speaker exemplified and stated that we don't have system in place regarding the issue of
mandatory reporting, speaker gave the example wherein a 12 year girl was raped by her father but she
threatened that if anybody report the matter she will commit suicide because she really loves her father. In
such cases how does the system deal with the case? Hence there exists many complexities which serves as
bottlenecks with regard to mandatory reporting which requires attention. It was suggested that the State
must invariably arrange to provide shelter to the victims as an important measure whose family do not
support for reporting so that victim themselves are motivated to come forward and report the matter. The
issue of police not reporting a matter owing to corrupt practices and power influences was discussed.
Session 7 was the last which dealt with Child Pornography & POCSO Law. Ms. Vidya Reddy insisted upon the deep nexus between child sexual abuse and information technology. Further, around 750 million Indian have access to mobile and 83% of them have access to internet, which unfortunately works as an enabler for the child trafficker to make a child pornography. It was deliberated that here is an Australian web-site called as 'it's time we talk', which is a project at the leading edge of international community-based efforts to address the harms associated with children's and young people's exposure to and consumption of pornography. In UK under the 'Personal safety and Health Education Act' it has been recently made mandatory to educate children on pornography. The question raised by a participants was, as to why people are interested in child pornography, it was replied that there is strong connection between the people 'viewing child abuse images' and 'people who contacted child sexual abuse', a study done by 'US Postal Inspection Services' in 2001, wherein the study says that 35% who sexually abuse child also have indecent image of children and around 65% though watch pornography, do not actually abuse children. The concern remains that the child pornography is a trans-national crime and hence, it is very difficult to prosecute the offenders. Nexus between child pornography, young people and internet which is encouraging de-sensitization among the people on issues regarding child pornography were discussed. Under the POCSO Act provisions on child pornography are referred under Section 13, Section 14, and Section 15, and it can be correlated with Section 67B of the Information and Technology Act, 2000 (hereinafter IT Act) especially while dealing with online or involves electronically enabled medium for the offence of child pornography. It was brought to the notice of the participants that, India has also acceded the UNCRC Optional Protocol on Child Pornography. Advocate Mr. Vakul Sharma deliberated that Section 67B of Information Technology Act 2000 (the first law that expressly prohibits online child pornography) provide various details or instances wherein IT can be misused for child pornography. The IT Act must be considered as an augmentation with the POCSO Act especially in those cases which fall under Section 11, 13 and 14 of POCSO Act. There are five instances under Section 67B of the IT Act, where a person can be punished for child pornography. Therefore, the entire range of child sexual abuse would fall under the purview of clause (a) to (e) of Section 67B. In other words it was shared by the speaker that where direct application of the POCSO Act in child pornography cases cannot be made, IT Act must be referred with special reference to Sections 67B clauses (a) to (e). Moreover, it was highlighted that except Section 11 of the POCSO Act, the punishment under the POCSO Act is more than 5 years. In the issues where jurisdiction may not be determinative by the POCSO Act help of Section 75 of the IT Act must be resorted to. Particularly when the origin or cause of action lies outside India. For the purposes of determination of the intermediary liability in the cases of child pornography under the POCSO Act, help may be taken from Section 2(1)(w) of the IT Act from where the definition of intermediary may be imported, which is a vast and inclusive definition. After a detailed analysis of the bottlenecks and insisting upon certain suggestions the conference concluded with a program audit done by the participating judges.
A 2-day Annual Conference was organized by the National Judicial Academy on the Functions of Registrar (Administration) on 11th and 12th March 2017. The core objective of the conference was to equip the Registrar (Administration) with the skills of capacity building and sensitize them on various aspects of High Court Administration. The seminar provided a forum to participant registrars to discuss the roles and responsibility of Registrar Administrator and how their performance can be improved by adopting the best practices of different high courts.

The topics Use of ICT in Court Administration, Human Resource Management: Appointment, Promotion, Performance Appraisal of High Court Staff, High Court Administration: Control, Supervision and Enforcement of Discipline were also discussed during the discourse.

The programme was divided into 6 sessions. Justice RC Chavan, Justice Ravi Tripathi, Justice G. C. Bharuka and Mr. Y.V. Ramakrishna were the eminent resource persons of the conference.

The broad discussions, deliberations and suggestions that arose in session one titled “Registrar (Administration): Role and Responsibilities” are as under:

1. The rules with regard to the Registrar (Administration) were discussed. It was emphasized that there are no uniformity in the roles and responsibilities of the Registrar (Administration) in the High Courts. However, it was suggested that the rules with regard to the administration should be written, transparent, effective and confirm to the standard of public life and business.

2. It was recommended that the judicial officers should not put the back of each other rather should share the real issues and problems that are cropping up in the system and make the tenure of Registrar (Administration) meaningful.

3. Registrar (Administration) is important and powerful officer and is a central figure in functioning of the High Court. It was suggested that Registrar (Administration) should exercise their functions
systematically and fearlessly. One should never say that he has given his 100% and the feeling to do more is very important.

4. It was emphasized that the Registrar (Administration) is a controlling officer because he is a representative of the power under Article 235 of the Constitution of India and advise the Chief Justice in various administrative matters. Getting the work done from the government is not a difficult task and one should know how to tackle the administrative work effectively and brief the Chief Justice in this regard. It was delineated that Registrar General can do effective planning resource allocation and scrutiny of the institution at various stages.

5. Hon'ble Justice Chavan emphasized the culture of corporate management and asserted that Registrar (Administration) should be humane. It was stated that enforcing discipline is the harsh way of doing things.

6. Registrar (Administration) has to satisfy the needs of the institution and at times need to be very tactful. It was stated that every judicial officer is discharging constitutional functions irrespective of their hierarchy. It was also suggested that Registrar Administration should only be answerable to the chief justice and not to judges.

7. The Registrar (Administration) should keep proper administration of judicial record and departments so as to manage and control the members of the staff of the high court.

Major highlights and suggestions that were emphasized during the discourse of second session titled as “Use of ICT in Court Administration/Management” are as follows:

1. Computer connectivity and proper training is very important for the effective implementation of the ICT mechanism. Through ICT things can be coordinated with accuracy. The ICT system not only improves the efficiency of court administration but also increase the speedy disposal of cases.

2. It was stated that an electronic database has to be created so as to ascertain which type of cases are being filed in a particular area and before making transfer of a particular judge to that area, training should be imparted with regard to the legal developments/case laws. It will help the judicial officer to adjudicate the matters more smoothly and effectively. To be in judicial service is a national service and judicial officers are not an ordinary servant.

3. It was recommended that e-library can act as vital tool in justice system.

4. Primary duty of the Registrar (Administration) is to get the things done as asked by Chief Justice of the High Court. He has to coordinate the work with the limited time and available resources. It was stated that speed and completion of work in time is very important for administration. ICT act as a catalyst and also as a monitoring tool to get the things done in time.

5. The session deliberated on the structure of the administration in Indian Judiciary and discussed the importance and relevance of Article 146, 227, 229 and 235 and of the Constitution of India. It was stated that data base information is very vital for promotions and retrieving information quickly which can be done through ICT mechanism.

6. It was strongly emphasized that for effective supervision of activities such as punctuality, performance, communication, coordination, discipline and movement of files from one department to another can effectively achieved through proper implementation of ICT tools.

7. Major hurdles and delays in pre-hearing stages can be sought out through the ICT mechanism.
Adherence of ICT tools makes the judicial process more easy and smooth. However, the study of entire process of ICT which include both hardware and software is the need of the hour which can be done through experts.

The broad discussions, deliberations and suggestions that were emphasized during the discourse in the third session titled "Human Resource Management: Appointment, Promotion, Performance Appraisal of High Court Staff" are as follows:

1. The session talked about the banning of back door entry appointments. There should be transparency in appointment system which can be brought through computerized test system. The Supreme Court Judgment Renu and Ors. Vs. District and Sessions Judge, Tis Hazari and Anr (2014)14SCC50 was also discussed. It was emphasized that transparency in the recruitment process is necessary. Appointment should be done strictly on merits.

2. For having a good database it was suggested that general advertisement may be published in the official website so that all eligible person may apply for the post.

3. The true feedback of the staff officers are also necessary for improving the institution. It was suggested that an employee should praised in public but should be criticized and counseled separately. Seniority ought to be respected.

4. The candidates who have adequate capacity to shoulder higher responsibility should only be considered for promotion. It was delineated that the debate regarding promotion on seniority and merit basis is never ending, though whenever both the person i.e. senior person and merit person are good at merit, then in that case senior person must be given preference over other. Annual confidential report may be communicated separately to each employee.

5. For the execution of new activities one should sense the manpower available in the system so as to utilize it efficiently and effectively.

6. Updating with the change system should be there. Knowledge should not be static. It should be updated as per the need of the hour.

7. Term of office of the Chief Justices are very short. Average age of the committee is 6 months. Thus, ultimately it is the officers of the Registry who make the whole High Court function while giving proper briefs and executing administrative orders. Therefore, Registrars are said to be the back bone of the judiciary.

8. One should bother about the institution and should not go for personal interest. It was stressed that our bonafide should be clear. It all depends upon the outlook, approach to life and positive attitude towards the work.

9. Human touch for the subordinate staff is very essential. It has to be seen that injustice should not be done to them.

The broad discussions, deliberations and suggestions that were curled out during the discourse of session four titled “Capacity Building and Skills Upgradation in the High Court Staff” are as under:

1. Systematic and institutionalized training to staff members on capacity building is the need of the hour.

2. Encouragement and appreciation to the staff is very important. Putting the person at the right place depending upon his capability is the right strategy for getting the things done effectively and efficiently.
3. Skill upgradation is not difficult if it is practiced. Giving time to yourself is also important. Skill upgradation should be in continuity and has to be institutionalized.

4. Every person is different and has his own instinct of work. Each person has to be treated differently depending upon his skills. They have to be motivated to give their best. Some incentive should be given to the staff in order to encourage them to appear for exams.

5. It was suggested by Justice RC Chavan that High Court should frame appropriate scheme and programme to spend the money/expenditure so that it can be institutionalized.

6. Senior officers need to train junior officers and should not lose patience. It was emphasized that mistake can be pardoned but mischief is to be punished.

7. Justice G. C. Bharuka suggested that we must recognize the effort of others and must learn to reward a person who build their capacity through their own efforts. This will motivate others.

8. High Court Registry must have some scientific standard method to measure the skills and capacity of the staff members. Hon’ble Justice RC Chavan remarked that as a judge we have to look the life comprehensively.

9. It was suggested that judicial officers should be allotted the work of court managers and should be trained in reputed management schools. It was emphasized that the court management subject should be introduce in the induction level only.

Major highlights and suggestions that were emphasized during the discourse of fifth session titled “High Court Administration: Control, Supervision and Enforcement of Discipline” are as follows:

1. It was recommended that problems and pragmatic solution has to come for better governance in Court system at High Court, district and taluka level.

2. Manual system has to be improved and one has to be innovative and think out of the box.

3. Justice G. C. Bharuka suggested that the name of the court manager should be changed to court facilitator and should get attach to District Judge and to the Registrar (Administration) in case of District court and High Court respectively.

4. It was emphatically emphasized that there should be systematic working and one should take the best use of technology.

5. For the proper administration effective study and monitoring of all section/branch is required.

6. Challenges of computerization in district court was highlighted which includes vested interest, computer phobia that data may get deleted and dependency factor.

7. Total dependency on the NIC should not be there and one should understand how the computer system works.

8. Registrar (Administration) does not have complete control over the data of administration. Therefore, it is suggested that administration and control of data should be with the Registrar (Administration) so that no tampering can be done.

9. It was highlighted by Mr. Y.V. Ramakrishna that backlog of cases is a global problem. Registrar (Administration) plays a very important role in the administration and should act as good and efficient manager. It was stated that winners do not do different things, they do things differently. It was stated that not only unnecessarily movement of files but also repetition of work should be
avoided where staff does not need to apply their mind and suggested to adopt the 'format or checklist system' in the court.

10. It was expressed that interaction with the senior officers and staff of the branch is very important for the total control of the branch.

11. It was suggested that Registrar (Administration) should find the reasons for delay of scrutiny of files and try to seek out the remedy as it is the major source of corruption. It was stated that introduction of format/pamphlet for administrative work can make the execution easier.

12. It was recommended that Registrar (Administration) should have full knowledge and control over the service rule. Discipline does not mean ruling with iron rod and one should have humanistic approach while dealing with human resource. Effective implementation of the ICT can make the difference.

Major highlights and suggestions that were emphasized during the discourse of sixth session titled “Best Practices and Procedures in Court Proceedings Followed in the High Court” are as follows:

1. In the last session each participant shared his view and talked about the best practices and procedures followed in their High Court. One of the participant suggested that there is no uniform procedure in the 'mentioning', which now-a-days are orally done.

2. It was suggested that file moves through many section which not only increases the chance of corruption but also leads in duplication of work therefore flowchart must be made in order to avoid the duplication of work.

3. It was suggested that Registrar (Administration) must study whether the work within the staff is equally distributed or not, he should see who is overburdened with work and who has less work. Some standardization need to be required in every system.

The conference concluded with the concluding remarks by Hon'ble Justice G. Raghuram, Director, National Judicial Academy. Participants expressed their gratitude and positive feelings for the conference conducted by National Judicial Academy. They requested to expand the number of days of the programme.
The National Judicial Academy organized a 2-day Colloquium to Develop Parameters for Judicial Performance Assessment on 18th & 19th March, 2017. The Colloquium aimed to bring together ideas and suggestions for improving judicial performance assessment system through more effective parameters. Recent initiatives in the Indian judicial system as well as in management sector focusing on developing performance assessment parameters were deliberated upon in the Colloquium. The Colloquium also involved a round table discussion to review the existing judicial performance assessment systems, where views of all high courts were taken into consideration. A total of 22 Justices from all high courts participated in the Colloquium.

**Major Highlights and Suggestions from the Colloquium**

- Judges are accustomed for individual performance assessment but there is a need for measurement of institutional performance assessment. In most organizations the assessment is institutional but in judiciary the focus of assessment has been individual and there is need for assessment at organizational level.

- The ultimate test of the effectiveness of the judicial system is not disposal but the extent to which society has been transformed because of the unique role of the judiciary in bringing social change. Judiciary is an instrumentality of judicial power of the State. It has to shoulder the burden with other wings of the State in order to setup a Welfare State. It should also shoulder the primary responsibility of eliminating inequality. This is an authoritative test of developing parameters for judicial performance assessment as provided in the 117th Report of the Law Commission of India.

- One of the objectives of the performance assessment is to align the institutional goal and performance of the individual working in it and to maximise the objectives and goals. Over the decades the objective of assessment has been to develop the capability of the individual. It is important to include the word development in evaluation process as it make evaluation process more constructive. People who are being evaluated must understand the purpose and dimensions of
evaluation. Communication about fundamentals of evaluation with those who are evaluated is very necessary. The assessed person would be aware about the overall institutional perspective. Communication prior and post the assessment process is also very important.

- Performance needs to be measured on critical tasks and should be clearly defined. The judgment about assessment as good or bad requires comparison. Assessment is meant to change behaviour. The assessment system must incentivize the individual, otherwise it is useless. Assessment should be unbiased and if it is negative then it should be informed to the person concerned with sympathy.

- The information of performance assessment should be shared with concerned functionary as well as between peers. Non-disclosure or non-sharing of information on performance assessment defeats the purpose of assessment.

- Indicators should be properly benchmarked and comparison of indicators across groups, districts, country and global level should be done. There should be a strong Management Information System [MIS] for collecting, collating and comparing data on performance assessment.

- There should be clarity about the role and task of the functionary whose assessment is required to be done. The critical task towards the attainment of the institutional goal should be identified. The assessment process should be simple and easy to understand. A very detailed structured assessment process may not be a productive assessment and will not enable behavioural change. Indicators should not be complex and opaque. The indicators should be so designed that performance on those indicators should remain under control of the functionary.

- The indicators of performance should have quantitative and qualitative dimensions. A balanced focus on all processes of assessment is important. The indicators can be direct as well as surrogate. A surrogate measure can provide useful feedback on the task performed.

- There should be perception of fairness of evaluation process. Those who are evaluated should have a perception of fairness. The assessment system must be humanistic. The quality of interaction and amount of trust and empathy in performance assessment is very important. The committee system for performance evaluation has resulted in less biasness.

- For enhancing access of poor people to justice, the court as an institution is required to be reformed. The access of poor people to court becomes difficult not because of judge but because of other stakeholders who do not allow poor people into court. The court can have very good disposal rate but it can be below average in access of poor people to justice. The court culture is required to be changed if access of poor people to justice is needed to be enhanced. The assessment of court as a whole can reveal factors which is restricting access of poor people to court. The judge can accordingly play the role of a captain and can motivate concerned stakeholder for improving access.

- There is a need for developing empathy among the court staff towards litigants through the means of training. The training on “Mission of Justice and Court Excellence” should be given to ministerial staff to change the role and attitude of staff towards litigants. This will make courts litigant friendly.

- The high court judges who are given the task of administration of district courts are designated differently in different high courts such as administrative judge, inspecting judge, portfolio judge, zonal judge and guardian judge. The nomenclature needs to be settled for uniformity and nomenclature “Guardian Judge” should be used in all high courts. The nomenclature “Guardian Judge” gives some comfort to subordinate judiciary.
• In Kolkata, Odisha, Jharkhand and Allahabad there is a provision of making senior most judge from service as member of the administrative committee of the high court. In other high courts the senior most judge from service in high court should be taken as additional member in administrative committee apart from 5 regular members of committee.

• There is system of performance review in judiciary where individual judge's performance is reviewed at the age of 50 and 55. This is weeding out process. Similarly the services of good officers are required to be extended. Under Article 235, the high court through their discretion can extend the services of very good judges. The law of concerned state should be taken care in this regard.

• Judges must prepare court development plan which should incorporate vision, timelines of cases, priority cases, steps to be taken for enhancing user-friendliness of courts and inputs and infrastructure required. This should define clearly the role and functions to be discharged by advocates, police and staff to improve the performance of courts. The role and functions should be monitored in non-binding cooperative manner. Such judges must get some incentives for planning and management and should get recognition for that. This will enhance transparency in the functions of courts. The Annual Confidential Report of judges must include parameter related to planning and management and should be duly rewarded.

• Preparation, attentiveness and control on courts should be major parameters of judicial performance assessment. Judicial control on court should be one of the strongest indicator for performance assessment of judges. Punctuality, quality of judgements, number of judgments appealed and strictures received are other criteria. Litigants' perspective is also a criteria.

• Irrespective of the outside assessment the performance assessment must help judges to improve from within. The reflexive process of the mind and stereotypes in mind must be controlled. Some research have shown that individuals who behave in fair manner can come under influence of unconscious biases. Decision making involve reliance on reflexive i.e. unconscious mind and reflective i.e. cognitive mind. The performance assessment should take into account these aspects of decision making.

• The standards of assessment in ACR are very different in different high courts. Parameters on which judges are assessed vary across the country. Therefore, there is lack of uniformity in judicial performance evaluation in India. The ACR writing must take into consideration the professional development of judicial officers.

• The Annual Confidential Report is written in subjective manner. Objective criteria should be adopted for writing ACR. Various subjective factors i.e. likeability of judicial officer among bar members specially the leaders of bar association and other social biases play crucial role in writing of ACRs. Negligence in timely recording of ACR entries is another issue of concern.

• The question that whether the findings of judicial performance evaluation should be made accessible to public should be discussed. Transparency about the performance will provide motivation to judges to perform better. The society should not get the perception that there is something to hide. The information on performance evaluation of judges should be accessible to public. If somebody wants to research on this then it should be allowed.
The National Judicial Academy organized a two day Workshop on Animal Rights Jurisprudence for Magistrates on 25th and 26th March, 2017. The workshop was attended by 54 participants who represented 22 High Courts. The workshop was conducted to assist the participants in gaining better insights into jurisprudence and ethics of animal welfare, animal welfare legislations, custody and seizure provisions as well as case studies in animal welfare. The objective of the workshop was to enhance the knowledge base and skills of the participants for better resolution of cases relating to animals since proceedings relating to these legislations are rare and requires comprehensive knowledge of the complex provisions involved therein.

The workshop commenced with a spirited deliberation on the development of the concept of animal welfare. Thereafter, the cultural dichotomy between the east and the west with respect to treatment of animals was accentuated. The distinguishing features between the concept of animal rights and animal welfare were highlighted along with the ramifications of conferring legal personhood on animals. It was discussed that there is statutorily and constitutional obligation that animals should be treated with compassion and should not be inflicted with unnecessary pain and suffering.

The second session was an interactive exercise wherein the topics which were the focus of deliberations included classifications of animals for the purpose of animal rights, vegetarianism vis-à-vis non-vegetarianism, Jallikattu and protection of indigenous cattle breeds, notifications categorizing certain wild animals as vermin and reconsideration of quantum of punishment for different offences against animals.

The link between animal cruelty and interpersonal violence was reflected upon by the speaker who delineated that perpetrators of domestic violence and child abuse were mostly involved in animal cruelty as well. The workshop also witnessed a discussion on the various legislations and regulations dealing with animals including the State Municipal Corporation Acts. The speaker explained the scope of application of these laws which can be broadly categorized as performing animals, draught and pack animals,
transportation of animals, slaughterhouses, companion animals and strays, experimentation on animals, wild animals, fishing and zoos. The speaker also discussed that laws were grossly violated by butchers due to non-adherence to the required conditions for culling and upkeep of poultry.

Procedure for maintenance of case property was also discussed along with the method for identification of animals. The speaker elaborated upon the practice and procedure with regard to the custody of the case property i.e. animal and the process of selection of the custodian. Further, Section 35 of Prevention of Cruelty to Animals Act, 1960 was expounded upon with regard to appointing infirmaries for the treatment and care of animals in respect of which offences have been committed and the cost of transportation of animal to infirmary.

It was followed by a discussion on the roles and responsibilities of various bodies which oversee the activities related to animals including the Animal Welfare Board of India, local bodies i.e. Kanjihouse and ABC Centers, State Animal Husbandry Department, Health Department, Department of Road Transport and Forest Department.

The co-relation between terror funding and cattle smuggling was highlighted and described in detail by the speaker. It was showed that revenue generated from cattle smuggling through the eastern borders of India was used to fund various terrorist organizations working in the neighboring countries. It was emphasized that cattle smuggling is a lucrative trade which continues in various states in direct contravention of a gamut of legislations. Moreover, the illegal slaughter of cattle and its effect on the economy was also accentuated with great detail. It was highlighted that certain people use the fat of these cattle for preparation of ghee or clarified butter. It was stated that the trade in cow meat was flourishing in violation of various laws due to the high revenue generated from this activity. The speaker also expressed concern regarding the use of oxytocin on animals which was detrimental to the health of the cattle.

Lastly, an overview of the essential provisions of the Wildlife Protection Act, 1972 was given to the participants including the procedural aspects relating to investigation and evidence collection. This discourse was supplemented by reference to various judicial precedents which clearly portrayed the stances taken by the courts in different circumstances. There was extensive deliberation on the definition of “animal article” as provided under the Wildlife Protection Act, 1972 and the judicial approach towards the interpretation of the said definition. The speaker also elaborated upon certificate of ownership required for keeping and acquiring captive animals and the provisions related to trade in ivory and other animal articles. Finally, the lacunae in the provisions of Wildlife Protection Act, 1972 were also brought to the fore with an aim to enrich the knowledge of the participants.
THE CURIOUS CASE OF COURT MANAGER IN INDIA: FROM ITS CREATION TO ITS DESERTION

Prof. Dr. Geeta Oberoi*

With overburdened dockets, courts in various countries have, in the last two decades, applied management methods to the court systems. Just as management of business enterprises changed the business environment with introduction of management graduates into the system, court systems too have shown tremendous improvement with involvement of court managers (CM). A survey of the progress made in other countries reveals that, notwithstanding some objection from lawyers and judges, CMs have yielded exceedingly good results.  

1. What led to the creation of the post of CM for India?

To trace the background behind an initiative to create the post of court managers (CM) for assisting judges in INDIA, we need to go back to the debates and deliberations that took place between the years 2006 to 2010 at the National Judicial Academy, Bhopal.

In those deliberations, on issues of delay, arrears and pendency of cases, it got revealed that our judges at all levels—right from magistracy to the level of judge of the Supreme Court of India—not only decide disputes before them but are also engaged in numerous administrative works. These administrative works concern management and development of human resources in courts, developing court infrastructure, communication, finance, protocol functions etc. These functions consume more than 40 to 60 percentage of time of each judge be at any level in the judicial hierarchy and therefore each judge in his/her tenure of judgeship can only devote remaining time to the files crying for justice from the courts.

Involvement of judges in non-judicial functions may pose serious threat to judicial independence and lead to ethical challenges or concerns in relation to professional conflict of interest. Therefore, the National Judicial Academy suggested to the department of justice of the government of India to create a post of CM for every court in India to shoulder responsibility for some non-judicial works so as to provide judges more time for deciding cases seeking justice from the courts of law.

This suggestion was accepted, and in the year 2010, the Government of India through its circular F.NO.32(30).FCD/2010 issued by the Ministry of Finance, allocated funds to create the posts of CM. The relevant extract of F.NO.32(30).FCD/2010 reads:

12.1 With a view to enhancing the efficiency of court management, and resultant improvement in case disposal, Rupees 3 Billion is allocated for employment of professionally qualified Court Manager to assist judges. The Court Manager, with MBA degrees [Master in Business Administration], will support the judges to perform their administrative duties, thereby enabling the judges to devote more time to their judicial functions. The post of a Court

* Opinion Expressed by Prof. Dr. Geeta Oberoi is her personal opinion and does not reflect the views or analysis of or by the NJA.


2 Non-judicial functions may involve—management of courts, serving in different court constituted committees or commissions on general court affairs like infrastructure, education, selection of staff, computerization, procurement, etc. See Nuno Garoupa and Tom Ginsburg, Judicial Roles in Non-Judicial Functions, 12 Washington University Global Studies Law Review, 2014, p. 755-782.

3 Available at http://doj.gov.in/sites/default/files/Annexure_A-Part-I.pdf
Manager would be created in each judicial district to assist Principal District Judge. Two posts of Court Manager may be created for each High Court, and one for each Bench of the High Court.

2. **Issues and concerns on functions outlined in the circular F.NO.32(30).FCD/2010:**

   Annexure III of circular F.NO.32(30).FCD/2010 identified ten areas of functions for the CM: (i) Policies and Standards; (ii) Planning; (iii) Information and statistics; (iv) Court management; (v) Case management; (vi) Responsiveness management; (vii) Quality management; (viii) Human resource management; (ix) Core system management; (x) IT System management.

   Under the head *policies and standards*, the CM is supposed to

   1. Based on applicable directives of superior courts, establish the performance standards applicable to the court (including on timeliness, efficiency, quality of court performance, infrastructure and human resources, access to justice, as well as for systems of court management and case management)

   2. Carry out evaluation of the compliance of the court with such standards, identify deficiencies and deviations, identify steps required to achieve compliance, maintain such an evaluation on a current basis through annual updates

   **Issues of concern on above functions allotted to the CM:**

   How can the CM who is not necessarily legally qualified, find applicable directives of the superior courts on - timeliness, efficiency, quality of court performance, infrastructure, human resources, access to justice, as well as for systems of court management and case management? Further, for whom the CM is supposed to establish the performance standards - for the judges or for the staff of the court other than judges or for the registry officials who are staff to the high court deputed from judges? Still further, how will the CM know which directives are latest and which are old ones or which one are to be applied and which one to be discarded when there are so many conflicting judgments and directions on all these aspects from different high courts and the Supreme Court?

   Even if the CM is provided assistance of legal researcher/staff member from the registry to find out the directives laid down by the superior courts in areas of timeliness, efficiency, court performance, infrastructure, human resources, access to justice, court/case management, the question still remains how can the CM develop performance standards for judges based on these directives and check for their compliance with the directives.

   The CM employed on contractual basis with inferior salary package to that of court staff and judges, due to his/her insignificant status within the court system, will not be in position to evaluate compliance of the directives given by superior courts either by the staff of the court or by the judges of the court. Therefore, involving CMs in policy making as specified in the government circular F.NO.32(30).FCD/2010 is burdened with the risks.

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4 Each year the Chief Justice's Conference is organized and chaired by the Chief Justice of India. Every Chief Justice of India has his agenda for his tenure and accordingly forms the agenda for the Conference in which directions are given to the high courts to implement the directives agreed upon in this 3 day conference. See details at [http://supremecourtindia.nic.in/Files/2016-05-06_1462510021.pdf](http://supremecourtindia.nic.in/Files/2016-05-06_1462510021.pdf) Therefore every year different directions are given importance.

5 Most of these directives from the high court to the staff or to the judges are in the form of internal circulars. Thus only the staff members of the high court dealing with circulation of such directives and the district judges as recipients of those directives have access to those directives.
Under the head **planning**, the CM is supposed to

1. In consultation with the stakeholders of a court (including the bar, ministerial staff, executive agencies supporting judicial functions such as prosecutors/police/process serving agencies and court users), prepare and update annually a 5 year court wise Court Development Plan (CDP)

2. Monitor the implementation of the CDP and report to superior authorities on progress

**Issues of concern on above functions allotted to the CM:**

Updating annually of CDP would have been huge task for the CM considering their new entry into the system but expecting that they will also develop the CDP is definitely a burden imposed for which they do not have resources. This task could be given only to the CM who has been retained in the system for a long time and who by virtue of their experience in the system learns completely all nuances and loopholes of the system. At present, there is no CM in any jurisdiction in India who has completed even 4 years at the job as a CM. Further, even many district judges and judges who serve as registrars in the high courts, and who have spent 10 to 25 years in the judicial service are not in position to prepare the CDP for multi-judge and multi-staff court complex. Then how can one expect the CM to come out with such a plan?

The access of the CM to superior court judges is highly restricted by middle level career judiciary members. Therefore, even if the CDP is prepared and provided to the CM, he/she cannot monitor implementation of the CDP by the regular court staff who will have upper hand over the CM. Thus involvement of CMs in *Planning* will not serve its purpose for some years till they are allowed to attain decades of experience in the system.

Under the head **information and statistics**, the CM is supposed to

1. Ensure that statistics on all aspects of the functioning of the court are compiled and reported accurately and promptly in accordance with systems established by the high court

2. Ensure that reports on statistics are duly completed and provided as required

**Issues of concern on above functions allotted to the CM:**

The syllabus of the MBA degree course in India does not cover statistics. In any regular institute or university, such degree course consists of 32 papers and a project in any of the specialization area opted by the student to be completed in five semesters. The first semester covers 10 subjects of: principles of management, managerial economics, financial accounting, environment management, quantitative techniques, business legislation, communication skills-i, foreign language, computers for managers and field study.

The second semester covers 12 subjects of: marketing management, financial management, human resource management, operations management, research methodology, organizational behaviour, business environment, cost and management accounting, self/ proficiency management, corporate taxation, operations research, business ethics.

The third semester covers 8 subjects of: strategic management, international business, entrepreneurship development, summer internship project, communication skills- ii, family business management, field project/business plan, aptitude development and 4 specializations.

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The fourth semester is specialization and a project. And for specialization, management graduates are offered options of marketing /finance /human resource /information technology /health care /international business /operations management/ banking and financial services /agri business /power and utilities management.

From the above curriculum, it is evident that statistics component is not offered to the management graduates, and therefore, they cannot be expected to be proficient in statistics and delegated preparation of statistical reports on court wise institutions and disposals. The statistics work can be delegated to persons employed from the Indian Statistical Institute (ISI) set up by Parliament in 1959 which offers graduation, post graduation and doctoral degree in Statistics. Instead of giving statistical work to the CM, students from statistics discipline could be employed for preparing statistical reports for judiciary under the supervision of the CM.

Under the head court management, the CM is supposed to

Ensure that the processes and procedures of the court (including for filing, scheduling, conduct of adjudication, access to information and documents and grievance redressal) are fully compliant with the policies and standards established by the high court for court management and that they safeguard quality, ensure efficiency and timeliness, and minimize costs to litigants and to the state and enhance Access to Justice. (Note: Standard systems for court management should be developed at the High Court level.)

Issues of concern on above functions allotted to the CM:

It is perhaps unrealistic to expect from newly appointed CM that they should learn about all the process and procedures of the court and then at the same time evaluate these processes and procedures to see if they are being complied with the standards developed by the high court. It takes years for even law practitioners to learn about all processes and procedures of regular trial court and even senior law practitioners rely heavily on court clerks and chamber clerks. The CM, therefore, cannot be expected to easily learn intricacies and complexities involved in court processes and procedures. Therefore, the question arises how can the CM ensure compliance from the district courts as per the standards developed by the high court?

It is not at all easy to learn all procedures and processes from the court and chamber clerks who make their living out of these processes and procedures operating in the courts and are unwilling to share the secrets of their trade and livelihood. Further, those high courts, which do not make law degree as mandatory qualification for appointment as CMs, will be more unrealistic in asking management graduates to learn legal procedures and practices prevailing in different kinds of courts. Traditional court staff in all likelihood will not share knowledge with the CM and may even misinform newly recruited CMs who, if not studied law, cannot find out about actual process and procedures prevailing under the criminal and civil manuals and different circulars notified by the high court from time to time.

The nature of employment offered to the CMs - contractual appointment makes both the staff of the court as well as the CM operate in atmosphere of distrust, suspicion and fear of each other. The regular court staff who is skilled in court practices and procedures after knowing that the CM is appointed on one year contract show reluctance to transfer any knowledge about the system to the CM based on uncertainty of the CM and on the other hand, even the CM who is not fully assured of continuance with the system, and the growth within the system, is reluctant to go extra mile to learn about the system.
Under the head *case management:* the CM is supposed to

Ensure that case management systems are fully compliant with the policies and standards established by the high court for case management and that they address the legitimate needs of each individual litigant in terms of quality, efficiency and timeliness, costs to litigants and to the state. (Note: standard system for case management should be developed at the high court level.)

**Issues of concern on above functions allotted to the CM:**

The phrase *case management* has been interpreted in three ways: first as an event built into the case process generally intended to maintain and monitor progress and to facilitate settlement; second as activities of court staff to co-ordinate cases and resources and to ensure that the needs of vulnerable parties are not ignored; third concerns the use of computer technology to monitor and organize the movement of cases through the judicial process.

An effective case management system would therefore include: the establishment of uniform case management procedures; the establishment of time limits to ensure that a case will proceed or move expeditiously; the court monitoring of pleadings and established time limits; and the enforcement of time limits to ensure that a court's management and control over its docket is effective.

However, in all jurisdictions, there has been considerable reluctance in the courts to delegate case management functions to the CM. There are many studies in the US that indicate that few trial judges effectively utilized their CMs in case flow management. These studies reveal that most CMs assumed a low profile, and that their most common tasks were routine operations such as budgeting, record keeping, data collection, and report writing.

Therefore, it cannot be imagined that for India where the concept has just taken birth and the CM are taking their first baby steps in the court system, the CM would be allowed to interfere in the existing practices followed for case management by the courts. There is a long way to go before the stakeholders, who are at present resisting even an employment of the CM, can even imagine this.

Under the head *responsiveness management,* the CM is supposed to

Ensure that the court meets standards established by the high court on Access to Justice, legal aid and user friendliness.

**Issues of concern on above functions allotted to the CM:**

Though the executive handles *Access to Justice* issues all over the world, the judiciary in India continues to hold dear this function as it was because of their initiative and efforts, the government in the 1980s was forced to establish whole machinery for administering legal aid. Judges at the constitutional courts therefore are keen to retain their hold over legal aid distribution. Till the composition of the courts is changed to judges who believe in disassociating judiciary from legal aid functions, which may take some more decades, involvement of the CM in various legal aid

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10 See text of article on this at http://www.commonllii.org/in/journals/NALSARLawRw/2013/13.pdf
related functions seems to be only option to reduce some burden imposed on the district judiciary in this field.

Under the head *quality management*, the CM is supposed to

Ensure that the court meets quality of adjudication standards established by the high court

**Issues of concern on above functions allotted to the CM:**

*Quality of adjudication* is an area that has been given far too little attention by the judiciary, by the bar, and by government. The CM can only provide the court support services, in the context of the goal of efficiency. To enhance *quality of adjudication*, lessons of modern management that ask for creating an organizational setting in which able people can work more effectively have to be applied. But the question arises as to how is this task to be accomplished in a court setting where the CM does not have free hand, status and respect? How can the CM who is given very inferior status be allowed to devise methods because of which judges derive greater sense of satisfaction from doing their work? To improve the quality of adjudication, judges have to be given an opportunity to enhance their professional skills, and to use those skills in an interesting way. For this, the CM will need status and recognition within the system to have any say in such matters.

From another angle, there are questions raised on *quality of adjudication standards* established by the high court. Here, two questions are important. First, as to which *quality of adjudication standards* are framed by the high court? Second, *quality of adjudication* being central to the judicial work – how the same can be delegated to the CM?

Under the head *human resource management*, the CM is supposed to

Ensure that Human Resource Management of ministerial staff in the court comply with Human Resource Management standards established by the high court

**Issues of concern on above functions allotted to the CM:**

Courts need people who are competent, up-to-date, professional, ethical and committed. Therefore, staff recruitment, selection, supervision, evaluation, position classification, administration of pay and benefits and performance management must demonstrate what core values the court believes in. Because impartiality and independence are the core court values, the CMs will have to meet these values and ensure that the right people are hired, developed and promoted in the system who are professional, accountable and adhere to the core values in which the court believes in.

At present, the CM are delegated only small portion of human resource management functions like preparing for exams for recruitment or checking attendance of employees. At the trial court level, the *principal district judge* in every district is responsible for the court business like controlling the staff, recruitment, promotion and transfer of the staff. He/she is responsible for court

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12 See MANAGEMENT AND COURTS: A PERPLEXING NEXUS, 20 Am. U. L. Rev. 601 1970-1971 where it is observed: CM should not decide any aspect of any case for litigants. He/she could possibly affect professional autonomy in cases in two ways - the scheduling or assignment of cases or both. It is a great error to ask CM to be an assignment or a calendar judge. CM has neither status nor likely to get power in law to accomplish much in the adjudicative sphere. But CM can perform constructively by providing support for a well-run calendar management program under judicial control.

13 For example, *Taj Prakash Pathak and Ors. v. Rajasthan High Court and Ors.* (2013) 1 SCC 540 where litigation started because after the examination was conducted, the Chief Justice ordered that the examination be treated as a Competitive Examination and only those candidates who secured a minimum of 75% marks be selected to fill up the posts of Translators. In view of the decision of the Chief Justice, only 3 candidates were found suitable for appointment. This triggered the litigation by those who could not secure minimum 75%.
administration in all courts falling under his/her jurisdiction. He/she has to prepare a policy for recruitment, promotion, writing confidential reports, inspection of courts etc. for his/her district. 14

Changing environmental factors, a changing labor force, increased public demand for accountability from courts must induce a sense of urgency about reforming prevailing court Human Resources practices. To bring such reform, to enable performance, increase morale, increase perceptions of fairness and self-worth in the court staff, judge in partnership with the CM has to establish human resource practices that contribute to meaning and pride over and beyond the reward of a paycheck. Judge alone cannot bring reform as identifying, attracting, recruiting, selecting good applicants for court positions, compensating, developing, and retaining court staff are critical Human Resources Management fundamentals 15 which judges are not equipped for, while the CM is.

There is need felt to curtail involvement of judges in recruitment process as it has been often found that their involvement may bring them disrepute or even present conflict of interest. However, conservative nature of judges makes them suspicious of the CMs and there is a failure in delegation of human resource management functions to the CMs.

Under the head core systems management, the CM is supposed to

Ensure that the core systems of the court are established and function effectively (documentation management, utilities management, infrastructure and facilities management, financial systems management (audit, accounts, payments)

Issues of concern on above functions allotted to the CM:

What the Chief justice Burger of the United States Supreme Court observed in 1969 on the record management in the trial courts of the United States, hold true for the Indian court system of 2017 which is

"in terms of methods, machinery and equipment...most courts have changed very little fundamentally in a hundred years or more....As litigation has grown and multiple-judge courts have steadily enlarged, the continued use of the old equipment and old methods has brought about a virtual breakdown in many places and a slow-down everywhere in the efficiency and functioning of courts. The judicial system and all its components have been subjected to the same stresses... as hospitals.... The difference is that, thirty or forty years ago, doctors and nurses recognized the importance of system and management in order to deliver to the patients adequate medical care.... Courts and judges have with few exceptions, not responded in this way."

Under the core system management, therefore the CMs can be delegated court records management. Virtually every court in the country handles records at least 100 years old, and many have in their custody records of the colonial period. Problems in the management of these records range from physical deterioration to high volumes of paper, as well as timely and accurate reference. Also, whole new sets of problems have emerged in recent years, particularly concerning security 17 and privacy. 18 Regular ministerial staff cannot handle many of these problems. Therefore,

14 See text at http://www.garph.co.uk/JJARMSS/Apr2014/4.pdf
15 HRM report by NACM available at https://nacmnet.org/CCCG/hr-management.html
16 ABA Journal May 1971, p. 425-430
17 Narang Singh v. Punjab and Haryana High Court through its Registrar and Another in CWP No. 14849 of 2006 decided on 17/04/2009 provides how court staff was responsible for files in the Court of Magistrate, Ludhiana in several cases. The staff was therefore prosecuted for loss of these files and suspended.
18 Maitin Mor v. Prabha Prabha (1998)2GLR221 - The record of the copying section made some shocking revelations. There was tampering with record, full of interpolations at places mentioning date and these interpolations, were made solely with a view to gain time, as appeal was filed beyond period of limitation.
the CM can be involved in laying strong foundation for storing these records at minimum cost for high accessibility and retrieval. However, till date no CM has been given free hand in the court records management because of temporary nature of their employment.

Under the head Information and Technology systems management, the CM is supposed to
1. Ensure that the IT systems of the court comply with standards established by the high court and are fully functional
2. Feed the proposed national arrears grid to be set up to monitor the disposal of cases in all the courts, as and when it is set up

Issues of concern on above functions allotted to the CM:

First, remuneration of the CM is not attractive enough to get for courts the services of management graduate with specialization in information and technology. Second, under the E-Court project, all high courts have created the position of Registrar (IT) who is technically qualified person engaged for managing information technology issues for the high court and district courts functioning under the high courts. Therefore, there is no point in dragging the CM in highly technical field which is still evolving and making progress every day. Third, the CMs cannot be wasted by utilizing them for the data entry work. For such jobs, there is a position of DEO (Data Entry Operator) in every government department and the courts too can hire these DEOs either directly or on deputation to work under the directions of Registrar (IT). Last but not the least, the CM and the Computer System Analyst (CSA) are two different posts with different educational backgrounds. Whereas the CM is a management graduate, the CSA is an engineering graduate with hardware or software or network engineering specialization. It would be more helpful to get the services of the CSA in the E-Court Project than the services of the CM.

3. Nature of employment offered to the CM in different jurisdictions

Beside the government circular F.NO.32(30).FCD/2010 discussed above in detail for its errors in defining the scope of functions for the CM post, the nature of employment offered to the CM and the conditions of service of the CM also led to rejection of the CM.

The nature of employment offered to the CM was on yearly contract basis, which could be renewed if appointing authority was satisfied with the performance of the CM. Also, the salary and status of the CM in all jurisdiction was inferior than even the magistrate who is junior most entrant in the judiciary as seen from the table provided below:

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19 See Kerala High Court notification for employment of CSA at http://www.hckrecruitment.nic.in/app_notif.php#
20 The table was compiled on the basis of information provided to the National Judicial Academy by the high courts. On file with the author.
## High Court wise information on CM: As on February 2017

<table>
<thead>
<tr>
<th>High Court</th>
<th>Tenure</th>
<th>Salary</th>
<th>Qualifications &amp; Experience</th>
<th>Termination Criteria</th>
<th>Sanctioned Post</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allahabad</td>
<td>1 year contract to be renewed based on performance and subject to the availability of finance up to period of 5 years</td>
<td>Rs.50,000 per month</td>
<td>MBA/degree or advanced diploma in General Management and 10 years of experience in the field of management, experience/ training in I.T. Systems Management, H.R. Management, Financial System Management</td>
<td>The services may be terminated by the chief justice or by District Judge at any time after giving one month notice or payment of one month salary in advance</td>
<td>High Court- 03 District Court- 72 Total - 75</td>
</tr>
<tr>
<td>Andhra Pradesh</td>
<td>Dispensed with from September 2016</td>
<td></td>
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</tr>
<tr>
<td>Bombay</td>
<td>Appointment on contractual basis for a period up to 5 years</td>
<td>Rs.52,900 per month, Which may be Increased by 6% p.a., if the performance of the CM is satisfactory</td>
<td>MBA/degree or advanced diploma in General Management Passed MSCIT/DOEACC</td>
<td>Registrar General may terminate the services at any time and without assigning any reason, with one month’s notice or one month’s pay</td>
<td>High Court [General Managers]- 04 District Court – 41 [Senior CM- 06] Court Managers-35 Total- 45</td>
</tr>
<tr>
<td>Calcutta</td>
<td>On yearly contract renewal year to year</td>
<td>Rs.45,000 per month</td>
<td>MBA degree or advanced diploma in General Management 5 years’ experience/ training in I.T. Systems Management, H.R. Management, Financial System Management</td>
<td>Services terminable either by the appointing authority, without assigning any reason with prior one month notice or one month salary in lieu of notice</td>
<td>Total- 24</td>
</tr>
<tr>
<td>Chhattisgarh</td>
<td>On contractual Basis</td>
<td>Rs.50,000 per month with increase of 10% after 12 months of continuous service</td>
<td>MBA degree or advanced diploma in General Management 5 years’ experience/ training in I.T. Systems Management, H.R. Management, Financial System Management Preference to candidates who hold a degree in law</td>
<td>Contract can be terminated at any time without any prior notice</td>
<td>High Court - 02 District Court- 21 Total- 24</td>
</tr>
<tr>
<td>Delhi</td>
<td>Never started with the Project of CM as 13th Finance Commission did not give any grants.</td>
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<tr>
<td>High Court</td>
<td>Tenure</td>
<td>Salary</td>
<td>Qualifications &amp; Experience</td>
<td>Termination Criteria</td>
<td>Sanctioned Post</td>
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<tr>
<td>Guwahati</td>
<td>On contractual basis</td>
<td>Rs.50,000 per month with increase of 10% after 12 months of continuous service</td>
<td>MBA degree or advanced diploma in General Management 5 years' experience/training in I.T. Systems Management, H.R., Management, Financial System Management Preference to candidates who hold a degree in law</td>
<td>Not specified</td>
<td>High Court - 01 District Court- 22 Total-23</td>
</tr>
<tr>
<td>Gujarat</td>
<td>1 year contractual basis, renewed year wise, up to the extent of another 04 years</td>
<td>Rs.40,000 per month consolidated</td>
<td>MBA degree or advanced diploma in General Management 5 years' experience/training in I.T. Systems Management, H.R., Management, Financial System Management Preference to candidates with a degree in law</td>
<td>Absence from duty without intimation shall amount to the termination of duty</td>
<td>High Court - 02 District Court- 25 Total- 27</td>
</tr>
<tr>
<td>Himachal Pradesh</td>
<td>Contractual</td>
<td>Rs.30,000/- per month</td>
<td>MBA degree or advanced diploma in General Management - B. tech in IT/Computer Science</td>
<td>To be terminated at any time by Chief Justice without notice or any compensation, if his/her services are found to be unsatisfactory or such a candidate violates any of the provisions/directions contained in the CM (appointment &amp; services conditions) Rules, 2010</td>
<td>High Court - 02 District Court- 11 Total-13</td>
</tr>
<tr>
<td>Jammu &amp; Kashmir</td>
<td>Under Process to take initiative to start the project</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jharkhand</td>
<td>01 year contractual basis with Extension of contract on suitability</td>
<td>50,000 per month for High Court 40,000 per month for District Court</td>
<td>MBA degree or advanced diploma in General Management 5 years' experience/training in I.T. Systems Management, H.R., Management, Financial System Management</td>
<td>No Information</td>
<td>High Court - 02 District Court- 24 Total-26</td>
</tr>
<tr>
<td>High Court</td>
<td>Tenure</td>
<td>Salary</td>
<td>Qualifications &amp; Experience</td>
<td>Termination Criteria</td>
<td>Sanctioned Post</td>
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<tr>
<td>Karnataka</td>
<td>Contractual basis</td>
<td>Rs.50,000 per month to be increased by 10% every year</td>
<td>MBA degree or advanced diploma in General Management 5 years’ experience/ training in I.T. Systems Management, H.R. Management, Financial System Management</td>
<td>Any violation of the terms and conditions or any breach of discipline or any misconduct by court manager will attract termination of appointment without any notice.</td>
<td>High Court- 04 District Court- 30 Total-34</td>
</tr>
<tr>
<td>Kerala</td>
<td>Contractual basis</td>
<td>scale pay of Rs.21240 - 37040</td>
<td>DO</td>
<td>No Information</td>
<td>High Court - 02 District Court-14 Total -16</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>on contract basis renewed after review</td>
<td>Rs.50,000 per month</td>
<td>MBA degree or advanced diploma in General Management B. tech in IT/Computer Science Preference to candidates with experience and qualification in the field of law</td>
<td>No Information</td>
<td>Total -54</td>
</tr>
<tr>
<td>Madras</td>
<td>Temporary basis</td>
<td>Pay scale of Rs.15,600-39100 plus grade pay of Rs.6600</td>
<td>MBA degree or advanced diploma in General Management 5 years’ experience/ training in I.T. Systems Management, H.R. Management, Financial System Management Preference to candidates with experience and qualification in the field of law</td>
<td>Liable to be removed by the orders of the Chief Justice on finding unsuitable on periodical assessment</td>
<td>High Court - 03 District Court- 32 Total-35</td>
</tr>
<tr>
<td>Manipur</td>
<td>Information not provided</td>
<td></td>
<td></td>
<td></td>
<td>Total-03</td>
</tr>
<tr>
<td>Meghalaya</td>
<td>Under Process</td>
<td></td>
<td></td>
<td></td>
<td>Total-04</td>
</tr>
<tr>
<td>Orissa</td>
<td>Contractual Basis for Period determined by the Chief Justice</td>
<td>Rs.55,000 Per month</td>
<td>MBA degree or advanced diploma in General Management 5 years’ experience/ training in I.T. Systems Management, H.R. Management, Financial System Management</td>
<td>Information not provided</td>
<td>High Court- 02 District Court - 30 Total-32</td>
</tr>
<tr>
<td>High Court</td>
<td>Tenure</td>
<td>Salary</td>
<td>Qualifications &amp; Experience</td>
<td>Termination Criteria</td>
<td>Sanctioned Post</td>
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</tr>
<tr>
<td>Patna</td>
<td>Contractual basis</td>
<td>CM for High Court PB-4 (Rs. 37400-67000) + GP Rs. 8700 and D.A. admissible from time-to-time. CM for Civil Court Rs. 27700-770-33090 + D.A. admissible from time-to-time.</td>
<td>Degree in M.B.A. or equivalent with Human Resources Personnel Management as the optional or as one of the Principal subjects, awarded by a recognized university or an institution recognized by U.G.C./AICTE; Candidate applying for Patna High Court must have experience of atleast two years and those applying for Civil Courts must have experience of atleast one year in a reputed organization in the field of Office Management.</td>
<td>Information not provided</td>
<td>2 (two) posts in Patna High Court and 35 (thirty five) posts in Civil Courts of Bihar21</td>
</tr>
<tr>
<td>Punjab &amp; Haryana</td>
<td>Contractual basis</td>
<td>Pay scale of 15,600-39100 plus grade pay of Rs 6600</td>
<td>MBA degree or advanced diploma in General Management 2 years managerial experience</td>
<td>Information not provided</td>
<td>Total- 02</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>Contractual basis to be renewed year wise, up to 4 years</td>
<td>Rs.50,000 per month consolidated</td>
<td>Do</td>
<td>Information not provided</td>
<td>High Court - 04 District Court- 35 Total-39</td>
</tr>
<tr>
<td>Sikkim</td>
<td>No post</td>
<td>Information not provided</td>
<td></td>
<td></td>
<td>Total -08</td>
</tr>
<tr>
<td>Tripura</td>
<td>Contractual basis</td>
<td>Information not provided</td>
<td></td>
<td></td>
<td>Total -08</td>
</tr>
<tr>
<td>Uttarakhand</td>
<td>Contract to be renewed on performance appraisal and subject to the availability of the post and finance as per relevant Government order</td>
<td>Rs. 75,000 per month</td>
<td>MBA in General Management 5 years’ experience/ training in I.T. Systems Management, H.R. Management, Financial System Management Preference to candidates who hold a degree in law</td>
<td>Appointing authority may terminate the services at any time and without assigning any reason, with one month’s notice or one month’s pay</td>
<td>High Court- 01 District Court- 13 Total- 14</td>
</tr>
</tbody>
</table>

4. **Additional functions of the CMs under the high court framed Rules**

The above table makes it clear that very few CMs were appointed because the government was funding this experiment of introducing the CM in courts for the first time. Hardly comparable to the existing judicial strength or staff strength, the few CMs that came to be appointed were loaded with

21 Available at http://patnahighcourt.bih.nic.in/exam/dstem/cm.pdf
huge sets of responsibilities and this complicated the matters. Beside functions outlined in the circular F.NO.32(30).FCD/201022 more functions for the CMs were specified by the high court rules.

For instance, the Allahabad high court Rules23 apart from the tasks outlined in the circular F.NO.32(30).FCD/2010, expected the CM to implement and manage data entry initiation, monitor the e-court project at the court posted and perform any other job as determined by high court or district judge or nodal officer.

A report from CMs working under jurisdiction of Andhra Pradesh high court revealed that their responsibilities were not fixed but prescribed from time to time by the high court. In their one-year tenure, they had: (i) submitted month wise biometric attendance reports of all sections and daily attendance report of all sections to the registrar general; (ii) physically inspected every evening functioning of biometric attendance machines to resolve minor technical issues for reporting faults found in normal functioning of the machines; (iii) co-ordinated with the budget section of the high court, State Judicial Academy, State Legal Service Authority to collect their proposals to be submitted for budget demands from the state government and participated in budget meetings; (iv) developed a software package for reducing maintenance of manual registers and developed file tracking system to prevent loss of files from its origin in the new filing section till the record rooms where finalized cases are stored; (v) prepared agenda notes for national conferences held on direction of the registrar general; (vi) supervised staff training programmes, recruitment of administrative staff; (vii) monitored copy application sections to make copies available to parties without delay; (viii) gave feedback to the High Court on status of installation of software and hardware in various mofussil courts.

Under jurisdiction of Bombay high court where more than 2000 trial court judges and 94 high court justices preside over different levels of courts, only 45 positions of CMs are created on contractual basis. Though duties of the CMs were taken from the circular F.NO.32(30).FCD/2010, the Maharashtra Court Manager Recruitment and Conditions of Service Rules, 201124 add many other functions to be performed by the CM, which are beyond their intellectual or physical capacity.

The Karnataka high court rules25 adopted functions from F.NO.32(30).FCD/2010.26 The report27 from CMs revealed that they were involved in speeding up the recruitment process, enhancing and developing employee skills, improving employee motivation, effective infrastructure management to manage space crunch, improve the inter and intra office communication for external customer management, in conducting lok adalats, mega lok adalats, in implementation of the e-court project, in indexing record rooms, in preparing backlog statements, in safety and health hygiene of court premises, in upkeep of IT and communication devices, in account and budgetary functions, in training and event management.

The Gauhati high court rules and the Rajasthan high court rules28 copied functions specified in the circular F.NO.32(30).FCD/2010. So also Himachal Pradesh high court rules along with a rider that

22 See website http://ecourts.gov.in/krishnanagar/court-manager-responsibilities
23 Available at http://www.allahabadhighcourt.in/rules/court_manager_16-04-12.pdf
24 Available at http://bombayhighcourt.nic.in/recruitment/PDF/recruitment2011110211000050.pdf
25 http://karnatakajudiciary.kar.nic.in/recruitment/PDF/recruitment2011102111000050.pdf
26 Available at http://hcraj.nic.in/pdf/COURT_MANAGER_FUNCTIONS.pdf
27 submitted to the National Judicial Academy, Bhopal by the High Court of Karnataka
28 http://hcraj.nic.in/notificationscourtmanager.pdf
the CM is to work under the directions of the registrar general in the high court and district judge in the district court and do any work as assigned by them. The Meghalaya high court which created four posts of CMs did not frame rules on functions of the CM but copied functions from the circular F.NO.32(30).FCD/2010.

The Jharkhand high court rules copied functions of CM from F.NO.32(30).FCD/2010 along with Notification directing the CM to (i) assist registry in preparation and compilation of all statistical data relating to institution, disposal and stay matter of all categories of cases pending in the trial courts across districts; (ii) promptly act upon the instructions received from the CM of Jharkhand high court who will be instructed by Joint Registrar (Judicial) / Central Project Coordinator; (iii) help district and subordinate judiciary in preparation of statistical report on institution, disposal, pendency; (iv) suggest judge of each district court ideas for improving the working in the courts with special reference to “20 year old cases” Scheme as well as Mission Mode Programme; (v) monitor and to ensure that all kinds of summons, notices and processes issued are delivered timely and promptly; (vi) involve in the field of e-Courts Project.

The CMs employed by Jharkhand High Court collectively made a representation to the Prime Minister of India in the year 2014 complaining about their service conditions, their functions not being as per appointment order, how some of them were not given any work, how some of them got some unusual work with no clear guidelines regarding authority for the post, how their ideas and suggestions were turned down, that they were not even given a proper office, minimum infrastructure and minimum staff to assist them. The CMs complained about the distrust placed on them due to contractual nature of their employment and how they were assigned superfluous work like liaising with the forest department to get some plants for the garden of the Court or of the residence of the Judges/ or getting telephone lines repaired, or liaising with the police officials to conduct meetings and to order refreshments for the meetings. The CMs also complained about the work assigned to them to check the correctness of the statistical data and that no suggestions were entertained to improve that data. They also pointed out to issue of not allowed to sit in the monthly meetings held on distribution of work and caseload. Further, the CMs also brought to the fore issue of not being paid their salaries in time.

The Kerala high court rules apart from functioned outlined in the finance ministry circular F.NO.32(30).FCD/2010 issued office memorandum asking the CM to (i) prepare notes in connection with the conference of chief justices organized by the supreme court and joint chief justice–chief minister conference; (ii) prepare item-wise progress and action taken report in connection with the resolutions adopted in the aforesaid Conferences; (iii) prepare replies to the queries received from the Supreme Court and various high courts; (iv) liaison with the registry section and route those files / papers through the identified registry officials from the high court.

Under the Madhya Pradesh high court rules, the CMs were given duties related to (i) supervision of E-court project, (ii) maintenance of computers; (iii) compilation of statistical data; (iv) assisting district judge; (v) all other duties assigned by high court or district judge from time to time. A report

29 http://hphighcourt.nic.in/pdf/CondCourtManagers31072013.pdf
30 dated 2/2/2012 and further Registrar General order dated 7/11/2012
31 This letter was forwarded by the Prime Minister's Office to the Department of Justice and from the Department of Justice to the National Judicial Academy to study and report. Letter on file with the NJA.
on impact of deployment of CM in Madhya Pradesh\textsuperscript{33} mentioned that the CM assisted the district judge in - supervising monthly inspection reports and statements of different courts; in evaluation of judicial officer; in handling and disposal of cases, particularly in monitoring of old cases pending for 5 years or more; prepared database of pending cases, supervised e-court entries and assessed implementation of e-courts project; improved working of different sections of district courts; helped disposal/elimination of cases in record room, disposal of copying applications and disposal of properties in court warehouse; monitored disposal of cases as per the targets set by national and state legal service authorities; assisted Legal Aid Department of the high court for organizing legal awareness programmes, apprised the registry on grievances of the staff, helped in the recruitment of clerical staff at the district court level.

For Manipur, which created 3 posts of CMs, the high court rules\textsuperscript{34} asked the CM to assist judges, registrars and officers to enhance the efficiency of the court management; prepare statistics on all aspects of the functioning of courts; prepare employee database for courts; prepare case status in all courts; involve in preparation of budget, supervise the proper utilization of budget allocations received for different purposes from the State and the Central Government, assist in Gender Budgeting, gather requirement for implementation of e-Courts Project which includes digitization of record rooms, library software implementation, co-ordinate functions and trainings for all judicial officers and staff of high court and subordinate courts, help in designing and reviewing calendar and newsletter for publication, involve in issuing, receiving and screening of application forms for recruitment to various posts in all courts, prepare database to help in identification of vacant posts, prepare database for monitoring the status of under trial prisoners, ensure procurement of appropriate, efficient and quality products for IT infrastructure development, etc.

Orissa high court expects the CM to (i) look after the infrastructural requirements of the high court including regular day-to-day maintenance of the high court buildings, (ii) work out requirement of staff, get government approval from time to time as per necessity and initiate the recruitment process in co-ordination with the Establishment Section and the Recruitment Cell of the high court, (iii) plan, prepare and process the budget proposals in coordination with the accounts section, (iv) ensure proper functioning of the IT section in co-ordination with the computer technicians.\textsuperscript{35}

The Punjab and Haryana high court rules\textsuperscript{36} in addition to functions in the finance ministry circular F.NO.32(30).FCD/2010, asked the CM to (i) manage and co-ordinate the processes involved in case flow which includes managing the filling of cases, their listing, disposal etc., keeping track of the old cases and creating and maintaining data to help in proper distribution of work amongst the judges in each district, including: consignment of files to the judicial record. (ii) Deploy proper staff as per their educational qualifications and work experience and timely submit requirement of new staff to the authorities having regard to retirements of old staff, establishment of new courts and increased workload. (iii) Facilitate administrative work for the staff like pay fixation, grant of ACPs, redressal of grievances of employees, organising induction training, timely submission of pension papers, etc. (iv) Visit the court complex to ensure cleanliness, regular attendance of staff and liaison with authorities like Public Works Department, Public Health Department, etc. for

\textsuperscript{33} This was sent to the State Government through the Principal Secretary, Law and Legislative Affairs, Department, Bhopal, vide Memo No. C/752 dated 23/02/2015
\textsuperscript{34} http://hcmimphal.nic.in/Documents/recruitment_rules_CM.pdf
\textsuperscript{35} vide office order No.4944 dated 28/06/2012,
\textsuperscript{36} Due to complaints made to the Prime Minister of India by the CMs, the high court dispensed services of CM from 31/3/2015, i.e. on completion of the 13th FC scheme.
repair and maintenance work, for infrastructure development of court complexes and for awarding contract under the guidance of the district judge for cleanliness of the court complexes and supervision the work so that proper cleanliness of the court complexes by the contractors is carried out. (v) Assist judges on training/functions and inaugurations. (vi) Assist accounts department in preparation of budget, supervise proper utilization of the budget allocations received for different purposes. (vi) Implement and manage requirements under the e-Courts project which includes data entry initiation as well as managing the service roll out under e-Courts project, preparing report regarding the LAN, switches, power point, internet points installation in the court complexes for Computerization. (vii) Provide training to the court staff regarding CIS, daily uploading of cause list / interim orders and judgments on website for ensuring delivery of Citizen Centric Services. (viii) Coordination with other departments like PWD, Electrical, NIC etc. on issues pertaining to LAN, configuration of switches, Video Conferencing and other pending matters. (ix) Remove bottlenecks in the working of copying agency for ensuring timely delivery of certified copies of the judgments / orders to the general public by monitoring the performance of copying agency periodically. (x) Supervise preparation of inventory of all the articles in the courts and ensure timely supply of stationery, computer peripherals like printers, printer toners and its annual maintenance. (xi) Data Management to ensure statistics on functioning of the courts are properly compiled and reported accurately and promptly, timely submission of all returns to the High Court, data feeding into National Judicial Data Grid, computerization of the work of GPF accounts of court employees.

As the CMs from Punjab and Haryana high court also like their counterparts from the Jharkhand high court filed complaint to the Prime Minister of India regarding their inferior status, salary, nature of works allocated, etc., the Punjab and Haryana high court on completion of 13th Finance Commission grant period, abandoned the CM project.

5. **Diagnosis on failure of the CM project under Indian set up**

First reason: The Government Funding and the Government Support?

The Government of India provided one time support of rupees 50 Billion to the judiciary through the 13th Finance Commission Grant, to utilize the same from March 2010 to March 2015. In this grant itself, some high courts were supported while others were not, for the creation of the post of CM.

Whereas Uttar Pradesh (380 million), Madhya Pradesh and Maharashtra (266 million each), Rajasthan (184 million), Tamil Nadu, Orissa and Bihar (163 million each), Karnataka (157.5 million), Gujarat (141.3 million), Andhra Pradesh (125 million), Jammu & Kashmir and Jharkhand (119.8 million each), Assam (114.1 million), West Bengal (103.3 million), Chattisgarh (87 million), Haryana (97.8 million) received substantial funds to create the post of CM for their courts, the north-east states like Arunachal Pradesh and Nagaland did not get any fund at all and other states received an insignificant amount.

Further, the government, out of 3 billion rupees earmarked for the CM project, could release only rupees 1 billion to different states as the state judiciary headed by state high courts could not submit utilization certificates for installments of the grants released to them in time to the department of justice.

Also, out of 700 CM positions that were to be created in period of 5 years (2010-2015), the judiciary could create only 462 posts of CMs. The CMs were appointed in the states of Haryana (88), Tamil Nadu (70), Punjab (46), Rajasthan (39), Odisha (32), Bihar (32), Andhra Pradesh (27), Jharkhand
(24), Assam (23), Maharashtra (22), Karnataka (21), Gujarat (14), Madhya Pradesh and Chhattisgarh (12 each).

Once the period of 13th Finance Commission got over, the government at the Centre in its next finance plan, the 14th Finance Commission asked the high courts to draw the funds from the state governments if they were keen to continue with the CM positions. This detachment to the CM project from the government side was also because of fact that the Government of India received written representation from the CMs working in Jharkhand and Punjab states related to their role and treatment.

Initially most high courts adopted the functions from circular F.NO.32(30),FCD/2010 and replicated same errors in job description. Then the high courts made it clear that they have created the posts of CM on the basis of financial support from the government. The notification from several high court clarified that the posts are created under the 13th Finance Commission grant and would be retained after the period of grant is over subject to the availability of funds from the government. Therefore, many high courts did not even venture to create the post of CM for the reason that they did not get financial support from the government (Delhi High Court) and many of them discontinued these posts as soon as the period of the 13th Finance Commission grant was over (Andhra Pradesh and Punjab and Haryana High Court).

Therefore, for the period (2015-2019), high courts have to take their own call on whether to retain or abolish the positions of CMs. Many high courts have abolished these positions citing reasons that no funds are allocated in the 14th Finance Commission by the government to continue these positions. This fact itself shows disinterest in the CMs.

Second reason: Were CMs adequate in number to make any difference?

There are 24 high courts supervising 600 district courts in India. Further, each district court has its own judicial hierarchy. At the top end of this hierarchy is the Principal District and Sessions Judge and below this position, there are several district judges, additional district judges, civil judges senior and junior division to decide civil matters, magistrate and chief judicial magistrate for conducting criminal trials. The total sanctioned strength of these judges working below 24 high courts for different jurisdictions of India is 20,502 but only 16,513 courtrooms have been established. Now assuming that there are say 12,000 to 15,000 trial judges operating in different districts across India, who all apart from their judicial work have large number of non-judicial tasks to be performed, would it be practically possible for even 400 CMs to really make any impact? How can 400 to 500 CMs serve 15,000 courts? Their insignificant strength too added to much confusion amongst everyone as to what work had to be allocated to them.37

This report from the four CMs in Karnataka makes one wonder if the CMs were super human beings to be allocated so many functions? Is it practical to be given so many tasks to so few persons who are new in the system and are also learning about the system? Also, what is expected in each task from the CM? Do they have freedom to take decisions in these areas on their own?

Third reason: Compensation to the CM and their service conditions?

Salary scales offered to the CM lag behind the private sector, and those in other government agencies and this puts courts at disadvantage when recruiting the CM. Also, great variance exists in

37 See http://www.nja.nic.in/TOC_and_PS/P-897%20PR.pdf for report from different states.
compensation offered to the CM from rupees 30,000 per month contract in the state of Himachal Pradesh to the pay scale of rupees 37400-67000 with grade pay of rupees 8700 as offered by the Patna High Court which recently appointed the CMs.

The gulf in the status between judge and CM in India is much wider than that prevailing in any other country where the position of the CM is created. No doubt in many jurisdictions of the world, the CM is denied participation in decision making related to core fundamentals concerning courts and is not treated equal to judge in most jurisdictions with exclusion in judges’ meetings, social occasions, method of addressing etc., but in India, things are further worse because of nature of employment offered, poor compensation package, absence of all allowances given to regular court staff, poor service conditions and disrespect.

Though employment conditions for the CM are better in the southern region of India than the northern region of India – still these conditions cannot by any standard matched to service conditions of even junior most court employees. This made CM more vulnerable even in front of very less educated junior most staff of the courts who feel more confident due to their secure regular job, which cannot be as easily terminated as compared to the post of CM.

Offering no fringe benefits for the CM position, not addressing the cost of living issues at the place of posting and at the same time asking the CM to meet diverse needs of local courts is unjustified and will in the long run make the CM join the court system only for gaining experience in the system rather than making any substantive contribution to the system.40

Fourth reason: Professionally trained CM?

When the Chief Justice Warren Burger of the United States Supreme Court called for a professional field of Court Management, based on his call, the Institute of Court Management was created in the year 1970 in the United States. This programme created CMs suited to work in the court environment in the United States. In India, only one law school NALSAR is offering combined LLB and MBA course to produce graduates professionally trained in court management principles. However, the salary and fringe benefits offered are not attractive enough to employ these graduates as CMs for courts in India. There are reports that this programme too would be closed.40

Fifth reason: Relationship between CM and judges?

The CM project was undertaken to relieve judges from their administrative jobs/tasks. But most judges in India equate their administrative responsibility as their power-cum-jurisdiction over things and people. Therefore, subtracting any assignment from them, even if trivial or administrative, is viewed as deduction in their power-cum-jurisdiction over things and people. This mindset poses a major challenge to any outsider who wants to enter in the business of the courts at par with judges. Judges are strong believers in the hierarchy business and therefore, any kind of subordinate help is welcomed but any kind of equal position – even if it is meant to reduce their burden – is resisted. Many judges openly criticized the idea of having CMs. They even suggested for training judges in management principles rather than involving management persons in the courts. Some very senior judges have also shown open dislike for the management principles.

39 See full research on this by Marcus Wm. Reinkensmeyer, Compensation of Court Managers: current salaries and related factors, 75(3) Judicature 1991, p. 154-160
Conclusion: Needed support of senior justices for acceptability of the CM

There are many dimensions of court management that are quite different from the management of a business, factory or a private organization. Courts differ from organizations in several ways: court systems, had always been managed primarily by judges and court clerks whereas the CM are given role to improve the court system with their managerial principles. The roles, responsibilities, and authority of the CM depends on how highly judges value their contribution in management excellence. The more knowledgeable and comfortable judges are about the CM, the more power are given to the CMs.41

Therefore need of the hour, in India, is to get senior supreme court and high court justices involve in promotion of idea of running the courts with the help of management graduate CMs. Unless and until, the project of the CM gets leadership in the higher echelon of the judicial system encouraging judges to hand over administration to professionally trained managers so as to concentrate more on judging, the project of CM will not take off and get acceptance. Leadership from the highest court – the Supreme Court of India is necessary to reduce resistance of judges who harbor feeling that CMs would in some way impinge on judicial independence. Leadership can cut down this unfounded fear and encourage courts below to hire the CM in the same way they hire skilled secretaries and court reporters who do for the judge what they cannot do for themselves.

Also, court being highly constrained environment where judges are unquestionably key figures, their level of receptivity to the CM will spell success or failure of the CM. Therefore, unless judge acknowledges the role of the CM in enhancing judicial operations, the CM will continue to face tremendous disaffection from the court staff members. The Chief Administrative officers and Sheristadar,42 in the district courts being unsure about what will happen to them if they lose the trappings of the office to the CM, will continue to escalate differences and conflicts between them and the CM. There is a perception that there would be a war game.43

The complicated nature and dynamics of the courts and the temptation of individuals in the courts to use power inappropriately or ineffectively coalesce in such a way that the task of CM will be a constant challenge.44 In such challenging scenario, adequate support of senior judges can turn around the table in favour of CM.

Apart from leadership, planning is also needed in area of defining scope of work for CM and their service conditions are to be formulated at par with other registry officials – giving them same salary and same scope of growth along the way in their career.

41 Ibid.
42 Senior clerks in the district courts. For their duties and place in the hierarchy of administration visit http://ecourts.gov.in/namakkal/duties-responsibilities
43 Traits of CM in challenging environment @ http://www.lawyersclubindia.com/articles/Traits-of-court-managers--5385.asp
44 Ibid.
P-1008: Annual National Seminar on Working of the Motor Accident Claims Tribunals in India

P-1010: Workshop on the use of Court Managers at the District Court Level
P-1011: Colloquium on Developments in the Area of Constitutional Law

P-1015: Annual National Seminar on Working of the POCSO courts in India
P-1017: Colloquium to Develop Parameters for Judicial Performance Assessment
Governing Bodies of the NJA

as on March 31, 2017

A. The Governing Council
1. Chairperson of the NJA, the Chief Justice of India
   • Hon’ble Mr. Justice Jagdish Singh Khehar
2. Two Judges of the Supreme Court of India
   • Hon’ble Mr. Justice Dipak Misra
   • Hon’ble Mr. Justice Jasti Chelameswar
3. Secretary, Department of Justice, Ministry of Law & Justice, GOI
4. Secretary, Department of Expenditure, Ministry of Finance, GOI
5. Secretary, Department of Legal Affairs, Ministry of Law & Justice, GOI
6. Secretary General, Supreme Court of India
7. Director, NJA Bhopal

B. The General Body
1. Chairperson of the NJA, the Chief Justice of India
   • Hon’ble Mr. Justice Jagdish Singh Khehar
2. Two puisne Judges of the Supreme Court of India
   • Hon’ble Mr. Justice Dipak Misra
   • Hon’ble Mr. Justice Jasti Chelameswar
3. Chief Justice of a High Court
   • Hon’ble Mr. Justice R.S. Reddy, Chief Justice, High Court of Gujarat
4. Judge of High Court
   • Hon’ble Mr. Justice D.N. Patel, High Court of Jharkhand
5. Ex- officio members:
   i) Minister, Ministry of Law & Justice, GOI
   ii) Chairperson, Bar Council of India
6. Secretary, Department of Justice, Ministry of Law & Justice, GOI
7. Secretary, Department of Expenditure, Ministry of Finance, GOI
8. Secretary Department of Legal Affairs, Ministry of Law & Justice, GOI
9. Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension, GOI
10. Two Law Academics
    • Dean, Faculty of Law, Delhi University
    • Director, NLIU, Bhopal
11. Secretary General, Supreme Court of India
12. Director, NJA Bhopal
National Judicial Academy

Conceived in early 1990s by the Supreme Court of India, the NJA had to wait nearly a decade to get its infrastructure in place. On September 5, 2002 the then President of India, Dr. A.P.J. Abdul Kalam, formally dedicated to the Nation, the beautiful sprawling complex of the NJA, spread over 62 acre campus overlooking the Upper Lake at Bhopal. The President on the occasion released a Second Vision for the Republic in which a new and dynamic role for the judiciary was envisaged with a view to make India a developed country by 2020. "The Academy", he said, "may aim at developing attitudinal changes to improve judicial integrity and efficiencies". The NJA commenced the rather challenging journey towards achieving higher standards of excellence in delivery of justice through human resource development and techno-managerial upgradation. Since 2003, NJA has successfully imparted training to more than 26,000 judicial officers of various levels.

Registered as a Society in 1993 under the Societies Registration Act (1860), the NJA is managed by Governing Council chaired by the Chief Justice of India. The Governing Council consists of two senior most Judges of the Supreme Court of India and three Secretaries to the Government of India from the Departments of Law and Justice, Finance and Legal Affairs. The mandate of the Academy under the Memorandum of the Society include following objectives:

(i) to establish a center of excellence in the study, research and training of court management and administration of justice and to suggest improvements to the judicial system;

(ii) to provide training and continuing legal education to judicial officers and ministerial officers of the courts; and

(iii) to disseminate information relating to judicial administration, publish research papers, books, monographs, journals etc. and collaborate with other institutions both within the country and abroad.

With the support and guidance of the justices of the Hon’ble Supreme Court of India, the NJA has launched an ambitious plan of research, education and training activities to give the judiciary - the required intellectual inputs to assist the judicial system in dispensation of quality and responsive justice.

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