



REPORT OF THE SECOND NATIONAL JUDICIAL PAY COMMISSION

VIGYAN BHAWAN ANNEXE
NEW DELHI

DECEMBER-2020

**PART - II
(PERMANENT MECHANISM)**

SHRI R. BASANT
Former Judge High Court of Kerala
MEMBER

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

SHRI VINAY KUMAR GUPTA
District Judge, Delhi
MEMBER-SECRETARY

PART-II
PERMANENT MECHANISM

Table of Contents

S.No.	Description	Page no.
1.	Introduction	1 – 2
2.	History of Judicial Pay Commissions in India	3 – 13
3.	Judicial Pay Commission to be regular feature	13 – 14
4.	Recommendations	14 – 33
	Constitution of the Commission	14 – 18
	Terms of Reference	18 – 22
	Composition of Commission	22 – 27
	Nodal Officer	27 – 29
	Mechanism for Overseeing the implementation	30 – 33
5.	Mechanisms to determine Judges' salary in other countries	33 – 50
	Introductory	33 – 34
	Australia	34 – 35
	Canada	35 – 37
	Hong Kong	37 – 40
	Kenya	40 – 41
	New Zealand	42
	United Kingdom	42 – 47
	United States of America	47 – 50
6.	List of Sources / Links	51 – 53

PERMANENT MECHANISM

INTRODUCTION :

1. Our country has a unique system of determination of Judicial salaries and conditions of service. Pay and allowances, pension and other retirement benefits are to be revised periodically (at present every 10 years) by the Commission appointed by the Supreme Court in exercise of its judicial power under Article 32 of the Constitution of India and the same comes into effect on being approved by the Supreme Court by means of a Judicial order/Judgment. Uniform pay and conditions of service of all Judicial officers across the country is thereby ensured, though the Subordinate Judiciary is part of State service.

1.1 None of the Countries have the system of judicial determination of the emoluments of the members of subordinate judicial service, just as it is in our country. We shall refer to the 'mechanisms' prevalent in other countries at the end of this report.

1.2 One of the terms of reference to this Commission is:

"to make recommendations on setting up a permanent mechanism to review the pay and service conditions of members of Subordinate Judiciary periodically by an independent Commission."

This subject was not included in the terms of reference to the First National Judicial Pay Commission constituted in the year 1996 (hereinafter referred to as Justice Shetty Commission and/or FNJPC).

Obviously, it was in recognition of the need to constitute a Commission from time to time without a formal order of the apex Court that this term of reference has been advisedly formulated by the Supreme Court now. The experience gained during more than two decades has revealed the need to take stock of this issue and put in place a permanent mechanism on the lines of Central Pay Commission. Experience has shown that delay and *adhocism* prevail in constituting and activating an exclusive body for revising the pay structure and emoluments of the members of Subordinate Judiciary.

1.3 At this juncture, we would like to clarify the obvious - that the permanent mechanism does not mean that a body or authority shall be there continuously for an indeterminate period. It only means that an independent body such as the National Judicial Pay Commission should be a regular feature at specified intervals and it shall not be an uncertain event. Once the Commission submits its report within the term or the extended term prescribed, it goes out of existence and a fresh body for similar purpose shall have to be constituted after a specified time. Just as the Central Pay Commission is constituted for the Central Government employees every 10 years as a regular feature, the Judicial Pay Commission should also be constituted in order to ensure that the process of pay revision and allied issues concerning the District and Subordinate Judiciary are dealt with by an independent Commission.

HISTORY OF JUDICIAL PAY COMMISSIONS IN INDIA:

2. It is appropriate to set out in brief the history of Judicial Pay Commissions in India which was also adverted to in the introductory Chapter I, Vol. I of part I of the Report. It was in the year 1989, the All India Judges Association filed Writ Petition (Civil) No.1022/1989 before the Supreme Court of India seeking several reliefs for improvement of the conditions of service of the members of Subordinate Judiciary all over the country. Uniformity in the Judicial cadres in different States and Union Territories, uniform pay scales and enhancement of the age of retirement for Judicial officers, transport facilities, grant of certain perks and allowances (such as residential office allowance, sumptuary allowance) and provision for in service training - these were the various reliefs sought in the Writ Petition. This Writ Petition was disposed of by the judgment dated 13.11.1991. The said judgment is reported in AIR 1992 SC 165 : (1992) 1 SCC 119. Various directions were issued therein such as enhancing retirement age of Judicial officers to 60 years, uniformity in designations, All India Judicial Service, provision of residential accommodation for Judicial officers with home office and library, provision of transport facility and setting up of in-service training institutes. Further, the Court directed "as and when the Pay Commissions/Committees are set up in States and Union Territories, the question of appropriate pay scales of Judicial officers be specifically referred to and considered".

2.1 Union of India and State Governments filed review petitions raising several objections. It was *inter alia* contended that by issuing the directions prescribing separate conditions of service to the Subordinate Judiciary, the Court has assumed powers exclusively assigned to the executive and the legislature branches, that there was no justifiable ground to place the Judiciary on a higher pedestal in regard to pay, emoluments and other service conditions and that similar demands will be raised by the other Government officials in which case there would be heavy financial burden on the Public Exchequer. It was pleaded that many of the States would not be able to bear the financial burden.

2.2 In an elaborate judgment delivered by another three-Judge Bench of the Supreme Court, the main contention advanced by the Union of India and the States against providing better service conditions for Judicial officers was rejected. The Supreme Court gave constitutional justification for treating the Judicial service on a separate footing and extending uniform pay scales for the judiciary throughout the country even if they were higher than the pay scales of executive officials of State Services. However, certain directions given in the main judgment of 1991 were modified. The judgment is reported in AIR 1993 SC 2493: (1993) 4 SCC 288.

2.3 Significantly, as regards separate treatment to be given to the Judiciary, the following pertinent observations were made:

"Hence, the earlier approach of comparison between the service conditions of the Judges and those of the administrative executive has to be abandoned and the service conditions of the Judges which are wrongly linked to those of the administrative executive have to be revised to meet the special needs of Judicial service."

Further, it was observed:

"We have also emphasized earlier the necessity of entrusting the work of prescribing the service conditions for the Judicial officers to a separate Pay Commission exclusively set up for the purpose. Hence, we reiterate the importance of such separate Commission and also of the desirability of prescribing uniform pay scales to the Judges all over India. Since such pay scales will be the minimum deserved by the Judicial officers, the argument that some of the States may not be able to bear the financial burden is irrelevant."

It was firmly laid down in the judgment in the review petition that

- i. there should be uniform pay scales to members of Subordinate Judiciary all over the country and such scales should be de-linked from the pay scales of the executive;
- ii. there shall be a separate Commission for determining the pay scales of the Judicial officers (in this regard the direction given in the main judgment stood modified); and
- iii. the States ought not to plead financial constraints if the pay scales of Judicial officers are enhanced while de-linking the same from those admissible to the officers of Executive branch.

2.4 The Judgment in the review petition was delivered on 24th August, 1993. About 2½ years later, the Government of India issued the notification on 21st March, 1996 constituting the First National Judicial Pay Commission.

The following were the terms of reference to the Commission:

- a) To evolve the principles which should govern the structure of pay and other emoluments of Judicial Officers belonging to the Subordinate Judiciary all over the country.
- b) To examine the present structure of emoluments and conditions of service of Judicial Officers in the States and UTs taking into account the total packet of benefits available to them and make suitable recommendations having regard, among other relevant factors, to the existing relativities in the pay structure between the officers belonging to subordinate judicial service vis-à-vis other civil servants.
- c) To examine and recommend in respect of minimum qualifications, age of recruitment, method of recruitment etc., for Judicial Officers. In this context, the relevant provisions of the Constitution and directions of the Supreme Court in All India Judges' Association Case and in other cases may be kept in view.
- d) To examine the work methods and work environment as also the variety of allowances and benefits in kind that are available for Judicial Officers in addition to pay and to suggest rationalization and simplification thereof with a view to promoting efficiency in Judicial Administration, optimizing the size of the Judiciary etc.

2.5 The Commission was headed by Justice K. Jagannadha Shetty, former Judge of the Supreme Court. The Member of the Commission Justice P.K. Bahri was a retired Judge of Delhi High Court. The Member- Secretary of the Commission was also a retired High Court Judge. With the constitution of this Commission, a regime of uniform pay scales and allowances and perks and post-retirement benefits to the members of the District and Subordinate Judiciary throughout the country has been put in place.

2.6 The Commission was authorized to devise its own procedure and appoint such advisors, institutional consultants and experts as it may consider necessary. Further, the Commission was empowered to call for such information and take such evidence as it may consider necessary. All the State Governments and the departments of the Central Government were required to furnish the information, documents and other assistance required by the Commission.

The headquarters of the Commission was located at Bangalore (where the Chairperson was residing).

2.7 In volume 1 of the report of Justice Shetty Commission, the Commission pointed out the difficulties in regard to staff and finances especially at the initial stages. The Commission became partially functional towards the end of December, 1996. It appears the High Court of Karnataka provided certain facilities such as office space and the services of some personnel. The Commission pertinently observed at Para 1.24:

"The Commission is not on the trodden ground but on the virgin field. It has no material to fall back upon. Since it is first of its kind, even preliminary particulars have to be gathered for preparing the questionnaire"....

Under the head "The task of Commission" at Para 1.23, the Commission observed that

"the terms of the reference were all embracing, it is just not determining the pay scales or conferring certain financial benefits to Judicial officers.... The work includes among others restructuring the multiple Judicial cadres into three uniform cadres, prescribing uniform jurisdictions, determining uniform pay scales. The Commission is also concerned with recruitment, training, work methods and work environment of Judicial officers etc."

2.8 The FNJPC submitted the report in November 1999. Thereafter, a three-Judge bench of the Hon'ble Supreme Court considered various recommendations in the Report after hearing the various stakeholders and delivered the judgment on 21.03.2002. This judgment is reported in AIR 2002 SC 1752; (2002) 4 SCC 247. We have elsewhere made reference to this judgment *in extenso*.

2.9 Even after the said judgment, the issues relating to implementation of various directives issued by the Supreme Court based on the recommendations of FNJPC came up for consideration of the Supreme Court on quite a number of occasions and with the active intervention of Supreme Court, the recommendations of the FNJPC as approved by the Supreme Court have become effective at last in or about the year 2006. However, certain ancillary issues especially with regard to re-fixation of pension loomed large in the several IAs filed by the petitioners till 2016 or so.

Some High Courts had to deal with the issues relating to pension and medical facilities long after the Commission's recommendations were approved.

2.10 The history of constitution of FNJPC after a long-drawn judicial exercise has been set out above. We shall now refer to the next milestone in the evolution of Judicial Pay Commissions.

2.11 Justice Padmanabhan Committee was appointed by the Order dated 28.4.2009 passed by the Supreme Court of India in an I.A. filed in WP (C) No.1022 of 1989 by the All India Judges Association. By that time, the VI Central Pay Commission constituted in October, 2006 submitted its report in March 2008. The Order of the Court was passed nearly a year later. The Supreme Court directed the constitution of One Member Committee (the expression 'Commission' is also used at some places in the Order) for determining the pay scales and allowances of Judicial officers and the pension of retired officers. Justice E. Padmanabhan, retired Judge of Madras High Court was nominated by the Court for this purpose. The following observations of the Court may be noted:

"The salary of the High Court Judges has been recently revised by passing an Ordinance, viz., The High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Ordinance, 2009 which has been published in the Gazette of India vide notification dated 09th January 2009 and subsequently ordinance has become an Act of the Parliament.

In view of the revision of the salary of High Court Judges, the pay scales of the Judicial officers require upward revision.

For the said purpose, appropriate scales of pay are to be determined having due regard to the recommendations of Justice Shetty Commission.

In order to go into the question of determining the pay scales of the Judicial officers on the basis of the Justice Shetty Commission Report, we appoint Hon'ble Mr. Justice E.Padmanabhan, Retd. High Court Judge as one member Committee. The said Committee may make suitable recommendations having regard to the recommendations already made by the Justice Shetty Commission in respect of the pay scales and allowances and other perquisites of the Judicial officers. The Committee is requested to submit its report at the earliest and not later than 20th July, 2009."

2.12 There were no terms of reference as such and the task of the Commission was confined to pay and allowances. Pay was to be determined keeping in view the principles already laid down by FNJPC. Having regard to the observations of FNJPC at Para 15.48 of the report (referred to in Volume 1 of report of this Commission in para 2.14 at page 33), the Master Pay Scale evolved by the FNJPC was revised by applying the factor/multiplicand of 3.07 representing the quantum of increase of High Court Judges' pay in the aftermath of VI CPC report.

2.13 No separate notification was issued by the Government of India regarding the constitution of that Commission. The office accommodation, staff including those experienced in accounts, the conveyance etc., were provided by the Supreme Court Registry. The Government of India was required to deposit a sum of Rs. 25 lakhs out of which the remuneration of the Hon'ble Chairperson and actual expenditure incurred by the Registry of the Supreme Court was met.

2.14 The Commission submitted its report on 17.07.2009. Hon'ble Supreme Court thereafter passed series of Orders in the year 2010 approving the recommendations of the Commission with few modifications and also

giving necessary directives for implementation by various States. Recommendations of the Commission with regard to pay and certain allowances were given effect to from 01.01.2006.

3. This Commission – the Second National Judicial Pay Commission:

3.1 With the emergence of the comprehensive report of the FNJPC followed by the report of One-Member Committee headed by Justice Padmanabhan (former Judge of Madras High Court) appointed by the Supreme Court in 2009, it can no longer be said that this Commission is 'treading on the virgin field' as observed by Justice Shetty Commission. However, with the passage of time and the experience gained and the recommendations of two Central Pay Commissions since the FNJPC submitted the report, this Commission had an unenviable task of giving in-depth consideration to several aspects relating to pay structure, pension and allowances from various perspectives and incidentally addressing certain anomalies that have surfaced. At the same time, many topics with which the FNJPC was confronted in view of diverse pay structures and service conditions at that point of time have lost their relevance. The need to dwell at length on the aspects discussed by Justice Shetty Commission under the head "Work conditions and environment" in view of various developments since then is perhaps unnecessary.

3.2 Just before the VII CPC submitted its report, the All India Judges Association filed Writ Petition (C) No. 643 of 2015 under Article 32 of the Constitution of India praying for issuance of writ/order directing the respondent (Union of India) to constitute the Judicial Pay Commission "in terms of the representation made by the petitioner to respondent No.1 on 13.5.2015 to review the service conditions of the Judicial officers in India in respect of pay scale, retirement age, pension and other emoluments." The other direction sought was in regard to All India Judicial Service. Notice was ordered on 14.09.2015 and after hearing all concerned, the Court passed the Order on 09.05.2017 constituting this Commission. The terms of reference to this Commission are almost the same excepting omission of the item concerning recruitment and All India Judicial Service. The order of the Supreme Court of India dated 09.05.2017 is annexed as pages x to xvii of Volume I of Part I of this Commission's Report. This Commission stood constituted by virtue of the order of the Court dated 09.05.2017. This was followed by the notification issued by Government of India after obtaining the Cabinet Resolution in order to give effect to the Court's order. The notification of Government of India dated 16th November, 2017 is almost on the same lines as the one issued in 1996 in respect of FNJPC (excepting the deletion of item (c) of the earlier terms of reference). The Headquarters of this Commission has been in Delhi. However, for various reasons, especially the

lack of requisite facilities, the Chairperson of the Commission has been attending to the work mostly from his residence at Hyderabad.

JUDICIAL PAY COMMISSION TO BE A REGULAR FEATURE:

4. As noticed above, the path-breaking judgments of the apex Court have paved the way for constitution of a separate and exclusive Pay Commission for the members of the Subordinate Judiciary. The need to set up a separate Pay Commission to review the pay structure and service conditions of Judicial officers periodically has been emphasized by the Supreme Court in the judgment referred to supra i.e. the review judgment in All India Judges Association case ((1993) 4 SCC 288 at para 11 p. 297). Uniformity in pay, pension, allowances and amenities for the Judicial officers throughout the country has become an accepted principle. It is also a settled principle that the emoluments and amenities of the members of Subordinate Judiciary need not be at par with the executive officials of the States or the Union Territories and that the nature of duties performed by the Judges and the concept of Judicial independence firmly entrenched in our Constitution justifies the differential treatment to the Judiciary. The two landmark judgments have firmly laid down this principle. All the objections raised by the Governments in regard to the constitution of a separate Pay Commission and devising a separate pay structure for the members of the Subordinate Judiciary pan India have been overruled by the Supreme Court and the exclusive Judicial Pay Commissions have come to stay. (The two landmark judgments of the

Supreme Court in All India Judges Association cases decided in 1991 and 1993 followed by successive judgments have firmly laid down this principle.) In this background, the need to constitute an exclusive national level Judicial Pay Commission is no longer a point of debate. It is an accepted norm. The present practice of one or more Associations of Judicial officers moving the apex Court soon after or just before the CPC report and the Court giving direction one or two years later and the Government taking its own time to notify the constitution of Commission and making it functional has to be put an end to. The Judicial Pay Commission like the Central Pay Commission should be a certainty and should come into existence on an appointed date without the Court's intervention. In this context, it needs to be mentioned that a Central Pay Commission fully supported by Government of India with all the facilities and expertise extended to it by the Government is constituted and made operational promptly a decade after the constitution of the previous Commission. On the same lines and with the same regularity, a National Judicial Pay Commission shall also be constituted by Government of India and the recommendations of the Commission shall be placed before the Supreme Court of India for scrutiny and approval.

RECOMMENDATIONS:

5. CONSTITUTION OF THE COMMISSION - TIME:

5.1 A National Judicial Pay Commission (NJPC) shall be constituted by Union of India **one** year after the Central Pay Commission is constituted.

That means the next NJPC has to be constituted by April, 2025, assuming that the constitution of the next CPC i.e. VIII CPC will in all probability be notified in April, 2024. In the normal course, the Central Pay Commissions are set up every 10 years.

5.2 Why one year after the CPC is constituted? The pay of High Court Judges gets increased only after the CPC report is considered by Government of India and a new pay structure is evolved. That has been the consistent practice. So far, the consistent trend has been that the salary of High Court Judges is paced with the fixed pay applied to the Secretary to Government of India/Chief Secretary of the States. True, the High Court Judges' emoluments are outside the purview of the Central Pay Commission. However, post-CPC report, the Government of India after formally seeking the views of the Supreme Court, finalises the pay structure for the High Court and Supreme Court Judges and then the High Courts and Supreme Court Judges (Pay and Conditions of Service) Act is amended. As said earlier, the salary of High Court Judge is fixed thereafter. Obviously, the pay of High Court Judge is the vertical cap within which the pay structure of all categories of Judicial officers has to be suitably devised. Therefore, in practical terms, no revision of pay of Subordinate Judiciary can effectively take place until and unless the High Court Judges' pay is revised.

5.3 The Judicial service comprising the District and Subordinate Judiciary has virtually become an All India Service now though their

emoluments are drawn out of the State exchequer and they are governed by the Service Rules framed by the Governor of the State. With the introduction of uniform pay scales and other conditions of service, the pay scales of State Government officials based on the recommendations of State Pay Commissions (constituted at indefinite intervals) have almost lost their relevance in determining the pay structure of the District Judiciary. Thus, it is the revision of pay of High Court Judges subsequent to the CPC report that makes all the difference in the revision of Pay for the Judges of subordinate judiciary. Further, the relativities as regards the pay scales of Judicial officers and that of All India Service officers is one of the factors that is being looked into while evolving a distinct pay structure for the Judiciary. One of the terms of reference requires the relativities factor also to be taken into account.

5.4 There is one more weighty reason for suggesting that Judicial Pay Commission's report shall be subsequent to the CPC report. The Central Pay Commission undertakes in-depth study of factors having intricate bearing on the extent of pay rise required since the last pay revision and makes its recommendations after a comprehensive analysis with the help of a team of experts and consultants including the senior officials from several departments of the Union Government. Naturally, the Central Pay Commission report provides valuable inputs for the Judicial Pay Commission to undertake the exercise of pay revision of members of District and Subordinate Judiciary.

5.5 Thus, a clear idea can be formed in regard to pay revision only after the CPC report is submitted and considered by the Government of India. The report of CPC generally emerges about 18 months after the Commission is set up. Having due regard to the various aspects noted above, this Commission is of the view that the Judicial Pay Commission should start functioning one year after the Central Pay Commission is constituted so that there will not be much of time lag between the pay revision of the members of the Subordinate Judiciary and the members of Central Civil Services. The Judicial Pay Commission needs some time to start functioning effectively and to gather the relevant preliminary data/information required from the State Governments/Union Territories and the High Courts. This exercise can be gone through by Judicial Pay Commission in the meanwhile i.e., in the interregnum between its constitution and the emergence of CPC's report. Therefore, this Commission feels that the timing of constitution of Judicial Pay Commission shall be such that it comes into being one year after the Central Pay Commission is constituted and the Judicial Pay Commission shall be able to devote requisite time and attention without further loss of time after the CPC report emerges. The CPC's recommendations are approved or modified by Government of India with a sense of urgency and not much of time lag occurs between the date of report and the Cabinet Resolution.

5.6 In this context, the following details regarding the constitution of Central Pay Commissions are furnished:

Date of (constitution) resolution by G.O.I.				Date of Report		Date of Implementation	
	CPC		JPC	CPC	JPC	CPC	JPC
Fifth	09.4.1994	First	As per Supreme Court Oder 28.04.1993 and GOI resolution 21.03.1996	29/30.01.1997	November 1999	--	Pursuant to Supreme Court Order 21.03.2002
Sixth	5.10.2006	JPC Report	As per Supreme Court order 28.4.2009 No GOI Resolution	March, 2008	17.07.2009	29.08.2008	07.04.2010 04.05.2010 19.07.2010 26.07.2010
Seventh	28.02.2014	Second	As per Supreme Court Order 09.05.2017 and GOI resolution 16.11.2017	19.11.2015	29.01.2020	25.07.2016	--

6. TERMS OF REFERENCE:

6.1 The terms of reference to FNJPC in pursuance to the order of the Hon'ble Supreme Court dated 24.08.1993 and the terms of reference to this Commission as per the order of the Supreme Court dated 09.05.2017 by which this Commission was constituted are as under:

S.No.	Terms of Reference FNJPC	Terms of Reference SNJPC
(a)	To evolve the principles which should govern the structure of pay and other emoluments of Judicial Officers belonging to the Subordinate judiciary all over the country.	To evolve the principles which should govern the structure of pay and other emoluments of Judicial Officers belonging to the subordinate judiciary all over the country.
(b)	To examine the present structure of emoluments and conditions of service of Judicial Officers in the States and UTs taking into account the total packet of benefits available to them and make suitable recommendations having regard, among other relevant factors, to the existing relativities in the pay structure between the officers belonging to subordinate judicial service vis-à-vis other civil servants.	To examine the present structure of emoluments and conditions of service of Judicial Offices in the states and UTs taking into account the total packet of benefits available to them and make suitable recommendations (including post retirement benefits such as pension etc.) having regard among other relevant factors, to the existing relativities in the pay structure between the officers belonging to subordinate judicial services vis-à-vis

		other civil servants (and mechanism for Redressal of grievances in this regard).
(c)	To examine and recommend in respect of minimum qualifications, age of recruitment, method of recruitment etc. for judicial officers. In this context, the relevant provisions of the Constitution and directions of the Supreme Court in All India Judges' Association Case and in other cases may be kept in view.	-----XXXX-----
(d)	To examine the work methods and work environment as also the variety of allowances and benefits in kind that are available for Judicial officers in addition to pay and to suggest rationalization and simplification thereon with a view to promoting efficiency in Judicial Administration, optimizing the size of the Judiciary etc.	To examine the work methods and work environment as also the variety of allowance and benefits in kind that are available in Judicial Officers in addition to pay and to suggest rationalization and simplification thereof with a view to promoting efficiency in Judicial Administration, optimizing the size of judiciary etc. and to remove anomalies created in implementation of earlier recommendations.
(e)	The Commission may consider and grant such interim relief as it considers just and proper to all categories of Judicial Officers of all the States/Union Territories. The interim relief, if recommended, shall have to be fully adjusted against and included in the package which may become admissible to the Judicial Officers on the final recommendations of the Commission. (Added vide resolution no. L-15014/1/97-Jus. Dated 16.12.1997 of the Government of India, Department of Justice)	To consider and recommend such interim relief as it considers just and proper to all categories of Judicial Officers of all the states/Union Territories. The interim relief, if recommended, shall have to be fully adjusted against and included in the package which may become admissible to the Judicial Officers on the final recommendations of the commission.
(f)	----	To recommend the mechanism for setting up of a permanent mechanism to review the pay and service conditions of members of subordinate judiciary periodically by an independent commission

		exclusively constituted for the purpose and the composition of such commission should reflect adequate representation on behalf of the judiciary.
--	--	---

6.2 On a close examination, we feel that some recasting is necessary in the interest of clarity as regards the first two terms of reference (a) and (b) shown above, are concerned. Further, clause 'd' of the terms of reference "to examine the work methods and work environment as also the variety of allowances and benefits in kind..." does not appear to be happily worded. Issues relating to pay & allowances and other benefits in kind falling in the first two terms of reference have been mixed up in this particular term of reference (mentioned as 'd' in the terms of reference to FNJPC and order dated 09.05.2017 constituting this Commission). Perhaps realizing the ambiguity in the structure of the sentence, the FNJPC has analyzed this term of reference covered by 'd' as follows (vide para 24.1 page 1165 of the Report):

"The terms of reference to our Commission *inter alia* required us to examine the work methods and work environment in Courts to promote efficiency in Judicial administration."

6.3 There is one more aspect which we would like to point out in respect of this particular term of reference- 'd'. The Commission is of the view that the scope of scrutiny and examination under this term of reference need not be too wide and it can be suitably restricted having regard to the developments that have taken place in the areas concerning Judicial

administration especially court/case management, ADR processes and infrastructure related issues, after the previous JPCs submitted their report.

6.4 Accordingly, we suggest the following **terms of reference** to the National Judicial Pay Commission, whenever it is constituted:

- (a) to examine the present structure of emoluments viz. pay and allowances and the conditions of service of Judicial officers in the States and Union Territories, to evolve the principles which should govern the structure of pay and other emoluments and to make recommendations for revising the pay structure/pay scales, allowances and other benefits in kind having regard to, among other relevant factors, the existing relativities in the pay structure between the officers belonging to Judicial service vis-à-vis All India Service Officers.
- (b) to examine and make recommendations regarding pension and other post-retirement benefits that should follow the pay revision.
- (c) to rectify the anomalies, if any, that have arisen while implementing the earlier recommendations.
- (d) to recommend such interim relief as the Commission considers just and proper (subject to the adjustment of the amount of

interim relief against the revised pay finally recommended by the Commission).

- (e) to consider the dates from which the revised pay, allowances and pensionary benefits recommended by the Commission should be given effect to and the time lines and the manner in which the arrears have to be disbursed to the Judicial officers.
- (f) to look into and make recommendations on the specific aspects having bearing on efficiency in Judicial administration such as improvements in the recruitment process, quality of training, administrative supervision, performance assessment and infrastructural support.

THE COMPOSITION OF COMMISSION:

7. In regard to this, it would be appropriate to follow the existing practice substantially. Therefore, the Judicial Pay Commission shall consist of:

- (1) a retired Judge of Supreme Court; and
- (2) a retired Judge of High Court preferably a person who worked as District Judge before the elevation as High Court Judge. Retired Judges of High Courts referred above can be the High Court Judge practicing in Supreme Court and settled down in Delhi/NCR.

7.1 The Commission should be advised and assisted by a Consultant who shall be an Officer (serving or retired) from Indian Audit & Accounts Service (IA&AS) having experience in matters related to pay scales, pay fixation and allied issues. The said Consultant shall be nominated by the Comptroller and Auditor General of India. It needs to be made clear that the Chairperson and Member of the Commission can work on part-time basis. Of course they are expected to devote sufficient time towards the Commission's work.

7.2 There shall be a Member-Secretary of the Commission of the rank of District Judge (preferably a serving officer from Delhi Higher Judicial Service). The Chairperson of the Commission, while requesting the Chief Justice for sparing the services of a senior District Judge on deputation, may suggest the name(s) of the serving District Judge(s). More than one name can also be suggested as alternatives.

7.3 The Chief Justice of India shall be empowered to select the Chairperson and Member (retired High Court Judge) in consultation with the Union Minister of Law & Justice.

7.4 Necessary administrative instructions may be issued to the Secretary-General of the Supreme Court of India to initiate action to pave the way for the constitution of NJPC promptly as per the time-lines indicated above. Further, the Department of Justice (Government of India) may also

address a letter to the Registry of Supreme Court in this regard one month in advance. Soon after the names are finalized by the Chief Justice of India, steps are to be taken for obtaining the Cabinet Resolution for the constitution of the Commission.

7.5 The Chairperson shall be entitled to pay, allowances and perquisites admissible to a sitting Supreme Court Judge and the Member will be eligible to get the pay, allowances and perquisites of a sitting Judge of the High Court subject to deduction of pension. The perks and allowances of Chairperson including official accommodation and car shall be such as are admissible to the Chairperson of the Central Pay Commission who has always been a retired Judge of the Supreme Court of India. However, the Member-Secretary, if (s)he is in service, shall be eligible to get the deputation allowance as per the applicable norms. The Member-Secretary, if (s)he is a retired officer, shall get the last drawn pay minus pension, apart from the usual allowances.

7.6 The Consultant, if a serving Officer, shall be paid monthly honorarium not exceeding 25% of the basic pay and if he happens to be a retired officer, his remuneration shall be not less than 25% of full pension and the same may be fixed by the Chairperson.

8. The tenure of the Commission shall be 24 months from the date of its constitution, extendable by 6 months.

9. The Member-Secretary of the Commission shall file Status report regarding progress made by the Commission every 6 months and the same has to be addressed to the Secretary-General of the Supreme Court.

10. The Member-Secretary shall file the Report covering the terms of reference in the Registry of the Supreme Court and thereafter promptly place it on the website of the Commission apart from sending the copies of the report to the State Governments/Union Territories administration and Secretary, Department of Justice, Government of India. The matter may then be posted before the Supreme Court within 4 weeks after the date of filing the report so that the Hon'ble Court may take up the hearing of the matter and pass appropriate orders on hearing the stakeholders.

11. Every State and Union Territory as well as the Registry of High Court shall provide the information/data required by the Commission. The facilities such as the extension of State Guest facility shall be provided to the Commission to facilitate the holding of conferences or to transact other official work.

12. The staff for the Commission shall be on full time basis and the staff pattern shall include one Officer of the rank of Under Secretary, a PPS (a senior Stenographer), two PS (Stenographer), one Section Officer, two Assistant Section Officers (Sr. Assistants), six Data Entry Operators, three Drivers and six MTS/Peons/Attendants.

12.1 Suitable staff willing to come on deputation from other departments of Central Government or State Government or Judiciary can be allotted to/selected by the Commission. Suitable retired personnel can also be engaged by the Commission.

12.2 On a letter being addressed by the Member-Secretary of the Commission, Ministry of Law (Department of Justice) and the Department of Personnel and Public Grievances shall take all necessary steps expeditiously for allocating the essential staff to the Commission.

12.3 In case of difficulty the Commission/Chairperson may hire the services of clerical staff and MTS/Peons/Attendants on contract basis through outsourcing or otherwise.

12.4 Necessary steps to be taken to provide experts and consultants as may be required by the Commission from time to time. The departments of Government of India such as the Department of Finance/Financial services and the Department connected with Statistics and the office of the CAG of India may provide the services of officers having experience in the field of pay revision, statistics and data analysis to the Commission on part-time basis which can be treated as additional charge for such officers and they may be paid monthly honorarium not exceeding 25% of the basic pay as decided by the Chairperson. And if they are retired officers, their remuneration may be fixed by the Chairperson.

12.5 At the same time, the Chairperson shall be empowered to engage legal professionals and other experts/consultants belonging to an institution in public or private sector. Sufficient funds should be allocated for this purpose and the proposals sent by the Member-Secretary of the Commission in regard to payment of remuneration for such persons shall be processed promptly. The Chairperson shall have the power to decide the remuneration payable to such experts/consultants in consultation with Department of Justice.

12.6 The Department of Justice shall furnish information to the Commission regarding the allocation of funds from time to time.

12.7 The Commission shall be provided with suitable office accommodation comprising atleast six rooms at some Central place.

NODAL OFFICER:

13. A Nodal Officer of the rank of Joint Secretary needs to be nominated by the Department of Justice to coordinate with the Member-Secretary of the Commission and other Departments of Government. From day one, such officer should act proactively to make the Commission functional at the earliest. *Inter alia*, the said officer shall take necessary steps for securing office space and other infrastructural facilities including residential accommodation to the Chairperson, ensuring prompt financial sanctions, writing to the States Governments/Union Territories and Departments of

Government of India for providing necessary information/data and other assistance.

13.1 We are particularly making this suggestion keeping in view the unpleasant experience and the problems faced by this Commission especially at the initial stages. The specific observation of the Supreme Court that the Union of India and the State Governments should extend necessary assistance did not prompt any officer to positively respond to the requirements of Commission. Though in accordance with the observation of the Hon'ble Court, the Commission indicated to the Government of India its requirements of infrastructural support and personnel for the purpose of carrying out the task, the response reasonably expected was not forthcoming.

13.2 We are not inclined to list out in detail the difficulties faced by the Commission from time to time. Broadly speaking, lack of timely response from the officials concerned and the communication gap had considerably handicapped the functioning of the Commission. There were notable delays in regard to allotment of office space and in carrying out minimal renovation and providing furniture, in the finalization of procedure for processing the bills and drawal of amounts. The allocation of funds was also delayed for want of follow-up action. The Cabinet resolution and the notification regarding the Commission was issued 6 months after the Court's order. In spite of Cabinet Committee's decision, the residential accommodation in Delhi was not offered to the Chairperson till May, 2019 and further the house offered was wholly

unsuitable for occupation. The Commission was not aware as to how much amount was sanctioned and under what heads. No staff whatsoever was allotted. The sanction of posts remained on paper. The Chairperson could not get even the services of a Stenographer or PPS in Delhi. It became a problem to find a drawing officer to process the bills. No help was forthcoming from the department to identify the experts concerned with pay revision. Further, it became difficult for the Commission to engage experts and consultants of their choice without any assurance as to the remuneration payable to them. At the initial stages, after the order was passed by the Supreme Court, the letter sent by the Chairperson indicating the infrastructural requirements was not responded to. It was towards the end of June, 2017, the Joint Secretary, Department of Justice started correspondence with the Chairperson. The Member-Secretary was having problems at every stage in establishing contact with the officers of concerned departments.

13.3 In the background of the multifarious problems faced by the Commission, the Commission has considered it appropriate to make the suggestion for nomination of a Nodal officer as soon as the constitution of the Commission is notified. Accordingly, it is **recommended**.

MECHANISM FOR OVERSEEING THE IMPLEMENTATION:

14. Any initiative to put in place a permanent mechanism as proposed above will not be complete unless a mechanism is also evolved to cater to the implementation aspects arising subsequently. Monitoring by

Supreme Court on the implementation-related aspects from time to time, as it happened in the past, should cease and the Supreme Court shall not be burdened with this type of work.

14.1 The problem in this regard has been taken note of by the Hon'ble Supreme Court in the recent order dated 28.02.2020 in which the following observations were made:

“The *amici* shall consolidate the views of the States and give their suggestions to the Court. They shall also consider what institutional mechanisms can be put in place to ensure that this Court is not compelled to intervene every time in respect of pay scales and conditions of service in respect of the Subordinate Judiciary.”

14.2 The experience reveals that for about a year or more, the Supreme Court keeps dealing with the issues of implementation by various States and giving necessary directives to expedite the process. That apart, interlocutory applications are filed after considerable time complaining that due benefit has not been given by the Government concerned on a misunderstanding of the recommendation/order. The Supreme Court had occasion to deal with the IAs filed regarding re-fixation of pension even till 2018. Issues like non-extension of medical facilities to the retired Judges was the subject- matter of litigation in some of the High Courts till recently.

14.3 At the consultative conferences held by the Commission, the lingering issues concerning implementation aspects have been brought to the notice of the Commission. The ideal situation would be that the apex Court

shall not be too often burdened with applications seeking implementation of the judgment/orders approving or modifying the recommendations made by the Judicial Pay Commission. While continued monitoring for years together by the apex Court needs to be avoided to save the precious time of the Court, at the same time, it shall be ensured that the aggrieved Judicial officers shall have easy access to a forum to complain against non-implementation or misinterpretation. As regards implementation, the problems are twofold: One is the complaint regarding delay in implementation including inadequate implementation by the States; second, the grievance that the implementation is not in conformity with the recommendations of the Commission read with the directives of the Hon'ble Court. There shall be a separate institutional mechanism to deal with such issues.

14.4 Having given thought to this problem, this Commission is of the view that a Grievance Redressal Committee shall be put in place soon after the Hon'ble Court passes the order approving or modifying the recommendations.

14.5 Accordingly, the following recommendations are made:

- i. One member Grievance Redressal Committee headed by a retired Supreme Court Judge preferably stationed in Delhi/(NCR) shall be constituted 3 months after the Judicial order is passed by the Supreme Court on receiving the report of NJPC.
- ii. A Grievance Redressal Cell headed by Registrar/Addl. Registrar of Supreme Court to be created.

- iii. The Grievance Redressal Cell shall be dealing with the grievances/complaints regarding implementation of the report, as approved by the Supreme Court.
- iv. The Grievance Redressal Cell shall be the Secretariat of the Grievance Redressal Committee.
- v. All individuals/Associations having grievances, may submit their grievances in writing to the Registrar-General of the concerned High Court with advance copy to the Grievance Redressal Cell in the Supreme Court.
- vi. Registrar-General of High Court to process and attempt to settle the grievance at the State Level or may forward the same to the Grievance Redressal Cell along with the report of action taken within 60 days.
- vii. The Grievance Redressal Committee to take a decision after hearing the stakeholders concerned.
- viii. Any individual/association or the State or Union Government shall not approach the Supreme Court or the High Court before the decision of the Grievance Redressal Committee.
- ix. The decision of the Grievance Redressal Committee to be implemented by all concerned, subject to modification if any, by the Supreme Court only.
- x. The Grievance Redressal Committee shall be empowered to take the decision in connection with the grievance placed before it only in accordance with the report of National Judicial Pay Commission read with the judgment/order of Supreme Court approving and modifying the recommendations of the Commission.
- xi. State Governments/UTs/High Courts shall render necessary assistance to the Grievance Redressal Committee including ensuring prompt response and action with regard to the grievance pointed out by Grievance Redressal Committee.
- xii. The Member of Grievance Redressal Committee shall draw pay and DA equivalent to what the Supreme Court Judge draws subject to deduction of pension. As and when required, the Registry of

Supreme Court may provide secretarial assistance by way of deputing a Court officer (proficient in stenography) who can also act as PS to the Member of GRC.

- xiii. The Grievance Redressal Committee may, if necessary, hold the hearing at the State concerned.

MECHANISMS TO DETERMINE JUDGES' SALARY IN OTHER COUNTRIES:

15. INTRODUCTORY:

15.1 Various countries have created mechanisms to determine salaries or compensation or remuneration of Judges. The terminology used to describe the pay and emoluments of Judges varies from country to country. In U.S.A. and Canada the term "Judicial Compensation" is used and the bodies constituted to determine the same are termed as "Judicial Compensation Commission". In Australia and its constituent States and New Zealand, the pay and emoluments are termed as "Remuneration" and there are "Remuneration Tribunals". In United Kingdom, there is "Senior Service Salaries Review Board".

15.2 The said mechanisms take the form of permanent review bodies or Commissions or Tribunals constituted periodically. The members of the said Commissions or Bodies are appointed by the Governments from various fields including the Judiciary. They are established through legislation in some countries and in others, they are advisory bodies formed by the Government. Not all of them are formed to deal with Judicial compensation or remuneration exclusively.

15.3 There is no mechanism exclusively for the members of Judicial Service in the neighboring SAARC countries. The Commission has given certain details regarding the salary and allowances of Judiciary in those countries in Chapter 2 of Volume I Part I of the Report.

16. We shall now briefly refer to the mechanisms prevalent in certain countries.

I. AUSTRALIA:

I.1 The Remuneration Tribunal that determines the Judicial salaries of the federal Judges is an independent statutory authority established under the Remuneration Tribunal Act, 1973. The Tribunal consists of three part-time members appointed by the Governor-General. The Remuneration Tribunal Act of 1973 was amended in 1989 to make a specific provision that the determination of Judicial remuneration by the Tribunal is subject to disallowance by either House of the Parliament. The Tribunal also makes recommendations of the remuneration of Members of Parliament, Ministers, senior public servants and other public office holders and federal Judges. The determination is made annually. The Tribunal's determination must be tabled before both the Houses of the federal Parliament and may be disallowed by either House as per Section 7 (8) of the said Act.

II. CANADA:

II.1 The Judicial Compensation and Benefits Commission established under Section 26 of the Judges Act, 1985 enquires into adequacy of the salaries and other amounts payable to federally appointed Judges in Canada. The first Commission was established in 1999. The Commission is required to complete an enquiry into Judicial remuneration and make recommendations every four years. The Commission consists of three members appointed by the Governor-in-Council. One is nominated by the Judiciary. The second member is nominated by the Minister of Justice and Attorney-General, Canada. These two members together nominate a third member who shall act as the Chairperson of the Commission. The tenure of members is four years.

II.2 The factors to be taken into account in conducting its enquiry are broadly indicated in Section 26, 1.1. of the Judges Act. The Federal Government and all provinces have since established independent Commissions after the judgment of Canadian Supreme Court in Reference: *Re: Remuneration of Judges of the Provincial Court of Prince Edward Island* (1997 3 SCR 3). The Canadian Supreme Court held that the Legislature and Government are under a constitutional obligation to refer questions relating to Judges' benefits to an independent Commission. The Government was not obliged to accept the recommendations, but if did not do so, it must be able to justify its action on the basis of rationality. The Commission has to submit the report containing its recommendations to the Minister of Justice of

Canada. The Minister of Justice shall respond to the report of the Commission within four months after receiving it. It is laid down in Section 26 (7) of the Judges Act: "Following that response, if applicable he or she shall, within a reasonable period, cause to be prepared and introduced a bill to implement the response."

II.3 In the case of *Provincial Court Judges' Association of New Brunswick v. New Brunswick* (Minister of Justice etc.), 2005 (2) SCR 286, the Canadian Supreme Court discussed the question of judicial independence in the context of Judicial remuneration and clarified the principles of the 'Compensation Commission Process' in order to avoid future conflicts. The Court reiterated the principle that the Government's response to the Commission's recommendations is subject to a limited form of Judicial review by the superior Courts. While reiterating that the Judicial salaries can be maintained or changed only by a recourse to the Commission that is independent, objective and effective, it was pointed out that a Commission report is consultative and not binding. At the same time, its recommendations must be given weight and the Government retains the power to depart from the recommendations as long as it justifies its decision with rational reasons in its response to the recommendations. It was observed that the Government's response was subject to a limited form of Judicial review by the superior Courts. The scope of Judicial review was laid down by the Canadian Supreme Court succinctly in the following words:

"The reviewing Court is not asked to determine the adequacy of Judicial remuneration but must focus on the Government's response and as to whether the purpose of the Commission process has been achieved".

II.4 The Court observed that a three-stage analysis for determining the rationality of the Governments response should be followed. The third point of analysis has been stated thus: "(3) Viewed globally, has the Commission process been respected and have the purposes of the Commission- pressing judicial independence and depoliticizing the settling of judicial remuneration - been achieved?"

II.5 It was also pointed out that Courts should avoid issuing specific orders to make the recommendations binding unless the governing statutory scheme gives them that option.

II.6 Having thus laid down the parameters of the judicial scrutiny, the Supreme Court proceeded to examine the validity of the Government's response in various States to the Judicial Compensation Committee's recommendations.

III. HONG KONG:

III.1 There are four advisory bodies which provide independent advice to the Chief Executive of Hong Kong on matters relating to pay, pension and conditions of service of holders of public offices and salary structure of the members of various services. One of the advisory bodies is a Standing Committee on Judicial salaries and Conditions of service. *Inter alia*,

as per the terms of reference, the said Committee has "to keep under review the structure including the salary levels, and conditions of service and benefits other than salary appropriate to each rank of Judges and Judicial officers". If the Committee discovers any anomalies in the internal structure of Judiciary, it may comment upon and refer such matters to the Chief Justice.

III.2 The Committee consists of Chairman and four members appointed by the Chief Executive and they are not from the judiciary. A lawyer, an accountant and business person are among the members of Committee. The pay revisions and changes in conditions of service where additional expenditure is involved, require the approval by the Finance Committee of the Legislative Council.

III.3 In the year 2003, the Judiciary took the initiative to obtain a Consultancy report from Sir Anthony Mason (former Chief justice of Australia) on matters relating to judicial remuneration and conditions of service in keeping with the principle of judicial independence. Sir Mason presented a comprehensive report bearing the title "Consultancy Report: System for determination of judicial Remuneration". The report is available on www.judiciary.hk/doc/en/publications/consultancyreporte.pdf. The judiciary's proposals based on the Mason Report were referred to the Standing Committee on Judicial Salaries and Conditions of Service by the Chief Executive to report on the acceptability of the proposals. The Committee was also required to undertake a study on the institutional structure and

mechanism for determination of judicial salary. The Standing Committee submitted its report in November 2005. In paragraph 3 of the said report, there is an affirmation of the principle that the determination of judicial salaries shall be such as to promote the independence of judiciary. The Committee agreed with the thrust of recommendation two to nine in Mason's report. However, on the first issue regarding the reduction of judicial salaries, there was a qualified endorsement of Sir Mason's suggestion and the Committee recommended that for the time being, the judicial pay may be frozen at the present level and be reviewed when the new institutional structure is put in place. Recommendation No.3 in Sir Mason's report was that judicial remuneration shall be fixed by the Executive after considering recommendations by an independent body established by statute.

III.4 As regards the institutional structure, the following recommendation was made by the Committee in its report of November 2005 "We recommend that there should be an independent body having a fair and transparent methodology to advise on the determination and adjustment of judicial remuneration. The Body should comprise seven non-official members (including two practising lawyers) whose terms of appointment should be staggered. The body should, in due course, be established by statute. The existing Judicial Committee could continue to operate, with expanded membership and more detailed terms of reference, and be transformed into a statutory body through introducing legislation in due course".

III.5 However no such statutory body has been constituted so far. The review of judicial remuneration and allied aspects is still being done by the Standing Committee on Judicial Salaries and Conditions of Service almost annually. The same terms of reference continue till date. The latest report is of the year 2019. The chair of the Standing Committee is Prof. Wong Yuk-shan. The Committee recommended that judicial salaries should be increased by 5.63% with effect from 1st April 2019. In the concluding para, it was observed that in the further reviews, the Judicial Committee will continue to adopt a balanced approach having regard to a basket of factors including the recruitment situation.

IV. KENYA:

IV.1 The Judicial Service Commission (JSC) of Kenya was established under Article 171 of the Constitution of Kenya and it is headed by the Chief Justice. A Judge of the Supreme Court, a Judge of Court of Appeals, one High Court Judge, the Attorney-General, one person nominated by Public Service Commission, two members (one being a woman) elected by the Association of Judges & Magistrates, two advocates (one being a woman) with 15 years experience lawyers) appointed by the President with the approval of National Assembly are its members. The Chairman, Attorney General and the Members of the Commission hold office for a term of five years and can also be re-nominated for a further term of five years. Apart from elected by the statutory body concerning advocates and two members (not being reviewing and

recommending the conditions of service (other than their remuneration) of Judges and Judicial officers, the Commission makes recommendations to the President in regard to appointment of the Judges. It can also enquire into complaints and initiate disciplinary action against the Court staff, Magistrates and other Judicial officers in the manner prescribed by the Parliamentary enactment. The Commission is also in charge of implementing continuing education and training programme for Judges and Judicial officers. It can advise the Government to take measures to improve the efficiency of the administration of justice.

IV.2 There is a separate Commission known as 'The Salaries and Remuneration Commission' established under Article 230 of the Kenyan Constitution read with the Parliamentary enactment of 2011. The said Commission determines and recommends the salaries and remuneration to be paid to State officers and other public officers (including Judges) and is also entrusted with the task of reviewing pensions. The members of this Commission are drawn from various Service Commissions including Judicial Service Commission, the Trade unions and Professional bodies.

V. NEW ZEALAND:

V.1 The Remuneration Authority Act, 1977 has established a Remuneration Authority to determine the salaries and allowances of the Government servants, Legislature and Judges. According to Section 5, the

Authority shall consist of 3-Members appointed by the Governor General by Order in Council. The Members have a term of three years. Section 12-B of the Act sets out the functions of this Authority in relation to Judicial salaries and superannuation rights and obligations of the Judges of Supreme Court, High Court, Court of Appeals and the District Court Judges of various designations. The Authority makes the determinations which are final and an Order in Council is not required to give effect to the same. Section 14 lays down in specific terms that it would be unlawful for any person to act contrary to a determination made under the Act. The determinations remain in force until superseded by another determination.

VI. UNITED KINGDOM:

VI.1 Judicial salaries among others are determined by the "Review Body on Senior Salaries" established by Executive appointment. The Review Body provides independent advice to the Prime Minister, the Lord Chancellor, the Secretaries of Defence, Health and Home and the Minister of Justice for Northern Ireland on the remuneration of holders of Judicial office, senior civil servants, senior officers of the armed forces, senior police officers and 'very senior' Managers in the NHS in England, Wales and Northern Ireland. It appears that the number of members in the Review Body fluctuates as in the year 2009 there were 10 members; in 2015 and 2019 there were six members; in 2018 there were 7 members and in 2020 there are 8 members. The members are from different backgrounds. The Review Body of 2018

consisting of 7 members (including the Chair of the Judicial Sub-Committee) submitted Report No. 90 in October, 2018 which is titled as "Supplement to the Fortieth Annual Report on Senior Salaries: Major Review of the judicial salary structure". It was presented to the Parliament by the Prime Minister in October, 2018. The Judicial Sub-Committee, after consulting an Advisory and Evidence group prepares a report on the judicial salaries which is then considered by the entire Committee (Review Body) before it finalizes the report. The determination is done every five years. The recommendations of the Review Body are made to the Government and the reports are tabled before the Parliament. If the Government accepts recommendations, the necessary appropriations have to be carried out by the Parliament.

VI.2 The Terms of Reference required the Review Body on Senior Salaries to carry out a review of the salary structure for the judiciary across the United Kingdom. Some of the purposes of the review, as stated in the Terms of Reference, are to:

- determine whether the current structure of judicial salary groups is fit for purpose in the light of future plans for the justice system in each jurisdiction and recent and expected changes in the nature of work undertaken at different levels;
- determine whether the structure of judicial salary groups can be simplified;
- consider evidence on the appropriate grouping of judicial posts;

- consider whether total remuneration for each salary group is correctly set, including in relation to that of appropriate recruitment pools in the legal profession, in order to recruit high caliber office holders at all levels of the judiciary;
- consider whether total remuneration for each salary group is correctly set, including in relation to senior people elsewhere in the public sector, bearing in mind the unique responsibilities and constraints of judicial office, in order to retain and motivate high caliber office holders at all levels of the judiciary;
- consider how best to reward and incentivise judicial leadership.

VI.3 This is the first 'major review' undertaken after the structural and constitutional changes to the Judiciary since 2011 review.

VI.4 The list of judicial offices in scope of the Major Review is in Appendix E. There are 7 salary groups (sg for short) in that list. Actually, there are 9 because there are two subdivisions in salary groups 5 and 6. Lord Chief Justice of England and Wales is in sg 1. President of the Supreme Court and Master of Rolls are in sg 1.1. Chancellor of the High Court, Justices of the Supreme Court, President of Queen's Bench division, Senior President of Tribunals are in sg 2. Lord/Lady Justice of appeal and Inner House Judges of the Court of Session are in sg 3. High Court judges are in sg 4.

VI.5 There are as many as 62 judicial posts (including those attached to the Tribunals) in salary groups 5 to 7. Circuit Judges, District Judges, County Court Judges are among them.

VI.6 The Review Board has regrouped the posts in salary groups 5 to 7. The salary groups now put in place are I to VII (New Group). The examples of posts for which recommendations were made are as follows (vide Table 3.2):

- I. Lord Chief Justice of England and Wales
 - I.1 President of the Supreme Court; Master of Rolls
- II. Chancellor of High Court (Justices of the Supreme Court are also in this group).
- III. Lord/Lady Justice of Appeal
- IV High Court Judge
- V Senior Circuit Judge, Upper Tribunal Judge, Chamber Presidents of First-tier Tribunals
- VI First tier Tribunal judge, District Judge, Employment Judge
- VII New Group: Adjudicator parking and Bus Lanes (Scotland)

VI.7 Apart from the above categories, the salary determination extended to **"Fee paid offices"** who are in large numbers - perhaps more than the regular salaried judges. Fee-paid Judges are paid at the rate that is generally based on the salary of their comparator Judge. They work in the Courts as well as in the Tribunals. The list of such Fee-paid Offices starts with Lord/Lady Justice of Appeal (sitting in retirement) and High Court Judge (sitting in retirement). The list ends with Legal Member, Appeal Tribunals.

VI.8 In the opening page, under the head "Key report findings", it was recorded:

"We are therefore recommending significant increases in the remuneration of Judges, with the largest pay increases going where there is the most obvious recruitment need. In reaching our conclusions, we have looked at the needs of different levels of judiciary. We have also taken account of the highvalue of the 1993 Judicial Pension Scheme (JUPRA) to judges who were in membership, compared to the 2015 New Judicial Pension Scheme (NJPS)".

VI.9 The recommended pay rates for all Judges from 1 April 2018 were given in Table 5.3 (at P138 of Report) under two heads: Salary for JUPRA Judges and salary for NJPS Judges. It covers salary groups I to VII.

VI.10 It was observed at para 6.13 that "the value of judicial pension has loomed large in this review". At para 5.40, it was emphasised that "the single most significant factor affecting the total net remuneration in the judiciary is the change to NJPS from the 1993 Judicial Pension Scheme". The material difference between the two pension schemes was then explained in para 5.41 (New Judicial Pension Scheme was brought into effect in 2015).

VI.11 In this background, the Review Board recommended that from April 2018 the group IV, V and VI Judges in NJPS shall get an increase of 32%, 22% and 8% respectively. All judges in new groups V and VI are eligible for 'leadership supplements', regardless of pension scheme membership. The resultant salary figure for these categories of Judges works out to £240,000 per annum for Group IV, £190,000 for group V and £137,000 for group VI

Judges. As regards judges in JUPRA pension scheme, an increase of 2.5% of base salaries from April 2018 was recommended.

VI.12 Problems relating to recruitment and early retirement of judges governed by JUPRA were discussed by the Review Board. As regards the retirement age, the Review Board was of the view that the issue of change of the retirement age of 70 merits urgent and serious consideration. Pertinent observations on the working environment and career management within the judiciary were made.

VI.13 Section 34 of Part 3 of Constitutional Reform Act, 2005 provides that the amount of the salary of Supreme Court Judges is to be determined by Lord Chancellor with the agreement of the Treasury and determination under sub-section (2) may increase but not reduce the amount. The allowances are also determined by Lord Chancellor. The Lord Chancellor is guided by the views of the Review Body and/or other expert bodies.

VII. UNITED STATES OF AMERICA:

VII.1 There is no distinct mechanism for determination of salaries and allowances of Federal Judges. However, in many States, there are judicial Compensation Commissions created by statute for determining the 'compensation' in respect of various Judges including the Supreme Court Judges of the concerned State. The Commissions examine the adequacy of

and need for adjustment of judicial compensation for each of the following four to six fiscal years. Such Judicial compensation Commissions (JCCs, for short) established under statutes are in place in the States of Alabama, Maryland, New Mexico, New York, Texas, Kentucky, Louisiana, West Virginia, Georgia, Connecticut and Oklahoma. In Iowa, the provision relating to JCC was repealed in 2008. In Mississippi, a Bill has been prepared to create a new Code section that would require State Personnel Board to issue a report every four years examining and recommending adequate level of compensation for County-court Judges and other Judges upto the level of Supreme Court Judges. In other States, such as New Jersey, Delaware, Minnesota, the Salary Review Commission or the Compensation Council sends up recommendations determining the compensation/salary payable to the State officers including Judges. The determinations made by almost all the Compensation Councils are advisory and serve as recommendation for legislative action. However, in New York, the recommendations of the Commission on Judicial Compensation would have the force of law.

VII.2 The number of members appointed to the Commissions varies between five and nine. However, in Louisiana, there are 13 members in the Commission and two among them are the nominees of Chief Justice of Supreme Court and one is a nominee to the Conference of Court of Appeals. Under most of the statutes, the members elect the Chairperson. In New Mexico, the dean of University

School of Law will be the Chairperson who can vote only in the event of a tie vote. In W. Virginia too, the Dean of University College of Law is a member. The President of State Bar is one of the members in New Mexico.

VII.3 In many States, most of the members of Judicial Compensation Commission are appointed/nominated by the Governor and the heads of Legislative Bodies. However, the Chief Justice of Supreme Court (of a State) is empowered to nominate one or two members to the JCC. In the Compensation Council of Minnesota (not exclusive to Judiciary), out of 16 members, 8 non-Judges are nominated by the Chief Justice. In the State of Georgia, the Chief Justice has to nominate a serving or retired Judge. In New York, two out of seven members are nominated by the Chief Judge of Court of Appeals. In Texas, the Commission is composed of 9 members who are appointed by the Governor with the advice and consent of Senate to serve six-year terms. Not more than 3 members can be legal practitioners in that Commission.

VII.4 In Oklahoma, it is interesting to note that a member to be appointed by Chief Justice of Supreme Court shall be from agriculture, the members appointed by the President of Senate shall be from labour and civic organizations. The Governor appoints two members from the manufacturing and professional fields. No active or

retired Judge or Attorney can serve on the Board of Judicial Compensation Commission in Oklahoma. In Arizona and Washington, there are Commissions exclusively for fixing the salaries of the holders of elective State Offices including the Judges.

Annexure : List of sources/Links

END OF PART-II

SHRI R. BASANT
Former Judge High Court of Kerala
MEMBER

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

SHRI VINAY KUMAR GUPTA
District Judge, Delhi
MEMBER-SECRETARY

Sources: (web site links) for each country.

- 1. AUSTRALIA**
Remuneration Tribunal

<https://www.remtribunal.gov.au/>
- 2. CANADA**
Judicial Compensation and Benefits Commission

http://www.quadcom.gc.ca/pg_JcJc_QC_01-eng.php
- 3. HONG KONG**
Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service (JSSCS)

<https://www.jsscs.gov.hk/en/welcome.htm>

Standing Committee on Judicial salaries and Conditions of service

<https://www.jsscs.gov.hk/en/jscs/jscs.htm>
- 4. KENYA**
Judicial Service Commission

<https://www.jsc.go.ke/>

The Salaries and Remuneration Commission

<https://src.go.ke/>
- 5. NEW ZEALAND**
Remuneration Authority

<https://www.remauthority.govt.nz/>
- 6. UNITED KINGDOM**
Review Body on Senior Salaries

<https://www.gov.uk/government/organisations/review-body-on-senior-salaries>

“Supplement to the Fortieth Annual Report on Senior Salaries”; “Major Review of the judicial salary structure”

<https://www.gov.uk/government/publications/major-review-of-the-judicial-salary-structure-2018>

7. UNITED STATES OF AMERICA

A) ARIZONA

<https://law.justia.com/constitution/arizona/5/12.htm>

<https://www.legis.nd.gov/files/resource/committee-memorandum/19326.pdf>

https://www.azleg.gov/const/arizona_constitution.pdf Article V Section 12 and Title 41-1904 of the Arizona Revised Statutes.

B) CONNECTICUT

<https://law.justia.com/codes/connecticut/2012/title-51/chapter-872/section-51-47c/>

C) DELAWARE

<https://delcode.delaware.gov/title29/c033/index.shtml>

D) GEORGIA

<https://law.justia.com/codes/georgia/2019/title-15/chapter-22/>

<https://cjcc.georgia.gov/press-releases/2015-12-18/report-judicial-district-attorney-circuit-public-defender-compensation>

E) LOUISIANA

<http://www.legis.la.gov/Legis/Law.aspx?d=77700>

F) MINNESOTA

<https://www.revisor.mn.gov/statutes/cite/15a.082>

G) NEW JERSEY

<https://law.justia.com/codes/new-jersey/2009/title-52/section-52-14/52-14-15-115/>
<https://lis.njleg.state.nj.us/nxt/gateway.dll?f=templates&fn=default.htm&vid=Publish:10.1048/Enu>

H) NEW MEXICO

<https://www.nmcourts.gov/judicial-compensation-commission.aspx>

I) NEW YORK

www.nyscommissiononcompensation.org

J) OKLAHOMA

<https://law.justia.com/codes/oklahoma/2014/title-20/section-20-3.3/>

K) TEXAS

<https://www.txcourts.gov/jcc/>

L) WASHINGTON

<https://salaries.wa.gov/about-us/overview-commission>

M) WEST VIRGINIA

https://www.wvlegislature.gov/Interims/judicial_comp.cfm

<https://www.wvlegislature.gov/WVCODE/Code.cfm?chap=04&art=2C#02C>