

MAIN PAGE

As per [Resolution](#) of Ministry of Law, Justice and Company Affairs (Department of Justice) the First National Judicial Pay Commission was constituted by the Government of India on 21st March 1996. It is headed by [Justice Jagannatha Shetty](#), Former Judge, Supreme Court of India. The members of the Commission are [Justice P.K. Bahri \(Rtd.\)](#), Former Judge of the Delhi High Court, and [Justice A.B. Murgod \(Rtd.\)](#), Former Judge of the Karnataka High Court. The Commission submitted its Report regarding Pay Structure of the Judicial Officers of the Subordinate Judiciary of the country during November 1999. Presently, it is examining the grievances of the staff of the Subordinate Judiciary as per the direction of the Supreme Court.

PREFACE

1. Our Constitution makers were keen to ensure that the Judiciary is independent of the Executive. The Constitution has tried to insulate the Judiciary from outside influence both from the Executive and the Legislature. Independence of judiciary is a basic structure of the Constitution. Independence of the judiciary constitutes the foundation on which rests the edifice of our democratic polity.
2. With regard to subordinate Courts, the Constitution contains a group of Articles 233 to 237 in Chapter VI in Part VI under the heading 'Subordinate Courts'. These provisions were also intended to ensure the independence of the Subordinate Judiciary.
3. Courts, like all other branches of Government, belong to people. Indeed, of all branches of Government, Courts can be seen as the most open. Yet, the people know less about the Courts than they do about the Executive and the Legislature. People blame Courts for delay in disposal of cases; perhaps, not knowing the handicaps with which Courts function.
4. The general concept of judicial independence is that a Judge should be free of any pressure from the Government or any one else as to how to decide any particular case; for that reason, a Judge's salary is not dependent on the Executive decision and his conditions of service are secured and not to be varied at the whim of the Executive. This is the general concept of judicial

independence.

5. Ancillary to this concept, there is the obligation of the Judge to provide speedy and fair trial to litigants. The speedy trial is recognised as a fundamental right in our Constitution.

1. S.P. Gupta v. Union of India: 1981 Supp. S.C. 87, 408.

2. Union of India & Others v. Bonnerjea & Another (1995) 6 SCC 765.

6. The fact remains that in spite of the best efforts of Judges, the judiciary has not been able to provide speedy justice. The reasons are manifold. To name a few:-

i) Things have changed in the recent past, particularly in the last 20 years. There has been a great upsurge in crime and criminal litigations, and equally in the number of civil disputes. So to say, there is unmanageable docket explosion in every court.

ii) To meet this challenge, there has to be a large increase in the number of judges, courts, court staff and other infrastructure. But no such increase has been made. Even in the existing courts, the working conditions in most of them are unsatisfactory. The courts have insufficient staff and inadequate infrastructure. They are provided with old typewriters. They do not have enough stationery for their day-to-day work.

iii) They do not have financial independence. Their finance is under the Executive control. They are not even provided with enough contingency funds to meet the requirements of the day-to-day goings.

iv) In every Bar, the new members are added each year. But either in the Bar room or in the Court Halls, there are no additional facilities. Even the Court Halls are not properly furnished. Most of the advocates who are required to attend courts have to stand all the while waiting for their cases to be called.

v) The law books are the tools of the trade for judges. But the judges are not provided with the up-to-date statutes or law books and commentaries either in their own Court Library or in their individual domestic library. The judges are generally under the mercy of lawyers to provide copies of the decisions or enactments relied during the course of the argument. Some judges write

judgments in their own hands for want of stenographers.

vi) The judges are not given proper training either at the induction level or periodical refresher courses to update their knowledge and technique of fast track disposal.

vii) The judges apply the same old procedure and the same old Court Management and Case Management.

viii) There is no Information Technology for Court Management in most of the States. There is no Data Base application for cases. No Scanner or Electronic Filing and for Retrieving Documents etc., the means which are commonly used in all Industrial houses and business establishments.

7. Commenting on the similar conditions in the British justice system which existed at one time, of course long long ago, **Lord Devlin** then said:

"If our business methods were as antiquated as our legal system, we would have become a bankrupt nation long back."

8. These deficiencies are indeed, insidious threat to the independence of the judicial system, though not to the independence of individual judges who operate the system. The independence of the legal system does not depend entirely on the independence of each individual judge. It also depends upon the manner in which the system is operated, and how judges are provided for. Some of these aspects have been dealt with by the Supreme Court in the All India Judges' Association Case³. The Court observed:

" Under the Constitution, the judiciary is above the administrative executive and any attempt to place it on par with the executive has to be abandoned." "The judges are not employees and judicial service is not service in the sense of 'employment'. As members of the judiciary, they exercise

3. All India Judges' Association Case - AIR 1992 SC 165 and AIR 1993 SC

2493, 2510.

the sovereign judicial power of the State. They are holders of public offices in the same way as the Members of the Council of Ministers and the Members of the Legislature."

" The service conditions of the judges should not be linked to those of the executives and the service conditions of the judges have to be revised to meet the special needs of the judicial service." "The Judicial officers throughout the country perform the work of the same nature and, therefore, their service conditions have to be uniform and it should be examined by a separate Commission and the State should not make a grievance if their service conditions are improved." "The exertions involved in the duties of the Judge cannot be compared with the duties of other services and the judicial service by its very nature stands on a different footing and should be treated as such."

9. The decision of the Supreme Court³ has given a new life support to the subordinate judiciary of this country. There appears to be no such decision in any of the Commonwealth countries, except a recent judgment⁴ of the Canadian Supreme Court, in which it was observed that it is imperative to have a "judicial compensation commission" for provincial court judges in order to protect the courts from political interference. It was also observed that the Commission must be independent, objective and effective to determine the judicial remuneration.

10. The involvement of an independent Commission is likely to promote the independence of judiciary. It provides a forum in which the members of the

4. Re. In the matter of a reference from the Lt. Governor in Council regarding the **Remuneration of Judges of the Provincial Courts dt. 18 September 1997.**

judiciary can fearlessly raise concerns about their conditions of service which they could not have raised at the bargaining table with the Executive or the Legislature.

11. Moreover, the Commission like this serves as an institutional sieve which protects the Courts from political interference

through economic manipulation, a danger which inheres in salary negotiation..

12. The Judiciary's reliance upon Government for periodic increases in remuneration entails an obvious potential for impairment of judicial independence. As the Chief Justice of South Australia has noted⁵:

"Those who control the purse strings will always have some capacity to influence the actions of those who are dependent upon the contents of the purse There can be no doubt that executive government control over judicial salary fixation is always at least an incipient threat to judicial independence."

As a Canadian Judge⁶ put it more bluntly:

"When you are reduced to begging for a decent salary, how can you be truly independent."

13. This Commission, by survey of the subordinate courts, has found that there is a large scale dissatisfaction in the Subordinate Judiciary all over the country.

14. The major cause for this dissatisfaction appears to be the burgeoning judicial work-load and the financial pressure due to inadequate compensation.

15. We want to impress upon the Government that the debilitating effects of inadequate remuneration of the judges in the long run can only lead to worsening

5. See: Report of the Remuneration Tribunal of Commonwealth of Australia, 1997, p.33.

6. Judge Francois-Beaudoin, President of the Conference des juges du Québec.

morale and eroding commitment to service. It is the universal experience that men and women who feel that they are underpaid for the demanding work they do, would generally suffer from low morale and declining sense of commitment to service. This is, indeed, happening in many State Judiciaries. The losers are, however, not the judges in the ultimate analysis, rather it is the public. The public have to go before courts for critical decisions in cases affecting law and order, cases that affect their civil and

legal rights, cases involving their lives and liberties and cases relating to their welfare and their children's welfare, etc.. We can ill-afford to entrust such cases in the hands of dissatisfied judges.

16. It is, indeed, appropriate to recall the warning given by Senator Henry Clay during the debate in the House of Representatives⁷:

"The labourer is worthy of his hire; and if you do not give him the wages of honesty, it is to be apprehended the wages of corruption may, in process of time, come to be sought."

17. Therefore, improving the service conditions of our judges is not in the interest of judges alone, but in the interest of sound and efficient administration of justice as well. That would ultimately benefit all of us and more so the Government, because the Government is a litigant in 60 per cent of cases that come before courts.

18. There is yet another aspect. The vast moral authority of courts in our system is bound up in the public mind with the visible adjunct of those who dispense justice, including certain way of living and the manner in which they commute to courts. This concern was illustrated well by a 1949 memorandum from three English Country Court Judges, complaining about low salary⁸:

7. The Annals of Congress report the following debate in the House of Representatives in March 1816, between Henry Clay (Whig Party, 1815-1821) and John C. Calhoun (War Democrat, 1811-1817).

8. Independence of Judiciary: The view from the Lord Chancellor's office, By Robert Stevense, p. 121.

"If judges have to live in mean houses, wear cheap clothes not only would their work suffer by reason of their mental discomfort but the present high estimation in which the judiciary is everywhere held would also suffer. If the members of the judiciary are not regarded with respect, their impartiality will, such is human nature, come to be doubted. . . ."

19. In urging to boost judicial salaries, we by no means are suggesting that salaries should be set at a level of the income of the most prosperous and successful advocates. **We are only trying to set the salary at a level that allows aspirants with modest**

backgrounds, and with family responsibilities, to accept the challenge of judicial service and a level that does not progressively penalise those dedicated individuals who choose to serve. We are trying to be fair to those who are making sacrifices – in terms of loneliness and general withdrawal from community affairs – to serve the public.

20. There is no better way to sum up our aim and object than to put it in the wise words of Churchill⁹:

"Our aim is not to make our judges wealthy men, but to satisfy their needs to maintain a modest but dignified way of life suited to the gravity, and indeed, the majesty, of the duties they discharge."

21. These are the principal reasons with which we have suggested certain emoluments to judicial officers. After all, we do not spend much on our judiciary. The expenditure on judiciary in our country in terms of GNP is relatively low. It is not more than 0.2 per cent. In Korea, it is more than 0.2 per cent; in Singapore,

9. Ibid 4, p. 127.

it is 1.2 per cent; in U.K. it is 4.3 per cent; and in U.S.A. it is 1.4 per cent.¹⁰ Unlike in the other departments of the Government, more than half of the amount which is spent on Indian Judiciary is raised from the Judiciary itself through collection of court fees, stamp duty and miscellaneous matters. Therefore, any increase in the salary structure of the Judicial Officers cannot be considered as a burden to the State.

22. That is one aspect. The other aspect relates to the public criticism regarding the functioning of the judiciary. The public criticism includes among others, the delay in disposal of cases; unsatisfactory judgments and creeping corruption in some quarters. The judiciary cannot afford to be indifferent to these criticisms. The costs of providing justice is like other calls on the public revenues. All persons and departments who utilise the public revenue are accountable to the public. The judges cannot be an exception to this recognised principle. They are equally accountable for their acts and omissions both on the Bench and off the Bench. It is, therefore, necessary for judges, individually and collectively, to ensure that no such criticism is levelled against them

or against the system.

23. It is needless to state that the High Court has a greater responsibility in the proper functioning of the subordinate courts. The High Court which has absolute control over the members of the Subordinate Judiciary must watch the watchmen to ensure that the public confidence in the judiciary is not diminished. "Misbehaviour by any judge, whether it takes place on the Bench or off the Bench, undermines public confidence in the administration of justice and also damages public respect for the law of the land, if nothing is seen to be done about it,

10. See: Report submitted by Dr. N.L. Mitra, Director, National Law School of India University, Bangalore, to the Commission p. 195-196.

the damage goes unrepaired"¹¹. Therefore, the High Court must have periodical and meaningful inspections over the subordinate courts. Even surprise inspections may be required. The Vigilance Cell of the High Court manned by competent judicial officers may be given greater power to enquire and investigate the complaints against the Judicial Officers.

24. The review of all the Judicial Officers at the age of 50, 55 and 60 years for compulsory retirement by the procedure prescribed by the respective Service Rules should be undertaken regularly. There should be continuing Committee of Senior Judges of the High Court headed by the Chief Justice for this purpose of review.

25. The High Court, if we may say so, should be ruthless in taking actions against the indolent and undesirable elements.

26. We trust and hope that this Report awakens the concerned to the needs of the whole process of justice delivery system and inspires Judicial Officers to rededicate themselves to respond positively to meet the challenges of the new millennium.

Justice K. Jagannatha Shetty

Former Judge, Supreme Court of India

Chairman

Delhi High Court Judge,
Member

Justice P.K. Bahri (Rtd.)
Karnataka High Court
Member-Secretary

Justice A.B. Murgod (Rtd.) Judge,

11. Jackson's Machinery of Justice by J.R. Spencer: 8th Ed., p. 369-370.

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Mr. K.R. Chamayya, initial Member-Secretary of the Commission, even after he left the Commission has been kind enough to associate himself with the on-going work of the Commission and we are obliged to him for preparing drafts of model Civil Courts Act, model Judicial Service Rules including Conduct Rules for Judges and Rules for Recruitment of Judges of Family Courts.

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The central feature of the preparation of the Report has been the inhouse hard and sustained work from our limited staff, who are indeed, the unsung heroes, details of whom are in the Annexure. They took pride in working overtime with a sense of involvement in the preparation of the Report.

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Justice K. Jagannatha Shetty

Former Judge, Supreme Court of India

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Justice P.K. Bahri (Rtd.)

Delhi High Court Judge,

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CHAPTERS

1. Introduction

- [2. History of Judiciary \(States / UTs\)](#)
- [3. Judicial Structure & Remuneration - International Experience](#)
- [4. The Trial Judge is really 'On Trial'](#)
- [5. Rechristening of Subordinate Judiciary](#)
- [6. Equation of posts CMM and CJM](#)
- [7. Amalgamation of Multiple Cadres into three uniform cadres](#)
- [8. Recruitment to the cadre of Civil Judge \(Jr.Dn.\)-cum-Magistrate I Class](#)
- [9. Civil Judges \(Sr.Dn.\) - Whether it should be mixed cadre or purely promotional cadre](#)
- [10. Direct recruitment to the cadre of District Judges - Profile, Problems & Prognosis](#)

[Annexure - Draft Judicial Service Rules](#)

- [11. Whether the Lower Judicial Service Person could be made eligible for direct recruitment to the post of District Judges'](#)
- [12. Principles relating to Inter-Se Seniority between Direct Recruits and Promotees in the cadre of District Judges](#)
- [13. Judicial Training & Education - Status, Needs, Organisation & Strategies](#)
- [14. Principles Governing the Pay Structure of the Subordinate Judiciary](#)
- [15. Evolution of new Pay Scales](#)
- [16. The Administration of Justice in the States should be Joint Responsibility of the Centre and the States](#)

[Annexure - CHRONOLOGICAL LIST OF CENTRAL ACTS](#)

- [17. Assured Career Progression Scheme and Functional Scales](#)
- [18. Dearnes Allowance - A Perspective](#)
- [19. Allowances, Amenities and Advances](#)
- [20. Promotional Opportunities](#)
- [21. Superannuation Age of Judicial Officers](#)
- [22. Retirement Benefits](#)
- [23. Pension Structure for Past Pensioners](#)
- [24. Work Methos and Work Environment](#)
- [25. Information Technology in the Administration of Justice](#)
- [26. All India Judicial Service](#)

1. INTRODUCTION

Prenatal History of the Commission :

1.1 Though there has been separation of judiciary from the executive, and though the powers and functions of Judicial Officers are quite different from powers and functions of the Executive Officers, the service conditions of Judicial Officers, however, have been tagged with those of the corresponding Executive Officers. Even the scales of pay of the Judicial Officers were related or made identical with the pay scales of the corresponding level of Executive Officers of the State Civil Service.

1.2 The repeated efforts of the Judicial Officers to get an improved service conditions and delink their pay scales from the corresponding Executive Cadres became successful. The State Governments did not accede to their request.

All India Judges' Association v. Union of India¹ :

1.3 In 1989, the All India Judges' Association and its Working President, filed Writ Petition (Civil) No.1022 of 1989 before the Supreme Court of India under Article 32 of the Constitution seeking many reliefs as to improve the conditions of service of subordinate Judicial Officers all over the country. But during the hearing of the petition, only the following reliefs were highlighted:

- (i) Uniformity in the Judicial cadres in different States and Union Territories;
- (ii) An appropriate enhanced uniform age of retirement for the Judicial Officers through-out the country;
- (iii) Uniform pay scales as far as possible to be fixed;

1. All India Judges' Association v. Union of India, AIR 1992 SC 165=(1992) 1 SCC 119.

- (iv) Residential accommodation to be provided to every Judicial Officer;
 - (v) Transport facility to be made available and conveyance allowance provided;
 - (vi) Adequate perks by way of Library Allowance, Residential Office Allowance, and Sumptuary Allowance to be provided;
- and,
- (vii) Provision for inservice training to be made.

The Judgment of the Supreme Court in the All India Judges' Association Case :

1.4 A three Judge Bench of the Supreme Court, after hearing the representatives of the Union of India, all the States and Union Territories, disposed of the said Writ Petition by judgment dated 13 November 1991. Ranganatha Misra, Chief Justice, who spoke for the Bench observed:

- (a) An All India Judicial Service should be set up and the Union of India should take appropriate steps in this regard.
 - (b) Steps should be taken to bring about uniformity in designation of Officers both in civil and the criminal side by 31-3-1993.
 - (c) Retirement age of judicial officers be raised to 60 years and appropriate steps are to be taken by 31-12-1992.
- d. As and when the Pay Commissions / Committees are set up in the States and Union Territories, the question of appropriate pay scales of Judicial Officers be specifically referred and considered.
- (e) The District Judge and Chief Judicial Magistrate should be given Rs.300/- and Rs.200/- respectively as Sumptuary Allowance per month.

(f) Government accommodation for residence to every judicial officer has to be provided and until State accommodation is available, the State at the instance of the High Court should provide requisitioned accommodation according to entitlement and the recovery of not more than 12 ½% of salary of the Officer towards rent should be made and the balance must be met by the Exchequer.

(g) The residential accommodation must be spacious enough to have a separate room for office purpose.

(h) Every Judicial Officer must be provided with uniform pattern of small library in his official residence and the District Judge should have provision made in his budget for the purpose.

(i) Every District Judge and Chief Judicial Magistrate should have a State vehicle. Judicial Officers in sets of 5 should have a pool vehicle and others would be entitled to suitable loans to acquire two wheeler automobiles within different time-limits as specified.

(j) Inservice Institute should be set up within one year at the Central and State or Union Territory level.

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Review filed :

1.5 The Union of India and some State Governments being aggrieved by the aforesaid judgment preferred Review Petitions raising several objections including Constitutional questions. The objections may be summarised as under:

(i) The power to prescribe service conditions is vested in the executive and the legislature. The Supreme Court by issuing the directions in question prescribing the separate conditions of service has impinged upon the field exclusively assigned by the Constitution to the Executive and the legislature.

- (ii) The service conditions of the State employees and the Judicial Officers are periodically reviewed by independent Pay Commissions constituted for the purpose.
- (iii) There is nothing distinguishable about the judicial work, and if the directions given by the Supreme Court are followed, the other services would also demand similar service conditions. That would place a very heavy financial burden on the public exchequer.
- (iv) The financial resources of all the States are not equal and some of the States would be unable to bear the financial burden by giving higher pay scales and other perquisites to the Judicial Officers.

Review Judgment of the Supreme Court² :

1.6 Another three Judge Bench of the Supreme Court, Ranganatha Misra, Chief Justice, since retired, after carefully examining the contentions raised by the Review Petitioners, delivered the judgment on 24 August 1993 modifying some of the reliefs given in the original judgment, while giving additional reliefs, P.B. Sawant J., who spoke for the Bench, inter alia, observed:

"The Judicial Service is not service in the sense of 'employment'. The judges are not employees. As members of the judiciary they exercise the sovereign judicial power of the State. They are holders of the public offices in the same way as the members of the council of ministers and the members of the legislature. When it is said that in a democracy such as ours, the executive, the legislature and the judiciary constitute the three pillars of the State, what is intended to be conveyed is that the three essential functions of the State are entrusted to the three organs of the State and each one of them in turn represents the authority of the State. However, those

who exercise the State-power are the ministers, the legislators and the judges, and not the members of their staff who implement or assist in implementing their decisions."

The learned Judge continued:

" The Judges, at whatever level they may be, represent the State and its authority unlike the administrative executive or the members of the other services. The members of the other services, therefore, cannot be placed on par with the members of the judiciary, either constitutionally or functionally."

2. All India Judges' Association v. Union of India, AIR 1993 SC 2493=(1993) 4 SCC 288.

He went on:

"With the inauguration of the Constitution and the separation of the State power distributed among the three branches, the continuation of the linkage has become anachronistic and is inconsistent with the constitutional provisions. As pointed out earlier, the parity in status is no longer between the judiciary and the administrative executive but between the judiciary and the political executive. Under the Constitution, the judiciary is above the administrative executive and any attempt to place it on par with the administrative executive has to be discouraged. The failure to grasp this simple truth is responsible for the contention that the service conditions of the judiciary must be comparable to those of the administrative executive and any amelioration in the service conditions of the former must necessarily lead to the comparable improvement in the service conditions of the latter."

He pertinently remarked:

" xxx xxx xxx

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 the judicial service."

He also observed:

" Further, since the work of the judicial officers throughout the country is of the some nature, the service conditions have to be uniform."

Finally, the learned judge emphasised:

" We have also emphasised 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 the country. 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."

1.7 For immediate reference, the views expressed in the aforesaid Review Judgment may briefly be summarised as follows:

(a) The legal practice of three years should be made one of the essential qualifications for recruitment to the judicial posts at the lowest rung in the judicial hierarchy.

Wherever the recruitment of the judicial officers at the lowest rung is made through the Public Service Commission, a representative of the High Court should be associated with the selection process and his advice should prevail unless there are strong and cogent reasons for not accepting it, which reasons should be recorded in writing.

- a. The Superannuation age of every subordinate judicial officer shall stand extended up to 60 years, but the respective High Courts should assess and evaluate the record of the judicial officer for his continued utility well within time before he attains the age of 58 years by following the procedure for the compulsory retirement under the Service Rules applicable to him and give him the benefit of the extended superannuation age from 58 to 60 years only if he is found fit and eligible to continue in service. In case he is not found fit and eligible, he should be compulsorily retired on his attaining the age of 58 years. Those judicial officers who are not desirous of availing of the superannuation age of 60 years, have the right to opt out at 58 years by proper intimation to the High Court before they attain 57 years.
- (c) The direction for granting sumptuary allowance to the District Judges and Chief Judicial Magistrates stands withdrawn for the reasons given earlier.
- (d) The direction with regard to the grant of residence-cum-library allowance will cease to operate when the respective State Governments / Union Territory Administrations start providing the Courts with the necessary law books and journals in consultation with the respective High Courts.
- (e) The Principal District Judge or Principal Judge at each district headquarters or the metropolitan town and the Chief Judicial Magistrate and the Chief Metropolitan Magistrate will be entitled to independent vehicles with the free petrol subject to maximum of 100 litres per month in consultation with the High Courts. The rest of the Judges and Magistrates will be entitled to pool vehicles - one for every five judges for transport from residence to Court and back. Where pool vehicle cannot be provided or judges desire loan for purchasing two wheelers, they should be given loans on suitable terms and also the conveyance allowance.
- (f) In view of the establishment of the National Judicial Academy, it is optional for the States to have their independent or joint training judicial institutes.
- (g) There should be uniform pay scales to subordinate judges all over the country and such scales should be delinked to the pay scales of the Executive Officers.

- (h) There should be separate Commission for determining the pay scales of the judicial officers.
- (i) The States should not plead financial constraint if the pay scales of the judicial officers are enhanced delinking the same from that of the corresponding executive officers.
- (j) The rest of the directions given in the original judgment are maintained.

Constitution of the Commission :

1.8 In pursuance of the above directions of the Supreme Court, the Government of India by Resolution dated 21 March 1996 constituted the **FIRST NATIONAL JUDICIAL PAY COMMISSION** for the Subordinate Judiciary all over the country with the following terms of reference :

- (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-a-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 direction 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 to Judicial Officers in addition to pay and to suggest rationalisation and simplification thereof with a view to promoting efficiency in Judicial Administration, optimising the size of the Judiciary etc..

Composition of the Commission :

1.9

1. Chairman - Mr. Justice K. Jagannatha Shetty
(Former Judge, Supreme Court)
2. Member - Mr. Justice P.K. Bahri
(Former Judge, Delhi High Court)
3. Member-Secretary - Mr. K.R. Chamayya
(Rtd. Chairman of State Administrative Tribunal)

1.10 On 2nd April 1996, Mr. K.R. Chamayya assumed office as Member Secretary of the Commission.

1.11 On 24th April 1996, Mr. Justice P.K. Bahri (Rtd.) assumed office as Member of the Commission.

1.12 On 1st June 1996, the Chairman of the Commission assumed office.

1.13 On 27th August 1996, Mr. K.R. Chamayya resigned as Member-Secretary and in his place, Mr. Justice A.B. Murgod, retired Judge of the Karnataka High Court was appointed, and he took charge on 28 August 1996, as Member-Secretary of the Commission.

The Commissioning of the Commission :

1.14 Though the Commission was constituted in March 1996, it could not be made immediately functional for want of office, finance and staff.

1.15 On 8 May 1996, the Chief Justice of the Karnataka High Court, at the personal request of the Chairman of the Commission, was pleased to make available the premises for establishing the office of the Commission in the newly built Annexe to the City

Civil Court Complex at the heart of Bangalore City. The said premises were entrusted to the Central Public Works Department for alterations to make it suitable for Commission's requirements. The C.P.W.D. finished their work and delivered the premises to the Commission in the middle of September 1996.

Procedure :

1.16 The Commission has been authorised to devise its own procedure and appoint such advisers, institutional consultants and experts as it may consider necessary for any particular purpose. The Commission may call for such information and take such evidence as it may consider necessary.

1.17 All State Governments, UT Administrations and the Ministries/ Departments of the Central Government are required to furnish such information, documents and other assistance as called for by the Commission.

Staff :

1.18 Regarding the staff, the Commission has not been given power to recruit them from open market. The Commission was asked to recruit personnel with the "Surplus Cell" of the Government of India. After protracted correspondence, the Commission found that there was no suitable person for its requirement in the "Surplus Cell".

1.19 There then, Government allowed the Commission to appoint the staff, either by deputation from other departments or re-employment of retired persons. The Commission, however, could not secure the services on deputation save in three cases. The Commission was left with no alternative except to appoint retired persons. Literally, the Commission had to chase the retired persons who are below 60 years since if they are above 60 years, the special permission has to be obtained from the Central Government. In view of this constraint, even-to-day some of the posts are lying vacant for want of such retired persons.

Finance :

1.20 Regarding finance, it was only on 22 August 1996, the first Letter of Credit was received from the Government for a sum of Rs.7.50 lakhs and the first cheque book was received for the disbursement of the said amount on 9 September 1996. But that amount was hardly sufficient for payment of the bill of C.P.W.D. and to purchase necessary office equipments.

1.21 After recruiting the skeleton staff in the aforesaid manner, the Commission became partially functional at the fag end of December 1996.

1.22 The Main Office of the Commission is located at Bangalore, while a small Branch Office with the Member Mr. Justice P.K. Bahri (Rtd.) is based at New Delhi for co-ordinating and interacting with the Judicial Officers of the Northern States.

The Task of the COMMISSION :

1.23 The terms of reference to the Commission are all embracing. It is just not determining the pay scales of and conferring certain financial benefits to Judicial Officers as the name of the Commission purports to indicate. The work includes, among others, the 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.

Collection of Material :

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 a first of its kind, even preliminary particulars have to be gathered for preparing the Questionnaire. Even before establishing the Commission's office, the Chairman addressed a circular letter dated 31 July 1996 to all the Chief Justices of the High Courts requesting them to furnish certain information pertaining to their Judicial Officers in the prescribed format. The information started trickling from September 1996 right upto the end of February 1997. In the meanwhile, the Chairman visited New Delhi, Madras, Mumbai and Pune and had personal discussion with the Judicial Officers on their problems and requirements.

Questionnaire :

1.25 After collecting preliminary material, a comprehensive Questionnaire covering the terms of reference was prepared. On 15 March 1997, the Questionnaire was released by Mr. Justice R.P. Sethi, Chief Justice of the Karnataka High Court. The Questionnaire has been given wide publicity in print and electronic media so that it may come to the notice of all the Judicial Officers all over the country. The Questionnaire was also sent to all High Courts, State Governments, Judicial Officers'

Associations, Bar Associations, Bar Council of India, Jurists and Others, seeking their views.

Replies to the Questionnaire :

1.26 Almost all the Associations of Judicial Officers have promptly responded to the Questionnaire during the period from 4 June 1997 to 29 December 1997.

1.27 But the High Courts took their own time to express their views on the Questionnaire. The High Courts of Himachal Pradesh, Madhya Pradesh, Sikkim, Kerala, Bihar and Jammu & Kashmir sent their replies in 1997. The High Courts of Karnataka, Uttar Pradesh, Tamil Nadu and Assam sent their replies in the beginning of 1998.

1.28 The remaining 8 High Courts namely, Calcutta, Gujarat, Mumbai, Rajasthan, Andhra Pradesh, Delhi, Punjab & Haryana and Orissa delayed their replies in spite of repeated requests and reminders from the Commission.

1.29 Most of the State Governments were also not active in responding to the Questionnaire. In 1997, only the State Governments of Goa and Mizoram and Union Territory Administrations of Lakshadweep, Diu & Daman and Dadra & Nagar Haveli have sent their replies. The State Governments of Manipur and Assam sent their replies in February 1998 and March 1998 respectively.

1.30 On 15 July 1998, the Supreme Court came to the rescue of the Commission by directing the Registrars of the High Courts and also the State Governments and Union Territory Administrations who have not responded to the Questionnaire to send their replies to the Commission within 8 weeks of the receipt of the order of the Supreme Court.

1.31 Accordingly, the said High Courts, State Governments and Union Territory Administrations replied to the Questionnaire.

1.32 The All India Judges' Association submitted a preliminary reply to the Questionnaire during May 1998 and final reply was received on 5 August 1998.

Consultants :

1.33 The Commission engaged different Consultants for different work: (i) Indian Institute of Public Administration, New Delhi, was entrusted with the task of rationalizing and suggesting uniform pay structures and other benefits for the proposed three cadres; (ii) Indian Institute of Management, Bangalore, was engaged for preparing a report on Case Management and Court Management; (iii) The National Law School of India University, Bangalore, was requested to collect and compile the history of State Judiciary and advise the Commission generally; (iv) Dr. N.R. Madhava Menon, Former Director of National Law School of India University, Bangalore, agreed to prepare a report on the Judicial Training Institute with the syllabus and course of training for Judicial Officers; and (v) Sri K.R. Chamayya, former Law Secretary / Legislative Draftsman and Chairman of the Karnataka Administrative Tribunal, was requested to prepare a model Civil Courts Act, Small Causes Court Act and draft Uniform Rules for Recruitment of Judges of Family Courts.

1.34 The Consultants, namely, the Indian Institute of Public Administration, New Delhi, the Indian Institute of Management, Bangalore and Dr. Madhava Menon, after discussion with the Commission, prepared separate Questionnaires in respect of subjects assigned to them. They sent the Questionnaires to all the High Courts, Judicial Officers' Associations, State Governments and other concerned persons and Institutions, seeking their views thereon. After examining the response received, they have prepared the reports.

1.35 The National Law School of India University, Bangalore has collected and compiled a lot of material relating to the history of the judiciary in some of the States and Union Territories.

Amendment to the Terms of Reference :

1.36 The original terms of reference did not empower the Commission to declare any interim relief. The Commission, therefore, requested the Government to appropriately enlarge the terms of reference to recommend interim relief as there were repeated demands from the judicial officers of every State. The Government of India vide Resolution No.15014/1/97-Jus dated 16-12-1997 amended / enlarged the original terms of reference by inserting a new para as under:

" 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".

Interim Relief :

1.37 The existing pay scales of Judicial Officers vary from State to State. To rationalise their pay structure by giving uniform pay scales is one of the objects of the Commission. As a preliminary to achieve that object, the Commission, on 31 July 1998 granted Interim Relief to the Judicial Officers of States and Union Territories where the benefits of the V Pay Commission of the Central Government were not extended. The Interim Relief was granted on varying terms like 35% to 75% of basic pay with admissible Dearness Allowance of Judicial Officers as on 1.1.1996. The Commission also granted certain Interim Relief to the retired Judicial Officers. The Interim Relief was given effect from 1st July 1996.

1.38 Some State Governments promptly implemented the Interim Relief, but others did not. Taking note of this anomaly, the Supreme Court made an Order on 27th April 1998 as follows:

"We direct the other State Governments to take appropriate decision whether to give the interim relief or the benefits under the Fifth Central Pay Commission's Report to the Judicial Officers in the States / UTs and make payment within four weeks from today, and report compliance to this Court."

1.39 Pursuant to the aforesaid direction, all the States have since implemented the Interim Relief.

Oral hearing :

1.40 The Commission afforded an opportunity of being heard to the representatives of all the Judicial Officers' Associations, High Courts, State Governments / Union Territory Administrations etc., Hearing commenced on 2 November 1998 and concluded on 24 February 1999..

National Level Consultative Meeting on 12th & 13th December 1998 :

1.41 The Commission thought that the reports prepared by the Indian Institute of Management and Dr. Madhava Menon should be discussed by the judicial fraternity, and other concerned authorities, before they are finalised by the Commission.

Accordingly, the Commission convened a National Consultative Meeting in Indian Institute of Management, Bangalore on 12 and 13 December 1998. The meeting was convened with the collaboration of said Institute of Management. Mr. Justice B.N. Kirpal. Judge of the Supreme Court inaugurated the Meeting which was presided by the Chairman of the Commission, Mr. Justice R.P. Sethi, Chief Justice of the Karnataka High Court was the Chief Guest. In the Meeting the draft report prepared by the Institute of Management on introduction of IT in Court work and the report by Dr. Madhava Menon on judicial training and Institute were thoroughly discussed. Dr. Madhava Menon and Dr. Rammohan Rao, Sri Vaidyanathan & Prof. Krishna of IIM played a prominent part in the two days discussion.

1.42 The Acting Chief Justice of Rajasthan High Court, Nominee Judges of the High Courts of Allahabad, Andhra Pradesh, Delhi, Gujarat, Guwahati, Jammu & Kashmir, Karnataka, Kerala, Madras and Mumbai participated in the deliberations and gave their valuable suggestions. Besides, the Directors of Judicial Training Institutes at Lucknow, Nagpur, Jabalpur and Ahmedabad and the Director of Sardar Vallabhbhai Patel Police Academy at Hyderabad were also present and took part in the discussion giving their views and suggestions. The representatives of some of the Judicial Officers' Associations and other eminent persons also shared their views on both the said reports.

Reports of the Commission :

1.43 The Commission, after due deliberations and taking into consideration every aspect, has prepared the Report in three Volumes. We trust and hope that all the State Governments / Union Territory Administrations would implement the recommendations made in the Report at the earliest.

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2. HISTORY OF JUDICIARY (LIST OF ALL STATES WERE GIVEN IN ORIGINAL REPORT HERE ONLY BIHAR IS REFERED

2.3 BIHAR

2.3.1 Initially, in Bihar, the constitution of Courts, jurisdiction and powers, appointments of Judicial Officers and making of rules were governed by the Bengal Civil Courts Act, 1871. The said Act was repealed by the Bengal, Agra and Assam Civil Courts Act, 1887, under which the following Courts at the District level in Bihar were constituted :

1. Court of District Judge;
2. Court of Additional Judge;
3. Court of Subordinate Judge; and
4. Court of Munsiff.

2.3.2 The Local Government was empowered to make appointments of the aforesaid Judicial Officers in consultation with the High Court of Calcutta which had then the jurisdiction over the entire area of Bengal, Assam, Orissa and the present State of Bihar.

2.3.3 The High Court of Judicature at Patna was established by Letter Patent dated 9th February, 1916. In that year, twelve District Judges came to be appointed at the following Headquarters :

1) Muzaffarpur, 2) Bhagalpur, 3) Gaya, 4) Patna, 5) Saran, 6) Ranchi, 7) Cuttack, 8) Munger, 9) Darbhanga, 10) Purnea, 11) Sahabad and 12) Manbhum.

2.3.4 By 1950, the number of District Judges was increased to 15 with the addition of three more posts at the following places:

1) Hazaribagh, 2) Champaran and 3) Santhal Parganas.

PAY SCALE :

2.3.5 In 1916, the concerned officials were paid a fixed monthly salary as indicated :

District Judge : I Grade (2 posts) Rs. 3,000 /-

II Grade (5 posts) Rs. 2,500 /-

III Grade (7 posts) Rs. 2,000 /-

Subordinate Judge : I Grade (2 posts) Rs. 1,000 /-

II Grade (6 posts) Rs. 800 /-

III Grade (11 posts) Rs. 600 /-

Munsiff : I Grade (14 posts) Rs. 400 /-

II Grade (20 posts) Rs. 300 /-

III Grade (22 posts) Rs. 250 /-

IV Grade (12 posts) Rs. 200 /-

2.3.6 This structure of the subordinate judiciary especially with reference to the cadres and jurisdiction had continued till 1959 with a marginal increase in the cadre of Judicial Officers.

2.3.7 The State of Bihar enacted the Bihar Superior Judicial Service Rules, 1951 and the Bihar Judicial Service Recruitment Rules, 1955 for regulating the recruitment and conditions of services of Superior Judicial Service and Bihar Judicial Service respectively.

2.3.8 Under the Bihar Judicial Service Recruitment Rules, 1955, the initial recruitment to the cadre of Munsiff was done from amongst the members of the Bar of at least one year's continuous practice as on the date of the advertisement. The recruitment was done by the Public Service Commission. The Officers would remain on probation for a period of two years. The pay scale of the Munsiff is Rs. 2425-75-2800-100-4000. The promotional cadre to the post of Munsiffs is that of the Chief Judicial Magistrates / Assistant Sessions Judges / Subordinate Judges carrying the pay scale of Rs. 3000-4500. However, the Munsiff after 10 years of service gets the said higher pay scale of Rs. 3000-4500.

2.3.9 At present, there are 266 of such posts and 1043 posts of Munsiffs.

2.3.10 The Subordinate Judge / Chief Judicial Magistrate is entitled to a second level pay scale in the scale of Rs.3700-125-4700-

150-5000. Such pay scale would be available upto 12½ % of the cadre strength of the Bihar Subordinate Judicial Service which includes Munsiffs and Sub-Judges including Chief Judicial Magistrates. Further, there will be third level pay scale of Rs.4500-150-5700 available to the extent of 2½ % of the cadre.

BIHAR SUPERIOR JUDICIAL SERVICE :

2.3.11 The Bihar Superior Judicial Service consists of District & Sessions Judges and Additional District & Sessions Judges.

2.3.12 At present, there are 228 posts of Additional District & Sessions Judges carrying the pay scale of Rs.3700-125-4700-150-5000. 33 % of the cadre is filled up by direct recruitment from the members of the Bar with seven years of practice and 67 % is by promotion from among the members of the Bihar Judicial Service.

2.3.13 The post of District & Sessions Judge is purely a promotional post from the post of Additional District & Sessions Judge. At present, there are 49 officers in the cadre of District & Sessions Judge with the pay scale of Rs. 3700-125-4700-150-5000.

2.3.14 There are Selection Grade posts of District & Sessions Judges in the pay scale of Rs. 4500-150-5700 and also Super Time Scale posts in the pay scale of Rs.5900-200-6700.

2.3.15 JURISDICTION :

(a) The Territorial jurisdiction of the Courts established at the Sub-Divisional Head-quarters is over the entire territory of the Sub-Division.

The Territorial jurisdiction of the Sessions Judges and Additional Sessions Judges is over the entire Sessions Division. However, on such stations where more than one permanent Court of Munsiff are established, the territorial jurisdictions of such Courts are divided on police-station-wise.

(b) The pecuniary jurisdiction of the Courts to hear and dispose of original suits is as follows:

- i) Additional Munsiff - upto the valuation of Rs. 20,000/-.
- ii) Munsiff (permanent Courts) - upto the valuation of Rs. 30,000/-.
- iii) The Appellate Jurisdiction of the District Judge is upto the valuation of Rs. 60,000/-.

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3. JUDICIAL STRUCTURE AND REMUNERATION

- INTERNATIONAL EXPERIENCE

INDIA :

3.1 By nationality we are Indians, but by legal tradition, we are generally still British. Our judicial system was English in origin. We have adopted the English model.

Supreme Court :

3.2 Chapter IV of Part V of the Constitution of India provides for Union Judiciary. It consists of Articles 124 to 147 providing for establishment and constitution of Supreme Court, appointment of judges and Chief Justice. The Supreme Court stands as a head of the judicial pyramid. The Chief Justice is called the Chief Justice of India and the other judges are termed as judges of the Supreme Court. They cannot be removed save by impeachment for proved misconduct or incapacity. They retire at the age of 65 years.

3.3 The Supreme Court has original jurisdiction to the exclusion of any other Court in any dispute between the Government of India and one or more States or between the States inter-se. It has appellate jurisdiction from the judgments and decrees of the High Courts in certain cases, both in civil and criminal proceedings. It has got absolute discretion to grant special leave to appeal from any judgment, decree, determination, sentence or order passed or made by any Court or Tribunal in the country. It has also advisory jurisdiction or consultative function. The power is conferred on the President of India to consult the Supreme Court if it appears to him that the question of law or fact has arisen or is likely to arise is of such public importance. The opinion

pronounced by the Supreme Court in its advisory jurisdiction is not a judicial pronouncement in the sense it is not binding on the party unless the party has agreed that it would be binding. However, it has a great persuasive force. The Supreme Court is free to pass executable decrees or to pass any order as may be necessary for "doing complete justice in the cause".

3.4 The decision given by the Supreme Court has binding force. All Courts in India are bound to follow the decision of the Supreme Court. While a judgment of a Court normally binds only the parties to litigation before it, the law declared by the Supreme Court shall be binding on all Courts within the territory of India. All authorities, Civil and Judicial, in the territory of India shall act in aid of the Supreme Court.

3.5 The Supreme Court is the guardian of the Constitution. It has power to issue directions or orders or writs or any writ for the enforcement of the fundamental rights guaranteed to the citizens and it is open to any person to move the Supreme Court by appropriate proceedings for the enforcement of his fundamental rights.

3.6 The Supreme Court, by its own judge-made law and procedure, has become one of the most powerful Institutions. It is not a Court of limited jurisdiction of only dispute settling like the Supreme Court as we know in any democracy. Almost from the beginning, the Supreme Court has been a law maker, albeit, in Homes' Expression "interstitial" law maker. Besides the role of dispute settling and interstitial law making, the Court is a problem-solver in the nebulous areas¹. It also steps in as an intervener where the executive fails to perform its obligations.

3.7 Even in regard to appointment of judges of the Supreme Court, the Government has no freedom of choice of candidates. The Government is bound to act upon the recommendation of the Chief Justice of India, which is supported by the majority view of four senior-most puisne judges of the Supreme Court². In no other country, the opinion of the Apex Court has been given such primacy in the matter of appointment of judges.

1. K. Veeraswami Vs. Union of India (1991) 3 SCC 655 at 708.

2. Special Reference No.1 of 1998: (1998) 7 SCC 739.

3.8 The judges sit on panel which is constituted by the Chief Justice. The Chief Justice of India is also a participatory functionary in matters of appointment of judges of the Supreme Court and the High Courts.

3.9 As on to-day, the Supreme Court judge draws the fixed salary of Rs.30,000/- per month in addition to periodical Dearness Allowance. He is entitled to Sumptuary Allowance of Rs.3,000/- and House Rent Allowance of Rs.10,000/- per month, if Government quarters is not provided. Both the allowances are free from Income Tax. The Chief Justice is entitled to the salary of Rs.33,000/- per month and Sumptuary Allowance of Rs.4,000/-. The Sumptuary Allowance is free from Income Tax. He is provided with rent-free furnished quarters.

3.10 Under the provision of Part I of the Supreme Court Judges (Conditions of Service) Act, 1958 as amended by the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 1998, the Chief Justice and other Judges of the Supreme Court, who have completed not less than seven years of service as a Judge in India would get pension. The maximum pension allowed to the Chief Justice is Rs.16,500/- per month and to other Judges is Rs.15,000/- per month.

3.11 A Judge who is not eligible to receive pension under the above provision will get pension of Rs.64,030/- per annum.

High Court :

3.12 Chapter V of Part VI provides for the High Courts in the States. It consists of Articles 214 to 231 providing, inter alia, for appointment and conditions of service of the Chief Justice, judges of the High Court, and transfer from one High Court to another. At the apex of the judicial pyramid is the High Court in every State. It has variety of jurisdictions. It has power to issue writs and orders for the enforcement of any of the fundamental rights and for any other purpose. It has the power of superintendence over all Courts and Tribunals throughout the territory in relation to which it exercises jurisdiction. It has absolute administrative and judicial control over the subordinate Courts. The judges of the High Court are liable for transfer from one High Court to another High Court. They cannot be removed save for proved misconduct or incapacity by the procedure prescribed for removal of Supreme Court judges. They retire at the age of 62 years.

3.13 They are entitled to a fixed salary of Rs.26,000/- per month with usual Dearness Allowance and other perquisites like tax-free Sumptuary Allowance of Rs.2,000/- and House Rent Allowance of Rs.10,000/-, if not availed of Government quarters. Chief

Justice of the High Court is entitled to a salary of Rs.30,000/- per month and Sumptuary Allowance of Rs.3,000/-. The Sumptuary Allowance is free from Income Tax. He is provided with rent-free furnished quarters.

3.14 Under the provision of Part I of the High Court Judges (Conditions of Service) Act, 1954 as amended by the High Court and Supreme Court Judges (Salaries & Conditions of Service) Amendment Act, 1998, a Judge who has completed not less than seven years of service is eligible to receive pension at Rs.14,630/- per annum for each completed year of service as Chief Justice and at Rs.11,150/- per annum for each completed year of service as Judge.

3.15 A Judge who has completed 14 years of service including not less than six years of service as Chief Justice in one or more of the High Courts is entitled for maximum pension of Rs.15,000/- per month.

3.16 A Judge who is not eligible to receive pension under the above provision will get pension of Rs.51,190/- per annum.

Subordinate Courts :

3.17 The Constitution of India also contains a group of Articles 233 to 237 in Chapter VI of Part VI under the heading "Subordinate Courts". Article 233 provides for appointment of District Judges by the Governor of the State in consultation with the High Court. The Constitution also provides for direct appointment of District Judges from the Advocates or Pleaders who have not less than seven years of practice, provided they are recommended by the High Court for appointment. Normally, 1/3rd of the cadre of the District Judge is directly appointed by this method in each State and the rest are appointed by promotion from the cadre of Civil Judges (Senior Division).

3.18 There are Courts of different categories, like District Courts, Courts of Civil Judges (Senior Division) and Courts of Civil Judges (Junior Division). On the Criminal side, there are the Courts of Sessions, Judicial Magistrates of the First Class in Districts. Metropolitan Magistrates in Metropolitan areas. They are exclusively professional people for trying cases depending upon the gravity of the offences and punishment to be awarded. But in some States, there are Special Judicial Magistrates of the First Class and Second Class for trying some specified cases in any local area. They need not be professional people with the legal background though it is a desirable qualification.

3.19 There are labour Courts dealing exclusively with the Labour litigations. Likewise, there are Sales Tax Tribunals, Motor Vehicles Accident Claims Tribunals etc., presided over by District Judges.

3.20 In some Metropolitan cities like Mumbai, Ahmedabad, Hyderabad, Calcutta, Chennai and Bangalore, there are City Civil Courts consisting of District Judges and Civil Judges (Senior Division), established by special statutes.

3.21 In some States, the Subordinate Courts have got unlimited Ordinary Original Civil Jurisdiction, while in some other States, they have got limited such jurisdiction. In such States, the respective High Courts have got unlimited pecuniary jurisdiction. The High Courts of Mumbai, Madras, Calcutta, Delhi, Himachal Pradesh and Jammu & Kashmir have Ordinary Original Civil Jurisdiction. The rest of the High Courts do not have such jurisdiction.

3.22 These subordinate Courts entertain cases arising under the State laws and also under the Central laws. They follow adversary system with common law tradition.

3.23 The District Judges are eligible for appointment as High Court Judges. The High Court Judges are eligible for appointment as Supreme Court Judges. The Constitution specifically provides for such appointment. Under the law made by each State, the Civil Judge (Junior Division) is eligible for promotion as Civil Judge (Senior Division) and further on to the cadre of District Judges.

3.24 The judiciary is thus a cadre system with the ladder of promotion just like any other Civil service. All the judges of the subordinate Courts retire at the age of 60 years.

3.25 The States have no executive or legislative powers in respect of the constitution, organisation, jurisdiction and powers of the Supreme Court. Neither, the State has power over the constitution and organisation of the High Court. These matters fall under the Union List and the Central Government alone is competent to deal such aspects. The State, however, has power in respect of matters relating to Officers and Servants of its High Court. It is of importance to note that the administration of justice, constitution and organisation of the Subordinate Courts have been included in the Concurrent List, which means, both the Central and State Governments have power to legislate in respect of those matters, subject to the recognised norms and limitations.

3.26 Though the Supreme Court is at the apex, it has no administrative control over the High Courts or on the Courts subordinate to the High Court. The High Court in each State is independent with full powers of administration over all other Courts and Tribunals.

3.27 The Independence of judiciary is a basic structure of the Constitution³. The judiciary is independent of the Executive and Legislature though there is no clear demarcation and separation of powers of the Judiciary, Executive and Legislature.

3.28 The pay structure of Subordinate Judiciary varies from State to State. Some of the States have adopted the pay scales of the Central Government and other States have got their own independent pay structure.

3.29 The following are the States which have adopted Central pay scales: (1) Maharashtra; (2) Gujarat; (3) Delhi; (4) Madhya Pradesh; (5) Goa; (6) Tamil Nadu; (7) Lakshadweep; (8) Haryana; (9) Pondicherry; and (10) Rajasthan.

3.30 However, even here, inter-State pay differentials do exist as far as allocation of pay scales of the Central Government are concerned. Two of the States have extended I.A.S. pay scales to the members of the Higher Judicial Service, viz., West Bengal and Madhya Pradesh.

3.31 The State Governments which have not adopted Central pay scales of 1996, have evolved their own pay structure. They are different from State to State as seen in the table below:

	Cadre	State	Pay Scales (in Rs.)
I.	a) District & Sessions Judge, Grade-I	Uttar Pradesh	5900-200-6700
	(b) District & Sessions Judge,	Uttar Pradesh	4500-150-5700

	Grade-II/ Addl. Dist. & Sessions Judge.		
II.	Civil Judges (Senior)	Uttar Pradesh	3000-4500
III.	Civil Judges	Uttar Pradesh	2200-4000

3. S.P. Gupta v. Union of India (1981) Supp. SCC 87, 408.

Kumar Padma Prasad v. Union of India (1992) (2) SCC 428.

Union of India v. Pratibha Bonnerjee (1995) (6) SCC 765.

AUSTRALIA :⁴

3.32 The Australian judiciary comprises three distinct jurisdictions - Federal, State and Territorial. Federal Courts derive their existence from Commonwealth legislation enacted pursuant to Section 71 of the Commonwealth Constitution, the State Courts from State legislation, and Territory Courts from Commonwealth legislation enacted under Section 122 of the Commonwealth Constitution. The High Court in Australia is the Apex Court mandated by Section 71 of the Commonwealth Constitution.

3.33 The determination of judicial remuneration in Australia has passed through three stages during the twentieth century. The first period was the longest, running from the turn of the century or earlier until the early 1950s. In most Australian jurisdictions, a salary increase was awarded in 1947 or 1948, with a further increase in 1950 or 1951. Thus, the annual salary of a puisne justice of the High Court remained constant (£ 3000) from that Court's inception in 1903 until 1947, when it increased to £ 4000, rising to £ 4500 in 1950. The salary of puisne judges of the State Supreme Courts reflected the similar pattern following the

Commonwealth's lead. The position was similar in the New South Wales District Court, the salary of the puisne judge remained the same (£ 1500) from 1883 to 1948, when it was increased to £ 1800, rising to £ 2000 in 1951.

3.34 The second period of judicial remuneration covers from the early 1950s until the introduction of judicial remuneration tribunals, commencing with the Commonwealth in 1973. The trend was followed shortly by Western Australia (1975) and New South Wales (1976), and later by Queensland (1980) and South Australia (1985). During this period, judicial remuneration was fixed by statute, with amendments raising salary being passed with increasing frequency - almost annually towards the end of the period in order to keep up with inflation.

3.35 In 1950s, some States in Australia experimented with automatic adjustment or "indexation" in the line with changes in the 'basic wage' or 'the cost of living'.

4. Extract from the Report of Judicial Remuneration of Australia 1997.

It is, however, not clear that why such automatic adjustment was abandoned. Such indexation was probably considered unsatisfactory because variations in the basic wage or the Consumer Price Index is only one factor in judicial remuneration; other factors include the earnings of senior barristers, changes in the jurisdiction and work-load of Courts and relative with similar Courts in other jurisdictions.

3.36 Over-all, the 1950s and 1960s in Australia have witnessed continued decline in the relative financial position of judiciary.

3.37 The Third period may be considered as the current period in which there have been independent remuneration tribunals for determining the remuneration payable to judges and magistrates, as well as to parliamentarians and holders of senior executive positions. The decisions of these tribunals have no binding force except in South Australia. But in the Commonwealth (since 1989), New South Wales, Queensland and Western Australia, the decisions of such tribunals have been given binding effect subject to disallowance by either House of Parliament. The position in the various jurisdictions may now be examined briefly.

The Commonwealth :

3.38 The Commonwealth Remuneration Tribunal was established pursuant to the Remuneration Tribunals Act, 1973. The Act establishes a Tribunal of three part-time members appointed for a term of not more than five years, but eligible for reappointment. One of the members is to be appointed Chairman by the Governor-General in Council. That person originally had to be either a judge or retired judge of a State Court or qualified to be appointed as such.⁵ The first two Chairmen were sitting judges, namely, W.B. (later Sir Walter) Campbell of the Supreme Court of Queensland (1974-82) and Dennis Mahoney of the New South Wales Court of Appeal (1982-92). The requirement for a judicially qualified

5. Remuneration Tribunals Act 1973 (Cth) Sec. 4 (6).

Chairman came to be removed in 1992 since that position was not requiring any special legal skills.⁶

3.39 The Tribunal was required to determine annually the remuneration payable to Members of Parliament and senior public servants subject to disallowance by either House of Parliament. The Tribunal, however, was only to "inquire into, and report to the Minister" on judicial remuneration and ministerial salaries. This was intended perhaps to overcome the constitutional barriers, which preclude the Tribunal from making determinations relating to remuneration of judges and salaries of Ministers.

3.40 Whether or not constitutional concerns really underlay the limitation on the powers of the Tribunal regarding ministerial and judicial salaries, the Commonwealth Parliament changed its position regarding the latter in 1989, and now requires the Tribunal to determine judicial (but still not ministerial) remuneration as well.

3.41 The effective determination of judicial remuneration by the Remuneration Tribunal appears to have operated reasonably satisfactorily until the mid 1980s. But thereafter, it has faltered for various reasons and consequently judicial salaries had fallen and senior barristers were refusing to accept appointment and in some cases, judges began to resign from the Bench to private practice.

3.42 In May 1988, the Hawke Government decided to alter the manner of determining the salaries of Chief Executive Officers of Government Business Enterprises (G.B.Es) to enable them to compete against the private sector for the best candidates. Their

salaries would no longer be linked to those of senior public servants, but would be determined by G.B.E. boards after consultation

6. Remuneration and Allowances Legislation Amendment Act 1992 (Cth) Sec.20.

with the Remuneration Tribunal. The result was an epochal report of 18 November 1988, which was to have such detrimental repercussions for the relationship between the Commonwealth Government and the federal judiciary that it is doubtful whether the resulting judicial bitterness has yet dissipated.

3.43 We will now briefly refer to the judicial remuneration in the States and Territories:

States and Territories :7

3.44 Judicial remuneration is determined by an independent statutory tribunal in six of the eight States and self-governing Territories, and de facto for Supreme Court judges in another (Tasmania). The remuneration of Australian Capital Territory judges and Magistrates is determined by the Commonwealth Remuneration Tribunal, the remuneration of A.C.T. Supreme Court judges being the same as that of Federal Court judges. New South Wales, Queensland, South Australia, Western Australia and the Northern Territory have their own Tribunals.

Western Australia :

3.45 The earliest of these was the Western Australian Salaries and Allowances Tribunal, established in 1975, just two years after the Commonwealth Remuneration Tribunal. It consists of three members, including a Chairman, appointed by the Governor in Council for a term of three years (renewable). No special qualification is stipulated, but persons holding offices within the Tribunal's jurisdiction are (appropriately) expressly disqualified. The Tribunal determines the remuneration of a wide range of public officers as well as judges and magistrates; the State Governor, Ministers, Members and Officers of Parliament, senior public servants, and also the entitlements of former premiers, Ministers and Members of Parliament.

7. Extracts taken from the compilation of the judicial remuneration in Australia.

3.46 Judicial remuneration must be determined at least once each year. Since 1992 the term "remuneration" has included non-pecuniary "benefits", such as cars. Reduction in remuneration is not prohibited. Determinations are binding, subject to disallowance by either House of Parliament, a power which Parliament has never exercised. Nevertheless, judges have not always regarded the Tribunal's work favourably, and have occasionally complained to it in private. The heads of the various courts also address formal submissions to the Tribunal on behalf of their courts. The Chairmen of the Tribunal have included two former senior public servants (an Under Treasurer and a General Manager of the Public Service Board), a former Chief Commissioner of the State Industrial Commission, and a former Commonwealth Minister. Members have included a Managing Director of a bank, lawyers, an accountant, a former Member of Parliament, and a retired public servant.

3.47 The Tribunal is not legally required to have regard to current wage-fixing principles, but has taken account of wage restraint principles. Its reports have echoed the concern of the Commonwealth Remuneration Tribunal, seeking to balance general wage restraint with the need to raise judicial remuneration to reduce the "unacceptably large" gap between judicial salaries and earnings of senior practitioners, which (as elsewhere) has led to difficulty in recruiting judges to both the Supreme Court and the District Court. The Commonwealth Government's failure to implement the November 1988 recommendations of the Commonwealth Remuneration Tribunal, whose report the Western Australian Tribunal has generally endorsed, has meant that it has followed the proposal to fix the remuneration of Supreme Court judges at about 85% of that of High Court justices only with considerable misgiving and over widespread judicial opposition.

New South Wales :

3.48 A few months after Western Australia, New South Wales established a Statutory and Other Offices Remuneration Tribunal to determine the remuneration of judges and statutory officers. The Tribunal must determine remuneration not later than 31 August each year or whenever the Minister so directs, and may alter a previous determination in order to apply a wages decision by the State's Industrial Commission. However, judicial remuneration may not be reduced, Tribunal determinations are binding,

subject to disallowance by either House of Parliament. A determination was annulled in 1982, but that was accomplished by legislation, not by disallowance on the ground that the increased remuneration awarded was unacceptable in the then existing economic climate.

3.49 The relativity of the salaries between judges of the Federal Court and their Supreme Court colleagues was a matter of some concern in New South Wales. Judicial remuneration was discussed at a Premiers' Conference on 28 June 1990, at which the Prime Minister and Premiers agreed jointly to address issues such as disparities between salaries and "leap-frogging". Consequently, the Chairman of the Commonwealth Remuneration Tribunal met with representatives from State and Territory Remuneration Tribunals and the Victorian Government on three occasions between August 1990 and July 1991 and thereafter on several occasions, and reached consensus that provided the remuneration of High Court justices was set at an "acceptable level" and regard was had to major differences in benefits, the salaries of Federal Court and State Supreme Court judges should not exceed 85% of that of a High Court justice. They also agreed to consult informally before determining judicial remuneration, which should occur at around the same time each year in order to avoid "leap frogging"⁸. New South Wales has followed this consensus since-then and the Tribunal has generally fixed the remuneration of a Supreme Court judge at the salary of a Federal Court judge, (i.e. 85% of that of a High Court justice) plus \$ 10,362.

8. N.S.W. Statutory and Other Offices Remuneration Tribunal, Report on the Salaries of Judges (28 November 1991), para, 3.

3.50 However, Federal Court judges' salaries generally exceed those of the Victorian, South Australian and Tasmanian Supreme Courts, leading to concerns of federal "poaching" of State judges in those States. Since Federal Court salaries are set at 85% of High Court salaries, nationwide adoption of the 85% standard for Supreme Court judges would ensure parity in remuneration between them and the Federal Court.

3.51 In its determination of 31 August 1996, the Tribunal increased the remuneration of a Supreme Court Judge by 4.25 percent

to \$ 1,77,488 thus preserving the relationship with the salary of a Federal Court Judge. The amount of \$ 10,362 which takes into account the difference in conditions of Federal Court Judges and Supreme Court Judges was added, making a total remuneration of \$ 1,87,850 per annum.

3.52 The Tribunal, after considering the views of the Assessors, determines that the base rate of remuneration for a Supreme Court Judge should be increased on and from 1 October 1997 by 5 percent from \$ 1,77,488 to \$ 1,86,362 per annum. The Tribunal also determines that the amount to be added to take into account of the difference in conditions of Supreme Court Judges and Federal Court Judges should remain at \$ 10,363 thus making the total remuneration of a Supreme Court Judge \$ 1,96,725 per annum.

3.53 A spokeswoman for Attorney-General Jan Wade has promised that the report of the Commission was being considered as reported in "HERALD SUN (MELB)" 1st Edition, 17 September, 1997 p. 15.

Queensland :

3.54 The next State Tribunal was Queensland's Salaries and Allowances Tribunal, established in 1980. It determines the salary and allowances of judges, but not the allowances of Magistrates since 1991. The determination of judicial remuneration is its sole function. Its determinations, which must occur at least once each year, are legally binding, subject to disallowance by the Legislative Assembly. But that power was exercised only once in 1993 to set aside a determination which was considered legally flawed.⁹

3.55 The Tribunal is not specifically required to take account of Wage Determination Principles or variations in the cost of living, but is required to consider the equity of Queensland judicial remuneration in the light of such remuneration elsewhere in Australia.

South Australia :

3.56 South Australia established its Remuneration Tribunal in 1985. But it did not determine judicial salaries until 1988. Until then, judicial salaries were set pursuant to a legislative formula which essentially fixed Supreme Court salaries at 95% of the

average in the other mainland States, and District Court salaries at 85% of the Supreme Court's, with subsequent increases to follow wage determinations of the State Industrial Commission; the Remuneration Tribunal had power only to fix judicial allowances, not salary. Since 1988, the Tribunal determines both salary and allowances.

3.57 The Tribunal must determine judicial remuneration at least once in each year. Their determinations are binding, and not subject to parliamentary disallowance, although they could, of course, be overturned by legislation. But that has never happened.

3.58 In determining remuneration, the Tribunal is required to "have due regard to" and "may apply and give effect to", any principles enunciated by the (Full) State Industrial Commission, which itself is required to pay similar regard to the

9. See Queensland Parliamentary Debates, 19 November 1993, 6096-6102, disallowing Queensland Salaries and Allowances Tribunal, Fourteenth Report (31 August 1993).

decisions and declarations of the Commonwealth Industrial Relations Commission. Moreover, the Tribunal is (and, again, uniquely in Australia) specifically directed to "have regard to the constitutional principle of judicial independence".

3.59 The South Australian Remuneration Tribunal appears to have performed well. The Tribunal has acted responsibly and independently, without governmental interference.

Northern Territory :

3.60 Judicial remuneration in the Northern Territory is determined from time to time by the Administrator, but cannot be reduced during a judge's term of office. The Remuneration Tribunal was established in 1981. The Tribunal only makes "recommendations" on judicial remuneration; but its recommendations have always been followed. In fact, the terms and conditions of Northern Territory judges provide for their remuneration at rates not less than those payable to judges of the Federal Court and the Tribunal has always recommended remuneration equivalent to that of the Federal Court.

Tasmania :

3.61 Tasmania and Victoria do not constitute Tribunals to determine judicial remuneration. Tasmania relies indirectly on

determinations of the South Australian and Western Australian Tribunals to fix Supreme Court judges salaries. The Chief Justice of Tasmania's salary is the average of the salaries of the Chief Justices of those States and puisne judges receive 90% of that figure. The salaries of Supreme Court Masters and Magistrates are fixed by reference to the salary of the Permanent Head of a government department: 92% for the former, and 81.25% for the latter. Tasmania has no intermediate Court.

Victoria :

3.62 Since 1980, the remuneration of Victorian judges and Magistrates has been determined by the Attorney-General. Until 1987, it was determined in response to wage increases awarded by the Australian Conciliation and Arbitration Commission and thereafter, following a recommendation of the Robinson Inquiry in 1986, determinations follow upon increases awarded by the Commonwealth Remuneration Tribunal.

3.63 Victorian judicial remuneration is to be reviewed in accordance with current wage fixing principles at least once every five years by a person the Attorney-General considers suitably qualified to carry out such a review.

3.64 It has been now felt that Victoria should change its method of determining judicial remuneration to a system closely resembling South Australia's. That system is yet to be implemented.

3.65 Judicial remuneration in Australia is presently in a state of uncertainty, with important reviews in progress in the Commonwealth and Victoria, Australian judges bear a strong sense of grievance and consider themselves seriously underpaid, as evidenced by the Commonwealth Remuneration Tribunal's report of November 1988. They have reluctantly accepted wage injustice; as they see it, because they acknowledged the arguments for wage restraint which depressed the wages of the general work-force during the Recession, expecting the "injustice" to be righted once the economy recovers. Now that economic recovery has begun.

3.66 The salary structure of various categories in different States are set out in the following Table:

SUPREME COURTS

YEAR	HC	FED.CT AND ACT.	N.S.W.	VIC.	QLD.	S.A.	W.A.	TAS.	MONEY WAGE
1990			5200	5000	4000	3400	2800	2400	146
1910	6000		5200	5000	4000	3400	3400	2400	174
1920	6000		5200	5000	4000	3400	3400	3000	302
1930	6000		5200	5000	4000	4000	4000	3000	422
1940	6000		5200	5000	4000	4000	4000	3000	429
1950	9000	8000	6200	7000	6200	5000	5200	4000	873
1955	13000	11000	9450	8500	9050	8000	7000	7000	1579
1960	17000	14000	11100	12300	9800	11000	9200	9200	1992

1965	21000	17000	17000	15700	13500	13700	12400	12400	2435
1970	27000	23000	22475	21350	17700	21000	19200	16650	3397
1975	43500	36750	42720	40500	42940	39000	28800	34155	6925
1980	73350	61800	62838	54230	62600	51087	51350	51401	11706
1985	110246	93507	100137	89311	95850	84604	93342	86600	
1990	154991	131734	135000	131734	139000	134000	135000	123719	
1994	177604	150955	158357	150372	143500	147995	148864	146601	

ENGLAND :

3.67 By long usage, the expression "the superior judges" or simply "the judges" usually means, the judges of the High Court, Court of Appeal and the Law Lords. It is these judges who are the centre of interest when people think of Courts. Before 1971, there was a system of County Court, but other Courts below the High Court were fragmented and largely governed by piece-meal legislation.

3.68 But the Courts Act 1971¹⁰ restructured and rationalised the lower judiciary. Below High Court there are (i) Circuit Judges; (ii) District Judges; (iii) Recorders and Assistant Recorders and (iv) Magistrates.

Circuit Judges :

3.69 Circuit Judges sit in the Crown Court to try all but the most serious criminal cases and in the County Courts where they handle most types of civil cases. Much of the work they do is on a par with work done by High Court Judges and indeed they are deputising for High Court Judges more and more often.

District Judges :

3.70 District Judges are handling minor judicial work which is not thought to need the expertise of a Circuit Judge.

Recorders and Assistant Recorders :

3.71 Recorders sit for between 20 and 50 days a year. Assistant Recorder is required to sit for a minimum of 20 days per year. The Assistant Recorder's work will be assessed, and 'it is expected that he or she will have progressed to a full Recordship after three to five years'. If not, the Assistant Recorder is not given a second chance.

10. Joshua Rozenberg. "The Search For Justice" (1994) p. 47-49.

Magistrates :

3.72 Magistrates consist of part-time lay magistrates (also called Justices of the Peace) together with some full-time legally qualified stipendiaries.

3.73 All the senior judges¹¹ (that is the judges of the House of Lords, the Court of Appeal and the High Court), Circuit Judges and Recorders are appointed by the Crown on the recommendation of the Lord Chancellor. The Prime Minister nominates the Lords Justices of Appeal, the Lord Chief Justice, the Master of the Rolls and the President of the Family Division (although it is commonly assumed that the Prime Minister is guided by the Lord Chancellor). In the old days when judicial posts were few in number and the Lord Chancellor could personally assess the field for every post himself, he acted largely on the basis of what he himself had heard. With increasing numbers of appointments, people began to wonder how he managed, and there were dark rumors about secret files, blacklists, and so forth. To dispel the sense of mystery, in 1986 the Lord Chancellor's Department

published a booklet entitled 'Judicial Appointment' which is available for all to read. From this we learn that within the Lord Chancellor's Department there is a body of officials called the Judicial Appointments Group. Potential appointees come to their notice either because they write in and say they are interested in a judicial appointment, or because their names are mentioned by judges and 'senior members of the profession' with whom the senior officials in the Judicial Appointment Group regularly consult. Files are opened on these candidates - and remain open when they have obtained a position. Into this file will go factual information about the candidate, and opinions which have been expressed about him. At some point, a person under consideration for appointment is likely to be interviewed, and this will put more information about him on file. The part of the information which is purely factual is open for the candidate to see, but the opinions

11. The information has been extracted from "Jackson's Machinery of Justice" by J.R. Spencer.

which have been expressed about him are usually given in strict confidence, and these he is never shown. However, the Lord Chancellor or the senior members of the Judicial Appointments Group are usually willing to give judges and would be judges general advice about their prospects, and this is likely to show an applicant in what standing he is held.

3.74 For centuries it was the case that there was no regular system of promotion. The Court of Appeal and the House of Lords were filled by promotions from below, but there was little movement from the lower judiciary to the High Court, and an appointment to the County Court bench - and more recently to a Circuit Judgeship - was regarded as the end of the road. In the last ten years, this has greatly changed. The Lord Chancellor's Department has made it plain that it expects the people who are appointed Recorders to have proved themselves as Assistant Recorders, and Circuit Judges to have proved their worth as Recorders or Assistant Recorders. Whilst the majority of appointments to the High Court Bench are still made from persons eminent in practice at the Bar, most of them have been new-style Recorders, and there are a number of High Court Judges in office who have been promoted from the Circuit Bench. There are signs that the judiciary is developing a career structure with a promotional ladder, like other areas of public service; although no one puts his foot on the first rung until he has reached his

middle age.

3.75 The Lord Chancellor, who is nominated by the Prime Minister, occupies an anomalous position. For some purposes he is the head of the judiciary and his powers are extensive. Not only is he in charge of judicial appointments, but he sits as a Law Lord in the House of Lords to hear cases and determine cases in so far as his other official duties permit. Yet he is invariably a member of the cabinet. As a cabinet minister, the Lord Chancellor holds office upon the usual political terms, which means that ordinarily he will vacate office if the government changes.

3.76 The position of the Lord Chancellor has, however, been the subject of comment and indeed treated as being unsatisfactory in a lecture of great distinction given recently by Lord Steven¹².

3.77 But Lord Woolf¹³ thinks otherwise. He states that the Lord Chancellor of the day can act as a safety valve avoiding undue tension between the judiciary and the Government and possibly between the judiciary and Parliament as well. As a member of the Cabinet, he can act as an advocate on behalf of the courts and the justice system. He can explain to his colleagues in the Cabinet the proper significance of a decision which they regard as being distasteful in consequence of an application for judicial review. He can, as a member of the Government, ensure that the courts are properly resourced. On the other hand, on behalf of the Government, he can explain to the judiciary the realities of the political situation and the constraints on resources which they must inevitably accept. As long as the Lord Chancellor is punctilious in keeping his separate roles distinct, the separation of powers is not undermined and the justice system benefits immeasurably. The justice system is better served by having the head of the judiciary at the centre of government than it would be by having its interests represented by a Minister of Justice who would lack these other roles.

3.78 The Circuit Judge must be a barrister of at least ten years' standing or a Recorder who has held that office for at least five years. A Recorder must be a barrister or solicitor of at least ten years' standing. A puisne judge of the High Court must be a barrister of at least ten years' standing. A barrister of at least fifteen years' standing, or an existing High Court Judge, qualifies for appointment as a Lord Justice of Appeal (i.e. a judge of the Court of Appeal). The qualifications

12. The Rt Hon. Lord Steyn, "The Weakest and Least Dangerous Department of Government" (1997) P.L.

13. Lord Woolf (1998) , 114 Law Quarterly Review, p.579.

for appointment as a Lord Justice of Appeal also qualify for appointment as Lord Chief Justice, Master of the Rolls, or President of the Family Division. The Lords of Appeal in Ordinary (the Law Lords) must be appointed from barristers or advocates of fifteen years' standing or from persons who have held high judicial office in England, Scotland or Northern Ireland for two years. Since most barristers begin to practice when they are still young, and judges are never appointed from those under forty and quite often from those over fifty, the requisite standing at the Bar is usually attained many years before there is any chance of judicial appointment.

3.79 There is a substantial difference in the terms upon which the superior judges hold office and the terms applicable to Circuit Judges and Recorders. All the superior judges other than the Lord Chancellor hold office 'during good behaviour subject to a power of removal by Her Majesty on an address presented to Her Majesty by both Houses of Parliament', this being the provision of the Supreme Court Act, 1981 which ultimately derives from the Act of Settlement 1701.

3.80 Circuit Judges and Recorders have no such security of tenure. The Courts Act, 1971 provides that 'The Lord Chancellor may, if he thinks fit, remove a Circuit Judge from office on the ground of incapacity or misbehaviour ', and also for failure to comply with the requirements of his appointment as to when he would be available to sit in Court. The retirement age was at 75 years by the Judicial Pensions Act, 1959. But Sec. 26 (1) of the Judicial Pensions and Retirement Act 1993 lowered the retirement age to 70 (but only for judges appointed after the Act came into force).¹⁴ Section 26(5) of the Act says the Lord Chancellor can allow Circuit judges and other minor judicial figures to stay on until they are 75 if he 'considers it desirable in the public interest'.¹⁵

14. Joshua Rozenberg. "The Search for Justice" (1994) p. 94.

15. Joshua Rozenberg. "The Search for Justice" (1994) p. 367.

3.81 Perhaps the greatest responsibility of all in the hands of the Lord Chancellor is to choose the judges. He himself appoints the lower judicial officers, and most magistrates. He also advises the Queen on appointments to the High Court, which means that the Queen has to accept the names he puts forward. But appointments to the Court of Appeal and above are different. These are made by the Queen on the advice of the prime minister.

3.82 At first sight this may seem one of those meaningless formalities designed to buttress the status of senior judges. But the reality is very different. It is nothing less than naked political control over appointments to the most senior levels in the judiciary - the Lord Chief Justice, the Master of the Rolls and the appeal judges.

3.83 Potential candidates for these posts are first selected by the Lord Chancellor. That process is itself questionable (and indeed it will be questionable in chapter 2). But with the system as it is one might assume that the Lord Chancellor would simply pick a name and then send it round to 10 Downing Street so that the prime minister could redirect it to Buckingham Palace. Not so.

3.84 The former Lord Chancellor, Lord Hailsham, generally gave the prime minister a shortlist of two or three names. But he always put them in order of merit, giving reasons, and indicated why he thought any rival candidates would have been unsuitable. Even so, on one occasion the prime minister picked Lord Hailsham's second choice."¹⁶

3.85 A guiding principle of the Lord Chancellor's approach is that, as far as possible, no one person's view about a candidate, whether positive or negative, should be regarded as decisive in itself. The independent view of a spread of observers and colleagues in a position to assess the candidate's work and

16. Joshua Rozenberg. "The Search for Justice" (1994) p. 9.

personality over a sufficiently long time is treated as having great weight. This approach is applied extensively in relation to the appointments of High Court and Circuit Judges and their associated part time appointments. In addition, as far as possible, candidates are appointed to permanent judicial posts only when they have successfully prepared and proved themselves by experience in an associated part-time capacity. This is already fully applied to the Circuit Benches and to most lower judicial and

tribunal appointments. To enable the Lord Chancellor to apply these principles, the Permanent Secretary and Deputy Secretaries undertake continuous consultations with judges and senior members of the profession.

3.86 High Court salaries had been set at £ 5,000 in 1832 while the County Court salaries had been raised to £ 2,000 in 1937. The County Court judges in their meeting in February 1946 raised objection and voted that the ratio between the remuneration of County Court and High Court judges needs reconsideration. They argued that the County Court judge is the permanent representative of the judiciary in the eyes of the ordinary citizen. From this point of view, it is important that his status and prestige, which depend to a considerable extent on his salary, should not be conspicuously below that of a High Court judge. The County Court judges continued to complain about their salaries and the differential with the High Court. By spring 1949, there were threats that some judges will take some individual steps to ventilate their grievances publicly.

3.87 During the period of 1951-1964, the salaries of County Court judges were raised to £ 2,800. This increase became law in the Judicial Officers (salaries) Act. It was further increased in 1957 to £ 3,750. It is important to note that the Judicial Officers (Salaries and Pensions) Act, 1957 authorised the Government to raise the County Court salaries by delegated legislation, subject to Parliamentary resolution. In June 1963, the High Court Judges salaries were proposed to be raised to £ 8,000. This proposal was, however, justified on the plea that "there was no intention of making judges wealthy men", but to satisfy their need to maintain a modest but dignified way of life suited to the gravity, and indeed the majesty, of the duty they discharge. Finally, it got the Royal assent on 14 April 1954.

3.88 In July 1965, the Labour Government kept the pledge made by its predecessor and announced its intention of raising all the salaries of the senior judges by an average of 25 per cent. The Judges' Remuneration Act, 1965 was enacted by the Labour Government. The Judges' Remuneration Act provided for increase by 25% for High Court Judges and accordingly it was raised from £ 8,000 to £ 10,000 and for the judges of the Court of Appeal from £ 9,000 to £ 11,250.

3.89 It is interesting to note that until the 1930s a High Court salary was four times as large as a County Court salary; but by 1965 a County Court judge was paid almost two thirds the salary of a High Court judge. It should also be mentioned that the judges' salaries remained at £ 5,000 per annum from 1852 until 1954, and at £ 8,000 until 1965, senior civil service salaries

showed the following change: in 1871 the most senior of the Permanent Secretaries in a government department received a salary of £ 2,000 per annum. It was not until 1929 that the salary reached £ 3,000 per annum. By 1950 it had crept upto £ 3,500 and by 1954 to £ 4,500. In 1963 Permanent Secretary of the ordinary department was paid £ 8,200 while the two most senior received £ 8,800 per annum. The figures were raised to £ 8,600 and £ 9,200 in 1966.

3.90 Much of the social history of this period was tied up in the intricacies of pay and wage control and the meaning of relativities. There was still friction between the civil service and the High Court bench with respect to salaries. During 1960s Permanent Secretaries finally pulled ahead of the High Court judge. In 1961, the High Court judges earned £ 8,000 and the Ordinary Permanent Secretary £ 7,000 (three earned more). Then in 1970, the Permanent Secretaries were to receive £ 11,900 and High Court Judges £ 11,500. By 1971, the High Court judges were still at £ 11,500; Permanent Secretaries had reached £ 14,000.

3.91 In May 1971, the Conservative Government appointed a permanent body called "Top Salaries Review Body" to advise the Prime Minister on the remuneration of the higher judiciary, Senior Civil Servants etc.. In its second report in 1972, it recommended that both High Court judges and Permanent Secretaries be paid at £ 15,750. The Committee on Top Salaries became the protector of judicial salaries and thus of independence. Until the rejection of its advice by the Major Government in 1992, its recommendations had always been accepted.

3.92 It would be fascinating to set out a few observation on salary relativities from the Review Body on Top Salaries. In Report No.6, 1994, it was stated thus:

"No formal evaluation of relative responsibilities within the judicial structure seems to have been attempted previously nor can any principle of external comparability be applied.

"The (Advisory Group on the judiciary) saw no special merit in principle in the present equivalence between the salaries of a High Court Judge and of a Permanent Secretary in the Higher Civil Service; but they considered that it would be wrong in practice for the pay of a High Court judge to fall behind that of the Permanent Secretary and

therefore regarded the maintenance of at least the existing parity as a safeguard. They also felt that bar earnings (net of expenses) provided a valuable independent means of checking whether judicial salaries were likely to prove sufficient to maintain satisfactory levels of recruitment.

"We have examined the history of judicial salaries since the Eighteenth Century, but we have looked in vain for any well established principles to guide us in this field except the need to maintain the status and dignity of the judicial office as an essential element of the constitution." (Ibid.29)

3.93 The relative salary relationship of High Court Judges and Circuit Judges - the nearest equivalent to County Court judges after the Courts Act, 1971 is 5 : 3. By 1979, the Lord Justice earned £ 27,799. High Court judges £ 25,886 - the same figure as Permanent Secretaries; Judges of the Court of Session £ 24,786; circuit Judges earned £ 18,415.

3.94 In 1985, the Review Body again considered judicial salary relativities. The Circuit Judges made a strong case to have their salaries come closer to those of the High Court judges. This claim, however, was ultimately rejected by the Judicial Sub-Committee. Nevertheless, the recommendation was that their salary be raised from £ 33,000 to £ 40,000 per annum. The Senior Circuit Judges went from £ 35,000 to £ 44,500.

3.95 In 1992, a 19% increase far ahead of inflation was recommended in the 15th Report of the Committee. It was understandable. " The notion of comparability of salaries is an art, not a science, and it is arguable that the Review Body on Top Salaries has been forced to rely on intuition rather than principle. It has simply assumed that Judicial salaries should bear some comparison with those of leaders in industry and leaders at the bar."

3.96 By 1992, the salary figures were £ 97,000 for Lords of Appeal, £ 93,000 for Lords of Justice of Appeal, £ 84,250 for High Court Judges, (£ 82,780 for Permanent Secretaries), Circuit Court judges were paid £ 59,900 and Senior Circuit Court Judges £ 66,500.

3.97 The arrival of Top Salaries Committee led the judges to outface inflation. By 1997, the salary figures were £ 140,665 for the Lord High Chancellor, £ 140,008 for Lord Chief Justice of England, £ 131,034 for Lord of Appeal in Ordinary, £ 131,034 for the Master of the rolls, £ 124,551 for Lord Justice of Appeal, £ 124,551 for Vice Chancellor, £ 124,551 for President, Family

Division, £ 112,011 for Judge of Chancery Division, £ 112,011 for Judge of Queen's Bench Division, £ 112,011 for Judge, Family Division, £ 92,378 for Senior Circuit Judge, £ 83,586 for Circuit Judge, £ 67,358 for Stipendiary Magistrate.¹⁷

17. Law Courts and Offices - Whitakers, 1997.

MALAYSIA:

3.98 Before independence, Malayan judges used to hold office at the pleasure of the Crown. In theory they could be dismissed for any or no reason, but after independence they no longer hold office at the pleasure of the Crown. The Constitution contains express provisions to secure independence of the judiciary from control or interference by the executive and the legislature.

3.99 The independence of judiciary is guaranteed by way of, first, the judges of Superior Courts may be removed from office by His Majesty only on the ground of misbehaviour or of inability from infirmity of body or mind or any other cause, properly to discharge the functions of their office and upon the recommendation of a tribunal consisting of five judges. They cannot be removed from office in any other way. Second, a judge's remuneration and other terms of office including pension rights may not be altered to his disadvantage after his appointment. Third, his remuneration is charged on the Consolidated Fund. Fourth, the conduct of a judge may not be discussed in either House of Parliament except on a substantive motion of which notice has been given by at least one fourth of the members of that House, and may not be discussed in the State Assembly at all. Fifth, a judge, since 1963, is "entitled" to his pension, unlike civil servants who are only "eligible" for their pension.

3.100 In 1970 the separate Ministry of Justice was abolished on the ground that its existence was inconsistent with the independence of the judiciary. Responsibility in Cabinet and Parliament for the machinery of justice was transferred to the Prime Minister. There are two schools of thought about this development. One view is that the executive should have no say in the running of courts and their staff which should be the sole responsibility of the head of the judiciary. The other view is that the head of the judiciary and his fellow judges should be free to concentrate exclusively on judicial work, and they should not be troubled by matters that are best handled by experts trained and skilled in administration. Today, it may be noted, in absence of a Minister of Justice, the Chief Justice of the Federal Court and the two Chief Justices of High Courts, are concerned about

subordinate Courts and their staff.

3.101 There is increasing trend of professionalism of Subordinate Courts. At one time, administrative officers such as Divisional Officers (Dos) and Additional Divisional Officers (ADOs) did part time duty sitting as magistrates. Though not qualified as lawyers, all of them had been given some training in law especially criminal law, the law of criminal procedure and the law of evidence, and they did well as magistrates. However, when emergency broke out in 1948, security became the first priority. The Dos and ADOs were then found to be not proper on the bench. The new trend is in favour of appointing trained lawyers as magistrates.

3.102 The Subordinate Courts in Sabah and Sarawak are governed by their respective Subordinate Courts Ordinance which make provisions for three main classes of Magistrates, namely, First Class Magistrates, Second Class Magistrates and Third Class Magistrates, all are legally qualified persons. First Class Magistrates may be declared as Stipendiary Magistrate by a warrant issued by the Governor. Normally, a First Class Magistrate can only hear civil cases where the value of the claim does not exceed \$ 1000. However, where a First Class Magistrate has been declared a Stipendiary Magistrate, the Chief Justice may confer on him special power so that he can deal with civil claims up to \$ 3000. The Second and third Class Magistrates deal mostly with minor cases. They are all administrative officers.

3.103 But the policy of judiciary is to take over all court work from administrative officers in states.

3.104 The Subordinate Courts in Peninsular Malaysia are having much higher jurisdiction in dealing with civil and criminal matters as compared with Subordinate Courts in Sabah and Sarawak.

3.105 There is no uniformity in Subordinate Courts in the whole country in respect of practice and procedure, though there is a constant demand in regard to uniformity in the organisation, functioning and separation of judiciary from executive.

3.106 It appears that the prosecuting officers and the subordinate judges constitute one common cadre and may change places from time to time.

3.107 The Judicial and Legal Service Commission, was established in 1957 to appoint, confirm, promote, transfer, and discipline

officers of the Judicial and Legal Service. It was abolished in 1960 and then revived in 1973 on Malaysia Day. This Commission is established by Article 138 of the Constitution. Its function is to promote, confirm on the permanent or pensionable establishment and exercise disciplinary control over members of the Judicial and Legal Service. It does not, however, have anything to do with the appointment of the Attorney General, judges or the Tribunal to enquire into the conduct of judges.

3.108 The Judges' Remuneration Act, 1971 provides for the remuneration of Judges' and pensions and other benefits of their dependents. Salaries and allowances of Judges are paid in accordance with the provisions of Section 2(1), (2) and Schedules First and Second of the Act. As per the recent regulation i.e. the Judges' Remuneration (Amendment of Schedules) Regulation, 1997 the salaries and allowances of judges with effect from 1-1-1995 are shown in the following table:-

SALARIES AND ALLOWANCES OF JUDGES IN MALAYSIA^{18.}

(Figures in Ringgit Malaysia, RM)

No.	Post	Salary	Housing Allowance	Maids	Entertainment	Special Judicial Allowance	Monthly Total	House Maintenance P/A
1.	Chief Justice	12000	3150	2100	5400	6000	28650	4100
2.	President Court of Appeal	10520	2500	2000	5100	4500	24620	3000
3.	Chief Judge of Malaya H.C.	10420	2500	2000	5100	4500	24520	3000

4.	Chief Judge of Sabah And Sarawak H.C.	10150	2500	2000	5100	4500	24520	3000
5.	Federal Court Judges	9780	2250	1000	4600	3750	21780	3000
6.	Court of Appeal Judges	9415	2250	1000	4600	3650	20915	3000
7.	High Court of Malaya / Sabah and Sarawak Judges	9050	2250	1000	4600	3600	20500	3000
8.	Judicial Commissioner	8250	2000	1000	4600	3600	19450	3000

18. Judges' Remuneration Act, 1971 of Malaysia as amended in 1997.

3.109 Judges of the Federal Court are entitled to fully furnished institutional quarters which shall be maintained free of charge. If such quarters are not availed of, the judges are paid house rent subsidy of RM 2250 per month. This is with effect from 1-1-1992. They are also paid RM 1000 per month for domestic help and a further sum of RM 3000 per annum for house and garden upkeep. These are with effect from 1-1-1996.

3.110 Judges of the Court of Appeal are also entitled to free fully furnished institutional quarters or in lieu thereof a house rent

subsidy of RM 2250 per month. They are also entitled to RM 1000 per month for domestic help and RM 3000 per annum for house and garden upkeep.

3.111 Judges of the High Court are also likewise entitled to free fully furnished institutional quarters or in lieu thereof a house rent subsidy of RM 2250 per month; besides RM 1000 per month for domestic help and RM 3000 per annum for house and garden upkeep.

Entertainment Allowance :

3.112 The Chief Justice is entitled to entertainment allowance of RM 5400 per month. President of the Court of Appeal is entitled to RM 5100 per month. Chief Judge of the High Court in Malaya is entitled to RM 5100 per month; Chief Judge of the High Court in Sabah and Sarawak is entitled to RM 5100 per month. Judges of the Federal Court, Judges of the Court of Appeal and Judges of the High Courts in Malaya, Sabah and Sarawak are entitled to RM 5000, RM 4800 and RM 4600 per month respectively.

Special Judicial Allowance :

3.113 The Judges are also entitled to Special Judicial Allowance.

3.114 Chief Justice is entitled to RM 6000 per month. President of the Court of Appeal is entitled to RM 4500 per month. Chief Judge of the High Court in Malaya is entitled to RM 4500 per month. Likewise, Chief Judge of the High Court in Sabah and Sarawak is entitled to RM 4500 per month. Judges of the Federal Court, Judges of the Court of Appeal and Judges of the High Courts in Malaya and Sabah and Sarawak are entitled to RM 3750, RM 3675 and RM 3600 per month respectively.

3.115 These are with effect from 1-1-1996.

UNITED STATES :

3.116 The American Court system is complex, partly because of their federal system. Each of the fifty states has its own written constitution. These documents, like the Federal Constitution, embody the principles of separation of powers, establishing the state's legislature (sometimes called the General Assembly) as the lawmaking body, the Governor as the Chief executive officer,

and a court system to exercise the judicial power. In some states the constitution itself creates the entire court system at both trial and appellate levels. In others, the constitution does little more than authorise the legislature to establish the judicial structure.¹⁹

3.117 Whether created by the state constitution or by enactments of the legislature, the judicial systems of the fifty states resemble each other in broad outline. Like all other aspects of state governments, however, they vary in detail. Any generalisations risk the portrayal of a judicial structure that is not quite like that in some or even many states. What follows is a description of the key components of the state court systems, with an indication of the typical patterns and variations.

19. American Law. By Lawrence M. Freedman p 57.

Trial Courts :²⁰

3.118 The trial courts are the lowest courts in all state systems, forming the base of the judicial pyramid. They are the most numerous courts, and collectively they have the most judges and cases. They are spread throughout the cities and countries in the State. These are the courts in which law suits are initially filed; hence, they are referred as courts of "first instance" or courts of "original jurisdiction". When persons commence civil proceedings, and when the state commences criminal prosecutions, they do so in trial courts.

3.119 In most states this base of courts of first instance is subdivided into two levels. The major trial courts, the upper level, are referred to as courts of "general jurisdiction" because they have authority to hear and decide numerous types of cases, civil and criminal. Unless some statutory or constitutional provision specifically deprives them of jurisdiction, they typically can adjudicate any kind of case. The name given to these courts varies from one state to another. In some states they are called "circuit courts"; in other states they are known as "superior courts"; in still others they are "district courts". This lack of uniformity in terminology is one of the many factors contributing to confusion concerning American Courts.

3.120 The lower level of trial courts, below the courts of general jurisdiction, consist of courts of "limited jurisdiction". In

contrast to courts of general jurisdiction, these courts have relatively restricted authority. Typically such a court has power to adjudicate only a narrow range of matters, often only one specific type of case. For example, in some states there are traffic courts vested with jurisdiction over relatively minor motor vehicle offences. In some states there are probate courts with authority only over the administration of decedents' estates or over guardianships of minor and incompetents. The authority of some courts of limited jurisdiction is defined in monetary terms. For example, a "small claims court" may have jurisdiction over civil cases in which the damages do not exceed \$ 5,000/- or some other relatively small amount. States typically maintain courts of limited jurisdiction to try misdemeanors and perhaps juvenile offences that are not serious. Here again there is considerable variation from one state to another. A major twentieth-century movement has been aimed at unifying state trial courts. Its key feature is the consolidation of all trial court business into a single judicial tier, thereby abolishing the distinction between the two trial levels (e.g., Illinois and Iowa, pp. 88 and 89). Some states that have unified their trial courts in form have at the same time organised and supposedly single, unified court into divisions such as probate division, family division, small claims division, and so on, thereby preserving in substance the structure of the old limited jurisdiction courts. However, having all trial courts grouped into one tier, even nominally, permits a more effective management of trial level business. Under a single administrative authority, judges can be assigned from one division to another as the work requires. It is thought that a unified trial court also serves to avoid the appearance of second class justice for cases that would otherwise be handled by courts of limited jurisdiction.

Appellate Courts :

3.121 At the apex of the judicial pyramid in every state is the court of last resort, usually called the supreme court. There are only a few exceptions to this terminology. In New York and Maryland the highest tribunal is named the court of Appeals, and in Massachusetts and Maine it is known as Supreme Judicial Court. In two states, Texas and Oklahoma, there are two courts of last resort: the Supreme Court (for civil cases) and Court of Criminal Appeals (for criminal cases). Most state courts of last resort have seven judges, usually called "justices". The smallest has three and the largest, nine. In a few states these courts function in panels of fewer than all their members. However, in most states all judges usually sit together so that the court functions as a unit when hearing and deciding appeals.

Intermediate Appellate Courts :

3.122 Originally a state's supreme court was the only appellate court in the state. It had jurisdiction over all appeals from the state's trial courts. In the late nineteenth century the rising tide of litigation began to overrun the capacity of the single supreme court in some states. In response, the legislatures began to create intermediate appellate courts. These courts were inserted as a new judicial tier between the trial courts of general jurisdiction and the supreme court. Although the name given to these courts varies, the most common title is court of appeals. Until well into the twentieth century only a majority of states had established such courts. The movements to create them quickened after the Second World War; today thirty-eight states have intermediate appellate courts.

3.123 The simplest scheme is to provide that all appeals from the trial courts go to the intermediate court, with the supreme court receiving no appeals directly from the trial level. The supreme court's jurisdiction is limited to reviewing the intermediate court's decision on a discretionary basis. That is, after the appeal has been decided in the intermediate court, the losing litigant may petition the supreme court for review. That court may then, in its discretion, decide whether to take up the case for decision.

Federal Courts :²¹

3.124 Article III of the Federal Constitution provides: "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts the Congress may from time to time ordain and establish." The creation of other federal courts is left up to Congress. That body moved promptly to pass the Judiciary Act of 1789, setting up the federal judicial system with trial courts in every state. The first set of intermediate courts with purely appellate jurisdiction was established by Congress in 1891. The structure put in place then is essentially the structure that exists today.

21. Ibid No.2 p. 23 to 25.

3.125 The Congress has created chain of federal courts. The federal judicial pyramid, like that in many states, is three-tiered. At the base are the trial courts, the major ones being the district courts. At the middle level are the courts of appeals. At the apex is the Supreme Court.

District Courts :

3.126 In its design for the federal judiciary, Congress has divided the United States and its territories into ninety-four federal judicial districts. There is at least one such district in each state. In the largest and most heavily populated states there are several districts, identified geographically by such designations as the Southern District of New York. With minor exceptions, no judicial District crosses state state lines.

3.127 In each district there is a United States District Court. These ninety-four courts are the major trial courts of the federal judiciary. Each of these courts has at least two judges; many have several, and in the most populous districts the court has more than two dozen. Because each district covers either an entire state or a large part of a state, the Court typically holds sessions in several cities in the district. For example, the United States District Court for the Eastern District of Virginia (covering the eastern half of the state) sits in Richmond, Norfolk and Alexandria.

3.128 Although a district court may have numerous judges, each case is presided over by a single judge, as in the state trial courts. In civil actions seeking money damages, the Constitution guarantees a right to jury trial if a jury is requested by either party. Statutes sometimes accord a right to jury trial in other cases. If the right to jury trial is waived, or if no such right is given by the Constitution or a statute, the judge acts as trier of fact as well as of law. Criminal prosecutions, other than for misdemeanors, are conducted with juries unless the defendant waives that right.

Courts of Appeals :

3.129 In addition to having created the ninety-four districts as units of trial court organisation, Congress has also established thirteen federal judicial circuits as a basis for the federal intermediate court structure. In each circuit there is a court of appeals, officially designated as the United States Court of Appeals for that circuit. Eleven of the circuits are numbered and are organised on a territorial basis, each embracing several states. For example, the Fourth Circuit includes the states of Maryland, Virginia, West Virginia, North Carolina, and South Carolina. The United States Court of Appeals for the District of Columbia Circuit embraces only the District of Columbia. The court of appeals in each geographical circuit has jurisdiction over appeals from the district courts within its circuit, in both civil and criminal cases.

Supreme Court :

3.130 At the apex of the federal judicial pyramid is the Supreme Court of the United States, the only court specifically provided for in the Constitution. Legislation enacted by Congress sets the number of its judges (called Justices) and its jurisdiction, within the boundaries of the jurisdiction authorised by Article III of the Constitution.

3.131 The Court has - and has had since the middle of the nineteenth century - nine Justices, one of whom is designated as the Chief Justice of the United States.

3.132 The Supreme Court has jurisdiction to review all decisions of the federal appellate courts. It also has jurisdiction over the decisions of the highest state courts when those courts have decided a question of federal law. The power to review cases from both state and federal courts gives the Supreme Court a unique position in the American judiciary's firmament.

3.133 With minor exceptions, the Court's jurisdiction is discretionary. Litigants petition the Court for a writ of certiorari, in effect asking the Court to hear and decide a case on its merits. The Court then, in its discretion, decides whether to do so. In this process the Court employs a "rule of four". If any four of the nine Justices wish to grant the writ of certiorari, the case will be taken up for decision. Otherwise, certiorari is denied, and the decision of the court below is left standing.

3.134 It should be underscored that a federal district court is a trial court essentially like a state trial court of general jurisdiction. Both types of courts function under substantially the same trial procedures. Indeed, in many states the trial court procedures are identical to those in the federal district courts. A casual observer of proceedings in a federal district court and a state trial court would notice few differences. In all large cities, as well as in many smaller towns, both courts are in sessions - often in court houses within a few blocks of each other. From these two trial forums, however, the appellate routes diverge. An appeal in a federal case will go to the U.S. court of appeals for the circuit in which the trial court is located. An appeal from a state case will go either to the state intermediate appellate court or the state supreme court.

3.135 The procedural rules and the adversary style of proceedings are basically the same in the federal and state trial courts. Much of their business is also the same. Approximately one-fourth of the federal district court's civil docket consists of cases brought there under the diversity of citizenship jurisdiction, which means that they are essentially state law cases. In such cases,

the federal district courts are engaging in exactly the same kind of work as the state courts of general jurisdiction. In the rest of their business, in civil and criminal, the federal district courts are concerned primarily with issues of federal statutory law, intermingled with federal constitutional questions and maritime cases. Some of these questions also arise in state court litigation. In general, however, state courts are much more involved with the traditional common-law subjects than the federal courts, while the latter are much more heavily involved in adjudicating statutory and constitutional questions.

3.136 The highest degree of judicial independence is found in the federal system. All federal judges hold office during good behaviour and can be removed only through impeachment by Congress. In an impeachment proceeding the House of Representatives must prefer charges against the judge by a majority vote, and the Senate must try the judge on those charges. The judge can be removed only if the Senate finds him guilty by a two-thirds vote. Impeachment is a formidable procedure, not easily invoked.

3.137 At the other end of the spectrum, affording the smallest degree of independence, are those state judicial systems in which judges hold office for terms of years, at the end of which they must stand for re-election by the voters. A judge with a term as short as four or six years, no matter how conscientious he may be, can hardly be unaware that his judicial decisions could become a political issue in the next election, never more than a few years away. Even if the judge himself can perform judicial duties without regard to such considerations, public suspicion of political influence will be a lurking threat to the appearance of justice. Short terms of office and popular election seem inconsistent with the concept of judicial independence. Yet such arrangements exist in many States along with praise for the virtues of judicial independence.

3.138 In some States, the re-election of judges is by a "retention election". The judge runs on his own record without any opponent. The people are asked simply to vote "yes" or "no" on whether that judge shall be retained in office. That system works to afford a somewhat higher degree of independence than does a contested election.

3.139 In an article titled "Judicial Independence in the USA" published in (1997) Electronic Journal, p.3, Justice Breyer of the U.S. Supreme Court, states as follows: There are **three** primary institutional pillars on which the U.S. Judicial administration is

based. The first is the **Judicial Conference** of the United States - which was created in 1922. It comprises the Chief Justice of the Supreme Court, 13 Chief Judges of the Circuits, 12 District Court Judges and the Chief Judge of the Court of International Trade. The Judicial Conference is the national policy-making body for the Judiciary, and supervises the Administrative office of the U.S. Courts (which was established in 1939). The second one is the **Administrative office** of the U.S. Courts. It addresses to the needs for centralisation of Judicial administration and contains a body of professional administrators subject to the direct control of the Judicial Conference, which administers the federal court **budget**, personnel management, procurement and other house keeping and support functions. The third one is **Circuit Judicial Councils** which have primary responsibility in the judiciary's disciplinary system.

3.140 Another independent, but centralised institution of the Judiciary is the **Federal Judicial Centre**, created by Congress in 1967. It is headed by the Chief Justice and is composed of six judges selected by the Judicial Conference and the Director of the Administrative Office. It has the responsibility of conducting research into Judicial administration and issues relevant to the administration of justice, as well as to propose and prepare educational programme for federal Judges.

3.141 The secured tenure and adequate remuneration for Judicial Officers have been always considered as the twin pillars of judicial independence. Article III, Section 1 of the U.S. Constitution provides that federal judges, "shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office."

3.142 An inter-locking net-work of federal statutes fixing compensation of high-level federal officials, including federal Judges provides for annual cost of living adjustments in salary determined in the same way as those for federal employees generally. But in four consecutive fiscal years commencing from 1976, Congress repealed, locked or postponed the previously authorised increases. A number of United States District Court Judges filed class actions against the United States in District Court, challenging the validity of the statutes under the Compensation Clause of the Constitution, which provides that federal judges shall receive compensation which "shall not be diminished" during their continuance in office. The District Court granted

summary judgment in their favour.

3.143 In **U.S. v. WILL**²², BURGET C.J. of the U.S. Supreme Court held that the statutes revoking the increase have violated the Compensation Clause in so far as it applied to the members of the certified class.

3.144 The judicial compensation to the Federal Judges as on 15 July 1996 is: Chief Justice of the Supreme Court is paid a year \$ 171,500; Associate Justice \$ 164,100; U.S. Circuit Court of Appeals Judges \$ 141,700 and U.S. District Judges \$ 133,600.

22. (1980) 449 U.S. 200, 227.

3.145 The annual salary structure of States Judges of Highest Court and General Trial Courts are as follows:

**ANNUAL SALARY STRUCTURE OF JUDGES
IN SOME OF THE STATES IN U.S.A.**

(in U.S. Dollars)

Name of the State	Highest Court	General Trial Court
Alabama	115,695 to 116,775	78,300 to 113,535

Arizona	101,130 to 103,538	86,683 to 96,314
California	131,085 to 137,463	107,390
Hawaii	93,780 to 94,780	86,780
Illionis	124,794	100,439 to 107,780
Maine	85,858 to 90,168	81,198 to 85,254
Minnesota	94,395 to 100,835	83,494 to 87,669
Missouri	99,733 to 102,233	76,059 to 86,256
New York	125,000 to 129,000	113,000
North Carolina	96,000 to 98,576	87,000 to 89,500
Pennysylvania	119,750 to 123,000	104,000 to 106,500

3.146 Information of all 50 States are indicated below²³:

Salaries of associate justices of the highest courts range from \$ 68,874 to \$ 1,32,250; average \$ 99,038; median \$ 97,148.

23. The National Center for State Courts, Salaries Current as of July 1, 1996.

Salaries of judges of intermediate appellate courts range from \$ 77,856 to \$ 124,200; average \$ 97,427; median \$ 94,355.

Salaries of general jurisdiction trial courts \$ 67,513 to \$ 1,15,000; average \$ 88,284; median \$ 86,533.

3.147 Recently, the Judicial Conference of the United States²⁴ which was presided by Rehnquist C.J. voted overwhelmingly at its semi-annual meeting in favour of a resolution declaring that a pay raise is badly needed for judges, law-makers and top government officials because the last cost-of-living increase occurred four years ago. They have stated that while salaries have been frozen since 1993, the cost of living has increased more than 12 per cent. During the same period, rank-and-file federal employees received cost-of-living adjustments of nearly 13 per cent. They have also emphasized that the current law would provide for a 2.3 per cent increase which is far short of the 9.6 per cent "catch-up" pay adjustment. They have urged the Congress to consider the "special circumstances" facing judges; the judges unlike members of Congress or Cabinet members make a lifetime commitment and work for many years after other government leaders have retired.

3.148 They have warned that continued erosion in judicial pay will result in salaries falling below the minimum needed to attract and retain high-caliber judges.

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24. The Washington post 24 September 1997.

PAKISTAN :

SUPREME COURT OF PAKISTAN :

3.149 The Constitution of the Islamic Republic of Pakistan provides for the establishment of the Supreme Court of Pakistan in Chapter 2 of Part 7.

3.150 The Supreme Court is at the apex of the judicial system of Pakistan. It consists of a Chief Justice known as Chief Justice of Pakistan and such number of other Judges as may be determined by an Act of the Parliament. At present, besides the Chief Justice, there are 13 other Judges in the Supreme Court. The Chief Justice of Pakistan is appointed by the President. Other Judges

are also appointed by the President in consultation with the Chief Justice. A person is eligible to be appointed as a Judge of the Supreme Court if he is a citizen of Pakistan and has been a Judge of a High Court for five years or an advocate of a High Court for fifteen years. The Chief Justice and Judges of the Supreme Court hold office till they attain the age of 65.

JURISDICTION :

3.151 The Supreme Court has original, appellate and advisory jurisdiction. The Supreme Court, to the exclusion of every other Court in Pakistan, has the jurisdiction to pronounce declaratory judgement in any dispute between the Federal Government and a provincial Government or between any two or more provincial Governments.

3.152 The Supreme Court has the power for the enforcement of the Fundamental Rights. It has jurisdiction to hear and determine appeals from judgments, decrees, final orders or sentences passed by a High Court, the Federal Shariat Court and the Services Appellate Tribunals. An appeal to the Supreme Court would lie as a matter of right for some specified cases; while for the rest, the Court hears an appeal with its prior permission.

3.153 The Supreme Court has Advisory jurisdiction. At any time, the President considers that it is desirable to obtain an opinion of the Supreme Court on any question of law which he considers of public importance, he may refer the question to the Supreme Court for consideration. The Supreme Court considers the question so referred and reports its opinion on the question to the President.

3.154 The permanent seat of Supreme Court is at Islamabad, but it also sits at Lahore, Karachi, Peshawar and Quetta. The Supreme Court, if it considers expedient to do so in the interest of justice, could transfer any case, appeal or other proceedings pending before any High Court to any other High Court.

3.155 All executive and judicial authorities throughout Pakistan are required to act in aid of the Supreme Court. Any decision of the Supreme Court, to the extent it decides a question of law or is based upon or enunciates a principle of law, is binding on all Courts of Pakistan. The Supreme Court has the power to review any judgment pronounced by it or any order made by it.

3.156 The Fifth Schedule of the Constitution of Islamic Republic of Pakistan relating to the Supreme Court provides that every

Judge of the Supreme Court shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may be determined by the President. Under the Supreme Court Judges (Leave, Pension and Privileges) Order, 1997, a Judge of the Supreme Court including the Chief Justice shall be entitled to the use of an official residence without payment of rent throughout his term of office and for a period of 30 days thereafter.

3.157 In case a Judge chooses to reside in a house not provided by Government, he shall be entitled to a monthly allowance of Rs.13,500/- with maintenance at the cost of Government expense. He shall be entitled to the use of an official car maintained at Government expense with 400 litres of petrol per month. A superior Judicial Office Monthly Allowance is paid amounting to Rs.3,600/- in the case of Chief Justice and Rs.3,500/- in case of every other Judge.

3.158 The Chief Justice of Pakistan will be paid a cost of living allowance of Rs.1,417/- and every other Judge of the Supreme Court a sum of Rs.1,341/- per month. The above allowances are exempt from income-tax.

3.159 A retired Chief Justice and a Judge of the Supreme Court on retirement will be entitled to the services of either a driver or an orderly at his option. The services of the Driver or the Orderly will remain available to his widow after his death. Besides, the Chief Justice and the Judge of Supreme Court on his retirement or resignation shall be entitled to a minimum amount of pension equal to 70% of the salary as may be determined by the President from time to time plus 5% of the said salary with each completed year of service either as a Chief Justice or as a Judge, not exceeding the maximum amount of pension equal to 85% of the salary. He is also entitled to commutation of pension as per rules.

HIGH COURT :

3.160 Chapter 3 of Part VII provides for establishment of the High Court. It consists of Articles 192 to 203 regarding qualification, appointment and conditions of services of a Chief Justice and other Judges.

3.161 In each of the 4 provinces namely, Punjab, Sindh, NWPF and Balochistan, there is a High Court. The Islamabad Capital Territory falls within the jurisdiction of the Lahore High Court of Punjab. The High Court consists of a Chief Justice and other Judges as may be determined by law or as may be fixed by the President.

3.162 A Judge of the High Court is appointed by the President after consultation with the Chief Justice of Pakistan, the Governor of the Province and the Chief Justice of the High Court in which appointment is to be made. The qualification for appointment of a Judge is that he must be a citizen of Pakistan, not less than 40 years of age and has been an advocate of the High Court or has held a judicial office for ten years and has for a period of not less than three years, served or exercised the functions of a District Judge in Pakistan. A Judge of a High Court holds office until he attains the age of sixty two years, unless he sooner resigns or is removed from office in accordance with the Constitution.

3.163 The High Court has original and appellate jurisdiction. It is empowered to make any order.

3.164 The High Court has the power to withdraw any civil or criminal case from the Trial Court and try it itself. It has extensive appellate jurisdiction against the judgements, decisions, decrees and sentences passed by the civil and criminal Courts.

3.165 The High Court has the power to make rules regulating its practice and procedure and of the Courts subordinate to it. Each High Court supervises and controls all Courts subordinate to it and any decision of the High Court binds all Courts subordinate to it.

TRANSFERS :

3.166 **Transfer of the Judges:** A Chief Justice or a Judge of the High Court is liable for transfer from one High Court to another or from the principal seat of a High Court to a bench of that High Court. In case he is so transferred, he is entitled, in addition to his salary, to a monthly allowance of Rs.5,000/-.

3.167 Under the High Court Judges (Leave, Pension and Privileges) Order, 1997, a Chief Justice and a Judge of the High Court shall be entitled to the official residence without payment of rent throughout his term of office and for a period of 30 days thereafter. In case he chooses to reside in a house not provided by the Government, he shall be entitled for a monthly allowance of Rs.13,500/- with maintenance at the Government expenses. He shall also be entitled to the use of an official car maintained at Government expense and 400 litres of petrol per month. a superior Judicial Office Allowance is paid amounting to Rs.3,500/- per month in case of a Chief Justice and Rs.3,000/- in case of every other Judge.

3.168 A Chief Justice is entitled to Rs.1,323/- per month and a Judge of a High Court is entitled to Rs.1,197/- per month as cost of living allowance. The above allowances are exempt from Income-tax.

3.169 A Chief Justice and a Judge of the High Court on retirement will be entitled to the services of either a driver or orderly at his option. The services of Driver or Orderly will remain available to his widow after death.

SHARIAT COURT :

3.170 Chapter 3-A of Part VII of the Constitution provides for the Federal Shariat Court in Pakistan. Articles 203A-203J deal with the appointment of the Judges including the Chief Justice of the Shariat Court.

3.171 Federal Shariat Court comprises, eight Muslim Judges including the Chief Justice to be appointed by the President, out of them, four are to be the persons qualified to be appointed as Judges of High Court, while three are to be Ulema (scholars well-versed in Islamic Law). Federal Shariat Court has original and appellate jurisdiction.

ORIGINAL JURISDICTION :

3.172 The Court is empowered to examine and decide a question whether or not any law or provision of law is repugnant to the injunctions of Islam as laid down in the Holy Quran and Sunnah of the Holy Prophet (peace be upon Him). In case the Court decides that any Law or provision of law is repugnant to the injunctions of Islam, it will set out the extent to which such Law or provision of law is so repugnant, and specify the day on which the decision shall take effect. Where any law is held to be repugnant to the injunctions of Islam, the President in the case of Federal law and the Governor in the case of Provincial law is required to take steps to amend the law so as to bring it in conformity with the injunctions of Islam.

APPELLATE JURISDICTION :

3.173 The Court has exclusive jurisdiction to hear appeals from decision of criminal Courts under any law relating to enforcement of Hudood Law, i.e., Law pertaining to offences of intoxication, theft, Zina (unlawful sexual intercourse) and Qazf (false imputation of Zina). The principal seat of the Federal Shariat Court is at Islamabad, but it has circuits at Lahore, Karachi, Peshawar and Quetta.

OTHER CIVIL COURTS :

3.174 In every district of a Province, there is a Court of District Judge which is the principal Court of original jurisdiction in civil matters. Besides the Court of District Judge, there are Courts of Civil Judges who function under the superintendence and control of the District Judge. All matters of civil nature originate in the Courts of Civil Judges. The District Judge may, however, withdraw any case and try it himself. Appeals against the judgements and decrees passed by the Civil Judges lie to the District Judge in cases where the value of the suit does not exceed the specified amount.

CRIMINAL :

3.175 In every district, there is a Court of Sessions Judge and Courts of Magistrates. Criminal cases punishable with death and cases arising out of the enforcement of laws relating to Hudood are tried by Sessions Judges. The Court of Sessions Judge is competent to pass any sentence authorised by law. Offences not punishable with death are tried by magistrates. There are Magistrates of I Class, II Class and III Class. An Appeal against the sentence passed by a Sessions Judge would lie to the High Court. An appeal against the sentence passed by a Magistrate would lie to the Sessions Judge, if the sentence is upto four years and in other cases to the High Court.

3.176 The recruitment of the subordinate judiciary at the trial Court level is made through a competitive examination held by the Provincial Public Service Commission. The posts of Additional District and Sessions Judges are filled in by promotion from the Judges of the Trial Courts as well as by direct recruitment from the Bar. Elevation to the High Court Benches is again made from the subordinate judiciary and from the Bar.

SPECIAL COURTS AND TRIBUNALS :

3.177 Special Courts and Tribunals are constituted to deal with specific types of cases, i.e. of offences pertaining to Banks; of Recovery of Bank Loans; under the Customs Act; for Traffic Offences, for trying corruption cases; under Commercial Laws and Drug Laws. There are also constituted Labour Courts; Insurance Appellate Tribunal; Income Tax Appellate Tribunal and Services Tribunals. Appeals from the Special Courts lie to the High Courts, except in case of Labour Courts and Special Traffic

Courts which have separate forums of appeal. An appeal from Tribunals would lie to the Supreme Court of Pakistan.

WAFAQI MOHTASIB (OMBUDSMAN) :

3.178 The concept Mohtasib (Ombudaman) is an ancient Islamic concept and many Islamic States had established the office of Mohtasib to ensure that no wrong or injustice is done to the citizens. The Prophet of Islam (peace be upon Him) introduced the system of 'Hisab' or accountability. Article 276 of the Interim Constitution of 1972 provided for appointment of a Federal Ombudsman as well as Provincial Ombudsman for the first time. Subsequently, the Constitution of 1973 included the Federal Ombudsman at item No.13 of the Federal Legislative List in the Fourth Schedule. The institution of Ombudsman was, however, actually brought into being through the establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983.

3.179 The Wafaqi Mohtasib who is appointed by the President of Pakistan holds office for a period of four years. He is not eligible for any extension of tenure, or for re-appointment. He cannot be removed from office except on ground of misconduct or of physical or mental incapacity.

3.180 The chief purpose of the Wafaqi Mohtasib is to diagnose, investigate, redress and rectify any injustice done to a person through maladministration on the part of a Federal Agency or a Federal Government official. The primary objective of the office is to institutionalise a system for enforcing administrative accountability.

POWERS :

3.181 Mohtasib has the same powers as a Civil Court under the Civil Procedure Code for summoning and enforcing the attendance of any person, compelling production of documents and receiving evidence on affidavits. He has also powers identical to that of the Supreme Court of Pakistan to punish any person for contempt.

3.182 The most significant feature of the Ombudsman's powers is that where the superior Courts cannot take notice of orders of administrators which are in conformity with the law and rules - howsoever oppressive or unjust or arbitrary they may otherwise be - the Ombudsman can go into their equity aspect without any inhibition and recommend their withdrawal or modification, if he so finds. Similarly, where the law or rules empower an authority to exercise discretion in deciding a matter, no Court can

question that discretion except the Ombudsman who, if he is satisfied that the discretion has not been exercised judiciously, may upset the decision or have it amended in the manner he deems fit.

3.183 SALARIES AND ALLOWANCE OF JUDGES IN PAKISTAN :

Chief Justice of Pakistan	Rs.20,250/- p.m.
Judges of Supreme Court	Rs.19,170/- p.m.
Chief Justice of High Court	Rs.18,900/- p.m.
Judges of High Court	Rs.17,100/- p.m.
Civil Judge	Rs.3880-290-6780
Senior Civil Judge	Rs.5085-366-8745
Additional District and Sessions Judge	Rs.7750-385-11600
District and Sessions Judge	Rs.9195-440-13595

* * * * *

4. THE TRIAL JUDGE IS REALLY "ON TRIAL"

4.1 Before referring to what really goes on at our trial Courts, it is necessary to have regard to what is required of a trial Judge.

We can state without contradiction, some of the qualities we desire in our trial Judges. It is universally accepted that a trial Judge ought to be neutral and detached. He must be kind and benign. He must have an omniscience and not subjective confidence. He must be quite familiar with the law and knowledgeable about human behaviour. He must have manifold "personality". It consists of, among others, independence, courtesy, patience, dignity, open mindedness, impartiality, thoroughness and decisiveness. Above all, he must have social consciousness. There may be some variations in "this personality" of the Judge from person to person, but whatever be the variations, the central core of agreed standard is that he should be neutral and impartial; calm and non-contentious umpire.

4.2 This central core of agreed standard is a must in every trial Judge, because, he has to dig out the nugget of truth through the clash of contradictions in our adversary system. He is primarily concerned about the justice, no matter to which side it may fall. In the quest for truth, it is therefore, necessary for him to be patient, dignified and courteous to litigants, witnesses, lawyers and others.

4.3 This prescribed role of the Judge for our adversary system must come to him by long experience and training. He has to fulfil the required expectations of all the participants in the Court drama, in which two sides in the Court are nearly equal in learning, though physically may be unequal. The Judge more often is called upon to resolve the conflict between the rival parties. But there are contradictions, power pressures from different directions. The pressures, which we consider, is not with an intention to influence his judgment but those that are inherent in our system.

JUDGE BATTERED :

4.4 The very nature of our trial procedures generates subtle force that works against the Judge and his efforts to be neutral and detached. The primary concern of the parties and their Counsel in the trial of a case is to win. The sole objective of the defence lawyer in a criminal trial is to obtain acquittal. He seeks acquittal not because his client is innocent, but he just wants an acquittal. He gets his practice only when he wins the case. Nobody engages a lawyer who always loses his case. Likewise, the Prosecutor wants only conviction. He wants the accused to be punished and his attitude and approach in the Court are accordingly oriented.

4.5 Each contesting lawyer seeks to secure success to his client. But the goal of winning by both the sides may be inconsistent

with the quest for truth, which the Judge is required to pursue. The Judge has to guard himself against trickery and cunning to defeat the ends of justice. Ultimately, when one party loses, there would be a deep strain, mistrust and hostility. Thus, at every stage, the trial Judge is under attack, however much he makes sincere efforts to render justice.

4.6 The atmosphere of the Court in certain cases is charged with high tension. The lawyers sometimes have an aggressive outlook against the Judge with assaultive mood against their opponents. Even the Judge's fairness is challenged when the ruling is given on any objection.

4.7 Indeed, in such a Court room drama, the Judge is really "on trial" and not the case on trial.

4.8 Trial Judges working under a charged atmosphere and constantly under a psychological pressure has been even judicially recognised.

4.9 In *K.P. TIWARI v. STATE OF M.P.*¹, the Supreme Court observed:

" The lower judicial officers mostly work under a charged atmosphere and are constantly under a psychological pressure with all the contestants and their lawyers almost breathing down their necks – more correctly up to their nostrils. They do not have the benefit of a detached atmosphere of the higher courts to think coolly and decide patiently. Every error, however, gross it may look, should not, therefore, be attributed to improper motive."

THE APPELLATE COURT :

4.10 Our legal system acknowledges the fallibility of the Judges and hence provides for appeals and revisions to correct the errors. The error may be of law or fact or of both. To err is human. There cannot be an exception to a Judge. As wisely put by a jurist "a Judge who has not committed any error is yet to be born."

4.11 Justice Felix Frankfurter² rightly commented:

"Judges are men, not disembodied spirits. Of course, a judge is not free from preferences or, if you will, biases."

4.12 Justice Cardozo³ said:

1. 1994 Supp (1) SCC 540.

2. Some observations of Felix Frankfurter, J. On the "Nature of Judicial Process of Supreme Court Litigation", 98 Proceedings AM Phil Society 233 (1954).

3. The Nature of the Judicial Process, Benjamin, N. Cardozo pp. 168-69.

"The great tides and currents which engulf the rest of men, do not turn aside in their course, and pass judges by. We like to figure to ourselves the processes of justice as coldly objective and impersonal. The law, conceived of a real existence, dwelling apart and alone, speaks, through the voices of priests and ministers, the words which they have no choice except to utter. That is an ideal of objective truth toward which every system of jurisprudence tends

It has a lofty sound; it is well and finely said; but it can never be more than partly true."

4.13 In deciding the appeal, the Appellate Court is not approaching the case as if for the first time. The raw materials for the Appellate Court are already collected, assembled and focussed unlike in the Trial Court. The Appellate Court hears only the oral arguments in a tension free atmosphere. The Appellate Court has plenty of time to come to conclusion. There is enough time for the Appellate Court to think and re-think on any legal issue. The Appellate Court could make research and go on editing its draft judgment any number of times. The decision-making may be prolonged and graduated. There is a qualitative difference in the variety, novelty and method in the decision-making by the Appellate Court. If the Appellate Bench consists of more than one Judge, they could share their views and labour.

4.14 Apart from that, unlike in the Trial Court, the Appellate Court will have substantial contribution from the well-prepared

lawyers. The assistance given to the Appellate Court generally is far better than the assistance given to the Trial Court.

4.15 It is true that, the Appellate Court has as much power as that of the Trial Court in deciding the matter. It does not mean that the Appellate Court should find fault with the Trial Judge in each and every matter of the decision making. It also does not mean that the Appellate Court should treat the Trial Judge with little respect. The Appellate Court dealing with the matter must be conscious and controlled with deference to the decision of the lower Court.

4.16 We rely upon Appellate Court to correct errors. But it does not carry an implication that the Appellate Court is wiser.

4.17 It is therefore not proper for the Appellate Court or Revisional Court to make derogatory remarks against Trial Judge.

4.18 IN BRAJ KISHORE THAKUR v. UNION OF INDIA AND OTHERS⁴, K.T. THOMAS, J. While deprecating the caustic and severe censure made by the Single Judge of the Patna High Court against the Senior District and Sessions Judge of Bihar Judicial Service, observed:

"Judicial restraint is a virtue. A virtue which shall be concomitant of every judicial disposition. It is an attribute of a Judge, which he is obliged to keep refurbished from time to time, particularly while dealing with matters before him whether in exercise of appellate or revisional or other supervisory jurisdiction. Higher Courts must remind themselves constantly that higher tiers are provided in the judicial hierarchy to set right errors, which could possibly have crept in the findings or orders of Courts at the lower tiers. Such powers are certainly not for belching diatribe at judicial personages in lower cadre. It is well to remember the words of a jurist that "a Judge who has not committed any error is yet to be born."

4. (1997) 4 SCC 65, at 66 and 70.

The learned Judge continued:

"No greater damage can be caused to the administration of justice and to the confidence of people in judicial institutions when Judges of higher Courts publicly express lack of faith in the subordinate Judges. It has been said, time and again, that respect for judiciary is not enhanced by using intemperate language and by casting aspersions against lower judiciary. It is well to remember that a judicial officer against whom aspersions are made in the judgment could not appear before the higher court to defend his order, Judges of higher courts must, therefore, exercise greater judicial restraint and adopt greater care when they are tempted to employ strong terms against the lower judiciary."

4.19 In *A.M. MATHUR v. PRAMOD KUMAR GUPTA*⁵, Shetty J., although in a different context, said:

"Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be constant theme of our judges. This quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary. Judicial restraint in this regard might better be called judicial respect, that is, respect by the judiciary. Respect to those who come before the Court as well as to other co-ordinate branches of the State, the executive and the legislature. There must be mutual respect, when these qualities fail or when litigants and public believe that the judge has failed in these qualities, it will be neither good for the judge nor for the judicial process.

5. (1990) 2 SCC 533 at 539.

The Judge's Bench is a seat of power. Not only do judges have power to make binding decision, their decisions legitimate the use of power by other officials. The judges have the absolute and unchallengeable control of the Court domain. But they cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of Counsel, parties or witnesses. We concede that the Court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a general principle of the highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities

whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct."

4.20 In *STATE OF RAJASTHAN v. PRAKASH CHAND AND OTHERS*⁶, the present Chief Justice Dr. A.S. Anand, J. (as he then was), deprecating the tendency of certain Judges in making disparaging and derogatory remarks in intemperate language, observed:

"The foundation of our system which is based on the independence and impartiality of those who man it, will be shaken if disparaging and derogatory remarks are permitted to be made against Brother Judges with impunity. It is high time that we realise that the much cherished judicial independence has to be protected not only from outside forces but also from those who are an integral part of the system. Dangers from within have much larger and greater potential for harm than dangers from outside. We alone in the judicial family can guard against such dangers from within.

6. (1998) 1 SCC 1.

One of the surer means to achieve it is by the Judges remaining circumspect and self-disciplined in the discharge of their judicial functions."

4.21 In *R.C. SOOD v. HIGH COURT OF JUDICATURE AT RAJASTHAN*⁷ B.N. Kirpal, J. after tracing the history of the case of the Petitioner, who was a Senior District Judge belonging to Rajasthan Judiciary, found fault with the Rajasthan High Court for taking a decision to ruin the Petitioner's judicial career. The learned Judge continued:

" We have no doubt that the action taken by the Court was not bona fide and amounts to victimisation. This is certainly not expected from a judicial forum, least of all the High Court, which is expected to discharge its administrative duties as fairly and objectively as it is required to discharge its judicial functions."

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"The High Court acted in the manner which can only be termed as arbitrary and unwarranted, to say the least."

4.22 So stating, the entire disciplinary proceedings initiated by the High Court against the Petitioner were quashed with the exemplary cost of Rs.20,000/- in favour of the Petitioner.

7. AIR 1999 SC 707.

I. OUR VIEWS :

4.23 From the representations received from the Judicial Officers all over the country, it becomes clear that they are working under great stress without proper appreciation of their problems by the High Court. It is necessary to emphasise that the Trial Judges are not mechanical scales or computers. They being human, vary in their respective qualities of intelligence, perceptiveness and attentiveness and mental and emotional characteristics. The High Court while reviewing their decisions must bring to bear these aspects before making any criticism against them.

4.24 It may be stated that the dynamics of judicial process of the Trial Judges and the Appellate Judges are quite distinct and different. The task of writing judgment in the appeal is nothing compared with the duty of conducting trial with procedural fairness of the adversary system.

4.25 The Trial Judges therefore deserve more sympathetic consideration. They should be treated with dignity and honour. They should not be openly criticised by using intemperate language or casting aspersions on their judicial functioning.

4.26 In this context, we are constrained to refer to a pernicious practice which has been specifically brought to our attention by the All India Judges' Association in their representation and also during the oral hearing.

4.27 It is said that some Judges particularly of some High Courts while hearing appeals, writ petitions, or Revision petitions against the orders and judgments of the Trial Court, used to summon the Trial Judges to the High Court to explain in open Court as to why they have written the judgments in that manner. The Trial Judges would be required to be present at their own cost before the learned Judges in the open Court in the midst of the Bar Members and public to explain their judgments. It is a great embarrassment and humiliation to the Trial Judges. If we may say so, with all respect, such practice is unknown to our accepted norms and procedure, if not an abuse of the power. We trust and hope that those learned Judges would soon discontinue that practice in the interest of maintaining harmony in the judicial fraternity and promoting public confidence in the administration of justice.

II. ANNUAL CONFIDENTIAL REPORTS / SELF ASSESSMENT REPORTS:

4.28 Annual Confidential Reports of the Judicial Officers prepared and maintained by the High Courts have given rise to many complaints from the Judicial Officers. It is said that in certain cases, confidential reports are based more on information received from the Bar members or third parties, which is in strict legal parlance "hearsay evidence". It may be stated that the judges who are honest and strict and who adhere to rules of procedure do not always find favourable response from the Bar Members.

4.29 The Commission considers that the procedure prescribed for writing the Confidential Report for All India Administrative Service is a better one and more transparent. This procedure is also adopted by some of the State Governments. The All India Service (Confidential Rolls) Rules, 1970 and the FORM I prescribed thereunder are enclosed as ANNEXURES 'A' & 'B' to this Chapter for ready reference.

4.30 It may be seen that Form I contains six parts:

Part - I for filling up Personal Data.

Part - II for self assessment by the Officer concerned.

Part - III for Reporting Authority.

Part - IV General.

Part - V Remarks of the Reviewing Authority.

Part - VI Remarks of the Accepting Authority.

4.31 We request all High Courts to adopt this procedure with minor modifications here and there, if necessary, if they have not yet adopted the same.

III. EASY ACCESSIBILITY:

4.32 Any Judicial Officer with any problem should have easy access not only to the Registrar General of the High Court but also to the concerned Administrative Judge / Chief Justice. The present tendency of certain Judges and Chief Justices to avoid audience to Judicial Officers on the ground that they need not bother them is not desirable. In some cases, even minor problem might be greatly upsetting the mind of the Judge concerned and the High Court should be ready to apply a healing balm to any hurt or injury of the Officer, in order to keep up the health and morale of the Officers.

IV. DISPENSERS OF JUSTICE SHOULD NOT BE DENIED JUSTICE IN THEIR OWN CASES:

4.33 "Nothing rankles more in a human heart than a brooding sense of injustice." It was said in connection with citizens at large as well as general litigants. But judicial officers cannot be an exception to this maxim.

4.34 Some times, the Judges of the Lower Courts are aggrieved by the decisions taken by the High Court on the administrative side and they approach the High Court for relief on the judicial side. It is complained that their writ petitions are admitted but kept in cold storage. This would be practically denying justice to judicial officers.

4.35 The Commission suggests that the writ petitions of the judicial officers should be expeditiously disposed of preferably by a bench presided over by the Chief Justice of the High Court. If the Chief Justice is disabled to hear such cases, the seniormost Judge may be requested to preside over such bench. This practice will give some kind of confidence to the aggrieved judicial officers.

V. SCRUTINY ON THE EVE OF ATTAINING 58 YEARS FOR EXTENDING BENEFIT OF TWO YEARS SERVICE

4.36 The Supreme Court in the Review judgment in the All India Judges' Association case⁸ observed that:

Para (30) "The benefit of the increase of the retirement age to 60 years shall not be available automatically to all judicial officers irrespective of their past record of service and evidence of their continued utility to the judicial system. The benefit will be available to those who, in the opinion of the respective High Courts, have a potential for continued useful service. It is not intended as a windfall for the indolent, the infirm and those of doubtful integrity, reputation and utility. The potential for continued utility shall be assessed and evaluated by appropriate Committees of Judges of the respective High Courts constituted and headed by the Chief Justices of the High Courts and the evaluation shall be made on the basis of the judicial officers' past record of service, character rolls, quality of judgments and other relevant matters.

Para (31) "The High Court should undertake and complete the exercise in case of officers about to attain the age of 58 years well within time by following the procedure for compulsory retirement as laid down in the respective Service Rules applicable to the judicial officers. Those who will not be found fit and eligible by this standard should not be given the benefit of the higher retirement age and should be compulsorily retired at the age of 58 by following the said procedure for compulsory retirement. The exercise should be undertaken before the attainment of the

8. 1993(4)SCC 288 at 305,306.

age of 58 years even in cases where earlier the age of superannuation was less than 58 years. It is necessary to make it clear that this assessment is for the purpose of finding out the suitability of the concerned officers for the entitlement of the benefit of the increased age of superannuation from 58 years to 60 years. It is in addition to the assessment to be undertaken for compulsory retirement at the earlier stage/s under the respective Service Rules

(Para 32) "The enhancement of the superannuation age to 60 years coupled with the provision for compulsory

retirement at the age of 58 years does introduce a change in the service condition of the existing personnel. There may be judicial officers who are not desirous of availing of the benefit of the enhanced superannuation age with the condition of compulsory retirement and may like to opt for retirement at the age of 58 years. In such cases, the concerned officers should intimate in writing their desire to retire at the age of 58 years well in advance and in any case before they attain the age of 57 years. Those who do not do so will be deemed to have exercised their option to continue in service till they attain 60 years of age subject to the liability of being retired compulsorily at the age of 58 years according to the procedure for compulsory retirement laid down in the Service Rules."

4.37 The experience of the Judicial Officers in every State is that the above system is not put to proper working. On gathering the preliminary information in that regard, the Commission has specifically incorporated a Question No.48 in the general Questionnaire as follows:

"Q.48. The Supreme Court has observed that while the superannuation age of every Judicial Officer shall stand extended upto 60 years, the benefit of the extended superannuation age from 58 to 60 shall be given to a Judicial Officer found fit and eligible by the respective High Court after assessing and evaluating the record of the Judicial Officer in accordance with the procedure for compulsory retirement under the Service Rules before he attains 58 years.

"There are views for and against the said practice. Let the Commission have your considered opinion on the said matter."

4.38 The responses received from the respondents are not worthy of mentioning. We can only state that the methodology required to be followed by the High Court for reviewing the cases of Judicial Officers at the age of 58 for the purpose of giving them the benefit of two years of service has affected the morale of the Judicial Officers. They are near unanimous that the procedure should be discontinued.

4.39 It will be seen that the Supreme Court has observed that the benefit of the increase of the retirement age at 60 years shall not

be available automatically to all Judicial Officers irrespective of their past record of service and evidence of their continued utility to the judicial system. The benefit must be extended only to those who have a potential for continued useful service. This potential for continued utility to the judicial service shall be assessed and evaluated by the High Court and the evaluation shall be made on the basis of the Judicial Officers' past record of service, character rolls, quality of judgment and other relevant matters.

4.40 These observations are followed by the directions to the High Court to review the cases of Judicial Officers who are about to attain the age of 58 years by following the procedure for compulsory retirement as laid down in the respective Service Rules for compulsory retirement. The next direction is that those who are not found fit and eligible by that review should be compulsorily retired at the age of 58.

4.41 It was further observed that the assessment of the Officers by following the procedure for compulsory retirement is only for entitlement to the benefit of the increased age of superannuation from 58 to 60 years and this would be without prejudice to or in addition to the assessment to be undertaken for compulsory retirement at the earlier stages under the respective Service Rules.

4.42 It was also observed that those Judicial officers who are not desirous of availing the benefit of the enhanced superannuation age may opt for retirement at the age of 58 years by intimating in advance their desire to retire at the age of 58 years and in any case before they attain the age of 57 years.

4.43 With all humility, if we may say so, the Apex Court's directions to review the cases of Judicial Officers at the age of 58 for giving them the benefit of two years, is uncalled for. You cannot assess the suitability of Officers for giving the benefit of two years **within the age of superannuation**, in addition to the assessment to be undertaken for compulsory retirement at the earlier stages under the relevant Service Rules. Such a review may be necessary if extension of two years is to be given after the age of retirement. Within the age of retirement, every Officer has a right to continue in service till he attains the age of superannuation unless he is removed by the procedure known to law. That procedure should not be linked for giving the benefit of the extended age of superannuation. It has to be independently followed under the respective Rules.

4.44 Secondly, it may be noted that the review of cases at the age of 58 years for compulsory retirement is not obligatory in respect of every Judicial Officer. It applies only to those who express their desire to continue beyond 58 years. Those who do not

want to continue beyond 58 years may simply intimate the High Court at the age of 57 years stating that they do not want to continue beyond 58 years. Then, they will escape the procedure for compulsory retirement by this scheme. They could honourably retire in the sense without being compulsorily retired at the age of 58, although their records may not be so good as that of those who venture to ask for two more years of service.

4.45 We may hasten to add that we are equally concerned in promoting efficiency in the administration of justice and to keep the streams of justice pure and unpolluted. With this object in view and also bearing in mind the purpose underlying the directions of the Supreme Court, we have recommended the review of all cases of Judicial Officers by a Committee of Judges headed by the Chief Justice. The review should not be one time affair. It should be periodical and the Committee should be continuing Committee. The review of cases shall be undertaken when the Officers are about to attain the age of 50, 55 and 60 years and those who are considered as dead wood should be weeded out in public interest. This procedure of compulsory retirement should be independent of and unconnected with the benefit of giving the upward revision of superannuation age.

4.46 The draft Service Rules in this regard for all High Courts to make has been prepared by the Commission and annexed elsewhere to this Report.

OUR RECOMMENDATIONS :

4.47 Many of the High Courts have incorporated the directions of the Supreme Court in their respective Service Rules, including the provision for compulsory retirement at the age of 58 years, although the retirement age has been fixed at 60.

4.48 We recommend to the High Courts to supersede such Rules and to frame a Rule specifying only the age of retirement. When such a rule is framed without any further conditions, the directions of the Supreme Court to review the cases at 58 will not be applicable, as observed by the Supreme Court in **RAJAT BARAN ROY AND OTHERS v. STATE OF WEST BENGAL AND OTHERS**, as follows:

"In view of this observation, it is clear that the direction issued as above, would cease to exist when appropriate rule enhancing the retirement age of the judicial officers to 60 years is made. Consequently, the rider to the direction issued by the Court also ceases to operate, being coterminus with the direction. After the directions in the 1993 case, in the case of such States which had framed rules consequent upon which the members of the subordinate judiciary in those States became entitled to continue in service till the age of 60 years, it will have to be held that the enhancement has come into force by virtue of such rules framed. In other words, the enhancement of retirement age in those States will be dehors the directions of this Court and will be subject only to the terms of the rules applicable. In such cases, in our opinion, the pre-retirement assessment will not be applicable unless the same is specifically provided under the rules."

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9. (1999) 4 SCC 235 at 240.

ANNEXURE 'A'

ALL INDIA SERVICES (CONFIDENTIAL ROLLS) RULES, 1970

In exercise of the powers conferred by sub-section (1) of section 3 of the All India Services Act, 1951 (61 of 1951), the Central Government, after consultation with the Governments of the States concerned, hereby makes the following rules, namely:-

1. Short title, commencement and application,-

- (1) These rules may be called the All India Services (Confidential Rolls) Rules, 1970.
- (2) They shall come into force on the date of their publication in the Official Gazette.
- (3) They shall apply to the writing and the maintenance of the confidential reports on the members of the Service.

2. Definition,- In these rules, unless the context otherwise requires:-

2₁(a) "accepting authority" means such authority or authorities supervising the performance of the reviewing authority as may be specifically empowered in this behalf by the Government.

2(aa) 'confidential report' means the confidential report referred to in rule 5;

2₂(b) 'confidential roll' means the compilation of the confidential

1. Substituted vide DP&T Notification No.22012/4/87 AIS (III) dated 8-12-1987.

2. Inserted / Substituted vide Notification No. 34/4/71- AIS (III), Vol. I-A dated 11-9-73.

reports written on a member of the Service and includes such

other documents as may be specified by the Central Government, by general or special order, in this behalf;

2₂(c) 'Government' means -

- (i) in the case of a member of the Service Serving in connection with the affairs of the Union or of a Union Territory, or serving under a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Central Government, or serving under a local body set up by an Act of

Parliament, or serving under an international organisation, an autonomous body not controlled by the Central Government or a State Government, or a private body, the Central Government;

(ii) in the case of a member of the Service serving in connection with the affairs of a State, or serving under a company association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Government of a State, or serving under a local body set up by an Act of the Legislature of a state, the Government of that State;

2(d) 'member of the Service' means a member of an All-India Service as defined in section 2 of the All India Service Act, 1951 (61 of 1951);

2₃(e) "reporting authority" means such authority or authorities

2. Inserted / Substituted vide Notification No. 34/4/71- AIS (III), Vol. I-A dated 11-9-73.

3. Substituted vide DP&T Notification No.22012/4/87 AIS (III) dated 8/12/87.

supervising the performance of the member of the Service reported upon as may be specifically empowered in this behalf by the Government;

2₄(f) "reviewing authority" means authority or authorities supervising the performance of the reporting authority as may be specifically empowered in this behalf by the Government.

2(g) 'State' means a State specified in the First Schedule to the Constitution and includes a Union Territory;

2₅(h) 'State Government' means the Government of the State on whose cadre the member of the Service

is borne and in relation to a member of an All India Service borne on a Joint Cadre.

6Explanation – "The authority or authorities supervising the performances" referred to in clauses (a), (e) and (f) shall not necessarily mean an authority or authorities belonging to the same Service to which the reviewing or the reporting authority, as the cases may be, belongs.

Government of India's Orders:

7In pursuance of clause (b) of rule 2 of the All India Service (Confidential Rolls) Rules, 1970, the Central Government hereby specifies the following documents to be included in the confidential roll, as defined in that clause namely:-

(i) Letters of appreciation / Resolution issued by the Government

4. Substituted vide Notification No.22012/4/87 AIS (III) dated 8/12/87.

5. Substituted vide DP&AR Notification No.13/4/71-AIS-I, dated 11/1/72.

6. Inserted vide DP&T Notification No.22012/4/87 AIS (III) dt. 8-12-87.

7. [F.No.11059/16/79-AIS(III), dated 25-5-80].

to a member of the All India Service; record about any medals, award etc. awarded to him in recognition of his services.

(ii) Copy of order imposing on the member of the Service any of the penalties specified in the All India Services (Discipline and Appeal) Rules, 1969.

7(a) Copy of the communication addressed to a member of the Service warning him or conveying the displeasure or reprimand by the Reporting Authority / Reviewing Authority / Accepting Authority in which a reference is made in the Confidential Report for the relevant period.

- (b) Copy of the communication addressed to a member of the Service conveying warning, or displeasure, or reprimand, of the Government.
- (iii) Record of final result of the inquiry into the charges or allegations against a member of the Service; mentioned in his confidential report.
- (iv) Copies of certificates regarding languages known by the member of the Service.
- (v) Copies of certificates regarding educational qualifications acquired by the member of the service after entering the service.
- *(vi) Copies of :-

7. Amended vide DP&T Notification No.11059/8/86 AIS (III) dated 21-1-1987.

8. Amended vide DP&T order No.11059/8/86 AIS III dated 5-1-1989. Amended vide DP&T order No.11059/18/85-AIS (III) dated 8-12-1987.

- (a) Certificates and marksheets regarding training (excluding certificates for one-week training programmes) received by a member of the Service;
- and
- (b) Evaluation Sheets in respect of training programmes sponsored by Government of India or duration of four weeks or more
- (vii) Record about any books, articles and other publications brought out by a member of the Service or for the publication of which he may be responsible.

Note 1 - Mention of items (v) and (vi) may also be made on the first page of the C.R. Dossier in the Columns "Languages Known" and "Educational Qualification"

respectively.

Note 2 - Details of the training under item (vii) may also be mentioned on the first page of the C.R. Dossier below the column "Educational Qualifications".

Note 3 - Information relating to item (viii) may be entered in a separate list to be kept in the C.R. Dossier. Copies of the articles, books and other publications need not be kept in the C.R. Dossier. No distinction is to be made between articles, books and other publications of a professional and those of a non-professional nature.

9. Amended vide order No. 11059 / 14 / 87-AIS III dated 11-9-1987.

3. Maintenance and custody of confidential rolls,-

(1) A confidential roll shall be maintained in respect of every member of the Service by the State Government as well as by the Central Government.

(2) The State Government as well as the Central Government may specify the manner in which the aforesaid confidential rolls shall be maintained and kept by it.

4. Form of the Confidential report,- The confidential report shall be written by the reporting authority in such form as may be specified by the Central Government.

Provided that the Government may make such additions in the form so specified as may be considered necessary or desirable by it to suit local conditions or requirements.

5. Confidential reports.- (1) A confidential report assessing the performances, character, conduct and qualities of every member

of the Service shall be written for each financial year, or calendar year, as may be specified by the Government, (ordinarily within two months of) the close of the said year.

^{10,11}[Provided that where a member of the Service is on deputation to an international organisation, confidential reports in respect of such member may be written-

(i) for the entire period of his tenure with the said organization even in a case where the period of such tenure exceeds one year; or

10. Inserted/substituted vide DP&AR Notification No. 8/6/72-AIS-III, dated 2-1-1975.

11. Inserted/substituted vide Notification No.34/4/71-AIS-III, Vol.I-A, dated 11-9-73.

(ii) for such shorter period as may be considered convenient or necessary by the reporting authority having regard to the circumstances of each case, ordinarily within three months of the close of the said period.]

[Provided further that a confidential report may not be written in such cases as may be specified by the Central Government, by general or special order.]

5(2) A confidential report shall also be written when either the reporting authority or the member of the Service reported upon relinquishes charge of the post, and, in such a case, it shall be written at the time of the relinquishment of his charge of the post or ordinarily within one month thereafter.

[Provided that a confidential report may not be written in such cases as may be specified by the Central Government, by general or special order.]

5(3) Where more than one confidential reports are written on a member of the Service during the course of a financial year or a

calendar year, as the case may be, each such report shall indicate the period to which it pertains.

5(4) Where the reporting authority has not seen, and the reviewing authority has seen, the performance of a member of the Service for at least three months during the period for which the confidential report is to be written, the Confidential report of any such member for any such period shall be written by the reviewing authority, and where, both the reporting authority and the reviewing authority have not seen, and the accepting authority has seen, the performance as aforesaid of any such member during any such period, the confidential report shall be written by the accepting authority.

5(5) Where the authority writing the Confidential report under sub-rule (2) or sub-rule (4) is a Government Servant, such report shall be written before he retires from service;

5(6) Where the reporting authority, the reviewing authority and the accepting authority have not seen the performance of a member of the Service for at least three months during the period for which the report is to be written, an entry to that effect shall be made in the confidential report for any such period by the Government.

¹²5(7) Notwithstanding anything contained in sub-rules (1), (2) and (4), it shall not be competent for the reporting authority, the reviewing authority or the accepting authority, as the case may be, where the authority writing the confidential report is not a government servant, to write a confidential report after he demits office.

Explanation: For the purpose of this rule, Minister shall not be treated as having demitted office if he continues to be a Minister in the Council of Ministers with a different portfolio or in the Council of Ministers immediately reconstituted after the previous Council of Ministers of which he was a Minister with the same or a different portfolio."

6. Review of the confidential report – (1) The confidential report shall be reviewed by the reviewing authority ordinarily within one month of its being written:

Provided that this requirement may be dispensed with in such cases as may be specified by the Government, by general or special order.

12. Substituted vide Notification No.11059/8/86 AIS-III dated 21-1-1987.

6(2) Where the report is written by the reviewing authority under sub-rule (4) of rule 5, or where the reviewing authority has not seen, and the accepting authority has seen, the performance of a member of the Service for at least three months during the period for which the confidential report is written, the confidential report of any such member for any such period shall be reviewed by the accepting authority, ordinarily within one month of its being written.

6(3) It shall not be competent for the reviewing authority, or the accepting authority, as the case may be, to review any such confidential report unless it has seen the performance of the member of the Service for at least three months during the period for which the report has been written, and in every such case an entry to that effect shall be made in the confidential report.

6(4) Notwithstanding anything contained in sub-rules (1) and (2), it shall not be competent for the reviewing authority or the accepting authority, as the case may be, to review any such confidential report-

(a) where the authority reviewing confidential report is a Government servant, after he retires from service, and

(b) in other cases, after he demits office.

¹²"**Explanation:** For the purpose of this rule, a Minister shall not be treated as having demitted office if he continues to be a Minister in the Council of Ministers with a different portfolio or in the Council of Ministers immediately reconstituted after the previous Council of Ministers of which he was Minister with the same or a different portfolio".

6A. Acceptance of the confidential report- (1) The confidential report, after review, shall be accepted, with such modifications, as may be considered

12. Substituted vide Notification No.11059/8/86 AIS-III dated 21-1-1987.

necessary, and countersigned, by the accepting authority, ordinarily within one month of its review:

Provided that this requirement may be dispensed for, in such cases as may be specified by the Government, by general or special Order:

Provided further that where the accepting authority has not seen the performance of any member of the Service for at least three months during the period for which the confidential report has been written, it shall not be necessary for the accepting authority to accept any such report.

Note,- An entry to this effect shall be made in the confidential report.

6A (2) Notwithstanding anything contained in sub-rule (1), it shall not be competent for the accepting authority to accept and countersign any such confidential report-

(a) where the accepting authority is a Government servant, after he retires from service, and

(b) in other cases, after he demits office.

¹²**"Explanation:** For the purpose of this rule a Minister shall not be treated as having demitted office if he continues to be a Minister in the Council of Ministers with a different portfolio or in the Council of Ministers immediately reconstituted after the previous Council of Ministers of which he was Minister with the same or a different portfolio".

6B. Cases in which the accepting authority writes or reviews the confidential report,- Notwithstanding anything contained in rule 5 or rule 6, where the accepting authority writes or reviews the confidential report of any

12. Substituted vide Notification No.11059/8/86 AIS-III dated 21-1-1987.

member of the Service, it shall not be further necessary to review or accept any such report.

7. Communication of the confidential report to the Central Government and the State Government,- A certified true copy of the confidential report shall be sent to the Central Government or the State Government or both to the Central Government and the State Government, according as the member of the Service is servicing in connection with the affairs of the State, on whose cadre he is borne, or the Union, or a State to which he has been deputed:

¹³Provided that, if the confidential report is written in a language other than Hindi or English, it shall be accompanied by an authentic certified translation in Hindi or English.

¹⁴**"8. Communication of Adverse remarks,-**

8(1) Where the Confidential report of a member of the service contains an adverse remark, it shall be communicated to him in writing together with a substance of the entire Confidential report by the Government or such other authority as may be specified by the Government ordinarily within two months of the receipt of the confidential report and a certificate to this effect shall be recorded in the Confidential report.

8(2) Where the reporting authority or the reviewing authority or the accepting authority records an adverse remark, he shall also record a note to the effect that the remark is an adverse remark:

13. Inserted vide Notification No. 8/5/72-AIS-III, dated 25-8-1973.

14. Substituted vide DP&T Notification No.11059 / 8 / 86-AIS-III dated 21-1-1987.

Provided that the question whether a particular remark recorded in the Confidential report of a member of the service is an adverse remark or not shall be decided by the Government.

Provided further that in the event of any difference of opinion between the Central Govt. and the Government of a State whether a particular remark is to be deemed an adverse remark or not, the opinion of the Central Government shall prevail.

Explanation: for the purpose of these rules an adverse remark means a remark which indicates the defects or deficiencies in the

quality of work or performance or conduct of an officer, but does not include any word or words in the nature of counsel or advice to the officer".

9. Representation against adverse remarks,- A member of the Service may represent to the Government against the remark communicated to him under rule 8 within 45 days of the date of its receipt by him:

¹⁵Provided that the Government may entertain a representation within three months of the expiry of the said period if it is satisfied that the member of the service had sufficient cause for not submitting the representation in time.

10. Consideration of representation against adverse remarks,—

(1) The Government shall, and if it considers necessary, in consultation with the reporting authority, [the reviewing authority or the accepting authority], consider the representation made under rule 9 by a member of the Service and pass orders as far as possible within three months of the date of submission of the representation—

15. Substituted vide DP&T Notification No.11059 / 8 / 86-AIS-III dated 21-1-1987.

(a) rejecting the representation, or toning down the remark, or

(b) expunging the remark.

Provided that where an order toning down or expunging the remark is passed a copy of such order, and if the order is passed beyond twelve months after the close of the financial year calendar year, as the case may, be to which the remark pertains, the reasons therefor, together with the certified true copies of the representation made and the remarks of the reporting authority and the reviewing authority, shall be endorsed to the Central Government or the State Government or both to the Central Government and the State Government according as the member of the Service is serving in connection with the affairs of a State on whose cadre he is borne or the Union or a State to which he has been deputed.

¹⁶[] deleted.

(2) The order so passed on the representation shall be final and the member of the Service concerned shall be informed suitably.

10.A. **General,**— The Central Government may issue such instructions, not inconsistent with the provisions of these rules, as it may consider necessary, with regard to the writing of the confidential reports, the maintenance of the confidential rolls and the effect of the confidential reports on the conditions of service of a member of the service.

11. **Interpretation,**— Where any doubt arises as to the interpretation of any of the provisions of these rules, the matter shall be referred to the Central Government who shall decide the same.

16. Substituted vide No.34/4/71-AIS-III, Vol. I-A dated 11-9-1973.

Executive Instructions:

¹⁷FORM OF CONFIDENTIAL REPORT

[See Rule 4 of the All India Service (Confidential Rolls) Rules, 1970]

[Ministry of Home Affairs Notification No.36/1/69-AISD-III, dated 15-7-70].

* * * * *

ANNEXURE 'B'

Form 1

Confidential Report

for

Indian Administrative Service Officers

Junior Time Scale

Senior Time Scale

Selection Grade

Name of Officer _____

Report for the year / period ending _____

Form 1

Confidential Report for Indian Administrative Service Officers

(Junior Time Scale, Senior Time Scale, Selection Grade)

Report for the year / period ending _____

PART – 1 PERSONAL DATA

(To be filled by the Administrative Section concerned of the Ministry/Department/Office)

1. Name of Officer
2. Cadre and Year of allotment
3. Date of Birth
4. Date of continuous appointment Date Grade
to present grade
5. Present post and date of appointment Date Grade

thereto

6. Period of absence from duty (on leave,
Training etc., during the year. If he has
Undergone training, please specify.)
7. Date of filing the Annual Property
Returns;

PART - II To be filled in by the Officer Reported upon

(Please read carefully the instructions given at the end of the form before filling the entries.)

1. Brief description of duties.
2. Please specify the quantitative / physical / financial targets / objectives set for yourself or that were set for you in
respect of eight to ten items of work, in order of priority and your achievement against each target.

Targets Achievements

- 3.(a) Please state briefly the shortfalls with reference to the targets / objectives referred to in column 2. Please

specify constraints, if any in achieving the targets.

(b) Please also indicate terms in which there have been significantly higher achievements and your contribution thereto.

PART - III To be filled in by the Reporting Authority

(Please read carefully the instructions given at the end of the form before filling the entries.)

A. NATURE AND QUALITY OF WORK

1. Please comment on Part II as filled out by the officer and specifically state whether you agree with the answers relating to targets and objectives, achievements and shortfalls. Also specify constraints, if any, in achieving the objectives.

2. Quality of output –

Please comment on the officer's quality of performance having regard to standard of work and programme objectives, and constraints, if any.

3. Knowledge of sphere of work –

Please comment specifically on each of these : level of knowledge of functions, related instructions and their application.

B. ATTRIBUTES

1. Attitude to Work –

Please comment on the extent to which the officer is dedicated and motivated and on his / her willingness and initiative to learn and systematise his / her work.

2. Decision-making ability –

Please comment on the quality of decision-making and on ability to weigh pros and cons of alternatives.

3. Initiative –

Please comment on the capacity and resourcefulness of the officer in Handling unforeseen situations on his / her own and willingness to take additional responsibility and new areas of work.

4. Ability to inspire and motivate –

Please comment on the capacity of the officer to motivate, to obtain willing support by own conduct and capacity to inspire confidence.

5. Communication skill (written and oral) –

Please comment on the ability of the officer to communicate and on his / her ability to present arguments.

6. Inter-personal relations and team work –

Please comment on the quality of relationship with superiors, colleagues and subordinates, and on the ability to appreciate others point of view and take advice in the proper spirit. Please also comment on his / her capacity to work as a member of a team and to promote team spirit and optimise the output of the team.

7. Relations with the public –

Please comment on the officer's accessibility to the public and responsiveness to their needs.

8. Attitude towards Scheduled Castes / Schedules Tribes / Weaker Sections of Society –

Please comment on his / her understanding of the problems of Scheduled Castes and Scheduled Tribes / Weaker Sections and willingness to deal with them.

C. ADDITIONAL ATTRIBUTES

(for officers of 12 years of service and above only)

1. Planning ability –

Please comment whether the officer anticipates problems, work needs, and plans accordingly and is able to provide for contingencies.

2. Supervisory ability –

Please comment on the officer's ability relating to:

- (i) proper assignment of tasks;
- (ii) identification of proper personnel for performing the tasks;
- (iii) guidance in the performance of tasks; and
- (iv) review of performance.

3. Coordination ability –

Please comment on the extent to which the officer is able to achieve coordination in formulation and implementation of tasks and programmes by different functionaries involved.

4. Aptitude and Potential –

Please indicate three fields of work from amongst the following for possible specialisation and career development of the officer. Please mark 1,2,3 in three appropriate boxes.

1. Personnel Administration	
2. Law and Order and Internal Security	
3. Financial Administration	

4. Agricultural and Rural Development	
5. Social Services and Educational Administration	
6. Planning	
7. Economic and Commercial Administration	
8. Industrial Administration	
9. Any other field (Please specify).	

5. Training –

Please give recommendations for training with a view to further improving the effectiveness and capabilities of the officer. (While specifying the areas of training, it is not necessary to confine to the fields referred to in column 4).

PART - IV GENERAL

1. State of health –

2. Integrity –

(Please see Note below the instructions)

3. General assessment –

Please give an overall assessment of the officer with reference to his / her strength and shortcomings and also by drawing attention to the qualities if any not covered by the entries above.

4. Grading –

(Outstanding / Very Good / Good / Average / Below Average)

(An officer should not be graded outstanding unless exceptional qualities and performance have been noticed; grounds for giving such a grading should be clearly brought out).

Place : Signature

Date : Name in block letters

Designation

(During the period of Report)

PART - V REMARKS OF THE REVIEWING AUTHORITY

1. Length of service under the Reviewing Authority.
2. Is the Reviewing Authority satisfied that the Reporting Authority has made his / her report with due care and attention and after taking into account all the relevant material?
3. Do you agree with the assessment of the officer given by the reporting authority?

(In case of disagreement, please specify the reasons;

Is there anything you wish to modify or add?)

4. General remarks with specific comments about the general remarks

given by the reporting authority and remarks about meritorious work of the officer including the grading.

5. Has the officer any special characteristics, and / or any abilities which would justify his / her selection for a special assignment or / out of turn promotion? If so, specify.

Place : Signature of the Reviewing Authority

Date : Name in block letters

Designation

(During the period of Report)

PART - VI REMARKS OF THE ACCEPTING AUTHORITY

(i.e. next superior authority)

Place : Signature of the Accepting Authority

Date : Name in block letters

Designation (During the period of Report)

INSTRUCTIONS

1. The Confidential Report is an important document. It provides the basic and vital input for assessing the performance of an officer and for his / her further advancement in his / her career. The officer reported upon, the Reporting Authority, the Reviewing and Accepting Authority should, therefore, undertake the duty of filling out the form with a high sense of responsibility.
2. Performance appraisal through Confidential Reports should be used as a tool for human resource development.

Reporting Officers should realise that the objective is to develop an officer so that he / she realises his / her true potential. It is not meant to be a fault-finding process but a developmental one. The Reporting Officer and the Reviewing officer should not shy away from reporting shortcomings in performance, attitudes or overall personality of the officer reported upon.

3. The columns should be filled with due care and attention and after devoting adequate time. Any attempt to fill the report in a casual or superficial manner will be easily discernible to the higher authorities.

4. If the Reviewing Authority is satisfied that the Reporting Authority had made the report without due care and attention he shall record a remark to that effect in Part V Column 2. The Government shall enter the remarks in the Confidential Roll of the Reporting Authority.

5. Every answer shall be given in a narrative form. The space provided indicates, the desired length of the answer. Words and phrases should be chosen carefully and should accurately reflect the intention of the authority recording the answer. Please use unambiguous and simple language. Please do not use omnibus expressions like ‘outstanding’, ‘very good’. ‘Good’, ‘Average’, ‘below average’ while giving your comments against any of the attributes.

6. The Reporting Officer shall, in the beginning of the year set quantitative / physical / financial targets in consultation with each of the officers with respect to whom he is required to report upon. Performance appraisal should be a joint exercise between the officer reported upon and the Reporting Officer. The targets / goals shall be set at the commencement of the reporting year i.e. April, in the case of All India Service Officers. In the case of an officer taking up a new assignment in the course of the reporting year, such targets / goals shall be set at the time of assumption of the new assignment.

7. The targets should be clearly known and understood by both the officers concerned. While fixing the targets, priority should be assigned item-wise, taking into consideration the nature and the area of work and any special features that may be specific to the nature or the area of the work of the officer to be reported upon.

8. Although performance appraisal is a year-end exercise, in order that it may be a tool for human resource

development, the Reporting Officer and the officer reported upon should meet during the course of the year at regular intervals to review the performance and to take necessary corrective steps.

9. It should be the endeavour of each appraiser to present the truest possible picture of the appraisee in regard to his / her performance, conduct, behaviour and potential.

10. Assessment should be confined to the appraisee's performance during the period of report only.

11. Some posts of the same rank may be more exacting than others. The degree of stress and strain in any post may also vary from time to time. These facts should be borne in mind during appraisal and should be commented upon appropriately.

12. Aspects on which an appraisee is to be evaluated on different attributes are delineated below each column. The appraiser should deal with these and other aspects relevant to the attributes.

NOTE:

The following procedure should be followed in filling up the column relating to integrity:–

(i) If the Officer's integrity is beyond doubt, it may be so stated.

(ii) If there is any doubt or suspicion, the column should be left blank and action taken as under:

(a) A separate secret note should be recorded and followed up. A copy of the note should also be sent together with the Confidential Report to the next superior Officer who will ensure that the follow up action is taken expeditiously. Where it is not possible either to certify the integrity or to record the secret note, the Reporting Officer should state either that he had not watched the officer's work for sufficient time to form a definite judgement or that he has heard nothing against the officer, as the case may be.

(b) If, as a result of the follow up action, the doubts or suspicions are cleared, the officer's integrity should be

certified and an entry made accordingly in the Confidential Report.

(c) If the doubts or suspicions are confirmed, this fact should also be recorded and duly communicated to the officer concerned.

(d) If as a result of the follow up action, the doubts or suspicions are neither cleared nor confirmed, the officer's conduct should be watched for a further period and thereafter action taken as indicated at (b) and (c) above.

(Ministry of Home Affairs OM No.51/4/64-Estt (d), dated 21.6.1963.)

* * * * *

5. RECHRISTENING SUBORDINATE JUDICIARY

5.1 The judges of the District Courts and the Courts subordinate thereto, are generally termed as Subordinate Judicial Service. Even the relevant Rules of Recruitment refer to them as "Subordinate Judicial Service". The word "subordinate", in our opinion, is not an appropriate word prefixing the "Judicial Service". The word "subordinate" conveys not only the state of being subordinate, but also indicates 'inferiority' in status, position, rank or order. It also indicates an act of submission and obedience to authority. These judges function independently in judicial functions, though they may be under the control of the High Court in matters of administration. But that does not justify their being branded as "Subordinate Judicial Service".

5.2 When we turn to our Constitution, we find reference to "Subordinate Courts" but not "Subordinate Judicial Service".

5.3 The title of Part VI, Chapter VI of the Constitution is styled as "Subordinate Courts".

5.4 Article 233, which is the first Article in this Chapter, provides for appointment of District Judges. They shall be appointed by the Governor of the State in consultation with the High Court concerned.

5.5 Article 234 provides for recruitment of persons other than District Judges. It states that appointments of persons other than

District Judges to the **judicial service of a State** shall be made by the Governor of the State **in accordance with rules made by him in that behalf** after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State. (Emphasis supplied).

5.6 Article 235 provides that the control over district Courts and Courts subordinate thereto including the posting and promotion of, and the grant of leave to, **persons belonging to the judicial service of a State** and holding any post inferior to the post of District Judges shall be vested in the High Court. (Emphasis supplied).

5.7 Article 236(a) defines the expression "District Judge" as including Judge of a City Civil Court, Additional District Judge, Joint District Judge, Assistant District Judge, Chief Judge of a Small Cause Court, Chief Presidency Magistrate, Additional Chief Presidency Magistrate, Sessions Judge, Additional Sessions Judge and Assistant Sessions Judge.

5.8 Article 236(b) defines 'Judicial Service' to mean:

"A service consisting exclusively of persons intended to fill the post of District Judge and other civil judicial posts inferior to the post of District Judge."

5.9 What then constitutes a Judicial Service of a State?

5.10 This has received consideration with the analysis of the aforesaid Constitutional provisions in **STATE OF MAHARASHTRA Vs. LABOUR LAW PRACTITIONERS' ASSOCIATION**,¹ in which, the Supreme Court observed:

"The term 'District Judge' should not be confined only to the Judge of the Principal Civil Court in the hierarchy of General Civil Courts. The term would now have to include also the hierarchy of specialised civil Courts, such as a hierarchy of Labour Courts and Industrial Courts. The fact that the Chief Presidency Magistrate and the Sessions Judge were also included in the definition of 'District Judge' indicates that a wide interpretation is to be given to the expression 'District Judge'. The extensive definition of a District Judge under Article 236 is indicative of the same.

1. AIR 1998 SC 1233.

Under Article 236(b), the expression "Judicial Service" is defined to mean "a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district Judge."

The Court concluded:

Judicial service thus postulates a hierarchy of Courts with the District Judge as the head and other judicial officers under him discharging only judicial functions.

xxx xxx xxx

Therefore, bearing in mind the principles of separation of powers and independence of the judiciary, judicial service contemplates a service exclusively of judicial posts in which there will be a hierarchy headed by a District Judge."

5.11 However, the different States have given different names to the Judicial Officers of their Subordinate Courts. We may briefly refer to them hereunder:

ANDHRA PRADESH

5.12 The Judicial officers of the Subordinate Courts have been classified into two categories: (i) Andhra Pradesh State Higher Judicial Service and (ii) Andhra Pradesh State Judicial Service.

5.13 The Higher Judicial Service includes District & Sessions Judges - Grade I and District & Sessions Judges - Grade II / Chief Judicial Magistrates / Chief Metropolitan Magistrates.

5.14 Andhra Pradesh State Judicial Service consists of Senior Civil Judges and Junior Civil Judges.

ASSAM :

5.15 The judges of the lower Courts are called as Assam Judicial Service, but have been differentiated as Grade I, Grade II and Grade III.

5.16 Grade I consists of District & Sessions Judges / Additional District & Sessions Judges / Special Judge.

5.17 Grade II covers Chief Judicial Magistrate / Additional Chief Judicial Magistrate / Asst. District & Sessions Judges.

5.18 Grade III includes Sub-Divisional Judicial Magistrates and Judicial Magistrates / Munsiffs.

BIHAR :

5.19 The judicial service has been dissected into (i) Bihar Superior Judicial Service and (ii) Bihar Judicial Service.

5.20 Bihar Superior Judicial Service consists of District & Sessions Judges / Addl. District & Sessions Judges.

5.21 Bihar Judicial Service includes Chief Judicial Magistrates / Asst. Sessions Judges / Subordinate Judges / Sub-Divisional Judicial Magistrates and Munsiffs / Judicial Magistrates I Class and II Class

DELHI :

5.22 Here again, the judicial service has been classified into two categories: (i) Delhi Higher Judicial Service and (ii) Delhi Judicial Service.

5.23 The Delhi Higher Judicial Service includes District & Sessions Judges / Addl. District & Sessions Judges / Chief Metropolitan Magistrates / Addl. Chief Metropolitan Magistrates.

5.24 The Delhi Judicial Service comprises of Senior Civil Judges / Judges, Small Causes Courts and Civil Judges / Metropolitan Magistrates.

GOA :

5.25 The Judicial Service consists of Grade I and Grade II.

5.26 District & Sessions Judges / Addl. District & Sessions Judges are in Grade I.

5.27 Civil Judges (Sr. Dn.) and Civil Judges (Jr. Dn.) are in Grade II.

GUJARAT :

5.28 There are three categories: (i) Senior Branch; (ii) Junior Branch Class I and (iii) Junior Branch Class II.

5.29 The Principal Judge / Addl. Principal Judge / Judges, City Civil Court / District Judges / Chief Judge, Small Causes Court /

Chief Metropolitan Magistrate / Addl. Chief Metropolitan Magistrate / Asst. Judges are in Senior Branch.

5.30 Judges of Small Causes Court / Civil Judges (Sr. Dn.) are in Junior Branch Class I.

5.31 Civil Judges (Jr. Dn.) / Judicial Magistrate I Class are in Junior Branch Class II.

HARYANA & PUNJAB :

5.32 The Judicial Officers are classified into (i) Superior Judicial Service and (ii) Civil Service (Judicial Branch).

5.33 The Superior Judicial Service includes District & Sessions Judges / Addl. District & Sessions Judges.

5.34 The Civil Service (Judicial Branch) comprises Civil Judges (Sr. Dn.) / Chief Judicial Magistrates / Judges of Small Causes Courts and Civil Judges (Jr. Dn.)-cum-Judicial Magistrates I & II Class.

HIMACHAL PRADESH :

5.35 This State has followed the pattern of Delhi by dissecting the service into (i) Himachal Pradesh Higher Judicial Service and (ii) Himachal Pradesh Judicial Service.

5.36 The Higher Judicial Service includes District & Sessions Judges / Addl. District & Sessions Judges / Registrar of High Court.

5.37 The Himachal Pradesh Judicial Service covers Senior Sub-Judges-cum-Chief Judicial Magistrates and Sub-Judges-cum-Judicial Magistrates I Class.

JAMMU & KASHMIR

5.38 There are two categories: (i) Jammu & Kashmir Higher Judicial Service and (ii) Jammu & Kashmir Civil Service (Judicial).

5.39 The posts of District & Sessions Judges and Addl. District & Sessions Judges are in the first category of Jammu & Kashmir Higher Judicial Service.

5.40 The posts of Sub-Judges / Chief Judicial Magistrates and Munsiffs / Judicial Magistrates are in the second category of

Jammu & Kashmir Civil Service (Judicial).

KARNATAKA

5.41 Karnataka uses the single expression as "Karnataka Judicial Service" to represent all the three grades, viz., District Judges with all scales, Civil Judges (Sr. Dn.) and Civil Judges (Jr. Dn.).

KERALA

5.42 Here again, we find two categories: (i) Kerala State Higher Judicial Service and (ii) Kerala Judicial Service.

5.43 Kerala State Higher Judicial Service includes District Judges (Selection Grade), District & Sessions Judges / Addl. District & Sessions Judges.

5.44 The Kerala Judicial Service consists of Sub-Judges / Chief Judicial Magistrates and Munsiffs-Magistrates.

MADHYA PRADESH

5.45 Madhya Pradesh Judicial Service is also classified as: (i) Madhya Pradesh Higher Judicial Service and (ii) Madhya Pradesh Lower Judicial Service.

5.46 The Higher Judicial Service consists of District Judges (Supertime Scale and above), District Judges (Selection Grade), District Judges in Junior Administration Grade Non-functional, District Judges (Sr. Time Scale).

5.47 The Lower Judicial Service includes Civil Judges - Selection Grade-cum-Chief Judicial Magistrates, Civil Judges - Senior Scale and Civil Judges Junior Scale.

MAHARASHTRA :

5.48 Maharashtra has divided the Judicial Service into (i) Senior Branch and (ii) Junior Branch.

5.49 The Senior Branch includes Principal Judge / Judges of the Bombay City Civil Court, District Judges / Addl. District Judges, Chief Judge / Addl. Chief Judge, Small Causes Court, Bombay, Chief Metropolitan Magistrate / Addl. Chief Metropolitan Magistrates.

5.50 The Junior Branch includes Judges of the Small Causes Courts at places other than Bombay, Civil Judges (Senior Division), Chief Judicial Magistrates / Addl. Chief Judicial Magistrates, Judges of the Small Causes Courts at Bombay and Metropolitan Magistrates, Metropolitan Magistrate, Juvenile Court, Bombay, Civil Judges (Jr. Dn.) and Judicial Magistrates of the First Class.

MANIPUR :

5.51 The Judicial Service in Manipur is on grade-wise, namely, Grade I, Grade II and Grade III.

5.52 Grade I covers District & Sessions Judges / Addl. District & Sessions Judges / Registrar / Joint Registrar, Gauhati High Court.

5.53 Grade II consists of Chief Judicial Magistrates / Addl. Chief Judicial Magistrates / Civil Judges (Sr. Dn.) and Dy. Registrar, Gauhati High Court.

5.54 Grade III includes Civil Judges (Jr. Dn.), Judicial Magistrates I & II Class / Administrative Officer of the District & Sessions Court.

MEGHALAYA :

5.55 This State has similar grades as in Manipur. Grade I includes District & Sessions Judge / Addl. District & Sessions Judge.

5.56 Grade II comprises of Asst. District & Sessions Judges / Chief Judicial Magistrates and Grade III includes Munsiffs & Judicial Magistrates.

MIZORAM :

5.57 Here, we notice grade within grades. Grade I (Senior) consists of Legal Remembrancer-cum-Secretary Law, Judicial / Registrar of High Court and District & Sessions Judges.

5.58 Grade I (Junior) includes Joint Legal / Remembrancer-cum-Joint Secretary Law & Judicial / Special Judges and Presiding Officer, MACT.

5.59 Grade II comprises of Dy. Legal Remembrancer-cum-Dy. Secretary Law & Judicial / Dy. Registrar in High Court / Civil

Judges (Sr. Dn.) / Chief Judicial Magistrates / Asst. District & Sessions Judges.

5.60 Grade III comprises of Asst. Legal Remembrancer-cum-Under Secretary / Judicial Magistrate I Class / Civil Judges (Jr. Dn.) and Asst. Registrar in High Court.

5.61 There is yet Grade IV that includes Special Officer-cum-Asst. Draughtsman and Translator.

NAGALAND :

5.62 The structure of Judicial Service is similar to Mizoram. There are four grades in the subordinate judicial service. Grade I represents District & Sessions Judge and Addl. District & Sessions Judges; Grade II refers to Dy. Registrar in High Court; Grade III indicates Judicial Magistrates I Class, Sub-Judges and Asst. Registrar in High Court and Grade IV includes Judicial Magistrates II Class and Sub-Judges.

ORISSA :

5.63 There are five classes of Officers. Orissa Superior Judicial Service (Senior Branch); Superior Judicial Service (Junior Branch); Judicial Service Class I (Senior); Judicial Service Class I (Junior) and Judicial Service Class II.

5.64 Orissa Superior Judicial Service Sr. Branch consists of District & Sessions Judges / Addl. District & Sessions Judges. The Superior Service (Junior Branch) includes Chief Judicial Magistrates. Orissa Judicial Service Class I Sr. includes Civil Judges (Sr. Dn.), Registrar of Civil Courts and Dy. Registrars of High Court.

5.65 Orissa Judicial Service Class I Jr. comprises of Sub-Divisional Judicial Magistrates / Asst. Registrars of High Court and Orissa Judicial Service Class II includes Civil Judges (Jr. Dn.) and Judicial Magistrates.

RAJASTHAN :

5.66 The subordinate judicial service in Rajasthan consists of Higher Judicial Service and Judicial Service. Higher Judicial Service covers District Judges Selection Grade / District Judges / Addl. District Judges / Law Secretary-cum-Legal Remembrancer.

5.67 Judicial Service includes Civil Judges (Sr. Dn.)-cum-Chief Judicial Magistrates and Addl. Civil Judges (Sr. Dn.)-cum-Addl. Chief Judicial Magistrates, Sr. Civil Judges-cum-JMFCs, Civil Judges-cum-JMFCs and Munsiffs & Judicial Magistrates I Class.

SIKKIM :

5.68 Here, we notice two categories: Sikkim Superior Judicial Service and Sikkim Judicial Service. Sikkim Superior Judicial Service includes Secretary, Law-cum-Legal Remembrancer / Joint Legal Remembrancer / District & Sessions Judges / Registrar in High Court.

5.69 Judicial Service of Sikkim is inclusive of Chief Judicial Magistrates and Civil Judges-cum-Judicial Magistrates.

TAMIL NADU :

5.70 There are four categories namely: (i) District Judges (Supertime Scale); (ii) District Judges / Addl. District Judges / Chief Judicial Magistrates; (iii) Civil Judges (Sr. Dn.); (iv) Civil Judges (Jr. Dn.) / Judicial Magistrates I Class.

TRIPURA :

5.71 There are three grades; namely, Judicial Officer Grade I, Judicial Officer Grade II and Judicial Officer Grade III.

5.72 Grade I includes District Judge / Addl. District Judge & Chief Judicial Magistrate.

5.73 Grade II consists of Civil Judges (Sr. Dn.) & Asst. Sessions Judges and Judicial Officer.

5.74 Grade III consists of Judicial Magistrates I Class & II Class and Civil Judges (Jr. Dn.).

UTTAR PRADESH :

5.75 The Judicial Service in Uttar Pradesh like many other States has only two categories of Judicial Officers: (i) Higher Judicial Service and (ii) Judicial Service. The Higher Judicial Service consists of District & Sessions Judges / Addl. District & Sessions Judges and Addl. Sessions Judges.

5.76 U.P. Judicial Service includes Civil Judges (Sr. Dn.) / Addl. Civil Judges (Sr. Dn.) / Chief Judicial Magistrates / Addl. Chief Judicial Magistrates / Judges, Small Causes Court / Addl. Judges, Small Causes Court and Civil Judges (Jr. Dn.) / Judicial

Magistrates.

WEST BENGAL :

5.77 There is Higher Judicial Service and Subordinate Judicial Service.

5.78 The Higher Judicial Service represents District & Sessions Judges / Addl. District & Sessions Judges / Chief Metropolitan Magistrates / Addl. Chief Metropolitan Magistrates / Chief Judges of Small Causes Courts / Secretary Law / Judges, City Civil Court.

5.79 West Bengal Subordinate Judicial Service consists of Civil Judges (Sr.Dn.)/ Asst. District & Sessions Judges / Sub-Divisional Judicial Magistrates / Civil Judges (Jr. Dn.) / Judicial Magistrates I Class.

PONDICHERRY :

5.80 Pondicherry Judicial Service consists of three cadres: (i) District Judge / Addl. District Judge / Sessions Judge / Addl. Sessions Judge; (ii) Civil Judges (Sr. Dn.) / Chief Judicial Magistrates and (iii) Civil Judges (Jr. Dn.) / Judicial Magistrates I Class.

5.81 Let us now refer to the views and comments received to the Commission's Question No.6.

Question No. 6 reads:

"PROPER EXPRESSION

Q.6. Article 235 speaks of "District Courts and Courts subordinate thereto" and persons belonging to "Judicial Service of a State".

Article 236(b) refers to the expression "Judicial Service" as consisting exclusively of persons intended to fill up the post of District Judge and other Civil Judicial posts inferior to the post of District Judge.

Some States have dissected the Judicial Service into Higher Judicial Service and Lower Judicial Service.

What should be the appropriate expression to be used to cover the three cadres which the Commission is contemplating?"

5.82 The views expressed by the Respondents are not uniform. They widely differ. For brevity, we set out below the proposed expressions and within the bracket the names of the Respondents:

5.82.1 STATE JUDICIAL SERVICE :

(Andhra Pradesh Judicial Officers Association, High Court of Gujarat (Judicial Service of a State), Haryana Civil Judges Association, High Court of Himachal Pradesh, Jammu & Kashmir Judicial Service Association, Kerala Magistrates (Judicial) Association, High Court of Bombay (Judicial Service of the State), Government of Nagaland, High Court of Orissa, High Court of Judicature at Madras, Government of Tamil Nadu, Tripura Judicial Service (Government), Uttar Pradesh Judicial Services Association, High Court of Judicature at Allahabad, Government of Uttar Pradesh, Government of West Bengal, Administrator of U.T., Lakshadweep (State / Union Territory Judicial Service), All India Judges' Association, Punjab Judicial Officers Association, High Court of Kerala, Government of Kerala and Tamil Nadu Judicial Officers Association.)

5.82.2 HIGHER JUDICIAL SERVICE / STATE JUDICIAL SERVICE :

(Government of Andhra Pradesh, High Court of Andhra Pradesh and All Orissa Judicial Officers Association).

5.82.3 HIGHER JUDICIAL SERVICE / LOWER JUDICIAL SERVICE :

(Mr. Justice P.P. Bopanna (Rtd.) and High Court of Madhya Pradesh.

Under Secretary, Government of Goa wants to have the word "cadre" to be affixed to these expressions).

5.82.4 SENIOR JUDICIARY / JUNIOR JUDICIARY :

(Judges of the City Civil and Sessions Court at Mumbai).

5.82.5 SUPERIOR JUDICIAL SERVICE / SUBORDINATE JUDICIAL SERVICE :

(Patna High Court).

5.82.6 DISTRICT JUDICIARY :

(Assam Judicial Service Association, Bihar Judicial Service Association and Delhi Judicial Service Association).

5.82.7 SUBORDINATE JUDICIAL SERVICE OF THE STATE :

(Mr. Justice Ranganatha Misra, Former Chief Justice of India).

5.82.8 INTEGRATED JUDICIAL SERVICE :

(Gauhati High Court).

5.82.9 JUDICIAL SERVICE :

(Government of Gujarat, Gujarat Judicial Service Association, Calcutta High Court, Karnataka State Judicial Officers Association, High Court of Karnataka, Bangalore (High Court has also given in the alternate expression "STATE JUDICIARY"), Rajasthan High Court, Mr. Justice D.R. Khanna, Former Judge of the Delhi High Court, Mr. Justice K. Ramachandraiah, former Judge of the Karnataka High Court).

5.82.10 STATE SUPERIOR JUDICIAL SERVICE AND STATE JUDICIAL SERVICE :

(Punjab & Haryana High Court).

5.82.11 High Court of Jammu & Kashmir stated that the proper expression to cover Civil Judges (Senior and Junior Division) is "JUDICIAL SERVICE" and for the District and Sessions Judges / Addl. District and Sessions Judges is "HIGHER JUDICIAL SERVICE".

5.83 We have carefully examined the matter in the light of the views expressed by the Respondents. We do not want to differentiate the Officers of different Courts by assigning different names as it is being followed in some States. It is better and appropriate to term them as belonging to one Common Service though there may be grades amongst themselves. Calling the

Officers as belonging to one Service though they belong to different grades is very common in the Executive Service like IAS, IPS, IA & AS and State Administrative Service.

That apart, having regard to the expression used in Article 236(b) of the Constitution and in the light of the decision of the Supreme Court in **STATE OF MAHARASHTRA Vs. LABOUR LAW PRACTITIONERS' ASSOCIATION**,¹ we consider that the proper expression to cover the three cadres, viz., District Judges, Civil Judges (Senior Division) and Civil Judges (Junior Division) would be "JUDICIAL SERVICE" prefixed by the name of concerned State. Say for example, Karnataka Judicial Service, Delhi Judicial Service, Maharashtra Judicial Service, Tamil Nadu Judicial Service etc..

5.84 We request all High Courts, State Governments and Administration of Union Territories to accordingly amend their respective Acts, Rules, Regulations and Circulars etc., to give effect to the above suggestion.

5.85 This takes us to the question whether any change in the existing nomenclature of any post or cadre is called for. The existing nomenclature of the posts in all States and Union Territories as per the judgment of the Supreme Court in the All India Judges' Association case is: (i) District Judge; (ii) Civil Judge (Senior Division) and (iii) Civil Judge (Junior Division). Hitherto, our discussion proceeded on the basis of the said nomenclature.

5.86 The Commission is, however, of the view that classifying Civil Judges as Civil Judge (Senior Division) and Civil Judge (Junior Division) may not be appropriate. The distinction made as Junior and Senior is likely to create a feeling of inferiority or superiority among the Civil Judges. The Commission considers that Civil Judge (Junior Division) may be termed as Civil Judge; and Civil Judge (Senior Division) may be termed as Senior Civil Judge.

5.87 The Commission ascertained the views in this regard by a supplementary Questionnaire furnished to all the Associations, nominees of High Courts and

1. AIR 1998 SC 1233.

State Governments who participated in the personal hearing. Almost all of them have expressed their view that the suggestion put forward by the Commission is more appropriate and the nomenclature of Civil Judges should be changed accordingly.

5.88 In fact, some of them have expressed the view that the nomenclature proposed by the Commission is better and more dignified and it does not create a feeling of inferiority or superiority among the Civil Judges. The President of the Delhi Judicial Service Association is exhilarated about the suggestion of the Commission and he has stated that the proposal of the Commission is more graceful and better-phrased and it removes the doubts created among the litigant public treating the Civil Judges as Junior and Senior which gives an impression of one is subordinate to the other.

5.89 In the premise, we suggest that hereafterwards, Civil Judge (Junior Division) be termed as **Civil Judge** and the Civil Judge (Senior Division) as **Senior Civil Judge**.

5.90 We request the High Courts and State Governments / Union Territories Administration to make necessary alterations in this regard in their respective enactments, rules, regulations, circulars etc..

5.91 It may be stated that the Commission has also prepared a draft Civil Courts Act for adoption by all High Courts in which the nomenclature used is only Civil Judge, Senior Civil Judge and District Judge.

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6. EQUATION OF POSTS OF CHIEF METROPOLITAN

MAGISTRATE AND CHIEF JUDICIAL MAGISTRATE

6.1 The question of equation of posts of Chief Metropolitan Magistrate (CMM) and Chief Judicial Magistrate (CJM) to an equivalent cadre in the three-tier judicial service of every State and Union Territory presents considerable problems.

6.2 We may first trace the structure of cadres of Magistrates provided under the Code of Criminal Procedure 1898 ("1898 Code"). Thereunder, there were certain special arrangements in respect of the cities of Madras, Bombay and Calcutta. These

cities were termed as Presidency-towns. Section 18 of the 1898 Code required the State to appoint sufficient number of Magistrates called Presidency Magistrates in the Presidency-towns, depending upon the inflow and pendency of criminal cases.

6.3 One of the Presidency Magistrates was appointed as the Chief Presidency Magistrate and the other Presidency Magistrates were subordinate to the Chief Presidency Magistrate.

6.4 The Chief Presidency Magistrate had certain powers over his subordinates. He had inter-alia, powers to frame rules to conduct the business and constitution of appropriate benches for disposal of cases. He was paid higher emoluments.

6.5 The system of Presidency Magistrates with an overall supervision of the Chief Presidency Magistrate was found to be useful in the Presidency-towns, where crimes were sophisticated and the volume of work was heavy which required quicker disposal of cases.

6.6 Outside the Presidency-town and particularly in the district, there was no system of appointing Presidency Magistrate. Instead, there was District Magistrate. Section 10 of the 1898 Code provided that the Government shall appoint a Magistrate of the First Class to be called the District Magistrate in every District outside the Presidency-town. The State Government may also appoint any Magistrate of the First Class to be an Additional District Magistrate, who shall have all or any of the powers of a District Magistrate.

6.7 Under Section 12 of the 1898 Code, the State Government may appoint as many persons as it thinks fit as Subordinate Magistrates of the first, second or third class in any District.

6.8 The District Magistrate would be directly under the control of the State Government and other Magistrates appointed in the District would be under the control of the District Magistrate. These District Magistrates were exercising both executive and judicial powers. The performance of these dual functions of the nature of executive and judicial by one authority was the order of the day before coming into force of the Constitution of India.

6.9 But in Presidency-town, some of the functions, particularly of the executive nature, of the District Magistrate were discharged by the Commissioner of Police.

6.10 Article 50 of the Constitution directs that the State shall take steps to separate the judiciary from the executive in the public services of the State. The Law Commission of India in their 37th and 41st Reports (paras 32 to 62 in 37th Report and para 2.1 in the 41st Report) recommended that there should be separation of the judiciary from the executive on an all India basis in order to achieve uniformity in the matter.

6.11 In order to bring about complete separation of judiciary from the executive, the Code of Criminal Procedure, 1973 ("1973 Code") was enacted. This Code provides two categories of Magistrates, namely, the Judicial Magistrates and the Executive Magistrates. Broadly speaking, functions which are essentially judicial in nature are vested in the Judicial Magistrates and functions which are "police" or administrative in nature are the concern of the Executive Magistrates.

6.12 Section 6 of the 1973 Code provides for the constitution of the following classes of criminal Courts besides the High Court and the Courts constituted under any other law: (i) Courts of Session; (ii) Judicial Magistrates of the First class and, in any metropolitan area, Metropolitan Magistrates; (iii) Judicial Magistrates of the Second Class; and (iv) Executive Magistrates.

6.13 Section 8 of the 1973 Code specifically provides for the Constitution of the metropolitan areas. The Section so far as relevant provides:

"Section 8. Metropolitan Areas, -

- (1) The State Government may, by notification, declare that, as from such date as may be specified in the notification, any area in the State comprising a city or town whose population exceeds one million shall be a metropolitan area for the purpose of this Code.
- (2) As from the commencement of this Code, each of the Presidency-towns of Bombay, Calcutta and Madras and the City of Ahmedabad shall be deemed to be declared under sub-section (1) to be a metropolitan area.
- (3) The State Government may, by notification, extend, reduce or alter the limits of a

metropolitan area but the reduction or alteration shall not be so made as to reduce the population of such area to less than one million.

(4) and (5) xxx "

6.14 It will be seen that the then existing Presidency-towns of Bombay, Calcutta, Madras and Ahmedabad were statutorily declared as Metropolitan areas which are also Metropolitan Cities.

6.15 The Magistrates posted in the Metropolitan area are called Metropolitan Magistrates. Section 17 confers power on the High Court to appoint a Metropolitan Magistrate to be the Chief Metropolitan Magistrate for a metropolitan area. The High Court may also appoint any Metropolitan Magistrate as Additional Chief Metropolitan Magistrate who will have all or any of the powers of the Chief Metropolitan Magistrate.

6.16 Section 11 provides for constitution of Courts of the Judicial Magistrates in every district (not being a metropolitan area).

6.17 Under Section 12 of the 1973 Code, the High Court could appoint a Judicial Magistrate of the First Class to be the Chief Judicial Magistrate and the High Court may also appoint any Judicial Magistrate of the First Class as Additional Chief Judicial Magistrate. The Additional Chief Judicial Magistrate shall have all or any of the powers of the Chief Judicial Magistrate.

6.18 The judicial powers of the Chief Judicial Magistrate are similar to the powers of the Chief Metropolitan Magistrate. The Chief Metropolitan Magistrate and the Chief Judicial Magistrate have similar control and jurisdiction over the Magistrates subordinate to them. Even their judicial powers are not different and indeed much the same. This would be clear from Section 29 of the 1973 Code which provides:

"Section 29. Sentences which Magistrates may pass.-

(1) The Court of a Chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or imprisonment for a term exceeding seven years.

(2) The Court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding five thousand rupees, or of both.

(3) The Court of a Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding one thousand rupees, or of both.

(4) The Court of a Chief Metropolitan Magistrate shall have the powers of the Court of a Chief Judicial Magistrate and that of a Metropolitan Magistrate, the powers of the Court of a Magistrate of the first class."

6.19 Under Section 374, the appeals against the sentence passed by the Chief Metropolitan Magistrate and Chief Judicial Magistrate lie to the Court of Session.

6.20 In this context, Sections 15 and 19 may also be read:

Section 15 so far as relevant provides:

"Section 15 (1): Every Chief Judicial Magistrate shall be subordinate to the Sessions Judge; and every other Judicial Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate.

xxx xxx xxx."

Section 19 so far as relevant provides:

"Section 19(1): The Chief Metropolitan Magistrate and every Additional Chief Metropolitan Magistrate shall be subordinate to the Sessions Judge; and every other Metropolitan Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Metropolitan Magistrate.

xxx xxx xxx."

6.21 It will be seen that the CMM and Additional CMM are subordinate to the Sessions Judge and all other Metropolitan

Magistrates are under the general control of the CMM and subordinate to him. Likewise, CJM has been constituted as subordinate to the Sessions Judge, but all other Judicial Magistrates are made subordinate to the CJM.

6.22 In the light of the aforesaid provisions, we may now proceed to determine the appropriate cadre to which CMM and CJM should be equated.

6.23 Before we consider the question, it may be useful to refer to the views and comments received to our Question No.(2) in the Questionnaire.

The Question No.(2) reads as follows:

"In States like Tamil Nadu, Andhra Pradesh, and West Bengal, the post of Chief Judicial Magistrate / Chief Metropolitan Magistrate is equated with the cadre of District Judge and in some other States, it is of the cadre of Civil Judge (Senior Division). According to you, to which cadre the post of Chief Judicial Magistrate / Chief Metropolitan Magistrate could appropriately be equated with having regard to the relative duties and responsibilities of the posts?"

6.24 The High Courts of Andhra Pradesh, Bihar, Calcutta, Delhi, Himachal Pradesh, Madras, Orissa and Sikkim have stated that the posts of CMM and CJM are to be equated to the cadre of District Judges.

6.25 The High Courts of Gauhati, Gujarat, Jammu & Kashmir, Kerala, Madhya Pradesh, Punjab & Haryana and Rajasthan have expressed the view that both the posts of CMM and CJM are to be equated to that of Civil Judge (Senior Division).

6.26 The High Courts of Allahabad, Bombay and Karnataka, however, are in favour of equating only the post of CMM to the cadre of District Judges. They want CJM to be in the cadre of Civil Judges (Senior Division).

6.27 The Governments of Goa, Gujarat, Kerala, Manipur and Sikkim are of the view that both the posts of CMM and CJM be equated with the cadre of Civil Judges (Senior Division).

6.28 The Governments of Andhra Pradesh, Meghalaya, Nagaland, Tamil Nadu and Tripura have favoured equation of the post of Chief Judicial Magistrate / Chief Metropolitan Magistrate to that of District Judge.

6.29 Judicial Officers' Associations of Delhi, Gujarat, Jammu & Kashmir, Rajasthan, Tamil Nadu, Tripura and Uttar Pradesh have stated that the post of CMM and CJM may be included in the cadre of District Judges. Karnataka Judicial Officers' Association, however, wants CMM to be included in the cadre of District Judges but not CJM.

6.30 The All India Judges' Association and the Associations of Judicial Officers of Andhra Pradesh, Assam, Bihar, Goa, Haryana, Kerala, Madhya Pradesh, Maharashtra, Manipur, Mizoram and Punjab have contended that the posts of CMM and CJM should be included only in the cadre of Civil Judges (Sr. Dn.).

6.31 For a proper conclusion in the matter, we may begin with the definition of "District Judge" in the Government of India Act, 1935.

Section 254 (3) of the Government of India Act, 1935 reads:

" In this and the next succeeding section the expression "district judge" includes additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, sessions judge, additional sessions judge, and assistant sessions judge."

6.32 We may also read the definition of "District Judge" in the Constitution of India.

Article 236 (a) provides:

" The expression "district judge" includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge."

Both are inclusive definitions.

6.33 When we read both the definitions side by side, it will be seen that the Chief Presidency Magistrate is a common post found in them. Article 236 (a) of the Constitution includes even the post of Additional Chief Presidency Magistrate, judges of the City Civil Courts, Additional and Joint District Judges, Chief Judge of Small Causes Court and Sessions Judge etc..

6.34 It may be noted that Article 236 (a) of the Constitution could not have referred to the post of CMM since the post of CMM was introduced for the first time in the 1973 Code. In 1973 Code, the Presidency Town has been renamed as Metropolitan Area. Under Section 8(2) of the 1973 Code, the Presidency Towns of Bombay, Calcutta, Madras and City of Ahmedabad shall be deemed to have been declared as Metropolitan Area. The Presidency Town has been thus renamed as Metropolitan Area and the Chief Presidency Magistrate has been redesignated as CMM.

6.35 Be it noted that it is just a change of designation. But there is no change in other respects. The powers, duties and responsibilities of the Chief Presidency Magistrate have been wholly inherited by CMM, even with higher sentencing power. CMM has now power to sentence upto 7 years imprisonment as against the power to sentence upto 2 years by Chief Presidency Magistrate.

6.36 It may be of importance to note that the Chief Presidency Magistrate was in the cadre of District Judge. Adroitly, the CMM and Addl. CMM in the Metropolitan Area of Delhi, Mumbai, Madras, Hyderabad and Ahmedabad continue to be in the cadre of District Judges. The lone exception is the CMM in Bangalore Metropolitan Area, who is still in the cadre of Civil Judges (Senior Division). But High Court of Karnataka very rightly suggested that, that post should be in the cadre of District Judges.

6.37 But those who have pleaded against the equation of CMM to the cadre of District Judges have strongly relied upon the provisions of Section 19 of the 1973 Code, which inter alia, provide that CMM shall be subordinate to the Sessions Judge. It is contended that when CMM is statutorily made subordinate to the Sessions Judge, it is not proper to equate the post of CMM to the cadre of District Judges.

6.38 We gave our anxious consideration to the problem presented. We do not consider that Section 19 of the 1973 Code is an impediment to equate the post of CMM to the post of District Judge. The High Court could issue necessary instructions making CMM as an independent Officer and not subordinate to Sessions Judge. Such instructions could be issued either at the time of appointing CMM under Section 17 of the Code or under the general controlling powers vested under Article 235 of the Constitution.

6.39 There is one more contention which needs to be dealt with. It was contended that the appeal against the conviction and

sentence passed by CMM lies only to the Court of Session as provided under Section 374 of the 1973 Code, and, CMM cannot, therefore, be integrated to the cadre of District Judges. It seems to us that providing an appeal to the Court of Session under Section 374 cannot be a decisive factor to determine the equation of post of CMM.

6.40 It may be stated that the conviction and sentence rendered by the Metropolitan Magistrate are also appealable to the Court of Session under Section 374(3) of the Code. But, the Metropolitan Magistrates are not subordinate to the Sessions Judge. They are subordinate only to CMM subject to the general control of the Sessions Judge.

6.41 It may further be noted that in some High Courts, there is a provision for appeal to the Bench of two Judges against the order and judgment of the single judge of the same Court. Such a provision does not mean that the single judge of the High Court is subordinate to the Bench of two other judges. All judges of the High Court are of equal rank and status. The appeal is a right conferred on the litigant to enable the Court to have a second look over the matter.

6.42 The State of Haryana, relying upon the decision of the Supreme Court in **M.L. SHARMA AND OTHERS v. UNION OF INDIA AND OTHERS***, has pleaded that the post of Chief Metropolitan Magistrate / Chief Judicial Magistrate should be integrated with the post of Civil Judge (Sr. Dn.).

6.43 We have perused the judgment. It does not support the argument advanced. The judgment is an authority for the proposition that even a category of post is included in the definition of "District Judge" under Article 236, it would be open to the State Government under appropriate Rules to classify such Officers as not District Judges proper and belong to a category different from that of District Judge category.

6.44 In the premise and for the aforesaid reasons, we equate CMM to the cadre of District Judges.

6.45 This takes us to the question of equation of the post of CJM. A cursory glance at the provisions of the Criminal Procedure Code, 1973 indicates that CJM outside the Metropolitan area is a counter-part of CMM in the Metropolitan area. Both have similar powers and duties. Both have similar control and supervisory powers over the Magistrates in their respective jurisdiction.

* WP (Civil) 442 of 1986 (1992 SCC (L&S) 1946 - 1992 Supp (2) SCC 430)

These then are the grounds urged for equating CJM to District Judge. But we cannot ignore the fact that CMM in a Metropolitan area functionally and legally stands on a higher footing. He has onerous duties and responsibilities.

6.46 Metropolitan area is an extensive area with population more than the District in which CJM is posted. Metropolitan area is of commercial importance unlike the Districts. The crimes committed in such city are of sophisticated nature, the disposal of which requires rich and special experience.

6.47 The Law Commission in its 37th Report has also recognised the importance and usefulness of the Presidency system of Magistrates and recommended the extension of it to bigger cities.

6.48 Besides, there are other aspects which distinguish CMM from CJM. Section 281 of the 1973 Code provides a simple procedure for recording memorandum of the substance of the examination of the accused by the Metropolitan Magistrates. The other Magistrates or a Court of Session has to record whole of such examination including every question put to the accused and every answer given by him.

Section 281, so far as relevant, provides:

"281. Record of examination of accused.- (1) Whenever the accused is examined by a Metropolitan Magistrate, the Magistrate shall make a memorandum of the substance of the examination of the accused in the language of the Court and such memorandum shall be signed by the Magistrate and shall form part of the record.

(2) Whenever the accused is examined by any Magistrate other than a Metropolitan Magistrate, or by a Court of Session, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full by the presiding Judge or Magistrate himself or where he is unable to do so owing to a physical or other incapacity, under his direction and

superintendence by an officer of the Court appointed by him in this behalf.

(3) to (6) xxx "

6.49 Again while rendering judgments, Metropolitan Magistrates need not write elaborate judgments in the manner required by the other Magistrate and Sessions Judge. It is sufficient if the Metropolitan Magistrates record only certain particulars in the judgment.

6.50 Section 355 reads as under:

"Metropolitan Magistrate's judgment.- Instead of recording a judgment in the manner hereinbefore provided, a Metropolitan Magistrate shall record the following particulars, namely -

- (a) the serial number of case;
- (b) the date of the commission of the offence;
- (c) the name of the complainant (if any);
- (d) the name of the accused person, and his parentage and residence;
- (e) the offence complained of or proved;
- (f) the plea of the accused and his examination (if any);
- (g) the final order;
- (h) the date of such order;

- (i) in all cases in which an appeal lies from the final order
either under Section 373 or under sub-section (3) of Section 374, a brief statement of the reasons

for the decision."

6.51 This procedure is in addition to the common power provided under Sections 260, 262, 263 and 264 of the Code.

6.52 Incidentally, it may be recalled that the Supreme Court in All India Judges' Association Case¹ has specifically observed that the Chief Judicial Magistrate should be placed below the Sessions Judge. It was observed in para 14 as follows:

"14. On the criminal side, there should be a Sessions Judge or Additional Sessions Judge and below him there should be the Chief Judicial Magistrate and Magistrates provided for in the Code of Criminal Procedure. Appropriate adjustment, if any, may be made of existing posts by indicating their equivalence with any of these categories."

6.53 For the reasons aforesaid, we are not inclined to equate the post of CJM to the post of District Judge. It would be more appropriate to include the post in the cadre of Civil Judges (Senior Division).

1. Ibid.

* * * * *

AMALGAMATION OF MULTIPLE CADRES INTO THREE UNIFORM CADRES

7.1 Generally, in most of the States and Union Territories, there are three cadres of Judicial Officers with uniform designations. But, in a few States, there are multiple cadres with different designations. One of the tasks of the Commission is to bring about uniformity in cadres and designations with uniform jurisdiction. This has become a necessity since the Commission proposes to provide uniform pay scales and other emoluments to Judicial Officers cadre-wise.

7.2 It may be stated that the Law Commission in the 14th Report has suggested that the State Judicial Service should have uniform designations in view of the more or less uniform functions performed by them. It observed:

"In view of the more or less uniform functions performed by the judicial officers so variously designated, it would,

we think, be advisable to aim at a uniformity of designation. There is, however, a fundamental difference in the general scheme of distribution of judicial business between the lower grade of officers (munsifs) on the one hand, and the higher grade of officers (subordinate judges) on the other. The first has limited pecuniary jurisdiction while the second, generally speaking, has unlimited pecuniary jurisdiction. We would, therefore, suggest that the State Judicial Service-Class II should consist of civil judges who should be designated as Civil Judges of the senior and junior divisions. Officers corresponding to munsifs would be designated as civil judges (junior division) and those corresponding to subordinate judges would be designated as civil judges (senior division)."

7.3 While quoting with approval the aforesaid observations of the Law Commission, the Supreme Court in the All India Judges Association Case¹ observed:

"We are inclined to adopt the view of the Law Commission. On the civil side, the State Judicial Service, therefore, should be classified as District or Additional District Judge, Civil Judge (Senior Division) and Civil Judge (Junior Division). On the criminal side, there should be a Sessions Judge or Additional Sessions Judge and below him there should be the Chief Judicial Magistrate and Magistrates provided for in the Code of Criminal Procedure. Appropriate adjustment, if any, may be made of existing posts by indicating their equivalence with any of these categories. The process of bringing about such uniformity would require some time and perhaps some monitoring. We direct that the Ministry of Law and Justice of the Union Government would carry on the monitoring activity and all the States and Union Territories would follow the pattern indicated above by March 31, 1993."

7.4 In the Review Judgment in All India Judges' Association Case², it has been reiterated in para 6 at page 2504 that –

"The Judiciary in this country is a unified institution judicially though not administratively. Hence uniform designations and hierarchy with uniform service conditions are unavoidable necessary consequences."

1. AIR 1992 SC 165 at 170 (para 14).

2. AIR 1993, SC 2493

7.5 Again, at page 2505, dealing with direction No.(ii) regarding Uniform Hierarchy and Designations, it has been observed as under:

"There is no serious objection raised by the review petitioners to have uniform hierarchy and give uniform designations to the Judicial Officers in different States and the Union Territories and to confer on them uniform jurisdiction directed by this Court."

7.6 At page 2510 dealing with direction No.(iv) regarding Uniform Pay Scales, it has been reiterated that –

"The uniform service conditions as and when laid down would not, of course, affect any special or extra benefits which some States may be bestowing upon their Judicial Officers."

7.7 Finally, in para 13 at page 2516/2517, it has been clearly laid down as under:

"Any clarification that may be required in respect of any matter arising out of this decision will be sought only from this Court and from no other Court. Further, the proceedings, if any, for implementation of the directions given in this Judgment shall be filed only in this Court and no other Court shall entertain them."

7.8 The Supreme Court has indicated that in every State and Union Territory, there should be, on civil side three cadres, viz.,

- (i) District Judge / Additional District Judge;
- (ii) Civil Judge (Senior Division)
- (iii) Civil Judge (Junior Division)

7.9 On the criminal side, there should be Sessions Judge / Additional Sessions Judge and below him there should be the Chief Judicial Magistrate and below him Magistrates provided for in the Code of Criminal Procedure.

7.10 Though the time-limit has been prescribed by the Supreme Court for every State and Union Territory to bring about the

aforesaid uniformity in cadres and designations, there still remain in some States multiple cadres with different designations.

7.11 Commission, therefore, in the Questionnaire, has formulated the following question:

"1. It is proposed to restructure the existing Judicial Service in all States / UTs uniformly into three cadres with the same designations as observed by the Apex Court viz., (i) District Judge / Additional District Judge; (ii) Civil Judge (Senior Division) and (iii) Civil Judge (Junior Division).

How many cadres are there in your State / UT? Please specify them and if there are more than three cadres, indicate how they could appropriately be assimilated into the said three cadres and designations without impairing the incumbents' scales of pay, seniority, chances of promotion and other benefits."

7.12 Response to the question from the High Courts, State Governments and Judicial Officers Associations are various and varied. They will be referred to when the cadre structure of such States is examined, but before doing so, it will be useful to bear in mind certain principles governing the integration of services and the consequences of such integration.

7.13 In **RESERVE BANK OF INDIA v. N.C. PALIWAL AND OTHERS**³, the Supreme Court observed that integrating different cadres into one cadre in Government service and preparing one combined seniority scheme does not offend Article 14 or 16 of the Constitution. The Court observed:

"Article 16 a fortiori also Article 14 do not forbid the creation of different cadres for government service. And if that be so, equally these two Articles cannot stand in the way of the State integrating different cadres into one cadre. It is entirely a matter for the State to decide whether to have several different cadres or one integrated cadre in its services. That is a matter of policy which does not attract the applicability of the equality clause. The integration of non-clerical with clerical services sought to be effectuated by the Combined Seniority Scheme cannot in the circumstances be assailed as violative of the constitutional principles of equality."

7.14 In **STATE OF MAHARASHTRA AND ANOTHER v. CHANDRAKANT ANANT KULKARNI AND OTHERS**⁴, the Supreme Court observed that integration of services and equation of posts is purely an administrative function and mere chances of promotion

are not conditions of service and if there is a reduction in the chances of promotion consequent on the integration of services, it did not tantamount to a change in the conditions of service. A right to be considered for promotion is a term of service, but mere chances of promotions are not.

3. (1976) 4 SCC 838 equivalent to (1977) 1 SCR 377.

4. (1982) 1 SCR 665 equivalent to (1981) 4 SCC 130.

7.15 The above principles have been reiterated in **HYDRO-ELECTRIC EMPLOYEES' UNION AND OTHERS v. SUDHIR KUMAR SHARMA AND OTHERS**⁵ and **UNION OF INDIA AND OTHERS v. S.C. DUTTA AND OTHERS**⁶.

7.16 From the aforesaid observations, it will be seen that the integration of services and equation of posts is purely an administrative function and it will not impinge upon the equality clause guaranteed under Article 14 or 16 of the Constitution, provided that the equation of posts has been done by following certain principles. The principles are: (i) Where there are similar posts, there will be little difficulty in intergrating or equating the posts; (ii) Where, however, there are no such similar posts, the following factors will have to be taken into consideration in determining the equation of posts:

- (a) Nature and duties of a post;
- (b) Powers exercised by the officers holding a post, the extent of Territorial or other charge held or responsibilities discharged;
- (c) The minimum qualifications, if any, prescribed for recruitment to the post;
- (d) The salary of the post.

7.17 These principles were also the basis for equation and integration of services allotted from one State to another consequent on the Reorganisation of the States in 1956. The Supreme Court in a long line of decisions starting from

5. (1998) 6 SCC 706.

6. (1991) 1 SCC 505 at 511.

THE UNION OF INDIA AND ANOTHER v. P.K. ROY AND OTHERS⁷ has accepted those principles as the correct principles for equation of posts for giving common pay scales.

7.18 Before we examine the State-wise cadres in detail for the purpose of restructuring multiple cadres, if any, into uniform three cadres in every State / UT, we may first dispose of one or two hotly contested issues, agitating the minds of Judicial Officers.

(i) CHIEF METROPOLITAN MAGISTRATES / CHIEF JUDICIAL MAGISTRATES (CMM / CJM):

7.19 Elsewhere, the Commission has, in detail, examined the position and powers of the CMM / CJM. There, we have suggested that in Metropolitan Cities, the post of CMM should be in the cadre of District Judges. It is not necessary to restate the reasons in support of our conclusion and we proceed on that basis.

7.20 In some States, however, the CJM and CMM are both in the cadre of District Judges. In the view that we have taken that CMM alone should be in the cadre of District Judges and the CJM should be deleted from that cadre, the latter shall fall to be included in the middle cadre of Civil Judges (Sr. Divn.). The respective States may kindly make these necessary alterations and amendments while restructuring their existing cadres.

METROPOLITAN MAGISTRATES :

7.21 The Metropolitan areas are declared under Section 8 of the Code of Criminal Procedure comprising of City or Town whose population exceeds one Million. But in actual practice, the population in some of the Metropolitan

7. (1968) 2 SCR 186.

areas is exceeding 5 millions. The usual crimes in such areas are more complex, sophisticated and sensitive. We find more of white collared criminals in such areas. The trial of such cases requires more experience and mature judicial mind. Even grant of Judicial / Police remand of the accused involved in such cases needs careful examination. Keeping in view the nature of the cases in the Metropolitan areas, we consider that the Metropolitan Magistrates should be in the cadre of Civil Judge (Sr. Divn.) and accordingly, recommend to every State to post only such Officers.

7.22 Needless to state that the Civil Judges (Sr. Divn.) must have been duly promoted in accordance with the prescribed qualification and if it is not repetitive, we have emphasized that the minimum eligibility for promotion to the cadre of Civil Judges (Sr. Divn.) is 5 years service as Civil Judges (Jr. Divn.). The same principle should apply while promoting and posting the Metropolitan Magistrates.

CITY CIVIL COURT JUDGES :

7.23 Six States have established City Civil Courts in their respective metropolitan cities, viz., (1) Hyderabad City (Andhra Pradesh State); (2) Ahmedabad City (Gujarat State); (3) Bangalore City (Karnataka State); (4) Bombay City (Maharashtra State); (5) Madras City (Tamil Nadu State); and (6) Calcutta City (West Bengal State).

7.24 The Judges of the City Civil Courts of Hyderabad, Bangalore, Madras and Calcutta form part of the general cadre of State Judicial Service. But the City Civil Court Judges at Bombay and Ahmedabad constitute separate cadres with slightly higher pay scales than that of the general cadre of District Judges.

HISTORICAL BACKGROUND OF THE CITY CIVIL COURTS OF BOMBAY AND AHMEDABAD :

7.25 The City Civil Court at Bombay was established pursuant to the Bombay City Civil Court Act, 1948 and in 1950, the City Civil Court was constituted with the jurisdiction to receive, try and dispose of all suits and other proceedings of civil nature arising within the Greater Bombay, except suits or proceedings which are cognizable by the High Court.

7.26 The City Civil Court shall be deemed to be a Court subordinate to and subject to the superintendence of the High Court

within the meaning of the Letters Patent of the High Court and the Code of Civil Procedure 1908.

7.27 Appeal shall lie to the High Court from: (a) every decree passed by the judge of the City Civil Court and (b) such orders passed by the said Judge as are specified in and to the extent provided for by Section 104 of the Code of Civil Procedure, 1908.

7.28 The Principal Judge / Additional Principal Judges and Judges, City Civil Court, preside over the City Civil Courts, Mumbai. The Judges of the City Civil Court, Mumbai are selected from amongst the practising Advocates of the Bombay Bar as well as from the Bar of the various Districts in the State. Promotions are made to this cadre from the Chief Judge / Additional Chief Judges, Small Causes Court, Chief Metropolitan Magistrate / Additional Chief Metropolitan Magistrates, District Judges and Additional District Judges.

7.29 The Principal Judge / Additional Principal Judges, City Civil Court are promoted by selection from amongst the Judges of the City Civil Court or by transfer of District Judges (Selection Grade).

7.30 The jurisdiction of the City Civil Court was at its inception limited to Rs.10,000/- and subsequently increased to Rs.25,000/- and then to Rs.50,000/- by the enactment of Maharashtra Act, 49 of 1977. With the amendment of the Bombay City Civil Court Act and by issuance of a notification, the original civil jurisdiction of the High Court has been transferred to the City Civil Court subject to certain exceptions listed therein. The notification, however, is under challenge and the matter appears to be presently pending in the Hon'ble Supreme Court.

AHMEDABAD CITY CIVIL COURT :

7.31 The set up of Ahmedabad City Civil Court was bodily lifted from the set up of the City Civil Court at Bombay. Civil and Criminal Courts for the city of Ahmedabad were constituted by the Ahmedabad City Courts Act, 1961 to try cases within the limits of the city of Ahmedabad as constituted under the Corporations Act, except suits or proceedings which are cognizable by the High Court and the Small Causes Court.

7.32 The City Civil Court shall be deemed to be a Court subordinate to and subject to the superintendence of the High Court within the meaning of the Code of Civil Procedure, 1908.

7.33 An appeal shall lie to the High Court from every decree passed by any Judge of the City Civil Court, and such orders passed by such Judges as are specified in, and to the extent provided by Section 104 of the Code of Civil Procedure, 1908.

7.34 The City Civil Court, Ahmedabad comprises of Principal Judge / Additional Principal Judge and Judges.

7.35 The method of recruitment is provided under the Gujarat Judicial Recruitment Service Rules.

7.36 The Judges, City Civil Court, Ahmedabad, are selected from amongst the Members of the Bar, District Judges, Chief Judge, Small Causes Court and Chief Metropolitan Magistrate or by transfer from District Judges through High Court.

7.37 The Principal Judge/Additional Judge are selected from amongst the Judges of the City Civil Court, District Judges or from the members of the Bar.

7.38 The Principal Judge will make arrangements as he may think fit for the distribution of the business of the Court among the various other Judges thereof.

7.39 The question is whether the Judges of the City Civil Courts of Bombay and Ahmedabad should continue to constitute separate cadre.

BOMBAY CITY CIVIL COURT JUDGES :

7.40 The Bombay High Court, after analysing the two judgments of the Supreme Court in the All India Judges' Association Case, has stated that **"separate cadre of the Judges of the City Civil Court cannot now be retained and it is necessary to make them part of the general cadre of District and Sessions Judges."**

7.41 This view gets the fullest support from the Maharashtra State Judicial Service Association.

7.42 The Government of Maharashtra also concurs with that view. The Government has stated that it would be better to make the City Civil Court Judges as part of the general cadre so that the Judge working in one area may get the experience of litigation

available in the other area.

7.43 But the Judges of the City Civil Court, Bombay have a different story to tell. By referring to the historical background of the City Civil Court for Bombay City, they have concluded that the Judges of the City Civil Court are intermediary Judges between the District Judges and the High Court Judges. Their contentions, inter alia, are as follows:

7.44.1 That the creation of the Bombay City Civil and Sessions court was necessitated due to the peculiar circumstances prevailing at that time. The increasing commercial activity in that part of the City and large influx of people from all over the country, led to a spate of commercial and other litigations. The Bombay High Court found itself burdened with heavy load of work, which the High Court was primarily not meant to handle, viz., acting as a Court of Appeal. Accordingly, the Bombay City Civil Court was set up with a limited pecuniary jurisdiction, which has been increased from time to time.

7.44.2 That Bombay City is not only a State capital but also the commercial capital of the country and a centre of World Trade which give a special and distinct position to the City, bearing the brunt of the changing nature of litigation. Some of the cases are sensitive in nature and the Judges were trying them insulated against threats and other dangers arising from the peculiar nature of such cases.

7.44.3 That the rise in the living standard of the citizens generally in the Bombay Metropolis makes it obligatory for the Judges of the Courts to maintain a standard of living in keeping with, if not higher, than the standard maintained by the other inhabitants of the Metropolis. The cost of living in Mumbai City is much higher than in the Districts of Maharashtra.

7.44.4 That the City Civil Court entertains a wholly different kind of litigation and cases than the Trial Courts in the other Districts in the rest of the State and that is the reason why the pay scales of the Judges of the City Civil Court are at a higher level than those of the District Judges in the rest of the State.

7.45 In this context, it is necessary to refer to the two Writ Petitions filed in the Bombay High Court, namely, W.P.No.3634 of 1998 and W.P.No.1165 of 1992 – MAHARASHTRA STATE JUDICIAL SERVICE ASSOCIATION v. STATE OF MAHARASHTRA.

7.46 In the first Writ Petition, the prayer made by the Judicial Officers' Association working in the mofussil area was for fixation of pay structure and revision of service conditions of Judicial Officers working in the mofussil area of Maharashtra on par with the pay scale available to the Judicial Officers working in the City of Bombay.

7.47 In the second Writ Petition, the prayer made was for uniform rules for the Judges of Family Court in the State of Maharashtra. We will separately consider that matter.

7.48 The High Court referred both the Writ Petitions for consideration by this Commission. We have considered the issues raised and in the view that we propose to take on uniform pay scales, it is not necessary to deal those issues separately.

G.B. BADKAS COMMISSION :

7.49 The Report of the Maharashtra Pay Commission 1965-66 headed by Shri Justice G.B. Badkas, former Judge of the Bombay High Court, needs to be referred. In the elaborate report, he has recommended the parity in the pay scales of the Officers working in mofussil areas and the Officers working in the City of Bombay. In Chapter IX para 33 at page 102 of the Report, it is stated as follows:

"When pay scales are determined on the basis of nature of duties and responsibilities, the factor of geographical location of the department or establishment obviously becomes irrelevant and pay scales which include such element and confer monetary benefits on that account, deserve to be discontinued. Considered from any point of view and after giving our anxious consideration to all aspects of the problem, we recommend that city scales should be abolished. We broadly base our conclusions on the ground that: (i) public service of the State is one service; (ii) that it is illogical that pay rates should be designed separately for small area and for a small part of the services; (iii) that the existing city scales give preferential treatment to the employees covered by them and as such are discriminatory; (iv) that these scales offend principle of equal pay for equal work."

7.50 The Commission is in agreement with most of the principles stated by BADKAS COMMISSION.

AHMEDABAD CITY CIVIL COURT JUDGES :

7.51 The Gujarat High Court is not in favour of merging the City Civil Court Judges into the common cadre in the State Judicial Service. They want to keep the Judges of the City Civil Court as a separate cadre with different pay scales.

7.52 The High Court has given the following among other, reasons:

- "1. The City Civil Court was established to lessen the burden of High Court as in Bombay and the Judges are entrusted the type of work which otherwise would be required to be done by the High Court Judges, on original side.
2. The Judges of City Civil Courts summarily decide suits involving unlimited pecuniary jurisdiction in accordance with separate procedural rules. Often suits involving claim of crores of rupees have to be decided in the Chamber proceedings requiring quick grasp and the decision making capacity of high order.
3. The City Civil Court Judges have powers of Sessions Court and the matters investigated by CBI in the State are being tried by the City Sessions Court.
4. The City Sessions Court Judge hears appeal from the decision of the Metropolitan Magistrate.
5. One of the City Civil Court Judges works as Transport Appellate Tribunal for the entire State. The Judges also hear queries against the orders of the Commission for taking Account.
6. The Principal Judge of the City Civil Court writes confidential reports of Chief Metropolitan Magistrate, Addl. Chief Metropolitan Magistrate and other Metropolitan Magistrates in addition to writing the confidential reports of the staff including gazetted staff.

7. While appointing direct recruits from the Bar to the cadre of City Civil Court Judges and District Judges, more meritorious candidates are appointed to the City Civil Courts.
8. The City Civil Courts earned a revenue of about Rs.2 crores in 1997 by way of court fees.
9. The industries in the city and the type of municipal and other litigation have no parallel in other Courts of the State.
10. The nature and quantum of matters like insolvency matters, company matters and intellectual property law matters are much higher in Ahmedabad city than in other places of State.
11. In view of the decision of the High Court in N.J. MANKAD v. STATE reported in 24(2) GLR 897, it is clear that the post of Judge of City Civil Court was treated as a post of promotion from amongst the Senior District Judges.
12. As an Appellate Judge, the Judge of the City Civil Court hears number of appeals arising under Public Premises (Eviction of unauthorised occupants) Act, 1972; Appeals under Trust Act, Appeals against orders of Town Planning Act, Essential Commodities Act; Prevention of Food Adulteration Act; Motor Vehicles Act, 1988 etc.,
13. Under the Ahmedabad City Civil Courts Act, suits are divided into summary suits, short causes, commercial causes and long causes. The procedure for summary suits was adopted to prevent dishonest and frivolous defences by parties and to avoid delay. Procedure for summon for judgment notices of motions for hearing the application for injunctions, summons for direction etc., are adopted. Special Judge is allotted Chamber work by rotation for every three months."

7.53 The Ahmedabad City Civil Court Judges wholly support the view taken by the High Court of Gujarat. Besides, they have stated that Ahmedabad has its distinct tradition, convention and litigation patterns which cannot be compared with other mofussil cities. The High Court of Gujarat has consistently acknowledged and recognised the superior status of City Court cadre. They

have also emphasised that the superior status of judicial officers of City Court which consists of direct recruits from the Bar, who have been selected in terms of their merits and the district judges who are likewise considered for the post in terms of their relative merits by selection, even at the cost of bypassing some senior district judges who have staked their claims for the appointment to this cadre, is maintained.

7.54 Government of Gujarat, however, has taken a contrary view. According to the Government, it is necessary to integrate the cadre of Judges of City Civil Court, Ahmedabad and the District and Sessions Judges into one common cadre. The Government has also referred to their Resolution dated 8 March 1977 whereunder it was decided to integrate the cadres of the Judges of the City Civil Court, Ahmedabad and the District and Sessions Judges into one common cadre to be known as Higher Judicial Service Cadre. The Resolution also provides for protection of the pay and pay scales of the Judges of the City Civil Court, even in the pay scales assigned to the integrated cadre. That Resolution has, however, been kept in abeyance until further orders, at the request of the High Court, by Resolution dated 7th June 1977.

7.55 Mr. Justice B.J. Diwan (Rtd.), former Chief Justice of Gujarat High Court and Andhra Pradesh High Court, in a separate Memorandum, has also emphasised the need to maintain separate status to the Ahmedabad City Civil Court Judges.

7.56 But the Gujarat Judicial Service Association, Ahmedabad, representing the Judicial Officers of the entire State, except the Judges of the City Civil Court, have stoutly opposed the suggestion to continue the separate cadre for the City Civil Court Judges. They have given both factual and legal reasons and proof in support of their contention that there is absolutely no difference between the powers and jurisdiction of the City Civil Court Judges at Ahmedabad and other District Judges of the State.

7.57 They have referred to Section 12 of the Ahmedabad City Courts Act, 1961 to show that the Civil Court has unlimited original civil jurisdiction for the District concerned in the same way as the City Civil Court of Ahmedabad. They have contended that the District Courts are not required to deal with the civil suits since there are Civil Courts subordinate to the District Courts with unlimited jurisdiction and in view of Section 15 of the Code of Civil Procedure, when two Courts have concurrent jurisdiction, the matter is required to be dealt with and tried by the lowest Court.

7.58 Their case is that since there is no Civil Court subordinate to the City Civil Court at Ahmedabad, it is incumbent upon the

City Civil Court at Ahmedabad to try the original civil suits.

7.59 They have also relied upon Section 61-D of the Indian Forests Act, 1927; Section 29 of the Bombay Rent Hotel Lodging House Rates Control Act and Section 54 of the Gujarat Town Planning and Urban Development Act, 1976, to prove that the District Judges are placed on par with the Principal Judge of the City Civil Court. They have laid emphasis on the mode of appointment of the District Judge as the Judge of the City Civil Court by transfer, which according to them, is a clear pointer that the District Judges are on par with the City Civil Court Judges.

OUR VIEWS :

7.60 We have given consideration to the rival contentions on the question whether the City Civil Court Judges of Bombay and Ahmedabad should form a separate cadre with different pay scales. Much of the arguments advanced for retention of such system are based on historical background about the need to constitute the City Civil Courts. We are not for a moment belittling the historical reasons or the compelling circumstances justifying the continuance of City Civil Courts. Indeed we are for continuing the system of City Civil Courts with all the existing procedure and powers that are being exercised. We are only concerned as to whether the City Civil Court Judges should continue to be a distinct cadre with different pay scales?

7.61 It is alleged that the special type of commercial litigation is only prevalent in Cities like Bombay and Ahmedabad. But, it is common experience that such litigations are not confined only to Metropolitan Cities. They are not uncommon in other cities. Indeed, such litigations frequently crop up in other cities as well.

7.62 It cannot therefore, be claimed that the City Civil Court Judges of Bombay and Ahmedabad should be treated as a separate cadre with higher emoluments in view of the pattern of litigations that they are saddled with.

7.63 It seems to us that keeping the City Civil Court Judges in one place without being transferred to District Courts would be

depriving such Judicial Officers of acquiring varied judicial experience. The experience gained in City Civil Court may be narrowly tailored and not broad based. The experience in working in different Courts would be an asset to Judicial Officers. The overall judicial experience gained by working in different centres would be immensely useful to them for handling the judicial work in the High Court, when they are elevated to the Bench of the High Court.

7.64 It cannot also be contended that the City Civil Court Judges constitute an intermediary cadre between the High Court Judges and District Judges.

7.65 This argument is not tenable. We have a unified judiciary based on cadre system. City Civil Court judges belong to the category of District Judges, who are below the High Court Judges. They cannot be treated as an intermediate cadre or Hybrid cadre between the judges of the High Court and the District Judges. This aspect becomes more clear if one peruses the expression of "District Judge" as defined under Article 236 (a) of the Constitution, which reads as follows:

"236(a). The expression 'District Judge' includes Judge of a City Civil Court, Additional District Judge, Joint District Judge"

7.66 It will be seen from the above definition of the 'District Judge', that the Judge of a City Civil Court falls within the category of District Judge / Addl. District Judge / Joint District Judge, etc.

7.67 There is yet another reason in support of our conclusion. The method of recruitment to the City Civil Court Judges of Bombay and Ahmedabad includes among others the appointment by transfer of Senior District Judges. This presupposes that the general cadre of District Judges is on par with the City Civil Court Judges, since appointment by transfer is possible only of persons belonging to equivalent cadres.

7.68 In the premise, we are firmly of the opinion that there is no basis now to keep the City Civil Court Judges out of the main stream of State Judicial Service. It would be proper and just to include them in the general cadre of State Judicial Service. We respectfully agree with the view of the High Court of Bombay.

7.69 We may say a word or more before parting with this matter. If the High Court considers that more experienced judges are

needed in the City Civil Court, it is always open to the High Court to post such senior judicial officers in the City Civil Courts. Even the existing special emoluments, if any, allowed to the City Civil Court Judges, may be protected treating them as personal or attached to the posts. It is for the High Court to pass such orders, if necessary, in this regard.

SMALL CAUSES COURT JUDGES :

7.70 The Judges of the Court of Small Causes, Mumbai / Ahmedabad, appointed under the Presidency Small Causes Court Act, 1882, contend that the judicial function performed by them is unique in character and has no comparison with the judicial function of any other judge in other cadres in the subordinate judiciary. They contend that they are appointed by way of promotion from the Civil Judges (Sr. Divn.); or Civil Judges (Jr. Divn.), in case of Civil Judges (Jr. Divn.) who have put in more than 7 years service or appointed from advocates practising more than 5 years.

7.71 They have made reference to Section 8 of the Presidency Small Causes Court, Act, 1882. It provides that the Chief Judge shall be the first of the Judges in rank and precedence. Section 42 of the said Act provides for an appeal from a decree or order made by the Small Causes Court exercising jurisdiction under Section 41, to a Bench of two Judges of the said Court. They have relied upon the observation of the Bombay High Court in *SHOBHANA v. RAMACHANDRA*⁸, wherein, Rule 9(2) of the Bombay Rent Control Rules giving preference to opinion rendered by the Sr. Judge on a Bench of two Judges of the small causes court, Bombay has been struck down on the ground, "judges who are equal in rank enjoyed equal powers and jurisdiction as far as judicial work is concerned". Their further case is that under certain rules of recruitment, the distinct status of the Small Causes Court Judges in all Metropolitan / Presidency Town has been maintained and, therefore, they should be put on higher footing than the Civil Judges (Sr. Divn.) and Chief Judicial Magistrates, or at least on par with the Additional District Judges. In other words, they want them to be equated with the District Judges.

7.72 The claim made by the Judges of the Court of Small Causes, Mumbai / Ahmedabad has been opposed by the Maharashtra and Gujarat State Judicial Officers' Associations. They have contended that the Small Causes Court judges could be equated only with the Civil Judges (Jr. Divn.).

7.73 The High Court of Bombay has stated that while unifying subordinate judicial service into three tier system, Small Causes

Court Judges will have to be included in the second tier, i.e. of Civil Judges (Sr. Divn.), and Chief Judges, Small Causes Court / Additional Chief Judge, Small Causes Court are to be included in the first tier viz., the cadre of District and Sessions Judges.

7.74 The High Court of Gujarat has also stated that the Judges of the Provincial Small Causes Court are to be included in the second tier along with the Civil Judges (Sr. Divn.). / Chief Judicial Magistrates / Metropolitan Magistrates.

7.75 It seems to us that the question of equation of Small Causes Court Judges must be left to the decision of each High Court, since there is no uniformity in their cadres. In some States, Civil Judges (Jr. Divn.) are empowered to exercise Small Causes Court jurisdiction and that too on varied terms. In Metropolitan Cities, Civil Judges (Sr. Divn.) are having such jurisdiction. It is not desirable to bring about uniformity in their cadres in all States. We, therefore, leave this matter to be examined and decided by the High Court of each State / UT.

8. 1996 (1) M.H.L.J. 751.

7.76 We, however, recommend that Chief Judge, Small Causes and Additional Chief Judge, Small Causes having regard to their supervisory powers and jurisdiction, be included in the cadre of District Judges in all States UTs as rightly pointed out by the High Courts of Bombay and Gujarat.

RENT CONTROL JUDGES :

7.77 In some States, Rent Control cases in urban areas are handled by Civil Judges (Sr. Divn.) and in some States, they are handled by the Civil Judges (Jr. Divn.). There is no uniformity even in this regard. Therefore, we do not want to suggest that all Rent Controllers in all States should be included in the same cadre. We leave this question also to the decision of the concerned High Court.

LABOUR JUDICIARY - LABOUR COURTS / INDUSTRIAL COURTS :

7.78 The pattern of Labour Judiciary in Maharashtra and Gujarat is almost identical, but that is not reflected in other States. There are three enactments operative in Maharashtra and Gujarat: (1) The Bombay Industrial Relations Act, 1946; (2) The

Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971; and (3) The Industrial Disputes Act, 1947.

7.79 One of the Labour Court Judges by name Sri G.P. Sharma filed an Intervening Application No.69/98 in Supreme Court in W.P.(C) No.1022/1989 in the ALL INDIA JUDGES ASSOCIATION AND OTHERS v. UNION OF INDIA AND OTHERS, inter alia, contending that there is acute disparity and inequality in the pay scales, service conditions and other benefits extended to the Presiding Officers of the Labour Court and Industrial Courts, vis-à-vis, the Additional District Judges etc., and seeking issuance of a suitable direction to the Central Government to enlarge the terms of this Commission to examine the service conditions of the cadre of Labour Courts / Industrial Courts Judges.

7.80 On 9 February 1998, the said Intervening Application was withdrawn with liberty to the party to approach this Commission.

7.81 Thereafter, number of representations have been received, in particular from Maharashtra and Gujarat Labour Courts Judicial Officers Associations. The Commission also afforded an opportunity of being heard to their representatives.

7.82 Mr. V.P. Patil made his oral submissions during the course of the hearing on behalf of the Labour Judiciary in the State of Maharashtra and Gujarat. He has contended that there should be no disparity of pay scales between the Judges working in Labour and Industrial Courts; and there should be uniform Special Pay for all the Labour Judiciary. He has also submitted that the age of retirement of Labour Judiciary should be raised to 65 and not to retire them at the age of 58 as it is currently being done. He has also pleaded for fixing uniform service conditions.

7.83 We do not think that we could examine all these contentions, since the Labour Judiciary in Maharashtra and Gujarat is quite different from that of other States.

7.84 However, the Judges of the Labour Courts and Industrial Courts / Tribunals are two common posts in all States / UTs. The Supreme Court in STATE OF MAHARASHTRA v. LABOUR LAW PRACTITIONERS' ASSOCIATION AND OTHERS⁹ has observed that the said two posts must be held to belong to State Judicial Service, and their recruitment / appointment must be in

accordance with the procedure prescribed to the Judicial Cadre.

7.85 We may state that those two posts are to be encompassed into the State Judicial Service by removing all outside control over them, and extending the pay scales and other benefits allowed to the corresponding posts in the Judicial Service.

9. AIR 1998 SC 1233.

7.86 Before parting with this subject, we have to refer to the existing pattern of judicial service in the following three States and one Union Territory viz.,

- (1) Himachal Pradesh;
- (2) Punjab;
- (3) Haryana; and
- (4) Delhi.

7.87 There are only two cadres in these States.

7.88 **HIMACHAL PRADESH :**

I. Himachal Pradesh Higher Judicial Service

comprising of:

- i) District and Sessions Judge
- ii) Additional District & Sessions Judge.

II. Himachal Pradesh Judicial Service

consisting of:

- i) Senior Sub-Judge-cum-Chief Judicial Magistrate;
- ii) Sub-Judge-cum-Additional Chief Judicial Magistrate;
- iii) Sub-Judge-cum-Judicial Magistrate;
- iv) Senior Sub-Judge-cum-Judge Small Cause Court.

7.89 PUNJAB :

I. Punjab Superior Judicial Service

comprising of:

District & Sessions Judge / Additional District & Sessions Judge.

II. Punjab Civil Service (Judicial Branch)

comprising of:

i) Civil Judge (Sr. Divn.) -cum- Additional Chief Judicial Magistrate	with unlimited pecuniary jurisdiction at each District HQs.
ii) Chief Judicial Magistrate -cum- Additional Civil Judge (Sr. Divn.)	with unlimited pecuniary jurisdiction at each District HQs.
iii) Additional Civil Judge (Sr. Divn.)-	with limited pecuniary jurisdiction at

cum-Judicial Magistrate First Class	each District HQs. as well as at each sub-division.
iv) Civil Judge (Jr. Divn.) - cum-Judicial Magistrate First Class and Second Class	with limited jurisdiction upto Rs.2.00 lakhs for initial period of 3 years and thereafter unlimited pecuniary jurisdiction.

7.90 HARYANA :

I. Haryana Superior Judicial Service

comprising of:

District & Sessions Judge / Additional District & Sessions Judge.

II. Haryana Civil Service (Judicial Branch)

comprising of:

i) Civil Judge (Sr. Divn.) -cum-Additional Chief Judicial Magistrate	with unlimited pecuniary jurisdiction at each District HQs.
ii) Chief Judicial Magistrate -cum-Additional Civil Judge (Sr. Divn.)	with unlimited pecuniary jurisdiction at each District HQs.
iii) Additional Civil Judge (Sr. Divn.)-cum-Judicial Magistrate First Class	with limited pecuniary jurisdiction at each District HQs. as well as at each sub-division
iv) Civil Judge (Jr. Divn.) - cum-	with limited jurisdiction upto Rs.2.00

Judicial Magistrate First Class and Second Class	lakhs for initial period of 3 years and thereafter unlimited pecuniary jurisdiction.
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7.91 DELHI :

I. Delhi Higher Judicial Service

comprising of:

(a) On the Civil side:

i) District Judge

ii) Addl. District Judge

iii) Rent Control Tribunal

iv) Addl. Rent Control Tribunal

(b) On the Criminal side:

i) Sessions Judge / Addl. Sessions Judge.

ii) Chief Metropolitan Magistrate / Addl. Chief Metropolitan Magistrate.

II. Delhi Judicial Service

comprising of:

(a) On the Civil side:

i) Senior Civil Judge

ii) Addl. Senior Civil Judge

iii) Judge, Small Causes Court

iv) Civil Judge, Rent Controller / Addl. Rent Controller

(b) On the Criminal side:

Metropolitan Magistrate

HIGHER JUDICIAL SERVICE IN (i) HIMACHAL PRADESH; (ii) PUNJAB; (iii) HARYANA; AND (iv) DELHI:

7.92 There cannot be any problem to equate the posts in Higher Judicial Service in all these three States and Union Territory of Delhi with the cadre of District Judges under our three-tier system. The States are, therefore, requested to include those posts in the cadre of District Judges.

7.93 The problem is with regard to the second cadre in these States which evidently does not fit into the three tier system which is mandated by the Supreme Court and which is also the basis upon which the entire report of the Commission is rested.

7.94 We have elsewhere stated that Civil Judge (Sr. Divn.) is exclusively a promotional cadre to the Civil Judge (Jr. Divn.) and promotion is to be made on the basis of merit-cum-seniority. We have prescribed the minimum experience of five years in the cadre of Civil Judge (Jr. Divn.) for being considered for promotion to the cadre of Civil Judge (Sr. Divn.). These principles are also incorporated in the "Draft Judicial Service Rules" which we have prepared for all States and Union Territories to follow. It is on this basis we have recommended uniform pay scales to the three Cadres with Career Progression Scales to the Officers in each of the Cadres.

7.95 We have elsewhere indicated that the Metropolitan Magistrates powers should not be conferred on Civil Judges (Jr. Divn.). They should always be in the cadre of Civil Judges (Sr. Divn.).

7.96 In the light of these principles, the High Courts of the above three States and the Union Territory are requested to dissect their Judicial Service other than the Higher Judicial Service / Superior Judicial Service into two distinct cadres, viz., Civil Judges (Jr. Divn.) and Civil Judges (Sr. Divn.).

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8. RECRUITMENT TO THE CADRE OF CIVIL JUDGES (JR. DIVN.) -CUM-MAGISTRATES FIRST CLASS

QUALIFICATION FOR RECRUITMENT :

8.1 Judicial Service in India is a career service with pyramidic structure of Courts. At the lower rung, there are judges called Munsiff-Magistrates since termed as Civil Judges (Jr. Divn.)-cum-Magistrates. Immediately higher is the cadre of Civil Judges (Sr. Divn.) / Chief Judicial Magistrates and above them Additional District and Sessions Judge / District and Sessions Judge. These cadres constitute the Subordinate Judiciary in every State. Over and above the Subordinate Judiciary is the High Court, which is the highest Court in the State, set up under Article 214 of the Constitution.

8.2 The Constitution prescribes the qualification for recruitment of District Judges and High Court Judges.

8.3 Article 233(2) provides that no person is eligible to be appointed a District Judge unless he has been an advocate or a pleader for not less than 7 years.

8.4 Article 217(2)(b) prescribes 10 years experience as an advocate for being eligible for appointment as a High Court Judge. Similar is the qualification for acquiring eligibility for appointment to the Supreme Court under Article 124(3)(d) of the Constitution.

8.5 But no such experience as an advocate or a pleader has been provided in the constitution for recruitment to the cadre of Civil Judge (Jr. Divn.)-cum-Magistrates First Class.

8.6 In view of this omission in the Constitution, States were free to prescribe any qualification and follow any method for selection. Some States were recruiting fresh law graduates without any experience at the Bar while other States insisted more than 4 to 5 years of Bar experience.

8.7 The Supreme Court in the ALL INDIA JUDGES' ASSOCIATION CASE¹ (AIR 1993 SC 2493) did not approve of the different qualifications prescribed by different States. The Court observed at p.2505 as follows:

"It has, however, become imperative, in this connection, to take notice of the fact that the qualifications prescribed and the procedure adopted for recruitment of the judges at the lowest rung are not uniform in all the States. In view of the uniformity in the hierarchy and designations as well as the service conditions that we have suggested, it is necessary that all the States should prescribe uniform qualifications and adopt uniform procedure in recruiting the judicial officers at the lowest rung in the hierarchy. In most of the States, the minimum qualifications for being eligible to the post of Civil Judge-cum-Magistrate First Class / Magistrate First Class / Munsiff Magistrate is minimum three years' practice as a lawyer in addition to the degree in law. In some States, however, the requirement of practice is altogether dispensed with and Judicial Officers are recruited with only a degree of law to their credit. The recruitment of raw graduates as judicial officers without any training or background of lawyering has not proved to be a successful experiment. Considering the fact that from the first day of his assuming office, the judge has to decide, among others, questions of life, liberty, property and reputation of the litigants, to induct graduates fresh from the Universities to occupy seats of such vital powers is neither prudent nor desirable. Neither knowledge derived from books nor pre-service training can be an adequate substitute for the first-hand experience of the working of the Court-system and the administration of justice begotten through legal practice.

1. AIR 1993 SC 2493.

The practice involves much more than mere advocacy. A lawyer has to interact with several components of the administration of justice. Unless the judicial officer is familiar with the working of the said components, his

education and equipment as a Judge is likely to remain incomplete. The experience as a lawyer is, therefore, essential to enable the judge to discharge his duties and functions efficiently and with confidence and circumspection. Many States have hence prescribed a minimum of three years' practice as a lawyer as an essential qualification for appointment as a judicial Officer at the lowest rung. It is, hence, necessary that all the States prescribe the said minimum practice as lawyer as a necessary qualification for recruitment to the lowest rung in the judiciary.

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We, therefore, direct that all States shall take immediate steps to prescribe three years' practice as a lawyer as one of the essential qualifications for recruitment of the judicial officer at the lowest rung."

8.8 Pursuant to these directions, almost all States have fallen in line by prescribing the minimum Bar experience as three years of qualification for recruitment.

8.9 Some States, however, have prescribed more than three years since the Supreme Court has mandated only the minimum qualification.

10. We may set out below the existing methods followed by the States and Union Territories for selection of Civil Judges (Jr. Divn.).

ANDHRA PRADESH

(i) Rules	Andhra Pradesh State Judicial Service Rules, 1962.
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(ii) Qualification	<p>a) By Direct Recruitment :</p> <p>i) Must not have completed 38 Years of age.</p> <p>ii) Must be actually practising as an Advocate of a High Court or as a First Grade Pleader with a degree in Law of a University.</p> <p>iii) Must have been actually practising in Court of Civil and Criminal Jurisdiction for a period of not less than three years;</p> <p>Provided in case of a person who is already in Govt. Service and applies for Civil Judge (Jr. Dn.) by direct recruitment, he must have actually practised for a period of not less than 3 years immediately prior to the date of his entering Govt. Service.</p> <p>b) Recruitment by transfer :</p> <p>i) Must not have completed 45 years of age</p> <p>ii) (a) Must possess a degree in Law of any University in India.</p> <p>(b) Must have passed the examination in Law of Practice and Procedure of the Andhra Pradesh Bar Council or equivalent thereto.</p>
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	(c) The age-limit in the case of candidates belonging to Scheduled Castes / Schedule Tribes & the backward classes for direct recruitment shall be 43 years.
(iii) Procedure for selection	After holding the written & oral examinations specified in the schedule to these rules.
(iv) Authority for Selection	The High Court.
(v) Examination	
a) Written	For Dist. Munsiff (Civil Judge Jr. Dn.) Number of papers - 2 Total Marks - 200
b) Viva Voce	For Dist. Munsiff (Civil Judge Jr. Dn.) Total Marks - 25
(vi) Training	
(a) Institutional	Andhra Pradesh Judicial Academy at Hyderabad

(b) Duration	4 months
(vii) Probationary period	Two years probation.

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EXTRACT OF THE ANDHRA PRADESH STATE JUDICIAL SERVICE RULES, 1962

1. Short Title and Commencement :

- (1) These rules may be called the Andhra Pradesh State Judicial Service Rules.
- (2) These rules shall be deemed to have come into force on the 1st April, 1958.

2. Definition :

(3) "Appointing authority" means:-

(b) in the case of the appointment to the post of District Munsiff by direct recruitment or by transfer, the Governor; and

(8) "District Munsiff" shall include-

- i) Munsiff Magistrate
- ii) City Magistrate
- iii) Assistant Judge, City Civil Court
- iv) Railway Magistrate
- v) Municipal Magistrate; and
- vi) Magistrate of the Juvenile Court

3. **Constitution:** The Service shall consist of the following categories of officers namely:-

Category 1 . . . Subordinate Judges

Category 2 . . . District Munsiffs

Category 3 . . . Judicial Second Class Magistrates

4. Appointments:

AD-HOC RULE :

Notwithstanding anything contained in the A.P. State Judicial Service Rules, on the commencement of this rule the appointment to the category of District Munsiffs shall be only by the methods of direct recruitment and appointment by transfer:

Provided that the vacancies in this category shall be filled by rotation in which direct recruitment and appointment by transfer shall be in the order specified below, in every cycle of five vacancies:

First vacancy ... Direct recruitment

Second vacancy ... Direct recruitment

Third vacancy ... Direct recruitment

Fourth vacancy ... Direct recruitment

Fifth vacancy ... Transfer

The ad-hoc rule hereby and shall be deemed to have come into force on the 12th October 1981.

Note: G.O. Ms. No.406, Home (Cts.C) Dept., dt. 19.7.85.

5. Preparation of lists of approved candidates:-

1. The High Court of Andhra Pradesh, shall from time to time after holding the examinations in accordance with the scheme specified in the Schedule to these rules for the candidates for appointment by Direct Recruitment and by Transfer to the posts of District Munsiffs prepare lists of persons considered suitable for appointment thereto.

(2) The High Court shall notify the vacancies as per the estimate of vacancies prepared for the year of recruitment, i.e. calendar year, invite applications, scrutinise them, conduct examinations both written and oral, prepare the select lists on the basis of the merit, by following the rule of reservation and send the said lists to the Government for approval of the selection and issuing orders for appointment as District Munsiffs. On appointment they will be imparted training in batches and given posting orders by the High Court.

(3) The list of the approved candidates to be prepared by the High Court shall contain not more than such number of candidates as are equal to the number of notified vacancies.

6. **Training:** Approved candidates shall undergo before appointment to a category such training as may be prescribed by the State Government and shall execute a bond as may from time to time be prescribed by the Government.

12. (a) **General qualifications:** No person shall be eligible for appointment to the service unless €

(i) he is a citizen of India;

(ii) his character and antecedents are such as to qualify him for such appointment; and

(iii) he is of sound health and active habits and free from any bodily defect or infirmity making him unfit for such appointment.

(b) Special qualifications: No person shall be eligible for appointment to the post of District Munsiff by the method specified in column (1) of the table below unless he possess the qualifications specified in the corresponding entries in column (2) thereof.

Note (1): References to age in the table and sub-rule (c) below shall be deemed to be references to age as on the first day of July of the year in which the appropriate list of approved candidates is prepared. The candidates should possess the other qualifications at the time when they apply.

***Note (2):** The age limit prescribed in the table and sub rules (c), (d) and (e) shall be raised uniformly by a period, not exceeding the period during which recruitment to the posts fell due but was not made.

Provided that during the period which had elapsed since the recruitment to the posts was last made, the recruitment thereto would have fallen due but was not made.

(G.O. Ms. No.1718 Home (courts.A) dt.17.12.75).

Method of appointment (1)	Qualifications (2)
DISTRICT MUNSIFFS	
By Direct Recruitment	1. Must not have completed 38 years of age. 2. Must be actually practising as an Advocate of a High Court in India or as a First Grade Pleader admitted as such by a High Court in India provided

	<p>that in the case of a candidate who is a First Grade Pleader he must have been in possession of a degree in law of a University in India established or incorporated by or under a Central Act, Provincial Act or a State Act or an Institution recognised by the University Grants Commission, at the time of his Admission as a First Grade Pleader.</p> <p>3. Must have been actually practising in court of Civil or Criminal Jurisdiction in India for a period of not less than three years."</p> <p>Provided that in the case of a person who is already in Government service and who applies for appointment to the post of District Munsiff by direct recruitment he must have actually practised for a period of not less than three years immediately prior to the date of his entering Government Service.</p>
By transfer	<p>1. Must not have completed 45 years of age; and</p> <p>2. (a) Must possess a degree in Law of University in India</p>

	<p>established or Incorporated by or under a Central Act, Provincial Act or a State Act, or an Institution recognised by the University Grants Commission or any other Equivalent qualification.</p> <p>(b) Must have passed examination in Law of Practice and procedure of the Andhra Pradesh Bar Council or any Examination equivalent thereto.</p> <p>Provided that a person who possesses a degree in Law of a University in India established or incorporated by or under a Central Act, Provincial Act or a State Act or an Institution recognised by the University Grants Commission, the syllabus of which includes "Civil Procedure Code and Criminal Procedure Code" shall not be required to pass the examination in Law and Practice and Procedure of the Andhra Pradesh Bar Council.</p>
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EXPLANATION :

* (c) The age limit in the case of candidates belonging to the Scheduled Castes, the Scheduled Tribes, the Aboriginal Tribes in the Scheduled area and the Backward Classes for direct recruitment as Judicial Second Class Magistrates or as District Munsiffs shall be 43 years.

*(Substituted by G.O.Ms. No.774, Home Dt. 9.6.1972)

14 (a) **Probation:** Every person appointed to any category shall, from the date on which he joins duty or reports for training, whichever is earlier be on probation for a total period of two years on duty in that category within a continuous period of three years.

15. (ii) Every person appointed to the category of District Munsiff shall during the period of probation pass the Account Test for Executive Officers.

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ASSAM

(i) Rules	The Assam Judicial Service Rules 1962 (as amended up to 1995)
(ii) Qualification	<p>a) Must be a Law Graduate of any recognized University or Barrister at Law.</p> <p>b) Must have atleast 3 years practice at the Bar.</p> <p>c) Age shall not be less than 25 years and more than 36 years on 1st January of the year in which the advertisement for selection is made.</p> <p>General conditions:</p> <p>i) Citizen of Indian Union ;</p> <p>ii) Shall be of good character;</p> <p>iii) Shall be of sound health and active habit and free from</p>

	<p>any bodily defect or infirmity.</p> <p>iv) Shall not have more than one wife living unless exempted by the Govt. on special grounds;</p>
(iii) Procedure for selection	Written examination followed by interview.
(iv) Authority for Selection	Posts are filled up by Assam Public Service Commission and High Court in 50:50 proportion
(v) Examination	
a) Written	<p>Number of papers - 4</p> <p>Total Marks - 500</p>
b) Viva Voce	Marks - 200
(vi) Training	<p>Institutional:</p> <p>a) North Eastern Judicial Officers' Training Institute, Guwahati.</p> <p>b) Duration - Fourteen weeks training.</p>

(vii) Probationary period	One year from the date of appointment.
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**EXTRACT OF THE ASSAM JUDICIAL SERVICE RULES, 1962,
AS AMENDED UPTO 1995**

Rule 1 - Short Title and Commencement -

- (1) These rules may be called the Assam Judicial Service (Amendment) Rules, 1995.
- (2) They shall come into force on the date of their publication in the official Gazette.

Rule 4 - Recruitment to the other posts of the Service on the commencement of these Rules shall be made by the following methods :-

- (c) Appointment to the posts in Grade-III of the service shall be made by the Governor on the recommendation of the High Court on the basis of selection from amongst the members of the Bar by the High Court.

Rule 5

- (A)(1) Of the vacancies to be filled up in Grade-III of the service, there shall be a reservation for candidates belonging to Scheduled Castes, Scheduled Tribes (Plains) and Scheduled Tribes (Hills) not exceeding 7% (seven per cent), 10% (ten per cent) and 5% (five per cent) respectively.

Rule 7 - Qualification for recruitment to the service in Grade III.

A candidate for recruitment to the post in Grade-III shall satisfy the following conditions besides the general conditions laid down under rule 8 :-

- (i) he must be a Graduate in Law of any recognised University or Barrister at Law;
- (ii) he must have practised at least three years at the Bar;
- (iii) the age of the candidate for selection shall not be less than 25 years and more than 36 years on the 1st January of the year in which the advertisement for selection is made.

Rule 8 - General Qualification -

Every member of the Service shall qualify the following general conditions:-

- (i) shall be a citizen of Indian Union;
- (ii) shall be of good character;
- (iii) shall be of sound health and active habit and free from any bodily defect or infirmity which render him unfit for such appointment;
- (iv) shall not have more than one wife living unless exempted by the Government on special grounds.

Rule 8(A) - Training -

- (1) There shall be a training course for the Officers appointed in Grade III of the service which shall be spread over a part of fourteen weeks as under:-
 - (a) working knowledge of criminal Courts, being attached to such courts, for a period of five weeks;

- (b) working knowledge of the revenue courts for a period of two weeks;
- (2) During the period of their training, trainees will be attached to District Judges who will detail the trainees to different courts. They will attend the courts situated in the District Head-Quarters and watch at least, one sessions case, original work in the Munsiffs Courts and also in the Magistrate's Courts. They will be under the supervision of the District Judges concerned during the said period.
- (3) During the period as stated above they will also have to acquire knowledge of accounts, working of the offices and maintaining of various registers in the offices of the Munsiffs and Magistrates.
- (4) During the last period of the training they will come to Gauhati for two weeks to acquaint themselves with the working of the High Court and of the Assam Board of Revenue. During that period they will be under the guidance of the Registrar of the High Court.
- (5) In order to understand the working of the offices of the subordinate Courts, the trainees must have a thorough knowledge of the provisions of the Civil Rules and Orders framed by the High Court under the Civil Procedure Code and the Criminal Rules and Orders framed by the High Court under the Criminal Procedure Code, as well as the Assam Fundamental Rules. The District Judges should bring the importance of this requirement to the notice of the trainees before they are allotted for training as specified above.

Rule 9 - Probation and confirmation -

All appointments other than appointments to temporary post under these Rules shall be on probation for a period of one year from the date of appointment to such post.

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BIHAR

(i) Rules	The Bihar Judicial Service Recruitment Rules, 1955.
(ii) Qualification	<p>a) Should be a Graduate in Law of any recognised University or a Barrister-at-Law or a member of the Faculty of Advocates in Scotland or an attorney on the rolls of a High Court.</p> <p>b) Under 31 years and over 22 years of age on the 1st day of August preceding the year in which the examination is held.</p> <p>For SC / ST candidates must be Under 36 years and over 22 years of age.</p> <p>Provided that no candidate who does not belong to SC / ST shall be allowed to take more than five chances at the examination.</p> <p>c) Be a practitioner at the Bar of atleast one year's</p>

	<p>continuous standing on the date of advertisement.</p> <p>d. Must be of sound health, good physique and active habits & free from any physical defect.</p> <p>e) Good Character.</p>
(iii) Procedure for selection	After conducting written examination and viva-voce.
(iv) Authority for Selection	The Public Service Commission in consultation with the High Court.
(v) Examination	
a) Written	<p>Number of papers - 7</p> <p>Total Marks - 950</p>
b) Viva Voce	Total Marks - 200
(vi) Training	Newly recruited Munsiffs are not given training in any Institute.
(vii) Probationary period	Two years.

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**EXTRACT OF THE BIHAR JUDICIAL SERVICE RECRUITMENT
RULES, 1955**

Rule 1 - (a) Short Title and Commencement.

These rules may be called the Bihar Judicial Service Recruitment Rules, 1955 and shall take effect from the date of this notification.

(b) **Definition:** In these rules, unless there is anything repugnant in the subject or context

(i) 'Commission' means the Bihar Public Service Commission;

(vii) 'Service' means the Bihar Judicial Service which includes posts of Subordinate Judges and Munsiffs.

Rule 2 - (a) Recruitment to the posts of Munsiffs shall be made in accordance with these rules.

Rule 4 - The Commission shall announce in each year, in such manner as they think fit, the number of vacancies to be filled that year by direct recruitment on the results of a competitive examination and shall invite applications from candidates eligible for

appointment under these rules. The competitive examination will be conducted by the Commission and will normally be held between the months of November and February.

Rule 6 - A candidate may be of either sex and must -

(a) be under 31 years and over 22 years of age on the 1st day of August preceding the year in which the examination is held:

Provided that in candidate belonging to a Scheduled Caste or a Scheduled Tribe must be under 36 years and over 22 years of age on the said dates.

Provided further that no candidate who does not belong to a Scheduled Caste or a Scheduled Tribe shall be allowed to make more than five chances at the examination;

(b) be a graduate in Law of a University recognised by the Governor or a Barrister-at-Law or a member of the Faculty of Advocates in Scotland, or an attorney on the rolls of a High Court or posses other educational qualifications which the Governor may, after consultation with the High Court and the Commission, decide to be equivalent to those prescribed above; and

(c) be a practitioner at the Bar of at least one year's continuous standing on the date of the advertisement.

Rule 7(a) - A candidate must be of sound health, good physique and active habits and free from any physical defect likely to interfere with the efficient performance of the duties of member of the service. A candidate who is found after examination by a Medical Board not to satisfy these requirements will not be selected for appointment.

Rule 14 - The examination shall be held according to the syllabus specified in Appendix 'C' to these rules which are liable to alteration from time to time by Government after consultation with the High Court and the Commission.

Rule 15 - (a) The Commission shall have discretion to fix the qualifying marks in any or all the subjects at the written

examination in consultation with the Patna High Court.

(b) The minimum qualifying marks for candidates belonging to the Scheduled Castes and the Scheduled Tribes shall not be higher than 35 per cent unless the number of such candidates qualifying at the written test according to the standards applied for other candidates is considerably in excess of the number of candidates required to fill all the vacancies reserved for the Scheduled Castes and the Scheduled Tribes:

Provided that the determining the suitability of a particular candidate for appointment, the total marks obtained at the written examination, and not the marks obtained in any particular subject or subjects, shall be taken into consideration.

(c) There shall be no qualifying marks for the Viva-voce test.

Rule 17 - On the basis of the marks obtained at the written examination, the Commission shall arrange for viva-voce test of the candidates who have qualified at the written examination according to Rule 15:

Provided that in exceptional circumstances and with the prior approval of Government, the Commission may, at their discretion, admit candidates of the Scheduled Castes and the Scheduled Tribes to the Viva-voce test even though they may not have obtained the minimum qualifying marks at the written test.

Rule 24 - A candidate appointed to the post of Munsiff otherwise than on a temporary basis shall be appointed on probation in the first instance but will be eligible for confirmation as a Munsiff subject to the condition that-

(i) he has completed two years of service from the date of his first appointment;

i. he has passed such tests as may from time to time be prescribed in the Departmental Examination Rules, and

(iii) he is recommended by the High Court for such confirmation.

Rule 25 - A candidate appointed on a temporary basis shall have to undergo all the training for the post as if he were appointed on a substantive basis.

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DELHI

(i) Rules	Delhi Judicial Service Rules
(ii) Qualification	<p>i) Citizen of India</p> <p>ii) Must have practiced as an Advocate for not less than three years on the last date prescribed for the submission of applications.</p> <p>iii) Not more than 32 years of age on the first day of January following the date of commencement of examination.</p>
(iii) Procedure for selection	After holding written examination followed by viva-voce to be held by the High Court.
(iv) Authority for Selection	<p>The Administrator upon recommendation of the Selection Committee consisting of</p> <p>a) Chief Justice or a Judge of the High Court.</p> <p>b) Two Judges of the High Court nominated by the Chief Justice.</p> <p>c) Chief Secretary, Delhi Administration, Delhi.</p>

	d) A Secretary of the Delhi Administration nominated by the Administrator.
(v) Examination	
a) Written	Number of papers - 5 Total Marks - 850
b) Viva Voce	Total Marks - 100
(vi) Training	Ad-hoc. The newly recruited Civil Judges are imparted training for a period of 6 to 9 months by attaching them with Senior Judicial Officers and imparting them lectures on various important legal subjects.
(vii) Probationary period	Two years probation.

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EXTRACT OF THE DELHI JUDICIAL SERVICE RULES, 1979

Rule 1 - Short Title and Commencement : (1) These Rules may be called the Delhi Judicial Service Rules and they shall come into force from the date of publication in the Delhi Gazette.

Rule 3 - (a) On and from the date of commencement of these rules there shall be constituted a Civil Service to be known as the Delhi Judicial Service.

(d) A person appointed to the service shall be designated as * Civil Judge or Metropolitan Magistrate or as * Civil Judge-cum-Metropolitan Magistrate in accordance with the duties being discharged by him for the time being.

Rule 7 - For purpose of recruitment to the service there shall be a Selection Committee consisting of the following:-

- (1) Chief Justice or a Judge of the High Court deputed by him.
- (2) Two Judges of the High Court nominated by the Chief Justice.
- (3) Chief Secretary, Delhi administration, Delhi.
- (4) A Secretary of the Delhi Administration nominated by the Administrator.

The Registrar of the High Court shall be the ex-officio Secretary of the Committee.

Rule 8 - The initial recruitment shall be made by the Administrator upon the recommendation of the Selection Committee.

Rule 13 - Recruitment after the initial recruitment, shall be made on the basis of a competitive examination to be held by the High Court at such intervals as the Administrator may in consultation with the High Court determine. The dates on which and the place at which the examination is to be held shall be fixed by the Administrator.

* Amended vide Govt. of N.C.T. Delhi's Notification No.F.6/15/85-Judl

Rule 14 - A candidate shall be eligible to appear at the examination if he is:

(a) a citizen of India

*(b) a person who has practised as an Advocate for not less than 3 years on the last date prescribed for the submission of application.

(c) not more than 32 years of age on the 1st day of January following the date of commencement of the examination.

Rule 16 - After the written test, the High Court shall arrange the names of the candidates in order of merit and these names shall be sent to the Selection Committee.

Rule 17 - The Selection Committee shall call for viva-voce test only such candidates, who have qualified at the written test as provided in the appendix.

Rule 18 - (i) The Selection Committee shall prepare a list of candidates in order of merit on the basis of competitive examination held in accordance with the Rules. Such list will be forwarded to the Administrator.

(ii) The Administrator may in consultation with the High Court make appointment in substantive, officiating or temporary vacancies from amongst those who stand highest in order of merit.*

Rule 19 - disqualification :

(1) No person who has more than one wife living shall be eligible for appointment to the Service.

(2) No woman who is married to any person who has a wife living shall be eligible for appointment to the Service.

* Amended vide Govt. of N.C.T. Delhi's Notification No.F.6/15/85-Judl
Vol.I/861 dated 12.5.1994.

Rule 20 - (1) Persons appointed to the service at the initial recruitment shall stand confirmed with effect from the date of appointment.

(2) All other candidates on appointment to the Service shall be on probation for a period of two years.

* Rule (18) substituted vide Delhi Administration's Notification No.F.6/15/85-Judl dated, the 23rd February, 1990.

Rule 28 - Recruitment made to the service by competitive examination shall be subject to orders regarding special representation and other concessions for the Scheduled Castes and Scheduled Tribes and Emergency Commissioned Officers and Short Service Commissioned Officers issued by the Central Government from time to time.

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GOA

(i) Rules	Goa Civil Service (Judicial Branch) Rules, 1992.
(ii) Qualification	<p>i) A degree in law of any recognised University in India or equivalent thereof from a foreign country.</p> <p>ii) Practice as an Advocate in High Court or any Courts subordinate thereto, for not less than three years.</p>
(iii) Procedure for selection	Interview.
(iv) Authority for Selection	Goa Public Service Commission.
(v) Examination	
a) Written	<p>Number of papers - Nil</p> <p>Total Marks -</p>
b) Viva Voce	Marks - 100

(vi) Training	Six months
(vii) Probationary period	Two years.

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EXTRACT OF THE GOA CIVIL SERVICE (JUDICIAL BRANCH)
RULES, 1992

Rule 1 - Short Title and Commencement. € (1) These Rules may be called the Goa Civil Service (Judicial Branch) Rules, 1992.

(2) They shall come into force at once.

2. Definition.- In these Rules, unless the context otherwise requires, -

(a) "Committee" means the Committee constituted under Rule 7;

(d) "High Court" means the High Court of Judicature at Bombay having jurisdiction over the State of Goa;

(e) "Members of the service" means persons appointed to any grade of the service in any capacity whatsoever in accordance with these Rules;

3. Constitution of Service and its Classification.-

The service shall have the following two Grades, viz:-

(1) Grade I - consisting of District Judges and Additional District Judges.

(2) Grade II € Senior Branch € Civil Judge, Senior Division.

Junior Branch € Civil Judge, Junior Division.

5. Method of recruitment. - Save as provided in Rule 10, appointment to posts in Junior Branch of Grade II of the service shall be made by direct recruitment in accordance with these rules.

6. Eligibility. - No person shall be eligible for appointment to the Junior Branch, Grade II, of the service unless:

- (a) he is an Indian citizen;
- (b) he is not less than 25 years and not more than 35 years of age (40 years in case of candidates belonging to the communities recognised as Backward Classes by Government for the purpose of recruitment);
- (c) he holds a degree in Law of any recognised University in India or equivalent thereof from a foreign country which has reciprocal understanding with the Government of India in the matter of recognition of academic qualifications;
- (d) he produces a certificate from a District Judge that he has sufficient knowledge of Konkani or Marathi;
- (e) he has practised as an advocate in the High Court or any Courts subordinate thereto or the former Judicial Commissioner's Court for not less than three years on the last date prescribed for the submission of the application, or he is an Assistant Public Prosecutor.

7. Interview: - Appointment to the Grade II, Junior Branch shall be made by the Governor in consultation with the Goa Public Service Commission wherein the representative of the High Court nominated by the Chief Justice of High Court shall be associated and whose opinion shall prevail unless there are strong and cogent reasons for not accepting it which reason shall be recorded in writing.

The Committee shall prepare a Select List of candidates in order of merit after holding interviews of eligible candidates. Such list shall remain in operation until exhausted or for a period of two years, whichever is earlier. The Committee may evolve a reasonable method or formula for short-listing of candidates for holding interviews.

Rule 9 - Appointment of candidates included in the list €

(a) Subject to the provisions of these Rules, the candidates may be considered for appointment to the available vacancies in the order in which their names appear in the List referred to in Rule 7.

(b) In filling the vacancies reserved for members of the Schedules Castes, Scheduled Tribes and Other Backward Classes as may be prescribed by the Government respectively, candidates belonging to these communities shall be considered for appointment as between themselves in the order in which their names appear in the List:

Provided that if a sufficient number of suitable candidates who are members of the Scheduled Castes, Scheduled Tribes and Other Backward Classes are not available for whatsoever reason for filling all the vacancies so reserved, the remaining vacancies shall be filled up by appointment of the other candidates in the List and an equivalent number of additional vacancies shall be reserved for candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes to be filled at the time of the next selection:

Provided further that if a sufficient number of suitable candidates belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes are not available at the time of the said next selection to fill up all the reserved vacancies, including the additional vacancies or such of them as are not filled, such vacancies shall lapse and form part of general vacancies.

Rule 12 - Period of probation and confirmation. - (a) Every person appointed to the Junior Branch Grade II of the Service, shall be on probation for a minimum period of two years and shall continue to be on such probation till the High Court issues a certificate about the satisfactory completion of probation. A person on probation shall be liable to be discharged from service at any time by the Governor on the recommendation of the High Court.

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GUJARAT

(i) Rules	Gujarat Judicial Service Recruitment Rules, 1961.
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(ii) Qualification	<p>i) Members of the Bar of 3 years practice.</p> <p>ii) Not less than 21 years and not more than 35 years of age in case of communities recognised as backward classes by Govt., not more than 40 years having sufficient knowledge of Gujarati and Hindi and ability to translate into and from English.</p>
(iii) Procedure for selection	Written test followed by interview.
(iv) Authority for Selection	High Court.
(v) Examination	
a) Written	Total Marks - 150
b) Viva Voce	Total Marks - 100
(vi) Training	Judicial Academy of Ahmedabad is imparting training for a period of 3 months to the initial recruits.
(vii) Probationary period	Two years probation.

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EXTRACT OF THE GUJARAT JUDICIAL SERVICE RECRUITMENT RULES, 1961

Rule 1. These rules may be called the Gujarat Judicial Service Recruitment Rules, 1961.

Rule 2. Definitions:- In these rules unless the context otherwise requires:-

- (b) "Commission" means the Gujarat Public Service Commission;
- (d) "High Court" means the High Court of Gujarat;
- (e) "Service" means the Gujarat Judicial Service.

Rule 3. Constitution of Service:-

- (1) The Service shall consist of two Branches, namely:-

(a) Junior Branch and (b) Senior Branch.

(2) The Junior Branch shall consist of the following two classes, namely:-

(a) Class I comprising,

(i) the cadre of Civil Judges (Senior Division) and

(ii) the Judges of the Courts of Small Causes.

(b) Class II comprising, Civil Judges (Junior Division) and Judicial Magistrates of the First Class.

Rule 5. Method of recruitment to Class II of the Junior Branch:-

(1) Appointments to the posts of Civil Judges (Junior Division) and Judicial Magistrates of the First Class shall be made by direct selection from amongst

(i) members of the Bar;

(ii) members of the staff of the High Court or any Court subordinate to it;

(iii) members of the staff working as Assistants in the Legal Section of the Legal Department in Sachivalaya;

(iv) members of the staff of office of the Government Pleader, High Court, Ahmedabad; and

(v) members of the staff of office of the Government Pleader, City Civil Court, Ahmedabad.

(2) The appointments shall be made by the Governor in consultation with the Chief Justice.*

(3) The appointments shall be made from amongst candidates who being members of the Bar.

- (a) are not less than 21 and not more than 35 years except that candidates belonging to the communities recognised as Backward by Government for purpose of recruitment may not be more than 40 years of age.
- (b) Have practised as Advocates, attorneys or Pleaders for not less than three years on the last date prescribed for the submission of application for the post.
- (c) Are certified in Ahmedabad by the Principal Judge of the City Civil Court or the Chief Judge of the Small Cause Court or the Chief Magistrate and elsewhere by a District Judge, to have sufficient knowledge of Gujarati and Hindi so as to

* Substituted and deleted by Government Notification, Legal Department,
No.GK/94/13/CJC/1093/192/D, dated June 14, 1994.

enable them to speak in the said languages, to write and read the said languages in Devnagari script and to translate with ease, from any of the said languages into English and from English into any of the said languages;

Explanation:- In the case of Police Prosecutors serving under the Government of Gujarat who apply for the post, the maximum age limit shall be 45 years and their service in that capacity shall be deemed to be practice at the Bar.

Rule 3(A). The appointments shall be made from amongst candidates who

being:

- (i) members of the staff of the High Court or any Court subordinate to it;
- (ii) members of the staff working as Assistant in the Legal Section of the Legal Department in Sachivalaya;
- (iii) members of the staff of office of the Government Pleader, High Court, Ahmedabad; and
- (iv) members of the staff of the Government Pleader, City Civil Court, Ahmedabad;
- (a) are not more than 45 years, and
- (b) have obtained the LL.B. (Special) Degree or qualified for enrolment as Advocate and served as such members for a period of not less than five years, including not less than two years after obtaining such degree or qualifying for such enrolment.

Rule 4. Unless otherwise expressly provided, every person appointed under the preceding sub-rules shall be on probation for a period of two years.

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HARYANA

(i) Rules	Haryana Civil Service (Judicial Branch)
(ii) Qualification	<p>i) Citizen of India.</p> <p>ii) Not more than 35 years and not less than 24 years as on the last date fixed for submission of application to Haryana Public Service Commission.</p> <p>Provided above maximum age for a candidate belonging to</p>

	<p>SC / ST and Backward class shall be 40 years or such age as may from time to time be fixed by the Government.</p> <p>iii) Must be a law graduate with three years of practice at the Bar on the last date of submission of application to the Public Service Commission.</p>
(iii) Procedure for selection	After holding the written and oral examinations specified, by the Haryana Public Service Commission.
(iv) Authority for Selection	Haryana Public Service Commission in association with the central committee.
(v) Examination	
a) Written	<p>No. of papers - 5</p> <p>Total Marks - 900</p>
b) Viva Voce	Total Marks - 200
(vi) Training	<p>Ad-hoc :</p> <p>Every candidate during the period of his probation has to</p>

	undergo training for 15 weeks.
(vii) Probationary period	Two years.

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EXTRACT OF THE RULES RELATING TO THE APPOINTMENT OF SUBORDINATE JUDGES IN HARYANA (AS AMENDED UPTO 1985)

PART A - QUALIFICATIONS

Rule 1A. Any reference in these rules to "a Subordinate Judge" or "a Sub-Judge" shall unless the context otherwise requires, be construed as a reference to "a member of the, 1(Haryana) Civil Service (Judicial Branch)" or to "the 1(Haryana) Civil Service (Judicial Branch)" as the context may require.

2Rule 2. "No person who is more than 35 years of age or such age as may, from time to time, be fixed by the Government for entry into Government service or less than 24 years of age on the last date fixed for the submission of the application form to the Haryana

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1. Substituted for the word "Punjab" vide Haryana Government, General Administration (General Services) Notification No.GSR./64/Const./Arts.234 and 309/Amd.-71, dated the 11th June, 1971, published in Haryana Government Gazette, Legislative Supplement, Part III of the 15th June, 1971.
 2. Substituted vide Haryana Govt. Notification No.G.S.R.38/Const./Arts.234 and 309 Amd.(1) 94, dated 4-5-94.

Public Service Commission shall be eligible to submit his application form to the Commission for the competitive examination for the Haryana Civil Service (Judicial Branch).

Provided that the above maximum age for a candidate belonging to Scheduled Caste, Scheduled Tribe and Backward Class shall be 40 years or such age as may, from time to time, be fixed by the Government for entry into Government service:

Provided further that an ex-serviceman shall be entitled to deduct from his age such period as may, from time to time be allowed by the State Government for entry into Government service to such candidates subject to maximum of 5 years."

Rule 3. No person shall be appointed to be a Subordinate Judge who has not obtained the degree of Bachelor of Laws at any University incorporated by law of India or the degree of Bachelor of Laws of the (undivided) Punjab University, the Sind University, the Dacca University, the Tribhuwan University, Nepal or of the Rangoon or Mandalay University in Burma, or is not a Barrister of England or Ireland or a member of the Faculty of Advocates of Scotland and has got three years practice at the Bar on the last date of submission of application form to the Haryana Public Service Commission.

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1. Substituted vide Haryana Government Home Department, General Services Branch Notification No.GSR.81/Const./Arts.234 and 309/Amd. (4)/68, dated the 17th September 1968, published in Haryana Government Gazette (Extraordinary) Part III of the 18th September, 1968.
 2. Added w.e.f. 24.8.93 vide Haryana Govt. Notification No.G.S.R.35/Const/Arts.234 and 309/Amd.(1)94, dated 4.5.94.

Rule 5. No person who has more than one wife living shall be eligible for appointment as a Subordinate Judge.

Rule 8. A member of the ²(Haryana) Civil Service (Judicial Branch) may be required to work as a Subordinate Judge or a Judicial Magistrate or both.

³"PART B - SUBMISSION OF ROLLS"

Rule 2. In pursuance of the advertisement issued by the Haryana Public Service Commission, candidates will submit their applications to the Commission in the forms prescribed by it along with necessary information and documents as may be required.

PART C - EXAMINATION OF CANDIDATES

The following rules and instructions, which are liable to alteration from year to year, are prescribed for the examination of candidates for admission to the Judicial Branch of the ³(Haryana) Civil Service:-

Rule 1. An examination will be held at such place as the ³(Haryana) Public Service Commission may determine, commencing on such date as may from time to time be notified in the Gazette.

Rule 4. ³The examination papers shall be set and marks awarded by the examiners who will be appointed by the Haryana Public Service Commission. There shall also be a test in viva-voce which will be conducted by the Haryana Public Service Commission. ³The representative of the High Court shall be one of the members of the

3. Substituted for the word "Punjab" vide Haryana Government, General Administration (General Services) Notification No.GSR.65/Const./Arts.234 and 309/Amd. (1) 94, dated 4-5-95.

Selection Committee and the opinion given by him with regard to the suitability of the candidate shall not be disregarded unless there are strong and cogent reasons for not accepting the opinion, which reasons must be recorded in writing.

6. The object of the examination is to test the practical ability of the candidates rather than the range of their theoretical knowledge. For this purpose, the kind of questions that will be asked will be to give the facts of a typical case and ask the candidate to frame issues, to write a judgment, and to discuss the admissibility of evidence.

7. ⁴No candidate shall be called for the Viva-voce test unless he obtains at least 45 percent marks in the aggregate in all the written papers and 33 percent marks in the language paper, Hindi (in Devnagari script).

8. ⁵No candidate shall be considered to have qualified in the examination unless he obtains at least 55 per cent marks in the aggregate of all papers including viva-voce test except in the case of candidates belonging to the Scheduled Castes/Tribes and backward classes, in whose case such qualifying marks shall be 50 percent.

⁶The merit of the qualified candidates shall be determined strictly according to the marks obtained by them.

4. Substituted vide Haryana Govt. Notification No.75/Const./Arts 309/Amd. (1) 74, dated 11.6.74.

5. Substituted vide Haryana Government Notification No.G.S.R.52/Const./Arts.234 and 309/Amd.(1) 90 dated 13.6.90.

6. Added vide Haryana Govt. Notification No. GSR 17 Const./Arts 234 and 309 Amd(4)77 dt. 21.1.1977.

Provided that in case two or more candidates obtain equal marks, their merit shall be determined according to the marks secured by them in the viva-voce and if the marks in the viva-voce of the candidates are also equal, the older in age shall be placed higher

in order of merit.

PART D - APPOINTMENT

* " 1. The names of candidates, selected by Government for appointment as Subordinate Judges under rules 10 and 11 of Part C, shall be entered on the High Court Register in the order of their selection, subject to the number specified in rule 8.

6. Every candidate shall, during the period of the candidature undergo such training as may be required of him, and if before he completes the training, is appointed as a Subordinate Judge, he shall do so while in service.

7(1) Whenever it shall appear to the Judges that a vacancy or vacancies in the cadre of the Judicial Branch of the ****(Haryana)** Civil Service, whether permanent, temporary or officiating, should be filled, they will make a selection from the High Court Register in the order in which the names have been entered in the register under rule 1 of this Part. The name or names of the selected candidate or candidates will be forwarded to Government for appointment as Subordinate Judges under Article 234 of the Constitution of India.

* Substituted vide Haryana Government Notification No .G.S.R.7 / Const./ Arts.234 and 309/Amd.(1) 93, dated the 5th February 1993.

** Substituted for the word "Punjab" vide Haryana Government, General Administration (General Services) Notification No.GSR.64/Const./Arts.234 and 309/Amd.71, dated 11th June, 1971 published in Haryana Government Gazette, Legislative Supplement, Part III of the 15th June, 1971.

Every Subordinate Judge shall, in the first instance, be appointed on probation for two years but this period may be extended from time to time expressly or impliedly so that the total period of probation, including extension, if any, does not exceed three years.

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HIMACHAL PRADESH

(i) Rules	The Himachal Pradesh Judicial Service Rules, 1973.
(ii) Qualification	<p>i) Not more than 35 years and not less than 25 years on the 1st day of January of the year in which the Commission invites application.</p> <p>However, 40 years is the maximum age limit for advocates who have practised for minimum period of six years; official, who is a Law Graduate with 3 years legal practice at the Bar and serving on the establishment of the High Court or any court subordinate thereto or in the H.P. Government Secretariat or in offices subordinate to.</p>
(iii) Procedure for selection	After holding the written and oral examinations by P.S.C. in consultation with the High Court.
(iv) Authority for Selection	Himachal Pradesh Public Service Commission.
(v) Examination	
a) Written	<p>Number of papers - 5</p> <p>Total Marks - 900</p>
b) Viva Voce	Total Marks - 250

(vi) Training	One month Ad-hoc practical training with the Senior-Judge-cum-Chief Judicial Magistrate of the respective District.
(vii) Probationary period	Two years.

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EXTRACT OF THE HIMACHAL PRADESH JUDICIAL SERVICE RULES, 1973

Rule 1. Short Title and Commencement

(i) These rules may be called the Himachal Pradesh Judicial Service Rules, 1973.

Rule 2. Definitions: x x x

Rule 3. Constitution of the Service and its Classification

(1) On and from the date of commencement of these rules, there shall be constituted a Civil Service to be known as the Himachal Pradesh Judicial Service.

(2) The Service shall have two grades, namely:

(i) Grade I Selection Grade, and

(ii) Grade II

(3) The posts in Grade I shall be Civil Posts, Class € I € (Senior Gazetted and those in Grade II shall be Civil Posts Class I Junior) Gazetted.

Rule 5. Method of Recruitment:

Save as provided in Rule 6 Part IV, the appointment to the Service in Grade II shall be made by competitive examination in the manner specified below:

A € QUALIFICATION

1. A Candidate for appointment to the Service must be:

(a) a citizen of India, or

(b) a subject of Sikkim, or

(c) a subject of Nepal, or

(d) a subject of Bhutan, or

(e) a Tibetan refugee who came over to India before the 1st January 1962 with the intention of permanently settling in India, or

(f) a person of Indian origin who has migrated from Pakistan, Burma, Ceylon and East African Countries of Kenya, Uganda and the United Republic of Tanzania (formerly Tenganyik and Zanzibar) with the intention of permanently settling in India.

Provided that a candidate belonging to categories (c), (d), (e) and (f) above shall be a person in whose favour a certificate of

eligibility has been issued by the Government of India.

3. No person, who is more than thirtyfive years or less than twentyfive years of age, on the 1st day of January of the year in which the Commission invites application for the competitive examination for recruitment to the Service shall be eligible to appear in the competitive examination.

Provided that:-

(a) the maximum age limit:-

(i) for an advocate, who has practised at Bar for a minimum period of six years.

(ii) For an official, who is a Law Graduate with three years legal practice at the bar and is serving on the establishment of the High Court or any Court subordinate thereto in the State of Himachal Pradesh Govt. Secretariat or in offices subordinate thereto, and has served on the said establishment or under the State or partly on the said establishment and partly under the State Govt. for a minimum aggregate of three years, or vice-versa, shall be 40 years.

NOTE: An incumbent who appears in the competitive examination as an advocate with six years practice at the bar with relaxed age limit as above shall not become ineligible for subsequent Competitive Examination if he is selected as Assistant Public Prosecutor under the Government as such. The maximum age limit of 40 years shall however, be applicable in his case too.

Explanation:

(a) For the purpose of this sub-rule, the expression "High Court" would include the erstwhile Court of Judicial Commissioner of Himachal Pradesh and the Himachal Bench to the Delhi High Court.

(b) For the purposes of computing the period of six years practice at the bar referred to in clause (a) above, the Govt.

may, in consultation with the High Court include the period during which a person had served as Subordinate Judge on temporary basis as a result of the competitive examination held by the Commission.

(c) A candidate belonging to Scheduled Caste, Scheduled Tribe or Backward class will be entitled to deduct from his age such period as may from time to time, be allowed by the Government for entry into service for such candidates.

4. No person shall be appointed to be a subordinate Judge who is not a Law Graduate with three years legal practice at the bar.

Provided that knowledge of customs, manners and dialects of Himachal Pradesh and suitability for appointment in the peculiar conditions prevailing in the Himachal Pradesh shall be desirable qualification for appointment to the service.

B. Method of Recruitment and Examination of Candidates:

1) Recruitment to the service shall be made through a competitive examination. Competitive examination shall be held by the Commission at such intervals as the Government may in consultation with the High Court, from time to time, determine. The examination will be held at such place(s) and on such dates as the Commission may determine.

4) The examination paper shall be set and marks awarded by examiners who will be appointed by the Commission. A representative of the High Court shall be a member of the Interview Board which conducts the viva-voce and his advice should prevail unless there are strong and urgent reasons for not accepting it, for which reasons should be recorded in writing.

C. Appointment, Probation and Confirmation:

2. Period of Probation:

a) Every person appointed to the service shall be on probation for a period of two years.

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JAMMU & KASHMIR

(i) Rules	Jammu & Kashmir Civil Service (Judicial) Recruitment Rules, 1967.
(ii) Qualification	<p>i) A Bachelor's Degree in Law of a University established in India or a Barrister of England or Northern Ireland or a Member of the Faculty of Advocates in Scotland;</p> <p>ii) Not more than 35 years as on 1st day of January preceding the year the examination is conducted.</p>
(iii) Procedure for selection	After holding the written and oral examinations by the J&K Public Service Commission.
(iv) Authority for Selection	Jammu & Kashmir Public Service Commission in association

	with the High Court.
(v) Examination	
a) Written	<p>Number of papers - 6 (Compulsory)</p> <p>6 (Optional)</p> <p>Total Marks - 950</p>
b) Viva Voce	Total Marks - 250
(vi) Training	Adhoc: Three months but not exceeding six months as determined by the High Court.
(vii) Probationary period	Two years.

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EXTRACT OF THE JAMMU AND KASHMIR CIVIL SERVICE (JUDICIAL) RECRUITMENT RULES, 1967

Rule 1. Short title, commencement and repeal -

- (1) These rules may be called the Jammu and Kashmir Civil Service (Judicial) Recruitment Rules, 1967.
- (2) These rules shall come into force from the date these are published in the Government Gazette.

Rule 2. Scope of the rules - These rules shall apply to the selection of candidates for appointments to the posts of Munsiffs in the Jammu and Kashmir Civil Service (Judicial).

Rule 3. Definitions - If these rules unless there is anything repugnant in the subject or context:-

- (a) "Commission" means the Jammu and Kashmir Public Service Commission;
- (d) "Service" means the Jammu and Kashmir Civil Service (Judicial).

Rule 4. Method of recruitment - Recruitment to the Service shall be made on the basis of the competitive examination conducted by the Commission.

Rule 7. Age - No person shall be recruited to the service who is more than 35 years of age on the first day of January preceding the year the examination is conducted by the Commission for recruitment to the service.

Rule 8. Academic Qualifications - No person shall be recruited to the service unless he is -

- (a) a Bachelor of Laws of a University established by law in India, or

(b) a Barrister of England or Northern Ireland or a member of the Faculty of Advocates in Scotland or any other equivalent law degree recognised by the Government of India.

Rule 10. Examination - The examination for selection of candidates shall, as far as practical be held annually, at such place or places as the commission may determine commencing on such dates as may from time to time be notified in the Jammu and Kashmir Government Gazette and shall consist of -

(a) Written examination in such legal and allied subjects including procedure as may be included in the syllabus prescribed under Rule 11;

(b) Viva Voce.

The object of viva voce examination is to assess the candidate's intelligence, general knowledge, personality, aptitude and suitability.

(2) For the purpose of conducting viva voce examination the Commission shall request the Chief Justice either by himself or through a Judge of the Court nominated by him to act as an expert on the Commission.

Rule 12. Papers - The written examination shall include compulsory and optional papers and every candidate shall take all the compulsory papers and three out of the optional papers mentioned in Appendix "A". The total number of marks and the time fixed for each paper are given in the aforesaid Appendix.

Rule 13. Marks -

(1) The examination will carry a total of 1150 marks including 250 marks for viva voce. Candidates obtaining such minimum qualifying marks, subject-wise and in the aggregate, as may be fixed by the Commission after considering the results of the examination and the number of vacancies to be filled, shall be summoned by them for viva voce. Candidates who have failed in two or more subjects, according to the standard so fixed by the Commission, shall not be eligible either for viva voce or for selection.

(2) After the examination the candidates will be arranged by the Commission in the order of merit as disclosed by the aggregate marks including those obtained in viva voce finally awarded to each candidate and in that order so many candidates as are found by the Commission in their discretion to be qualified by the examination shall be recommended for appointment up to the number of unreserved vacancies decided to be filled on the results of the examination;

Provided that any candidate, belonging to a class regarding which provision for reservation of appointment or posts has been made, who though not qualified by the standard prescribed by the Commission is best in order of merit according to the results of the examination from that class shall be recommended for appointments to vacancies reserved for members of such class in that service.

(3) The form and manner of communication of the result of the examination to individual candidates shall be decided by the Commission in their discretion and the Commission will not enter into correspondence with them regarding the result.

Rule 43. Probation - The selected candidate, if so required by the Court, shall have to pass a departmental examination to be prescribed for the purpose before he is confirmed as Munsiff.

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KARNATAKA

(i) Rules	Karnataka Judicial Service (Recruitment) Rules, 1983.
(ii) Qualification	i) Degree in Law or equivalent; ii) Must have practised as an Advocate for not less than 4 years;

	iii) Must be more than 25 years but must not have attained the age of 38 years.
(iii) Procedure for selection	After holding the written and oral examination by the Committee of five judges of the High Court.
(iv) Authority for Selection	High Court of Karnataka.
(v) Examination	
a) Written	Number of papers - 4 Total Marks - 400
b) Viva Voce	Total Marks - 100
(vi) Training	Training is being imparted under the supervision of High Court ranging from 3 weeks to 5 weeks.
(vii) Probationary period	Two years.

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EXTRACT OF THE KARNATAKA JUDICIAL SERVICE (RECRUITMENT) RULES, 1983

Rule 1. Title and Commencement - (1) These rules may be called the Karnataka Judicial Service (Recruitment) Rules, 1983.

Rule 2. Method of Recruitment, Minimum Qualification etc.

In respect of each category of posts specified in Column (2) of the Schedule below, the method of recruitment and the minimum qualifications shall be as specified in the corresponding entries in Columns (3) and (4) thereof:-

Sl. No.	Category of Posts	Method of recruitment	Minimum Qualifications etc.
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1	Munsiffs	<p>By direct recruitment on the basis of written examination and viva voce examination conducted by the High Court of Karnataka in accordance with the rules.</p> <p>¹ Provided that in respect of the vacancies categorised as 'backlog' relating to the Scheduled Castes and Scheduled Tribes under the Government Order No.DPAR 19 SBC 89, dated 12-7-89, as amended from time to time, the direct recruitment under</p>	<p>1. Must be holder of a degree in Law or equivalent qualification; and</p> <p>2. Must on the last date fixed for submission of application be:-</p> <p>(a) Practising as an Advocate and must have so practised for not less than four years as on such date; or</p> <p>(b) Working as a Senior Asst.Public Prosecutor in the Department of Prosecutions and must have so worked for not less than four years as</p>
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		<p>these rules shall be on the basis of such viva voce examination only.</p>	<p>on such date.</p> <p>Note: Period of practice as an Advocate, if any, shall for the purpose of clause(b) be treated as service as Assistant Public Prosecutor.</p> <p>Age: Must have attained the age of twenty five years and must not have attained the age of 38 years on the last date fixed for submission of applications.</p> <p>Probation: Two years. During the period of probation he must undergo such training as</p>
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			may be prescribed by the High Court of Karnataka.
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KERALA

(i) Rules	Kerala State Judicial Service Rules, 1991.
(ii) Qualification	<p>Out of every 4 vacancies first, second and third shall be filled or reserved to be filled by direct recruitment and the fourth by transfer from inservice personnel.</p> <p>i) Practice at the Bar for not less than five years;</p> <p>ii) Must not have completed 35 years on first day of January of the year in which applications are invited;</p> <p>iii) Must be a Law Graduate or Barrister-at-Law.</p>
(iii) Procedure for selection	After holding the written and oral examinations.
(iv) Authority for Selection	High Court of Kerala.
(v) Examination	

a) Written	Number of papers - 4 Total Marks - 400
b) Viva Voce	Total Marks - 50
(vi) Training	Institutional: Every person selected shall undergo Training for 24 weeks in the Directorate of Training under the High Court of Kerala.
(vii) Probationary period	Two years.

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EXTRACT OF THE KERALA JUDICIAL SERVICE RULES, 1991

Rule 1. Short title and Commencement -

(1) These Rules may be called The Kerala Judicial Service Rules, 1991.

(2) They shall come into force with effect from 1.1.1992.

2. Applicability of the General Rules.- The provisions of the Kerala State and Subordinate Service Rules, 1958 shall apply to the service wherever express provision is not otherwise made in these rules.

3. Constitution - (1) There shall be a common service called "The Kerala Judicial Service" in the place of existing Kerala Civil Judicial Service and Kerala Criminal Judicial Service.

(2) The service shall consist of the following categories of officers namely:-

Category 1:- Subordinate Judges / Chief Judicial Magistrates

Category 2:- Munsiff Magistrate

(3) The service shall first be formed by integrating the members of the Kerala Civil Judicial Service consisting of Subordinate Judges and Munsiffs and the members of the Kerala Criminal Judicial Service consisting of Selection Grade Civil Judicial Magistrates, Chief Judicial Magistrates, Senior Grade Judicial Magistrates of the first class, Judicial Magistrates of the first class and Judicial Magistrates of the second class.

Rule 4. Appointing Authority.- the appointing authority for category 1 shall be the High Court of Kerala and for category 2 shall be the Governor of the State.

Rule 5. Appointment.- (1) Appointment to a category specified in column (1) below shall be made by the method of appointment specified against that category in column (2).

	Category	Method of appointment
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	1	2
2.	Munsiff Magistrates	Direct recruitment and transfer in the manner provided in sub-rule (3) of this rule.

(3) Out of every four vacancies arising in category 2, the first, second and third shall be filled or reserved to be filled by direct recruitment and the fourth by recruitment by transfer from among the following categories:

(i) Assistant Public Prosecutors Grade I

Assistant Public Prosecutors Grade II

(ii) Assistant Registrar

Private Secretary to the Chief Justice and other Officers of the High Court in the same scale of pay of Assistant Registrars, Personal Assistant to the Chief Justice, Additional Personal Assistant to the Chief Justice, Section Officers, Librarian, Reference Librarian, Court officers, Court Fee Examiners, Accountant, Head Translator, and Selection Grade Shorthand Writers in the High Court of Kerala.

(iv) Section Officers and Librarian in the Law Department, Government Secretariat.

(v) Sheristedars of District Courts, Additional District Courts, Special Courts, the Office of the Motor Accidents Claims Tribunals, the Office of the State Transport Appellate Tribunal and the Sub-Courts, Head Clerks of the District Courts and Additional District Courts and

Selection Grade Confidential Assistants in the Subordinate Civil Courts.

(vi) Sheristedars of Chief Judicial Magistrate's Courts and Selection Grade Confidential Assistants in the Subordinate Criminal Courts.

Rule 8. Training. - Every person selected for appointment to category 2 shall undergo such training as may be prescribed in this behalf by the High Court.

Rule 10. Qualification. - (1) No Advocate shall be eligible for appointment to category 2 unless he is having practice at the Bar for a period of not less than five years and has not completed 35 years of age on the first day of January of the year in which applications for appointment are invited.

(3) (i) to sub-rule (1) the following further proviso shall be added namely:-

"Provided further that an Advocate, who is a member of Scheduled Caste or the Scheduled Tribe shall be eligible for appointments to category 2 if he is having practice at the Bar for a minimum period of not less than three years."

Rule 11. Probation. - (1) Every person appointed to any category shall, from the date on which he joins duty be on probation, if he is recruited direct or by transfer for a total period of two years on duty within a continuous period of three years and if appointed by promotion, for a total period of one year on duty within a continuous period of two years.

Rule 12. Tests. - Every person appointed to category 2 shall within the period of probation pass the Account Test for Executive Officers or the Account Test (Lower) unless he has already passed either of those tests and also pass such other tests as may be prescribed by the High Court of Kerala.

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LAKSHADWEEP

(i) Rules	The Lakshadweep Administration Judicial Department (Munsiffs Recruitment) Rules, 1986.
(ii) Qualification	i) Should not exceed 35 years (relaxable for Govt. servants

	upto 5 years); ii. Bachelor's Degree in Law; iii. Practice at the Bar for not less than 5 years; iv. Knowledge of Malayalam.
(iii) Procedure for selection	By transfer on deputation from among the members of Kerala Judicial Service holding analogous posts.
(iv) Authority for Selection	The Union Public Service Commission is the authority for selection in consultation with the High Court of Kerala.
(v) Examination	
a) Written	Not applicable in view of the reply to Question (iii) above.
b) Viva Voce	Not applicable in view of the reply to Question (iii) above.
(vi) Training	As applicable to Kerala Judicial Service Officers.
(vii) Probationary period	Two years.

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MADHYA PRADESH

(i) Rules	The Madhya Pradesh Lower Judicial Service (Recruitment and Conditions of Service) Rules, 1994.
(ii) Qualification	<p>i) Citizen of India;</p> <p>ii) Attained the age of 25 years and not completed 35 years on the 1st day of January of the year in which the applications are invited;</p> <p>iii) Degree in Law;</p> <p>iv) Practised as an Advocate for not less than 3 years on 1st January.</p> <p>v. Good character and sound health.</p>
(iii) Procedure for selection	By holding examination by the Public Service Commission

	in consultation with the High Court and the State Government.
(iv) Authority for Selection	Public Service Commission.
(v) Examination	
a) Written	Number of papers - 2 Total Marks - 200
b) Viva Voce	Total Marks - 25
(vi) Training	Judicial Officers Training Institute at Jabalpur is imparting training for a period of 3 ½ months.
(vii) Probationary period	Two years.

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EXTRACT OF THE MADHYA PRADESH LOWER JUDICIAL SERVICE (RECRUITMENT AND CONDITIONS OF SERVICE) RULES, 1994

Rule 1(1). Short Title, Commencement and Application:

These Rules may be called the Madhya Pradesh Lower Judicial Service (Recruitment and conditions of Service) Rules, 1994.

Rule 2. Definitions:- In these Rules, unless the context otherwise requires :-

- (a) 'Commission' means Madhya Pradesh Public Service Commission;
- (d) 'High Court' means the High Court of Madhya Pradesh;
- (e) 'Service' means the Madhya Pradesh Lower Judicial Service.

Rule 3. Constitution of Service:-

- (1) The Service shall consist of the following categories of Civil Judges, namely:-
 - (i) Civil Judges - Junior Scale
 - (ii) Civil Judges - Senior Scale
 - (iii) Civil Judges - Selection Grade-cum-Chief Judicial Magistrates.

Rule 5. Method of Appointment and the Appointing Authority:

- (1) All appointments to category (i) of Rule 3(i) shall be made by the Governor by Direct Recruitment in accordance with the

recommendations of the Commission on selection:

Provided that the procedure and curriculum for holding examination for the selection of candidates shall be prescribed by the Public Service Commission in consultation with the High Court and the State Government:

Provided further that a sitting Judge of the High Court to be nominated by the Chief Justice shall be one of the members of the Selection Committee and the opinion given by him with regard to the suitability of the candidate shall not be disregarded except for strong and cogent reasons to be recorded in writing.

(2) Appointments to Categories (ii) and (iii) of Rule 3(1) shall be made by the High Court by selection from categories (i) and (iii) of Rule 3(1) respectively. The selection shall be on the basis of merit-cum-seniority.

Provided that appointments to category (ii) and (iii) shall be made only on completion of 6 years and 4 years service in Categories (i) and (ii) of Rule 3(1) respectively on the 1st day of January of the year in which selection is to be made.

Rule 7. Eligibility: No person shall be eligible for appointment by direct recruitment to posts in category (i) of Rule 3(1) unless:-

(a) he is a citizen of India;

(b) he has attained the age of 25 years and not completed the age of 35 years on the first day of January of the year in which applications for appointment are invited;

Provided that the upper age limit shall be relaxable upto a maximum of five years if a candidate belongs to Scheduled Castes, Scheduled Tribes or other Backward Classes:

Provided further that the upper age limit of a candidate who is a Government Servant (whether permanent or temporary) shall be relaxable upto 38 years:

(c) he possesses a degree in law of any recognised University;

(d) he has practised as an Advocate for not less than 3 years on the first day of January of the year in

which applications for appointment are invited; and

(e) he has good character and is of sound health and free from any bodily defect which renders him unfit for such appointment.

Rule 10. List of candidates recommended by the Commission:-

(1) The Commission shall forward to the Government a list arranged in order of merit of the candidates who have qualified by such standards as the Commission may determine. The list shall be published for general information.

(2) Subject to the provisions of these rules and the Madhya Pradesh Civil Services (General conditions of Service) Rules, 1961, candidates will be considered for appointment to the available vacancies in the order in which their names appear in the lists.

Rule 11. Probation:-

(a) A person appointed to category (I) of Rule 3(1) shall, from the date on which he joins duty be on probation for a period of two years.

(b) The High Court may, at any time, extend the period of probation, but the total period of probation shall not exceed three years.

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MAHARASHTRA

(i) Rules	The Bombay Judicial Service Recruitment Rules, 1956.
(ii) Qualification	<p>i) Candidates who are not less than 21 and not more than 35 years (40 years in the case of candidates belonging to communities recognised as Backward by Govt. for purposes of Recruitment);</p> <p>ii) Practised as Advocate for not less than 3 years;</p> <p>iii) Sufficient knowledge of Marathi.</p>
(iii) Procedure for selection	By viva voce after holding elimination / screening test.
(iv) Authority for Selection	Public Service Commission.
(v) Examination	
a) Written	<p>Number of papers - Nil</p> <p>Total Marks - Nil</p>
b) Viva Voce	Total Marks - Not indicated

(vi) Training	Six months
(vii) Probationary period	Two years.

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EXTRACT OF THE BOMBAY JUDICIAL SERVICE RECRUITMENT RULES, 1956

(AS MODIFIED UPTO 1992)

Rule 1. Short Title. - These rules may be called the Bombay Judicial Service Recruitment Rules, 1956.

Rule 2. Definitions - In these rules, unless the context otherwise requires,-

- (a) "Commission" means the Bombay Public Service Commission;
- (c) "High Court" means the High Court of Bombay;
- (d) "Service" means the Judicial Service of the State of Maharashtra.

Rule 3. Constitution of Service, -

(1) The service shall consist of two Branches, namely:-

- (a) Junior Branch and
- (b) Senior Branch.

(2) The Junior Branch shall consist of the following Class I Officers, namely:-

- (1) Judges of the Small Causes Courts at places other than Bombay;
- (2) Civil Judges (Senior Division), Chief Judicial Magistrates and Additional Chief Judicial Magistrates;
- (4) Civil Judges (Junior Division) and Judicial Magistrates of the First Class.

Rule 4 (i) appointments to the posts of Civil Judges (Junior Division) and Judicial Magistrates of the First Class shall be made by nomination from members of the Bar (or in special circumstances, by re-employment of retired Civil Judges, Junior Division or by nomination from among officers of other services).

(ii) the appointments shall be made by the Governor in consultation with the Commission (except that it shall not be necessary to consult the Commission in re-employing retired Civil Judges, Junior Division).

Provided that the Commission shall invite a representative of the High Court to be present at the interview held by the Commission for this purpose and the representative so present may take part in the deliberations of the Commission but shall not be entitled to vote;

(iii) appointments other than appointments of retired Civil Judges (Junior Division) shall be made from among candidates who -

(a) are ordinarily not less than twenty-one and not more than thirty-five years (forty years in the case of candidates belonging to communities recognised as Backward by Government for purposes of recruitment).

(b) Unless otherwise expressly directed ordinarily have practiced as advocates attorneys or pleaders in the High Court or Courts subordinate thereto for not less than three years on the last date prescribed for the submission of the applications;

(iv) (a) The person appointed by nomination from the members of the Bar shall be on probation for a period of two years which may be extended by the High Court from time to time, as it may deem fit.

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MANIPUR

(i) Rules	Manipur Judicial Service Rules, 1976.
(ii) Qualification	i) (a) 2/3 of the posts are filled by competitive examinations

	<p>conducted by the Commission.</p> <p>(b) Shall not be less than 22 years and not more than 32 years of age on the first day of January of the year in which examination is held;</p> <p>(c) Must be a Graduate in Law of any recognised University.</p> <p>ii) (a) The remaining one-third posts are filled by selection, by Gauhati High Court from amongst Bar Members with 3 years of practice.</p> <p>(b) Shall not be less than 25 years and not more than 35 years.</p> <p>iii) Must be a Graduate in Law of any recognised University.</p>
(iii) Procedure for selection	After holding written examination and viva-voce examination.
(iv) Authority for Selection	Manipur Public Service Commission.
(v) Examination	
a) Written	Number of papers - 5

	Total Marks - 650
b) Viva Voce	Total Marks - 150
(vi) Training	Two weeks in Criminal Court and another two weeks in Civil Courts before starts working. Foundation and refresher courses are also provided.
(vii) Probationary period	Two years.

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EXTRACT OF THE MANIPUR JUDICIAL SERVICE RULES, 1976

Rule 1(i) - Short Title and Commencement:

These Rules may be called the Manipur Judicial Service Rules, 1976.

Rule 6 - Recruitment:

Recruitment to the posts of the service, other than those mentioned in Rule 16, after the commencement of these Rules, shall be made by the following methods:-

(i) Appointment to the posts in Grade-III in any one year, shall be made by the Governor in the manner indicated below:-

(a) By filling up two third of the posts on the result of the competitive examination to be conducted by the Commission.

(b) By filling up the remaining one third posts by Selection from amongst the members of the Bar by the Gauhati High Court.

Rule 7 - General Qualifications:

Every member of the service shall satisfy the following general conditions:-

(i) shall be a citizen of India.

(ii) shall be of good character.

(iii) shall be of sound health and active habits and free from bodily defect or infirmity which may render him unfit for such appointment.

(iv) shall not have more than one spouse living unless exempted by the Governor on special grounds.

(v) If the member be a woman, she shall not have married a person having another wife living.

Rule 8 - Qualification:

A candidate for recruitment to the post in Grade-III shall satisfy the following conditions, besides the general conditions laid

down under Rule 7:-

(i) (a) For recruitment on the result of the competitive examination as laid down in Rule 6 (i)(a), he shall not be less than 22 years and not more than 32 years of age on the first day of January of the year in which the examination is held;

(b) For recruitment by selection by the Gauhati High Court as laid down in Rule 6 (i)(b), he shall not be less than 25 years and not more than 35 years of age on the first day of January of the year in which the selection is made.

(ii) He must be a Graduate in Law of any University recognised by the Government or Barrister at Law.

Provided that a candidate for selection from the Bar by the Gauhati High Court must have practised at least for three years in the Bar.

Rule 11 - Probation Period:

All initial appointments to the service shall be on probation for a period of two years from the date of appointment to such posts.

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MEGHALAYA

(i) Rules	The Meghalaya Judicial Service Rules, 1988.
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(ii) Qualification	<p>i) (a) 50% of the posts are filled on the basis of the results of the competitive examination held by the Commission.</p> <p>(b) Age shall not be less than 21 years and more than 27 years on the 1st of January of the year in which examination is held.</p> <p>ii) (a) Remaining 50% by selection from amongst Bar members and persons in service by the High Court.</p> <p>(b) Age of candidate for selection by the High Court shall not be less than 25 years and more than 35 years on the 1st January of the year in which examination is held.</p> <p>iii) Must be a Law Graduate.</p> <p>iv) A candidate for selection by the High Court must have:</p> <p>a) Practice at least 3 years in the Bar;</p> <p>b) A law degree and worked as an employee of Supreme Court, High Court, District Court or a Civil or Criminal Court for at least seven years.</p>
(iii) Procedure for selection	After holding written and oral examinations.
(iv) Authority for Selection	Public Service Commission.

(v) Examination	
a) Written	Number of papers - 4 Total Marks - 500
b) Viva Voce	Total Marks - 100
(vi) Training	Two weeks in Criminal Court and another two weeks in Civil Courts.
(vii) Probationary period	One year.

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EXTRACT OF THE MEGHALAYA JUDICIAL SERVICE RULES, 1988 (DRAFT)

1. (1) These Rules may be called the Meghalaya Judicial Service Rules, 1988.
- (2) They shall come into force at once.

2. In these rules, unless there is anything repugnant to the subject or context:-

- (a) "Commission" means the Meghalaya Public Service Commission;
- (b) "High Court" means the Gauhati High Court;
- (e) "Member of the service" means a person appointed or deemed to have been appointed under the provisions of these rules to any post in the Service;
- (g) "Service" means the Meghalaya Judicial Service.

6. Recruitment:- Recruitment to any post in the Service after the commencement of these rules shall be made by the following methods, namely:-

- (c) Appointment to any post in Grade-III in any one year shall be made by the Governor in the manner indicated below, namely-
 - (i) by filling up fifty percent of the post on the basis of the results of the competitive examination to be conducted by the commission in the manner laid down in Schedule B.
 - (ii) By filling up the remaining fifty percent of the posts by selection from amongst the members of the Bar and from amongst the persons serving in connection with the affairs of the State by the High Court.

8. Qualifications for recruitment to the Service in Grade-III:-

A candidate for recruitment to any post in Grade-III shall satisfy the following conditions besides the general conditions laid down under rule 9, that is-

- (a) the age of the candidate for recruitment through the Commission shall not be less than 21 years and more than 27 years on the 1st of January of the year in which the examination is held; provided that the

upper age limit in respect of a candidate belonging to Scheduled Tribes, Scheduled Castes and other Backward classes shall be in accordance with any general or special rules or orders made by Government from time to time.

(b) the age of the candidate for selection by the High Court shall not be less than 25 years and more than 35 years on the 1st of January of the year in which the selection is held; and

(c) a candidate for the post must be a graduate in law of any recognised University:

Provided further that a candidate for selection by the High Court must have -

(i) practised at least for three years in the Bar; or

(ii) a law degree and worked as an employee of Supreme Court, High Court, District Court or a Civil or Criminal Court for at least seven years.

9. General Qualification:-

Every member of the service shall satisfy the following general conditions, that is, he €

(a) should be a citizen of India;

(b) should be of good character;

(c) should be of sound health and active habit and free from any bodily defect or infirmity which render him unfit for such appointment;

(d) should not have more than one wife living unless exempted by the Government on special grounds; and

(e) should not have been convicted for any offence involving moral turpitude.

10. Probation and Confirmation,-

(1) A person appointed to any post in the service after the commencement of these rules, other than those appointed by promotion from within the service, shall be placed on probation for a period of one year from the date of appointment to such post and his pay shall be fixed in accordance with the provisions of F.R. 24 of the Meghalaya Fundamental Rules and Subsidiary Rules, 1984.

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MIZORAM

(i) Rules	The Mizoram Judicial Service Rules,1989.
(ii) Qualification	For Direct Recruitment: i) 2/3 of the vacancies to be filled by direct recruitment after holding written and oral examination by the Commission. ii) Shall not be less than 21 years and not more than 30 years on the first January of the years in which the examination is held; iii) Should have passed Class VI Standard in Mizo

	<p>vernacular.</p> <p>iv) Must be a holder of the Bachelor's degree in Law.</p> <p>Recruitment by Selection:</p> <p>i) One-thirds of vacancies by selection from amongst the members of the Bar.</p> <p>ii) Shall not be less than 25 years and not more than 35 years on the first January of the year in which the selection is made;</p> <p>iii) Must be a holder of the Bachelor's degree in Law</p>
(iii) Procedure for selection	After holding written and oral examinations by the Public Service Commission.
(iv) Authority for Selection	The Public Service Commission.
(v) Examination	
a) Written	<p>Number of papers - 4</p> <p>Total Marks - 500</p>

b) Viva Voce	Total Marks - 100 (for direct recruit) 150 (for recruitment amongst Bar)
(vi) Training	Two weeks in Civil Courts and another two weeks in Criminal Courts.
(vii) Probationary period	Two years.

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EXTRACT OF THE MIZORAM JUDICIAL SERVICE, 1989

Rule 1. Short Title and Commencement:

- (i) These rules may be called the Mizoram Judicial Service Rules, 1989.

Rule 2. Definitions:

- (c) "Commission" means the Mizoram Public Service Commission.

Rule 4. Composition:

The service shall consist of four grades of officers as shown in Schedule-A to these rules, namely-

(i) (a) Grade I - Senior

(b) Grade I - Junior

(ii) Grade II

(iii) Grade III

(iv) Grade IV

Rule 6. Recruitment:

Save as provided in rule 13 of these rules, recruitment to the service shall, after the commencement of these rules, be made by the following methods:-

Appointment to the Service in the Grade IV in any one year shall be made by the Governor in the manner indicated below:

- (a) by filling up two thirds of the vacancies by direct recruitment on the basis of the competitive examination to be conducted in the manner as laid down in these rules and
- (b) by filling up the remaining one-third of the vacancies in the grade IV by selection from amongst the members of the Bar having been a practising advocate of any court in India for a period of not less than three years as per the certificate issued by the principal District Court or the Bar Association;
- (c) All appointments to the service shall be made to respective grades or time scales of pay of the service and not against any specific post included in the scale.

Rule 7. Qualifications for Recruitment to the Service in the Grade IV:

A candidate for recruitment to the vacancies in Grade IV shall satisfy the following conditions, besides the general qualifications laid down in rule 9 of the rules:

- (i) (a): for direct recruitment on the basis of the result of the Competitive Examination as laid down in rule 6 (a), he shall not be less than 21 years and not more than 30 years on the first January of the years in which the examination is held and the candidate should have passed Class VI standard in Mizo vernacular.

(b) for recruitment by selection as laid down in rule 6 (b), he shall not be less than 25 years and not more than 35 years of age on the first day of January of the year in which the selection is made;

(ii) he must be a holder of the Bachelor degree in Laws of any University recognised for the purpose.

Rule 9. General Qualifications:

Every member of the Service shall satisfy the following general conditions,-

(i) shall be a citizen of India;

(ii) shall be of good character;

(iii) shall be of sound health, active habits and free from any bodily defect or deformity which may render him unfit for such appointments;

(iv) shall not have more than one spouse living unless exempted by the Governor on special ground.

Rule 11. Consultation with the Commission and its Powers :

(1) For the purpose of direct recruitment in Grade IV, a Competitive Examination as specified in the Schedule B of these rules shall be conducted through the Commission.

(2) Decision of the Commission as to the eligibility or otherwise of a candidate for admission to the examination shall be final; and only those candidates to whom admission card has been issued by the Commission shall be admitted to the examination.

(3) The Commission shall prepare a final list, in order of merit of the candidates who have qualified in the examination so held, and shall forward the name of the Governor along with relevant papers and specified recommendations, if any.

(4) Any inclusion of a candidate's name in the list shall confer no right for appointment to the service unless the Governor is satisfied, after such inquiry as may be considered necessary, that the candidate is suitable in all respects for appointment to the Service and an actual offer of appointment is made.

(5) A competitive Examination for direct recruitment to the Service shall be held at such intervals as the Governor may, in consultation with the Commission, determine from time to time. The dates on which and the places at which the examination shall be held shall be fixed by the Commission.

Rule 12. Transitional Provisions - Constitution of Committee and its Powers :

(1) So long as the Commission is not constituted, a Committee shall be constituted by the Governor, which shall conduct the Competitive Examination and do all other necessary exercises as may be required to be done by the Commission as per rule 11, for the purpose of direct recruitment to the Service in the Grade IV.

(4) (a) For the purpose of the recruitments from amongst the members of the Bar, the vacancies shall be notified in the leading local News-papers and in the Mizoram Gazette inviting applications from amongst the persons eligible under these rules, and on receipt of the applications, an appropriate lists of the suitable candidate shall be prepared and then forwarded to the Committee for conducting viva voce of those listed candidates in a suitable manner and without any prejudice.

(b) The Committee shall finally prepare the merit lists of the candidates in accordance with their performances in the viva voce and shall send to Government for forwarding the same to the High Court for recommendation along with all the relevant papers.

(5) For the purposes of this rule, the Committee shall consist of the following, viz,€

(a) Chief Secretary to the Government - Chairman.

(b) Principal Secretary to the Government - Member.

(c) Special Secretary, DP&AR - Member.

(d) Legal Remembrancer-Cum-Secretary to the Government, Law, Judicial & Parliamentary Affairs Department-Member-Cum-Secretary.

Rule 15. (1) Appointment:

Mutatis mutandis to Rule 6 (c) all appointments to the service shall be made to the appropriate Grades of the Service and not

against any specific post.

Rule 19. Probation:

(1) Every person recruited to the service in accordance with these rules shall be on probation for a period of two years.

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SCHEDULE-B

[See Rule-11(1)]

1. A competitive examination for recruitment to the service in the Grade IV shall be held at such intervals as the Governor may, from time to time determine.

2. The examination shall be conducted in accordance with the syllabus as set forth below :-

a)	English :	(ii) General English to test comprehension, Precs and grammar	100 Marks
b)	General Knowledge including Current Affairs		100 Marks
c)	Law Paper I	(i) Code of Civil Procedure	100 Marks

		(ii) Constitution of India (iii) Law of Evidence	
d)	Law Paper II	(i) Code of Criminal Procedure (ii) Indian Penal Code (iii) Mizo Customary Law	100 Marks
e)		(ii) Viva voce (for Recruits from amongst the Bar)	150 Marks

3. Without prejudice to clause 2 of candidate may be examined by the Committee for testing his practical acquaintance with Law and procedure with special reference to his ability to draft pleadings, frame issues, appreciate evidence, and to apply the case-laws properly.

4. The Committee shall prepare a list of all candidates who have qualified in the examination in order of merit which shall be determined in accordance with aggregate marks obtained by each candidate and if two or more candidates obtain same marks, the Committee shall determine their position in accordance with the general suitability of the candidate to the service and with regard to their ages. The list shall be forwarded to the Governor.

5. Inclusion of a candidate's name in the list shall confer no right to appointment unless the Governor is satisfied after such

enquiry as may be considered necessary that the candidate is suitable in all respects for appointment to the service.

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NAGALAND

(i) Rules	The Nagaland Judicial Service Rules, 1995.
(ii) Qualification	i) For Direct Recruits : a) Shall not be less than 21 years and not more than 30 years on the first January of the year in which the examination is held. b) Graduate in Law from any recognised University in India or Barrister at Law. c) Must have 3 years' practice at the Bar.
(iii) Procedure for selection	After holding written and oral examination by the Public Service Commission, with prior consultation with Guwahati

	High Court.
(iv) Authority for Selection	The Public Service Commission.
(v) Examination	
a) Written	Number of papers - 5 Total Marks - 650
b) Viva Voce	Total Marks - 150
(vi) Training	Training is being imparted in the North Eastern Judicial Officers' Training Institute at Guwahati.
(vii) Probationary period	Two years.

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EXTRACT OF THE NAGALAND JUDICIAL SERVICE RULES, 1995

Rule 1. Short title and commencement:

- (1) These Rules may be called the Nagaland Judicial Service Rules, 1995.
- (2) They shall come into force from the date of their publication in the official Gazette.

Rule 3. (2) There shall be four grades in the service.

Rule 6 (4) (d) Appointment to the post in Grade-IV shall be made by the Governor on the result of the Competitive Examination to be conducted by the Commission in the manner laid down in the Third schedule to the Rules.

Provided that a representative of the High Court shall also to be associated in the interview as member;

Provided further that recruitment to the post in Grade-IV shall be made in accordance with the reservation policy made with respect to gazetted post adopted by the State Government from time to time.

Rule 7. Qualification for recruitment to the service in Grade-IV:

A candidate to the post in Grade-IV shall satisfy the following conditions besides the general qualification specified in Rule 10.

- (1) For direct recruitment on the basis of the result of the competitive examination specified in Rule 5 (2) the

candidate shall not be less than 21 years and not more than 30 years on the first January of the year in which the examination is held.

(2) The candidate must be a graduate in Law from any recognised University in India or Barrister at Law.

(3) The candidate must have 3 years of experience in the Bar.

Rule 10. General Qualifications:

Every member of the service shall satisfy the following conditions:-

(a) He shall be a citizen of India;

(b) He shall possess a sound moral character;

(c) He shall be of sound health free from physical defects or infirmity which may disqualify for appointment;

(d) He shall not have more than one spouse living, unless exempted by the Governor on special ground.

(e) If the member is a woman, she shall not have married a person having another wife living.

Rule 11. Probation and Confirmation:

All appointments other than appointment to temporary post under these Rules shall be on probation for a period of two years from the date of appointment to such post.

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ORISSA

(i) Rules	Orissa Judicial Service Rules, 1994.
(ii) Qualification	<p>i) Not below 21 years and not over 32 years in the case of direct recruits and not over 40 years of age in the case of emergency recruits, on the 1st day of August last preceding the month in which the applications are invited.</p> <p>ii) An Advocate having practice at the Bar for at least -</p> <p>a) 3 years if the recruitment is made by the Commission through competitive examination;</p> <p>b) 5 years if such recruitment is made owing to any specific emergent situation.</p>
(iii) Procedure for selection	i) For direct recruits:

	<p>a) Written test without any prior Screening;</p> <p>b) Number of candidates to be called for the viva-voce test shall be three times the number of vacancies to be filled up;</p> <p>c) In the viva voce, 10 marks shall be allowed for career marking.</p> <p>ii) For emergency recruits:</p> <p>a) Screening of eligible candidates, on the basis of marks obtained in different examinations only called as career marking and the length of practice in the Bar.</p> <p>b) Number of candidates to be called for the viva voce test shall be those whose names find place in the list of candidates securing the first required number of positions on the basis of screening.</p>
(iv) Authority for Selection	Public Service Commission.
(v) Examination	
a) Written	<p>Number of papers - 5</p> <p>Total Marks - 600</p>

b) Viva Voce	Total Marks - 75
(vi) Training	One year training at various courts and on various topics.
(vii) Probationary period	Two years.

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EXTRACT OF THE ORISSA JUDICIAL SERVICE RULES, 1994

Rule 1. (1) These rules may be called the Orissa Judicial Service Rules, 1994.

(2) They shall come into force on the date of their publication in the Orissa Gazette.

Rule 2. In these rules, unless the context otherwise requires,-

(b) "Commission" means the Orissa Public Service Commission;

(c) "direct recruit" means a person recruited to the Service through the competitive examination under Sub-rule(1) of rule 5;

(g) "High Court" means the High Court of Orissa;

(i) "Service" means the Orissa Judicial Service;

(j) "Scheduled Castes" and "Scheduled Tribes" shall have the same meanings as are respectively assigned to them under the Constitution of India.

Rule 3. (1) The Service shall consist of all posts in the Judicial Service of the State other than those included in the Orissa Superior Judicial Service constituted under the Orissa Superior Judicial Service Rules, 1963.

(2) The Service shall comprise the following branches, each constituting a cadre, namely:-

(i) the Orissa Judicial Service, Class I (Senior Branch) consisting of posts of Subordinate Judge or Civil Judge (Senior Division), Registrars of Civil Courts and Deputy Registrars of High Court;

(ii) the Orissa Judicial Service, Class I (Junior Branch) consisting of posts of Sub-Divisional Judicial Magistrates, Assistant Registrars of High Court, Assistant Commissioners and Additional Assistant Commissioners of Endowments; and

(iii) the Orissa Judicial Service, Class II consisting of Munsiffs or Civil Judges (Junior Division) and Judicial Magistrates.

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PART - II

RECRUITMENT

Rule 5 (1) Recruitment to the posts in the Orissa Judicial Service, Class II of the Service shall save as provided in sub-rule (2), be made by the Commission through competitive examination which shall consist of two parts, namely a written examination and a viva voce test.

(2) Where the Government after, consultation with the High Court is of the opinion that owing to any specific emergent situation, which has arisen, it is necessary in the public interest to fill up the vacancies in the Orissa Judicial Service, Class II expeditiously without following the method provided in sub-rule (1) , such vacancies may be filled up by conducting an emergency recruitment which shall consist of only viva-voce test and in the manner provided in these rules.

Rule 7. (1) There shall be reserved vacancies only in the Orissa Judicial Service, Class II for the candidates belonging to Scheduled Castes and Scheduled Tribes in accordance with the provisions of the Orissa Reservation of vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 and the rules made thereunder.

Rule 8. (1) Notwithstanding anything contained in these rules, in the case of initial recruitment to the Service under rule 5, one per cent of the vacancies shall be reserved for Orthopaedically handicapped candidates.

Rule 10. (1) In order to be eligible for recruitment under rule 5 a candidate may be of either sex and shall be -

- (a) not below twenty-one years of age and not over thirty-two years of age in the case of direct recruits and not over forty years of age in case of emergency recruits, on the 1st day of August last preceding the month in which the applications are invited;
- (b) an Advocate having practice at the Bar for at least -
 - (i) three years if the recruitment is made in pursuance of sub-rule (1) of rule 5; and
 - (ii) five years if such recruitment is made in pursuance of sub-rule (2) of rule 5, as on the last date fixed for receiving applications;
- (c) able to speak, read and write Oriya fluently and must have passed an examination in Oriya Language equivalent to that of Middle English School Standard;
- (d) of good character; and

(e) of sound health and free from any organic defects and physical infirmity;

Provided that nothing contained in Clause (e) shall be applicable to an Orthopaedically Handicapped Candidate.

(2) Notwithstanding anything contained in clauses (a) and (b) of sub-rule (1), but subject to the other provisions of the said sub-rule, a person who is -

(i) a Superintendent or a Ministerial Officer in the High Court, or any Civil or Criminal Court subordinate to the High Court; or

(ii) an Assistant Law Officer or Translator of the Law Department of Government, shall be eligible for appearing at the competitive examination held under sub-rule (1) of rule 5 for appointment to the posts in the Orissa Judicial Service Class-II of the Service, if he -

(a) is a graduate in Law of a University recognised by the State Government;

(b) has approved service in the High Court or in any Civil or Criminal Court Subordinate to the High Court or in the Law Department, or has such service (including practice at the Bar, if any), of not less than five years on the last date fixed for receipt of applications for the said competitive examination;

(d) is not more than thirty-seven years of age on the 1st day of August last preceding the month in which the applications are invited.

11. No person who has more than one spouse living shall be eligible for appointment to the Service.

Rule 14. (1) The Commission shall scrutinise the applications received by it and after considering the eligibility of the applicants

for admission to the examination to be held by it for the purpose of recruitment under rule 5, shall issue well in advance a certificate of admission to each eligible candidate so as to enable him to appear at the written examination or viva voce test, as the case may be.

(2) (a) The following procedure may be adopted in so far as direct recruits are concerned:-

- (i) There shall be written test without any prior screening.
- (ii) The number of candidates to be called for viva-voce test shall be three times the number of vacancies to be filled up.
- (iii) The candidates to be called for the viva voce test shall be those whose names find place in the list of candidates securing the first required number of positions in order of merit.
- (iv) In the viva voce test 10 marks shall be allotted for career marking.

(b) For emergency recruits, the following procedure may be adopted:-

- (i) There shall be screening of eligible candidates, when need be, on the basis of marks obtained in different examinations, commonly called as career marking; and the length of practice in the bar.
- (ii) The number of candidates to be called for the interview shall at the most be three times the number of vacancies advertised and one hundred marks shall be earmarked for such interview.
- (iii) The candidates to be called for the viva voce test shall be those whose names find place in the list of candidates securing the first required number of positions on the basis of

screening.

(iv) An objective system of evaluation of candidates which shall be adopted.

Rule 18. (1) A sitting judge of High Court being nominated by the Chief Justice, shall represent the High Court and be present at the viva voce tests referred to in rule 5 along with the Chairman and another member of the Commission. The opinion given by the representative of the High Court with regard to the suitability of the candidates shall not be disregarded unless there are strong and cogent reasons for not accepting the opinion which reasons must be recorded in writing.

PART III

PROBATION, TRAINING AND DEPARTMENTAL EXAMINATIONS

Probation of the 22.(1) Every direct recruit shall on appointment remain direct recruits on probation for two years and the period shall count from the date the officer joins the post to which he is appointed.

23. A direct recruit shall be required to undergo a course of training ----- which may be altered from time to time by Government after consulting the High Court and the Commission. Ordinarily this course of training shall be for one year. The judicial work done by such officers during the course of training who will remain in direct charge of courts will be treated as work done in the course of their training.

24. The emergency recruits on being appointed to the Service shall be given direct charge of Courts.

Rule 25. (1) Every person appointed to the Orissa Judicial Service, Class II shall, subject to such exemption, if any as may be granted by Government have to pass the Departmental examination in accordance with the rules ----- as may be made therein by Government, from time to time in consultation with the High Court and the Commission.

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PONDICHERRY

(i) Rules	Pondicherry Judicial Service (Cadre and Recruitment) Rules, 1996.
(ii) Qualification	<p>i) Holder of Degree in Law of any University of the Indian Union;</p> <p>ii) Must be practising as an Advocate for not less than three years or working as Asst. Public Prosecutor for not less than three years.</p> <p>iii) Must have attained the age of 25 years and must not have attained the age of 38 years.</p>
(iii) Procedure for selection	Written and viva voce examination conducted by the High Court.
(iv) Authority for Selection	Selection Committee consisting of 5 Judges of the High Court, the Chief Secretary of the Govt. and Secretary (Law).
(v) Examination	
a) Written	<p>Number of papers - 3</p> <p>Total Marks - 300</p>

b) Viva Voce	Total Marks - 100
(vi) Training	At present 14 weeks training is being imparted by the High Court of Tamil Nadu.
(vii) Probationary period	Two years.

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EXTRACT OF THE PONDICHERRY JUDICIAL SERVICE (CADRE AND RECRUITMENT) RULES, 1996.

Rule 1. Short Title and Commencement - (1) These Rules may be called the Pondicherry Judicial Service (Cadre and Recruitment) Rules, 1996.

Rule 2. Definitions - In these rules, unless the context otherwise requires,-

(c) "High Court" means, the High Court of Judicature at Madras exercising jurisdiction over the Union Territory of Pondicherry.

(d) "Member of the service" means a person appointed in substantive capacity to either scale of the service under the provisions of these rules and includes a person appointed on probation.

(e) "Service" means the Pondicherry Judicial Service.

Rule 3. Constitution (a) The Pondicherry Judicial Service shall consist of the following cadres, namely,-

(3) Civil Judge (Junior Division / Judicial Magistrate First Class).

Rule 7. Recruitment of Civil Judges.- (1) the recruitment of personnel in the Civil Judge (Junior Division / Judicial Magistrate First Class, and the appointment by transfer on deputation or direct recruitment, if any in the cadre of District Judge, shall be made by the Administrator in consultation with the High Court.

Rule 9. Method of Recruitment: (c) Civil Judge (Junior Division) / Judicial Magistrate First Class.- By direct recruitment on the basis of written examination and viva voce examination conducted by the High Court as specified in the Annexure to these rules.

Rule 10. Qualification for direct recruits,-

(b) Civil Judge (Junior Division) / Judicial Magistrate First Class,-

(i) Must be a citizen of India;

(ii) Must be holder of a Degree in Law of any University of Indian Union or an equivalent examination;

(iii) Must be practising on the last date fixed for submission of application as an Advocate

and must have so practised as Advocate for not less than three years as on such date.

OR

working as Assistant Public Prosecutor and must have so worked for not less than three years as on such date.

(iv) Preference will be given to a person ordinarily residing within the territorial limits of the Union Territory of Pondicherry.

(v) Must have attained the age of twenty-five years and must not have attained the age of thirty-eight on the last date fixed for submission of application / panel sent by Employment Exchange of Pondicherry.

11. Probation,-

(b) Civil Judge (Junior Division) / Judicial Magistrate First Class - Two years.

During the period of probation, he / she must undergo such training as may be specified by the High Court;

Provided that the Administrator may, on the recommendation of the High Court, extend the period of probation, but in no case shall the period of probation extend beyond three years in all.

Rule 20. Reservation.- The reservation of posts for the Scheduled Castes and Scheduled Tribes and other Backward Classes (OBC) shall be in accordance with the orders issued by the Central Government from time to time.

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PUNJAB

(i) Rules	Punjab Civil Service (Judicial Branch) Rules, 1951.
(ii) Qualification	i) Not below 23 years and not over 27 years for direct recruits and 37 years for an advocate who has practiced at the Bar for a minimum period of four years and for an official who is a Law Graduate serving in the High Court, subordinate courts, Secretariat of the State Government with

	<p>four years service experience.</p> <p>ii) A citizen of India;</p> <p>iii) Acquired a Degree of Bachelor of Law.</p>
(iii) Procedure for selection	Written test and viva voce by the Punjab Public Service Commission.
(iv) Authority for Selection	Punjab Public Service Commission.
(v) Examination	
a) Written	<p>Number of papers - 5</p> <p>Total Marks - 900</p>
b) Viva Voce	Total Marks - 100
(vi) Training	15 weeks training is being imparted.
(vii) Probationary period	Two years.

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EXTRACT OF THE PUNJAB CIVIL SERVICE (JUDICIAL BRANCH) RULES, 1951

PART A - QUALIFICATIONS

(1) A candidate for appointment to the service must be

- (a) a citizen of India; or
- (b) a subject of Sikkim; or
- (c) a subject of Nepal; or
- (d) a subject of Bhutan; or
- (e) a Tibetan refugee who came to India before the 1st January, 1962, with the intention of permanently settling in India, or
- (f) a person of Indian origin who has migrated from Pakistan, Burma, Ceylon and East African countries of

Kenya, Uganda, and the United Republic of Tanzania (Formerly Tanganyika) and Zanjibar, with intention of permanently settling in India.

1-A. Any reference in these rules to "a subordinate Judge" or "a Sub-Judge", shall, unless the context otherwise requires, be construed as a reference to "a member of the Punjab Civil Service (Judicial Branch)" as the context may require.

2. No person, who is more than **twenty-seven years**, of such age, as may from time to time be fixed by the Government for entry into service, or is less than twenty-three years on the date of appointment, shall be appointed as Sub-Ordinate Judge:

Provided that -

(a) the maximum age limit -

(i) for an Advocate who has practised at the Bar for minimum period of four years; or

(ii) for an official, who is a Law Graduate and is serving on the establishment of the High Court of Punjab and Haryana or any court subordinate thereto in the State of Punjab, or in the Punjab Government Secretariat or in offices subordinate thereto, and has served on the said establishment or under the State Government, or partly on the said establishment and partly under the State Government for a minimum aggregate of four years, shall be 37 years or such other age limit as may, from time to time, be prescribed by the State Government in this behalf.

(b) for the purposes of computing the period of four years practice at the Bar referred to in consultation with the High Court of Punjab and Haryana, include the period during which a person had served as subordinate Judge on temporary basis as a result of the competitive examination held by the Punjab Public Service Commission.

(c) A candidate belonging to a Scheduled Caste, Scheduled Tribe or Backward Class will be entitled to deduct from his age such period as may, from time to time be allowed by the Government for entry into service, for

such candidates.

3. No person shall be appointed to be a subordinate Judge who has not obtained the Degree of Bachelor of Laws at any University, incorporated by law in India or the Degree of Bachelor of Laws of the (Undivided) Punjab University, the Dacca University, the Tribhuwan University, Nepal, the Sind University, or of the Rangoon or Mandalay University in Burma or is not a Barrister of England or Ireland or a member of the Faculty of Advocates of Scotland.

Explanation : The expression "degree of Bachelor of Laws" used in this rule means a degree entitling a candidate to be enrolled as an Advocate under the Advocate Act, 1961 and the Rules made thereunder.

5. No person who has more than one wife living shall be eligible for appointment as a subordinate Judge.

PART C - EXAMINATION OF CANDIDATES

1. An examination will be held at such place as the Punjab Public Service Commission may determine, commencing on such date as may from time to time be notified in the Gazette.

4. The examination paper shall be set and marks awarded by examiners who will be appointed by the Punjab Public Service Commission. There shall also be a viva voce test which will be conducted by the Punjab Public Service Commission.

6. The object of the examination is to test the practical ability of the candidate rather than the range of their theoretical knowledge. For this purpose, the kind of question that will be asked will be to give the facts of a typical case and ask the candidate to frame issues, to write a Judgment and to discuss the admissibility of evidence.

8. The merit of the qualified candidates shall be determined by the Punjab Public Service Commission according to the aggregate marks obtained in the written papers and viva voce;

Provided that in the case of two or more candidates obtaining equal marks, the candidate older in age shall be placed higher in the order of merit.

10. (i) The result of the examination will be published in the Punjab Government Gazette.

(ii) Candidates will be selected for appointment strictly in the order in which they have been placed by the Punjab Public Service Commission in the list on those who have qualified under rule 8, provided that in the case of candidates belonging to the Scheduled Castes / Tribes and other Backward Classes, Government will have a right to select in order of merit a candidate who has merely qualified under rule 8, irrespective of the position obtained by him in the examination.

Provided further that the selection of candidates belonging to the Schedules Castes / Tribes & other Backward classes in order of merit inter se shall be made against the vacancies reserved for them and in the manner prescribed by the Government from time to time.

PART D - APPOINTMENT

1. The names of the candidates selected by Government for appointment as Subordinate Judges under rules 10 and 11 of Part C shall be entered on the High Court Register in the order of their selection.

5. Every candidate shall, within a period of two years from the date of his selection pass by the Higher standard and Departmental Examination prescribed in Part C failing which his name shall be removed from the register of candidates.

Provided that where a candidate is appointed as a Subordinate Judge within the said period of two years, he shall within a period of four years from the date of his selection pass by the higher standard the said departmental examination failing which he shall be removed from service;

Provided further that in no case, the said period of two years or four, as the case may be, shall be extended.

6. Every candidate or a Subordinate Judge shall, during the period of his candidature or service, as the case may be, undergo such training as may be required of him, and if before the candidate completes his training he is appointed as Subordinate Judge, shall complete the training while in service.

7. (1) Every subordinate Judge shall, in the first instance, be appointed on probation for two years but this period may be

extended from time to time expressly or impliedly so that the total period of probation, including extension, if any, does not exceed three years.

PART E - DEPARTMENTAL EXAMINATION

1. A departmental examination of Subordinate Judges will be held thrice a year in the months of February, June and October. The exact dates for holding such examination shall be notified, well in advance, in the official Gazette.

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RAJASTHAN

(i) Rules	The Rajasthan Judicial Service Rules, 1955.
(ii) Qualification	<p>i) Must not have attained the age of 35 years on the first day of January next following the date of commencement of the examination by PSC.</p> <p>ii) Bachelor of Laws (two years course under Old Scheme) or Bachelor of Laws (Professional) of any University established by Law in India.</p> <p>iii) Three years' practice at the Bar as a lawyer.</p> <p>iv) Thorough knowledge of Hindi.</p> <p>v) Citizen of India; or</p> <p>vi) Subject of Nepal; or</p> <p>vii) Subject of Bhutan, or</p> <p>viii) Tibetan refugee who came to India before 1st Jan. 1962.</p> <p>ix) A person of Indian origin migrated from Pakistan, Burma, Sri Lanka, East African countries of Kenya, Uganda and Zaire and Ethiopia.</p>

(iii) Procedure for selection	Written and oral examination conducted by the Public Service Commission.
(iv) Authority for Selection	The Public Service Commission.
(v) Examination	
a) Written	Number of papers - 3 Total Marks - 300
b) Viva Voce	Total Marks - 35
(vi) Training	Ad-hoc training is being provided in Harischandra Mathur Institute of Public Administration Training Centre at Jaipur for initial recruits.
(vii) Probationary period	Two years.

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EXTRACT OF THE RAJASTHAN JUDICIAL SERVICE RULES, 1955

(CORRECTED UPTO JULY, 1991)

1. Short Title, Commencement and Application.- (1) These rules may be called the Rajasthan Judicial Service Rules, 1955.

(3) They shall apply to the members of the Service consisting of Civil Judge-cum-Chief Judicial Magistrates, Civil Judge-cum-Additional Chief Judicial Magistrates, Senior Civil Judges, Civil Judges, Munsiffs and Judicial Magistrates.

3. Status of Service.- The Rajasthan Judicial Service is a State Service.

4. Definitions.- In these rules unless there is anything repugnant in the subject or context.-

(a) "Commission" means the Rajasthan Public Service Commission.

(c) "Court" means the High Court of Judicature for Rajasthan.

(d) "Member of the Service" means a person appointed in substantive capacity to a post in the cadre of the service under the provision of these rules or of any rules or orders superseded by rule 2.

(f) "Service" means the Rajasthan Judicial Service.

7. Source of Recruitment:- Recruitment to the Service shall be made to the posts of Munsifs on the result of a competitive examination conducted by the Commission.

9. Reservation for Scheduled Castes and Scheduled Tribes:- Reservation for Scheduled Castes and Scheduled Tribes shall be in accordance with the orders for such reservation in force at the time of recruitment.

10. Age.- A candidate for recruitment to the Service may not have attained the age of 35 years on the first day of January next following the date of commencement of the examination by the Commission for recruitment to the Service:-

Provided:

(iv) that the upper age limit for a candidate of a Scheduled Caste or of a Scheduled Tribe shall be deemed to have been raised by five years.

(v) Provided that upper age limit for reservists namely the defence personnel transferred to the reserve, shall be 50 years.

(vi) That the upper age limit for the political sufferers shall be 40 years till the 31st December, 1964.

(ix) Notwithstanding anything contained contrary in these rules, in the case of persons serving in connection with the affairs of the State in substantive capacity, the upper age limit shall be 40 years.

11. Qualification:- "(1) No Candidate shall be eligible for recruitment to the service unless,-

(a) he is a Bachelor of Laws (Two years Course under the Old Scheme) or Bachelor of Laws (Professional) of any University established by Law in India and recognised for the purpose by the Governor or a Barrister of England or Northern Ireland or a member of the faculty of Advocates in Scotland; and

(b) he has not less than three years€ practice as a lawyer.

12. Nationality, - A candidate for appointment to the Service must be:-

(a) a citizen of India, or

(b) a subject of Nepal, or

(c) a subject of Bhutan, or

(d) A Tibetan refugee who came over to India before the 1st January, 1962 with the intention of permanently

settling in India; or

(e) A person of Indian origin who has migrated from Pakistan, Burma, Sri Lanka, East African Countries of Kenya, Uganda and United Republic of Tanzania (formerly Tanganyika and Zanzibar) Zambia, Malawi, Zaire and Ethiopia, with the intention of permanently settling in India;

Procedure for Recruitment

14. Examination.- A competitive examination for recruitment to the service shall be held at such intervals as the Governor, may, in consultation with the Court, from time to time determine, and shall be conducted by the Commission at such time and at such dates as it may notify.

19. List of Candidates Recommended by the Commission €

(1) The Commission shall prepare a list of the candidates recommended by them for direct recruitment in order of their proficiency as disclosed by their aggregate marks. If two or more of such candidates obtain equal marks in the aggregate the Commission shall arrange them in order of merit on the basis of their general suitability for service:

Provided that the Commission shall not recommend any candidate who has failed to obtain a minimum of 45% marks in the aggregate both of written and Oral Examinations.

21. Appointment.- (1) On receipt of the list prepared by the Commission under rule 19, the Governor shall consult the Court and shall after taking into consideration the views of the Court and subject to the other provisions of these rules select candidates for appointment in substantive, temporary and officiating vacancies from among those who stand highest in order of merit in the said list provided that he is satisfied that such candidates are duly qualified in other respects.

23. Probation.- All candidates shall on substantive appointment to the Service be placed on probation for two years, provided

that such of them, as have previous to their appointments to the Service officiated or served temporarily on a post in the Service may be permitted by the Governor to count such officiating or temporary Service towards the period of probation.

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SIKKIM

(i) Rules	The Sikkim Judicial Service Rules, 1995.
(ii) Qualification	<p>i) Practice as an Advocate for not less than three years in India;</p> <p>ii) Not more than 35 years of age on the 1st day of January of the following year.</p>
(iii) Procedure for selection	Selection Committee consisting of the Chief Justice of the High Court & Chief Secretary of the Government shall call for interview of those candidates who fulfil the above said qualification.
(iv) Authority for Selection	The High Court.
(v) Examination	
a) Written	At present no examination is held.
b) Viva Voce	Marks - Not indicated.
(vi) Training	Undergo training which shall be determined by the High Court. The nature and duration of such training shall be

	determined by the High Court from time to time.
(vii) Probationary period	Two years.

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EXTRACT OF THE SIKKIM JUDICIAL SERVICE RULES, 1995

Rule 1. Short title and commencement: These rules may be called the Sikkim Judicial Service Rules and they shall come into force from the date of publication in the Sikkim Gazette.

2. Definitions: In these Rules, unless the context otherwise requires:-

(b) "High Court" means the High Court of Sikkim

(c) "Service" means the Sikkim Judicial Service.

3. For the purpose of recruitment to the service, there shall be a Selection Committee consisting of the following:-

- (1) Chief Justice or puisne Judge of Sikkim High Court, nominated by the Chief Justice.
- (2) Chief Secretary, Government of Sikkim. The Registrar or in his absence, the Deputy Secretary of the Committee.

4. A candidate shall be eligible to be recruited if he is:-

- (a) a person having practised as an Advocate for not less than 3 years in India or a person qualified to be admitted as an Advocate under the Advocate Act, 1961 and
- (b) not more than 35 years of age as on the 1st day of January, of the following year.

5. For the purpose of selection, the Selection Committee shall call for interview all those candidates who fulfil the above said qualification and are otherwise found suitable by the Selection Committee.

6. The Selection Committee shall prepare a list of the selected candidates and in making the selection shall see that preference has been given to candidates who are conversant with local laws, customs and regional languages. The list so prepared shall be then sent to the High Court which shall forward it with its recommendation to the Governor for filling up the vacancies then existing or that may occur within a period of one year of the preparation of the list.

Rule 7. All candidates on appointment may be required to undergo initial training at any place within or outside Sikkim as the High Court may determine. The nature of duration of such training shall be as determined by the High Court from time to time. After the satisfactory completion of such initial training such candidate shall be placed on probation for a period of two years.

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TAMIL NADU

(i) Rules	Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 1995.
(ii) Qualification	<p>i) Holder of Degree in Law.</p> <p>ii) a) Must be practising as an Advocate or Pleader for not</p>

	<p>less than 4 years; or</p> <p>b) working as Asst. Public Prosecutor Gr.I or Gr.II & must have worked for a period of not less than 4 years.</p> <p>iii) Must have attained the age of 25 years but must not have attained the age of 38 years on First July of the year in which selection is made.</p>
(iii) Procedure for selection	Written and oral examinations conducted by the Tamil Nadu Public Service Commission.
(iv) Authority for Selection	Public Service Commission
(v) Examination	
a) Written	<p>Number of papers - 4</p> <p>Total Marks - 400</p>
b) Viva Voce	Total Marks - 60
(vi) Training	At present 14 weeks training is being imparted at the time of initial recruitment.

(vii) Probationary period	Two years.
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EXTRACT OF THE TAMIL NADU STATE JUDICIAL SERVICE (CADRE AND RECRUITMENT) RULES, 1995

Rule 1. Short title

These rules may be called the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 1995.

Rule 3. Constitution

The Tamil Nadu State Judicial Service shall consist of the following categories namely:-

Category €

4. Civil Judge (Junior Division / Judicial Magistrate, First Class)

Rule 5. Method of appointment, Qualification and age

In respect of each category of posts specified in column (1) of the Schedule below, the method of appointment and the qualification shall be specified in the corresponding entries in columns (2) and (3) thereof:-

SCHEDULE

Category (1)	Method of Appointment (2)	Qualification (3)
4. CIVIL JUDGE (Junior Division/ Judicial Magistrate, First Class)	<p>By direct recruitment on the basis of written examination / and Viva-voce Examination conducted by the Tamil Nadu Public Service Commission in accordance with the rules specified in the annexure to these rules.</p> <p>Provided that the Government may, in times of exigencies permit the Tamil Nadu Public Service Commission to resort to direct recruitment solely on the basis of Viva-voce examination dispensing with written examination.</p>	<p>1. Must be a holder of degree in Law.</p> <p>2. Must, on the date of Notification be:-</p> <p>(a) practising as an Advocate or Pleader and must have so practised for a period of not less than four years as on such date; or</p> <p>(b) working as Assistant Public Prosecutor, Grade-I or Grade-II and must have so worked for a period of not less than four years as on such date.</p>

	<p>Provided further that when recruitment is made on the basis of viva-voce examination only, the candidates shall be admitted to the said examination for each open competition vacancy, as well as for each reservation group vacancy, in the ratio of 1:6 namely six candidates for one vacancy on the basis of the oral percentage of the total marks obtained in the law subject including practical in the B.L. Degree examination (I, II and III year in the case of 3 year B.L. Degree course and III, IV and V year in the case of 5 year B.L. Degree Course):</p> <p>Provided also that the maximum marks for Viva-voce examination and the minimum marks for selection shall be as follows:</p> <p>Max Marks ... 100 Marks</p> <p>Min Marks for selection ... 30 Marks for Scheduled Castes and Scheduled Tribes.</p>	<p>Explanation - Period of practice as an Advocate or Pleader if any, shall for the purpose of clause (b) be treated as service as Assistant Public Prosecutor, Grade-I or Grade-II.</p> <p>3. Must have attained the age of twentyfive years and must not have attained the age of thirtyeight years on the 1st July of the year in which the selection for a appointment is made.</p>
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	32 Marks for Most Backward Class and Denotified Community. 35 Marks for Backward Class. 40 Marks for Open Competition.	
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Rule 6. Training Test and Confirmation:

(2) **Test:** Every person appointed to the categories of District Judge / Additional District Judge / Chief Judicial Magistrate and Civil Judge (Junior Division / Judicial Magistrates, First Class) by direct recruitment, shall, with in the period of probation pass the Account Test for Executive Officers.

Rule 8. Seniority:

(3) The seniority of a person appointed to the category of Civil Judge (Junior Division /Judicial Magistrate, First Class) shall be determined by the rank assigned to him in the list drawn by the Tamil Nadu Public Service Commission.

Rule 11. Probation:

Every person appointed to the post of Civil Judge (Junior Division / Judicial Magistrate, First Class) by direct recruitment, shall, from the date on which he joins duty, be on probation for a total period of two years on duty within a continuous period of three years inclusive of the training as may be prescribed by the High Court. The High Court shall be competent to extend the period of probation, if it is not satisfied with his work or conduct. Orders declaring the completion of probation shall be issued by the High Court.

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TRIPURA

(i) Rules	Tripura Judicial Service Rules, 1974.
(ii) Qualification	<p>i) Age shall not be less than 22 years and more than 35 years on the first January of the year in which the Examination is held;</p> <p>ii) Age of the candidate from the Bar shall not be less than 25 years and more than 40 years on the first January of the year in which the selection is held;</p>

	<p>iii) Must be a Graduate in law of any recognised University.</p> <p>iv) A candidate for selection from the Bar must have practised at least for three years in any Court.</p>
(iii) Procedure for selection	Written and oral examination conducted by the Public Service Commission.
(iv) Authority for Selection	<p>Governor on recommendation by</p> <ol style="list-style-type: none"> 1. Public Service Commission - 50% and 2. High Court - 50%.
(v) Examination	
a) Written	<p>Number of papers - 4</p> <p>Total Marks - 500</p>
b) Viva Voce	Total Marks - 200
(vi) Training	Undergo training at Guwahati in the North Eastern Judicial Officers' Training Institute. The period of training shall be

	determined by the High Court from time to time.
(vii) Probationary period	Two years.

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EXTRACT OF THE TRIPURA JUDICIAL SERVICE RULES, 1974

Rule 1. (1) These rules may be called the Tripura Judicial Service Rules, 1974.

(2) They shall come into force with effect from the date of their publication in the Official Gazette.

Rule 2. In these rules, unless there is anything repugnant to the subject or context:-

(a) "Chief Justice" means the Chief Justice of the Gauhati High Court (the High Court of Assam, Nagaland, Meghalaya, Manipur and Tripura);

(b) "Commission" means the Tripura Public Service Commission;

(f) "High Court" means the Gauhati High Court (the High Court of Assam, Nagaland, Meghalaya, Manipur and Tripura);

(g) "Service" means the Tripura Judicial Service.

CONSTITUTION OF SERVICE AND ITS CLASSIFICATION

Rule 3. (1) There shall be constituted a service to be known as the Tripura Judicial Service.

(2) The service shall have three grades, namely :-

(a) Grade - I

(b) Grade - II

(c) Grade - III

Rule 6. (3) Recruitment to the other posts of the service after the commencement of these rules shall be made by the following methods:-

(d) Appointment to the posts in Grade III in any one year shall be made by the Governor in the manner indicated below:-

(i) by filling up 50% of the posts on the result of the competitive examination to be conducted by the Commission in the manner laid down in the Second Schedule to these rules;

(ii) by filling up the remaining 50% of the posts by selection from amongst the members of the Bar in consultation with the High Court;

Rule 8. A candidate for recruitment to the post in Grade III shall satisfy the following conditions, besides, the

general conditions laid down under rule 9:-

- (i) the age of the candidate for examination shall not be less than 22 years and more than 35 years on the first January of the year in which the examination is held;
- (ii) the age of the candidate for selection from the Bar shall not be less than 25 years and more than 40 years on the first January of the year in which the selection is held;
- (iii) a candidate for the post must be a graduate in law of any University recognised by the Government for the purpose of these rules or a Barrister-at-law;

Provided that a candidate for selection from the Bar must have practised at least for 3 years in any court.

Rule 9. Every member of the service shall satisfy the following general conditions, namely:-

- (i) he shall be a citizen of the Indian Union;
- (ii) he shall be of good character;
 - (iii) he shall be of sound health and active habits and free from any bodily defect which may render him unfit for such appointment;
 - (iv) he shall not have more than one wife living, unless exempted by the Government on special ground; and
 - (v) if the member be a woman, she shall not have married a person with another wife living.

Rule 10. Appointment to the service made by direct recruitment shall be subject to the orders regarding special representation in the services for the Scheduled Castes and the Scheduled Tribes issued by the Government of India from time to time. If no such suitable candidate is available, the posts will be filled up by the candidates other than those of the Scheduled Castes and the Scheduled Tribes.

Rule 11. All appointments other than appointment to temporary posts under these rules shall be on probation for a period of two years.

Rule 16. A person appointed to the service shall undergo such training and pass during the period of probation such departmental examination as the Governor may, in consultation with the High Court, from time to time, prescribe:

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UTTAR PRADESH

(i) Rules	The Uttar Pradesh Nyayik Sewa Niyamawali, 1951.
(ii) Qualification	<p>i) Must not have attained the age of 32 years but must have attained the age of 22 years on the first day of January next following the date of commencement of the examination;</p> <p>Upper age limit of 5 years for SC/ST.</p>

	<p>ii) Must be a Bachelor of Laws;</p> <p>iii) An Advocate, Vakil or Pleader or a Barrister of England or Northern Ireland;</p> <p>iv) Possess knowledge of Hindi;</p> <p>v) Candidate for recruitment to the Service must have put in 3 years' practice at the Bar.</p>
(iii) Procedure for selection	Written and oral examination conducted by the Public Service Commission.
(iv) Authority for Selection	Uttar Pradesh Public Service Commission.
(v) Examination	
a) Written	<p>Number of papers - 5</p> <p>Total Marks - 850</p>
b) Viva Voce	Total Marks - 100
(vi) Training	Judicial Officer Training & Research Institute at Lucknow imparts training for 12 weeks to the newly recruited Civil

	Judge (Jr. Divn.)
(vii) Probationary period	Two years.

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EXTRACT OF THE UTTAR PRADESH NYAYIK SEWA NIYAMAWALI, 1951

PART I - GENERAL

1. Short Title and Commencement:

These rules may be called U.P. Nyayik Sewa Niyamawali 1951 and they shall come into force from such date as may be notified by the State Government in this behalf in the official Gazette.

3. Scope of the Service:

These rules apply to the members of the U.P. Nyayik Sewa consisting of -

(a) Munsiffs, and

(b) Civil Judges

4. Definition:

In these rules unless there is anything repugnant in the subject or context.

(a) "Commission" means the Uttar Pradesh Public Service Commission.

(f) "The Service" means the UP Nyayik Sewa.

PART III - RECRUITMENT

6. Source of Recruitment:

Recruitment to the service shall be made on the result of a competitive examination conducted by the Commission.

7. Reservation for Scheduled Caste:

Reservation for Scheduled Castes shall be in accordance with the orders for reservation in force at the time of recruitment.

PART IV - QUALIFICATIONS

9. Nationality:

A candidate for recruitment to the service must be -

(a) a citizen of India; or

(b) a subject of Sikkim, or

(c) a Tibetan refugee who came over to India before January 1, 1962 with the intention of permanently settling in India, or

(d) a person of Indian origin who has migrated from Pakistan, Burma, Ceylon, and in East African countries of

Kenya, Uganda and the United Republic of Tanzania formerly Tanganyika and Zanzibar with the intention of permanently settling in India.

11. Age:

No person shall be recruited to this service who is more than 32 years or less than 22 years of age on the first day of January next following the date of announcement of the examination by the Commission for the recruitment to the service.

Provided that the upper age limit shall be greater by five years in the case of candidates belonging to Scheduled Castes and Scheduled Tribes.

12. Academic qualifications:

(1) A candidate for recruitment to the service must be either

- (a) a Bachelor of Laws of a University established by law in Uttar Pradesh or of any other University of India recognised for this purpose by the Governor, or
- (b) an Advocate, Vakil or Pleader on the roll of entitled to practise in the Court or Courts subordinate thereto; or
- (c) a Barrister of England or Northern Ireland or a Member of the Faculty of Advocates in Scotland.

PART V - PROCEDURE FOR RECRUITMENT

13. Competitive examination:

The examination may be conducted at such time and on such dates as may be notified by the Commission and shall consist of

- (a) written examination of such legal and allied subjects, including procedure as may be included in the syllabus.

(c) an interview to assess the all round student career of the candidates and their personality, address and general suitability.

PART VI - APPOINTMENT, PROBATION AND CONFIRMATION

19. List of candidates approved by the Commission:

The Commission shall prepare a list of candidates who have taken examination for recruitment to the service in order of their proficiency as disclosed by the aggregate marks finally awarded to each candidate. If two or more candidates obtain equal marks in the aggregate, the Commission shall arrange them in order of merit on the basis of their general suitability for the service.

Provided that in making their recommendations the Commission shall satisfy themselves that the candidate has obtained such an aggregate of marks in the written test that he is qualified by his ability for appointment to the service.

23. Probation:

(1) All candidates on appointment to the service shall be placed on probation for two years.

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WEST BENGAL

(i) Rules	West Bengal Civil Service (Judicial) Recruitment Rules.
(ii) Qualification	a) For direct recruits:

	<p>i) 50% on the results of the competitive examination conducted by the P.S.C., remaining 50% by selection from amongst the members of the Bar by the High Court.</p> <p>a) Must be a graduate in Law;</p> <p>b) Shall not be less than 21 years or more than 33 years on the first January of the year in which the Examination is held.</p> <p>Except SC / ST, others are not allowed to appear at more than three Examinations.</p> <p>Upper age limit may be relaxed upto two years for inservice Govt. officials.</p> <p>c) Age for selection by the High Court Shall not be less than 27 years or more than 32 years on the first January.</p> <p>d) A candidate for selection by the High Court shall not be eligible to Apply unless he has put in three years' continuous practice at the Bar.</p>
(iii) Procedure for selection	Written and oral examination conducted by the Public Service Commission.
(iv) Authority for Selection	Public Service Commission.

(v) Examination	
a) Written	Number of papers - 8 + 3 Total Marks - 800 + 300 = 1100
b) Viva Voce	Total Marks - 100
(vi) Training	Training is imparted at different levels, as determined from time to time.
(vii) Probationary period	Two years.

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EXTRACT OF THE WEST BENGAL CIVIL SERVICE (JUDICIAL) RECRUITMENT RULES

1. These Rules may be called The West Bengal Civil Service (Judicial) Recruitment Rules. They shall come into force immediately.
2. **Method of recruitment,-** Recruitment to the West Bengal Civil Service (Judicial) occurring in any one year shall be made in

the following manner, that is to say, -

- (i) by filling up fifty per cent of the vacancies on the results of a competitive examination to be conducted by the Public Service Commission, West Bengal, and
- (ii) by filling up the remaining fifty per cent of the vacancies by selection from amongst the members of the Bar by the High Court, Calcutta.

3. Qualifications, -

- (a) Every candidate must be a citizen of India.
- (b) Every candidate must be of good health and character and must be in all respects suitable for appointment to Government service.
- (c) Every candidate must be either a graduate in Law of some Statutory University or a Barrister-at-Law or a member of the Faculty of Advocates in Scotland, or an Advocate or an Attorney on the rolls of High Court in Calcutta.
- (d) The age of a candidate for the examination shall not be less than 21 years or more than 33 years on the 1st January of the year in which the examination is held.

Provided that no candidate other than the candidate belonging to the Scheduled Castes or the Scheduled Tribes, be allowed to appear at more than three examinations.

(Vide Notification dt. 26.6.80)

Provided further that the upper age limit may be relaxed up to two years in the case of candidates who have been in the Service of Government for at least two years.

(Vide Notification dt.14.6.62)

(e) The age of a candidate for selection by the High Court shall not be less than 27 years or more than 32 years on the 1st January of the year in which the vacancy, to be filled up under clause (ii) of Rule 2, occurs.

(f) A candidate for selection by the High Court shall not be eligible to apply unless he has put in at least three years' continuous practice at the Bar and is in active practice at the time of his application.

(g) A candidate failing to qualify in an examination shall not be eligible to apply for appointment by selection by the High Court within a period of two years from the date of the examination in which he appeared.

[Rule (f) & (g) amended vide Notification dt. 02.02.67]

4. Rules of Examination and lists of Subjects and Papers, -

The written examination to be conducted by the Public Service Commission will be in two parts:

Part - I will consist of **eight** compulsory papers carrying a total of 800 marks.

Part - II will consist of **three** optional papers in Law carrying a total of 300 marks.

The written test will be followed by a Personality test to be conducted by the Public Service Commission. The maximum marks for this test shall be 100.

5. The West Bengal State Services Recruitment Rules shall also apply to the West Bengal Civil Service (Judicial) to the extent of such particulars as are common to all other posts and services under the State Government, provided that amendments to such of the Recruitment Rules which may be made from time to time shall apply be extended to the West Bengal Civil Service (Judicial) on previous consultation with the High Court, Calcutta.

ANALYSIS :

8.11 It will be seen from the above chart that there is no uniformity as to the qualification for selection, age-limit for selection, additional benefit for higher qualification, authority for selection, zone of selection, procedure for selection and training for the

selected candidates.

8.12 We have received quite a large number of suggestions with regard to these matters and we may briefly set out on topic-wise hereunder:

QUALIFICATION FOR SELECTION :

8.13 As seen earlier, the Supreme Court in the All India Judges' Association case has laid down that there should be minimum practice of three years as lawyer as a necessary qualification for recruitment to the lowest rung in the judiciary. The reason given by the Supreme Court is that recruitment of law graduates as judicial officers without any training or background of lawyering as a lawyer has not proved to be a successful experiment. Neither knowledge derived from books nor pre-service training can be an adequate substitute for first-hand experience of the working of the Court system and the administration of justice begotten through legal practice. The Court has emphasised that unless the judicial officer is familiar with the administration of justice, his education and equipment as a judge is likely to remain incomplete. This is the reason with which the Supreme Court proceeded to prescribe the minimum three years Bar practice for recruitment to the lowest rung of the judiciary.

8.14 In obedience to the above direction, States and Union Territories like Andhra Pradesh, Assam, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Punjab, Rajasthan, Sikkim, Tripura, Uttar Pradesh and West Bengal have all prescribed three years Bar practice in addition to a law degree as the minimum qualification.

8.15 Karnataka and Tamil Nadu States, however, have prescribed four years practice as a lawyer in addition to a law degree.

8.16 Kerala State and U.T. of Lakshadweep have prescribed five years practice as the minimum qualification.

8.17 The legality of the five years practice prescribed by Kerala State came up for consideration before the Supreme Court in an Interlocutory Application filed in the All India Judges' Association case¹. The Court reiterated the view taken earlier in the All India Judges' Association case but added further:

"As an advocate, a person has to present and expound law, as such he fulfils an important social need,

namely, the upholding and preserving of society against onslaughts of selfish tyrants, be they individuals, communities or the State. Blackstone in his introduction to commentaries, has spoken of law as " a science which distinguishes the criterion of right and wrong, which teaches to establish the one and prevent, punish or redress the other, which employs in its theory the noblest faculties of the soul, and exerts in its practice the cardinal virtues of the heart, a science which is universal in its use and extent, accommodated to each individual, yet comprehending the whole community". "It is no wonder, then, that lawyers through the ages in all countries have enjoyed esteem and respect as pillars of justice, as preserver of the weak and poor against oppressors and tyrants, as upholders of the freedom and liberty of human beings, as a sword for the guilty and a shield for the innocent."

1. AIR 1994 SC 2771.

8.18 The Court then said that if the Rules prescribe a longer standing in the Bar, it will not, in any way, run counter to the judgment in the All India Judges' Association Case, and it is open to the Kerala State to prescribe a higher qualification as five years standing at the Bar.

8.19 But some States and High Courts are against the Rule of minimum three years as a condition for selection to the cadre of Civil Judges (Jr. Divn.). We may examine their objections under the following question:

WHETHER THERE IS NEED TO PRESCRIBE THREE YEARS STANDING IN THE BAR ?

8.20 This is the question which is seriously debated in the judicial fraternity and in the Government circle as is evident from the following:

8.21 The following High Courts, Associations and State Governments are wholly against the Rule of three years Bar practice as a condition for recruitment to the initial cadre of judicial service:

HIGH COURTS :

1. Patna; 2. Madhya Pradesh; 3. Orissa; 4. Punjab & Haryana; 5. Allahabad; and 6. Calcutta.

ASSOCIATIONS :

Judicial Officers' Associations of

1. Goa; 2. Haryana; 3. Madhya Pradesh; 4. Mumbai; 5. Manipur; 6. Mizoram; 7. Orissa; 8. Punjab 9. Tripura; 10. Uttar Pradesh; 11. West Bengal and 12. All India Judges' Association.

STATE GOVERNMENTS :

Goa, Meghalaya and Uttar Pradesh Governments.

JURIST :

Justice Ranganatha Misra, Former Chief Justice of India, Justice R.S. Sarkaria, Former Judge of the Supreme Court, and Justice D.R. Khanna, Former Judge of the Delhi High Court are also against the Rule of three years practice as a condition for entering the judicial service. They prefer selection of brilliant young law graduates and intensive training after selection.

8.22 We may set out herein, in laconic details, the arguments against prescribing the minimum three years standing as Advocate.

8.23 The Punjab & Haryana High Court has inter-alia stated that in the initial three years of legal practice, the lawyers neither gain any experience nor earn anything in the absence of any work with them. Imposing such condition serves no useful purpose at all to improve the efficiency in judicial service and on the contrary, it will have a negative effect on young Law Graduates who want to take Judicial Service as a career. They would be totally frustrated by remaining in the Bar without any work for three years.

8.24 The Allahabad High Court has something more to say: They have stated that if three years practice is also added to the life of an Advocate, he would have to wait for 9 years after completing 10 + 2 course (where generally students complete such course at the age of 18 or 19 years). Thus, he would be able to make himself eligible for judicial service at the age of not less than 28 years. It is further stated that cream of fresh law graduates would not go for judicial service and may try their luck elsewhere rather than waiting for a chance to enter the judicial service.

8.25 The Calcutta High Court has given the following reasons. To put it in their own words:

Three years' practice at the Bar is not useful as - (i) within that short period, they do not devote themselves whole-heartedly to practice with an eye on the service; (ii) three valuable years are lost from their service tenure; (iii) three years practice does not give them any complete idea about art of advocacy or functions of judiciary; (iv) generally, they practice in one line of law (or under senior specialised on one line) and that too, very negligently, as a result of which, they do not shape into good lawyers by that time, nor do they acquire knowledge about the Court work and Court formalities; (v) if the talented persons acquire routine practice, they would not try for judicial service and we may get only inferior persons who would come for service after finding no future in the profession; (vi) this smattering knowledge which they may acquire by legal practice for three years may be overcome by strenuous training after recruitment so as to make them good judges and thereby the age of entry into service would be low and better talents would be attracted being enamoured with the glamour of service and prospects thereof.

The All India Judges' Association is more emphatic in their remarks. They have stated that during the initial period of practice as Advocate, one will be tempted to take up " negative " professional ethics in the prevailing atmosphere in most of the Bar Associations in the country.

8.26 The Commission largely shares these views. They are indeed weighty. It is a common experience that unless a senior who takes special interest in his junior during the initial period of three years, there is no scope for acquiring any useful knowledge about the case law and Court procedure. More often, during the initial period, the junior will be only asked to carry files and stand before the Court for asking adjournment. No responsible work will be entrusted to him by the senior unless the junior is his son or would be son-in-law.

8.27 It is true that the Law Commission in its 14th Report, Vol.I. page 178 has expressed the view that three years practice at the Bar should be prescribed as one of the minimum qualifications of eligibility for entering into the lower judicial service [Civil Judge (Jr. Divn.)] recruited at the State level.

8.28 But the same Law Commission has favoured the recruitment of brilliant young men who will set a higher tone and level to the Subordinate judiciary. While dealing with recruitment to All India Judicial Service, the Commission has observed: (Vol.I, page 167)

" we are definitely of the view that a proportion of the higher judiciary should be recruited by competitive examination at the all-India level so as to attract the best of our young graduates to the judicial service. This measure will enlarge the field of selection and bring into the higher judicial service a leaven of brilliant young men who will set a higher tone and level to the subordinate judiciary as a whole. The personnel so recruited will be subjected to an intensive training. The rest of the higher judiciary should, in our view, be recruited in part directly from senior members of the Bar, and partly by promotion from the lower subordinate judiciary."

8.29 The Law Commission in its 116th Report in Chapter IV para 4.4 page 18 has observed thus:

" why not catch people young and give them intensive training. A short practice hardly trains effectively. If, on the other hand, as is contemplated herein, intensive pre-service training is given to the fresh young recruits, they will turn out to be better judges. There are countries in which practice at the Bar is not a pre-requisite or essential qualification to be eligible to become a Judge. Undoubtedly, in common law countries practice at the Bar is a must to be a judge at any level. But experience shows that practice for a very short period say for a period of two to three years at the Bar hardly imparts such training so as to make him a good judge."

8.30 As to the observation of the Law Commission in its 14th Report recommending three years practice at the Bar, we may state that observation was evidently based on the then existing system of legal education. The Law Commission made that report in 1958 when the LL.B. degree course was only of two years duration for which law practice as a subject was not in the curriculum.

8.31 In the present system of legal education of 3 years or 5 years, law practice is one of the subjects prescribed for the students. Particularly in the curriculum under the present 5 years law degree course, the students have to attend Court compulsorily to get themselves educated in the practical training in Court craft.

8.32 It would be, therefore, futile to prescribe three years practice as an Advocate to have intimate knowledge of the Court work as a condition for recruitment to the cadre of Civil Judges (Jr. Divn.).

8.33 If it is not out of place to mention, that the students coming out of the Institute like National Law School of India University, Bangalore to be better equipped and more informed than a junior advocate with three years standing. The students from National Law School of India University are the favourites for campus selection by multi-nationals. Every year, multi-national companies land at the school campus and select students of the final year by offering them a fat salary of Rs.20,000 to Rs.25,000. The entire purpose of establishing the National Law School of India University is to produce good law graduates for enriching the Indian Bar. That purpose has been practically defeated by insisting upon three years Bar practice as a pre-condition for entering the judicial service.

8.34 Further, in our opinion, 3 years standing at the Bar as the minimum qualification for entry into the judicial service may be wholly unnecessary and uncalled-for in view of the Commission's recommendations on Institutional training for the selected candidates. Attention of the concerned authorities is invited to the report of the Commission on judicial education and training and in particular the broad themes of the curriculum for induction training. It includes among other things, practical training through field placement. The Commission has recommended the induction training course for about one year by qualified trainers.

RECOMMENDATION BY THE COMMISSION :

8.35 If intensive training is given to young and brilliant law graduates, it may be unnecessary to prescribe three years practice in the Bar as a condition for entering the judicial service. It is not the opinion of any High Court or State Government that induction

to service of fresh law graduates with brilliant academic career would be counter-productive. We consider that it is proper and necessary to reserve liberty to High Court and State Governments, as the case may be, to select either Advocates with certain standing at the Bar or outstanding law graduates with aptitude for service. It is not correct to deny such discretion to High Authorities like, High Courts and State Governments.

8.36 Those High Courts and State Governments who are interested in selecting the fresh law graduates with a scheme of intensive induction training may move the Supreme Court for reconsidering the view taken in All India Judges' Association Case for deleting the condition of three years standing as Advocate for recruitment to the cadre of Civil Judges (Jr. Divn.). We trust and hope that the Supreme Court will reconsider that aspect.

THE AGE LIMIT FOR RECRUITMENT :

8.37 In Andhra Pradesh, the prescribed age limit is upto 38 years. In Assam, it is between 25 to 36 years. In Bihar, it is 22 to 31 years. In Gujarat and Bombay, the age prescribed is between 21 and 35 years. In Haryana, it is 24 to 35 years. In West Bengal, it is 27 to 32 years. In Tripura, it is 25 to 40 years.

8.36 In Tamil Nadu, Pondicherry and Karnataka, it is 25 to 38 years.

8.39 In Mizoram, Meghalaya, Manipur and Madhya Pradesh, there is uniformity in age limit, i.e. 25 to 35 years. In Delhi Administration, only the maximum age, i.e. 32 years is prescribed. In Himachal Pradesh, it is 25 to 40 years for those who have practised for a minimum period of 6 years. In Sikkim, the maximum age limit is 35 years.

RECOMMENDATION BY THE COMMISSION :

8.40 While recommending the maximum age for recruitment of Civil Judges (Jr. Divn.), it is necessary to bear in mind the maximum age suggested by the Commission for direct recruitment of District Judges. There, we have indicated that the candidates should be between 35 and 45 years. Therefore, it is not proper to prescribe any age beyond 35 for selection to Civil

Judges (Jr. Divn.).

8.41 Generally, persons with uninterrupted education would be able to graduate themselves at 21 years and complete the three years law degree course by 24 years. If we insist three more years of practice as a pre-condition for recruitment, then, they would be completing that period by 27 years. But this may be possible only for urban students. The rural students will have their own inherent disadvantage. We have, therefore, to give some more margin while fixing the maximum age.

8.42 Secondly, every year, there is no recruitment to the Civil Judge (Jr. Divn.) cadre. Advocates may have to wait for the advertisement for a couple of years after completing the three years Bar practice.

8.43 Having regard to all these facts and circumstances, it seems to us that the candidate for recruitment in terms of age must be below 35 years. He will then have reasonable period of twenty five years of service.

8.44 We accordingly suggest to all States and High Courts to fix 35 years as the maximum age for eligibility for selection to the cadre of Civil Judges (Jr. Divn.) with relaxation by 3 years for SC/ST candidates.

8.45 It is not necessary to prescribe any minimum age in this regard.

ADDITIONAL BENEFIT FOR HIGHER QUALIFICATION :

8.46 Except in Delhi Administration and in the State of Rajasthan, there is no other State providing additional benefit to a candidate selected for Civil Judges (Jr.Divn.) possessing higher qualification. In Delhi, three advance increments are allowed for a candidate having higher qualification than the prescribed minimum qualification.

8.47 In Rajasthan, if a candidate has to his credit two years more than the minimum practice prescribed, he would be entitled to two advance increments.

RECOMMENDATION BY THE COMMISSION :

8.48 If selected candidates are having a higher qualification like Post-Graduation in Law, we recommend that three advance increments be given as it is allowed by the Delhi Administration. It is an acknowledged fact that Post-Graduation in Law is a difficult course and it is better to reward appropriately such candidates.

8.49 But we do not propose to suggest any advance increments to those who are having more experience as Advocate than the minimum prescribed. Giving any advance increment for additional Bar practice is not proper. It should not be a bonus for those who have not been able to make their way immediately after acquiring the minimum qualification.

AUTHORITY FOR SELECTION :

8.50 At present, in some States, Public Service Commission is the selecting authority while in other States, the High Courts are the authority for selecting Civil Judges (Jr. Divn.). In a couple of States, selection is partly made by the High Court and partly by the State Public Service Commission.

8.51 In the States of Andhra Pradesh, Assam, Delhi, Gujarat, Karnataka and Kerala, selection to the lower judicial service is made by the respective High Courts.

8.52 In Bihar, Goa, Haryana, Himachal Pradesh, Jammu & Kashmir, Madhya Pradesh, Maharashtra, Meghalaya, Mizoram, Orissa, Punjab, Rajasthan, Tamil Nadu, West Bengal and Nagaland, selection is made by the Public Service Commission.

8.53 In Manipur and Tripura, there are dual sources of selection.

8.54 In Manipur, the Public Service Commission recruits 2/3rd of the posts from amongst the law graduates on the basis of competitive examination and viva-voce and the Gauhati High Court selects 1/3rd of the posts from amongst the Advocates.

8.55 In Tripura, the State Public Service Commission is entrusted with the responsibility of selecting 50% of the posts of Civil Judges (Jr. Divn.). The remaining 50% is left to be selected by the Gauhati High Court.

8.56 The High Courts of Andhra Pradesh, Gujarat, Himachal Pradesh, Karnataka, Kerala and Bombay have suggested that the selection should be left exclusively to the High Court.

8.57 Even the State Governments of Andhra Pradesh, Kerala and Administration of Lakshadweep are for entrusting the task of such selection only to the High Court.

8.58 Justice K. Ramaswamy, Former Judge of the Supreme Court favours such proposal.

8.59 The All India Judges' Association also is of opinion that the selection should be left to the exclusive jurisdiction of the High Court.

8.60 But the High Courts of Gauhati, Patna, Madhya Pradesh, Punjab & Haryana, Allahabad and Calcutta and State Governments of Meghalaya, Uttar Pradesh and West Bengal and Judicial Officers' Associations of Haryana, Jammu & Kashmir, Maharashtra, Uttar Pradesh and West Bengal are all against entrusting the selection process to the High Court. They are of the opinion that State Public Service Commission is the only proper authority for making such selection since the High Courts have not got the required machinery.

8.61 Justice R.S. Sarkaria, former Judge of the Supreme Court has expressed the view that Public Service Commission in association with the High Court should be the authority for selection.

8.62 Before coming to any conclusion in this regard, it is necessary to advert to certain decisions of the Supreme Court in the matter.

8.63 In *D.R. CHAUDHARY v. ASHOK KUMAR YADAV*¹, the Supreme Court has observed that Public Service Commission while selecting the candidates for recruitment of judicial officers, a sitting Judge of the High Court nominated by the Chief Justice should participate in the interview examination to be conducted by the Public Service Commission. The Judge should be an expert and the advice tendered by him with regard to any particular candidate should ordinarily be accepted, unless there are strong and cogent reasons recorded by the Public Service Commission for not accepting such advice.

8.64 The above principles have been reiterated in the All India Judges' Association Case², as follows:

"To ensure uniform practice in selecting judicial officers, therefore, we direct that in all cases, where the

selection of the judicial officers is made by the Public Service Commission, the representative of the High Court shall be one of the members of the Selection Committee and the opinion given by him with regard to the suitability of the candidate shall not be disregarded unless there are strong and cogent reasons for not accepting the opinion, which reasons must be recorded in writing."

The Court further observed:

" It should be remembered that both the directions given above, viz., prescription of minimum legal practice of three years as an essential qualification to be eligible for being appointed as a judicial officer and the obligation to invite the representative of the High Court to participate in the selection process and to accord his advice dominating weight are calculated to ensure recruitment of competent, independent and honest judicial officers and thus to strengthen the administration of justice and the confidence of public in it. The States should, therefore, take immediate steps to comply with the said directions by amending the relevant Rules."

RECOMMENDATION BY THE COMMISSION :

8.65 In the light of the aforesaid decisions of the Supreme Court, it is unnecessary to insist that the High Court alone should be the selecting authority. The observations of the Supreme Court in the aforesaid cases in the matter of selection of judges since being faithfully followed by the Public Service Commissions by associating the nominee Judge of the High Court whose opinion carries great weight, we do not want to say that the selection should be left to the High Court alone. After all, the High Court also must follow the procedure of written examination followed by viva voce test / interview. They do not have any machinery for conducting the written examination. The Public Service Commission appears to be better suited for that purpose. So far as Interview is concerned, High Court nominee would be associated.

8.66 In the premise, the existing selecting authority, whether it is High Court or State Public Service Commission may be allowed to continue. We do not want to add any thing further on this aspect.

ZONE OF SELECTION :

8.67 The High Courts which have favoured for extending the zone of selection to law graduates working in Courts and allied departments are: (1) Andhra Pradesh; (2) Delhi; (3) Gujarat; (4) Himachal Pradesh; (5) Kerala; (6) Madhya Pradesh; (7) Bombay; (8) Orissa; (9) Punjab & Haryana; (10) Rajasthan; (11) Madras; and (12) Calcutta.

8.68 The High Courts which are against such proposal are: (1) Gauhati; (2) Patna; (3) Jammu & Kashmir; (4) Karnataka; (5) Sikkim; (6) Allahabad; and (7) Calcutta.

STATE GOVERNMENTS :

8.69 The States of Andhra Pradesh, Goa, Gujarat, Kerala, Meghalaya and U.T. of Lakshadweep are in favour of expanding the zone of selection to law graduates working in the Courts and allied departments.

8.70 But the Governments of Maharashtra, Sikkim, Tamil Nadu, Uttar Pradesh and West Bengal are against such proposal.

JUDICIAL OFFICERS' ASSOCIATIONS :

8.71 Judicial Officers' Associations of (1) Andhra Pradesh; (2) Assam; (3) Delhi; (4) Gujarat; (5) Haryana; (6) Kerala; (7) Maharashtra; (8) Manipur; (9) Mizoram; (10) Orissa; (11) Punjab; (12) Rajasthan; (13) Tamil Nadu and (14) West Bengal have all suggested that it is better to make the law graduates working in Courts and other allied departments eligible for recruitment to the cadre of Civil Judges (Jr. Divn.). Even the All India Judges' Association concurs with such proposal.

8.72 But the Judicial Officers' Associations of Jammu & Kashmir, Karnataka and Uttar Pradesh are against such a move.

JURIST :

8.73 Justice Ranganatha Misra, Former Chief Justice of India, Justice K. Ramaswamy, Former Judge, Supreme Court of India, Justice R.S. Sarkaria, Former Judge, Supreme Court of India, Justice D.R. Khanna, Former Judge of the Delhi High Court, Justice P.P. Bopanna, Former Judge of the Karnataka High Court and Justice D.M. Chandrashekhar, Former Chief Justice of

Karnataka have also supported the proposal mooted by the Commission to extend the zone of selection to law graduates in the Law Courts and allied departments.

EXISTING RULE IN GUJARAT :

8.74 The Gujarat State has been following this procedure from the very beginning. They have framed Recruitment Rules as follows:

" Rule-5: Besides the members of the Bar, members of the staff of the High Court as well as subordinate Courts, members of the staff working as Assistants in the legal section of the Legal Department, Sachivalaya, members of the staff of Office of the Government Pleader, High Court and City Civil Court, Ahmedabad are eligible for appointment provided they have obtained the LL.B. (Special) Degree or are qualified for enrolment as an Advocate and have served for a period of not less than 5 years including not less than 2 years after obtaining such Degree or qualifying for such enrolment and are certified to have sufficient knowledge of Gujarati and Hindi and are able to translate from Gujarati to English and English to Gujarati etc.. Besides these requirements, these staff members are required to pass an examination called the Civil Judges (Junior Division) and Judicial Magistrates"

8.75 The validity of the Rule came for consideration before the Supreme Court in the case which has since been reported in 1995 (2) SCALE, p. 374. In that decision, the Supreme Court has upheld the validity of the Rule by observing that the direction given by the Court regarding minimum 3 years Bar practice in the earlier decisions for entry into judicial service is only applicable to the members of the Bar and that direction does not *stricto sensu* apply to the others concerned in that Rule.

RECOMMENDATION BY THE COMMISSION :

8.76 We are of opinion that it will be useful to extend the zone of selection to law graduates who are working in Courts and other allied departments. They acquire sufficient knowledge of law and procedure. Since we are suggesting intensive Institutional Training for about one year, such candidates could be properly shaped to become good judicial officers. We suggest that the law

graduates with sufficient experience in service and within certain age limit both are to be prescribed by the respective High Court, could be made eligible for selection to the cadre of Civil Judges (Jr. Divn.).

EXISTING PROCEDURE FOR SELECTION :

8.77 Most of the States and Union Territories are selecting Civil Judges (Jr. Divn.) by conducting written examination followed by viva voce test. Such States and UTs are: (1) Andhra Pradesh; (2) Assam; (3) Bihar; (4) Haryana; (5) Himachal Pradesh; (6) Jammu & Kashmir; (7) Karnataka; (8) Kerala; (9) Madhya Pradesh; (10) Manipur; (11) Meghalaya; (12) Mizoram; (13) Nagaland; (14) Orissa; (15) Punjab; (16) Rajasthan; (17) Tamil Nadu; (18) Tripura; (19) Uttar Pradesh; (20) West Bengal; (21) Delhi; and (22) Pondicherry.

8.78 But the marks prescribed for written test and viva voce test are wide in variance. The respective marks for written examination and viva voce test on seriatim are set out below:

Sl. No.	State / U.T.	Written Test Marks	Viva Voce
1.	Andhra Pradesh	200	25
2.	Assam	500	200
3.	Bihar	950	200
4.	Haryana	900	200

5.	Himachal Pradesh	900	250
6.	Jammu & Kashmir	950	250
7.	Karnataka	400	100
8.	Kerala	400	50
9.	Madhya Pradesh	200	25
10.	Manipur	650	100
11.	Meghalaya	500	100
12.	Mizoram	500	100
13.	Nagaland	650	80
14.	Orissa	600	75

15.	Punjab	900	100
16.	Rajasthan	300	35
17.	Tamil Nadu	400	60
18.	Tripura	500	200
19.	Uttar Pradesh	850	100
20.	West Bengal	1100	100
21.	Delhi	850	100
22.	Pondicherry	300	100

8.79 But States like Goa, Gujarat, Maharashtra and Sikkim do not conduct written examination. Selection is made only by viva-voce test.

8.80 Some of the High Courts and State Governments have stated that in addition to the written examination and viva voce test, there should be separate aptitude test and group discussion for selection. Such methods are favoured by Gauhati High Court,

Patna High Court and Karnataka High Court. Some State Governments and Judicial Officers' Associations have also favoured this idea of group discussion and aptitude test.

8.81 Some, however, have expressed the view that aptitude test need not be separately held since the same could be judged during the viva voce test.

8.82 The Calcutta High Court has emphatically stated that the selection should not be made only by interview which may be arbitrary and likely to lead to favouritism.

RECOMMENDATION BY THE COMMISSION :

8.83 We suggest that written examination followed by viva voce test should be essential for selection of Civil Judges (Junior Division). This procedure is necessarily to be followed, whether it is by the High Court or by the Public Service Commission. We only emphasise that the written examination should be oriented more to test the candidate's practical acquaintance with law and procedure with special reference to his ability to draft pleadings, appreciate evidence and write judgments. The written examination should not be merely to test candidates in legal subjects in the ordinary manner since the candidates have already taken a law degree.

8.84 It is left to the selecting authority to prescribe appropriate marks for the written examination and viva voce test. But we would like to point out that the marks allotted for the viva voce test should be less than 1/3rd of the marks prescribed for the written examination. This requirement will have to be scrupulously observed to avoid the selection being impeached as being arbitrary.

8.85 We may also suggest that there should be more realistic and less arbitrary evaluation procedure for written examination and viva voce test. While dealing with the procedure for selection of District Judges, we have exhaustively set out the method of evaluation by grading system.

8.86 We request the States and Public Service Commission to follow only that evaluation method even for selection of Civil Judges (Junior Division).

TRAINING FOR SELECTED CANDIDATES :

8.87 We have comprehensively dealt with this subject in a separate chapter and we request all High Courts and Governments to follow that.

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9. CIVIL JUDGES (SENIOR DIVISION) - WHETHER IT SHOULD BE MIXED CADRE OR PURELY PROMOTIONAL CADRE?

9.1 Generally, the Civil Judge (Senior Division) is a promotional post to Civil Judge (Junior Division). But in the State of Gujarat, it is a mixed cadre consisting of promotees and direct recruits. 50% of the cadre post is earmarked for promotion and the remaining 50% is filled up by direct recruitment from the practising advocates of not less than 5 years standing.

9.2 In Goa Administration also, Civil Judge (Senior Division) is a mixed cadre, but the percentage earmarked for promotees and direct recruits is different. For promotees, 67% of the cadre posts is reserved and the remaining 33% is filled up by direct recruitment from advocates of not less than 5 years standing.

9.3 In all other States and Union Territories, the cadre is purely a promotional one.

9.4 Those States which are having a mixed cadre are in favour of continuing their system. Likewise, the rest of the States do not want a change in the structure of their existing cadre, save the High Court of Himachal Pradesh and Government of Meghalaya.

9.5 The High Court of Himachal Pradesh has stated that to promote efficiency, the composition of the middle cadre should be 25% by direct recruitment and 75% by promotion.

9.6 Government of Meghalaya is of opinion that the cadre of Civil Judges may be mixed cadre to the extent of not exceeding 25% by direct appointment.

9.7 The High Court of Bombay adds a rider stating that it should be purely a promotional cadre but the discretion may be left to the High Court by making an enabling provision conferring power on the authority to make direct recruitment in exceptional

emergent circumstances.

9.8 Naturally, all Judicial Officers' Associations of every State have categorically stated that the cadre of Civil Judges (Senior Division) should be filled up only by promotion from the Civil Judges (Junior Division).

9.9 Among the retired Judges, Justice K. Ramaswamy, Former Judge of the Supreme Court has stated that it is desirable to keep the Civil Judge (Senior Division) as a promotional cadre, but if there is any recruitment directly from the Bar, it should not be more than 20%.

9.10 Sri P.P. Rao, Senior Advocate of the Supreme Court has also favoured the mixed cadre consisting of 50% direct recruitment and 50% promotees.

9.11 Justice Ranganatha Misra, Former Chief Justice of India is totally opposed in making the cadre of Civil Judges (Senior Division) the mixed cadre.

RECOMMENDATION BY THE COMMISSION :

9.12 While examining the problem presented, as to whether the cadre of Civil Judges (Senior Division) should be a mixed cadre or not, we have to bear in mind the decision taken by the Commission as to the nature of the cadre of District Judges. The Commission has decided that it should be mixed cadre. The Commission has rejected the vociferous demand of the service judges to reserve it exclusively for promotees.

9.13 The question now to be examined is whether it is proper to make the middle cadre also a mixed cadre. It is true that the mixed cadre may promote efficiency in the service, but while attempting to promote efficiency, we should not create frustration amongst the service judges for want of adequate promotional opportunity.

9.14 Generally, in every State, the posts of Civil Judges (Senior Division) are comparatively very much less than the posts in the Civil Judges (Junior Division). In some States, it is less than half. In some States, it is less than 1/3rd and in one or two States, it is less than 1/4th.

9.15 Hereinbelow, the chart giving the number of posts in the cadre of Civil Judges (Junior Division) and Civil Judges (Senior Division):

Sl. No.	State	Civil Judge (Jr. Dn.)		Civil Judge (Sr. Dn.)
1.	Andhra Pradesh	433		122
2.	Assam	146		46
3.	Bihar	1043		266
4.	Goa	20		14
5.	Gujarat	290		167
6.	Haryana		178*	
7.	Himachal Pradesh		70*	
8.	Jammu & Kashmir	51		42
9.	Karnataka	330		167

10.	Kerala	229		81
11.	Madhya Pradesh	422		251
12.	Maharashtra	717		163
13.	Manipur	19		6
14.	Meghalaya	3		2
15.	Mizoram	26		11
16.	Nagaland	5		7
17.	Orissa	261		70
18.	Punjab		213*	
19.	Rajasthan	315		144

20.	Sikkim	6		2
21.	Tamil Nadu	399		96
22.	Tripura	45		10
23.	Uttar Pradesh	721		529
24.	Pondicherry	10		5
25.	NCT of Delhi		218*	
26.	West Bengal	337		206

* Inclusive of both Civil Judges (Jr. & Sr. Dn.)

9.16 With these respective cadre strengths, in almost all the States, the Civil Judge (Junior Division) has to wait for about 10 years to get first promotion to the cadre of Civil Judges (Senior Division).

9.17 In States like Kerala, Rajasthan, Sikkim, Uttar Pradesh and West Bengal, no Civil Judge (Junior Division) gets the first promotion till he completes 10 years of service.

9.18 In Bihar, such unfortunate Civil Judges (Junior Division) have to wait nearly 20 years to get such promotion.

9.19 In Jammu & Kashmir, Maharashtra and Tamil Nadu, the position seems to be slightly better. Civil Judges (Junior Division) in these States could generally get promotion after about 8 years of service.

9.20 In Gujarat, having regard to the mixed cadre of Civil Judges (Senior Division), first promotion to the Civil Judge (Junior Division) would be available to him only after 11 to 12 years.

9.21 In these circumstances, whether it is prudent to make the Civil Judges (Senior Division) a mixed cadre for promotees and direct recruits? Even in States where the Civil Judges (Senior Division) is a mixed cadre of promotees and direct recruits, it would be frustrating for Civil Judges (Junior Division) to wait for first promotion for about 10 years. If that cadre is made a mixed cadre, it would further diminish the promotional opportunity available to the Civil Judges (Junior Division) which according to us is not in the interest of promoting efficiency.

9.22 We, therefore, fully concur with the views expressed by the Judicial Officers' Associations all over the country and some of the High Courts as indicated above.

9.33 We recommend that the cadre of Civil Judges (Senior Division) should be constituted purely as promotional cadre.

9.34 We, however, hasten to add that there should be a minimum eligibility for Civil Judge (Jr. Divn.) for being considered for promotion to Civil Judge (Sr. Divn.). Having regard to the rights, duties and responsibilities of the Civil Judge (Sr. Divn.), we consider that the minimum experience of five years as Civil Judge (Jr. Divn.) is a must for earning eligibility for promotion as Civil Judge (Sr. Divn.). We have also included this principle in the draft 'JUDICIAL SERVICE RULES' which is annexed to our Report.

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10. DIRECT RECRUITMENT TO THE CADRE OF DISTRICT JUDGES

- PROFILE, PROBLEMS AND PROGNOSIS

10.1 The mixed cadre of District Judges consisting of promotees and direct recruits in every State Judicial Service was intended to promote efficiency in the administration of justice. But the fact remains otherwise. There is a lot of discontentment between

the direct recruits of District Judges on one side and promotees on the other. The two classes are generally not in cordial terms, nay, in some States, they are not even on talking terms. They are forming separate Associations. They are locked up in legal battles fighting up to the Apex Court. They made separate representations to this Commission.

10.2 The root cause for all these unfortunate fall out seems to be the mode of direct recruitment followed by High Courts and determining the inter-se seniority between the promotees and the direct recruits. The High Courts are not unaware of this bitterness and discontentment in the service, yet seem to have done little to improve the method of direct recruitment so as to remove the grievance of promotees.

10.3 The common grievance of the service judges in the lower cadre in all the States, and which grievance is also highlighted in the Memorandum of All India Judges' Association is that the hopes and aspirations of judges who have entered the lowest rung of the judicial service have been shattered for want of adequate promotional opportunity. It was complained that the unreasonable quota reserved and unscientific method followed for direct recruitment of District Judges have practically driven the service judges to despair and despondency. It was said that they could never think of becoming Principal District Judges. It was pointed out that the Advocates are recruited as District Judges at relatively younger age, varying from 32 to 40 years, while service judges would get a chance of promotion as District Judges only at their advanced age. Such direct recruits would be ranked above the promotees in the seniority list and occupy all the central posts. They also deprive the promotees the chance to reach the High Court.

10.4 How the ill-managed direct recruitment could jeopardise the already bleak chance of promotion of service judges has been pointed out in the Memorandum of the All India Judges' Association by citing the following instance in the State of Bihar:

"It is reported that due to certain reasons, no 'Direct Recruitment' of Addl. District Judges took place in the State of Bihar between the years 1982 and 1990. Then suddenly as many as 30 Addl. District Judges were inducted in the Higher Judicial Cadre as Direct Recruits in 1991. Consequently, the lower judicial cadre Officers had not yet overcome the ill-effects of such a bolt from the blue (because such a big batch of Officers, younger in age, had tended to block their promotional avenues), when in the year 1997, the High Court dealt the severest blow by

inducting a 'Jumbo Batch' of 53 Addl. District Judges at one go. In this manner, these two batches comprising 83 Officers, much younger in age and inducted during a short span of 7 years, was a fatal blow to the Judges manning the lower cadres since their service career has suddenly become bleak; firstly, as Addl. District Judges, and, secondly, if some lucky chap does manage to raise his head over the water, then there would be slim probability of his becoming a District Judge (or Principal District Judge), and even if such a possibility occurs in the case of still luckier ones (and for a short duration), then certainly he or she would stand no chance of elevation to the Bench. In other words, an apparent policy of the Patna High Court does not seem to give due regard to the service career of an overwhelming majority of the District Judiciary."

10.5 Of course, this has been refuted by one of the direct recruits from Bihar cadre during the course of hearing and he squarely put the blame on service judges for having resorted to several litigations to delay the direct recruitment.

10.6 There are many other complaints in this regard, but we do not want to refer to them in this discussion. But one thing seems to be clear. The direct recruitment to the cadre of District Judges, instead of creating harmony and promoting efficiency in the service has been eroding the integrity and independence of the judiciary by ill-will and bickerings. We can ill-afford to allow such state of affairs to continue in the judiciary.

10.7 The Commission considers that the method of direct recruitment to the cadre of District Judges requires to be radically overhauled so as to ensure fairness to promotees as well as to direct recruits.

10.8 It is with that object, the Commission has formulated the following questions for the views and comments from the concerned:

- (1) What are the qualifications prescribed in your State for direct recruitment to the cadre of District Judges?
- (2) The percentage for direct recruitment to the cadre of District Judges varies from State to State. In West Bengal, there is no direct recruitment to the cadre of District Judges. What is the position in your State? What according to you should be the proper percentage for such recruitment to avoid imbalance and impairment of the rights of the promotees?

(3) It is complained that in some States direct recruitment to the cadre of District Judges is made at the age of 32 to 35, prejudicially affecting the rights and prospects of the promotees. What are your views in this regard?

10.9 A wide variety of views and comments have been received in response to these questions and they will be presently examined.

10.10 We may first refer to the Constitutional provisions relating to appointment of District Judges. They are as follows:

Article 236: Interpretation, - In this Chapter -

(a) the expression "district judge" includes judges of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge;

(b) xxx xxx xxx

Article 233: Appointment of district judges, -

(1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

10.11 It will be seen that the two clauses of Article 233 contemplate recruitment to the cadre of District Judges by promotion from the subordinate judicial service as well as by direct recruitment from Pleaders or Advocates having not less than seven years of practice.

10.12 In *SUSHMA SURI AND OTHERS v. GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI AND ANOTHER*,¹ the Supreme Court has stated that seven years practice specified under Article 233(2) should not mean that the practice should be only as members of the Bar. Such a construction would be too narrow and would defeat the object of Recruitment.

10.13 With reference to the scope of the Rules under Delhi Higher Judicial Service Rules and with reference to Rule 49 framed by the Bar Council of India, the Court further observed that:

"Article 233(2) should not be restricted only to Advocates who are practicing as members of the Bar. Such a construction would be too narrow defeating the object of recruitment. The object is to get the persons of necessary qualification, experience and knowledge of life."

The Court further observed:

" A Government counsel may be a Public Prosecutor or Government Advocate or a Government Pleader. He too gets experience in handling various types of cases apart from dealing with the officers of the Government. Experience gained by such persons who fall in this description, cannot be stated to be irrelevant nor detrimental to selection to the posts of Higher Judicial Service. The expression 'members of the Bar' in the relevant rule would only mean that a particular class of persons who are actually practicing in courts of law as pleaders or advocates. In a very general sense an advocate is a person who acts or pleads for another in a court and if a public prosecutor or a

1. 1998 VII AD (S.C.) 365.

Government counsel is on the rolls of the Bar Council and is entitled to practice under the Act, he answers the description of an advocate."

The Court concluded:

"We think it is in this manner that the expression used in Article 233(2) of the Constitution has to be understood and the rules framed by the Delhi Administration in this regard have to be read in the light of the Constitutional

provisions. The expression used "from the Bar" would only mean from the class or group of advocates practicing in Courts of law. It does not have any other attribute."

10.14 With these principles in mind, we may now examine the contentions urged for Judicial Officers' Associations. It was urged for them that there should not be any quota for recruitment from Advocates. According to them, the main source from whom the District Judges could be drawn is the service judges as provided under Clause (1) of Article 233, Clause (2) of Article 233 is only an enabling provision to recruit District Judges from the Bar in case of need and such an enabling provision should not be utilised to whittle down or deprive the legitimate aspirations of the service judges. It was further contended that fixing a quota for direct recruitment should be discontinued, and the discretion should be left to the High Court to decide whether there is any need to resort to clause (2) of Article 233.

10.15 It is too hard to accept these submissions. The fixation of quota for direct recruitment is not inconsistent with the provisions or mandate of Article 233.

10.16 In *ORISSA JUDICIAL SERVICE ASSOCIATION, CUTTACK AND ANOTHER*², the Apex Court has upheld the Constitutional validity of the Orissa Judicial Service Rules, 1963 in which the quota for two sources of recruitment has been prescribed.

2. AIR 1991 SC 382.

10.17 In *O.P. SINGLA AND ANOTHER v. UNION OF INDIA AND ANOTHER*³, the quota prescribed for recruitment to the Delhi Higher Judicial Service (1970) has been sustained by observing that whenever rules provide for recruitment to the service from different sources, there is no inherent infirmity in prescribing quota for appointment of persons from those sources.

10.18 We, therefore, proceed that there could be quota prescribed for direct recruitment as well for promotion to the cadre of District Judges.

10.19 We may now briefly set out the method prescribed by States and Union Territories for selection of District Judges for

direct recruitment.

3. AIR 1984 SC 1595.

ANDHRA PRADESH

(i) Rules	The Andhra Pradesh State Higher Judicial Service - Special Rules, 1958 (Relevant Rules annexed)
(ii) Quota	33 1/3% of the total number of posts.

(iii) Qualifications	Shall be an Advocate or a Pleader of not less than seven years standing at the Bar and must not have completed 45 years of age on the first day of the month in which the notification inviting applications has been published.
(iv) Procedure for Selection	<p>a) Written Test with 80 Marks.</p> <p>b) Interview - 20 Marks.</p> <p>Interview will be conducted to the candidates qualified in the written examination.</p>

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EXTRACTS OF THE ANDHRA PRADESH STATE HIGHER JUDICIAL SERVICE-SPECIAL RULES - 1958

Rule No.2 - Appointment :

(ii) by direct recruitment from the Bar

Provided that 33 $\frac{1}{3}$ % of the total number of permanent posts shall be filled or reserved to be filled by direct recruitment.

Explanation :

a) In the determination of 33 $\frac{1}{3}$ % of the total number of permanent posts, fractions exceeding one-half shall be counted as one and other fractions shall be disregarded.

b) All promotions shall be made on grounds of merit and ability, seniority being considered only when merit and ability are approximately equal.

3 - Qualifications :

A) person for appointment to Category-II from Bar

a) shall be an advocate or a Pleader of not less than seven years standing at the Bar.

b) must not have completed forty five years of age on the first day of the month in which the notification inviting application for such appointment by direct recruitment is published in the Andhra Pradesh Gazette.

c) Shall be of sound health and active habits and free from any bodily defect or infirmity which render him unfit for such appointment.

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ASSAM

(i) Rules	The Assam Judicial Service Rules, 1967. (Relevant Rules annexed)
(ii) Quota	Not more than 1/3rd of the posts.
(iii) Qualifications	<p>Shall be a practicing Advocate of the High Court or of the District Court and should have so practised for a period of not less than seven years.</p> <p>Shall not have completed 45 years of age on the first day of January of the year of recruitment.</p>
(iv) Procedure for Selection	<p>There is no mention in the Assam Judicial Service Rules, 1967. Decision in this regard is taken by the Chief Justice or by any Sub-Committee of Judges constituted as desired by the Chief Justice.</p> <p>However, in the last direct recruitment, written test with 70 marks and viva voce test with 30 marks, with cut off marks of 60% for selection have been prescribed.</p>

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EXTRACTS OF THE ASSAM JUDICIAL SERVICE

RULES - 1967

6 - Qualifications for recruitment to the service in Grade I and II

- (1) Appointments to the post of Grade I and Grade II by promotion from the next grade below shall be made on the ground of merit and ability, seniority being considered only when merit and ability are equal;
- (2) A candidate for direct recruitment from the Bar to the post of Grade I and Grade II shall satisfy the following conditions, besides general conditions laid down under Rule 8 :
 - (i) shall not have completed 45 years of age on the 1st day of January of the year of recruitment;
 - (ii) shall be a practising advocate of the High Court or of the District Court and should have been so practising for a period of not less than 7 years.

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BIHAR

(i) Rules	Bihar Superior Judicial Service Rules, 1951. (Relevant Rules annexed)
(ii) Quota	<p>1/3rd of the posts in the cadre of the service.</p> <p>Provided that the State Government may in consultation with the High Court deviate from the said proportion in either direction.</p>
(iii) Qualifications	Minimum practice of 7 years at Bar.
(iv) Procedure for Selection	All eligible candidates are required to appear at an objective test to be conducted by the Chief Justice in this behalf with the assistance of any of the Judges that the Chief Justice may consider necessary for a preliminary screening to judge their suitability. On the basis of the result of this screening test, four times the number of candidates to be selected for appointment are called for interview. Thereafter, the list of candidates is prepared on the basis of written & viva-voce test and names are recommended to the State Govt.

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**EXTRACTS OF THE BIHAR SUPERIOR JUDICIAL
SERVICE RULES - 1951**

5. Appointments to the Bihar Superior Judicial Service, which shall, in the first instance, ordinarily be to the post of Additional District and Sessions Judge, shall be made by the Governor in consultation with the High Court -

a. by direct recruitment, from among persons qualified and recommended by the High Court for appointment under clause (2) of Article 233 of the Constitution; or

(b) by promotion, from among members of the Bihar Civil Service (Judicial Branch).

6. Of the posts in the cadre of the service, two-thirds shall be filled by promotion and one-third by direct recruitment.

Provided that the State Government may in consultation with the High Court deviate from the said proportion in either direction.

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DELHI

(i) Rules	Delhi Judicial Service Rules, 1970. (Relevant Rules annexed)
(ii) Quota	Not more than 1/3rd of the posts in the service.

(iii) Qualifications	<p>Must have practised as an Advocate for not less than 7 years.</p> <p>Must have attained the age of 35 years and have not attained the age of 45 years on the first day of January of the year in which the applications for appointment are invited.</p>
(iv) Procedure for Selection	<p>Advertisement is issued in a number of national dailies having circulation all over India. After scrutiny of the applications, the Registry places these applications before the Screening Committee constituted by the Full Court for screening the applications, interviewing the screened candidates and preparing a panel of suitable candidates for consideration of the Full Court. Thereafter, recommendation is sent to the Administrator. (Lt. Governor, Delhi.)</p>

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EXTRACTS OF THE DELHI JUDICIAL SERVICE RULES, 1970

7 - Regular Recruitment :

(b) by direct recruitment from the Bar

Provided that not more than 1/3rd of the [Word (Substantive) deleted vide Delhi Administration's Notification No.F-6/10/87-Judl., dated 17.3.1987.] posts in the service shall be held by direct recruits;

9 - Qualification for Direct Recruits shall be as follows:-

(1) Must be a citizen of India.

(2) Must have practiced as an Advocate for not less than seven years.

* (3) must have attained the age of 35 years and have not attained the age of 45 years on the 1st day of January of the year in which the applications for appointment are invited.

* Clause (3) of Rule 9 substituted vide Delhi Administration's Notification No.F.6/10/87-Judl., dated 21.5.1990.

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GOA

(i) Rules	Goa Civil Service (Judicial Branch) Rules 1992. (Relevant Rules annexed).
(ii) Quota	50%.
(iii) Qualifications	Not less than seven years practice as Advocate in the High Court or Courts subordinate thereto.

(iv) Procedure for Selection	Advertisements are issued and interviews are held. No written test is conducted.
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EXTRACTS OF THE GOA CIVIL SERVICE (JUDICIAL BRANCH) RULES, 1992

18 - Appointment to Posts in Grade I :

(a) Appointment to posts in Grade I shall be made by the Governor -

(i) by promotion from amongst members Grade II Selected by the High Court:

Provided that a member of Grade II Junior Branch shall not be eligible to be considered for promotion unless he has put in ten years of service.

(ii) by nomination on the recommendation of the High Court from members of the Bar who have been for not less than seven years, practising as Advocates in the High Court or Courts subordinate thereto:

Provided that the proportion of posts filled in by nomination shall as far as possible be equal.

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GUJARAT

(i) Rules	The Gujarat Judicial Service Recruitment Rules, 1961
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	(Relevant Rules annexed).
(ii) Quota	50%.
(iii) Qualifications	Members of the Bar who have practised as advocates or pleaders for not less than seven years and recommended by the High Court. Provided that a person recruited at the age of not more than 45 years (except in the case of a person belonging to a community recognised as Backward by Government for the purpose of recruitment in whose case at the age of not more than 48 years) shall before he is appointed as a District Judge, be appointed in the first instance to be an Asst. Judge for such period as may, on the recommendation of the High Court, be decided by Government on the merits of his case.
(iv) Procedure for Selection	The practice of calling for names of suitable members of the Bar from all District Judges in the State as well as Principal Officers of the City Courts in Ahmedabad for being considered for appointment to the post of District Judge has been adopted so far. However, in the current practice of the selection procedure, advertisement is published in the local as well as national news-papers notifying the vacancies and inviting applications. The selection procedure is presently under process of the High Court.

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EXTRACT OF THE GUJARAT JUDICIAL SERVICE RECRUITMENT RULES, 1961

6 - Method of recruitment to the Senior Branch :

(1) The appointment to the post of the Principal Judge of the Ahmedabad City Civil Court shall be made by Governor in consultation with the High Court by selection from amongst the Judges of the City Civil Court or the District Judges, or the members of the Bar.

(2) (i) the appointment to the post of a District Judge shall be made by the Governor-

(a) in consultation with the High Court by promotion from amongst the members of the Junior Branch who have ordinarily served as Assistant Judges, or

(b) on the recommendation of the High Court from amongst members of the Bar who have practised as advocates or Pleaders for not less than seven years.

Provided that a person recruited at the age of not more than 45 years (except in the case of a person belonging to a community recognised as Backward by Government for the purpose of recruitment in whose case at the age of not more than 48 years) shall before he is appointed as a District Judge, be appointed in the first instance to be an Assistant Judge for such period as may, on the recommendation of the High Court, be decided by Government on the merits of his case;

Provided further that, ordinarily the number of posts to be filled in by promotion under sub-clause (a) shall be equal to the number of those to be filled on the recommendation of the High Court from amongst members of the Bar under sub-clause (b).

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HARYANA

(i) Rules	Punjab Superior Judicial Service Rules, 1963. (Relevant Rules annexed).
(ii) Quota	25% of the cadre strength.
(iii) Qualifications	<p>Not less than 10 years as Advocate or a Pleader and is recommended by the High Court for such appointment.</p> <p>Not less than 35 years and not more than 45 years of age on the first day of January next following the year in which his appointment is made.</p>
(iv) Procedure for Selection	Post is notified by means of notification and the same is circulated to all the District and Sessions Judges in the States of Punjab, Haryana and U.T. of Chandigarh. On receipt of applications, eligible candidates are called for interview which is to be conducted by the Screening Committee. The report of the Screening Committee is considered by the Judges of the Full Court and recommendation is made to the

	Govt. for selection / appointment of the candidates.
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EXTRACT OF THE HARYANA STATE - PUNJAB SUPERIOR JUDICIAL SERVICE RULES, 1963

8 - Recruitment to Service :

District Judge

(i) by promotion from amongst the members of the Haryana Civil Service (Judicial Branch) who have completed not less than ten years continuous service as such and have held for an aggregate period of one year or more, any one or more of the following posts during that period of 10 years :

- (a) Senior Sub-Judge
- (b) Additional Senior Sub-Judge
- (c) Chief Judicial Magistrate
- (d) Additional Chief Judicial Magistrate, or
- (e) Judge of a Small Cause Court.

9 : Appointment of Direct Recruits

1. No person shall be eligible for Direct recruitment unless he :

- (i) is not less than 35 years and more than 45 years of age on the first day of January next following the year in which his appointment is made

(ii) has been for not less than 10 (Ten) years as Advocate or a Pleader and is recommended by the High Court for such appointment.

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HIMACHAL PRADESH

(i) Rules	The Himachal Pradesh Higher Judicial Service Rules, 1973 (Relevant Rules annexed)
(ii) Quota	1/3rd by direct recruitment and 2/3rd by promotion; Provided that nothing in this rule shall prevent the officiating appointment of a member of the Himachal Pradesh Judicial Service on any post which is to be filled up by direct

	<p>recruitment, till a direct recruit is appointed.</p> <p>Provided further that the direct appointments to the service shall be subject to the orders regarding reservation in the service for SC/ST/Backward Classes issued by the Himachal Pradesh Government from time to time and made applicable to Such appointments in consultation with The High Court.</p>
(iii) Qualifications	<p>Has been for not less than 7 years an Advocate or a Pleader and is recommended by the High Court. Not less than 35 years and not more than 45 years of age on the first day of January next following the year in which his appointment is made.</p>
(iv) Procedure for Selection	<p>After holding an interview or an examination or both as may be prescribed by the High Court for such appointment.</p>

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EXTRACT OF THE HIMACHAL PRADESH HIGHER JUDICIAL SERVICE RULES, 1973

8 - Recruitment to Service :

(1) Recruitment to the Service would mean by promotion and direct recruitment in the following manner :

(a) 2/3 by promotion

(b) 1/3 by direct recruitment

Provided that this ratio would apply only to the recruitments to be made after the coming into force of these rules.

Provided further that nothing in this rule shall prevent the officiating appointment of a member of the Himachal Pradesh Judicial Service on any post which is to be filled up by direct recruitment, till a direct recruit is appointed.

Provided further that the direct appointments to the service shall be subject to the orders regarding reservation in the service for Scheduled Castes/Scheduled Tribes/Backward classes issued by the Himachal Pradesh Government from time to time and made applicable to such appointments in consultation with the High Court.

9 - (1) Appointment of direct recruits :

(1) No person shall be eligible for direct recruitment unless he :

- (i) is not less than 35 years and not more than 45 years of age on the first day of January next following the year in which his appointment is made.
- (ii) has been for not less than 7 years an Advocate or a Pleader and is recommended by the High Court, after, it has held an interview or an examination or both as may be prescribed by it, for such appointment.
- (iii) No person who is recommended by the High Court for appointment under Sub-rule(1) shall be appointed unless he is found physically fit by a Medical Board set up by the Governor and is also found suitable for appointment in all other respects.

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JAMMU & KASHMIR

(i) Rules	The Jammu & Kashmir Higher Judicial Service Rules, 1983 (Relevant Rules annexed).
(ii) Quota	<p>25% by direct recruitment and 75% by promotion.</p> <p>In case suitable candidates are not available for direct recruitment, posts reserved for that category shall be filled up by promotion.</p>
(iii) Qualifications	<p>Has at least 7 years continuous practice at the Bar as an Advocate or Pleader and is recommended by the High Court.</p> <p>Not more than 45 years of age on the first day of January of the year in which the advertisement inviting applications for the posts is issued.</p>
(iv) Procedure for Selection	<p>By holding an examination followed by an interview as may be prescribed by the High Court for such appointment.</p> <p>Every person who qualifies in the written examination shall be examined by a Medical Board constituted by the Director, Health Services of the respective Divisions and shall be called for interview only after the Board certifies that the candidate possesses sound physical and mental health.</p>

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EXTRACT OF THE JAMMU AND KASHMIR HIGHER JUDICIAL SERVICE RULES, 1983

Method of Recruitment :

4(1) Recruitment to the service shall be made -

- (a) 75% by promotion;
- (b) 25% by direct recruitment.

(2) In case suitable candidates are not available for direct recruitment posts reserved for that category shall be filled up by promotion.

5. (1) No person shall be eligible for direct recruitment unless he -

- (i) is a permanent resident of the State
 - (ii) is not more than 45 years of age on the first day of January of the year in which the advertisement inviting applications for the posts is issued;
 - (iii) has at least 7 years continuous practice at Bar as an Advocate or Pleader and is recommended by the High Court, after it has held examination followed by an interview as may be prescribed by it, for such appointment.

(2) Every person who qualifies in the written examination shall be examined by a Medical Board constituted by the Director, Health Services of the respective Divisions and shall be called for interview only after the Board certifies that the candidate possesses sound physical and mental health.

6. Direct recruitment - (1) Applications for direct recruitment to the service shall be invited by the Court by publishing a notice to that effect in the leading newspaper of State and shall be made in the form prescribed from time to time to be obtained from the Registrar of the Court on payment of the prescribed fee.

(2) The application shall be submitted to the Court by the candidate through the Registrar of the High Court. The application shall be accompanied by certificates of age, academic qualifications, standing as a legal practitioner and such other documents as may be required to be furnished.

7. Selection Committee : xxx

8 Procedure of selection : (1) The Section Committee referred to in rule 7 shall scrutinize the applications received and may thereafter hold such examination, as it may consider necessary for judging the suitability of the candidates. The Committee may call for interview such of the applicants who in its opinion have qualified for interview after scrutiny and examination.

(2) The marks to be allotted for examination and interview shall be determined by the Selection Committee.

(3) In assessing the merits of a candidate the Selection Committee shall have due regard to his professional ability, personality and health.

(4) The Selection Committee shall prepare a preliminary list of candidates in order of merit who in its opinion, are suitable for appointment to the service and place the same for consideration before the Court.

(5) The Court shall examine the recommendations of the Selection Committee and, having regard to the number of direct recruits to be taken, prepare a final list of candidates in order of merit and recommend the same to the Governor.

9. Appointments : xxx

10. Promotion of member of the Judicial Service : xxx

11. Appointments to be on rotational system : (1) Appointments to the service shall be made on the rotational system, the first three vacancies shall be filled by promotion of the members of the Judicial Service and the fourth vacancy shall be filled from the

list of direct recruit and so on.

(2) A roster shall be maintained as running account from year to year and will start at the commencement of a year at the point following the point which was utilized at the end of the previous year.

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KARNATAKA

(i) Rules	The Karnataka Judicial Services (Recruitment) Rules, 1983. (Relevant Rules annexed).
(ii) Quota	Not exceeding 33 2 %.
(iii) Qualifications	Must be practising on the last date fixed for submission of applications as an Advocate and must have so practised for not less than seven years as on such date. Must not have attained the age of 48 years on the last date fixed for submission of applications.

(iv) Procedure for Selection	There is no specific provision regulating the details of recruitment in respect of selection of candidates.
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EXTRACT OF THE KARNATAKA JUDICIAL SERVICES (RECRUITMENT) RULES, 1983

2 - Method of Recruitment, Minimum Qualification etc.,

District Judges

By promotion on the basis of seniority cum merit from the cadre of Civil Judges.

Provided that such number of posts as may be determined by the High Court from time to time, but not exceeding in the aggregate 33²% of the posts in the cadre of District Judges may be filled by direct recruitment.

NOTE : The High Court of Karnataka may, subject to these rules, adopt such procedure as it deems fit for selecting the candidates by direct recruitment or by promotion by seniority-cum-merit.

Qualifications :

For Direct Recruitment :

1. Must be holder of a degree in Law or equivalent qualification; and
2. Must be practising on the last date fixed for submission of application as an Advocate and must have so practised for not less than seven years as on such date.
3. Must not have attained the age of forty eight years on the last date fixed for submission of application.

Probation : Two years. During the period of probation he must undergo such training as may be specified by the High Court of Karnataka.

Officiation : 2 years.

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KERALA

(i) Rules (ii) Quota	Number of posts to be filled up or reserved to be filled up by direct recruitment shall be 1/3rd of the permanent posts in the categories of Selection Grade District Judges and District Judges taken together.
(iii) Qualifications	Shall not have completed 47 years of age on the first day of January of the year in which

	<p>applications for appointment are invited.</p> <p>Shall be a practising advocate and should have so practised for a period of not less than seven years.</p>
(iv) Procedure for Selection	<p>Notification is issued in leading newspapers, Kerala Gazette, ILR (Kerala series), K.L.J. & K.L.T. inviting applications. Chief Justice calls for reports about each candidate in a prescribed format which is kept in a confidential cover and placed before the Selection Committee at the time of oral examination. Maximum marks shall be 100. The cut off marks shall be 60%, except for SC/ST for whom it is 50%.</p>

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EXTRACT OF THE KERALA STATE HIGHER JUDICIAL SERVICE RULES, 1961

2. Method of appointment :

- (a) Appointment to category (1) shall be made by the High Court by promotion from category (2).
- (b) Appointment to category (2) shall be made by transfer from the category of Subordinate Judges in C.J.M.S. of Kerala Judicial Service or by direct recruitment from the Bar, provided that the number of posts in category (2) to be filled up or reserved to be filled up by direct recruitment shall be one-third of the permanent posts in categories (1) and (2) taken together.

Note : The rules relating to reservation of appointments (Rules 14 to 17) in Part II of the Kerala State and Subordinate Services Rules, 1958) shall apply to appointments by direct recruitment to category (2).

- (c) Appointment by promotion to category (1) and appointment by transfer to category (2) shall be made on the basis of merit and

ability, seniority being considered only where merit and ability are approximately equal.

Note : (i) Previous punishments shall be taken into account in determining the merit and ability of the candidate in the selection.

(ii) The District and Sessions Judges on other duty are also entitled to be considered for promotion to category (1) provided they are otherwise eligible.

3. Qualifications - (1) (a) & (b) - xxx

(2) (a) - xxx

(b) He shall not have completed 47 years of age on the first day of January of the year in which applications for appointment are invited.

(c), (d), (e) & (f) - xxx

Note: Category (1): Selection Grade District and Sessions Judge.

Category (2): District and Sessions Judge (including Additional District and Sessions Judge).

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MADHYA PRADESH

(i) Rules	Madhya Pradesh Uchchatar Nyayik Seva(Bharti Tatha Seva Sharten) Niyam, 1994. (Relevant Rules annexed).
(ii) Quota	Not to exceed 10% of the total permanent strength.
(iii) Qualifications	Has been for not less than seven years as advocate or a pleader. Has attained the age of 35 years and not attained the age of 48 years on the first of January of the year in which applications for appointment are invited.
(iv) Procedure for Selection	<p>(a) Written test (Two papers) - 100 marks each.</p> <p>(b) Interview - 25 marks.</p> <p>Candidates who secure 55% Marks in the aggregate in the two papers (except SC/ST for whom the aggregate is 45%) will be called for interview.</p>

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EXTRACTS OF THE MADHYA PRADESH UCHCHATAR NYAYIK SEVA NIYAM 1994

7 : Qualification for Direct Recruitment :

No person shall be eligible for appointment by direct recruitment

unless

- (a) he is a citizen of India;
- (b) he has attained the age of 35 years and has not attained the age of 48 years on the first of January of the year in which applications for appointments are invited;
- (c) he has been for not less than seven years as Advocate or a Pleader;
- (d) he has good character and is of sound health and free from any bodily defect which renders him unfit for such appointment.

The procedure of selection for direct recruitment and promotion to categories (a), (b) and (d) of Rule 3(1) be such as may be prescribed by the High Court.

5 : Method of Appointment :

- (2) (b) The appointments shall be made by selection on the basis of merit cum seniority.

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MAHARASHTRA

(i) Rules	The Bombay Judicial Service Recruitment Rules, 1956 (Relevant Rules annexed).
(ii) Quota	50%
(iii) Qualifications	With not less than seven years as advocate or pleader in the High Court or Courts subordinate thereto and recommended by the High Court.
(iv) Procedure for Selection	Advertisement is issued and interview is held as per the guidelines of the Full House for the purpose of selection. No Written test is conducted.

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EXTRACTS OF THE BOMBAY JUDICIAL SERVICE RECRUITMENT RULES, 1956

5 - Method of Recruitment to the Senior Branch

District Judges, Selection Grade District Judges and Judges of the Bombay City Civil Court :

(i) District Judges shall be of two grades namely:-

(a) District Judges: and

(b) Selection Grade District Judges.

i. District Judges € Appointments to the posts of District Judges shall ;

be made by the Governor -

(a) by transfer from the Judges in the City Civil and Sessions Court, Bombay, who are recruited from the Bar only if they are willing;

(b) by promotion, in consultation with the High Court, from the members of the Junior Branch who have been promoted as Additional District Juidge; and

(c) by nomination, on the recommendation of the High Court, who has been for not less than seven years as advocate or pleader in the High Court or Courts subordinate thereto.

(iii) (a) Appointment under Sub-clause(c) of clause (ii) shall not be made unless a person is first appointed to work as an Additional District Judge on probation for a period of two years which may be extended by the High Court from time to time as it may deem fit.

(a-1) During the period of probation and until expressly confirmed by a written order, the services of an appointee shall be terminable by one month's notice on either side, without any reason being assigned therefor or by payment of salary for the period of notice or the unexpired portion thereof.

(a-2) He/She shall be required to pass the language examinations according to the rules prescribed in that behalf unless he has already passed or has been exempted from passing those

examinations.

(b) Ordinarily the proportion of posts filled in by promotion, under sub-clause (a) of Clause (ii) and those by appointment from members of the Bar under Sub-Clause (b) of Clause (ii) shall be 50:50.

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MANIPUR

(i) Rules	The Manipur Judicial Services Rules, 1976. (Relevant Rules annexed).
(ii) Quota	—
(iii) Qualifications	<p>Shall be a practising Advocate of a High Court or of a District Court in India and should have so practised for a period not less than 7 years.</p> <p>Shall not be less than 35 years and not more than 45 years of age on the first day of January of the year of recruitment.</p>
(iv) Procedure for Selection	Decision in this regard is taken by the Chief Justice or by any

	<p>Sub-Committee of Judges constituted as desired by the Chief Justice of the Gauhati High Court.</p> <p>A written test with 70 marks and viva voce test with 30 marks is followed by the Gauhati High Court. 60% is the cut off marks for selection.</p>
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EXTRACTS OF THE MANIPUR JUDICIAL SERVICES RULES, 1976

6 : Recruitment : (i) xxx

(ii) xxx

(iii) Appointment to the post of Grade I shall be made by the Governor by promotion from members of the Service who have been confirmed in Grade-II in consultation with the Gauhati High Court.

Provided that the appointment to the post of District Judge and Additional District Judge if need be, may be made from the Bar in accordance with these Rules on recommendation to the Gauhati High Court.

10 : Qualification for Direct Recruitment to the Service in Grade-I :

A candidate for direct recruitment from the Bar to the post of Grade-I, as provided in Rule 6 (iii) shall satisfy the following conditions, besides the general conditions as laid down under Rule 7 :

(i) He shall not be less than 35 years and not more than 45 years of age on the first day of January of the year of recruitment.

(ii) He shall be a practising advocate of a High Court or of a District Court in India and should have so practised for a period not less than 7 years.

Note: Grade I consists of the following:

District Judge

Additional District Judge

Registrar and Joint Registrar of Gauhati High Court.

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MEGHALAYA

(i) Rules	The Meghalaya Judicial Service Rules, 1988. (Relevant Rules annexed).
(ii) Quota	Not more than 1/3rd of the posts.
(iii) Qualifications	Shall be a practising Advocate of the High Court or of a

	<p>District Court and should have so practised for a period not less than 7 years.</p> <p>Shall not have completed 45 years of age on the first day of January of the year of recruitment.</p>
(iv) Procedure for Selection	<p>Decision in this regard is taken by the Chief Justice or by any Sub-Committee of Judges constituted as desired by the Chief Justice of the Gauhati High Court.</p> <p>A written test with 70 marks and viva voce test with 30 marks is followed by the Gauhati High Court. 60% is the cut off marks for selection.</p>

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EXTRACTS OF THE MEGHALAYA JUDICIAL SERVICE

RULES, 1988

4 (3) - Composition of the Service :

Each of the categories in schedule 'A' shall form an independent cadre and members of one category shall have no claim for appointment to a higher category except in accordance with the provisions of these rules.

6 (a) : Recruitment to any post in the service after the commencement of these rules shall be made by the following methods, namely :

(a) Appointment to any post in Grade-I shall be made by the Governor either by promotion from Grade II in consultation with the High Court or by direct recruitment from the Bar on the recommendation of the High Court :

Provided that not more than one third of the posts may be filled up by direct recruitment.

7 (2) : Qualification for Appointment :

(1) Appointment to any post in Grade I and Grade II by promotion from the next grade below shall be made on the ground of merit and ability, seniority being considered only when merit and ability are approximately equal.

(2) A candidate for direct recruitment from the Bar to any post in Grade I shall satisfy the following conditions, besides general conditions laid-down under rule 9, that is -

(a) shall not have completed 45 years of age on 1st day of January of the year of recruitment; and

(b) shall be a practising advocate of the High Court or of a District Court and should have so practised for a period of not less than 7 years.

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MIZORAM

(i) Rules	The Mizoram Judicial Service Rules, 1989. (Relevant Rules Annexed).
(ii) Quota	Upto 25% of the posts.
(iii) Qualifications	<p>Shall be a practising Advocate of any Court in India for a period of not less than seven years.</p> <p>Shall not be less than 30 years and not more than 45 years on the 1st day of January in the year in which the recruitment is made, which is relaxable upto 5 years for SC/ST.</p>
(iv) Procedure for Selection	<p>Decision in this regard is taken by the Chief Justice or by any Sub-Committee of Judges constituted as desired by the Chief Justice of the Gauhati High Court.</p> <p>A written test with 70 marks and viva voce test with 30 marks is prescribed by the Gauhati High Court.</p> <p>60% is the cut off marks for selection.</p>

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EXTRACT OF THE MIZORAM JUDICIAL SERVICE RULES, 1989

8 : Qualification for Recruitment to the Service in Grade I, Grade II and III

(1) Appointment to the service in the Grade I, II and III, except for the vacancies in the post of Asst. Registrar, Deputy Registrar or Registrar of the High Court, as the case may be shall be made by the Governor in consultation with, and on the recommendation of the High Court, by promotion from the next grade below from the permanent members of the Service, on the basis of merit-cum-seniority.

(2) In the case of failure to fill up the posts in the Grade I, II, III by promotion from the permanent members of the service, in Grade II, III and IV respectively upto 25% of the vacancies may be filled up by direct recruitment from the Bar on the recommendation of the High Court.

Provided that a candidate for such recruitment from the Bar under sub-rule (2) shall not be less than thirty years and not more than fortyfive years on the 1st day of January in the year in which the recruitment is made, which is relaxable upto five years for Scheduled Castes and Scheduled Tribes, and shall be a practising advocate of any court in India for period of not less than seven years for Grade I and five years for Grade II.

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NAGALAND

(i) Rules	The Nagaland Judicial Service Rules, 1995. (Relevant Rules annexed),
(ii) Quota	25% of the posts.
(iii) Qualifications	<p>Shall be a practising Advocate of the High Court or of the District Court and should have practised for a period of not less than 7 years.</p> <p>Shall not have completed 45 years of age on the first day of January of the year of recruitment.</p>
(iv) Procedure for Selection	<p>Decision in this regard is taken by the Chief Justice or by any Sub-Committee of Judges constituted as desired by the Chief Justice of the Gauhati High Court.</p> <p>A written test with 70 marks and viva voce test with 30 marks is prescribed by the Gauhati High Court.</p> <p>60% is the cut off marks for selection.</p>

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EXTRACT OF THE NAGALAND JUDICIAL SERVICE RULES, 1995

6 : Method of Recruitment

(4) Recruitment to the post of the service after the commencement of these rules shall be made by the following methods :

(a) Appointment to the post of Grade-I shall be made by the Governor either by promotion from Grade-II in consultation with the High Court or by direct recruitment from the Bar on the recommendation of the High Court.

Provided that 25% of the posts shall be filled by direct recruitment.

9 : Qualification for Recruitment to the Service in Grade I & II :

(2) A candidate for direct recruitment from the Bar to the post of Grade I shall satisfy the following conditions besides the general conditions laid down in Rule 10.

(i) Shall not have completed 45 years of age on the first day of January of the year of recruitment.

(ii) Shall be a practising Advocate of the High Court or of the District Court and should have practiced for a period of not less than 7 years.

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ORISSA

(i) Rules	Orissa Superior Judicial Service Rules, 1963 (Relevant Rules annexed).
(ii) Quota	Not exceeding 25%.
(iii) Qualifications	At least seven years standing at the Bar on the 1st August of the year in which the advertisement for receipt of applications is published. Not under 35 years of age and not over 45 years of age on the 1st August of the year in which the advertisement for receipt of applications is published.
(iv) Procedure for Selection	<p>(a) Written test (2 papers)- 200 marks.</p> <p>(b) Viva voce test - 30 marks</p> <p>(c) Length of service - 5 marks</p> <p>(d) Career in law - 5 marks</p> <p>Candidates are called for viva voce test provided they obtain 50% of marks in each of the two papers.</p>

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EXTRACT OF THE ORISSA SUPERIOR JUDICIAL SERVICE RULES, 1963

7 : When a vacancy occurs in the Senior Branch of the Service, Government shall decide in consultation with the High Court whether it may be filled up by direct recruitment or promotion.

Provided that the number of direct recruits in the Senior Branch of the Service shall not exceed twentyfive percent of the cadre posts mentioned in sub-rule 2 of rule 4.

8 : (1) Direct Recruitment to the Senior Branch of the service shall be made from the Bar.

(2) Reservation of twenty three per cent for the members of the scheduled tribes and fifteen per cent for the members of scheduled castes of the vacancies available in direct recruits to the Senior Branch of the service shall be made provided that they are found suitable in every respect for appointment to the said service.

(3) Candidates for direct recruitment to Senior Branch of the service shall -

(i) be of at least 7 years standing at the Bar on the 1st August of the year on which the advertisement for receipt of applications is published; and

(ii) not be under 35 years of age and over 45 years of age on the 1st August of the year in which the advertisement receipt of applications is published.

(4) The High Court shall for each vacancy open to direct recruit to the Senior Branch of the service, furnish to Government a list

of two candidates in order of merit and Government shall appoint one of them after satisfying themselves as to the character and antecedents of the selected candidates.

(5) Selected candidates shall be physically fit and shall be required to appear before the State Medical Board before final appointment.

9 : (1) Whenever a vacancy in the Senior Branch of the Service is decided to be filled up by promotion the Government shall fill up the same after due consideration of the recommendation of the High Court in accordance with sub rule (2);

(2) The High Court shall recommend for appointment to such vacancy, an officer of the Junior Branch of the Service, who in the opinion of the High Court is the most suitable for the purpose;

Provided that if for any reason, Government are unable to accept the recommendations as aforesaid they may call for further recommendations from the High Court to fill up the vacancy.

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PONDICHERRY

(i) Rules	Pondicherry Judicial Service (Cadre and Recruitment Rules, 1996 (Relevant Rules annexed).
(ii) Quota	Not exceeding 33.33% of the posts in the cadre.
(iii) Qualifications	<p>Not less than 7 years experience at the Bar.</p> <p>Must not have attained the age of 48 Years.</p>
(iv) Procedure for Selection	<p>The selection shall be made by a Committee of five Judges of the High Court constituted for this purpose by the Full Court of the High Court, the Chief Secretary to Govt. of Pondicherry and the Secretary (Law), Govt. of Pondicherry.</p> <p>A viva voce examination with 100 marks is held to test the candidates' general knowledge, grasp of principles of law and suitability for appointment. Minimum marks for pass shall be 30 for candidates belonging to SC/ST/OBC and 40 for others.</p>

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EXTRACT OF THE PONDICHERRY JUDICIAL SERVICE (CADRE AND RECRUITMENT) RULES, 1996

9 : Method of Recruitment :

(a) District Judge -

(i) by promotion on the basis of seniority cum merit from the cadre of Civil Judge (Senior Division) :

Provided that such number of posts as may be determined by the High Court from time to time but not exceeding in the aggregate 332% of the posts in the cadre of District Judge may be filled by direct recruitment; and

(ii) by direct recruitment from the Bar on the basis of viva voce examination conducted by the High Court as specified in the Annexure.

(b) xxx

(c) xxx

ANNEXURE TO RULES

DISTRICT JUDGE

1. (a) The High Court may, if considered necessary, invite applications to select person for appointment as District Judge.

(b) The selection of District Judge shall be made by a Committee of five Judges of the High Court constituted for this purpose by the Full Court of the High Court, the Chief Secretary to Government of Pondicherry and the Secretary (Law), Government of Pondicherry. Such Committee shall be called as "Committee for Selection of District Judge".

(c) The said Committee shall, by notification, invite application indicating therein the classification of vacancies and all other necessary particulars.

2. A candidate shall, along with his application, produce from the Presiding Officer of the Court in which he is actually practising, a certificate indicating the length of his practice; and remit such fee as may be specified in the notification inviting applications. Applications received without such fee shall be rejected. Fee once paid shall not be refunded.

3. Viva Voce - The candidates' general knowledge, grasp of principles of law and suitability for appointment as District Judge shall be tested.

The maximum marks for viva voce examination shall be 100. The minimum marks for pass shall be 30 for candidates belonging to Scheduled Castes and Scheduled Tribes and other Backward Classes (OBC) and 40 for others.

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PUNJAB

(i) Rules	Punjab Superior Judicial Service Rules, 1963. (Relevant Rules annexed).
(ii) Quota	1/4th of the total number of cadre posts.
(iii) Qualifications	<p>Has been for not less than 10 years an Advocate or Pleader and is recommended by the High Court for such appointment.</p> <p>Not less than 35 years and not more than 45 years of age on the first day of January of next following the year in which his appointment is made.</p>
(iv) Procedure for Selection	Post is notified by means of notification and the same is circulated to all the District and Sessions Judges in the States of Punjab & Haryana and U.T. Chandigarh.

	On receipt of applications, eligible candidates are called for interview which is to be conducted by the Screening Committee. The report of the Screening Committee is considered by the Judges of the Full Court and recommendation is made to the Govt. for selection / appointment of the candidates.
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EXTRACT OF THE PUNJAB SUPERIOR JUDICIAL SERVICE RULES, 1963

9 - Appointment of direct recruits :

(1) No person shall be eligible for Direct recruitment unless he -

- (i) is not less than 35 years and more than 45 years of age on the first day of January next following the year in which his appointment is made;
- (ii) has been for not less than 10 years an Advocate or Pleader and is recommended by the High Court for such appointment.

(2) No person who is recommended by the High Court for appointment as under sub-rule(1) shall be appointed unless he is found physically fit by the Medical Board set up by the Governor and is also found suitable for appointment in all other respects.

Amended Rule No. 2 :

(2) In the Punjab Superior Judicial Service Rules, 1963 (Hereinafter referred to as the said rules), in rule 8, for sub-rule (2), the

following sub-rule shall be substituted, namely:-

"(2) Of the total number of cadre posts, three-fourth shall be manned by promoted Officers and one-fourth by direct recruits."

Provided that nothing in this sub-rule shall prevent the officiating appointment of a member of the Punjab Civil Services (Judicial Branch) on any post which is to be filled up by direct recruitment, till a direct recruit is appointed.

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RAJASTHAN

(i) Rules	The Rajasthan Higher Judicial Service Rules, 1969 (Relevant Rules annexed).
(ii) Quota	Direct Recruitment is made in the ratio of 1:3 with a rider that the total of direct recruitees shall at no time exceed one third of the cadre strength.
(iii) Qualifications	Must have attained the age of 35 years and must not have

	attained the age of 45 years on the first day of January preceding the last date fixed for submission of the application.
(iv) Procedure for Selection	The High Court shall scrutinise the applications and call for interview only those who, in its opinion, are fit to be called for that purpose. Such candidates shall be interviewed by a Committee constituted by the High Court consisting of the Chief Justice, the Administrative Judge and two other Judges. The recommendations of the Committee shall be placed before the Full Court with the relevant record and the Court shall make the final selection of the candidates suitable for appointment to the service in order of merit.

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EXTRACT OF THE RAJASTHAN HIGHER JUDICIAL SERVICE RULES, 1969

part iii - principles and procedure of recruitment and promotion

9 - APPOINTMENT TO THE SERVICE :

(1) Subject to the provisions of these rules, appointment of persons to the service shall be made by the Governor on the recommendation of the Court made from time to time;

Provided that the number of persons appointed to the service by direct recruitment shall at no time exceed one third of the total strength of the service.

(2) Subject to the provisions of sub-rule (1), after every three persons appointed by promotion, the fourth persons shall, as far as possible, be appointed by direct recruitment. If a suitable person is not available for appointment for direct recruitment, the post may be filled by promotion from amongst the members of the Rajasthan Judicial Service.

14 - Age :

A candidate for direct recruitment to the service must have attained the age of 35 years and must not have attained the age of 45 years on the first day of January preceding the last date fixed for submission of the application;

Provided that for direct recruitment in the year 1968, 1969, 1970, 1971 and 1972 the upper age limit shall not apply to any candidate who is a Released Commissioned Officer as defined in clause (e) of sub-rule(i) of rules of the Rajasthan Civil Services (Recruitment of Released Emergency Commissioned and Short Services Commissioned Officers) Rules, 1968, if he fulfils the qualifications laid down in rule 15.

15 - Qualifications :

A candidate for direct recruitment to the service -

(i) must be a citizen of India, and

(ii) must be an advocate who has practised in the Court or Courts subordinate thereto for a period of not less than seven years.

20 - Scrutiny of application and interview :

(1) The Court shall scrutinise the applications received in accordance with the provisions of rule 19 and thereafter call for interview only those who, in its opinion, are fit to be called for that purpose.

(2) Such candidates shall be interviewed by a Committee constituted by the Court consisting of the Chief Justice, the Administrative Judge and two other Judges.

(3) The recommendation of the Committee shall be placed before the Full Court with the relevant record and the Court shall

make the final selection of the candidate or candidates suitable for appointment to the service in order of merit.

(4) Notwithstanding anything hereinbefore contained; if the number of persons selected in accordance with the above mentioned provisions is less than the number of posts required to be filled by direct recruitment, the Court may select persons to fill the remaining vacancies even from amongst those advocates who have not applied under rule 19 but fulfill the qualifications laid down in Clause (ii) of rule 8 and are considered to be fit for appointment to the service.

21 - List of candidates selected by direct recruitment :

The Court shall prepare a list of all the candidates whom it considers suitable for appointment to the service arranging their names in the order in which they are to be appointed and shall recommend their names to the Governor for appointment to the Service having regard to the provisions of rule 9.

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SIKKIM

(i) Rules	Sikkim Superior Judicial Service Rules, 1980. (Relevant Rules annexed).
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(ii) Quota	1/3rd of the total number of posts.
(iii) Qualifications	<p>Has been for not less than 7 years, an Advocate or a Pleader and is recommended by the High Court for such appointment.</p> <p>Not less than 35 years and not more than 45 years of age on the first day of January next following the year in which his appointment is made.</p>
(iv) Procedure for Selection	Selection is done on the basis of an interview to be conducted by Chief Justice & Judges of the High Court.

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EXTRACT OF THE SIKKIM SUPERIOR JUDICIAL SERVICES RULES, 1980

7 - Recruitment to Service :

(1) Recruitment to the service shall be made:-

- (i) by promotion from the Sikkim Judicial Service; or
- (ii) by direct recruitment.

Note : Notwithstanding the provisions of sub-rule 1 (i) and (ii) persons may be appointed against any of the posts in Appendix

"A" on deputation from the Judicial Service of other States in India for a period of five years from the commencement of these rules. This period of 5 years may be further extended by the Governor in consultation with the High Court if the circumstances so warrant.

(2) Of the total number of posts specified in Appendix "A" two-thirds shall be manned by promoted officers and one-third by direct recruits, if filled by promotion or direct recruitment as the case may be.

Provided that nothing in this sub-rule shall prevent the officiating appointment of a member of the Sikkim Judicial Service on any post which is to be filled up by direct recruitment till a direct recruit is appointed.

8 - Appointment of Direct Recruits :

(1) No person shall be eligible for direct recruitment unless he -

- (i) is not less than 35 years and not more than 45 years of age on the first day of January next following the year in which his appointment is made;
- (ii) has been for not less than 7 years, an advocate or a pleader and is recommended by the High Court for such appointment.

(2) No person who is recommended by the High Court for appointment under sub-rule (ii) shall be appointed unless he is found physically fit by a Medical Board set up by the Governor and is also found suitable for appointment in all other respects.

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TAMIL NADU

(i) Rules	The Tamil Nadu State Judicial Service (Cadre and
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	Recruitment) Rules, 1995. (Relevant Rules annexed).
(ii) Quota	In the ratio of 1 : 5.
(iii) Qualifications	Must be practising on the date of notification as an advocate or pleader for not less than seven years. Must not have attained the age of 48 years on the 1st July of the year in which the selection for appointment is made.
(iv) Procedure for Selection	Seven Judges as nominated by the Chief Justice will conduct interview (viva voce) and send a panel of names for consideration of Government for appointment.

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EXTRACT OF THE TAMIL NADU STATE JUDICIAL SERVICE (CADRE AND RECRUITMENT) RULES, 1995

5. Method of Appointment, Qualification and Age :

1. District Judge (Supertime Scale) - xxx

2. District Judge

i) By direct recruitment -

1. Must be a holder of a degree in law and

2. Must be practising on the date of Notification as an Advocate or Pleader and must have so practised for a period of not less than seven years as on such date.

3. Must not have attained the age of forty eight years on the 1st July of the year in which the selection for appointment is made.

i. By promotion on the basis of seniority-cum-merit from the category
of Civil Judge (Senior Division / Chief Judicial Magistrate).

The ratio between the direct recruits and promotees shall be 1: 5.

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TRIPURA

(i) Rules	Tripura Judicial Service Rules, 1974. (Relevant Rules annexed).
(ii) Quota	25% of posts.
(iii) Qualifications	<p>Shall be a practising Advocate of any Court in India and should have so practised commendably for a period of not less than 7 years.</p> <p>Shall not be less than 35 years and more than 45 years on the first day of January of the year of recruitment.</p>
(iv) Procedure for Selection	<p>Decision in this regard is taken by the Chief Justice or by any Sub-Committee of Judges constituted as desired by the Chief Justice of the Gauhati High Court.</p> <p>A written test with 70 marks and viva voce test with 30 marks is prescribed by the Gauhati High Court. 60% is the cut off marks for selection.</p>

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EXTRACT OF THE TRIPURA JUDICIAL SERVICE RULES, 1974

6 - Recruitment :

6 (3) : Recruitment to the other posts of the service after commencement of these rules shall be made by the following methods:-

(b) : Appointment to the posts in Grade I other than the Legal Remembrancer and Secretary, Law Department and the Registrar, High Court, shall be made by the Governor by promotion from Grade II in consultation with the High Court and by direct recruitment from the Bar on the recommendation of the High Court.

Provided that 25% of the posts shall be reserved to be filled up by direct recruitment.

7 - Qualification for Recruitment to the Service in Grade I

and Grade II :

(1) Appointment to the post of Grade I and Grade II by promotion from the next grade below shall be made on the ground of merit-cum-seniority.

(2) A candidate for direct recruitment from the Bar to the post of Grade I shall satisfy the following conditions, besides general conditions laid down under rule 9:

(i) he shall not be less than 35 years and more than 45 years on the first day of January of the year of recruitment:

(ii) he shall be a practising advocate of any court in India and should have so practised commendably for a period of not less than 7 (seven) years.

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UTTAR PRADESH

(i) Rules	The Uttar Pradesh Higher Judicial Service Rules, 1975. (Relevant Rules annexed).
(ii) Quota	15% of the vacancies.
(iii) Qualifications	Pleaders and Advocates of not less than seven years standing on the first day of January next following the year in which the notice inviting applications is published.
(iv) Procedure for Selection	<p>Vacancies are notified in news papers.</p> <p>Scrutiny of the applications received is made by the Selection Committee - normally comprising of three sitting Judges of the High Court.</p> <p>A written test comprising of two papers is held. The first paper contains the questions on substantive law (including U.P. Local Acts) and the other paper is of procedural law. Both papers carry 150 marks each. The candidates who in the</p>

	<p>opinion of the Selection Committee qualify after scrutiny of applications and written test are called for interview, which carry 100 marks. The cut-off marks shall be 45% in the general category and 35% in the reserve category. The candidates are called for interview in the ratio of 1:4. The report of the Committee is placed in Judges' meeting and thereafter, recommendation is forwarded to Govt.</p>
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EXTRACT OF THE UTTAR PRADESH HIGHER JUDICIAL SERVICE RULES, 1975

5 - Sources of Recruitment - The recruitment to the service shall be made -

- (a) by direct recruitment of pleaders and advocates of not less than seven years standing on the first day of January next following the year in which the notice inviting applications is published;
- (b) by promotion of confirmed members of the Uttar Pradesh Nyayik Seva (hereinafter referred to as the Nyayik Seva), who have put in not less than seven years service to be computed on the first day of January next following the year in which the notice inviting applications is published.

Provided that for so long as suitable officers are available from out of the dying cadre of the Judicial Magistrates, confirmed officers who have put in not less than seven years service to be computed as aforesaid shall be eligible for appointment as Additional Sessions Judges to the service.

Explanation - When a person has been both a pleader and an advocate his total standing in both the capacities shall be taken into account in computing the period of seven years under clause (a).

6 - Quota - Subject to the provisions of Rule 8, the quota for various sources of recruitment shall be -

- (i) direct recruitment from the Bar 15%
- (ii) Uttar Pradesh Nyayik Sewa 70% of the vacancies
- (iii) Uttar Pradesh Judicial Officers 15%

Service (Judicial Magistrates)

Provided that where the number of vacancies to be filled in by any of these sources in accordance with the quota is in fraction, less than half shall be ignored and the fraction of half or more shall ordinarily be counted as one;

Provided further that when the strength in the cadre of the Judicial Magistrates gradually gets, depleted or is completely exhausted and suitable candidates are not available in requisite numbers or no candidate remains available at all, the shortfall in the number of vacancies required to be filled from amongst Judicial Magistrates and in the long run all the vacancies, shall be filled by promotion from amongst the members of the Nyayik Sewa and their quota shall, in due course, become 85 per cent.

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WEST BENGAL

(i) Rules	The West Bengal Higher Judicial Service (Direct Recruitment) Rules, 1956.
(ii) Quota	?th of the posts.
(iii) Qualifications	<p>Has been for not less than seven years an Advocate or a Pleader and is recommended by the High Court for such appointment.</p> <p>Not less than 35 years and not more than 45 years of age on such date as the State Government may fix in this behalf.</p>
(iv) Procedure for Selection	<p>Applications shall be invited by the State Government and on receipt shall be forwarded to the High Court with a view to enabling the High Court to make its recommendations for the purpose of filling the vacancy.</p> <p>However, direct recruitment has been rescinded since 1977.</p>

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LAKSHADWEEP

LACCADIVE, MINICOY AND AMINDIVI ISLANDS (CIVIL COURTS) REGULATION 1965

8 - Direct Recruitment (Mixed Cadres) :

No recruitment rules have been framed for the post of District Judge. The post of District Judge was created upgrading the post of Sub Judge and the incumbent holding the post of Sub Judge was promoted and posted as District Judge on the recommendation of the High Court of Kerala. Necessary provision for direct recruitment etc., will be incorporated while drafting the recruitment rules for the post of District Judge in consultation with the High Court of Kerala in due course.

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QUOTA FOR DIRECT RECRUITMENT PRESCRIBED UNDER SERVICE RULES :

10.20 The Judicial Service Rules of States and Union Territories have prescribed varying quota for recruitment of District Judges.

10.21 Such Rules of recruitment of Maharashtra, Goa and Gujarat provide for reservation of 50% of the posts for direct recruitment of District Judges.

10.22 The Judicial Service Rules of Andhra Pradesh, Assam, Bihar, Delhi, Himachal Pradesh, Karnataka, Kerala, Rajasthan, Sikkim and Pondicherry provide for 2rd of the cadre posts.

10.23 The respective Rules of Punjab, Haryana, Jammu & Kashmir, Mizoram, Nagaland, Orissa and Tripura provide for 25% reservation.

10.24 The Tamil Nadu Judicial Service Rules provide for 1:5 ratio for direct recruitment and promotion.

10.25 The Uttar Pradesh Judicial Service Rules prescribe 15% of the cadre strength, while the Madhya Pradesh Judicial Service Rules prescribe only 10%.

10.26 In West Bengal, for the present, there is no direct recruitment to the cadre of District Judges. Perhaps, from 1977, they have suspended the direct recruitment. The posts are filled only by promotion. They have, however, stated that they are reconsidering the issue.

10.27 But the High Courts, State Governments and Service Associations, in their response to the Commission's general Questionnaire, have suggested as under:

Views of High Courts :

10.28 The High Courts of Andhra Pradesh (1/3 & 2/3), Delhi (1/3 & 2/3), Gujarat (50 : 50), Himachal Pradesh (25 : 75), Jammu

& Kashmir (25 : 75), Karnataka (1/3 & 2/3), Kerala (1/3 & 2/3), Bombay (Maharashtra) (50 : 50), Orissa (25 : 75), Punjab & Haryana (25 : 75), Madras (Tamil Nadu) (1 : 5) and Allahabad (Uttar Pradesh) (15 : 85) have favoured continuation of the existing quota (percentage) between the Direct Recruits and the Promotees respectively.

10.29 The High Courts of Gauhati, Patna and Madhya Pradesh have not furnished their views on the proper percentage for direct recruitment.

10.30 The High Court of Rajasthan has suggested that direct recruitment can only be made on rotational basis (3 promotions and 1 by direct recruitment as far as possible).

10.31 The High Court of Sikkim has opined that there is no need for any direct recruitment.

10.32 The High Court of Calcutta has suggested that direct recruitment should not exceed 20% of the recruitment in a particular year.

VIEWS OF STATE GOVERNMENTS :

10.33 Many of the State Governments have concurred with the views of their respective High Courts with the exception of Gujarat and Maharashtra.

10.34 The Government of Gujarat has suggested that the percentage may be fixed at 25% whereas the Government of Maharashtra have favoured only 30%.

10.35 The Government of Assam, Bihar, Delhi, Himachal Pradesh, Jammu & Kashmir, Orissa, Punjab & Haryana and Rajasthan have not furnished their opinion.

VIEWS OF SERVICE ASSOCIATIONS :

10.36 The Judicial Officers' Association of Andhra Pradesh, Assam, Bihar, Himachal Pradesh, Goa, Sikkim, Tamil Nadu, Uttar Pradesh and Tripura have not responded on the adequate percentage to be earmarked for direct recruitment to the cadre of District Judges.

10.37 The Judicial Officers' Associations of Delhi, Madhya Pradesh, Meghalaya, Orissa and West Bengal have not favoured any direct recruitment to the cadre of District Judges.

10.38 The Judicial Officers' Association of Gujarat favoured 33% direct recruitment from the Bar, whereas the Judicial Officers' Association of Karnataka has favoured direct recruitment not exceeding 2nd of the total posts and not more than 5 at one time.

10.39 The Judicial Officers' Association of Kerala wants to have direct recruitment at the ratio of 1 : 8.

10.40 The Maharashtra Judicial Officers' Association has suggested that the direct recruitment should be restricted to 25% only. Similar is the suggestion made by the Association of Punjab Judicial Officers.

10.41 The Judicial Officers' Association of Haryana has favoured 10% for direct recruitment.

10.42 The All India Judges' Association suggested not more than 25% direct recruitment.

JURIST :

10.43 Justice Sri R.S. Sarkaria, former Judge, Supreme Court of India, has favoured the ratio of 33 : 67.

AGE LIMIT PROVIDED UNDER THE SERVICE RULES :

10.44 Here again, we do not find any uniformity either as to the minimum age or maximum age for recruitment of District Judges.

10.45 In the Service Rules of Himachal Pradesh, Rajasthan, Orissa, Punjab & Haryana, Sikkim and Delhi, the age range of 35 to 45 has been prescribed.

10.46 Madhya Pradesh Judicial Service Rules provide for 35 to 48 years.

10.47 The Rules of Higher Judicial Service of Andhra Pradesh, Assam, Gujarat, J & K, Meghalaya and Nagaland specify only the upper age limit of 45 and no minimum age has been prescribed.

10.48 Such Rules of Kerala prescribe the maximum age limit of 47, while Karnataka, Tamil Nadu and Pondicherry Judicial Service Rules specify 48 years, but no minimum age has been prescribed.

10.49 The Uttar Pradesh Judicial Service Rules point out the other way about. Only the minimum age limit of 35 has been specified. No upper age limit has been provided.

10.50 The Rules of Bihar, Maharashtra and Goa do not provide either maximum or minimum age limit for recruitment.

10.51 However it is understood that in Maharashtra, in the two selections made in the years 1989 and 1992, the candidates recruited were between the age group of 33 and 50 years.

10.52 As regards Bihar, the High Court of Patna, in the meeting held on 22-11-1997 resolved that candidates who have not completed the age of 35 years and those who have already completed the age of 50 years on the last date of receipt of the applications, as specified in the advertisement, shall not be eligible for consideration for such appointment to the post of District Judge.

VIEWS OF HIGH COURTS :

10.53 Some of the High Courts are of the view that direct recruitment for District Judge must be from persons who are between 35-45 years. Those High Courts are: (1) Delhi; (2) Himachal Pradesh; (3) Bombay (Maharashtra); (4) Punjab & Haryana and (5) Rajasthan.

10.54 The High Court of Andhra Pradesh has indicated that the minimum age of 35 be uniformly followed by all the States.

10.55 The Gauhati High Court is of opinion that the age of the candidates may be between 35 and 40.

10.56 The High Courts of Karnataka and Calcutta have stated that the direct recruitment should not be from those below 40 years though their Rules of recruitment do not provide for any minimum age. Whereas, the High Court of Patna has opined that the candidates should not be below 45 years.

10.57 The Allahabad High Court has suggested 40 to 45 years for direct recruitment.

10.58 The Kerala High Court does not wish to have any age restriction save the Constitutional requirement of Bar experience.

10.59 The Madras High Court has preferred to have direct recruitment of District Judges from candidates who are between 35-38 years.

10.60 The High Court of Madhya Pradesh has reiterated the age prescribed in their service Rules, viz., 35-48 years.

10.61 The High Courts of Gujarat, J & K, Orissa and Sikkim have not responded on this aspect.

VIEWS OF STATE GOVERNMENTS :

10.62 The Governments of Karnataka, Kerala, Maharashtra and Uttar Pradesh have concurred with the suggestion made by their respective High Courts.

10.63 The Government of Andhra Pradesh does not share the views of the Andhra Pradesh High Court. The Government has stated that for direct recruitment, the age must be between 40 to 45 years as against the High Court's view of 35 years as the minimum.

10.64 The Government of Tamil Nadu is bit liberal on this matter. They have stated that the candidates upto the age of 48 years could be considered for recruitment of District Judges.

10.65 The Government of West Bengal wants only the minimum age of 35.

10.66 The Government of Nagaland favours that existing upper age limit of 40 years should be allowed to continue for selection to the post of Deputy Commissioner (Judicial).

10.67 The other State Governments are silent on this matter.

VIEWS OF SERVICE ASSOCIATIONS :

10.68 The Judicial officers' Associations of Andhra Pradesh, Karnataka, Kerala, Maharashtra and Rajasthan want that the minimum age of 40 should be prescribed for direct recruitment of District Judges.

10.69 The Judicial Officers' Associations of Haryana, J & K and Orissa have suggested for 40 to 45 years.

10.70 The Delhi Judicial Officers' Service Association is in favour of 42 to 45 years.

10.71 The Bihar Judicial Service Association says that the minimum age should be 45, while the Tamil Nadu Judicial Officers' Association would like to have only the maximum age of 48.

10.72 Other Judicial Officers' Associations have not reacted to this problem.

JURISTS :

10.73 Justice Sri R.N. Misra, former Chief Justice of India and Justice Sri R.K. Mahajan (Rtd.) of Allahabad High Court have suggested that it is better to have direct recruits between 40 and 45 years.

OUR RECOMMENDATIONS :

10.74 We have carefully examined the various and varied views and suggestions made by High Courts, State Governments and Associations on the triple requirements for direct recruitment of District Judges, namely, (i) Quota; (ii) Age limit and (iii) Procedure for selection.

10.75 It seems to us that it is proper and necessary for all High Courts to have uniform procedure for recruitment of District Judges. There should be uniformity as to the quota, minimum and maximum age and method of selection. Such uniformity is imperative since District Judges cadre is a feeder service to the High Court and in some cases an onward march to the Apex Court.

(i) QUOTA :

10.76 At the outset, we may observe that the stand taken by the Service Associations that there should be only promotion and no direct recruitment to the cadre of District Judges does not stand to reason. We have explained elsewhere that there is need to introduce fresh blood to promote efficiency in the cadre in the first place. Second, the makers of the Constitution obviously intended that there should be direct recruitment to the cadre of District Judges. They have provided the eligibility for recruitment of advocates as District Judges under Article 233 of the Constitution. It indicates their intention. We cannot ignore it.

10.77 As seen earlier, Maharashtra, Goa and Gujarat have reserved 50% of the posts. Not less than 10 States have opted for 33.2% while 7 other States have provided 25% reservation. In Uttar Pradesh, it is only 15% and in Madhya Pradesh, it is just 10% of the posts in the cadre of District Judges.

10.78 But while providing for any kind of reservation, we have to bear in mind the impact of such reservations on service judges in all the cadres. We have already given a grim picture of the existing discontentment between the promotees and the direct recruits of District Judges. We have also emphasised that such discontentment should be removed at the earliest and a healthy atmosphere should be created to enable both the classes to give their best to the administration of justice. It would be detrimental to the administration of justice by keeping one class at the disadvantage level over the other.

10.79 In our opinion, 50% reservation provided in some States is too much and 15% or 10% reservation made in some other States is too little. We must have such quota for direct recruitment so that both direct recruits and promotees could move side by side for further benefits and opportunities.

10.80 Since temporary posts are also available for direct recruitment, we consider that not exceeding 25% of the posts in the cadre of District Judges should be reserved for direct recruitment. This percentage of reservation would not jeopardise the interests of the promotees since we have decided to give them certain weightage for fixing the inter-se seniority, besides providing an opportunity to service judges to compete for such direct recruitment.

(ii) AGE LIMIT :

10.81 Here again, we find lot of variance amongst the High Courts. It ranges from 35 to 45 years and 35 to 48 years.

10.82 The grievance of the promotees is that younger elements if inducted into the cadre would impair their promotional chances. There cannot be any doubt in this regard. If candidates at a relatively younger age are taken into service, they would remain longer and march over the promotees for better avenues. The grievance of the service judges in this regard deserves to be removed.

10.83 Some States/High Courts have pleaded for the minimum age of 40. The Judicial Officers' Associations have made similar

submissions. It has to be borne in mind that the direct recruits must have sufficient span of service in order to enable them to make some mark and look for career progress.

10.84 Secondly, at the age of 40, people begin to "settle down" with stable commitments. They would make commitment to their family, career, friends or some special interest. When once they make firm commitment in their life, they are unlikely to switch over to service, which entails periodical transfer. They may wait for an opportunity for elevation to High Court if they are really busy practitioners.

10.85 Thirdly, at the age of 40, we may get persons who are mostly unsuccessful at the Bar and the very purpose of direct recruitment of young and brilliant advocates may be defeated.

10.86 We are, therefore, of the opinion that the minimum age for direct recruitment should not be kept at 40.

10.87 The next question is whether it is proper not to prescribe any minimum age for such direct recruitment as it has been the practice in some of the States. We do not think that it is a correct practice. Judicial work requires heavy responsibility at the District Judge level by matured people. They are entrusted with the important Sessions trials apart from other diverse works which involve the demand for greater professionalism in the process of judging. It requires proper development of an attitude of mind and compatible behavioural patterns. The Constitution provides only the minimum standard with seven years practice at the Bar, but Advocates with seven years practice are sometimes selected as Civil Judge (Junior Division). By seven years of practice, one will not get the required maturity to handle Sessions cases. The life and liberty of the persons are at stake in Sessions cases.

10.88 We consider that there should be minimum age for direct recruitment and it should be not less than 35 years. To put it more explicitly, the minimum age should be 35.

10.89 Incidentally, we may state that a District Judge post is equivalent to the post of a Secretary in the State Service and Joint Secretary in the Central Government. In the normal course, the IAS Officers reach the post of Secretary /Joint Secretary at the age of 38 at the minimum and 46 at the maximum. We may explain it further:

10.90 The minimum age prescribed for a candidate for IAS recruitment is 21 and the maximum is 30 for general candidates with

5 years extension to SC/ST and 3 years extension for OBC. A candidate who has been selected to IAS cadre at the age of 22 has to render service for 16 years to become Secretary to the State Government, which is an equivalent post of the District Judge. That means, he would be eligible for the post of Secretary to Government at the age of 38 at the minimum, and 46 at the maximum, depending upon the age at which he has entered the service. With regard to the upper age limit, it seems to us that it should not be more than 45, with relaxation of a few years for SC and ST candidates. Persons beyond the age of 45 will have a short span of service with no scope for any further movement in the judicial career. Such persons would lack enthusiasm for the work and would be a liability than asset to the service.

10.91 Our recommendation about the age range between 35 and 45 is in consonance with the prevailing pattern followed by some States as we have seen earlier. Besides, the High Courts of Andhra Pradesh, Bombay, Delhi, Gauhati, Himachal Pradesh, Punjab & Haryana and Rajasthan have also expressed the view that 35 years should be the minimum and 45 years the maximum limits for direct recruitment of District Judges.

10.92 It may also be stated that a study of job satisfaction as reported by Robertson and Smith (1985) showed that satisfaction with work tended to increase with age, but that there is a dip in satisfaction in the 40-50 years age group, suggesting that this group is the most difficult to motivate. (See: A Handbook of Personnel Management Practice by Michael Armstrong, p.273).

10.93 For the aforesaid, we recommend that the candidates for direct recruitment to the cadre of District Judges should be between 35 and 45 years and the upper age may be relaxed by 3 years for SC/ST candidates.

10.94 The same age limit must be applicable to service judges also as and when they are made eligible for such direct recruitment.

(iii) PROCEDURE FOR SELECTION :

10.95 We have earlier set out the procedures followed by the High Courts for selecting candidates for direct recruitment. Most of the High Courts are having only Viva Voce Test.

10.96 High Courts of Andhra Pradesh, Allahabad, Jammu & Kashmir, Madhya Pradesh, Orissa, however, have prescribed written test in addition to viva-voce.

10.97 The Commission has received innumerable complaints that the selection by only viva-voce has more often led to arbitrariness if not whimsical selection, unjust if not unreasonable. With respect to High Courts, we do not want to carry any such impression. But we do feel that there is less transparency and objectivity in the selection process. We would, therefore, like to recommend the following procedure to reduce degrees of subjectivity and arbitrariness and to promote more fairness and objectivity:

- (i) There shall be written examination followed by viva-voce.
- (ii) Written Examination must carry 200 marks on the subject/subjects prescribed by the High Court. The paper should be of a duration of minimum two hours.
- (iii) The cut off marks in the Written Examination should be 60% or corresponding grade for general candidates and 50% or corresponding grade for SC/ST candidates. Those who have secured the marks above the cut off marks shall be called for viva-voce Test.
- (iv) The viva-voce Test should be in a thorough and Scientific Manner and it should be taken anything between 25 and 30 minutes for each candidate. The viva-voce shall carry 50 marks. There shall be no cut off marks in viva-voce Test.
- (v) The merit list will be prepared on the basis of marks/grades obtained both in the Written Examination and viva-voce.

EVALUATING PROCEDURE :

10.98 There is no known method of being perfect in evaluating performance in competitive examination. Over the years, educationists and managements have evolved techniques to reduce the degree of subjectivity and arbitrariness. To promote fairness and objectivity in the selection of District Judges, selection also should be transparent. One technique which is now

widely used in this regard is evaluation through grades instead of numerical marks. The Commission recommends this technique for judicial selection, whether it is by written examination or viva-voce, whether it is for initial cadres of judicial service, i.e., Civil Judges (Junior Division) or the cadre of District Judges.

10.99 The system which the Commission is contemplating operates as follows:

- (i) The questions in the question paper may carry numerical marks for each question.
- (ii) The examiner may assign numerical marks for each sub-question which may be totalled up and shown against each full question in numbers.
- (iii) The tabulator will then convert the numerical marks into grades in a seven point scale with corresponding grade as follows:

Percentage of Marks	Grade	Grade Value
70% and above	O	7
65% to 69%	A+	6
60% to 64%	A	5
55% to 59%	B+	4

50% to 54%	B	3
45% to 49%	C+	2
40% to 44%	C	1
Below 40%	F	0

(iv) After converting the numerical marks of each question into the appropriate grade according to the formula given in the first column above, the tabulator will reconvert the Grades obtained for each question to the Grade value according to the value given in the third column above.

What is now obtained is the relative Grade value of each answer in the question paper obtained by the candidate in a seven point scale (i.e. €0€ to €7€).

The tabulator's next task is to add up those Grade Values and divide the sum total by the number of questions in the answer book including the questions unanswered by the candidate. What is thus obtained is the Cumulative Grade Value Average (CGVA) obtained by the candidate at the examination. Suppose the CGVA comes to €4€ , the grade obtained by the candidate at the examination is "B+". If the CGVA is €6€ , the grade of the candidate is "A+".

(v) Thus organised, the result of the written examination will be indicating only the cumulative evaluation grade of the candidates which moderates the inevitable element of subjectivity in individual evaluation and brings in relative objectivity and fairness to a much higher degree. Of course, the tabulation record sheet can carry the numerical marks as well for reference and rechecking whenever needed. A proper computer programme can do all these operations in minutes.

(vi) Today, the viva voce examination can be more unfair than the written examination in view of the fact that it is decided on chance or impression in the shortest possible time. Rural candidates are generally at a disadvantage in this process. English speaking candidates sometimes gain advantage without they being superior in skills for the job. A dominant member of the interview board may carry the day to the disadvantage of many deserving candidates. These things happen not necessarily because of any conscious bias or disposition of members of the Board. This is inherent in the process itself as it operates at present in many places. The judiciary cannot afford to lose opportunities to get the most outstanding candidate because of infirmities in the selection system. As such, an alternative procedure by and large modelled on the lines of the written examination is recommended for the viva voce as well.

(vii) The viva-voce Examination will adopt the following procedure:

- (a) A proforma containing categories such as knowledge / Skills / Attitudes / Ethics / Communication / Character, etc., be developed (this will depend on what are the qualities the judiciary is looking for in the prospective Judges being interviewed) in advance and each category may be given relative weightage (credits) in terms of marks. For example, if the total Viva marks are 100, one may assign 10 marks for knowledge / comprehension, 5 marks for ethics /attitude, 25 marks for skills of judging, 10 marks for communication abilities, 10 marks for general knowledge, etc..
- (b) Each member of the Board including the Chairman will be asked to assign marks for each category immediately after a candidate is interviewed and before the next candidate is called in. To strike some commonality or relative parity in approach of members, the board may have some general discussion before commencement of interview on range of marks to be given in particular level of assessment. If necessary, some written guidelines may also be circulated to be adhered to in assigning marks at the time of interview.
- (c) At the end of each day's interview, the tabulator will convert the numerical marks assigned to each category into grades and then to grade values. This will then be totalled up and the Cumulative Grade Value Average of each candidate interviewed will be obtained.

(d) Thus a separate list of candidates interviewed and the Grades obtained in the Viva Voce will be readied which will naturally be far more fair and transparent with little scope for corrupt practices to creep in. Again, for ready reference, the result-sheet may carry the numerical marks side by side with grades.

(viii) The final selection list will be readied by combining the Cumulative Grade Value obtained in the written examination and the Viva Voce examination.

Since in practice many candidates who have obtained less than a prescribed grade (say B+) in the written examination will not be called for viva voce examination, the combined tabulation has to be done only with reference to fewer candidates, possibly one-tenth or even less of the total number of applicants for the job.

(ix) If the Viva Voce is rigorous and higher marks are given only to those who are outstanding in all categories of evaluation given in the proforma, the chances are very few to obtain higher grades (like €0€ or €A€) and their numbers may be just within the available vacancies. There may be some borderline cases where it is difficult to determine who is to be included and whom to be excluded. This dilemma may be resolved by a second interview between those candidates by the same board OR

Alternatively looking at the difference in numerical scores between them similarly placed in grades.

PROBATION :

10.100 We suggest that the direct recruits to the cadre of District Judges shall be on probation for a period of two years and all promotees shall be on officiating basis for a similar period of two years.

10.101 The period of probation or officiation may be extended by the appointing authority with reasons to be recorded in writing by such period not exceeding twice the prescribed period of probation or officiation, as the case may be.

10.102 At the end of the period of probation/officiation or the extended period of probation/officiation, as the case may be, the appointing authority shall consider the suitability of the person who is so appointed/promoted to hold the post to which he was appointed or promoted, and - if it decides that he is suitable to hold the post to which he was appointed and has passed the special examinations or tests, if any, required to be passed during the period of probation or officiation, as the case may be, it shall, as

soon as possible, issue an order declaring him to have satisfactorily completed the period of probation/officiation. If the appointing authority considers that the person is not suitable to hold the post to which he was appointed or promoted, such person may be discharged from service if he is a probationer or reverted to his original cadre if he is a promotee.

10.103 A probationer who has been declared to have satisfactorily completed the probation or promotee who has been declared to have satisfactorily completed his period of officiation shall be confirmed as a full member of the service at the earliest opportunity.

SENIORITY :

10.104 The inter-se seniority of the direct recruits and promotees has been elaborately dealt with elsewhere in a separate chapter. However, we may state at this stage that an Officer appointed in accordance with the Rules of Recruitment on regular basis shall be made senior to persons appointed temporarily.

TRAINING :

10.105 Training is a must for direct recruits and promotees to the cadre of District Judges. The High Court may from time to time prescribe the period and the course of training for such Officers. They must also be given a periodical training by way of refresher courses as the High Court may, from time to time, determine.

COMPULSORY RETIREMENT :

10.106 The Commission attaches great importance to promotion of efficiency and integrity in the judicial administration. Judicial service is not meant for indolent and undeserving Officers. There shall be a Committee consisting of Senior Judges, at least three of them, headed by the Chief Justice of the High Court to review the career progress and other attributes of all the Officers. This review has to be undertaken periodically once in every five years, commencing at the age of 50, 55 and 60 years. If the Committee considers that in public interest the Officer should be retired from service, he should be compulsorily retired by giving him a notice of not less than three months in writing or three months' pay and allowances in lieu thereof. It should be a continuing process by the said Committee.

SELECTION GRADE / SUPER TIME SCALE DISTRICT JUDGES :

10.107 In most of the States, in the cadre of District Judges, there are Selection Grade District Judges and Super Time Scale District Judges. In Madhya Pradesh and West Bengal, there is another grade called District Judge (Above Super Time Scale).

10.108 We give below the existing position and the demand made for upward revision by certain States:

ANDHRA PRADESH :

The cadre of District & Sessions Judges consists of:

- i) District & Sessions Judge - Grade I
- ii) District & Sessions Judge - Grade II

Grade-I District & Sessions Judge is a promotional post to Grade-II District & Sessions Judge.

The posts in these two cadres are interchangeable, as no particular post has been ear-marked for giving the different pay scales.

Out of the total cadre strength of 117, 23 posts are in Grade-I District & Sessions Judges and 94 posts are in Grade-II District & Sessions Judges.

ASSAM :

The District Judges are classified as Grade-I. Out of that, some posts are in the Selection Grade. (The exact number of the break-up strength of the cadre is not available).

BIHAR :

There are two categories:

- i) District & Sessions Judges
- ii) Additional District & Sessions Judges

There are 111 District Judges and 228 Additional District & Sessions Judges.

Amongst the posts of 111 District Judges, there are 50 posts carrying the pay scale of Selection Grade and 12 posts in the Super Time Scale. These two categories of posts are supposed to be the promotional posts from the category of Additional District & Sessions Judges.

HARYANA :

The cadre consists of:

- i) District & Sessions Judges
- ii) Additional District & Sessions Judges

Total posts in both these categories are 88 and 20 per cent of it is ear-marked for Selection Grade.

HIMACHAL PRADESH :

The Higher Judicial Service comprises of District & Sessions Judges / Addl. District & Sessions Judges with a strength of 24 in addition to 4 posts of Registrars in the said Cadre.

Selection Grade is allowed to those Officers who have put in 8 years of service.

JAMMU & KASHMIR :

The Higher Judicial Service in the State comprises of

- i) District & Sessions Judges
 - (Super Time Scale)
- ii) District & Sessions Judges
 - (Selection Grade)

iii) District & Sessions Judges /
Addl. District & Sessions Judges
in the ordinary scale.

There are 33 posts in these categories. Out of it, 2 posts have been ear-marked for Super Time Scale and 7 posts carry Selection Grade.

KARNATAKA :

The cadre of District Judges consists of 135 posts. 20 posts therefrom carry the Super Time Scale.

KERALA :

Out of 101 cadre strength of District Judges, 16 posts are in the Selection Grade.

MADHYA PRADESH :

Out of 292 posts in Higher Judicial Service, 51 posts carry Selection Grade Scale, 25 posts carry Super Time Scale and 6 posts carry Above Super Time Scale.

For the Selection Grade, the minimum requirement is 8 years service in Higher Judicial Service; for Super Time Scale, 11 years service in the Higher Judicial Service; for Above Super Time Scale, 14 years service in the Higher Judicial Service.

MAHARASHTRA :

There is no specific Selection Grade or Super Time Scale in Metropolitan City, Mumbai. But such scales of pay / grade are there in the Mofussil area. Such posts in the Mofussil area are 191, out of which 7 posts are in the Selection Grade. There seems to be no Super Time Scale District Judge.

In the Metropolitan Area, the scale of pay admissible to the Selection Grade District Judges in the Mofussil area has been given to the Principal Judge / Addl. Principal Judge of the City Civil Court.

ORISSA :

The Superior Judicial Service consists of 73 posts and out of which 8 posts are in Selection Grade and 3 posts are in Super Time Scale.

PUNJAB :

This State has a simple formula. Out of the 68 posts in the Superior Judicial Service, Selection Grade is given to those who have completed 8 years of service.

RAJASTHAN :

The Higher Judicial Service consists of 248 posts. From out of it, 24 posts are for Selection Grade District Judges.

TAMIL NADU :

The cadre of District & Sessions Judges consists of 125 posts. From out of it, 18 posts carry the Super Time Scale.

TRIPURA :

18 posts of Judicial Officers Grade-I are there comprising of: District & Sessions Judge / Addl. District & Sessions Judge / CJM / Addl. CJM / Legal Remembrancer / Registrar in High Court.

20 per cent of the posts carry Selection Grade.

UTTAR PRADESH :

The biggest State with largest contingent of Judicial Officers in the Higher Judicial Service. There are in all 741 such posts. From out of it, 137 posts are in Selection Grade and 56 carry Super Time Scale.

WEST BENGAL :

The total strength of Higher Judicial Service is 230. They have got almost identical service conditions as that of IAS cadre Officers.

After 9 years of service in the Higher Judicial Service, Selection Grade is given. After 11 years of service, Super Time Scale is given and after 14 years of service, above Super Time Scale is given. (Number of posts in each grade / scale is not available).

DELHI :

The Union Territory of Delhi may appear to be small, but its judicial strength is more than in some of the larger States. There are 134 posts in Higher Judicial Service. Twenty percent of the cadre strength carries Selection Grade and 1 post is in Super Time Scale.

DEMAND MADE FOR UPWARD REVISION BY CERTAIN STATES :

10.109 Some of the Associations of Judicial Officers have asked for upward revision of the posts in the Selection Grade and Super Time Scale.

10.110 The Registrar and Judicial officers of the Office of the Welfare Commissioner, Bhopal Gas Victims, Bhopal have suggested to double the existing Selection Grade posts and Super Time Scale posts in their State.

10.111 Judicial Officers Association of Punjab have suggested that Selection Grade pay scale may be given to District Judges after completion of 5 years and Senior Selection Grade after 10 years.

10.112 The High Court of Rajasthan and also the Rajasthan Judicial Service Officers' Association have stated that Super Time

Scale of pay available to IAS Officers should be given to Officers of Higher Judicial Service. Likewise, U.P. Judicial Officers' Association has suggested for grant of Selection Grade after completion of 6 years in Higher Judicial Service and Super Time Scale after 10 years of such service.

10.113 Government of West Bengal has suggested that certain posts should be created in the cadre of District Judges with consolidated fixed pay of Rs.26,000/- to those who could not reach the High Court.

10.114 All India Judges' Association has indicated that Selection Grade be given to all District Judges after 8 years of service.

OUR RECOMMENDATION :

10.115 We have considered carefully the representations of High Courts, State Governments and Service Associations.

10.116 In our opinion, it is necessary to bring about uniformity in giving Selection Grade and Super Time Scale for the District Judges in all the States / UTs. It is also necessary to prescribe the minimum qualification for entitlement to such grade / scale. These two scales are not to be considered as career progression scales. They are functional scales depending upon performance.

10.117 The Commission recommends minimum 25 per cent of the posts in the cadre of District Judges in every State / UT shall carry Selection Grade. This may be given on the basis of merit-cum-seniority to those who have put in minimum experience of 5 years in the cadre.

10.118 The Commission further recommends that minimum 10% of cadre strength in District Judges be given Super Time Scale to those who have put in minimum number of 3 years in the cadre of Selection Grade.

10.119 Having regard to the nature of the pay scales recommended for Selection Grade District Judges and Super Time Scale District Judges, the Commission does not want to recommend any scale above the Super Time Scale in the District Judges cadre.

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Annexure : Draft Judicial Service Rule

11. WHETHER THE LOWER JUDICIAL SERVICE PERSONNEL COULD BE MADE ELIGIBLE FOR DIRECT RECRUITMENT TO THE POST OF DISTRICT JUDGES ?

11.1 The Constitution, as it stands, does not provide for consideration of persons who are already in judicial service for direct recruitment to the cadre of District Judges.

11.2 Article 233 is as follows:

"233 (1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

"(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment."

11.3 The scope of this Article has come up for consideration before the Supreme Court in the following cases:

In *RAMESHWAR DAYAL v. STATE OF PUNJAB*¹, S.K. Das J. observed: (at p.822)

". Article 233 is a self contained provision regarding the appointment of District Judges. As to a person who is already in the service of the Union or of the State, no special qualifications are laid down and under cl. (1), the Governor can appoint such a person as a District Judge in consultation with the relevant High Court. As to a person not already in service, a

1. AIR 1961 SC 816.

qualification is laid down in cl. (2) and all that is required is that he should be an advocate or pleader of seven years' standing."

In CHANDRA MOHAN v. STATE OF UTTAR PRADESH², Subba Rao, C.J. after referring to Article 233, 234, 235, 236 and 237 stated: (at p.1993)

"The gist of the said provisions may be stated thus: Appointments of persons to be, and the posting and promotion of, District Judges in any State shall be made by the Governor of the State. **There are two sources of recruitment, namely, (i) service of the Union or of the State, and (ii) members of the Bar.** The said judges from the first source are appointed in consultation with the High Court and those from the second source are appointed on the recommendation of the High Court. But in the case of appointments of persons to the judicial service other than as District Judges, they will be made by the Governor of the State in accordance with rules framed by him in consultation with the High Court and the Public Service Commission. But the High Court has control over all the district courts and courts subordinate thereto, subject to certain prescribed limitations."

11.4 Subba Rao, C.J., then proceeded to consider whether the Government could appoint as District Judges persons from services other than the judicial service. After pointing out that Art. 233(1) was a declaration of the general power of the Governor in the matter of appointment of District Judges and it did not lay down the qualifications of the candidates to be appointed or denoted the sources from which the recruitment had to be made, he proceeded to state,

2. AIR 1966 SC 1987.

"But the sources of recruitment are indicated in cl. (2) thereof. **Under cl.(2) of Art.233 two sources are given, namely, (i) person in the service of the Union or of the State, and**
(ii) Advocate or Pleader."

11.5 Posing the question whether the expression "the service of the Union or of the State" meant any service of the Union or of the State or whether it meant the judicial service of the Union or of the State, the learned Chief Justice emphatically held that the

expression "the service" in Art. 233(2) could only mean the judicial service.

11.6 In SATYA NARAIN SINGH v. HIGH COURT OF JUDICATURE AT ALLAHABAD³, CHINNAPPA REDDY J. observed:

" Two points straightaway project themselves when the two clauses of Art. 233 are read:

The first clause deals with 'appointments of persons to be, and the posting and promotion of, District Judges in any State' while the second clause is confined in its application to persons 'not already in the service of the Union or of the State'. We may mention here that 'Service of the Union or of the State' has been interpreted by this Court to mean judicial service. Again while the first clause makes consultation by the Governor of the State with the High Court necessary, the second clause requires that the High Court must recommend a person for appointment as a District Judge. It is only in respect of persons covered by the second clause that there is a requirement that a person shall be eligible for appointment as District Judge if he has been an advocate or a pleader for not less than 7 years. In other words, in the case of candidates who are not members of a Judicial Service they must have been advocates or pleaders for not less than 7 years and they have to be recommended by the High Court before they may be appointed as District Judges, while in the case of candidates who are

3. AIR 1985 SC 308.

members of a Judicial Service the 7 years rule has no application but there has to be consultation with the High Court. A clear distinction is made between the two sources of recruitment and the dichotomy is maintained. The two streams are separate until they come together by appointment. Obviously the same ship cannot sail both the streams simultaneously."

11.7 The grievance of Service Judges however, is that they are unjustly denied of an opportunity to compete for direct Recruitment to District Judge posts, when similar facility is provided in other Administrative services.

11.8 The Commission, with a view to ascertain the views and comments from all concerned in this regard, included the following

questions in the general Questionnaire:

Q.No.8.3 :

Do you think that the officers in the lower judicial service should be allowed to compete for direct recruitment to the District Judge cadre?

If so, what should be the experience in service for such Officers and how Article 233 of the Constitution of India should be amended? Explanation (aa) to Sub-Article (2) of Article 217 may be noted in this context.

Q.No.8.4 :

Has any weightage been given in your State / UT in terms of increments and / or retirement benefits for direct recruits to the cadre of District Judges who possess more than the minimum number of years of practice at the Bar?

11.9 Responses received from the High Courts, Governments and Judicial Officers' Associations and individuals are not uniform. They are briefly summarised herein below:

HIGH COURTS :

11.10 High Courts of Patna, Jammu & Kashmir, Bombay, Orissa, Punjab & Haryana, Sikkim, Allahabad and Calcutta are in favour of allowing the officers in the Lower Judicial Service to compete for direct recruitment of District Judges.

11.11 But, High Courts of Andhra Pradesh, Guwahati, Delhi, Himachal Pradesh, Karnataka, Kerala, Gujarat, Madhya Pradesh, Rajasthan and Madras are against the proposal.

GOVERNMENTS :

11.12 Governments of Andhra Pradesh, Karnataka, Maharashtra, Tripura, Meghalaya and Gujarat want that the Officers of the Lower Judicial Service should be given an opportunity for direct recruitment of District Judges.

11.13 But, Kerala, Tamilnadu and Nagaland Governments are against any such move.

11.14 Sikkim Government wants that the posts of District Judges should be filled up only by promotion and not by direct recruitment.

11.15 In West Bengal, there is no direct recruitment for the present, but wants to reconsider the question.

SERVICE ASSOCIATIONS :

11.16 The Judicial Officers / Service Associations of Andhra Pradesh, Bihar, Delhi, Gujarat, Jammu & Kashmir, Kerala, Orissa, West Bengal, Kerala Magistrates (Judicial) Association, Haryana Civil Judges' Association, Haryana State Judges' Association, Judges of the City Civil and Sessions Court, Mumbai plead for an opportunity to the Lower Judicial Service for direct recruitment of District Judges.

11.17 Maharashtra State Judicial Service Association though initially opposed the proposal, subsequently sent revised view favouring the proposal.

11.18 But, Manipur Judicial Officers' Association, Imphal, The Delhi Higher Judicial Service Association and the All India Association of Direct Recruits have strongly opposed the move for making Service judges eligible for direct recruitment.

11.19 The Judicial Officers / Services Associations of Tamil Nadu, Mizoram, Assam, Uttar Pradesh and Goa, have gone a step further. They are totally against the direct recruitment of District Judges.

11.20 But, the Uttar Pradesh Judicial Service Association in the alternative has indicated that the in-service Judicial Officers with seven years service be allowed for such direct recruitment.

INDIVIDUAL VIEWS :

11.21 Justice R.N. Mishra, Former Chief Justice of India, Mr. Justice D.R. Khanna, Former Judge, Delhi High Court, Mr. Justice Bopanna and Mr. Justice K. Ramachandriah, Former Judges, Karnataka High Court are in agreement with the suggestions of the Commission.

11.22 Mr. Justice R.S. Sarkaria, Former Judge of the Supreme Court and Mr. Justice D.M. Chandrashekhar, Rtd., Chief Justice of

Karnataka do not want such opportunity for the Service Judges.

PROPOSED CONDITIONS :

11.23 Patna High Court is of the view that only those Subordinate Judicial Officers with 10 years of service could be allowed for direct recruitment, while Bombay High Court has stated that four years of service may be sufficient.

11.24 Gujarat High Court has stated that Officers in the Lower Judicial Service with seven years experience, after written test and oral interview could be recommended for direct recruitment.

11.25 Maharashtra Government requires seven years of minimum service. Under Secretary (Law), Government of Goa, Panaji suggests five years experience. The Meghalaya Government wants that the requisite service as qualification could be prescribed by Rules, with provision for relaxation in deserving cases.

11.26 The Gujarat Judicial Service Association, Haryana Civil Judges' Association are for prescribing seven years of service, while, the Judges of the City Civil and Sessions Court, Mumbai are for six years of service.

11.27 The Bihar Judicial Service Association and West Bengal Judicial Officers Association have stated that experience in service plus the practice in the Bar together should not be less than seven years. Similar is the view expressed by the Maharashtra State Judicial Service Association.

11.28 The Karnataka State Judicial Officers' Association wants only Civil Judges (Senior Division) with minimum experience of three years be allowed.

11.29 Kerala Magistrates (Judicial) Association wants every member of subordinate Judicial Service, on completion of two years service, be allowed to apply as against ten per cent of the posts reserved for direct appointment.

11.30 Delhi Judicial Service Association has stated that all posts reserved for direct recruitment from Bar should be left open for selection by a competitive examination both for Advocates of seven years and Judicial Officers of seven years service.

11.31 Justice R.N. Mishra, Former Chief Justice of India wants 10 years experience in service should be insisted upon, while

Tripura Judicial Service Association considers that Officers of Grade II with minimum of seven years service may be allowed.

11.32 There are different reasons given by different High Courts and Associations, justifying the need to amend Article 233(2) of the Constitution. They are set out herein in laconic details:

PATNA HIGH COURT :

11.33 That an opportunity for Service judges to compete for the post of District Judges would give an impetus and improve their efficiency.

BOMBAY HIGH COURT :

11.34 If meritorious young blood is to be encouraged in the interest of the judicial system, then the avenues should be kept open. There is no harm to allow officers of lower judicial service to compete for direct recruitment to the cadre of District Judges. In the matter of such candidates, High Court will have an added benefit of assessing candidates on the basis of their work and confidential record.

PUNJAB & HARYANA HIGH COURT :

11.35 It would provide a chance to young and competent Judicial Officers to improve discipline in judicial service and make Officers work more efficiently, diligently and sincerely.

ALLAHABAD HIGH COURT :

11.36 That the experience at Bench is not inferior to that at Bar and it will be in tune with the provisions under Article 217(2) of the Constitution of India. It will further introduce fair and meritorious competition.

HARYANA CIVIL JUDGES' ASSOCIATION :

11.37 It would enable judicial officers to work more efficiently, diligently and sincerely in the hope of getting quick promotion which is otherwise too slow in the judicial service.

ALL INDIA JUDGES' ASSOCIATION :

11.38 Such an incentive will tend to keep such junior Judges on their toes to make them constantly improve their professional knowledge and experience. They would make more determined effort for keeping their professional image clean, hoping to get quick promotion through competition.

REASONS AGAINST -

HIGH COURT OF DELHI :

11.39 If Officers in the Lower Judicial Service are allowed to compete for direct recruitment of District Judges, there are possibilities of juniors overtaking their seniors which may lead to frustration in the seniors and it may not be conducive to judicial discipline.

HIGH COURT OF KARNATAKA :

11.40 It may lead to indiscipline, heart-burn, jealousy etc.

CONSTITUTIONAL AMENDMENT PROPOSED :

11.41 The following amendment to Article 233(2) of the Constitution has been proposed:

11.42 PUNJAB & HARYANA HIGH COURT :

Art. 233 :

(2) " Any person already in the judicial service of a State continuously for not less than seven years or any person who has been for not less than seven years an advocate or a pleader shall be eligible to be appointed a District Judge only if he is recommended by the High Court for appointment."

11.43 BOMBAY HIGH COURT :

Art. 233 :

(2) Deletion of word "only" from Article 233(2) of the Constitution

and addition of Sub-Clause (3) to Article 233 as under:

"(3) A person already working in the State Judicial Service in the cadre of Civil Judge (Junior Division) / Judicial Magistrate First Class; Civil Judge (Senior Division) / Chief Judicial Magistrate, with at least four years of service shall be eligible to be appointed as a District Judge."

11.44 CALCUTTA HIGH COURT :

Art. 233 :

(2) " A person shall only be eligible to be appointed as a District Judge if he has been for not less than seven years as an advocate or pleader or a member of the Subordinate Judicial Service and is recommended by the High Court for appointment."

11.45 ALLAHABAD HIGH COURT :

Art. 233 :

(2) "A person having total 7 years experience at Bar or Judicial Service or both shall be eligible to be appointed as District Judge and who is recommended by the High Court for appointment."

11.46 Bihar Judicial Service Association :

Article 233 (2) be amended by deleting the word " not already in service".

11.47 All India Judges' Association :

Art. 233 :

"(2) Appointment of District Judges :

A person shall not be appointed a District Judge unless -

a) he has worked at least for 7 years in any State Judicial cadre or as a Law Officer, within the territory of India;

or

b) he has been an Advocate for 7 years;

c) his total tenure of work under clauses (a) & (b) has been for 7 years."

11.48 West Bengal Judicial Service Association :

Art. 233:

(2) "That a person already in the service or not of the union or the State shall only be eligible to be appointed as District Judge if he has been for not less than 7 years a Judicial Officer or an Advocate or a Pleader or both a Judicial Officer and an Advocate or Pleader on the recommendations of the National Judicial Service Commission."

11.49 Karnataka State Judicial Officers Association :

Art. 233 :

(2) "A person shall not be qualified for appointment as a District Judge unless he is in Judicial Service of the Union or State and has worked for not less than 3 years in the cadre of Civil Judge (Senior Division) and is not less than 40 years of age."

CONCLUSION :

11.50 We have given our anxious consideration to the views and comments expressed by the respondents to our Questions 8.3 and 8.4.

11.51 The majority of the High Courts and the Service Associations barring a couple of them are for giving an opportunity to the Service judges for direct recruitment of District Judges. Even, some of the Governments are in favour of such a move. The reasons given in support of the proposal are that it would promote efficiency, improve discipline in judicial service and make the officers to work more efficiently, diligently and sincerely.

11.52 We are highly impressed by the reasons given by the High Courts of Allahabad, Bombay, Punjab & Haryana and All India Judges' Association. If meritorious young blood should be introduced in the mixed cadre, there is no reason why merited serving judges should be excluded from consideration for direct recruitment. In such selection the High Court will have an opportunity to

assess the merit of serving judges as against the merits of the competent advocates. The Bombay High Court has rightly observed that the High Court in such selection will have an added advantage of assessing the service judges on the basis of their work and confidential records.

11.53 We agree that if an opportunity is afforded, it would make the Officers to work more efficiently, diligently and sincerely.

11.54 We do not understand why such an opportunity should create indiscipline, heart-burn and jealousy amongst the judicial officers as the Karnataka High Court has stated. We are equally unable to appreciate that it may lead to frustration amongst the Seniors who are not selected for direct recruitment as indicated by the Delhi High Court.

11.55 It may be noted that we are not recommending for accelerated promotion to Service judges. The accelerated promotion to a junior judge may lead to heart-burn and jealousy in the Service. Though we have formulated a question on that aspect and though some of the High Courts and Associations are in favour of introducing the system of accelerated promotion, we do not consider it desirable to have that system since it is likely to lead to bitterness and jealousy amongst the officers.

11.56 The Commission considers that if an opportunity for direct recruitment is afforded to inservice judges, it would, to a great extent, remove the frustration which is presently dogging them. Such an opportunity would add lustre to their career and enable them to outshine with their merit, hard work and sincerity.

11.57 The contention urged by the directly recruited District Judges that those who have got the promotional channel should be allowed to make a move only through that channel does not sound to reason. In All India Administrative Service, there is no bar for any person in any service for applying, subject to the age prescribed. It is a common experience that many of the successful IAS and IPS candidates initially belonged to one or the other service.

11.58 The Commission, therefore, considers that it is reasonable and also necessary to provide eligibility for service judges for direct recruitment of District Judges.

11.59 As seen earlier, some of the High Courts have suggested ten years of minimum service to earn eligibility for consideration for recruitment of District Judges.

11.60 Patna High Court has suggested 10 years of such service. Gujarat High Court requires seven years of experience. Punjab & Haryana High Court also wants minimum seven years of service.

11.61 The High Courts of Calcutta and Allahabad have suggested seven years of minimum experience but that seven years should be inclusive of the antecedent practice as advocate or pleader.

11.62 Bombay High Court has suggested minimum of four years judicial service; perhaps, against the background that the minimum practice at the Bar for entering the judicial service is three years and both put together would be seven years. But it may be noted, the Civil Judge (Junior Division) with four years service may not get adequate exposure and may not get any opportunity for trial of serious Criminal cases and Civil suits involving high stakes.

11.63 Apart from that, it is not correct to tag on the Bar practice with Judicial experience for direct recruitment of District Judges. Such Bar practice will count for initial entry into judicial service and it is not proper to give the benefit of it again for the same officer, while seeking appointment as District Judges.

11.64 In this context, reference may be made to Clause (2) of Article 217 of the Constitution. It reads as under:

"(2) A person shall not be qualified for appointment as a Judge of a High Court unless he is a Citizen of India and -

(a) has for at least ten years held a judicial office in the territory of India; or

(b) has for at least ten years been an advocate of a High Court or of two or more such Courts in succession."

11.65 In computing the period of judicial office held by an officer his antecedent practice at the Bar is not to be counted. On the same line of reasoning, the antecedent Bar practice should be excluded for Judicial Officer to earn eligibility for direct recruitment of District Judges.

11.66 The Clause (2) of Article 233 provides that an Advocate or a Pleader must have minimum 7 years of practice to become eligible for appointment as District Judge. If we consider that a Judicial officer is to be made eligible for direct recruitment as

District Judge, he must have also a minimum of 7 years of service. We cannot apply different yardstick. The same yardstick must be used for Advocates as well as inservice judges.

11.67 We accordingly suggest that Clause (2) of Article 233 be substituted with the following clause:

Art. 233

(3) A person shall be eligible to be appointed directly as a District Judge if he has been for not less than seven years an Advocate or held judicial office in the territory of India and is recommended by the High Court for appointment."

11.68 We propose to recommend age limit between 35 years and 45 years for Advocates to apply for direct recruitment. The same age limit shall also be prescribed to service judges for seeking direct recruitment as District Judges.

11.69 We request the Central Government, all High Courts, State Governments, Administration of Union Territories to take immediate action for amending Clause (2) of Article 233 as indicated by us.

* * * * *

12. PRINCIPLES RELATING TO INTER-SE SENIORITY BETWEEN DIRECT RECRUITS AND PROMOTEES

IN THE CADRE OF DISTRICT JUDGES

12.1 In Service, the ranking of an Officer in the seniority list is determinative of his future career prospects. It is an index to attain one's reasonable aspirations and expectations. It should not, therefore, be kept fluctuating. The fluctuating ranking would seriously tell upon the nerves of the affected Officer. As far as possible, it must be kept certain and free from dispute.

12.2 But unfortunately, in most of the States, the inter-se ranking in the seniority list of direct recruits and promotees in the cadre of District Judges has always been the subject matter of controversy. It has been a vexed question for the High Courts and to the service personnel. It has, in fact, created bad blood with acrimonious debate between the two classes. It has affected even their

performance in the administration of justice.

12.3 The Commission considers that in the interest of promoting efficiency in the administration and to bring about harmony amongst the Officers, it is necessary to identify the causes and suggest remedial measures. With this object in mind, the Commission invited the views and comments from all concerned by specifically framing the following question in its Main Questionnaire:

"Question No.9: LITIGATION ON INTER-SE SENIORITY:

In some States / UTs, there is a lot of litigation between the direct recruits and the promotees on the question of inter-se seniority. Why such litigation has arisen? Please suggest the remedial measures to avoid such litigations."

12.4 The Commission has received a variety of comments and suggestions from the High Courts, State Governments, Judicial Officers' Associations and from some retired Judges. We may refer to them chronologically on State-wise basis with the prevailing Seniority Rule.

ANDHRA PRADESH :

12.5 The High Court informs that some times recruitment from the Bar is delayed for long period and the promotions are made from the judicial service on temporary basis, but continued for long periods. When direct recruitment takes place later, it creates problem in fixing inter-se seniority which leads to litigation between the two groups. Same view has been expressed by Andhra Pradesh Judicial Officers' Association.

12.6 The Relevant Seniority Rule 6 of the Andhra Pradesh Higher Judicial Service Special Rules, 1958 states:

"The seniority of a person appointed to category-II shall be determined with reference to the date from which he was continuously on duty in that Category."

NOTE : Category - I : District and Sessions Judges - Grade I

Category - II : District and Sessions Judges - Grade II

ASSAM & TRIPURA :

12.7 According to High Court, there are litigations on disputes regarding fixation of inter-se seniority between the two classes. But no details of such disputes have been furnished to the Commission.

12.8 The Relevant Seniority Rule 12 of the Assam Judicial Service Rules, 1967 as amended by the (Amendment) Rules, 1995 reads:

"12(1) The seniority, interse of the member of Grade I and II of the service shall be determined by the Governor in consultation with the High Court."

12.9 Similar Rule has been framed by Manipur, Meghalaya and Nagaland.

BIHAR :

12.10 The High Court states that the litigation takes place between direct recruits and promotees due to bulk appointments made from the Bar after a gap of several years. Such bulk recruitment from the Bar created imbalance in the cadre. The seniority is determined from the date of initial appointment. When a large number of appointments are made at one go from one source, such appointees become seniors as a big block marring future prospects of promotees.

12.11 Relevant Seniority Rule 16 of the Bihar Judicial Service Rules, 1951 reads:

X X X X X X X X

"16(e) Seniority of direct recruits vis-à-vis promoted officers shall be determined with reference to the date from which they may have been allowed to officiate continuously in posts in the cadre of the service or in posts outside the cadre on identical time-scale of pay and of equal status and responsibility or in posts of higher scale of pay and of higher responsibility in or outside the cadre.

"Provided that when a direct recruit and a promoted officer are appointed on the same date, the promoted officer shall be senior to the direct recruit."

DELHI :

12.12 The High Court of Delhi states that there is litigation between direct recruits and the promotees pending in the Supreme Court and the matter is thus subjudice. By stating so, the High Court has conveniently avoided giving the causes of such disputes and suggesting remedial measures.

12.13 There are three Associations in Delhi Judicial Service:

I. DELHI HIGHER JUDICIAL SERVICE ASSOCIATION (REGD.) DELHI:

12.14 This Association appears to have been formed recently. It represents Direct Recruits to the Higher Judicial Service of Delhi.

12.15 On Question No.9, the Association states inter-alia; that the litigation between direct recruits and the promotees has occurred on account of not filling up the posts of direct recruitment in time, while the promotions are made immediately as and when the vacancy occurs. Promotions are also made on an ad hoc basis / temporary basis against the posts earmarked for direct recruitment. The persons who are promoted want to retain their positions to which they have no right. To legitimize such claims, they indulge in litigation to deny the rights of direct recruits.

12.16 This Association suggests among others, the following remedial measures:

- (a) the seniority of officers should be decided immediately without any further delay. It is said that in Delhi the inter-se seniority has not been decided for the last more than 20 years which itself is a cause of dispute.
- (b) the recruitment to a post falling vacant should be made as expeditiously as possible and not later than three months.
- (c) Accountability should be fixed on a person / authority who has failed to act promptly in the above regard.

II. DELHI HIGHER JUDICIAL SERVICE ASSOCIATION:

12.17 This Association represents promotee Officers.

12.18 To the aforesaid Question No.9, the Association traces the history of certain litigations between the direct recruits and the promotees starting from the writ petition of O.P. Singla's vs. Union of India which was decided by the Supreme Court in 1984 and follow-up action taken by the High Court.

12.19 According to them, problems however continue. Many of the Officers get promotion long after 22 years of service. Recently some Officers got early promotion due to expansion of the cadre of Delhi Higher Judicial Service and not because of any improvement in service conditions. The expansion of the cadre has resulted in induction of more direct recruits of younger age. As long as this system of rota and quota is continued, the rota quota rule can never be worked out satisfactorily. The seniority determined by rotation of quota becomes "meaningless concept" for promotees. The interest of both sections can be protected by applying rota quota rule at the stage of grant of selection grade and elevation to the High Court and not at the stage of induction.

III. DELHI JUDICIAL SERVICE ASSOCIATION (REGD.):

12.20 This Association purports to represent all cadres in the Judicial Service.

12.21 Their response to the Question No.9 is as follows:

The litigation between direct recruits and the promotees in most of the States is as a result of incorrect observance of the service rules by the High Courts as well as by violating the terms of Rules. The Rules too are most harsh, oppressive and unjust as they are based on concepts of administrative or executive class of service, which yield undesirable results in judicial service.

12.22 They suggest that the date of actual appointment to higher post should govern the seniority of judges and giving of seniority from an anterior date when the post was available is extraneous and irrelevant consideration and is in bad faith. The Service Rule which permits and perpetuates such practice should not be followed and be amended. The evil effect of the present Rule is that it makes service judges of long years of experience junior to those judges who are appointed much later and who are much younger in age as well as experience. In fact, such persons who join later on from the Bar, have started their practice and

gained experience only by practising before those very judges who are now rendered juniors to them.

12.23 In the alternative, this Association suggests that there should be equal and equitable distribution of all service benefits like selection grades, deputation and elevation to High Courts between direct recruits and promoted judges in the ratio of 1: 2, which will take the rule of rotation to its logical end.

12.24 Their complaint is that even though the post becomes available in the quota, yet the promotions are not given till the recruitment from the Bar is made and this has created great hardship to the promoted judges.

12.25 The Relevant Seniority Rule 8 of the Delhi Higher Judicial Service Rules, 1970 provides:

8(1) xxx xxx xxx

(2) The seniority of direct recruits vis-à-vis promotees shall be determined in the order of rotation of vacancies between the direct recruits and promotees based on the quotas of vacancies reserved for both categories by Rule 7 provided that the first available vacancy will be filled by a direct recruit and the next two vacancies by promotees and so on."

GOA :

12.26 The Judiciary of the State is under the control of the High Court of Bombay.

12.27 The Bombay High Court states that to avoid inter-se seniority disputes (or litigation) between the promotees and the direct recruits, the Commission should formulate clear rules regarding recruitment and promotion.

12.28 The Government of Goa is of the view that there should be a roster between the promotees and direct recruits and first place should go to promotees.

12.29 The Goa Judicial Officers' Association suggests that a roster should be replaced and the date of appointment should be the criteria for fixing the seniority, be it by promotion or by direct recruitment to avoid unnecessary litigation regarding seniority.

GUJARAT :

12.30 High Court has referred to two writ petitions of District Judges pending in the High Court claiming parity of scales with the City Civil Court Judges and another filed by superseded Assistant Judge. But both of them are not concerned with the inter-se seniority of direct recruits and promotees. The City Civil and Sessions Judges and the Gujarat Judicial Service Association however, state that there are petitions pending in the High Court between the direct recruits and the promotees on the question of inter-se seniority. Probably, it has escaped the attention of the High Court.

12.31 The Gujarat Judicial Service Association which represents all Judicial Officers of the State is of the opinion that litigation on inter-se seniority arises because of non-fixation and / or incorrect fixation of seniority by the High Court. According to them, the seniority should start from the date of appointment and not from the date of vacancy arising.

12.32 The State Government suggests for framing of specific rules for fixing inter-se seniority between the direct recruits and the promotees. The Government also favours the fixation of seniority with reference to the date of appointment.

12.33 The Inter-se seniority between the direct recruits and Service promotees in the cadre of District Judges is determined on the basis of the report dated 4-12-1998 submitted by the Committee of Hon'ble Judges, which has been accepted at the Full Court meeting of the High Court held on 21-4-1999 which provides as follows:

"The practice followed is that the promotees and direct recruits get their seniority only when they are posted against the substantive posts of 50% reserved for each category. The service rendered by promotees posted in direct recruitment vacancies, or in posts in excess of the promotees quota will not get seniority."

HARYANA :

12.34 Punjab & Haryana High Court admits that there are litigations between the direct recruits and the promotees even though seniority between the two classes has been fixed according to Rule 12 of the Punjab Superior Judicial Service Rules of 1963.

12.35 The Haryana Civil Judges' Association states that the cause of the dispute between the direct recruits and the promotees lies in the manner of giving the seniority for direct recruits over the promotees. They indicate that promotees should be made senior to the direct recruits.

12.36 The Haryana State Judges' Association is another Association representing the Additional District & Sessions Judges of Haryana. This Association is of the opinion that there is a transparent bias against the promotees in the matter of fixation of seniority.

12.37 The relevant extract of the Rule 12 of the Punjab Superior Judicial Service Rules 1963 provides:

" The seniority inter-se of the members of the service shall be determined by the length of continuous service on a post in the service irrespective of the date of confirmation:

Provided that in the case of two members appointed on the same date, their seniority shall be determined as follows:-

- i) In the case of direct recruits, the member older in age shall be senior to the younger;
- ii) A member recruited by direct appointment shall be senior to a member recruited otherwise;
- iii) In the case of members appointed by promotion, seniority shall be determined according to the seniority of such members in the appointments from which they were promoted."

HIMACHAL PRADESH :

12.38 The High Court and State Government say that there is not much litigation between the direct recruits and the promotees on the question of inter-se seniority.

12.39 Shri Ravinder Parkash, Senior Sub-Judge-cum-CJM, Kulu, Himachal Pradesh has set out some reasons for the inter-se seniority disputes. He says the Rules are faulty. The direct recruitment is not made at the appropriate time when the post falls vacant. The principles of rota and quota are causing great hardship. The direct recruits are some times appointed 3-4 years after the ad hoc promotions but they are given seniority over the promotees on the basis of rota quota rule. This practice leaves behind heart burn amongst the Judicial Officers who after rendering service of 15 to 20 years are made junior to persons who are appointed before 3-4 years. The best method to avoid such litigation, he says, is that the seniority should be fixed only from the date the Officer joining duty.

12.40 The relevant Rule 12 of Himachal Pradesh Higher Judicial Service Rules, 1973 provides:

"The seniority, inter-se, of the substantive members of the service, whether direct recruits or promoted officers, shall be determined with reference to the respective dates of their confirmation.

Provided that the seniority, inter-se, of substantive members of the service having the same date of confirmation shall be determined as follows:-

- (i) in the case of direct recruits, the older in age shall be senior to the younger;
- (ii) in the case of promoted officers, in accordance with the seniority in the Himachal Pradesh Judicial Service as it stood immediately before their confirmation;
- (iii) in the case of promoted officers and direct recruits, the older in age shall be senior to the younger."

JAMMU & KASHMIR :

12.41 The High Court is of the view that much litigation as to inter-se seniority between the direct recruits and the promotees could be avoided if a specific and comprehensive rule is made.

12.42 J & K Judicial Service Association also shares this view.

12.43 The relevant extract of the Seniority Rule 17 of Jammu & Kashmir Higher Judicial Service Rules, 1983 reads:

"17(2) As between direct recruits and promotees, the seniority shall be determined with reference to the date of their appointment in the cadre; provided where the promotee and direct recruit are appointed on the same date, the promotee shall rank senior to the direct recruit."

KARNATAKA :

12.44 The High Court appears to be more frank in this regard. It is stated that litigation has arisen in view of delay in filling up vacancies arising out of the quota reserved for direct recruits. The High Court suggests that litigation between direct recruits and the promotees on the question of inter-se seniority can be avoided by fixing and counting the seniority from the date of entry into

the cadre, i.e. the date of taking charge in the case of promotees and the date of joining duty in the case of direct recruits.

12.45 Karnataka State Judicial officers' Association states that the problem of inter-se seniority has arisen on account of recruiting District Judges who are relatively young. Recruitment is made some times in large numbers at a time thereby blocking the seniority of promotees. According to them, this problem may be remedied by restricting the number of appointments by direct recruitment.

12.46 The State Government identifies the reasons for such litigation. It is due to not adhering to the quota between the direct recruits and the promotees and the process of direct recruitment taking a long time and often taking years. Another reason given by the State Government is that normally promotions are made in excess of the quota and when the excess promotees are pushed down upon direct recruitment, it leads to litigation.

12.47 Justice D.M. Chandrasekhar, Former Chief Justice, High Court of Karnataka and Justice P.P. Bopanna (Rtd.) are for determining the inter-se seniority from the respective dates of appointments to the cadre, whether by promotion or by direct recruitment.

12.48 The relevant extract of the Karnataka Government Servants' (Seniority) Rules, 1957 states:

"Rule 2. Subject to the provisions hereafter contained, the seniority of a person in a particular cadre of service or class of post shall be determined as follows:

(a) Officers appointed substantively in clear vacancies shall be senior to all persons appointed on officiating or any other basis in the same cadre of service or class of post.

(b) The seniority inter-se of Officers who are confirmed shall be determined according to dates of confirmation, but where the date of confirmation of any two officers is the same, their relative seniority will be determined by their seniority inter-se while officiating in the same post and if not, by their seniority inter-se in the lower grade.

(c) Seniority inter-se of persons appointed on temporary basis will be determined by the dates of their continuous

officiation in that grade and where the period of officiation is the same, the seniority inter-se in the lower grade shall prevail.

xxx xxx xxx

3. Where officers are recruited to any service or a class of post by promotion and by direct recruitment, the officers directly recruited will take precedence over the promoted officers in case where the date of appointment is the same."

KERALA :

12.49 The High Court of Kerala has not given their comments on Question No.9. The State Government is no better. The State Government is not aware of any litigation regarding the inter-se seniority between the direct recruits and promotees.

12.50 There are two Associations: (1) Kerala Judicial Officers' Association (Registered) and (ii) Kerala Magistrates (Judicial) Association. The reason given by the former is not relevant for our purpose. The latter states that the seniority of direct recruits and of promotees should be determined with reference to the respective dates of appointments of each of such candidates.

12.51 The Rule regarding Seniority provides:

"6. Seniority (1) The seniority of a person appointed either to category (1) or category (2) shall, unless he has been reduced to a lower rank as punishment, be determined with reference to the date of the order of his first appointment to the said category:

Provided that the seniority of a person appointed to category (2) prior to 1st January 1979 shall be determined with reference to the date from which he was appointed to the category otherwise than as a temporary basis, without being subsequently reverted from the post.

(2) If two or more persons are appointed by the very same order either to category (1) or to category (2), their inter-se seniority shall be determined by the serial order in which their names appear in the appointment order."

(**Note:** Category (1) - Selection Grade District and Sessions

Judge.

Category (2) - District and Sessions Judges (including

Addl.District and Sessions Judge).

MADHYA PRADESH :

12.52 The High Court of Madhya Pradesh appears to have misunderstood the Question No.9. By way of answer to that question, it has simply asked the Commission to refer to Rule 11 of the Madhya Pradesh Uchchatar Nyayik Seva (Bharti Tatha Seva Sharten) Niyam, 1994.

12.53 Madhya Pradesh Judges' Association has also asked the Commission to refer to the said Rule 11. We think one has copied the answers of another.

12.54 According to the Madhya Pradesh Judicial Officers' Association, the root cause for the litigation between direct recruits and the promotees on the question of inter-se seniority is due to stagnation, frustration and nepotism on the part of the Recruiting authority.

12.55 The State Government has, however, stated that there are clear rules regarding the fixation of inter-se seniority list and, therefore, the problem is not felt in their State.

12.56 Mr. P.V. Namjoshi, Director, Judicial Officers' Training Institute, Jabalpur, appears to be the only person in Madhya Pradesh who has applied his mind carefully to this thorny problem. In his Memorandum to the Commission, he states:

"In Civil Service, whenever a Deputy Collector is promoted as an Officer of the Indian Administrative Service, his inter-se seniority is determined on the basis of total length of service rendered by him and not from the date of his

promotion. For example, if he happens to be in the State Civil Service for a continuous period of 21 years, he would get a weightage of seven years over a member directly recruited to the cadre. The same formula should be made applicable mutatis mutandis to the Members of the Higher Judicial Service."

12.57 The relevant extract of the Service Rule regarding Seniority reads:

"11. Seniority: (1) The seniority of a person appointed to a post in Categories (a), (b), (c) and (d) of Rule 3 (1) shall, unless he has been reduced in rank on account of punishment, be determined in accordance with:

(a) the date of continuous officiation in the service in case of officers promoted to category (a).

(b) the date of order of appointment in the case of direct recruits to post in category (a) (i) and

(c) the date of order of promotion to categories (b), (c) and (d) respectively or such date as may be specified in this regard by the High Court;

Provided that where the date of continuous officiation in the case of a member promoted to a post in category (a) (i) and the date of joining the service in the case of direct recruit to the post in the same category, be the same, the promoted officer shall be treated as senior;

Provided, however, that seniority inter-se among the persons promoted by an order of the same date or among direct recruits appointed by an order of the same date shall follow the order in which their names have been recommended by the High Court."

Note:

Category (a) (i) -	District Judge in Senior Time Scale.
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Category (a) (ii) -	District Judge in Junior Administration Cadre, non- functional.
Category (b) -	District Judge in Selection Grade.
Category (c) -	District Judges in Super Time Scale.
Category (d) -	District Judges in above Super Time Scale.

MAHARASHTRA :

12.58 The High Court of Bombay requires the Commission to formulate and get enforced concise and clear Rules regarding recruitment and promotions.

12.59 According to the Government of Maharashtra, there is hardly any litigation on inter-se seniority between direct recruits and promotees. However, the Government feels that the solution to such type of litigation "is to specify the date from which the recruited person is appointed comes in the cadre of District Judge."

12.60 Maharashtra State Judicial Service Association feels that a proper representation to promotees would eliminate such litigation.

12.61 Justice A.Y. Sakhare of Bombay High Court states that reason for litigation is discriminatory rules or ambiguity. He suggests that the recruitment rules and service rules must be uniform in all States which will eliminate litigation.

12.62 Justice A.D. Mane and Justice B.B. Vagyan state that by making appropriate clear rules regarding fixation of seniority and promotion, such litigation could be avoided.

12.63 Justice R.J. Kocher states that there should be uniform recruitment rules to avoid litigation about inter-se seniority.

12.64 The relevant extract of Rule 5 (2) (iii) (c) of the Bombay Judicial Service Recruitment Rules, 1956 (as modified upto 30th June 1992) provides:

"Seniority in the cadre of District Judges in case of persons appointed under sub-clauses (a) and (b) of clause (ii) shall be determined on the basis of their dates of appointment to work as District Judges.

Provided that, if more than one person is so appointed to work as District Judge on the same date, seniority inter-se as between them shall be in the order fixed by the High Court."

ORISSA :

12.65 The High Court of Orissa states that litigation regarding seniority could be avoided by regular recruitment and filling up the vacancies without much delay.

12.66 All Orissa Judicial Officers' Association states that the cadre is not hemmed by any litigation between direct recruits and promotees on their inter-se seniority.

12.67 The relevant Rule regarding seniority is as follows:

"17. Seniority of Officers in the service shall be determined in accordance with the dates of substantive appointment to the service;

"Provided that a promoted officer, who may have been allowed to continuously officiate from a date prior to the date of appointment of a direct recruit, shall, if he is subsequently substantively appointed in the service without reversion to his parent service take his seniority in the cadre over such direct recruit."

PONDICHERRY :

12.68 This Union Territory has no problem on inter-se seniority because no direct recruitment to the cadre of District Judges has been made so far, although the Rules provide for direct recruitment.

PUNJAB :

12.69 According to Punjab & Haryana High Court, Punjab is not lacking in the litigation between the direct recruits and promotees. But seniority as between them is strictly fixed according to Rule 12 of the Punjab Superior Judicial Service Rules, 1963.

12.70 The Punjab Judicial Officers' Association states that litigation between direct recruits and promotees mostly arises on account of interpretation put on the Rules by the High Court while implementing the Rules. Such litigation can be avoided if Service Rules are framed in such a manner that the same are not vague and admit of only one interpretation.

12.71 The Government of Punjab has not replied to the questionnaire.

12.72 The relevant extract of the Service Rules as to Seniority provides:

"12. The seniority, inter-se of the members of the service shall be determined by the length of the service on a post in the service irrespective of the date of confirmation:

Provided that in the case of two members appointed on the same day, their seniority shall be determined as follows:

1. In the case of direct recruits, the older in age shall be senior to the younger;

2. A member recruited by direct appointment shall be senior to a member recruited otherwise;
3. In the case of members appointed by promotion, seniority shall be determined according to the seniority of such members in the appointments from which they were promoted;
4. In the case of promoted officers and direct recruits, the older in age shall be senior to the younger."

RAJASTHAN :

12.73 Neither the High Court nor the Judicial Service Officers' Association has understood the question and, therefore, they have not answered properly.

12.74 However, Judicial Service Officers' Association has stated that seniority must be assigned to both the cadres from the date of their promotion / selection.

12.75 The relevant Service Rule provides:

"24. Seniority: Subject to the other provisions of these rules, seniority in the service shall be determined by the date of the order of substantive appointment in a permanent vacancy including appointment on probation under Rule 25;

Provided that a promoted officer who may have been allowed to officiate continuously against a permanent vacancy in the cadre from a date prior to the date of appointment of a direct recruit, shall, if he is subsequently selected and substantively appointed in the service, take his seniority in the cadre over such direct recruit;

Provided further that the seniority of candidates appointed to the service shall in the case of the appointment of more persons than one to the service by an order of the same date, follow the order in which their names have been recommended by the High Court."

SIKKIM :

12.76 According to the High Court of Sikkim, there is no litigation regarding inter-se seniority between direct recruits and promotees. However, they have suggested remedial measures as follows:

- (a) Seniority should be fixed from the date of appointment, be it direct or on promotion;
- (b) If a direct recruit and a promotee are appointed to a higher post on the same day, the direct recruit be considered as senior to the promotee.

12.77 The relevant extract of the Seniority Rules of Sikkim reads:

"11(1). The Seniority, inter-se, of the members of the service shall be determined by the date of confirmation of a post in the service."

TAMIL NADU :

12.78 The Madras High Court is of opinion that litigation on inter-se seniority could be avoided by making prompt recruitment and ear-marking the vacancy at a particular point of time and taking the date of appointment as the date for fixing the seniority.

12.79 The Tamil Nadu Government states that such litigation could be avoided by making regular recruitment and by fixing seniority as per the ranking in the selection list.

12.80 The Tamil Nadu Judicial Officers' Association, Chennai, have got a novel idea to avoid litigation on inter-se seniority. They suggest that there should be no direct recruitment to the cadre of Civil Judges (Senior Division) and District Judges.

12.81 Rule 8 of the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 1995 provides:

"8. Seniority. (1) The seniority of a person appointed to the category of District Judge (Super Time Scale) shall be determined by the date of first appointment to that category.

Provided that where the date of the first appointment of two or more District Judges / Additional District Judges / Chief Judicial Magistrates to the category of the District Judge (Super Time Scale) is the same, then the inter-se seniority shall be determined by the rank assigned to them in the list drawn by the High Court.

(2) The seniority of a person appointed to the category of District Judge / Additional District Judge / Chief Judicial Magistrate shall be determined by the date from which he was continuously on duty in the category of District Judge / Additional District Judge / Chief Judicial Magistrate.

Provided that the seniority of a person appointed to the category of District Judge / Additional District Judge / Chief Judicial Magistrates by promotion from category 3 - Civil Judge (Sr. Divn.) - shall be fixed by the Government on the recommendation of the High Court."

UTTAR PRADESH :

12.82 The Allahabad High Court states that after the judgment of the Supreme Court in O.P. Garg's case (AIR 1991 SC 1202), the dispute between the direct recruits and promotees has been settled.

12.83 Government of Uttar Pradesh agrees with the High Court.

12.84 U.P. Judicial Services Association says that fixation of inter-se seniority has been the root cause giving rise to endless litigations between the direct recruits and promotees. Some fool-proof formula must be evolved for fixation of such seniority. They suggest the following measures to avoid litigation on seniority, viz.,

"Date of joining or officiation for direct recruits as well as for promotees must be the criteria for determination of their seniority."

12.85 Justice R.K. Mahajan (Rtd.) of the Allahabad High Court admits that there has been a lot of litigation on inter-se seniority between direct recruits and promotees. That is on account of promotion of officers on ad hoc basis against the direct recruit vacancies and the vacancies some times are not filled up for 2 to 3 years or more. The direct recruit is given seniority over the promotee from an anterior date of his recruitment, which leads to frustration amongst the promotees. Some time undertaking is taken from the promotees that they would not claim any seniority but that practice is not a healthy practice. He suggests that no promotion should be made on ad hoc basis, and if made in the public interest, promotees be given seniority from the dates of their joining duty.

12.86 Rule 26 of the U.P. Higher Judicial Service Rules, 1975 provides for seniority as follows:

" 26(1). Except as provided in sub-rule (1), seniority of members of the service shall be determined as follows:

(a) seniority of the officers promoted from the Nyayik Sewa vis-à-vis the officers recruited from the Bar shall be determined from the date of continuous officiation in the service in the case of promoted officers and from the date of their joining the service in the case of direct recruits. Where the date of continuous officiation in the case of an officer promoted from the Nyayik Sewa and the date of joining the service in the case of a direct recruit is the same, the promoted officer shall be treated as senior."

WEST BENGAL :

12.87 The Calcutta High Court states that there is lot of litigation on inter-se seniority. The litigation arises due to arbitrary recruitment and fixation of seniority. Recruitment was made long after promotion in some years. The High Court is of the opinion that if recruitment and promotions are made in time the Rules about seniority are specified and followed judiciously in unambiguous terms, and unbiasedly, the possibility of such litigation could be prevented.

12.88 Government of West Bengal also agrees with the proposal of the High Court. They have reiterated that to avoid such

litigation, the Rules of Seniority may be made clear and it should be based on rational and practical basis.

12.89 The West Bengal Judicial Services Association also concurs with the High Court and the State Government. They are of the view that Rules of seniority must be clear and based rationally and practically. It should not be arbitrary and impracticable. Continuous officiation from the date of joining with regard to promotees should be the date for reckoning seniority of the promotees vis-à-vis direct recruits and not the date of confirmation of the Officers. They suggest that the date of joining to the cadre whether on probation or continuous officiation should be the basis of Seniority.

12.90 They have given one more suggestion. They want the Commission to follow the practice in the All India Services such as IAS and IPS, wherein the promoted Officers would get a weightage of seniority of one year for every three years of completed service in the State Service upto a maximum of nine years. This provision, according to them, is most rational and reasonable.

12.91 It may be noted that in West Bengal, direct recruitment of District Judges has been stopped since 1977.

12.92 The relevant extract of the Service Rules reads:

"Rule 3. The seniority of direct recruits and promotees shall be determined according to the date of appointment on probation in the case of direct recruits and according to the date of promotion to a post if the officiation is continuous in the case of promotees:

Provided that the relative seniority of members having the same date of first appointment to a post shall be determined -

- (i) in the case of direct recruits, inter-se, with reference to the age of the members concerned;
- (ii) in the case of promotees, inter-se, with reference to the position of the members concerned in the gradation list of the West Bengal Civil Service (Judicial);
- (iii) in the case of a promotee and a direct recruit, inter-se, with reference to the age of the members concerned."

12.93 Before proceeding further it will be useful to refer to some of the decisions of the Supreme Court on the disputes relating to inter-se seniority between the direct recruits and promotees.

I. S.B. PATWARDHAN v. STATE OF MAHARASHTRA (1977)

3 SCR 775 : (AIR 1977 SC 2051)

12.94 In this case, the Supreme Court has deprecated the practice of preparing the seniority list on the basis of date of confirmation of officials. The Court observed that "confirmation is one of the inglorious uncertainties of Government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies."

II. DIRECT RECRUIT CLASS II ENGINEERING OFFICERS' ASSOCIATION v. STATE OF MAHARASHTRA (1990) 2 SCC 715.

12.95 The Supreme Court approved the principles stated in Patwardhan's case and laid down the following propositions for preparing the inter-se seniority between the direct recruits and promotees:

(A) Once an incumbent is appointed to a post according to Recruitment Rules, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above Rule is that where the initial appointment is only Ad hoc and not according to Rules, then the officiation in such post on Ad hoc appointment cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the Recruitment Rules but the appointee continues in the post uninterruptedly till he is regularised in accordance with the Rules, the period of officiating service must be counted for the purpose of determining the seniority.

(C) When appointments to a cadre are made from more than one source, it is permissible to fix the ratio for recruitment from the such different sources, and if Rules are framed in this regard, they must ordinarily be followed strictly.

III. O.P. GARG v. STATE OF UTTAR PRADESH (AIR 1991 SC 1202).

12.96 This is a second round of litigation regarding seniority in the U.P. Higher Judicial Service. In this case, the Supreme Court observed that if temporary posts form part of the cadre and so long as the temporary posts have independent existence, the appointment against such posts has to be treated as substantive appointment. The seniority of a direct recruit, appointed to the post in service has to be determined from the date of continuous officiation of his service. The seniority of a promotee officer has to be counted on the basis of continuous length of service and not with reference to the date of confirmation.

12.97 When recruitment to the service is from more than one source, the existence of the vacancy either permanent or temporary is the sine qua non for claiming benefit of continuous length of service towards seniority. The period of officiation / service which is not against a substantive vacancy (permanent or temporary) cannot be counted towards seniority.

IV. BHASKAR RAO v. STATE OF ANDHRA PRADESH 1993 SCR (2) 547.

12.98 The Andhra Pradesh Higher Judicial Service Rules case regarding the fixing inter-se seniority between the direct recruits and promotees came up for consideration in this case before the Supreme Court. The promotees were appointed in temporary posts in 1978 and made permanent in 1983. The direct recruits were appointed in 1981. The question presented was whether the service rendered on temporary appointment could be counted for seniority. It was observed by the Court that the service comprises of posts permanent and temporary and if the appointments to such posts were made after following the procedure, the seniority has to be given on the basis of continuous service in temporary posts as well.

V. ASHOK KUMAR v. STATE OF TAMIL NADU 1994 SUPP. (2) SCC 631.

12.99 The Tamil Nadu State Higher Judicial Service Rules, 1982 regarding the determination of inter-se seniority between the direct recruits and the promotees was considered in this case. The direct recruits were not confirmed when vacancies were available and confirmation of promotees was made earlier since they were appointed earlier in point of time.

12.100 The question debated was whether it was proper to confirm the promotees earlier to direct recruits and rank them seniors.

The Apex Court observed that there was no particular quota reserved for direct recruits under the Rules. The Rules only provided not more than 10 posts in the cadre shall be filled by direct recruitment. This is not linked to the total cadre strength. Hence the seniority cannot be fixed on the principles of rota. The date from which the direct recruits and promotees are continuously officiating is relevant and material.

VI. STATE OF PUNJAB AND OTHERS v. DR. R.N. BHATNAGAR AND ANOTHER, (1999) 2 SCC 330.

12.101 The Supreme Court was concerned with the Quota-rota rule for recruitment from two sources, namely, promotees and direct recruits. The rule provides for filling vacancies in the cadre by promotees and direct recruits in the ratio of 3 : 1. That Rule was with reference to the recruitment to Punjab Medical College Education Service (Class I) Rules, 1978.

12.102 After reviewing the earlier decisions of the Supreme Court on the working of the Quota-rota rule, the Court observed that for working out such a Rule of recruitment, the vacancies arising in the cadre had to be kept in view and not the posts themselves. Quota-rota rule should be followed for monitoring recruitment from two sources. As the ratio for recruitment is 3 : 1, the first three vacancies in the cadre would go to promotees and the 4th vacancy would go to direct recruit. Similarly, 5th, 6th and 7th were to be filled by promotees and the 8th vacancy would go to a direct recruit. Likewise, 9th, 10th and 11th would go to departmental promotees and the 12th vacancy would go to direct recruit, so on and so forth. That is how the roster points are to be worked out regulating recruitment from two sources, i.e. from promotees and direct recruits.

12.103 Reverting back to the critical response from judicial fraternity on Question No.9, it will be seen that the existing Recruitment Rules and Seniority Rules in most of the States are primary cause of the problems in the first place: Second, the delay in making recruitment from the Bar or making promotions in the service personnel in excess of the quota reserved for them.

12.104 These are intractable problems for which the solution lies according to us in formulating non-discriminatory and unambiguous Rules of Seniority for all the States/UTs.

12.105 The High Courts of Bombay and Calcutta and in particular the Judges of the Bombay High Court, Mr. Justice A.Y. Sakhare, Mr. Justice A.D. Mane, Mr. Justice B.B. Vagyan and Mr. Justice Kochar, have also emphasised that there must be

uniform Recruitment Rules and Seniority Rules in all States/UTs and such rules alone could eliminate the discontentment or litigation amongst the Judicial Officers.

OUR RECOMMENDATION :

12.106 Bearing in mind the aforesaid perspectives, comments and suggestions made by the High Courts, State Governments, Judges and Service Associations, we have made the uniform Rules of Recruitment and Seniority for operation by all the States/UTs.

12.107 The Rules of Recruitment, inter alia, provide as follows :

(i) Reservation for direct recruitment from the members of the Bar to the cadre of District Judges should not be more than 25% of the cadre posts. This is a simple rule prescribing the upper limit for direct recruitment without any prescription of rota quota system.

(ii) The age of the candidate must be between 35 and 45 years as on the last date fixed for receipt of the applications and the upper age may be relaxed by 3 years for SC/ST candidates.

(iii) To avoid arbitrariness in the selection and to provide for more transparency, the direct recruitment of District Judges from the members of the Bar shall be by competitive examination consisting of : (a) Written Examination and (b) Viva Voce Examination.

The written examination is about two hours on a subject as may be specified by the High Court and it shall carry maximum of 200 marks.

Candidates who secure not less than 60% marks or the corresponding grade in the written examination shall be eligible for viva voce examination. SC / ST candidates who secure not less than 50% of the marks or the corresponding grade shall be eligible for the viva voce examination.

The viva voce examination shall carry maximum marks of 50.

(iv) The recruitment shall take place bi-annually. However, the vacancy position including 'NIL' vacancy should be notified in the Official Gazette every year.

(v) Selection will be made by the Full Court or by five senior-most Judges of the High Court.

(vi) Rules of Seniority :

Seniority of the Officers appointed by direct recruitment or promotion shall be determined according to the dates on which they report for duty.

Where more than one Officer is promoted to a cadre at the same time, the inter-se seniority of the persons who are promoted shall be determined by their inter-se seniority in the lower cadre.

With regard to direct recruits, the inter-se seniority is determined on the basis of their rankings in the select list.

WEIGHTAGE FOR PROMOTEES :

12.108 According to the feed-back information which we have received, from the High Courts regarding average age of promotees and direct recruits made in the last five years to the cadre of District Judges, the promotees will always be "older" in age to direct recruits. Reason being, the Civil Judges (Sr. Divn.) get promotion as District Judges only at their advanced age while Bar Members are directly recruited at relatively younger age.

12.109 Below is the Table depicting that State-wise position :

TABLE

Average age of District Judges at the time of Promotion/Direct Recruitment during the last five years.

Sl.No.	State / UT	Average age of	Average age of
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		promotee Dist. Judges	Directly Recruited Dist. Judges
1.	Andhra Pradesh	48	39
2.	Assam	51	38
3.	Bihar	54	41
4.	Delhi	46	40
5.	Gujarat	52	40
6.	Haryana	53	42
7.	Himachal Pradesh	51	43
8.	Jammu & Kashmir	52	38
9.	Karnataka	50	41

10.	Kerala	48	40
11.	Madhya Pradesh	51	42
12.	Maharashtra	49	46
13.	Orissa	53	38
14.	Punjab	55	43
15.	Rajasthan	51	43
16.	Sikkim	46	40
17.	Tamil Nadu	50	37
18.	Tripura	49	42
19.	Uttar Pradesh	50	42

20.	West Bengal	50	(No. D.R. since 1977)
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12.110 It will be seen from the above Table that the average age of promotees would be about 50 years as against the average age of 42 years of the direct recruits. Indeed, the Table shows that in majority of the States, such average age of the promotees would be above 50 years while that of the direct recruits would be less than 42 years.

12.111 This will have an imbalance in the service conditions of promotees and direct recruits and that is the root cause of frustration amongst the promotees. Apart from the imbalance in service, the promotees would be denied of the higher pay scales like Selection Grade, Super Time Scale etc., since it is given on the basis of merit and seniority of the Officers. The promotees will not have any chance to become the Principal District Judges of the Districts, since such posts are generally occupied by senior judges. They would be wholly denied of opportunity to go side by side with the direct recruits in their onward march to reach the High Court. Even if they are elevated to the High Court, they will have hardly three to four years of service. Such a short period is not sufficient to make any worthwhile contribution to the High Court.

12.112 The Commission considers that it is imperative to remove the frustration of promotees resulting from the aforesaid imbalance and the only way which we can think of is to give certain weightage to the promotees for the purpose of determining their seniority.

12.113 The system of giving weightage is not new to the service jurisprudence. It has been provided to Officers of the State Service when they are selected to the All India Services.

12.114 Reference may be made to the India Administrative Service (Regulation of Seniority) Rules, 1987 as amended by Notification dated 31 December 1997.

12.115 Relevant portion of the said amended Rules provide as follows:

"2. In the Indian Administrative Service (Regulation of Seniority) Rules, 1987 (hereinafter referred to as the Principal Rules), in rule 3, in sub-rule (3), for clauses (ii) and (iii), the following clauses shall be substituted, namely:

'(ii) The year of allotment of a promotee Officer shall be determined with reference to the year in which the meeting of the Committee to make selection, to prepare the select list, on the basis of which he was appointed to the Service, was held and with regard to the continuous service rendered by him in the State Civil Service not below the rank of a Deputy Collector or equivalent, up to the 31st day of December of the year immediately before the year in which meeting of the Committee to make selection was held to prepare the select list on the basis of which he was appointed to the Service, in the following manner:

(a) For the service rendered by him up to twenty one years, he shall be given a weightage of one year for every completed three years of service, subject to a minimum of four years.

(b) He shall also be given a weightage of one year for every completed two years of service beyond the period of twenty one years, referred to in sub-clause (a), subject to a maximum of three years'."

12.116 The weightage is given to the promotees to the IAS cadre taking into consideration the service rendered by them in the State Service. The total service rendered by the Officers is counted. The weightage of one year for every completed 3 years of service subject to a minimum of 4 years and maximum of 10 years is given to such Officers.

12.117 This system is stated to be functioning very satisfactorily without giving any scope for discontentment either to direct recruits or to the promotees in the All India Service, particularly in IAS Cadre.

12.118 The Commission suggests that in fairness and to minimise the age-long discontentment between the promotees and direct recruits, certain weightage be given to promotee District Judges.

12.119 The Commission recommends that promotees be given a weightage of one year for every five years of judicial service rendered by them **subject to a maximum of three years.**

12.120 The judicial service of Officers for providing weightage is the entire service rendered by them as Judicial Officers right from the entry into Judicial Service up to the date of their promotion to the cadre of District Judges.

12.121 We draw support from the provisions of Article 217 (2) (a) of the Constitution of India, which reads as under:

"217. Appointment and conditions of the office of a Judge of a High Court,-

xxx xxx xxx

(2) A person shall not be qualified for appointed as a Judge of a High Court unless he is a citizen of India and -

(a) has for at least ten years held a judicial office in the territory of India; or (underlining is ours)

(b) xxx xxx xxx

12.122 The meaning and scope of "Judicial Office" has come up for consideration before the Supreme Court in SHRI KUMAR PADMA PRASAD v. UNION OF INDIA AND OTHERS¹, in which the Supreme Court observed at p.1225 thus:

"The judicial service under Article 236 (b) consists of District Judges who preside over the District Courts and the Subordinate judges who man the courts inferior to the District Courts, Subordinate Judges who are members of the judicial service are eligible for appointment as District Judges. It would be logical and consistent with the constitutional scheme to read "judicial office" under Article 217(2)(a) to mean an office within the judicial service of the State. Ordinarily the District Judges who are superior members of the judicial service are considered for appointment as Judges of the High Court but the constitution-makers wanted to hold-out a possibility of elevation as a Judge of the High Court to the Subordinate Judges, so as to infuse amongst them a sense of responsibility and an

incentive for maintaining efficiency and it was with that objective that the expression "judicial office" has been used in Article 217(2)(a) of the Constitution. In our view the expression "judicial office" in the said article means an office which is a part of judicial service as defined under Article 236(b) of the Constitution."

12.123 In the light of these principles, we have drafted Judicial Service Rules, 1999 for being adopted by all the High Courts and State Governments. The Draft Rules are annexed to the Chapter captioned as 'DIRECT RECRUITMENT TO THE CADRE OF DISTRICT JUDGES - PROFILE, PROBLEMS AND PROGNOSIS'.

1. AIR 1992 SC 1213.

* * * * *

13.1 INTRODUCTION

13.1.1 After a long period of relative neglect and low priority, judicial education holds out the promise of organized action in the coming years at the hands of the authorities in India. The decision of the First National Judicial Pay Commission to give the subject the attention it deserves while recommending the restructuring of the status and service conditions of what the Constitution of India calls the "Subordinate Courts" (Chapter VI, Articles 233-237) is a welcome development not only for the institution but also for the litigant public. The immediate provocation for the initiative came from a 1992 judgment of the Supreme Court in All India Judges' Association V. Union of India & Others (AIR 1992 SC 165) reiterated in another judgment on a Review Petition in 1993 (AIR 1993 SC 2493). Chief Justice Ranganatha Misra who wrote the judgment on behalf of himself, Justices A.M. Ahmadi and P.B. Sawant said :

"One of the claims advanced before us was for provision of inservice training for judicial officers. This we consider as a must ... We are of the view that inservice institutes are indispensable for the upkeep of the efficiency of judicial service. We direct that an All India Institute of Inservice Training for higher officers of the judiciary including the District Judges and a State level institute for training of the other members of the subordinate judiciary within each of the States and Union Territories or one common

institute for more than one State or Union Territory **should be set up within one year from now and at any rate not later than December 31, 1992**. This has to be organized by respective High Courts" (emphasis added).

It is refreshing to note that claim for in-service training came as a demand from the judicial officers themselves in their petition before the Supreme Court. They must have experienced how the lack of such training affected their capacity to perform better in their judicial and administrative functions.

13.1.2 The Supreme Court did consider the item as a priority issue and mandated the setting up of two sets of judicial training institutions - one for higher judicial officers including the District Judges at the all India level and another for State/Union Territory at the State or regional levels - by the end of 1992 and imposed the organizational responsibility on the High Courts. Six years later, the scheme has not taken off from the drawing board stage. Hopefully, the High Courts which have been given the responsibility will now act on the basis of the Report of the National Judicial Pay Commission and ensure that the institutes are in place at least in beginning of the next millenium which incidentally is just two years away.

Law Commission Recommendations :

13.1.3 The need for raising the competency of judicial officers for better performance of the judicial system was highlighted by several reports of the Law Commission of India beginning with the Fourteenth Report (Reform of Judicial Administration, Volume I, Chaper-9, Subordinate Judiciary) in 1958. The report said :

"The problem of efficient judicial administration, whether at the level of the superior courts or the subordinate courts, is largely the problem of finding capable and competent judges and judicial officers. Delays in the disposal of cases and the accumulation of arrears are in a great measure due to the inability of the judicial officers to arrange their work methodically and to appreciate and apply the provisions of the Procedural Codes ... However, well framed the substantive law and carefully designed the procedural law, the proper application and working of these laws lies largely in the hands of the officers presiding over the courts. Even if these laws were perfect, we would need adequately trained and capable judicial officers to apply and administer them. Without such personnel, administration of justice can never be satisfactory". (p.161).

13.1.4 Reiterating the increasing importance of training to judicial officers, the Setalvad Commission report added : "... Not only has the volume and variety of the work increased but the pace at which a munsiff has to perform his duties has quickened. Unless a young officer is given the proper training, he is likely to acquire by reason of his inexperience, un-businesslike habits which he may find it difficult to shed later on and which may prevent him from becoming an efficient judge. A certain amount of training in the administrative work of a court is also essential to a fresh entrant into the service from the Bar, if he is not to be at the mercy of his office clerks" (p.178).

13.1.5 The Fifty-fourth Report of the Law Commission in 1973 further emphasized the subject and recommended the immediate setting up of a National Academy for Judicial Training. It said :

"Even at the cost of repetition, we wish to emphasize that the success of any system, and particularly the judicial system depends on the men who work the system...Successful completion of the training should be a condition precedent to confirmation of appointment in the judiciary".

13.1.6 Keeping in mind the changed role of judges in the independent Republic of India, the Gajendragadkar Commission added : "The subjects to be included should be such as to deal with the relationship of law to other social sciences, including, in particular, economics and sociology. The emphasis should not be on technical law or procedure, but on law as a part of an interdisciplinary study and on the application of the law to the facts of a particular case....A subject of importance is the effect of social change on legal institutions..".

13.1.7 It is in the light of the jurisprudential view of the judicial role that judicial training should be organized. "The law is predominantly an instrument of social engineering in which conflicting pulls of political philosophy, economic interests and ethical values struggle for recognition. This struggle has to be viewed against the background of history, tradition and development of legal techniques. A working knowledge of those disciplines is therefore essential". (p. 332-333, 54th Report).

13.1.8 The One Hundred and Seventeenth Report of the Law Commission is devoted entirely to the subject of training of judicial officers (November 1986). The report found, quoting approvingly the comment on the American judicial system by the then Chief Justice of that country, "... In the final third of the century, we are still trying to operate courts with fundamentally the same

basic methods, the same procedures and the same machinery which Roscoe Pound found were not good enough" even at the turn of the century a hundred years ago ! As Lord Devlin said of the British Justice System, "If our business methods were as antiquated as our legal system, we would have become a bankrupt nation long back". The Law Commission Report therefore concluded that the "updating of the knowledge and skills can hardly be left to the voluntary effort of individual judges.." It is conceded that training can significantly upgrade the capability of everyone called upon to perform a duty. It is all the more so in the case of judicial officers, because sociology of law is acquiring new and added significance in the development of the society". (p. 2 of 117th Report).

13.1.9 The importance and urgency of pre-service and in-service training for judicial officers have again been reiterated in the 114th Report on Gram Nyayalaya (participatory justice at the grassroot level) and the 116th Report in which the Commission recommended the scheme for an all-India Judicial Service.

13.1.10 It is thus beyond doubt that there is an imperative need for organized programme of judicial education and training not only at the time of selection and appointment, but on a continuing basis during service. It is also clear that the primary reason for judicial delays, repeated appeals and legal uncertainties, inter alia, can be traced to the lack of required competence in terms of updated knowledge and skills on the part of judicial officers at several levels of the system. In short, there is no substitute to organized and appropriate training on a continuing basis which requires priority attention in the judicial reform agenda. The occasion of the introduction of all-India Judicial Service should provide the opportunity for a meaningful, nation-wide programme of judicial education to prepare the system to respond to the challenges of the next millenium with competence and confidence.

13.2 THE FUNCTION OF THE JUDGE

13.2.1 The nature and scope of judicial education depends upon the function of the judge in a given society. Broadly speaking, the function of every judge, trial or appellate, is to decide the cases brought before him according to law and in a manner accepted by society as just, fair and reasonable. The credibility and legitimacy of judicial decisions depend not only on its merit and soundness in law, but also on public perception of impartiality and objectivity of the procedure adopted by the judge. This is a delicate task which judges have to internalise when they assume the role of judging.

Organizing a fair trial and determination of facts :

13.2.2 This report looks at only the functions of a trial or an appellate judge in the "Subordinate Courts". The most important of his function is to conduct the proceedings in a fair, orderly and dignified manner. Finding the truth of contested issues of fact is the first concern of a trial judge. Based on facts ascertained, the judge is to apply the law and give his decision on guilt, liability etc. For ensuring "fairness" in truth ascertainment and minimising subjectivity in the process, procedural law gives rights and privileges to litigants, witnesses and officers of court. It is the function of the judge to give maximum protection to these rights and privileges of parties so that justice is not only done but appears to have been done. This is a function which demands a variety of skills on the part of the judge besides knowledge of law. A judge's personality and values influence his decisions and the atmosphere he creates in the courtroom. His body language and tone of voice, his reactions to witnesses, his interaction with others in the courtroom, his manner of ruling on objections, his treatment of advocates all affect public perception of the fairness of the trial.

With the introduction of new technologies and changes in law, the judge is confronted with continuing challenges of court management, litigational efficiency and judicial balance in the conduct of trial of civil and criminal cases.

13.2.3 The judges at the primary level also have the responsibility to critically evaluate pleadings, settle issues, handle interlocutory applications and manage introduction of evidence by parties to the dispute. In the process, he may issue commissions and invoke methods of alternate resolution of the disputes before him. The judge has to rule on evidentiary contests on admissibility, relevancy and probative value. He must be able to appreciate evidence, assess the credibility of witnesses, and

determine facts on the basis of preponderance of probabilities. A judge is expected to be an expert in all areas of the law, though as a lawyer he might have specialised in one or two branches of law only. All these demand knowledges and skills of such range and variety which perhaps no other profession requires from a practitioner. At the same time the facilities and support services available to him are so limited and archaic which make his task all the more difficult and challenging.

Writing Judgments :

12.2.4 On ascertaining facts and after receiving arguments on behalf of parties, the judge has to perform the most important function of delivering judgment on which his credibility and acceptability are determined by the legal community, the parties and the society at large. Judicial reasoning is both an art and a science to be cultivated by every judge by study, reflection and hard work. His competence in language and communication is critical for this task. Complex factual situations have to be analyzed and important legal principles have to be explained to avoid possible conclusions contrary to his own. The judge must be able to put it in such a way that even if the matter goes on appeal, the appellate judge should find it persuasive enough to go by the finding of the trial judge.

Sentencing and Calculation of Damages :

13.2.5 In criminal proceedings the judge has to perform another important function of awarding an appropriate sentence to the guilty. With better understanding of the varied goals of punishments and the nature of human behaviour, the sentencing function has assumed a critical role in criminal justice administration. Similarly the calculation of money damages in a civil court is not that easy as generally believed.

Human Rights Observance :

13.2.6 The emergence of human rights in its varied dimensions in substantive and procedural laws makes varying demands from the trial judge particularly in criminal trials, environmental adjudication, family dispute settlements, juvenile justice and labour relations litigation. The trial judge has to have an abiding interest and wholesome understanding of human rights jurisprudence as developed by international instruments and Constitutional law.

Judge as a Manager of Men and Events :

13.2.7 Finally, the judge has to be an able administrator to be able to move things in a culture in which inaction and delay have been entrenched habits in judicial administration. He has to manage the docket and the ministerial staff intelligently and imaginatively through continuing interaction, motivation, supervision and leadership. He has to keep the bar in good humour with a message of firmness and impartiality. He has to strive for excellence in his job and earn the reputation of being a "good judge".

Functional Skills Needed :

2.8 The judicial function thus is a challenge to everyone who occupies that office. To be able to respond to such a noble assignment of dispensing justice efficiently and impartially, a trial judge, inter alia, has to improve his knowledge and skills on :

- (a) the concept and concerns of a fair trial and its operational parameters.
- (b) the concept of a fair judge, an activist judge, a firm judge.
- (c) the methods of fact-finding in judicial proceedings.
- (d) the art of judgment writing.
- (e) the science of sentence determination and damages calculation.
- (f) management of court proceedings in a fair, dignified, orderly manner.
- (g) management of case flow, information, accounting records, court staff, media, etc.
- (h) updating knowledge of human rights jurisprudence and emerging areas of litigation brought about by technological changes.
- (i) improving professional skills and ethics.
- (j) changing social order and democratic governance under rule of law.

2.9 Each one of these items calls for a fund of related knowledges which require inputs from social and forensic sciences, management science, information technology etc. This cannot be had by individual initiatives alone from amidst the daily routine

of a judge. Hence the need for scientifically organized and constantly improved system evaluation and training on a continuing basis.

13.3 FUTURE ROLE OF JUDGE AND TRAINING NEEDS

13.3.1 The role of a judge is by and large determined by the nature and variety of his functions. The conventional functions are assuming new dimensions with the expansion and diversification of judicial assignments and changes in the expectations of society. Technological changes do also impact on judicial functions. Thus, on the eve of the third millenium, the role of a judge in the secular, socialist, democratic, republic of India in which one-sixth of the human race inhabit is likely to assume changes of far-reaching significance and complexity not totally comprehensible at present. The perception of justice itself is changing in contemporary times. There are a number of myths and mysticisms around the office of judgeship, perhaps deliberately developed over the centuries, which are increasingly being questioned on grounds of relevance, utility and legal benefits. Privileges and immunities of judges are being re-examined in terms of relationship to independence and accountability.

13.3.2 Reflecting on the role of the judge, The Hon. Judge Sandra E. Oxner, President of the Commonwealth Magistrates' and Judges' Association wrote :

"The all powerful and righteous judge became exposed by the spotlight of contemporary media scrutiny as a human being subject to all human frailties.

"The general public disillusionment with official office holders coupled with the lingering respect for the judiciary from a time when the judge and her behaviour were protected from public scrutiny combine to create an expectation of a very high standard of judicial conduct in and out of court. While the expectation is not misplaced, the burden it places on a judge is such that a

support system of advice and collegiality must be in place to allow the judge to live up to these expectations and not inadvertently bring the administration of justice into disrepute. The establishment of ethical standards of conduct and collegial discussions of specific problems will assist the judge in ordering her affairs and conduct in such a way as to maintain the public trust and better withstand the searing light of media scrutiny...

"It is important that lines of communication are open between the media and the judiciary.. This analysis of the role of a judge points up the need for judicial support through education in the following various fields; the principle and practice of the independence of the judiciary; accountability to the public; judicial ethics and conduct; sensitivity training in contemporary social issues; gender, aboriginal, ethnic, and other disadvantaged groups sensitivity training; and Media-Bench relations". (Report of the Tenth Commonwealth Magistrates' and Judges' Conference, Victoria Falls, Zimbabwe, August 1994, p.137).

Socialisation of a New Judge :

13.3.3 The expectations, perceptions and dilemmas of the judge's role contribute to the individual's transition from lawyer to judge. This transition takes months or years to complete. It is a major change in which the new judge has to keep distance from lawyer friends developed over years of law practice and a network of judicial colleagues has to be painstakingly evolved. The new role substantially changes the perspective from which one views the trial, the law, the profession, justice in society and dynamics of rule of law.

13.3.4 "The Judge's Book" a valuable handbook prepared by the National Judicial College and the American Bar Association and widely circulated among judges in U.S.A. and outside, quotes a study of the socialisation process to describe the transition in the role of a new judge. This study finds that "there are four steps to the socialisation of a judge and that moving through all the steps takes at least fifteen years of judicial service. The first of these steps, **Professional Socialisation**, occurs in the period before a person becomes a judge, and includes law school, legal practice experiences, and other career-related experiences. The second step, **Initiation and Resolution**, includes the first five years on the bench. During this period the judge undergoes an initial adjustment and self-concept change in trying to define his or her role as a judge. Towards the end of this stage there is a resolution of role conflicts, and a transition to the decision to remain on the bench. The third step, **Establishment**, covers years

six through fifteen on the bench. During this stage the role of the judge changes from that of altruist and legalist to guardian of the law, as another role definition and resolution of conflict occurs within the judge. The final step, **Commitment**, begins when the judge has served on the bench 15 or more years. During this final stage, there is an increased commitment to the bench, marked by a satisfaction with judicial life. The new judge would do well to consider these findings and to be thereby forewarned of what lies ahead". (Alpert, Atkins and Ziller, "Becoming a Judge : The Transition from Advocate to Arbiter" 62 Judicature 325 (1979) quoted in The Judge's Book, Second Edition, The National Judicial College, Nevada, Page 9).

Qualities of a Judge :

13.3.5 The essential qualities of a good judge are listed in the Judge's Book as follows:

(a) Graciousness : A trial judge should cultivate the ability to be gracious and to listen attentively to the parties and their cases. A good hearing is soothing to the soul. So the judge should make it a point to show interest in every case, no matter how unimportant it seems to be.

(b) Moral Courage : A judge should not expect to be popular. He should develop the courage to do justice whatever the consequences.

(c) Reputation for Fairness : This is something one can develop only by actually being fair and giving such an impression to the people concerned. How a judge conducts his or her private life as well as the judge's manner in the courtroom can give the appearance of unfairness even in a judge who is, in fact, fair.

(d) Mercy : A good judge will have the mercy to apply when appropriate.

(e) Patience : It may seem to be a waste of time to listen to extensive arguments on a point on which the judge has made up his or her mind. But judges owe it to the lawyers to listen to their arguments. One object of the adversary system is to afford an opportunity to correct premature judgments which all human minds are prone to form ... There is no more sorry spectacle than a trial judge throwing his weight around. A judge should be dignified and firm but should not be mean.

The confident and enlightened judge frames commands in the form of requests, makes them in a pleasant way, and is respected. The insecure judge shouts

orders, which are obeyed but without respect.

(f) Ability to Communicate : A trial judge is a teacher who must learn to transform legal phrases into plain English that can be understood by lay people without jeopardising its legal soundness.

(g) Decisiveness : A judge who does not possess decisiveness should acquire it. Thoughtful consideration is essential, but indecisiveness is inconsistent with judicial responsibility. And having decided, the judge should announce the decision with a show of confidence that it is right.

(h) Honesty and Integrity : These are qualities essential for every gentleman and more so for a person occupying the office of judge. In judges these qualities should be transparent and unquestionable.

13.3.6 The above list is not exhaustive of the attributes of a good trial judge. They illustrate the complex role of a judge which requires mental and behavioural abilities capable of influencing the attitudes of a variety of actors in the court room. In a plural society with institutionalised social inequalities based on gender, religion, language, race and caste, the role of the judge becomes all the more difficult and challenging. This is where the Constitutional philosophy should invariably inform and illuminate the thought and action of every judge particularly operating at the grassroot level.

Judge of the Future

13.3.7 The Judge's Book published by the American National Judicial College contains a chapter on "The Judge of the Future" which succinctly projects the emerging features which will be reflected in the judges of the future. A few excerpts from Chapter 21 of the book are given below :

"Although speculations about the judge of the future bring visions of robotic truth-assessing machines, law dispensing computers, and chemical-test-determined dispositions, human beings, rather than mechanical marvels, will continue to exercise the fine art of judgment for any foreseeable future".

13.3.8 The most visible recent change in the judiciary has been the growing diversity of judges themselves. A look at the law schools of today indicate the demographics of the bench of tomorrow. A growing number of women will occupy judicial offices

particularly in trial courts. So also the Dalits, more Backward Classes and minorities who have had historically no representation in the judiciary. Reflecting the make up of the legal profession, the bench will become younger, demographically diverse and less experienced which will make judicial education and training critical factors in future.

13.3.9 Technology is changing the role of the judge. Innovations are allowing traditional tasks to be done more efficiently. Where once the judge heard all aspects of a case, new procedures such as Alternate Dispute Resolution (and Lok Adalats) are helping judges to deal with increased caseloads. Computers, adaptations of sound recording devices and videotaping facilities will quicken the process of trial, management of dockets and production of transcripts, orders and judgments. Many of these technologies suggest the prospects of limiting a judge's personal staff while increasing the number of technical specialists in the court. The personal computer will enormously increase the research and communication capabilities of the judge.

The level of scholarship of future judges is bound to increase with easy access to internet and related facilities. The judge of the future will have a national and perhaps an international perspective.

13.4 SUBORDINATE JUDICIARY : A PROFILE AND A PROGNOSIS

13.4.1 Prior to the Constitution of India, the position of the subordinate judiciary like appointments, posting and promotion were not exclusively in the hands of the High Courts.

At the Conference of the Judges of the Federal Court and of the Chief Justices of the Provincial High Courts, the position of the subordinate judiciary in relation to the provincial Executive was considered and it was regarded as essential that the members of that service should not be exposed to the extraneous influence of the members of the party in power. It was recommended that provision be made placing exclusively in the hands of the High Courts the power of appointment and dismissal, posting, promotion and grant of leave in respect of the entire subordinate judiciary including the District Judges.

The above views have been given effect in the recommendations made by the Drafting Committee of the Constitution with certain modifications, and ultimately, a new chapter as Chapter VI of Part VI under the title "Subordinate Courts" has been incorporated in the Constitution.

13.4.2 This Chapter VI of Part VI contains a group of Articles 233 to 237.

Article 233 which is the first Article in this Chapter provides for appointment of District Judges.

The expression "District Judges" has been defined under Article 236(a).

Article 234 provides for recruitment of persons other than District Judges.

1. The framing of India's Constitution by B. Shiva Rao, Select Documents, Vol. IV, p. 186.

Article 235 provides that the control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State shall be vested in the High Court.

Under Article 236(b), the expression "Judicial Service" has been defined to mean a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge.

13.4.3 Judicial service postulates the hierarchy of Courts with the District Judge as the head and other judicial officers under him discharging only judicial functions².

13.4.4 Judicial service is a career service with pyramidal structure of Courts. At the lowest rung, there are judges called Civil Judges (Junior Division). Next higher grade is Civil Judges (Senior Division) and still higher is the cadre of Additional Judge and District Judges. Likewise, on the criminal side, there are Magistrates at the lowest level; Chief Judicial Magistrates/Chief Metropolitan Magistrates/Assistant Sessions Judges at the middle cadre and above them Sessions Judges/Additional Sessions Judges.

Over and above all these, is the High Court which is the highest Court in the State, set up under Article 214 of the Constitution.

13.4.5 We have adopted the adversary system which is commonly followed by other Commonwealth countries. But it is unfortunate that we have not made any improvements either in the structure of Courts or training the judicial officers to meet the growing challenges in the administration of justice. We have no doubt made considerable progress in science and technology but the machinery of justice remains with antiquated tools and outmoded laws and procedures.

2. State of Maharashtra v. Labour Law Practitioners' Association, AIR 1998 SC 1233.

13.4.6 Adverting about the grave conditions prevailing in the subordinate Courts, the 14th Report of the Law Commission observed³:

"Under the Constitution, administration of justice and the constitution and the organisation of Courts other than the High Courts are the responsibility of the State administration. The facts revealed indicate on the one hand a gross neglect by the State administration of their duty in establishing the necessary number of Courts and on the other, a complete failure on the part of the State to carry out its obligations to provide trained and proper judicial personnel for presiding over the Courts. The States in question cannot even urge financial stringency as an excuse for, the figures reveal that these States have been making substantial gains out of the revenue earned by them by way of Court fees. It is a matter for serious consideration whether in order to prevent what appears to be virtually a breakdown in the system of judicial administration the Central Government should not, by an amendment of the Constitution, be given a greater measure of control over some aspects of judicial administration in the States".

When these observations were made, the field of Legislation on administration of justice and organisation of all Courts, except the Supreme Court and High Courts, were exclusively in the State List under Entry 3, List II of the Seventh Schedule. That was indeed the reason why the Law Commission made the aforesaid observation by recommending an amendment to the Constitution to enable the Central Government to take greater measure of control over some aspects of judicial administration in the States.

3. P. 158, Vol. I of Fourteenth Report on Reform of Judicial Administration, 1958.

13.4.7 But the position today is different. By 42nd Amendment Act, 1976, which came into force on January 3, 1977, a part of the Entry 3 of List II in Seventh Schedule was omitted and by Clause (c) of Section 57 of the 42nd Amendment, Entry 11-A was inserted into List III - Concurrent List.

Entry 11-A so inserted in List III reads thus :

"11A. Administration of justice; constitution and organisation of all courts, except the Supreme Court and High Courts".

This transposition of entry confers equal powers on the Central Government to take adequate measure of control to make the much needed improvement in the administration of justice, constitution and organisation of all Courts. But the Central Government has done little in this regard in spite of the power being given to them.

13.4.8 It may be noted that like in the United States, we do not have dual system of judiciary - Federal Judiciary and State Judiciary. The Federal Judiciary deals with a the cases arising under Federal Laws while the State Judiciary deals with the State Laws. We have adopted single judicial system as State Subordinate Judiciary. The State Subordinate Judiciary is the only forum in which all cases arising under the Central and State enactments are examined and tried. In fact, there are more than hundred Central Legislations in addition to the Indian Penal Code with which the State Subordinate Courts are involved in enforcing. That being the position, we fail to see why Central Government should not come forward to share the responsibility of administration of justice in every State.

13.4.9 It is estimated that the country has in its Twenty Five States and Seven Union Territories a cadre strength of over 12,000 judges in its Subordinate Judiciary. The required strength according to Law Commission estimates is said to be twice that number immediately and four times that number in the next five to ten years. On an average, about 1,500 to 2,000 judicial officers are to be added to the strength of the subordinate judiciary. A statement showing the cadre strength of the judges in the subordinate courts of different States and Union Territories as on 1997 is given below :

STATEMENT SHOWING THE CADRE STRENGTH OF JUDGES

IN THE SUBORDINATE COURTS

Sl.No.	State	Cadre I Dist. Judges etc.	Cadre II Civil Judges Sr.	Cadre II Civil Judges Jr.
1.	Andhra Pradesh	117	122	433
2.	Assam	29	46	146
3.	Bihar	276	265	1042
4.	Goa	11	14	20
5.	Gujarat	67	264	290
6.	Haryana	63	---- 158*----	
7.	Himachal Pradesh	28	12	58
8.	Jammu & Kashmir	33	42	51

9.	Karnataka	135	167	330
10.	Kerala	101	81	229
11.	Madhya Pradesh	277	229	444
12.	Maharashtra	270	254	717
13.	Manipur	4	6	11
14.	Meghalaya	2	3	3
15.	Mizoram	6	11	3
16.	Nagaland	9	8	5
17.	Orissa	62	113	261

18.	Punjab	60	---- 213* ----	
19.	Rajasthan	248	144	315
20.	Sikkim	5	2	6
21.	Tamil Nadu	85	96	399
22.	Tripura	18	10	45
23.	Uttar Pradesh	650	519	660
24.	West Bengal	234	166	337
25.	Delhi	134	---- 218* ----	
26.	Lakshadweep	1	-	2
27.	Pondicherry	4	5	10

28.	Andaman Nicobar	1	1	3
29.	Chandigarh	3	3	6
30.	Dadra & Nagar Haveli	1	1	-
31.	Daman & Diu	1	1	-
32.	Arunachal Pradesh	-	-	-
TOTAL :		2935	2585 589*	5856

Note : * break up not available.

13.4.10 According to a recent study, India has a little over 10 judges per million people whereas it is 243 in China and 150 and more in some of the developed countries of the West. The number of cases per million people is fairly high (1500) and the expenditure incurred on the judiciary by the Government is strikingly low (0.19 of the GNP). It is also stated that more than half the expenditure is recovered by the Government through court fee, stamp duty and similar fees. (Pistor and Phillip, Rule of Law and Legal Institutions in Asian Economic Development 1960-'95, Harvard University, quoted in NLSIU Report on History of District Courts in India, mimeograph 1998 at p.195).

13.4.11 At present excepting in 3 or 4 States, there is no scientific and systematic training programme available to the judicial

officers either at induction or in later stages of their career. Wherever they exist, the emphasis is on lectures on topics of procedure and substantive law where the trainees take the course with very little impact on them. Thus, by and large, judicial career is evolved in the country through the method of trial and error at great cost to the litigants and under risk of unjustifiable delay and distortion in the delivery of justice.

13.4.12 A Prognosis : Subordinate Judiciary in the next Millennium

It is now clear and widely acknowledged that there is no alternative excepting to address the problems of the subordinate judiciary squarely if democracy is to survive and rule of law is to prevail in the trying years ahead.

There should be a radical change in the structure and status of the subordinate judiciary during the closing years of the century. Indeed, that is what the First National Judicial Pay Commission is attempting to achieve.

13.4.13 What will be the nature of the Subordinate Judiciary in 2000 AD or immediately thereafter? Indications are that there will be appreciable number of women and a large number of S.C., S.T. and Backward Class Members in judicial service at all levels and more particularly at the induction stage. If an All India Judicial Service is brought about at least at the level of District Judges, then it may provide better opportunities for appointment to High Courts. If the status and service conditions of subordinate judges are improved, the better talents may vie each other to enter judicial service. If new technologies and better management practices are made available, the capacity of an average judge to handle complex litigation will be greatly enhanced and the litigational time will be considerably reduced. A variety of Alternate Dispute Resolution Methods will be in place taking away a heavy chunk of disputes from courts and giving greater freedom to the judge to employ these strategies to manage his docket much more efficiently than to-day.

13.4.14 All these are welcome developments to the judges and the litigants. The problem arises in the diversity of work involved and the demand for greater professionalism in the process of judging and judicial administration. It is not only a question of acquiring varied knowledges and skills but also a matter of developing an attitude of mind and compatible behavioural patterns on the part of presiding officers.

This calls for intensive and extensive training of the kind that is neither conceived nor organized any where at present within the

training institutions. An innovative and flexible curriculum which is constantly reviewed and developed is the need of the hour. Training has to be taken much more seriously by the trainers and the trainees for which structural reforms are necessary. A system of incentives and disincentives should elevate the status of training in the judiciary to the desired degree. Training should be made attractive and interesting by adoption of methods tested for adult education. Exercises and role plays should replace lectures and standard reading materials should be developed to make learning relevant and productive. In short, in the scheme of things in future, judicial training will have to be conceived and executed imaginatively if it has to influence judicial behaviour in a manner facilitative of change and efficiency.

13.5 JUDICIAL EDUCATION AROUND THE WORLD :

A SELECT SURVEY

13.5.1 Educating judges on judicial functions and training them on how to judge properly are relatively new ideas not yet accepted fully by the judicial fraternity. Some judges still believe that institutionalised training may interfere with judicial independence. Others resent the very notion of training in as much as it questions their capacity and competence. However, with the explosion in knowledges bearing on legal disputes and with the diversification of complex litigation, there has been increasing demand from many judges themselves for programmes of continuing education tailored to specific problems and needs. Today in some countries it has become mandatory for judicial personnel to get trained periodically. Even experienced judges have felt the need for examining their judicial skills and methods of work in the context of technological developments and specialised legal practice. In plural democratic societies the need is felt to identify possible biases in relation to minorities, caste groups and women vis-à-vis judicial attitudes and practices with a view to correct the distortions in the process of judging.

The need for mandatory judicial education is now acknowledged throughout the world and many countries have evolved programmes for institutionalised judicial training institutes organized as part of the judicial establishment of the respective countries.

Judicial Studies Board of England and Wales :

13.5.2 In England the proposal for organized judicial training came from a working group appointed in 1975 under the Chairmanship of Lord Justice Bridge. The dislike of the word 'training' led to the nomenclature of "judicial studies" which came to be accepted in place of the then prevailing sentencing seminars. The Judicial Studies Board was created by the judges in 1978 with the initial object of reducing inconsistency in sentencing in criminal courts. Until 1985, the Board was concerned only with the criminal jurisdiction. Thereafter, its role was extended to the civil and family jurisdictions. The Board also

became responsible for supervising the training of Magistrates and members of tribunals.

13.5.3 The structure of the Judicial Studies Board comprises the Main Board, which is responsible for policy and planning and for all matters of general application, and four Committees for planning and organizing instructional seminars and providing the necessary material. In 1991 the Board established a fifth Committee to advise the Board and the other committees on the problems and concerns of Ethnic Minorities. The other four Committees are - the Criminal Committee for training those who sit in the Crown Court; the Civil and Family Committee to train judges who deal with these areas of work; the Magisterial Committee to train Magistrates and a Tribunals Committee to advise on training of those who serve on tribunals. There are sixteen members of the Main Board, of whom 10 are judges. There are 63 members of committees, of whom 20 are judges. The administration of the Board's activities is managed by the personnel of the Lord Chancellor's Department. The courses are run by the judges under their direct control despite the recommendation of the Bridges Committee to attach the programmes to an academic centre with a full-time Director of Studies. The Board reportedly has an annual budget of nearly 2 million pounds.

13.5.4 The Board's induction seminars last 3 to 4 days. There are four criminal induction seminars a year attended by an average of 120 lawyers, some of who have never even conducted a case in the criminal courts. First day is devoted to lectures on preparation and conduct of a trial. A mock trial in which the novice judges play different roles is the highlight of the second day.

A real judge presides over the trial. Actual cases are used in mock trial and the trainees learn how to manage a trial. In the third day they will receive lectures from academics, probation officers, prison officials etc. The rest of the course is devoted to sentencing exercises. Much of the work is now done in groups of five or six pupils, each with its own tutor judge.

As homework, the trainees are given examples of real cases and asked what sentences they would impose. These are marked and compared with the actual sentences given by the Court of Appeal. Thereafter the trainee judges are attached with an experienced judge for a week or two before they are permitted to sit in the Crown Court. Many persons feel that even after four days of intensive training, they are not well prepared to sit in the regular courts.

13.5.5 The newly appointed judge usually begins his judicial career sitting in the court where he gained his work experience. There is always a more senior judge sitting in a nearby court; if anything goes wrong the new judges are told to adjourn the case immediately so that they can seek the advice of the senior judge. They can also telephone the Court of Appeal and ask the Registrar for instant advice on what to do next. After sitting for five years, these judges get another 3 or 4 days' refresher course for each subject area in which they are involved - crime, civil actions and family work.

13.5.6 There are no residential training courses for High Court judges or judges of Court of Appeal. They do attend occasional evening seminars to learn about developing areas of law. Sometimes they attend one day seminars on important new legislations.

13.5.7 The Board's committees use the services of law professors, practising lawyers and experts from other professions to lecture at the seminars. Otherwise, the major part of the course is to be conducted by the committees themselves. This work involves the selection of subjects, selection of speakers, selection of reading materials, selection of material for practical exercises and writing the publications of the Board. In association with the Open University, the Board has brought out training packages for Magistrate's training.

Judicial Education in the United States of America :

13.5.8 Judicial education in America is perhaps the best organized and most advanced in the whole world. Started in early 1960s as part of judicial conferences, the training seminars became popular and in great demand among trial judges. With a grant from

a private Foundation, the American Bar Association with the involvement of the National Conference of State Trial Judges established in 1964 the National Judicial College. Starting with modest curriculum and an enrolment of a couple of hundred judges, by the mid 1970s, the National Judicial College began presenting 40 to 50 courses each year attracting over 1800 judges annually. Several extension programmes are additionally organized. The College, a non-profit educational corporation, is located on the campus of the University of Nevada, Reno since 1965. The College is governed by a board of trustees chosen by the American Bar Association Board of Governors. The Board of Trustees sets general college policy and chooses the Dean, who serves as the chief executive officer of the college. With an operating budget of about \$4.5 million annually, the college is funded by a combination of tuition, gifts and grants from alumni, corporations and foundations and the income from \$10 million endowment that the college has raised. In addition to the resident courses in Reno, the college conducts a number of State and regional programmes as well as special programmes for judges from foreign countries. The college offers in co-operation with the University of Nevada, a Master of Judicial Studies degree programme.

13.5.9 There are half a dozen other judicial training centres in America, each with specialisation in selected branches of law and judicial administration. Most of the training of federal judges is conducted by the Federal Judicial Centre in Washington D.C. which operates under the direction of the Judicial Conference of the United States. It is established by statute by the Congress and is funded by it. It is managed by an eight member board of which the Chief Justice of U.S.A. is the ex-officio chairman. Its mandate is to improve judicial administration in U.S. courts which it does through training of judges and various staff members. It has a large collection of training literature including video programmes.

13.5.10 After the success of the National Judicial College, several of the larger States became interested in having their own judicial education programmes. The California Centre for Judicial Education and Research (CJER) is one such centre for the California judges. It prepares judge's Bench Books and other educational materials. It arranges training courses to enhance judicial performance and conducts research on the subject.

13.5.11 The State judicial education officers, joined by some representatives of the national organizations, founded in 1975 the National Association of State Judicial Education (NASJE) which acts as a clearing house for the State programmes, programme materials, faculty suggestions and curriculum development. In their annual conferences they discuss innovative programmes

conducted in State centres and thus help promote the cause of judicial education.

13.5.12 The Institute for Court Management in Denver, Colorado is the training arm of the National Centre for State Courts for training court administrators. The American Academy of Judicial Education, originally founded by the American Judges Association and now an independent non-profit corporation located in Alabama provides education conferences and seminars for judges in different locations around the country. It has been particularly active in providing training for judges before they begin their judicial career. Since 1980, the University of Virginia Law School at Charlottesville, in association with the Appellate Judges Conferences offers an LL.M. degree programme restricted to 30 judges.

Judicial Education in Countries of the Commonwealth :

13.5.13 In a survey on Judicial Education in the Commonwealth presented at the Commonwealth Magistrates' and Judges' Association Conference in 1994, The Hon. Judge Sandra E. Oxner, the then President of CMJA divided the judicial education programmes existing in Commonwealth countries into three categories. The first category consisting of Canada, Malaysia, Nigeria, India, Pakistan, Bangladesh and Sri Lanka do have formally established judicial education institutes though some of them are not still fully operational. The second category includes countries which have a committee or board that administers continuing education programmes for judges on an ad hoc basis. Australia, England and Wales and New Zealand are in this category because of their structure though they do have sophistication in their programmes and services. Several countries in Africa, Hong Kong and Singapore belong to this category. The third group do not have even such ad hoc programmes of judicial education. It is interesting to note that by and large whatever exists by way of judicial education in the Commonwealth are programmes organized by judges, managed by judges and offered to judges.

(The information summarised below is drawn from the paper presented by Judge Oxner at the Commonwealth Magistrates' and Judges' Association Conference at Victoria Falls, Zimbabwe in August 1994).

13.5.14 **Canada** had judicial education in vogue by the nineteen seventies. This included residential orientation programmes for newly appointed judges and refresher courses for judges in service. All programmes had focus on sentencing and developments in law. The Canadian Association of Provincial Court Judges (CAPCJ) organizes ten day residential programmes for newly

appointed judges and residential regional provincial court programmes. Today these courses specialise in sensitivity training, judicial ethics, judgment writing etc.

Despite the above initiatives, in 1985 the Stevenson Committee Report found that 40 per cent of Canadian judges never took a course during their judicial career. The recommended solution was the establishment of the National Judicial Institute which got set up in 1986. It is a research and educational organization for all Canadian judges. Its mandate is "to foster a high standard of judicial performance by programmes that stimulate professional and personal growth, and to engender a high level of social awareness, ethical sensitivity and pride in excellence".

13.5.15 A very significant contribution of the National Judicial Institute of Canada for the programme of judicial education everywhere is the publication after two years of research and consultation a series of minimum standards in organizing judicial education. The study emphasised that judicial education is essential to enhance the fair and efficient administration of justice and that an organizational and individual commitment to judicial education must be made. According to these Standards -

(a) the **Goals** for judicial education are (1) to bring about an awareness by judges that education immediately after appointment and, on a regular basis throughout their judicial careers is necessary for maintaining and enhancing essential competence, personal growth and social awareness; (2) to provide the public with information on judicial education in order to get recognition of the need to make time and resources available for this purpose; and (3) to create standards for judicial education, both at national and local levels.

(b) the **Objectives** to be achieved include (1) providing judges with knowledge, skills, techniques and awareness required to perform judicial responsibilities fairly, correctly and efficiently; (2) to improve through education the administration of justice, including fair and efficient management of trials and the reduction of court delay; and (3) to promote each judge's commitment to the highest standards of personal growth, official conduct and social awareness.

(c) the **Structure** of judicial education to include ten days of intensive education at the time of

appointment and ten days of continuing education every calendar year thereafter. These programmes should include a balance among the areas of substantive law, skills training and current social issues. Topics to be studied include evidence, procedure, sentencing, family violence, judicial ethics, media relations, cross cultural issues, judgment writing, case flow management, gender bias, tribal issues, computer courses for judges and designing strategies for implementing change in the courts.

(d) the **Faculty** should consist primarily of judges with expertise in the subject matter and who are capable of preparing and presenting educational materials effectively. Law Professors, lawyers and people with special expertise are also to be utilised where their expertise are needed.

The NJI is governed by a Board of judges representing all courts chaired by the Chief Justice of Canada and includes two lay members.

13.5.16 **Australia** has a Judicial Commission in New South Wales established in 1986 which provides education and technical assistance to the judiciary in New South Wales which, incidentally has more judges than the rest of Australia put together. The three major functions of the Commission are to assist the Courts to achieve uniformity in sentencing, to organize and supervise a scheme of continuing judicial education and to examine complaints against judicial officers. In addition to presenting seminars and conferences ranging from induction courses for new appointees to specialists conferences on specific aspects of law, procedure and judicial skills, the Commission publishes monthly The Judicial Officers Bulletin with information of interest to judges. It maintains a fairly up to date sentencing data base. Nearly all New South Wales magistrates undergo a three week induction programme, a voluntary judicial education programme in the Magistrates' Courts and are expected to devote five days a year to judicial education. The curriculum includes study of judicial attitudes in decision making on key issues and broader understanding of social problems, computer training and advanced court management.

13.5.17 The Australian Institute of Judicial Administration is another educational and research institute affiliated to the University of Melbourne. Its object is to conduct programmes of continuing education for judges, magistrates, officers of courts, lawyers and law professors. The AIJA provides conferences, seminars and workshops in which judicial officers, among others

can participate. The subjects covered include use of technology in courts, computer use and sentencing. There is no course offered on substantive law. In 1997 in association with the Judicial Commission of New South Wales, the AIJA offered a week-long residential judicial orientation programme for new judges. The first day consisted of two sessions of lectures by senior sitting judges on (a) the Role of the Judge and (b) Becoming a Judge. The second day had a series of small group workshops on (a) trial management and (b) ADR. The third day included lecture-cum-discussion on topics such as (a) Financial Statements Partially Demystified, (b) Using Computers as a Research and a Management Tool, (c) Assessing the Credit of Witnesses, and (d) Issues Relating to Migrants, Interpreters and Multiculturalism. The fourth day was entirely devoted to Courtroom Issues such as contempt in the face of the court, disqualification for bias, ethical issues arising in a courtroom setting and unrepresented litigants. The fifth day of the programme had four sessions one each on (a) Sentencing, Civil Damages and Gender Awareness, (b) sentencing practice sessions and damages determination sessions, (c) judgment writing, and (d) problems in evidence. The final day was devoted to a session on courtroom communication and judicial intervention and court-media relations.

13.5.18 In most **European** countries, judicial appointments are based on a career judiciary after completing basic legal education. The arrangements for judicial training therefore focus on the additional courses for prospective judges, and judicial appointment is conditional upon successful completion of the programme. Thus, in **France**, judges who are recruited directly after university education undergo a two-year course under the direction of the Ecole Nationale de la Magistrature. The first part of the course consists of full-time formal training and the second part of service as a clerk to the local judges in a lower court. There are also opportunities in a further four months' training to study and work in a variety of institutions concerned with law and administration, in public and private companies and to undertake research. Italy and Belgium follow similar judicial education programmes.

13.5.19 The **German** system provides a unified training for the bar and judiciary. Judges are chosen from those who must distinguish themselves on the programme. Training lasts five and half years and includes study in courts and tribunals and with firms of lawyers. In Scandinavian countries prospective judges have a "judicial apprenticeship" under a judge as a clerk or assistant.

Lessons Judicial Education Programmes Convey :

13.5.20 There are few issues which emerge from consideration of judicial education programmes functioning in different countries which are relevant for structuring the training in India. There is absolutely no doubt that judicial education and training are indispensable for better judicial administration. There is also no doubt that there must be organizational and individual commitment from the side of judges to the need for such education in order to justify the utilisation of time and resources. Furthermore, it is desirable and necessary to keep the control of such training with the judiciary lest there should arise possibilities of jeopardizing judicial independence through executive influence. At the same time judicial education and training are too complex for judges alone to organize and administer. Judges may not have sufficient knowledge of their own weaknesses and of education techniques to deliver effective programmes. As Judge Oxner said : "while judicial control over curriculum cannot be decried, a mechanism that funnels to the judges the public and professional perceptions of weaknesses in the judiciary is important to ensure these issues are before the curriculum committee -. Another technique to counteract judicial insularity is to add to the judicial institute structure advisory groups on topics of special interest - family violence, tribal rights, gender bias, human rights issues etc."

13.5.21 Many of the problems revealed in the role of a judge are responded to by the curriculum of many of the programmes offered in judicial education. Starting with sentencing and updating of laws, judicial education curriculum moved into computer programme for judges, human rights issues, judicial ethics, judgment writing, conduct on and off Bench, media relations, case flow management, contemporary social problems and technological advances (particularly in medicine and health). A curriculum committee must be prepared to continuously justify the choice of topics in successive programmes.

13.5.22 Besides educational programmes, judicial education centres need to develop self-study materials as well as audio and video tapes to supplement judicial libraries. Information packages of printed orientation material, bench books and standardized judicial materials are useful and inexpensive tools in judicial education.

There is need for constant evaluation of the programmes in terms of objects, content, materials, method and impact.

Continuing Judicial Education :

13.5.23 For organizing continuing judicial education, the principles and standards promulgated by the National Association of State Judicial Educators, U.S.A. are of great value. They suggest instruction in five major areas :

(a)_**Legal Ability** : updates on law, court rules and court procedures; in depth analysis of complex legal issues; examination of judicial decision-making practices and philosophies; and effective opinion writing through identification, analysis and clarity in expressing legal issues, reasoning and conclusions.

(b)_**Comportment and Demeanour** : judicial code of conduct; fostering fairness through the recognition and elimination of bias or prejudice; cultural awareness; decisiveness; and judicial temperament.

(c)_**Judicial Management Skills** : case management; effective trial and jury management; settlement skills; personnel management; skills to cope with the growth of litigation and the increasing complexity of legal issues and proceedings; and, when appropriate, court system planning administration.

(d)_**Contemporary and Inter disciplinary Issues** : updates on scientific and behavioural sciences relevant to any judicial practice; knowledge of contemporary social issues; and the law and humanities.

(e)_**Personal Development** : revitalisation and re-dedication to public service; awareness of the need to maintain high levels of personal well being; and stress management.

13.5.24 There are however a number of new initiatives setting different trends in judicial education. One such trend is to organize judicial education on important subject matter thrown up by major changes in legislations, landmark judicial decisions or social upheavals. Family violence, drug problem, child abuse etc. provide such subject-matter trends influencing judicial education programmes.

The increased awareness of human rights and social demand for fair deal from courts irrespective of gender, race etc. create need for another organizing principle for judicial education. The programmes thus evolved are designed to promote a change in judge behaviour in interaction with parties, victims, witnesses and attorneys.

13.5.25 Finally, an issue of considerable significance conveyed by experiments in judicial education is the need to train judicial education faculty. The principle that judges teach judges is unexceptionable; but judges have to be trained to do the teaching. For this Faculty Development programmes are to be introduced incorporating better understanding of adult education principles and appropriate instructional methods. Topics for such programmes would include : characteristics of the adult learner, assessing learner needs, developing learning objectives, structuring a course, participatory learning techniques, and evaluating learning. Typically, such a programme allows the participants an opportunity to practice applying the principles they have learned. They might make a short presentation which would be videotaped and then critique by their peers and evaluated by an expert in adult education.

There is a wealth of knowledge and experience in developing judicial education programmes already available in many countries, particularly the United States of America. Co-operation and exchange among the institutions involved in different countries can do a great deal to advance the cause and the process of educating the judges of the future.

13.6 JUDICIAL TRAINING SCHEMES IN INDIA

13.6.1 It is often said that an institution is only as good as the people who operate it. The level of motivation and leadership, the degree of competence and professionalism and the clarity of purpose and methods which the judges display make the judicial system perform to its optimum efficiency. Judicial officers, undeniably are the key figures in determining the quantity and quality of output which the public gets as justice out of litigation in courts. Any investment in updating their knowledge and skills will be doubly repaid in the delivery of justice and in the efficiency of judicial administration.

13.6.2 Despite realising its importance and the repeated recommendations from several committees and commissions, pre-service institutional training for new entrants to judicial service had not received the attention it deserved from the High Courts and the Government till recently. A few years' practice at the Bar or few days' attachment with a senior judge perhaps was deemed adequate to preside over courts to which one is appointed! The All India Conference of Chief Justices in 1983 adopted a resolution asking the Government to set up regional training institutes in the four regions of the country for training of members of the subordinate judiciary. It was suggested that eminent professors, lawyers, judges and jurists could be invited to deliver lectures on various topics of relevance on law and other related subjects. Perhaps it was for the first time that the Chief Justices recognized the need for a broader training for subordinate judges and welcomed the introduction of people from outside the judicial fraternity for imparting training.

13.6.3 The status of training obtaining in the country is summarised by the Law Commission in its 117th Report on Training of Judicial Officers (1986). To quote "... institutional training at present is being imparted only at the North-Eastern Judicial Officers Training Institute at Guwahati and Andhra Pradesh State Judicial Academy at Secunderabad. Broadly stated, the judicial officers taking training in these institutes have the benefit of a short-term pre-service training in the conduct of proceedings in the court and allied matters as also the management of office. No refresher course is being held at these Institutes with the result that the training begins and ends at the pre-service level and it is of a short duration ... At the U.P. Administrative Training Institute, Nainital, pre-service training of six to eight weeks is imparted to judicial officers. There are rules framed by the State of Orissa

for an elaborate training programme. In the rest of the country, fresh recruits to judicial service are given a semblance of training by being directed to work with senior civil judges and/or district or sessions judges for an average duration of three to six months before actual posting is given" (117th Report, 1986 at p.6).

13.6.4 According to the Law Commission, training through attachment with courts of senior judges has an inbuilt disadvantage in so far as it sustains all past practices without challenge in disregard of the needs of contemporary times. Recognising the grossly inadequate facilities for training and acknowledging the continuing need for training of judicial officers, the 1985 Conference of Chief Justices, Chief Ministers and Law Ministers unanimously resolved to ask the Central Government to set up an academy with the Chief Justice of India as Chairman. A Governing body with Chief Justice of India as Chairman would determine the structure, faculty, courses and other aspects to provide pre and in-service training for judicial officers as also to identify places where branches of the academy could be set up.

13.6.5 Pursuant to this resolution, the then Chief Justice of India prepared and sent a blue print for the establishment of an academy which was eventually established as a Society registered under the Societies Registration Act, 1860. Though the National Judicial Academy was formally set up in 1994, it has not started training courses as yet. A massive campus is reportedly under construction in Bhopal where the academy is located. A retired Supreme Court Judge was appointed as Director General and a few officials deputed from the staff of the Supreme Court are overseeing the construction activities financed by the Central Government. The Society has a membership of twelve persons including five judges, two law academics and four Secretaries to Government of India. The Registrar General of the Supreme Court is the ex-officio Secretary of the Academy and the Chief Justice of India ex-officio Chairman. The Society meets once every year mainly to approve budget and authorise expenditure. Membership other than ex-officio members is by nomination by the Chairman. The Society has a Governing Council with Chief Justice as Chairman and Law Secretary, Expenditure Secretary, Registrar General and Director General as members.

Since the National Judicial Academy at Bhopal is still an institution-in-making and has not yet come out with its scheme of training there is little to reflect on its activities at present. Hopefully a first-rate national judicial training centre would emerge at Bhopal at least by the turn of the century.

13.6.6 An institution which came up in the recent past (1987) and got a reputation for organizing systematically training courses for subordinate judiciary is the **Institute of Judicial Training & Research, U.P.** located in Lucknow. The institute has its own campus with infra-structural facilities, a core faculty drawn from higher judicial service and a moderate library. It is under the administrative control of the Department of Law, Government of Uttar Pradesh. We will presently consider the curriculum prescribed by the Institute for the trainees.

13.6.7 **The North Eastern Judicial Officers' Training Institute, Guwahati**

The Institute is perhaps one of the earliest institutions of its kind set up in early 1981 at Guwahati as a society registered under the Societies Registration Act with Chief Justice of Gauhati High Court as its Ex-officio Chairman. All the Law Ministers of the seven N.E. States are its members. The object of the Society is to provide training to Judicial Officers and also to train the ministerial officers in the subordinate courts. All the States, namely States of Assam, Nagaland, Meghalaya, Manipur, Tripura, Arunachal Pradesh and Mizoram contribute annually to run the Institute. The Director of the Institute draws a fixed monthly honorarium. He is the seniormost Member of the State Judicial Service. Originally the post was held by a retired Judge of the High Court. There are two Professors who are former District & Sessions Judges on a monthly remuneration of Rs.3500/-. The Secretary of the Institute is a retired Deputy Registrar of the Gauhati High Court with the remuneration of Rs.2500/-. They are supplemented by the ministerial staff.

Two types of training courses are offered. The foundation course for three months for Munsiffs and Judicial Magistrates. The refresher course of one month for officers of the rank of Additional and Assistant District and Sessions Judges and to Officers to be promoted to such cadre.

Subjects for Foundation Courses :

- 1) Utility of procedural laws in administration of justice.
- 2) Prevention of misuse of procedural laws.
- 3) Broad principles of law of Evidence on problem which may arise during a trial.

4) Role of the Court / Judicial Officer in

(a) framing issues / charges

(b) recording of evidence

(c) examination of accused u/s 313 Cr.P.C.

(d) hearing arguments.

Subjects for Refresher Courses :

1) Principles governing award of compensation in Land Acquisition cases.

2) Compensation to be awarded in Motor Accident Claims cases - Insurers liability.

3) Appellate court powers -

a) civil appeals

b) criminal appeals

4) Updating knowledge of case law.

5) Art of writing judgment in an appeal.

Institute also imparts training on Court Management to Judicial Officers like adjournment of judicial work, Management of Interlocutory proceedings, Management of Pre-trial stage, and cases to be referred to Lok Adalath. These are on the judicial side. The Judicial Officers are given training on the Court administration like periodical inspection of prescribed registers and records, management of the copying section and process section, maintenance of discipline over staff, accounts and financial matters etc. Training is also imparted on certain laws which are coming to day-to-day application in the judicial process.

13.6.8 The Andhra Pradesh Judicial Academy, Secunderabad

The Academy is one of the recent additions in the list of judicial training institutions in the country. Started in 1991, with Chief

Justice of the Andhra Pradesh High Court as the Chief Patron and all the other Judges of the High Court are Patrons. A Judge of the High Court nominated by the Chief Justice would become the President and such other Judges of the High Court nominated by the Chief Justice would be the Members of the Board of Governors of the Academy. The Academy is headed by a Director - a District & Sessions Judge Grade-I who is assisted by an Additional Director and Senior Faculty Member of District & Sessions Judge Grade-II. The Deputy Director is of the cadre of Civil Judge (Sr.Div.) and Assistant Director is of the cadre of Civil Judge (Jr.Div.).

The Academy provides foundation course of two months for direct recruits of District Judges on subjects like administrative and financial aspects, disciplinary proceedings, forensic science and medicine, all branches of law, court management and supervision of subordinate courts. There is also a course on advance study of Forensic Science and Forensic Medicine for District Judges, Sub Judges and Munsiff Magistrates. The curriculum covers all relevant branches of Forensic Science and Forensic Medicine with practical demonstrations and exercises at scientific and medical institutions. This will be for two weeks duration.

The Academy also conducts orientation course for Subordinate/Assistant Sessions Judges soon after their promotion from the cadre of Civil Judge (Jr.Div.) on the subjects like Land Acquisition, Arbitration, Insolvency, Marriages, Elections, Civil Appeals, Sessions Cases, Offences tried by Assistant Sessions Judges, Forensic Medicine, Suits and Interlocutory proceedings, administrative rules and procedures etc. This course will be for two weeks.

The Academy further provides refresher course for Civil Judge (Jr.Div.) in Substantive, Procedural and Evidentiary laws of Civil and Criminal branches and Court Administration. This will be for three weeks.

The Academy conducts specialised workshops on Court Management for the ministerial staff of the Courts in Rules, Circular order and instructions of the High Court and Government on judicial and administrative matters. Checking of civil proceedings, Maintenance of civil registers, checking of criminal proceedings, Maintenance of Criminal registers etc. This course will be for one week. Besides, training is also imparted on financial and accounts management for one week.

The Academy started giving training on conduct and discipline for officers of the High Court for about one week.

The eminent personalities and former Judges of the Supreme Court and High Courts are regularly invited for giving lectures to Judicial Officers and other legal personnel. Seminars, Symposiums and Workshops on various Court related subjects are also periodically conducted.

The Academy has to its credit certain publications containing articles and speeches of eminent judges.

13.6.9 Madhya Pradesh Judicial Officers' Training Institute

This Institute commenced functioning from 1994. It is yet to prepare specific syllabus for training. But, generally it conducts some programmes for Judicial Officers on particular subjects and topics. It has a Director, Additional Director, Administrative Officer and other ministerial staff. The Chief Justice of the Madhya Pradesh High Court would appoint any serving District Judge as the Director and any Member of the Civil Judge (Sr. Div.) as Additional Director and Administrative Officer. The Institute has a separate building and hostel. The Institute conducts foundation course for Civil Judges (Jr. Div.) for nearly one month in the training Institute and further one month's training in the District Headquarters under the guidance of the District Judge. The trainee judge may be either first called to the Training Institute or may be first posted in the District Headquarters and then called for the Institute for the institutional training. The training in the District Headquarters covers Court procedure, financial matters sitting along with the Senior Judges and visiting to local Police Station to acquaint oneself regarding how FIR is recorded, crimes are registered, case diaries and general diaries are written etc.

13.6.10 Gujarat State Judicial Academy

This is one more addition to the list of training for Judicial Officers. The Chief Justice will be the Chief Patron of the Academy and all the Judges of the High Court could be Patrons of this Academy.

The Chief Justice would nominate a Judge of the High Court of Gujarat as President and such Judges as Members of the Board to administer the functioning of the Academy.

In further administration, the Academy would be headed by a Director appointed by the President of the Academy in consultation

with the Chief Justice. He would be either a retired High Court Judge or a District Judge. Further, the Director is to be assisted by one Assistant Director. The Director is in the pay scale of Rs.8000/- while the Assistant Director is in the grade of Rs.3000-5000. They are assisted by a small supporting staff of six members.

The Academy conducts Foundation course to the newly recruited Civil Judges (Jr. Div.) and Judicial Magistrates First Class and organises Legal Workshops and Seminars throughout the State on various subjects on Law. The total duration of the said training to Civil Judges is of four months, out of which two months practical training at the District Headquarters, i.e. place of posting and the remaining two months in the Academy. The Academy has no infrastructure. It runs the course at Sardar Patel Institute of Public Administration, Ahmedabad (SPIPA). The training at SPIPA, there are two parts, one is of listening to lectures and another is to visit Forensic Science Laboratory, Sabarmati Central Jail, Bureau of Handwriting and Finger Print and the High Court.

There are three parts in the Academy training:

FIRST PART

Basic Principles in the Administration of Justice

- i) The function and duties of a Judge.
- ii) Judicial approach.
- iii) Standards of proper judicial conduct, maintenance of decency and decorum in court and behaviour with the members of the Bar and litigating public.
- iv) Standards of judicial ethics.
- v) Art of writing judgements. (Theory)

SECOND PART

Administration and Office Management

- i) Control and Supervision
- ii) Supervision and accuracy of returns.
- iii) Knowledge regarding Government and High Court Circulars.
- iv) Accounts and Financial matters.
- v) Correspondence with superior courts.
- vi) Civil Manual (Relevant Chapters).
- vii) Criminal Manual (Relevant Chapters).

THIRD PART

Practice and Procedure in Court

A. Code of Civil Procedure

- i) Jurisdiction of the court (pecuniary and territorial, Section 6 to 8 & 15 to 21-A C.P.C.)
- ii) Stay of suit and res judicata (Sec.10 and 11 of C.P. Code)
- iii) Party to suits and pleadings. (Plaint, Written Statement, set-off and Counter Claims). (Order I, II, VI, VII and VIII)
- iv) Issue of summons, appearance of parties and consequence of non-appearance. (Section 27 to 32 & Order V & IX of CPC)
- v) Admission, Examination of parties by the Court, Discovery and Inspection, (Order X, XI and XII of C.P. Code)
- vi) Framing of issues (Order XIV of CPC)

- vii) Adjournments (Order 17 XVII of CPC)
- viii) Hearing of the Suits and Examination of the witnesses. (Order XVIII of CPC)
- ix) Judgment and Decree, Interest & Costs. (Sections 33 to 35-B & Order XX, XX-A of C.P. Code)
- x) Execution of Decree and Orders. (Sections 36 to 74 and Order XXI of C.P. Code)
- xi) Effect of Death, Marriage and Insolvency of Parties on suits and proceedings. (Order XXII of CPC)
- xii) Compromise and Withdrawal of the Suits. (Order XXIII of C.P. Code)
- xiii) Suits by or against Government or Public Officers in their official capacity. (Sections 79 to 82 and Order XXVII of C.P. Code)
- xiv) Suits by or against the Corporation or firms. (Order XXIX and Order XXX of C.P. Code)
- xv) Suits by or against minor and persons of unsound mind. (Order XXXII of C.P. Code)
- xvi) Suits by indigent person. (Order XXXIII of C.P. Code)
- xvii) Suits relating to mortgage of immovable property. (Order XXXIV of C.P. Code)
- xviii) Summary procedure in respect of certain suits. (Order XXXVII of C.P. Code)
- xix) Attachment before the judgment and appointment of receiver (Order XXXVIII and XL of C.P. Code)
- xx) Temporary injunctions and interlocutory orders. (Order XXXIX of C.P. Code)
- xxi) Caveat and its rules. (Section 148-A of C.P. Code)
- xxii) Inherent Powers of the Courts, amendment in judgment, decree of orders and general power to amend. (Section 151 to 153-A of C.P. Code)

xxiii) Appeals, Reference, Review and Revision.

xxiv) Relevant chapter of Civil Manual.

B. criminal Procedure Code

i) Constitution of Criminal Courts and offices. (Sections 6 to 25 Cr.P. Code)

ii) Information to the Police and their powers of investigation. (Sections 154 to 176 Cr.P.Code)

iii) Arrest, remand and detention of persons and bail. (Sections 41 to 60, 167 and 436 to 450 of Cr.P.C.)

iv) Search warrants. (Section 93 to 98 of Cr.P.C.)

v) Jurisdiction of the Criminal Court in the inquiry and trial. (Section 177 to 189 of Cr.P.C.)

vi) Condition requisite for initiation of proceedings. (Sections 190 to 199 of Cr.P. Code)

vii) Complaints to Magistrate and commencement of proceedings before Magistrate. (Sections 200 to 210 of Cr.P.Code)

viii) Form of charges and joinder of charges. (Sections 211 to 224 of Cr.P.Code)

ix) Trial of warrant and summons cases by Magistrate. (Sections 238 to 259 of Cr.P.Code)

x) Summary trials. (Sections 260 to 265 of Cr.P.C)

xi) Maintenance of wives, children and parents. (Sections 125 to 128 of Cr.P.Code)

xii) The Judgment. (Sections 353 to 365 of Cr.P.Code)

xiii) Execution, suspension, remission and commutation of sentence. (Sections 413 to 435 of Cr.P.Code)

xiv) Disposal of property. (Sections 451 to 459 of Criminal Procedure Code)

xv) Limitation for taking cognizance of certain offences. (Sections 467 to 473 of Cr.P.Code)

xvi) General provision as to inquiries and trials. (Sections 300 to 327 of Cr.P.Code)

C. Indian Evidence Act

i) The Law relating to relevancy of facts. (Sections 5 to 55 of Evidence Act)

ii) Facts which need not be proved. (Sections 56 to 58)

iii) Proof of documents and documentary evidence. (Sections 61 to 90)

iv) Exclusion of oral evidence by documentary evidence. (Sections 91 to 100)

v) Burden of Proof. (Sections 101 to 114)

vi) Estoppel. (Sections 115, 116 and 117)

vii) Examination of witnesses. (Sections 118 to 165)

D. Indian Penal Code

i) General Explanation.

ii) Various kinds of punishment including imposition of fine.

iii) Common intention, Common object, abatement and Criminal conspiracy.

iv) Offences relating to Army, Navy and Air Force.

v) Offences against the State.

vi) Offences against the public tranquility and public order.

vii) Offences relating to giving false evidence against public justice.

viii) Offences relating to coin and Government stamps.

ix) Offences relating to Weight & Measures, Public health safety, Conveyance, Decency and Morals.

- x) Offences affecting the human body and right of private defence.
- xi) Offences against the property and right of private defence.
- xii) Offences relating to documents and to private marks.
- xiii) Offences relating to marriage.
- xiv) Defamation.
- xv) Offences relating to Criminal intimation, insult and annoyance.
- xvi) General Exception.
- xvii) Attempt to commit offences.

E. Miscellaneous

- i) Limitation Act, 1963
- ii) Suit valuation Act, 1887
- iii) Stamp Act, 1899
- iv) Selected social legislation like Factory Act, Standard of Weight & Measures Act, 1976, Water (Prevention and Control of Pollution) Act, 1974. Water (Prevention and Control of Pollution) Cess Act, 1977.
- v) Human Anatomy - Muscle, Bones, and Injuries.
- vi) Writing of judgment (practical).

Over and above, the Academy is holding the Legal Workshops and Seminars for the subordinate Judicial Officers at District Headquarters, normally once in two months. In the said Legal Workshop, participants have to prepare the paper on the Legal subjects given by the Academy and on the day of Legal Workshop they have to discuss the problem. Recently, the Academy has changed the procedure, now the academy is preparing the questionnaire on Legal subjects and every participant has to find out the probable solution to the said questions and at the time of Legal Workshop those questions are to be discussed. The aim of the Academy is that every Judge should be conversant with the latest Law on the point.

13.6.11 Judicial Officers Training Institute, Maharashtra, Nagpur :

This Institute has been set up in Nagpur with modest facilities for training Civil Judges, Judicial Magistrates and Additional District Judges for Foundation course and also for Refresher course. The Faculty consists of one Director and two posts of Joint Directors. The Director is in the scale of pay of Rs.18400-22400 with Special pay of Rs.800/-. The pay scale of the Joint Director is that of the cadre of the District Judge i.e. Rs.14300-18300, with the Special pay of Rs.800/-. There are as many as 32 supporting ministerial staff. The Institute has an attached hostel, library and indoor games facility and also for training in Yoga.

The following topics are selected to be included in the Course contents for the in-coming batch having regard to the common importance and relevancy for the said topics even while discharging judicial duties of the Court of Civil Judges (Sr. Dn.) and the Chief Judicial Magistrate.

Sl. No.	Subject	Days Allotted	No. of Lectures
1.	Norms of Behaviour for Judicial Officer in relation to his Superiors, Subordinates, Bar members, Litigants, Members of the Public, Colleagues and other Officers.	4 days	12 Lectures
2.	Administrative work in Civil and Criminal Courts with reference to the instructions contained in Civil and Criminal Manual.	1 Week	15 Lectures
3.	Civil Proceedings with reference to provisions regarding Injunctions, Appointment of Receiver, Framing of Issues, Attachment before Judgement and the Appointment of Commissioner.	1 Week	15 Lectures
4.	Evidence Act; Relevancy of Facts, Admissibility, oral and Hearsay Evidence, Admissions and Confessions, Expert's opinion Taking Judicial Notice of a Fact, Documentary Evidence, Presumptions;	1 Week	15 Lectures

	Generally and about the Documents, Oral Evidence, Burden of Proof.		
5.	Writing of Judgment : Civil and Criminal : Contents, Arts, Style, Purpose, Brevity etc.	1 Week	Lectures and Group discussions totally 15 in numbers
6.	Darkhast Proceedings : Technicalities of Procedures, Speed and Importance, and Practical Aspects.	4 days	12 Lectures and Group discussions
7.	<p>A. Civil Laws : Special features of the Constitution of India with reference to Fundamental Rights and the Judiciary,</p> <p>Law of Succession (Succession Certificates, Wills and Probates), Partnership Act (Ss.17 and 49), Court Fees Act and Suits Valuation Acts, Limitation Act, Stamp Act, Interpretation of Statutes and Precedents.</p> <p>B. Criminal Laws : Food Adulteration and Essential Commodities Act.</p>	1 Week	15 Lectures
8.	Criminal Proceedings with reference to Sessions Trials, Grant of Bail, Important Aspects of Liberty of Citizens, Framing of		15 Sittings of Group discussions

	Charges, Recording of Plea and Examination of Accused, Recording of Evidence in Criminal Cases, Police Statements, Proof of Contradiction and Extent of their use, Disposal of Property and Sentence.		
9.	"Child Psychology" and "Child Welfare."		9 Lectures by Guest Speakers
10.	Speedy Disposals : Factors and Methods, Recommendations of Arrears Committee Report 1989-90, Conciliation Courts as alternative modes and forums for resolving disputes.		10 Sittings during Group Discussions
11.	Visit to the High Court	3 Days	

(Time - 9 Lectures and 3 Group Discussions)

TRAINING PROGRAMME FOR THE ADDITIONAL DISTRICT JUDGES

- 1) Norms of behaviour by Judicial Officers inside and outside the Court.
 - i) Behaviour with litigants and public while hearing the cases,
 - ii) Behaviour with the members of the Bar,
 - iii) Behaviour with subordinate staff,
 - iv) Behaviour with colleagues including District Judge,
 - v) Behaviour with Officers of other Departments such as Collector, Superintendent of Police, Executive Engineer etc.

Training on this subject would include citing of instances and embarrassing situation if any, while dealing with the allotment of the quarters for the Judicial Officer, getting the plans and estimates sanctioned for construction of Court building and residential quarters etc.

2)_Civil Proceedings :

Discussion by syndicate method on the following topics with leading cases thereon : -

- i) Admission, first orders in Regular as well as in Miscellaneous Civil Appeals.
- ii) Order 41 and particularly the provisions regarding additional evidence and additional documents, if any, at the appellate stage.

iii) Limitation Act, Guardian & Wards Act, Land Acquisition Act, Bombay Public Trust Act.

iv) Law relating to Trust-reading material : Tagore Law Lectures Latest Edn.

v) Sections 52 & 53 of the Transfer of Property Act, distinction between lease and licence connected aspects pertaining through reading materials; important decisions of the Supreme Court and Bombay High Court.

vi) Hindu Marriage Act, with reference to the provisions of divorce, maintenance, Hindu Succession Act, with particular reference to Sections 7, 8, 14 etc.

vii) Intra country adoptions, appointment of guardians, Specific Relief Act with Reference to the provisions regarding injunction u/order 39 C.P.C. Sections 34, 105, 120-A, 149, 300, 302, 304, 498-A, 307-A and Section 100 I.P.C. and general exceptions under the Penal Code, Section 313 Cr.P.C.

viii) Concept of 'Admission', 'Confessions' and related provisions under Sections 17 to 31, Section 32 of the Evidence Act, Circumstantial evidence, relevancy of facts under the Evidence Act and Sections 145, 146 Evidence Act.

3) Criminal Proceedings :

i) Admissions and first orders including Bail and Anticipatory Bail.

ii) Sessions Trial, Procedural aspects, charge etc.

iii) Important provisions of Indian Penal Code viz. Murder, Rape, Dacoity, Forgery, Unlawful assembly, Conspiracy, Criminal Breach of Trust etc.

iv) Prevention of Corruption Act.

v) Essential Commodities Act.

vi) N.D.P.S. Act.

vii) Atrocities on Women (Prevention Act).

viii) Sentencing and Victimology.

ix) T.A.D.A.

4) Evidence Act :

Recording of expert evidence including Forensic Science and Ballistic Sciences.

5) Administration :

i) Recruitment of the Staff, Departmental Examinations, Disciplinary enquiries, vis-a-vis Discipline and Conduct Rules.

ii) Budget of the District and Subordinate Courts.

iii) AC/DC Bills.

iv) Permanent Advance, Contingent expenditure, Office expenses etc.

v) Dead stock including purchase procedure, Finance rules, Treasury rules and Powers of the District Judge.

vi) Inspection and compliance of inspection notes, control over record room, judicial conference/District Judges' Conference, various returns including Annual Returns.

And; Some other subjects covering Constitution and Child Psychology.

13.6.12 The High Court of Kerala has set up in 1986 a Training Directorate with a committee of judges of the High Court to supervise its operations. Two Senior District Judges are working in the Directorate offering pre-service training to Munsiffs-Magistrates for over 6 months of which five weeks are devoted to practical training in courts, police stations and select administrative departments of government. The Directorate also conducts refresher courses for judicial officers for periods

ranging from two days to one week at the High Court of Kerala. One day District level workshops for judicial officers of the area are also undertaken by the Kerala institute.

Reproduced below is the syllabus of training offered by the Directorate of Training, High Court of Kerala to the newly appointed Munsiffs-Magistrates over a period of ten weeks before they proceed for field assignments :

Statutory Training for Newly Appointed

Munsiffs-Magistrates

SYLLABUS

I. CIVIL

1. Independence of Judiciary; its relevance; responsibilities of the courts; status and duties of Judges.
2. Suits for injunctive and declaratory reliefs.
3. Stay of suits - when and why? General Principles.
4. Valuation for purpose of Court Fee and jurisdiction-Determination of market value.
5. Estoppel - Current Judicial Trends.
6. Recording and admissibility of evidence-duties of Court.
7. Principles of succession applicable to Christians.
8. Suits for partition-Matrimonial action.
9. Proof of Wills and other compulsorily attestable documents.
10. Res Judicata - Constructive res judicata - O.II R.2 - O.XXIII, R.1 C.P.C.
11. Suits by and against Government - By and against Corporations and firms.

12. Presumptions and burden of proof - in general and in particular cases.
13. Institution of suits - place of suing: sections 16 to 20 C.P.C.
14. Secondary Evidence - Exclusion of oral evidence.
15. Restitution - Extent of jurisdiction of the court.

16. Suits in ejectment; adverse possession; distinction between Articles 64 and 65 of the Limitation Act.
17. Resistance to execution - Obstruction; claim petitions.
18. Suits on Negotiable instruments.
19. Awarding damages - General Principles.
20. Lease and Mortgage - Lease and licence - Distinction - Pledge & Hypothecation.
21. Mortgages generally - Distinction between mortgage and Charge.
22. Important provisions of Small Causes Courts Act.
23. Section 5 of Limitation Act - Extent of Courts power - Exclusion of time - How and when - Sections 148, 149 C.P.C.
24. Sections 17 and 49 of the Registration Act - Effect of non-registration.
25. Kerala Buildings (Lease and Rent Control) Act - Eviction - General Principles.
26. Refund of Court Fee and impounding of documents.
27. Suit by and against minors - Interpleader suits.
28. Budgeting - Maintenance and verification of accounts - Contingent expenditure - P.F. Loans - Audit objections.

29. Disciplinary proceedings - Procedure enforcement of discipline.
30. Discovery, Inspection, Interrogatories - Principles and procedure.
31. Grant of temporary injunction - Principles - Stay order and injunction - Distinction.
32. Important provisions in the Stamp Act.
33. Notice - Actual and Constructive - Notice to quit.
34. Distinction between indemnity and guarantee - Revocation.
35. Decree and order - Power of the executing court.
36. Attachment before judgment - arrest before judgment.
37. Easements - Customary rights.
38. Compromise and withdrawal of suits; satisfaction of decree O.XXI R.2.
39. Attachment in execution - Court sale - setting aside sale.
40. Succession under Mithakshara Law - Marumakkathayam Law and Hindu Succession Act.
41. Alienation by guardian under Hindu Law and Mohammed Law.
42. How to write judgment in Civil Cases.
43. Benami transactions (Prohibition) Act, 1988.
44. Important provisions of K.L.R. Act.
45. Garnishee proceedings; attachment of decree and rateable distribution.
46. Contracts - Valid - Voidable and void effect.
47. Set off - Counter Claim - Effect of discontinuance of suit upon counter claim.

48. Joint tenancy and tenancy in common.
49. Costs - Compensatory costs - interests - General Principles.
50. Trial of suits - General Principles - Important provisions in the Civil Rules of practice.
51. Issue of summons-Substituted service; when and how effected-Related matters.
52. Arrest and Detention.
53. Suit by indigent person; Principles and procedure.
54. Framing of issues - Disposal of suit at the first hearing.
55. Transfer of decree; question to be determined by court executing the decree.
56. Breach of contract - Frustration.
57. Important provisions of K.S.R. and Financial Code.
58. General Clauses Act.
59. Survey - Cadastral and theodolite maps - survey and Boundaries Act.
60. Gift and Exchange - Transfer of actionable claim.
61. Frame of suit - Procedure in cases where there are numerous plaintiffs and defendants - Misjoinder and non-joinder of parties - Striking off parties and addition of parties.
62. Office management - Grant of leave and refusal - Curtailment and treatment of absence - Ministerial staff and their supervision.
63. Interpretation of statutes - General Principles.
64. Classification and preservation of records - Important High Court Circulars.

65. Suits for specific performance of contracts - powers and duties of courts.
66. Principles of succession under the Mohammedan Law.
67. Jurisdiction of courts; extent and scope - Objection to jurisdiction.
68. Appointment of receiver - Appointment of Commissioner.
69. Impleadment of L.Rs - Abatement of Suits - Condonation.
70. Part Performance - Lis Pendens - Effect.
71. Amendment of Pleadings - Exercise of inherent power.
72. Suretyship - Surety-s liability and discharge.
73. Review - Enlargement of time - Caveat - Duties of the Court.
74. Interpretation of documents - General Principles.
75. Partnership suit - Dissolution of partnership suit on accounts and for accounts.
76. Legal disability in Limitation Act (Ss. 6 and 7).
77. Exclusion of time in legal proceedings (Ss. 12 and 14 to 17 of Limitation Act).
78. Effect of acknowledgement in writing and payment of limitation (Ss. 18 to 20 of Limitation Act).
79. Sale of Goods Act and Carriers Act.
80. Precedents.

II. CRIMINAL

1. Investigation of criminal cases - Principles - Extent of Court's power - Mahazar and seizure list.
2. Sentencing - Probation - Juvenile Delinquency.

3. Disposal of property - Confiscation principles.
4. Procedure in cases of accused suspected to be of unsound mind.
5. Section 125 Cr.P.C. - Muslim Women (Protection of rights on Divorce) Act.
6. Discharge and acquittal - General principles.
7. Trial of summons and warrant cases - Summary trials.
8. Medical evidence and expert evidence.
9. Section 27 of the Evidence Act.
10. Sections 145-155 - Section 162 and Section 165 Cr.P.C.
11. Search warrants - Search and Seizure.
12. Test identification parade - Trial of cases and counter-consolidation.
13. Taking cognizance - What it means - Power of court.
14. Compounding - Withdrawal - Section - Limitation.
15. Framing of charges - Joinder of charges - Questioning of accused.
16. Criminal Court management - High Court Circulars.
17. Appreciation of evidence - Circumstantial evidence.
18. Nature & Classification of injuries - Percentage.
19. Punishment - Maximum and minimum imprisonment for a term - termination set off; fine - Default - Recovery.
20. Evidence, relevance and admissibility.
21. Government servants conduct rules.

22. Issue and service of process - Execution - Absconding accused - Attendance of prisoners.
23. Recording of confession - Provisions in Crl. Rules of Practice.
24. Crl. Rules of Practice - Maintenance of registers - Calendar - Statements.
25. Limit of punishment for offences made up of several offences - Secs. 71,75 I.P.C. and Secs. 222-325 Cr.P.C.
26. Bail and remand.
27. Penal provisions of Customs Act.
28. Penal provisions of Kerala Police Act - Kerala Gaming Act - Prevention of Immoral Traffic Act.
29. Criminal Intimidation - insult and annoyance.
30. Penal provisions of Arms Act - Explosives Act and Explosive Substances Act.
31. Penal provisions of Forest Act.
32. Secs. 34, 120B and 149 I.P.C.
33. Important provisions of P.F.A. Act.
34. Abatement and attempt to commit offences.
35. Jurisdiction and power of criminal court.
36. Hurt and grievous hurt.
37. Theft and receiving stolen property.
38. Offences relating to administration of justice, practice and procedure.
39. Criminal misappropriation - Criminal breach of trust.
40. Prison Rules - Prisoners - identification of Prisoners Act.

41. Law relating to right of private defense; Scope and limit - other general exceptions in I.P.C. (Secs. 81-83, 85, 86 & 95).
42. Juvenile Justice Act - Borstal Schools Act.
43. Penal provisions of Abkari Act - Drugs Act - Narcotic Drugs and Psychotropic Substances Act.
44. General exceptions in I.P.C.
45. Criminal rashness and negligence connected with the provisions of M.V.Act - Res Ipsa Loquitor.
46. Offences relating to marriage and women.
47. Sections 200 to 293 Cr.P.C.
48. Who could prosecute, limitation, sanction.
49. Judgment, important aspects.
50. Preparation of judgment and decrees.

III. GENERAL

1. Environmental Law
2. Basic Principles of Human Behaviour
3. Child Behaviour.
4. Man Management.
5. Crime and mental illness, psychiatric criminology, treatment approaches in psychiatry.
6. Adolescence, its relevance and behavioural management, problem in marriage, crisis management and bringing up children.

7. Psychological testing - various aspects.

* **Source :** Directorate of Training, High Court of Kerala (1998).

13.6.13 There is no organized set up for judicial training in States like Bihar, Delhi, Jammu & Kashmir, Karnataka, Orissa, Punjab, Haryana, Himachal Pradesh, Tamilnadu, West Bengal and Union Territories where adhoc arrangements are made under the supervision of the High Court to offer orientation to newly recruited judicial officers. Orissa and Himachal Pradesh have evolved detailed plans to set up judicial training institutes though not much progress is made so far.

13.6.14 The scheme proposed as Foundation Course for judicial officers in certain States simply gives a long list of Statutes and rules as the syllabus of the course. One gets the impression reading the recommended syllabii for newly recruited judicial officers that what is intended is a modest attempt in the available time of training to make up the deficiencies in legal knowledge and that too in a superficial manner. This may be justified because of the poor quality of education obtaining in most law colleges of the country and the possibilities of obtaining a law degree without any serious study. One may recall in this context the difficulties encountered by various High Courts in filling up the reserved vacancies of Munsiffs-Magistrates despite there being large number of applicants with law degrees and the required period of legal practice experience! When the reserved vacancies increased in numbers, the recruiting authorities either succumbed to the pressure of filling up the posts with less qualified candidates or devised schemes to prepare them with crash programmes of legal education. With the assistance of the Karnataka Government, the National Law School of India University conducted two such mini-LL.B. courses for S.C./S.T. advocates with 4 to 7 years practice at the Bar to enable them to take the Munsiffs-Magistrates selection examination. The fact that over 50 per cent of such examinees could succeed in the final selection indicates that the deficiency they suffer from arises in the lack of opportunities to learn at the law colleges where they pursued the LL.B. Degree and at the Bar. This deficiency in legal knowledge in greater or lesser degree is shared by other law graduates as well who could not get the opportunity to learn in good teaching institutions of law.

13.6.15 The point for consideration in the present context is whether the time available for the pre-service induction training is to be spent for giving basic knowledge of various law subjects in which some recruits are indeed deficient. Such an approach will

make the programme uninteresting and less rewarding to meritorious trainees who have had better education in good law colleges where they studied for their LL.B. Degree. This is a basic dilemma which training institutions face. Compounding the problem is the lack of adequate competence on the part of trainees in use of language, particularly English. The judicial training institutions, excepting perhaps one or two, are supposed to be imparting the training through the medium of English language. The materials are in English and most of the judges who address them can handle the subject only in English. A substantial section of trainees are said to be neither proficient in their mother tongue nor in English to be able to conduct legal transactions in that language which poses a serious hurdle for the training institutions. In the circumstances, it is worthwhile to examine whether the training period can be extended to one year in which the language and communication skills of the trainees can also be strengthened along with competence in law.

13.6.16 The methods of training are lectures and discussion for class room interactions and observation and participation in field assignments. There are weak attempts in role plays and simulation exercises for skills education in one or two training institutions. The infra-structural facilities and technical resources required for skills training are not available to the existing judicial training institutions.

13.6.17 Another drawback is the lack of a multi-discipline faculty. All the institutions uniformly keep Senior District Judges as faculty members. It is not clear whether they are sent to these institutions by the High Court because of their pronounced talents in teaching and training or because it was felt necessary to keep them away from the courts for different reasons involving tasks of administration of Justice. In any case very few of them stay long enough to put in their best to the cause of judicial training. The need for extra-inputs for proper judicial training is met by guest faculty who are liberally used by most institutions.

13.6.18 The course content of training offered to the members of the higher judicial service comprising of Additional District Judges by the Uttar Pradesh Institute of Judicial Training and Research is given below :

Institute of Judicial Training and Research, U.P.

Course Objective and Design

Objects : To help the participants acquire professionalism in judicial decision-making as Additional District Judges.

Course Content :

1. Behavioural Science.
2. Value based Programme.
3. Law of Precedents.
4. Basic feature of Constitution.
5. Govt. Service - General Conditions (fundamental rules).
6. Principles of Natural Justice.
7. Inherent Powers of Civil Courts.
8. Pitfalls to be avoided by Drawing & Disbursing Officer.
9. How to grant leave order payments of leave salaries & allowances etc. during leave period.
10. Arbitration & Conciliation Act (Old & New).
11. How to make miscellaneous advances.
12. How to grant annual increment and order fixation of E.B.
13. Bar of Jurisdiction of Civil Courts under various enactments.
14. How and when to sanction TA & LTC.
15. How to check the registers maintained by the Zarir of Civil Court.
16. Pleading & Issues
17. Stay & Injunction.

18. How to grant Retirement Benefits & Family Pension.
19. How to make store purchases.
20. Bail & Remand.
21. Judicial Discretion.
22. How and when to sanction G.P.F. Advance and G.I.S.
23. General Rules Civil & Criminal relating to Finance.
24. Sessions Trial.
25. How to frame charge.
26. Income Tax Rules - Salary.
27. Circular letters of High Court regarding Administration, Stores & Finance.
28. Criminal appeal & Revision - Scope.
29. Civil appeal & Revision - Scope
30. Sentencing.
31. Interpretation of Statutes.
32. General Clauses Act (Central)
33. General Clauses Act (State).
34. Consumer Protection Act.
35. Finger Prints Science.

Source : Mr. D.P. Varshney, H.J.S., Director, Institute of Judicial Training and Research, Lucknow (1998).

The time-table of the course spread over eight weeks includes sessions devoted to communication skills, management skills, stress control, service regulations, sentencing, judgement writing, interpretation of Statutes, medico-legal issues, Human Rights, exercises on trial of different types of offences etc. There is evidence of serious re-thinking in the scope of training programmes and attempt to overcome the deficiencies by addressing a number of issues formerly outside such courses. It will be interesting to assess the impact of such modified courses on the trainees and their behaviour in court.

13.6.19 Two other institutions which are actively though only occasionally involved in giving refresher courses for judicial officers at the national level are the Institute of Criminology and Forensic Science (ICFS) and the Indian Institute of Public Administration (IIPA), both located in New Delhi. The former conduct regular residential courses of two to three weeks for police and prison officials from various States. In some courses on criminal justice, they invite District and Sessions Judges as well as Chief Judicial Magistrates. These courses discuss common concerns in criminal process particularly on scientific evidence, sentencing, judiciary-executive inter face and co-ordination issues. The IIPA which regularly conducts courses for civil servants occasionally conducts specialised workshops for judicial officers involved in criminal justice, consumer courts, industrial tribunals etc. Because of relatively better infra-structural facilities and availability of a wider spectrum of subject experts who come as faculty, these courses are better organized and appreciated. Another advantage of courses organized by ICFS and IIPA is the joint participation of a mix of judicial and non-judicial officers who operate the legal and judicial system with different roles and responsibilities.

There is no follow-up activity nor impact assessment which tend to leave these workshops and training courses as ad hoc, unco-ordinated attempts directed at few individual actors rather than at the system as a whole.

13.6.20 Under support from the British Council and with the approval of the Chief Justice of India, the School of Law, University of Warwick in association with the National Law School of India initiated a series of gender sensitivisation courses for judicial officers in 1995. Several batches of District Judges nominated by the Chief Justice underwent three-month long courses of which

nearly two months were spent in England attending classes and visiting courts and training centres in that country. The "Gender and the Law" course was based on a need assessment survey and was designed to provide sophisticated approaches of training. The project has been continued for a second term of two more years after reports of its being found useful.

13.6.21 In spite of several efforts in organizing judicial education and training, the situation on the ground at the turn of the century is far from satisfactory. Perhaps there is no other department of government in which persons are inducted in highly skilled jobs with little or no training as the judiciary. With the setting up of the National Judicial Academy under the Chairmanship of the Chief Justice of India, hopes are now being raised of a revival of interest in a modern system of pre-service and continuing education to judicial officers at all levels.

13.7 JUDICIAL TRAINING AS JUDGES PERCEIVE IT

Towards a Wider Consultation :

13.7.1 The best persons to identify the training needs and to suggest the nature and scope of training programmes necessary are the judges themselves. Having seen the strengths and weaknesses of the system and having experienced the changing demands of office, judges can discern the gaps and inadequacies in existing systems of judicial education and possibly suggest changes for equipping them better. There may however be serious doubts on whether the prevalent systems of training and re-training even with some modifications can deliver the skills and competence required. In any case, for peaceful continuity and effective management of change, it is advisable to ascertain the perceptions of judges and involve them in planning the programmes of judicial education and training. This report therefore attaches great importance to the consultative method adopted in preparing this chapter.

13.7.2 It is necessary to explain briefly the method employed in assembling the views and comments of judges on the subject. Initially the consultant had few rounds of general discussion on the state of trial judiciary and the prospects of reform through judicial education and training. Several sitting and retired judges of both the trial and appellate judiciary shared their deep insights which gave a broad idea of the issues and perspectives for inquiry. Secondly, a survey of the reports of Law Commission, literature on judicial training elsewhere and documentation on training in some of the States in Indian Union provided information on various dimensions of a meaningful training programme. Thirdly, on the basis of the documents and expert comments received, a memorandum detailing the impressions and proposals was prepared. A questionnaire consisting of nearly 100 questions covering issues on concepts, strategies, organization, scope, trainers, curriculum, methods, materials and evaluation got prepared to accompany the memorandum for eliciting views of judges from all over the country. Nearly 200 judges, senior advocates and judicial organizations were selected to make a representative sample of the judicial establishment of each and every State in the country. The Chairman of the Judicial Pay Commission himself forwarded the Questionnaire and Memorandum with a covering letter impressing upon the respondents the importance of the exercise and seeking their individual and collective responses. Several respondents joined together and sent their considered views collectively on behalf of judicial associations, High Courts, training institutions etc. Over fifty questionnaires were duly returned which included several institutional and collective responses. What is contained in this chapter is an analytical summary gathered from these responses

and reactions of the judicial fraternity of India.

A copy each of the Memorandum and the Questionnaire sent round for the survey are appended to this chapter of the report as Annexure I and Annexure II respectively.

13.7.3 It was the considered view of the Commission and the Consultant that this participatory exercise should be taken further into a consultative meeting of the judges and trainers who are interested and involved in judicial education and training. In pursuance of this, the draft report on the responses to the questionnaire along with the recommendations from the Consultant were placed before the consultative meeting of experts convened by the Commission in Bangalore on 12-13 December 1998. The idea was not only to seek critical feedback on the findings and recommendations before issues are finalised in the report, but also to establish as wide a consensus as possible amongst High Courts and judicial training institutions and judges' associations on the scheme proposed so that immediate, co-ordinated implementation is possible if the authorities so decide.

What follows is a faithful summary of the perceptions and comments of over a hundred sitting and retired judges on the questions relating to the nature, scope and method of judicial education and training. For clarity of analysis they are presented in six segments as they were asked in the questionnaire. The list of persons/institutions who have filed their responses is given in Annexure III to the report.

13.7.4 REPORT ON ANALYSIS OF RESPONSES TO THE QUESTIONNAIRE

I. CONCEPTS AND APPROACHES

(1) Goals of Judicial training

The goals of judicial training are :

- (i) to inculcate self-confidence, loyalty and a judicial work culture;
- (ii) to imbibe judicial ethics and standards of judicial conduct;

- (iii) to sensitize them to the values and ethics of the Constitution;
- (iv) to help improve performance in delivery of justice and in judicial administration;
- (v) to enable updating of legal knowledge and to sensitize them on changing demands of the system;
- (vi) to familiarise on the forces operating at the social, economic, political and administrative environment in which judges work;
- (vii) to enhance their sense of idealism, humanism and social justice;
- (viii) to develop analytical and communication skills and research and writing skills necessary for the job;
- (ix) to impart skills of management of men and materials including computer technology, case flow and accounting techniques;
- (x) to sensitize on gender issues, juvenile problems and social responsibilities;
- (xi) to influence personality development on the lines of hard work, honesty, impartiality, public service, judicial dignity and respect for human rights;
- (xii) to enhance capabilities in dealing with emerging, complicated areas of science and technology involved in litigation.

Note : The **goals** are different from **objects** which are specific to a particular programme or module of training. Goals are general and expected outcomes ultimately; whereas objects are to be achieved immediately at the end of a particular course. Goals lead to objects identification in particular training exercises.

Structuring the objects in a pointed, achievable manner is the task of a course co-ordinator who uses materials and methods selectively to achieve that purpose. Several such courses may together achieve the goals over a period of time.

Greater the clarity in **goals** and specificity in **objects**, the higher the chances of training succeeding in influencing behaviour of trainees.

(2) Difference between Education and Training

- (a) Education is knowledge of theory and Training is about application of knowledge or learning of skills and techniques;
- (b) Goals of the two are the same; objects are different - the object of education is enhancing knowledge level, whereas object of training is efficient discharge of duties;
- (c) Judicial training requires "hands on", "on-the-job" learning; judicial education can be class-room based or through self-study;
- (d) Judicial education is more foundational and orientational in content and concerns; it is built around precepts, knowledge, principles and theories to cover gaps and inadequacies in previous learning. Training is built on education and structured according to tasks;
- (e) Judicial education is broader in concept and can include judicial training as well; the two are distinguishable on the basis of methodologies employed to impart learning;
- (f) Education is overall knowledge; training is focussed, specialised and result-oriented;
- (g) Education is a continuing process and is life-long; training is accomplished on basis of job requirements and performance goals;
- (h) Training consumes more resources and requires constant refinement of aims and methods.

Note : The purpose of seeking the distinction between the two, is to give clear signals to the trainers on identification of objects, allocation of resources and employment of appropriate methodologies in different types of judicial training programmes. Even in the selection of the Faculty for the course, the relative

weightage to be given to education and training should be known. Furthermore, it is easier to evaluate the impact if the educational objects are distinguished from the training objects.

(3) Existing Sources of Training

- (i) State judicial academies or training directorates operated by the High Courts;
- (ii) Partly from induction training course and mostly from experience;
- (iii) Judges in many States do not have any opportunity for organized institutional training; they learn day-to-day tasks through attachment with senior and experienced judges for 3 to 6 months after initial recruitment; this is found to be too inadequate for independent and efficient functioning;
- (iv) Some legal workshops and seminars periodically organized give some useful learning to judicial officers;
- (v) College education, library, media and law reports do contribute to judicial learning;
- (vi) In-service training is relatively unknown in most States and the High Courts do not seem to be keen on it;
- (vii) Judges are left to fend for themselves and learn through trial and error and possibly from the profession practising before them;
- (viii) Previous practice at the Bar is another source of education and training in judging too.

Note : It is refreshing to find that judges do realise the importance of training as they experienced difficulties in judging in the absence of proper training. The judicial authorities, however, do not seem to realise the extent of low productivity, miscarriage of justice and avoidable appeals and revisions preferred in the system. In the absence of research data, such issues are neither raised nor responded adequately. Good training schemes alone will demonstrate what training can achieve in the cause of justice.

(4) Inadequacies in Existing Training :

- (a) Most States have no training scheme nor training institutions;
- (b) No proper continuing education programme at State or national level;
- (c) People are sent for training at the fag end of their service;
- (d) Because of shortage of judges, training periods are reduced or training avoided altogether;
- (e) The available schemes are neither scientifically organized nor based on experience;
- (f) All judicial officers are unlikely to benefit from uniform training; therefore it must be selective and need-based;
- (g) Most schemes are totally inadequate to enhance judicial capabilities and much less on judicial skills;
- (h) Most schemes have no written test or examination to assess the impact of training;
- (i) Schemes are ad hoc exercises with no thrust on specialisation and not linked to specific needs of the work assigned;
- (j) Training is not participatory and no inter-active learning procedures adopted;
- (k) Organization does not give priority or weightage to participation in training;
- (l) The curriculum is not scientifically evolved nor is it periodically revised;
- (m) Because of resource constraints, funds are not allocated for judicial training;
- (n) There is no training on change of jobs or on promotion;
- (o) There is no proper infra-structure for judicial training;
- (p) Training not taken seriously either by the trainers or by the trainees;

- (q) There is total absence of competent trainers who are skilled on the job;
- (r) Some of the programmes are too localised and are not standardized to serve larger goals;
- (s) Objects of specific training programmes are not clearly formulated or communicated;
- (t) Rhetorical lectures and exaggerated sermons from the so-called visiting dignitaries do not inspire learning;
- (u) Properly supervised attachment with efficient judicial personnel can train a great deal; but it is rarely done as the senior has neither time nor motivation;
- (v) Lack of trained permanent core teaching facility in training establishments is a serious handicap;
- (w) Poor performance at training has no effect on career;
- (x) Training in appreciation of scientific evidence and in innovative approaches in judging is non-existent or superficial;
- (y) Above all, independent, well meaning initiatives by subordinate judges are looked down upon and are not encouraged.

Note : A surprisingly large number of adverse comments have been given by the judges on existing programmes. As such, the existing schemes need to be radically changed if the resources spent has to give returns.

(5) Need for In-Service Training

All the respondents were emphatic on the need for continued training to officers in service. Induction training has certain limited objects with a view to guide the new comers in the new office. There is need for periodical training to every judicial officer at all levels upto Additional District Judge. After every promotion a training programme has to be provided.

Thus, every judge is of the view that like induction training, continued in-service training is essential and is to be provided at

every promotion and at periodic intervals.

(6) What are the objects of in-service training ?

In contra-distinction to induction training, the following specific objects were suggested for the different types of continuing education and training :

- (i) Updating knowledge of law and practice in selected areas;
- (ii) Improving skills of court and time management;
- (iii) Induction of new ideas and experiences to tackle changing tasks;
- (iv) Improving work culture and developing judicial balance to problems;
- (v) Sorting out angularities and prejudices;
- (vi) Preparing for higher judicial responsibilities;
- (vii) Identifying weaknesses and correcting them;
- (viii) Sharing experiences among the judicial fraternity;
- (ix) Increasing efficiency and accountability;
- (x) Understanding the nature and scope of new jurisdictions and powers;
- (xi) Testing the abilities and skills in comparative situations;
- (xii) Learning the management of stress and crisis situations;
- (xiii) Interact with leaders of other professions who have insights to contribute on role of judiciary in responsible governance;
- (xiv) Think collectively on maladies like delay, access, cost, difficulties of litigants, bar-bench relations

etc.;

(xv) Strategies for improving working conditions and increasing productivity of judges.

(7) Poor Quality LL.B. Education : Can Induction Training Correct it ?

Responses were mixed to the issue raised in the question and there was doubt about the capacity of initial training filling the gaps in earlier legal education. Majority favoured strict and rigid standards in the selection itself so that those who do not have adequate knowledge do not get recruited to the judiciary. In any case even the best of law colleges, they argued, cannot give the type of training required for judiciary. Several subjects, particularly procedural subjects, do not receive adequate attention in Law Colleges.

The assumption with which training course is planned is that every person recruited has adequate competence expected of an advocate with few years practice at the Bar. This is questionable and the reason why induction training is contributing little today is the extremely poor quality of legal knowledge of some candidates who are being recruited to the judiciary.

(8) How does the recruitment process ensure minimum Competence?

Selection process is not likely to guarantee competence in all candidates selected, though most of them may possess basic knowledge and skills.

Pre-selection training is not practical as candidates may not take it seriously unless they are assured of selection. Furthermore, financing pre-selection training is a problem. As such, Judiciary may have to compromise and select candidates knowingly that their education is inadequate and equipment is poor.

Recruitment at best can act as a screening of available material. Written examinations and personal interviews can assess the knowledge level to some extent. Perhaps a two stage examination scheme as prescribed for central services can increase possibilities of identifying the really deserving candidates. This may not necessarily help in excluding undeserving candidates, given the uncertainties of the processes and the reservation politics inevitably involved in them.

Given the wide variation in the quality of legal education imparted in colleges within the State and among the States, adherence

to rigid standards may result in injustice to certain sections of society. Filling of reserved seats in subordinate judiciary will be a near impossible task if high levels of knowledge and skills are insisted in selection examination.

If Bar Councils or the Judicial Academies can themselves organize systematically preparatory pre-selection courses for prospective candidates who want to improve their chances, it may help weaker candidates in the selection and also promote prospects of all trainees having some acceptable level of common basic knowledge expected of them.

Alternatively weaknesses of individual trainees have to be addressed separately by the training academies through special schemes which may necessitate greater time, attention and resources for their training.

(9) Is Training to be concerned mainly with Skills ?

Largely that is the object; but it has to have a knowledge base and has to be enriched with changes in attitudes and values. It must enable trainees to foster self-development and make self-evaluation.

(10) How Training can cater to the demands of the brighter and the needs of the weaker candidates simultaneously?

The conventional law subjects are not to be taught in the judicial training course. They should be left for self-study.

Weaker candidates may be given instruction through remedial programmes outside the normal training course. Also brighter trainees may be asked to give guidance to their colleagues who are unable to follow the courses.

Extra-training for weaker candidates outside the normal period of training may cause psychological problems in them. The best strategy is not to select candidates for judicial jobs if they do not possess expected levels of learning.

(11) Language Training

It is the unanimous view of all respondents that English should be the medium of training. Some would like Hindi also to be made compulsory and regional language a desirable third language in judicial training. However, regional language should not be the medium of instruction as it will affect judicial standards throughout the country and will be unfair to the concept of equal

justice under law. Legal literature of good quality is also available at present only in English. Judicial excellence in the present circumstances requires the use of English in judicial work.

(12) Motivating the Trainees to take Training Seriously:

Everything needs to be done to make the trainees take the programme seriously and internalise the learning for better judicial performance. This may require policy changes and administrative arrangements conducive to hard work. Several suggestions emerged from the responses. These include :

- (a) Successful completion of training to be a part of the probation requirement and the services of those who have totally failed to imbibe the minimum learning during training should be terminated forthwith rather than allowed to continue at great risk to the efficiency of administration of justice.
- (b) Performance at training to be a relevant consideration for determining eligibility for promotions and career advancement of all judicial officers.
- (c) The importance of training and expectations from trainees be communicated clearly and rules be framed to announce the priority judiciary attaches to training.
- (d) Examinations be conducted at training centres and performance of trainees be graded as "excellent", "very good", "good", "satisfactory" and "poor". Those who are declared "poor" shall not be confirmed in the cadre to which they are recruited and they may be subjected to denial of increments as long as they do not secure at least a "satisfactory" grade.
- (e) Enhance the quality and content of training programmes by adopting varied teaching aids and methodologies.
- (f) Recognise meritorious performance in training through awards, recommendations and preferential promotion opportunities.
- (g) Give service advantages to meritorious officers including study leave, library grants, empanelment

for special assignments etc.

(h) Peer group pressures can promote motivation.

(i) Research, project work and participatory exercises to be encouraged in training. It should be a process of "learning by doing" rather than "learning by listening".

(j) Exposure to the experiences of judiciaries in other countries will be useful at higher levels of judicial service.

(k) In extreme cases of non-performance even after training, reversion to lower cadres can be considered.

(l) Annual appraisal report should be linked with training goals and achievements.

(m) Compensatory allowances can motivate in select situations.

(n) Periodical examination through written tests and group discussions can enable the learner to understand deficiencies and acquire capabilities by the time final assessment is made at the end of training.

(o) Judicial academies should be run on lines of military or police academies for inculcating discipline and seriousness.

Note : Motivation is the key for achievement. Admittedly, the trainees in judicial academies even at the induction stage lack motivation. It is imperative for the judicial establishment to consider how the motivational level of trainees could be increased by altering rules of employment and making training attractive and instructive. Adult learning processes are varied and the training schemes will have to address the issues scientifically if judicial behaviour is to be influenced in desired directions.

(13) Nature of Examination in Training :

(i) Examination to be held in each subject of training course.

(ii) It should be a mixture of open book, problem-type, project work, group discussion and paper presentation exercises.

(iii) Some have doubted the desirability of university-type examinations though they wanted evaluation made by other methods.

(14) Consequence of Unsatisfactory Performance in Training :

(a) Several steps suggested earlier on the question of motivating judges to take training seriously would apply here.

(b) Entry in service records after giving opportunity for correction may be resorted to.

(c) Repeating the training course should be insisted upon and probation period continued.

(d) Repeat training, though rigorous, should be helpful to the officer to learn at his pace rather than tending to be punitive and self-defeating.

(e) Some responses do suggest amendment of recruitment rules to the effect that unsatisfactory performance at training will entail discharge from service or placement at a lower grade than the one recruited for.

(15) Ensuring fairness and objectivity in training evaluation :

(i) Making an officer of the level of High Court Judge in charge of the assessment system.

(ii) Entrusting examination to a panel of examiners or committee of judges.

(iii) Review by an appellate authority in cases of complaint according to transparent procedures and acceptable criteria.

(iv) Providing a re-check/re-valuation procedure.

(v) Display of periodic test results and opportunity to understand causes of non-attainment of higher grades.

(vi) Evaluation partly or fully by agencies outside the training institute.

Note : It is important that when performance at training is given serious repercussions on career advancement, the process of evaluation is fair, objective and transparent. There are examination techniques now available to eliminate bias and too much of subjectivity in assessment procedures. They need to be adopted according to requirements in the Academies.

Additional Comments :

In respect of the first set of questions on "concepts and approaches" analyzed above, there has been few additional comments offered by some respondents. These are summarised below :

(i) Unlike the civil services examinations, the candidates for judicial service are much more mature persons as they have spent some time in legal practice and are in the age group of 27 or above. The training scheme should take this into account and conduct the training little differently.

(ii) Undue emphasis should not be placed on English language skills as what is required is ability to understand communications in English and not the power of expression in that language. In fact power of expression is more required in the language of the region which may also be allowed to be developed.

(iii) The best legal luminary or a competent judge may not necessarily be a good trainer. As such careful selection and training of the trainers is a pre-requisite for success of training programmes.

(iv) While training in traditions and practices in judiciary are necessary, it should aim to give a futuristic orientation so that the trainees could respond to changes responsibly as and when they occur. Training tends to reinforce existing values and practices sometimes to the detriment of efficiency and responsiveness.

(v) The induction-type training course must be conceived at three stages and should be linked appropriately in contents and

concerns. The first stage is soon after the initial recruitment to the judiciary as Munsiff/Magistrate. The second stage is at the time of promotion as a civil judge and the third is when the officer is promoted to the cadre of District Judge.

II. ORGANIZATION AND SUPPORT SERVICES

(1) The Case for a National Judicial Academy and Four Regional Academies :

An overwhelming majority of respondents (88%) are in favour of a National and four Regional Judicial Academies apart from Training Directorates under each State High Court. Some believe that regional academies are unnecessary and State level training institutions can perform the tasks if the National Academy can help standardize the programmes and provide supporting services. Of course, smaller High Courts can join neighbouring States and have joint training establishments.

Those who support Regional Academies are in favour of establishing them in Uttar Pradesh (Lucknow), Andhra Pradesh (Secunderabad), Assam (Gauhati) with the National Academy located in Madhya Pradesh (Bhopal). It may be re-called these are places in which infra-structural facilities already exist, though in a modest scale, and where some training programmes are periodically organized for judicial officers.

There is an opinion advanced that the relationship between the National/Regional and State academies should not be that of a Principal-Satellite (subordinate) type, but co-equal institutions with differing functions. The National institution may be better placed to provide training ideas, propose new training schemes, assemble appropriate reading materials and self-study kits, run training the trainer courses and help standardisation and co-ordination.

(2) Structure of the National/Regional Academies :

The dominant opinion is that the National/Regional Academies should be directly under the supervision of the Supreme Court. There should be a Governing Board in which besides representation from Supreme Court, High Courts, Central and State Governments and Bar Councils, there should be some independent experts/academicians nominated.

While a Senior Supreme Court Judge can be Chairman of the national academy, the senior most puisne judge of the High Courts in the region by rotation can be the Chairman of the regional academies.

There is a view that regional academies should also have in their Governing Boards representatives from the District Judiciary and the NGOs/Social Workers.

The role and responsibilities of the Governing Board members vis-à-vis the regular faculty must be delineated so that there is no compromise on academic freedom and institutional autonomy. However links with higher judiciary at the administrative level may help enhance prestige and credibility for the courses while ensuring greater discipline on the part of trainees.

There is a caution given that care should be taken not to let the academies become a place for re-employment of retired judges or an asylum for those not desired in the regular courts for whatever reasons.

(3) Relationship between Academies to maximise Productivity :

There may be functional control of regional and State academies by the N.J.A. for purposes of quality assurance. Otherwise, the two have a large area of co-ordinate functions. Every member of regional/state academies be deputed to be in the faculty of the N.J.A. for a fixed period to acquire special expertise and to facilitate academic co-ordination. Similarly faculty of the N.J.A. may be deputed to state/regional academies for fixed periods to enhance interaction.

Two-thirds of all training programmes need to be organized at the State /regional level and only one-third need to be at the national level. Participation at the national level courses be regulated on the basis of merit and functional roles.

A system of communication linkages be established with the N.J.A. so that judicial officers can have the benefit of courses nationally conducted through distance learning techniques, video-conferencing etc. This can enhance the reach of training without disturbing officers from their work places and schedules.

Curriculum development and standardisation of syllabii and study materials are the key functions of the NJA and much of the actual conduct of training should be left to the State/regional academies. There should not be hierarchical or bureaucratic controls which will inhibit the development of State academies in its own fashion responding to local problems and challenges.

There is a view that while the NJA should be the place for training of District Judges and possibly High Court Judges, the

State/regional academies should conduct training for the subordinate judicial officers. Refresher courses for specialised training and continuing education of senior judicial officers should first be developed and conducted by the NJA and in appropriate cases be repeated in State/regional academies. Such courses should be carefully planned to serve specific needs and experimented for its impact at the NJA level before recommended for repetition elsewhere. This will avoid wastage of resources and maximise benefits to judiciary as a whole.

(4) Composition of Faculty in Judicial Academies :

The size of the faculty will vary according to demands and resources. However, on an average a State academy may have a Principal and a Vice-Principal, two Professors, one or two Lecturers and two or three Research Officers. Of course, this is to be the core faculty and will be supplemented by a guest faculty of invited experts from the locality. In any case, a minimum of five full-time faculty members should invariably be available to every training institution.

According to one view, the minimum academic staff of a regional training institution should be fifteen (15) with at least 20 supporting administrative staff. This would include a Director (rank of High Court Judge), a Deputy Director (rank of Senior District Judge), three Professors representing three relevant disciplines (law, management and social services), three Associate Professors representing judiciary (civil judge rank), forensic sciences and behavioural sciences respectively, two instructors in law, two computer/information technology (library) experts and two field work co-ordinators (experienced court administrators/lawyers).

It is suggested that the ratio between trainers and trainees should be in the range of 1:5.

The primary principle should be that judges should be teaching other judges and academies are to enrich and diversify this process. The ideal situation would be to find volunteers among distinguished and retired judges to undertake the teaching functions according to pedagogic techniques and teaching goals evolved by academic faculty of training institutions.

Considering that there is hardly any tradition of systematic judicial training in the country as a whole and that there will be heavy demands in training which may be between 2000 to 2500 trainees per year for at least five or more types of courses (induction courses and refresher (continuing education) courses), there is need to develop a cadre of regular faculty members trained and

motivated to undertake the tasks in the immediate future. Identifying another 1000 or more guest faculty members, interested, competent and distributed in different States is another task to be undertaken. They also need to be given an orientation if the effort has to be productive; co-ordinated and functional.

(5) Existing Academies to be developed as Regional Academies?

While there is general agreement to declare the Lucknow, Secunderabad and Gauhati academies of regional status, there is demand for a similar one at Nagpur or Jaipur for the western region. There is a demand for a regional academy at Bangalore as well.

The primary requirement, it is argued, is strengthening State academies than go for regional one. State academies with National Academy at Bhopal can fulfil the immediate needs at least for some time.

(6) Budget Estimates for running a Judicial Academy :

The budget projections vary between 2 to 10 crores of rupees though a substantial section of respondents believe that once the infra-structure is available the running cost can well be within 2 to 3 crores of rupees a year. A State academy can well be managed with rupees two crores of which one crore will be for salaries and another for administration and programmes.

The average annual budget of the National Academy may be in the range of rupees 5 crores.

(7) Selection and Retention of Faculty :

Most respondents are in favour of recruiting permanent faculty for basic needs of training. The Judiciary and Universities are the two sources for their recruitment. Senior advocates if available can also serve the need in some cases.

If faculty were to be drawn from serving judges and professors, they should be taken on deputation at least for a minimum period of 5 years extendable for another 5 years. This will prevent stagnation and bring in fresh blood with diverse experiences. However, it is not easy to identify the right person to come for deputation.

Retired judges and professors if found suitable can be engaged on contract basis as either regular or adjunct faculty. Other things

being equal, outstanding District Judges rather than High Court judges may better serve the needs of training.

Senior judges with interest in teaching may be given an year off from judicial work if they volunteer to teach at the academies.

The Directors/Principals should be appointed for a minimum term of six to ten years preferably from the higher judiciary or eminent jurists.

(8) Status to be accorded to Senior Faculty in the Academies :

While the Director/Principal of State/regional academies should have the status and perquisites of a High Court Judge, the others in the Faculty may be placed on equivalent status of Central Universities. Deputy Directors/Vice-Principal may have the status of a Secretary to Government in States.

The status of the Director of the NJA should be that of a Supreme Court Judge. Others in the Faculty may carry scales of pay offered in institutions of national importance like the IITs, IIMs etc.

(9) Medium of Instruction in Academies :

Two-third of the respondents want English to be medium of instruction while one-third are split between Hindi and regional language together with English.

(10) Organization of Skills Teaching :

Skills teaching is important in training; but it may not necessarily need a separate department to organize clinical training. Given the fact that majority of faculty members are people with skills, they would impart skills training in their respective courses. Further in field placement, project work and mock trials/moot courts the trainees may get opportunities to sharpen their skills.

(11) Academic Links Desirable with Outside Institutions :

Exposure to the training programmes of other countries is always beneficial. Eminent judicial trainers from outside institutions may be invited for short periods to conduct seminars or co-teach courses with the Faculty in the academies. Wherever possible, trainees at least in refresher/continuing education courses may be provided opportunities to participate in training programmes of other countries and trainee judges from these countries may be admitted to join the courses in the academies in India.

In any case, academies should develop professional links with comparable institutions outside India and exchange publications and study materials. This will be mutually beneficial to improve quality of judging and to have critical feedbacks on our strengths and weaknesses. International collaboration in judicial training particularly at the level of SAARC or Commonwealth should be encouraged.

(12) Computer Training for Judicial Officers :

All judges are unanimous in their opinion that training in computers particularly its use in judicial work must be compulsorily taught in all training programmes. Academies should be fully equipped with equipments and instructors not only to teach the use of computers, but it must form an integral part of the training methodologies in every course.

Some persons suggested that every court should have access to internet and e-mail facilities as well.

(13) Financing Judicial Academies : Desirability of Seeking Private Donations :

Many respondents are emphatic that the funds should come from the State only. There was one view that international finances available for judicial training should be kept in a central pool and individual academies made to compete for grants from it according to the merit of their programmes.

Another view supported by many says that there is no harm in seeking donation of library and study materials as well as teaching aids.

(14) Can Judicial Academy come up on the model of L.B.S. Academy, Mussorie?

Majority suggests that it can be a model in many respects in terms of infra-structure and quality of programmes. However, it suffers from a bureaucratic structure; whereas the model of IITs and IIMs is more professional and adaptable for judicial officers.

III. NATURE AND SCOPE OF PROGRAMMES

(1) Status of Foundtion/Induction Courses :

Yes, the induction courses for fresh recruits and promotees constitute the major activity of the State academies; whereas refresher and continuing education courses should engage most of the time of regional and national academies.

(2) Status of Refresher Courses :

Refresher courses for officers who are already in service are necessary and should compulsorily be attended once in three years (or, in any case, once in five years) by judges at all levels including the High Courts. The average size of such courses can be anywhere between 25 to 35 participants.

The duration of such courses depending upon the subject and scope of such exercise can vary between 1 to 6 weeks; the suggestion being 1 week for High Court Judges, 1 to 2 weeks for District Judges and 1 to 3 weeks for others.

Taking into consideration the large number of judges at all levels to be able to undertake refresher courses, the academies need to conduct such courses round the year, sometimes having more than one such course at the same time. Initially it may pose some organizational difficulties; after gaining some experience and standardization of quality criteria, it may be possible to repeat such courses more frequently or even to offer them at least partly through distance education techniques.

(3) Should Academies offer courses other than Induction and Refresher Programmes for Judicial Officers?

Thematic courses of shorter duration of 1 to 5 days including week-end courses may be organized to presiding officers of specialised tribunals and senior level administrators of judicial establishments.

It is also desirable to have at least occasionally orientation courses organized to officers who in their official functions deal with judicial proceedings. Thus, police officers, public prosecutors, income tax and custom, excise officials, Government secretaries, law officers of Government and Heads of Public Sector Undertakings may all be brought in to educate them on judicial processes, rule of law, issues on Court-Executive interface, contempt of court and human rights jurisdiction of superior courts.

Courses should always be need-based, informative, analytical, and result-oriented.

There is need for judicial academies undertaking research projects on a continuing basis either by themselves or jointly with universities and other organizations on issues of interest in judicial organization and administration with a view to propose judicial reforms and enhance judicial productivity.

Management related courses ought to form the focus of special seminars and workshops. Seminars on issues of contemporary public concern should also receive the attention of Judicial Academies.

Occasionally courses for the supporting staff of courts may also be organized to motivate and educate them on the tasks of judicial administration as distinguished from general administration.

Yoga, meditation and similar stress-releasing and efficiency-promoting techniques should form an essential part of courses.

(4) Venue for Courses outside the Academy

Majority of respondents wanted the judicial training courses to be residential even when held outside the campus of the Academy.

Though regional and national academies may be encouraged to conduct their courses in different States for officers of the State, it was felt that courses in the campus of the Academy involving equal rank officers of several States have distinct advantages in

inter-active learning and developing judicial discipline and solidarity. In any case, unless proper infra-structure and learning environment is available, no attempt should be made to organize courses for judicial officers in premises outside the campus of judicial academies. It is better not to organize training rather than organize badly and bring disrepute to a valuable tool for influencing change.

There is an opinion advanced that only foundation course be residential. Refresher and short duration courses will have to justify each time why it should be residential and what are the adverse outcomes if it is organized on week-ends or part-time basis or purely through correspondence/distance education methods. This is to avoid disturbance to judicial work and to save scarce resources.

(5) Standardization of Distance Education and Training:

There is mixed reaction to distance education in judicial training. For education purposes, they argue, it will be possible; but for training of skills, it is still to be developed.

However, there is wide support to start off correspondence courses with standard materials for continuing education of judicial officers. This may cover new legislations or amendments to existing legislations and leading case laws, both Indian and foreign. Even summaries of expert committee reports and of articles by eminent jurists in legal periodicals can be communicated to all judicial officers by the Academies. Knowledge-based components of judicial education can well be supplied through correspondence and learning on them can be assessed through project reports and similar assignments. Well produced audio and video cassettes can be an effective medium even to introduce new skills and attitudes to judicial officers. However, in distance learning also, participating officers should be examined and evaluated by the Academies through assignments or otherwise.

Perhaps, an option can be given to the judges to obtain the grade requirement in continuing education either through an extended period of distance learning or a residential programme of a shorter duration.

(6) to (9) Objects Determination in Foundation and Refresher Courses

Note : Even though these cluster of questions attempted to gather specific objects of the two types of courses distinguished from

generalised goals, the responses did not throw much light. This is what the trainers need for designing a course and to develop appropriate techniques to address each of the objects. It is also necessary to evaluate the impact of each segment of the course. To the extent the objects remain vague and generalised, skills, attitude and ethical standards cannot be addressed adequately in judicial training. Of course, to some extent all objects cannot be articulated in simplistic terms; nor can it be exhaustively stipulated at any given time. Nevertheless, the first task of every teacher/trainer will continue to be the struggle to identify and communicate clearly and unambiguously the learning goals of the total course and of each module in it.

It is interesting to find that many respondents expect from the induction training **better understanding of legal principles as well as substantive and procedural laws**, (what ought to have been obtained in LL.B.), **familiarity with court functioning** (which must have been observed during legal practice) and **knowledge about working of related departments** of police, revenue, jails, forensic labs, mental hospitals etc. (which again a conscientious lawyer could have gathered in practice). This is the problem with objects being vague. The training ends up in repeating what is already known or giving elementary things at a superficial level which one expects in the pre-recruitment education and practice of lawyers.

There are others who identify the objects as judicial decision-making, writing judgments, passing interim orders, managing court procedures and personnel, judicial ethics, treatment of special categories like juveniles, unsound persons, alternate systems of dispute resolution, computer literacy, accounting in courts, relationship with the Bar and media etc.

Interestingly again, there has not been any mention in the responses that study of the impact of constitutional law and judicial review is to be a subject of study in the training of new recruits to the judiciary. Nor is human rights referred to as a topic for learning in induction training.

Updating in legal developments is the popular response to the question on "objects" for refresher courses. Improvement of skills and capabilities (without identifying them) have been suggested as additional objects of refresher and continuing education courses. Imparting skills and knowledge to deal with special laws involved in motor accident compensation disputes, land acquisition disputes, disputes under companies and industrial disputes acts etc. were suggested for specialised continuing education courses.

Major changes in any area of law and policy and introduction of major departures in judicial administration should be the objects of short term seminars and workshops organized by judicial academies. Such programmes should include case studies and field visits rather than substantive knowledge.

For motivating judges to voluntarily seek participation in training, the strategy would be mention in service records, award of certificates, giving monetary incentives and recognizing distinguished performance in training courses as additional qualification in promotion and placement.

(10) Objects of Training Outside India :

Only judicial officers with long years of experience to be sent. The objects include understanding the law and judicial systems of other countries. Only those very good in English language and personal interest in comparative legal studies should be sent for training abroad. Another object of training abroad is to study how science and technology can improve the quality of dispensation of justice.

The trainers (faculty of training academies) should be sent for further training abroad so that, through them, Indian judicial officers can receive what is good in other systems in a manner appropriate to Indian situation. Foreign training in the best of such institutions will help improve organizational aspects relating to the conduct of such training. There is a view that training abroad should be confined to the trainers in judicial academies.

(11) Foreign Judges in Indian Academies :

Respondents mainly welcomed limited training opportunities being provided for judges from abroad, particularly of Commonwealth countries. They opined that it should be on payment of full costs and possibly on reciprocal basis.

(12) Should Academies have a role in Recruitment Process :

Academies are welcome to offer pre-selection counselling and training to prospective candidates for judicial offices particularly those belonging to reserved categories.

Academies may also be authorized to conduct the Judicial Selection examination on behalf of the High Courts or the Public Service Commission and under the directions of the High Court concerned.

There were some persons among the respondents who were against giving training academies a role in actual selection of judges. However, there is no objection in a member of the faculty being invited to sit with High Court judges while interviewing candidates. Some persons did not want even that.

To a suggestion made as to whether bright students from law colleges can be identified, motivated and guided by judicial training academies for judicial selections, the respondents are generally in agreement. Possibly a campus selection by the High Court through an alternate process if formulated under proper rules may also find approval in this regard.

IV. TRAINING THE TRAINERS

(1) Lack of Qualified Trainers and how to produce them :

There is not enough competent, dedicated and trained teachers for judicial academies. This is not because such people are not available in the country. Both in the Judiciary and in Universities there are potentially capable trainers, but they do not prefer to go to training institutions because of the poor service conditions, paucity of infra-structure facilities and low prestige given to such assignments in the judicial establishment itself.

The best available resource is in the judiciary itself. Sitting and retired judges who have inclination for teaching can be recruited and trained to become competent trainers if they can be offered conditions of service attractive enough to opt for such job. A large Panel of such personnel from amongst High Court and District Judges should be prepared for possible assignments in academies for periods long enough to make an impact. Retirement from such assignments should be at 65 years, the age at which Supreme Court judges retire. The usual recruitment procedures are unlikely to attract the right type of faculty members to the academies. It must be a process of nomination-cum-invitation-cum-selection based on pre-determined criteria widely publicised

in the entire judiciary and in the Universities.

(2) Staff Structure in the Academies :

There is some support to the suggestion that the faculty strength may be equally divided into permanent, deputation-basis and guest teachers. However, others think that long-term deputation and larger pool of visiting lecturers will be conducive to better performance. Permanent faculty may after sometime feel frustrated because of lack of adequate promotional opportunities as compared to their counterparts in the judiciary.

However, there is a strong view that no institution can develop in the long run if a core team of permanent staff is not available and, as such, each academy should have some senior level permanent teachers who may be available to the institution for at least 10 to 15 years.

(3) Role of NJA to provide Trainers to Regional/State Academies :

Yes, the National Judicial Academy should undertake the task of identifying a pool of officers with the help of the High Courts from throughout the country, train them for different tasks and notify their availability for teaching assignments in different academies in the region. The reputation of judges in the profession, the service records and an aptitude survey based on relevant criteria can help the High Court/NJA to spot such candidates. The process should be transparent and scientific and no caste, region or other irrelevant considerations should influence the process.

If there is to be a Judicial Service Commission, it can perform the task ably and on objective criteria.

There are possibilities of identifying such candidates in the Bar also.

(4) Qualities of a Good Judicial Trainer :

A number of qualities have been identified by the respondents. These include -

- (i) Sound knowledge of the theory and practice of law.
- (ii) Commitment to independent judiciary and judicial reform.
- (iii) An effective communicator and good command of language.
- (iv) Aptitude to work as a teacher and ability to learn more.
- (v) Capacity to inspire trainees and promote interactive learning.
- (vi) Good reputation and integrity of character, to be a role model.
- (vii) Research capability with inter-disciplinary approaches.
- (viii) Creative thinking, willingness to unlearn and re-learn.
- (ix) Punctual, disciplined, clean habits and secular-minded.
- (x) Experience in management/administration.
- (xi) Proficient in some subject other than law.
- (xii) Understand the psychology of adult learning.
- (xiii) A sense of history, a sense of humour and respect for rule of law and human rights.

(5) Availability of Trainers outside Judiciary :

Outside judiciary, good trainers for judicial academies can be found in reputed law colleges, universities, the Bar, management institutions, staff of existing training institutions and corporate establishments.

(6) Desirability of Training the Trainers in Judicial Academies Abroad :

There is wide approval to the suggestion that the identified pool of officers should be sent to the best available judicial academies abroad to learn the essentials of organization and conduct of training programmes. The idea is not to gather substantive

knowledges but to learn the pedagogic methods of effective training of highly educated persons like judges. Association with master trainers and observation of actual training exercises would give the ideas and skills to suitably improvise techniques for use in India. Since there is no such experience in this regard in India, such visits by the trainers at least for some initial period will be beneficial.

(7) Strategies to develop Academies as Centres of Excellence :

There is positive response to the suggestion that based on performance in the first few years, judicial academies should have the prospects of becoming universities which could award degrees in judiciary-related studies. Such a prospect would promote research and innovation on every aspect of administration of justice and provide empirical data on any proposition to the judiciary to plan reforms.

Advanced seminars, workshops and judicial conferences under the auspices of academies can generate new ideas and initiatives for constant improvement of quality of education, training and research.

The status of excellence should be earned by hard work and competitiveness through outputs, reputation, publication and consultancy.

There should be periodical performance audit of the academies by a high-powered body which should advise on academic agenda and performance targets.

(8) Universities to be advised on Degrees in Court Management :

Yes, if reputed universities and management institutes can educate people on Court Management, it will provide trained persons for judicial administration. Perhaps judicial academies can introduce such courses jointly with management institutions which will enable officers already in service to take advantage of such programmes.

4.9 Research and Development Work in Academies :

Research in judicial wing of government is a neglected area and there is no reliable information on a variety of aspects concerning judiciary which has grown in size and complexity over the years. Judicial academies should start research on priority issues. The judges who come for training are a rich resource for gathering information and conducting small studies with field surveys. It helps in training them also on hidden facts of judicial administration.

It will be ideal to prepare a research agenda after wide consultation with the judiciary so that the outcome of research can find its way to policy formulation and administrative reforms.

Problems and issues are many and varied. They have to be broken down into research questions and proper methodology has to be worked out so that it can be managed in reasonable time and they are linked to a common theme or development goal. Such action-oriented research can change the quality of governance in the judicial set-up. Academies are eminently suited to take this responsibility right from the beginning.

4.10 Planning Infra-Structure for Future Challenges :

The infra-structure pattern of LBS Academy at Mussorie appears to be of guidance in planning the national and regional judicial academies. More than physical infra-structure, it is the academic programmes, professional management and functional autonomy which will tell on the efficiency of the academies. There must be halls specially designed for moot courts and mock trials for ADR experiments and for group study. Computerised library system with one terminal for two trainees should be available.

Additional Comments :

Some very valuable suggestions have come from respondents by way of additional comments. These are :

- (i) All senior faculty members should be encouraged to do research on areas of his choice for which one month's paid leave should be made available. There should be a research article published each year by every faculty member.
- (ii) Faculty members who get poor assessments from the trainees for two consecutive courses should be

repatriated to the parent departments and not retained in academies on compassionate or other grounds.

(iii) All training academies should grow over a 5 to 10 year period according to performance and its own reputation. Therefore the investment on a training institution should not be made at one go.

(iv) Judges who have robust common sense, practical skills and varied experience should be constantly inducted into the academies at least for short periods even if they refuse to come on regular assignments.

V. CURRICULUM CONTENT AND SYLLABII

(1) Appropriateness of the Curriculum for Foundation Course :

The accompanying memorandum to the Questionnaire suggested the following six themes for the Foundation Course Curriculum :

- (a) Knowledge of Law in the context of social change and development.
- (b) Understanding judicial process in Governance under rule of law.
- (c) Updating knowledge of Law and Legal Procedure.
- (d) Developing skills in Management of Court and related systems.
- (e) Government Policies, Judicial interface and Speedy Justice.
- (f) Judicial Ethics, Discipline and Accountability.

Each of the themes are broken down into different subjects and teaching modules to develop a syllabus for the induction training course.

Asked on the adequacy of the curriculum, the respondents generally agreed with the relevance, coverage and organization of the content proposed. They however felt that one year period can be reduced if some of the subject papers (like Law and Social

Development, Law and Economics, Judicial Review and Judicial Process, Principles of Legislation and Interpretation of Statutes, Constitutional Law) are dropped. Their argument is subordinate court judges do not immediately need such knowledges more than what they have acquired in LL.B. or in legal practice.

It was suggested by some that direct recruits from the Bar may need training on (a) framing issues/charges, passing interim orders, writing judgments and sentencing; (b) understanding of work of police stations, correctional institutions, prisons, revenue departments, forensic laboratories etc.; (c) working of courts at various levels; (d) knowledge of accounts and civil service rules; and (e) judicial ethics.

There was a strong suggestion that training for adequate computer proficiency should be provided if necessary for two or three months to be able to master information technology.

The curriculum should have a core content which is immediately needed by the trainees and a broader content on which ideas may be given for self study and development.

(2) Three-step Process of Training and its Relevance :

There was overwhelming support for the three-step concept in the training of fresh recruits ie. initial 6 months of course work at the academy, next 3 months of field work and final 3 months again at the academy to round up the work assignments and remaining part of course requirements mainly based on practical skills and court management.

There was an opinion that the field placement should be of longer duration and class room studies reduced. Another suggestion was to divide the training period into foundation course and professional orientation, the former to be completed in 3 to 4 months and the rest to be devoted to the work he should be doing as a judge; namely, judgment writing, court management etc.

The introductory course for people in service (on promotion to a higher cadre) should be of one or two months only.

(3) List of Subjects and Credits :

Broadly there was support to the list of eighteen subjects to be taught in 6 months of training. Some suggested that segments IV and V may be shortened and kept for the last 3 months of training. There is need for greater weightage to be given to computer and information technology. Similarly C.P.C. and Cr.P.C., Law of Evidence and Rules of Court should occupy more time and attention.

There appears to be overlapping of subjects which should be avoided when learning modules are developed in each subject.

Weightage for subjects which are not of immediate use to judicial officers may substantially be reduced.

(4) Suggestions on Emphasis of Modules in different Subjects :

Thirty class hours for each subject are adequate to address the issues therein. However, in practice there may be need to increase the number of class hours in particular subjects and borrow it from other subjects. This is a matter to be adjusted by the Faculty and what is suggested here is to be taken for guidance only.

The course co-ordinator must prepare a lesson plan and a teaching plan keeping the expected outcomes from each subject and the course as a whole.

At the beginning of every course, the participants may be asked to list their needs and expectations from the training. Such suggestions may be given proper consideration in designing the teaching plan.

(5) Skills of Judging and Methods of Teaching them :

It was the opinion of a retired High Court Judge who has had a long career in the subordinate courts (Dr. Justice David Annoussamy from Pondicherry) that the training time should not be wasted in teaching substantive or procedural law. The selection test should be so devised to ensure adequate knowledge of the laws. Training should be on practical knowledge and skills only which should be taught through moot courts and mock trials. Training will be successful only if meritorious candidates alone are selected based on adequate knowledge of laws and procedure.

According to the Justice, there are six types of skills to be taught during training and examined at the end of it. These are :

(1) Comprehend the disputed matter to be able to frame charges and issues, not casually, but professionally. Materials should be given for that purpose with increasingly complicated exercises as the candidate proceeds in the training.

(2) Ability to detect admissibility and relevancy of evidence quickly and correctly to be able to conduct the trial according to law. An exercise for teaching this skill could be providing recorded evidence of past cases and asking them to remove inadmissible and irrelevant portions. They may be also asked to write down memorandum of substance of evidence from the full fledged record.

As conduct of trial includes asking questions by court and giving a finding on questions asked, it is desirable that trainees are given the charges/the issues, and the evidence recorded and are asked to formulate questions which could have been asked by the court.

(3) The third skill is to be able to receive intelligently the arguments advanced by both sides. If arguments are irrelevant and repetitive, judge should be able to seek clarification from advocates; otherwise they may face difficulties while writing judgments. To teach this skill, trainees may be asked to hear recorded arguments and write down their reactions indicating when and for what reasons they would have intervened if the arguments were advanced while they were presiding.

(4) The fourth skill according to the judge is capacity to analyze evidence according to the issues framed. Judges just summarise the evidence and jump on their conclusions on preponderance. Analysis requires a different, rational approach.

(5) The fifth skill is to gather the law, interpret it and decide on questions of law applicable.

(6) The final skill necessary is writing judgments without repetitions, **unnecessary** reproduction of documents, evidence, case law, statutory provisions etc. How to organize and respond to issues in such a manner as to satisfy the parties to the dispute (not keeping the appellate court or the media in mind).

An exercise which can help teach the skill is asking to write judgments on the basis of materials supplied and to remove what is removable in judgments already rendered.

Note : The views of Justice David Annoussamy give valuable insights for the trainers to organize the teaching of skills in simulated situations in the academies and in structuring the content of the knowledge-oriented courses in the training programme.

On the question of judicial skills, other respondents suggested that the essential skills for judges are cool temperament, patience, listening, good memory, control of court proceedings particularly on lawyers, without appearing biased, analytical ability, time management, judgment writing and human relations management.

Case study, role playing exercises and writing projects relevant to the skills are methods of teaching skills.

(6) Balancing Knowledge Component with Skills Component :

Respondents suggest a "judicious mix" in which the skill-based segment is given 60% time and space and knowledge segment 40% of time and attention.

It was suggested that in refresher courses and continuing education programmes, knowledge component may be given wider coverage while in induction training the skill component greater emphasis.

(7) Teaching of Judicial Ethics

While some felt that the subject can be taught in an integrated manner in every course/subject, the majority of respondents argued that it must be taught as an independent subject. Reputed and experienced judges can teach the subject through case studies, lecture discussions and role playing.

(8) Syllabus Development for Refresher Courses :

Many have suggested that new developments in law and practical problems in administration of justice should form the subject matter of refresher courses. They can occupy the role of remedial programmes for known deficiencies in the judicial system. Anyway these are to be reviewed and changed from time to time.

Judicial officers themselves may be asked to suggest themes for refresher courses from time to time.

(9) Coping with Needs of Individual Trainees :

Individualised attention is desirable in training. This is possible effectively only when the trainer-trainee ratio is high and the programme content is evolved on the basis of problems identified by trainees themselves.

There should be counselling and project assignments to help individual trainees. Remedial programmes to be introduced as and when needed for which bright and promising trainees may themselves be used.

Follow-up contacts through correspondence can help individuals to cope up with judicial work. Assistance through phone or personal visits is helpful.

Two or three trainees may be attached with each faculty member to offer individual guidance and interactive learning.

More discussions and small group exercises can promote solution of individual problems in learning.

(10) Continuing Education for Superior Court Judges :

The general opinion is that judges at all levels require training. Judicial conferences with pre-conference workshops are useful for continuing education of superior court judges. Short duration, week-end refresher courses are advisable for High Court judges.

VI. METHODS OF TRAINING

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(1) Scope of Lecture-cum-Discussion in a Training Programme :

It is good teaching method; but is not enough. Participative learning techniques should be employed wherever possible. In any case lecture-discussion should not be extended beyond one-fifth of the entire training.

A work book may be prepared by the faculty in advance for each subject detailing the study plan, essential reading, exercises to be done, portions left for self-study and expected outcomes.

The knowledge component of training can largely be taught through lecture and questions followed by written tests and group discussions.

(2) Scope for some part of Syllabus left for self-study:

If information giving is the object of a given module, it may be left for self-study. Even then discussion in groups of such topics may be helpful for enhancing the understanding of the subject/information.

(3) Scope of Independent Research and Writing (Projects):

Yes, project work for research and writing on issues relevant to judicial learning is good method provided proper guidance is available from the Faculty and the project report is presented and discussed in group meetings involving sitting judges. It can be evaluated for 15 to 20 per cent of the credit for each subject. The selection of project topics may be made in consultation with trainees. Some projects may be assigned to groups of trainees when they involve more investigation and analysis.

Projects are effective only in residential courses. Case comments, dissertations on socio-legal topics and critiquing of articles by eminent jurists published in legal periodicals etc. are research/writing exercises which can make learning real and practical.

Some Respondents suggested 25% of total credit in given subjects to independent research and writing

(4) Scope of Simulation Exercises in Skills Education :

Mock trials, moot courts, negotiation and mediation exercises as well as conciliation and arbitration of different types of disputes under simulated conditions must be assigned to each trainee. The entire process may be video-taped, played back in the presence of experts and other trainees and critiqued for understanding the strengths and weaknesses of each training in the use of such

techniques. Similarly video clippings of actual proceedings by leading lawyers/judges may be presented for comparison to the trainees.

It was suggested that these practice exercises should not be basis for grading the over all performance of trainees. In fact trainees should be allowed to evaluate and grade themselves giving supporting reasons for their assessment.

These techniques of training should occupy one-third of the total time of training and one-third of credits of the course.

(5) Scope for Small Group Discussion and Workshops :

Appropriate method for giving deeper insights on topics of current relevance, issues of science and technology, controversial questions of law & policy, emerging areas of law related knowledges requiring inter-disciplinary skills. Every subject and every topic should accommodate as many seminar and workshop exercises wherever possible, in the company of one or two experts on the subject to act as discussants. It may be also advisable to invite trainees themselves to act as moderators of such seminars/workshops.

(6) Scope of Law Clinics (Legal Aid Clinics) in Academies :

Given the increasing importance of Lok Adalats and ADRs, it will help bring at least some aspects of judicial work in the academy premises if legal aid clinics are set up on a regular basis.

Law clinics can also serve a variety of other learning goals depending upon its structure, contacts with NGOs and resources.

(7) Periodic Examinations to Enhance Learning :

The respondents did say that periodic examinations, not of the conventional type only, can be a regular feature of training course. In fact, the course can start with one examination (written and oral) which will give a profile of the group and weaknesses of individual trainees. If such initial test is linked with the series of tests culminating in the final assessment, it gives an idea of the total learning curve of individual trainee and the impact of the training. The entire data must be computerized, transparent and to be explained to the trainee by the Faculty concerned.

Some persons felt such periodic examinations will be a distraction to learning and should be avoided. Too many examinations and too much importance on them may undermine the efficiency and objects of training. Examination is to remain a measure of learning from which the trainee himself could improve the pace and level of learning.

(8) Training Methods for Short-term Refresher Courses:

Seminars, group discussions, lectures, group assignments (projects) are to be used imaginatively. Field experiences wherever possible should be provided by visits in groups.

Video-tapes, correspondence and tele-conferencing are other strategies for conducting continuing education.

(9) Examination of Refresher Course Participants :

Yes, suitable examination to evaluate the extent of learning in continuing education courses is also desirable. It can be "take home", "open-book" examinations besides group discussion and written assignments.

However, refresher courses should not aim to find the shortcomings of judges which may affect his career prospects.

(10) Use of Crash Courses for Training Existing Staff :

Respondents were equally divided on the potential of crash courses and that too correspondence to train the 15,000 existing judicial officers. They felt at best it may give some knowledge based education but not true training.

Conclusion :

A tremendous pool of ideas and comments emerged out of the survey conducted through the Questionnaire. Because some questions were asked differently in more than one place, some aspects of judicial education and training have come in for repeated discussion in the body of the analysis. However, the conclusions are clear and emphatic and are supported by an overwhelming number of respondents who are sitting and retired judges of the country. The fact that a large number of judicial officers' associations have taken active interest in the survey and have enriched the findings reflect the dominant faith of the judiciary in the principle of reform through training.

A brief summary of the propositions which reflect judicial thinking on the subject and which are adopted in formulating the recommendations of the report in subsequent chapters is reproduced below :

- (i) There is a felt need for judicial education and training at all levels of the judicial hierarchy. What is obtaining at present is thoroughly unsatisfactory both in contents and methods. The objects have to be clear, the methods have to be scientific, inter-active and participatory, the faculty ought to be carefully chosen, trained and retained for longer periods and a system of evaluation of learning needs to be developed through objective, transparent criteria.
- (ii) Realising the imperative need and critical importance of training in shaping judicial behaviour, the scheme should be given the priority it deserves through a variety of norms, standards and procedures. The object is to convey the message to the judicial officers that their career advancement will be regulated by the performances at the training and conduct afterwards. Those whose performance in training is unsatisfactory will have to repeat the training course at great risk to the service benefits. Only by motivating the officers and by giving attention to augmenting the strengths and removing the weaknesses through individualised training, can the system expect to impact in the desired directions.
- (iii) Judicial education is to be conceived differently from judicial training though they have the same goals, but different objects. Clarity in articulating the objects of different types of courses will help improve the methods adopted in training and in maximising the benefits to the trainees. This is where educational psychology, principles of adult learning and inter-play of interactive, participatory methods contribute to the evolution of scientifically organized training schemes. Training, after all, is influencing behaviour of an individual and it is a complex process of motivation, building up on existing knowledges, imparting varied skills and techniques and suggesting alternative approaches in problem solving and management.
- (iv) Induction courses of one year's duration at the basic level (ie. Munsiffs and Magistrates and perhaps of six month's duration at higher levels ie., Civil Judges and District Judges) and Refresher Courses of duration varying

between one week to six weeks depending upon the nature of the subject of training are recommended in the proposed academies. Besides short-term, week-end seminars, workshops and conferences are recommended for orientation and sensitization purposes on themes found to be appropriate from time to time by higher judiciary.

(v) In Induction Courses there are serious problems arising out of the uneven and sometimes extremely inadequate knowledge, language skills and motivation levels of the trainees. If the recruitment process is not tightened to ensure that only persons with the expected minimum standards alone get selected, there has to be remedial courses organized for the weaker candidates at great expense and possibly greater inconvenience to the system itself. This is a matter which the High Courts will have to address if the new training initiative has to achieve maximum results.

(vi) Training at periodic intervals aimed at updating knowledge, imparting specialized skills and equipping to take higher judicial responsibilities is necessary in judiciary more than ever before. However, if they are not carefully planned and competently executed, they would not yield the desired results. Today there is very little happening in existing institutions in this direction.

(vii) There is need for a judicial academy in the jurisdiction of each High Court for one or more States. Equally, there should be a national academy with specialised functions such as curriculum development, training the trainers, standardising training methods, materials and evaluation techniques, evolving norms and themes for short-term refresher courses and long-term distance education training, co-ordinating common tasks of State level academies etc. The reaction to the proposal for four regional training institutions was mixed. Many felt it to be unnecessary at least at the present moment.

(viii) There was general support to the proposal to give independent status and autonomy to the judicial academies. The Governing Board should be presided by the Chief Justice himself and should have representation not only from the judiciary but also the academia, government and other stake holders. The organizational status can be that of a society registered under the Society's Registration Act on the model of the National Judicial Academy, Bhopal, as it would give the necessary flexibility and status to perform its tasks responsibly.

(ix) The Faculty of judicial academies should consist of a core permanent group which represents relevant disciplines including Law and a large visiting/guest teachers invited from judiciary, practising profession and technical experts from other disciplines. Naturally, the majority of teachers/trainers should come from the judiciary; however, they should be carefully chosen based on knowledge, reputation, ability to communicate and aptitude to train. The Faculty should be paid as well as High Court Judges or Senior Professors of IITs or IIMs. If they have not been teaching earlier, they should be given an orientation training before giving training responsibilities in the Academy.

(x) Every respondent to the questionnaire insisted on detailed and insightful training on the use of computers in judicial work. They felt that as much time required for the purpose should be found in the training period for this purpose.

(xi) Induction training for fresh recruits and refresher courses for officers in service will form the major activity of the judicial academies. However, they should undertake research on current problems facing the judiciary and expose the officers to the causes and concerns for the ills of judicial administration. In this regard judicial academies should build networks with other institutions of higher learning within the country and outside.

(xii) It will be desirable for the academies to evolve and conduct appropriate courses for the staff of the judicial establishment with a view to increase efficiency and productivity.

(xiii) On the content of the training courses, there were lots of useful suggestions. There is agreement that it should not be repeating law subjects studied in the college though procedural subjects require a more detailed functional analysis during training. Imparting skills of judicial work and inculcating values of the judicial system should occupy more time and space in the curriculum. The approach should be inter-disciplinary and reflecting the working environment the officer experiences in the court setting. In this regard, training the future trainers should be the first priority.

The curriculum should have a core absolute content and a variable, need-based content which must be constantly

revised on the basis of experiences gained during training exercises. There should be a balance between theory-based courses and skill-based components of training.

The proposal to have six months initial training followed by three months' field study, followed again by another three months' round-up learning in the academy (for induction training) is generally welcomed by most people.

(xiv) The Academies can borrow many organizing strategies from the L.B.S. Academy of Administration for civil services at Mussorie. Judicial Academies should aim at higher and higher levels of excellence in education and training with a potential to be declared Universities in course of time. There should be performance audit internally and by external experts from time to time.

(xv) While there is large agreement on organized, scientific and purposeful training for the new recruits to different judicial cadres in the subordinate judiciary, there is not much consensus on how to go about training the officers who are already part of the system. Use of crash courses, distance education techniques and selective introduction of institutionalised programmes have been suggested. The point that this problem requires special attention and possibly special type of courses was well-taken.

Based on the above perspectives, comments and suggestions of the judicial fraternity, the next few chapters have given some shape to the organization of the academies, the development of the courses and the adoption of suitable strategies for optimum levels of achievement of goals of judicial training.

13.8 DEVELOPING A CURRICULUM FOR JUDICIAL EDUCATION AND TRAINING

13.8.1 Based on the curricula of the existing training programmes in some States and on the recommendations of the Law Commission of India, the working paper circulated with the Questionnaire did propose a broad scheme of the curricular structure for induction training of judicial officers at the primary level. While the responses received were generally supportive of the proposal, there were some insightful comments on inclusion and exclusion of certain papers or modules in such papers. In this chapter the curriculum is further revised on the basis of comments received and in the light of the near consensus reached in the National Level Consultative Committee where the subjects were thoroughly discussed and further clarified and recommended by pedagogic techniques.

13.8.2 It is worth clarifying the function of a curriculum in a training setting of responsible officers who have had basic education in law and some exposure to the system of administration of justice. It must give them additional learning relevant to the work situation and should not be blind repetition of the courses studied (even if not properly) in the law college. The objects of studying each additional units of learning must be justified in the curriculum statement as that would give them directions for self-study and to choose materials for themselves. The objects preferably must separately give the knowledge content and the skills content of the prescribed course/module. As the demand on judicial capabilities changes, the curriculum planning should be a continuous process of revision and reform preferably in consultation with officers being trained. This means that the curriculum presented is just for the initial year only and must undergo close scrutiny by the trainers and experts at the end of each year. It is

important that this process is made compulsory in every training academy lest the content should become obsolete and irrelevant to the changing needs and demands.

In this regard, it is also important to distinguish the **goals** from the **objects** of training. Goals are acquisition of greater efficiency and improved quality of administration of justice. This is the cumulative result of a variety of factors in the judicial establishment including training. On the other hand, objects are related to a specific course/module in a given set of environment and circumstances and with reference to the particular category of officers undergoing training. Specifying objects with clarity is not an easy task. This comes with experience both in judicial administration and in judicial training. This is where the trainers require training and continued interaction with the players in the judicial, educational, behavioural and management spheres. In fact, the objects determine the pedagogic methods to be employed and the study materials and examination system to be adopted. If objects are clearly articulated and communicated, the success of the course is partly assured.

13.8.3 In the context of the above and based on lessons from the field of adult learning and educational psychology, the trainers will have to develop their own skills and strategies. Judges are, of course, the best persons to train other judges; but if they were to do so effectively they themselves have to assimilate developments in educational psychology and learn pedagogic skills appropriate to adult learning. This is why it is said that all judges, however experienced, cannot become effective trainers and the academies will be well advised to make careful selection of their faculty based on carefully chosen criteria including demonstrated aptitude for teaching/learning.

13.8.4 No training can be successful if there is no guarantee of some minimum levels of knowledge on the part of the trainees. Minor gaps and deficiencies on the part of some individuals can be sorted out by remedial coaching; but if the basic minimum as expected in the recruitment rules are lacking and the language skills are weak, the training can run into problems. Today, according to experience collected, there are recruits who are extremely weak in their understanding of legal procedures and evidence and who cannot communicate effectively in any language, much less in English. This explains the disappointing impact of training in shaping judicial conduct and the reasons why training is taken in some cases as a mere formality both by the trainees and even by some trainers. A sense of helplessness leads to compromises thereby devaluing training itself.

To resolve this problem, two alternatives were proposed in the questionnaire both of which seem to have not found favour with the judges. The first option was a short-term rigorous pre-selection education for weaker candidates at the instance of the High Court by some law teaching institutions. The other option was to give remedial coaching after provisional selection in the academy with extended period of training. The respondents were of the view that both these approaches will result in discrimination and consequent complexes in the officers. Their solution is that under no circumstance shall candidates who do not have the expected levels of legal knowledge and language skills should ever be recruited even if there are reserved vacancies to be left unfilled. While it is a problem for the respective High Courts and Governments to resolve, today it does pose insurmountable problems to training institutions.

13.8.5 There is unanimity in the view that the training curriculum should carry a heavy well-thought-out segment of hands-on training in judicial work (placement with a senior judge) and a fairly thorough programme of computer education. Both these suggestions are well taken and have to be reflected in the curriculum evolved. There is a large body of support in keeping placement training between the two segments of institutional training; the first six months mainly to update knowledge of laws and related subjects and to prepare for placement and the last two months to clarify field experiences, imbibe judicial ethics, learn management of judicial administration and to polish the acquired capacities in conduct of trial and in writing of judgments.

13.8.6 Broad themes of the Curriculum for Induction Training :

The scheme of education and training for newly recruited officers (munsiffs/magistrates) spread over a period of one year will have six major themes around which several specific courses (subjects) will be organized. The six broad themes are :

Major Themes around which courses are structured for Induction Training of all categories of Judicial Officers :

- (i) Law, Society and Justice;
- (ii) Rule of Law, Judicial Process and Constitutional Government;
- (iii) Procedural Laws and Administration of Justice;
- (iv) Technology, Modernisation and Management of Change;

(v) Judicial Ethics and Accountability;

(vi) Select Problems in Society and Role of Judiciary in the Context of Development.

The six themes are not of uniform value or weightage. Obviously, about half the time and attention of the entire course has to be assigned to the third theme, namely, Procedural Laws and Administration of Justice. As such, the number of subjects around that theme are more as compared to all other themes many of which can be taught in just one or two subject titles.

The subjects listed below around the six major themes of study carry in terms of number of credits the recommended weightages for each subject/course in the total curriculum. Local adjustments are possible within the over-all curriculum. After all, the writing out of the Teaching Plans including the drafting of the syllabus, reading materials, examination scheme and teaching methods for each subject is the responsibility of individual teachers in charge of training in each training institution. The design that is so developed by individual trainers in different subjects is always to be reviewed and revised before every new training scheme is launched. Curriculum planning and development is, after all, a continuing process and in the context of developments in Law and Society, the syllabus of a training institution can never be the same for more than a year. Based on the experiences of a training scheme just concluded and on the changed demands for training, a conscientious trainer will revise the curriculum for the entire course and the syllabus for each subject before embarking on another scheme of training. Therefore the scheme proposed here can only be taken as tentative and recommendatory in character to be constantly improved upon every year based on needs and experiences.

It is also to be remembered that the curriculum proposed here covers only the taught portion of the training in the Academy and does not include the practical learning component of the training based on field placement. It is important to evolve such strategies wherein the field placement gets integrated with class room learning in such a way that the two reinforce each other giving the trainee the requisite knowledge and skills coupled with the confidence and professionalism necessary for judicial officers. The strategy proposed in this regard is to have an initial Academy-based teaching for six months, a well-organized field placement for four months and a winding up programme in the Academy for the last two months.

Break-up of Subject Titles organizing the Curriculum around the six major Themes

Sl. No.	THEMES	SUBJECTS / COURSES	WEIGHTAGE / CREDITS
			(Assuming Total Credits for the entire training is 100 of which 50% is available for taught courses in the Academy and 50% for field training).
1.	LAW, SOCIETY AND JUSTICE	b) Law, Political Economy	Three (3)

		and Development.	
2.	RULE OF LAW, JUDICIAL PROCESS CONSTITUTIONAL AND GOVERNMENT	b) Judicial Process : Role and Functions of a Judge in Adversarial Adjudication.	Two(2)
3.	PROCEDURAL LAWS AND ADMINISTRATION OF JUSTICE	e) Legal Aid, Alternate Dispute Resolution Methods and Court Administration.	Six (6)
4. 5.	JUDICIAL ETHICS AND ACCOUNTABILITY	b) Judicial Supervision and Accountability.	Two (2)
6.	SELECT PROBLEMS IN SOCIETY AND ROLE OF JUDICIARY IN THE CONTEXT OF DEVELOPMENT	Series of Seminars and Projects around selected Problems.	Five (5)
		TOTAL :	Fifty (50)

13.8.6(1) Law, Society and Justice :

Being a law graduate, every trainee would have some perspective of the role of law in society and the potential of law as an instrument of social justice and development. However, it is unlikely that he had occasion to appreciate the role of law in directing change, regulating economic forces and apportioning the fruits of development. The changes which basic legal concepts like property, contracts, torts, crime, family have undergone while interacting with economic and social policies need to be studied in context to give the young judge the macro-level understanding of the office he is to occupy. It is not just settlement of some disputes but, in the process, he is structuring a just social order where disputes are avoided as far as possible.

The 54th Report of the Law Commission wanted judicial officers to develop a healthy understanding of certain social science subjects (Economics, Political Science, History, Sociology, Psychology) in relation to law and legal policies.

The new Five Year Integrated LL.B. Course is supposed to give the above insights to the new generation of lawyers as the curriculum does teach the above subjects. But the social sciences learning is elementary and the integrated analysis with law, if at all instructed as expected, could only open up the curiosity of the law student. In judicial education it can be taken further with a view to project the functional interaction between law and society. How much of it to be imparted in initial judicial education and in what form depends on the assessment of the training needs by the trainers in specific contexts. Nevertheless, the following two courses appear to be necessary :

13.8.6(1) (a) Law and Social Justice :

The object of this course can be to give a critical understanding of Indian society as it evolved through several centuries and how it influenced the shaping of law and legal institutions. It is to be a blend of history, sociology, culture and economics. In short it is to be a socio-economic history of legal system. How justice is perceived and administered at different times? How Common Law and customary law impacted the shape of events? What were the factors which united the society during the Freedom Movement? In all these how lawyers and judges advanced one set of values as distinguished from another and with what techniques? The lessons of history and culture in legal discourses can give meaningful suggestions to the young officer for being a conscientious player in legal development as well as social development through law.

The content of the course could include perceptions and practices in law making and delivery of justice during the colonial period, the implications of non-separation of judiciary from executive, the evolution of the concept of independence of judiciary, the crystallization of the role of the legal profession, the attempts at constitutional reforms during the colonial regime, the values of the Independence Movement and their reflections in legal battles, the Constitution making process vis-à-vis judicial process as projected in the Constituent Assembly debates etc. It could also include case studies of legislative, executive and judicial attempts in delivery of social justice (like untouchability offences, land reform, labour law, child justice, gender justice etc.).

The methods of teaching the course include lecture-discussion (25 per cent), individual/group projects or syndicate studies on research and reporting through seminars (25 per cent), field visits and workshops (25 per cent) and written examination with inter-disciplinary questions on law-society relationships (25 per cent).

The topics of case studies and projects will keep changing year after year with a mix of old and new problems/issues where legal initiatives have succeeded/failed in delivery of social justice. The thrust here is more on social development through law and the role of legal institutions/instruments in social engineering in order to appreciate the limits and limitations of the judicial process. It may also help to appreciate techniques of conflict management in society and the need for law to be responsive and pro-active in the dispute resolution process.

The process of learning here is deductive (reasoning from observed facts) rather than inductive (logical reasoning from a general law). It is experience rather than logic and black letter law. The young officer will learn the distinction between proof in law and proof in social sciences. It would enable him to understand the complexity of social reality even while facts and evidence are presented in isolated fashion in court proceedings. He would begin appreciating the impact of judicial decisions in society and the need to appreciate the reasons for disillusionment with law and legal processes.

13.8.6(1) (b) Law, Political Economy and Development :

This is the second course in the Law, Society and Justice Unit of the judicial training curriculum. While the first course emphasised the socio-cultural dimensions of law and administration, this course would focus on the political and economic dimensions of law in society. Every subordinate judge is now increasingly called upon to administer justice around issues which

pertain to economic relationships and distributive justice. With the law of contracts and torts assuming critical importance in the new economic regime, judges can potentially do a great deal to advance the cause of justice in complex market relationships. This requires understanding of the elements of political economy, the relationship between the State and the Market and the role of Human Rights in disciplining unequal and unfair deals. Given the prospects of ambiguous policies in legislation in the market regime, the trial judges may have to be creative in their choice of remedies and activist in resolution of disputes keeping the intention of legislature and needs of society in mind. This is a matter of value orientation, judicial balancing of competing interests and capacity to appreciate complex economic transactions through market practices. The young judge cannot be expected to have this perspective and analytical skill which a course like the one proposed should give him at the induction stage itself.

Giving the example of revolutionary changes taking place in the concept and status of 'property' in modern societies, the Law Commission (54th Report) had canvassed broad-based social science education to judges. Law and Development was an independent course which the Gajendragadkar Commission wanted in judicial training. Sociology of Law was recommended by the Desai Commission. Today administration of justice is indeed difficult without an understanding of the complex role law is playing in development and social change. With economic liberalisation and globalisation and in the context of a dominant role for the World Trade Organization in resolution of economic disputes, national legal systems have to play a pro-active and creative role in structuring legal remedies for economic development and social justice. Any discerning observer can appreciate this new role in the emerging areas of law such as intellectual property law, natural resources law, energy law, environment law, laws regarding financial markets and international trade, consumer protection law etc. No law college anywhere in the country ever taught these laws so far. Nor is it likely that the younger generation of lawyers have had occasion to practice in these areas. At the same time no one can deny the fact that trial judges in future will be increasingly involved in these matters for which the jurisprudence and tools of the past are inadequate instruments. Hence the need for providing a foundation on economic laws including economic offences in the context of India's economy getting integrated with the world economy.

This course again will depend on non-law subjects and materials mainly from economics to develop its content and concerns.

13.8.6(2) Rule of Law, Judicial Process and Constitutional Government :

Constitutional governance under rule of law demands from the judiciary exacting standards of judicial behaviour for which the judges have to be trained both in skills and attitudes. The culture of human rights and a healthy suspicion in respect of exercise of public power by State and its agencies are indispensable attributes of judicial mind. While making independent judgment, judges have to strive for certainty in law and reasonableness in its application. In short, the tasks of a judge in a constitutional democracy governed by rule of law and human rights are indeed challenging and formidable. More than knowledge of law what is required is impeccable integrity and a cultivated discipline conducive to restrained conduct and dignified behaviour. While this is the product of learning and socialisation with judicial fraternity its elements can be imbibed in training. Towards this end, the following two courses are recommended

13.8.6(2) (a) Principles of Legislation, Interpretation of Statutes and Scope of Judicial Review :

Rule of law requires judges to understand and respect the intention of the legislature while interpreting statutes. A law cannot be understood except in terms of its purpose, the mischief intended to be avoided and the goals expected to be advanced. In gathering this information, every judge inevitably is drawn into policy debates, history of the legislation, diverse view points in society and the limitations of law in social control ordering. Statutes are after all, collection of words and phrases, most of which are amenable to diverse interpretations. The science of legislation (principal and subordinate; supreme and delegated) and the art of legislative drafting conceals an agenda of social engineering which judges have to unfathom through known principles and procedures. These principles are not uniform in respect of all legislations. The extent to which the principles can be used in understanding the law also varies depending upon the issues in question and how far they are obvious in the words and phrases of the statute. Certain rules of interpretation have been developed in Common Law and incorporated in judicial practice all over the world. Even though trial judges are not always confronted with these issues in their daily functions, yet it is important that they are aware of them and how and where they can involve them in judicial work.

Equally important is the controversial yet significant function of judicial review of administrative action and legislation. The principle that every law and executive action should be in conformity with the Basic Law - the Constitution - is part of Indian

jurisprudence and perhaps a basic feature of Indian Constitution. The judicial power involved in judicial review is sensitive and is exercised by the High Courts and the Supreme Court. It is a technique for protecting Fundamental Rights against State action maintaining rule of law through avoidance of arbitrariness in Government. While exercising judicial review, courts are likely to deal with policies and inevitably declare the constitutionality of actions of the other two wings of Government. In this process frictions arise and judicial power gets increasingly challenged. It is to the credit of India's democracy that judiciary had its way in working out the constitutional scheme through checks and balances. In doing so, the role of the judiciary has become crucial and delicate. Every member of the judicial establishment even if not exercising judicial review, ought to realise the nature and significance of this doctrine, the manner of its exercise in the Indian context and the responsibilities it imposes on judiciary as a whole. As such, this subject should form a component of the course designed to acquaint the trainee to the larger role of judiciary in democratic governance.

There are interesting discourses on all three aspects in several judgments of Indian and foreign courts which may be imaginatively edited and presented for teaching and discussion. A purely theoretical approach with text book materials is inadequate for the purpose of attaining the objects intended to be achieved by teaching the subject. It is important that the trainees understand the undemocratic nature of judicial process and the need for care and caution in the application of judicial review against democratic decision-making processes. This is a task indeed far more challenging than any other judicial function in a democracy. Judicial restraint and judicial activism will have to be understood in proper context lest the judge should fall in the trap of either obstructing policy or enunciating policy both of which do not bring credit to the judiciary.

13.8.6(2)(b) Judicial Process : Role of a Judge in Adversarial Adjudication

Understanding the nature, scope and limitations of the judicial process is part of the training of a judge. Judicial process in an adversarial setting structured by written rules of procedure and evidence pre-supposes a fair, independent judge endowed with a lot of patience and common sense even during trying circumstances. There are different actors playing different roles in the court and the judge is supposed to regulate the show according to the rules of the game. In the process he is to be not only fair and impartial, but seen to be so by the parties whose lives and liberties are at stake. There are active and activist judges as there are restrained and passive judges. Judicial methods are varied and complex accommodating judges of all types and providing

dynamism to the judicial process without compromising the integrity of the process itself. Thus, by understanding judicial process, both in theory and practice, the trainee will learn the elements which go in the making of a good judge. This subject should aim to give the trainee maximum of knowledge and skills, attitudes and approaches which can be a resource in judging. Biographical notes of judges can be useful material for study and reflection.

Judicial discretion is a source of judicial power which can add dignity and authority to the court while serving the cause of justice. At the same time, improper use of discretionary powers can undermine the integrity and respect attached to judicial office without which judges cannot function effectively. It is therefore important that this course gives instruction on the use and abuse of judicial discretion particularly in relation to dealing with interim applications and orders. Preparation for hearing of a case can help a great deal in court during trial.

Managing examination and cross-examination of witnesses in a professional manner is both an art and a science which can be cultivated by a conscientious judge. To be a master of the proceedings in court, the judge ought to know when to intervene and when not, where to stop the lawyer and how to achieve intended results without jeopardising the reputation for fairness and avoiding conflicts with arguing counsel.

There are differing views on whether a judge is to be only an umpire or can assume the role of an active player in adversarial trial proceedings. The law seems to provide scope for both the roles within parameters (see for example Order X CPC, 313 CrPC, examination of court witnesses). To be able to learn and practice such roles, the trainee judge has to study a whole lot of theory of judicial roles and interrogate assumptions and strategies in diverse circumstances. While this course will provide the occasion for such an exercise, he should be able to put to test such knowledges while on placement training as an understudy with experienced judges. In short, the teaching of this subject is partly in the classroom setting and partly in the field situation.

13.8.6(3) Procedural Laws and Administration of Justice :

This theme comprises the core topics usually given in all judicial training programmes. In many training programmes they form the total content of the course excepting, of course, the field-based apprenticeship training. What is recommended here is a radically different approach in the teaching of procedural laws and their organization and integration in the total curriculum for

training. The lecture-discussion type of teaching of topics straight away lifted from the C.P.C., Cr.P.C. and Evidence Act do not convey anything more than what the trainee already got either from the law college or from the profession or from both. As such, a good trainer might consider giving a functional and integrated design in the entire teaching of procedural laws. There can be many models for such a design and each one has its own plus and minus points. For example, one may adopt a style of teaching the entire criminal procedure and evidence by taking the trainees through a step-by-step journey from occurrence of crime in society to its final disposition in courts taking, wherever necessary, bye-lanes and diversions to explain the course of different criminal cases in different situations. The pre-trial processes, trial and appellate procedures, interlocutory stages, constitutional court interventions, administrative and supervisory interventions, impact of actions of extra-legal authorities etc. can all be presented in vivid detail to the best advantage of every trainee judge who is already informed of the basic rules.

The theme around Procedural Laws which constitute 50 per cent of the total taught subjects in the Academy (25 credits) can be organized in five different courses such as Civil Proceedings, Criminal Proceedings, Special Jurisdictions, Judgement Writing and Court Craft, Legal Aid and ADR. The content and scope of these five courses under the rubric "Procedural Laws" are explained below :

13.8.6(3) (a) Civil Proceedings :

The course should give an over view of the judicial system with special focus on civil courts, their structure, jurisdiction and functions. Naturally it is necessary to expose the trainee to various types of disputes ordinarily reaching the civil judicature and the laws (contract, tort, family law, property law etc.) governing them. Of course, the style of treatment of substantive laws will be different in view of their knowledge of these laws.

The second module relates to a number of procedural issues whereby the filing and admission of suits are controlled by the Court Fees Act, Suits Valuation Act, Stamp Act, Limitation Act, Specific Relief Act etc. Discussion on different type of suits seeking different kinds of reliefs will enable the trainees to get acquainted with the nature of work he is likely to be confronted with immediately on assuming office.

Management of pre-trial procedures should receive adequate attention. Examination of parties and pleadings and framing of issues are important tasks where knowledge and skills have to be developed by case studies and practice exercises. Emphasis shall be made for prevention of misuse of discretionary powers, particularly in granting ex-parte interim orders. Broad principles of law of evidence on problems which may arise during a trial. Relying on rules and principles available in CPC which allow an activist Judge to become a "settlement judge" too. Use of Commissions in gathering evidence, resolving questions of relevance and admissibility, and appreciation of evidence applying principle of preponderance of probabilities call for deep study and reflection with reference to specific fact situations. Case files containing recorded evidence should be used to train these aspects of judicial matters.

There are occasions which demand interpretation of contracts and statutes for which the judge should be trained so that established norms and practices are not deviated from when dealing with such issues. Issues on evidence and proof in civil proceedings are too many and are varied. The trainer should be able to select such materials from actual practice which are capable of showing the trainee the consequences of alternative courses of action in given fact situations. A mechanical, status-quoist approach is unwelcome; at the same time, a radical, non-conformist approach is also not favoured for trial judges. To the extent the class room can demonstrate how the slightest error of judgment of facts and procedural norms can lead to unforeseen consequences in the outcome of proceedings, the course can be instructive and meaningful to the trainees.

The structure of modules and the methods of teaching the proceedings in a civil court should not be merely statute-based on already known principles and procedures. The question of why those principles are prescribed and how those principles can be dynamic in operation have to be addressed in teaching. Importance of procedure in the judging process has to be appreciated while at the same time realising that procedure, after all, is a tool for finding truth and being fair to both parties to the dispute. The judge should know why criminal proceedings are differently structured as compared to civil or constitutional proceedings. He must also appreciate the rationale behind modifications effected in civil proceedings by special laws to achieve goals which ordinary civil courts are unable to accomplish.

One of the problems in teaching with materials based on past decisions is the tendency to perpetuate the same approaches and methods which may not be conducive to the changed circumstances. While precedents have their value in the system, it can lead

to miscarriage of justice as well if the limitations are not appreciated and risks are not taken to break the ice in appropriate cases. As many trial decisions may be final, it is important that the trial judge understands the scope for creative and positive approaches wherever justice demands such cause of action irrespective of precedents to the contrary. It is a challenge to the trainers to inculcate such a spirit in their students.

13.8.6(3) (b) Criminal Proceedings :

The concept of a "fair trial" as expounded by the Cr.P.C. and Evidence Act and as refined by the provisions of the Indian Bill of Rights under the Constitution should form the primary module of this course. This can largely be taught through lecture and discussion with selective study of cases and Law Commission Reports.

Role and responsibilities of the Magistrate at the pre-trial stage during police processes of arrest, bail, remand and discharge deserve to be taught in great detail with the help of relevant statutory provisions and constitutional court decisions. Disposal of cases without trial and procedures to secure the presence of accused should inform the understanding of a judge's function. Framing of charges is another aspect in criminal proceeding which requires special attention in training.

The trial of criminal cases is the most crucial stage in the criminal proceedings with the collection of evidence and appreciation to determine the truth. Speedy disposal of staggering number of pending cases in which the judge should have positive influence, quickening examination and true examination of witnesses. Credibility of oral evidence in various and varied context and circumstances. Avoiding stereo-typed and ancient method of appreciation of evidence. Recent trend of Supreme Court decisions regarding appreciation of evidence in reaching conclusions on controverted facts. Display of learning methods of clinical education now invoked in some law teaching institutions which give the necessary skills through exercises and role plays in simulated conditions. The judicial academy has to make an inventory of clinical teaching methods now in vogue in developed countries and with the help of multi-media support systems introduce programmes which can impart sophisticated skills to their trainees.

Examination of accused under Section 313 of Cr.P.C. Preparing oneself fully with the case before arguments to shorten the lengthy arguments call for particular attention.

Judicious use of the doctrine of giving the benefit of doubt to the accused.

Sentencing constitutes an important function of the criminal court which requires special expertise and skills. Given the increasing irrelevance of conventional sentences and the limited options available, the sentencing judge has to perform a vital social function in a manner that makes criminal justice sustainable. Special focus in this regard should be on socio-economic crimes and atrocities against weaker sections.

There is great wisdom in bringing to the knowledge of the trainee judge little known topics like compounding, victim compensation, legal aid, maintenance, special procedures in dealing with mentally ill persons, awarding of costs etc.

The body of criminal law outside the Indian Penal Code is so vast and complex, that this course may have to develop several modules around some of those special laws focussing mainly on modifications in those laws in respect of procedure, evidence and disposition.

Again, the wide range of issues in forensic science, medical jurisprudence and recent developments in proof ought to receive adequate attention of the trainees.

8.6.3 (c) Special Jurisdictions and Institutions

Tribunalisation is a trend that is popular and pervasive in Indian justice system. While they participate in several ways with ordinary courts, they do differ from them substantially in procedures and dispositions. Administrative Law and Administrative Tribunals should form an important focus of this course, lest the officer should import techniques and approaches abandoned by

the legislature into tribunals.

Dealing with children in judicial proceedings should be another module deserving close study and conscious effort to understand. It can include elements of juvenile court proceedings in respect of delinquent children. It must also address issues of rights of children in civil and administrative matters and how they are to be protected by modified procedures and reformed attitudes.

Another special jurisdiction warranting attention in judicial education is that relating to workers in labour and industrial courts. The skills and knowledge required for a presiding officer in a labour court are to be dynamic and informed by a variety of labour rights and economic policies. The procedures are seldom adversarial and assistance of lawyers not always available in such forums. If the presiding officer does not adapt himself to the philosophy of labour adjudication it can be disastrous to the economy and deleterious to industrial peace.

There are specialised judicial institutions now being set up for women. The Family Court is one such example. They are intended to be different from the usual run of civil courts and they have been empowered by statutes to deliver gender justice sometimes through affirmative action unique to such institutions. Special qualifications are often prescribed for presiding officers of these courts and tribunals. Apart from special institutions for women, there is a felt need for gender sensitization of judicial personnel in general to get rid of entrenched gender biases and discriminatory practices. Future judges have to be equipped to deal women's issues with sensitivity and commitment to equality and human dignity.

Finally, there are new jurisdictions being set up to protect the Scheduled Castes from atrocities perpetrated against them and to adjudicate grievances relating to violation of human rights. Special courts including human rights courts are now functioning in different States with vastly increased powers and special responsibilities. It is important that the young entrant to the judiciary is adequately informed of these special jurisdictions and the role they are expected to play in delivery of justice.

13.8.6.3 (d) Court-Craft and Management :

A full course on court-craft and management is warranted in judicial training for the future. Judicial function is no more confined to trial management and few administrative/accounting procedures but has become a complex part of modern governance. The National Judicial College of USA in association with the American Bar Association has brought out an instructive volume called

"THE JUDGE'S BOOK" in 1994 which provides a range of topics which should find place in judicial training everywhere. Starting with a discussion on the qualities and life of a judge, the book highlights the essential elements of judging which includes (a) listening; (b) note-taking; (c) decision-making; (d) judicial management; (e) exercising judicial discretion and (f) court room control. The National Judicial Academy is well advised to bring out a comparable volume discussing the skills and attitudes which a judge in India should cultivate in order to be successful in the profession and to endear himself to the community.

No one is born with professional capacities and all the qualities and skills necessary can be cultivated with proper motivation and training. There was a time when people used to assume the role of judging only after becoming mature and experienced with a reputation for wisdom and integrity. Today young law graduates with little or no experience in life and in law get recruited and with few months' training are put on the job. In this context, it is all the more necessary that the trainees are given adequate training inputs to be informed of judicial qualities and skills and motivated to conform to normative standards expected of the profession. Hence the need for a full course on court-craft and judicial management.

To be able to understand one's court as an institution with strengths and weaknesses, the presiding officer has to have qualities of head and heart which any leader of an organization necessarily has to possess. Of course, a court is a unique institution; yet it does involve people and procedures, norms and standards not always compatible with each other. Added to that, the mounting arrears of cases and consequent delay in disposals tend to alienate the public and undermine confidence in the ability of the system to deliver justice. Looked at in this perspective the task of judicial management is far more complex and difficult than ever before.

The process by which an organization attains its organizational goals is what management is all about. Therefore, it is good to start with the goals of justice system in general and trial courts in particular. From this, the trainee can look at the existing methods of docket management, its relation to manpower utilisation, resources distribution, record system etc. The trainee should get a total view of the judicial establishment and a micro-view of each segment of the system. Management of information is an important aspect which must be given attention partly here and mostly in the next theme of technology and modernisation. Time management is another skill which should be learnt. The importance of timely and adequate supervision and monitoring of what

happens in and around the court has to be inculcated in every trainee. Man management is another aspect worth reflecting on. Finally management of the actual trial in court requires different skills which need to be cultivated if the judge has to be a good professional person. All these and more can be learnt by appropriate modules in the Academy and later through observation and participation in the company of senior judges.

Court craft involves a bundle of skills and attitudes difficult to be listed exhaustively. Nonetheless, several aspects of the same can be taught by taking the young trainee to the unique environment in which a judge is placed in court and how experienced men react to situations of stress and conflict. Avoidance of gender bias and conveying a picture of integrity and responsiveness are necessary for effective court control. Attentiveness, quick and fair decision-making and firmness are attributes which need to be cultivated. And on each of these, there is theory to be studied and practice to be undertaken. In a plural society like India, the judge has to be sensitive to the interests of minorities and careful about the language in which communications are made.

Finally, judgement writing is an art and a science which should be learnt and perfected to the extent possible. Language and communication skills are essential in this regard. Note taking intelligently in the course of the trial and questions put to counsel during arguments are helpful tips in sharpening the thinking and organizing the thoughts for writing a reasoned judgment. Findings of fact are the essence of the exercise.

Exercise of contempt powers and management of public relations have become important in contemporary times and the judge will be well advised to know the patterns and limits of such aspects. In the course of the proceedings, a trial judge may have to manage a number of other professionals and it will be wise to acquire necessary knowledge about them and their functioning. These include the police and prosecuting departments, the jail and correctional staff, the Bar Councils and the media persons.

13.8.6(3) (e) Legal Aid, A.D.R. and Judicial Administration :

The changes in judicial proceedings brought about by the Legal Services Authority Act, the Arbitration and Conciliation Act and similar local legislations are of considerable significance. Increasingly alternate methods of dispute settlement are being invoked by parties which are to be encouraged and institutionalised by presiding officers of courts. If imaginatively integrated, ADRs can revolutionize administration of justice and help reduce arrears and delay, two major causes for popular dissatisfaction with the system. As such, judicial training should give adequate attention to ADRs and equip the judges to lend their weight on its popular use. Equally, the concept of legal aid cannot be reduced to giving a lawyer to represent the poor. It involves settlement through Lok Adalat, public legal education, public interest litigation, law reform and giving the system a human face. In all these aspects, the judge should have sympathy and understanding to be able to direct better access to the poor and marginalised sections of people.

Judicial administration involves a total knowledge of administrative, budgeting and accounting systems associated with courts on which presiding officers have responsibilities and functions to perform. It includes disciplinary powers over staff and accountability to superior courts. The law relating to service matters has to be acquainted with by the judge. Administration is different from management and the judge should know the distinctions and their implications.

13.8.6(4) Technology, Modernisation and Change :

Two courses of 3 credits each are included under the theme of technology and modernisation. The challenge of the next millenium arises from science and technology. To the extent institutions of governance can absorb and respond to the technological revolution, to that extent, it can do great public good. If they do not, they can as well retard progress and inhibit human and social development. Judiciary is no exception to this emerging truth.

It is distressing to find that judiciary continues to be the one major institution in society untouched by the three revolutions of modern times, namely, technological, communication and management related changes. The most obvious example is the non-use of computers in judicial work. Procedures are archaic and they are made worse by outmoded administrative and management systems. Perhaps a beginning can be made with the training of future judicial officers. Two courses in this regard are recommended at the induction stage.

It is to be noted that the First National Judicial Pay Commission has accepted the recommendations of The Indian Institute of Management, Bangalore for large scale induction of Information Technology in judicial proceedings, its use in managing legal information systems, case flows, and networking.

13.8.6.4 (a) COMPUTERS IN JUDICIAL WORK :

It is not necessary any more to make out a case for the induction of computers and information technology in judiciary and in administration of justice. Substantial time during training in the Academy should be given for familiarity in computer use not just as a word processor but in legal research using the internet and in case and docket management using appropriate softwares. The potential of video technology in expediting trials may be demonstrated so that the trainees are aware of it even if it is impractical in the immediate future.

All project reports in different courses at the training must be prepared by individual trainees in his or her personal computers. This would give them at the end of training period complete confidence in its use and would persuade them to prefer dictating to the computer rather than using stenographers and intermediaries who are, any way, increasingly becoming scarce in judicial administration.

13.8.6(4) (b) Science and Technology in Judiciary :

Apart from computers and information technology, there are emerging areas where judicial work interfaces with different facets of science and technology which constantly change life on earth. Issues for which there are no precedents and are not susceptible to conventional styles of adjudication are being brought before courts and tribunals for resolution. Intellectual Property disputes, environmental disputes and disputes arising from bio-technology are illustrative of this emerging scenario. It will be suicidal to let future judges assume positions of power without even elementary knowledge on technology and technology-related laws which are increasingly becoming common place in society. Environmental litigation is already very much part of judicial

work and mere knowledge of environmental laws does not help in dispute settlement. Of course, no lawyer or judge can become an expert on these branches of knowledge; what is expected of them is an informed understanding of the impact of science on life and, wherever possible, an ability to become critical consumers of scientific knowledges without which dispensation of justice in certain disputes will be difficult and dangerous.

The law of evidence is likely to undergo radical changes with standardization of new technologies. The judge will be handicapped if he is unable to appreciate the probative value of new standards and concepts of evidence. The entire technology of DNA printing is an accepted method of proof today in contested parentage and similar disputes. Genetics and reproductive technologies are throwing new light on several questions of fact in which ordinary inferences are no more acceptable. It looks as though the 21st century will herald radical changes in our understanding of human behaviour through inventions in biological sciences rather than in social sciences. Naturally, law, concerned with human behaviour, has to mend fences with biology and bio-technology in more significant ways than hitherto before.

There are many more areas of law and medicine which can be suggested as possible candidates for inclusion in the syllabus of this course. Suffice it to say that a progressive training institution will keep its agenda open and continuously upgrade its instruction materials and methods with a view to train what may be called the scientific man with judicial acumen.

13.8.6(5) Judicial Ethics and Accountability :

Two short courses each of 2 credits only are recommended to cover this theme in the training curriculum. Given the fact that complaints against individual judges are increasing and standards of accountability are diluting, it is imperative for judiciary to make an honest effort to put its house in order. The lower courts are institutions in contact with the common people all the time and they administer justice to the vast majority of litigant public. As such, the conduct of judges in subordinate courts is constantly exposed to public scrutiny and assessment. This makes it imperative for trial judges to be more and more professional in their approaches and transparent in their dealings. The code of ethics is not just the Judges' Service Conduct Rules or immunity provisions. It involves goals to which judges have to aspire for, individually and collectively to command public allegiance and judicial majesty.

The method of implementing judicial discipline and correcting erring judges should be fair and known to each and every member of the judiciary. Keeping the ultimate value of independence of judiciary and the need for protecting legitimate rights and privileges of judges, the course should aim at not only inculcating the principles of judicial ethics but also in enhancing the sense of satisfaction of judging which every professional should normally get.

Supervision of subordinate courts is an important task which does not receive today the attention it deserves. It is not necessarily personal supervision which tend to disrupt judicial work and consume lot of time and resources. It is possible through appropriate standards, periodical work auditing procedures, surprise checks, occasional meetings and friendly persuasion to extract higher productivity and greater efficiency from individual judicial officers. It is important that while entering service and periodically thereafter, judges receive instruction on accountability systems and procedures so that they become catalysts in their professional development. It may not be possible to get accountability through conventional methods of showing displeasure or demonstrative authority for causing harm. It is important that internal mechanisms of correction and discipline are strong in the judiciary. Peer-group justice can be of help, but only to a limited extent in the present circumstances. Prevention is better than cure and this is possible if the problem is always kept in focus in judicial conferences and collective efforts are initiated to correct and reform.

13.8.6(6) Select Problems in Society and Role of Judiciary:

This is an omnibus course which should help to round up the year-long training, relating judicial role to larger issues in society. Though courts are concerned only with disputes brought before it, judges as conscience-keepers of society responsible for justice and rule of law, ought to have a balanced view of events seeking change in established values and practices. Not all problems in society seek legal solutions; those that do, may not find solutions within the strict framework of established law. However, they do come back again and again in different forms and shapes compelling the legal community to respond with new tools and fresh strategies. This is a grey area of jurisprudence in which policy and law get inextricably mixed up challenging the judicial process for solutions.

Courts cannot deny remedies when there is injustice and violation of rights. Compensation for violation of fundamental rights is an example of such judicial response, despite the fact that it is not written into the Constitution and the laws. The history of

Common Law is a vivid illustration of judicial initiatives in promoting legal developments.

The prospects of innovative and creative use of law by lower courts becomes clear from *Municipal Council, Ratlam vs. Vardhichand*¹. The Magistrate invoked the powers under section 133 Cr.P.C. and gave directions to the Municipality which were not only upheld but applauded by the Supreme Court. The court added that judicial process is not to be confined to adjudicatory functions but to be adapted to affirmative actions to make remedies effective. Social justice delivery is not merely the duty of superior courts though they do have extensive powers in this regard. Subordinate courts can do a great deal if they are informed, equipped and motivated. This course should provide the technology and educate them of the appropriate use of judicial process outside the strict adjudication function for which the Procedure Codes have endowed them with powers. Ensuring tort consciousness on municipal authorities by reminding them of their statutory functions is a job which lower courts can well attempt. Chapter XIV of the Indian Penal Code deals with public health offences. What often surfaces in courts as nuisance cases are really community problems particularly of the poor and downtrodden. It is in this context the induction training should impart training on how to use judicial power imaginatively and responsibly to the solutions for which they are intended.

The idea of having a course like this is to enable the trainee judges to have a retrospect of judicial history in social and legal developments. It will serve several purposes in training the judicial mind. It will give him an understanding of the positive and negative roles which courts played in the past in shaping human destiny. It will give him a sense of pride in belonging to a profession which is critical in directing and moderating change for public good. It can also educate the young judge about the limits of law and the need for caution and restraint while dealing with larger issues of life and development.

1. AIR 1980 S.C. 1622 .

By its very nature, this course can only be taught as a Seminar in which the topics for research and presentation shall be left to

the choice of the trainees themselves. Besides using methods of empirical research, the trainee will struggle to innovate solutions keeping in mind the limitations of the legal and judicial processes. He may have to make ethical decisions and assume value premises in writing reports which reflect the extent of moderation and restraint he might have learnt during the training. In defending his opinion during presentation, he will learn to respect others' views, how to be responsible even when you are critical and how to cultivate intellectual honesty.

The Seminar paper and its defense will provide a useful tool to the trainer to assess the extent of learning and to instruct the person concerned of his strengths and weaknesses as a person and as a judge. Good papers can be polished and published which will encourage judges to think creatively and act responsibly in professional work. Respect for scholarship and motivation to learn and unlearn continuously throughout life have to become part of a conscientious and competent judge.

The Seminar should form the beginning of the continuing education programme of every judge graduating from the judicial academies.

13.8.7 Syllabi, Teaching Plans and Reading Materials

It is tempting for a teacher to prepare the detailed syllabus for each of the fourteen courses in the Induction Training curriculum and impose it uniformly on those assigned to teach those subjects in the Academies. This is precisely what is happening in many centres of higher education today. The result is non-involvement and indifference on the part of teachers actually teaching the subjects who may have different ideas sometimes far superior to those prescribed. It tends to inhibit creativity and innovation. It arrests the growth of curriculum development and tends to maintain items which are out of date. A good and enterprising trainer has to have the freedom to design the syllabus of the subject he teaches and select the materials to be used for teaching/learning and conduct the teaching through methods which he considers appropriate. The broad curricular goals and the subjects to be included in it must be sufficient to give him the intended results to be achieved by training. Similarly the specific objects identified for each subject should convey to him his responsibilities vis-à-vis those subjects in the total scheme of things. Of course, he needs to interact with others teaching other parts of the curriculum to achieve co-ordination and integration. He should subject his course design, teaching plans and study materials for critical scrutiny by the entire faculty and other experts. Once

such an exercise is done, it should be left to him to do the best he is capable of in accomplishing the objects of the course in the training programme.

There are ready made syllabii available for all the courses in the literature produced by judicial training academies from around the world. They may be consulted, but not copied blindly. Individual teachers might commit mistakes; it is better that they are corrected by themselves rather than prevent them from venturing this essential step by producing a syllabus authored by somebody outside without his participation. It is therefore expected of teachers in judicial academies to design the syllabii themselves in the light of the objects and scope explained in the earlier paragraphs of this chapter.

Another practice which should be institutionalised in the Academy is to get every teacher prepare a teaching plan at the commencement of each course every year for each subject. The teaching plan should contain (a) an introduction of the subject and its importance; (b) the specific objects to be achieved by studying it in the total training programme in terms of knowledges and skills; (c) the content of the subject to be studied organized into specific modules supported by essential and recommended reading materials for each module; (d) the period of time apportioned for each module; and (e) the method of teaching and assessment proposed. A teacher making such a plan for the whole subject will necessarily have to do his home work well and convey his scheme clearly to the trainees in advance. He will have a responsibility to adhere to the plan as well. Students will know in advance what is in store each week, prepare for each session and can monitor the progress of teaching/learning course-wise. It will help organize the plan of study by each trainee and promote self study for the really enterprising amongst them.

The reading materials may either be put together or referred to with appropriate citations so that the trainees can reach them easily in the Library. The discussions in the class room will be more focussed and analytical. The quality and quantity of learning will be discernibly superior if the teaching plan system is honestly implemented.

If each State Academy were to evolve such syllabii around the six major themes identified for induction training, it could be compared and refined by the National Judicial Academy for consideration of the trainers in the succeeding year.

13.8.8 Practical Training through Field Placement

As per the curriculum proposed here, four months of training for every fresh recruit to judicial service, is to be spent in the field

under supervision. At present there is no uniform pattern in this regard. Admittedly, this is the segment which gives the trainee hands on experience which shapes his attitudes, imparts the skills and endows the confidence more than any other component of training. However, to achieve the intended results, the practical training through field placement has to be carefully prepared on an individualised basis and imaginatively implemented under supervision. This involves enormous organizational and monitoring work which demands all the ingenuity and enterprise of the faculty in charge of training.

Since individualised schedule and supervision has to be arranged, it is advisable to have 10 trainees only under each teacher. The teachers involved have to get together and draw up the various components of training which are common to all and those specific items relevant to identified groups of individuals. The pattern followed in the LBS Academy of Administration, Mussorie for training of IAS Probationers can provide some useful tips in the designing of the programme using maximum available resources and opportunities for learning.

It is desirable to identify specific goals of learning while in placement with police department, jail administration, district administration and with senior judges or administrators in the court system. It is important to be selective in identifying the personnel in these departments to whom the trainees are deputed as they can make or mar the programme. They should appreciate the scheme and the goals to be achieved and should be willing to share the responsibilities for instruction and guidance. The placement training scheme for senior students adopted by the National Law School of India, Bangalore may be revealing and instructive in this regard.

Occasional workshops at periodical intervals during the field placement will help to clarify doubts, assess the progress of learning, correct distortions, if any, and strengthen the programme mid-course appropriately. It also helps to integrate field experience with what is learnt in class room and to reflect on the gulf between theory and practice. Further, it enables trainees to learn from each others' experience and to moderate perceptions of law and life. Self-study can be encouraged by workshops and group exercises with limited guidance from the Faculty.

A good strategy for developing successful individualised field placement schedule is to consult the candidate concerned and accommodate his suggestions to the extent possible. Documenting the experiences systematically which are examined by the

superior periodically is a good strategy to augment the learning experience.

The final two months of training at the Academy is a crucial period to consolidate and internalise all the learning to which a trainee is exposed both in class room and in the field. The Seminar courses proposed during the period and the projects he writes at that time are bound to be productive and instructive.

A final point recommended here is to consider advising those who do not make the grade to continue in the Academy for another course of training. Perhaps, a fourth of each batch may need to have retraining if the quality is to be controlled and standards are to be improved.

13.9 IN-SERVICE TRAINING AND CONTINUING EDUCATION

Orientation Courses :

13.9.1 Apart from induction training of fresh recruits, there are two other training tasks which judicial academies have to perform. Firstly, a crash programme of orientation and sensitization programmes to the officers already in position at the primary and intermediate cadres has to be mounted with a view to fill up the gaps in their knowledge and skills as envisaged by the new curriculum. These can be attempted by week-end workshops, distance education techniques and special short-term courses focussing on knowledge, skills and attitudes. Computer literacy and management skills can be imparted through appropriate modules in these localised orientation training programmes selectively organized depending on local needs and resources. It is important that these courses are available to everyone of the existing cadres during the next two years or so.

The orientation courses are to be tailored to local needs and, as such, are not amenable to one standardized format. The judicial training institutions should look into the recommended new curriculum for Munsiffs/Magistrates and compare it with the training the existing officers had when they were inducted into service to find out the focus and content of orientation courses. There are instances where officers have been appointed without any substantial training whatsoever. It is necessary to remedy this deficiency as early as possible; otherwise its adverse consequences will be felt for long time in the service. In view of their job experience even though for a limited period, it may be possible to condense the syllabus, collapse the courses, adopt easier training methodologies and avoid field placement training in these orientation programmes. At least part of such training may be given through study materials supplied while at work and occasional seminars held in different districts around such materials. It is desirable, however, to frame appropriate syllabii spelling out the specific objects of each programme and proposing a teaching/study plan to be accomplished within a reasonable time-frame.

The orientation courses may be slowly tapered out over the next few years depending on the progress made in imparting the basic training to everyone of the subordinate judges with less than, say, five years of work experience. Hopefully in about 2 to 5 years depending on the size of the workforce and availability of resources, everyone of the officers in the Munsiff/Magistrate cadre would have received the basic training recommended under the new curriculum.

Continuing Education for Judges :

13.9.2 The in-service training courses for officers with 5 or more years of experience and for senior judges of the District Judiciary may be brought under the scheme of Continuing Education. This is the second important task which judicial academies have to undertake to give the judiciary the competence and quality it badly needs today. There is no profession today which can perform its tasks competently unless the knowledge and skills of its members are continuously upgraded by collective and individual efforts. The explosion in knowledge in recent times has made it impossible for individual practitioners to keep abreast of professional developments by individual efforts alone. The need for multi-disciplinary approaches and skills for rendering superior quality services and to meet the higher demands of consumers of services have made organized, systematic continuing education imperative for lawyers and judges. In many Western countries certain credits in such courses at periodic intervals is a condition precedent for continuing in the practice of the profession. There are institutions imparting such training under

professional supervision. In India, there are no such institutions as yet; some refresher courses and seminars are occasionally organized on optional basis which are more in the nature of social get-togethers rather than serious educational exercises. In this context, the task before the Academies is challenging and complex given the ego problems arising out of judicial hierarchies and the absence of any compulsion from the judicial establishment.

Objectives : Short-term and Long-term :

13.9.3 Identifying, articulating, explaining and justifying the short-term and long-term changes that the courses aim to bring about is the first step in developing continuing education programmes. Almost everybody within the judiciary and outside will agree that judges need continuing education for increased efficiency and better sensitivity to changing needs and demands. But unless the needs can be articulated at the micro-level with respect to specific problems, it is not possible to induce change at the organizational or individual level. This is the primary task of every trainer attempting to induce change in desired directions.

How does one determine the desired directions? This is the task of the organization and of legislative/judicial policy planners. For example, expediting judicial proceedings and reducing delays and arrears in the system is a desired goal. This can be achieved by a variety of ways such as changes in the laws and procedures, re-structuring of institutions, eliminating the causes which induce people to seek or cause delays, and training the decision makers and administrators to adopt particular patterns of behaviour promotive of expedition. While the first three are systemic and organizational goals, the last one is the training goal.

The training goals are achieved by a series of sustained efforts on different fronts. Some of them are achievable in the short-term while others can come about incrementally and fully achieved only in the long run. This depends on a variety of environmental factors all of which are not susceptible to control by the change agents like the trainers and administrators. As such, every trainer has to adopt a step-by-step approach in order to ensure success for inducing change through training. As is explained elsewhere in this report, no reform in laws and structures can by themselves achieve the desired goals unless the man operating the system lends his weight towards change. Ultimately, in the justice system also it is the human element which can bring about the desired change to the desired degree. Hence the critical importance of training and re-training of judges on a continuing basis. It is the

recognition of this fundamental truth which justifies investment and effort in continuing education of judicial personnel.

Assessing Learner Needs :

If elimination of delay is the goal and behavioural and attitudinal changes in judicial officers are instrumental for the same, the trainer will have to identify why judges behave as they do and what can motivate them to behave differently and how. This is what is called **assessment of learner needs**. What information and what type of skills can help the learners learn most within available time and resources? A needs assessment should always be the first step in any educational planning. In most training programmes, the needs assessment exercise is a combination of two factors, namely, (a) learners' expectations from the training and (b) the trainers' assumptions on what the learner should gain from the training.

There are several ways in which the above two factors can be addressed in order to get a clear picture of learner needs. The trainers' own personal experience with similar activities would help to identify some real or perceived needs. Informal conversations with the learner group or a survey through questionnaires or interviews with learners in advance of developing the course is an appropriate strategy to gather or verify learner needs. The trainer can seek feedback from specialists within the judiciary or outside which can form a great resource in identification of learner needs. Past evaluations of training programmes are also instructive in this regard. Of course, the judicial policies and organizational goals which Chief Justices' Conferences or judicial officers' association meetings or law commission recommendations might have articulated, could give ideas on the need expectations of the system from the learners (judges).

Developing Learning Objectives :

13.9.4 Armed with information on learner needs, the next step for the trainer to take is to write out what he expects the learner to achieve from the training. What information he should get, how much of it he is to retain, what type of skills he should acquire, what existing practices or attitudes he should give up etc. must be spelt out and explained while writing out the learning objectives. Though preparing learning objectives is essential for all systems of education, in the case of adults involved in continuing education, such a step is essential if the training has to have any impact on them.

Unfortunately some of the training courses which attempt this strategy have confused system goals with learning objectives. Statement of goals which the judicial system should aspire for is not statement of learning objectives. Therefore, merely saying that the course is intended to upgrade knowledge or improve skills is not a statement of learning objectives. They are more of the nature of goals rather than specific targets aimed at in a 3 or 5 day continuing education course. Merely stating that the course aims at "Gender Sensitization" or "Sentencing Practices" etc. is also not conveying learning objectives. Learning objectives are the reactions and responses which the trainer expects from the learners. These responses can be of different kinds and at different levels all of which should be clarified in the statement of objectives. For example, if information-giving is an objective of the course, the statement should clarify whether it is intended to enlarge knowledge in particular areas, enhance understanding and comprehension of specific tasks, ensure long-term retention etc. The idea is to explain to the learner the significance of the information imparted and to convey to him as to what cognitive level of learning it is aiming at. Newspaper reading also gives information; but we seldom retain all that we read. In adult education, information intended for application and comprehension will have to be organized in such manner as to enable retention and repeated recall. Hence the need for stipulating the cognitive level of learning in clarifying objectives when information giving is an objective.

13.9.5 Similarly, another type of learning objective is change of attitudes which operates at the affective level of learning. It is a more challenging task in training. Attitude is a state of mind which reflects the value disposition and degree of commitment of the learner. In adult education, there are techniques available to influence these aspects of the character of the learner. Depending on learning objectives, they may be employed in pedagogy and motivation. They have to be identified and explained as objectives of the proposed training.

13.9.6 A third type of learning objective is at the level of behaviour. Ultimately every training expects behavioural change for which the trainer has to know the trainees, understand the milieu in which they operate and develop programmes in such a way as to strengthen the performance by playing on emotional and environmental factors. The statement of objectives should convey to the learner what behavioural changes are expected at the end of the training.

The stipulation of learning objectives should naturally evolve out of the learners' needs assessment. The objectives should be written out with clarity and specificity so that every learner understands what is offered and what it aims at. This will also help in

evaluating the progress of learning and to adopt the training accordingly.

It is recommended that in the statement of objectives, the trainer avoids the use of terms such as "understand", "know" which are expressions difficult to verify or evaluate. On the other hand, if the statement of objectives were to say - "As a consequence of learning this module of the course, the learner will be able to conduct (verify, revise, negotiate, mediate, analyze, list, solve, construct, demonstrate, decide etc. etc.) sentence hearing in the spirit of the statutory parameters" - it is possible to measure learning and improve training strategies.

13.9.7 The National Judicial College, USA came out with a useful **Practical Guide for Effective Presentation Strategies for Judicial Educators**. It is an excellent summary of some preparatory steps which trainers have to undertake to maximise the usefulness and impact of training programmes. In writing this chapter of the report, consultation with the above publication has been useful and is acknowledged. (Alayne Casteel and Gordon I. Zimmerman, Faculty Course Development Guide, Reno, Nevada, 1997).

The above publication gives a checklist to assist the development of learning objectives. It includes :

- (a) Are the objectives relevant to learner needs?
- (b) Are the objectives consistent with the expertise of the instructor or instructors available in the institution?
- (c) Are they stated in behavioural terms? i.e. in terms of what the learner should be able to do at the end of training or at the end of learning particular modules of the course?
- (d) Are the objectives written in clear, unambiguous and understandable language so that every learner, whatever his background, understands the same thing in the same sense?
- (e) Are the objectives achievable (entirely or predominantly) given the available resources and support services, programme duration, size of the group etc.?

(f) Are the objectives stated in such a manner as to enable evaluation of learning outcomes?

It seems wherever trainers in Academies undertake so much of preparatory work in developing their programmes, it is bound to make a difference in the quality of training given and the impact it is likely to achieve in terms of training objectives.

Preparing Course Content and Structure :

13.9.8 In continuing education, generally, curriculum for induction training has to be excluded. It is, however, not possible to give uniform course content and structure for this type of training. But for promoted Civil Judges (Sr. Divn.) and District & Sessions Judges, the subjects which are relevant in their day-to-day administration of justice, must be identified. It may be stated that the coverage of all topics uniformly at the training in continuing education is not always necessary. Some topics may require more time and attention, while others can be left for self study and quick review. What is important is to accommodate some amount of flexibility in time and coverage, keeping the priority of the subjects appropriate to the needs of the Officers participating in a particular course. This course will have to be selected by the Academy concerned. However, we may broadly indicate the subjects, such as :

1. Law relating to Land Acquisition

i) Scope of enquiry

a) In reference regarding valuation

b) In reference regarding title.

ii) Principles governing award of compensation.

2. Principles to be followed in awarding compensation in Motor Vehicle Accident Claims and Liability of Insurer - Extent of such liability.

3. Appellate Court Powers

a) Civil Appeals

b) Criminal Appeals

4. Art of writing Judgement in an appeal.

5. Updating knowledge of case law.

6. Sessions Trials:

i) Appreciation of evidence

ii) Statutory presumptions in

a) Rape trials and problems in equal justice

b) Dowry death cases

c) Cases under Prevention of Corruption Act.

7. Law relating to Infringement of Trade Mark / Copy right - Passing of actions, etc.,

8. Technique on conciliation in the Marriage Disputes in Family Courts.

9. Gender Justice:

i) Women Equality and Law

ii) Domestic Violence Litigation

iii) Discrimination and Harassment of women at work place.

iv) Sex equality at the Bar and in the Courts.

In the recommended curriculum for Induction Training, each subject has been given specific number of credits to indicate the weightage assigned in terms of time, resources and importance. Similarly within a subject credits may be assigned to different modules to indicate the time and attention required to be devoted in the training. This depends on needs and objectives of the

course concerned.

The structure in which topics are arranged and the style in which issues are framed can contribute a great deal in facilitating discussion in a focussed manner. The time and occasion in which interactive learning methods are employed also add to the maximisation of learning pace and opportunities. These are considered to be minor details and are often taken for granted in the usual course of business. However experience tells that more attention and detailed preparation in all these aspects contribute to better learning and greater success in training.

Methods in Refresher Courses :

13.9.9 The method that is usually employed in most of these courses is the Lecture-cum-Discussion. Lecture, no doubt, is useful provided the lecturer comes with adequate preparation and knows well the end-result to be achieved at the end of the session. No teaching even in one session can entirely be through lecture alone. Too much of continuous lecturing will severely limit the learning outcomes. There is no way of assessing how much the learner is learning in a straight lecture. As such, audience participation is invoked through questioning from either side. If the lecture is supported by visual aids like charts, slides and other visual demonstrations, the impact will be greater as attention will be focussed and sustained. Sometimes activities in the class where trainees are asked to take sides on a controversial proposition generate enthusiasm and participation. Sometimes distribution of a hand-out seeking written responses interrupting lecture can do some good in facilitating learning. Of course, use of black-boards, flip charts etc. are necessary even in lectures. Body language, conversational mode, eye contact, time management, pre-views and summaries of topic presented, humour and illustrations, repetitions and modulation of voice are all useful tips in improved lecture method of teaching.

Using transparencies with an overhead projector is a good practice provided the classroom has good facilities to give a clear view to all members of the group. Transparencies can be used to convey the lecture outline, facts of a case being studied, to raise issues for discussion, to present alternate responses, to suggest check list or guidelines and help review of the material.

Use of black-boards and flip charts is particularly beneficial in participatory learning. The instructor can write down in telegraphic language all the responses from the trainees to a question emphasising those which the instructor considers important.

Of course, the writing should be clearly visible to everyone in the class.

Use of video-tapes can present difficult issues in perspective if the group is prepared in advance and necessary instructions in what to do while viewing are given to the trainees. Sometimes the video presentation may need to be stopped for a while to have a brief point raised which otherwise may escape their attention. Every video-presentation must be followed by a discussion on the information carried, messages conveyed and follow-up action required.

The Seminar or Group Discussion methods are appropriate for participatory learning in situations where the problems are complex and experiences are as important as perceptions and information. The moderator has an important role here as he can give an overview of the topic, identify key questions arising out of presentations and elicit alternate responses. If the group is large it can have "break-out" groups in which learners will get greater opportunities for participation. Break-out groups, after an hours' discussion on an issue, can assemble again in seminar/conference and report back. Good seminar leaders apprehend problems of group dynamics and do necessary ground work for maintaining enthusiasm and momentum.

The Panel Discussion by experts is effective to cover vast information on controversial issues and to engage the audience to interrogate received notions and to rethink on assumptions and conjectures. By intelligent and imaginative moderation, the teacher can apportion the time, emphasise the issues, complement the presentations, maintain the attention of the audience and co-ordinate the process for achieving the learning objectives. The Panelists should exchange thoughts with the moderator before the discussion takes place in order to sharpen the focus of the proceedings and to evoke participant interests. The moderator must get the questions from audience quickly and put it sharply to save time and to share the learning widely.

The "role playing" technique is another device which promotes interactive learning among adults. When there are different stake holders as in a court room, the role playing device can simulate an environment in which actors are forced to demonstrate their capacities in comprehension and application. Roles can be reversed and action repeated to give exposure to other dimensions.

When challenged by other players, they are made to think of strategies and ethics along with knowledge and attitudes.

Evaluation :

13.9.10 Course evaluation is to be an integral part of every continuing education programme. As far as possible, each subject should be separately evaluated. Evaluation can be oral or written or both. Evaluation is done by gathering trainee reactions to each topic, each speaker, general organization and reading materials supplied. On each item participants may be asked to give their rating in a seven point scale ranging from 1 to 7 or from poor to excellent. Besides, they may be asked to give their specific remarks as and when necessary.

Faculty members can also do the same exercise with necessary changes in the evaluation schedule. An evaluation by trainee judges after few weeks of the programme giving reflections on the course in the context of their professional work will bring out some ideas for improving the course for the future.

Course evaluation is primarily intended to assess the extent of learning. Secondly it serves to know the strengths and weaknesses of the course in order to improve future programmes. Thirdly it gives seriousness to the entire exercise and helps trainers and trainees to improve themselves in their tasks.

Continuing education courses are in a sense more difficult to organize purposefully because of the nature of participation and the range of issues they are expected to address. Nevertheless, that is the only strategy to equip the judiciary to respond to the needs of justice and to the legitimate demands of the public. Judicial Academies will get popular support to the extent they can fulfil this objective.

13.9.11 Preparing Training Designs : A Sample on Gender Justice

Gender Justice and Court Procedures :

An issue on which continuing education is widely recommended for judges at all levels is "Gender Bias in Courts". To design a

series of training programmes in this regard, we need to know (a) actual training needs on the topic; (b) what the training can and should achieve (object); (c) the training design and structure; (d) the training methods and materials; and (e) the assessment or evaluation of training to give feed back on learning.

The subject can be dealt with in courses ranging between one day's duration to one month's duration. Ordinarily, a topic like this for in-service training cannot expect to have time of anything more than a week-end ie., about 2½ days beginning from a Friday afternoon and ending by Sunday evening. Serving judges of a given State may be sponsored by the High Court to participate in the Refresher Course of 2½ days' duration. Let us assume that 25 judges of the same cadre are nominated 6 to 8 weeks ahead of the commencement of the course. The question is what are the activities you, as a trainer, are going to propose in the time available in order to achieve a change in gender-based discrimination in courts and tribunals? What steps you will undertake to design an appropriate programme?

13.9.12 Consider the following sample design, critique it with a view to improving upon it and re-design for your purpose.

TITLE OF REFRESHER COURSE
CONTINUING EDUCATION WORKSHOP ON "GENDER BIAS
IN THE COURTS"

PARTICIPATION :

District and Additional District Judges nominated by the High Court - Limited to twenty five participants - Residential.

VENUE AND DURATION :

2½ days - Week-end - At Judicial Academy

SCOPE AND OBJECTIVES :

Judges are obliged by the Constitution, the laws and oath of office to avoid gender bias not only in their own decision-making but

also in court interactions on which they preside. Despite this obligation and occasional outcry from feminist groups and the media, there is a substantial body of evidence indicating continued sex-based discrimination in courts vitiating the commitment for equal justice under law. Much of it is the product of received myths and misconceptions, discriminatory laws and customs and the prevailing notions of cultural stereotypes in society.

There is some data available today on the nature and extent of gender-based problems in our courts and how individual judges have been trying to eliminate gender bias in courts with varying degrees of success. This course is intended to examine such data with a view to evolve capacities, strategies and attitudes in presiding officers of courts to eliminate them from judicial processes.

The course is specifically designed to enable participants -

- (a) to **identify** instances of gender bias in court proceedings which are often not noticed or if noticed, not considered to be warranting judicial attention;
- (b) to effectively **intervene** and **rule on** gender issues arising in court proceedings;
- (c) to **write judgments** avoiding gender bias; and
- (d) to **promote** practices conducive to equal justice in court administration and trial.

PROGRAMME DESCRIPTION

Day One 2 PM - 2.30 PM Session I

(Friday afternoon)

- Introduction of faculty and participants.
- Discussion on methodology - Roles and Responsibilities for the successful conduct of the workshop.

2.30 PM - 3.30 PM Session II

Lecture - Discussion on "**Women, Equality and Law**"

Faculty : A law professor familiar with issues of equality debate and an expert in laws relating to women.

Reading Materials :

- i) Select constitutional and statutory provisions on Gender Justice.
- ii) Excerpts from select reports and studies on the subject.

Note : This is a perspective session aimed at refreshing the information of judges on the problems of inequality women face in society and in the judicial system (Based on selected empirical data listed in reading materials). The session will also acquaint the judges of what the legal responses have been and how they have fallen short of the standard of commitment to equal justice (Based on relevant statutory provisions, judicial decisions and expert committee findings included in reading materials).

The lecture will be limited to half the time of the session and will be interspersed with visual material with the help of OHP or slide projector.

The synopsis of the lecture raising the issues will be circulated to participants in advance and participants will be encouraged to react, thus making the very first session interactive, though in a limited way.

The discussion is likely to spill over to the coffee break giving a momentum to the workshop and an active environment for the sessions to follow.

3.30 PM - 4.00 PM Break for Refreshments

4.00 PM - 7.00 PM Session III

Topic : Domestic Violence Litigation and Gender Justice Issues

Faculty : Two pre-selected participants of whom one is a woman, a judge of the High Court having reputation for sensitivity to women's rights and the trainer of the Academy in charge of the course.

Reading Materials :

- (1) Edited cases relating to dowry death.
- (2) Selected excerpts from case files relating to divorce and separation
- (3) Research studies and Law Commission Reports; relevant portions only
- (4) Excerpts from Sakshi study on Judicial Survey of Attitudes (1996).

Teaching Methods :

- Short presentations on the problems and issues;
- Moot Court/Role playing;
- Break-out meetings in small groups analyzing select issues and reporting back;
- Summing up by the trainer-moderator.

Note : This session has four objectives -

- (1) for participants to **reflect** on perceived injustices in law and procedure relating to domestic violence;
- (2) **provide perspectives** on possible alternate courses of action open to the court which can be more equitable in domestic relations situations;
- (3) enable the participants to **appreciate** evidence with a gender perspective; and
- (4) **understand the importance of being sensitive** in taking depositions, issuing interim orders, giving

adjournments, writing judgments and invoking services of other professionals (social work, medicine, forensic experts) in domestic violence cases.

Participants will be encouraged to write down their impressions on the two sessions held in the afternoon and turn in their comments on the following day which will form part of the evaluation.

Day Two 9.30 AM - 12.30 PM Session IV

Saturday

Topic : Rape Trials and Problems in Equal Justice

Faculty : A Prosecutor with expertise in conducting rape trials and a Defense lawyer preferably a woman; a High Court Judge who has written opinions in rape appeals and a woman activist familiar with issues of gender justice in sexual violence cases.

Reading Materials :

- (1) Edited case files of rape cases where injustice is perceived by women's groups.
- (2) Excerpts of Law Commission Reports and Parliamentary Debates on amendment of rape law.
- (3) Selected articles, research studies and media reports on health and psychological problems associated with rape.
- (4) Statistics on incidence of rape, conviction rates etc.

Teaching Methods :

The session will begin with a short video-clipping on the trauma of rape victims and medical opinions on the problems arising therefrom.

It will then be followed by short presentations on the experience of prosecutors and defense lawyers in conducting rape trials.

The discussion will then be initiated by the social activist focussing on what women expect from the courts, prosecutors and defense attorneys. The trainer who moderates the discussion will seek division of the house on controversial issues with a view to

involve the judges at an affective level. He would also provide comparative perspectives from other jurisdictions with the help of charts and transparencies.

The High Court judge will then reflect on why and where appellate courts intervene in trial court judgments and what High Court expects the trial court to do in respect of gender equality in rape and related sexual violence. The participants will be encouraged to question the interpretations taken by the appellate courts.

Expected outcomes of the Session :

This session is bound to be lively involving almost every participant. At the end of the three hour-long session participants will get -

- (a) **ability to appreciate** the grievances often aired by women's groups in respect of rape trials;
- (b) perspectives on **the need to have a wider knowledge base** to be able to conduct rape trials fairly and equitably;
- (c) willingness to **correct tendency to underestimate** the injury to the victim and to bestow misplaced sympathy to offenders;
- (d) opportunity to **sharpen skills** for better appreciation and interpretation of evidence including expert testimony; and
- (e) confidence to **control court interactions** which tend to prejudice the victim.

12.30 PM - 2.00 PM Lunch Break

2.00 PM - 5.30 PM Session V

Topic : Marriage Disputes and the Matrimonial (Family) Court

Faculty : A Senior Family Court Judge, a Family Counsellor (Conciliator) attached to the Family Court and two pre-selected

participants with experience in matrimonial jurisdiction.

Reading Materials :

- (1) Edited case file materials on divorce, maintenance and child custody cases.
- (2) Excerpts of Law Commission Reports, Research studies and socio-legal reports on matrimonial litigations highlighting gender justice issues.

Teaching Methods :

Session to begin with a 30 minute Moot Court of arguments in a trial case - Trainer to present the facts in advance and introduce the two participants who will represent the parties. The Family Court Judge to preside - After judgment, participants to raise questions and offer comments for 30 minutes.

The Family Court Judge is then to give a presentation on how the Family Court is different from an ordinary civil court in the matter of gender justice. Participants to offer comments on how far conciliation/counselling can be a necessary part of all matrimonial cases and what are the skills and attitudes necessary therefor.

The last one hour of the session will be small group conciliation/counselling exercises on assigned matrimonial petitions in which the participants will play roles and record their experiences in the exercise.

Expected Outcomes :

Besides acquainting the judges on the peculiar problems experienced by women in matrimonial proceedings, this session will (a) expose the participants to the **skills** necessary to deal sensitively on matrimonial disputes; (b) help **identify** usual prejudices associated with dealing such litigation; (c) **promote understanding** of the dynamics of inter-personal relations in marriage which should help in negotiating mediated settlements; (d) **provide ideas** from behavioural sciences on how to deal with child custody matters while being fair and just to the woman involved.

As on the previous day, participants will be asked to write down their specific comments on a proforma circulated in respect of

what they learnt or failed to learn in the two sessions. The proforma will be so prepared as to probe the extent of gender sensitization of the respondents in respect of a criminal proceeding as well as a civil proceeding (rape and divorce/custody).

Day Three 9.30 AM - 12.30 PM Session VI

Sunday

Topic : Discrimination and Harassment of Women at Work Place

Faculty : A woman trade unionist, a member of the Women's Commission, a High Court Judge experienced in labour disputes and a woman journalist reporting on women's issues.

Reading Materials :

- (1) Selected judgments on sexual harassment at work place and on Equal Remuneration Act.
- (2) Reports on discrimination in employment.

Teaching Methods :

The session will start with a little quiz on participants' perspectives and beliefs on discrimination and harassment of women at work place. Using the flip chart the trainer will consolidate the responses in the class in such a way as to project the range of gender-based prejudices and problems.

This will be followed by a Panel Discussion amongst the faculty, each highlighting one or other dimension of the problem. The moderator will focus attention of the group on major biases and injustices raised keeping in focus the role of the judge in moderating or aggravating the impact of such biases on women's right to equal treatment and dignity.

The final part of the session will be devoted to small group interactions on writing out a code of judicial conduct in reducing gender-based inequalities in dealing with employment-related disputes and in court administration.

Note : At the end of this session, participants will have (a) clearer **understanding** of who and where women experience

discrimination in work places, (b) **acquire** minimum skills to be able to correct the imbalances when such disputes come before them and (c) help **provide** a more gender-friendly atmosphere in the courts.

12.30 PM - 2.00 PM Lunch Break

2.00 PM - 3.30 PM Session VII

Topic : Sex Equality at the Bar and in the Courts

Faculty : Chairman of the Bar Council/Bar Association, representative of the Women's Bar, and two participants of whom one to be a woman.

Teaching Methods :

The Session will largely be based on brief presentations by the Faculty. However, the initial few minutes will be devoted in ascertaining the perceptions of participants on what they consider to be the state of affairs at the bar and in court proceedings. The participants will be asked to write in a piece of paper three instances which in their belief can be discriminatory of women in the bar room, court offices and in court transactions including trial.

Expected outcomes :

Besides **sensitizing** the judges on the problem in their own midst, the session will help in **drawing up** a judicial code of conduct to create a more gender-neutral atmosphere not only to women lawyers and judges, but also women litigants, women witnesses and women employees of courts. Judges will begin to **realize the need** to adopt gender-neutral language, avoid sexist remarks, renounce double standards wherever they exist and to respect women's dignity particularly of those belonging to minority sections of the population.

3.30 PM - 4.00 PM Break for Refreshments

4.00 PM - 5.00 PM **Session VIII**

Evaluation and Valediction

Points to Consider :

There can be many variations of the above design depending upon the specific needs of participants, time available for training and resources which the Academy commands. The point to be noted is that a well-thought-out training design is a pre-requisite for the success of in-service training. Such design should necessarily be based on a needs assessment on which specific objectives to be achieved by each session/module should be spelt out clearly. Participants should be involved as much as possible for which the training methods should be varied and interesting. Lectures ought to be kept to the minimum and each session should be co-taught by a balanced mix of experts carefully chosen and adequately briefed on the expected outcomes of their respective sessions.

Too much of reading materials even if distributed will not be read. As such, careful selection and proper editing should be done well in advance. For a course of 2½ days' duration, it is prudent to contain the reading materials to about 100 neatly typed A-4 size pages. The reading materials should be supplied in bold print with titles and sub-titles and, wherever possible, with short catch notes/summary of points. Additional reading materials may be listed after every module/topic and such materials may be kept in reserve in the library for participants to browse through. Some participants are likely to take special interest in topics of their choice and would be wanting to learn more on their return to their respective stations. Certainly they would be wanting to consult as many materials as are available on a given proposition as and when the issue confronts them in the course of their professional work. The reference list given in the reading materials will be the initial resource to fall back upon.

As far as possible at least a small number of participants must be invariably asked to read the materials in advance and to react in each session so that those who have not read the materials will also be benefitted. It is a good strategy to force participants to bring the materials in class and consult relevant pages occasionally during the session.

Evaluation in a prepared proforma at the end of each day will be more beneficial rather than be content with a general evaluation at the end of the course.

If the course were to be repeated, few of those judges who were participants in the earlier course may be invited as faculty for the succeeding course.

There may be an opinion that what is presented here for a 2½ day course is rather too heavy and taxing to the ordinarily overworked judges who expect some relief and relaxation in a week-end retreat. It is important that continuing education to succeed must endeavour to remove such impressions which have been created all around from the way they are conducted at present. These are costly exercises and the benefits should outweigh the costs if they have to be sustained with public support. As such, it is desirable to make it tight involving the participants in some or other useful activity all the time available. By corresponding with participants well before their arrival at the academy, they should be prepared to put in their effort and time totally for their own benefit.

On an average, every judicial academy should offer at least one hundred residential continuing education programmes of short and long duration (week-end courses and week-long courses) every year catering to at least 500 to 600 judges. If the facilities and resources immediately available are not adequate for the task, academies may consider the strategy adopted by the Gujarat High Court under Hon'ble Chief Justice B.N. Kirpal's initiative. It is called mobile academy for training of judicial officers under which the trainers will reach out to each locality rather than asking the trainees to come to the headquarters. Every week-end the team moved to district and tehsil towns where the judges of the locality assembled to receive continuing education packages.

Nothing short of a crash, massive, organized effort can achieve the objectives of preparing the judiciary for the urgent tasks awaiting attention.

13.9.13 Training the Staff of Courts :

Another major activity, judicial academies should undertake to improve efficiency and productivity is the training (induction and

in-service) to be given to senior members of the ministerial staff of courts. Without their willing and competent support services, judges would not be able to accomplish the goals of judicial education and training. Today no worthwhile training is available to them and they operate by and large in the same way as they were doing their job in pre-Independence days. Added to such archaic methods, corruption and indiscipline have crept in making the judicial system the most slow, increasingly costly and unnecessarily complex wing of the Government. The judicial establishment even today is untouched by the management information revolutions which have overtaken many sectors of life and governance.

It is to be noted that with the expert inputs from the management people, this Commission is making recommendations to transform the judicial establishment computer-friendly and management-driven to achieve results in the next few years. As part of this package, training of court staff is likely to come out strongly for early implementation. This report, therefore, has not discussed on the training of non-judicial personnel of the court system excepting to say that it should evolve simultaneously with the training of judges.

13.10 ORGANISATION OF ACADEMIES FOR EXCELLENCE IN JUDICIAL EDUCATION

13.10.1 Though individuals are responsible in building institutions, it is the structure, character and traditions of institutions which can sustain and improve standards of performance long after the promoters have disappeared from the scene. The goals set, the traditions built, the work culture developed, the extent of academic freedom provided and the type of core team of trainers initially assembled will largely determine the potential of the Academy to deliver and deliver it well. As such, great deal of attention has to be bestowed in selecting the Faculty and giving necessary autonomy to the Academy. It cannot be kept as an appendage of the High Courts almost entirely dominated by judges who may not have the time or interest to look after the efficient working of the Academy. Teaching is different from judging and the two should not be mixed up if teaching and research have to be competitively superior and the institution has to assume a character and status of its own.

Organization :

13.10.2 The organization may assume one of different models. It can be created under an independent statute in which case it will not only enjoy the required autonomy but also can, if desired, shape up into a university which can award degrees in judicial administration or court management. The Judicial Academy in Bangladesh is established under a statute of that country's Parliament. Another model is that adopted by the National Judicial Academy in India which is formed as a registered society with limited membership mostly of judges and officials of the Government of India which provides the funds. A third model is what prevails in many of the States under which through an Executive Order, an academy is established under the joint control of the High Court and the Department of Law of the State Government. The money comes from either the High Court budget or grant from the Law Department. A variation of this model is the Directorate of Training sponsored as a unit under the direct control of the High Court.

Each model has its own advantages and disadvantages. A uniform model is perhaps not practical even if desirable. Whatever the organization, a State academy can function effectively only if some basic principles are adhered to. These include :

- (a) The State Academy must have a highly qualified, well motivated full-time Director who will have the status and remuneration equivalent to that of a Chief Justice of a High Court and a tenure of not less than five years;
- (b) The Academy must have a core faculty of at least five professors with salaries and perquisites equivalent to that of High Court Judge, six Associate Professors with salaries and perquisites equivalent to that of a District Judge and few Lecturers/Tutors with status equivalent to that of CJM/Civil Judge. The visiting (Guest) Faculty will be invited as required. If the staff is drawn on deputation from the Judiciary, they must serve the Academy for a minimum period of five years. The ideal situation will be that half the faculty (all ranks) may be recruited from the judiciary and the other half from legal academics, legal practitioners and social scientists with pronounced interest in the legal system and having pedagogic abilities.
- (c) The Academy should have an independent Board of Governors with Chief Justice of the High Court as Chairman and members drawn from the High Court, District Courts, Government and the Bar. While Judicial /Legal members

can constitute two-thirds of the Board, one-third can come from other categories.

(d) The Academy should have an independent budget approved by the Board of Governors. On a rough estimate, the annual budget of a State Academy for optimum efficiency will be in the range of 3 crores of rupees. It is important that the administrative staff should be kept to the minimum. For a Faculty of 15 to 20 persons in an academy, the support staff including Registrar, Librarian and Finance Officer may well be kept below 30 persons. The strategy is to pool vehicles, stenographers and research persons and getting work organized through mechanised communication systems and contracted out security, cleaning and messenger services. The culture of Government departments and other judicial establishments is not conducive to promotion of academic excellence.

(e) Academic autonomy is the key to academic excellence. If competent staff are put in place, they may be given the power to design and execute the courses under exacting standards of accountability. If the faculty is kept on contract terms, those who are unable to deliver may be able to be discharged after due notice. Let it not be an extension of Government service where security is guaranteed for every one including those who work and those who do not. A Committee of the Board of Governors should periodically evaluate teacher performance in a transparent manner according to criteria agreed to earlier. If the work is found unsatisfactory the teacher may be reduced in rank or his remuneration be reduced, if discharge is considered unnecessary.

A new work culture which is exacting, business-like, and performance-oriented if not generated in the Academies, it will end up like mediocre, self-serving white elephants of the kind we have plenty in this country. The practice of sending people out from parent departments to training institutions when they are unproductive or otherwise not desired in service is to be totally abandoned if training is to become serious exercise directed towards efficiency and excellence.

Structure and Co-ordination

10.3 The organization of a State Academy can by and large participate the following model if it should have the potential to develop into a centre for excellence in judicial education and training.

	THE CHIEF JUSTICE (Chairman, Board of Governors)	
Staff Selection Committee	BOARD OF GOVERNORS (15 persons of whom 4 including the	Faculty Evaluation Committee

	<p>C.J. from High Court, 2 senior most</p> <p>District Judges, 2 Government nominees of whom one to be the Law Secretary, Chairman of the Bar Council, the Advocate General of the State, the Dean of the Law Faculty of one of the Universities in the State and 4 from among the staff of the Academy including the 2 Directors. The Director (A) to be ex-officio Secretary of the Board)</p>	
<p>DIRECTOR 'A' (Administration & Finance)</p>		<p>DIRECTOR 'B' (Academic Affairs)</p>
<p>Committee on Grievances</p>	<p>STAFF COUNCIL</p>	<p>(All academic staff to be members) Directors 'A' and</p>

		'B' to preside alternately the Council which is the executive body of the Academy.
Committee on Finance	Committee on Training	Committee on Research & Development

An organization simple, transparent and participatory like the one suggested above can keep the functioning informed and co-ordinated. It provides a structure which is democratic and at the same time leaves operational freedom to every group and individual in assigned spheres of the collective enterprise.

Though the Directors are executive officers of the organization they are accountable to the Staff Council. Being an academic institution it makes sense in making all academic staff irrespective of the ranks they hold to be members of the Staff Council. There is no need for administrative members to be members in the Staff Council as their representation can always be had through Director (A). In cases of complaints, the Grievances Committee can always probe and recommend necessary corrective action. Unnecessary hierarchy of posts and positions in academic institutions concentrating the decision making power tends to destroy institutional integrity, promote factional interests and undermine the capacity of the institution for academic excellence. Similarly avoidable external controls on routine matters even if they come from superior judges are unwelcome for institutional development and faculty performance. Such supervision can be streamlined through the Board meetings, appointment of investigating committees wherever necessary and evaluating performance critically demanding accountability from each and

every individual in the staff of the Academy.

Budget

13.10.4 The annual budget of the Academy for running expenses is expected to be of the order of rupees three crores to begin with. This may increase in the course of time with expanded activities and inflation. In any case, by 2010 the annual budget is unlikely to exceed rupees five crores if staff appointments are strictly controlled and prudent financial management introduced. A tentative break-up of major items of expenditure assuming the budget to be rupees three crores, is given below :

1. Salaries (Academic Staff)

Directors Rs.30,000 p.m., Professors Rs.25,000 p.m., Associate Professors Rs.20,000 p.m. and Assistant Professors (Lecturers) Rs.15,000 p.m. and Guest Faculty @ Rs.10,000 p.m. - Total of 20 persons of all ranks will come to **Rs. 60 lakhs** annually.

2. Salaries (Administrative Staff) ... Rs. 40 lakhs per year

3. Library and Equipments ... Rs. 100 lakhs per year

4. Maintenance, Utilities and Services ... Rs. 50 lakhs per year

5. Guest House, Hostels and Miscellaneous... Rs. 50 lakhs per year

Of course, the above is too sketchy a budget and adjustments may have to be made within it or some excess (in any case not to exceed Rs. 5 crores even after 5 years of operation) will have to be provided for unforeseen expenses. This is estimated on the assumption that the Academy will have the Campus built, furnished and provided with minimum equipment. It is also assumed that the full complement of the faculty in terms of staff will be about 20 full-time academic personnel, 30 administrative personnel and 10 to 15 visiting/guest faculty.

14. PRINCIPLES GOVERNING THE PAY STRUCTURE OF THE SUBORDINATE JUDICIARY

14.1 One of the terms of our reference requires us "to evolve the principles which should govern structure of pay and other emoluments of judicial officers belonging to the subordinate judiciary all over the country".

14.2 Hitherto, in our country pay and other service conditions of judicial officers in almost all the States have been linked to the corresponding executive officers of the State or the Central Services. That is perhaps due to the fact that the linkage between the service conditions of the judiciary and that of the administrative executives was a historical accident. The erstwhile rulers constituted only one service, namely, the Indian Civil Service for the judicial as well as administrative service, and it was from among the successful candidates in the examination held for such recruitment, that some were sent to the administrative side while others to the judicial side. Indeed, initially there was no clear demarcation between the judicial and executive services and the same officers used to perform judicial as well as executive functions. This logical consequence in terms of the service conditions was inevitable. But with the promulgation of the Constitution and the separation of the State power distributed among the three branches of the Government, the continuation of the linkage became inconsistent with the constitutional principles.

14.3 Although these were obvious realities, no effort was made to place the judicial officers in a separate category while determining their remuneration. The Supreme Court ultimately had to step in to correct the anomalous position by pointing out the importance of the judiciary and its functions. The Supreme Court in its landmark judgment in **ALL INDIA JUDGES ASSOCIATION v. UNION OF INDIA AND OTHERS**¹ observed thus :

1. AIR 1993 SC 2493=1993 4 SCC 288.

"The judicial service is not service in the sense of employment. The Judges are not employees. As members of the judiciary, they exercise the sovereign judicial power of the State. They are holders of public offices in the same way as the members of the council of ministers and the members of the legislature. When it is said that in a democracy such as ours, the executive, the legislature and the judiciary constitute three pillars of the State, what is intended to be conveyed is that the three essential functions of the State are entrusted to the three organs of the State and each one of them in turn represents the authority of the State. However, those who exercise the State power are the

ministers, the legislators and the judges and not the members of their staff who implement or assist in implementing their decisions. The Council of Ministers or the political executive is different from the Secretarial staff or the administrative executives which carries out the decisions of the political executive. Similarly the legislators are different from the legislative staff. So also the Judges from the Judicial staff.

The parity is between the political executive, the legislators and the Judges and not between the Judges and the administrative executive. The distinction between the Judges and the members of the other services has to be constantly kept in mind for yet another important reason. Judicial independence cannot be secured by making mere solemn proclamations about it. It has to be secured both in substance and in practice. It is trite to say that those who are in want cannot be free. Self-reliance is the foundation of independence. The society has a stake in ensuring the independence of the judiciary and no price is too heavy to secure it. To keep the Judges in want of the essential accoutrements and thus to impede them in the proper discharge of their duties is to impair and whittle away justice itself."

14.4 The Apex Court has categorically observed that the linkage between the service conditions of the judiciary and that of administrative executives is not proper and should be discontinued since the judiciary is above the administrative executive. It was observed that "parity in status can only be between the judges and the political executive and not between judges and administrative executives."

14.5 In view of these significant observations of the Supreme Court, the need to evolve the principles which should govern the pay structure of subordinate judicial officers has become imperative.

14.6 The practice of paying, or remunerating individuals for their labour is not new. According to DAVID A. HUME², it dates back at least to the time of Christ. Reference to payment for labour is made in the Holy Bible, the Gospel according to Matthew 20:1-2: "For the Kingdom of heaven is like a landowner who went out in early morning to hire men to work in his vineyard. He agreed to pay them a denarius for the day and sent them into his vineyard."

14.7 Over the years, social scientists, especially the economists, have been trying to work out different methods of determining

the salary structure for different categories of employees. They have invented various and varied theories. However, no single theory is acceptable or determinative to those who are involved in settling salary disputes or determining pay structure.

14.8 Generally, the pay structures are based on decisions about internal relativities and external comparisons but they must also take into account of pay progression policy.

2. "Reward Management" , Chapter 5, pages 72 to74 by David A. Hume.

14.9 Internal relativity decisions are usually formed through processes of job evaluation. This normally excludes personal factors, and the relative size of jobs is measured on the basis of what has to be done to achieve a standard and acceptable level of job performance. In an individual job range structure, this provides the reference point for the rate within the range, which should be paid to a fully competent person. In a conventional graded structure, the same assumption is made for all the jobs grouped into the grade although in practice their relative size may differ.

14.10 External comparisons are made through market rate surveys, and decisions on external relativities follow the organisation's policy on how its pay levels should relate to market rates – its market stance.

14.11 Market stance policy depends on the organisation's views as to whether it should pay above the market, match the market or pay less than the market. These will be influenced by such factors as the level of people the organisation wants to attract and retain.

14.12 But it may be noted as Helen Murlis³ said that all people do not work for money alone. There are in fact many determinants of the decision to work for, and stay with, in a particular department or employer. Throwing money for recruitment and retention may be worst possible strategy because this only deals with one aspect of what is generally a complex problem.

Some employees generally weigh up a number of tangible and intangible factors when looking at what employers have on offer. Some of them look for personal recognition and the desire to go on learning and developing as a career goes through different stages. Others may prefer to work for an employer who is caring and supporting as well as challenging and successful.

3. "Reward Management", Third Edn., by Michael Armstrong and Helen Murlis.

14.13 During the British period, Atchison Commission (1886-87) and the Royal (Islington) Commission (1912-15) were constituted to determine the pay structure of Civil Servants. They have followed certain principles. The Royal (Islington) Commission in particular formulated the following principle:

"Government should pay so much and so much only to their employees as is necessary to obtain recruits of the right stamp and maintain them in such degree of comfort and dignity as will shield them from temptation and keep them efficient for the term of their service."

14.14 This principle was accepted even by the Royal (Lee) Commission constituted in 1923 for Superior Services in India.

14.15 However, the Royal (Priestly) Commission (1953-55) on Civil Services in the United Kingdom made a significant departure in formulating certain principles. Instead of leaving the question of pay fixation entirely to the market conditions, that Commission introduced the concept of "fairness" both to the employees as well as to the tax payers. It observed that:

"Civil service pay should be settled in the light of explicit principles that will commend themselves as fair both to the staff concerned and to the community as a whole."

14.16 But according to A.P. Williams⁴, the 'fairness' in pay structure is the most commonly used - and most commonly abused - term in this area. He goes on to state: "Fairness, like beauty, is only too often in the eye of the beholder; but it would be too cynical to maintain that its use in this context is really a disguised

form of envy. When Elliot Jaques (1961), in his book Equitable Payment advanced

4. "Just Reward?" The Truth about Executive Pay by A.P. Williams, 1994 Edn., Chapter 4.

the idea of the 'felt-fair Principle', and referred to an unrecognised system of norms for fair payment related to individual's unconscious feeling of the need for a match between the level of work and the capacity of the individual to do it. He was in one sense only restating the problem, but in another he was appealing to a widely (if not universally) shared set of values as to what was socially acceptable."

14.17 In our country, the practice of setting up of Commissions, at regular intervals, on an average of 10 years, for determining and / or revising pay and allowances of Central Government employees has been generally followed.

14.18 We may begin with the principles followed by the successive Central Pay Commissions for determining pay structure of different categories of Central Government employees. Such determination has been hitherto extended to judicial officers as well.

14.19 But before referring to the principles enumerated by the Central Pay Commission, it will be useful to refer to some of the International Resolutions and Instruments recommending adequate salaries and pensions for judges.

14.20 The idea of a minimum salary for judges has been recognised in a number of International Instruments. Article 11 of the Basic Principles of the Independence of the Judiciary, which was adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, provides that:

"The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law."

14.21 A more recent document is the Draft Universal Declaration on the Independence of the Judiciary, which the United Nations Commission on Human Rights invited Governments to take into account when implementing the U.N. Basic Principles (Resolution 1989/32), Article 18(b) provides that :

" The salaries and pensions of judges shall be adequate, commensurate with the status, dignity and responsibility of their office, and shall be periodically reviewed to overcome or minimise the effect of inflation."

14.22 We may now turn to the principles followed by the Central Pay Commissions for reviewing or restructuring the pay

structures of Central Government employees.

First Central Pay Commission (1946-47) :

14.23 The First Central Pay Commission innovated the principle of "living wage" to Government employees. It observed that "the test formulated by the Islington Commission is only to be liberally interpreted to suit the conditions of the present day and to be qualified by the condition that in no case should be a man's pay be less than a living wage." Amplifying the concept of "living wage", it stated that the Government which sponsored the minimum wage legislation for private industry must be willing to give the benefit of that principle to its own employees. In other words, that Commission was of opinion that the salary of the lowest paid employee should not be less than the minimum wage. While considering the question of maximum salary, the Commission agreed with the view that the State should compete with private enterprise in respect of prize posts; but expressed their inability to agree that the salaries of public servants could be reduced below the standard remuneration available to similarly situated employees in the private sector. The Commission recommended the principle that, as a matter of social policy, the lowest paid should not fall below the "living wage" (meaning thereby the minimum wage) and the top salaries should also as a matter of social policy be kept down to the extent possible without jeopardising the essential requirements of recruitment and efficiency.

Second Central Pay Commission (1957-59) :

14.24 The Second Central Pay Commission reiterated the principle that the pay structure and the conditions of service of Government employees should be so designed as to ensure recruitment of persons with requisite qualifications and ability at all levels and to maintain their efficiency. It went on to state that, after determining the minimum and the maximum salaries on a combination of both economic and social considerations, the intermediate salaries should be fixed on sound and equitable relativities.

Third Central Pay Commission (1972-73) :

14.25 Third Central Pay Commission proceeded on the premise, inter alia, that the pay structure, if it is to be sound, should satisfy the tests of "inclusiveness", "comprehensibility" and "adequacy" and should, at the same time, be fairly simple and rational. Beyond the minimum subsistence level, the adequacy or otherwise of the salary structure should be judged by the level of salaries obtaining in alternative occupations. In the intermediate ranges, the Commission emphasised that a limit should be set by what the economy can afford and the upper range limit should be on considerations of social acceptability. While observing that the Government should formulate a set of principles of wage fixation as suited to its needs, it also remarked that the true test to be adopted should be whether the Government service is attracting and retaining the persons it needs and whether such persons are reasonably satisfied with the pay and other benefits taken together.

Fourth Central Pay Commission (1983-86) :

14.26 The Fourth Central Pay Commission was, however, guided by a number of factors for determining the pay structure, viz., social status regard to which the public employment carries in society, the authority of the post, security of tenure and the welfare measures adopted by the Government for the benefit of its employees. Motivation for employees, efficient performance and comparability were also considered by the Commission. The Commission gave greater importance to the capacity of the State to pay its employee. The Commission observed that the pay structure must be fair from the point of view of employees as well as the people they serve.

Fifth Central Pay Commission (1994-97) :

14.27 The Fifth Central Pay Commission was specifically asked to evolve the principles which should govern the structure of emoluments and other conditions of service. So, the Commission had to survey the principles adopted by the antecedent Commissions and accepted some of the general principles including the three characteristics of a sound pay structure, namely, inclusiveness, comprehensibility and adequacy. The well-accepted principle of supply and demand consideration as emphasised by Islington Commission was also reiterated. However, it emphasised on professionalism in Government service and the Government should have less such people with better payment. It observed that there should be transparency in pay packages and the need for merging of various allowances into a simple allowance. The Commission also laid emphasis on the principle "equal

pay for equal work", "fair compensation", "productivity" and "model employer". Besides, the Commission has considered certain other criteria like the intrinsic value of a job, delinking pay from position in the hierarchy, interest of isolated posts, justice to lowest and highest paid functionaries, liberal reimbursement of actual expenses and full compensation for entering into the public service. The Commission, however, has emphasized the capacity of Government to pay and kept it as the uppermost factor.

14.28 From the aforesaid, what could be deduced is that for the purpose of determining salary structure, some of the following factors viz., the market forces of demand and supply, cost of living, ability to pay, the prevailing pay structure in the society, equal pay for equal work, the role and image of organisation and the expected performance of the employees are taken into consideration.

14.29 These principles set out by the successive Pay Commissions are commonly used for determining the appropriate pay scales of Industrial workers and Government employees. But when we take up the judges' salary structure, those principles are neither sufficient nor all of them are relevant.

14.30 This is what the 14th Report of the Law Commission at p. 163 had to state:

"In the matter of scales of pay and remuneration, the judiciary compares unfavourably with the executive branches of the Government. It is true that, generally speaking, the scales of pay of the judicial officers and the corresponding executive officers are identical in many of the States. However, it has to be remembered that the executive officers are, by and large, recruited at a much younger age than the judicial officers. The entrant to the judicial service is required to be a graduate in law and in most of the States it is also necessary that he should have practised for a certain number of years at the Bar. On the other hand, for recruitment to the executive branches of Government service, a degree in arts or science is, generally speaking, sufficient. In the result, a person entering the judicial service does so when he is about 26 or 27 years of age and at a time when his contemporaries who have entered the executive service of the Government have already acquired a certain seniority in the service and have come to draw a higher salary. It will thus be seen that a person joining the judicial service starts with a lower remuneration than

what he would have received if he had entered the executive service for a few years earlier. It has also to be noted that owing to the lesser proportion of superior posts in the judicial service, promotions come less quickly to the judicial officers, and a person who has entered the service as a munsiff, assuming that he is fit and fully qualified, takes much longer time to become a district judge than would an equally competent deputy collector to reach the position of a collector. Again the judicial officer, having started at a later age, has a shorter span of service than the executive officer and this affects his pension and other retirement benefits."

14.31 In the Review Judgment in All India Judges' Association Case (AIR 1993 SC 2493) the Supreme Court observed at p. 2501:

"The judicial service is not service in the sense of 'employment'. The judges are not employees. As members of the judiciary, they exercise the sovereign judicial power of the State. They are holders of public offices in the same way as the members of the council of ministers and the members of the legislature."

xxx xxx xxx

"The Judges, at whatever level they may be, represent the State and its authority unlike the administrative executive or the members of the other services. The members of the other services, therefore, cannot be placed on par with the members of the judiciary, either constitutionally or functionally.

"The distinction between the Judges and the members of the other services has to be constantly kept in mind for yet another important reason. Judicial independence cannot be secured by making mere solemn proclamations about it. It has to be secured both in substance and in practice. It is trite to say that those who are in want cannot be free. Self-reliance is the foundation of independence. The society has a stake in ensuring the independence of the judiciary, and no price is too heavy to secure it. To keep the judges in want of the essential accoutrements and thus to impede them in the proper discharge of their duties is to impair and whittle away justice itself."

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"As pointed out earlier, the parity in status is no longer between the judiciary and the administrative executive but between the judiciary and the political executive. Under the Constitution, the judiciary is above the administrative executive and any attempt to place it on par with the administrative executive has to be discouraged. The failure to grasp this simple truth is responsible for the contention that the service conditions of the judiciary must be comparable to those of the administrative executive and any amelioration in the service conditions of the former must necessarily lead to the comparable improvement in the service conditions of the latter."

14.32 The Supreme Court has also observed in the said review judgment that while fixing the pay scales of the judicial officers, the consideration of the capacity of the Government to pay would be irrelevant.

14.33 So, this much is clear that there cannot be a linkage between the pay scales of judicial officers with the pay scales of the executives. However, since we have a graded system of judicial service, the salary level of the High Court Judges is an important factor to be reckoned to maintain the relativities across the State judiciary. It is a vital factor to be borne in mind while judging the appropriateness of any particular level of salary to the Judges of the Subordinate Courts.

14.34 The Supreme Court in the above-said case has also observed that there is a wide variance in the pay structure prevailing in various States and Union Territories for the same nature of work performed by judicial officers. It was further observed that judicial officers should not be remunerated differently since they perform similar nature of the work.

14.35 It is, therefore, imperative for the Commission to determine uniform pay scales for similar grades of Judges in every State and UT. This principle is also based on "Equal Pay for Equal Work" which has been enshrined under Article 39(d) of the Directive Principles of State Policy in our Constitution. The said Article proclaims 'equal pay for equal work' for both men and women under common employer.

14.36 In this context, it may be useful to refer to the definition of the expression "same work or work of similar nature" contained in Clause (h) of Section 2 of the Equal Remuneration Act, 1976. This Act was enacted to give effect to the provisions of Article 39(d) of the Constitution and the obligation created by 'The Convention Concerning Equal Remuneration for Men and Women Workers' for work of equal value (generally referred to as 'Equal Remuneration Convention 1951') adopted on June 29, 1951, to

which India was a signatory. Article 2 of the Convention obliged the signatory States to effectuate the said rule by all means including the machinery of law. The said Act is applicable to such establishments and employments as may be notified by the Central Government under Section 1(3) of the Act. Though the said Act is mainly directed against discrimination against women, yet the relevance of the said definition cannot be ignored for our purpose.

14.37 The definition in Section 2(h) reads:

"2(h). 'Same work or work of a similar nature' means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the difference if any between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment."

14.38 This definition lays emphasis on the similarity of skill, effort and responsibility when performed under similar terms and conditions of employment.

14.39 Adroitly, the persons discharging similar if not identical functions bearing similar responsibilities should get equal pay on the binding principle of 'Equal Pay for Equal Work'. This is a Constitutional goal and fundamental right guaranteed to the citizens of this country.

14.40 The State shall not say that the Employer being different in State to State cannot apply the Rule of equal pay for equal work. But as already explained by the Apex Court, the Judicial Officers cannot be regarded as civil servants of the State. They perform judicial functions of the State in every State.

14.41 For the purpose of giving equal pay or uniform pay, it is necessary to provide uniform jurisdiction to Judicial Officers in every State/UT.

14.42 In six of the States, namely, West Bengal, Maharashtra, Tamil Nadu, Delhi, Himachal Pradesh and Jammu & Kashmir, the original pecuniary jurisdiction of the District / Civil Judges are not uniform. The reason is that the respective High Courts have

retained the ordinary original jurisdiction.

14.43 There have been twelve Commissions and Committees in the past between 1924 and 1990 suggesting for abolition of the ordinary original civil jurisdiction of the High Courts. All these reports have been considered and summarised by Malimath Arrears Committee Report - 1989-1990. The Malimath Committee Report has traced the history of vesting of such original jurisdiction in such High Courts and emphasised the need to abolish it at the earliest. But unfortunately, all these High Courts are still continuing their ordinary original civil jurisdiction.

14.44 The following High Courts have such jurisdiction to entertain and try suits and proceedings of civil nature limited to pecuniary and territorial jurisdictions as follows:

Sl. Name of the Pecuniary Territorial

No. High Court Jurisdiction Jurisdiction

1. High Court of Suits & proceedings of Calcutta City area

Calcutta Civil nature where the in Calcutta Municipal

value exceeds Rs.One lakh. Corporation.

2. High Court of Suits & proceedings of Greater Bombay

Bombay Civil nature where the

value exceeds

Rs.Fifty Thousand.

3. High Court of Suits & proceedings of City of Madras.

Madras Civil nature where the
value exceeds Rs.One lakh.

4. High Court of Suits & proceedings of Union Territory.

Delhi Civil nature where the
value exceeds Rs.Five Lakhs.

5. High Court of Suits & proceedings of State of Jammu &
Jammu & Civil nature where the Kashmir.

Kashmir value exceeds Rs.Two lakh
and Fifty Thousand.

6. High Court of Suits & proceedings of State of Himachal
Himachal Civil nature where the Pradesh.

Pradesh value exceeds Rs.Two Lakhs.

14.45 The Commission considers that it is now absolutely necessary to abolish the original civil jurisdiction of such High Courts to bring about complete uniformity of jurisdiction of the Civil Courts in all States and Union Territories.

14.46 It is on this premise that we have recommended uniform pay scales to Judicial Officers in every State and Union Territory.

14.47 There are other aspects which are to be borne in mind while determining the pay scales of judicial officers and for which full compensation must be provided. They are: (i) Pivotal Role of Subordinate Judiciary in our system of administration of justice; (ii) Essential Characteristics of Judicial Office; (iii) Special Qualifications required for Recruitment; (iv) Onerous Duties and Responsibilities of the Post; and (v) Personal sacrifice in terms of loneliness and general withdrawal from the community

affairs.

14.48 We may now examine these aspects in turn:

(i) The Pivotal Role of Subordinate Judiciary :

14.49 In our judicial hierarchy, the subordinate judiciary is the backbone of the system. It is the foundation on which the judicial edifice of the country rests. These subordinate courts play a prominent role, although not an exclusive part in preserving law and order in society. They provide instrumentality for the trial of disputes between individuals and between individuals and States. They quite generally decide delicate issues between Government and private parties. In a large number of cases, they are the final Courts or the Courts of last resort since only a few judgments stand appealed.

14.50 It is in these Courts and not at the hands of the executive or legislature that our citizens feel the keen edge of the law. The dynamics of judicial processes and the factual determination of legal culpability are witnessed by the public only in these Courts⁵. It is by witnessing such processes, the public confidence and respect to the judiciary is enhanced.

(ii) Essential Characteristics of Judicial Office :

14.51 The person who occupies a judicial office must have manifold personality. It consists of among others, independence, courtesy, patience, dignity, open mindedness, impartiality, thoroughness and decisiveness. Above all, he must have

5. "Judges and Jurors" by T. Vanderbilt C.J. of New Jersey.

social consciousness. Two of these need to be emphasised: (i) Impartiality and (ii) Independence. These are indispensable qualifications of the judge, without which, his character, courage, honesty, wisdom and learning are of little use or value to the litigants. These two essentials are inter-related. Indeed, the judge has to be independent to become impartial.

14.52 Our Constitution makers have ensured that the judiciary is independent of the executive and the legislature. The independence of the judiciary is a basic feature or structure of our Constitution⁶. There are two dimensions of judicial

independence:- (i) Individual Independence of a judge and (ii) Institutional or collective independence of the Court or Tribunal of which that judge is a member.

14.53 These two dimensions of judicial independence have been succinctly explained by Lamer C.J. of the Canadian Supreme Court as follows⁷:

"The individual independence takes within its fold that the judge must be independent in mind so as to determine the cause in question for the purpose of balancing the contradicting views and to render impartial judgment uninfluenced by public clamour. He must be independent in the sense that he should be self-reliant and not submissive. He must be able to take decisions freely without being subject to bias or influence. He has to remain completely

6. S.D. Gupta Vs. Union of India & Others (1981) Supp. SCC 87, 223.

Shri Kumar Padma Prasad Vs. Union of India (1992) 2 SCC 428 at 446, 456.

7. In the matter of reference from the Lt. Governor in the Council regarding remuneration of the judges of the Provincial Courts, decision dated 18 September 1997.

independent with nothing to influence or control him but God and his conscience. While individual independence attaches to individual judges, the institutional or collective independence attaches to the Court or Tribunal as an institutional entity."

The learned Judge then said at p. 58 & 59:

"The relationship between these two aspects of judicial independence is that an individual judge may enjoy the essential conditions of judicial independence but if the court or tribunal over which he or she presides is not independent of the other branches of government, in what is essential to its function, he or she cannot be said to be an independent tribunal."

The learned Judge further observed:

"Individual independence was referred to as the "historical core" of judicial independence, and was defined as "the complete liberty of individual judges to hear and decide the cases that come before them" (p.69). It is necessary for the fair and just adjudication of individual disputes. By contrast, the institutional independence of the judiciary was said to arise out of the position of the courts as organs of and protectors "of the Constitution and the fundamental values embodied in it - rule of law, fundamental justice, equality, preservation of the democratic process, to name perhaps the most important" (p.70). Institutional independence enables the courts to fulfill that second and distinctly constitutional role."

xxx xxx xxx

"I do not wish to overlook the fact that judicial independence also operates to insulate the courts from interference by parties to litigation and the public generally."

14.54 It is needless to state that the judges have to maintain individual independence and also institutional independence within the financial security provided to them. They cannot fall back on others for support even for themselves or for their family members. They cannot also engage themselves in any avocation or other occupation to supplement their income.

(iii) Special Qualifications required for Recruitment :

14.55 The Executive Officers are by and large recruited at much younger age than the judicial officers. The qualification for recruitment to the initial cadre of judicial service is a graduate in law followed by one year's apprentice course for enrolling as an advocate and thereafter a certain number of years' of practice at the Bar. The Supreme Court has stated that the minimum of such practice should be three years. But in actual practice, the advocates with standing of 4 to 7 years of practice are selected in most of the States. In the result, person entering judicial service does so when he is more than 27 to 30 years of age. It is at a time when his contemporaries who have entered the executive service of the Government with a degree in Arts or Science or with a post-graduate qualification, have already acquired a certain seniority in the service and have come to draw a higher salary. Secondly, the judicial officer having started at a later age has a shorter span of service than the executive officer and that would

inevitably affect his career, his pension and other retirement benefits. The Law Commission in its 14th Report has highlighted this aspect to which we have already made a reference earlier.

(iv) Onerous Duties and Responsibilities :

14.56 In the 13th Century, Bracton wrote⁸ :

"Let not one, who is unwise and unlearned, ascend the judgment seat, which is, as it were, the throne of God
And

8. Laws and Customs of England Vol. I, 9; Vol. II, 181;

Reproduced in "Judges And Jurors" by Vanderbilt C.J.

when a person is obliged to judge and to be a judge, let him take care of himself, lest by judging perversely and against the laws, through entreaties or for a price, for the advantage of a paltry temporary gain, he presumes to bring upon himself the sadness of external grief"

"A judge ought not only to be wise, but powerful, according to the saying of Solomon. Avoid seeking to be a judge, unless thou art strong in virtue to break through iniquities, lest by chance thou shouldst fear the face of the powerful man, and cause scandal"

14.57 We have adopted a common law tradition with the adversary system. The lawyers plan the strategy and dig up evidence to present it in Courts. The lawyers of two sides battle it out to win the case for their client. But the goal of winning by both sides would be inconsistent with the quest for truth. The judge is the only person disinterested in the outcome of the case and sees to it that both sides obey the rules of the game. He has to determine the admissibility of the evidence or the non-admissibility of the evidence. He is a judge of both the law and the facts. He has to completely and effectively control the Court and conduct of the case. He has to bear in mind that the sole object of the judicial machinery is to find out the nugget of truth from the conflicting versions. He cannot, therefore, sit quietly and see the manifest wrong done either by the party or by the Counsel. He cannot allow

the wrong to be done by any party.

14.58 Ultimately, when one party loses, there would be deep strain, mistrust and hostility. The Judge must use every bit of his experience and, if possible, elicit any relevant additional facts so as to determine the truth behind what are often conflicting stories of witnesses and parties. In the process, the Judge is really battered.

14.59 Particularly, now-a-days, the trial judges have no simple trials which their predecessors used to do. Instead, the present judges have complicated, both civil and criminal cases, involving dozens of issues. In each case, they have to examine a number of witnesses. They have to go through innumerable documents which are some times in the language with which they may not be familiar. Added to that, they are faced with conflicting views of different High Courts on the same or similar question.

14.60 The judges have to work continuously both on the Bench and off the Bench. They do not have a calm and detached atmosphere in the Court and they have to work in a charged atmosphere.

14.61 Adroitly, the Supreme Court observed⁹:

"It has also to be remembered that the lower judicial officers mostly work under a charged atmosphere and are constantly under a psychological pressure with all the contestants and their lawyers almost breathing down their necks more correctly upto their nostrils. They do not have the benefit of a detached atmosphere of the higher courts to think coolly and decide patiently. . ."

14.62 In the All India Judges' Association case¹⁰ the Supreme Court has recognised some of the distinct nature of duties of trial judges in the following observations:

"There is also no similarity in the nature of sedentary work done by the Judge and the members of the other services. The sedentary work is mainly of two types -mechanical and creative. Each case

9. K.P. Tiwari v. State of Madhya Pradesh AIR 1994 SC 1031 and 1032.

10. AIR 1993 SC 2493 and 2508.

coming before the Judge has its own peculiarities requiring application of the fresh mind and skill. The judge has constantly to be a creative artist. His work, therefore, requires constant thinking and display of talent. The exertions involved in the duties of the Judge cannot be compared with the duties of other services"

14.63 The Court has also quoted with approval the following passages from David Pannick's book "Judges".

"The reasons which judges must give to justify their decisions can be gnawed over at their leisure by the teams of lawyers trained (and generously paid) to extract for the purpose of an appeal, every morsel of error The Judge has the burden of resolving, day after day and week after week, a long succession of issues, each one of which occupies the professor-critic for months and even years of specialized study."

xxx xxx xxx

"The judge has burdensome responsibilities to discharge. He has power over the lives and livelihood of all those litigants who enter his court His decisions may well affect the interests of individuals and groups who are not present or represented in court. If he is not careful, the judge may precipitate a civil war . . . or he may accelerate revolution . . . He may accidentally cause a peaceful but fundamental change in the political complexion of the country."

"Judges today face tribulations, as well as trials, not contemplated by their predecessor Parliament has recognised the pressures of the job by providing that before the Lord Chancellor recommends any one to the Queen for appointment to the Circuit Bench, the Lord Chancellor 'shall take steps to satisfy himself that the person's health is satisfactory'. . . . This seems essential in the light of the reminiscences of Lord Roskill as to the mental strain which the job can impose Lord Roskill added that, in his experience, 'the work load is intolerable; seven days a week 14 hours a day'"

XXX XXX XXX

"He (judge) is a symbol of that strange mixture of reality and illusion, democracy and privilege, humbug and decency, the subtle network of compromises, by which the nation keeps itself in its familiar shape."

"The qualities desired of a judge can be simply stated: 'that if he be a good one and that he be thought to be so'. Such credentials are not easily acquired. The judge needs to have 'the strength to put an end to injustice' and 'the faculties that are demanded of the historian and the philosopher and the prophet'."

14.64 In the usual cases there may not be much difficulty for the judges to come to any conclusion, either on facts or on law. But, the problem arises in the unusual cases. As Chief Judge, Learned Hand¹¹ puts it:

"the customary law of English-speaking peoples stands, a structure indubitably made by the hands of generations of judges, each professing to be a pupil, yet each in fact a builder who has contributed his few bricks and his little mortar, often indeed under the delusion that he has added nothing. A judge must manage to

11. HAND, THE SPIRIT OF LIBERTY 130 (1953 edn.)

escape both horns of this dilemma; he must preserve his authority by cloaking himself in the majesty of an overshadowing past; but he must discover some composition with the dominant trends of his time - at all hazards he must maintain that tolerable continuity without which society dissolves, and men must begin again the weary path up from savagery."

(v) Personal sacrifices in terms of loneliness and general withdrawal from the community affairs :

14.65 There is an old saying that a judge shall live like a hermit and work like a horse. This may be an extreme term, but

nonetheless it is accepted that a judge cannot lead a life like others.

14.66 It is well recognised that a judge shall not have extra-judicial activity, which may conflict with the judicial obligations. Even if there is any extra-judicial activity, it shall be conducted in such a way that it does not cast any reasonable doubt on his capacity to act as a judge or interfere with the performance of judicial functions.

14.67 The judge shall not have social relationship. He shall not act or permit his relative or others to give an impression that they are in a special position to influence him.

14.68 The judge shall not seek membership of any club or society or a company or any organisation. He shall not serve as a Director or a Trustee or non-legal or legal advisor of any company or organisation.

14.69 The judge shall not use or permit use of the prestige of his judicial office for any fund raising or membership solicitation.

14.70 The judge shall not make any public comment that is likely to impair his fairness in the trial. He should disqualify himself in the proceedings in which his impartiality is likely to be questioned.

14.71 The judge shall not have any transaction or continuing business relationship with a lawyer or other persons. Even his spouse or other family members who are residing with him shall not have such business relationship. They shall not even accept any gift or compliment from the public.

14.72 These are the judicial ethics which are not exhaustive but only illustrative.

14.73 The Commission has also to take into consideration that the judicial salaries in real terms have been considerably eroded by the application of tapering neutralisation formula for compensating the price increases, especially at higher levels.

14.74 Having regard to these, and other aspects, it is necessary to have an appropriately designed remuneration system which must serve as a key factor for recruitment, retention and motivation of judges to ensure proper administration of justice.

14.75 The Commission considers that a poorly designed remuneration system is likely to manifest itself in the recruitment of poor quality of judges which will inevitably lead to undesirable levels of judicial performance.

14.76 We are reminded of the observations made by the Chief Justice Marshall¹²:

12. Proceedings and Debates of the Virginia Convention of 1829-1830, 619 (1830).

(Reproduced in "Judges and Jurors" by Vanderbilt, Chief Justice, p.24).

". No Sir. I have always thought, from my earliest youth till now, that the greatest scourge an angry Heaven ever inflicted upon an ungrateful and sinning people, was an ignorant, a corrupt, or a dependent judiciary."

14.77 The scale of pay and other emoluments to Judicial officers are to be evolved to avoid such a judiciary in our country.

* * * * *

15. EVOLUTION OF NEW PAY SCALES

GENERAL BACKGROUND :

15.1 Hitherto the salary of the Judicial Officers was linked with that of the administrative executive which we may say was a historical accident. There was only one service in the State viz., Indian Civil Service for recruiting candidates for the Judicial as well as the Administrative Service. This practice was prevalent in the pre-independence era. During those days, there was no clear demarcation between the judicial and executive services and the same officers used to perform both judicial and executive functions. But after the promulgation of the Constitution of India, the judiciary has been separated from the executive.

Consequently, the continuation of the linkage between the service conditions of the Judicial Officers and those of the administrative executives would be anachronistic and inconsistent.

15.2 The Supreme Court has made this point beyond doubt in stating that,

"the judicial service is not service in the sense of 'employment'. The judges are not employees. As members of the judiciary, they exercise the sovereign judicial power of the State. They are holders of public offices in the same way as the members of the council of ministers and the members of the legislature. When it is said that in a democracy such as ours, the executive, the legislature and the judiciary constitute the three pillars of the State, what is intended to be conveyed is that the three essential functions of the State are entrusted to the three organs of the State and each one of them in turn represents the authority of the State. However, those who exercise the State-power are the ministers, the legislators and the

1. (1993) 4 SCC 288 at 295.

judges, and not the members of their staff who implement or assist in implementing their decisions. The council of ministers or the political executive is different from the secretarial staff or the administrative executive which carries out the decisions of the political executive. Similarly, the legislators are different from the legislative staff. So also the Judges from the judicial staff. The parity is between the political executive, the legislators and the Judges, and not between the Judges and the administrative executive."

15.3 The Supreme Court went on to state :

"36. We have already discussed the need to make a distinction between the political and the administrative executive and to appreciate that parity in status can only be between Judges and the political executive, and not between Judges and the administrative executive. 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 the

judicial service. Further, since the work of the judicial officers throughout the country is of the same nature, the service conditions have to be uniform."

15.4 The Commission is thus required to determine the uniform pay scales to three cadres of the Judicial Service. Since it is a virgin field and not a trodden ground, the Commission engaged the Services of a professional body viz., the Indian Institute of Public Administration (IIPA), New Delhi as the Consultant for the purpose.

15.5 IIPA has a distinguished and experienced faculty in the fields of Economics, Financial Management including Public Finance; Human Resources Development and Behavioural Studies; Management Studies, Public Enterprises and Computer Applications, Public Policy, Planning and Environmental Studies; Social Welfare Administration and Administration of Justice; Rural Studies; and Urban Studies.

15.6 The Commission gave the following terms of reference to the IIPA:

1. To analyse the existing pay structure and conditions of service of the Judicial Officers in the States and Union Territories.
2. To examine and compare the pay structure and conditions of service of the Subordinate Judicial Service with those of Civil Servants.
3. To evolve broad principles which should form the basis of determining the pay structure and other emoluments for the Subordinate Judiciary in the country.
4. To suggest a rational pay structure and other emoluments for the members of Subordinate Judiciary of the States and Union Territories.

15.7 Mr. M.C. Gupta, Director of the IIPA and his designated team, viz., Mr. O.P. Minocha and Prof. S.S. Singh, have taken a special interest in the study.

15.8 They, with the assistance of the Commission prepared and circulated a Questionnaire seeking the views and opinions from Judges and other persons of different walks of life across the country in respect of the above aspects. They have carefully studied

their responses.

15.9 They have studied the existing pay structure and remuneration policies of Judges in England, Australia, USA and Malaysia. They have prepared a very useful report which has been submitted to the Commission on 13th August 1998.

15.10 The Report of IIPA consists of 5 Chapters.

15.11 Chapter 1 deals with the importance of judicial system.

15.12 Chapter 2 deals with the general principles governing the determination of pay structure, the retirement / superannuation arrangements, and other aspects of compensation. The purpose of the Chapter is to highlight as to how the pay structure helps in attracting competent persons, maintaining their morale and motivation and to retain such competent members of judiciary. The approach taken by all the previous five Central Pay Commissions has been discussed in this Chapter.

15.13 Chapter 3 deals with the international experience of judicial remuneration.

15.14 Chapter 4 gives an account of the discussion held by the IIPA with the members and the office-bearers of the Judges' Associations of Andhra Pradesh, Kerala, Karnataka, Tamil Nadu, Uttar Pradesh, Delhi and others.

15.15 Chapter 5 deals with the approach taken by the IIPA to work out a rational pay structure.

15.16 The Report gives the personal profile of 200 Judges across the country whose views have been considered by the IIPA. The personal profile including their experience in judiciary, quantum of their work-load in terms of hours of work, their monthly expenditure and the criteria to determine the pay structure have been set out in six Tables. This is a very useful information giving the insight to the problem presented.

17. For immediate reference, those Tables are hereunder extracted :

TABLE- 1 : Personal Profile of the Respondents		
Designation	Number	Percentage
District Judge / Additional District Judge	80	40.0
Civil Judge (Senior)	74	37.0
Civil Judge (Junior)	46	23.0
Total	200	100.0

15.18 Out of the total respondents, majority (79.5%) have joined the service after obtaining their Law Degrees. Further, 20% had possessed post graduate degrees in Law. The details are given in Table - 2.

TABLE - 2 : Educational Background of the Respondents		
Educational Qualification	Number	Percentage

LL.B., B.A.	159	79.5
LL.M.	11	5.5
M.A., LL.M.	29	14.5
Ph.D.	1	0.5
Total	200	100.0

15.19 Analysis of the experience in services of the respondents reveals that about 28% of them have got an experience of 15-20 years and another 15.5% have got more than 20 years experience. The respondents are fairly distributed in respect of their experience. Taking cognizance of the distribution of respondents in experience, we can conclude that the views of the judges are quite representative in character. The details are given in Table - 3.

Table - 3 : Experience of the Respondents		
Experience (years)	Number	Percentage
31	31	15.50

5 - 10	44	22.00
10 - 15	38	19.00
15 - 20	56	28.00
20 - 25	31	15.50
Total	200	100.0

15.20 Analysis of the quantum of work load reveals that about 61% of the Judges spent about 5-7 hours and another 7% even more than 7 hours in the Court room. About 78% of the Judges, it is found that they spend 2-5 hours in preparing cases. Further, most of the Judges are required to spend considerable time after court hours and during holidays (21%) and 7-9 hours (8.5%) per day. All this demonstrates that Judges are required to spend long hours per day in discharging their duties. The details are given in Table - 4.

TABLE - 4 : Quantum of Work-load in Terms of Hours of Work

Details	2 - 5	5 - 7	7 - 9	More than 7	NA	Rare
In the Court Room	64 (32%)	122 (61%)	14 (7%)	-	-	-
Preparation for hearing cases	156 (78%)	39 (19.5%)	3 (1.5%)	-	2 (1%)	-
After Court hours & during holidays	141 (70.5%)	42 (21%)	17 (8.5%)	-	-	-
Meetings & other	118	1	-	-	28	53

official engagements	(59%)	(0.5%)			(14%)	(26.5%)
Total number of hours (on an average per day) which is required to keep updated with latest aspects of judicial profession	147 (73.5%)	25 (12.5%))	11 (5.5%))	16 (8%)	1 (0.5%))	-

15.21 In the context of expected standard of living all the judges are required to spend a considerable amount on different items. About 16.5% of the judges are spending more than Rs.10,000/- per month and another 6.0% are spending more than Rs.12,000/- per month. However, majority of the judges (54%) are spending upto Rs.8,000/- per month on different items of their normal household activities. The details are given below :

Table - 5 : Monthly Expenditure Profile of Judges

Monthly Expenditure (Rs.)	Number	Percentage
2000 - 4000	11	5.50
4000 - 6000	42	21.00
6000 - 8000	55	27.50
8000 - 10000	47	23.50
10000 - 12000	33	16.50
12000 & above	12	6.00

15.22 IIPA had asked the judges (respondents) to indicate the criteria that could be adopted for determining the pay structure to the judicial officers. Most of the judges have indicated that the 'nature of work' followed by the 'quantum of work' involved and morale of the judicial officers are the most important factors. The details of the criteria with ranking to determine the pay structure to the judicial officers is given in Table - 6.

TABLE - 6 : Criteria with Ranking to determine the Pay Structure - details regarding									
Criteria	I	II	III	IV	V	VI	VII	VIII	Total
Equal pay for equal work	43	12	18	16	30	33	42	6	200

	(21.5)	(6.0)	(9.0)	(8.0)	(15.0)	(16.5)	(21.0)	(3.0)	(100.0)
Model Employer	4 (2.0)	11 (5.5)	4 (2.0)	9 (4.5)	18 (9.0)	65 (32.5)	59 (29.5)	30 (15.0)	200 (100.0)
Social Responsibility	29 (14.5)	26 (13.0)	30 (15.0)	35 (17.5)	35 (17.5)	15 (7.5)	27 (13.5)	3 (1.5)	200 (100.0)
Capacity of the Govt. to pay	1 (0.5)	2 (1.0)	6 (3.0)	16 (8.0)	9 (4.5)	15 (7.5)	26 (13.0)	125 (62.5)	200 (100.0)
Nature of Work	75 (37.5)	35 (17.5)	24 (12.0)	42 (21.0)	15 (7.5)	4 (2.0)	3 (1.5)	2 (1.0)	200 (100.0)
Quantum of work involved	3 (1.5)	64 (32.0)	48 (24.0)	28 (14.0)	37 (18.5)	10 (5.0)	6 (3.0)	4 (2.0)	200 (100.0)
To retain the morale of judicial officers	38 (19.0)	53 (26.5)	35 (17.5)	21 (10.5)	21 (10.5)	19 (9.5)	9 (4.5)	4 (2.0)	200 (100.0)

Qualification	8	6	36	46	17	47	27	13	200
	(4.0)	(3.0)	(18.0)	(23.0)	(8.5)	(23.5)	(13.5)	(6.5)	(100.0)

15.23 The Commission, in its turn, has issued a general Questionnaire with certain specific questions as to the nature of pay scales for Judicial Officers. We have taken into consideration the relevant responses received from the respondents, in addition to the very useful information furnished by the IIPA.

15.24 We have particularly borne in mind the pivotal role of Subordinate Judiciary, essential characteristics of judicial office, special qualifications required for recruitment, onerous duties and responsibilities of the post and personal sacrifice in terms of loneliness and general withdrawal from the community affairs made by Judicial Officers. We have taken into consideration the pay scales recommended by the 5th CPC and of those that have been accepted by the Central and State Governments and all other relevant principles which have bearing on the matter for determining the uniform pay structure to the three cadres in Judicial Service.

15.25 Before evolving the uniform pay scales, it is necessary to study the existing pay scales of different cadres in different States and Union Territories. They are set out hereunder:

Details of Existing Cadres and Pay Scales in different States / UTs.			
	State / UT	Cadre	Existing Pay Scale (Rs.)
1.	Andhra Pradesh	District & Sessions Judge-Gr.I	8140-280-10380

2.	Assam	Selection Grade :	3950-125-4450-150-5200-175-5900-200-6100
3.	Bihar	Super Time Scale :	5900-200-6700
4.	Goa	District & Sessions Judge	4500-150-5700
5.	Gujarat	Principal Judge	5900-200-6700 (Pre-Revised) 18400-500-22400 (Revised)
6.	Haryana	Selection Grade :	5900-200-6700
7.	Himachal Pradesh	Seln.Grade (after 8 yrs.)	5000-100-5900-200-6700
8.	Jammu & Kashmir	District & Sessions Judge (Super Time Scale)	5100-150-6300
9.	Karnataka	Super Time Scale	5825-175-6000-200-6800
10.	Kerala	Dist. Judge (Seln. Grade)	5900-150-6500-200-6700

11.	Madhya Pradesh	District Judge (Above STS)	7300-100-7600
12.	Maharashtra	Principal Judge, CCC / Addl. Principal Judge CCC	5900-200-6700
13.	Manipur	District & Sessions Judge	3700-125-4700-150-5000
14.	Meghalaya	District & Sessions Judge	3900-150-4650-EB-160-5450
15.	Mizoram	District & Sessions Judge	5100-150-6300-200-6700
16.	Nagaland	District & Sessions Judge	4500-150-5850-175-6200
17.	Orissa	Super Time Scale	5900-200-6700
18.	Punjab	Seln. Gr. (after 8 yrs.)	5000-150-5900-200-6700
19.	Rajasthan	Selection Grade :	5900-200-6700
20.	Sikkim	District & Sessions Judge	3200-100-3700-125-4700
21.	Tamil Nadu	District Judge (STS)	5100-150-5700
22.	Tripura	Selection Grade :	5900-200-6700
23.	Uttar Pradesh	Selection Grade	5900-200-6700

24.	West Bengal		
		Above Supertime Scale:	7300-100-7600 (Pre-revised) 22400-525-24500 (Revised)
25.	Delhi		
		Super Time Scale :	5900-200-6700 (Pre-revised) 18400-500-22400 (Revised)
26.	Pondicherry		
		Dist. Judge / Sessions Judge	3000-100-3500-125-5000 (Pre-revised) 10000-325-15200 (Revised)
27.	Lakshadweep	District Judge	4500-150-5700
<p>Note : Since then some of the State Governments have revised their pay scales. However the same information has not been furnished by the High Courts / State Governments.</p>			

15.26 It will be seen that there is a wide variance in the pay structures prevailing in the various States and Union Territories. The Judicial Officers performing the same or similar nature of work are remunerated differently. We have to remove this incongruity by evolving a uniform/common pay scale, cadre-wise, to Judicial Officers in every State and Union Territory.

15.27 While evolving a pay scale to any cadre of service, it is necessary to bear in mind the length of the time scale, the period and the rate of increment, the ratio, if any, between the minimum and maximum or such other parameter of the pay scale and the desirability of introducing an 'Efficiency Bar'.

15.28 Instead of fixed pay scales, we have opted for the telescopic scales to Judicial Officers. The telescopic pay scales are preferable for the reason that experience in a lower cadre itself is a qualification for promotion to the higher cadre. This principle is also implicit in the recruitment rules of any cadre. Promotion, however, is not always definite or certain. It depends upon the various circumstances such as strength of cadre and the relative age group of persons in the cadre. There must, therefore, be a mechanism to provide a pay scale to the person in the lower cadre, which may correspond at least to the lower reaches of the scale prescribed for promotional cadre. This is in conformity with the principle that an Officer in the lower cadre is generally entrusted with more responsible work after some years of experience, and that responsibility may be near or more than that of the higher post. In such situation, the Officer should be suitably rewarded for such responsible work.

15.29 These aspects could be worked out only when we prepare a **Master Pay Scale** before determining the different pay scales. Hence, we have, at the first instance, gone for the **Master Pay Scale**.

15.30 The advantages of the Master Pay Scale are manifold. Some of them may be stated as under :

- (i) The pay scale would be telescopic in nature;
- (ii) In the hierarchy of cadres of posts, the bottom of the lowest of any level of the pay scale admissible to any cadre, would dip into a part of the range of the immediately next below scale. (This kind of pay scale is intended to reward the experienced Officers in the lower cadre languishing without promotion.);
- (iii) It has convenient inbuilt incremental structure which would be the basis for working out the other pay scales;
- (iv) The Officers who have reached a particular stage of pay would get the same increment, irrespective of the pay scale attached to their posts;
- (v) The different segments of the Master Pay Scale could be formed into different pay scales according to the requirements.

15.31 The Master Pay Scale evolved by the Commission is as follows:

Rs. 9000-250-10750-300-13150-350-15950-400-19150-450-21850- 500-24850.

15.32 The Master Pay Scale has got a total span of 44 stages, the details of which are set out below:

Pay stages			
1.	9000	23.	15600
2.	9250	24.	15950
3.	9500	25.	16350
4.	9750	26.	16750
5.	10000	27.	17150
6.	10250	28.	17550
7.	10500	29.	17950
8.	10750	30.	18350
9.	11050	31.	18750
10.	11350	32.	19150
11.	11650	33.	19600
12.	11950	34.	20050
13.	12250	35.	20500

14.	22550	36.	20950
15.	12850	37.	21400
16.	13150	38.	21850
17.	13500	39.	22350
18.	13850	40.	22850
19.	14200	41.	23350
20.	14550	42.	23850
21.	14900	43.	34350
22.	15250	44.	24850

NUMBER OF SCALES IN MASTER PAY SCALE :

15.33 Broadly speaking, the number of pay scales should be equal to the number of clearly identifiable levels of responsibilities. The identifiable levels in our Judicial Service are three, viz., (i) Civil Judge (Junior Division); (ii) Civil Judge (Senior Division); and (iii) District Judge.

15.34 Primarily, we have to therefore evolve three pay scales. But, since we have decided to give Assured Career Progression Scales to the first two cadres and Selection Grade Pay Scale and Super Time Pay Scale to the third cadre, we have to prepare 7 (seven) pay scales in all.

MINIMUM AND MAXIMUM OF THE REVISED PAY SCALES :

15.35 While fixing the minimum of the Master Pay Scale, we have looked into the pay scales recommended by the 5th CPC to

the All India Service Officers at the entry level. We have also considered the qualification prescribed for the post of Civil Judge (Junior Division); consequently, their late entry into the service.

15.36 Taking all these and other relevant factors, we have fixed Rs.9,000/- as the Minimum of the Master Pay Scale.

15.37 As to the maximum in the Master Pay Scale, we have to bear in mind that in no circumstances, the District Judge shall get more than the pay of the High Court Judge. That is the vertical cap. Taking this aspect into consideration, we have fixed a maximum of Rs.24,850/- in the Master Pay Scale.

15.38 Accordingly, the following three primary Pay Scales have been determined, cadre-wise :

CIVIL JUDGES (JR. DIVN.) : Rs.9000-250-10750-300-13150- 350-14550

CIVIL JUDGES (SR. DIVN.) : Rs.12850-300-13150-350-15950- 400-17550

DISTRICT JUDGES : Entry Level - Rs.16750-400-19150- 450-20500

15.39 We have also determined the Assured Career Progression Scheme for Civil Judges (Jr. Divn.) and Civil Judges (Sr. Divn.) as follows :

CIVIL JUDGE (JUNIOR DIVISION) :

I Stage : Rs. 10750-300-13150-350-14900

II Stage : Rs. 12850-300-13150-350-15950-400-17550

CIVIL JUDGE (SENIOR DIVISION) :

I Stage : Rs. 14200-350-15950-400-18350

II Stage : Rs. 16750-400-19150-450-20500

15.40 It may be noted that the II Stage ACP for Civil Judge (Junior Division) is the Pay scale of the Civil Judge (Senior Division)

and the II Stage ACP for the Civil Judge (Senior Division) is the entry level pay scale of the District Judge.

15.41 So far as the other pay scales to the District Judge are concerned, we have recommended Selection Grade Scale of Rs.18750-400-19150-450-21850-500-22850 and Super Time Scale of Rs.22850-500-24850.

15.42 We have not provided any 'Above Super Time Scale' to the District Judges, though such pay scales are provided presently in Madhya Pradesh and West Bengal. Both the States have adopted IAS Pay Rules to the Higher Judicial Service in their States and consequently, the 'Above Super Time Scale' of Rs.22400-525-24500 has been provided to the senior-most District Judges who happen to be only a fortunate few.

15.43 But our recommended Selection Grade and Super Time Scale would benefit a large number of District Judges in all States and UTs. We have recommended 25% of the cadre posts of District Judges who have put in not less than five years of service in the cadre be given the said Selection Grade Scale and they shall be called Selection Grade District Judges. We have also recommended that 10% of the Selection Grade District Judges who have put in not less than three years of service as Selection Grade District Judges be allowed Super Time Scale of pay.

15.44 Both these scales would be given by selection on the basis of merit-cum-seniority.

15.45 It may be noted that our Selection Grade Scale is apparently superior to the existing Super Time Scale of the District Judges in the said two States. Besides, the opening point and the end point in our Super Time Scale are also relatively higher than those of their 'Above Super Time Scale'.

15.46 We have also taken care to protect the interests of such of those District Judges in those two States who are in the 'Above Super Time Scale' by appropriately giving them the benefit of fixation.

47. For better understanding, we have set out below a Table and Chart indicating the mean of basic pay of the proposed scale to each cadre of Judicial Officers with reference to the pay of the High Court Judges and the Supreme Court Judges :

TABLE	
Category of Judges	Monthly Mean Pay (in Rs.)
Civil Judge (Junior Division)	11,775
Civil Judge (Senior Division)	15,200
District Judge (Entry Level)	18,625
District Judge (Selection Grade)	20,800
District Judge (Super Time Scale)	23,850
Judge of the High Court	26,000 (Fixed)
Chief Justice of the High Court	30,000 (Fixed)
Judge of the Supreme Court	30,000 (Fixed)

Chief Justice of the Supreme Court	33,000 (Fixed)
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15.48 It may be seen from the aforesaid Table and Chart that the mean of the basic pay of Civil Judges (Junior Division), Civil Judges (Senior Division), District Judges (Entry Level), District Judges (Selection Grade) and District Judges (Super Time Scale) works out respectively at 42.3%, 58.5%, 71.6%, 80% and 91.7% of the salary of the High Court Judges.

15.49 In the same Chart, it may be seen that the mean of the basic pay of Civil Judge (Junior Division) and Civil Judge (Senior Division) works out at 49.4% and 63.7% of the mean basic pay of the District Judges (Super Time Scale).

15.50 We further recommend that in case the salary of the High Court Judges is revised upward at any time, the pay scales of the Judicial Officers in all the aforesaid cadres, should also be suitably revised upward by maintaining the said respective ratios.

RATE OF INCREMENT :

15.51 We have examined the granting of increment as a percentage of basic pay, but we find that such a system is operationally inconvenient. We have, therefore, adopted the system of fixed-quantum increments while evolving the Master Pay Scale.

15.52 We may also say a few words as to why we have adopted a particular rate of increment or increments in the Master Pay Scale.

15.53 Increment is a periodical increase given to employees, mainly for three reasons :

- i) It is a credit to the experience gained and for better quality and quantity of work;
- ii) The domestic responsibilities of employees generally increase as they grow and the increment would meet such contingency;
- iii) The annual increment itself serves as an incentive to employees for putting forward sustained effort in their work.

15.54 The rate of increment in any scale would depend on its minimum, maximum and the time span. Other considerations for fixing the rate of increments would be : (a) incremental rates in the existing pay structures, and (b) price escalation in recent years especially since 1986 when most of the State Governments revised the salary structure to their employees, which was also extended to the Judicial Officers.

15.55 It is common knowledge that short time-span would give rise to complaints of stagnation, while longer time-span results in very slow increases in the pay. To avoid these two extremes, we consider that six incremental rates would be proper and ideal.

EFFICIENCY BAR :

15.56 The system of Efficiency Bar was in vogue earlier. But such a system did not serve the purpose for which it was intended. It has been observed in the past that the majority of the officials are allowed to cross the Efficiency Bar as a matter of course with little or no effective consideration of the objectives of such assessment.

15.57 It is also complained that the assessment on efficiency of an officer is likely to be based on personal prejudices and predilections. It is also stated that the Efficiency Bar has been used as an instrument of oppression on an officer who does not toe the line of his superior.

15.58 Having considered all these aspects, we are of the view that the 'Efficiency Bar' should be dispensed with. Indeed, every Association of Judicial Officers and even some High Courts are not for the system of 'Efficiency Bar'.

15.59 The supervisory power of the High Court is so vast that it could be effectively utilised by other means to deal with the incompetent, dishonest, inefficient and negligent officers. Therefore, we have not provided any 'Efficiency Bar' in any scale.

PRINCIPLES OF FIXATION OF PAY IN THE PAY SCALES RECOMMENDED BY THE COMMISSION

60. The Commission in its Report dated 31.01.1998 has allowed interim relief to Judicial Officers of different States/UTs in varying terms to bring about near parity in the emoluments drawn by them. The interim relief allowed was ranging from 35% to 75% as per the details given below :

	Name of the State / UT	Percentage on Basic Pay + Dearness Allowance of each Judicial Officer as on 1st January 1996
1.	Andhra Pradesh	35%
2.	Assam	75%
3.	Bihar	35%
4.	Haryana	40%
5.	Himachal Pradesh	40%
6.	Jammu & Kashmir	40%
7.	Karnataka	35%

8.	Kerala	35%
9.	Maharashtra	40%
10.	Manipur	40%
11.	Meghalaya	40%
12.	Mizoram	40%
13.	Nagaland	40%
14.	Orissa	40%
15.	Punjab	40%
16.	Rajasthan	40%
17.	Sikkim	45%

18.	Tamil Nadu	35%
19.	Tripura	40%
20.	Uttar Pradesh	40%
21.	West Bengal	55% - To the Officers of the Subordinate Judicial Service only.

15.61 The Commission gave the interim relief to Judicial Officers in such of the States/UTs where the benefits of the pay scales recommended by 5th CPC were not extended, because, the then object of allowing interim relief was to raise the emoluments of the beneficiaries approximately to the level of the pay scales of the 5th CPC.

15.62 We have since evolved the new pay scales to different cadres, which are termed as "our revised pay scales".

15.63 It may at once be stated that our revised pay scales are indeed better than the existing pay scales at various levels in every State, and it is, therefore, necessary to fix the existing incumbents in our revised pay scales.

15.64 We may, in this context, refer to the method adopted by the earlier Pay Commissions, both at the Centre and States, for fixation of pay whenever the new pay scales are determined. They are generally of the following two types:

- (i) giving a uniform percentage increase to all; and
- (ii) giving varying percentage of basic pay or varying quantum increase depending upon the length of service put in.

15.65 In certain Public Sector Undertakings, the concept of point to point fixation is also in vogue.

15.66 The formula of giving varying quantum increases depending upon the length of service confers equal benefit to all employees within each of the 'service-length groups' and, therefore, leads to clubbing of pay stages thereby equalising the junior and senior which causes resentment in the latter.

15.67 The formula of the 'point to point fixation' implies that the pay of an Officer should be fixed in the revised scale at a stage which represents the same number of increments which he had earned in the pre-revised scale. It may in effect amount to counting the entire service rendered by him in the pre-revised scale as having been rendered in the revised scale. The application of this formula of point to point fixation would lead to an anomalous situation to Officers drawing the same basic pay in different existing scales being fixed at different stages in the corresponding revised scales. This may defeat the very purpose of evolving a 'Master Pay Scale' which is based on the principle that all Officers at the same pay stage should get the same increment.

15.68 But giving a certain percentage of Basic Pay as an additionality to all Officers seems to be better as it spreads the advantage evenly among all the Officers. The procedure is also simple since the benefit is given on a percentage basis, and the service of an Officer reflected in the increments earned also gets a weightage. This formula inevitably gives weightage to the length of service of the Officer because the stage which he occupies in the existing scale reflects the length of his service. We would, therefore, like to adopt this formula.

15.69 Before we apply the said formula, it is necessary to determine the effective date on which the pay scales are to be given effect to.

EFFECTIVE DATE :

15.70 The Judicial Officers in UTs and in certain other States are already given the benefits of the pay scales of 5th CPC with effect from 1-1-1996.

15.71 Some Associations of Judicial Officers have stated that we should give the benefit of our revised pay scales with effect from the date of the original judgment of the Supreme Court in All India Judges' Association Case. Some others are asking that it should be given at least from the date of the Review Judgment of the Supreme Court in that case. Likewise, the different Officers have made different demands.

15.72 The "effective date" should not be pick and choose. It should not be arbitrarily selected. It must have a nexus to the object of giving the revised pay scales. It should be uniform regard being had to the effective date on which some States have already implemented the pay scales of the 5th CPC. It should also be in conformity with such date applied to Civil Servants in general to avoid heart burning.

15.73 The Central Government servants and employees of certain State Governments have been given the benefit of the pay scales of 5th CPC with effect from 1-1-1996.

15.74 Our Commission was constituted on 21-3-1996. We commenced working only at the fag end of December 1996.

15.75 We have given Interim Relief to Judicial Officers with effect from 1-7-1996. The interim relief was confined to those Officers who are not given the benefit of pay scales recommended by 5th CPC.

15.76 We have structured our revised pay scales at 1510 AICPI level by merging the entire D.A. admissible as on 1-1-1996.

15.77 We have to, therefore, strike a balance amongst the aforesaid dates.

15.78 We consider that it is not proper to relate back the effective date to the date of judgment of the Supreme Court. Nor it is just to limit it to the date from which the interim relief has been given, though ordinarily it should be the date.

15.79 Since some of the States and the Union Territories have already given the Central pay scales to our Judicial Officers with effect from 1-1-1996, it would be necessary for us to determine the effective date for our revised pay scales as on 1-1-1996 notwithstanding the fact that the interim relief has been given with effect from 1-7-1996.

15.80 We, however, make it clear that only notional benefit would be worked out from 1-1-1996, without giving the actual financial benefit flowing therefrom. The actual monetary benefit shall be given only with effect from 1-7-1996.

15.81 We may also make it clear that the benefit of other allowances which we have recommended be given with effect from 1-11-1999, the date which we have fixed since we are presenting these Reports in November 1999.

15.82 Needless to state that the Interim Relief as such shall cease to be operative since it has been included while evolving the

new pay structure.

15.83 This takes us to the methodology of the fitment formula.

15.84 As earlier indicated, we have preferred the method of giving certain percentage of Basic Pay as an additionality to all Officers. This should be so whether they are covered by the respective State Government scales or 5th CPC scales.

15.85 Taking all these factors into consideration, we are of opinion that another 10% of Basic Pay should be the basis for working out the fixation level in our revised scales. This should be in addition to the interim relief already granted by the Commission or the adoption of 5th CPC scales by some States/UTs with effect from 1-1-1996.

15.86 We are conscious of the fact that this method of fixation may not give uniform consequential benefits to Judicial Officers. It is inevitable. It is impossible to provide equal consequential benefits to each cadre with mathematical precision in view of the fact that the existing pay scales of Judicial Officers in every cadre vary from State to State. That is because of the implementation of the pay scales of the 5th CPC by some States/UTs, while giving effect to our interim relief on varying terms by other States.

OUR RECOMMENDATIONS :

15.87 Taking all these factors into consideration, we recommend the following procedure for fixation of pay in our revised scales :

- i) A Judicial Officer shall first be given a financial benefit of 10% over his basic pay as on 1-1-1996 in his existing pay scale.
- ii) Then, compute the aggregate emoluments of the Officer as on 1-1-1996 in the following manner :
 - a) Basic pay in the existing scale as on 1-1-1996 plus 10% thereon.
 - b) Dearness Allowance admissible on the original Basic Pay on 1st January 1996 at AICPI level

of 1510 (1960=100).

* c) Amounts of interim relief admissible (As recommended by this Commission).

iii) After the aforesaid calculations, the pay of the Officer in our revised scale shall be fixed as follows :

a) If the aggregate of the present emoluments as aforesaid computed is less than the minimum of the revised scale, then, it should be at the minimum of our revised scale;

* We have not given Interim Relief with effect from 1-1-1996. We have confined it only with effect from 1-7-1996. Since we propose to evolve the new pay structure with reference to 1-1-1996, it has become necessary to determine the aggregate emoluments inclusive of the interim relief. The interim relief is, therefore, taken into consideration notionally.

b) if the aggregate of the present emoluments so computed corresponds to a stage in our revised scale, at that stage of the revised scale;

c) if the aggregate of the present emoluments so computed is intermediate between two stages in the revised scale, then at the higher of the two stages; and

d) if the aggregate of the present emoluments so computed is more than the maximum of the revised scale, then at the maximum of the revised scale and the difference, if any, be treated as personal pay.

15.88 In fixing pay on the revised scale, following factors should also be taken into account :

a) In case, an Officer drawing pay in the pre-revised scale (existing scale), equal to or less than that of his senior/seniors in the same cadre and similarly appointed, draws his next increment in the revised scale on the date earlier than such senior/seniors whereby his pay is raised to a stage higher than that of such senior/seniors, the date of next increment of the senior/seniors shall be advanced to the date on which the junior officer draws his next increment;

b) In case, an Officer promoted to a higher post before 1-1-1996 draws less pay in the revised scale than his junior shall be advanced to an amount equal to the pay fixed for his junior in the higher post, from the date of promotion of the junior.

15.89 These benefits, one or the other, shall be extended, if the anomaly which we have indicated is the direct consequence of the application of the fixation principles enunciated by us.

15.90 This takes us to fixation of pay for those who are now enjoying the benefit of the 5th CPC scales. It may be noted that the 5th CPC scales have also been pegged at 1510 AICPI level as on 1-1-1996. 5th CPC had recommended 20% fixation benefit of basic pay. But the Government has allowed 40% fixation benefit while implementing, in the following manner :

- a) Basic Pay as on 1-1-1996
- b) D.A. as on 1-1-1996
- c) First instalment of IR - Rs.100/-
- d) Second instalment of IR - 10% of Basic Pay
- e) Fixation benefit of 40% of Basic Pay as on 1-1-1996.

15.91 Even in all such cases, allow another 10% fitment (additionality) benefit on the basic pay as on 1-1-1996.

15.92 By aggregating the sum as aforesaid, the pay of the Officer shall be refixed as per the principles enunciated earlier.

15.93 Date of Next Increment in the Revised Scale :

- a) We also recommend that the next increment of an Officer in the revised scale shall be granted on the date he would have drawn the increment, had he continued in the existing scale.
- b) If an Officer draws his next increment in the revised scale under clause (a) above and thereby becomes eligible for higher pay than his senior whose next increment falls due at a later date, then, the pay of such senior shall be refixed equal to the pay of the junior from the date on which the junior

becomes entitled to higher pay. In cases where the pay of an Officer is stepped up in terms of clause (b) above, the next increment shall be granted after completing requisite qualifying service, i.e., one year.

15.94 Needless to state that an Officer who reaches stagnation level, must be given stagnation increment as prevalent in the respective States/UTs.

FINANCIAL IMPLICATIONS :

15.95 Having made the foregoing recommendations on the pay structure, it becomes necessary to quantify the financial implications of these recommendations to every State/U.T.

15.96 This is a bit difficult task since actual strength of the Judicial Officers in each cadre at each pay stage, as on date, is not available with us. We have only the pay scale-wise number of Officers in each State/U.T.

15.97 We have, however, on the basis of data available - the difference between average yearly emoluments (i.e., pay + D.A.) of the Judicial Officers in the existing scales of pay and that on the basis of new scales of pay recommended- we have estimated the financial liability on introduction of new scales.

15.98 The available information shows that 12,771 posts on regular pay scales are in existence. While calculating the financial implications, the old scales of pay, prior to the implementation of 5th CPC scales, have been considered. Since-then, certain State Governments/UTs have revised their pay scales. In some States/UTs, 5th CPC scales have been adopted in toto while in others, the scales have been modified. Further, in some States, pay scales have been revised based on the recommendations of their own pay Commission or Official Pay Committee. If these pay scales have already been adopted, the financial liability will, to that extent, be reduced.

15.99 Introduction of measures for removal of stagnation such as ACP for both Civil Judges (Junior Division) and Civil Judges (Senior Division) and also Selection Grades and Super Time Scales for District Judges and slight variations in the grading of Judicial Officers are not taken into consideration in this calculation.

15.100 Further, the Commission, although has not made modifications in the pension and gratuity scale (except pension structure

for past pensioners), the merger of D.A., I.R. and 10% fitment benefit automatically increase the financial burden on State Exchequer. Similarly, other recommendations pertaining to allowances will also entail additional expenditure, the estimation of which would not be possible.

15.101 Broadly, the totality of the additional financial burden upon the revised scales being given effect to would be of the order of Rs.95.71 crores for a year for all States/UTs. This includes the payment of IR given to the Judicial Officers and also the benefits of 5th CPC scales. Details of financial implication, State-wise, are given in the appendix. The summary of the same is given below for immediate reference :

Estimated Financial Implications of New Scales of Pay to Judicial Officers			
Sl. No.	State / UT	Number of Judicial Officers	Additional Financial Burden (Rs. in Crores)

1.	Andhra Pradesh	672	4.14
2.	Assam	221	2.05
3.	Bihar	1648	11.60
4.	Goa	44	0.34
5.	Gujarat	640	4.98
6.	Haryana	266	2.23
7.	Himachal Pradesh	94	0.70
8.	Jammu & Kashmir	162	1.45
9.	Karnataka	632	4.10
10.	Kerala	382	2.53
11.	Madhya Pradesh	988	8.26

12.	Maharashtra	1250	8.60
13.	Manipur	30	0.33
14.	Meghalaya	8	0.11
15.	Mizoram	53	0.44
16.	Nagaland	22	0.22
17.	Orissa	457	3.72
18.	Punjab	301	2.45
19.	Rajasthan	761	5.60
20.	Sikkim	12	0.12
21.	Tamil Nadu	602	3.74
22.	Tripura	73	0.45

23.	Uttar Pradesh	2239	17.37
24.	West Bengal	773	7.16
25.	Delhi	419	2.84
26.	Lakshadweep	3	0.03
27.	Pondicherry	19	0.15
Total :		12771	95.71

15.102 We are not unaware of the fact that there are equally other important calls from other departments on the States' revenue, but as the Supreme Court has observed in the All India Judges' cases, the States should not make any grievance on the little hike in the emoluments of Judicial Officers which is as important as the other two organs of the State.

15.103 We have also made a recommendation by way of substantial relief to the States - in a separate chapter - that **the Central Government shall bear fifty per cent of all the expenditure of the Subordinate Courts**, including but limited to, the emoluments of the Judicial Officers, the Court Staff, and the infrastructure with proper furniture and fixture in Courts.

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**16. THE ADMINISTRATION OF JUSTICE IN THE STATES
SHOULD BE JOINT RESPONSIBILITY
OF
THE CENTRE
AND
THE STATES**

16.1 Administration of justice, constitution and organisation of all courts, except the Supreme Court and High Courts, was originally included in the State List under the Seventh Schedule to the Constitution. But, by the Constitution (Forty Second Amendment) Act, 1976, it has been brought to the Concurrent List. Entry 11A in the Concurrent List reads :

"11A. Administration of justice; Constitution and Organisation of all Courts, except the Supreme Court and High Courts."

16.2 Let us turn to the Constitutional provisions relating to Subordinate Courts :

Chapter VI Part VI of the Constitution provides for Subordinate Courts. The relevant Articles may be read :

"233. Appointment of district judges - (1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising

jurisdiction in relation to such State.

"(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment."

"234. Recruitment of persons other than district judges to the judicial service - Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State.

"235. Control over subordinate courts - The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

"236. Interpretation - In this Chapter -

(a) the expression "district judge" includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge;

(b) the expression "judicial service" means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge.

"237. Application of the provisions of this Chapter to certain class or classes of magistrates - The Governor may by public notification direct that the foregoing provisions of this Chapter and any rules made thereunder shall with effect from such date as may be fixed by him in that behalf apply in relation to any class or classes of magistrates in the State as they apply in relation to persons appointed to the judicial service of the State subject to such exceptions and modifications as may be specified in the notification."

16.3 It will be seen from the aforesaid provisions of the Constitution that the State Government has no control over the judges of District Courts and Courts subordinate thereto. It has no power either in their selection, appointments, posting, promotion, transfer, grant of leave or any one of their service conditions except the appointment is made in the name of the Governor in consultation with the High Court.

16.4 In sum, the Government has neither the power to interfere nor interdict the matters pertaining to appointment and service conditions of the Judicial Officers. The advice of the High Court in all such matters is binding on the Government. The Government, however, is liable to meet all the expenditure of the Subordinate Judiciary, including the infrastructure of Courts, quarters for Judicial Officers and their emoluments.

16.5 Similar is the position with regard to staff of the Courts. The Public Service Commission or the State Level Recruitment Committee selects them and High Court / District Judges would post them in different Courts. Their service conditions are regulated with the consultation of the High Courts.

16.6 Every State Government is pleading inability to meet the increasing financial burden of the judicial administration. Even the additional courts sought by the High Court are not sanctioned. The Courts in Moffusil places are located in dilapidated buildings, with no adequate furniture either for Judges or for lawyers. The old rickety furniture, is a sight to see in the Moffusil Courts. Such Courts, instead of awe inspiring to the litigant public, have become pathetic sight to see.

16.7 The Central Government recently has included the infrastructure of Courts as "planned item" to enable them to provide half of the expenditure required for the purpose and the States sharing the other half of the expenditure.

16.8 We thought that this partnership between the Centre and the States has improved the much needed infrastructure of Courts

and Quarters for Judicial Officers. But, we have been informed that, it is not so.

16.9 In order to ascertain the actual state of affairs of the conditions of Courts in all States, we invited the views of High Courts and State Governments by formulating the following Questions in our general Questionnaire :

61. Are the Courts at Tehsil/District Level are properly maintained and adequately furnished?
Please narrate the deficiency if any and suggest remedies.

61.2 Recently, the infrastructure of Courts has been made a planned item. To what extent, has this improved the situation?

16.10 The question-wise replies received from the respondents are briefly summarised herein below :

16.10.1 ANDHRA PRADESH HIGH COURT :

61. By and large yes. Repairs are being carried out by R&B Department as and when requisitioned by the Unit Heads. The High Court has also been taking up with the Chief Engineer (Building), Hyderabad for effecting repairs to the Court Buildings. Further the State Government has been providing a sum of Rupees one crore every year under MINOR WORKS. High Court is according sanctions for major repairs providing amenities such as additional office accommodation, water supply, toilet facilities, party sheds etc., in the Subordinate Court every year.

The reports from Districts reveal that the response from R&B officials for carrying out maintenance work is not prompt.

61.2 Construction of Court Buildings and Residential Quarters for Judicial Officers has been treated as a Centrally sponsored Scheme from the year 1993-94 onwards and the expenditure on the scheme is to be borne by the Central Government and the State Government on 50:50 basis. This measure has substantially helped in building up new Court complexes, residential

quarters.

16.10.2 GAUHATI HIGH COURT :

61. The Courts at the Munsiff/District level are not properly maintained. they are not properly furnished. Lack of maintenance of Courts is due to inadequate funds with the P.W.D. to maintain the Courts.

61.2 Although infrastructure of the Courts has been made a planned item in the Budget, the amount received by the State Government for the infrastructure of the Courts is not made available by the State Government promptly. As a result, any development in the infrastructure has to await till funds are received from the State Government.

16.10.3 PATNA HIGH COURT :

61. Not at all. Furniture are not provided at most of the places. Water supply position is not proper.

61.2 To no appreciable and perceptible extent.

16.10.4 DELHI HIGH COURT :

61. Majority of the Courts in Delhi are housed in courts building at Tis Hazari. There are 138 proper court rooms and 89 courts are in improvised rooms which were set up after converting the office room to meet the acute shortage of court accommodation. The improvised court rooms lack basic necessities of chamber and toilets. As a result a group of judicial officers have to share their toilet or use public/litigants' toilets. Even the lady judicial officers do not have chamber and toilet facility in improvised rooms. It causes great inconvenience and hardship to them. Most of the rooms are without proper light and air and are unhygienic.

Similar is the situation in Patiala House which was a residential building and it was converted into courts. Most of the court rooms are like improvised court room of Tis Hazari. They are very small, and dingy and without proper light and air.

Some furniture of course has been supplied to the courts and chambers of the judicial officers but it is not befitting to their status and it is far short of their need.

Above all over one lakh of litigants, lawyers and other public visit Tis Hazari Courts every day. Tis Hazari Court building which

was built in 1956, for the use of few courts, is now grossly inadequate for the present need. As a result public conveniences are also inadequate to meet the demand of lakhs of daily visitors creating insanitary and unhygienic conditions in the building. The problem is aggravated by poor maintenance of the building by the PWD. The demand for more accommodation for making proper court rooms, public conveniences etc., has fallen flat on the deaf ears of the Government.

Recently under the orders of Hon'ble Supreme Court some more rooms which were in occupation of civil administrative offices of the Government in Tis Hazari building were given but they have not solved the problem of shortage of court rooms etc., at all.

61.2 As far as Delhi is concerned, it has not made any change except that a new court complex has come up at Karkardooma. But more court rooms are needed in Tis Hazari and Patiala House Court complexes with all ancillary facilities.

16.10.5 HIGH COURT OF GUJARAT :

61. The Courts at district level as well as City level are not properly maintained nor adequately furnished. The Division Bench of Gujarat High Court had to pass orders directing the State Government to immediately provide necessary funds for the furniture, stationery, maintenance of the building etc. Even after directions of Court, no satisfactory steps have been taken by the Government to maintain court buildings or to furnish them adequately. The Government is always reluctant to part with money for the maintenance of the building, furniture, stationery etc., of the Courts. Many of the Courts do not have even the place for dias for the Presiding Officers.

61.2 Though infrastructure of the Court has been made a planned item, it has not worked satisfactorily. Nor has it improved the situation at all, though the Central Government is required to bear half of the costs of the Court Building. In fact, the State Government is not prepared to provide other half of the costs and this has resulted into stagnation.

16.10.6 HIGH COURT OF HIMACHAL PRADESH :

61. The Courts at District/Tehsil level are properly maintained and adequately furnished except the Courts at Divisional Headquarter at Mandi, where the Courts are housed in a very old building, which has virtually out-lived its life. The Court of Sub Judge at Jawali is housed in a rented private building. The Court of Sub Judge at Anni is housed in a Court room spared by the

Revenue Department and there is no proper accommodation for the office. A few other Courts are also housed in old buildings rendered unworthy of being used as Court/Office rooms. However, the process for construction of new Court buildings at such places has been initiated and the cases are on different stages. In the near future appropriate and adequate accommodation will be available to all the existing Courts.

The State Government shall provide all the necessary infrastructure for commencing the functioning of the Courts in any place and also provide all facilities necessary for the existing Courts to function properly.

61.2 Though in the recent past, visible progress has been made in providing infrastructure of Courts, however, during the last year for want of adequate funds, virtually no headway could be made for advancing the process of providing infrastructure of Courts at various places including even such places where the construction was near completion. Ignoring this exception, making of infrastructure of Courts a planned item has definitely led to improve the situation.

16.10.7 HIGH COURT OF JAMMU & KASHMIR :

61. The Courts are by and large furnished with meagre funds available with the High Court. However, these Courts are not properly maintained and adequately furnished by the State Government.

61.2 In the State of Jammu & Kashmir, it is not a planned item. As the Scheme is not being implemented in its true spirit and funds are not channelised to provide infrastructural facility for Courts, therefore, no improvement can be noticed in the situation.

16.10.8 HIGH COURT OF KARNATAKA :

61. The Courts at Taluk/District are not adequately furnished and the scale of furniture fixed for the Courts is inadequate and a proposal has been made for enhancement of furniture to the Courts.

61.2 Inclusion of infrastructure of Courts in the planned item is bound to improve the situation. However, desired result has not been achieved as sufficient funds are not provided in Karnataka. A proposal has been made for providing adequate infrastructure of Courts by sanctioning Rupees One Crore and the said proposal is pending before the Government.

16.10.9 KERALA HIGH COURT :

61. The Court buildings are not properly maintained nor adequately furnished. Most of such Court buildings are very old. Proposal for construction of buildings wherever found necessary is pending. Wherever land is readily available, administrative sanction has been recommended. Enough funds are not available and unless funds to the tune of a few hundred crores are immediately available, the proposals cannot be implemented. This is a major problem which has to be dealt with seriously.

The Courts are not adequately furnished. Old rickety chairs are a common sight in all the courts. Provision for infrastructural facilities to the courts should be made a plan item so as to make available to the courts a suitable and conducive working atmosphere.

61.2 Buildings are being constructed for Courts and quarters under the plan 50 per cent centrally sponsored scheme, subject to availability of land and allotment of funds in a phased manner. Because of financial constraints, the desired effect has not been achieved.

16.10.10 HIGH COURT OF MADHYA PRADESH :

61. No, because of lack of adequate funds.

61.2 Yet to be implemented in our State.

16.10.11 BOMBAY HIGH COURT :

61. No. In most of the Districts in Maharashtra, the Courts do not have adequate buildings and furniture.

61.2 The effects are yet to be felt.

16.10.12 ORISSA HIGH COURT :

61. Courts at Tahasil and District level are not properly maintained and adequately furnished. This is due to want of sufficient fund provided by the State Government.

61.2 After the infrastructure of courts has been made a planned item, now court buildings and residential quarters are constructed.

16.10.13 PUNJAB & HARYANA HIGH COURT :

61. The Courts at Tahsil/District level are not at all properly maintained. Neither there are proper court rooms nor sufficient furniture have been provided for court staff, lawyers and litigants nor there is any proper provision for toilets in court complexes. Most of the judges also do not have proper chambers. Generator sets have also not been installed in order to meet out the sudden failure of electricity.

61.2 Although the infrastructure of courts has been made a planned item, yet the results are far from satisfactory and it needs more attention to improve the situation.

16.10.14 RAJASTHAN HIGH COURT :

61. All the Courts at Tahsil and in the District are not properly maintained and adequately furnished. The Courts are not provided with adequate budget for furniture to be provided in chamber, court-room and staff-room. At many places sufficient space for chamber, court-room and staff-room is not provided.

In some of the Courts even under-trials are not provided proper place in the court premises. At so many places, litigant-sheds are not constructed by the State Government.

61.2 After making infrastructure of courts as a planned-item the situation has improved to a little extent and gradual process of improvement is going on in a phased plan which will take time.

16.10.15 HIGH COURT OF SIKKIM :

61. At present in this State new buildings have been constructed or are under construction. Central financial assistance properly utilised.

61.2 In this State the process is on. The situation is improving.

16.10.16 HIGH COURT OF MADRAS :

61. With the available Government funds, Courts are maintained but still more has to be done. Enough funds have to be allocated

considering Judiciary as one of the wings of State.

61.2 As the infrastructure of courts has been made a planned item, things have improved in getting funds from the Government.

16.10.17 ALLAHABAD HIGH COURT :

61. At Tehsil/District level, efforts are made to maintain and furnish the courts properly with whatever sum is made available to the court by the Government but for regular maintenance of residential and non-residential buildings it is required that P.W.D. or some other Government agency should undertake this work under the order of the Government.

61.2 After the infrastructure of Courts, has been made a planned item an overall improvement is being felt gradually.

16.10.18 CALCUTTA HIGH COURT :

61. The buildings neither properly maintained nor adequately furnished. Most of the buildings are worn out and some of them leak waters at the time of Rainy Season, as for example, in Alipore Criminal Court buildings. Court rooms are insufficient and stuffy. There is very scanty seating arrangement not only for the litigants but also for the lawyers in some of the Courts. Furniture are not at all sufficient. Some of the buildings are so much dilapidated as those are unfit for using as Court rooms although courts have to run therein. *There have been incidents of falling down of plasters of the ceiling missing the head of Judge.*

Adequate fund should be provided for remodelling the buildings by phased programme considering the urgency.

61.2 Some programmes have been taken up towards improvements of the situation to provide better infrastructure to the Courts in respect of the court building, residential quarters for the matter remained stalled for sizeable periods of time due to want of fund.

16.11 From the comments received from the High Courts, it will be clear that Court buildings, almost everywhere, are in a bad shape. They are poorly maintained with rickety furniture. Even after the infrastructure of Courts has been made a planned item, things have not substantially improved, barring in one or two States.

16.12 It is the uniform opinion of most of the High Courts that the State Government is always reluctant to part with money for the maintenance of the buildings, providing furniture, stationery etc., for the Courts and for construction of new buildings.

16.13 We, however, take it that it may not be deliberate design of the State Governments, but evidently due to the financial crunch.

16.14 Let us turn to the views of the State Governments.

THE STATE GOVERNMENTS :

16.15 All the State Governments, save Kerala and Maharashtra Governments, have reported that there is no deficiency in the infrastructure of Courts.

16.16 It seems to us that they appear to be blissfully ignorant of the pathetic condition of the Court buildings with miserable furniture and fixtures.

16.17 The Kerala Government and Maharashtra Government, however, are frank enough to admit that the funds crunch is the greatest problem to improve the infrastructure of Courts and Quarters for Judicial Officers.

16.18 We are of opinion, if things are allowed to continue in this manner, it is neither good for the judiciary nor for the litigant public. A lot of new Courts are required to be established by increasing the Judge strength in all cadres to clear the arrears and to meet the ever-increasing inflow of cases.

16.19 What then is the remedy?

16.20 There is no point in whipping the States alone.

16.21 We have adopted one set of Courts both for the States and Centre, unlike in the United States.

16.22 In the United States of America, there are two sets of Courts. There are Federal Courts for enforcement of Federal Laws. There are State Courts which are exclusively concerned with State Laws. The Federal Courts are maintained by the Federal

Government while State Courts are maintained by the State Governments. These Courts are functioning side by side in every State.

16.23 But our Courts are concerned with State Laws as well as Central Laws.

16.24 There are quite a large number of Central enactments, which we have set out in the list appended hereto as Annexure. It runs into a long list of about 340. The major Acts like Procedural Codes, Indian Evidence Act and Indian Penal Code may be common both to the States and the Centre. Some of the Acts may be obsolete, but bulk of the Central Laws remain live. The additions to that list are made every year by the Parliament.

16.25 This being the position, we fail to see why the State Governments alone be burdened with the financial liability of the Subordinate Courts.

16.26 Indeed, this question was repeatedly presented before us during the course of hearing. The representatives of the following State Governments have pleaded with us for recommending that the Centre should equally share expenditure on Subordinate Courts :

- (1) Sri Manish Gupta, IAS, Chief Secretary, Government of West Bengal.
- (2) Sri K. Mohan Chandran, IAS, Principal Secretary, Home Department, Government of Kerala.
- (3) Sri Sudhir Sharma, IAS, Principal Secretary, Department of Finance, Government of Tripura.
- (4) Sri K. Manoj Kumar, Joint Secretary, Government of Tripura.
- (5) Sri Sudhir Kumar, Secretary, Appointments, Government of Uttar Pradesh, Lucknow.
- (6) Sri Shiv Prakash, Joint Secretary, Department of Finance, Government of Uttar Pradesh, Lucknow.
- (7) Sri M.R. Hegde, Secretary, Department of Law, Government of Karnataka, Bangalore.
- (8) Sri M.L. Sharma, Additional Secretary (Home), Government of Himachal Pradesh, Shimla.

(9) Sri K. Pradeep Chandra, IAS, Secretary (Finance), Government of Andhra Pradesh, Hyderabad.

16.27 We find considerable force in their submissions. Efficient justice delivery system is sine qua non for maintenance of law and order. Speedy justice is one of the guaranteed fundamental rights to citizens. ***It must, therefore, be the joint responsibility of the Central and the State Governments to ensure that the judicial administration does not suffer from any handicaps.***

16.28 The Judiciary is not a heavy burden either on the State or the Centre. Unlike in other Departments, more than half of the amount which is spent on Indian Judiciary is raised from the Judiciary itself by means of Court Fees, Stamp duty and miscellaneous matters.

16.29 That apart, as we have highlighted in the "Preface" to our Report, the expenditure on judiciary in our country in terms of GNP is relatively low. It is not more than 0.2 per cent. In Korea, it is more than 0.2 per cent; in Singapore, it is 1.2 per cent; in U.K. it is 4.3 per cent; and in U.S.A. it is 1.4 per cent.

16.30 Therefore, we trust and hope that the Central Government will not make any grievance on our proposal.

OUR RECOMMENDATIONS :

16.31 For the reasons aforesaid and in the interest of strengthening and promoting the independence of the justice delivery system, we recommend as follows :

- 1) Each State must prepare a 5-Year Plan, to improve the existing infrastructure of Courts, construction of new Courts, providing furniture, fixtures, library etc., to all Courts and for construction of Quarters for all Judicial Officers.
- 2) ***The Central Government must share half of the annual expenditure on Subordinate Courts and Quarters for Judicial Officers.***
- 3) We have been told by the representatives of North Eastern States and Sikkim that about 90 to 92 per

cent of the expenditure in their States is met by the Central Government under the provisions of 'Special Category of States'. We make it clear that our aforesaid recommendation is without prejudice to the rights and privileges of the North Eastern States and the State of Sikkim.

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ANNEXURE: CHRONOLOGICAL LIST OF CENTRAL ACTS

17. ASSURED CAREER PROGRESSION SCHEME (ACP) AND FUNCTIONAL SCALE

17.1 During our preliminary study, we have received number of requests from the Judicial Officers that they should be accorded advance career progression scales.

17.2 In order to ascertain the views and remarks on this aspect, we have specifically provided the following Question in our general Questionnaire.

Q.21 In States like Madhya Pradesh and West Bengal, there are Selection Grade, Supertime Scale and 'Above Supertime Scale' related to number of years of service in the cadre of District Judges.

In the State of Andhra Pradesh, the Civil Judges (Junior Division) are entitled to a time-bound scale after 8 years of service and a special promotional post in a higher scale after 16 years of service, if stagnated in the same post. In Haryana State, there is senior scale after 5 years and Selection Grade after 12 years of service. In Punjab State also such scales are given after 8 and 18 years of service. In Uttar Pradesh, there is higher scale after 5 years of service.

In West Bengal, Himachal Pradesh and Madhya Pradesh, I.A.S. Pay Rules of 1954 as amended up-to-date are made applicable to Higher Judicial Service.

What are your suggestions for allowing time-bound pay scales for career progression. Should it be provided to every cadre? If so, please justify with cogent reasons and suggest such time-bound pay scales and eligibility period for such entitlement.

17.3 The High Courts of Andhra Pradesh, Patna (Bihar), Himachal Pradesh, Karnataka, Bombay (Maharashtra), Orissa, Rajasthan, Sikkim, Tamil Nadu, Allahabad (Uttar Pradesh) and Calcutta (West Bengal) have favoured introduction of 'Career Progression Time Bound Pay Scales' to prevent stagnation due to absence of promotional avenues. They have suggested that the benefit of higher time bound scale should not be automatic irrespective of past record of service; there should be a screening committee to examine the individual cases to evaluate the performance and those who come up to the expected level would be given such benefits.

17.4 However, the High Courts of Delhi, Gujarat, Kerala and Madhya Pradesh are against giving any 'Time Bound Promotion Scheme', since according to them, such benefits would generally tend to develop complacency in the Officers.

17.5 Almost all the Service Associations have pleaded for time bound pay scales at each interval of 5 to 10 years in each cadre.

17.6 It may be stated that an ACP system is intended to assure pay progression to Officers within the time-bound schedule. The scheme is designed to allow an officer the pay upgradation when functional considerations do not permit promotion in the cadre-hierarchy. With ACPs, the Officer moves into the next higher scale. The basic hypothesis here is that a person of considerable experience needs to be suitably rewarded to keep his tempo of work with high moral values and ought not to be allowed to stagnate or degenerate.

17.7 The Commission has noted that there is lack of promotional opportunities to Judicial Officers in view of the limited number of posts. It is, therefore, necessary to provide them some form of 'in-situ' arrangements on a time-bound basis.

17.8 At the outset, the ACP, which we intend to propose for the first two cadres, is not linked to the availability of the

promotional posts. It is not restricted to the percentage of posts in the cadre. Nor it is on functional basis. The scheme is intended to afford reasonable opportunity to all the Officers in the grade to get financial upgradation in a time-frame.

17.9 OUR RECOMMENDATION :

A. Civil Judge (Junior Division) :

We recommend the following two Assured Career Progression Scales to the Civil Judge (Junior Division) :

- i) Rs.10750-300-13150-350-14900 after 5 years of continuous service from the date of entry.
- ii) Rs.12850-300-13150-350-15950-400-17550 after completion of another 5 years of continuous service.

We have recommended the second ACP with a definite purpose that a Civil Judge (Jr. Divn.) at the end of the 10th year of continuous service, shall be able to get the initial pay scale of the Civil Judge (Sr. Divn.) to avoid frustration due to stagnation, if there is no promotion forthcoming to him in the meanwhile.

B. Civil Judge (Senior Division) :

We recommend the following two Assured Career Progression Scales to the Civil Judge (Senior Division):

- i) Rs.14200-350-15950-400-18350 after 5 years of continuous service.
- ii) Rs.16750-400-19150-450-20500 after completion of another 5 years of continuous service.

Here again, we have recommended the second ACP to the Civil Judge (Senior Division), which is equivalent to the entry level pay scale of the District Judge to avoid disappointment and frustration for want of promotional opportunity.

This conferment of benefits by way of ACPs should not be automatic but on the appraisal of their work and performance by a Committee of Senior Judges of the High Court constituted for the purpose.

We further recommend that these financial upgradations should not be provided to those who have declined regular promotion on

any personal ground.

We also recommend that in case where an Officer in the cadre of Civil Judge (Junior Division) or Civil Judge (Senior Division) who has been provided the ACP, refuses functional promotion to the higher cadre in his turn of seniority and merit, he shall be reverted to the original pay scale.

C. District Judges:

We recommend the following financial upgradations on functional basis:

i) Selection Grade Scale of Rs.18750-400-19150-450-21850-500-23850.

This scale would be available to 25% of the cadre posts and would be given to those having not less than five years of continuous service in the cadre.

ii) Super Time Scale of Rs.22850-500-24850.

This Scale would be available to holders of 10% of the Selection Grade District Judges and would be given to those who have put in not less than three years of continuous service as Selection Grade District Judges.

We recommend that both these scales be given on the assessment of merit-cum-seniority.

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18. DEARNESS ALLOWANCE - A PERSPECTIVE

18.1 Dearness Allowance (DA) is an allowance paid to employees to compensate them for erosion of real income / wage due to inflation, which they were getting on a particular bench-mark date. This bench-mark date is generally the date from which a pay structure / a set of pay scales is given effect to.

18.2 The increase in the cost of living and the consequent erosion of income is measured in terms of a consumer price index number and, DA to be sanctioned to employees is determined on the basis of the percentage increase in that index or the point-

factor system.

18.3 The very concept of DA is a post-Second World War phenomenon. Initially, the frequency and quantum of DA given were more or less on an adhoc basis, by way of response to demand of employees for wage increases to mitigate their hardship. Later on, the payment of DA was linked to a Consumer Price Index number. Consequently, a formula came to be evolved, with reference to :

- a) the basis for computation of increase in cost of living,
- b) the frequency of DA revision and
- c) the extent to which neutralisation of such increase would be given.

18.4 Periodical Committees / Commissions were constituted in the past by the Central Government to examine the question of payment of DA to the employees. The Committees' / Commissions' recommendations were generally accepted and implemented by the Government of India and the State Governments also followed it.

18.5 The III Central Pay Commission (CPC) recommended payment of DA whenever the CPI rose by 8 points over the index of 200 (with base 1960 = 100). This principle was changed in 1986 as per the recommendations of the IV CPC. The IV CPC recommended the grant of DA on a 'percentage system' of the basic pay.

18.6 Similarly, the extent of neutralisation of price increases given to various categories of employees has also undergone change from time to time. However, the general pattern adopted, all over the country is to give the benefit of 100% neutralisation to the lower categories of employees, with tapering scale of neutralisation to higher categories of officials. The extent of neutralisation granted with effect from 1-1-1973 (based on the Report of III CPC) ranged from 100 per cent to 35 per cent. But, upon the recommendation of the IV CPC, this method of neutralisation has been altered with effect from 1-1-1986.

18.7 As per the recommendation of the IV CPC, DA was admissible twice a year, that is, on 1st January and 1st July and each instalment of DA was calculated with reference to the percentage increase in the 12 monthly average of All India Consumer Price Index (AICPI) (base 1960) over the average index of 608, which was the base for the pay scales recommended by IV CPC. Thus

the extent of neutralisation based on the recommendation of IV CPC ranged from 100 per cent to 65 per cent. This system of tapering scale of neutralisation was rested on the assumption that employees drawing higher salary would be able to absorb the impact of price rise to certain extent, but lower categories of employees need full protection in the interest of social justice, since they cannot withstand the effects of price-rise.

18.8 However, it may be noted that even 100 per cent neutralisation may only protect the real value of wages of employees as on a fixed, earlier bench-mark date, but it does not add to their real income. Similarly, the higher salaried officials would feel the pinch of erosion in their real income on the lower percentage of neutralisation. Besides, over a period of time, such tapering neutralisation of DA would seriously distort the relativity of pay scales that have been determined after taking into account factors like qualifications, training, nature of work, degree of responsibilities etc.

18.9 The anomaly in the differential neutralisation has been highlighted in the report of the Karnataka IV Pay Commission in 1992, of which, the Chairman of the present Commission was also its Chairman. There, the IV Karnataka Pay Commission observed :

"We are highlighting these issues to bring out the unfairness which is inherent in the present scheme of neutralisation of DA for price rise. We have refrained from making any specific recommendation in this regard mainly because the scheme has been evolved on All India basis and the State Government has adopted it. We only hope that the future Pay Commission appointed by Government of India will take note of the drawbacks in the scheme of neutralisation of DA for rising price and formulate a more objective scheme based on fairness."¹

18.10 The V CPC has also realised the injustice in the graduated scale of neutralisation formulae. It has observed :

"Inflation neutralisation on a graduated scale in the present circumstances will be anachronistic and unduly unjust to senior officers.

It went a step further and said :

" the Government's conscious intervention in removal of the unjust practice of differential neutralisation of

DA is a must. Accordingly, we recommend that inflation neutralisation be made uniform at 100 per cent at all levels."

1. Report of the Karnataka Fourth Pay Commission, Chapter XV, page 432-433.

18.11 The V CPC, among other things recommended that AICPI for Industrial workers to be continued as the basis for the purposes of calculating DA and the existing practice of using 12-monthly average of AICPI for calculating DA also to be continued.

18.12 The Government of India and also the State Governments in general have accepted and implemented the principles enunciated by the V CPC.

18.13 We consider that the same principle of neutralisation should be extended to Judicial Officers also.

OUR RECOMMENDATION :

18.14 We recommend that the same DA formula as being implemented at present to the Central Government employees be followed in the case of Judicial Officers, in every State / UT.

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19. ALLOWANCES, AMENITIES AND ADVANCES *

ELECTRICITY AND WATER CHARGES :

19.1 The Judicial Officers do the office / court work even in their residence. So, the High Courts of Patna, Gujarat, Himachal Pradesh, Karnataka, Madhya Pradesh, Punjab & Haryana, Rajasthan, Sikkim, Uttar Pradesh and West Bengal have suggested that electricity and water charges relatable to the residential office must be borne by the State.

19.2 Almost all the Service Associations have urged the Commission to recommend that the entire electricity and water charges payable by the Judicial Officers are to be borne by their State Governments.

19.3 But this has been opposed by most of the State Governments.

OUR RECOMMENDATION :

19.4 We have examined this matter carefully. We consider that since Judicial Officers are required to perform the judicial work / administrative work in home office also, it is necessary that certain portion of electricity and water charges should be borne by the State Government.

* The directions issued by the Supreme Court with regard to allowances and other related matters in ALL INDIA JUDGES' ASSOCIATION CASE ((1993) 4 SCC 288) are mere aids and incidental to and supplemental of the main direction and intended as a transitional measure till a comprehensive National Policy is evolved. Each High Court / State Government can, therefore, adopt these recommendations of the Commission by appropriate policy rules framed and thereupon, the directions issued by the Supreme Court need not be followed. [See: (1999) 4 SCC 235].

19.5 We accordingly recommend that atleast 50% of charges of electricity and water consumed by the concerned Judicial Officer in his residential accommodation be paid by the State Government.

19.6 The payment by reimbursement shall be made to the Judicial Officers on quarterly basis by the Controlling Unit Officers i.e. District Judge, upon production of the receipts for having paid the bills.

* * * * *

HOME ORDERLY

19.7 The system of providing Orderlies in the residence of Judicial Officers is prevalent in some of the States like Andhra Pradesh, Karnataka, Maharashtra, Orissa, Tamilnadu. What is being done is one of the court Peons / Attenders is posted at the residence of Judicial Officers. But there are complaints that those Attenders are being misused and treated as regular domestic servants. In many cases, the Judicial Officers invite trouble when such attendants resist anything but office-related work. This has led to departmental enquiry against the Judicial Officers. Some have even lost the chances of their promotion. Such incidents are highlighted in Newspapers much to the embarrassment of the officers.

19.8 In some States, the Judicial Officers are paid cash allowance from Rs.500/- to Rs.750/- to engage a servant of their own.

19.9 Against this background, the Commission had formulated the following question :

"Are the Judicial Officers provided Home Orderly? Instead, would you suggest cash payment to Judicial Officers to engage Home Orderly of their choice?"

19.10 The replies received may be summarised as follows :

19.10.1 Most of the High Courts have suggested that the Judicial Officers be allowed to engage an Attender (as Home Orderly) of their choice with corresponding reduction in the number of office attenders.

19.10.2 Even the Service Associations have urged that instead of official home orderly, all Judicial Officers be paid in cash equal to the emoluments of a Group 'D' official to engage a servant of their own choice. He should not be governed by the Service Rules or official control.

19.10.3 We have considered carefully the suggestions and comments of the High Courts / Associations and State Governments on this issue. In our opinion, the official Attender should not be misused by the judicial officers in their own interest. We consider that the judicial officers must be free to engage a servant of their choice for all types of work at the Home and Home Office:

19.11 OUR RECOMMENDATIONS :

a) Payment of Home Orderly Allowance in lieu of Home Orderly (called as Home Orderly Allowance) be paid to every Judicial Officer with liberty to appoint a person of his choice who would be wholly under his control. Judicial Officers are, however, advised to appoint a Home Orderly-cum-Driver or preferably an Orderly who knows driving so that his services may be utilised even for driving in case of need, if the Officer owns a car.

b) Every Judicial Officer be paid Home Orderly Allowance of Rs.2500/- p.m. This allowance is approximately equal to only the basic pay of a Group 'D' Government employee who is also entitled to D.A. and other allowances. Since we are not recommending Home Orderly to be appointed as Government Servant, we have

recommended a consolidated sum of Rs.2500/-.

c) Neither the High Court nor the State Government is responsible for the regularisation / absorption of such person and he remains in service only as long as the concerned Officer requires him / her.

d) The Judicial Officer must every month produce to the office, the name and address of the person appointed as Home Orderly and the acknowledgement of the person for having received the salary.

e) The Home Orderly Allowance shall be drawn by the Judicial Officer along with his pay and other allowances in his monthly pay bill.

* * * * *

NEWSPAPER / MAGAZINE

19.12 Supply of Newspapers / Magazines to Judicial Officers is intended to widen their wisdom since they mainly confine themselves to Law Journals, Court files - to the exclusion of the world wide information. Besides, the Newspapers are the windows through which one could keep himself abreast with the socio-economic life of the community. Sometimes the Newspapers give the substance of the leading judgements of the Apex Court and High Courts.

19.13 It is in this backdrop, the Commission had set out Question No.27 which reads as under :

Q.27. It is suggested that one National and one local newspaper be provided to every Judicial Officer at the cost of the State. Do you justify this proposal?

19.14 The replies received from all High Courts except the High Court of Patna are in favour of giving the said facility to Judicial Officers. Indeed, they suggest that one magazine also should be provided to the Judicial Officers. But the High Court of Patna has indicated that only Controlling Officers should get this benefit while the High Court of Kerala has not furnished its comments.

19.15 All the Service Associations have urged to recommend free supply of Newspaper / Magazine to all Judicial Officers.

19.16 Even the State Governments, viz., Andhra Pradesh, Gujarat, Goa, Karnataka, Kerala, Maharashtra, Manipur, Meghalaya, Nagaland, Sikkim and Tamilnadu have favoured the free supply of Newspaper / Magazine.

19.17 The State Governments of Uttar Pradesh, West Bengal etc., have stated that as per the directions of the Apex Court, the Judicial Officers are already supplied with Law Journals or paid cash in lieu of that, and therefore, they are not in favour of free supply of Newspaper to them in view of limited resources of the State.

19.18 It may be stated that certain level of Officers in the State and Central Governments are provided with Newspapers / Magazines at State cost.

19.19 A proficiency in one's regional language is imperative for any citizen. At the same time, we should not lose sight of the necessity of proficiency in English as almost all Acts, State and Central and Law Reports and Commentaries, are in English Language.

OUR RECOMMENDATION :

20. We recommend that all Judicial Officers be supplied Newspaper / Magazine at State cost as indicated below :

21.

Level of Officer	Newspaper	Magazine
Civil Judge (Jr. Dn.)	One National and one Regional	One
Civil Judge (Sr. Dn.)	One National and one Regional	One
District Judge	One National and one Regional	One

19.21 The Judicial Officer may get the Newspaper / Magazine as per his entitlement through his local hawker upon payment in the first instance, and the Officer could claim reimbursement from the office after producing the original bill.

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CITY COMPENSATORY ALLOWANCE (CCA)

19.22 The Commission has circulated the following question seeking opinion on payment of CCA:

Q.28 : What is the principle upon which the City Compensatory Allowance is paid? Is there any need to change the basis of classification of Cities and the rates of city compensatory allowance. The allowance being given as compensation of certain cities' problems, should it not be uniform for all officers working in such cities?

19.23 The following is the summary of the replies received from the respondents :

- i) Most of the High Courts / State Govts. / Service Associations are in favour of a uniform rate of CCA for a particular city.
- ii) They want CCA on par with Central Government Rules. Some of them have suggested to adopt the recommendations of V C.P.C.
- iii) Some of the Associations have suggested the pattern of CCA to be adopted on percentage basis instead of the slab system.
- iv) It is also suggested by the High Court of Bombay that CCA should be fixed on the basis of cost of living index of the City instead of population. The same view has been expressed by the Maharashtra State Judicial Service Association.

19.24 The rationale behind the grant of City Compensatory Allowance is that while the minimum wage and other salaries are decided on average cost of living index and the DA component compensates the erosion based on the similar average, there are certain cities where the cost of living is higher, for which separate allowance is provided. The present scheme adopted by various State Governments follows the pattern of Govt. of India.

19.25 We have perused the discussion / recommendation of the V C.P.C. Though the ideal situation for classification of cities would be to link the payment of CCA to the difference between all India and regional price indices, this does not appear to be feasible since the AICPI and regional price indices are not comparable as they are based on different weighing diagrams. In this situation, the population criteria has to be continued for the purpose of classification of cities.

OUR RECOMMENDATION :

19.26 Each State Government has adopted classification of Cities based on the population criteria best suited to their local conditions. The C.C.A. rates vary from State to State. Since C.C.A., is a compensatory allowance peculiar to some cities for special reasons indicated elsewhere, it is not appropriate to provide separate C.C.A. rates to Judicial Officers who are working in the same atmosphere as other Government servants. Therefore, we recommend C.C.A., at the same rates payable to respective State Government employees.

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ROBE ALLOWANCE

19.27 Prescribed uniform for Judicial Officers has been made mandatory. The Judges cannot come to the Court with the dress of their own choice. They must wear the uniform prescribed by the High Court. It has got its own advantage. It may not add colour to the Judge, but it will certainly create an awe inspiring atmosphere in the Court. The uniform generally consists of black coat, white shirt, black gown, necktie / band and white or grey trousers. Now-a-days, this uniform is pretty costly. So, we have received requests from all sides for what is termed as 'Robe Allowance'.

19.28 The Commission invited the views in this regard from all concerned by circulating the following question:

Q.No.29 : Some Associations want payment of Robe Allowance to Judicial Officers. There are views to the contrary also. What is your considered opinion?

19.29 From the replies received from the Respondents, it will be seen that already in Himachal Pradesh, Orissa, Rajasthan, Tripura, Uttar Pradesh, West Bengal and Union Territory of Delhi, Robe Allowance is provided to Judicial Officers. The details are furnished as under:

a)	Delhi	An initial payment of Rs.5550/- and maintenance of Rs.300/- per month.
b)	Himachal Pradesh	An initial amount of not exceeding Rs.1150/- towards cost of one black coat length, one black zodiac neck-tie and also the stitching charge is paid to all Judicial Officers. In addition, the District / Addl. Dist. & Sessions Judges are being supplied with black silk gowns.
c)	Orissa	Once in every two years, robe allowance at the rate of Rs.1200/- upto the rank of Chief Judicial Magistrate is being provided.
d)	Tripura	Rs.200/- per month is being paid as outfit allowance.

e)	Uttar Pradesh	Rs.300/- per month is being provided as robe allowance to all Judicial officers.
f)	West Bengal	Rs.500/- for every alternative year as robe allowance is being given to Judicial Officers.

19.30 The High Courts of Andhra Pradesh, Delhi, Punjab & Haryana, Uttar Pradesh, Bihar, Himachal Pradesh, Jammu & Kashmir, Madhya Pradesh, Orissa, Rajasthan, Sikkim and Tamil Nadu have suggested payment of robe allowance. Some of the High Courts have even quantified the amount, both initial payment and maintenance allowance.

19.31 But the High Courts of Gujarat, Karnataka, Bombay and Calcutta are against granting robe allowance to Judicial Officers.

19.32 The High Courts of Kerala and Gauhati have not expressed any opinion.

19.33 The Governments of Uttar Pradesh, West Bengal, Tripura and Lakshadweep Administration have favoured payment of robe allowance. But the Governments of Andhra Pradesh, Kerala and Sikkim are against providing such allowance.

19.34 When we turn to Service Associations, they are uniformly vociferous. They say, they cannot afford to meet the high cost of the uniform and the prohibitive cost of stitching.

19.35 The opinion of the former Judges is divided in this respect. Mr. Justice Ranganatha Misra, former CJI and Mr. Justice R.K. Mahajan (Rtd. Judge, Allahabad High Court) are for giving robe allowance. But Mr. Justice Sarkaria (former Judge, Supreme Court), Mr. Justice P.P. Bopanna (Rtd. Judge, Karnataka High Court) are against granting any robe allowance to Judicial Officers. Mr. B.S. Sekhon, former Law Secretary, Government of India is also against it.

19.36 It may be interesting to note the reasons given by certain High Courts for denying Robe Allowance to Judicial Officers.

19.37 The High Court of Gujarat has stated that the cost of clothes and stitching charges are increasing day by day. But the same has to be suffered by all citizens of the country and not by Judicial Officers alone. Normally Robe Allowance is granted to Class-IV employees and the demand for Robe Allowance can hardly be justified.

19.38 The High Court of Karnataka is of the opinion that it would not be befitting for the Judicial Officers to either claim or receive robe allowance.

19.39 The Bombay High Court has observed that in view of status and revised pay scales of Judicial Officers, it is not necessary to grant Robe Allowance.

19.40 The High Court of Calcutta, is against payment of any amount as Robe Allowance, regard being had to the dignity and prestige of the Judicial officers, though presently, they are paid Rs.500/- once in two years.

19.41 IN DELHI JUDICIAL SERVICES ASSOCIATION (REGD.) & ANOTHER vs. DELHI ADMINISTRATION AND OTHERS¹, the High Court of Delhi has considered the claim of the Delhi Judicial Officers for Robe Allowance and has ordered initially a lumpsum amount of Rs.5500/- and to pay every month a sum of Rs.300/- as dress allowance, by observing thus :

1. 1993 (3) SLR 583.

"It is undeniable that petitioners in the performance of their duties as judicial officers have to wear the dress as prescribed by High Court. There cannot be two opinions on that. This aspect it appears has not been properly appreciated by the Central Government and its argument that it could not be said that the petitioners would be able to discharge their duties more efficiently if they were supplied uniform by the Government or they were paid allowance for the same would appear to be rather irrelevant and devoid of reason.

"The Officers of the Delhi Judicial Service have to be provided with uniform and allowances for the maintenance of the same. It is obligatory for them to wear the dress as prescribed by Rules and Orders of this Court. We have not been able to find out as to what amount towards cost of dress and maintenance is paid to judicial officers by other States. It is not clear to us as to on what basis the State of Bihar is paying Rs.75/- per month as "gown allowance". We also do not know since when this amount is being paid. This gives us no guidance. As far as State of U.P. is concerned when the cost of books and clothes is spiraling the allowance of Rs.300/- p.m. paid to judicial officers there cannot have any bearing for the officers in Delhi where the cost of living is undeniably on the higher side. We can take judicial notice of the fact that the costs of law books or for that matter any books are so high that for a sum of Rs.300/- one cannot buy even a single good law book. We have also examined the recommendations of the Pay

Commissions, particularly the Fourth one which have been reproduced above. These recommendations are of the year 1986. We cannot, however, compare the uniform for the Armed Forces with that prescribed for the judicial officers in the discharge of their respective duties. Judicial Officers are expected to be properly dressed as per rules and we do not think any period be fixed for buying a new dress for them. They should themselves change the dress as and when the need arises.

"Considering all these aspects of the matter, we are of the opinion that all the judicial officers be given a monthly allowance which shall be towards maintenance of the dress and also be enough for them to purchase dress out of that and not that they should be provided further cost of dress every three or five years. The break up of cost of clothes and stitching charges as given in the affidavit of Mr. S.K. Tandon and as mentioned above have not been disputed before us as no affidavit in reply thereto has been filed. We are of the opinion that all judicial officers who have been appointed to the service should be paid initially a lumpsum amount of Rs.5500/- and then they should be paid every month a sum of Rs.300/- as dress allowance for the purpose aforementioned."

19.42 IN STATE OF RAJASTHAN & OTHERS vs. RAJASTHAN JUDICIAL SERVICE OFFICERS ASSOCIATION AND ANOTHER², the Supreme Court has deprecated the practice of High Courts making orders regarding the grant of Robe Allowance. The case before the Supreme Court arose in this way :

19.43 Originally, as per the State Government Notification dated 18.9.1992, Judicial Officers of Rajasthan were paid Dress Allowance of Rs.1500/- once in every three years with effect from 1.1.1992. Not being satisfied with that allowance, Judicial Officers moved the High Court in a Writ Petition claiming higher Dress Allowance. The Rajasthan High Court directed the State to pay to all Judicial Officers a lumpsum of Rs.8500/- towards Dress Allowance and thereafter pay Rs.300/- per month towards the maintenance of the dress. The High

2. Civil Appeal No.54 of 1997 disposed of on 24 May 1999.

Court also directed the State to consider revision of this allowance every four years, looking to the escalation in prices. Challenging the decision of the Rajasthan High Court, the State preferred an appeal to the Supreme Court in Civil Appeal No.54 of 1997.

19.44 The Supreme Court, after considering the matter and other relevant decisions on the question, observed :

"Whether a separate allowance for dress should or should not be granted also depends upon the total pay packet of the officer, his rank and status in society and whether in the context of his overall emoluments, it is necessary to give him a separate allowance. Employees in Class IV are normally given these allowances because their pay packets are perceived as at the lowest levels. One cannot ipso facto assume that the same logic will apply to Judicial Officers until we have an overall examination of their service conditions and a report from the National Judicial Pay Commission. In the judgments which were cited, this Court felt compelled to intervene only to ensure that proper functioning of the Judicial Officers was not affected. Unless the concerned service condition can be perceived as seriously affecting proper discharge of judicial duties, the High Court should not issue a mandamus directing the State to pay certain amounts to the Judicial Officers. [Underlining is ours]

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XX XX XX

"In the present case, looking to the parameters laid down by the Constitution and all the above decisions, the quantum of dress allowance or kit maintenance allowance was not required to be determined by the High Court in the manner in which it has done. "The impugned judgment of the High Court, therefore, cannot be sustained. It is, however, pointed out by the appellants that in November 1998, the State Government has decided to increase the uniform allowance from the existing rate of Rs.1500/- to Rs.3000/- in a block of three years. Learned Counsel appearing for the State of Rajasthan has also stated before us that the State will pay the increased allowance as specified in its letter of 20-11-1998 addressed to the Advocate-on-Record by the Principal Secretary to the Government and issued by the Finance Department. The appellants are directed to pay the uniform allowance of

Rs.3000/- in a block of three years accordingly.

"The appeal is allowed with the above direction. There will, however, be no order as to costs."

19.45 It is, therefore, now necessary for us to consider the matter regarding the Robe Allowance in all aspects; First, we may examine whether it is necessary to grant robe allowance to judicial officers; second; if so, how much it has to be allowed?

19.46 As we have made it clear in our Question No.29. there are two views on the question of granting robe allowance. Those who are against the proposal are of opinion that the judicial officers hold high and respectable posts and they should not demand dress allowance as Class IV servants. Nor they could be compared to the Military or Police personnel. It is also stated that the increasing cost of cloth and stitching should be borne by them like the general public.

19.47 The other view is that it has become quite expensive and hard to bear the cost of the prescribed dress and since it is compulsory it is necessary that they should be provided for.

OUR RECOMMENDATION :

19.48 We have carefully considered the rival contentions. We have also seen some of the judicial officers with torn coat and wornout neck-tie, particularly at the lowest cadre. It is a pity to see them with such shabby dress. In one Bar Association, which I have visited, I was informed by the judicial officer who is known for his honesty and integrity, that he cannot afford to buy decent dress to his wife and children and how he would be justified to make such purchase for himself.

19.49 That apart, "dress is an index of man's character". The clean and decent dress is also a part of the disciplined life. It also gives satisfaction. The judicial officers cannot afford to be shabbily dressed whether on the dais or off the dais. Particularly, he is a centre of gravity in the Court room, if not a centre of attraction. It is, therefore, necessary that he should be decently dressed.

19.50 Some High Courts have made rules that Judicial Officers whenever they want to see the Judges of the High Court must come with full suit. This order is made compulsory even in summer with exorbitant heat.

19.51 We are, however, concerned only with uniform for Court work.

19.52 The dress has become pretty costly. In fact, our Officers of the Commission have physically visited certain standard retail shops at Bangalore and collected necessary data relating to the retail price of clothing. The details are furnished below:

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RAYMONDS		
1.	Stitching charges	Rs.1600-00
2.	Stitching charges	Rs. 180-00
3.	Stitching charges	Rs. 80-00
4.		

GWALIOR		
1.	Stitching Charges	Rs. 1,600-00
2.	Stitching Charges	Rs. 180-00
3.	SHIRT @ Rs. 115/-	Rs. 288-00
	Stitching Charges	Rs. 80-00
4.	ORDINARY GOWN	Rs. 800-00
	TOTAL :	Rs. 4,465-00

19.53 It may be mentioned that the stitching charges vary from city to city markedly. However, the normal rate for stitching has been incorporated in the cost-structure. Keeping in view the above, we recommend that a lumpsum amount of Rs. 5,000/- should be paid to every Judicial Officer, once in five years as robe Allowance.

19.54 We are however, not in favour of recommending what may be termed as 'dress maintenance allowance' or 'kit maintenance allowance'. It is expected that those who wear the uniform are required to maintain it properly and neatly.

* * * * *

CONVEYANCE

19.55 The Apex Court in the ALL INDIA JUDGES CASE¹ has, inter alia, observed:

"We shall now deal with the claim for transport. In most of the States the District Judge has been provided a motor car and in some of the States the Chief Judicial Magistrate is also provided with such transport, be it a car or jeep. There are still some States like Rajasthan, Haryana and Madhya Pradesh where provision of a car for every district judge has not yet been made. We direct that every District Judge should be provided with a car by March 31, 1992, and it shall be the obligation of the other States where such facility has not been provided to ensure the same within the time limit.

"The chief judicial magistrate is a touring officer apart from doing trial work as a magistrate. Mandate of the Code of Criminal Procedure requires him to undertake some touring. The quality of criminal justice administration would very much depend upon the mobility of the Chief Judicial Magistrate. We, therefore, direct that in such States and Union Territories where provision of independent transport for the Chief Judicial Magistrate has not been made, the same should be done by September, 30, 1992. We are further of the view that in stations with more than four judicial officers a common transport should be provided for the purpose of taking them from the residence to the Court and back and meeting their other official purposes and such vehicle should be placed under the control of the seniormost officer in the pool. The arrangement should be that for every five officers, there should be a vehicle. Provision for this aspect should be made by March 31, 1993. This direction has become necessary as judicial officers should not be forced to travel along with litigants and lawyers. In many sensitive cases, records are carried by them. In some disturbed areas,

1. (1992) 1 SCC 119.

instances of harassment to judicial officers taking advantage of their using common transport have come to light. We direct that every State and Union Territory would file a compliance report in the Registry of this Court in respect of these three aspects within one month from the expiry of the outer limit indicated for each of them.

"There are several outlying Courts where the number of officers would not be more than five. We do not intend to provide any independent transport for them but such officers who ask for loan for purchase of a two wheeler automobile should immediately be provided the same. Appropriate funds should be made available for such purpose. A pool car should have 60 litres of petrol per month and a judicial officer owning a scooter would be entitled to an allowance of Rs.200 per month."

19.56 In the Review Judgment², the Apex Court modified the aforesaid directions as under:

"It is the principal District Judge at each headquarters or metropolitan towns as the case may be, who will be entitled to an independent vehicle. This will equally apply to the Chief Judicial Magistrate and the Chief Metropolitan Magistrate. The rest of the Judges and Magistrates will be entitled to pool-vehicles one for every five judges for transport from residence to Court and back - and when needed, to loans for two wheeler automobiles and conveyance allowance. The State Govts / UTs are directed to provide adequate quantity of free petrol for the vehicles not exceeding 100 litres per month in consultation with the High Court".

2. (1993) 4 Sec 288.

19.57 The Commission on a preliminary discussion has received several grievances from the judicial officers and the High Courts. Hence, the Commission formulated the following questions seeking views from the concerned :

Q.No.30 : The Supreme Court has observed that barring District Judges / Chief Judicial Magistrates / Chief Metropolitan Magistrates, the rest of the Judges should be provided with pool vehicles - one vehicle for five Officers. Has this been implemented in your State / UT? Is there any problem or inconvenience in this method of transportation? Opinions and suggestions on this matter are welcome.

Q.No.31 : If a Judicial Officer owns a car, how much petrol allowance may be provided for the use of his car for office purposes?

19.58 Replies received from the High Courts, Service Associations and state Governments are to the following effect :

19.59 All the High Courts have reported that the direction of the Apex Court with regard to provision for conveyance to District Judges and Chief Judicial Magistrates including common / pool vehicle has been complied with / implemented. But some have pointed out the following practical difficulties with regard to pool vehicle :

- 1) The court buildings and residences of the judicial officers are scattered over the length and breadth of the city. For example, in Delhi and Lucknow, Courts are situated at different and distant places and provision of 100 litres petrol per month is inadequate and thus causes practical difficulty in use of pool vehicles.
- 2) There is enormous wastage of time in collecting and carrying five judges in a trip of the vehicle from residences to the Court houses and back. If a vehicle is to make more than one trip, then some officers have to come too early to the office while others reach late. Similarly, for the return journey in the evening, if an officer is held up in a case for recording of evidence or hearing of lengthy arguments - to accommodate either witnesses or lawyers coming from outstations - then that officer has either to leave the court work incomplete or to make some alternate arrangement because, most of the vehicles start at fixed times without waiting for all of them. Thus, the present arrangement of fixed timings for groups of officers causes not only personal inconvenience but also adversely affects the overall efficiency of courts / judges. In other words, by the use of pool vehicles, no uniformity and punctuality can be maintained amongst the Judicial Officers. Further, some judicial officers work in the chambers even before and after court hours and others finish their work within court hours. If any one is held up (out of five) due to any reason, the other four judicial officers are detained against their will and for no work or the odd judicial officer is left in the court campus without any vehicle to go back to his residence.
- 3) The pool vehicle system is not convenient to lady Judicial Officers.
- 4) Pool vehicle system is uneconomical from the angle of the cost of maintenance. It is reported that the approximate monthly expenditure of a vehicle is Rs.15000/- i.e. an approximate expenditure of Rs.3000/-p.m. per officer.

5) Pool vehicle is to carry Judicial Officers from residence to court and back to the residence only. It cannot be used for any emergency like illness of Judicial Officers.

6) The pool car is used not as taxi, but as a black board registered vehicle, it cannot carry more than 4 + 1 persons. It would be contrary to the provisions of law to carry 5 + 1 persons in such cars.

19.60 It is also stated that there is delay in allotting the funds for petrol and maintenance of vehicles by the Government and the vehicles have to remain idle.

19.61 Some High Courts and all the Service Associations prefer soft loans at nominal interest of 6% with appropriate petrol allowance instead of pool vehicle.

19.62 To those who own cars, the High Courts have suggested 75 to 100 litres of petrol per month.

19.63 However, the High Court of Orissa has suggested petrol allowance equivalent of the price of 40 litres of petrol, while High Court of Patna has favoured petrol allowance equivalent of the price of 60 litres.

19.64 All the Service Associations have requested 50 litres to 150 litres of petrol per month for those who own their own cars.

19.65 We have received large number of requests from the First Additional District Judges/First Additional Principal City Civil Court Judges, and Chief Judges, Small Causes Courts that they have got heavy duties and responsibilities and that they have to take over the responsibility of the Principal District Judge whenever the latter is on leave. It appears that the car provided to the Principal District Judge is not made available to them. They have, therefore, requested for independent vehicle.

19.66 First Additional District Judge/First Additional Principal City Civil Court Judges are generally very senior District Judges. We are of opinion that their requests appear to be reasonable.

19.67 There is a large scale complaint that the existing system of providing a pool car for five Officers not only is inconvenient but also contrary to the Motor Vehicle Rules existing in some States. It is also complained that if there is a lady Judicial Officer, it would be difficult for the five Officers to get themselves squeezed into the car. This problem will be more if there is a security

guard provided to one of those officers since the Security Guard has to accompany the officer always.

19.68 The Commission has also noticed the recommendations of the 5th C.P.C. with regard to Transport Allowance to Central Government employees.

OUR RECOMMENDATIONS:

19.69 Taking these factors into consideration, we recommend as follows:

1. (a) The existing system of providing independent vehicles to every Principal District Judge / Chief Judicial Magistrate / Chief Metropolitan Magistrate as directed by the Supreme Court must continue.

(b) Needless to state that the Principal Judge of City Civil Court in every city where City Civil Court has been constituted should be provided an independent vehicle.

(c) The Chief Judges of Small Causes Courts, who are in the cadre of District Judges, should be provided with independent vehicles.

(d) The First Additional District Judge and First Additional/Principal City Civil Court Judge should also be provided with an independent vehicle.
2. Instead of one pool car for five Officers, it should be one pool car for a maximum of four Officers. That does not mean that there shall be no pool car if there is any station with less than 4 Officers. Indeed, if there are less than 4 Officers, it is but necessary to provide them also a pool car.
3. If there is a lady Judicial Officer to be ferried in the pool car, she should be provided the front seat of the car.
4. Since there is a complaint that 100 litres of petrol for pool car is found to be generally inadequate, we recommend 150 litres in Metropolitan cities and outside thereof 125 litres per month.

5. We further recommend that the Judicial Officers may be allowed to utilise the pool car for their personal requirements when it is not on duty for Court purposes, at a rate of Rs.3.50 per K.M. This shall be properly arranged and supervised by the Principal District Judge or Chief Administrative Officer.

1. The Judicial Officer who owns Car be given the following litres of petrol / diesel or equivalent price thereof in the type of city or location as mentioned hereinbelow:

Type of City / Location	Ceiling limit of petrol /diesel (in Litres)
'A' and 'A-1'	75
District Centre	50

The classification of cities on the basis of population criteria adopted by the respective States best suited to their local conditions referred to in the case of CCA be adopted for the purpose of conveyance allowance.

7. The Judicial Officer who owns Scooter be given 25 litres of petrol or equivalent price thereof.
8. The Judicial Officer who owns Car may be given the option to avail of the pool vehicle facility or petrol / diesel as aforesaid.
9. The Judicial Officers may be given liberal soft loans with nominal interest as Motor Car Advance upto a ceiling of Rs.2.5 lakhs with convenient instalments for repayment.
10. As the number of Officers availing the pool vehicle facility decreases the excess number of poor vehicles

shall be surrendered to High Court / State Government.

11. The cadre of car drivers should be frozen and surplus drivers, if any, should be redeployed elsewhere and surplus vehicles should also be disposed of.

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SUMPTUARY ALLOWANCE

19.70 The Supreme Court in the main judgement in ALL INDIA JUDGES' ASSOCIATION CASE¹ (para 32) has observed:

"In many of the States the prevailing practice is that the district judge takes a monthly meeting with the collector and district magistrate and the superintendent of police. He also meets the members of the Bar. Now and then he meets his judicial officers-those at the headquarters as also the others who are in the interior. It is desirable that the district judge devotes some time as frequently as possible and at least once a week to meet the judicial officers beyond the working hours, discusses working problems of his officers and forms his own opinion about how the work is being done. A weekly assessment of such performance generates even temper of judicial activity and upholds the tempo being maintained at the appropriate level. There is not yet any

definite system of judicial training in most of the States and Union Territories. A judicial officer with his first posting or until he acquires adequate experience requires guidance. It should ultimately be the obligation of the district judge to provide the same. We are of the view that to the post of district judge a monthly allowance of Rs.300 by way of sumptuary allowance should be available to enable him to extend small courtesies at such meetings. The Chief judicial magistrate does some of these activities in respect of the magistrates handling criminal work. In our opinion he should be entitled to a sum of Rs.200 per month by way of sumptuary

1. (1992) 1 SCC 119.

allowance. We are aware of the fact that under the Conditions of Service Act of High Court Judges, a sumptuary allowance of Rs.300 is payable to them every month. Now that we have directed that Rs.300 should be fixed for the district judges, we command that the sumptuary allowance fixed for the High Court Judges may be enhanced suitably. These allowances shall be payable from 1.4.92. We would like to add that this allowance is intended for utilisation to the full extent for entertaining judicial officers in connection with performance of duty and would not be considered as a perk for being included in the hands of the recipient as his income."

19.71 However, this facility has been withdrawn in the Review Judgement on the ground that the necessary expenditure could be met through existing provision of funds. The relevant portion of the Review Judgement is reproduced below:

"The direction to give sumptuary allowance to the District Judge in his capacity as the principal judicial officer of the concerned district and to the Chief Judicial Magistrates at the rate of Rs.300/- and Rs.200/- per month respectively was in consideration of the fact that they had to hold monthly meetings with the Collector, District Magistrate and Superintendent of Police etc., and also to meet the judicial officers, working under them as well as the members of the Bar, occasionally. In such meetings, they are expected to extend small

courtesies. It is now represented that whenever official meetings are held, there is a provision which enables the District Judge as well as the Chief Judicial Magistrate to spend from the amounts at the disposal of the Court. in view of this, we rescind the said directions. However, we make it clear that the sumptuary allowance, if already paid to the District Judges and the Chief Judicial Magistrates, should not be recovered from them."

19.72 The Commission had formulated the following question on this topic:

Q.31: It is suggested from some quarters that a tax-free Sumptuary Allowance should be given to all cadres of Judicial Officers. Please indicate the quantum and the need to grant such allowances bearing in mind the observations of the Supreme Court in that respect.

19.73 Replies received from the High Courts save the High Court of Delhi, have favoured/suggested for payment of sumptuary allowance to all the Judicial Officers. The High Courts of Himachal Pradesh, Kerala and Madras have not furnished their comments. The rate of such allowance indicated varies in the range of Rs.1000/- p.m. to Rs.500/- p.m.

19.74 The High Courts of Gujarat and Punjab and Haryana have stated that all Judicial Officers be paid a uniform sumptuary allowance of Rs.500/- p.m.

19.75 The High Court of Sikkim has suggested 5% of the basic pay be given as sumptuary allowance to all the Judicial Officers.

19.76 All the High Courts have suggested that such sumptuary allowance granted to Judicial Officers should be tax-free.

19.77 All the Service Associations have putforth the demand for the grant of tax-free sumptuary allowance.

19.78 But most of the State Governments have observed that there is no need to grant such allowance to all the Judicial Officers, other than the District Judges and Chief Judicial Magistrates.

OUR RECOMMENDATION :

19.79 We have come to know that the amount at the disposal of the Principal District Judge for the purpose of "hospitality" is found to be too inadequate. It is not even sufficient to meet the expenses of any official meeting.

19.80 It is not correct to state that the Judicial Officers do not have visitors at home and there is no need to extend courtesy. They may not have visitors from the public, but members of the Bar, judicial fraternity and staff of the Courts very frequently visit every Judicial Officer. It is an Indian tradition to offer courtesy to the visitors in the form of tea/coffee along with some eatables. It is, therefore, necessary to provide sumptuary allowance to each of them.

19.81 After giving the fullest consideration to the problem presented, and having regard to the sumptuary allowance of Rs.2,000/- p.m. granted to the High Court Judges, we recommend sumptuary allowance at the following rate:

Category of Judicial Officer	Rs. per month
District Judge	1,000/-
Civil Judge(Sr.Dn.)	750/-
Civil Judge(Jr.Dn.)	500/-

19.82 Since sumptuary allowance is intended to extend courtesy, it must be made tax-free.

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HILL ALLOWANCE

19.83 The Hill Allowance came into vogue in the context of the increase in emphasis on raising the tempo of developmental activities in the Hill areas with a view to reducing the disparity between the Hill Districts and the rest of the areas by encouraging the civil servants to work with enthusiasm in the Hill Areas and especially in the interior areas.

19.84 For deciding a particular area as hill station, the altitude of the place is relevant. Normally, employees working in hill stations situated at an altitude of 1,000 metres (about 3,300 feet) or more, above the Mean Sea Level, would be eligible for entitlement of Hill Allowance. But the Hill Allowance is given taking into consideration not only the altitude of the place but also other factors, like the hill-station being an out-of-the way place, the difficulties in securing provisions for daily necessities, and for emergency needs.

19.85 At present, the States of Jammu & Kashmir, Karnataka, Madhya Pradesh, Tamil Nadu, Uttar Pradesh and West Bengal are giving the Hill Allowance to Judicial Officers.

19.86 We have examined the recommendation of the V C.P.C. on the matter. The V C.P.C. has recommended the Hill Allowance (Special Compensatory Allowance-Hill Allowance) as under:-

Areas included in	Below Rs.3000	Rs.3000- Rs.4499	Rs.4500- Rs.5999	Rs.6000- Rs.8999	Rs.9000- above
Above 1000 M - 1500 M altitude	40	80	120	160	200
Above 1500 M - 2000 M altitude	150	300	450	600	750
Above 2000 M - 2500 M	250	400	550	800	1050

altitude					
Above 2500 M altitude	300	500	700	1000	1300

19.87 The "Special Compensatory Allowance" which is a new name encompassing the various types of allowances like, Remote Area Allowance, Difficult Area Allowance, Border Area Allowance/Disturbed Area Allowance etc., suggested by the V.C.P.C. deserves to be appreciated, but Government of India is yet to make up their mind.

19.88 In the meanwhile, the existing pattern for payment of Hill Allowance to Judicial Officers working in Hill Stations may be continued by the States concerned.

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RISK ALLOWANCE

19.89 The risk can be divided into two categories; one category would be covering areas where risk is gradual and insidious, like the danger of cancer for a Radiographer; the other category is where there is contingent danger to life or limb due to injury or attack as a direct consequence of the performance of official duties. Normally risk allowance is given only to cases falling in the first category.

19.90 Certain categories of employees both in Government of India and in some States are given risk allowances, whose normal duties involve special risks. Risk allowance is paid to employees working in certain surroundings which are risky and may, over a period of time, cause deterioration in their health.

19.91 The Commission has sought the opinion of the High Courts/Service Associations and State Governments on the question as to whether any Judicial Officer could be given risk allowance.

19.92 The High Courts of Andhra Pradesh, Gujarat, Himachal Pradesh and Kerala have not favoured the payment of risk allowance to Judicial Officers.

19.93 The High Courts of Jammu & Kashmir, Bombay, Karnataka and Madhya Pradesh have suggested payment of risk allowance to Judicial Officers posted in areas declared as terrorist areas/particular stations.

19.94 The High Courts of Patna, Bombay, Punjab and Haryana, Sikkim and West Bengal have not furnished any views on this matter.

19.95 The High Court of Gujarat has opined that there is Group Insurance Scheme prevailing in the State and, therefore, there is no need to give separate risk allowance to Judicial Officers.

19.96 The High Court of Rajasthan has stated that if the officer is trying any sensitive matter, special insurance cover be provided to him.

19.97 The High Court of Allahabad has stated that risk allowance may be paid in the border district and disturbed areas, and also to Judicial Officers trying TADA cases and anti-dacoity cases.

19.98 Some of the Service Associations of Andhra Pradesh, Kerala, Maharashtra, Rajasthan have urged the Judicial Officers and their family should be provided insurance cover for injury/death. They want that the insurance premium should be paid by the Government.

19.99 The State Governments have not favoured the proposal of paying risk allowance. Some State Governments have suggested that the proper course would be to take into consideration the element of hazard, if any, while fixing their scales of pay.

OUR RECOMMENDATION :

19.100 In our opinion, it is not proper for Judicial Officers to entertain any kind of fear of their life or limb. If they entertain any such fear to them or to their family members, while trying any case or posted in any particular area, they will not be able to dispense justice impartially and courageously.

19.101 We are, therefore, not in favour of granting Risk Allowance.

19.102 If there is any threat to their life or to their family members while trying any particular case, they must promptly inform the police, who must assess the nature of the situation and provide them with the necessary security.

19.103 We are also not inclined to provide a separate insurance cover for Judicial Officers who are posted in some border district or disturbed areas or trying some sensitive cases like TADA and anti-dacoity cases. Even in such cases, what is required is proper security to the Judicial Officers and their family.

19.104 We may, in this context refer to the Government Compulsory Insurance Scheme which is prevailing in Andhra Pradesh, Kerala, Maharashtra, Gujarat, Rajasthan, Tamil Nadu, Madhya Pradesh, Jammu & Kashmir and Karnataka. This scheme is in addition to the Group Insurance Scheme. It is proper that the Governments of other States also introduce such Government Compulsory Insurance Scheme for Government Servants and Judicial Officers.

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MEDICAL FACILITIES

19.105 The right to health with medical care has been recognised as a fundamental right guaranteed under Article 21 read with Articles 39(e), 41 and 43 of the Constitution.

19.106 This has been so declared by the Supreme Court in **CONSUMER EDUCATION AND RESEARCH CENTRE AND OTHERS vs. UNION OF INDIA AND OTHERS**¹.

19.107 The relevant portions of the observations of the Supreme Court in that case run as follows (paras 26 & 27):

26. "The right to health to a worker is an integral facet of meaningful right to life to have not only a meaningful existence but also robust health and vigour without which worker would lead life of misery

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Continued treatment, while in service or after retirement is a moral, legal and constitutional concomitant duty of the employer and the State. Therefore, it must be held that the right to health and medical care is a fundamental right under Article 21 read with Articles 39(e), 41 and 43 of the Constitution and make the life of the workman meaningful and purposeful with dignity of person. Right to life includes protection of the health and strength of the

worker is a minimum requirement to enable a person to live with human dignity. The State, be it Union or State Government or an industry, public or private, is enjoined to take all such action which will promote health,

1. AIR 1995 SC 922.

strength and vigour of the workman during the period of employment and leisure and health even after retirement as basic essentials to live the life with health and happiness. The health and strength of the worker is an integral facet of right to life.

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27. We hold that right to health, medical aid to protect the health and vigour of a worker while in service or post retirement is a fundamental right under Article 21, read with Articles 39(e), 41, 43, 48A and all related Articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person."

19.108 At present, the medical benefits available to civil servants have been extended to the Judicial Officers. They are governed by the respective Rules of the Government, which vary from State to State.

19.109 Since there is no uniformity in this respect, the Commission circulated the following question seeking suggestions from the concerned:

Q.No.33. What is the existing procedure for availing of medical facilities to Judicial Officers and members of their families? (Kindly furnish the relevant Government Orders in this regard). Do you consider this procedure cumbersome and time-consuming? If so, please suggest a simplified procedure for reimbursement of the medical expenses.

19.110 The replies received from various quarters are summarised as below:

Almost all the Service Associations have reported that they generally do not get timely care and attention from the Authorised Medical Attendants, and they are compelled to seek the services of private doctors. It is also complained that they cannot go to Government hospitals since they have to punctually remain in Courts. It is represented that in most of the cases, the required medicines, though admissible under the rules, are not provided and that the reimbursement of medical expenditure is made after a long time by a cumbersome procedure. Several Associations have submitted that on account of the inconvenience and hardship caused by the existing method, they do not make use of the medical facilities provided by the Government.

The common request that we have received from the Service Associations is that the existing medical aid rules should be simplified and liberalised, and they should be allowed to consult and get treatment from qualified Doctors with whom they have confidence and the expenses incurred should be reimbursed. The other suggestions like the right to call the Doctors to residence for check-ups, Dispensary at Court Complex, exclusive dispensary within or near the residential complex of Judges, treatment first and rules next as the norm etc., have been made by various Service Associations.

They have also suggested that a lumpsum may be paid every month towards medical benefit or the benefit of the Central Government Health Scheme or a similar scheme be framed and extended to them.

The High Courts of Patna and Kerala have suggested that 'Medical Insurance' scheme may be introduced by the Government.

Alternatively, it is submitted that the medical facilities available to the Hon'ble Members of the State Legislatures or the Hon'ble Members of the Parliament may be extended to Judicial Officers.

19.111 Let us examine the provisions regarding the medical facilities available to the Members of the State Legislatures. We are told that they are more or less similar in all States. Being nearer home, we have secured the rules relating to medical benefits provided to the Members of the Karnataka Legislature. We may extract hereunder the relevant rules:

"Karnataka Legislature (Members Medical Attendance) (Amendment) Rules, 1997:

Rule 5A provides as follows:

"Reimbursement of Expenses incurred at any place other than in a Government Hospital or Dispensary: In respect of expenses incurred by a Member for the medical attendance and treatment obtained by him in any place, other than any Hospital or Dispensary maintained by the State Government or in any Hospital or Dispensary notified by the Karnataka Legislature, he shall be entitled for reimbursement of the expenses incurred to the same extent as he is entitled under these rules for reimbursement of expenses incurred by him for medical attendance and treatment obtained in such Hospital or Dispensary. The expenses shall be inclusive of the charges for accommodation in the place where such treatment is taken."

Rule 5A(I) reads as under:

"Reimbursement of expenses incurred at any place other than in Government Hospital or Dispensary and other than Hospital and Dispensary notified by the Karnataka Legislature: In respect of expenses incurred by a member for the medical attendance and treatment obtained by him in any place other than in a Hospital or Dispensary maintained by the State Government and other than Hospital or Dispensary notified by the Karnataka Legislature, he shall be entitled to reimbursement of the expenses incurred to the same extent as he is entitled under these rules for reimbursement of expenses incurred by him for medical attendance and treatment obtained in such Hospital or Dispensary. The expenses shall be inclusive of the charges for accommodation in the place where such treatment is taken."

19.112 On 1 April 1998, the State Government has notified the list of private hospitals in Bangalore and also in District Headquarters and private hospitals in other States where Members of the Legislature could take treatment and get reimbursement of the expenses incurred.

19.113 We may also usefully refer to the medical facilities provided to the Hon'ble Members of the Parliament. They are covered by the Central Services (Medical Attendant) Rules, 1944₂.

19.114 Under the Central Government Health Scheme extended to the Members of Parliament, exclusive dispensaries are opened in New Delhi to cater to the Members of the Parliament and their family members. Even Ayurvedic Dispensary, Unani

Dispensary and Homeopathic Dispensary have been established at Delhi for their benefit.

19.115 Medical facilities are admissible upto a month even after the person ceases to be a Member of Parliament.

19.116 A record of health status of Members of Parliament is also maintained.

19.117 Under the Scheme applicable to them³, the family of the Member includes wife or husband, as the case may be, children or step children and parents who are dependent and residing with the Member. These are the only persons entitled to the benefit under the Scheme.

2. "Handbook for Members of Rajya Sabha", - Rajya Sabha Secretariat, New Delhi - May 1991, p.99.

3. "Handbook for Members of Lok Sabha", - Lok Sabha Secretariat, New Delhi - March 1998, p.172 & 173.

REIMBURSEMENT :

19.118 The Members of Parliament are entitled to reimbursement of medical expenses incurred by them on the treatment of self / family members if they are treated elsewhere where Central Government Health Scheme is not provided. For this purpose, a Member has to prefer the claim in the prescribed form. The claim should be duly countersigned by the Authorised Medical Attendant and supported with the cash memos and receipts.

OUR RECOMMENDATION :

19.119 The grievance of the Judicial Officers on the existing medical benefit rules cannot be unjustified. Their schedule of Court timings would not permit them to go and wait in the Government Hospitals when they are badly in need of treatment assuming that the Government Hospitals are as good as private hospitals. Secondly, the Judicial Officers do not have the liberty to contact anybody to get things done like the Executives. So much so, the Judicial Officers rarely go to the Government Doctors or Hospitals.

19.120 But, we consider that the payment of a lumpsum every month as Medical Allowance in lieu of all medical benefits is not a

solution to the problem, but an escape from it. Any such allowance will be only a monetary benefit and does not really confer medical benefit.

19.121 We have noticed that about 9 lakh Central Government employees are covered under the CGHS in 21 cities. But extending the same or similar benefit to the Judicial Officers of various States may not be possible or feasible till the State Governments adopt such a scheme for their employees.

19.122 Taking all these factors into consideration, we recommend as follows:

1. The Judicial Officers in every State be given the medical benefits that are provided to the Members of the respective State Legislatures, subject to certain modifications herein below mentioned:

i) The State Government shall notify the list of Hospitals / Dispensaries, Government and private, in each City / District Headquarters and Taluka places for medical treatment of Judicial Officers and members of their family;

ii) The Judicial Officers shall be entitled to claim expenses incurred by them for the medical attendance and the treatment obtained by them and their family members in such notified Hospitals / Dispensaries.

The expenses shall be inclusive of the charges for accommodation in the place where such treatment is taken.

iii) The Judicial Officers shall be entitled to reimbursement of the expenses incurred by them or for their family members for the medical attendance and treatment obtained by them in any place other than in a hospital or dispensary maintained by the State Government and other than the hospitals or dispensaries notified by the Government, to the same extent as they are entitled to under the rules for reimbursement of expenses incurred by them for medical attendance and treatment obtained in the notified Hospital or Dispensary.

Expenses shall be inclusive of charges for accommodation.

- iv) There should not be any restriction on reimbursement except to the extent of in-patient room entitlement. Further, there should not be any ceiling on reimbursement of expenditure on expensive treatments like kidney transplant, open heart surgery etc; full reimbursement of actual expenses should be allowed.
- v) The Principal District Judge should be notified as the competent authority for passing the bill for reimbursement of medical attendance and expenses of Judicial Officers under him and in case of District Judges, the High Court should be the sanctioning authority.
- vi) All claims for reimbursement of the expenses incurred by Judicial Officers for themselves or for their family members should be accompanied by an "Essentiality Certificate" issued by the Authorised Medical Attendant with the bills for reimbursement, supported by the prescription and vouchers or cash memos.
- vii) Judicial officers shall be entitled to advances to meet the medical expenses for treatment upto 80% of the estimate and the balance be paid after approving the bill when it is produced.

Payment of Rs.100/- every month as Medical Allowance :

19.123 The V CPC has recommended payment of Rs.100/- per month as Medical Allowance to the Central Government employees and also retirees who are not covered under the CGHS. This recommendation has been accepted by the Central Government and Rs.100/- per month is being paid to the Central Government employees and also the retirees.

19.124 Some State Governments like the Government of West Bengal and Karnataka are also paying certain lumpsum to their employees and retirees as well. But the Judicial Officers are excluded from such benefits on the ground that this Commission has been constituted to look into their grievances.

19.125 It seems to us that it is extremely a good measure to pay certain cash every month to meet the ordinary medical needs. Accordingly, we recommend payment of Rs.100/- per month to all Judicial Officers, both serving and retired, as Medical Allowance, in addition to the other benefits which we have set out earlier.

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LEAVE TRAVEL CONCESSION (LTC) / HOME TRAVEL CONCESSION (HTC)

19.126 The following questions have been circulated to elicit views and comments on the LTC/HTC facilities to be provided to Judicial Officers.

Q.No. 34. What are the provisions regarding L.T.C. and H.T.C. to Judicial Officers in your State/UT?

Please furnish the particulars cadre-wise.

34.1 Is it advisable to replace L.T.C. with payment of a fixed sum with forced leave for a specified period ?

34.2 There are some suggestions to carry forward L T.C to be utilised after retirement so that on the eve of retirement, the Court work is not affected and the Officers may concentrate more on the judicial work and leisurely travel after retirement. There are also suggestions to encash the unutilised L.T.C.

Which do you prefer? Your choice should be rested on the public interest.

19.127 The substance of the replies received on Question No.34 is as follows :-

L.T.C.

ANDHRA PRADESH

L.T.C. to the Judicial Officers are governed by the same set of rules as other Officers of the State.

As per the State Government Rules, LTC is admissible to all the Judicial Officers (Subordinate Judges and District Munsiff) and their family members from his Headquarters to Hometown / any place within the State.

LTC as applicable to the Officers of All India Service is admissible to the District Judges.

ASSAM

LTC is admissible to all Judicial Officers for visiting any place in India once in a block of 4 years starting from 1992.

BIHAR

In Bihar, cash of Rs. 2000/- towards L.T.C. for Judicial Officer and family members is granted once in a block of 4 years subject to maximum of 4 L.T.C.s in entire service.

Eligibility for L.T.C. is 10 years service.

DELHI

Like other Government Servants, Judicial Officers in Delhi are entitled to one L.T.C. any where in India in a block of 4 years.

GUJARAT

L.T.C. is admissible to Judicial Officers once in 4 years. The distance permissible is 3000 Kms one way or 6000 Kms both ways.

HARYANA

L.T.C. is admissible to Judicial Officers for visiting any place in India once in a block of 4 years similar to other employees of State Government.

HIMACHAL PRADESH

Judicial Officer can avail only 2 concessions in a block of 4 years. Of the 2 concession he can avail both of them to Hometown or in the first block to anywhere in India and in the second block to Hometown or Vice versa. The block concession of a spell of two years can be carried over to the next year.

JAMMU & KASHIR

In a circle of 4 years one L.T.C. is admissible to the Judicial Officers.

KARNATAKA

L.T.C. is admissible once in service to any place in India.

KERALA

The facility of L.T.C. is not available at present.

MADHYA PRADESH

No L.T.C. facility is provided to Government employees including Judicial Officers.

MAHARASHTRA

L.T.C. to Judicial Officers is admissible once in block of 4 years to any part of the State.

ORISSA

L.T.C. is admissible to Judicial Officers once in entire service to any place in India.

PUNJAB

L.T.C. is permissible to Judicial Officers once in 4 years.

RAJASTHAN

No provision for availing L.T.C.

SIKKIM

No provision for availing L.T.C.

TAMIL NADU

Judicial Officers can avail L.T.C. once in four years. One way journey fare for L.T.C. is admissible if availed once in two years. Two way journey fares are provided, if availed once in four years. If they travel out of the State, the claim has to be restricted to 400 kms.

UTTAR PRADESH

L.T.C. is admissible to maximum of four times in the whole of service.

First L.T.C. may be availed between 5th and 10th year of service, second between 11th and 20th year of service, third between 21st and 30th year of service and the last after 30 years of service.

WEST BENGAL

L.T.C. is admissible to Judicial Officers [Civil Judges (Junior)/ Civil Judges (Senior)] once in entire service subject to the condition of availing the same one year prior to retirement. Members of the Higher Judicial Service enjoy L.T.C. benefit as per

the provisions of the All India L.T.C. Rules.

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H.T.C. :

ANDHRA PRADESH

H.T.C. is admissible to all Judicial Officers once in 2 years.

ASSAM

H.T.C. is not available to Judicial Officers.

BIHAR

H.T.C. is not admissible to Judicial Officers.

DELHI

H.T.C. is admissible to Judicial Officers once in 4 years.

GUJARAT

H.T.C. is admissible to Judicial Officers once in 2 years.

HARYANA

H.T.C. is admissible to Judicial Officers once in 2 years.

HIMACHAL PRADESH

Judicial Officers can avail 2 concessions in a block of 4 years. Of the two concessions he can avail both of them to Hometown or in the first block to anywhere in India and the second block to Hometown or vice versa.

JAMMU & KASHMIR

H.T.C. facility is not admissible to Judicial Officers.

KARNATAKA

H.T.C. is allowed to Judicial Officers once in every two calendar years.

KERALA

H.T.C. facility is not provided at present.

MADHYA PRADESH

H.T.C. is admissible to Judicial Officers once in two years.

MAHARASHTRA

H.T.C. is provided to Judicial Officers once in two years.

ORISSA

H.T.C. is admissible once in a block period of 2 years to Judicial Officers.

PUNJAB

No H.T.C. facility is provided to Judicial Officers.

RAJASTHAN

No provision for availing H.T.C.

SIKKIM

No provision for availing H.T.C.

TAMILNADU

H.T.C. is admissible to Judicial Officers once in 2 years.

UTTAR PRADESH

H.T.C. is not available to Judicial Officers.

WEST BENGAL

H.T.C. is provided to Judicial Officers every year provided the place of visiting is 250 miles away from Calcutta.

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19.128 It will be thus seen that the L.T.C. facilities provided to the Judicial Officers vary from State to State. In some States L.T.C. is provided in a block period of 4 years and in some other States once in 10 years while in others once in service and in a couple of States, there is no L.T.C. is provided. We have to take into consideration all these aspects.

19.129 Likewise HTC facilities also vary from State to State. In many States H.T.C. facilities are not provided at all. In a couple of States H.T.C. is admissible once in 4 years while in half a dozen States H.T.C. is provided once in 2 years.

19.130 The next question for consideration is, if LTC is to be provided, whether it is desirable to replace it with payment of a fixed sum with forced leave for a specified period.

19.131 The High Courts of Andhra Pradesh, Jammu & Kashmir, Karnataka, Kerala, Rajasthan, Sikkim and West Bengal are against this proposal. According to them, it may create administrative and personal problems to the Judicial Officers and also unnecessarily imposing burden on the State exchequer. It is also said that this would amount to encashing LTC.

19.132 However, the High Courts of Bihar, Bombay, Orissa, Punjab & Haryana, Tamil Nadu and Uttar Pradesh have favoured the replacement of LTC by payment of fixed amount. They are of opinion that in view of the mental strain and pressure, it is necessary that all Judicial Officers should be given a fixed sum with forced leave to make use of it as they like it.

19.133 The High Courts of Delhi and Gujarat also favoured replacement of LTC by payment of fixed amount, but they are against forced leave for specified period as it affects the working of courts.

19.134 Several Service Associations have also not favoured the concept of fixed sum with forced leave instead of LTC.

19.135 Only a few Associations have supported replacement of LTC by payment of fixed sum with forced leave.

19.136 Almost all the State Governments are against the replacement of LTC by payment of fixed amount since the financial implications of allowing such encashment would be enormous.

19.137 The next aspect to be considered is whether LTC should be allowed to carry forward to be utilised after retirement ?

19.138 The High Courts of Andhra Pradesh, Bihar, Gujarat, Jammu & Kashmir, Karnataka, Bombay, Rajasthan, Sikkim, Tamil Nadu, Uttar Pradesh and West Bengal support this proposal. However, the High Courts of Kerala, Madhya Pradesh, Punjab & Haryana are against it. The High Court of Sikkim favours LTC to be carried forward, (says that) it should be utilised only in the year of retirement.

19.139 Almost all the State Governments are against the carry forward idea.

19.140 The Service Associations are divided in their views.

19.141 The High Court of Himachal Pradesh, Jammu & Kashmir, Orissa, Rajasthan and Uttar Pradesh have suggested to make provision for encashment of unutilised LTC.

OUR RECOMMENDATION :

19.142 Keeping in view the various suggestions of the High Courts / State Governments and Service Associations and the nature

of work of the Judicial Officers and also bearing in mind the basic philosophy underlying the LTC scheme, we make the following recommendations :

- 1) The LTC shall be provided to all Judicial Officers :
 - a) Once in four years to any place in India;
 - b) For entitlement of first LTC, one must have put in not less than 5 years of continuous service;
 - c) No LTC shall be allowed within one year before retirement*;
- 2) HTC : All Judicial Officers shall be provided HTC once in two years;
- 3) The entitlement for the journey would be according to the Rules in the respective States.
- 4) In view of the general opposition, we are not inclined to recommend cash payment in lieu of LTC. We are also not inclined to recommend carry forward of LTC beyond retirement.

* * * * *

* We have received number of complaints that the Judicial Officers at the fag end of their service are not serious in their Court work and at the cost of the public duty and more often leaving the part heard cases go on LTC. To inculcate a sense of work culture, we have deliberately made this restriction.

SPECIAL PAY

19.143 The Commission has formulated the following question seeking the views and comments from the concerned on "Special Pay" :

Q.No. 35: In some States like Assam, Haryana, Kerala, Maharashtra, Gujarat, West Bengal, Goa and Jammu & Kashmir, varying Special Pay is paid to certain categories of Judicial Officers. What according to you

should be the consideration for determining the posts to which Special Pay could be attached? Is it not advisable to provide Special Pay only to those posts which in addition to the judicial work, have administrative work as well?

19.144 The summary of the replies received indicates the following :

i) Most of the High Courts have suggested that Special Pay should be given only to those posts which in addition to the judicial work have administrative work as well. The High Courts of Delhi, however, has made a significant point for denying Special Pay to those who do the administrative work in addition to judicial work. It is stated that administrative work is done during office hours only and the Chief Justice of Supreme Court and the Chief Justice of the High Court though perform wide ranging administrative work get no additional remuneration and, therefore, there is hardly any justification for giving Special Pay to the Judicial Officers of the Subordinate Judiciary for performing the administrative work.

ii) Almost all the Service Associations have urged for payment of Special Pay to the Judicial Officers, who do administrative work in addition to judicial work.

iii) The majority of the State Governments have expressed the view that Special Pay should be abolished as the pay structure is based on the concept of nature of work, jurisdiction, qualification etc.

19.145 We have carefully examined the various suggestions / submissions made by the High Courts / Service Associations / State Governments.

19.146 We agree with the submission that the pay scale is fixed on several factors including the duties, responsibilities of the post and, therefore, no additional payment for Judicial Officers who do the administrative work during Court hours is called for.

19.147 We, however, request the High Courts to evolve a principle of paying "Special Pay" to such of those Judicial Officers who have considerable administrative work outside the Court hours. We do not have any such material before us and, therefore,

we do not want to embark upon such enquiry.

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CONCURRENT CHARGE ALLOWANCE

19.148 Normally charge allowance is being paid to those holding additional charge of a post with equal or higher responsibility. For the payment of such allowance, usually, it is stipulated that one should have held additional charge for a minimum period of certain number of working days ranging from 14 to 30. In some States charge allowance is being paid to Judicial Officers whereas in some other States they are not given any charge allowance.

19.149 From the replies received, it is found that charge allowance is paid in the following States viz., Andhra Pradesh, Gujarat, Jammu & Kashmir, Karnataka, Kerala, Maharashtra, Rajasthan and Tamil Nadu.

19.150 Almost all the High Courts are of the opinion that wherever a Judicial Officer holds concurrent charge of other courts and discharges additional work beyond the quota prescribed, there should be provision for payment of Charge Allowance.

19.151 However, the High Court of Patna (Bihar), Delhi, Himachal Pradesh and Maharashtra have not favoured this idea. Patna High Court has observed that "they put on mostly routine work of other courts" and therefore no charge allowance be paid. High Court of Delhi has stated that "such charge of other court is only a temporary phenomena" and therefore charge allowance is not required. The High Court of Himachal Pradesh states that "since the Judicial Officers do not turn out additional work and the working hours remaining the same, no allowance is necessary on this count." The High Court of Madhya Pradesh has observed

that charge allowance is not justifiable.

19.152 In the States where charge allowance is allowed, there is no uniformity either with regard to the rate or the minimum period of entitlement. The rate varies from 3% to 5% of the Basic Pay and equally the period for entitlement.

19.153 It is suggested by some High Courts that charge allowance may be paid for Judicial Officer who holds the charge continuously beyond the period of 7 days, while other High Courts indicated that such period shall be more than two weeks at a stretch. Rate of charge allowance indicated by the High Courts varies between 10% to 20% of the Basic Pay.

19.154 The Central Government employees will get extra remuneration for the additional charge provided the period is not less than 40 days. The appointing authority is competent to make additional payments up to three months only. But prior approval of the Department of Personnel and Training is required for combination of appointments beyond 3 months and the concurrence of the Ministry of Finance is required for making additional payments beyond three months. (See G.I. M.H.A., Deptt. of Per. & A.R. O.M. No.6 (26)-Estt. (Pay-II)/81 dated 30.12.1981).

19.155 OUR RECOMMENDATION :

i) We have given our consideration to all aspects of the matter.

We recommend that charge allowance be paid to the Judicial Officer when he is placed in charge of another Court continuously beyond the period of ten working days and if he performs appreciable judicial work of that Court;

AND

ii) The charge allowance be paid to such Judicial Officer at 10% of the minimum of the time scale of the additional post held.

* * * * *

ENCASHMENT OF LEAVE AND LEAVE SALARY

19.156 Encashment of earned leave while in service has been allowed in some of the States; viz., Andhra Pradesh, Gujarat, Karnataka, Kerala, Maharashtra, Orissa, Rajasthan, Sikkim, Tamil Nadu and Uttar Pradesh. However, there is no uniformity in such scheme of encashment of leave in the States.

19.157 In the State of Andhra Pradesh, Judicial Officers are permitted to encash 15 days of earned leave in a financial year or 30 days in two financial years.

19.158 In Gujarat, Judicial Officers are permitted to encash 15 days leave once in two years.

19.159 In Karnataka, all the Judicial Officers are entitled to encashment of earned leave not exceeding 30 days at an interval of two years block period.

19.160 Encashment of Earned Leave for a maximum of 15 days in a year is allowed in Kerala.

19.161 In the State of Maharashtra, encashment of Earned Leave is permissible for 30 days once in two years.

19.162 In Orissa, every Judicial Officer is permitted encashment of 30 days earned leave in every block of two years, provided the Officer has 120 days earned leave to his credit.

19.163 In Rajasthan, encashment of earned leave for 30 days once in a block of two years is allowed.

19.164 In Sikkim, 30 days once in a block of three years is permitted. This provision appears to have been withdrawn from 31-1-1998.

19.165 In Tamil Nadu. 15 days earned leave at an interval of 12 months or 30 days at an interval of two years is allowed.

19.166 In Uttar Pradesh, 30 days encashment is permitted to the Officers having basic pay upto Rs. 2900/- and 15 days encashment to officers drawing above Rs. 2900/- as basic pay in every Calendar Year.

19.167 In other States, there appear to be no such facilities.

19.168 This facility is also not available to Central Government employees.

19.169 The 5th CPC discussed this issue in detail and did not recommend in-service encashment of earned leave. However, the 5th CPC recommend that encashment of leave should be linked to LTC. It has proposed that all employees may be permitted to encash 10 days earned leave at the time of availing LTC subject to the conditions that

- (a) the total leave so encashed during the entire service career does not exceed 60 days in the aggregate;
- (b) earned leave of at least an equivalent duration is also availed simultaneously by the employee;
- (c) a balance of at least 30 days of earned leave is still available to his credit; and
- (d) the period of leave encashed shall be deducted from the quantum of leave that can be normally encashed by him at the time of superannuation.

19.170 But these recommendations have not yet been accepted by the Central Government.

19.171 In this aspect, the Commission has received certain suggestions. Some High Courts have suggested that compulsory leave taking while encashing the leave should be discontinued. All the High Courts have suggested that there may be provision for encashment of leave in a block period, but the payment there from should be tax-free.

OUR RECOMMENDATION :

19.172 The Commission has considered all the suggestions and the existing schemes for encashment of leave. We want the Judicial Officers to work continuously and vigorously. They should not be compelled to avail leave while availing of the encashment facilities. The encashment as suggested by the High Courts should be tax-free. We accordingly recommend as follows :

- (i) Benefit of availing encashment of leave be extended to all Judicial Officers in all the States/UTs without insisting on the availment of leave simultaneously.

(ii) Judicial Officers in all the States / UTs be allowed to encash leave not exceeding one month in a block period of two years.

(iii) The encashment of leave be made tax-free.

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TRANSFER GRANT / DISTURBANCE ALLOWANCE

19.173 Each State has prescribed the rules regarding payment of Transfer Grant for transferred officers. But such Rules are in variance with the provisions made by the Central Government. Recently, the Central Government has introduced what is termed as "Composite Transfer Grant" with effect from 8-10-1997. The Composite Transfer Grant shall be equal to the month's Basic Pay in case of transfer involving change of station located at a distance more than 20 Kms from each other. In case of transfer to stations which are less than 20 Kms from the old station or transferred within the same city, the Composite Transfer Grant will be restricted to one third of the Basic Pay, provided a change of residence is actually involved. This excludes incidental expenses of the Government servant and the members of his family, and the expenses to go from the residence to Railway Station / Bus Stand / Air Port etc.

19.174 In our opinion this method of "Composite Transfer Grant" is simple and better than the cumbersome procedure under the existing Rules of the State Government regarding Transfer Grant. In fact, there is not much difference in the ultimate benefit in Rupees, annas and pies in one or other method.

19.175 We, therefore, recommend to all States to follow the Government of India Rules for payment of Transfer Grant. Till then, the existing rules in each State / UT would also govern the Judicial Officers.

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HOUSING, HOUSE RENT ALLOWANCE AND RELATED ISSUES

19.176 Housing is a basic need, next only to food and clothing. But the provision of this minimum need has lately become difficult on account of factors like excessive population pressure, growth of urban agglomeration consequent upon industrial development, the 'push' and 'pull' factors leading to migration from rural to urban areas. We have too many people chasing too little housing. It is, therefore, necessary that the State should assume greater responsibility on the question of housing.

19.177 The Hon'ble Supreme Court in the main judgment in the All India Judges' Case¹ has observed thus :

"33. Provision of an official residence for every Judicial Officer should be made mandatory. A Judicial Officer to work in a manner expected of him has to free himself from undue obligations of others, particularly owners of buildings within his jurisdiction who ordinarily may have litigation before him. This is mostly the case in rural areas where outstation judicial courts are located. We are aware of cases where a rural court is located in the building belonging to a lawyer or a client. Even the residential accommodation of the judicial officer belongs to people of that

category. Such a situation often gives occasion to personal embarrassment to the judicial officer and it has to be avoided.

34. Expenditure on residential accommodation in a family budget is not ordinarily to exceed 15 per cent of the monthly income; otherwise it becomes difficult for the person concerned to make his

1. (1992) 1 SCC 119.

two ends meet. A judicial officer who is not provided residential accommodation is obliged to go in for rented accommodation. In view of the prevailing rate of rent, the smallest accommodation that can be taken may often cost 75 per cent to 100 per cent of the monthly salary, a situation which cannot be countenanced by any logic. It is absolutely necessary that appropriate conditions should be provided for the judicial officer and he should have reasonable mental peace in order that he may perform his duties satisfactorily. Rendering justice is a difficult job. It is actually a divine act. Unless the judicial officer has a reasonably worry free mental condition, it would be difficult to expect unsoiled justice from his hands."

"35. Very often building projects are undertaken for providing residential accommodation to public officers but the requirement of the judicial officer is not taken into account for one reason or the other. Control of the State purse is in the hands of the executive. As appropriate share of construction expenses is not being provided towards accommodation of judicial officers, they do not have any quota in the building projects. As a result of this over the years at several places throughout the country residential accommodation for judicial officers has turned out to be scanty. Many judicial officers dread postings in Metropolitan towns as residential accommodation is not available and the rental would be exorbitant in respect of private accommodation. The cost of living also becomes heavy."

"36. We take judicial notice of the fact that the Planning Commission of the Central Government is considering acceptance of the subordinate judiciary as a plan subject. Providing adequate residential accommodation should be

considered as a priority. Until, adequate governmental accommodation is available, it should be the obligation of the State at the instance of the High Court to provide requisitioned accommodation for every judicial officer according to his entitlement and recovery of not more than twelve and a half per cent of salary of the officer towards rent should be made and the balance should be met by the State Exchequer. We would emphasise the need of provision of a separate and exclusive office room as an indispensable component of every such official residence and the accommodation should take into account this feature. As a long term measure, Government accommodation should be constructed to meet the need of the judicial officers at their respective stations. This should be a matter for the Planning Commission to review and the State Government to co-operate and undertake construction activity. The Governments of the States and the Union Territories would take some time to implement this part of the direction. In case for some reason, the Planning commission does not come forward to take up the matter before January, 1992, the Chief Justice of every High Court should set up a committee with him as Chairman where two senior Judges of the Court and the Secretaries of Finance, Law and Works should be members and annual planning of construction of residences should be made. We accordingly fix the outer limit of December 31, 1992 when this part of the direction would become fully operative."

19.178 In the Review Judgment² the Apex Court further observed that the Government has to give priority for construction of adequate number of houses for Judges with necessary facilities and the provision of house rent allowance is not an answer much less a substitute for the adequate housing facility. It was,

2. AIR 1993 SC 2493.

however, clarified that above direction was not intended to provide rent-free housing accommodation but accommodation at a rental not exceeding 12.5% of the salary of occupant. The relevant extract of the Review Judgment reads :

"(vi) Provision for residential accommodation : In the directions given, this court has emphasised that the judicial

officers cannot be left without proper accommodation for any length of time. Secondly, the accommodation available to the judicial officer must be adequate and consist also of a separate and exclusive office-cum-study room as an indispensable component of such residence. Thirdly, it was pointed out that in the absence of official residences, the judicial officers are required to pay exorbitant rent out of proportion to their salaries. Lastly, it was emphasised that in the pool of the Government accommodation which is available in any town, the judiciary gets the last priority. The Governments have not so far shown any keen awareness of the problems faced by the judges for want of accommodation and of the manner in which it affects the discharge of their duties. It is for these reasons that it was suggested that the Government should give top priority to the provision of residential accommodation to the judges and construct enough houses with the requisite facilities."

"It is difficult to understand the objections raised by the review petitioners to the said direction. The attitude adopted by the petitioners itself bears out that the Governments are not at all keen on providing proper residential accommodation to the members of the judiciary and justifies the necessity to give the said direction. On the admission of the review petitioners, there is at present a shortage of about 5000 houses. This means that about 50 per cent of the judicial officers are facing trials and tribulations for want of proper accommodation at rentals within their means. The estimated expense of Rs. 150 to 200 crores for constructing the said houses which is to be incurred by all the States and the Union Territories is according to us not forbidding even assuming that the estimate is (sic)."

"We now understand that the judiciary has not been included as a plan subject by the Planning Commission. If this is so, the construction of adequate number of houses with the necessary facilities should be given the top priority being the most primary requirement of the judges at any place. The provision of house rent allowance is not an answer much less a substitute for the adequate housing facility. In the judgment under review, it has been specifically emphasised that the provision of a separate and exclusive office room is an indispensable component of the official accommodation allotted to the judicial officer. In order to ensure that the quarters constructed for the judicial officers are of proper dimension and with adequate number of rooms, their future construction should be made in consultation with and under the supervision of the respective High Court and the High Court should take

adequate interest in their construction.

"It may be noted in this connection that the direction is not to provide rent-free housing accommodation but accommodation at a rental not exceeding 121 per cent of the salary of the occupant. We, therefore, reiterate the said direction and reject the objections of the petitioners."

19.179 In this respect, the Commission formulated five questions seeking the opinion / suggestion of High Courts, State Governments and Service Associations. The questions and replies received from the respondents are set out here under :

Q.No.42. The Supreme Court has observed that residential accommodation to every Judicial Officer must be provided. If State accommodation is not available, it should be the obligation of the State Government at the instance of the High Court to provide requisitioned accommodation with provision for 'Home Office' for every Judicial Officer according to his entitlement and recovery of not more than 12 1% of the salary of the Officer towards rent should be made and the balance should be met by the State Exchequer. Is this being followed in your State / UT?

19.180 Almost all the High Courts, Service Associations and State Governments have stated that in their respective States, the directions of the Supreme Court regarding provision of residential accommodation to every Judicial Officer have been complied with by providing state accommodation or requisitioned accommodation. However, some High Courts have reported that the accommodation provided to Judicial Officer is not befitting their status and it lacks space for home office.

Q.No.42.1. It is suggested by some that it is necessary in the public interest that all Judicial Officers in every State / UT be provided with rent free Government accommodation according to their entitlement as a condition of service. How do you justify this proposal? Would it not come in conflict with the aforesaid observations of the Supreme Court? (Note: In States like Bihar, Haryana, Orissa and Punjab, certain categories of Judicial Officers are provided with rent free accommodation).

19.181 Replies received from the High Courts reveal that as many as 11 High Courts viz., High Courts of Andhra Pradesh, Gujarat, Himachal Pradesh, Kerala, Madhya Pradesh, Bombay, Punjab & Haryana, Rajasthan, Sikkim, Tamilnadu and Calcutta have observed that rent free accommodation is to be provided to all the Judicial Officers and it does not come in conflict with the observations of the Supreme Court, because what has been provided is only the minimum and not the maximum.

19.182 The High Court of Gujarat has stated that in case of providing rent free accommodation to Judicial officers, the question of payment of HRA does not arise.

19.183 It is also brought to the notice of the Commission that in several States like Punjab, Haryana, Orissa and Bihar, some category of Judicial Officers are already provided with rent free quarters and, therefore, the observation of the Apex Court does not debar providing of rent free accommodation to all Judicial Officers.

19.184 The High Court of Delhi observed that providing rent free accommodation may not be conducive to resource needs of the state exchequer. More or less, similar views are expressed by the High Court of Jammu & Kashmir when it has stated that "rent should be recovered as expenditure on construction of quarters is made out of public funds." The Orissa High Court has suggested that if Government accommodation is not provided, house rent given to Judicial Officers should be on par with house rent given to such corresponding category of Central Government employees.

19.185 During the hearing, the Service Associations have urged before the Commission that rent-free accommodation should be provided to all Judicial Officers and it will not conflict with the directions of the Supreme Court. It is also urged that rent-free accommodation should be made as a condition of service. But certain Associations have contended that this proposal is directly in conflict with the observations of the Apex Court and hence not justified.

19.186 But the State Governments have urged that providing rent-free accommodation to all Judicial Officers would be against the guidelines of the Apex Court.

Q.No.42.2. It is suggested that those Judicial Officers who are on their own or who do not avail of Government quarters may be given a lumpsum tax-free House Rent Allowance depending upon the cadre of the Officer. How much would you suggest as House Rent Allowance in such cases?

19.187 By and large, the High Courts have suggested to provide lumpsum tax-free H.R.A. to the Judicial Officers occupying their own house with permission of the High Court. However, there is no unanimity with regard to the amount of such tax-free H.R.A. The High Courts of Delhi, Gujarat, Jammu & Kashmir, Bombay, Sikkim and Calcutta favour either the formula suggested by the V C.P.C. or 30% of the basic salary of the officer as tax-free H.R.A.

19.188 All the Service Associations have strongly pleaded to provide lumpsum tax-free H.R.A. in varying scales ranging from Rs.1000 to 5000 per month.

19.189 The State Governments have stated that the provisions of H.R.A. as applicable to Government servants should apply mutatis mutandis to Judicial Officers. They have further stated that payment of lumpsum tax-free H.R.A. is not desirable to one section of the community since such payment is not provided to all Government servants.

Q.No.42.3. "Who looks after the maintenance of the accommodation provided to Judicial officers? Whether it is Public Works Department or Judicial Department? Is there any deficiency in the Service?"

19.190 All the High Courts, except the High Court of Allahabad, have stated that the maintenance of the accommodation provided to Judicial officers is required to be looked after by the Public Works Department, but the services provided are not satisfactory. The High Court of Allahabad has stated that at present in Uttar Pradesh maintenance of the Judges Quarters is looked after by the Judicial Department, but it has no separate establishment for the purpose and, therefore, it should be entrusted to the Public Works Department with proper budgetary allocation.

19.191 Some High Courts like Karnataka, Punjab and Haryana have suggested that it would be better to have an Engineering Wing in the Judicial Department to maintain the Court buildings and judicial quarters with sufficient flow of funds.

Q.43 What are the facilities available for Judicial Officers in your State/UT to own house/site at a place of their choice for settling after retirement? What Scheme do you suggest to secure loan either from the Government or from the financial institutions for construction of houses at a concessional rate of interest?

19.192 Most of the High Courts have reported that no separate facilities are available to the Judicial Officers to own a house/site at places of their choice after retirement. Similar views have been expressed by the Service Associations. Some High Courts and State Governments have reported that the judicial Officers like the other Government employees are entitled to House Building or House Purchasing Advance at some concessional interest. The scale of finance for HBA / HPA varies from State to State. Some of the High Courts have suggested that adequate finance with nominal interest / subsidised interest be given to Judicial Officers for the purpose of constructing/purchasing a house. It is suggested by some High Courts and Service Associations that whenever sites are allotted by the Improvement Development Authorities or houses are allotted by the Housing Board, certain quota be reserved to the Judicial officers. Further analysis of the data reveals that some of the High Courts have suggested to adopt the scale of finance for HBA / HPA as recommended by V C.P.C. The State Governments have reported that their respective HBA rules are also made applicable to Judicial Officers and certain percentage of quota is already provided for allotment/allocation of houses/sites to all the employees including Judicial Officers.

OUR RECOMMENDATION :

19.193 Having given our anxious consideration to the grievances of the respondents, we recommend the following:

1. All Judicial Officers, irrespective of their cadre, should be provided with Government quarters according to their entitlement. If adequate Government quarters are not available at a time, the Government shall requisition the proper houses and make available to the Judicial Officers.
2. Government is entitled to collect by way of rent an amount not exceeding 12.5% of the basic pay of the occupant of such accommodation every month, since we are inclined to recommend payment of House Rent Allowance to every Judicial Officer irrespective of providing Government quarters/requisitioned houses.
3. All Judicial Officers are entitled to House Rent Allowance at the rate provided to the Government servants in the respective States/UTs.
4. Judicial Officers who occupy their own houses with the permission of the High Court are also entitled to H.R.A. at the same rate as provided to the corresponding Government employees.

5. We earnestly appeal to all State Governments/U.T. Administrations to undertake a "crash programme" for house construction for Judicial Officers and for the Court Complex with the assistance of Planning Commission and Government of India and complete such programme during the next two to three years.

6. The Government quarters/requisitioned house provided to Judicial Officers must have separate space for 'Home Library' and the necessary books and the furniture of the Home Library shall be at the cost of the High Court, which shall be administered and managed by the Principal District Judge of the District.

7. The Drawing Room of each such quarters/houses shall be reasonably furnished with a sofa set, carpet, teapoy and one or two side tables and chairs at the cost of the High Court / State which shall be administered and managed by the Principal District Judge.

The upholstery of every sofa-set should be changed once in three years.

8. The regular maintenance and repairs of Government quarters allotted to Judicial officers shall be the obligatory duty of the Public Works Department, since it is not possible for the High Court to maintain a separate department for this purpose.

9. A certain percentage of sites / houses, wherever they are available for allocation / allotment by the Housing

Board /City Improvement / Development Authorities etc., should be ear-marked for allotment to Judicial Officers by the respective State Governments / UTs.

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TELEPHONE FACILITIES

ANDHRA PRADESH :

19.194 All Judicial Officers in Andhra Pradesh are provided with telephones both at Courts and at their residence with STD facilities subject to the following ceilings prescribed by the High Court:

Sl. No.	Name of the Category	Chambers	Residence
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1.	Prl. District Judges	3,000 calls	2,000 calls
2.	Addl. District Judges	3,000 calls	1,000 calls
3.	Sub-Judges	2,000 calls	1,000 calls
4.	District Munsiffs	2,000 calls	1,000 calls

ASSAM :

19.195 Telephones are provided to the District Judges, Addl. District Judges, Chief Judicial Magistrates, Addl. Chief Judicial Magistrates, Civil Judges (Sr. Divn.), and S.D.J.M. in the Sub-Division, both at office and residence. The District Judges and Chief Judicial Magistrates are provided STD facilities in their residence. But the Judicial Magistrates and Munsiffs are not provided with telephones at their residence.

BIHAR :

19.196 The District Judge (Principal District Judge) has been provided with telephone at his office and residence. CJM / ACJM are provided with telephone at their residence. There is no ceiling of calls.

Other Officers have not been provided with telephone.

DELHI :

19.197 There is no Taluka / Tehsil level Court in Delhi. Judicial Officers who are in the pay scales of Rs.3700-5000 and above are entitled to telephone at their residence. Residential telephones have also been provided to all District Judges who have put in 5 years service having senior time scale of Rs.3000-4500.

GOA :

19.198 Telephone is provided at District / Taluka Courts, Residential telephones are also provided to the District / Additional District Judges, Civil Judges (Senior Divn.) and Civil Judges (Junior Divn.).

GUJARAT :

19.199 All Taluka Courts are provided with Telephone facilities. A policy decision has been taken to provide telephone facility to Judicial Officers at their residence at every District / Taluk level.

The Judicial Officers are entitled to free calls as follows:

District & Sessions Judge /

City Civil & Sessions Judges - No limit

Joint District & Sessions

Judges - 1000 calls bimonthly.

All other Judges / Magistrates - 650 calls bimonthly

HARYANA :

19.200 All the District & Sessions Judges, Addl. District and Sessions Judges, Chief Judicial Magistrates and Senior Sub-Judges have been provided with telephone both at office and residence. Additional Civil Judges (Senior Division) are provided with telephone only at office, Civil Judges (Junior Division)-cum-Judicial Magistrates are not provided with telephone facilities.

JAMMU AND KASHMIR :

19.201 Tehsil level Courts are not provided with telephone. The District Judges / Chief Judicial Magistrates have been provided with telephone facility. Some Special Mobile Magistrates are also availing of this facility.

KARNATAKA :

19.202 In Taluks, the combined Courts are provided with telephones. But the Presiding officers of the Taluk Level Courts are not having telephones at their residence.

KERALA :

19.203 Only District Judge, Additional District Judge and Chief Judicial Magistrate are provided with telephone at office and residence. Others are not given any such facility.

MADHYA PRADESH :

19.204 Telephones have been provided both at office and residence of District Judges, Special Judge under S.C., S.T., Prevention of Atrocity Act, and District Judge, Consumer Forum. Telephone has been provided to Chief Judicial Magistrate at his residence. The Chief Judicial Magistrate has been given STD facility for his residence telephone but not for other Judges.

MAHARASHTRA :

19.205 Every Court has been given telephone, but only the District Judges and Chief Judicial Magistrates have the residential telephones. STD facility is provided only to residential telephone of District Judges. But there appears to be no free calls for personal use. However, if total number of calls do not exceed 750 per month, it seems no questions are asked and the payment is invariably made by the office.

ORISSA :

19.206 The Judicial Officers in the ranks of District Judge and Chief Judicial Magistrates have telephone both in the office and residence. So also Registrar, Civil Court and a few other officers. But no STD facility is given except for the telephone in the office of the District Judges.

PUNJAB :

19.207 District Judges, Chief Judicial Magistrates and Senior most Civil Judges have telephone at their residence and also in the office. Apparently, the others do not have telephone.

RAJASTHAN :

19.208 Officers below the rank of Chief Judicial Magistrate are not having telephone either in their Court or at their residence. Obviously, the Officers above the said rank do have the telephone.

SIKKIM :

19.209 All the Judicial Officers are given telephone at their Court as well as at their residence with STD facilities.

TAMIL NADU :

19.210 The District Judges and Subordinate Judges are provided with telephone in Court and in their residence, except the Civil Judge (Jr. Divn.)-cum-Judicial Magistrate.

TRIPURA :

19.211 Telephone facilities have been provided in the office of the District Judge, Chief Judicial Magistrate and SDJM and also at the residence of District Judge and C.J.M. Perhaps, the other categories of Officers do not enjoy that facility.

UTTAR PRADESH :

19.212 At Tehsil Courts, telephone at present has been provided to one senior most Officer. In the District Headquarters, most of the Officers upto the cadre of Civil Judge (Senior Division) are given telephone at the residences with ceiling of 700 calls.

WEST BENGAL :

19.213 District Judges have been given telephones in chambers, offices and residences. Chief Judicial Magistrates and Sub-Divisional Judicial Magistrates are having telephone in their chambers, in most of the Districts and Sub-Divisions. In Chambers of some of the Munsifs at Sub-Divisional level, telephones are provided. There is no telephone at the residence of the Civil Judges (Senior Division) and Civil Judges (Junior Division) and the Additional District Judges. Telephones are provided at the residence of the Chief Judicial Magistrates and Sub-Divisional Judicial Magistrates.

SUGGESTIONS :

19.214 There are many suggestions from Service Associations and individuals. Broadly to state:

19.215 Telephone facilities should be provided to each Judicial Officer, both in Court and also at his residence.

19.216 STD facilities be provided for residential telephones, but number of units relating to the calls can be fixed for each Officer.

19.217 Some have suggested that 650 metered calls be provided free for personal use, while others have suggested that all call charges for personal requirement must be fully reimbursed. Some others have asked for 50% of the chargeable calls should be reimbursed.

19.218 Suggestion has also been made on the requirement to maintain a separate register for private calls, while others have stated that Judicial Officer be asked to pay charges made as personal calls on the telephone numbers which are not mentioned in the telephone directory of the High Court.

SUGGESTIONS FROM HIGH COURTS :

19.219 The High Court of Bombay has suggested that all the Presiding Officers be provided with residential telephone and certain number of free calls over and above the free calls permitted by the telephone department be allowed for personal requirement of Judicial Officers treating the same as part of service conditions.

19.220 The Calcutta High Court, however, has stated that all Judicial Officers require telephone at their chambers with restriction not to use the telephone for personal purposes except by making payment for personal calls. Similar is the view expressed by the West Bengal Judicial Service Association stating that the Judicial Officers will have to pay the charges from their own pocket for personal use of the telephone.

19.221 The High Court of Sikkim has stated that the Judicial Officers do require telephone at Office and at residence with STD facilities and accordingly are provided in their State. But occasionally the use of the telephone goes high and, therefore, the free

calls may be limited depending upon the categories of Officers.

19.222 We have considered these suggestions.

19.223 In Central Government and some States, telephones are not provided to the residence of the Officers below the rank of Deputy Secretary. Telephones at the office and residence of Deputy Secretary level Officers are, however, provided, but no STD facilities.

19.224 In these days, telephone is a necessity and not to be regarded as a luxury. It is, therefore, not only desirable but also necessary to provide telephone in all Courts and also at the residence of every Judicial officer.

19.225 However, we have to evolve a uniform principle without prejudice to the benefits already allowed to the Judicial officers in some States with regard to STD facilities.

OUR RECOMMENDATION :

19.226 We, therefore, recommend as follows:

1. **Every Court** must be provided with a telephone with STD facilities.
2. **Every Judicial Officer** must be provided with a telephone at his residence with STD facilities except to Civil Judge (Sr. Divn.) and Civil Judge (Jr. Divn.).
3. Without prejudice to the existing benefits of the free telephone calls, we recommend the following limits of free calls to the different categories of Officers:

Sl. No.	Name of the Category	Admissible free calls for two months	
		Office	Residence
i)	Prl. Dist. Judge/Sessions Judge/C.M.M. (with STD facility both in office and residence)	3,000	2,000
ii)	Addl. Dist. Judge/Addl. Sessions Judge (with STD facility both in office and residence)	2,000	1,000
iii)	Civil Judge (Sr. Dn.) and	2,000	1,000

	C.J.M. (STD facility to CJM both in office and residence)		
iv)	Civil Judge (Jr. Dn.)/Magistrate	1,500	750

4. The office must bear the expenses of the installation and bi-monthly payment of the telephone bills upto the aforesaid ceiling. Th excess calls, if any, must be borne by the concerned Judicial Officer.

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ADVANCES

19.227 The Government provides loans and advances to its employees for various purposes, which include house building / purchase advance (HBA / HPA), motor car advance, marriage advance, festival advance, advance for miscellaneous purposes like purchase of Khadi / Handloom cloth, warm clothing etc. All these facilities are hitherto extended to Judicial Officers also by the respective States / UTs.

19.228 Some advances are interest-free for e.g., festival advance, advances in connection with transfers, tours and journeys on LTC., whereas other advances like HBA /HPA, purchase of conveyances, personal computers, etc., are interest bearing.

ADVANCES FOR CONSTRUCTION / PURCHASE OF HOUSE :

19.229 At present, advances are granted for purchase of sites, construction and purchase of houses. The general pattern of advances available to the Central and State Government employees in this regard is almost similar. However, each Government has prepared a scheme of its own depending upon the local circumstances and available resources.

19.230 At present Central Government employees are entitled to HBA / HPA as indicated in the table below:

Sl.No.	Purpose	Cost	Basic pay + Stagnation Increment + NPA	Maximum limit (in Rs.) w.e.f. 16.12.97
4.	Construction of a house in a rural area	80%	50 times	7,50,000
5.	Enlarging existing living accommodation	100%	50 times	7,50,000
6.	Enlarging existing living accommodation in rural areas	80%	50 times	7,50,000

19.231 Further, w.e.f. 16.12.97, the cost of ceiling limit, will be 200 times of the basic pay + NPA + SI subject to a maximum of Rs.18 lakhs. The entire amount of advance together with interest is to be repaid in full in monthly instalments within a period of not exceeding 20 years - the advance in 180 monthly instalments and the interest in 60 instalments. The advance carries differential interest rates ranging from 7.5% and 12% per annum depending upon the quantum of advance.

Conveyance Advance :

19.232 With a view to encourage and assist their employees to own their own vehicles which are required for use in the discharge of their duties, both Central and State Governments have been giving them advances repayable in easy instalments for purchasing vehicles.

19.233 At present, the advance for the purchase of a motor car is admissible only to Officers drawing a pay of Rs.10,500/- per month or more in Government of India. An amount not exceeding 11 months' pay subject to a maximum of Rs.1,80,000/- or the cost of the vehicle, whichever is less, is granted as advance for the purpose.

19.234 Similarly, an advance for the purchase of a motor cycle / scooter / moped is admissible to those drawing a pay of Rs.4,600/- p.m. or more. In this case also, an advance not exceeding 6 months' basic pay subject to a maximum of Rs.30,000/- or the cost of the vehicle, whichever is less, is granted.

Personal Computer Advance :

19.235 The advance for the purchase of a Personal Computer is admissible only to Officers drawing a pay of Rs.10,500/- or more per month in Government of India. An amount not exceeding Rs.80,000/- or the anticipated price of the computer (excluding customs duty, if any), whichever is less, is granted as advance for this purpose. The Commission elsewhere has recognised the

importance of I.T. for Judiciary and hence there is need for purchase of personal computer by Judicial officers.

19.236 OUR RECOMMENDATIONS :

1. We recommend that all State Governments / UTs may adopt the limits prescribed by the Central Government for giving advances to Judicial Officers for construction / purchase of House.
2. We further recommend that a rebate of ½ % in the interest on HBA as admissible in the case of Central Government employees for undergoing sterilisation operation, may also be provided to Judicial Officers.
3. Elsewhere, the Commission has recommended liberal soft loan upto Rs.2.5 lakhs for Judicial officers to purchase Motor Vehicles on nominal interest and with easy instalments for repayment. We reiterate the same herein.
4. Advance for purchase of Personal Computer by the Judicial Officers be given on the same scale and terms and conditions as allowed to Government of India Officers.

A N D

5. Other Advances, if any, to the Judicial Officers in regard to matters not specifically covered herein, may be provided on the similar terms and conditions admissible to Central Government Officers.

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20. PROMOTIONAL OPPORTUNITIES

20.1 The adequate promotional opportunity is one of the significant factors in service jurisprudence. Every officer looks forward

to reasonable career progression not only because of higher salary but also with the object of occupying higher position of power and responsibility. It is undeniable that stagnation for long period would demoralise the officers. It is, therefore, necessary to evolve a proper promotion policy.

20.2 Keeping in view these factors, the Commission sought the views and comments on the following Questions :

Q.No.44. How many promotions a Judicial officer in your State at the lowest cadre normally gets during his tenure of service and at what intervals? Work out the realities with concrete examples.

Q.No.44.1. Does he invariably reach the highest cadre in the Judicial Service before retirement? If not, at what level does he stagnate and let the Commission have your suggestions to avoid stagnation?

Q.No.44.2. Should promotion be based on selection by merit alone or seniority-cum-merit? Please give reasons for preferring one or the other.

20.3 The replies received from the Respondents are presented below :

Almost all the High Courts have stated that a Judicial Officer recruited at the lowest level [i.e. Civil Judge (Junior Division)], generally gets promotion upto the post of Addl. District Judge / District Judge. Certain stray incidents of some Judicial Officers recruited as Civil Judges (Junior Division) retiring as Civil Judge (Senior Division) have also been reported. On careful scrutiny, it is found that such Officers have entered Judicial Service at an advanced age and could not complete even 25 years of service, before they could get promotion to the cadre of Addl. District Judge / District Judges. It is also noticed that in some cases, Civil Judges (Junior Division) not only reached the cadre of District Judges, but also marched to the High Court.

20.4 Some of the High Courts have reported that normally the first promotion from the cadre of Civil Judge (Jr. Dn.) to Civil Judge (Sr. Dn.) takes place within 6-9 years and second promotion after an interval of another 6-9 years. The High Courts of Kerala, Allahabad and Calcutta have stated that the interval between one promotion and another is about a decade. However, Sikkim stands as an exception. It is a small State with less number of Judicial Officers and having a population of around 5 lakhs with no scope for adequate promotional opportunity.

20.5 To prevent stagnation, various views have been expressed. Many of the High Courts / Service Associations and State Governments have suggested the following remedies :

- i) Introduction of time bound pay scales or career advancement scheme.
- ii) Provide a running pay scale.
- iii) Stop direct recruitment from the Bar to the cadre of District Judges.
- iv) Reduce at least the percentage of direct recruitment to the cadre of District Judges and make it uniform in all States / UTs.
- v) All ex-cadre posts having judicial functions must be brought within the umbrella of judicial service with provision for deputation.
- vi) Create selection grade and super-time scale in the District Judges cadre.

20.6 On the question as to whether promotion has to be on the basis of seniority-cum-merit or promotion by selection, the following suggestions have been received:

The High Courts of Andhra Pradesh, Delhi, Himachal Pradesh, Jammu & Kashmir, Kerala and Orissa have suggested that all promotions shall be made on the ground of ability and merit so as to keep all the Officers on their toes all the time and compel them to improve and give their best. However, they have added that seniority will have to be considered where merit and ability are equal.

The High Courts of Bihar, Gujarat, Karnataka, Madhya Pradesh, Punjab & Haryana, Sikkim, Tamil Nadu, Uttar Pradesh and West Bengal have favoured the principle of seniority-cum-merit for promotion. According to them, though promotion by merit is good in principle, it is more often based on subjective satisfaction and it is difficult to objectively consider the standard of meritorious performance.

Most of the Service Associations and State Governments have, however, favoured the principle of 'Seniority-cum-Merit' for

promotion.

20.7 Taking all these factors into consideration, we have :

- i) Rationalised the cadre structure and accordingly rationalised the pay structure also. Evolved a Master Pay Scale and carved out the required number of pay scales which have been elongated to prevent stagnation.
- ii) Recommended Assured Career Progression Scheme for the cadres of Civil Judge (Junior Division) and Civil Judge (Senior Division) by providing two financial upgradations, within the stipulated time-frame.
- iii) Recommended Selection Grade and Super-Time Pay Scales for District Judges, consistent with the functional needs and requirements.
- iv) Recommended that the cadre of Civil Judges (Senior Division) should be purely a promotional cadre and no direct recruitment should be made to this cadre.
- v) Recommended suitable amendment to Article 233 (2) of the Constitution to provide an opportunity for in-service Judges to compete for direct recruitment to the cadre of District Judges.
- vi) Recommended that 'not exceeding 25% of the posts in the cadre of District Judges should be reserved for direct recruitment'. This much of percentage for direct recruitment is considered necessary to promote efficiency, while at the same time, not impairing the interests of the promotees.
- vii) Recommended an innovative concept of certain weightage for fixing the inter-se-seniority of the promotees and direct recruits in the cadre of District Judges to minimise if not to remove the constant irritation and imbalance between the promotees and direct recruits.
- viii) Suggested that the promotional posts should be filled up at the earliest without being linked to the

direct recruits.

* * * * *

21. SUPERANNUATION AGE OF JUDICIAL OFFICERS

SURVEY OF THE PAST :

21.1 In the past, the age of retirement of judges in the judicial service in every state was linked to that of the State Government Employees / Central Government Employees.

21.2 Till 31-3-1938, the normal age of retirement of Central Government Employees was 55 years. Employees could, however, be retained in service upto 60 years depending on their being physically fit and mentally alert.

21.3 The First Central Pay Commission set up by the Central Government in 1946 recommended 58 years for superannuation of Central Government employees. But this recommendation was not accepted by the Government on the ground, inter-alia, that the majority of persons retiring at the age of 55 were not capable of rendering efficient service; that their replacement at the age of 55 by younger men would serve the interest of efficiency better and that a retirement age should be fixed which would release men at the age when they would still be fit to render service to the country in other spheres of their choice.

21.4 In 1953, the question was reconsidered, but the earlier decision to retain the age of retirement at 55 was reaffirmed. The Government, however, decided that in view of shortages of trained personnel, the extension of service beyond 55 years might be given liberally on the ground of public interest particularly in the case of scientific and technical personnel.

21.5 In 1958, the question of retirement age was again considered in view of the continuing shortage of trained manpower. The Government did not extend the age of superannuation, but laid down the criteria for grant of extension and re-employment of technical and scientific personnel. It was decided that re-employment or extension might be granted upto two years at a time.

21.6 The Second Central Pay Commission examined the question of retirement age in some greater detail. It compared the data on life expectancy at birth and the retirement age, and also the data on general mortality and survival rate of pensioners, in comparison with the age of superannuation of Government servants in some foreign countries. The Commission also took note of the opinions expressed by eminent persons, economists, retired public servants, heads of departments, etc. After considering the various aspects, the Commission recommended an upward revision to 58 years. It mainly relied upon the fact that the life expectancy in India has improved, and there was greater need of scientific and technical personnel in Government service to meet the requirements of the Third Plan, then on the anvil.

21.7 Initially, the said recommendation was not accepted by the Government, since it was felt that raising the age of superannuation would reduce employment opportunity.

21.8 In 1962, the matter was again brought to the attention of the Government. The Government then took into consideration several factors like shortage of experienced and trained manpower; insignificant impact on employment opportunity (viz., of less than one per cent of the total volume of additional employment needed for the educated unemployed during the Third Plan period); the higher expectation of life and the continued physical fitness of Government employees after retirement. The Government decided to raise age of retirement from 55 to 58 years with effect from 1st December 1962. The age of retirement for Group D category of employees and workshop employees in the Central Government was maintained at 60 years.

21.9 The Third and Fourth Central Pay Commissions received many representations for upward revision of age of retirement to 60 years. But it did not favour the revision on the ground, inter-alia, that it would reduce the employment opportunities for fresh graduates and technical persons in Government service. They emphasised the need for injecting fresh blood and fresh knowledge for the efficient working in government.

21.10 All the State Governments save State of Kerala have followed similar age of retirement to their respective employees and also extending the same to Judicial officers in their states.

21.11 When the matter thus stood, the All India Judges' Association filed a writ petition¹ before the Supreme Court seeking

several reliefs including the upward revision of retirement age. It was contended before the Court therein that there is a marked distinction between the Civil Service and the Judicial Service, both in the qualification and nature of work. The age of superannuation of the Judicial Officers should be more than that of civil servants in as much as the basic qualification for recruitment to the judicial service requires every Officer to have in the minimum a bachelor's degree in law which is acquirable after becoming a graduate. But for normal civil service an ordinary graduate could apply and secure a job and that is not possible in judicial service which requires further period of three years to acquire the basic qualification. This inevitably would take minimum age for entry into Judicial Service higher than the minimum age for entry into Civil Service. It was urged that a distinction has to be maintained in the age of retirement for the Judicial Officers from that of the Civil Service and it is wrong to apply the same rule for both the categories.

21.12 Considering these and other factors, the Supreme Court observed that the age of retirement of Judicial Officers in subordinate courts should be raised from 58 to 60 years.

1. AIR 1992 SC 165 = (1992) 1 SCC 119.

21.13 The aforesaid view has been maintained in the Review Judgement² but with certain directions, which will be presently considered.

FIFTH CENTRAL PAY COMMISSION :

21.14 This Central Pay Commission was also required to examine the question as to the appropriate age of retirement of Central Government employees. The Commission entrusted the matter to the INSTITUTE OF APPLIED MANPOWER RESEARCH ("IAMR") for study and report.

21.15 IAMR if, we may say so, has examined the question in a scientific manner with collection of statistics of this country and countries abroad. It has even collected the up-to-date Data and in particular from the ILO Report III of the Joint Committee of

Public Services (4th Session), Geneva, 1988. The relevant part of the report may usefully be extracted herein below₃:

"It is observed that the age of superannuation is 65 years in most Western Countries, viz. Australia, Belgium, Finland, France, Greece, Italy, Ireland, Luxembourg, Netherlands, Spain, Sweden, Turkey, U.K., Canada and U.S.A. In Denmark the age of retirement is 67 and in Norway, the retirement age of 70 years is followed in the case of certain categories of employees. In Asian region, the highest age of retirement is 65 years in Japan and Hong Kong; 60 years in China, Pakistan, Philippines; 57 years in Bangladesh; and 55 years in Malaysia, Singapore and Sri Lanka."

2. AIR 1993 SC 2493; (1993) 4 SCC 288.

3. IAMR Report, Page 17.

21.16 The Table containing the age of superannuation in public services in foreign countries prepared by IAMR is hereto annexed as Annexure I to this chapter.

21.17 It is interesting to note the new developments in the age of retirement in other countries. IAMR has collected the following information:

NEW DEVELOPMENTS - WORLD TRENDS₄

"In a number of countries, specially in European region, a further increase in the retirement age is round the corner. This change is taking place due to demographic causes especially the phenomenon of ageing population; and to reverse / arrest the trend of early retirement. In about 20 countries, there is a possibility of raising the current normal age of retirement on the following patterns:

- (i) Denmark, Switzerland, Portugal, U.K., Australia and Finland are taking measures for greater flexibility in the age of retirement for longer stay of people at work. Israel and Germany are also taking similar measures.

- (ii) U.S.A., has recently increased the age of retirement from 65 to 67 years. Japan is raising the age of retirement to 65 for both men and women. Costa-Rica has already increased the age of retirement to 65 years.
- (iii) In the Republics of Czech and Slovak, it is proposed to increase the age of retirement to 62 years for both men and women, as against the existing 60 years for men and 57 years for women.

4. IAMR Report, Page 18.

- (iv) A gradual increase of retirement age to 65 years is being proposed in Italy against 60 years at present.
- (v) In Argentina a proposal for raising the retirement age from 60 to 65 is being discussed."

21.18 IAMR has made a sample survey of the health conditions of about 1183 retired persons by contacting them personally. It is highly educative to read that information which runs as follows:⁵

"A sample survey of persons retired during the last five years (1990-94) was carried out for assessing their activity status, health conditions, opinions, on the age of superannuation, availability of work, leisure time spent, etc. For this purpose, names and addresses of about 5000 retired persons (1000 for each year) was obtained from the Office of Chief Controller of Pensions. In all 1183 retired persons were contacted by mail with Reply-paid facility to furnish information in the questionnaire drawn for the purpose. By the end of July, 365 persons furnished the information. Of course, 166 belonged to the gazetted and the rest i.e. 199 to non-gazetted categories.

About 50 per cent of the respondents reported that they were either working or were available for work. It was interesting to note that persons in the age group of 62 to 65 (about 9 per cent) had indicated their desire for work. Those employed / self employed, were persons between the ages 60 to 62 years.

Bulk of the retired persons viz. 80 per cent reported 'Excellent' to 'Good' health conditions. Another 14 per cent

5. IAMR Report, Page 106.

reported 'Fair' health and only 6 per cent reported 'Poor' to 'Indifferent' health. The incidence of poor or indifferent health was found to exist amongst people above 62 years of age. It is seen that health conditions amongst the retired persons were good upto the age of 62 years."

21.19 After taking all these factors into consideration, IAMR has recommended as follows:

(a) The age of superannuation for Central Government employees is recommended at 62 years, uniformly for all categories including school teachers. This age will also be applicable to the employees of Union Territory Administrations and N.C.T. of Delhi.

(b) A higher age of superannuation of 65 years is recommended for scientific and technical research and teaching professionals and Medical research and teaching professionals, Judges, Medical specialists, Computer specialists and other high-tech. professionals may also have the age of retirement of 65 years.

Non-technical employees, however, in scientific, technical or research institutions may not qualify for the enhanced retirement age and may retire at the general age of retirement of 62 years.

(c) The age of superannuation of senior officers of Central Police Organisations (CPOs) performing administrative and

6. IAMR Report, Page 72.

supervisory nature of duties may be increased to 62 years. No change in retirement age is recommended for the operational personnel in any of the Central Police Organisation and the status-quo may be maintained.

(d) The age of superannuation for officers performing administrative and supervisory duties in the Delhi Police may be 62 years at par with Central Government employees etc."

RECOMMENDATIONS OF THE FIFTH CENTRAL PAY COMMISSION :

21.20 After considering the report of IAMR and other relevant material, the 5th CPC recommended⁷ to :

"increase the age of retirement for all Central Government employees (Except those in the Armed Forces and Central Police Organisations) to 60 years.

21.21 The 5th CPC further observed that⁸:

"The recommendation for extending the age of superannuation to 60 years should have only prospective effect from such date as Government may specify and shall be applicable only to those employees who are to retire at the normal age of superannuation on or after the date on which the Government orders come into effect."

21.22 The 5th CPC also made the following suggestion⁹:

"The present age of superannuation of Central Government

7. Volume III - 5th CPC Page 1752.

8. Volume III - 5th CPC Page 1753.

9. Volume III - 5th CPC Page 1755.

employees has acted in the past as a benchmark against which the ages of superannuation of other categories of employee, judicial officers, teachers, constitutional authorities etc. were fixed. It is expected that our recommendations will lead to suitable readjustments elsewhere in order to maintain the present relativities."
(emphasis furnished)

21.23 Pursuant to the recommendations made by the 5th CPC, the Central Government by order dated 13th May 1998, raised the age of retirement of Central Government employees from 58 to 60 and directed that they shall now retire from service on the

afternoon of the last day of the month in which he / she attains the age of 60 years. It was further stated that the Government servants whose date of birth is the 1st of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of 60 years.

21.24 Likewise, the Government of West Bengal, Pondicherry, Meghalaya, Mizoram and National Capital Territory of Delhi, have raised the retirement age of their civil servants to 60 years.

21.25 The remaining States, however, have not raised the age of retirement of their employees and it remains at 58.

21.26 Kerala Government consistently stood the ground by retaining the retirement age at 55 years for their employees.

21.27 This being the position, the Commission received several representations from Judicial Officers for enhancing the age of superannuation. The Commission, therefore, wanted to ascertain the views and comments on the matter from all concerned. For this purpose, the following question was formulated and included in the general Questionnaire :

Q.No. 48.1 :

What should be the proper age of superannuation to Judicial Officers?

21.28 In reply to the question, the diverse views have been received, which are set out in laconic details below :

VIEWS FROM JUDICIAL OFFICERS' ASSOCIATION :

21.29 By and large, most of the Judicial Service Associations have asked for raising retirement age to 62. One of the reasons given by them is rested on the recent hike in the retirement age of Central Government employees to 60 and the need to have proper relativity in their age of retirement. The Judicial Officers' Associations of Bihar, Gujarat, Kerala, Maharashtra, Manipur and Orissa, have, however, accepted the prevailing retirement age at 58 years.

21.30 The West Bengal Judicial Officers' Association has gone a step further. It has stated that if experience and maturity are required in judicial work, the retirement age should be raised to 65 years.

21.31 All India Judges' Association has given certain innovative reasons. It has stated that the judicial hierarchy has been

accepted as a single entity by the Supreme Court. When each member of the judicial hierarchy puts his heart and soul in the discharge of his functions arduously for long hours every day, there should not be yawning gap in the retirement age of judges at various levels. They, in other words, want that there should be uniform age of retirement for judicial officers, High Court judges and Supreme Court Judges.

THE HIGH COURTS :

21.32 The High Courts of Patna, Jammu & Kashmir, Bombay, Sikkim, Rajasthan, and Punjab & Haryana are for upward revision of the age of retirement to 62 years. They have mainly put forward two fold reasons : (i) The retirement age of Central Government employees has been raised to 60 years and the existing relativity in the age of retirement of Judicial Officers has to be maintained; and (ii) The increase in the average span of life.

21.33 The High Court of Calcutta has a different approach to the question. It is stated that the general age of superannuation of the Judicial Officers may be maintained at 60 years keeping in tune with other service, but power should be conferred upon the High Court to extend upto 62 years for deserving cases.

21.34 The High Courts of Karnataka, Andhra Pradesh, Delhi, Himachal Pradesh, Kerala, Madhya Pradesh, Gujarat, Calcutta, Orissa, Madras and Allahabad, are, however, for maintaining the status-quo at 60 years.

THE GOVERNMENTS :

21.35 As expected, the Governments of Andhra Pradesh, Karnataka, Kerala, Maharashtra, Nagaland, Tamilnadu, Uttar Pradesh, West Bengal and Administration of the Union Territory of Lakshadweep, are against any alteration in the present retirement age of Judicial officers.

21.36 The Question for consideration is **what should be the proper retirement age for our Judicial officers in the present set up?**

21.37 Before we examine this question, we may refer to the observations and directions made by the Supreme Court in the Review Judgement in ALL INDIA JUDGES' CASE¹⁰. While declaring that there shall be upward revision of retirement age of

Judicial Officers from 58 to 60, the Apex Court has made certain observations / directions which we had an occasion to consider earlier. But for immediate reference, we may reproduce the same below :

10. Ibid2.

"There is, however, one aspect we should emphasise here. To what extent the direction contained in the main judgement under review shall stand modified. The benefit of the increase of the retirement age to 60 years shall not be available automatically to all Judicial Officers irrespective of their past record of service and evidence of their continued utility to the judicial system. The benefit will be available to those who, in the opinion of the respective High Courts, have a potential for continued useful service. It is not intended as a windfall for the indolent, the infirm and those of doubtful integrity, reputation and utility. The potential for continued utility shall be assessed and evaluated by appropriate Committees of Judges of the respective High Courts constituted and headed by the Chief Justices of the High Courts and the evaluation shall be made on the basis of the judicial officers' past record of service, character rolls, quality of judgements and other relevant matters.

"The High Court should undertake and complete the exercise in case of officers about to attain the age of 58 years well within time by following the procedure for compulsory retirement as laid down in the respective Service Rules applicable to the judicial officers. Those who will not be found fit and eligible by this standard should not be given the benefit of the higher retirement age and should be compulsorily retired at the age of 58 by following the said procedure for compulsory retirement. The exercise should be undertaken before the attainment of the age of 58 years even in cases where earlier the age of superannuation was less than 58 years.

"It is necessary to make it clear that this assessment is for the purpose of finding out the suitability of the concerned officers for the entitlement of the benefit of the increased age of superannuation from 58 years to 60 years. It is in addition to the assessment to be undertaken for compulsory retirement and the compulsory retirement at the earlier

stage/s under the respective Service Rules.

"The enhancement of the superannuation age to 60 years coupled with the provision for compulsory retirement at the age of 50 years does introduce a change in the service condition of the existing personnel. There may be judicial officers who are not desirous of availing of the benefit of the enhanced superannuation age with the condition of compulsory retirement and may like to opt for retirement at the age of 58 years. In such cases, the concerned officers should intimate in writing their desire to retire at the age of 58 years well in advance and in any case before they attain the age of 57 years. Those who do not do so will be deemed to have exercised their option to continue in service till they attain 60 years of age subject to the liability of being retired compulsorily at the age of 58 years according to the procedure for compulsory retirement laid down in the Service Rules."

21.38 Some of the High Courts have literally incorporated the above observations in their Service Rules making also a provision for compulsory retirement at the age of 58 years, if the Judicial Officers are found unsuitable for two more years of service.

21.39 Elsewhere in our Report¹¹, we have stated that the directions of the Supreme Court have affected the morale of the Judicial Officers. The review

11. See the Chapter "The Trial Judge is Really 'On Trial' ".

of cases for compulsory retirement under the relevant Service Rules should be independently taken up by the High Court, and it should not be linked with the consideration for giving the benefit of service from 58 to 60 years. Therein, we have emphasised and also in our "Preface" to this Report that the cases of Judicial Officers must be periodically reviewed for compulsory

retirement once in every five years, that is, at about 50, 55 and 60 years under the respective Service Rules made for the purpose. Such a review must be made by a Committee of Judges of the High Court headed by the Chief Justice. Those who come clean from such review should only be allowed to continue in service till they attain the age of superannuation.

21.40 We have also recommended to delete the Rules made by the High Courts incorporating the directions of the Supreme Court in the Review Judgement in the ALL INDIA JUDGES' ASSOCIATION CASE for compulsory retirement at the age of 58 years. Instead, we have suggested to all High Courts to make a rule specifying only the superannuation age without any condition. We have indicated that once such a rule is made, the said directions of the Supreme Court need not be followed for review of cases of Judicial Officers as observed by the Supreme Court in RAJAT BARAN ROY AND OTHERS v. STATE OF WEST BENGAL AND OTHERS¹².

21.41 We may now proceed to consider the contentions advanced for upward revision of the retirement age of our Judicial Officers.

21.42 As earlier stated, the All India Judges Association has pleaded for uniformity in the retirement age for the Judges of the Supreme Court, Judges of the High Court and Judicial Officers. They want that the age of retirement of Judicial Officers should be raised to 65 years.

12. (1999) 4 SCC 235, at 240.

21.43 We consider that the demand made by the All India Judges' Association is not sound and cannot be accepted. Indeed, it overlooks the intention of the makers of the Constitution.

21.44 Article 124 of the Constitution provides that the Judge of the Supreme Court shall hold office until he attains the age of 65 years.

21.45 Article 217 of the Constitution provides that every Judge of a High Court shall hold the office until he attains the age of 62

years (amended under the 16th Amendment to the Constitution. Prior to that, it was 60 years).

21.46 The Makers of the Constitution have deliberately kept different age of retirement for the High Court Judges and the Supreme Court Judges, in spite of the demand in the Constituent Assembly to fix uniform retirement age for the Judges of High Court and the Judges of Supreme Court. While rejecting that demand, Dr. Ambedkar gave the following reasons :

"It is essential that a difference of 3 to 5 years should be maintained between the retirement age of High Court Judges and that of Supreme Court Judges."

Dr. Ambedkar went on to state¹³ :

"The honour and prestige associated with a seat on the Supreme Court Bench have their limits as an attraction and it is the prospect of continuing in service for a period of five more years that chiefly attracts him to the new office. As this attraction would disappear if the age of superannuation for High Court judges

13. The Framing of India's Constitution by B. Shiva Rao, Select Documents, Vol. IV p.198-199.

also is raised to 65, judges for the Supreme Court will have to be selected from among junior and comparatively inexperienced judges of the High Court, and a Court thus manned would hardly command the respect and confidence which the Supreme Court in the land ought to inspire. On a careful balancing of these considerations, we have come to the unanimous conclusion that - (i) it is essential that a difference of 3 to 5 years should be maintained between the retiring age of High Court Judges and that of Supreme Court Judges; (ii) age limit for retirement should be raised to 65 for High Court Judges and to 68 years for Supreme Court Judges;"

21.47 Subsequently, it appears that there were more criticisms for fixing the retirement age at 60 for the High Court Judges, as against the retirement age of 65 years for Supreme Court Judges. This has resulted in the Sixteenth Amendment to the Constitution by fixing the retirement age of High Court Judges at 62 years. Mr. M.V. Pylee¹⁴ narrates this development in the following manner :

"Both in the Constituent Assembly and outside, during the time of the framing of the Constitution and after, the provisions dealing with the conditions of service of judges of the High Court were subjected to three major criticisms. The most important of these related to the fixation of sixty years as the retiring age as was then provided. It was pointed out that when the age of retirement of the judges of the Supreme Court was fixed at sixty-five years, there was little justification for fixing that of the High Court

14. Constitutional Government in India by M.V. Pylee, Second Revised Edition 1965, P.553.

judges at sixty. There is hardly any reason to suppose that the judges of the Supreme Court will do better after sixty than the judges of the High Court. There is no fundamental difference between the types of work of the Supreme Court and the High Court, nor in the conditions under which the judges work. It may be that a 'brilliant or sound' judge of the High Court who is physically fit has the opportunity to be appointed to the Supreme Court and thereby continue in service until he completes sixty-five years of age. But vacancies on the Supreme Bench are not of frequent occurrence. In comparison with the number of judges who retire every year from the High Courts, possible vacancies in the Supreme Court during the same period are negligible. Fixation of sixty as the retiring age may also prevent the top men in the Bar who have crossed the age of fifty years, from accepting appointments as judges of High Courts. These criticisms have substantially gone home as a result of which the sixteenth Amendment of the Constitution provided the retiring age to be raised to sixty-two years."

21.48 Having regard to the differential age of retirement for the Supreme Court Judges and the High Court Judges, which had the Constitutional sanction, we cannot accede to the contention that the age of retirement of the Judges of all Courts should be uniform.

21.49 However, there is a compelling reason for raising the retirement age of Judicial Officers to 62 years.

21.50 It is now well-settled that Judicial Service will include also the hierarchy of specialised Civil Courts such as Labour Courts and Industrial Courts.

21.51 In *STATE OF MAHARASHTRA v. LABOUR LAW PRACTITIONERS' ASSOCIATION AND OTHERS*¹⁵, the Supreme Court while explaining the scope of the expression 'District Judge' as defined under Article 236(a) and the expression 'Judicial Service' as defined under Article 236(b) of the Constitution, has observed:

"Para 9. Article 236(a) defines the expression "district judge" as including judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge. This is an extensive definition and does not cover every category of a district judge.

xxx xxx xxx xxx

Para 10. The District Judge, therefore covers a judge of any Principal Civil Court of Original Jurisdiction. With an increase in the numbers of specialised courts and tribunals which are being set up to deal with specific kinds of civil litigation which would otherwise have been dealt with by the ordinary civil courts, we now have a number of specialised courts exercising different categories of civil original jurisdiction. It can be specialised civil original jurisdiction pertaining to Labour and Industrial disputes specified in the relevant Acts as in the case of Labour and Industrial Courts, or it could be pertaining to recovery of bank debts and so on. The structure of civil courts exercising original jurisdiction is no longer monolithic. The judge of the

15. AIR 1998 SC 1233 AT 1236 TO 1239.

Principal Civil Court heading the concerned set of courts under him and exercising that jurisdiction can also fall in the category of a "District Judge": by whatever name called

xxx xxx xxx

xxx xxx xxx

Para 17. xxx xxx xxx

When the service is exclusively judicial, there is no reason to exclude such judicial service from that term under Article 236.

xxx xxx xxx

Para 18. xxx xxx xxx

xxx xxx xxx

Going by these tests laid down as to what constitutes judicial service under Article 236 of the Constitution, the Labour Court judges and the judges of the Industrial Court can be held to belong to judicial service. The hierarchy contemplated in the case of Labour Court judges is the hierarchy of Labour Court Judges and Industrial Court Judges with the Industrial Court judges holding the superior position of District Judges. The Labour Courts have also been held as subject to the High Court's power of superintendence under Article 227."

21.52 It may be stated that on these principles, even Member of the District Forum constituted under the Consumer Protection Act 1986, the Member of the Debt Recovery Tribunal constituted under the Debts Due to Banks and Financial Institutions Act, 1993 and the Judge of the Family Court constituted under the Family Courts Act, 1984, would also fall into the Judicial Service as defined under Article 236(b) of the Constitution, with the District Judge as the head of that service. But these posts have different age of retirement as seen herein below:

CONSUMER PROTECTION ACT, 1986:

Section 10(2) provides:

Every member of the District Forum shall hold the office for a term of five years or up to the age of 65 years whichever is earlier and shall not be eligible for reappointment."

THE ADMINISTRATIVE TRIBUNALS ACT, 1985:

Section 8(a) and (b) provides:

" In case of Chairman or Vice-Chairman, the age of 65 years and in the case of any other member, the age of 62 years."

RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993 :

Section 6 provides :

" The presiding officer of a Tribunal shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of 62 years whichever is earlier."

Section 11 provides :

" The presiding officer of an Appellate Tribunal shall hold the office for a term of five years from the date on which he enters upon his office or until he attains the age of 65 years whichever is earlier."

THE FAMILY COURT ACT, 1984 :

Section 4(5) provides :

" No person shall be appointed as or hold the office of, a judge of a Family Court, after he has attained the age of sixty two years."

THE INDUSTRIAL DISPUTES ACT, 1947:

Section 7-C provides :

"Disqualifications for the presiding Officers of Labour Courts, Tribunals and National Tribunals, -

No person shall be appointed to, or continue in, the office of the Presiding Officer of a Labour Court, Tribunal or National Tribunal, if -

(a) he is not an independent person; or

(b) he has attained the age of sixty-five years."

21.53 For convenient reference, we have given below the Table containing the Name of the Statute, Name of Post with the age of retirement:

Sl.No.	Name of the Statute	Name of Post	Age of retirement
1.	The Consumer Protection	Member, Dist. Forum	Upto 65 years

	Act, 1986		
2.	The Administrative Tribunal Act, 1985	Member	Upto 62 years
3.	The Recovery of Debts Due to Banks & Financial Institutions Act, 1993	Presiding Officer	Upto 62 years
4.	The Family Courts Act, 1984	Judge, Family Court	Upto 62 years
5.	The Industrial Disputes Act, 1947	1. Labour Court 2. Industrial Tribunal	Upto 65 years

21.54 All these statutory posts fall into the expression "Judicial Service" as defined under Article 236(b) of the Constitution, to which our Judicial Officers also belong.

21.55 It is well-settled that different posts which are falling into the same service cannot have different age of retirement.

21.56 We cannot, however, as earlier stated, fix the age of retirement of our Judicial Officers uniformly at 65. The High Court Judges retire at 62 years and the Supreme Court Judges retire at 65 years. There is thus no scope to place the Judicial Officers between 62 and 65 years. Besides, any attempt of the Judicial Officers to overstep the limit of 62 years may be considered as trespass into the realm preserved to maintain the relativity of the retirement age of the Judges of the High Court and the Supreme Court. Such an attempt has to be ruled out in the first place.

21.57 What remains to be considered is only a narrow strip between 60 and 62 years. The Judicial Officers are already having 60

years as retirement age. The next step could only be to 62 years. Fortunately, there is no Constitutional inhibition for fixing the age of retirement of Judicial Officers at 62 years on par with that of High Court Judges.

21.58 We do not, however, mean that the High Court Judges should rest at 62 years. We would welcome if the age of retirement of High Court Judges is revised to 65 years and correspondingly, the age of retirement of Supreme Court Judges is raised to 68 or 70 years.

OUR RECOMMENDATION :

21.59 After considering various aspects of the matter, we recommend an increase in the age of retirement for all Judicial Officers from 60 to 62 years for the following reasons:

- (i) From the statistical data collected by the IAMR to which we had made reference earlier, the longevity of our people has considerably increased.
- (ii) From the Report of IAMR, it will be seen that in a number of countries, especially in European region, increase in the retirement age is round the corner. The change is taking place due to demographic causes, especially the phenomenon of ageing population and to reverse / arrest the trend of early retirement.
- (iii) From Annexure-I, which is a copy of the Table prepared by IAMR, it will be seen that the age of superannuation in public services in some of the foreign countries is upto 65 years.
- (iv) Recently, the Central Government while accepting the recommendation of the V Central Pay Commission, has raised the age of superannuation of the Central Government employees upto 60 years. This has been followed by all the Administrations of Union Territories.
- (v) The V Central Pay Commission has also observed that the superannuation of Central Government employees has acted in the past as a Benchmark against which the age of superannuation of other categories of employees, Judicial Officers, Teachers, Constitutional Authorities etc., were fixed. They have suggested that

their recommendation will lead to suitable readjustments in these Services in order to maintain the present relativities.

(vi) There is a tendency on the part of Judicial Officers after retiring at 60 years to seek re-employment in the Corporation and Statutory Boards as Law Officers. There, they will generally continue for a fixed term of five years.

(vii) Most of the Judicial Officers do not get full pension for want of qualifying service of 33 years, since they join the judiciary at later age in view of the additional qualification and experience prescribed for judicial recruitment.

(viii) The Judicial Officers, as the age advances, become more mature and their services could be better utilised by continuing them in service, instead of driving them to other avocations.

(ix) Unlike in the public services, there is no question of impact on employment situation if the age of retirement of Judicial Officers is raised to 62 years, since they are recruited from the members of the Bar. There are hardly 12,000 Judicial Officers in the whole country who would be given the benefit of upward revision by two years of service.

XXX XXX XXX

ANNEXURE**AGE OF SUPERANNUATION IN PUBLIC SERVICES IN FOREIGN COUNTRIES**

Sl.No.	Name of the Country	Age of retirement
1	2	3
1.	AUSTRIA	65 yrs and 10 yrs of service. Full pension 35 yrs of service (early pension at 60 yrs and 10 yrs of service)
2.	BAHRAIN	Full pension 40 yrs of service
3.	BANGLADESH	57 years minimum pension of 10 yrs of service 60% pension after 25 yrs

		70% (full pension at 57 yrs)	
4.	BELGIUM	65 yrs and 20 yrs of service	
		early retirement 60 yrs and 5 yrs of service	
6	MYNAMAR (BURMA)	60 yrs and 10 yrs of service	
		Full pension 42 yrs of service	
8	CANADA	60 yrs 5 yrs of service	
		early retirement 55yrs and	
		30 years of service	
		Full pension 35 yrs of service	
10	IVORY COASTE	Full pension 40 yrs of service	
11	CYPRUS	55 yrs	
12	ELSALVADOR	60 yrs and 15 yrs of service	

		Full pension 40 yrs of service		
13	FINLAND	65 yrs (for some categories between 55 and 63 yrs) Early retirement 63 yrs Full pension 63 yrs of age and 30 yrs of service		
14	FRANCE	65 years Early retirement 60 yrs (55 yrs for Public servant in foreign country)		service

15	GAVON	55 yrs and 15 yrs of service No age, if 30 yrs of service
16	F.R.G. (Federal	Early retirement 62 years No age requirement if 35 yrs of service
17	GREECE	65 yrs and 15 yrs of service Full pension 56 yrs and 35 yrs of service
18	INDONESIA	55 years Early retirement 50 yrs & 20 yrs of service Full pension 30 yrs of service
19	IRELAND	65 yrs of age Full pension 40 yrs of service
20	ITALY	65 yrs of age and 20 yrs of service

		(Lower age for Army) Early retirement 40 yrs of service
21	JAPAN	65 yrs of age and 25 yrs of service
22	LUXEMBOURG	Early retirement 60 yrs and 30 yrs of service
23	MADAGASCAR	55 yrs/60yrs and 15 yrs of service Early retirement 45 yrs & 15 yrs of service No age requirement if 25 yrs of service
25	MEXICO	55 yrs and 15 yrs of service Full pension 30 yrs of service
26	MOROCCO	60 years 65 years for teacher 66 years for Magistrate

		Early retirement 21 yrs of service
27	NEPAL	20 yrs of service
28	NETHERLANDS	65 years
29	NIGERIA	60 yrs of age and 15 yrs of service
30	NORWAY	Certain categories 70 yrs - 60 to 68 yrs (3 years of service) Early retirement 67 yrs with 30 yrs of service Full pension 30 yrs of service
31	PAKISTAN	60 yrs and 10 yrs of service Early retirement 25 yrs Full pension 30 yrs of service

32	PHILIPPINES	60 yrs and 15 yrs of service
33	PORTUGAL	70 yrs and 5 yrs of service Early retirement 60 yrs & 36 yrs of service or on completion of 30 yrs
34	SENEGAL	55 yrs and 15 yrs of service
35	SPAIN	65 yrs and 9 yrs of service Early retirement 60 yrs & 30 yrs of service
36	SRI LANKA	55 yrs and 10 yrs of service
37	SURINAME	60 yrs of age Early retirement 55 yrs and 35 yrs of service
38	SWEDEN	65 years of age
39	SWITZERLAND	62 yrs and 40 yrs of service Early retirement. Women 60 yrs and 35 yrs of service

40	TOGO	55 yrs and 15 yrs of service Full pension 40 yrs of service
41	TRINIDAD & TOBAGO	55 yrs and 10 yrs of service
42	TUNISIA	55 yrs for Police / Prison or workers performing difficult or non-healthy work - 55 yrs and 35 yrs of service
43	TURKEY	65 yrs and 15 yrs of service Full pension 30 yrs of service
44	UNITED KINGDOM	60 to 65 yrs and 5 yrs of service
45	UNITED STATES OF AMERICA	62 yrs of age and 5 yrs of service or 60 yrs and 20 yrs of service or 55 yrs of age and 30 yrs of service
46	VENEZUELA	60 yrs and 25 yrs of service

		No age after 35 yrs of service
47	ZIMBABWE	56 to 65 yrs of age
48	MOURITIUES	60 years
49	ISREAL	65 years
50	USSR (Former)	60 years
51	POLAND	65 years

Sources: 1. ILO, Joint Committee on the Public Service

Report III, Fourth Session, Geneva, 1988.

2. Averting the Old Age Crisis, World Bank, 1994.

* * * * *

22. RETIREMENT BENEFITS

22.1 The benefits available to Civilian employees are pension, gratuity, leave encashment, commutation of pension and family pension.

22.2 At the outset, we may point out that the pension is not a gratis or bounty payable on the sweet will and pleasure of the employer. It is the right of the employee to get pension and it is a valuable right vesting in the employee.

22.3 In DEOKINANDAN PRASAD v. STATE OF BIHAR¹, the Supreme Court observed:

" The grant of pension does not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of quantifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to the officer employee not because of the said order but by virtue of the Rules."

It was further held:

" Pension is not a bounty payable on the sweet will and pleasure of the Government and that on the other hand, the right to pension is a valuable right vesting in a Government Servant."

22.4 Pension is thus a valuable right of an employee.

22.5 The Central Government employees are given such benefits in the following terms:

1. AIR 1971 SC 1409.

i) Pension :

The amount of pension is related to the length of qualifying service rendered by the employee and average emoluments drawn by him during 10 months immediately preceding the date of retirement. Full pension is admissible to an employee who retires after completing the qualifying years of service of not less than 33 years and the amount of pension is determined at 50% of the average emoluments subject to a maximum of 50% of the highest pay in the Central Government i.e. Rs.30,000/-.

22.6 Proportionate pension is admissible where an employee retires before completing 33 years of qualifying service but after

completing 10 years of service. The amount of pension will be proportionate to the amount of pension admissible for qualifying service of 33 years and is subject to a minimum of Rs.1275/- per month.

ii) Death-cum-Retirement Gratuity (DCRG) :

DCRG is admissible to permanent Government servant on his retirement or payable to his family in the event of his death while in service which have been dissected by the V Central Pay Commission as:

a) Retirement Gratuity; and

b) Death Gratuity

a) Retirement Gratuity :

It is admissible to permanent employees who retire after completion of 5 years' of qualifying service at the rate of 'one-fourth' of emoluments for each completed six-monthly period of qualifying service subject to a maximum of 16½ times 'the emoluments' or Rs.3.5 lakhs (w.e.f. 1.1.1996), whichever is less.

b) Death Gratuity :

In the event of death in harness (while in service), the Death Gratuity shall be payable to his family or nominee(s) at the following rates:

	Length of Qualifying Service	Rate of Gratuity
i)	Less than 1 year	2 times of emoluments
ii)	One year or more but less	6 times of emoluments

	than 5 years	
iii)	5 years or more but less than 5 years	12 times of emoluments
iv)	20 years or more	Half month's emolument for every six-monthly period of qualifying service subject to a maximum of 33 times of emoluments limited to Rs.3.5 lakhs.

The Death Gratuity in the above scale is admissible irrespective of whether the deceased Government servant was permanent, temporary or quasi-permanent.

iii) Leave Encashment :

Leave Salary for the amount of Earned Leave at credit subject to a maximum of 300 days plus Dearness Allowance appropriate to such leave salary is admissible, but will not include House Rent Allowance, City Compensatory Allowance and Interim Relief allowed at the time of retirement or death in service.

iv) Commutation of Pension :

The popular conception of commutation is the sale of pension for a lump sum amount. The Central Government employee upon retirement is allowed to give up the right of a portion of pension, not exceeding 40% of the basic pension and to get a lump sum amount in lieu thereof.

The commuted value of pension is calculated with reference to a commutation table which, inter alia, takes into account the longevity of pensioners and the interest rate. The table indicates the commuted value of pension expressed as number of years' purchase with reference to the age of pensioner on his next birth day. The Commutation value of pension goes on decreasing as the age of pensioner increases. Normally the commuted portion of pension will be restored after 15 years from the date of retirement in case of simultaneous commutation, otherwise after 15 years from the date of commutation.

v) Family Pension :

Family Pension is admissible to the family of the deceased Government Servant when he dies:

- a) after completion of not less than one year of continuous service;
- b) after retirement from service and was in receipt of pension on the date of death.

At present, Family Pension is available for families of Civilian employees, who die while in service or after retirement. Family Pension is payable to the widow or widower for life or till remarriage and to children upto the age of 25 years.

Normal Rates of Family Pension :

22.6 Family Pension is calculated on the basis of basic pay last drawn on the date of retirement / death and is admissible at uniform rate of 30% of pay last drawn in all cases (effective from 1-1-1996) subject to a minimum of Rs.1275/- and a maximum of Rs.9000/- per month.

22.7 Enhanced Family Pension in case of dying in harness :

(i) When a Government Servant after rendering not less than 7 years of continuous service dies in harness, his family becomes entitled to Family Pension at enhanced rate of double the ordinary pension or 50% of the last pay drawn, whichever is less.

(ii) The rate of enhanced Family Pension shall be 50% of pay last drawn or double the ordinary family pension or the pension authorised on retirement, whichever is the least.

22.8 The enhanced Family Pension in both the cases shall be payable for a period of 7 years or upto the date on which the Government Servant would have attained the age of 65 years had he survived, whichever is less, and the higher rate is not admissible if a pensioner dies after attaining 65 years of age.

22.9 Most of the State Governments are following the Central Government pattern to their employees regarding the aforesaid matters. Some States, however, have prescribed the maximum and minimum pension. This maximum and minimum pension varies from State to State, since the pay scales are pegged at varying index levels and also the minimum and maximum of the same pay scales are allowed to the employees.

22.10 In order to ascertain the correct picture on these aspects, the Commission circulated the following questions:

Q.No.48.2. What is the maximum pension allowed to Judicial Officers in your State and what is the qualifying service required for it? Have you got any alternate proposal which is consistent with the general policy of the State?

Q.No.48.3. How much pension is allowed to be commuted? At present, commuted pension gets restored after completion of 15 years which period is said to have been fixed on scientific basis. How do you then justify the reduction of that period?

Q.No.48.4. What are the rules relating to payment of terminal gratuity? What is the maximum gratuity payable? Please furnish the relevant rules.

Q.No.48.5. What are the rules in your State governing encashment of leave upon retirement? How much leave is permitted to be encashed? Please furnish the relevant rules.

Q.No.48.6. What is the rule relating to Family Pension? What is the maximum Family Pension allowed?

(Please furnish the relevant rules.)

Do you propose uniformity in the aforesaid matters in all States / UTs?

22.11 The responses received from the respondents indicate that most of the State Governments have generally adopted Central Government pattern for grant of pensionary benefits to their employees and the same has been extended to Judicial Officers. The only difference between the pension structure of the State Governments and that of the Central Government is in the quantum of minimum pension, gratuity and terms of encashment of leave.

22.12 As against the full pension allowed for Central Government employees on completion of qualifying service of 33 years, the State Governments like Tamil Nadu and Kerala allow full pension to their employees on completion of qualifying service of 30 years.

22.13 In most of the States, pension is calculated with reference to the average emoluments drawn during the 10 months preceding superannuation. But in States like Karnataka, Orissa, Tamil Nadu and West Bengal, last pay drawn by the retiring officer forms the basis for determination of the pension.

22.14 We have received suggestions to reduce the qualifying years of service for full pension and also for dispensing the present ceiling of minimum 10 years of qualifying service for minimum pension.

22.15 For full pension, the request of the Associations is 18 ' 30 years of qualifying service. Likewise, it was suggested that the quantum of pension from the existing 50% of the basic pay be raised to 60% , 75%. Some Associations have demanded even 100% of the last pay drawn.

Commutation of Pension :

22.16 As seen earlier, the Central Government allowed their employees to commute a maximum of 2rd of the pension till recently. However, the Government after accepting the recommendations of the V CPC has raised the level to 40% of the pension with effect from 1.1.1996. This has been followed by the State of Sikkim and in no other States. In all other States, 2rd of the

pension is allowed to be commuted.

22.17 We have, however, received suggestions from the Respondents to raise the existing ceiling on commutation from 2rd to 50% of the pension.

22.18 So far as the restoration of commuted pension is concerned, the Central Government allows such restoration on expiry of 15 years period from the date of commutation. Here again, almost all the States have followed this pattern, save the States of Kerala, Madhya Pradesh and Orissa. These three States allow the restoration of commuted pension after expiry of 12 years period. In Punjab, the restoration of commuted pension is allowed on expiry of 12 years only to those cases where pension is commuted before attaining the age of 59 years.

Gratuity :

22.19 The present position with regard to gratuity is that it is paid at 3th of emoluments for each completed six-monthly period of qualifying years of service subject to a maximum of 16½ times of emoluments. Most of the States are also following the Central pattern of payment of gratuity. However, the ceiling on maximum gratuity varies from State to State. It ranges between Rs.1 lakh to Rs.3.5 lakhs. While the ceiling on gratuity / death gratuity has been enhanced to Rs.3.5 lakhs by Government of India with effect from 1.1.1996 in pursuance of the recommendations of V CPC, most of the State Governments have, however, limited the gratuity-cash-ceiling at Rs.2.5 lakhs.

22.20 We have received the following suggestions / requests from the High Courts and the Service Associations with regard to payment of gratuity:

- i) That it should be calculated at the rate of half of emoluments for each completed six-monthly period of service instead of 3th at present;
- ii) That cash ceiling should be removed;

iii) That D.A. should be taken into account for computing gratuity; and

iv) That the maximum gratuity should be raised appropriately from the present 16.5 times of emoluments.

Encashment of Leave :

22.21 As seen earlier, the limit of accumulation of Earned Leave is 300 days for Central Government employees, plus D.A. appropriate to such leave salary. But it will not include House Rent Allowance, City Compensatory Allowance and Interim Relief allowed at the time of retirement or death in service.

22.22 This limit of 300 days has not been followed by the State Governments. They have prescribed the maximum of 240 days Earned Leave for encashment.

22.23 We understand that in the Central Government service, Officers are not entitled to encash their Earned Leave when they are in service, whereas in most of the States, encashment of Earned Leave while in service is allowed. Indeed, we have also recommended this procedure for Judicial Officers.

22.24 High Courts and the Service Associations have suggested that encashment of Earned Leave at the time of retirement may be enhanced to 300 days.

Family Pension :

22.25 We have earlier set out the Rules relating to Family Pension for Central Government employees. It is, therefore, not necessary to restate here. But the payment of Family Pension in State Governments is not uniform. It varies from 30%, 20% and 15% depending upon the pay ranges of the deceased. Therefore, the High Courts have suggested that it is desirable to have uniformity in the matter of Family Pension for the Judicial Officers throughout the country.

22.26 The Service Associations have represented to the Commission that the existing rates of Family Pension are grossly inadequate and it should be revised upwards between the range of 50% to 75% of the last pay drawn.

OUR RECOMMENDATION :

22.27 We have considered all the suggestions of the Respondents.

Minimum Qualifying Service :

22.28 We do not consider that it is proper to dispense the present ceiling of minimum 10 years of qualifying service for entitlement to pension. Pension confers a long term benefit on a pensioner covering the entire remaining period of his life and should, therefore, be admissible only if he has served a minimum period of 10 years. We are, therefore, not inclined to dispense the existing requirements of 10 years to be eligible for minimum pension.

Eligibility to Full Pension :

22.29 As to the plea to reduce the qualifying service of 33 years for earning full pension, it may be stated that the Judicial Officers would now retire at the age of 60 years and they will have thus the benefit of two more years of service than the State Government employees who retire at 58 years. In fact, in Kerala, the age of superannuation of the State Government employees is still at 55.

22.30 Almost all the States have followed the Central Government pattern in prescribing 33 years of service for earning full pension. The States of Kerala and Tamil Nadu, however, have reduced it to 30 years. The Table below gives the picture of such requirements in all the States / UTs.

T A B L E
DETAILS OF (A) MAXIMUM PENSION, (B) QUALIFYING YEARS OF SERVICE AND (C) PORTION OF COMMUTATION

Sl.No.	State / UT	Maximum Pension (%)	Qualifying years of Service	Portion of Commutation
1	Andhra Pradesh	50	33	1/3
2	Assam	50	33	1/3
3	Bihar		33	1/3
4	Gujarat	50	33	1/3
5	Haryana	50	33	1/3
6	Himachal Pradesh	50	33	1/3
7	Jammu & Kashmir	50	33	1/3
8	Karnataka	50	33	1/3
9	Kerala	50	33	1/3

10	Madhya Pradesh	50	33	1/3
11	Maharashtra	50	33	1/3
12	Orissa	50	33	1/3
13	Punjab	50	33	1/3
14	Rajasthan	50	33	1/3
15	Sikkim	50	33	40%
16	Tamil Nadu	50	33	1/3
17	Tripura	50	33	1/3
18	Uttar Pradesh	50	33	1/3
19	West Bengal	50	33	1/3
20	Goa	50	33	1/3

21	Delhi	50	33	40%
22	Meghalaya	50	33	1/3
23	Manipur			
24	Mizoram	As per Central Rules		
25	Nagaland			
26	Lakshadweep			
27	Pondicherry	Not available		

NOTE: Commutation of pension for Central Government Civilian Employees has been enhanced to 40% from 1/3rd w.e.f. 1-1-1996 on the recommendations of V CPC.

22.31 We do not know the circumstances, which compelled the State of Tamil Nadu to reduce the qualifying years of service from 33 to 30 years for earning full pension. In Kerala, we can understand that the age of retirement is 55 and there is, therefore, every justification for prescribing 30 years of qualifying service to get full pension.

22.32 So far as the Judicial Officers are concerned, there is no such inhibition. Their age of superannuation has been raised to 60 years. In view of this enhanced superannuation age, there is no reason at all to reduce the qualifying years of service for entitlement to full pension.

22.33 We accordingly recommend that the qualifying years of service should be 33 years for earning full pension except in the States of Tamil Nadu and Kerala.

Quantum of Pension :

22.34 There is a general demand from the Associations of Judicial Officers for increasing the quantum of pension from the existing 50% to 60%, 75% and even to 100%.

22.35 In our opinion, this demand is unreasonable and indeed uncalled for.

22.36 We have made significant upward revision in the pay scales of Judicial Officers at all levels and that would in turn confer on the retiring persons substantial benefit of enhanced pension even at the existing rate of 50%.

22.37 It may be noted that Judges of the High Courts and the Supreme Court are allowed pension only upto 50% of the pay.

22.38 There is therefore, no justification to recommend any increase of pension from the existing level of 50%. It may remain at 50% of the pay only.

Calculation of Pension :

22.39 We would, however, like to say a word more on the method of calculation of the pension.

22.40 At present, pension is calculated with reference to the average emoluments drawn during the 10 months preceding the superannuation for the Central Government employees and also in most of the States, except in the States of Karnataka, Orissa, Tamil Nadu and West Bengal. In these States, as stated earlier, the last pay drawn is the only basis for determining the pension.

22.41 The Central Government has not adopted the principle of last pay drawn in spite of the recommendation of the V CPC to that effect. Most of the State Governments have not accepted the principle 'last pay drawn' and even the Central Government has not accepted it.

22.42 We recommend that the State Rules for the time-being in force for calculation of pension may apply to Judicial Officers in the respective States / UTs.

22.43 We may, however, state that determination of the pension with reference to the last pay drawn is more practical, simple and indeed beneficial in view of the fact that some of the Officers would have drawn their annual increments just before retirement and there is no reason why full benefit of increment drawn should be denied to them for the purpose of calculating the pension.

22.44 We, therefore, recommend to all the State Governments to follow the principle of last pay drawn, which has been adopted by the States of Karnataka, Orissa, Tamil Nadu and West Bengal.

Commutation of Pension :

22.45 As seen from the Table earlier referred to, the Central Government has allowed commutation upto 40% of the Pension by accepting the recommendation of the V CPC.

22.46 But under the service conditions of Judges of the Supreme Court and High Courts, commutation of pension is allowed to the extent of 50% of the pension.

22.47 Since the Judicial officers after retirement are expected to maintain a dignified life, we consider that it is appropriate to allow them commutation upto a maximum of 50% of the Pension.

22.48 We, accordingly, recommend that the commutation of pension for Judicial Officers in every State / UT be allowed upto 50% of the pension determined.

Restoration of Commuted Pension:

22.49 Restoration of the commuted portion of the pension is generally after 15 years. Even the Judges of the Supreme Court and High Courts will get such restoration only after 15 years. That 15 years is reckoned from the actual date of commutation. This has been arrived at after a scientific calculation on the return to the Government on the consolidated sum paid as Commutation Pension.

22.50 Secondly, we are allowing commutation to the extent of 50% of the Pension. We cannot, therefore, reduce the period for restoration of pension.

22.51 We, accordingly, recommend that restoration of commuted pension may be allowed after 15 years.

GRATUITY :

22.52 As earlier stated, the gratuity payable varies from State to State. It ranges from Rs.1 lakh to Rs.3.5 lakhs. The Central Government, however, has raised the gratuity to Rs.3.5 lakhs with effect from 1.1.1996. But the States generally have not followed this principle.

22.53 The procedure for payment of gratuity to the High Court Judges under the Conditions of Service Act, 1954 and the Rules made thereunder is two-fold - one applicable to the Judges who are elevated to the High Court from the judicial service cadre and the other to Judges who are directly recruited from the Bar. To the first category, gratuity will be payable on the basis of the rules applicable to the Judge if he had not been appointed as a Judge and his service as a Judge being treated as service thereon for the purpose of calculating the gratuity. To the second category, the rules, notification and orders for the time-being in force with respect to the death-cum-retirement gratuity benefits which are applicable in relation to the Officer of a Central Civil Service Class I, would apply.

22.54 What it means to say is that for the second category, the maximum gratuity payable would be Rs.3.5 lakhs, whereas to the first category, it would be invariably less than Rs.3.5 lakhs depending upon the rules prevalent in each State. Of course, option is given to the first category to opt for the other, in the event of which, he may have certain advantage or disadvantage.

22.55 Taking all these factors into consideration, we recommend that the rules of each State applicable to Government Servants shall govern also the Judicial Officers in the matter of payment of gratuity.

ENCASHMENT OF LEAVE :

22.56 As elsewhere stated, the limit of accumulation of Earned Leave is 300 days for Central Government employees. But in most of the States, it is limited to 240 days.

22.57 The Judges of the High Courts and the Supreme Court are allowed to encash 300 days of Earned Leave. But the same principle need not be adopted for the Subordinate Judiciary since they have been given the privilege of encashing their Earned Leave to the extent of 30 days once in every block period of two years when they are in service.

22.58 In the premise, we recommend that the procedure prescribed from time to time by the respective State Governments for Government employees with regard to the limit of Earned Leave for encashment would continue to operate even for Judicial Officers.

FAMILY PENSION :

22.59 As of now, the rate of family pension admissible to the members of the Central Government employees is 30% of the pay last drawn, subject to a minimum of Rs.1275/- and maximum of Rs.9000/- per month. **Be it noted that it is 30% of the last pay drawn.**

22.60 But, the family members of the Judges of the High Courts and the Supreme Court get only 30% of the **pension payable to them**. In other words, the family pension admissible to the members of the Judges of the High Courts and Supreme Court is very much less than the family pension admissible to the members of the Central Government employees.

22.61 This glaring discrimination deserves to be removed and we trust and hope that Central Government would soon take the necessary steps in this regard.

22.62 The Judges of the Subordinate Courts are governed by the rules regulating the family pension framed by the respective State Governments. It varies from 30%, 20% and 15% depending upon the pay ranges of the deceased, subject to a minimum prescribed in each pay range.

22.63 If the Central Government provides payment of family pension at 30% of the last pay drawn to the family members of the Judges of the Supreme Court and High Courts, we recommend similar benefit be provided to the family members of the Judicial Officers in every State / UT. Till then, we suggest that the Rules of each State governing the payment of Family Pension to their Government Servants may continue to apply even to the Judicial Officers.

Domestic Help Allowance :

22.64 We have seen that Judicial Officers, after retirement, stand in long queue to pay electricity or water bills. It is indeed a pathetic scene, if not embarrassing for themselves. It is necessary that they be paid some amount to enable them, to employ a domestic assistant or a part-time servant. We have recommended Rs.2500/- per month for every serving Judicial Officer for engaging a Home Orderly of his choice. For the retired Judicial Officer, we recommend a cash payment of Rs.1250/- per month as 'Domestic Help Allowance', which will be paid to him upon furnishing a certificate every month that he has engaged a servant.

WHETHER COMMUTED PENSION RETAINS THE CHARACTER OF PENSION ?

22.65 That commuted pension is no pension at all. The commutation money stands entirely on a different footing from pension money.

22.66 For general information of our Judicial officers we may refer to two decisions of the Supreme Court.

(i) UNION OF INDIA AND ANOTHER v. WING COMMANDER, R.R. HINGORANI (RETD.)²

The facts of the case are that the Respondent was then Squadron Leader of Indian Air Force. He was allotted Official quarters in the Cantonment, Delhi. While he was in occupation of the said quarters, he was transferred from Delhi to Chandigarh and therefore the allotment of the quarters to him stood automatically cancelled after concessional period of two months from the date of his transfer. He, however, did not give any intimation of his transfer to the Directorate of Estates, but continued in the occupation of the said flat for a period of nearly

2. AIR 1987 Supreme Court 808.

5 years. The Estate Officer having come to know of the occupation asked him to vacate the flat and pay the damages for the unauthorised occupation. The Respondent refused to pay the damages on the ground that he was not in unauthorised occupation.

The Estate Officer initiated proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 to recover Rs.38811.17p. as damages. The Respondent in the meanwhile made a representation to the Central Government for sympathetic consideration of his case. The Central Government reduced the amount to Rs.20482.78p. on compassionate ground but deducted the same from out of commuted pension payable to the Respondent, apparently under Section 11 of the Pension Act, 1871.

Section 11 of the Pension Act, inter-alia, protects from attachment, seizure or sequestration pension or money due or to become due on account of any such pension.

Validity of the recovery of Rs.20482.78 was questioned before the Delhi High Court but the Delhi High Court upheld the recovery. Upon the appeal, the Supreme Court reversed the judgment of the High Court.

The relevant portion of the judgment is set out below:

"Whether on commutation of pension the commuted pension becomes a capital sum or still retains the character of pension so long as it remains unpaid in the hands of the Government, is not a new one till it was settled by the judgment of this Court in *Union of India v. Jyoti Chit Fund & Finance*³. The Court touched upon the previous judgment in this regard including a decision in the English case, in *Crowe v. Price*⁴, it was held that -money paid to a retired

3. (1976) 3 SCR 763: (AIR 1976 SC 1163).

4. (1889) 58 LJ QB 215.

officer of His Majesty's force for the commutation of his pension does not retain its character as pension so as to prevent it from being taken in execution. On p. 217 of the Report, Coleridge, C.J. said:"

"It is clear to me that commutation money stands on an entirely different ground from pension money, and that if an officer commuted his pension for a capital sum paid down, the rules which apply to pension money and make any assignment of it void, do not apply to sum."

"Following the dictum of Coleridge, C.J., Besley, C.J. and King J. in *Municipal Council, Salem v. B. Gururajah Rao*⁵, held that when pension or portion thereof is commuted, it ceases to be pension and becomes a capital sum. The question in that case was whether the commuted portion of the pension of a retired Subordinate Judge was income for purposes of assessment of professional tax in a municipality. The question arose in a different form in *C. Gopalachariar v. Deep Chand Sowcar*,⁶ and it was, whether the commuted portion of the pension was not attachable in execution of a decree obtained by certain creditors in view of S. 11 of the Pensions Act. Pandurang Row, J. interpreting S. 11 of the Act was of the opinion that not only the pension but any portion of it which is commuted came within the provisions of the Section. He particularly referred to the words "money due or to become due on account of pension" appearing in S. 11 of the Act which, according to him, would necessarily include the commuted portion of the pension. He observed that the phrase "on account of" is a phrase

5. ILR 58 Mad 469: (AIR 1935 Mad 249).

6. AIR 1941 Mad 207

used in ordinary parlance and is certainly not a term of art, which has acquired a definite or precise meaning in law. According to its ordinary commutation the phrase "on account of" means "by reason of" and he therefore queried :"

"Now can it be said that the commuted portion of the pension is not money due on account of the pension? Though the pension has been commuted, still can it be said that money due by reason of such commutation or because of such commutation, is not money due on account of pension?"

He referred to S. 10 of the Act which provides for the mode of commutation and is part of Chapter III which is headed "Mode of Payment" and observed:

"In other words, the commutation of pension is regarded as a mode of payment of pension. If so, can it be reasonably urged that payment of the commutation amount is not payment on account of the pension, though not of the pension

itself, because after commutation it ceases to be pension? I see no good reason why it be deemed to be otherwise. No doubt money is due immediately under the commutation order, but the commutation order itself is on account of a pension which was commuted. The intention behind the provisions of S. 11, Pensions Act, is applicable to the commuted portion as well as to the uncommuted portion of the pension and the language of S. 11 does not appear to exclude from its protection the money that is due under a commutation order commuting a part of the pension."

"10. In *Hassomal Sangumal v. Diaromal Laloomal*,⁷ C.J. speaking for a Division Bench referred to Gopalachariar's case and pointed out that it does not lay down that once a pension has been commuted and the money paid over to the pensioner, the exemption from attachment still continues. The learned Chief Justice went on to say that the words "money due or to become due" used in S. 11 must by necessary implication mean the money that has not yet been paid to the pensioner."

"11. In *Jyoti Chit Fund's* cases the Court repelled the contention that since the civil servant had already retired, the provident fund amount, pension and other compulsory deposits which were in the hands of the Government and payable to him had ceased to retain their character as such provident fund or pension under Ss 3 and 4 of the Provident Funds Act, 1925, Krishna Iyer, J. speaking for himself and Chandrachud, J. observed:"

"on first principles and on precedent, we are clear in our minds that these sums, if they are of the character set up by the Union of India, are beyond the reach of the Court's power to attach. S.2(a) of the Provident Funds Act has also to be read in this connection to remove possible doubts because this definitional clause is of wide amplitude. Moreover, S. 60(1), provisos (g) and (k), leave no doubt on the point of non-attachability. The matter is so plain that discussion is uncalled for:

We may state without fear of contradiction that provident fund amounts, pensions and other compulsory deposits covered by

7. AIR 1942 Sind 19 Davis.

8. AIR 1976 SC 1183.

the provisions we have referred to, retain their character until they reach the hands of the employee. The reality of the protection is reduced to illusory formality if we accept the interpretation sought."

"12. xxx xxx xxx

It bears out the construction that the words " money due or to become due on account of pension " occurring in S. 11 of the Pensions Act, 1871 include the commuted portion of the pension payable to an employee after his retirement. It must accordingly be held that the Government had no authority or power to unilaterally deduct the amount of Rs.20482.78p. from the commuted pension payable to the respondent, contrary to S. 11 of the Pensions Act, 1871."

(ii) Des Raj Bhatnagar and another v. Union of India

In this case, the Petitioner was an employee of the Central Government. After serving in the Central Government for over 29 years, he was permanently absorbed in Food Corporation of India and consequently retired from the Government service. On absorption in the Food Corporation of India he was required to exercise of the following two options :

- (a) Receiving the pro rata monthly pension and death-cum-retirement gratuity as admissible under the rules; and
 - (b) Receiving the pro rata gratuity and a lump sum amount in lieu of pension worked out with reference to commutation table obtaining on the date from which the pension was to be admissible and under the option order.
-

9. (1991) 2 SCC 266.

Accordingly, the Petitioner was sanctioned the original pension in accordance with the Central Civil Services (Pension) Rules, 1972. Under the said Rules maximum of one-third of the amount admissible pension could be commuted. However, in the case of government officers including Industrial Management Pool Officers who were opting for permanent absorption in Public Sector Undertakings, an option was given to commute the full amount of their original pension, for a lump sum of Rs.35,568/-.

Thereupon, the Third Central Pay Commission made recommendations in the matter of providing relief to government pensioners. The said Commission recommended that irrespective of the amount of pension drawn by them, pensioners should be given relief at the rate of 5 per cent of their pension subject to a minimum of Rs.5 per mensem and a maximum of Rs.25 per mensem.

The case of the Petitioner was that according to the said recommendation he should also be given the relief similar to the other Government Pensioners. But the Central Government has arbitrarily denied that relief to him by passing an Office Memorandum to that effect.

The question arose whether the petitioner who has received the lump sum by way of commutation of the entire pension could be regarded as Central Government Pensioner.

The Supreme Court answered the question in the negative by observing thus:

"After getting a lump sum in lieu of entire pension, they do not fall in the class of Central Government pensioners who got their one-third pension commuted also fall in a different class in as much as they get two-third pension, and after 15 years of such commutation or having attained the age of 70 years whichever was later they became entitled to full pension. Petitioner on the other hand was not entitled to any pension after having received the lump sum amount in lieu of pension being commuted and having opted to receive such amount in lump sum at the time of entering the service in Public Sector Undertaking."

22.67 From the aforesaid decisions it becomes abundantly clear that the commuted pension cannot be regarded as pension.

* * * * *

23. PENSION STRUCTURE FOR PAST PENSIONERS

22.1 Pensioners Associations and individual pensioners have made various and varied submissions to the Commission.

I. Retired Judges' Association (West Bengal) has made a detailed representation, inter alia, stating:

i) To evolve a formula by which inequity is eliminated in case of future revision of pension without limiting to the minimum of notional revised pay or for that matter 50% of such notional pay as actual pension since for all practical purposes the pensioners will be deprived of any increment in such pension except at the minimum level.

ii) To grant a lump sum of Rs.1,000/- p.m. to be credited directly to the pension account of the retiree in the Bank towards day-to-day routine medicines and check-up.

iii) To provide travel concession to the retired judges once a year to travel to any place in India. Such concession should be equivalent to 50% rebate in air or train fare in the first class for the retiree and his dependents irrespective of their age.

This should be taken as a special honour to a judge on his retirement and this benefit is absolutely necessary because the retired judge is not in a position to travel outside with his family.

II. A.P. Retired Judicial Officers Association, Hyderabad with Sri D.V. Ramana Murthy as its President, has submitted a memorandum to the Commission to recommend a new Pension formula ensuring the pension of not less than 50% of the minimum pay of the proposed new pay scales for the post irrespective of date of retirement of the officers.

III. Sri T. Gopalakrishna Murthi, Retired District & Sessions Judge from Hyderabad has made a written submission to the

Commission seeking several reliefs for himself and for other retirees.

IV. Sri M. Narasimha Reddy, Chief Judge, City Small Causes Court, Hyderabad, has sought the following:

- i) Telephone facility upto 500 free calls bi-monthly should be allowed or else the bi-monthly rent of Rs.350/- shall be borne out by the Government.
- ii) House sites shall have to be allotted for Judicial Officers for a reasonable price and loans for construction of houses; and
- iii) L.T.C. once in a year within the State and L.T.C. once in two years to any place in India may be provided.

V. Sri A.V. Koteswara Rao, Former Secretary to Government & Retired District Judge from Andhra Pradesh in his Memorandum has emphasised among others, the following:

- i) Restoration of Commuted Pension after (9) years.
- ii) Family Pension in the event of unfortunate death of the pensioner shall be given to his surviving wife to the extent of the entire amount of pension without reduction beyond the period of 7 years till her demise.

VI. Some of the Retired Judicial Officers have made several representations urging to remove the anomaly in the existing pension structure and fixing new rates or scales of pension.

They also seek a fixed sum of medical expenses, telephone facility concession of 500 free calls, travel concessions and minimum family pension etc. Further, they want preference to be given to the pensioners/ family of the pensioners regarding beds in Government Hospitals, with benefits to the mentally retarded children of the pensioners. They have suggested to recommend pioneering scheme of family security/welfare/benefit fund to the families of the pensioners by deducting certain amount from their pension including payment of bonus to pensioners on par with the Government employees.

VII. Sri N. Haridas, District Judge (Rtd.) from Thiruvananthapuram has complained against the attitude of the State Government of Kerala ordering that the Pension arrears and other retirement benefits due to the retiring persons are to be paid in eight 'half yearly' instalments, running through a period of four years. He has stated that this method of payment is most unethical and unusual, since it deprives the retiring employees 'plan and hope' of utilising such amount for purposes like building a house, meeting daughters' marriage expenses etc. He wants that all pension arrears due to retired Judicial Officers must be paid in lump sum forthwith.

22.2 Some of the pensioners have pleaded their total helplessness in carrying out the day-to-day work without a home orderly or assistant. They say that they are left high and dry after retirement. Even for paying electricity bill and water bill etc., they have to personally go and stand in queue which they have not done in their life time. Ironically, they have stated that as Judicial Officers, they are made to sit on the elevated Dais but after retirement, they are made to stand in queue with the general public. They have sought atleast a domestic assistant to do their indoor and outdoor work.

22.3 In sum, it has been suggested that the Commission should evolve a uniform scheme for equalisation of pensions of comparable posts with reference to the revised scales of pay, irrespective of the date of retirement, and recomputation of pensions of all pensioners by removal of ceilings put on the maximum pension in each State/UT so that their pensions are broadly comparable to pensions of those retiring on the revised scales of pay. They have thus pleaded for absolute parity among all the pensioners

22.4 It has also been urged that this principle has already been conceded in the case of Judges of Supreme Court, High Courts and also Civilian Employees of Central Government with effect from 1-1-1996.

Medical Facilities :

22.5 The need for medical care and attention increases with advancement of age. The Government of India has extended CGHS facilities to pensioners, wherever such scheme is available, provided they pay the same quantum of contribution as paid by the serving employees.

22.6 Very recently, with effect from 1-12-1997, Government of India have granted a fixed medical allowance of Rs.100/- per

month to pensioners in areas not covered by CGHS for meeting the expenditure on day-to-day medical treatment where it does not require hospitalisation. This system of providing some fixed allowance to pensioners also exists in some States.

22.7 We have received a number of suggestions for coverage and extension of medical facilities to the pensioners. They may be summarised as under:-

- 1) The same medical facilities for pensioners and their family members on par with serving officers.
- 2) Some fixed monthly medical allowance;
- 3) Some kind of comprehensive medical insurance for the pensioners.
- 4) Provision for issue of medical cards to the retired officers to be honoured by all Govt. hospitals and Private Nursing Homes and expenses incurred should be met by the respective Governments;
- 5) Provision for medical facilities on line of the Judges of the High Court/Supreme Court.
- 6) Provision for a medical insurance wherein 50% of the contribution has to be made by the pensioners and the balance 50% by the respective State Governments.

22.8 Before we consider the demands of the pensioners, it may be useful to refer to the recommendation of the V CPC as to parity of pension to all pensioners. It has stated:

"137.13. While it is desirable to grant complete parity in pension to all past pensioners irrespective of the date of their retirement, this may not be feasible straightaway as the financial implications would be considerable. The process of bridging the gap in pension of past pensioners has already been set in motion by the Fourth CPC when past pensioners were granted additional relief in addition to consolidation of their pension. This process of attainment of reasonable parity needs to be continued so as to achieve complete parity over a period of time.

"137.14. As a follow-up of our basic objective parity, we would recommend that the pension of all the pre-1986

retirees may be updated by notional fixation of their pay as on 1-1-1986 by adopting the same formula as for the serving employees. This step would bring all the past pensioners to a common platform or on to the Fourth CPC pay scales as on 1-1-1986. Thereafter, all the pensioners who have been brought on to the Fourth CPC pay scales by notional fixation of their pay and those who have retired on or after 1-1-1986 can be treated alike in regard to consolidation of their pension as on 1-1-1996 by allowing the same fitment weightage as may be allowed to the serving employees. However, the consolidated pension shall be not less than 50% of the minimum pay of the post, as revised by Fifth CPC, held by the pensioner at the time of retirement. This consolidated amount of pension should be the basis for grant of dearness relief in future. The additions to pension as a result of our recommendations in this chapter shall not, however, qualify for any additional commutation for existing pensioners."

22.9 The Central Government has accepted the above recommendation for the Central Government Employees with effect from 1-1-1996 vide Government of India O.M.No.F.45/86/97-P&PW(A) – Part –II dated 27-10-1997 issued by the Additional Secretary (Pension), Department of Pension & Pensioners Welfare, Ministry of Personnel, Public Grievances & Pensions, New Delhi. Hereto annexed a copy of the said Government order.

22.10 As a first step, the Commission in its Interim Report dated 31-1-1998 granted Interim Relief at a uniform rate of 40% of the basic pension with effect from 1-7-1996 to all pensioners who retired prior to 1-7-1996. The Commission intended that to be a provisional measure pending finalisation of the Report with the determination of a uniform salary structure to Judicial Officers throughout the country.

22.11 In this interregnum, the Central Government and certain State Governments have revised the pay scales of their employees and also pensionary benefits. The State Governments have, however, fixed a ceiling on maximum pension for their employees depending upon the maximum pay allowed to them.

22.12 We are not unaware of the plight of some of the Retired Judicial Officers. We are, indeed, sympathetic to them and their family members. All of a sudden, upon retirement, they would be fish out of water. They have to maintain atleast some semblance of status in society as retired Judicial Officers.

22.13 We are also conscious of the fact that the Judicial Officers after retirement cannot engage themselves in any gainful employment except to revert to the Bar. But the age is against them. There is no enough stamina left with them in that age to run from pillar to post apart from the difficulty to reactivate the art of submission in the court.

22.14 But we cannot afford to be too generous at the cost of the public. We do not think that it is appropriate to allow L.T.C. to retirees. In fact, we have suggested at one stage that the Judicial Officers should be allowed to carry forward their entitlement of L.T.C to be utilised after retirement. But the proposal has been opposed by the serving Judicial Officers. Therefore, we cannot allow any L.T.C. to retirees.

22.15 We are also not inclined to provide them any free telephone calls.

22.16 We have elsewhere rejected a similar request from others for restoration of Commuted Pension before 15 years.

22.17 We however, consider that a provision for 'domestic help' must be provided.

22.18 OUR RECOMMENDATIONS :

1. The Revised Pension of the Retired Judicial Officers should be 50% of the minimum pay of the post held at the time of retirement, as revised from time to time.
2. There should not be any ceiling limit on the maximum pension payable.
3. The Pensioners should be given the benefit of full neutralisation of the cost of living in the same scale as is being extended to the serving Judicial Officers.
4. A cash payment of Rs.1,250/- per month as ' Domestic Help Allowance' to every retired Judicial Officer, which would be paid upon producing a certificate to that effect.

5. All retired Judicial Officers should be given a fixed monthly medical allowance of Rs.100/- to meet day-to-day medical expenses.

6. All the medical facilities that we have recommended to serving Judicial Officers with regard to treatment and reimbursement of expenditure etc., be made applicable to retirees.

22.19 We may, however, state that medical reimbursement bills submitted by the retired Judicial Officers should be processed and paid by the office of the Principal District Judge of the place where the retiree has opted to settle.

* * * * *

ANNEXURE

F.No.45/96/97. P&PW(A)-Part II

Government of India

Ministry of Personnel, Public Grievances & Pensions

Department of Pension & Pensioners Welfare

New Delhi, Dated 27th October 1997.

OFFICE MEMORANDUM

Subject: Implementation of Government's decision on the recommendations of the Fifth Central Pay Commission – Revision of Pension of pre-1996 pensioners/Family pensioners etc.

* * * * *

The undersigned is directed to say that in pursuance of Government's decision on the recommendations of Fifth Central Pay

Commission, sanction of the President is hereby accorded to the regulation, with effect from 1.1.1996, pension/family pension of all the pre-1996 pensioners/family pensioners in the manner indicated in the succeeding paragraphs.

2.1 These orders apply to all pensioners/family pensioners who were drawing pension/family pension on 1.1.1996 under the Central Civil Services (Pension Rules), 1972, CCS (Extraordinary Pension) Rules and the corresponding rules applicable to Railway Pensioner and Pensioners of All India Services including officers of the Indian Civil Service retired from service on or after 1.1.1973.

2.2 Separate orders will be issued by the Ministry of Defence in regard to Armed Forces pensioners/family pensioners.

2.3 These orders do not also apply to retired High Court and Supreme Court Judges and other Constitutional/Statutory Authorities whose pension etc. is governed by separate rules/orders.

3.1 In these orders:

(a) 'Existing Pensioner' or 'Existing Family Pensioner' means a pensioner who was drawing/entitled to pension/family pension on 31.12.1995.

(b) 'Existing Pension' means the basic pension inclusive of commuted portion, if any, due on 31.12.1995. It covers all classes of pension under the CCS (Pension) Rules, 1972 as also Disability Pension under the CCS(Extraordinary Pension) Rules and the corresponding rules applicable to Railway employees and Members of All India Services.

(c) 'Existing family pension' means the basic family pension drawn on 31.12.1995 under the CCS(Pension) Rules and the corresponding rules applicable to Railway employees and Members of All India Services.

(d) 'Existing Dearness Relief' means the relief due to pensioners/family pensioners upto average CPI 1510.

4.1. The pension/family pension of existing pre-1996 pensioners/family pensioners will be consolidated with effect from

1.1.1996 by adding together:-

- i) The existing pension/family pension.
- ii) Dearness Relief upto CPI 1510 i.e., @ 148%, 111% and 96% of Basic Pension as admissible vide this Department's O.M.No.42/8/96-P&PW(G) dated 20.3.1996.
- iii) Interim Relief I
- iv) Interim Relief II
- v) Fitment weightage @ 40% of the existing pension/family pension.

The amount so arrived at will be regarded as consolidated pension/family pension with effect from 1.1.1996. The upper ceiling on pension/family pension laid down in the Department of Pension and Pensioners' Welfare Office Memorandum No.2/1/87/PIC.II dated 14.4.1987 has been increased from Rs.4500/- and Rs.1250/- to 50% and 30% respectively of the highest pay in the Government (The highest pay in the Government is Rs.30,000/- since 1.1.1996). Since the consolidated pension will be inclusive of commuted portion of pension, if any, the commuted portion will be deducted from the said amount while making monthly disbursements.

4.2 Some of the existing pensioners who retired between 31.3.1985 and 31.12.1985 are in receipt of personal pension. The said personal pension will continue to be granted as a separate element and will not be merged into the pension as consolidated above.

4.3 Since the consolidated pension/family pension arrived at as per paragraph 4.1 includes dearness relief upto average index level 1510, dearness relief will be admissible thereon only beyond index average 1510 in accordance with the revised scheme of dearness relief for which orders are being issued separately. The two instalments of dearness relief sanctioned earlier from 1.7.1996 and 1.1.1997 in this Department's Office Memorandum No. 42(8)/P &PW(G)/96 dated the 12th September 1996 and Office Memorandum No.42(2)P&PW(G)97 dated the 3rd April 1997 respectively shall be adjusted against revised Dearness Relief becoming due on the consolidated pension/family pension.

4.4 The amount already paid on account of Interim Relief sanctioned vide this Department's Office Memorandum No.42/18/95 P

& PW(G) Vol.II dated 6.9.1996 will be recovered from the arrears becoming due on consolidation of pension/family pension as in para 4.1 above and sanction of Dearness Relief on consolidated pension/family pension.

5.1 Where the consolidated pension/family pension in terms of paragraph 4 above works out to an amount less than Rs.1275/- the same shall be stepped upto Rs.1275/-. This will be regarded as pension/family pension with effect from 1.1.1996. In the case of pensioners who are in receipt of more than one pension, the floor ceiling of Rs.1275/- will apply to the total of all pensions taken together.

5.2. Where the disability pension under the CCS (EOP) Rules is drawn in addition to invalid pension under the CCS (Pension) Rules, 1972, the minimum limit of Rs.1275/- will apply to total of two pensions as indicated in paragraph 5.1. Where the disability pension is drawn in isolation, the minimum limit of Rs.1275/- will apply to 100% disability. For lesser degree of disability the minimum limit will be proportionately less.

6. The employed/re-employed pensioners/family pensioners are not getting dearness relief on pension at present under the extant orders, In their case, the notional dearness relief which would have been admissible to them but for their employment/re-employment will be taken into account for consolidation of their pension in terms of paragraph 4.1. above as if they were drawing the dearness relief. Their pay will be re-fixed w.e.f. 1.1.96 with reference to consolidated pension becoming admissible to them. Dearness relief beyond 1.1.1996 will, however, not be admissible to them during the period of employment/re-employment.

7. The cases of Central Government employees who have been permanently absorbed in public sector undertakings/autonomous bodies will be regulated as follows:-

a) **PENSION**

Where the Government servants on permanent absorption in public sector undertakings/autonomous bodies continue to draw pension separately from the Government, the pension of such absorbees will be

updated in terms of these orders. In cases where the Government servants have drawn one time lumpsum terminal benefits equal to 100% of their pensions and have become entitled to the restoration of one-third commuted portion of pension as per Supreme Court Judgement dated 15.12.1995, their cases will not be covered by these orders.

b) FAMILY PENSION

In cases where, on permanent absorption in public sector undertaking/autonomous bodies, the terms of absorption permit grant of family pension under the CCS (Pension) Rules, 1972 or the corresponding rules applicable to Railway employees/members of All India Services, the family pension being drawn by family pensioners will be updated in accordance with these orders.

8. All Pension disbursing authorities including Public Sector Banks handling disbursement of pension to the Central Government pensioners are hereby authorised to pay pension/family pension to existing pensioners/family pensioners at the consolidated rates without any further authorisation from the concerned Accounts Officers/Head Office etc. A table indicating the existing pension, the consolidated pension and difference payable from 1.1.1996 is enclosed for ready reference, (Annexure I). This table may be used where the pensioner is in receipt of a single pension only. Where a pensioner is in receipt of more than one pension, consolidation may be done separately in terms of paragraph 4.1. and as indicated in paragraph 5 floor ceiling of Rs.1275/- may be applied to total pension from all sources taken together. A suitable entry regarding the revised consolidated pension shall be recorded by the pension Disbursing Authorities in both halves of the Pension Payment Order. An intimation regarding disbursement of revised pension may be sent by the pension disbursing authorities to the Office of CPAO and Accounts Officer which had issued the PPO in the form given at Annexure-II so that the latter can update the Pension Payment Order Register maintained by him. An acknowledgement shall be obtained by the Pension Disbursing Authorities from Office of CPAO and the respective Accounts Officers in this behalf.

9.1 The consolidated pension/family pension as worked out in accordance with provisions of Para 4.1 above shall be treated as final 'Basic Pension' with effect from 1.1.1996 and shall qualify for grant of Dearness Relief sanctioned thereafter in respect of

following categories of pensioners/family pensioners:-

- i) Pensioners who retired between the period from 1.1.1986 to 31.12.1995.
- ii) Family pensioners, who became entitled for family pension during the period from 1.1.1986 to 31.12.1995 and were sanctioned family pension at 30% of the last pay drawn by the deceased employee.

9.2 In case of other pensioners/family pensioners, these orders provide for revision/consolidation of pension with effect from 1.1.1996 as an interim measure only so as to provide them immediate relief and shall be subject to variation. Detailed instructions regarding fixation of their pay on notional basis /revision/consolidation of pension/family pension and issue of authorisation in this regard will be issued separately. Pending issue of detailed instructions as stated above, grant of pension/family pension to all these pensioners/family pensioners may be continued to be regulated under these orders.

10. The arrears on account of consolidation of pension would be paid in cash with the stipulation that where amount of arrears is less than Rs. 5,000/-, it should be paid in one instalment and where it is in excess of Rs.5,000/- it should be paid in two instalments, in the first instalment, payment should be restricted to Rs.5,000/- plus fifty percent of their balance amount of arrears.

11. It is considered desirable that the benefit of these orders should reach the pensioners as expeditiously as possible. To achieve this objective, it is desired that all pension disbursing Authorities should ensure that the revised pension and the first instalment of arrears due to the pensioners in terms of the above orders is paid to the pensioners or credited to their account by 30th November, 1997 or before positively. Instructions regarding release of second instalment of arrears will be issued later.

12. In their application to the persons belonging to Indian Audit and Accounts Department these orders issue in consultation with the Comptroller and Auditor General of India.

13. Ministry of Agriculture etc. are requested to bring the contents of these Orders to the Notice of Controller of Accounts / Pay and Accounts Officers and Attached and subordinate Offices under them on a top priority basis. All Pension disbursing offices are also advised to prominently display these orders on their notice boards for the benefit of pensioners

Sd/-

(S. LAKSHMINARAYANAN)

Additional Secretary (Pension)

To

All Ministries/Departments of Government of India

F.No.45/86/97-P PW(A)-Pt.II dated 27-10-1997

Copy to:-

(As per list attached)

24. WORK METHODS AND WORK ENVIRONMENT

24.1 The terms of reference to our Commission inter-alia require us to examine the work methods and work environment in courts to promote efficiency in judicial administration.

24.2 The proper work method and work environment in any court largely depend upon the judge who presides over the court. Those who preside over the court should be familiar with the procedure and its working and be able to proceed without delay or hesitation on matters of evidence and procedure. He must have the ability to control the courts and should command the respect of those who appear before him or her, whether Advocate, Clients or Witnesses. Without these qualities of the Presiding Judge, it would be impossible to provide speedy and satisfactory justice to the litigant public.

24.3 The second important aspect is that the Judge should have a court, with proper facilities, assistance of the personal and other court staff.

24.4 The third and equally important aspect is that the proceedings require the presence of parties and their counsel if they are represented and the presence of witnesses.

24.5 We may broadly examine these three aspects together.

24.6 The Commission has already emphasised the need to recruit right kind of persons – talented, dedicated and honest persons with attractive service conditions. The Commission also emphasised the need to have judicial training institute in every State for imparting induction training / periodical refresher courses to Judicial Officers.

24.7 Both these aspects have been elaborately dealt with in the earlier chapters.

24.8 To examine the court work methods and work environment and to suggest improvements thereof, the Commission engaged the services of Indian Institute of Management (IIM), Bangalore. The IIMB, after an in-depth study, has submitted its report, which will be summarised hereunder.

24.9 IIMB in its report, inter-alia, states that most people having stakes in the judicial work are of opinion that justice delivery system is unsatisfactory or poor. The main reason given by them is the delay in disposal of cases.

24.10 IIMB has ransacked the order sheets of several cases and after carefully analysing them stated as follows:

"In order to gain an initial insight into the extent of delays obtaining at present in subordinate civil courts, a sample of sixteen "Order Sheets" taken out at random from the City Civil Court in Bangalore were examined. An interesting (though not surprising) feature of the data we obtained on processing, time for different cases was the wide variability that obtained from case to case and court to court. The time taken to serve summons and emergency notices to defendants varied from three months to three years. The time taken to file written statements ranged from six months to twentyfour months. Interlocutory applications caused delays ranging from four months to four years. Framing of issues consumed as much as three years and six months in one case. Other stages that delayed the cases were absence of advocates and, of course, innumerable adjournments given for a variety of reasons. The "Order

Sheets" contain revealing information about sources of delay"

The IIMB goes on to state :

"The major causes of delays were "summons not being served on time" and "witnesses not being present in court". For criminal cases, the most widely felt source of delay was "inadequate number of concerned personnel". For civil cases, it was "filing of unwarranted Interlocutory Applications". This finding accords with the views of several commissions and reinforces the felt need to introduce long over due reforms.

24.11 The IIMB has examined the question of Process Management with reference to the report of Lord Woolf of Britain and then states:

"Process Management may be termed as Case Management in the legal context. We give below the important aspects of case management. Case Management as stated in the report of Lord Woolf in Britain has the following dimensions:-

- a) Identifying key issues in a case
 - b) Encouraging parties to settle cases or agree on issues
 - c) Summary disposal of weak cases and trivial issues
 - d) Deciding the order in which the issues are to be resolved
 - e) Fixing time table for parties to take specific steps
 - f) Limiting disclosure and expert evidence
 - g) Allocating each case to specific track (Fast Track / Multi Track)
 - h) Achieving transparency, control of costs
 - i) Fixing and enforcing time table for procedural steps before and during trial, limiting length of trial

strictly and the judge to ensure effective use of allotted time.

24.12 The remarks of IIMB on this aspect are as follows :

In the Indian context, **enforcing time tables** would be an essential element of Case Management and would involve deadlines to be set at the following stages of the legal process :

- Serving Summons and Warrants in time
- Posting of cases
- Examination of Witnesses
- Effective Pleadings
- Trial Procedure (criminal cases)
- Controlling Discovery, Inspection and Admission
- Limiting adjournments, Interlocutory Applications
- Effective execution of decrees (civil cases)

24.13 The IIMB has found that the delay in most of the cases is due to multiplicity of interlocutory applications, which are not dealt with by the Court promptly.

24.14 Further, the IIMB has noted that the Courts are not taking advantage of Orders X to XII of the Code of Civil Procedure (Code).

24.15 The IIMB then referred to the proposed Code of Civil Procedure (Amendment) Bill, 1997 and in particular the following provisions:

- (i) Any plaint to be filed should be in duplicate, accompanied by all documents relied upon by the plaintiff. Any document not filed shall not be allowed in evidence at the hearing. The affidavit of

genuineness of the claim must also be filed at this stage.

(ii) The Court shall issue summons to defendant within thirty days of institution of the suit, deliver the summons to the plaintiff (addressed to the defendant) for service and direct that the summons be served by courier service or fax or electronic mail as prescribed or approved by the High Court. The plaintiff should send the summons as directed by the Court within two days of writing of the summons by the Court. Default on the part of the plaintiff to deliver the summons to defendant will lead to dismissal of the suit.

(iii) The defendant should furnish the written statement in duplicate along with all documents relied upon. Any document not filed shall not be allowed to be received in evidence at the hearing. This should be filed within 30 days from the date of service of summons. This should also be supported by an affidavit.

(iv) Time taken to record oral evidence of witnesses must be reduced by filing affidavits of examination-in-chief and filing the statements recorded before a Commissioner, if need be, in the case of cross-examination and re-examination.

(v) Where elements of settlement acceptable to the parties are apparent, the Court should formulate terms of settlement and after obtaining the views of the parties, may refer the terms of possible settlement for Arbitration, Conciliation or judicial settlement through Lok Adalat for mediation. The Court shall direct the parties to opt for either mode of settlement outside the Court and fix appearance before the forum or authority as may be opted by the parties. The parties shall then appear before the authority for conciliation. If the Presiding Officer is satisfied that it is not proper to proceed with the matter further, in the interest of justice, the matter may be referred back to the Court.

(vi) In the case of adjournments, it is obligatory for the judge to record reasons and award actual or

higher cost, not merely notional cost, to be paid by the party seeking adjournment. This proposal also limits the **number of adjournments to three** to a party during the hearing of a suit.

(vii) The Court, while granting temporary injunction to restrain an act or make an order for the purpose of staying proceedings against the defendant in relation to a property under disposition, shall direct the plaintiff to provide security so as not to cause delay on flimsy grounds

(viii) In matters relating to property disputes, to avoid hardship to the affected party, the Court may ask for the appointment of a Commission to make investigations and elucidate matters in dispute about the property so that when the suit is tried, the findings of the Commission will be available.

(ix) On the day of judgement, authenticated copies should be made available immediately after the judgement is pronounced, and within fifteen days, the decree shall also be drawn up. An appeal may be preferred in the Court, which passes the decree, and notices shall be served on the advocates in the Court of first instance.

24.16 The IIMB has stated that the above provisions are indeed useful means of avoiding delay in disposal of cases.

24.17 The IIMB recommends that awaiting the enactment of that proposed legislation, the High Courts could issue certain guidelines to lower Courts similar to those provisions wherever they are not inconsistent with the existing provisions of the Civil Procedure Code in order to reduce the avoidable delay in disposal of cases.

24.18 We also urge the High Courts to issue such other guidelines / directions to the lower courts so that Judicial Officers may be armed with such protection against the objection, if any, raised by the Advocates.

24.19 With regard to Criminal Courts, this is what IIMB has to remark :

"(i) In criminal proceedings, charge sheets are often filed in the Court after a long lapse of time. The

court proceedings start from the time the charge sheet is filed in the court. There are procedural differences between summons trial cases and warrant trial cases. Nonetheless, reasons for delay are common to both procedures. The need for a greater degree of cooperation among the various agencies involved in the criminal justice system (The Police, The Prosecution, The Courts and jail authorities) is imperative since thousands of under trial prisoners languish in custody in criminal case.

"(ii) Problems in the service of Processes affect the criminal justice system as much as the civil system. The printed forms need to be revamped, made more legible and readable and as many copies as required be made and copies invariably given to concerned parties. The practice of writing just one copy or writing the names of more than one witness in one copy and serving them in a haphazard manner on the parties must end. Many of the delays and problems encountered by the criminal justice system in this country originate from the early state of delay and inefficiency occasioned in the service of processes. Many of these remedies lie with the Police and have to be initiated before the stage of filing the charge sheet. The Courts will need to question these delays when the charge sheet is submitted and monitor the progress of the case before trial commences. This calls for close coordination between the magistracy, the Courts and the agencies in charge of enforcing laws, be the Police or Customs or any other department.

"(iii) The IIMB has noted the usefulness of the Directorate of Prosecution in Karnataka which was set up following the recommendations of the Fourteenth Law Commission Report. It is of opinion that the directorate has greatly contributed to better disposal of criminal cases in the State. Officials of the rank of Assistant Public Prosecutor in a Magistrate's Court and Public Prosecutors in the court of District and Sessions Judge and officials designated as Assistant Director of Prosecution, Deputy Director of Prosecution, Joint Director of Prosecution and Director of Prosecution & Government Litigation together head an independent, cohesive team dealing with all the government litigation in lower courts. The charge sheets are vetted by the Assistant Director of Prosecution who is attached to the

Superintendent of Police of the district. This practice helps the prosecution to present a well-articulated case before the court and minimizes the chances of legal defects in the charge sheet. This single practice could by itself contribute to reduction of delays and streamlining of the system and is therefore worthy of emulation countrywide. (This may need an amendment to Section 173 of the Criminal Procedure Code.)"

The IIMB recommends the pattern of the Karnataka model of Directorate of Prosecution for replication in all the States."

24.20 The IIMB after examining the 77th Report of the Law Commission has also suggested that at least two well trained police officials at every police station should be set apart for getting service of summons effected upon witnesses for cases relating to that police station and for ensuring their presence on the date of hearing. Not only these police officials be set apart for service of process but they should not be diverted for other duties.

24.21 We entirely agree with these suggestions. We suggest, if not two police officers, at least one of them must be set apart exclusively in every police station to attend the court work, like service of summons, ensuring presence of witnesses and undertrial prisoners. We request the High Courts to take up this matter with their Government.

24.22 Among the general recommendations made by IIMB, the following may be noted :

A. xx xx xx xx

B. xx xx xx xx

C. xx xx xx xx

D. Infrastructure, Staff facilities and Working Environment

6) The existing classification of Courts based on work load should be re-examined by each High Court

and new classification based on existing work load should be arrived at.

7) Load data for each Court, based on the nature of the cases should result in realistic classification and help establish benchmarks for performance at the Court and the individual levels. These benchmarks would help to assess the work load of each court, each judge, and eventually serve as inputs for future planning and performance appraisal exercises. These will also help superior courts by way of norms for use at the time of inspections.

8) There is scope to relieve the judge of some of the functions not directly related to judicial work. The suggestion to create an Auxiliary Adjudication Service which will function within the Court but will not call upon the resources of the judge except in rare cases should be further examined. Pre-trial processing tasks could be left to the Auxiliary Service.

9) Training and Development of the Human Resources of the judicial department is an issue that should be addressed earnestly to attain higher efficiency levels. Job Content, Job Description, Goal Setting and Performance Appraisal should receive attention.

10) Court facilities should be upgraded significantly to improve the morale of court officers and the staff and to offer better comforts to the public. Waiting rooms, information kiosks, telephones, photo copying machines; drinking water and toilet facilities for the public are necessary.

11) The Presiding Officers should be provided with dictating machines to reduce their dependence on stenographers. The working environment for the judicial staff should be pleasant. They should not depend upon the petitioners, members of the public etc., for stationery and other basic requirements. Adequate working space, ventilation, light, provisions of fans, a power generator etc., for all courts are minimal facilities that must be introduced.

12) As stated in the 77th Report, judicial officers must be provided with comfortable residential accommodation. They should not be at the mercy of the general public for such facilities as it may dilute

judicial integrity. Staff facilities, good living quarters and better working conditions are pre-conditions for the efficiency of the judiciary. This is a reform long overdue.

13) The Record Room in the court should be computerized; all data must be backed up and kept elsewhere in data storage media for each court. Scanning of documents, micro filming etc. should be resorted to in order to reduce dependence on manual work, to prevent tampering with documents and ensuring documents safety.

E. Alternative Dispute Resolution methods (ADR)**

14) Various reports already submitted in this connection including the 114th Report of the Law Commission of India should be studied and ADR should not be looked upon merely as a means of Court Management, reduction of arrears etc.

** The Commission has separately dealt this subject at the fag end of this chapter.

15) The Legal Authorities Act, 1987, the Karnataka State Legal Services Authority Regulations, 1997 and other provisions relating to Lok Adalat are also relevant. These provisions should be used in pre-trial proceedings.

16) Mediation as a consensual and voluntary ADR method and the use of a facilitator trained in conflict resolution should also be studied and experienced in the Indian context.

17) Resorting to Arbitration to settle commercial disputes and other ADR routes should be looked upon as a vital alternative and awareness created among the public.

18) Plea-bargaining in criminal cases is a concept that calls for wider examination.

19) Pre-trial discovery helps classify and simplify issues and this calls for a wider discussion in the light of the Government of Gujarat's Judicial Reform Committee which examined the question of pre-trial discovery with a view to diverting cases to Lok Adalats for resolution.

II. RECOMMENDATIONS : PROCESS IMPROVEMENTS

20) The following suggestions are based on our re-examination of the material collected by us and are also supported by the Survey conducted by us (IIMB Report Chapter 3). The Code of Civil Procedure (Amendment) Bill, 1997 (Bill No. L of 1977) now before the Parliament has an important bearing on improving judicial processes. If the Bill is passed, several observations contained in this report could be deemed to have been fulfilled. While making improvements in the process, we would like to stress that an automated system should supplement manual efforts, which should be based on the Recommendations of the 77th Report of the Law Commission.

A. Serving Summons in Time

21) Stern punitive action should be initiated against notice / summons / warrants servers, if delay is deliberate.

22) The various forms in use for issue of processes should be simplified in language and content. They should enable coding for computerization. Routine administrative problems should be resolved by using local resources.

XX XX XX XX

B. Presence of Witnesses (Criminal Cases)

26) If the prosecution witnesses are not produced, the court should intervene to secure the presence of at

least material witnesses by issuing coercive processes.

27) The prosecution and defence should get a maximum of two opportunities to produce their respective witnesses. Further adjournments should not be allowed, but ends of justice should be borne in mind.

28) Lack of concern by the state for witnesses is a major hindrance in securing adequate presence of witnesses. Witnesses should be treated with consideration with respect to their time and provided adequate facilities.

C. Adjournments, Interlocutory Applications etc.

29) Frequent and avoidable adjournments due to dilatory tactics of litigants and their lawyers are major causes of delay. Deliberate filing of Interlocutory Applications leading to heavy delays should also be discouraged. Frequent and unwarranted adjournments, in principle should be curtailed by discretionary powers given to the judge, keeping the overall objectives of justice in mind. All reasons for adjournments must be clearly recorded by the Presiding Officer. Vague and routine reasons must show up in the Case Summary for follow up action. Cases should not be adjourned if witnesses are present. The entire evidence should be recorded in one stretch. Affidavits could be used to prove things of a formal nature. The provisions of Order 17 of CPC should be enforced strictly. There should be a ceiling on the number of Interlocutory Applications. Relevant rules may be amended to allow more than one prayer in one IL application with a maximum of three IL applications. ILs should not go on beyond 3 months.

30) A provision to limit prayer for adjournments by prosecution and defence to two only on any ground whatsoever deserves serious consideration. For filing counters and written statements also, there should be a time limit.

31) Heavy penalties should be imposed on those who plead for adjournments on frivolous grounds. Frivolous Interlocutory Applications and Appeals and Revisions on IL applications should be similarly

discouraged.

32) For oral arguments, time limit should be introduced (say 15 minutes per issue) with a request to file short and neat written argument.

33) While posting cases, the judge should take into account the plausibility of conducting trial on a day-to-day basis. Posting of cases should be undertaken on a rational basis with judicial application of mind. The Presiding Officer should apply his / her mind to post cases in a shorter time.

34) Docket management should be introduced. This takes within its fold simplified procedures and enhances the judicial role in posting of cases. This will remain a judicial function.

D. Posting of Cases

35) Posting should be based on assessing reasonable work, which could be handled in a day, and not done indiscriminately.

36) As "Calling Work" consumes much time, the Presiding Officer should delegate quasi-judicial functions to such Officers and deal with matters of direct judicial relevance.

37) For more effective co-ordination among judges, prosecutors, defence lawyers and investigating officers, each judge should identify problems of co-ordination on a case by case basis and act as an Arbiter. There could be monthly meetings of these officials presided by the Judge at which only Court management and Case management aspects should be discussed.

E. Pleadings

38) As a matter of law and procedure, pleadings should bring out bare minimum facts and not matters of evidence. Incomplete pleadings should be discarded. After stipulated time, only resubmission should be allowed. Provisions of CPC (Order 6) Rules 16 should be made use of freely.

F. Discovery, Inspection and Admission

39) Though in the law of procedure, there are provisions for "Discovery, Inspection and Admission" there are not many cases in which these provisions are being invoked and this is one of the factors contributing to delay in disposal of cases. At the time of institution of suit, the judge should make it clear that the counsel should invoke respective provisions relating to "Discovery, Inspection and Admission", if they wanted to avail of such provisions. If they do not take such opportunity, they should be denied of such opportunity after a stipulated time frame (say 2 months).

G. Framing of Issues, Settlement of Issues

40) This is one of the primary duties of the Presiding Officer. It is a crucial control point. High Courts should issue fresh directives in this regard, especially in fixing time limits.

H. Judgements / Orders / Decrees

41) There should be greater control by Presiding Officer in expediting the execution of decrees, issue of certified copies and related processes. There should be no delay beyond seven working days after the judgement to draft and notify the decree. This can be ensured by better-organized work methods. Any instruction by the High Court in this regard should be accompanied by other instructions concerning better working procedures.

24.23 The Commission while generally agreeing with these recommendations, has, however, to emphasise the following:

It is disheartening to note that lawyers who are required to assist the speedy disposal of cases, are seeking adjournments. It is equally sad to note that certain Judicial Officers readily accept such requests of the lawyers and grant adjournments, may be, to be in good books of the Bar. These two are the major contributing factors for delaying justice.

Secondly, we tend to overlook the existing provisions in the Procedural Code meant for speedy disposal of cases and instead, suggest reforms and amendments. It is like a local saying that a dancer who does not know how to dance properly complaining about the defect in the stage.

Take for example, there are provisions like Orders X, XI and XII in the Code of Civil Procedure, which afford largest opportunity for lawyers appearing for the parties to exercise their expertise and procedural skills in the conduct of cases. It is the stage in which the greatest speed and effectiveness in procedure should be achieved for speedy disposal of cases. It is termed as Pre-Trial.

PRE-TRIAL :

24.24 We may set out Orders X, XI and XII.

24.25 Order X, which provides for examination of parties by the Court, reads thus:

"ORDER X : EXAMINATION OF THE PARTIES BY THE COURT

Rule 1. Ascertainment whether allegations in pleadings are admitted or denied:

At the first hearing of the suit, the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

Rule 2. Oral Examination of party, or companion of party:

(1) At the first hearing of the suit, the Court -

(a) shall, with a view to elucidating matters in controversy in the suit, examine orally such of the parties to the suit appearing in person or present in Court, as it deems fit; and

(b) may orally examine any person able to answer any material question relating to the suit, by whom any party appearing in person or present in Court or his pleader is accompanied.

(2) At any subsequent hearing, the Court may orally examine any party appearing in person or present in Court, or any person, able to answer any material question relating to the suit, by whom such party or his pleader is accompanied.

(3) The Court may, if it thinks fit, put in the course of an examination under this rule questions suggested by either party.

Rule 3. Substance of examination to be written:

The substance of the examination shall be reduced to writing by the Judge and shall form part of the record.

Rule 4. Consequence of refusal or inability of pleader to answer:

(1) Where the pleader of any party who appears by a pleader or any such person accompanying a pleader as is referred to in rule 2, refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day.

(2) If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit."

24.26 Order XI which provides for discovery and inspection may also be read.

So far as relevant, it provides:

"ORDER XI : DISCOVERY AND INSPECTION

Rule 1. Discovery by interrogatories :

In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer :

Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose:

Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross examination of a witness.

Rule 2. Particular interrogatories to be submitted:

On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the Court. In deciding upon such application, the Court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the Court shall consider necessary either for disposing fairly of the suit or for saving costs.

Rules 3 to 23 Omitted "

24.27 Order XII provides for admissions. So far as relevant, it reads:

"ORDER XII : ADMISSIONS

Rule 1. Notice of admissions of case:

Any party to a suit may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

Rule 2. Notice to admit documents:

Either party may call upon the other party to admit, within fifteen days from the date of service of the notice, any document saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs; and no costs of proving any document shall be allowed unless such notice is given except where the omission to give the notice is, in the opinion of the Court, a saving of expense.

Rule 2A. Document to be deemed to be admitted if not denied after service of notice to admit documents:

(1) Every document which a party is called upon to admit, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of that party or in his reply to the notice to admit documents, shall be deemed to be admitted except as against a person under a disability:

Provided that the Court may, in its discretion and for reasons to be recorded, require any document so admitted to be proved otherwise than by such admission.

(2) Where a party unreasonably neglects or refuses to admit a document after the service on him of the notice to admit documents, the Court may direct him to pay costs to the other party by way of compensation.

Rules 3 to 9 Omitted"

24.28 Since we have received complaints that the Courts are not following these procedures, we have formulated the following questions in our general Questionnaire seeking views and comments from all concerned :

"Q.No. 52. Order X of the Code of Civil Procedure deals with oral examination of the parties with regard to the admissions and denials of the allegations of facts as are made out in the plaint or written statement; Order XI of CPC deals with the discovery and inspection of documents after delivery of interrogatories in writing for the examination of the opposite parties and Order XII of CPC deals with admitting truth of the whole or any part of the case of any other party after giving notice and also calling upon other party to admit documents. Do trial Courts make use of these provisions before embarking upon the regular trial of a Civil Suit?

Please set out the procedural or other hindrance experienced for not following the aforesaid procedure.

Q.No. 52.1 Why pre-trial procedure in every case should not be made mandatory and why a case which is ripe for evidence, should not be taken continuously on day-to-day basis after fixing a date for Trial?

Q.No.52.2 Why a party non-co-operating in the pre-trial procedure should not be directed to pay costs?"

24.29 The responses received from High Courts / State Governments Officers' Associations are summarised hereunder on State-wise basis :

ANDHRA PRADESH :

24.30 Seldom utilised as the Courts are over burdened with work and if the steps under Orders X and XI have to be followed, there should be cooperation from advocates so that adjournments are not sought for even for going through these preliminary steps. The experience is that even at the stage of framing of issues, there is no assistance from advocates in most of the Courts. Interrogatories are seldom resorted to and very often documents are filed after the commencement of trial with an application seeking permission. There should be inculcation of better litigative discipline, if necessary by imposing sanctions under law.

ASSAM :

24.31 Presently, the trial courts in our State are not making use of the provisions of Orders X, XI and XII of the Code of Civil Procedure.

24.32 In our opinion, the pre-trial procedure should be insisted upon and where a departure is made from the said procedure, the

Court must record its reasons. In our opinion, once a case is ripe for evidence, it should be taken continuously on day-to-day basis and only in exceptional cases for reasons to be recorded the case should be adjourned to a later date. The party not cooperating in the pre-trial procedure should be directed to pay heavy costs.

BIHAR :

24.33 Advocates produce hindrance in observing the procedure and a very insisting officer is likely to be harassed in many ways. Rules are already there but are not observed / practised because of non-cooperation of various agencies responsible for producing witnesses.

GUJARAT :

24.34 Trial Courts do not make use of provisions of Orders X, XI and XII CPC. This is because of non-cooperation by the advocates and even by the litigants. However, we feel that a Judicial Officer should strictly comply with these provisions. The pre-trial procedure should be made mandatory. Though it is difficult to continue civil suit on day-to-day basis after fixing the date for trial, the Judge concerned must insist for a day-to-day trial.

24.35 The litigant, who is not co-operating in pre-trial procedure, should be made to pay heavy costs and not merely costs, as generally understood. If this is implemented by all Judicial Officers and not lightly interfered with by higher forum, then, pre-trial stages can be successfully implemented.

HIMACHAL PRADESH :

24.36 The Pre-Trial procedure should be made mandatory. The procedure prescribed under Order X of the Code of Civil Procedure is seldom followed in Himachal Pradesh, though there may not be any practical difficulty in following the procedure and the provisions of Order XI CPC are also taken recourse to in very rare cases. The provisions of Order XII are no doubt, by and large, followed and parties are called upon to admit or deny the documents which are available before framing of issues.

24.37 Non-implementation of relevant provisions seems to be a matter of practice which has evolved for years and the background is not known.

JAMMU & KASHMIR :

24.38 The Civil Courts apply the procedure laid down by Orders X, XI and XII CPC depending on the facts and circumstances of each case. Pre-trial procedure and recording of evidence on day-to-day basis should be made mandatory. Costs may be awarded in case the parties wilfully delay the progress of the case and non-cooperate with the pre-trial proceedings.

KARNATAKA :

24.39 Observance and use of pre-trial procedures in every case should be made mandatory.

24.40 The provisions of Orders X, XI and XII CPC are not being effectively used. However, compulsory utilisation of the said provisions would reduce the time spent in recording evidence. Lawyers and litigants should be persuaded by proper legal literacy programmes to effectively and consistently use the said provisions.

24.41 The provisions relating to costs should be effectively used, if necessary by suitable modifications and party who does not co-operate in the pre-trial procedures should be directed to pay suitable costs.

KERALA :

24.42 The provisions are not generally being followed by the Courts in this State.

MADHYA PRADESH :

24.43 No co-operation is there from the Bar and the advocates. They are reluctant (many of them are rather ignorant) to make use of these provisions.

MAHARASHTRA :

24.44 Pre-trial procedure should be mandatory.

24.45 Very few Courts make use of Order X, though other Orders referred to in the question are mostly relied on if the parties move the Court. A party who does not adhere to the pre-trial procedure should be saddled with heavy costs.

ORISSA :

24.46 Procedures contemplated under Orders X, XI and XII CPC are followed in the pre-trial stage and no procedural or other hindrance is experienced for not following the aforesaid procedure. The suggestion of the Commission is fully endorsed.

PUNJAB & HARYANA :

24.47 It is submitted that trial courts hardly make use of the provisions of Orders X and XII CPC before embarking upon the regular trial of a suit and the only hindrance being experienced by the trial courts for non-following the aforesaid procedure is that the lawyers and litigants do not cooperate at all in this regard and at times, it has been seen that considerable long time is being wasted in securing the presence of the parties for the purpose of admission and denial and seeking reply to the interrogatories. Whenever any attempt was made by any trial judge for strict compliance of the aforesaid provisions of CPC, there has always been hue and cry amongst the members of the Bar even to the extent of making false complaints so as to compel the Judge not to follow these provisions.

24.48 It is not always necessary to direct the party to pay costs on account of his non-cooperation in pre-trial procedure. Instead, the party may be proceeded under Rule 10 Order VIII and Rule 4 Order X CPC.

RAJASTHAN :

24.49 No doubt, the provisions of Orders X, XI and XII CPC are there for speedy disposal of matters and unnecessary issues may be avoided by examination of parties but this is not the routine practice of the Court due to non-cooperation of the parties, paucity of time and heavy work load in the Courts. Pre-trial procedure in fact must be made a mandatory provision. A party non-cooperating at the pre-trial procedure must be directed to pay heavy cost.

SIKKIM :

24.50 Order X CPC is occasionally followed. Order XI and Order XII CPC are hardly followed. This has been the practice since

long. In fact, trial as of practice starts with Order XI and Order XVIII CPC.

24.51 Pre-trial procedure may be made mandatory.

UTTAR PRADESH :

24.52 Provisions of Orders X, XI and XII CPC are being followed by the Civil Court to some extent. In the self annual assessment form there is a column for showing the number of cases in which statement under Order X CPC was recorded but due to heavy work load, frequency of adjournment sought by the lawyers, delaying tactics of the parties and lawyers, and the lawyers' strike/s are some of the hindrances which are experienced in this regard.

24.53 It should be made mandatory.

24.54 Non-cooperating party in pre-trial procedure should be directed to pay cost which should go to the State and not to the other party, because in that case, it in fact goes to the pocket of the lawyers of the party concerned.

WEST BENGAL :

24.55 The provisions of Order X CPC are generally not utilised. Orders are passed by the Courts under Order XI and Order XII CPC by way of routine matters. But those provisions are very rarely utilised by the parties and their lawyers. The litigants and the lawyers, as well as to some extent the Courts, proceed with these matters in routine fashion and these opportunities under these provisions are hardly exploited, although by utilising those provisions much delay may be avoided. Lawyers take these procedure quite negligently as a result of which Courts also do not insist on these at the point of penal orders.

24.56 It is in the interest of administration of justice that those pre-trial procedures should be made mandatory. It should be made mandatory if necessary by suitable amendments to the CPC by inserting the provisions to make these procedure mandatory.

DELHI :

24.57 Provisions of Orders X, XI and XII CPC are not followed regularly in all cases. Experience has shown that litigants feel shy or avoid making statement to Courts in the absence of their advocates, because of adversarial nature of proceedings the litigants under legal advice or otherwise do not come out with truth. Sometimes they are tutored to give answers which are in

tune with the pleadings already made. Too much insistence on the part of the Judicial Officers invites protests and at times open allegations of taking undue personal interest in the matter. A few dates of hearings are also wasted in procuring attendance of the parties.

24.58 It will be better if pre-trial procedure is made mandatory.

24.59 We may also set out hereunder the views and comments received from other eminent persons :

JUSTICE SRI RANGANATH MISRA, FORMER CHIEF JUSTICE OF INDIA :

24.60 The provisions of Orders X, XI and XII CPC are usually followed by the trial Courts and scrutiny from time to time during inspection made. There is no hindrance. The suggestion that pre-trial procedure in every case should be made mandatory and a case should be taken continuously on day-to-day basis and a party non-cooperating in the pre-trial procedure should be directed to pay costs are welcome procedure.

MR. JUSTICE K. RAMASWAMY, FORMER JUDGE OF THE SUPREME COURT :

24.61 Under the Legal Services Authorities Act, 1987, all the cases can be compromised by the parties in the Lok Adalats which result in decrees of the Court. Therefore, under Orders X to XII CPC and similar provisions in the Criminal Procedure Code, all civil cases and petty cases or compoundable offences should be dealt with at a pre-trial stage. Trial of cases should be conducted on day-to-day basis.

MR. JUSTICE R.S. SARKARIA, FORMER JUDGE OF THE SUPREME COURT :

24.62 The proposal to make pre-trial procedure mandatory seems to be worth implementation. It would result in saving valuable judicial time as in USA and other countries where pre-trial procedure is in vogue.

MR. P.P. RAO, SENIOR ADVOCATE OF THE SUPREME COURT :

24.63 There should be a provision in CPC requiring the trial court to make an endeavour to resolve the disputes at the earliest stage with the assistance of the counsel of both sides in the spirit of Lok Adalat. Order XXVII, Rule 5B, requiring the Court in suits against Government or a public officer to assist in arriving at a settlement has been referred to for guidance.

MR. JUSTICE P. VENKARAMA REDDY, JUDGE, HIGH COURT OF ANDHRA PRADESH :

24.64 The Advocates' resistance is the primary cause for not observing the provisions of Orders X to XII CPC. In case of a party not co-operating in the pre-trial procedure, he should be saddled with costs, which should not be a nominal one.

MR. JUSTICE P.P. BOPANNA, FORMER JUDGE, HIGH COURT OF KARNATAKA :

24.65 The trial Court lawyers are the biggest hindrance in observing the provisions of Orders X to XII CPC. That the costs for failure of parties to co-operate in the pre-trial should be made payable by the lawyers to ensure better co-operation.

IN SUM :

24.66 It will be seen from the views obtained from the respondents that pre-trial procedures are not followed by Courts primarily due to non-cooperation of lawyers and litigants. The other ground is that the Court is over-burdened with the work load. This is the view purforward by almost all the High Courts.

24.67 The High Court of Punjab & Haryana states that whenever pre-trial is insisted upon, there is hue and cry in the Bar, even to the extent of making false complaints against the judge.

OUR RECOMMENDATION :

24.68 It is of importance to note that there are three basic factors in the pre-trial, namely, the ascertainment of facts, observance of time-limits and the incidence of costs. It may also be stated that pre-trial is a process which is simple, speedy and comparatively inexpensive, as in the case of entering a default judgment or obtaining a consent order. No doubt it involves a great deal of energy and industry on the part of the practitioners and the Judges.

24.69 In the premise, we recommend that the provisions relating to pre-trial should be made mandatory against heavy sanction for not observing it. If necessary, amendment in this regard may be made to the Code of Civil Procedure.

24.70 In the meantime, we request the High Courts to issue strict instructions by way of Circulars to the Courts to follow the procedure of pre-trial and further to provide that the failure to follow the said procedure should be treated as dereliction of duty on the part of the Judicial Officers.

24.71 We may further suggest that the copy of such circular may also be sent to the Bar Association with a request for co-operation.

PRE-TRIAL AND ALTERNATIVE DISPUTES RESOLUTION (ADR)

MEDIATION / CONCILIATION AND LOK ADALATS :

24.72 Alternative dispute resolution, which for the sake of brevity we shall refer to as ADR, is linked in most people's minds with alternatives to the traditional judicial process, with which it is usually contrasted. That is wrong conception. ADR gives people an involvement in the process of resolving their disputes that is not possible in a public, formal and adversarial justice system bristled with abstruse procedures and recondite language of the law. It offers choice: choice of method, of procedure, of cost, of representation, of location. It is often quicker than judicial proceedings and it can ease burdens on the courts.

24.73 We shall single out first for closer examination of mediation / conciliation.

24.74 There is not much difference between mediation and conciliation. Mediation is one of the methods by which conciliation is achieved. Conciliation is essentially a consensual process.

24.75 We are of the opinion, mediation / conciliation must be resorted to at the pre-trial stage itself.

24.76 The conciliation has now got statutory sanction under the Arbitration and Conciliation Act, 1996. Part III of the Act consisting of Section 61 to 81 provides for method of conciliation of disputes arising out of legal relationship, whether contractual or not. It is by an independent conciliator. The settlement agreement arrived at by such conciliation has the status and effect as if it is an Arbitral Award on agreed terms.

24.77 There are two models of conciliation, which we contemplate. The first one is the Trial Judge, himself to adopt a conciliatory role. If that is adopted, much formal court time can be saved, with consequential savings to the parties of time, money and stress. The judge may take the opportunity, at a pre-trial stage or at other stages to act as a mediator, directing the parties' attention to the main issues in question and encourage sensible settlement. This is fine as far as it goes.

24.78 This is what the 14th Law Commission also suggested in its report under the sub-heading "CONCILIATION AND PRE-TRIAL".

24.79 The said report so far as relevant reads as follows:

"We are, however, of the view that the trial judge could himself act in a way as a conciliator. The appropriate time for initiating and tactfully helping parties to arrive at a compromise, we consider, would be when the clarification of the pleadings and the examination of parties under Order X, Rules 1 and 2 take place.

XX XX XX XX

XX XX XX XX

Lawyers perform a real service to their clients and to society and the Courts when they make settlements that are right settlements, where there are two sides to a case, where the issue may well be in doubt, where the facts are honestly in conflict or where the law is unsettled, there is always some figure which is fair to both sides. It should be the lawyer's aim to make such a settlement if he can."

24.80 We have no wish to discourage this course provided judicial impartiality, which every member of the judiciary will be acutely anxious to preserve, is maintained. However, taking this process too far might undermine the perception of judicial impartiality.

24.81 It must be noted that this conciliation cannot become successful unless the judge plays an unduly active role. But we are afraid, judges who try to induce parties to come to an amicable settlement are liable to be misunderstood, however, tactful words are used by the judge without the appearance or taking a view of either side.

24.82 Another way of conciliation while preserving judicial impartiality might be to appoint a different judge for the conciliation process. This may be more useful in terms of user-satisfaction and time-savings.

24.83 Indeed, we have thought up this model even at the stage of preparing the general questionnaire. In the general questionnaire, we have set out the following question:

Q.No.53.1. An alternative forum viz. Conciliatory Court for Dispute Resolution has been established in Himachal Pradesh and it is working satisfactorily. Why not such Court be established in every State-Cities and Districts?

24.84 We may hereunder briefly summarise the views and comments received in response to the said question.

24.85 High Court of Andhra Pradesh has stated that it is doubtful whether creation of such Conciliatory Court is feasible in States where there is heavy work load and such Courts may involve duplication of work after the Lok Adalats are established.

24.86 The High Courts of Guwahati, Patna, Gujarat, Madhya Pradesh, Bombay, Orissa, Punjab and Haryana, Rajasthan, Madras and Allahabad have favoured the establishment of a separate Conciliation Court.

24.87 High Court of Madras has suggested that appropriate amendments to Order X, Rule 2(1)(b), Order X Rule 4(2) and Order XXVII, Rule 5(B) of the Code of Civil Procedure may be made with power to the Conciliation Court to initiate conciliation proceedings in all types of cases, including the Motor Accidents Claims Tribunal cases.

24.88 Most of the Judicial Officers' Associations have favoured the establishment of Conciliatory Courts.

24.89 Mr. Justice R.S. Sarkaria, Former Judge of the Supreme Court, has strongly recommended establishment of such Conciliatory Court stating that the mode of settlement of disputes of conciliation has much to commend itself and it needs to be popularised through the good offices of ICADR, superior Courts and the Bars. He has also referred to the success in such mode of settlement of disputes in USA.

24.90 Mr. P.P. Rao, Senior Advocate of the Supreme Court has made an innovative suggestion. He has stated that the Court should be empowered by introducing suitable provision similar to Order XXVII Rule 5B CPC, in the Code of Civil Procedure to assist the parties in all types of cases in arriving at a settlement.

24.91 Before we proceed further, let us see the opinion expressed by the Himachal Pradesh High Court, which has hitherto successfully carried on the Conciliatory Court. The High Court states:

"The system of Conciliatory Courts was introduced by the High Court of Himachal Pradesh and the system is still prevalent. Its working has been affected by Lok Adalats as two different institutions are serving the same purpose and the quantum wise achievement is also affected. Conciliatory courts may prove to be more effective alternate dispute resolutions system than the provisions of Arbitration and Conciliation Act, 1996.

The conference of Chief Justices on 10-13 December 1987 resolved recommending adoption of system of conciliation courts with modifications in each State. Such courts could be established in other States, in districts or even in taluks as done in Himachal Pradesh."

24.92 Let us now turn to another mode of ADR. This is styled as 'Lok Adalat'.

LOK ADALAT :

24.93 This has been statutorily sanctioned under the Legal Services Authorities Act, 1987. Chapter VI of the Act contains provisions providing for organisation of Lok Adalats; the power and functions of the Lok Adalat and the effect of the award made by the Lok Adalat.

24.94 Section 20 of the Act is important for our purpose. Under this Section the Court may refer any case to Lok Adalat, if both the parties thereof agree; or, one of the parties thereof makes an application to the Court for referring the case to the Lok Adalat for settlement and if the Court is prima facie satisfied that there are chances of settlement; or the Court if satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat.

24.95 However, the Court shall not make reference unless the parties concerned are provided an opportunity of being heard in respect of the application filed by one of the parties or of suo motu initiation.

24.96 The Lok Adalat shall decide the dispute with utmost expedition to arrive at a compromise or settlement on the basis of

principles of justice, equity, fair play and other legal principles.

24.97 Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned to the Court which referred the case to the Lok Adalats.

24.98 Every award of the Lok Adalat shall be deemed to be a decree of Civil Court and the parties are entitled for refund of Court fee in accordance with the provisions of the Court Fees Act.

24.99 Every award made by the Lok Adalat shall be final and binding between the parties' and no appeal shall lie to any Court against the Award.

24.100 But under the Arbitration and Conciliation Act, 1996 there is no provision similar to Section 20 of the Legal Services Authorities Act, 1987 enabling the Court to refer the case to Conciliatory Court. That Act provides for an independent Conciliator to be appointed by consent of parties. This is not permissible in our civil justice system. We must have Conciliatory Court as part of the administration of justice. We do not want an independent Conciliator outside the jurisdiction of the Court.

24.101 We may, however, point out that the original court must have power to examine the nature of the dispute and persuade the parties to come to settlement by conciliatory procedure and if it thinks fit, refer the case to the Conciliatory Court for arriving at a settlement.

24.102 In this regard, the suggestion made by Mr. P.P. Rao, Senior Advocate of the Supreme Court, would be relevant. He has referred to the Order XXVII Rule 5B CPC. This provision requires the Court only in suits against the Government or any public officer to assist the parties in arriving at settlement before the trial begins.

24.103 Similar provision could be introduced in the Code requiring the Court prima facie to examine the matter and advise the parties in all types of cases in arriving at a settlement at the pre-trial stage and if it is appropriate refer the case to the Conciliatory Court.

24.104 The settlement arrived at the Conciliatory Court must be recorded and dealt with as if it is a decree of the Civil Court.

24.105 We are, however, of the opinion that once the case is referred to the Conciliatory Court or to Lok Adalat Court, it should

not come back to the Original Court for trial. If the case comes back for trial either from the Conciliatory Court or from the Lok Adalat on the failure to reach the settlement, it would be duplication of work with unnecessary wastage of time and manpower.

24.106 The experience gained by Himachal Pradesh High Court in the working of the Conciliatory Court after Lok Adalats are constituted is that the working of the Conciliatory Court has been affected by the Lok Adalat as two forums are serving the same purpose.

24.107 Himachal Pradesh is a small State. Naturally, volume of work in the Courts will not be large. Separate Conciliatory Court and Lok Adalat may result into duplication of work there. However, in populous States with big Cities and Districts, there is a heavy backlog of cases awaiting disposal. In Metropolitan Cities, pendency of cases is heavy and litigants stand in queue. It may take decades to clear the arrears even if additional Courts are established. There can, therefore, be no scope for duplication of work if independent Conciliatory Courts and Lok Adalat are separately constituted.

24.108 Indeed, as many as 9 High Courts have favoured establishment of a separate Conciliation Court.

24.109 We are of opinion that it is better to have independent Conciliatory and Lok Adalat Courts.

24.110 Before we conclude, it may be useful to bear in mind the role of mediator in conciliation proceedings, which role has to be played by the Conciliatory Court.

24.111 Mr. D.K. SAMPATH, Visiting Professor of National Law School of India University, in his tiny book titled as "MEDIATION" has explained the scope and role of mediator as follows (page 12):

"The mediator has an active but limited role. He is not expected to be neutral like an umpire. He is an activist in the cause of settlement and it is his duty to promote it. Hence he has to contribute his mite towards a solution. Such a contribution is by his functioning effectively as a conduit between the disputants who may not even be on talking terms. It is by no means a passive role that he plays. After both parties present their versions, it is the mediator's task to mark the areas of agreement and widen the same by persuasion, with a view to shrink the area of differences. This will lead to identification of the surviving points of dispute and the parties have to be nudged by the mediator along

the path of self-resolution by appealing to their good sense and sense of fair play. Relations and friends would help in this. The mediator should not hold out any threats of prosecution or litigation either to secure the presence of the disputants to the negotiating table or their consent to any of the terms proposed. The whole process is based on the exercise of free will and consent of both the disputants. The moment this is withdrawn, the process of conciliation collapses. The mediator is not called upon to apportion blame or guilt for generating the conflict or for the failure of negotiations. Once either party is dubbed guilty, he will turn sullen and angry. Thereafter, he will withhold all co-operation and may even withdraw from the negotiating table. It will create resentment. He will regret why he ever came at all. The mood for conciliation vanishes.

The mediator has to cash in on the initial impulse of the disputants to give mediation a chance and strengthen it into a strong sense of purpose. The wavering parties have to be motivated to a durable settlement that will give a quietus to the controversy. Once the consensual nucleus is identified and emphasised by the mediator, the waivers and concessions are to be promoted by a process of give and take on both sides. The disputants may differ on important issues relating to the dispute. The mediator has to resist the temptation of adjudicating on facts. **He is not an arbitrator. His is not to be an attitude of take it or leave it. There is no machinery for adjudication on facts in the process of conciliation by mediation. No witness; no adversary process. No findings; no award. This limitation on the role of the mediator arises from the scope of the initial consent given by the initiator and the responding party to avail themselves of the facility of mediator's services. This consent is the source of mediator's role.** It circumscribes his functioning. As it has an important bearing on the end result, it should be briefly explained to the parties at the outset. It cannot be and should not be enlarged in the course of the process by assuming powers of finding on facts or confronting the disputants with an award. The entire effort is an exercise in persuasion. You cannot change tracks half way."

OUR RECOMMENDATIONS :

24.112 In the light of the aforesaid discussion, we recommend that –

- (1) The Conciliation and Lok Adalat Courts must be **annexed** to the civil justice system.
- (2) There shall be permanent separate Courts for Conciliation and Lok Adalat in every City and District.
- (3) A provision similar to Order XXVII Rule 5B CPC and such other provisions may be introduced in the Code of Civil Procedure requiring the Court to endeavour to settle the matter in dispute at the Pre-Trial stage and if it is appropriate to refer the same to one or the other to be taken cognizance of and adjudicated by them.
- (4) Conciliatory Court and Lok Adalat Court may be assisted by trained Mediators or reputed persons whose advice is likely to carry conviction to the parties.
- (5) When once the case is referred to the Conciliatory or to the Lok Adalat Court, it must not revert back to the original Court for trial but must end in settlement which must be given the status of the Civil Court decree.

LANGUAGE OF THE COURTS

24.113 In almost all States, the Judicial Proceedings in lower Courts, are recorded in local language of the State concerned. In some of the States, at the level of District and Sessions Judges, the proceedings are recorded in dual language, i.e. one in English

by the Judge himself and another in the Regional language. Proceedings including evidences are recorded by the Reader (Peshkar) in vernacular while the Presiding Officer either in his own hand or by dictation to the Steno-Typist records the Proceedings in English.

24.114 On account of implementation of transfer policy of Judges of the High Courts, generally 2nd Judges in a High Court are from outside the State concerned. The transferee Judges who are not familiar with local language of the State, face considerable difficulty in dealing with cases when the records are only in local language. The translation of all the records into English would be an enormous task besides the cost factors. Secondly, the High Courts are not generally well-equipped with adequate staff to get the records promptly translated into English, and even if it is done, it would cause delay in disposal of cases.

24.115 We, therefore, recommend that all High Courts should direct the lower Courts to record the Proceedings in English language and also in regional language in all cases where the judgment / decree is appealable or revisable by the High Courts.

24.116 We may also state that this procedure would facilitate the creation of All India Judicial Service.

WRITTEN ARGUMENTS

24.117 The Commission sought the opinion with regard to submission of written arguments in Civil cases by framing the following question:

Q.No. 54: Section 314 of the Criminal Procedure Code provides for submitting written arguments supplementing the oral submission. But there is no similar provision in the Code of Civil Procedure. Is it not better to have similar provision for disposal of civil cases? If desired, please indicate the necessary amendments to the Code of Civil Procedure providing for written arguments.

24.118 There is consensus amongst all concerned that concise and brief written arguments in Civil cases would be helpful to

judges and also would consume less time for oral submissions. It is also the consensus that a provision similar to Section 314 of the Code of Criminal Procedure could be incorporated in the Code of Civil Procedure.

24.119 We, therefore, recommend the inclusion of a section in the Civil Procedure Code similar to Section 314 of the Criminal Procedure Code.

24.120 Meanwhile, the High Courts may issue directions to the lower Courts permitting the judges to demand written submissions from the counsel with a list of cases to be relied upon at least a week before the date fixed for final arguments in all the cases.

FALSE AND FRIVOLOUS CASES :

24.121 It is common experience that Civil Courts are not free from false and frivolous cases and we have sought suggestions to prevent it. We have also asked the question:

Q.No. 55.1. Is the existing provision for taking action against those who give false evidence adequate? Is it deterrent enough? What are your suggestions in this regard?

24.122 The responses received, among others, is that the existing provisions are not adequate or deterrent enough to prevent such litigations coming to Courts.

24.123 Section 35A(2) of the CPC provides for imposing compensatory cost in respect of false or vexatious claims or defences. It states that no Court shall direct any party to pay an amount exceeding three thousand rupees or exceeding the limits of its pecuniary jurisdiction, whichever amount is less. This has been incorporated by the Amendment Act, 1976.

24.124 The High Court has got the power to limit the said amount of compensatory cost which any Court or class of Courts, is empowered to award.

24.125 Section 35A(3) of the CPC states that the compensatory cost awarded will not preclude the Court from taking any

criminal proceedings against the party.

24.126 The responses received from the respondents indicate that the Courts generally do not initiate proceedings under Section 35A CPC for false or vexatious claims or defences.

24.127 It is also the general opinion that the witnesses who come before the Courts do not have any regard for truth. The Courts are reluctant to initiate proceedings against them under Sec.340 of the Criminal Procedure Code.

24.128 Indeed, initiating proceedings under Sec.340 is cumbersome and time consuming. Even if the complaint is filed at the instance of the Civil Court, Prosecutor would not be vigilant enough to prosecute the proceedings and ultimately it will have a natural death. The very purpose of initiating such proceedings would thus be defeated.

24.129 The Courts could take contempt proceedings over gross perjury or for frivolous, false and fraudulent documents as the same "interferes or tends to interfere with, the due course of any judicial proceeding:" as provided under Sec. 2(c)(ii) of the Contempt of Courts Act, 1971. (See: Chandra Shashi v. Anil Kumar Verma (1994) 7 JT (SC) 459 : 1994 AIR SCW 4994.) But this proceeding even if taken would be time consuming since the Civil Court has to make a reference to the High Court, which has to take regular proceedings under the Contempt of Courts Act.

24.130 In this context, we may also refer to Sec.344 of the Criminal Procedure Code. It empowers the Criminal Courts to take summary procedure for trial for giving false evidence.

"(1) If, at the time of delivery of any judgment or final order disposing of any judicial proceeding, a Court of Session or Magistrate of the first class expresses an opinion to the effect that any witness appearing in such proceeding had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding, it or he may, if satisfied that it is necessary and expedient in the interest of justice that the witness should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily and sentence him to imprisonment for a term

which may extend to three months, or to fine which may extend to five hundred rupees, or with both."

24.131 We recommend that a similar provision be introduced in the Civil Procedure Code.

24.132 We may also refer to Order XVI Rule 12 of the Civil Procedure Code which authorises the Courts to impose fine on witnesses not appearing before it, if for reasonable cause, despite being served. We suggest that a similar, but stringent provision could be included in the Civil Procedure Code empowering the Courts to take action against the person or witness for giving false evidence or producing false documents.

24.133 We further recommend that Section 35A(2) should be suitably amended empowering the Courts to impose compensatory or special cost of not less than Ten Thousand Rupees and not more than Twenty five Thousand Rupees.

COURT WORKING HOURS / HOLIDAYS / VACATIONS

24.134 With regard to Court working hours, we have circulated the following question for opinions and comments:

"Q.No. 50: What are the Court timings in your State? International Labour Organisation has fixed 40 hours of work per week as the International work norm. How many hours per week do the Courts work? How many working days are lost in a year by strike or boycott of Courts? Are such loss of working days made good by compensatory work?

24.135 The information received from the respective High Courts, the State Governments / Officers' Associations and individuals are summarised hereunder:

ANDHRA PRADESH :

24.136 The Subordinate Courts in Andhra Pradesh sit from 10.30 A.M. to 5.00 P.M. with lunch break between 2.00 P.M. and 2.30 P.M.

24.137 The Courts work for 30 hours in a week.

24.138 Saturday is a non-Court working day, but the office works.

ASSAM :

24.139 The Court timings are from 10.00 A.M. to 5.00 P.M. with half an hour lunch break.

24.140 38 working hours in a week.

BIHAR :

24.141 In April to June, the Subordinate Courts in Bihar work from 6.30 A.M. to 11.30 A.M. In the remaining months of the year, the Courts work from 10.30 A.M. to 4.30 P.M. with a recess of half an hour.

24.142 30 hours per week during summer except in the second week wherein the Courts work for 25 hours due to second Saturday being a holiday.

24.143 During the remaining months, the Courts work for 36 hours per week except the second week wherein the Courts work for 30 hours.

DELHI :

24.144 Court timings of Subordinate Courts are from 10.00 A.M. to 4.00 P.M. with half an hour break between 1.30 P.M. and 2.00 P.M.

24.145 The Courts work 33 hours in a week.

GOA :

24.146 10.30 A.M. to 1.00 P.M. and 2.30 P.M. to 5.00 P.M.

24.147 The Courts work 30 hours per week.

GUJARAT :

24.148 In Gujarat State, the Courts work for 44 hours in a week.

24.149 The office hours of Civil and Criminal Courts in Gujarat are from 10.30 A.M. to 6.10 P.M. with a recess of half an hour

except on second and fourth Saturdays.

24.150 The working hours of the Civil and Criminal Courts are from 11.30 A.M. to 2.30 P.M. and from 3.30 P.M. to 5.30 P.M.

24.151 All Second and Fourth Saturdays are holidays.

HIMACHAL PRADESH :

24.152 The Courts work from 10.00 A.M. to 4.00 P.M. with half an hour lunch break from 1.00 P.M. to 1.30 P.M. However, the office works from 9.45 A.M. to 4.45 P.M.

24.153 Working hours of Courts are 33 hours per week, except in the second week wherein the working days are reduced to 27 **1** hrs.

JAMMU & KASHMIR :

24.154 10.00 A.M. to 4.30 P.M. except during summer in Jammu Region where the Courts work from 8.00 A.M. to 1.30 P.M. with half an hour break.

24.155 On an average, 30 hours per week.

KARNATAKA :

24.156 The working hours for District Judiciary are between 10.30 A.M. and 5.30 P.M. six days a week.

24.157 The Court sitting hours are from 11.00 A.M. to 2.00 P.M. and 3.00 P.M. to 5.00 P.M. with lunch break between 2.00 P.M. and 3.00 P.M.

24.158 30 hours per week.

KERALA :

24.159 11.00 a.m. to 5.00 p.m. Six days per week, except second Saturday.

LAKSHADWEEP :

24.160 10.30 A.M. to 5.00 P.M. six days a week.

MADHYA PRADESH :

24.161 The working hours of Subordinate Courts are from 11.00 A.M. to 5.00 P.M. with a break of half an hour.

MAHARASHTRA :

24.162 The office working hours in all the Districts in Subordinate Courts are from 10.30 A.M. to 5.30 P.M. with half an hour recess.

24.163 The Court timings in Small Cause Courts, Bombay and in the districts of Akoloa, Amravati, Bhandara, Buldhana, Chandrapur, Nagpur, Wardha, Yavatmal, Nanded, Osmanabad, Parbhani and Dadra & Nagar Haveli, Silvassa are from 11.00 A.M. to 2.00 P.M. and 3.00 P.M. to 5.00 P.M.

24.164 In other Districts of Maharashtra, the Court timings are from 11.30 A.M. to 2.30 P.M. and 3.30 P.M. to 5.30 P.M.

JUDGES OF THE CITY CIVIL & SESSIONS COURT, MUMBAI :

24.165 11.00 A.M. to 4.45 P.M. with 45 minutes break.

24.166 In Bombay City Civil Court, the Judges work for 25 hours a week.

MEGHALAYA :

24.167 The Court working hours in Meghalaya are from 10.00 A.M. to 4.30 P.M.

NAGALAND :

24.168 The Subordinate Courts follow the timings of Government offices, i.e. from 9.00 A.M. to 3.30 P.M. in winter and from 9.30 A.M. to 4.00 P.M. in summer for 6 days in a week, second and fourth Saturdays being holidays.

ORISSA :

24.169 The Court timings in the State of Orissa are from 10.30 A.M. to 5.00 P.M.

PUNJAB & HARYANA :

24.170 The working hours of Courts are from 10.00 A.M. to 4.00 P.M. with half an hour lunch break.

24.171 In Haryana, during summer, i.e. from 1st May to 31st July, the timings are from 7.30 A.M. to 1.30 P.M.

24.172 It is suggested that the Court hours throughout the country be fixed from 9.30 A.M. to 4.30 P.M. or from 9.00 A.M. to 5.00 P.M. to meet the requirement of 40 hours of work.

RAJASTHAN :

24.173 From 10.00 A.M. to 5.00 P.M. with lunch break from 1.30 P.M. to 2.00 P.M.

24.174 During summer, i.e. from 3rd week of April to the end of June, the Courts work from 7.00 A.M. to 12.30 P.M. with lunch break from 9.45 A.M. to 10.00 A.M.

SIKKIM :

24.175 10.00 A.M. to 4.00 P.M. with second Saturday as holiday.

TAMIL NADU :

24.176 The Court timings are from 10.30 A.M. to 1.30 P.M. and 2.00 P.M. to 5.45 P.M.

24.177 The Court hours per week are 32½ hours.

UTTAR PRADESH :

24.178 The Subordinate Courts work from 10.30 A.M. to 4.00 P.M. with half an hour lunch break at 1.30 P.M.

WEST BENGAL :

24.179 The working hours of the Subordinate Courts are from 10.00 A.M. to 5.00 P.M. and the Court sitting hours are from 10.30 A.M. to 4.30 P.M. The Courts remain closed on second and fourth Saturdays in every month.

24.180 The weekly working hours vary from 33½ hours to 39 hours in the alternative weeks.

Sri P.P. Rao, Sr. Advocate, Supreme Court :

24.181 The working hours could be from 10.00 A.M. to 5.00 P.M. with a lunch break of 45 minutes in a 5 day week.

24.182 From the aforesaid analysis, it will be seen that there is a confusion as to the Court timings and Court hours of work. It may, however, be stated that working hours of the Courts, (we mean by Judges sitting in the Courts) would be 30 to 33 hours in a week in almost all the States.

24.183 In some States, one Saturday in a month is a non-working day, while in some other States, two Saturdays are closed days for Courts.

24.184 We may state that Punjab & Haryana High Court is the only High Court which has recommended for increasing Court hours for judicial work. They have suggested that throughout the country, in all Subordinate Courts, Court working hours be fixed from 9.30 A.M. to 4.30 P.M. or from 9.00 A.M. to 5.00 P.M. We really appreciate this suggestion.

24.185 We are, however, conscious of the fact that there is qualitative difference in physical work and mental work. The mental work carried on in the open Court is more strenuous and taxing than performing the physical work. Besides, Judicial Officers do work before and after Court hours in the chambers and in their home office. We are, therefore, not inclined to recommend 40 hours of work for them to meet the international work norms. We, however recommend that in all States there shall be a minimum 36 hours of judicial work per week.

24.186 We are recommending considerable improvements in the emoluments of Judicial Officers. We expect them to do more work voluntarily in the interest of the litigant public.

24.187 We also suggest that only second Saturday be declared as non-working day for Judicial Officers.

24.188 We are not in favour of working only for 5 days a week. It should be six days in a week. We accordingly recommend.

24.189 So far as the timings are concerned, it is not advisable to fix uniform timings for all Courts in all States. The climatic conditions differ from State to State. We leave this matter to the respective High Courts to determine the time schedule for working hours for Judicial officers and office timings for the non-judicial staff, with a reasonable lunch break, but bearing in

mind the above requirements of 36 hours in Courts for Judicial officers to work.

PUNCTUALITY :

24.190 In this context, it needs to be mentioned that we have received a lot of complaints about Judicial officers that they are not punctual on their seats. It is said that some of them come late to the Courts and rise early too. It is also said that Judicial officers retire to their Chambers during the Court hours, if Bar members are absent in Courts.

24.191 We deprecate this tendency. We expect the Judicial Officers to be punctual. We may state that the Judicial Officers should not retire to their Chambers merely because Advocates are not present in Courts when the cases are called. The shop-owner cannot close his shop because the customers are not present. He has to keep the shop open whether there is customer or not. Likewise, the Judges should not retire to their Chambers if Advocates are not available. They should go on with the case papers and demonstrate more seriousness in their responsibilities. Then advocates would rush to the Courts.

24.192 We expect the Judicial Officers to religiously follow these basic traits of self-discipline.

HOLIDAYS :

24.193 We do not think that in any other country there are as many declared holidays in a year as in our country. This is in spite of the Central Pay Commission recommending that there should be reduction in the Government holidays. It will be useful to refer to the recommendation of 5th CPC. It has stated thus (Volume-III, p.1706 & 1707):

"Holidays other than the three national holidays are largely based on religious considerations and serve merely to satisfy the sentiments of different constituencies. Mere political expediency also dictates the closure of government offices on certain occasions. We have been informed that though government had considered a reduction in the number of holidays, the relevant proposals could not be given effect to in the absence of a consensus on the question of apportionment of the reduced number of holidays among different religious communities and groups.

We are of the considered view that efficiency and productivity would be considerably enhanced by curtailing holidays that are declared on various pretexts. In order to promote a sense of true secularism, religious festivals

should rightly be treated as personal to individual employees and it should not be necessary to close government offices on such occasions. Apart from the revival of the six-day week recommended by us, which will result in an addition of 52 working days, it should suffice if Central Government offices are closed only on the three national holidays (Republic Day, Independence Day and Mahatma Gandhi's Birthday). Simultaneously, individual employees could be permitted to avail of a larger number (say, about 16) of restricted holidays annually to enable the celebration of festivals and other occasions of specific significance and interest to them, the list of restricted holidays being suitably enlarged for the purpose.

Religious festivals and secular considerations apart, there is also an increasing tendency to declare holidays on the demise of political personages and leaders, past and present, the appropriateness of which has been a subject of intense debate in the recent past. We realise that this is a sensitive issue, which is often influenced by extraneous pressures and exigencies. It has nevertheless to be recognized that the closure not only of government offices, but of banks, commercial establishments, educational institutions, etc. on such occasions severely hinders productive activities, disrupts trade and commerce, and causes untold suffering to those whose very existence depends on their daily earnings.

In other countries of the world, homage to deceased dignitaries is paid not by closure of establishments and suspension of work but merely by flying the national flags at half mast, observing silence in memory of the departed and state mourning for a specified period. Even the instructions of the Ministry of Home Affairs on the observance of state mourning envisage only the flying of the national flag at half-mast and cessation of all official functions and entertainment during the mourning period. Having regard to the adverse implications of closure of offices due to the demise of leaders and political personages, the imperative need to develop a more committed work ethos and culture and to the fact that there are other respectful and dignified methods of paying homage, we are of the firm view that except President or Prime Minister in harness, no holidays should be declared on the demise of any other leader or dignitary."

24.194 It will be equally useful to refer to the significant suggestion made by the All India Judges' Association. It has suggested

thus :

"The holiday pattern of the District level judicial courts should be totally insulated from the general holidays spree of the State Governments who often suddenly declare un-anticipated non-working days through notification under the Negotiable Instruments Act causing whole-sale disruption of court work, for no justification at all. There should be a total ban on sudden closure of courts on the death of political or national personalities or on account of religious occasions."

24.195 It seems to us that the recommendations of the 5th CPC are extremely useful even for considering the working of Courts. We may also state that the suggestions of the All India Judges' Association are pragmatic and should be accepted.

OUR RECOMMENDATIONS :

24.196 We deprecate the sudden declaration of a holiday for Courts merely because the holiday has been declared by the Government. The sudden closing of Courts causes enormous difficulties to the litigants and witnesses whose cases are listed for that day. We, therefore, recommend that High Courts should not fall in line with the Governments in the matter of suddenly declaring any day as a holiday for Courts.

24.197 We further recommend that the High Courts may request the State Governments not to include "Courts" in the notification of declaring holidays under the Negotiable Instruments Act.

24.198 We also recommend that the number of declared holidays for Courts should not exceed 12 in a year. We request the High Courts to determine such holidays having regard to local customs and traditions.

VACATION :

24.199 The All India Judges' Association has made a bold submission in their representation regarding vacation for Courts :

1. There shall be "Judicial Emergency" or an "extra-ordinary" situation requiring 'extra-ordinary' remedial measures to tackle the pendency of cases. It is suggested that there should be judicial emergency for a period of 5 years and there shall be 50% moratorium on vacations and holidays on a

voluntary basis.

2. It is necessary to provide the holiday pattern of the District level Courts to be totally insulated from the general holidays spree of the State Governments.

3. The 6 day week should continue but Saturday should be treated as "judgments day". In other words, no substantial court work should be fixed on Saturdays, and instead, the Judges should exclusively devote it to dictation of Judgments or miscellaneous orders or pronouncement of verdicts or perusal of files for final arguments. The idea underlying this methodology is to permit full relaxation to the Judicial Officers on Sundays.

OUR RECOMMENDATION :

24.200 Some have suggested that there shall be more Courts to clear the backlog of cases. Some have suggested that we must adopt double shift system with the same infra-structure. Yet others have suggested that the vacation to Courts should be curtailed.

24.201 We have examined the practicability of adopting double shift Courts. Bar Members may not relish this idea. In Metropolitan Cities like Mumbai, Bangalore, Chennai, Hyderabad, Ahmedabad and Delhi, the Advocates have to come from far off places. Particularly in Mumbai, it would take not less than 1½ hours to 2 hours for transit from their home to Court and an equal time for returning to their residence.

24.202 Apart from that, it is not possible to secure Bar Members who could work in the shift system.

24.203 Additional Courts would be a good idea. But, there are no infrastructure, much less, the adequate manpower. It may take its own time for establishing the required additional Courts.

24.204 We are cognisant that the Judicial Officers need some time for attending their family affairs by way of a vacation. They need some rest too. But what is forefront in our minds is the enormous pendency of cases in all Courts.

24.205 We are of the opinion that by increasing the hours of work in Court and increasing the number of working days, and at the same time, reducing the vacation, we would be able to reduce the arrears to some extent.

24.206 We have elsewhere recommended that the Court hours of work should be increased to 36 hours per week with six days working.

24.207 Keeping in view the necessity of reducing the docket explosion and balancing the absolute need to give some respite to Judicial Officers, we recommend:

"That till such period the arrears are brought down to manageable limits, the Court vacation period should be cut down by 15 days in a year."

24.208 We leave this matter for the High Courts to work out appropriately by curtailing the existing vacation.

PENDENCY IN COURTS

24.209 We have got too much of pendency with backlog of cases in each State. We do not have the enough manpower and the Judge strength to tackle the same.

24.210 By way of illustration, we may hereunder set out the pendency of cases and Judge strength in some of the major States during the period 1985 to 1995 including the Judge strength as on 1999.

ANDHRA PRADESH :

24.211 In Andhra Pradesh, as on 30.6.1985, there were 5,321 Sessions Cases, 4,44,104 suits and other proceedings in the District Courts and Courts subordinate thereto and 1,22,560 cases in the Magistrates Courts. In all, there were 5,71,985 cases pending.

This pendency has increased as on 31-12-1995 to 28,438 Sessions cases, 8,01,079 original suits and other proceedings in the District Courts and Courts subordinate thereto and 2,47,281 criminal cases in the Magistrates Courts, altogether it comes to 10,76,798. The percentage of increase in pendency of cases from 1985 to 1995 was 88.26.

24.212 The sanctioned Judge strength as on 1985 was only 608 and that has been increased to 680 as on 1995. During that period, the percentage of increase of the sanctioned Judge strength was 11.84. As on 1999, the Judge strength is 672.

ASSAM :

24.213 In Assam, as on 30-6-1985, there were 4,694 cases pending in the Sessions Courts, 1,10,349 cases in Magistrates' Courts and 22,525 civil cases pending in District Courts and other Courts subordinate thereto. Thus, in all, there were 1,37,568 cases pending. As on 31-12-1995, the pendency has increased to 7,775 cases in the Sessions Courts. 1,53,573 cases in Magistrates' Courts and 46,831 civil cases in the District Courts and other Courts. Thus, in all, there were 2,08,179 cases pending. The increase in pendency from 1985 to 1995 was 51.33%.

24.214 The sanctioned strength of Judges as on 1985 was 192. In 1995, there were 200 Judges. Thus, there was increase in Judge strength from 1985 to 1995 at 4.17%.

24.215 The Judge strength as on 1999 is 221.

BIHAR :

24.216 In Bihar, as on 30-6-1985, there were 77,932 Sessions cases, 6,36,870 criminal cases and 1,57,224 civil cases pending. Thus, there were 8,72,026 cases pending in various Courts. As on 31-12-1995, this pendency has gone up to 1,94,547 Sessions cases, 7,49,006 criminal cases and 2,28,488 civil cases. Thus, the pendency increased to 11,72,041. The percentage of increase during that period was 34.40.

24.217 The sanctioned Judge strength as on 1985 was 1,276 and as on 1995 it was 1,537. The Judge strength increased during the period of 10 years by 20.45%.

24.218 The Judge strength as on 1999 is 1648.

GUJARAT :

24.219 In Gujarat, as on 30-6-1985, there were 3,758 Sessions cases, 9,75,916 cases in the Magistrates Courts and 2,13,928 civil proceedings pending in the District Courts and other courts subordinate thereto. Thus in all, there were 11,93,602 cases pending. This pendency has increased to 24,995 Sessions cases, 31,45,542 criminal cases and 7,08,048 civil cases in District Courts and Courts subordinate thereto as on 31-12-1995. Thus, there were 38,78,585 cases pending. The pendency during the said period of 10 years increased by 224.95%.

24.220 In 1985, the sanctioned Judge strength was 479 and the strength was increased to 599 in 1995. The increase in the Judge strength during the said period was 25.05%.

24.221 The Judge strength as on 1999 is 640.

HARYANA :

24.222 In Haryana, as on 30-6-1985, there were 2,247 cases pending in the Sessions Courts, 1,04,341 cases pending in Magistrates' Courts and 86,979 civil cases pending in the District Courts and other Courts. Thus, in all, there were 1,93,567 cases pending. This pendency has increased in 1995 to 9,142 in Sessions Courts, 1,81,446 in Magistrates Courts and 2,10,077 civil cases in District Courts and other Courts. The total pendency was 4,00,665 cases. Thus, the percentage of increase in pendency of cases from 1985 to 1995 was 106.99.

24.223 The Judge strength during 1985 was 174 and it increased to 221 in 1995. Thus, the percentage of increase in sanctioned Judge strength was only 27.01. The Judge strength as on 1999 is 266.

KARNATAKA :

24.224 In Karnataka, there were 5,628 Sessions cases, 3,36,933 criminal cases and 5,92,663 civil cases pending in various Courts as on 30.6.1985. In all, 9,35,224 cases were pending. In 1995, there were 25,489 Sessions cases, 5,91,958 criminal cases and

6,15,379 civil cases pending in those Courts, totalling to 12,32,826. The increase during the said period of 10 years was 31.82%.

24.225 The sanctioned Judge strength was 439 in 1985 and 557 in 1995. During the said period of 10 years, the Judge strength was increased by 26.88%.

24.226 As on 1999, the Judge strength is 632.

MADHYA PRADESH :

24.227 In Madhya Pradesh, there were 19,570 cases pending in Sessions Courts, 6,65,733 cases pending in the Magistrates' Courts and 2,26,508 civil cases pending in the District Courts and other subordinate Courts as on 30.6.1985. In all, there were 9,11,811 cases pending in various Courts. In 1995, the pendency of cases increased to 65,371 Sessions cases, 11,20,675 criminal cases and 4,34,966 civil cases, totalling to 16,21,012. The percentage of increase in pendency of cases during 1985 to 1995 was 77.78.

24.228 In 1985, the Judge strength was 759 and in 1995, it was increased to 944. The Judge strength increased during the said period of 10 years by 24.37%.

24.229 The Judge strength as on 1999 is 988.

MAHARASHTRA :

24.230 In Maharashtra, there were 20,177 cases pending in Sessions Courts, 12,42,462 cases pending in Magistrates Courts and 5,89,543 civil cases pending in District Courts and Courts subordinate thereto, as on 30.6.1985. Thus in all, there were 18,52,182 cases pending. In 1995, there were 80,008 cases in Sessions Courts, 29,02,196 cases in Magistrates Courts and 9,23,850 civil cases in District Courts and Courts subordinate thereto. In all, 39,06,054 cases were pending. The increase in pendency of cases during the said period of 10 years was 110.89%.

24.231 In 1985, the Judge strength was 918 and it was increased to 1,226 in 1995. During the said period of 10 years, the Judge strength increased by 33.55%

24.232 The Judge strength as on 1999 is 1,250.

PUNJAB :

24.233 In Punjab, as on 30.6.1985, there were 4,176 cases pending in Sessions Courts, 96,712 cases pending in Magistrates Courts and 1,01,958 civil cases pending in District Courts and other subordinate Courts. Thus in all, there were 2,02,846 cases pending in various Courts. In 1995, the pendency was 14,669 in Sessions Courts, 94,562 in Magistrates Courts and 2,16,240 civil cases in District Courts and Courts subordinate thereto, totalling to 3,25,471 cases. The percentage of increase in pendency of cases during the said period of 10 years was 60.45.

24.234 The sanctioned Judge strength was 186 in 1985 and 273 in 1995. The percentage of increase of Judge strength during the said period was 46.77.

24.235 As on 1999, the Judge strength is 301.

TAMIL NADU :

24.236 In Tamil Nadu, as on 30.6.1985, there were 6,082 Sessions cases, 2,75,594 Criminal cases and 4,42,711 civil cases. Thus, there were 7,24,387 cases pending in various Courts. In 1995, the pendency was 12,868 cases in Sessions Courts, 2,61,027 cases in Magistrates Courts and 4,72,414 civil cases in District Courts, totalling to 7,46,309 cases. The pendency of cases rose by 3.03% during the said period of 10 years.

24.237 The sanctioned strength of Judge was 271 in 1985 and 636 in 1995. The Judge strength during the said period of 10 years was increased by 134.69%.

24.238 The Judge strength as on 1999 is 602.

UTTAR PRADESH :

24.239 In Uttar Pradesh, as on 30.6.1985, there were 62,449 cases pending in Sessions Courts, 8,46,577 cases pending in Magistrates Courts and 3,97,202 civil cases pending in District Courts. Thus, in all, there were 13,06,228 cases pending in various Courts. In 1995, there were 1,88,402 cases pending in Sessions Courts, 20,48,102 cases pending in Magistrates Courts

and 8,80,362 civil cases pending in District Courts and Courts subordinate thereto. In all, there were 31,16,866 cases. The percentage of increase in pendency of cases was 138.62 during the said period of 10 years.

24.240 The Judge strength was 1,391 in 1985 and 1,574 in 1995. The percentage of increase of Judge strength was only 13.16% during the said period of 10 years.

24.241 The Judge strength as on 1999 is 2,239.

DELHI :

24.242 In Delhi, as on 30.6.1985, there were 3,672 cases pending in Sessions Courts, 3,97,064 cases pending in Magistrates Courts and 85,169 civil cases pending in District Courts and other Courts subordinate thereto. Thus, in all, there were 4,85,905 cases pending in various Courts. In 1995, there were 18,056 cases in Sessions Courts, 3,77,140 cases in Magistrates Courts and 1,18,865 civil cases in District Courts and Courts subordinate thereto. Thus, in all, there were 5,14,061 cases pending. The percentage of increase of cases during the said period of 10 years was 5.79.

24.243 The sanctioned strength of Judges was 167 in 1985 and 304 in 1995. The percentage of increase of Judge strength during the said period of 10 years was 82.04.

24.244 The Judge strength as on 1999 is 419.

24.245 Following are the charts depicting the "pendency of cases in subordinate Courts" and the "Judge strength" in all States / UTs as obtained by the Ministry of Law and Justice, Government of India.

24.246 Increase in the number of Judges has not kept pace with increase in the number of cases as evident from the above table. During the period 1985 and 1995, the overall Judge strength increased by about 15.4% as against the increase in the pendency of cases by about 62.1%.

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25. INFORMATION TECHNOLOGY IN THE ADMINISTRATION OF JUSTICE

25.1 Technological Developments in the field of information and introduction of computers have made a turning point in the history of human civilization. It has brought about a sea change in all fields of human activity. It has resulted in enhanced efficiency, productivity and quality of output in every walks of life.

25.2 The information technology has been advocated in the western countries for the last two or three decades, but hardly any worthwhile effort has been made till recently, particularly, in judicial administration of subordinate courts in our country.

25.3 The Commission considers that there is an immediate need for exposing our legal profession, judicial fraternity and court management to the update computerised technology so as to render speedy justice with better legal outputs.

25.4 The Commission formulated the following question in its questionnaire to elicit views and suggestions for application of Information Technology in Court System :

Q.No.56 : The introduction of Computers has brought about sea-change in the work and efficiency in various activities. Are the courts in your State/UT equipped with Computers for Court Management and Case Management ?

25.5 The High Courts of Andhra Pradesh, Assam, Delhi, Gujarat, Himachal Pradesh, Kerala, Madhya Pradesh, Bombay, Uttar Pradesh, Tamil Nadu and Calcutta have informed that the process of introduction of computers is on in some of the District Judges' Courts.

25.6 The High Courts of Orissa, Rajasthan, Punjab and Sikkim appear to have not yet taken steps towards introduction of computers in the lower Courts.

25.7 The Commission engaged the services of Indian Institute of Management (IIM), Bangalore, as Consultant, for suggesting improvement in the Court Management.

25.8 It may be stated that IIM, Bangalore, is a Consultant for computerisation for many Governmental Departments and for Public and Private Sector Enterprises. IIM, Bangalore, is perhaps the best Consultant in the country for Information Technology.

25.9 The IIM, Bangalore, after studying the utility of computerisation of Courts in the countries abroad and also surveying the

Court work and Court management in several centres in our country, has among others, recommended that for the purpose of improvements in operational efficiency, co-ordination, accessibility and speed in the judicial administration, the introduction of Information Technology (IT) is absolutely essential.

25.10 IIM, Bangalore has prepared a comprehensive Report in which the following portion pertains to I.T. in Court work :

"1. Introduction :

Extensive use of Information Technology by diverse organizations the world over has resulted in enhanced efficiency, effectiveness and optimal use of resources. Computers as well as electronic communication devices such as facsimile machines, electronic mail, video conferencing, provide the ability to process large volumes of data with speed and accuracy, exchange of useful information between different locations and support higher quality of decision making. These capabilities have contributed to more efficient and responsive systems not only in business organizations, but also in legal, governmental and other public systems.

While the Information Revolution arrived in India some years ago, automation has not transformed all facets of life in equal measure. It has not permeated to the Subordinate judiciary in particular, resulting in old work methods based on manual systems being continued even now. The enormous problems being faced by the judiciary due to arrears, backlog and delays can be partly resolved by the introduction of automation in subordinate courts.

2. Work Done So Far :

The 121st Report of the Law Commission of India (July 1987) has devoted a whole chapter to "Technological Advances and its use in the context of Judicial appointments". A beginning has been made by National Informatics Centre (NIC) in computerisation of Court records. The administrative system in the Supreme Court has been computerised. A query system allows litigants anywhere in the country to enquire and obtain information on the status of a case filed in the Supreme Court through NICNET. The Supreme Court is also introducing a Classification System as well as a system to track progress of cases and a Case Flow System. Gujarat High Court has also

introduced a comprehensive case management system. Such systems are also being initiated at other high courts. Work has also commenced at some subordinate courts like the City Civil Court in Bangalore.

3. Need for Significant Thrust :

The problems faced by courts, judiciary and public seeking justice in terms of backlogs, delays and expense are well known. While there are many dimensions to these problems, improvements in operational efficiency, coordination, accessibility and speed which IT could bring about can contribute significantly towards improvement and alleviation of difficulties. However the present pace of development, particularly at the subordinate court level is too slow and is unlikely to have the desired impact in the near future. Massive problems need appropriately large commitments and major initiatives if a significant dent is to be made.

Recently, there has been a tremendous interest in major initiatives in IT at the national level. A task force set up by the Prime Minister has drawn up 108 recommendations with the objective of developing India into an "IT Superpower". In our view, applications having a major impact on fundamental systems which contribute to shaping our society, like the legal system, should be a significant part of any such undertaking. A quick calculation will show that a project for provision of computers at every court in India accompanied by development of appropriate software than some of the other proposals currently being made. We feel therefore that it is necessary that a strong plea to the Centre for a comprehensive plan for IT usage in courts is needed.

Further, computer usage has made sufficient inroads into private as well as public organizations in India. There are several visibly successful applications, be it in railway reservations or department stores or educational institutions. Also India software developers have been recognised internationally for their talent in developing software for diverse applications. It is time that these talents and experience be put to use in developing effective systems for the important and public-sensitive domain of legal systems.

4. Areas where IT will be useful :

Most of the bottlenecks identified by Judicial Commissions and Committees referring to delays, arrears and backlog be partly overcome if a sound judicial management information system is introduced in India. Case Management, File Management and Docket Management will be vastly improved by resorting to the use of computers. In particular, the following are areas where use of computer will result in enhanced productivity and reduction of delays.

- a) Legal Information Data Bases
- b) On line query system for precedents, citations, codes, statutes etc.
- c) Generation of Cause List and on line statistical reports
- d) On line Caveat matching
- e) On line updation of data, monitoring and "flagging" of events
- f) Pooling of orders and judgements
- g) Daily List generation with historical data of each case
- h) Word processing with standard templates including generation of notices/processes
- i) Access to international data bases
- j) Feed back reports for use of various levels.

The above are some of the areas where information technology can be introduced after due preparation. In particular, tracking of cases would result in better monitoring and control of cases by the Presiding Officers, rather than by the lawyers.

Computerisation should be supplemented by the use of Fax, E Mail, Video conferencing and other facilities for higher productivity and quicker decision making at all levels.

5. International Practices :

Courts in USA have been extensively using Information Technology for several years now. In UK, software development for computers at the subordinate court level has been developed extensively. For example, the Local County Court Management System (LOCCS) in use in England has a data base system which is part of a package called CASEMAN and supports the following judicial applications :

- a) Creates initial court records for registering a case
- b) Issues summons and monitors the service of the summons
- c) Stores electronic copies of evidence
- d) Generates Cause List
- e) Updates records
- f) Maintains Court Dairy
- g) Automatically generates other relevant documents and records

The Lord Woolf Commission in U.K. has considered the case for use of Information Technology in the judiciary and has effectively articulated many aspects of IT usage in its report "Access to Justice" (July 1996).

In Australia "Cyber Courts" use technology in the legal arena extensively at all stages and have demonstrated considerable reduction in delays as a result.

In Singapore the courts manage their time and resources optimally to achieve an active, efficient and effective case management process. The use of technology in Singapore courts goes beyond the use of computers. Occasions for transporting of accused and witnesses in criminal cases within the country and from outside are greatly reduced by

the use of video cameras in jails and court premises. The Lawnet Service Bureau is networking with law firms, judiciary and data bases. Video conferencing is a common feature both within the judiciary and outside. A key board is provided in each court to the lawyers to make their written submissions on a real time basis. Their Differentiated Case Management (DCM) System assigns different management tracks to different cases in subordinate courts in accordance with the nature and complexity of each case. The public who visit the courts have also access to a touch screen by which they know the status of various cases. This practice promotes transparency and improves accountability.

The experience of IT usage in these countries, particularly U.K. could provide very useful pointers and even specific tools and software in developing systems suitable for India.

6. Preparatory Steps :

The success of Computerisation of court work depends to a very large extent on the degree of preparations made. Therefore, any hasty, half-hearted step should be avoided as they will prove to be counter-productive.

Information Technology is also more than introducing computers. It should also reckon with improving communications. Facsimile machines, electronic mail and other means of swift and reliable communications should be introduced to synchronise with computerisation.

Before undertaking the major task of introducing widespread IT usage, following questions need to be considered :

- a) What is the IT strategy for the judiciary ? How do you integrate technology with the objectives ?
- b) What is a cost-effective Management Information System for the judiciary? What tools can be optimally used for the coordination of information ?
- c) What should be learning process for the judiciary as well as the administrative staff ? How does one impart hands-on training to persons who may have hardened views on the subject ?

After a firm strategy is in place, the next step would be to prepare (a) the judicial organisation and (b) the human

resources in the judiciary, to commit themselves to the concept. An extensive familiarisation programme should be launched, aimed at gaining the acceptability of all users. To begin with, all Presiding Officers should be contacted and the subject discussed with them in groups. A class room set up at this stage for Presiding Officers is not desirable. There should be no talk of hardware and software during this phase.

The judicial organisation should be prepared simultaneously for the introduction of computers. Source Documents should be obtained and gone through for source coding, data entry and connected technical operations. This should be done by a team of computer professionals. The period during which the manual work would run simultaneously with computerisation after introduction of computers should be determined and the phasing out should be free of all hassles.

There will be three stages of computerisation as follows :

- a) Planning Stage
- b) Development Stage
- c) Operational Stage

Training will be an on-going activity during all the three stages. There will be a separate Training Plan. Training needs will be analysed soon after the IT strategy is finalised. The training plan will incorporate designing and delivering training programmes with a view to achieving the objectives of the learning process as a whole.

At the Planning Stage all the applications of Information Technology in the judicial context will be analysed. The existing data based run by private agencies would be examined for their reliability and validity. International practices would also be analysed. A detailed plan would be arrived at on the various applications of IT in the Indian context and developing them for the Indian judiciary as an extension of the work being done in the Supreme Court, High Courts and Bangalore City Civil Court. There should be compatibility of data among the various systems.

At the Development Stage, selection of equipment (hardware) and developing suitable software which will

supplement the existing systems would be decided. The expert team would coordinate their efforts closely with those who are preparing and coding the data. Staffing requirements would also be decided at the development stage. Training plans, skills acquisition and definition of roles would be documented and calibrated.

At the Operational Stage, the implementation process begins. The plans so far executed are tested and validated. Intensive coordination is required at this stage.

Care taken at the preceding stages and imaginative training to ensure that retentive learning takes place would underwrite the success of the project as a whole."

25.11 The aforesaid portion of the Report was the subject matter of discussion in the National Consultative Activity convened by the Commission on 12 and 13 December 1998 in co-ordination with IIM, Bangalore. The National Consultative Activity was inaugurated by Hon'ble Mr. Justice B.N. Kirpal, Judge of the Supreme Court of India and presided over by the Chairman of the Commission, with Mr. Justice R.P. Sethi, Chief Justice of the Karnataka High Court and Director of IIM as the Chief Guests.

25.12 Almost all the High Courts represented by their nominee Judges, the Directors of the Judicial Training Institutes of the States concerned, Director of National Police Academy, Legal Luminaries, Professors of Law and Management and Representatives of the Judicial Officers' Associations participated in the said Consultative Activity. The brief proceedings of the National Consultative Activity is enclosed as Annexure-I.

25.13 Pursuant to the decision taken in the said discussion, the Chairman of the Commission wrote to the Prime Minister of India as well as to the Chief Justice of India for taking appropriate action for introduction of IT in the Judiciary.

25.14 The Commission has received reply from Sri N. Seshagiri, Special Secretary & Director General, National Informatics Centre, Govt. of India, Planning Commission, New Delhi, stating thus :

"Subject: Inclusion of Subordinate Judiciary in the Information Technology Action Plan.

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Under the District Courts Computerisation and Networking Programme, the National Informatics Centre (NIC) has already covered implementation of IT in all the 430 District Courts in the country. NIC has received satisfactory support from the District Courts. Under this project considering the availability of funds we could cover up to judges only. Kindly find the enclosed brochure for further details.

The IT Task Force - 'Working Group on Citizen Interface' has already considered 'IT for Judiciary' in its draft report. Further, the resolution passed by the 'First National Judicial Pay Commission' has been forwarded to the Working Group for necessary action."

25.15 The reply received is enclosed as Annexure-II.

25.16 We have also received from the Government of India, 'The Computerisation and Networking Programme for District Courts' as planned by the Planning Commission. This is also enclosed as Annexure-III.

25.17 After taking into consideration of the discussion and the views expressed in the National Consultative Activity, IIM, Bangalore has submitted the Report with its recommendations summarised in the following terms :

A. Development of Software Package for functional effectiveness

- i. It is recommended that a uniform software package with comprehensive functionality involving complete aspects of information storage and processing at District Courts may be developed. These should cover the following essential stages :

- a) Filing of Cases
- b) Daily List generation
- c) Process Service and monitoring of cases in each court
- d) Performance improvement and monitoring systems, and
- e) Feedback and reports generation.

ii. Packages available and being used in subordinate courts abroad may be studied for guidance in this regard. The recommendations in Lord Woolf's Report deserve close study. The Task Force should study International practices and their applicability in the Indian context.

iii. National Informatics Centre (NIC) has been developing computer networks for the central and state governments. A comprehensive plan for installation of hardware and software after carefully evaluating the requirements should be drawn up. If NIC is unable to devote resources to develop such a package in short time frame, this could be offered to software firms in India on a competitive tender basis.

B. Computer usage to assist Judicial functioning

- i. Apart from supporting effective operation of primary activities, computers may assist judges in the court room and for generation of orders through
 - a) Word processing with provision of standard templates,
 - b) Online availability of case files including pleadings, affidavits, orders and documents and full case histories,

- c) Case Tracking and Monitoring,
- d) Access to databases of relevant law and relevant legal precedents, and
- e) Vital feedback information for corrective action at all levels of the judiciary.

Some of the above applications do not need special software development. They may use standard software packages available for these purposes. However proper evaluation, effective installation and training would have to be undertaken.

- ii. The "Check Slip" should be the beginning point for simplification to help data processing.

C. Legal Assistance Kiosks

Legal information Kiosks may be installed at court premises to provide assistance to public. Such Kiosks may provide guidance on basic procedures, information on availability of ADR schemes and legal assistance. These should be networked with suitable security provisions to the computers being used for operational systems so that read - only facility of querying on the status of pending cases can be provided. At later stages they may provide data entry facilities for computer based submissions. Such services will greatly facilitate public interaction with legal systems and also demonstrate the concern of the courts for the public at large.

D. Comprehensive Plan for Implementation

- i. An extensive program of computerization across the entire country should be undertaken by a Task Force after development of a comprehensive plan for installation of hardware and software and their effective usage. An Action Plan should be drawn up. The Government of India's Action Plan for IT announced in 1998 and the Prime Minister's Task Force set up for this purpose should include Judiciary as one of the areas requiring the

urgent attention of the government for introduction of IT.

ii. Such a Plan must not be limited to installation of hardware and software. An analysis of process performance for possibilities of re-engineering must be undertaken as part of the task.

iii. Changes in organisational practises and regulations, reassignments of roles and responsibilities, work methods and performance criteria will have to be undertaken as part of the task.

iv. Changes in organisational practises, training of Judicial and other personnel in the use of computer-based systems and new work methods in dealing with new systems arising from re-engineered work are urgent, essential reforms.

WORK DONE BY THE NIC :

25.18 From the Brochure received from the Government of India, Planning Commission, National Informatics Centre, New Delhi, it will be seen that there appears to be one uniform method evolved by NIC for 'District Courts Computerisation and Networking Programme'.

25.19 It is said that NIC has received a report from 430 District Courts in the country that the implementation of IT is satisfactory in such Courts.

25.20 We have personally verified the steps taken regarding the implementation of IT in some of the District Courts in Karnataka Stage. We find that in almost all such Districts, what has been done is only the installation of hardware without any programme for training the concerned Judicial Officers or the Court Staff. In fact, in many District Courts, we find that the room in which the computers are located is locked. Perhaps, without knowing how to operate.

25.21 From the feedback information that we have received and also from the discussion in the National Consultative Activity,

which we have referred to earlier, it is seen that there is hardly any progress in the implementation of IT in District Courts or in the Courts subordinate thereto, save in Gujarat and Maharashtra States.

25.22 In this context, reference may be made to the experience gained by the Gujarat State Judicial Academy of which Mr. Justice R.A. Mehta (Rtd.) is the Director. He has highlighted the following activities which could be computerised for the subordinate Judiciary :

1. Internet and Online access to users and Lawyers.
2. Bulletin Board Service (BBS), File Transfer (FTP).
3. CD Servers for legal data-bases JUDIS, India Code, Gujarat Case Law, Gujarat Code, JURIX, Lexis, Nexis.
4. Application Servers.
5. Data Servers.
6. Internet Server (ISP).
7. HC Web site, Web page.
8. VSAT & District Court & other HC, SC connectivity, Online access.
9. Comprehensive Case Information System CCIS, Judgments, Orders, Notices, MIS & Statistical Reports.
10. About 50 Forms and merging of data from CCIS.
11. Admn. Departments A,B,C,D, B Spl. Depts.
12. Files-Classification, file names and files, directories.
13. File movements - Bar Code readers.

14. Agenda of meetings of Committees, Standing Committee and Full Court.
15. Minutes of Decisions of meetings.
16. Pay Roll, Pay slips.
17. Personal Information.
18. Judicial Officers-Personal Information.
19. Confidential reports and Adverse remarks.
20. Assessment of Disposals.
21. Complaints and Inquiries.
22. Lower Court Returns and Statistics, online reports and compilation.
23. Seniority Lists of Judicial Officers, Staff.
24. Transfers of Judicial Officers.
25. Accounts, Cheques.
26. Inventory.
27. Fixed Deposits.
28. Library - Catalogue, issue and movement of books.
29. Telephone and Address Directory.
30. Mailing Lists.
31. Legal Aid and Services.
32. Vigilance.

- 33. Law Officer Branch.
- 34. Rules Recruitment Rules, HC Rules, Judicial Service Rules.
- 35. HC Judges Act-Rules.
- 36. Notifications, Circulars by HC.
- 37. Pension and Retirement Benefits and automatic calculations.
- 38. Leave Accounts - automatic calculations.
- 39. Personal files of Judges and individuals and security.
- 40. Linkage of judicial and non judicial files.
- 41. Organisation Charts.
- 42. Work flow charts.
 - 43. Flow Charts of activities.
 - 44. Flow Charts of case.
 - 45. Flow Charts of Acts and Rules.
 - 46. Decree Dept. documents/forms.
 - 47. Record Room, Criminal, Civil and OJ.
 - 48. Scrutiny of each department, each Judge and Officer's works and data.

25.23 OUR RECOMMENDATIONS :

- i. The Commission recommends that each High Court should immediately constitute a Task Force consisting of Senior Judges of the High Court and a computer expert for preparing a comprehensive

action plan for implementation of IT in District Court and Courts subordinate thereto.

ii. Such a Plan should not be limited to installation of hardware and software. An analysis of process performance for possibilities of re-engineering must also be undertaken as part of the task.

iii. Changes in organisational practices and regulations, reassignments of rules and responsibilities, work methods and performance criteria will have to be periodically undertaken by the Task Force.

iv. The training of Judicial and other personnel in the use of computer-based systems and new work methods in dealing with new systems arising from re-engineered work must also be undertaken simultaneously.

v. The National Informatics Centre (NIC) perhaps due to inadequate / insufficient resources - manpower and financial - has not been able to develop a needed package for all the District Courts in India in a short time-frame.

Each High Court must immediately inform the Government of India to entrust to private software firms on a competitive tender basis for computerisation and networking programme of District Courts and Courts subordinate thereto.

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ANNEXURE - I

PROCEEDINGS OF THE NATIONAL CONSULTATIVE ACTIVITY ON JUDICIAL EDUCATION AND TRAINING; AND I.T. FOR JUDICIARY HELD ON 12th AND 13th DECEMBER 1998

First National Judicial Pay Commission (Commission) in association with the Indian Institute of Management, Bangalore convened a National Consultative Activity on 12th and 13th December 1998 at Indian Institute of Management Auditorium, Bangalore to consider and approve the two Draft Reports prepared by the Commission. The two reports pertain to:

- i) Judicial Education and Training, and
- ii) Information Technology for Judiciary

The Activity was inaugurated by Hon'ble Sri Justice B.N. Kirpal, Judge of the Supreme Court of India and presided over by Justice K. Jagannatha Shetty (Rtd.), the Chairman of the Commission, Justice R.P. Sethi, Chief Justice of Karnataka High Court was the Chief Guest.

The Senior Judges of most of the High Courts, the Director of IIM, Bangalore, the Directors of the Judicial Training Institutes of every State, Director of National Police Academy, Legal Luminaries, Professors of Law and Management and Representatives of the Judicial Officers' Associations attended the Meetings.

In the Technical Sessions in which methodology of introduction of IT in Subordinate Courts was examined, it was found that there is no way out to speed up the course of justice save by computerisation of Subordinate Courts all over the country.

The recommendations of the 'TASK FORCE' constituted by the Prime Minister for "Information Technology Action Plan" for all Governmental and non-Governmental levels were perused and found that Judiciary has not been included therein.

WHEREFORE, it is unanimously resolved :

1. "That the Information Technology Action Plan" must include computerisation of the Subordinate Judiciary all over the country. And
2. the Chairman of FNJPC is authorised to take necessary steps by moving the Prime Minister and Chief Justice of India to take up the matter with Government of India.

Accordingly, the Chairman has written to the Prime Minister of India as well as the Chief Justice of the Apex Court for appropriate action in this respect.

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ANNEXURE - II

No. 55/DGCNIC/99-43

Government of India

Planning Commission

National Informatics centre

New Delhi – 110 003

Dt. : February 4, 1999

Subject : Inclusion of Subordinate judiciary in the Information Technology Action Plan.

Under the District Courts Computerisation and networking Programme, the National Informatics Centre (NIC) has already covered implementation of IT in all the 430 District Courts in the country. NIC has received satisfactory support from the District Courts. Under this project considering the availability of funds we could cover up to the level of District Judges and equivalent rank Judges only. Kindly find the enclosed brochure for further details.

The IT Task Force- 'Working Group on Citizen Interface' has already considered 'IT for Judiciary' in its draft report. Further, the resolution passed by the 'First National Judicial Pay Commission' has been forwarded to the Working Group for necessary action.

Sd/-

(N. Seshagiri)

Special Secretary & Director General

Copy forwarded to :

- (i) Hon'ble Justice K. Jagannatha Shetty (Rtd.), Chairman, First National Judicial Pay Commission, Bangalore, No. FNJPC/CON/12/98, dated 16 Dec '98.
- (ii) Member Secretary, Planning Commission, No. –nil- dated 28, Jan '99.
- (iii) Addl. Secretary, Deptt. of Justice, PMO U.O. No. 360/31/C/10/98-ES.II. dated 1, Jan '99.
- (iv) K. Srinivasan, Prl. Adviser (C&I), Planning Commission, I.D. No. p-12040/5/98-C&I dated 2-2-1999.
- (v) P.K. Agarwal, Joint Secretary, Ministry of Law & Justice, No. 15014/2/99-JUS (M) dated 28, Jan '99.



ANNEXURE - III

24. District Courts Computerization and Networking Programme

SUPREME COURT OF INDIA

High Court of Allahabad High Court of Andhra Pradesh High Court of Bombay Calcutta High Court

High Court of Delhi Gauhati High Court

High Court of Himachal Pradesh High Court of Jammu & Kashmir

High Court of Karnataka High Court of Kerala

Madras High Court High Court of Madhya Pradesh

High Court of Punjab & Haryana High Court of Orissa

High Court of Patna Rajasthan High Court

High Court of Sikkim

AND

NATIONAL INFORMATICS CENTRE

INTRODUCTION :

The National Informatics Centre has been giving information Technology support to the Indian Judiciary for over six years. The successful implementation of an information system assisting the registry of the Supreme Court of India in decision making, marked NIC's first step towards computerisation of Courts. This was closely followed by the computerisation of all High Courts in 1992. Today all High Courts have been computerised and interconnected through NII's satellite based computer communication network (NICNET); most of them are taking out computer generated Daily Cause Lists. COURTNIC and NICNET have enabled the ready availability of information on pending cases in the Supreme Court at any of the over thousand VSAT nodes of NICNET spread across the country. The JUDIS, the Judgment Information System, archives all reported cases of Supreme Court right from 1950 onwards and makes it available on NICNET. The complete JUDIS database is now encapsulated in a CD-ROM for ready retrieval. As a logical next step in NIC's effort is the District Court Computerisation and networking project which helps streamlining the Judicial administration in the lower courts.

PROGRAMME OBJECTIVES

The main goal of the District Courts Computerisation and Networking Programme is introducing Information Technology Tools in all areas which are routine and time critical in nature, streamlining the District Judicial Administration and bring about transparency of information to the litigants. The following are the objectives of the project :-

Objectives – 1

- ☐ Streamlining judicial administration by computer assisted 'monitoring of case filing' by the litigants / advocates.
- ☐ Keeping track of movement of case files in the Court.
- ☐ Providing Computer-based querying facilities to litigants / advocates

Objectives – 2

- ☐ Interconnection of all District Courts, the 18 High Courts and the Supreme Court. Providing e-mail facility among all courts and facilitating the day-to-day interaction with the High Court through NICNET.

Objectives – 3

- ❑ Giving access to local, National and International legal databases for the District Judges over NICNET and INTERNET.

APPLICATION AREAS

Based on the experience gained by NIC from computerization and networking of the Supreme Court and all the 18 High Courts in the country, the following areas were identified for computerisation in all the 430 District Courts.

1. Case File Monitoring
2. Certified Copies
3. Report Generation
4. Library and Database Resource Sharing
5. E-Mail Facility
6. Personnel Information System
7. Pay Roll and Accounts Processing

CASE FILE MONITORING SYSTEM

The computerisation of District Courts envisages a centralised Filing Counter for streamlining the entire activity of filing process. As soon as a case is filed at the filing counter, the computer decides the posting of the case to a judge based on the existing procedure. It will automatically register the case in the District Court and produce a receipt to the litigant / advocate. At the end of each day the computer will generate a list of cases filed on that day in a format similar to the one maintained in a Register, as is the practice. For avoiding the litigants dealing with a multitude of sections for finding out their case status, a query

counter is being opened at the Filing Counter. The preliminary details entered in the computer system will be made available immediately at the computer terminal provided in each court room. The judge can have a list of cases posted by the computer on that date in his court.

The terminal provided in each court room along with a printer will substitute the type-writer. When a case is heard by the judge, the order issued by him will be entered straightway into the computer terminal by the clerk concerned. As the computer system will be storing the orders of the court, any further modification suggested by the judge can easily be carried out in the system within a short time. A copy of the order can also be taken from the printer attached to the computer terminal. The staff of the court will update the database by feeding the operative part of the judgment on the computer system. It will ensure that the matter will come on the board on the date given by the Judge. If a notice is required to be served, the computer system will automatically generate the same and also immediately make it available at the query counter terminal.

CERTIFIED COPIES

As all terminals are connected to the main system in LAN any order/judgment that is typed from any court room, will be automatically available on the LAN. The query terminals at the Filing Counter can be used for generation of print-outs of the orders/judgments as certified copies to the litigants. These computer printed orders of courts are to be signed by an officer before they are issued to parties. In this process there would not be any delay in getting certified copies. This will certainly help in generating the certified copies without delay.

All routine notices, orders etc., can be produced from the computer terminal as the computer system has the formats of various notices and addresses of the parties, it can automatically generate various types of notices.

FAST REPORT GENERATION

The following reports can be generated by the Software

- ☐ List of cases filed on a particular date
- ☐ List of cases heard/disposed of by a judge on a particular day

- ☐ Statistical reports required by the District Court authorities.

BENEFITS

District Court Computerisation and Networking Programme will benefit the management, the judges, the advocates and the litigants alike :

- ☐ Monitoring of case flow will be easy
- ☐ Litigants, Advocates get case related information at one place
- ☐ Posting of cases to various courts will be transparent
- ☐ Litigants can get certified copies instantaneously
- ☐ Accurate statistical information can be generated
- ☐ Cause Lists for each court can be generated automatically
- ☐ Caveat Matching will take place at the filing stage itself
- ☐ All required notices can be generated automatically
- ☐ Preparation of orders/judgments becomes simpler
- ☐ Introduction of IT Tools will bring an innovative approach and a better work culture in the District Court.
- ☐ National and International legal databases will be readily available to judges, advocates and litigants.
- ☐ E-Mail and Internet facilities will be available to every district court.

For further information contact :

Courts Informatics Division

National Informatics Center

A-Block, CGO Complex
Lodhi Road, New Delhi – 110 003.
Grams : NICNET HQ
Ph:4364292 Fax :91-11-4362489, 4362628
e-mail :clmr@caselaw.delhi.nic.in

26. ALL INDIA JUDICIAL SERVICE

26.1 Our terms of reference do not require us to indicate the methodology of constituting the All India Judicial Service. It is the responsibility of the Central Government as per decision of the Supreme Court in the All India Judges' Case ¹. The Supreme Court observed as follows :

"We are of the view that the Law Commission's recommendation should not have been dropped lightly. There is considerable force and merit in the view expressed by the Law Commission. An All India Judicial Service essentially for manning the higher services in the subordinate judiciary is very much necessary. The reasons advanced by the Law Commission for recommending the setting up of an All India Judicial Service appeal to us.

Since the setting up of such a service might require amendment of the relevant Articles of the Constitution of the Service Rules operating in the different States and Union Territories, we do not intend to give any particular direction on this score particularly when the point was not seriously pressed *but we would commend to the Union of India to undertake appropriate exercise quickly so that the feasibility of implementation of the recommendations of the Law Commission may be examined expeditiously and implemented as early as possible. It is in the interest of the health of the judiciary throughout the country that this should be done.*"

1. AIR 1992 SC 165.

26.2 We have received the status report from the Government of India on the proposal of constituting the All India Judicial Service. The status report dated 10-2-1997 runs as follows :

"The Supreme Court of India in the Writ Petition (Civil) No.1022 of 1989 between All India Judges Association Versus Union of India in its judgment dated 10th April, 1995 has given the direction to Union of India to take immediate measures for the implementation of the direction, to achieve the objective of setting up of All India Judicial Service. Since a Resolution will have to be moved in the Rajya Sabha in this regard, the Government has sought the views of the State Governments / High Courts in the matter.

2. So far we have received comments from 23 States. Comments are still awaited from Governments of Meghalaya and Bihar. The State Governments of Goa, U.P., Mizoram, Punjab, Kerala, Tripura, Sikkim and Orissa agree with the setting up of an All India Judicial Service. The Governments of Himachal Pradesh, Haryana, Tamil Nadu, Madhya Pradesh, Maharashtra, West Bengal, Assam and Rajasthan have given a conditional approval to the proposal. The State Governments of Arunachal Pradesh, Nagaland, Karnataka, Gujarat, Jammu & Kashmir, Manipur and Andhra Pradesh have not favoured the setting up of an All India Judicial Service.

3. Of the 18 High Courts, we have received the views - comments of 16 High Courts. Views of the Calcutta High Court and the High Court of Jammu & Kashmir are awaited. The High Courts of Allahabad, Patna, Guwahati and Rajasthan have favoured the setting up of an All India Judicial Service. The High Courts of Orissa, Sikkim, Andhra Pradesh and Kerala have given their conditional approval to the proposal. The High Courts of Mumbai, Karnataka, Gujarat, Delhi and Madhya Pradesh have no views to offer in this regard in the light of Supreme Court judgment. The High Court of Himachal Pradesh, Punjab and Madras have not favoured the setting up of an All India Judicial Service.

4. In the light of the recommendation of the Law Commission of India, direction of the Supreme Court and views / comments of the State Governments / High Courts, the question of setting up All India Judicial Service through a

resolution of the Rajya Sabha and an enactment of Parliament under article 312 of the Constitution is under consideration."

26.3 The Commission in order to assist the Central Government wanted to ascertain the views of the High Courts and State Governments as to the qualifications and method of recruitment to All India Judicial Service. The Commission circulated the following question :

"Q.No.70 The States Reorganisation Commission has observed that creation of All India Service would be a major compelling necessity for the Nation and it has suggested that a proportion of the Higher Judiciary should be recruited by competitive examination at All India Level so as to attract the best of our young graduates to the Judicial Service. The Law Commission of India has in its 14th Report emphasised the need to establish the All India Judicial Service.

The Supreme Court has unequivocally stated that it is in the interest of the health of the judiciary throughout the country that an All India Judicial Service should be constituted. The Supreme Court has, however, left the matter to the Union of India to undertake quickly appropriate exercise in that regard. Please set out the qualifications and method of recruitment to All India Judicial Service?

26.4 Responses received from the High Courts and State Governments may briefly be summarised as follows :

HIGH COURT OF ANDHRA PRADESH :

26.4.1 All India Judicial Services (AIJS) will be composed of Officers selected on All India basis and allotted to State cadre, to remain in that State to ensure the effective control of the High Court in the interest of judicial administration. The initial entry to the AIJS should be to the cadre of Subordinate Judge/Asst. Sessions Judge / Civil Judge (Senior Division). 60% posts in the cadre of Sub-Judges should be allocated directly to the cadre of AIJS. The inservice Judicial Officers may also be permitted to compete for AIJS. There should be a Committee for selection consisting of two Chief Justices of High Courts, one Judge of the Supreme

Court, Director of National Judicial Academy and Chairman, UPSC.

GOVERNMENT OF ANDHRA PRADESH :

26.4.2 Government of Andhra Pradesh is not in favour of constitution of AIJS.

PATNA HIGH COURT :

26.4.3 Qualification for recruitment to AIJS should be law graduate and experience of one year at the Bar.

HIGH COURT OF GUJARAT AND GOVERNMENT OF GUJARAT :

26.4.4 Oppose to setting up of AIJS.

HIGH COURT OF JAMMU & KASHMIR :

26.4.5 No comments.

HIGH COURT OF KARNATAKA :

26.4.6 Not furnished reply.

GOVERNMENT OF KARNATAKA :

26.4.7 Opposes the constitution of AIJS.

HIGH COURT OF KERALA AND GOVERNMENT OF KERALA :

26.4.8 No comments.

HIGH COURT OF MADHYA PRADESH :

26.4.9 Candidates with practice of not less than seven years with the maximum age limit of 40 years should alone be considered for AIJS and 40% of the sanctioned strength is to be filled up by direct recruitment.

HIGH COURT OF BOMBAY :

26.4.10 Views on AIJS can be expressed only when the Government of India makes a decision as to how it is going to carry out the exercise of constituting the AIJS.

GOVERNMENT OF MAHARASHTRA :

26.4.11 Seven years practice as an Advocate should be prescribed for AIJS.

HIGH COURT OF ORISSA :

26.4.12 The recruitment should be akin to the Indian Civil Service Examination and qualification for recruitment should be LL.B degree.

HIGH COURT OF PUNJAB & HARYANA :

26.4.13 Not in favour of formation of AIJS, as it will negate the control of the High Court under Article 235 of the Constitution. If created, it may be on par with the Central Services such as IAS, IPS, IFS etc.

RAJASTHAN HIGH COURT :

26.4.14 AIJS should consist of promotees to the higher judiciary from the subordinate judiciary of the State only and for direct recruits, 7 years Bar practice should be prescribed with the minimum age of 35 years. Inservice people should be allowed to compete for AIJS.

HIGH COURT OF MADRAS AND GOVERNMENT OF TAMIL NADU :

26.4.15 Not in favour of AIJS.

ALLAHABAD HIGH COURT AND GOVERNMENT OF UTTAR PRADESH :

26.4.16 AIJS can be constituted by absorbing all the existing members of the State Judicial Service on the lines of IFS (Indian Forest Service). Thereafter, recruitment should be made through National Judicial Service Commission. Fresh law graduates should be allowed to compete.

CALCUTTA HIGH COURT :

26.4.17 AIJS has to be constituted in terms of the Constitution and observations of the Supreme Court and the Law Commission. Recruitment must be by the National Judicial Service Commission. The age limit may be 30 to 33 years and qualification for recruitment must be a degree in law.

GOVERNMENT OF WEST BENGAL :

26.4.18 Not in favour of AIJS.

26.5 It will be seen from the above comments and views that some High Courts and State Governments are of the view that the power of control under Article 235 of the Constitution will be belittled if AIJS is constituted. They are perhaps under the impression that AIJS is an independent Service, unconnected with the State Judicial Service.

SERVICE ASSOCIATIONS :

26.6 Invariably, Officers' Associations have opposed the formation of AIJS, perhaps on the ground that their seniority will be affected and their chances of promotion will be diminished.

OUR RECOMMENDATIONS :

26.7 In our opinion, it is necessary to allay these apprehensions while constituting AIJS. Bearing that in mind, we indicate herein the broad outlines for consideration of the Central Government for constituting the AIJS :

- (i) The AIJS could be constituted only in the cadre of District Judges as per the provisions of Article 312(3) of the Constitution. The District Judges directly recruited and promoted should constitute the AIJS.
- (ii) The selection for direct recruitment should be by National Judicial commission / UPSC and promotees by the respective High Courts.
- (iii) The qualification for direct recruitment to AIJS should be in conformity with that prescribed

under Article 233(2) of the Constitution - i.e., Advocate / Pleader who has got not less than 7 years Bar practice.

(iv) Service Judges also should be allowed to compete for recruitment to AIJS, by appropriately amending Article 233(2) of the Constitution. (See V.II, Chapter 11).

(v) Not exceeding 25% of the posts in the cadre of District Judges in every State should be earmarked for direct recruitment.

(vi) The age limit for recruitment to AIJS should be between 35 and 45 years.

(vii) The procedure for selection shall be by written examination followed by viva voce.

(See: V. II, Chapter 10).

(viii) **Appointment** : The National Judicial Commission / UPSC, after selecting the candidates for direct recruitment to the cadre of District Judges, must allocate to the States / UTs, the candidates equal to the vacancies that are surrendered by them. The High Court thereupon will recommend those names to the Governor for appointment as per Article 233 of the Constitution.

(ix) **Training** : The prescribed training is only after appointment.

(x) **Seniority** : All India Seniority is as per the ranking in the select list..

(xi) **Inter-se Seniority in the State / UT** : The inter-se seniority between the direct recruits and promotees shall be determined according to the date of allotment and date of promotion.

(xii) Such direct recruits must thus be annexed to the respective State Judicial Service within the three-tier system.

(xiii) **Court Language** : The recording of the deposition in all Courts should be in two languages - (i) Regional language (to be recorded by the Court Officer); and (ii) English (by the Presiding

Officer).

26.8 We are of the opinion that, if the AIJS is constituted in the manner indicated, the apprehension of the High Courts, the Service Judges and the Governments could be minimised, if not totally eliminated.

* * * * *

Appendices

[Draft Civil Courts Bill](#) [Draft Family Court Judges \(Recruitment \) Rules](#) [Summary of Recommendations](#) [Hearing Schedule I.R.](#)
[Proceedings dated 31-1-1998](#) [Participants in the Personal Hearing](#) [Circular relating to Family Courts Form to be filled by the](#)
[Judicial Officers during Personal Hearing](#) [Prel. Questionnaire issued by the Chairman](#) [Estimated Financial Implications of New Scales](#)
[of Pay to Judl. Officers -Statewise details](#) [Main Questionnaire](#) [Events of FNJPC](#) [List of Respondents to the Main Questionnaire](#)

Annexures

[I. Memorandum on Judicial Education](#)

[II. Questionnaire on Judicial Education](#)

[III. List of Respondents](#)

[IV. List of Participants in the NCA](#)

STAFFS

• FIRST NATIONAL JUDICIAL PAY COMMISSION

At Bangalore Head Office

Sriyuths :

1. H.G. Srivara, K.A.S.,	<i>8. H. Muniraju</i>	15. K.S. Sampath Iyengar
<i>Deputy Secretary</i>	<i>Statistical Assistant</i>	<i>Steno Grade 'D' (up to 27-12-1998)</i>
2. R. Ramapriya	9. N.R. Narasimha Murthy	<i>16. M.S. Raghavendra Rao</i>
<i>Joint Director</i>	<i>Assistant (up to 06-09-1998)</i>	<i>Steno Grade 'D' (up to 29-04-1999)</i>
3. K. Vittal Sheregar	10. N. Prabhakar	17. D. Ravikumar
<i>P.P.S. to Chairman</i>	<i>Assistant</i>	<i>Steno Grade 'D'</i>
<i>4. G. Narayana Rao</i>	11. N. Subbalakshmi	18. C.I. Rani
<i>Deputy Director (up to 27-02-1998)</i>	<i>Assistant</i>	<i>Steno Grade 'D'</i>
5. R. Ramachandra	12. S. Bhagawan Singh	<i>19. Shivayogi Guttal</i>
<i>Section Officer</i>	<i>Assistant</i>	<i>Computer Operator</i>
6. B. Krishna Murthy	13. R. Venkataraman	20. R. Vasanth Kumar
<i>P.S. to Member-Secretary</i>	<i>Steno Grade 'C'</i>	<i>L.D.C.</i>
<i>7. H.S. Vijayendra Kumar</i>	<i>14. B.S. Srinivasa Prasanna</i>	<i>21. B.S. Manjunath</i>
<i>Assistant Director (up to 03-11-1997)</i>	<i>Steno Grade 'D' (up to 09-07-1997)</i>	<i>L.D.C.</i>

At Delhi Sub-Office

1. S.P. Malik	<i>3. Arvind Kumar</i>
P.S. to Member (up to 15-04-1998)	<i>Computer Operator</i>
2. S. Seetharam	<i>4. Yog Raj Sharma</i>
P.S. to Member	L.D.C.

END OF REPORT