



EFFECTIVE DISTRICT ADMINISTRATION

TAMIL NADU STATE JUDICIAL ACADEMY

Effective District Administration

TAMIL NADU STATE JUDICIAL ACADEMY

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MESSAGE

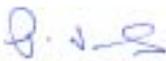
Knowledge is power and knowledge of laws is empowerment. The Handbook, Study Material and Reading Material published by the Tamil Nadu State Judicial Academy in English and Tamil is a commendable step to enhance the knowledge and skills of the Court Staff of the District Judiciary.

I am glad to note that the Handbook covered important provisions of Law such as Code of Civil and Criminal Procedure, Limitation Act, Court Fees and Suits Valuations Act to enable the Court Staff to easily understand the same applicable to their day to day work.

The Study Material which covered brief introduction of Courts, jurisdiction, Control and Administration apart from the duties and responsibilities of staff members, registers maintained in the Courts etc. is also really helpful to staff of the district judiciary.

The reading material consisting of Articles on District Court Administration, Disciplinary Proceedings, Inspection of Courts, Role of District Judge, Legal Aid etc. will certainly improve the skills of the Judicial Officers in the State.

I congratulate the Governing Body of the Tamil Nadu Judicial Academy for their efforts in publishing this type of books for the District Judiciary and I wish that, in the coming years, the Academy will continue with the impressive work that it has been doing.


(P. SATHASIVAM)

Tamil Nadu State Judicial Academy, Chennai

PREFACE

“It is the obligation of the district judge to operate as the captain of the team, both under his direct supervision at the headquarters and in respect of the officers located in different areas within his district..... It is the obligation of the district judge to inspect the outlying courts, maintain the proper judicial tempo and temper of functioning in his district and be responsible for the efficient running of the system.” **All India Judges’ Association -vs- Union of India and others, AIR 1992 SC 165, Pages 173 & 174.**

Tamil Nadu State Judicial Academy is pleased to present this compilation of articles touching upon important aspects of District Administration to serve as a guide for District Judges and Chief Judicial Magistrates in the discharge of their administrative duties.

The Academy places on record its deep appreciation and gratitude to the authors, who had spent their valuable time in sharing their knowledge to enhance the judicial administrative system of the State.

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EFFECTIVE DISTRICT ADMINISTRATION

**Justice R. BANUMATHI,
Judge, High Court, Madras**

Two Clauses (1) and (2) of Article 233 of Constitution of India contemplate recruitment to the post of District Judge by

(a) promotion from the subordinate judicial service of the State; as well as

(b) direct recruitment from the members of the Bar.

The initial appointment of persons to be District Judges as well as initial promotion of Officers as District Judges is with the Governor of the State in consultation with the High Court. Once they are appointed/promoted, thereafter the entire control vests with the High Court. The constitutional mandate for appointment of District Judge shows the importance of the position as District Judge.

Principal District Judge is the administrative head of the District and the team leader of the Officers in the District. As the Administrative Head of the District, it is the duty of the Principal District Judge to operate as the captain of the team both at the headquarters and in respect of the Officers located in different areas within his District. It is the obligation of the Principal District Judge to maintain proper judicial tempo of functioning in his District and be responsible for the efficiency in the District.

Unable to settle the disputes, the litigant approaches the Court seeking justice by paying court fees and heavy fees to the lawyers. For substantial number of litigants, District Court is the final Court. The primary duty of the Courts is to render justice. As the administrative head of the District, first of all, the Principal District Judge has to maintain punctuality and also to ensure that the other Judicial Officers in the District are punctual. Also to see that during Court hours, the Judicial Officers are on the Dais. In case of any deviation, District Judge must personally warn the

Judicial Officers to maintain punctuality and Court timings. If there is still persistence in not maintaining punctuality, the Principal District Judge must bring it to the notice of the High Court.

As the administrative head of the District, the Principal District Judge has to ensure that filing of cases in all the Courts in the District are done without delay; number of part-heard cases are not swelling; proper maintenance of Registers; prompt compliance of Copy Applications; disposal of properties both valuables and non-valuables; issuance of certified copies of the orders/judgment without delay; periodical consignment of records, periodical destruction of records and organising legal aid programmes under his direct supervision.

POSTINGS AND TRANSFERS:-

The Principal District Judge has administrative responsibilities of recruitments, postings, promotions and transfers. Every year the District Judge has to consolidate the vacancy position in the posts of Stenographer, Typist and Junior Assistant etc., which are within the purview of Tamil Nadu Public Service Commission and address the TNPSC for allocation of required candidates to the District marking a copy to the High Court. The Principal District Judge is the Appointing authority and also the transferring authority for the post in Categories I to IV in Tamil Nadu Judicial Ministerial Service and also the Office Assistant and Masalchi. Insofar as transfers and postings of Office Assistant and Record Clerk working in Criminal Unit, each District have got their own practice i.e., either the Principal District Judge or the Chief Judicial Magistrate will be passing the orders of transfer. The Principal District Judges are required to follow the prevailing practice in their respective Districts.

IDENTIFICATION OF LAND FOR PRIVATE RENTED BUILDINGS OCCUPIED BY THE COURTS:-

The Principal District Judge is in-charge of the Court Buildings in the District and the infrastructure. Wherever the Courts are functioning in private rented buildings, the Principal District Judges are to coordinate with the District Collector and identify suitable land for construction of

the Court Buildings. After identifying the land, the Principal District Judge has to inform the High Court and after getting permission from the High Court, the Principal District Judge has to communicate with the District Collector for passing appropriate proceedings for handing over possession to the Judicial Department. Once the land is transferred to Judicial Department, the Principal District Judge has to monitor the preparation of the plan and estimate for the construction of buildings by P.W.D. While sending the plan for construction of buildings, the Principal District Judges are to send the proposal with estimate not only for the current financial year, but also with future escalation for the next two budget years. Likewise, suitable steps are to be taken for construction of Quarters for the Judicial Officers, wherever the Judicial Officers are not having the post attached quarters.

DISTRIBUTION OF EQUAL WORK:-

The Principal District Judge has to ensure that the work is distributed evenly to all the Judicial Officers. What we notice is that few Courts are overburdened while few others are not having sufficient work. The Principal District Judge has to carefully study the pendency of the cases in each Court and ensure that the work is evenly distributed by passing appropriate proceedings. In case of any difficulties, the Principal District Judge has to bring it to the notice of the Hon'ble Administrative Judge and thereafter, communicate with the High Court to get instructions from the High Court.

PROPOSAL FOR CONSTITUTION OF NEW COURTS:-

Wherever there is heavy pendency in Courts, proposals are to be sent to the High Court for constitution of Additional Courts. Likewise, wherever there are District Munsif-cum-Judicial Magistrate's Courts functioning, depending upon the pendency, proposal has to be sent for bifurcation of Civil and Criminal Courts. Before so sending proposal, the Principal District Judge has to bring it to the notice of the Hon'ble Portfolio Judge and then send the proposal.

MONTHLY REVIEW:-

- Only the Principal District Judge has the administrative responsibility in recording the monthly review. Such review of the Officers must be honest review of the work turned out by the Officers. Monthly review work ought not to be given entirely to the staff. They could only assist the Principal District Judge in preparing the Note and placing the materials along with statements received.
- Monthly review of each Officer should be fed into the computer. Whenever the monthly review is done every month, the District Judge could look into the computer as to the review recorded for the previous months and to see whether the Officer has reached the norms continuously. Unless the review is fed into the computer, it would become difficult to go through the entire File maintained by the Office for the previous months.

ANNUAL CONFIDENTIAL REPORT:-

The Annual Confidential Report [ACR] is recorded by the High Court on the basis of the remarks recorded by the Principal District Judge/Administrative Judge. The ACR prepared by the Principal District Judge also plays an important role for the High Court to exercise control over the Subordinate Judiciary. A great responsibility is cast upon the Unit head in recording the ACR. The Principal District Judge must correctly record the ACR and ACR must reflect the performance of the Officer.

Even if the Principal District Judge worked for a short spell of time in a particular District, the Principal District Judge must record ACR for the Officers in the Unit, notwithstanding the District Judge's transfer to some other unit.

PERIODICAL MEETINGS:-

As Unit head of the District, it is imperative on the part of the Principal District Judge to call for periodical meetings. In those meetings, the Officers are to be impressed upon the collective responsibility to motivate them for efficient functioning of the Courts and Justice Delivery

System. In *All India Judges' Case* [AIR 1992 SC 164 (174), the Hon'ble Supreme Court emphasized the need to call for such periodical meetings by the Unit head – Principal District Judge. Such meetings are to be convened preferably on Saturdays without wasting the judicial time. It would be desirable to have such meetings at least once in three months. In such periodical meetings:-

- Take stock of the pendency of cases of each Court and ensure equal distribution of the work.
- Find out the reasons for pendency of old cases and impress upon the Officers in the District to concentrate upon old cases and senior citizen cases and part-heard cases.
- Know about the requirements of each one Court rather than to rely upon the details furnished by the staff in the District.
- Collect statistics of cases regarding non-appearance of Investigating Officer and also reason for the delay in disposal of cases. The same has to be communicated to the Chief Judicial Magistrate who normally participates in the monthly meeting with the Superintendent of Police and other Police Officers.
- Impress upon the Officers about various programmes of Legal Services Authority and to organise such programmes.
- Get feed back on the implementation of the instructions earlier given.

Monthly meetings would enable the Principal District Judge to acquaint himself/herself to the actual situation and enable the Principal District Judge to have effective administration. Monthly meetings would also enable the Principal District Judge to get first hand knowledge about the functioning of the Courts and also to impress upon the Officers in their collective responsibility in Justice Delivery System.

During the monthly meetings, effectively communicate with the other Officers as to what they should accomplish in their Courts and collectively in the District. Even though the District Judge is the administrative head of the District and make the decisions, the District Judge should always

seek the opinion of other Officers and try to incorporate them wherever possible.

DEPOSITS / INVESTMENT / RENEWAL OF FIXED DEPOSITS:-

One of the important area causing concern is bringing the cheque amounts to Civil Court Deposit [CCD] and investing in Fixed Deposits [FDs]. In Motor Accident Claims and Land Acquisition Cases and also in Suits, once the cheque is presented and the amount is brought to CCD Account and since CCD carries no interest, the amount must be invested in Fixed Deposits within a period of seven days and not later than fifteen days.

There has to be prompt deposit of the amount in Fixed Deposits. If the compensation amount is not promptly deposited, the litigants are subjected to great loss by losing the interest. We have noted a few instances where the CCD amount has not been deposited in the Fixed Deposits for quite a long time, causing heavy loss of interest to the litigants. In one or two such instances, disciplinary proceedings have also been initiated against the concerned staff members. This poses difficulty not only to the litigants but also to the concerned staff members. The Principal District Judge has to impress upon the Judicial Officers in his Unit to be prompt in investing the amount in Fixed Deposits. Like wise, Fixed Deposits on maturity are to be renewed for further time, so that party may not loose any further interest.

ISSUANCE OF CHEQUES:-

The Principal District Judges are to ensure:-

- Judicial Officers in the Unit are to be impressed upon to see that Cheques are to be issued to the party concerned in the open Court explaining the amount and also the apportionment of the amount.
- **In Land Acquisition Cases**, though Cheques are issued in the name of Advocates, the Judicial Officers must ensure that the Cheques are issued in the open Court only in the presence of parties concerned.
- That there is no delay in disposal of Cheque applications.

CORRESPONDENCE WITH HIGH COURT:-

The Principal District Judge has to ensure that the District Court must promptly respond to the communication from the High Court, Tamil Nadu State Judicial Academy, State Legal Services Authority.

All the communications to the High Court are to be addressed only to the Registrar General, High Court, Madras. The Judicial Officers shall not address any communication directly to the Hon'ble Judges of the High Court [**Vide Circular - ROC.1282/2006/RG/RR dated 26.7.2006**].

As and when appeal intimations were received from the High Court, records are to be sent to the High Court without any delay.

RECORD SECTION:-

As Principal District Judge, you must ensure that periodical consignment are sent to the Central Record. Principal District Judges must ensure that the records are destroyed periodically. Summer vacation, Christmas Vacation and Dasara vacation are to be fully utilised for destruction of records in the Central Record. This has to be planned well in advance in March-April of every year.

As Unit head, you must direct the Chief Judicial Magistrate to ensure that Judicial Magistrates in the District are taking steps for destruction of records by publication and thereby taking steps for disposal.

MAINTENANCE OF ACCOUNTS:-

For proper maintenance of the Accounts, Reconciliation Statement of the Court and the Treasury must tally. Non-tallying of the Reconciliation Statements causes delay in issuance of cheques. In District Courts and Sub Courts, since the amount involved in cases and cheque petitions are huge amounts, staff members with integrity and good experience are to be chosen for the maintenance of the accounts. Only experienced staff would be in a position to correctly maintain the accounts, lest it leads to mismanagement and inefficiency in maintaining the accounts. In the

periodical meetings, the Principal District Judge should impress upon the Officers about the importance of the Reconciliation Statement.

INHOUSE MANAGEMENT:-

Principal District Judges must impress upon the Officers in ensuring cleanliness in and around the Court premises, maintenance of furniture, typewriters. Books supplied to the Library are to be neatly bound/covered.

INSPECTION OF COURTS:-

Unlike the other services, Judicial Officers/Judicial Ministerial Service is not merely an employment. They are part of the system in dispensation of Justice. Judges and the Judicial Ministerial staff are responsible in the effective functioning of the system. In **(2000) 1 SCC 416 [High Court of Judicature at Bombay through its Registrar v. Shashikant S.Patil and another]**, the Hon'ble Supreme Court emphasized the need for honesty and integrity and efficiency of Judicial Officers.

The Annual Inspection is in a way, evaluation of the work done and its quality. The Annual Inspection by the Unit head is expected to provide corrective measures and not fault finding. Subordinate Judiciary is to be encouraged and that Inspection should act as a catalyst [**Vide - AIR 1999 SC 1677 (High Court of Punjab and Haryana v. Ishwar Chand Jain and another)**].

The Principal District Judge has to instruct the District Court staff to prepare the annual Calendar tentatively fixing the dates for Inspection of the Courts in his District and also the Chief Judicial Magistrate's Court. Likewise, Chief Judicial Magistrate must make ready his tentative Calendar for the Criminal Unit.

PRE-INSPECTION NOTES:-

The Principal District Judges themselves are burdened with their judicial work, administrative work, inspection of all the Courts in the District and correspondence with the High Court and such other works. The Unit heads would not be in a position to systematically assess the situation on

the performance of the lower Courts. The staff members who prepare the Pre-Inspection Notes by themselves are not experts in the objective assessment as to the performance in the lower Courts. The preparation of Pre-Inspection Notes is to be entrusted to responsible and experienced staff members like Head Clerk of the District Court or Sheristadar of the Sub-Court etc. The Ministerial Officers, who are entrusted with the preparation of Inspection Notes, are to be suitably instructed in verifying the following:-

- Various Registers maintained in the Court, particularly the Suit Register and other Registers.
- Proper maintenance of all the Registers and in house keeping.
- Copyist Section.
- Nazir Section.
- Drafting of Decrees etc.
- Service Registers.

In maintaining the Registers, mistakes and omissions are bound to occur. While preparing the Pre-Inspection Notes, the omissions and mistakes are to be pointed out and the innocuous mistakes are to be corrected even during the preparation of Inspection Notes and the same may be noted in the Pre-Inspection Notes as “**since rectified**”. Appropriate instructions are to be given to the concerned staff members to avoid such mistakes or omissions in future and they are not to be faulted with.

For proper assessment of the work, Annual Inspection is also to be conducted in the areas like:-

- Filing of the suits – like territorial jurisdiction, pecuniary jurisdiction, limitation aspect, correctness of the Court Fee paid and such other aspects.
- Adherence of the Special List System.
- Number of part-heard cases.
- Time taken for hearing the arguments, delivery of judgment etc.

- Investment/Renewal of Deposits of compensation amount.
- Whether there is delay in proper in-house keeping like Record Room, Library, Indent of stationery, Replacement of worn out typewriters, extent of use of Computers etc.

The Principal District Judge has to go through the Pre-Inspection Notes well in advance – a day or two, prior to the Inspection, so that the Principal District Judge could carefully go through the same and have clear idea about the performance of the Officer and the functioning of that Court concerned. Such advance preparation for inspection would enable the Principal District Judge to give appropriate instructions during inspection which would create an impression upon the minds of the staff and the Officer and it would encourage them for better performance in future. At the time of inspection, the Principal District Judge should make personal notes regarding the matters which are to be attended after the inspection. Form No.15 deals with the instruction regarding the notes of Inspection of subordinate courts. Suitable correctional instructions are to be given to the Officer and the staff, so that they may avoid such omissions or lapses in future. After the inspection, the Officer and the staff members must have a deep sense of satisfaction for proper guidance in future. The Inspection Notes is to be submitted to the High Court without delay.

POST-INSPECTION:-

This is one of the important area which the Principal District Judges are required to monitor. Post Inspection stage is important both for the Court inspected and also for the District Judge. During the post inspection period, the mistakes/defects pointed out during the inspection regarding the jurisdiction and the Court Fee matters are to be rectified and check-slips are to be issued to comply with the directions during the Annual Inspection. All other correctional directions and instructions are also to be complied with.

Subsequent to the inspection, the Inspecting Authority has a greater responsibility. The responsible Court staff, preferably the same officer, who has prepared the Pre-Inspection Notes, is to be placed in-charge to see that the instructions given during inspection are being properly carried out within the stipulated time. All possible steps are to be taken by the Court inspected to comply with all the directions. Rectification report also has to be sent to the High Court without delay.

NEED TO BE TRAINED ON COURT MANAGEMENT AND JUDICIAL SKILLS:-

Tamil Nadu State Judicial Academy has de-centralised number of training programmes for the Judicial Officers as well as training of staff members. The Principal District Judge in co-ordination with other Officers in the Unit is responsible for effectively organising those training programmes.

All the Judicial Officers have been provided with laptops and laser printers with the object of enabling them to prepare judgments on their own, not depending upon the stenographers. Further, each Judicial Officer has been provided with broad band connectivity, by using which judicial officers may access the Internet and various online law journals to obtain latest case laws and update their legal knowledge.

Under the aegis of 13th Finance Commission Grant, all the Judicial Officers of the State are provided with Supreme Today Online. In Supreme Today, the Judicial Officers can have access to various law journals to obtain various case laws and update knowledge.

The topics chosen by the Tamil Nadu State Judicial Academy for training the Judicial Officers in the District are to be discussed at length and it is desirable with the District Judge to take steps in imparting such training to the Officers in the District as per the guidelines of the Tamil Nadu State Judicial Academy.

COMPUTERISATION OF COURTS:-

The Hon'ble E-Committee, Supreme Court of India is taking all steps to adopt Information Technology for modernizing Indian Judiciary and making the Judicial Officers across the country computer literates.

Under the e-Courts Project, all the courts in the District headquarters, across the State, have been computerized. Similarly, all the taluk level courts will be computerized shortly and the work is under progress. District Judges must monitor the progress made in computerisation of Taluk level Courts. Technical man power has been provided to all the Districts.

As per the direction of the e-Committee, the data of pending cases, institution and disposal are to be uploaded. All the Principal District Judges are required to personally monitor this and see that the uploading of the data is completed by the end of June 2013.

Under the Directions of the e-Courts Committee, Supreme Court of India and E-Committee of the Madras High Court, a core group of two Judicial Officers from each District numbering 70 were trained on Ubuntu Operating System and on change management. As per the directions of the E' Courts Committee, Supreme Court of India, all the Judicial Officers in the Districts are to be trained on Ubuntu Operating System and on change management. For the said purpose, the RAM capacity in the laptops provided to all the judicial officers has been recently enhanced by spending around Rs.17,00,000/-.

All the Principal District Judges/ District Judges of the Districts have to make necessary arrangements and train all the Judicial Officers in the District on Ubuntu Operating System by 30.06.2013.

NEED FOR TRAINING THE STAFF:-

Staff members play key role in the Justice Delivery System. While Judges decide the case, staff members take care of filing of Plaints, Petitions etc., posting of cases, calling work in the Court, drafting decree, delivering certified copy of judgment/orders. For efficiency in the Justice Delivery System, staff members are to be equipped with basic knowledge of law and procedure and their duties and responsibilities.

There is no systematic training for the staff members in the Subordinate judiciary. For the system to be efficient, systematic training of staff members is very much essential. As Principal District Judge, you yourselves can well organise such trainings within your Districts using the services of Judicial Officers within your District, Head Ministerial Officer, retired staff etc. By imparting inservice training and continuous learning, the staff members are motivated and we take them along in the judicial reform we foresee.

DELEGATING ADMINISTRATIVE RESPONSIBILITIES:-

Being responsible for judicial as well as administrative work, for efficiency, I would like to suggest de-centralisation of Principal District Judge's administrative duties and distribute them to the colleagues – Additional District Judges, Chief Judicial Magistrate or Subordinate Judge.

For instance - destruction of records, organising training programme for staff members, organising legal aid programmes, conducting Mega lok-adalats, the responsibilities could be entrusted to the other Officers. That would help the Principal District Judge in speedy disposal of matters in the administration. However, over all supervision has to be made by the Principal District Judge over the work entrusted to the colleagues.

CONCLUSION:-

The District Judge should motivate the people around them viz., the Judicial Officers, staff members and others and inspire them to perform at a higher level. Effective management is integrity, discipline and carrying it out. Encourage the Judicial Officers and staff members in the District to excel in their performance and collectively let us enhance the efficiency of the Justice Delivery System.



INSPECTION OF COURTS – CIVIL & CRIMINAL COURT REGISTERS- ASSESSMENT OF WORKS OF SUBORDINATE OFFICERS

**Justice S.TAMILVANAN,
Judge, High Court, Madras**

INTRODUCTION :

Inspection in general, denotes an official visit of an office by a superior officer or authority to have a careful examination of the functioning of the office, as per procedure and guidelines issued by the authority.

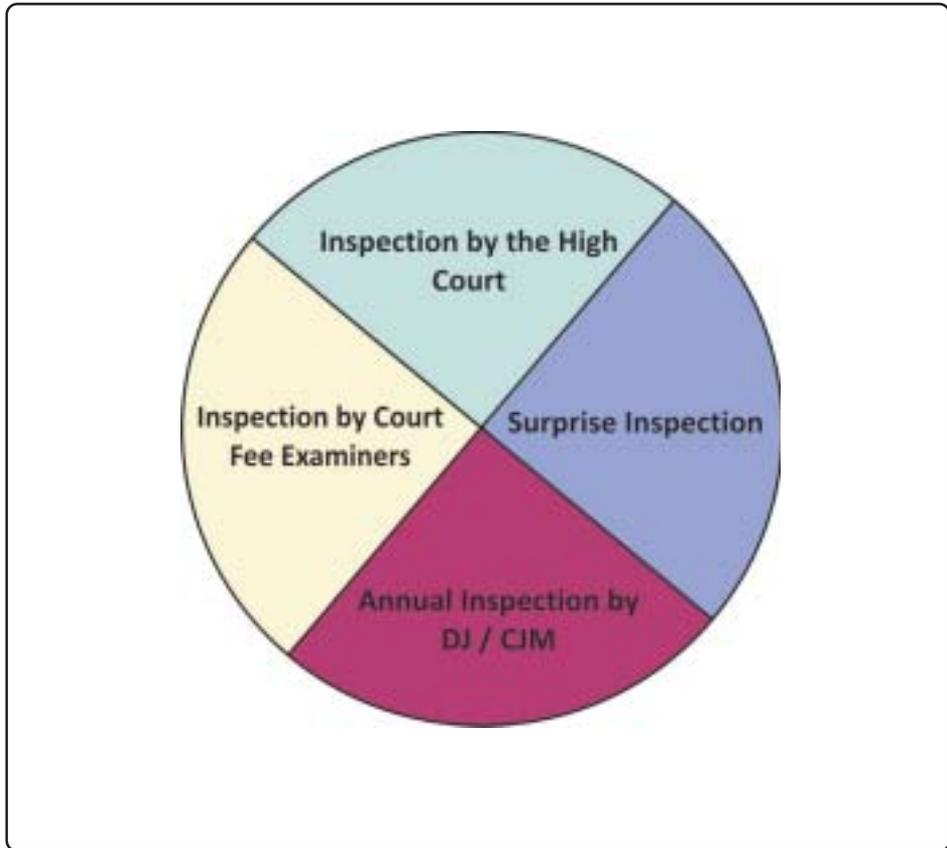
INSPECTION OF COURTS :

The service of judicial officers and judicial ministerial service are not merely an employment like other services. They are part of the system in dispensation of justice. The District level Judges and the Judicial Ministerial staff are highly responsive for the effective functioning of the Courts and the system in dispensation of justice.

The Hon'ble Supreme Court of India has emphasized the need and necessity of inspection of courts to maintain utmost integrity and efficiency in the administration of Justice Delivery System by its decision in **High Court of Judicature at Bombay, through its Registrar vs. Shashikant S.Patil and another, 2001 (1) LW 1.**

In order to ensure proper discipline and corrective measures, Court inspection gets vital importance. The Courts at the District level have various types of inspections, which are as follows :

1. Periodical Inspection by the High Court;
2. Annual Inspection by the District Judge / Chief Judicial Magistrate;
3. Surprise Inspection by the District Judge / Chief Judicial Magistrate;
4. Inspection by Court-Fee Examiners of the High Court.



INSPECTION BY HIGH COURT :

High Courts in India exercise complete control over subordinate courts, as per Article 235 of the Constitution, which includes District Courts. Inspection of the Subordinate Courts is one of the important functions, which High Court performs, for having effective control over the subordinate courts. The object of such inspection is for the purpose of assessment of the work performed by Subordinate Judge, in respect of his capacity, integrity and competency.

The Hon'ble supreme Court in **High Court of Punjab and Haryana vs. Ishwar Chand Jain**, reported in (1999) 4 SCC 579, has given various guidelines regarding inspection of subordinate courts by the High Court, as per Article 235, which reads as follows :

“Inspection should act as a catalyst in inspiring subordinate judges to give best results. They should feel a sense of achievement. They need encouragement. They work under great stress and man the courts while working under great discomfort and hardships. A satisfactory judicial system depends largely on the satisfactory functioning of courts at grass root level.”

Periodical inspection of District Court and other Subordinate Courts are done by the concerned Portfolio Judge of the High Court with the assistance of selected staff members of the High Court, who would go to the Courts, to be inspected well in advance and prepare inspection notes, pointing out errors and mistakes, based on the Registers and Records. The High Court exercises complete control over the subordinate courts, including District Court, as per Article 235 of the Constitution, apart from the power of superintendence over all the Courts and Tribunals, subordinate to the High Court under Article 227 of the Constitution.

COURT INSPECTION BY DISTRICT JUDGES :

Judicial Officers and the Judicial Ministerial Staff working in the District Judiciary are the foundation of the system. However, due to various reasons the Court management at the lower level is not in good shape. It cannot be disputed that the judiciary needs more resources to have proper infrastructure and to increase the efficiency of court management. However, it is the duty of the Judges of the District judiciary and the staff working in the said Courts to render dedicated service for the effective functioning of the respective Court at its optimum level, with utmost efficiency in the administration of justice. Hence, inspection is one of the most important functions of the District Judge, to maintain proper administration and control of the Courts in his unit.

Regular inspection by the District Judge is made once in a year, as per procedure. However, surprise inspection can be made as and when required by the District Judge. The Annual court inspection is made at the District level by the District Judge, however, Chief Judicial Magistrate is

also empowered to inspect the Judicial Magistrate Courts in the district unit under his control.

In the State of Tamil Nadu and Union Territory of Puducherry, all the District and Sessions Judges are empowered to inspect the courts in their respective administrative control, including the CJM-courts. If there are more than one District Judge in the District, the Principal District Judge of the District, being the head of the District unit of the judiciary is empowered to inspect the court under his administrative control. However, he cannot inspect any independent court in the District, such as Labour Court etc., as the said court is not under his administrative control. The District Judge has to inspect all the subordinate courts in his unit, which includes, Sub-Courts, District Munsif Courts, CJM's Court, by way of regular inspection, once in a year and submit his report to the High Court.

INSPECTION BY CJM :

The Chief Judicial Magistrate has to inspect all the Judicial Magistrate Courts once in a year, by way of regular inspection. The CJM can also make surprise inspection of any judicial magistrate court in his unit, if need be. The District Judge being the head of the District unit of the judiciary is empowered to make surprise inspection of any Court in the District under his administrative control, including Judicial Magistrate Courts.

INSPECTION BY COURT-FEE EXAMINERS OF THE HIGH COURT :

Inspection by Court-fee Examiners of the High Court is done, in order to verify whether the Court-fee is properly calculated and paid, as per the relevant provision of law, under the Court-Fees Act, by the parties. As payment of Court-fee relates to the revenue of the State, court is duty bound to inspect and verify the correctness of the Court-fee being paid on the plaint, petition etc., based on the valuation of the suit or the claim made by the parties. Only the Court officials, who are experts and having sufficient experience in court fee matters, are being deputed by the High Court to verify the correctness of the Court-fee paid. In case, if there is

deficit payment of court fee, under a wrong provision of law, check-slip could be issued towards collecting the deficit court-fee.

FUNCTIONING OF COURTS OF SESSION :

High Court confers power on the District Judge and Additional District Judges, to function as Sessions Judges in the respective Sessions division, in order to try and dispose cases, exclusively triable by Courts of Session. Similarly, Sub-Judges are conferred with power to try and dispose cases triable by Assistant Sessions Judge. However, they constitute a single unit in the District, while dealing with Sessions cases, as per the Code of Criminal Procedure.

As per the Code, all the cases, which are triable by Courts of Session are committed by the concerned Magistrates to the Sessions Court and the same could be made over to Additional Sessions Court or Assistant Sessions Court by the Sessions Court or Principal Sessions Court, as per procedure known to law.

The Apex Court of India in **High Court of Judicature at Bombay vs. Shrishkumar Rangrao Patil**, reported in **(1996) 6 SCC 339** has observed the importance of self-imposed corrective measures and disciplinary action under the doctrine of control enshrined in Articles 239 and 124 (6) of the Constitution thus :

“The lymph nodes (cancerous cells) of corruption constantly keep creeping into the vital veins of the judiciary and the need to stem it out by judicial survey lies on the judiciary itself by its self-imposed or corrective measures or disciplinary action under the doctrine of control enshrined in Articles 235, 124(6) of the Constitution. It would, therefore, be necessary that there should be constant vigil by the High Court concerned on its Subordinate Judiciary and self introspection.”

The court inspection should act as a catalyst and for which it is necessary for pointing out error, in order to correct the error and to avoid the same in future. The object of court inspection is instructive in nature to motivate the judicial officers and the staff to function well, as per procedure. In this regard, the Supreme Court in **High Court of Punjab and Haryana vs. Ishwar Chand Jain and another** reported in **AIR 1999 SC 1667**, observed as follows :

“33. Time has come that a proper and uniform system of inspection of subordinate courts should be devised by the High Courts. In fact the whole system of inspection need rationalization. There should be some scope of self-assessment by the officer concerned. We are informed that the First National Judicial Pay Commission is also looking into the matter. This subject, however, can be well considered in a Chief Justices’ Conference as High Court itself can devise an effective system of inspection of the subordinate courts. Registrar General shall place a copy of this judgment before the Hon’ble Chief Justice of India for him to consider if method of inspection of subordinate courts could be matter of agenda for the Chief Justices’ Conference.”

PRE-INSPECTION NOTES:

The Inspecting Judge, either the District Judge or Chief Judicial Magistrate is burdened with judicial work, administrative work, inspection of all the Courts in the District and having correspondence with the High Court, in connection with other works. The Unit Head are not personally in a position to systematically assess the situation on the performance of the lower Courts. The staff members who prepare the Pre-Inspection Notes by themselves are not experts in objective assessment as to the performance in the lower Courts. Hence, preparation of Pre-Inspection Notes is to be entrusted to responsible and experienced staff members like Head Clerk of the District Court or Sheristadar of the Sub Court etc. The Ministerial Officers who are entrusted with the preparation of Inspection Notes are to be suitably instructed on the following points :

1. Various registers maintained in the Court, particularly the Suit register and other registers, especially the permanent registers;
2. Proper maintenance of all the registers and in house keeping;
3. Copyist Section;
4. Drafting of decrees etc.

In maintaining the registers, mistakes and omissions are bound to occur. While preparing the Pre-Inspection Notes, the omissions and mistakes are to be pointed out and the innocuous mistakes are to be corrected even during the preparation of Inspection Notes and the same may be noted in the Pre-Inspection Notes as "Since Rectified". Appropriate instructions are to be given to the concerned staff to avoid such mistakes or omissions and not to be faulted with, in future.

IMPORTANT ASPECTS RELATING TO COURT INSPECTION :

In order to have proper assessment of the work, 'Annual Inspection' is to be conducted in the areas like:

1. Filing of the suits – in respect of territorial jurisdiction, pecuniary jurisdiction, subjective jurisdiction, limitation aspect, correctness of the Court Fee paid and such other aspects;
2. Adherence of the Special List system;
3. Number of Part Heard cases;
4. Time taken for hearing the arguments, delivery of judgment etc.;
5. Investment of Court deposits;
6. Proper in house keeping like record room, property room relating to criminal cases, library, indent, replacement of worn out library books, typewriters, furniture, fixtures and fittings, extent of use of Computers etc.

DUTY OF THE INSPECTING JUDGE :

The Inspecting Judge has to go through the Pre-Inspection Notes well in advance – a day or two, prior to the Inspection, so that the Inspecting Judge could carefully go through the same and have clear idea about the performance of the Officer and the Court concerned. Only then the Inspecting Judge could proceed with the clear idea about the functioning

of that particular Court. Such advance preparation for inspection would enable the Inspecting Judge to give appropriate instructions during inspection, that would create an impression upon the minds of the staff and the Officer, which would encourage them for better performance in future.

RELEVANCY OF PERSONAL NOTES :

At the time of inspection, the Inspecting Judge may make personal notes regarding the matters, which are to be attended after the inspection. Suitable correctional instructions are to be given to the officer and the staff so that they may avoid such omissions or lapses in future. The Inspecting Judge, should keep it in mind that after the inspection, the officer and the staff members must have a deep sense of satisfaction for appropriate guidance in future, apart from rectifying the errors.

POST INSPECTION:

This is one of the important area which many a times neglected. Post Inspection stage is important both for the Court inspected and also for the Inspecting Judge. During the post inspection period, the mistakes/ defects pointed out during the inspection regarding the jurisdiction and the Court Fee matters are to be rectified and check-slips are to be issued to comply with the directions during the Annual Inspection. All other correctional directions and instructions are also to be complied with.

INSPECTION REPORT SHALL BE SUBMITTED WITHOUT DELAY :

Subsequent to the inspection, the Inspecting Authority also has a great responsibility. Responsible Court Staff, preferably the same officer, who has prepared the Pre-Inspection Notes, be placed in-charge to see that the instructions are being properly carried out within the stipulated time. All possible steps are to be taken by the Court inspected to comply with all the directions. The Inspecting Authority has to submit the Inspection Report to the High Court within a reasonable time. Elaborate notes on particular register with full details as to the entries need not be submitted to the High Court by the District Judges. As far as possible, the District Judge should summarize in his own words, the notes of Inspection for the

information of the High Court and the result of the scrutiny. Form No.15 given infra deals with the instruction regarding the notes of Inspection of Subordinate Courts. Reading and understanding of Form No.15 would greatly help the Staff Members and the Judicial Officers in improving their efficiency in Court Management.

PURPOSE OF ANNUAL INSPECTION:

The Annual Inspection by the District Judge is to assess the performance of the Staff and the Administrative ability of the Judicial Officer. It does not mean for judging the success or failure and also not for fault finding. The Inspection is mainly correctional; incorrect performance are to be pointed out and directed to be corrected as per procedure known to law. However, if there is any serious lapses, that must be taken cognizance, in order to take appropriate action as per law.

At the end of each inspection, 'Action Review' should be planned and suitable instructions shall be given, so that such lapses / mistakes may not occur. It is a part of the administrative work of the inspecting authority to educate the staff and sensitizing them to do things rightly and to avoid errors and mistakes in future.

The mistakes pointed out in the previous inspection are to be rectified. Watching over the rectification and the compliance of the direction given in the inspection is one of the neglected areas. Often, the Inspecting Authority does not keep track of the inspection report in the compliance of the directions. Rectification and Feed back is very much important. Rectification and Feed back would enable the District Court and High Court that the instructions given are properly carried out.

INSTRUCTION FOR PERIODICAL VERIFICATION OF THE REGISTERS BY THE JUDICIAL OFFICER :

The administrative responsibility of the Judicial Officer plays a vital role in running the administration. In fact the administrative responsibility of the Judicial Officer is no less important than the judicial work. Firstly, the Officer has to issue directions on the basis of going

through the running note file maintained by the Head Ministerial Officer. That apart, the Judicial Officer has to periodically verify all the registers and check, whether they are properly maintained. Such periodical checking has to be at least once in a month or twice in a month. Once the signal is given that the officer is verifying the registers, the staff members would rise up to the occasion towards proper maintenance of the registers. In the periodical meeting convened by the District Judge, Judicial Officers shall give suitable instruction in this regard.

DUTY OF JUDICIAL OFFICER WHILE ASSUMING CHARGES :

Whenever a Judicial Officer assume charges in a particular place, first priority must be given to give instructions to the Head Ministerial Officer / Sheristadar to maintain the running note file. It is also imperative to call for the registers and verify them. Once the registry knows that the Presiding Officer is checking the registers, then and there, the message is sent that they cannot any more remain mediocre and that they should perform well. The Judicial Officer or the Judge of the concerned court may also proceed with the confidence that he has the control of the registers and the registry.

RUNNING NOTE FILE (RNF):

In both the Civil and Criminal Courts, Head Ministerial Officer (HMO) has an immediate control of the other staff members. Head Ministerial Officer is on par with the Manager and must take stock of the situation on ground level. The Head Ministerial Officer must be in command, demanding work and at the same time receptive and also watchful over the work done by the other staff members. Such managerial skill requires knowledge of all the branches and also motivate team work. Head Ministerial Officer must be capable of efficiently organizing his work and also controlling the other staff members.

For exercising effective control over the other branches, Head Ministerial Officer has to maintain the Running Note File – (RNF) regarding all the branches. Head Ministerial Officer has to check the register maintained in all the branches and prepare the Running Note File. The

Running Note File (RNF) has to be placed before the Judicial Officer, who can have cross check in respect of the same and issue prompt directions to rectify the defects.

OBJECT OF RUNNING NOTE FILE (RNF) :

The object of maintaining the Running Note File cannot be underestimated. It serves to achieve accuracy in the maintenance of registers. Maintaining Running Note File has dual purpose -

- (i) checking the register, so that the staff can do their best;
- (ii) growing the team spirit by enlightening the staff members and correcting their mistakes then and there.

Most often, the need for maintenance of Running Note File by Head Ministerial Officer and the checking up of the records and registers is underestimated. It is important to direct the Head Ministerial Officer to maintain 'Running Note File'. It was noticed that checking of registers and maintaining Running Note File by the Head Ministerial Officer has helped a lot in improving the performance of the staff members and also developing a team spirit amongst them. Maintaining 'RNF' will certainly reduce the work of the Judicial officer in checking the register and for the Head Ministerial Officer, very much easier to check the registers by issuing appropriate directions then and there. The system of maintaining Running Note File (RNF) is helpful to avoid such mistakes pointed out, in the future and improve the performance. Checking up the registers and giving correctional instructions removes all the barriers enabling the staff members to improve their performance.

FILING OF SUITS AND PETITIONS :

Normally, the Head Ministerial Officers are in-charge of checking the Suits, Original Petitions and Appeals etc. relating to jurisdiction, payment of proper Court Fee, Limitation and to find out whether the case filed is in proper form. Everyday number of cases are being filed into the Courts. More the papers are filed, more the time is required to check them up. In order to number the case, thorough checking up of the cases

is very much essential. By and large, it is noticed that when the cases are being returned, all the defects noticed are not stated in the "Grounds of Return" column. It is noticed that the Checking Officer commits the mistake of returning the papers pointing out certain defects. After the case is represented again, the case papers are returned pointing certain other defects and so on. By so returning the case papers number of times, the office has to repeatedly handle the same case papers, which increases the work of the office. Number of returns increases the paper work and also the entries in the registers, resulting in handling the same case papers again and again. At times, this also gives room for complaints.

Equally the delay in assigning the number is also noticed. Either due to pre-occupation with other work or laziness, the numbering of the cases are delayed. Whatever be the reason, the habit of postponing the checking of cases and numbering must be strictly avoided.

TAPALS / LETTER CORRESPONDENCE:

At the commencement of the day, the tapals are to be sorted out. The F.I.Rs, Charge Sheets and other important letters from the High Court and the District Court are to be initialled by the Presiding Officer. The Judicial Officer must necessarily go through the important tapals particularly the tapals of the High Court and the District Court. The Head Ministerial Officer is to sort out the letters and assign to those persons giving proper instructions in attending them. Important tapals are necessarily to be placed before the Judge and shall be acted as per the instructions of the Presiding Officer.

The Head Ministerial Officer and other concerned staff should always have a pocket note book to take down the instructions given by the Officer. The tapals are to be attended then and there, without causing delay.

The staff members are to train up themselves not merely bringing up the tapals and connected problems. They must train up themselves to bring necessary details and facts for discussion and suggestions while they place the letters before the Officer. The High Court correspondences

are to be attended swiftly with utmost care. At times, in a hurry to complete the work, some of the subordinates may have the tendency to put up files and statistics in a hurried manner and at times, the facts and statistics may not be correct. The concerned Judicial Officer should verify the correctness of the details before furnishing the same to the High Court or the District Court. Similarly, the District Court must verify the correctness of the communication, before sending the same to the High Court.

Whenever files are attended, regarding the establishment in respect of acquisition of sites or for allotment of land for formation of new Court buildings, the staff members normally have the tendency of circulating the entire files, which may run to few hundred pages. The staff members are to be suitably trained to develop a sense of involvement in the work of the Institution. They must be taught to go through the file and put up the same with the synopsis of relevant facts and details.

The staff members are to be trained and instructed to properly handle the files and respond to the tapals. The officers must keep themselves informed of everything and be a great motivator and educator of the staff members, in this regard.

REGISTER FOR LIBRARY BOOKS:

Almost in all the Courts, this register is not properly maintained. The books are also not neatly arranged. Library room is yet another area where there is mistaken belief that more efficient staff are not required. Library involves manifold work of receiving the journals and distributing them to the other Courts, arranging the journals and sending them for the binding. In short, only the staff member having skill and knowledge can handle the library.

BINDING OF LIBRARY BOOKS :

In several Courts, binding works of the library books are not done. The binding of the library books are to be sent to the concerned Central Prisons. Sending library books to the Central Prisons has several advantages. It encourages the prisoners to do some manual work. It also aims at trying to reform the prisoners who had been convicted. That apart,

the binding work is done without any payment, since the work is done on book adjustment. However, it must be kept in mind that perfection and neatness in the work is more important.

Care has to be taken in sending the books to Central Prison for binding, by properly arranging them. The prisoners being laymen, would not be in a position to arrange the journals. The journals sent for binding are to be properly arranged in the proper order – Index, Journal Section, Summary of Cases, Cases Reported – Supreme Court and High Court. After sending the books, there shall be periodical correspondence with Prison Authorities to know about the perfection and completion of the work. The Library Books received are to be neatly arranged and maintained. The Library Register has to be periodically checked, especially on the availability of the books.

CUSTODY AND CARE OF LIBRARY BOOKS AND LAW REPORTS:

- (i) The books and law reports belonging to the Court should be kept in almyrahs provided with lock and key and shall be placed as much as possible in one room in the custody of the Head Clerk or Sheristadar. The text books should be kept separately from the law reports.
- (ii) Two separate registers of the books and law reports should be maintained in each court, one to be kept by the Head Clerk or Sheristadar and the other in the Library.

All new books and reports added from time to time will be entered in the register by the Head Clerk or Sheristadar and missing books should be properly accounted for. The registers should be kept up to date deleting such of the books, which are ordered to be disposed of on adding new ones.

- (iii) No book should be removed from the library without the permission of Head Clerk or Sheristadar. When a book is removed, a receipt must invariably be furnished by the person using the book and the receipt should be returned to him or cancelled when the book is returned.

Books should not be handed over to the members of the Bar except under the directions of the Bench Clerk in charge of the Court who will be solely responsible for such books.

The Bench Clerk has to check the books in the Court library, periodically in every week and should also check every morning and at the end of the day the books placed on the Judge's table.

Books and law reports required for reference of the Presiding Officer of the Court at his residence should be promptly restored to the Court premises, in order to avoid missing of books.

- (iv) When a new Head Clerk or Sheristadar takes charge of the Library, he shall within a month of his taking charge, report to the Presiding Officer if any book shown in the register of books is either lost or missing.

Every Presiding Officer on assuming charge of office should satisfy himself that the library is in good condition, and if he finds that the books are out of order or that any book or volume is missing, he should take immediate steps to have the defects rectified and the books restored.

THE IMPORTANT POINTS PERTAINING TO INSPECTION OF MAGISTRATE'S COURT :

So far as inspection of Criminal courts are concerned, various guidelines have been issued by the High Court, by way of circular orders.

I. Pendency of Cases:

The primary duty of the Court is towards the disposal of cases expeditiously, as per procedure known to law, to meet the ends of justice. However, the courts should also follow the circular orders and standing instructions issued by the High Court, then and there. In this regard the points to be noted are :

- (1) The maximum duration of a criminal case should not exceed two months;
- (2) Priority has to be given to trial of cases where persons are in custody;

- (3) Where from the beginning it is found that the accused are not easily available, prompt and effective steps should be taken. Issues processes under Section 82 and 83 of Criminal Procedure Code, to see that the cases are transferred to the long pending case register and;
- (4) Where an accused is present, but witnesses are not secured within a reasonable time, the proceedings are brought to a termination by applying judiciously Section 258 Cr.P.C., in Summons Cases. The pendency should be checked with reference to the above along with other points that may suggest themselves to the Inspecting Officer.

II. **Expeditious trial of cases:**

The attention of the Inspecting Officer is drawn to rules 3, 5, 7 and 10 of the Manual of Instructions for the guidance of Magistrates, in this regard. The Inspection should be designed to find out if the trial of cases has proceeded in the light of those instructions, in addition to the provisions of the Criminal Procedure Code and the Criminal Rules of Practice.

III. **Disposal of property:**

The case properties, both valuable and non-valuable should be kept in proper custody of the Court. The disposal of the property by Judicial Magistrate is also an important aspect. In case of valuable properties, such as gold jewels, there must be proper description of the property, with the correct weight in the register, with appraiser's certificate. The concerned Magistrate / Judge should take proper care in dealing with the property, while keeping in his custody and in case of disposal, by following the mandatory procedure. The crucial points to be borne in mind under this heading are:

- (a) the foot note in Criminal Register No.15 is often held to imply that the Magistrate need personally check only on the valuables, once in three months and send a report of such verification once in three months. However, the Magistrate has to check non-valuables also periodically or at least have a verification made by the Head Ministerial Officer once a quarter;

(b) the accumulation of non-valuable properties in the property room should be avoided by a judicious use of (i) Section 452(2), Criminal Procedure Code, which permits properties to be returned on bond at any stage, (ii) Section 42(4), Criminal Procedure Code which permits properties subject to speedy and natural decay to be disposed of at once; and (iii) Section 457(2) Cr.P.C, which requires the issue of a proclamation only in cases where the owner is not known, but not where there is an order directing the property to be returned to a specific person.

IV. Witness batta and process fee:

The duty of the Court is to collect batta in private complaints where such batta has to be collected under the rules, keep proper accounts for its disbursement and refund. In cases prosecuted by the State, batta is to be paid from contingencies, but the batta, payable has to be calculated correctly and disbursed. This task is left to a Ministerial Subordinate, but is essential that the Magistrate keeps a careful day to day check over this item of work.

V. Collection and Remittance of fines:

Prompt collection of fine is an important part of the work of any Magistrate, as that of the trial of cases. The Magistrate should also see that fine, amounts, which became unrealizable are written off at the earliest moment, when it is permissible to do so. For this, proper and systematic attention should be bestowed on (a) the execution of distress warrants and (b) the completion of default sentences. The fine statements, which enable the superior Courts to watch this aspect of the work, should be correctly prepared and sent promptly on the due dates. The proper maintenance of the working sheet for fine recovery in Form 36 is an essential part of this work. It should also be borne in mind that very often the bulk of the arrears shown as pending, relates to taxation cases and it is also in this type of cases that the fines are easily capable of realisation, provided prompt coercive processes are taken.

PRESCRIBED FORMS SHOULD BE ISSUED :

Either inspection of civil courts or criminal courts, printed form prescribed should be used and proper inspection report should be submitted by the concerned District Judge / CJM to be sent to the High Court and there should be follow up action to rectify the errors.

SUPERVISION OF SUBORDINATE CRIMINAL COURTS

SUPERVISION BY SESSIONS JUDGES & CHIEF JUDICIAL MAGISTRATES :

The Code declares that every Chief Judicial Magistrate and Chief Metropolitan Magistrate and every Additional Chief Metropolitan Magistrate shall be subordinate to the Sessions Judge and every other Judicial Magistrate subject to the general control of the Sessions Judge be Subordinate to the Chief Judicial Magistrate and every Metropolitan Magistrate shall subject to the general control of the Sessions Judge, be Subordinate to the Chief Metropolitan Magistrate and that the Chief Metropolitan Magistrate is responsible for the supervision of the Magisterial work and Administrative work of all Metropolitan Magistrates and similarly, the Chief Judicial Magistrates must supervise the Administrative and Judicial work of all the Magistrates within the district.

POINTS TO BE NOTICED IN EXERCISING SUPERVISION :

Some of the points to which the attention of the Sessions Judge, Chief Judicial Magistrates is particularly directed in the exercise of their power of supervision, which are noted below:-

- (a) Rash issue of process to the accused; judicious and discriminating use of the provisions of Sections 203 and 245 of the Code.
- (b) Dealing with disputed claims of civil right under colour of criminal charge.
- (c) Indiscreet imposition of fines beyond the means of offenders.
- (d) The imposition of heavy fines in addition to imprisonment with a view, in default of payment, to extend the term of imprisonment beyond the powers of the Magistrate to inflict.

- (e) Indiscriminate extensions of the grant of time for the payment of the fine without regard to principles laid down in Section 424 of the Code.
- (f) Excessive sentence of imprisonment out of all reasonable proportion to the offence of which the accused has been convicted.
- (g) Failure to make proper and judicious use of the provisions of Section 360 of the Code, the Tamil Nadu Children Act, the Tamil Nadu Borstal Schools Act and the Tamil Nadu Probation of Offenders Act.
- (h) Light punishment for offences requiring severe sentences with special reference to cases, which should have been submitted by the Judicial Magistrates to the Superior Courts for higher punishment.
- (i) Exaction of excessive bail or excessive security for keeping peace or for good behaviour.
- (j) Avoidable delay at any stage of the trial of the cases.
- (k) Needless adverse remarks in judgments against public servants.
- (l) If a sentence of imprisonment for a term of less than three months is awarded for the types of offences mentioned in Section 354(4) the reasons recorded by the Magistrate should be noticed.

SECURITY FROM MINISTERIAL SERVANTS AND TESTING OF THE SAME AS TO ITS SUFFICIENCY :

Under the instructions issued in Paragraph 8 of Memorandum No.16, Public (Separation) Department, dated 4th February, 1950, the incumbents of the posts of Head Clerks in the Courts of Chief Judicial Magistrate and Judicial Magistrate, should furnish security for a sum of Rs.500/-. The senior of the Junior Assistant where there is more than one Junior Assistant in the Court of the Judicial Magistrate should furnish a similar security as they too have been entrusted with the custody of cash and valuables. In Courts where there is only one Junior Assistant, the said Junior Assistant should furnish the security aforesaid. The Magistrates concerned shall however, be responsible for the custody of cash and valuables. (G.O. Ms. No.3015 Public (Separation) Department, dated 29th December 1952).

The Chief Judicial Magistrate, should strictly insist on the security prescribed in Paragraph (1) above, being furnished by the incumbents concerned within a reasonable time after their appointment to the post. All the Junior Assistant who do not furnish such security within the time allowed by the Chief Judicial Magistrate should be replaced peremptorily following rule 26(f) of the Tamil Nadu Judicial Ministerial Service Rules. If necessary, Service Commission should be immediately addressed for allotment of sufficient number of candidates for these security posts. The Chief Judicial Magistrate should also take steps, if need be, to appoint willing person from the civil side to these posts as they are also included in Category 5 of class IV of the Tamil Nadu Judicial Ministerial Service (High Court's Roc. No.149/54-C-1, dated 15th March 1955)

The rules contained in Chapter XII of the Tamil Nadu Financial Code, Volume I, will mutatis mutandis apply to the security bonds furnished under this rule, provided that the form of the security bond shall be executed either in Form No.11 or Form No.12 (as the case may be) at Page 343 of the Civil Rules of Practice and Circular Orders, Volume II and that notwithstanding the instructions contained in Article 284 of the Tamil Nadu Financial Code, Volume I, all security bonds in Form No.11 or Form No.12 should be registered under the Registration Act, 1908.

FURNISHING SECURITY BONDS AND FIDELITY BONDS :

The security bonds and the fidelity bonds furnished under these rules shall be kept in the personal custody of the Head Clerk in the Court of the Chief Judicial Magistrate after testing of the personal security and the security in the form of immovable property and the periodical verification referred to in Article 288 of the Tamil Nadu Financial Code, Volume I, may be carried out through the District Munsif having jurisdiction over the area within which the property is situated. The Chief Judicial Magistrates shall report to the High Court in their annual reports that such securities have been duly examined and are found to be satisfactory.

During their annual inspection of the Courts of Chief Judicial Magistrates, the Sessions Judges should see whether these rules have been followed and record their observations in their inspection notes.

INSPECTION OF COURTS BY CHIEF JUDICIAL MAGISTRATES :

- (1) Chief Judicial Magistrates shall inspect every year, all the Courts of Judicial Magistrates in their districts, to have proper administrative control over courts. It is open to the Chief Judicial Magistrates to have surprise inspection of any Judicial Magistrate's Court in the District, if need be.
- (2) Copies of the reports of the inspection of the Courts of Judicial Magistrates should be submitted to the High Court by the Chief Judicial Magistrate with the least practicable delay.

INSPECTION OF COURTS OF SPECIAL JUDICIAL MAGISTRATES :

The Courts of Special Judicial Magistrates in the Districts shall be inspected in the manner prescribed below:-

Judicial Magistrates, shall inspect the registers relating to property, fines and cash in the Courts of Special Judicial Magistrates within their jurisdiction once a quarter.

Note:- The Inspection referred to above shall be conducted in the second fortnight of the month following each quarter.

(2) The reports of inspection should be submitted to the Chief Judicial Magistrate concerned; Tabular form to be annexed to the judgment.

The judgments in original decisions shall conform to the provisions of Section 354 of the Code and shall contain the particulars specified therein, with the statement in tabular form, giving in addition the following particulars, viz.

For judgments in Trials only two copies in manuscript of this statement are required, one copy for record and one for transmission to the High Court. The one for record may conveniently be written up in a list to be bound up by way of index with the printed judgments for each year.

However, in cases under the Tamil Nadu Traffic Rules, 1938 and the Prevention of Cruelty to Animals Act, 1960, the copy for record need not be prepared.

Note:- Attention of all Magistrates is drawn to pages 52 to 55 of the manual of instructions for guidance of the Magistrates in the Tamil Nadu State in the matter of writing judgments.

LIST OF WITNESSES ETC., TO BE APPENDED TO JUDGMENT :

There shall be appended to every judgment a list of the witnesses examined by the Prosecution and for the defence and by the Court as also a list of exhibits and material objects.

JUDGMENT OF SPECIFIC OFFENCE IN WHICH SENTENCE IS PASSED :

When an offender is convicted of two or more offences and it is competent to the Court to award more than one sentence, the Court shall in its judgment declare in respect of which offence or offences any sentence awarded is imposed.

PURPOSE OF SURPRISE INSPECTION :

It is also relevant to note the purpose of surprise inspection. Only by way of surprise inspection, the District Judge or Chief Judicial Magistrate can verify the actual functioning of the court, in respect of maintaining the registers and records and also making relevant entries thereon, keeping the Court and the premises neat and clean and verify the absence of staff members, who have signed in the attendance Register of the concerned court. Surprise inspection will make the judicial officers and the staff members alert in the District unit in keeping everything, up to date, expecting surprise inspection at any time. Certainly the surprise inspection will be a message for proper administration of the functioning of the courts under the unit of the District Judge / CJM.

In order to conduct proper inspection by District Judge / Chief Judicial Magistrate, the inspecting Judge should know various registers being maintained by the Courts, the purpose of making such registers and the entries made thereon.

When there is surprise inspection, the Inspecting Judge, should first seize the attendance register and verify the physical presence of the staff members, who signed in the attendance register. In case, any staff member is "on duty", that could have been noted in the Running Note maintained by the ministerial head.

CONCLUSION :

In respect of Court inspection, three important aspects, so vital are **procedure, practice and techniques.**

PROCEDURE RELATING TO INSPECTION :

It cannot be disputed that Court should scrupulously follow the procedures in maintaining registers and records and making appropriate entries thereon, then and there. The procedure contemplated under the code of Civil Procedure, Civil Rules of Practice, various circular orders issued by the High Court and other standing instructions are to be followed by the Civil Court for proper and effective functioning of the court. Similarly, the criminal courts should follow the code of criminal procedure, Criminal Rules of Practice, High Court circular orders and various notifications for proper administration of the court, including maintenance of Registers and records, for proper and effective functioning of criminal courts. The adherence of the aforesaid procedures have to be verified with reference to the registers and records, by way of court inspection.

PRACTICE RELATING TO INSPECTION :

In respect of court inspection, the Inspecting Judge, prior to the inspection, selects staff members, who are experts, having sufficient experience and maintaining proper integrity, to verify the registers and records of the Court being inspected and to prepare pre-inspection notes. So far as the inspection done by court-fee examiners is concerned, it relates to mainly on payment of court fee, as per Court-Fees Act, hence, staff members, having sufficient knowledge and experience in the said branch shall be deputed, for the inspection. Maintaining Running Note File should be insisted for proper administration of the Court. Similarly, the Sheristadar, Head-Clerk and other staff members entrusted with specific work, shall be directed to keep a small note-book and note down the instructions given by the Presiding Judge, then and there and also to carryout the same promptly.

The Judicial Officer and the Head Ministerial officer are expected to provide instructions, then and there to the concerned staff members in

following the mandatory procedures and also towards maintaining the registers and records properly. Such practice would improve the standard of court management and if it is followed in its letter and spirit, there will be proper and effective court administration.

TECHNIQUES RELATING TO INSPECTION :

Inspection techniques play a vital role, for which the concerned Inspecting Judge should have thorough knowledge, in respect of all the registers, especially about the important registers, maintained by the Courts. The Inspecting Judge, should also have proper legal acumen in following Civil Rules of Practice, Criminal Rules of Practice and up to date circular orders issued by the High Court, then and there and also apply his presence of mind, on the facts and circumstances, to meet the contingency and to give proper instructions, without any deviation to the judicial officer and judicial ministerial staff, entrusted with the specific assignment of the Court and that may be the techniques to be followed by the Inspecting Judge. The inspecting Judge should also verify the follow up action to comply with the directions given in the inspection, for effective court management and to have proper administrative control over all the courts.



ADMINISTRATIVE POWERS AND DUTIES OF DISTRICT JUDGES

**Justice P. DEVADASS,
Judge, High Court, Madras**

INTRODUCTION :

In the District Judiciary, the post of District Judge is a key post, because he is the head of the District Judiciary and he wields enormous judicial and administrative powers. He is the head of the judicial family in the District. He is the live link between the District Judiciary and the High Court.

CONSTITUTIONAL POSITION :

In the Constitutional Scheme, with regard to State judiciary, District Judge has been given a place of prominence. Though the District Judges (See Article 233(1), Constitution of India) are appointed by the Governor in consultation with the High Court, and other Judges are appointed by the Governor in consultation with the State Public Service Commission and with the High Court, the control over them is vest with the High Court (See Article 235, Constitution of India). Though the post has I.C.S vantage, there are many shining examples of such Civilian Judges went upto the Supreme Court of India via High Court. The post of District Judge is also a category from which High Court Judges are appointed (See Article 217(2), Constitution of India).

MULTIFARIOUS ROLES :

Besides their judicial functions on the civil side (District Judge) and on the criminal side (Sessions Judge), the District Judges have to discharge multifarious functions. They are the Head of Office to the subordinate Judicial officers functioning under them. They are Head of Department to the staff employed in the District Unit. They are the Appointing Authority as well as Disciplinary Authority for the court staff. They are Drawing Officers, Controlling Authority, Financial Adviser with regard to the budgetary allocation meant for the District.

PERSONNEL MANAGEMENT :

The District Judges have to manage the personnel, applying sound principles of management and administration and also applying information and communication technology. He must give continuous training to the Court Staff. He must treat them with humane touch and extract maximum but qualitative work from them.

As Appointing Authorities, the District Judges must know the rules and regulations and Government Orders relating to recruitment of staff and also its various sources, namely, by direct recruitment, by regular promotion and by transfer of service. They have to watch the performance of staff on probation and also declare their satisfactory completion of probation. They have the power to confirm them in permanent vacancies. They must place right person at the right place. They have to draw panel of persons eligible for promotion. Though staff has no right of promotion, but has right of consideration for promotion.

Pay related matters have to be regulated by the District Judges. Pay fixation, grant of increment, sanction of advance increment, grant of various kinds of loans and advances, such as Educational Advance, Festival Advance, Handloom Advance are vest with the District Judges. They have to channalize the applications for House Building Advance to be sanctioned by District Collectors and also Vehicle Advance to be sanctioned by the High Court. They are sanctioning authorities for the grant of temporary loan, part-final withdrawal from GPF accumulations. Upto certain limit, they are authorised to pass reimbursement of medical bills of subordinate Judicial Officers and staff.

As Appointing Authority, he has the power to permit the staff to retire on superannuation. He is the authority to accept or reject the option for voluntary retirement from service (V.R.S.) and also retirement on medical invalidation. They shall also vet their pension proposals and submit them well in advance to the Accountant General.

He must be thorough with Government Orders and High Court circulars with regard to the appointment on compassionate ground. It is to be noted that as per the High Court's circular, if the appointment has to be made on the said ground to posts coming within the purview of Tamil Nadu Public Service Commission, he has to conduct an examination in S.S.L.C. standard. This is not necessary if the appointment is made in the

post of Record Clerk, Examiner, etc. since they are not coming within the purview of TNPSC.

Transfer is an incidence of service. This is an implied term in the terms and conditions of contract of employment / appointment. The District Judges have to effect transfer. But, it must be effected on need base and in the interest of better administration or even to weed out incorrigibles from a particular station. But, in effecting transfer, they must take into account the difficulties of the staff and their families. In effecting transfer, least unavoidable inconvenience alone shall be caused to them. He being the head of the family of the staff as well as leader of the subordinate judicial officers, he must also have their welfare in his mind. He must stand behind them when they are placed in piquant situations. He must protect the right and also expose the guilty.

As he is the authority to sanction certain types of leave, he has to deal with request for various kinds of leave, applying the Tamil Nadu Leave Rules etc.

SERVICE RULES :

A District Judge must have thorough knowledge of the following :

- 1) Articles 309, 310 and 311, Constitution of India.
- 2) Fundamental Rules.
- 3) Tamil Nadu Judicial Ministerial Service Rules.
- 4) Tamil Nadu State and Subordinate Service Rules.
- 5) Special Rules for Tamil Nadu Basic Service.
- 6) High Court Service Rules.
- 7) GPF Rules
- 8) Financial Code
- 9) Tamil Nadu Government Servants Conduct Rules.
- 10) Tamil Nadu Civil Services (Discipline and Appeal) Rules.
- 11) Various Adhoc Rules relating to certain categories of post, such as driver, etc.12) G.Os. and circulars relating to contingent staff / daily wage staff.

CONTROLLING OF SUBORDINATE JUDICIAL OFFICERS :

The District Judge as leader and first in command of the judicial officers functioning in a District, must act as guide, philosopher and instructor to the judicial officers working under him. He must review their judicial work every month in a pragmatic manner and provoke them to do maximum work to the best of their ability. He must make the lazy to work and industrious to more industrious and illustrious for others. He must maintain good and healthy relationship with them. He must extract maximum work from them. But, at the same time, he must see that they are turning out qualitative work.

Their grievances have to be vetted by him before it being submitted to the High Court for consideration. He must have frequent interaction with the judicial officers. He must hold regular meeting of Subordinate Judicial Officers and apprise them of latest judicial decisions, High Court's circulars, Orders and instructions. At times, he has to deal with complaints against them. He must strictly enforce punctuality in office work as well as in court work.

CONTROLLING OF 'DOCKET EXPLOSION' :

The ills and perils of Indian Courts are arrears, arrears, court arrears. Every one is battling for a malady to arrest this ever increasing disease of our judiciary. Its doctors are judicial officers. The entire edifice of the judiciary rests on the subordinate judiciary. It is the bulwark and also the feeding centre for the High Court. Every District Judge must vow to eradicate or at least minimize the ever mounting arrears. The District Judge must be a model judge for other judges. He must work and also make them to work. The District Judge must always keep in his fingertips the staggering pendency of all civil and criminal cases of his district. He must continuously furnish the High Court with list of stayed cases, so that High Court can make suitable way for the clearance of these bottlenecks to render speedy justice. He must goad and instigate the officers working under him to strive hard to dispose of more old cases and senior citizen cases and bring down the pendency. He must monitor the disposal of time-limit cases. He must continuously review the work of the officers

working under him. Give them suitable instructions, guidance and also necessary infrastructure and staff, so that they can turn out more work with less inconvenience.

Court alone is not the proper mechanism to reduce the court arrears. There are many alternative modes. Now, various modes of A.D.R. (Alternative Dispute Resolution) mechanism have statutorily come to stay. The District Judges shall conduct maximum Mediations, Lok Adalats, Settlements and Compromises. They shall also encourage the officers working under them to work with similar spirit. All shall work to fight against the galloping arrears. Reducing of the general pendency in the district is the responsibility of the District Judge.

UPKEEP OF COURT CAMPUS, COURT BUILDINGS, QUARTERS :

It is the responsibility of the District Judge to see that the Court campuses are kept neat and clean. He must make regular visits, rounds around the Courts and its campuses along with staff in-charge and give suitable instructions to them and record it in the Rounds Note book and see that they are carried out. He must interact with Municipal and Health authorities to remove the garbages regularly. He must instruct P.W.D. authorities to effect repairs to the Court buildings, judicial officers' quarters. He must also see that budgetary allotment for the building maintenance are properly spent and did not go unspent. Some times, when new courts are to be opened in a rented building, he has to enter into Rental Agreement with private owners, fix rent in consultation with P.W.D. authorities and get it approved by the High Court. In auctioning the shops, canteens, STD Booths, etc. situate within court campuses, he must follow similar rules properly. Staff has to be instructed to keep the court building and judicial officers' quarters litter free zone.

INSPECTION :

District Judges are Inspecting Authority for various courts under their control. It may be Annual Inspection or Surprise Inspection or Inspection on the orders of the High Court. It shall not be a fault-finding or a grueling exercise intend to overawe or humiliate the judicial officers working under them. Without doing mere inspection, he must see that the defects pointed out in the previous surprise inspection, annual inspection are carried out. He must see that Rectification Reports are submitted in time and are also vetted. He must instruct the Sub Judge to inspect the Nazareth. He must make ready his office and the courts under his control for the inspection of the Hon'ble Portfolio Judge of his district.

INTERACTION WITH HIGH COURT, OTHER DEPARTMENTS AND BAR ASSOCIATION :

The High Court is the controlling body. Such controls are exercised by the High Court over the district judiciary through the Hon'ble Portfolio Judges of the concerned District. The District Judges must maintain continuous interaction with the Hon'ble Portfolio Judges and apprise them of all the activities and developments related to courts in the district. He must place various requirements, such as staff, new court, building and furniture requirement, etc. to the High Court also with the knowledge of the concerned Portfolio Judge.

He has to maintain cordial relationship with the District Collector and the Superintendent of Police, however, without compromising the judicial autonomy and judicial standards. He must maintain cordial relationship with the Revenue Department, Health Department, Municipality, PWD, Electricity Board Officials and District Employment Exchange, etc.

He must maintain good rapport with Bar Association, members of the Bar. By his manners and activities, he must win the confidence of the Bar. He shall carry the Bar with him by his sweet manners. He must put his heart and soul to prevent them from resorting to frequent Boycotts. He must cultivate healthy relationship between the Bench and the Bar. There shall be frequent Bench-Bar meetings to sort out the problems and also their genuine demands within his powers.

DISCIPLINARY AUTHORITY :

As Appointing Authority, he has the power to suspend the staff. For each and every commissions and omissions, he shall not resort to his such power. Ordering suspension must be based on rules and regulations and guidance. It shall be resorted to only in required cases. He has the power to revoke the suspension orders passed by the subordinate Judicial Officers.

With regard to complaints with substance and basis, he has to order domestic enquiries or he himself can conduct the enquiry. In conducting enquiries, he must follow rules and regulations, principles of natural justice. As Disciplinary Authority, he has the power to pass Final Orders against staff either punishing them or pardoning them or closing the enquiries. But, it must be passed following sound judicial principles.

LEGAL AID WORK :

Since the District Judge is the Chairman of the District Legal Services Authority (DLSA), he must conduct frequent legal aid meetings in the district. He must also conduct more legal literacy and awareness camps and Lok Adalats for various types of cases. In this regard, he must have the assistance of Banks and other entities in the utility service field.

COURT AND CASE MANAGEMENT:

Court management, although include staff management, has much focus on managing the courts. The case management is mainly concerned with the court cases, case records. Some times, it may overlap with court management. The District Judges must see that the court records are kept neat. As soon as the cases are disposed of, they shall be duly indexed and sent to the Record Room. Copy Applications are complied with in time and copies of judgment, orders and decrees are issued to the litigant public without delay. Case records which are ripen for destruction has to be destroyed following the rules. This will give room / space for storing other records in the Record Room. He must see that decrees are drafted and typed by staff without delay. He must also see that various registers,

such as Suit Register, I.A. Register are properly maintained by staff and Filing Section shall function properly. He must see that the required case records are sent to other Courts, High Court and Supreme Court without delay. The popular complaints against the subordinate courts is delayed submission of statistical statements. The District Judge must see that the weekly, monthly, half yearly and yearly statistical statements are submitted to the High Court within due dates. This is an important administrative work of the District Judge. Now, Court Managers are also appointed to assist the District Judges.

SUBORDINATE JUDICIAL OFFICERS :

Annually, the District Judges shall assess the performance of judicial officers working under them. He has to write Annual Confidential Reports on them. This performance appraisal is not an empty formality or an annual ritual. It is a most responsible task as it will have an effect on their fate and future career. So, he must discharge his this enormous responsibility with much care and caution, but without any bias.

MISCELLANEOUS WORK :

The District Judges have to make regular visit to the Central Jail or Sub Jail to see that human rights of prisoners and under-trials are not violated. He shall prepare the report thereon and submit it to the High Court with a copy to the District Collector with his comments for improving the conditions in the jail. He is the Chairman for the selection of members to the Juvenile Justice Board. He is the Chairman of the District Grievance Cell. With regard to the pendency of F.I.Rs., N.B.Ws., Criminal cases, production of witnesses, he must conduct periodical meeting with the Chief Metropolitan Magistrate / Chief Judicial Magistrate, Collector, Superintendent of Police and Public Prosecutor and give them suitable instructions.

CONCLUSION :

Thus, the administrative duties and responsibilities of the District Judges are onerous. As the head of the District judiciary, he must administer the District judiciary in a proper manner without giving room for any complaints. An efficient administration of the District Judiciary by the District Judge is the hallmark of his good governance. He shall try to be a great Judge as well as a great administrator.



DISTRICT ADMINISTRATION IN JUDICIARY

Justice Dr. A.K. RAJAN
Former Judge, High Court, Madras

Administration means "Management of the affairs of the institution". District Court administration may be classified as matters relating to judicial matters, and Office matters. Judicial matters can be further classified as management inside the court hall, and matters outside the court room. Office management also can be classified as matters relating to judicial aspects and matters relating to staff management.

JUDICIAL MATTERS:

A. INSIDE THE COURT HALL:

Promptitude: The principle District Judge should ensure the prompt beginning of the day's proceedings in all the courts in the district. The PDJ should set an example by beginning the proceedings of his court on time. Only then the PDJ can command others.

Calling work should be finished quickly and the regular work in the court, like examination of witnesses and hearing arguments etc. should start at the earliest possible time.

After hearing arguments judgments should be delivered on the fixed day, without fail. To ensure such promptitude, the judgment should be concise. At the same time all the issues should be answered, and all the case laws cited by the counsel should be considered.

The lower courts orders should be given due respect. For example the NBWs issued by the magistrate shall not be cancelled as a matter of routine. Otherwise the lower courts will lose their due respect from the public.

B. OUT-SIDE THE COURT ROOM:

The PDJ should ensure the Delivery of copy of the judgments and orders, passed by all the judicial officers, without delay. Bail orders should be, brief so that they may be furnished as early as possible, on the same

day. New innovations may be adopted, according to the needs of the situation. Ordinarily, pronouncement of orders shall not be deferred. These steps would go a long way in maintaining the dignity of the courts and judicial officers.

Issuance of Cheques should not be delayed. The PDJ has the power and responsibility for issuing cheques in matters like MCOPs. The amount deposited in courts must be distributed without any delay, and the balance need to be deposited in the banks immediately, as per the rules and directions issued by the courts. The concerned staff should be instructed and supervised.

Legal aid camps should be conducted periodically as per the instructions given by the High Court. Nowadays at least once in a month the PDJ should attend such meetings. For this the co-operation of all, including the staff and the advocates are necessary. These kinds of requests to advocates shall not be allowed to influence the court matters, in any manner.

Assessment of the works of the judicial officers. The PDJ has a very important task of assessing the works of the lower grade judicial officers. Assessment shall be judicious and impartial; unbiased views shall be expressed. If an officer had not done his duties properly, true and justifiable views should be recorded. Indiscriminate views without application of mind or without proper assessment shall not be made. Officers who have done good work must be duly appreciated without any hesitation. Personal prejudices against any officers have no role and should not play any part, while recording such assessments.

Circulars and directions of the higher courts should be obeyed and followed diligently. When the High Court has issued any general or specific direction that shall be followed and obeyed meticulously. All circulars issued by the High Court should be remembered and followed.

Strikes and boycotting of courts by advocates – should be managed efficiently. It is an art. It requires a great amount of skill, patience, tactics and presence of mind. It shall be faced courageously, with the help and

assistance of all, including the other judicial officers, staff, advocates and any other well wishers.

OFFICE ADMINISTRATION:

RELATABLE TO JUDICIAL MATTERS:

1. TAKING ON FILE-NUMBERING:

Any suit or petition or application must be taken on file immediately, without unnecessary delay. Urgent applications shall be processed quickly and be brought before the concerned courts. Bail applications need a special attention, as it relates to the personal liberties of individuals, it is to be brought before the courts at the earliest possible time.

Posting of staff and entrustment of responsibilities needs greater attention. Greater care should be taken while deciding these aspects; the assistance of the senior staff may also be taken into confidence for accreting their qualities and calibre. In case, any staff does not perform his duties properly he should be shifted and even be transferred to any other place and proper person should be posted to that seat. Experience will teach these aspects. Periodic shifting of seats must be made so that all will get experience and it will go a long way in prevention of creating vested interests.

Transfer of staff may be made according to the needs and circumstance. Transfers should be made in such a manner that all the staff acquire experience in all kinds of work in the courts. No one should be kept in the same section however efficient he may be. Periodic shifting must be made; but shifting should be made only after a reasonable period.

Registers: Maintenance of Registers and books prescribed by the rules are to be kept updated. Filing and disposals should be recorded promptly. The PDJ must effectively supervise these works, including the maintenance of records of the Courts.

Moneys should be deposited in banks: All moneys that come to the court must be properly accounted for and the amount must be deposited in the banks in F.Ds. Otherwise it will be detrimental to the beneficiaries.

Valuables like jewels must be under proper custody; it is always better to send them to the Govt. treasury, since the chances of being lost are more. That must also be periodically verified.

Jail visits-surprise visits: The PDJ along with the CJM is required to visit the jails periodically. They must also make surprise visits in order to ensure the wellbeing of the inmates of the jails.

2. ACTION FOR DERELICTION OF DUTIES:

Effective management lies in taking action for violation of prescribed rules and regulations. When any staff member is found guilty of dereliction of the duties or violation of the rules, appropriate action, must be taken. Undue sympathy should not be shown.

STAFF MANAGEMENT:

1. POSTINGS:

Transfer of staff from one place to another should be exercised with care. While making such transfers, the genuine requests made by the staff, should be given due importance and must be considered with due care and attention. Once transferred the order of transfers should not be cancelled. The staff should obey the orders. Re-transfers may be made in fit cases after they join in the new place of posting and after some time. There is nothing wrong in keeping a good worker in the place of his choice. It is not necessary that the staff should be transferred to another station after some time. It all depends on the circumstances. The golden rule is the staff should feel comfortable in the work spot, but the court should also feel comfortable in his postings. When occasion warrants transfers shall be made.

2. FIXATION OF SENIORITY :

The fixation of seniority, according to rules, is one of the most important rights conferred by the statutes. It is neither a charity nor a gratuity, made by the head of the institution. But in many districts, in the

past, seniority was never fixed and published. Such practices lead to various kinds of malpractices; many persons lost their opportunity of getting their due promotion. The PDJ shall ensure that the seniority is fixed and published.

3. RECRUITMENT:

The vacancies that arise periodically should be filled up without any delay. While doing so the policy of reservation followed by the State should be followed. The selecting authority should be very diligent while making the selection.

4. PROMOTION:

Another area of heartburn for the staff is that promotions are not given promptly. Just as seniority, promotion also is another important right of the staff. There are many cases in the past where promotions were not made in time, which resulted in many sincere workers losing their prospects. It should be remembered that it is also an incident of the service.

5. ENFORCEMENT OF RULES:

Rules shall be enforced properly. Any violation shall be seriously viewed, and necessary action as contemplated under the rules shall be initiated. There shall not be any hesitation to take action against erring staff. Any person who hesitates to take action for violation of rules cannot be considered as a good administrator.

6. DISTRIBUTION OF WORKS:

The distribution of work made by the head clerk must be monitored. Work shall not be dumped on those who work and others cannot be allowed to rest.

7. COMPLAINTS RECEIVED:

Very often complaints would be received, almost against every person. Unsigned complaints should not be acted upon. But any genuine complaints must be looked into and appropriate remedial measures should be taken.

8. ASSESSMENT OF WORKS:

Assessment of work should be made with due care; good work must always be appreciated.

RAPPORT WITH OTHER WINGS OF GOVERNMENT

1. WITH THE REVENUE DEPARTMENT:

Having good rapport with other wings of the government is another important matter. Many judges think and feel that they are above all other wings. Such attitude must be given up. One should think each has his own importance. Respect for others' rights should always be given. That will improve overall improvement in inter se relationship. Revenue department has its own priority. But at the same time the due respect to the judiciary should not be compromised.

2. WITH THE POLICE DEPARTMENT:

Judiciary need to have somewhat close relationship with the police department. But a judicial officer shall not dance to the tunes of the police. The prestige of judiciary shall always be ensured.

3. WITH OTHER DEPARTMENTS:

Judiciary need not be always isolated or in their day to day affairs. But the judicial officers should keep a distance from all, including the other departments.



DISCIPLINARY PROCEEDINGS DUTIES & RESPONSIBILITIES OF DISCIPLINARY AUTHORITY & ENQUIRY OFFICER

**Justice K. SUGUNA
Judge, High Court, Madras**

This Article deals with various aspects of disciplinary proceedings and also the duties and responsibilities of the Disciplinary Authority and Enquiry Officer.

DISCIPLINARY PROCEEDINGS - MEANING:

In common parlance, the term "Disciplinary Proceedings" means the steps taken to find out the truth or otherwise of the alleged allegations brought to the notice of the Competent Authority, as per rules.

RULES APPLICABLE TO THE STATE OF TAMIL NADU IN THE MATTER OF DISCIPLINARY PROCEEDINGS:

As far as the State of Tamil Nadu is concerned, the entire administration of the Government has been divided into number of departments and the employees of each department are governed by the Rules and Regulations of the concerned department, with regard to their service conditions. The said Rules is called as "State and Subordinate Service Rules", i.e., if an Officer comes under the State Service, he is governed by the State Service Rules and if an Officer comes under the Subordinate Service, he is governed by the Subordinate Service Rules. But, in the matter of disciplinary proceedings, except for a few departments, for all the other departments, the Tamil Nadu Civil Services (Discipline and Appeal) Rules, alone is applicable. For the Judicial Department also, the Tamil Nadu Civil Services (Discipline and Appeal) Rules alone is applicable.

Now, let us examine, as to how, in a disciplinary proceedings, action can be initiated, what are the procedures to be followed, what is the nature of final orders to be passed and whether the final orders passed in the disciplinary proceedings can be challenged by the concerned delinquent.

If any commission and omission alleged to have been committed by any staff member/officer is brought to the notice of the Competent Authority, to find out as to whether there is any truth in the said allegation brought to his notice, the Competent Authority can conduct a preliminary enquiry or a discreet enquiry.

DISCREET ENQUIRY:

A discreet enquiry is nothing but a secret enquiry. If, on the conclusion of the discreet enquiry or preliminary enquiry, any material is found that there is a possibility of truth in the said allegation, the Competent Authority has to, first, call for explanation from the concerned staff member/officer against whom allegation has to be levelled. On receipt of his explanation, if the Competent Authority is satisfied with the same and if he is of the opinion that based on the explanation, the said allegations cannot be true, quoting the reason, he can drop the said proceedings, by passing an order to that effect. On the other hand, if the Competent Authority is not satisfied with the reply given by the delinquent, he must issue a charge memo.

CHARGE MEMO:

Charge memo is governed by Rule 17 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. If the Competent Authority feels that the so-called allegation is only of a minor lapse, charge has to be framed under Rule 17(a) of the said Rules. But, if the Competent Authority is of the opinion that the so-called allegation is of a serious nature, then, he must frame a charge memo under Rule 17(b) of the said Rules.

If a charge is framed under Rule 17 (a) of the said Rules, by issuing a charge memo, after getting the explanation from the concerned delinquent, final order can be passed and there is no need to conduct an enquiry. But, the punishments to be imposed for a charge framed under Rule 17(a) can only be minor punishments and Rule 8 of the said Rules deals with the same. As per the said Rule, the following minor punishments can be imposed:

- Censure;
- Fine;
- Suspension;
- Withholding of annual increment upto 3 years or promotion including stoppage at an efficiency bar;
- Recovery from pay of the whole or part of the pecuniary loss by consequence of the commission and omission committed by the delinquent;
- Recovery from pay to the extent necessary of the monetary value equivalent to the amount of increments ordered to be withheld where such an order cannot be given effect to; and
- Recovery from pay to the extent of the monetary value equivalent to the amount of reduction to a lower scale in the time scale ordered where such an order cannot be given effect to.

On the other hand, if the charge has been framed under Rule 17(b) of the said Rules, then, the procedures laid down under the Rules have to be followed. Those procedures are governed under Rule 17 (b) of the said Rules. The major penalties are as under:

- Reduction to a lower rank in the seniority list or to a lower post. However, if the punishment is reduction to a lower post, the delinquent cannot be reverted to a lower post than to which he was originally recruited;
- Reduction to a lower stage in the time scale. However, if, for some reason, it cannot be given effect to fully, the monetary value equivalent to the difference in emoluments as a result of such a punishment can be recovered;
- Compulsory retirement;
- Removal from service;
- Dismissal from service; and
- Withholding of increments with cumulative effect.

REQUIREMENTS OF A CHARGE:

When a charge is framed, it should be very specific and it should be definite. For example, as against an Officer or a staff member, when a charge under Rule 17(a) or under Rule 17(b) has been framed with regard to corruption, that charge should indicate as to what is the probable date of receipt of consideration, from whom it was received and in relation to what, it was received. If the charge is not specific and definite, even after the enquiry also, the punishment cannot be allowed to stand. Unless the charge is specific and definite, the concerned delinquent may not be in a position to put forth his defence effectively.

CONTENTS OF A CHARGE MEMO:

- Date of the charge sheet;
- Correct name of the delinquent;
- Specific date of the incident;
- Description of the incident;
- Reproduction of language in verbatim if there are words of abuse, defamation or threat;
- Reference of relevant rule and
- Particulars as to within how much time and to whom, the reply should be submitted;

POINTS TO BE REMEMBERED REGARDING A CHARGE MEMO:

- Charge sheet to be signed by the Competent Authority;
- Loose usage of words such as "habitual" and "wilful" should be avoided in the charge sheet;
- Abbreviations such as "etc." and phrases such as "such other things" should be avoided;
- Charge sheet should be served on the delinquent and all earnest efforts should be made to see that the charge sheet is served on the delinquent;

- Upon serving the charge memo on the delinquent, his signature or thumb impression of having received the charge memo should be obtained in the office copy.
- If the delinquent refuses to accept the charge sheet, an endorsement to that effect should be made in the office copy in the presence of, at least, two witnesses whose signatures should also be obtained;
- In case, the concerned delinquent receives the charge sheet, but, refuses to sign or give his thumb impression in the office copy, an endorsement to that effect should be made in the office copy and signature of, at least, two witnesses should be taken in the office copy;
- If the staff concerned asks for the charge sheet in the language which he knows, it should be done.
- If the employee either refuses to accept or to give acknowledgment of the charge sheet or is not present within the organisation, the charge sheet should be sent to his last known and recorded address by Registered Post with Acknowledgment Due.
- If the staff concerned refuses to accept the Registered letter carrying the charge sheet, there should be an endorsement by the postal authorities to that effect.

DOCUMENTS TO BE SUPPLIED ALONG WITH A CHARGE MEMO:

Along with the charge memo, copies of the documents which are to be relied on in the enquiry to be conducted, have to be given to the delinquent. Besides, the names of witnesses who are proposed to be examined, should also be informed to the delinquent. That apart, the statement of allegations also should be served on the delinquent.

STATEMENT OF ALLEGATIONS:

In number of instances, what is stated in the charge memo, is verbatim given under the heading "Statement of allegations". That is not the correct form of statement of allegations. The statement of allegations must contain all facts and particulars connected with the said allegations. Mere reproduction of the charge alone under the heading "Statement of allegations" is not sufficient. The statement of allegations, should necessarily be more elaborate than that of a charge memo. This must be borne in mind while a charge is framed. While issuing a charge memo, the delinquent should also be directed to submit his reply to the said allegations levelled against him. After receipt of reply from the concerned delinquent, if the Competent Authority is not satisfied with the reply, an Enquiry Officer can be appointed.

PERSONS CONCERNED WITH THE DOMESTIC ENQUIRY :

i. Enquiry Officer:

In the enquiry, there should be an Enquiry Officer appointed by the Disciplinary Authority to conduct the enquiry. The Enquiry Officer's job is to listen to and record the statement of both sides and to allow both the parties to submit to him, the relevant documents in support of their contention and also to allow both the sides, to examine their witnesses as well as to cross-examine other witnesses and also to allow them to submit their arguments as well as counter-arguments and to record the evidence adduced in the enquiry and to submit an Enquiry Report.

While appointing the Enquiry Officer, it must be ensured that the Enquiry Officer so appointed should neither be a friend of the delinquent nor any enmity between them should have prevailed in the past. The fact of the appointment of the Enquiry Officer should also be intimated to the delinquent.

The documents to be forwarded to the Enquiry Officer are copy of the charge sheet, copy of the reply submitted by

the delinquent, the list of witnesses, if available and the list of documents to be produced in the enquiry, if available.

The Enquiry Officer, on being appointed, must inform in writing to the delinquent, the venue of enquiry, the date of enquiry, with a direction to him to appear on the said date at the particular venue for the said enquiry.

ii Presenting Officer:

The Presenting Officer is an officer appointed to present the case of the department before the Enquiry Officer relating to the allegations levelled against the concerned delinquent. The Presenting Officer will produce in the enquiry, all the relevant documents relating to the charge and also examine the witnesses of the Department and he will also cross-examine the witnesses of the delinquent. Actually, he plays the role of a Prosecutor.

iii Witnesses on the side of the Department:

They are persons who appear in the enquiry, to give statement, in support of the charges levelled against the delinquent.

iv Charge-sheeted employee's witnesses:

They are persons who appear in the enquiry to give their statement in defence of the charge-sheeted employee.

JOINT ENQUIRY:

If an allegation has been levelled against more than one delinquent, a joint enquiry can be held. But, that joint enquiry should be conducted only by an officer who is competent enough to conduct an enquiry as against the highest ranked officer.

FRESH ENQUIRY:

Besides, if the charge-sheeted employee makes a request for re-conducting the enquiry or the Disciplinary Authority feels, on the merits of the case, that the enquiry has to be re-opened and conducted again, in the interest of justice, the enquiry can be re-opened and conducted again. This is called a fresh enquiry. But, there is no rule to this effect.

It is always necessary that the enquiry should be conducted in the presence of the delinquent. However, if the delinquent fails to report for the enquiry at the appointed place, date and time, the Enquiry Officer can proceed with an *ex parte* enquiry, after providing one or two opportunities. That apart, if the delinquent wishes to have the assistance of a co-employee of his choice or assistance of an advocate, it can be allowed.

FURNISHING OF COPIES OF DOCUMENTS TO DELINQUENT:

Before proceeding further with the enquiry, if the delinquent has sought certain documents and if the documents are of voluminous nature, the delinquent should be permitted to peruse the said documents and to take notes of the same. If the delinquent has sought number of documents and if those documents are not connected with the allegations or they do not have any relevance with the allegations levelled and such documents are not necessary to put forth his effective defence, stating so, his request to peruse those documents or to get a copy of those documents may be rejected. If the documents are not voluminous, the delinquent is entitled to the copies of the said documents. These documents should be given, if he is in need of, even before he gives reply to the charge memo.

CONDUCT OF ENQUIRY:

Coming to the enquiry to be conducted on the dates specified for the enquiry, since charges are framed by the Department, the Presenting Officer, can examine the departmental witnesses and the delinquent may also be permitted to cross-examine them. So also, the department as well as the delinquent can mark the documents in the said enquiry. If the Enquiry Officer is not able to complete the enquiry in a day, he can also adjourn the same to subsequent dates and in such a case, the date of

next hearing should be intimated to the delinquent. Apart from this, the copies of the depositions of the witnesses enquired in the said enquiry have to be supplied daily to the delinquent and his signature should be obtained in the original. If copies are not given without any valid reason, that will vitiate the enquiry.

ENQUIRY REPORT:

After the completion of the enquiry, the Enquiry Officer must prepare a report called Enquiry Report. First of all, the Enquiry Report must contain the allegations levelled against the delinquent. If the Enquiry Officer comes to the conclusion that a particular allegation stands proved, he must give reasons for the same, i.e., based on whose evidence and based on what documents, he had arrived at such a conclusion. So also, if the Enquiry Officer is of the opinion that the charge is not proved based on oral evidence and based on the documents, he must give reasons for the same. That enquiry report has to be submitted to the Disciplinary Authority.

ROLE OF DISCIPLINARY AUTHORITY:

The Disciplinary Authority must forward a copy of the Enquiry Officer's report to the delinquent, calling for his reply for the same, by giving sufficient time. For some reason, if the delinquent seeks extension of time, normally, at the first instance, extension of time used to be given. But, if this dilatory tactics is going to be adopted by the delinquent to prolong the proceedings, then, stating that reason, extension of time for giving the reply, need not be given at all.

After receipt of the reply, the Disciplinary Authority must examine the reply with reference to the allegations levelled and the finding of the Enquiry Officer and he must pass an order, either dropping the entire charges, or, if in his opinion, the explanation submitted to the Enquiry Officer's report is not satisfactory, stating the reason as to why that explanation offered by the delinquent cannot be accepted and why the finding of the Enquiry Officer has to be accepted, he must give a finding with regard to the allegations levelled and after giving finding to all the allegations levelled, he can pass a final order.

What are the final orders to be passed are dealt with under Rule 8 of the said Rules. As per Rule 8, major penalties as well as minor penalties can be imposed. At this juncture, it should be borne in mind that after framing the charge under Rule 17(b), even a minor punishment can be imposed. But, after framing the charge under Rule 17(a), a major punishment cannot be imposed.

If the Disciplinary Authority is not accepting the finding of the Enquiry Officer, he can take a different view. For example, for the allegation levelled against a delinquent, if the Enquiry Officer has given a finding that charge is not proved and if the Disciplinary Authority is of the opinion that the finding of the Enquiry Officer that the charge is not proved, is not a correct finding, stating the reason, he must issue a show cause notice to the delinquent, indicating that he is differing from the finding of the Enquiry Officer with reasons. He must also call for an explanation from the delinquent and after getting his reply, he is at liberty to give a different finding and based on that finding, he can pass a final order. But, the procedures contemplated under Rule 17(b) need not be followed, if it is proposed to impose a member of a service, any of the penalties on the basis of the fact which led to his conviction by a Court of law. However, stating the same, orders can be passed. However, he shall be given a reasonable opportunity of making a representation, if he so desires and that representation shall be considered before imposing the penalty.

PERSONAL HEARING:

In addition to oral enquiry, if the delinquent so desires, before passing the final orders, an opportunity of personal hearing can be given to him.

INITIATION AND COMPLETION OF DISCIPLINARY ACTION:

Yet another aspect which must be borne in mind with regard to disciplinary action is that, it should be initiated no sooner the commission and omission said to have been committed by any staff or an officer, has been brought to notice of the Competent Authority. Similarly, it should also be completed within a reasonable period. What is the reasonable period depends upon the allegations levelled, witnesses to be examined and other aspects.

But, if the delinquent or the staff against whom disciplinary proceedings is initiated, is not co-operating in the disciplinary proceedings, two or three opportunities may be given to the delinquent and even after providing him such opportunities, if he is not co-operating, recording the same, the enquiry can be proceeded with further and final orders can be passed.

PROVISION OF APPEAL / REVIEW:

After passing the final orders, if the delinquent is not satisfied with the order passed, he can file an appeal. Time limit has been prescribed for filing an appeal under Rule 19. So also, Rule 23, deals with the manner as to how the Appellate Authority has to deal with the appeal. If the delinquent is not satisfied with the orders passed by the Appellate Authority also, he can file a writ petition invoking Article 226 of the Constitution of India.

SUSPENSION:

Another aspect of disciplinary proceedings is suspension. Suspension is an interim measure taken debarring a delinquent from exercising his powers and discharging his duties. The delinquent can be placed under suspension, where an enquiry into grave charges is contemplated or pending or a complaint of any criminal offence is under investigation or trial and such suspension is necessary in public interest. The subject of suspension is dealt with under Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Apart from the above contingencies, the delinquent who is detained in custody, whether on a criminal charge or otherwise, for a period longer than 48 hours, is deemed to have been placed under suspension.

When a penalty of dismissal, removal or compulsory retirement from service against a Government servant under suspension is set aside in appeal or review under these rules and the case is remitted for further enquiry, the order of suspension is deemed to have been continued from the original date of dismissal, removal or compulsory retirement.

On setting aside of the order of dismissal, removal or compulsory retirement, if the Competent authority takes a decision for further enquiry also, the delinquent is deemed to have been placed under suspension from the date of dismissal, removal or compulsory retirement. However, the suspension can be revoked at any point of time.

But, if the delinquent is placed under suspension, he has to be paid Subsistence Allowance. However, to avail himself of the benefit of Subsistence Allowance, as per the Fundamental Rules, he must reside in the headquarters. Without any valid reason, if Subsistence Allowance is not paid, that may also vitiate the final orders passed in the disciplinary proceedings. If, for some reason, the delinquent wants to leave the headquarters, he must get the permission of the Disciplinary Authority or the authority who had placed him under suspension. Either the Disciplinary Authority or the officer to whom such power has been given, can place a delinquent under suspension.

In the final orders, for example, if the delinquent is exonerated of all the allegations levelled against him, the suspension period has to be treated as "duty period". While passing the final orders, the Disciplinary Authority is expected to pass an order as to how the suspension period has to be treated.

After passing the suspension order, whether it is necessary to continue to keep the delinquent under suspension, has to be seen by reviewing the order of suspension, once in six months.

If the delinquent makes a request to change the headquarters, for certain reason, the Disciplinary Authority can examine the reason and also order for change of headquarters. If the delinquent requests the Disciplinary Authority to permit him to leave the headquarters and if the reason given by the delinquent is an acceptable one, such permission can be granted.

If the Disciplinary Authority is of the opinion that for certain commissions and omissions, the delinquent or a staff member has to be placed under suspension, he should first examine as to whether instead

of straight-away resorting to suspension, the delinquent or the concerned staff member can be transferred.

Suspension of the delinquent should be in public interest, that is to say, his continuance in office should be a hindrance to the enquiry to be conducted or against the public interest. To say in other words, if the delinquent is engaged himself in an activity which is prejudicial to the safety or public interest of the nation, in that case, allowing him to be in service will be against public interest. For example, if a trap is set up as against a particular delinquent and in the trap conducted, money is also recovered from him, in that case, in public interest, he should be placed under suspension. The aspect of suspension is dealt with exhaustively in G.O.Ms.No.40, Personnel and Administrative Reforms Department, dated 30.01.1996.

MANNER OF DEALING WITH PROMOTION DURING PENDENCY OF DISCIPLINARY PROCEEDINGS:

During the pendency of the disciplinary proceedings, if the name of the delinquent comes within the zone of consideration for further promotion, what should be done, has to be seen. If the charge is framed under Rule 17(a), pendency of a charge is not a bar for promotion. If the charge is framed under Rule 17(b), then, pendency of the charge is a bar for promotion. However, for the charge framed under Rule 17(a), if final orders are passed imposing a minor punishment also, during the currency of punishment, the delinquent is not entitled for promotion. However, after the currency of punishment, he is entitled to be promoted.

In the disciplinary proceedings, if the delinquent is exonerated of the charges, then, he is entitled for promotion on the date on which his junior was promoted. But, as far as monetary aspect is concerned, he is entitled for the monetary benefit only from the date on which he assumes office of the promotional post. However, from the date on which his junior was promoted, his pay has to be fixed notionally in the promotional post.

As far as the charge framed under Rule 17(b) is concerned, during the pendency of the charge memo and also during the currency of punishment, one is not entitled for promotion. However, certain relaxations have been given by way of Government Orders.

CONDUCT OF DEPARTMENTAL PROCEEDINGS AND CRIMINAL CASE SIMULTANEOUSLY:

When a criminal case is filed solely on the basis of the criminal offence committed by the staff member or judicial officer, which is, in no way, connected with the discharge of his official duties, there is no need to pursue departmental action. However, the concerned staff member or judicial officer can be placed under suspension. But, the ultimate departmental action can be initiated against the delinquent after the result of the criminal case. On the other hand, when criminal action is initiated with regard to his official duty, both the departmental action as well as criminal case can be proceeded with simultaneously. However, in the opinion of the Competent Authority, if departmental action is proceeded with, it will have an impact on the criminal trial, then, departmental action can be stopped till the criminal trial is over.

District Judges and Chief Judicial Magistrates would be required to deal with not only judicial officers but also ministerial staff and basic servants. As far as ministerial staff are concerned, selection is made by the Public Service Commission. In certain cases, for example, appointments are made on compassionate ground and certain posts are filled through Employment Exchange. If the appointment is made based on the selection by the Public Service Commission, the concerned employee has to be put on probation. Besides, appointments can be made under Rule 10(a)(i) of the Subordinate Service Rules, i.e., after some time, their service will be regularised. Number of Government Orders have been issued in this regard. If one is appointed in a permanent post, then, he must be put on probation.

After the completion of period of probation prescribed, declaration of probation has to be made. If, for any reason, the period of probation has to be extended, before the expiry of probationary period, the concerned staff should be informed of the extension of probation or else, his probation is deemed to have been declared.

Before the declaration of probation, if, in the opinion of the Competent Authority, the execution of the work of the concerned staff is not satisfactory or his conduct is not good, or he has committed certain commission and omission, two options are available. The first option is that if his work is not satisfactory, his completion of probation need not be declared and his service can be dispensed with. The second option is that if he had committed any commission and omission, the Competent Authority has got a right to take disciplinary action against the concerned staff, but in that case, the procedures which have to be followed for a regular Government servant, must be followed here also. The reason as to why this is required in a disciplinary proceedings is that if a charge is framed and a punishment is imposed, that causes a stigma on the concerned staff member and that will have civil consequences. Under such circumstances, without providing an opportunity or without conducting an enquiry, no final order can be passed.



**LEGAL SERVICES – DUTY OF EVERY JUDGE PRACTICE –
PROCEDURE & TECHNIQUES FOR (I) LEGAL AID CAMPS;
(II) MEGA LOK ADALATS & (III) CONTINUOUS LOK
ADALATS & MEDIATION CLINICS**

**Justice T.MATHIVANAN,
Judge, High Court, Madras**

**LEGAL AID
ISSUES, CHALLENGES AND SOLUTIONS -
AN EMPIRICAL STUDY**

EXORDIUM:

The prime obligation of the State is to provide free legal aid to the poor, indigent and marginalized and it is their right guaranteed under the Constitution of India to demand and avail.

The philosophy of legal aid as an inalienable element of fairness is evident from *Mr. Justice Brennan's* (Legal Aid and Legal Education, p.94) well known words:

“Nothing rankless more in the human heart than a brooding sense of injustice. Illness we can put up with. But injustice makes us want to pull things down. When only the rich can enjoy the law, as a doubtful luxury, and the poor, who need it most, cannot have it because its expense puts it beyond their reach, the threat to the continued existence of free democracy is not imaginary but very real, because democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness. (M.H.Hoskot v. State of Maharashtra, AIR 1978 SC 1548 : (1979) 1 SCR 192 : (1978) 3 SCC 544 : 1978 UJ 847 : 1978 Cr LJ 1678 : 1978 CrLR 362 : 1978 SCC (Cr) 468)

As it is understood by everybody, free legal services to the poor and needy is an essential element of any reasonable fair and just procedure. In **Gideon v. Wainwright** [(1963) 372 US 335 : 9 L ed 2d 799, quoted in Hussainara Khatoon v. State of Bihar, AIR 1979 SC 1369 (1373) : (1979) 3 SCR 532 : (1980) 1 SCC 98 : 1979 Cr LJ 1045 : 1980 SCC (Cr) 40], **Black, J.** has observed:

“Not only these precedents but also reason and reflection require us to recognise that in our adversary system of criminal justice, any person held into Court, who is too poor to hire a lawyer cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both State and Federal quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defences. That Government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the wide-spread belief that lawyers in criminal Courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but is in ours. From the very beginning State and national constitutions and laws have laid great emphasis on the procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realised if the poor man charged with crime has to face his accusers without a lawyer to assist him.”

In a participatory democracy, it is essential that citizens have faith in their institution. A judiciary that is seen as fair and independent is an important component in sustaining their trust and confidence.

An impartial independent judiciary is the guardian of individual rights in a democratic society. In order for citizens to have faith in their court system, all people must have access to the courts when necessary.

The Courts in criminal and civil functioning in our Nation must see, how the legal profession contributes to making 'equal justice for all' a reality. Citizens agree to limitation on their freedom in exchange for peaceful coexistence, and they expect that when conflicts between citizens or between the state and citizens arise, there is a place that is independent from undue influence, that is trustworthy, and that has authority over all the parties to solve the disputes peacefully.

It is also the responsibility of the State to ensure that fair and impartial justice is made available at the door steps of the poor and economically weaker sections irrespective of their caste, creed, religion, geographical position at free of cost. A fundamental value of Indian system of justice is that the stability of our society depends upon the ability of the people to readily obtain access to the courts, because the court system is the mechanism recognized and accepted by all to peacefully resolve disputes. Denying access to the courts forces dispute resolution into other arenas and results in vigilantism and violence.

As envisaged under Article 15 of the Constitution of India, the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Based on this cardinal principle, no citizen shall on the grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability.

Article 14 of the Constitution of India provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Human equality at the spiritual level has been preached and practiced in our country since ages. This is the meaning of, and is derived from, the Vedantic teaching of the same divine *Atman* in all beings-integral, inalienable, and full, and the *samatvam* and the *sama-darsitvam*, equality and sameness of vision, flowing from it.

Equality has been and is the single greatest craving of all human beings at all points of time. It has inspired many a great thinker and philosopher. All religious and political schools of thought swear by it, including the Hindu religious thought, if one looks to it ignoring the later crudities and distortions.

However, to provide and avail the free legal assistance certain difficulties and challenges are being experienced in our nation. The issues with regard to the provisions of free legal assistance to the needy people getting increased day-by-day and the challenges have also been taking it's growth rapidly. Under these circumstances, the National Legal Services Authority, being the Strewed, with the strength of the State Legal Services Authorities, being it's fore front warriors, is taking relentless effort to find out solutions with the active assistance of the Government both Central and State to tackle the situation.

Let us analyse the difficulties (issues) and challenges in providing free legal assistance to the poor and marginalized people and also reach out the solutions.

LEGAL AID - A HISTORICAL BACKGROUND:

In the early years 1876 – 1965, Civil legal assistance for poor people in the United States began in New York City in 1876 with the founding of the Legal Aid Society of New York. The legal aid movement caught on in urban areas. By 1965 virtually every major city had some kind of program. One hundred fifty-seven organizations had employed over 400 full time lawyers with an aggregate budget of nearly \$4.5 million. There was no national program.

(Ref: The early history of legal services is described in EARL. JOHNSON JR., JUSTICE AND REFORM: The Formative years of the American Legal Services Program (1974), and John A. Dooley & Alan W. Houseman, Legal Services History ch.1 (Nov 1985) (unpublished manuscript, on file with National Center on Poverty Law).

Reginald Heber Smith's 1919 book, *Justice and the Poor*, promoted the concept of free legal assistance for the poor. *Smith* challenged the legal profession to consider it an obligation to see that justice was

accessible to all, without regard to ability to pay. "Without equal access to the law," he wrote, "the system not only robs the poor of their only protection, but it places in the hands of their oppressors the most powerful and ruthless weapon ever invented."

National, state, and local bar associations responded to Smith's call to arms. The American Bar Association established the Standing Committee on Legal Aid and Indigent Defendants; state and local bars sponsored legal aid programs. However, these initiatives made only modest headway. Legal aid generally gave perfunctory service to a high volume of clients. Going to court was rare. Appeals were nonexistent. Administrative representation, lobbying and community legal education were not contemplated. Legal aid had little on those it served and no effect on the client population as a whole. Much of what we know today as welfare law, housing law, consumer law, or health law did not exist.

England had entered a new era with the 'Legal Aid and Advice Act, 1949'. The procedure known as *in forma pauperis*, which had been introduced in England in 1495 by Victorian times had been largely superseded and somewhat enlarged by a poor person's procedure under rules of court, but it was confined to the extremely poor, had no adequate administrative basis, was dependent on the charity of private practitioners, and was restrictively operated by the courts. It covered only litigation in the higher courts. In criminal cases a traditional "*dock brief*" system provided representation for prisoners in the dock who could produce a fee of one guinea (1.05 pounds), but no opportunity was afforded for a proper defense to be prepared.

A start, however, had already been made in developing a criminal legal aid system under statute. This was eventually completed in 1933, but was, again, most restrictively operated by the judges. Poor man's lawyer centers had begun to appear in London and a few large cities, in which private practitioners attended evening sessions to give legal advice. A few centers had been established by charitable foundations in which lawyers were employed to give advice and a somewhat more extended legal service. In addition, many solicitors undertook a certain amount of

charitable work in their own offices for the poor who dared to consult them.

But, the system established in 1949 was something entirely new in the long history of the law. This becomes apparent when its main principles are stated:

1. Legal aid was no longer to be a matter of charity but a national responsibility funded by the state.
2. It was to form an integral part of the administration of justice and, accordingly, be a matter of civic right.
3. Those granted legal aid were to be required to pay no more towards the cost than they could be reasonably expected to provide out of their own resources, and if they could afford nothing, nothing would be required.
4. The services provided were to be the same as were available to the paying client with sufficient means to meet the cost, though not so ample as to make it unnecessary for him to consider his own pocket, and the person assisted was to be entitled to consult the solicitor of his own choice.
5. No restrictions or controls were to be imposed save as might be necessary to avoid abuse of the facilities, whether by the client or the legal adviser.
6. The lawyers providing the services were to be properly remunerated.
7. The new legal aid system was to embody constitutional protections to ensure both the professional independence of the lawyers in their service of their assisted clients and of the body administering the system. To further this, the administration was to be committed to the Law Society, acting in conjunction with the General Council of the Bar.

The Legal Aid and Advice Act 1949 had been introduced by the Labour Government that had ousted the **Churchill administration** after the war. The Labour administration was pursuing a policy of nationalization and of building the first welfare state. This legal aid system could be regarded as a first step towards the nationalization of the English legal profession and the erosion of its independence, but it wasn't. The system had been devised by the Law Society itself in the early days of the war, and it had been recommended by the **Rushcliffe committee** set up by the **Churchill Government** in 1944. The constitution of that committee had been of the highest calibre and it was entirely non-political. The bill had been welcomed in both houses of Parliament and was enthusiastically supported by the Conservative opposition. Lawyers and laymen alike were anxious to see it implemented.

While writing Foreword in 1919, to Reginald Heber Smith's, "**Justice and the Poor**", **Elihu Root** has observed that;

"Legal aid work essentially is a state of the individual lay mind, an individual professional point of view, and the answer of the organized bar to a public demand for a means for implementing some of the basic legal principles undergirding the American way of life. This activity is carried on generally in a material framework of law office, bricks, mortar, desks, filing cabinets, and books. But at the center of the concept there are always a client asking help and a lawyer giving it. Functionally always a client asking help and a lawyer giving it. Functionally there is a meeting of their minds, an exchange of ideas, the transfer of a professional commodity."

John S. Broadway, Professor of Law, Duke University; Director Legal Aid Clinic, Duke University, has stated in his Article – Legal Aid – Its Concept, Organization And Importance, that;

"Legal aid works is not only the client's state of mind. It is also a point of view. The statutes in the various jurisdictions which define the phrase "practice of law" award to the

members of the bar what amounts to a monopoly. The privileges of this monopoly, of course are fully balanced by the obligations. One of these obligations, recognizing that laws and principles of justice do not implement themselves, devolves upon the members of the bar a large portion of the duty to see that justice according to law is actually administered to each of our fellow citizens, if, when and as he needs it."

Pollock & Maitland express it in these words. "The old procedure required of a litigant that he could appear before the court in his own person and conduct his own cause in his own words." (Pollock Maitland, History of English Law 211 (2nd ed. 1899). To the same general effect, see Cohen, History of the English Bar 5 (1929).

With reference to this, **Professor John S. Broadway** has stated in his article;

"The need of the low income client for legal aid is not new. We are told that in an early stage of the development of law in a comparatively primitive world it was customary not to allow the individual litigant a lawyer. The right to be represented by counsel is an improvement rather than a basic concept in Anglo American procedure. Even today the right to appear in propria persona survives, though now it seems necessary to save it from extinction.

Lawyers did not spring full blown into the judicial arena. They were called into being little by little as the needs of clients in a society gradually acquiring civilization also became more complex. Only specialized services could meet the need. Lawyers have had to win the good opinion of the public. This condition may continue."

LEGAL AID WORK IN THE UNITED STATES:

According to Maguire, who has written the early history of the New York Legal Aid Society, The Lance of Justice (1928);

“The first legal aid organization of which we have record opened its doors in New York City in 1876. The motivating factor was a recognized need for the service. Initially the demand, perhaps inarticulate, came from a group of immigrants. Only later was the service made available to all applicants who could not pay a fee. The basic concept may not have been American. Some early publications suggest that there were earlier efforts in this direction in Germany and the Scandinavian countries.”

Since about 1930 there had been developing another phase of the organized legal aid movement. Gradually it has dawned upon us that the poor client in the rural country who for some reason does not have the aid of a lawyer can suffer as much injustice in a given case and be just as much disturbed as can his neighbour in the city. It was also clear that the same sort of obstacles which keep the latter from applying to the metropolitan private law office operate more or less effectively to deter the country man's visit to the lawyer in the rural county seat. A new goal, organized service in every county in the United States, appropriate to local needs, gradually took shape. The question is what can we do about it.

EQUAL JUSTICE IN PRACTICE

The idea of mere access to the courts in theoretical or legal sense is not enough; rather, it is the results that flow from the decisions made from the courts that give it meaning. For example, the value of 'access' is evident when the courts decide that no one, especially those in positions of power, is above the law, or when access requires the right to counsel in cases where one's liberty is in jeopardy.

The practical application of the fundamental right to access the courts under the U.S. Constitution has been put to the test throughout the nation's history. It has been claimed and challenged by many. Early on, the Supreme Court established its authority over all disputes. In 1807, **President Thomas Jefferson** claimed executive privilege in a case against **Aaron Burr**, whom Jefferson accused of treason. In his defense, Burr

asked the Court to issue a subpoena compelling Jefferson to provide his private letters concerning Burr. Jefferson refused. **Chief Justice John Marshall** denied the president's argument and ruled that Jefferson's claim that disclosure of the documents would imperil public safety was a matter for the Court to judge, not the president.

The issue of presidential immunity was heard again almost 200 years later. In 1974, a special prosecutor subpoenaed White House tape recordings in an effort to determine if the president had been involved in a political scandal known as Watergate. This time, the American President **Richard Nixon**, as he then was, sought to have the subpoena quashed on the grounds of executive privilege. The Court ruled eight to zero that the tapes should be released, because the Court determined that no person, not even the president of the United States, is completely above the law. In the opinion that followed, Chief Justice Warren Burger wrote, 'Neither the doctrine of separation of powers, nor the need of confidentiality of high level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances.'

THE LEGAL PROFESSION'S COMMITMENT:

The President of American Bar Association writes as under:

The American Constitution establishes the fundamental right of access to the judicial system. The courts, as guardians of every person's individual rights, have a special responsibility to protect and enforce the right of equal access to the judicial system. If the courts have this special responsibility but no judicial police force to enforce their rulings, why is there general compliance? Two important reasons stand out:

- (1) public trust and confidence in the system overall, and
- (2) a strong commitment by the organized bar to work with the judiciary to establish and demand compliance of judicial decisions.

As president of the largest bar group in the United States, I consider it important to discuss how this second point intersects with the judiciary. If the judiciary is the guardian of the rights of the people, the organized bar and its lawyers are the foot soldiers. The legal profession and the practicing bar bear a large share of the burden. With this in mind, the American Bar Association (ABA) has established 11 goals to be pursued in its quest of 'Defending Liberty and Pursuing Justice.' The second of these goals is 'To promote meaningful access to legal representation and the American system of justice for all persons regardless of their economic or social condition.'

It was in defense of this goal that the ABA submitted its amicus brief on behalf of disabled Americans in **Tennessee v. Lane**. When the Watergate scandal broke, **Chesterfield Smith**, then president of the ABA, issued a press release that stated '**no man is above the law**' a quote that later appeared in all major U.S. Newspapers. Subsequently, the ABA House of Delegates-composed of 474 legal representatives from all 50 states and the U.S. territories-voted unanimously against granting legal immunity to President Nixon.

During the reign of Henry II, in the Twelfth Century, the concepts of 'access to justice' and 'rule of law' took shape in England when the King agreed for establishment of a system of writs that would enable litigants of all classes to avail themselves of the King's justice. Soon, the history revealed that with the abuses of King's Justice by King John, the rebellion in 1215 was broken out, which led to carving of **Magna Carta**, which became the foundation for the British constitutionalism.

Legal Aid being the primordial right of every citizen, reliance could be placed on the very tenets of the **Magna Carta** which was formulated well over seven centuries ago, where the beginnings of equal justice under the law were marked by the inscription in the 40th paragraph of the Charter as enshrined hereunder:

"To no one will we sell, to no one will we deny or delay right or justice."

The modern concept of justice is not the one that was propounded by the Natural Law Schools theorists, nor was it crystallized from the aphorisms of the Positivists, but the modern notion was a milieu of sociological jurisprudence with a tinge of critical legal thought. With specific reference to India, this means that access to justice was not about bringing the culprits to the books, but it extended far beyond by imposing a positive duty to the State to restore it all that was due.

In Britain, the history of the organized efforts on the part of the State to provide legal services to the poor and needy dates back to 1944, when *Lord Chancellor, Viscount Simon* appointed *Rushcliffe Committee* to enquire about the facilities existing in England and Wales for giving legal advice to the poor and to make recommendations as appear to be desirable for ensuring that persons in need of legal advice are provided the same by the State.

The earliest Legal Aid movement appears to be of the year 1851 when an enactment was introduced in France for providing legal assistance to the indigent.

EVOLUTION OF LEGAL AID MOVEMENT IN INDIA:

Before we endeavor for the search of the evolution of Legal Aid Movement in India, it may be more relevant to refer the decision of U.S. Supreme Court in *Raymond Hamil, 32 L ed. 2d. 530 (535)*, which has extended the processual facet of poverty jurisprudence, *Douglas.J.*, has explicated as under:

“The right to be heard would be, in many cases of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules

of evidence. Left without the aid of counsel he may put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defence, even though he has a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate or those of feeble intellect."

The widespread insistence on free legal assistance, where liberty is in jeopardy, is obvious from the Universal Declaration of Human Rights:

'Article 8: Everyone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted by the Constitution or by law.'

Article 14 (3) of the International Covenant on Civil and Political Rights guarantees to everyone:

"The right to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing, to be informed if he does not have legal assistance, of his right; and to have legal assistance assigned to him in any case where the interests of justice shall require, and without payment by him in any such case if he does not have sufficient means to pay for it."

FREE LEGAL AID:

Free legal aid to the poor is an essential element of fair trial procedure for securing justice to all on the basis of equal opportunity for defence. By the mid-twentieth century the above principle was realised all over the world. In England, it was started by the Legal Aid Act, 1949, in civil cases and it extended to criminal cases in 1967. The Courts in Britain have established the concept of legal aid that, if the party has cause of

action but has no money to pay for the fee of lawyers, he is entitled to get legal assistance from the Government Exchequer. In practice it is made available almost automatically when the accused shows that he has no means to defend his case.

Ancient India was not aware of the concept of equal justice. It is revealed from the history that the King was empowered by Manusmriti to administer justice without minding his whims emphasizing on the religion. **Manusmriti** says that the sanctity of administration of justice in social, economic and political aspects has to be preserved and developed.

In ancient period, Hindus were administered by Hindu Law in deciding civil and religious of which the parties were Hindus.

In the medieval period, the King was required to administer Islamic Law in deciding all cases irrespective of religion of the parties to the suit. It was **Jahangir**, who took the credit for dispensing even-handed justice to all irrespective of birth, rank of the official position. Infact, he used to say that God forbid to favour nobles or even princes in that matter of dispensation of justice. Because of his fair hearing the justice was known as 'Jahangiri Nyaya.

In the modern period, as stated in the fore-going paragraphs, the earliest Legal Aid movement appears to have been emerged in the year 1851, where some enactment was introduced in France for providing legal assistance to the indigent.

In the year 1944, **Lord Chancellor Viscount Simon** had appointed *Rushcliffe Committee* to enquire about the facilities existing in England and Wales for giving legal advice to the poor and to ensure that the persons in need of legal advise are provided the same by the State. The Committee had recommended four-tier machinery i.e.,

- (i) at Taluka (tehsil) level,
- (ii) at district level,
- (iii) at greater Bombay level, and
- (iv) at State level]

for giving legal aid although the same could not be implemented due to certain reasons. In the same year i.e., in 1944, another Committee on '**Legal Aid and Legal Advice**' was appointed under the Chairmanship of **Justice Arthur Trevor Harries**, the then Chief Justice of Calcutta High Court. This Committee recommended giving legal assistance to the poor.

It is revealed from the available sources of information that from the year 1952, the Government of India had also started addressing to the question of legal aid for the poor in various Conferences of Law Ministers and Law Commissions. In 1960, some guidelines were drawn by the Government for legal aid schemes. In different States, legal aid schemes were floated through Legal Aid Boards, Societies and Law Departments.

In 1980, a Committee at the national level was constituted to oversee and supervise legal aid programmes throughout the country under the Chairmanship of **Mr. JUSTICE P.N. BHAGWATI**. This committee came to be known as CILAS (Committee for Implementing Legal Aid Schemes) and started monitoring legal aid activities throughout the country.

The introduction of **Lok Adalats** added a new chapter to the justice dispensation system of this country and succeeded in providing a supplementary forum of the litigants to conciliatory settlement of their disputes. The Committee so appointed has also evolved a model scheme for legal aid programmes. Subsequently, on a review of the working of the Committee, certain deficiencies were noticed and it was thought to constitute statutory legal services authorities at the National, State and District levels so as to provide for the effective monitoring of legal aid programmes.

In 1987, **Legal Services Authorities Act** was enacted to give a statutory base to legal aid programmes throughout the country on a uniform pattern. This Act was finally enforced on 9th November, 1995 after certain amendments were introduced therein by the Amendment Act, 1994. **Mr. JUSTICE R.N. MISHRA**, the then Chief Justice of India, had played a key role in the enforcement of the Act.

Although the free legal aid was recognized by the Court as a fundamental right under Article 21, the scope and ambit of the right was not made clear. This left out was filled in ***Sunil Batra vs. Delhi Administration, AIR 1978 SC 1675 : (1979) 1 SCR 392 : (1978) 4 SCC 494 : 1978 Cr LJ 1741 : 1979 SCC (Cr) 155***. It was held that the legal aid shall be available to the prisoner in two situations:

- i. to seek justice from prison authorities, and
- ii. to challenge the decision of such authorities in the Court.

Thus, the requirement of legal aid was brought about in not only the judicial proceeding, but also in the proceedings before the prison authorities which were an administrative proceeding.

CONCEPT OF LEGAL AID:

The expression "legal aid" has not been defined anywhere in ***Legal Services Authorities Act, 1987***. However it is generally defined that;

"Legal aid is the provision of assistance to people otherwise unable to afford legal representation and access to the court system. Legal aid is regarded as central in providing access to justice by ensuring equality before the law, the right to counsel and the right to a fair trial."

A number of delivery models for legal aid have emerged, including duty lawyers, community legal clinics and the payment of lawyers to deal with cases for individuals who are entitled to legal aid. Legal aid is essential to guaranteeing equal access to justice for all, as provided for by Article 6.3 of the European Convention on Human Rights regarding criminal law cases. Especially for citizens who do not have sufficient financial means, it will increase the possibility, within court proceedings, of being assisted by legal professionals for free (or at a lower cost) or of receiving financial aid.

The meaning of the expression "Legal Aid" has also been defined in **Government of Gujarat, Report of the Legal Aid Committee, 1971** as under;

"Legal Aid, in its common sense, conveys the assistance provided by the society to its weaker members in their effort to protect their rights and liberties, bestowed upon them by the laws. In the words of Justice P.N.Bhagwati, "Legal Aid means providing an arrangement in the society so that the machinery of administration of justice becomes easily accessible and is not out of reach of those who have to resort to it for enforcement of the rights given to them by law." In such an arrangement, Justice Bhagwati emphatically observes, "the poor and the illiterate should be able to approach the courts and their ignorance and poverty should not be an impediment in the way of their obtaining justice from the courts."

It has also been defined in **Government of India, Report of the Expert Committee on Legal Aid – 'Processual justice to the People', May 1973** as under;

"The spiritual essence of a legal aid movement consists in inviting law with a human soul: its constitutional core is the provision of equal legal service as much to the weak and in want as to the strong and affluent, and the dispensation of social justice through the legal order."

The ***Encyclopedia Britannica*** defines "Legal Aid" as phrase which is acquired by usage and court decisions, a specific meaning of giving to person of limited means grants or for nominal fees, advice or counsel to represent them in court in civil and criminal matters i.e., the professional legal assistance given, either free or for a nominal sum, to indigent persons in need of such help.

Legal Aid is the method adopted to ensure that no one is debarred from professional advice and help because of lack of funds. Thus, the provisions of legal aid to the poor are based on humanitarian considerations

and the main aim of these provisions is to help the povert-stricken people who are socially and economically backward.

Lord Denning while observing that Legal Aid is a system of government funding for those who cannot afford to pay for advice, assistance and representation said:

“The greatest revolution in the law since the post-second World has been the evolution of the mechanism of the system for legal aid. It means that in many cases the lawyers’ fees and expenses are paid for by the state: and not by the party concerned.”

In ***Bihar Legal Support Society vs. The Chief Justice of India & Anr., 1987 AIR 38 : 1987 SCR (1) 295***, Hon’ble **Mr. Justice P.N. Bhagwati**, Chief Justice of India (as he then was) has observed that;

“In fact, this Court has always regarded the poor and the disadvantaged as entitled to preferential consideration than the rich and the affluent, the businessmen and the industrialists. The reason is that the weaker sections of Indian humanity have been deprived of justice for long, long years: they have had no access to justice on account of their poverty, ignorance and illiteracy. They are not aware of the fights and benefits conferred upon them by the Constitution and the law. On account of their socially and economically disadvantaged position they lack the capacity to assert their fights and they do not have the material resources with which to enforce their social and economic entitlements and combat exploitation and injustice. The majority of the people of our country are subjected to this denial of access to justice and, overtaken by despair and helplessness, they continue to remain victims of an exploitative society where economic power is concentrated in the hands of a few and it is used for perpetuation of domination over large masses of human beings. This court has always, therefore, regarded it as its duty to come to the rescue of these deprived and vulnerable sections of Indian humanity

in order to help them realise their economic and social entitlements and to bring to an end their oppression and exploitation."

CONCEPT OF LEGAL SERVICES:

The phrase "***Legal Services***" has been defined under ***Section 2(c) of the Legal Services Authorities Act, 1987*** as under;

"Legal Service includes the rendering of any service in the conduct of any case or other legal proceeding before any Court or other authority or tribunal and the giving of advice on any legal matter."

The object being to provide free legal aid service which is also the one enshrined under Article 39-A of the Constitution of India."

Literally, legal service means help or assistance or free service in the field of law. The apex court has categorically stated in its various decisions that legal aid is not a charity but it is a duty of a welfare state.

The provisions of ***Section 2(1)(c)*** encompasses the following three ingredients;

- 1) Legal services are provided in conducting legal proceedings;
- 2) Legal proceeding may be before courts or tribunals or any other authority; and
- 3) Legal service includes legal advice also.

EQUAL JUSTICE AND FREE LEGAL AID:

Whenever the phraseology namely *equal justice and free legal aid* comes to the mind of the Court, insofar as our Indian system of Administration of Justice is concerned Article 39-A of Constitution of India will take its magnitude.

Article 39-A has been inserted by the constitution (Forty-second Amendment) Act, 1976, Section 8 (w.e.f. 03.01.1977). ***Article 39-A*** enacts as under:

39-A. Equal justice and free legal aid.- The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

The directive principles envisaged under Article 39-A is that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. This Article emphasizes that free legal service is an inalienable element of 'reasonable fair and just' procedure for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice.

The right to legal aid was examined by the Supreme Court in detail in *Hussainara Khaton vs. State of Bihar, AIR 1979 SC 1360 (1374) : 1979 3 SCR 169 : (1980) 1 SCC 81 : 1980 SCC (Cr 23) : 1979 Cr.LJ 1036 : 1979 CAR 197*, where prisoners were kept in Bihar jails without a trial for a longer period than that to which they would have been sentenced, if convicted. *P.N.Bhagwati, J.*, in this case opined that a procedure which did not make available the legal services to an accused, who was too poor to afford a lawyer, could not be regarded as 'reasonable, fair and just.' Thus, the fundamental right of legal aid was held to be implicit in the procedural requirement of Article 21 of the Constitution.

P.N.Bhagwati, J., has further held that:

"The right to free legal services is, therefore, clearly an essential ingredient of 'reasonable, fair and just' procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the State is under

a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require provided of course the accused person does not object to the provision of such lawyer."

The directive principles in Article 39-A has been taken cognizance by the Supreme of India along with the provisions of Article 21 in ***M.H.Hoskot v. State of Maharashtra, AIR 1978 SC 1548 : 1978 Cr LJ 1945*** and ***State of Hussainara Khatoon v. Home Secretary, State of Bihar, AIR 1979 SC 1369 : (1979) 3 SCR 532 : (1980) 1 SCC 98 : 1979 Cr LJ 1045 : 1980 SCC (Cr) 40*** to lead to certain guidelines in the administration of justice. One of these is that when the accused is unable to engage a counsel owing to poverty or similar circumstances the trial would be vitiated unless the State offers free legal aid for his defence to engage a lawyer to whose engagement the accused does not object. In recent years it has increasingly been realised that there cannot be any real equality in criminal cases unless the accused gets a fair trial of defending himself against the charge laid and unless he has competent professional assistance. In such a case the Court possess the power to grant free legal aid if the interest of justice so require. This dictum has also been laid down by the Honourable Supreme Court in ***Ranjan Dwivedi v. Union of India, AIR 1983 SC 624 (629) : (1983) 2 SCR 982 : (1983) 3 SCC 307.***

ACCESS TO JUSTICE:

Access to justice has been universally recognized as one of the most important basic human rights and this right is included in Article 39-A of the Constitution as a Directive Principle of State Policy with a view to ensuring equal access to the people irrespective of their caste, creed or resources. But, sadly this principle was not implemented in its letter and spirit up to 1978. Strong awareness of rendering legal aid and advice has resulted in Supreme Court's interpretation of Articles 21 and 19 (1)(d) and (5) as incorporating provisions for legal aid. (Ref. AIR 2000 Journal Section, 17 at p. 19)

RIGHT OF CHOICE OF LAWYER FOR LEGAL DEFENCE:

Article 22(1) of the Constitution directs that no person who is arrested shall be denied the right to consult and to be defended by a legal practitioner of his choice. This legal right is also available in the Code of Criminal Procedure, under Section 303. The Courts have held that from the time of arrest, this right accrues to the arrested person and he has the right of choice of a lawyer. The accused may refuse to have a lawyer but the Court has to provide an *amicus curie* to defend him in serious cases. The Courts have also held that the indigent accused have a right to legal aid. This requirement is to ensure that poverty does not come in the way of any accused getting a fair trial. (ref. AIR 2001 Journal Section, 138 at p. 142)

However, the right to 'consult and be defended by a legal practitioner of his choice' under Article 22(1) is not available to any person detained under the law relating to prevention detention. In ***Francis Coralie Mullin vs. Union Territory of Delhi, AIR 1981 SC 746 : (1981) 2 SCR 516 : (1981) 1 SCC 608 : 1981 Cr LJ 306***, the petitioner, a British national, was detained under the Conservation of Foreign Exchange and Prevention of Smuggling Act, 1974. She felt considerable difficulty in finding lawyer for her defence for which she moved the Supreme Court. ***Bhagwati, J., relying on the view taken in Madhav Hayawadanrao Hoskot vs. State of Maharashtra, AIR 1978 SC 1548 : (1978) 3 SCC 544 : 1978 Cr LJ 1678***, and ***D.Bhuvan Mohan Patnaik vs. State of A.P., AIR 1974 SC 2092 : (1975) 2 SCR 24 : (1975) 3 SCC 185***, extended the right to legal aid to the said detenu as well. In the opinion of the learned Judge, the preventive detention law should also satisfy the test of Article 21. Thus, the right of legal aid was made available to the detenu to consult a legal counsel of his choice.

ACCUSED TO BE INFORMED OF HIS RIGHT FOR FREE LEGAL AID:

A significant question regarding legal aid is : whether the accused has to ask for the lawyer where the majority of the people in a country are illiterate and backward and even the literate people are not aware of their rights. In ***Khatri v. State of Bihar, AIR 1981 SC 928 : (1981) 1 SCC 635 : 1981 SCC (Cr) 235***, it was held that it was not necessary that the accused

must ask for legal assistance. Even when there is no such demand, such aid must be made available. Further, the Supreme Court imposed a duty upon the trial Court to tell the accused about his right. The Supreme Court required that the Magistrate or the Sessions Judge before whom the accused was produced must inform him about his right to counsel for his defence. It would make a mockery of legal aid if it were to be left to a poor ignorant and illiterate accused to ask for free legal services.

Khatri v. State of Bihar, AIR 1981 SC 928 : (1981) 1 SCC 635 : 1981 SCC (Cr) 235, enunciates that the Magistrate or the Sessions Judge, before whom the accused appears, is under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the ***State. Suk Das v. Union Territory of Arunachal Pradesh, AIR 1986 SC 991 : (1986) 1 SCR 590***, also reiterates the above proposition. Thus the duty is cast on the Magistrate or the Sessions Judge to inform the accused concerned about his entitlement to have engaged a counsel at the cost of State. The rules regarding the legal aid to unrepresented accused persons in cases before the Courts of Session also provide the same thing. In the instant case, when the learned Judge allowed the counsel engaged by the Legal Aid Committee to withdraw the *vakalatnama*, he should have again apprised the accused of the fact that he was entitled to the services of the counsel at the cost of State, and on the accused's giving consent, he should have referred the matter again to the Legal Aid Committee for engaging another lawyer. Instead of doing so, he shut the doors of justice to an indigent person, who was in custody, and left him unrepresented. The course adopted by the Additional Sessions Judge is against the spirit of the provisions and rules and the accused was, therefore, deprived of the constitutional safeguard. In a zeal to have a speedy trial, the Judge ignored the constitutional mandate and denied the justice to the accused. The trial held by him, therefore, cannot be said to be a trial guaranteed by the Constitution. (Ref. Hiranman s/o Sakharam Borkar vs. State of Maharashtra, 2000 Cri LJ 4185 (4188, 4189) : (2000) 2 All MR (Cri) 1439 (Bom)).

It is unfortunate that the programme of free legal services is not successful to the extent to what it should have been because of the non-cooperative attitude of the members of the Bar. The judicial officers are also equally responsible for the non-availability of these benefits to this class of litigants. In each case where a woman or child is a party, it is equally a duty of the judicial officer concerned to let them know that they are entitled for free legal aid. (ref. Kalaben Kalabhai Desai vs. Alabhai Karamshibhai Desai, AIR 2000 Guj 232 (233) : (2000) 4 Cur CC 419.

Chapter-II of the Legal Services Authorities Act, 1987 (herein after it may be referred to as 'the Act') encompasses Sections 3 to 5. Sections 3 and 4 deals with the constitution of the National Legal Services Authority as well as it's functions. Whereas, Section 3(A) deals with the Supreme Court Legal Services Committee. As per Section 2(aa) 'Central Authority' means the National Legal Services Authority constituted under Section 3.

Chapter-III of the Act encompasses Sections 6 to 11(A). Chapter-III deals with the constitution of the State Legal Services Authority. Sections 6 and 7 deals with the Constitution of State Legal Services Authority as well as it's functions respectively. Section 8(A) deals with High Court Legal Services Committee. Whereas, Sections 9 and 11(A) deals with District Legal Services Authority as well as Taluk Legal Services Committee.

Chapter-IV of the Act contemplates the criteria as well as the entitlement to legal services. It encompasses Sections 12 and 13. Section 12 deals with the criteria for giving legal services. Whereas, Section 13 deals with entitlement to legal services.

As per Section 12 of the Act every person who has to file or defend a case shall be entitled to legal services under this Act if that person is:-

- (a) a member of a Scheduled Caste or Scheduled Tribe;*
- (b) a victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution;*
- (c) a woman or a child;*
- (d) a person with disability as defined in clause (i) of Section 2 of the Persons with Disabilities (Equal opportunities, Protection of rights and full Participation) Act, 1995 (1 of 1996);*

- (e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or*
- (f) an industrial workman, or*
- (g) in custody, including custody in a protective home within the meaning of clause (g) of Section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956) or in a Juvenile home within the meaning of clause (j) of Section 2 of the Juvenile Justice Act, 1986 (53 of 1986); or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of Section 2 of the Mental Health Act, 1987 (14 of 1987); or*
- (h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court. (Now the income limit has been raised up to One Lakh by NALSA)*

Section 13(1) of the Act envisages that the persons who satisfy all or any of the criteria specified in Section 12 shall be entitled to receive legal services provided that the concerned Authority is satisfied that such person has a prima-facie case to prosecute or to defend.

Section 13(2) of the Act says that an affidavit made by a person as to his income may be regarded as sufficient for making him eligible to the entitlement of legal services under this Act unless the concerned Authority has reason to disbelieve such affidavit.

Chapter-VI deals with the Lok Adalats. This chapter encompasses Sections 19 to 22. Nowadays, in proportion to the escalation of the population, filing rate of cases has also been rapidly increasing, which causes grave concern to the administration of justice and it also portrays as a prime challenge to the Indian Judiciary. In this regard, it is presumed that Sections 19 to 22 of the Act are the enabling Sections and for rendering a helping hand to the Courts in dilution pendenciate.

Sub-Section (5) to Section 19 of the Act confer jurisdiction to the Lok Adalats to determine and to arrive at a compromise or settlement between the parties to the dispute. As per Clause (i) of sub-Section (5) to Section 19, any case pending before any Court may be brought before the Lok Adalat. As contemplated under Clause (ii), any matter which is falling within the jurisdiction of, and is not brought before, any court for which the Lok Adalat is organised can also brought before the Lok Adalat and could be settled by way of pre-trial disposal. Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.

As envisaged under Section 21(1) of the Act, every Award of the Lok Adalat shall be deemed to be a decree of a civil court, or, as the case may be an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of Section 20, the court fee paid in such case shall be refunded.

As per sub-section (2) to Section 21 of the Act, every Award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the Award.

In view of the decision of the Honourable Supreme Court in **Salem Advocate Bar Association, Tamil Nadu vs. Union of India, 2002 (4) CTC 504, Section 89 has been inserted in the Code of Civil Procedure, 1908**, to reduce the burden of the Courts by resorting to Alternative Dispute Resolution Mechanism. The intention of the Legislature behind enacting Section 89 C.P.C., is that where it appears to the Court that there exists an element of a settlement which may be acceptable to the parties, they at the instance of the Court, shall be made to apply their mind so as to opt for one or the other of the four A.D.R., methods mentioned in the section and if the parties do not agree, the Court shall refer them to one or the other of the said modes.

Section 89, a newly inserted Section in C.P.C., deals with settlement of disputes outside the Court. Section 89(1) C.P.C., enacts as under:

Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observation of the parties, the Court may formulate the terms of a possible settlement and refer the same for-

- (a) arbitration;*
- (b) conciliation;*
- (c) judicial settlement including settlement through Lok Adalat; or*
- (d) mediation.*

Section 89 C.P.C., suggests four kinds of alternative ways for settling the disputes of the parties concerned outside the court. Amongst the four devices, the third one, Clause (c) contemplates that where a dispute has been referred for judicial settlement, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of the Act.

Thus, it is clear that sub-section 2(c) of Section 89 itself empowers the Legal Services Authority under the Legal Services Authority Act to settle the dispute through the mode of Lok Adalat.

Section 69-A has been inserted to Tamil Nadu Court-fees and Suits Valuation Act, 1955 by the Tamil Nadu Court-fees and Suits Valuation (Amendment) Act, 2007 (Tamil Nadu Act 44 of 2007). It deals with refund on settlement of dispute under Section 89 of the Code of Civil Procedure.

As per Section 69 of the Tamil Nadu Court-fees and Suits Valuation Act, 1955, whenever any suit is dismissed as settled out of Court before any evidence has been recorded on the merits of the claim, half the amount of all fees paid in respect of the claim or claims in the suit shall be ordered by the Court to be refunded to the parties by whom the same have been, respectively, paid. Further, the Court can refer the parties to the suit to anyone of the modes of settlement of disputes referred to in Section 89 of the Code of Civil Procedure, 1908 (Central Act V of 1908).

The Government have now decided to amend the Tamil Nadu Court-fees and Suits Valuation Act, 1955 by inserting new Section 69-A, based on the lines of the amendment made in the Court-fees Act, 1870 (Central Act VII of 1870) in the year 1999 with a view to entitling the plaintiff to a certificate from the Court authorizing him to receive back the full amount of fee paid in respect of such plaint, if the dispute referred by the Court is settled.

The Honourable Supreme Court in Salem Advocate Bar Association (II) v. Union of India, (2005) 6 SCC 344 : AIR 2005 SC 3353 has directed all the State Governments to amend laws on lines of amendment made in Central Court Fees Act by Act 46 of 1999. Generally, refund of Court-fee on reference to ADR under Section 89 C.P.C.,.

Order X, Rule 1A C.P.C., envisages the direction of the Court to opt for any one mode of alternative dispute resolution. It says that after recording the admissions and denials, the Court shall direct the parties to the suit to opt either mode of the settlement outside the Court as specified in sub-section (1) of Section 89. On the option of the parties, the Court shall fix the date of appearance before such forum or authority which may be opted by the parties.

Order X, Rule 1B deals with appearance before the conciliatory forum of authority. It envisages that where a suit is referred under Rule 1A, the parties shall appear before such forum or authority for conciliation of the suit.

If the effort made by the Court at the request of the parties to the suit or proceedings fails in settling the dispute before such forum, the parties to the suit or proceedings whatever may be the case have to appear before the Court consequent to the failure of efforts of conciliation.

In this connection, Rule 1C of Order X assumes more importance. It says that where a suit is referred under Rule 1A and the Presiding Officer of Conciliation Forum or Authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the Court and direct the parties to appear before the Court on the date fixed by it.

It is more relevant to note here that Rules 1A, 1B and 1C were inserted by C.P.C., (Amendment) Act, 46 of 1999, w.e.f.01.07.2002.

Rule 3 to Order XXIII C.P.C., deals with compromise of suit. Rule 3B to Order XXIII C.P.C., contemplates that no agreement or compromise to be entered in a representative suit without leave of Court.

ISSUES AND CHALLENGES:

Equal access to the courts is not reserved for adult citizens only. Children deserve the same access to the nation's courts because they too are citizens and deserve to exercise their right in court. However, they face additional barriers. Children cannot initiate legal actions without the assistance of adults; they may not know where to turn for assistance or even that help is available; and their voices are often unheard or unnoticed. Yet improving children's access to the justice system can help strengthen families and made victims of crime more likely to disclose their victimization and to support the legal process.

The Constitution of India, under its various Articles, makes it imperative upon the State to provide healthy environment for children and protect their rights. Article 14 provides that any child shall not be denied equality before the law or the equal protection of the law within the territory of India. Article 15 safeguards a child from discrimination, allows the State from making special provision for children and for the advancement of children from any socially and educationally backward classes, the Scheduled Castes and the Scheduled Tribes. Article 17 abolishes and forbids the practice of 'Untouchability' in any form. Article 19 confers upon the right to freedom of speech and expression; Article 21 prevents any person to be deprived of his life or personal liberty except according to procedure established by law. Article 21A provides for free and compulsory education to all children of the age of six to fourteen years. Article 23 prohibits traffic in human beings and begging and other similar forms of forced labour. Article 24 prevents a child below the age of fourteen years to be employed to work in any factory or mine or engaged in any other hazardous employment. The Directive Principles of State Policy in the form of Articles 38, 45, 46, 47, 51 and 51A also safeguard the interests of children.

More than five lakh children are doing work at homes and they never gone to schools. More than 8.6 billion children are left by their parents for other works instead of sending them to schools. 69.65 percentage of children are in drop out. Though there is hue and cry about the abolition of child labour, there is no significant improvement in the abolition of child labour.

Article 21A of the Constitution of India contemplates that there shall not be any discrimination in equal education. (***Unnikrishnan vs. State of Andhra Pradesh, AIR 1993 SC 2178***)

Education shall be made available to all. Compulsory education alone strengthens the social integration. Reasons for compulsory education - Poverty, Social Inequality and Age Limitation. (***M.C.Metha vs. State of Tamil Nadu***).

Section 2(t) of the Right to Education Act says that the duty of the responsible Government is to provide free and compulsory education.

Article 45 of the Constitution of India provides provision for early childhood care and education to children below the age of six years:- The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years. (This provision has been substituted by the Constitution (Eightysixth amendment) Act, 2002, by Section 3 w.e.f. 01.04.2010).

Right to education is implicit in right to life.- In ***Francis C. Mullin v. Administrator, Union Territory of Delhi, AIR 1981 SC 746 : (1981) 2 SCR 516***, while elaborating the scope of the right guaranteed under Article 21 of the constitution, the Apex Court has observed:

"But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes right to live with human dignity and all that goes along with it, viz., the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely

moving about and mixing and co-mingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self.

We must hasten to add that just because we have relied upon some of the directive principles to locate the parameters of the right to education implicit in Article 21 of the Constitution, it does not follow automatically that each and every obligation referred to in Part IV gets automatically included within the purview of Article 21 of the Constitution. We have held the right to education to be implicit in the right to life because of its inherent fundamental importance. As a matter of fact, we have referred to Articles 41, 45 and 46 merely to determine the parameters of the said right."

COMMUNITIZATION OF EDUCATION:

Directive Principles of State Policy: It emphasizes the compulsory education as one among the rights of the children. (*Mohini Jain case*)

The children between the age of 6 and 14 must be necessarily found in schools then only, we can eradicate the child labour. States are bound to provide free and compulsory education to all the children between the age of 6 and 14.

The Honourable Supreme Court, in *Mohini Jain v. State of Karnataka, AIR 1992 SC 1858 (1864) : (1992) 3 SCC 666*, has observed that the right to education has been held to flow directly from right to life. The observations of the Apex Court are quoted below:

"Right to life is the compendious expression for all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range

of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavour to provide educational facilities at all levels to its citizens."

As per the Survey made in the year 2001, the literacy rate was 53.38 percentage. (Ashok Kumar Thakkar - Kothari Education Commission)

In these days, the education is a privilege and not a right. Right to education is a justifiable right.

Reservation for economically weaker students fails to take off because of private schools' reluctance. (The Week, May 12, 2013).

CHILD ABUSE:

An eminent social activist Dr. Dorothy I Hieght, has said that 'We have got to work to save our children and do it with full respect for the fact that if we do not, no one else is going to do it.'

Children are the most vulnerable human asset of any nation. Therefore, their nurture and solicitude becomes the responsibility of the State, nay it is the responsibility of the entire society. Today's children constitute tomorrow's future and to ensure a bright future of our children, we have to ensure that they are properly educated and not exploited. For this reason, they are entitled to special care and assistance, more so, because of their physical and mental immaturity. However, at the same time, children are most vulnerable members of any society. Because of this vulnerability, many children are exploited in various forms.

Trafficking in women and children is the gravest form of abuse and exploitation of human beings. Thousands of Indians are trafficked everyday to some destination or the other and are forced to lead lives of slavery. They are forced to survive in brothels, factories, guest houses, dance bars, farms and even in the homes of well-off Indians, with no control over their bodies and lives. The Indian Constitution specifically bars the trafficking of persons. Article 23, in the Fundamental Rights, Part III of the Constitution, prohibits, 'traffic in human beings and other similar forms of forced labour'.

A damning report from the Asian Centre for Human Rights says that child sexual abuse in juvenile justice institutions in India, is rampant, systematic and has reached epidemic proportions.

Even if we have waken up to the horror of child sexual abuse because of one atrocity, we must recognize that his malady is not skin deep. It has afflicted the entire body.

Since the protectors turn predators, the abuse of children becomes the order of the day.

Rehabilitation of abandoned, neglected and deserted children and also children craving for love and affection. These children are left at lurch in street on account of either social immorality of their parents or due to poverty and illiteracy.

Article 38 of the Constitution of India deals with State to secure a social order for the promotion of welfare of the people. It enacts as follows:

- (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.
- (2) The State shall, in particular, strive to minimize the inequalities in income and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

Crime against Women in India and World (As per the Institute of Objective Studies 162, Jogabai Main Road, Jamia Nagar, New Delhi – 110025.)

Although Women may be victims of any of the general crimes such as murder, robbery, sexual harassment, cheating etc., only the crimes which are directed specifically against Women are characterised as 'Crimes Against Women'. Since crimes against women appears to be very serious

in nature, various new legislations have been brought and amendments have also been made in the existing laws with a view to handle these crimes effectively. These are broadly classified under two categories.

1. The Crimes under the Indian Penal Code (IPC).
2. The Crimes under the Special & Local Laws (SLL).

Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements. The gender specific laws for which crime statistics are recorded throughout the country are -

1. Immoral Traffic (Prevention) Act, 1956.
2. Dowry Prohibition Act, 1961.
3. Indecent Representation of Women (Prohibition) Act, 1986.
4. Commission of Sati (Prevention) Act, 1987.

During the year 2010, A total of 2,13,585 incidents of crime against women (both under IPC and SLL) were reported in the country as compared to 2,03,804 during 2009 recording an increase of 4.8% during 2010. These crimes have continuously increased during 2006 - 2010 with 1,64,765 cases in 2006, 1,85,312 cases in 2007, 1,95,856 cases in 2008, 2,03,804 cases in 2009 and 2,13,585 cases in 2010.

Many activists blame the rising incidents of sexual harassment against women on the influence of "Western culture". The Indecent Representation of Women (Prohibition) Act was passed to prohibit indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner.

In **Vishaka** case [(1997) 6 SCC 241 : AIR 1997 SC 3011], the Supreme Court of India took a strong stand against sexual harassment of women in the workplace . The Court has also laid down a detailed guidelines for prevention and redressal of grievances. The National Commission for Women subsequently elaborated these guidelines into a Code of Conduct for employers.

In 1961, the Government of India passed the Dowry Prohibition Act, making the dowry demands in wedding arrangements illegal. However, many cases of dowry related domestic violence, suicides and murders have been reported. In the 1980s, numerous such cases were reported. However, recent reports show that the number of these crimes has been reduced drastically.

In 1985, the Dowry Prohibition (maintenance of lists of presents to the bride and bridegroom) rules were framed. According to these rules, a signed list of presents given at the time of the marriage to the bride and the bridegroom should be maintained. The list should contain a brief description of each present, its approximate value, the name of whoever has given the present and his/her relationship to the person.

FEMALE INFANTICIDES AND SEX SELECTIVE ABORTIONS:

India has a highly masculine sex ratio, the chief reason being that many women die before reaching adulthood. Tribal societies in India have a less masculine sex ratio than all other caste groups. This, in spite of the fact that tribal communities have far lower levels of income, literacy and health facilities. It is therefore suggested by many experts, that the highly masculine sex ratio in India can be attributed to female infanticides and sex- selective abortions.

All medical tests that can be used to determine the sex of the child have been banned in India, due to incidents of these tests being used to get rid of unwanted female children before birth. Female infanticide (killing of girl infants) is still prevalent in some rural areas viz., Salem, Krishnagiri, Dharmapuri and Theni. The abuse of the dowry tradition has been one of the main reasons for sex - selective abortions and female infanticides in India.

DOMESTIC VIOLENCE AGAINST WOMEN IN INDIA

According to United Nation Population Fund Report, around two – third of married Indian women are victims of domestic violence and as many as 70 per cent of married women in India between the age of 15 and

49 are victims of beating, rape or forced sex . In India, more than 55percent of the women suffer from domestic violence, especially in the states of Bihar, U.P., M.P. and other northern states. Violence against young widows has also been on arise in India. Most often they are cursed for their husband's death and are deprived of proper food and clothing.

INCEST RAPE IN INDIA

Incest is sexual intercourse between close relatives that is illegal in the jurisdiction where it takes place and is conventionally considered a taboo. The term may apply to sexual activities between: individuals of close "blood relationship"; members of the same household; step relatives related by adoption or marriage; and members of the same clan or lineage.

'*Crime in India -2009*' report released by the National Crime Records Bureau (NCRB) reveals that cases of incest rape have 'increased by 30.7 per cent from 309 cases in 2008 to 404 cases in 2009', and out of total rape cases of 21,397,94, in come cases involved offenders were known to the victims.

REMEDIES FOR DOMESTIC VIOLENCE AGAINST WOMEN

This is the high time for our Nation to take effective steps to minimize the occurrences vis., The Domestic Violence. A recent study has concluded that violence against women is the fastest-growing crime in India. According to a latest report prepared by India's National Crime Records Bureau (NCRB), a crime has been recorded against women in every three minutes in India. Every 60 minutes, two women are raped in this country. Every six hours, a young married woman is found beaten to death, burnt or driven to suicide. Domestic violence is now being viewed as a public health problem of epidemic proportion all over the world and many public, private and government agencies are seen making huge efforts to control it in India. There are several organisations all over the world, government and non-government actively working to fight the problems generated by domestic violence to the human community. There is an urgent need for stringent laws and severe punishment after proper investigation.

The gruesome rape and murder of a 23 year old paramedical student in the heart of the capital has shaken the conscience of the entire nation. The unprecedented furor over the continuous inaction by the law enforcement agencies had resulted in nationwide protest forcing the Government to announce an empowered committee headed by **Justice J.S.Verma**.

Justice Verma Committee had invited suggestions on "Possible amendments in the criminal laws and other relevant laws to provide for quicker investigation, prosecution and trial as also enhanced punishment for criminals accused of committing sexual assault of extreme nature against women, and connected areas such as gender justice, respect towards womanhood, and ancillary matters.

Bachpan Bachao Andolan (BBA) is India's pioneer grassroots social movement for the protection of child rights especially from child trafficking, child labour, in favour of education for all. It is common knowledge that the largest number of crime against women of sexual nature goes unreported. However, millions of girls in the country are leading a life of slavery, sexual and physical abuse with no freedom of movement and no help forthcoming from the law enforcement machinery. As victims of trafficking these girls are exploited in multiple forms and are often missing from their homes and yet, no cases are being registered for their recovery and against the perpetrators, who are exploiting them. In this connection ***Bachpan Bachao Andolan*** has made several suggestions along with the documents under the caption of Suggestions on Specific Changes required in the Law. It is apparent that Justice J.S.Verma, committee has also recommended the Law Commission to amend the Penal Law providing more teeth to punish the culprits, stringently who are committing crime against women.

EPILOGUE:

As envisaged under Article 15 of The Constitution of India, social justice is the key stone. One facet of it is gender justice, which is a composite concept. It is the human right of women. The Universal Declaration of Human Rights (1948) too affirms the ideal of equal rights

of men and women. The U.N. Convention on the Elimination of All Forms of Discrimination Against Women (1979) observes that discrimination against women violates the principles of equality of rights and respect for human dignity.

Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right. The common minimum requirement of this right has received global acceptance. The International Conventions and norms are, therefore, of great significance in the formulation of the guidelines to achieve this purpose.

Gender relations need to be measured in the context of participation and sharing of the important decision-making process that results in the above inequalities. Such a measure would help identify the differing degrees of inequality in terms of age, income levels and geographical location. For Governments and concerned citizens seeking to redress these inequalities, indices are a mean of determining the issues on which they must concentrate, and provide feedback on the effectiveness of their actions. Clearly, then the accuracy of any measure of gender inequality needs close scrutiny.

The question of gender equality is a very old and burning problem. Twenty years ago in Mexico the First World Conference on Women inspired a movement that has helped to reduce gender inequality worldwide. Illiteracy among women is declining, maternal mortality and total fertility rates are beginning to fall, and more women are participating in the labour force than even before. However, much remains to be done. Persistent inequality between women and men constrains a society's productivity and, ultimately, slows its rate of economic growth. Although this problem has been generally recognised, evidence on the need for corrective action is more compelling today than ever before.

To eradicate the crimes against women, if not completely, at least to certain extent, female education is very much important and the Government is under the obligation to make awareness among the women folk to create awareness about the importance of education for the purpose of erasing the illiteracy and poverty.

In a Democratic country like our Nation, in the course of administration of justice both the victims of crime as well as its perpetrators are required free legal aid. In order to improve this mechanism we have to create faith in the minds of needy people to have free and costless access to justice and for which the lawyers community at large must be prepared to do more pro bono service and if they are nominated to handle the cases through legal aid system, their remuneration may sizeably be increased.



BUDGET

In every financial year from 1st April to 31st March of succeeding year, the funds allotted by the Government to the Judiciary, the High Court distributes the funds to the all the subordinate courts. At district level such funds are allotted to the Principal District Judges/District Judges/Chief Judicial Magistrates and Presiding Officers of Special Courts for L.A.O.P. Cases, M.C.O.P. Cases and for Labour Courts.

The Principal District Judges/District Judges/Chief Judicial Magistrates in turn, allot the funds to the subordinate courts under their unit according to the requirements of each courts considering the availability of funds.

The funds allotted to the various courts are under the distinct heads as follows:-

| COURT | MAJOR HEAD |
|--|-------------------|
| District Courts | |
| Regular Establishment | 2014 00 105 AB |
| Copyist Establishment | 2014 00 105 AC |
| Process Server Establishment | 2014 00 105 AD |
| Criminal Courts | 2014 00 105 AA |
| Special Courts MCOP cases and LAOP Cases | 2014 00 105 AF |

The funds are allotted for four quarters in a year as follows:

| | |
|-------------------------|--|
| 1 st Quarter | For the period from 01.04.2013 to 30.06.2013 |
| 2 nd Quarter | For the period from 01.07.2013 to 30.09.2013 |
| 3 rd Quarter | For the period from 01.10.2013 to 31.12.2013 |
| 4 th Quarter | For the period from 01.01.2014 to 31.03.2014 |

The funds allotted under the budget are classified as salary and non salary heads as follows:

THE SALARY HEAD :

- ◆ Pay
- ◆ Dearness Allowance
- ◆ Medical Allowance
- ◆ Medical Charges
- ◆ Other Allowances
- ◆ House Rent Allowance and
- ◆ City Compensatory Allowance

THE NON SALARY HEAD :

- ◆ Travel Concession
- ◆ Tour T.A.
- ◆ Transfer T.A.
- ◆ Fixed Travel Allowance
- ◆ Telephone Charges
- ◆ Other Contingencies
- ◆ Electricity Charges
- ◆ Service Postage
- ◆ Furniture
- ◆ Rent
- ◆ Property Tax
- ◆ Water Charges
- ◆ Sumptuary Allowance
- ◆ M & E Purchases
- ◆ Motor Vehicle purchase
- ◆ Hire Charges
- ◆ Remunerations
- ◆ Fuel
- ◆ Prize and Awards
- ◆ Cost of Books
- ◆ Training
- ◆ Computer Purchase
- ◆ Computer Maintenance
- ◆ Computer Stationery
- ◆ Labour Welfare Funds and
- ◆ Compensation Payable to local bodies

The Principal District Judges / District Judges / Chief Judicial Magistrates and Presiding Officers of Special Courts shall take care in submitting the number statement in every July to the High Court, which is basis for allotment of budget funds as per the requirement. It will be helpful to avoid allotment of excess funds or deficit funds for the next financial year.

Similarly utmost care and importance to be given while preparing the Final Modified Appropriation Statement and to be submitted to High Court in every January. In that statement, the particulars regarding excess/

surrender amount if any to be specifically mentioned with reasons therefor. On such occasion, 20% anticipated expenses may be included apart from the actual expenditure already incurred and to be incurred within that particular financial year.

The funds allotted under the budget shall be utilized with its fullest utility without wasting the funds allotted by surrendering the same to the Government at the end of the financial year. For that, due care and caution to be taken by the Principal District Judges/District Judges/Chief Judicial Magistrates and Presiding Officers of Special Courts by devoting their personal attention while verifying the budget statement before approving the same.

Some of the Do's and Dont's in preparation and allotment of funds.

(A). DO'S

1. Funds to be allotted to the subordinate courts as per their requirements in the budget statement submitted already.
2. Funds to be allotted to subordinate courts considering the actual expenditure incurred by the particular court in the previous financial year.
3. Funds for the rent for the private buildings occupied by the courts and for the residential accommodation of the Judicial Officers to be allotted based on the actual rents required for payment in the financial year.
4. Stationery articles to be purchased only from the Co-operative institutions. Open market purchase to be avoided. In urgent necessities, if such articles are not available in Co-operative concerns, necessary special permission to be obtained from the Presiding Officer of the concerned court to purchase the same in open market.
5. While utilizing the contingent fund for purchase of stationery articles and also to meet out the contingent expenses, the actual requirement to be taken into consideration with reference to the stock register and physical verification of the stocks. Mere purchasing of stocks

which are already available leads to misuse and abuse apart from wastage of Government fund.

6. The funds under the Transfer Travelling Allowance, medical reimbursement to be allotted to each courts based on the actual bills prepared and countersigned by the Head of Units as per the actual requirements and random allotment of funds to be avoided.
7. Every month on or before the 2nd working day, the subordinate courts should submit the Disbursing Officers Return Statement, which would reflect the actual expenditure incurred by the Presiding Officers of individual courts to the Principal District Court and Chief Judicial Magistrate Court. On receipt of such statement, it should be checked by the Sherishtadar / Head Clerk whether the expenditure incurred is within the ceiling limit of fund allotted to the particular court. If it exceeds, suitable action to be taken against the official concerned for incurring the expenditure over and above the ceiling limit.
8. While preparing the Final Modification Allotment statement, actual expenditure incurred to be verified with reference to the Disbursing Officers Return Statement received from the concerned courts and the probable expenditure to be incurred for the remaining months of the financial year, to be actually worked out and ascertain the amount under each head for each items whether is in excess or deficit. Such particulars to be actually worked out in order to surrender the excess amount already allotted and also for claiming the deficit amount required.
9. For the allotment of property tax and water tax due to the local bodies to be based on the actual demand notice made by the local bodies.

(B). DON'TS

1. The rents for the private buildings under the occupation of courts and private residential accommodation under the occupation of the Judicial Officers shall not be claimed/allotted without receiving the rent certificate from the Public Works Department and without the

sanction proceedings of the High Court/Principal District Judge/
District Judge/ Chief Judicial Magistrate as the case may be.

2. The bills for the reimbursement of excess house rent paid by the Self Drawing Judicial Officers shall not be presented for encashment, without the Accountant General authorization and allotment of funds.
3. If any fund utilized without allotment shall not be made good by allotting further fund without taking action for incurring excess expenditure over and above the ceiling limit of the fund allotted. Even at that time of allotment, it should be verified whether such expenditure is actually required.
4. The funds allotted for a particular sub head shall not be utilized for the other sub head.
5. The funds allotted under the particular major head shall not be utilized for the other major head.
6. The funds allotted for each quarters shall not be utilized for the other quarters in advance.
7. Whenever additional allotments required, the actual funds required with the working sheet to be verified. Such additional funds shall not be allotted on random basis.



CIRCULARS / ORDERS OF THE HON'BLE HIGH COURT

R.O.C.30/2006-CON.B2 DATED 08.02.2006

- ◆ The Judicial Officer shall not address any communication directly to the Hon'ble Judge/Judges. The communications are to be addressed only to the Registrar of the Registry and the Registry will place such papers immediately before the Hon'ble Chief Justice – Hon'ble Portfolio Judge for necessary action.

R.O.C. NO.1282/2006/RG/RR DATED 26.07.2006

- ◆ All the Principal District Judges/District Judges along with the Chief Judicial Magistrates/Chief Metropolitan Magistrate as the case may be, to visit the Central Prisons/Jails/Sub Jails, surprisingly twice a month without fail instead of the Second & Fourth Saturday of the month and submit reports to the High Court.

R.O.C. NO.1342/99/F1 DATED 24.08.99

- ◆ All the Additional District Judge-cum-Chief Judicial Magistrate in the District level and the Judicial Magistrate in the Taluk level are hereby directed that they should inspect the Police look-ups in their respective Jurisdiction atleast once in a month, independently and submit their report to the High Court, with copy to the District Collector concerned.

R.O.C. NO.3793A/2010/B5/STATISTICS DATED 11.08.2010

- ◆ The Heads of Civil and Criminal Units are also hereby directed to monitor specifically the disposal of Senior Citizen cases by their respective Subordinate Judicial Officers.

R.O.C. NO.3307(A)/99/B5 DATED 21.12.2000

- ◆ All Principal District Judges and Additional District Judge-cum-Chief Judicial Magistrates are hereby asked to instruct all the Presiding Officers under their controls to dispose of cases concerning Older persons, above 65 years of age (Senior citizens) on priority basis, as per the provisions of law.

R.O.C. NO.1010/2001/B5 P.DIS.NO.31/2001 DATED 07.03.2001 HIGH COURT'S CIRCULAR P.DIS.NO.41/46 DATED 07.02.46 HIGH COURT'S CIRCULAR P.DIS.NO.180/67 DATED 29.04.67

- ◆ All the Subordinate Judicial Officers had been directed that the arguments pertaining to cases should be heard within 14 days after the closure of evidence in each and every cases and they were also directed to follow the instructions scrupulously in the interest of better administration of justice.
- ◆ Likewise, instructions had also been issued that Judgment(s) should be delivered by the Judicial Officer concerned in each and every case within 14 days of termination of arguments.

R.O.C. NO.134A/2003/B5 P.DIS.NO.2/2003 DATED 10.01.2003

- ◆ All the Principal District Judges are directed to dispose of the pending I.As on their file, within short spell.
- ◆ If there are any C.R.P.s or C.M.A.s or such connected proceedings pending against I.As, it should be intimated to the High Court, within one week.
- ◆ All the Principal District Judges are also directed to bring the above instructions to the notice of other District and Sessions Judges functioning in their respective units and to issue necessary instructions, to the sub-ordinate officers in their units, for strict compliance and report to the High Court.



Tamil Nadu State Judicial Academy has always striven for achieving excellence in the acquisition of judicial skills.

This material has been published by the Academy with the noble object of enhancing the knowledge and skills of all the stake holders of the Judicial System.

Valuable suggestions for improvement are most welcome.

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