

**Colloquium to Develop Parameters for Judicial Performance
Assessment**

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Report

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The National Judicial Academy organized a two day **Colloquium to Develop Parameters for Judicial Performance Assessment** on **18th & 19th March, 2017**. The Colloquium aimed to bring together ideas and suggestions for improving judicial performance assessment system through more effective parameters. Recent initiatives in the Indian judicial system as well as in management sector focusing on developing performance assessment parameters were deliberated upon in the Colloquium. The Colloquium also involved a round table discussion to review the existing judicial performance assessment systems, where views of all high courts were taken into consideration. A total of 22 Justices from all high courts participated in the Colloquium.

SESSION 1

10:00 AM – 11:30 AM

Emerging Management Tools in Performance Assessment

Speaker: Prof. (Dr.) Subhash Bhatnagar

Chair: Justice Kurian Joseph

- Judges are accustomed for individual performance assessment but there is a need for measurement of institutional performance assessment. In most organizations the assessment is institutional but in judiciary the focus of assessment has been individual and there is need for assessment at organizational level.
- There is system of performance review in judiciary where individual judge's performance is reviewed at the age of 50 and 55. This is weeding out process. Similarly the services of good officers are required to be extended. Under Article 235, the high court through their discretion can extend the services of very good judges. The law of concerned state should be taken care in this regard.
- The ultimate test of the effectiveness of the judicial system is not disposal but the extent to which society has been transformed because of the unique role of judiciary in bringing social change. Judiciary is an instrumentality of judicial power of the state. It has to shoulder the burden with other wings of the state to setup a welfare state. It should also shoulder the primary responsibility of eliminating inequality. This is an authoritative test of developing parameters of judicial performance assessment as provided in the 117 Report of the Law Commission of India.
- One of the objective of the performance assessment is to align the institutional goal and performance of the individual working in it and how to maximise the objectives and goals. Over the decades the objective of assessment has been to develop the capability of the individual. It is important to include the word development in evaluation process as it make

evaluation process more constructive. People who are being evaluated must understand the purpose and dimensions of evaluation. Communication about fundamentals of evaluation with those who are evaluated is very necessary. The assessed person would be aware about the overall institutional perspective. Communication prior and post the assessment process is very important

- Performance needs to be measured on critical tasks and they should be clearly defined. The judgment about assessment as good or bad requires comparison. Assessment is meant to change behaviour. The assessment system must incentivize the individual, otherwise it is useless. Assessment should be unbiased and if it is negative then it should be informed to the person concerned with sympathy.
- What inputs are provided to the system is important. Assessment of functions of judges and employee is not adequate assessment and inputs that are being provided should be looked into. Efficiency can be assessed as the relationship between input and output.
- Assessment is influenced by not merely how hard we work but what processes we use in our work. The changes in the processes should be done according to changing circumstances.
- Effective outcomes needs to be assessed on an annual basis and impact must be assessed in long term manner. If impact of judicial system on society is required to be assessed then it has to be done. Surveys can be conducted in long term period i.e. 2 years, 3 years or 4 years to assess from the client that whether any change has taken place. So nature of instruments and timing of instrument has to be different for different forms of performance measurement.
- Individual performance and institutional performance are equally important. The supervisors should contribute to the development of their subordinates. Evaluation of employees' contribution to team is very important. Peers reviews on the contribution of employees should also be taken into consideration.
- Recognition of good performance is very necessary and it should motivate good and hardworking functionaries. The feeling of what is being done as important and earning respect out of work is important in the process of performance assessment. The information of performance assessment should be shared with concerned functionary as well as between peers. Non-disclosure or non-sharing of information on performance assessment defeats the purpose of assessment.
- Indicators should be properly benchmarked and comparison of indicators across groups, districts, country and global level should be done. There should be a strong Management Information System [MIS] for collection, collating and comparing data on performance assessment.
- There should be clarity about the role and task of the functionary whose assessment is required to be done. The critical task towards the attainment of the institutional goal should

be identified. The assessment process should be simple and easy to understand. A very detailed structured assessment process may not be a productive assessment and will not enable behaviour change. Indicators should not be complex and opaque. The indicators should be so designed that performance on those indicators should remain under control of the functionary.

- The indicators of performance should have quantitative and qualitative dimensions. A balanced focus on all processes of assessment is important. The indicators can be direct as well as surrogate. A surrogate measure can provide useful feedback on the task performed.
- Goals should be set which can stretch an employee and remain attainable. Unattainable goals does not serve any purpose. There should be an established system of rewards and punishment to motivate to perform better. The performance assessment should help the employee to identify weaknesses and scope for improvement. The possibility of improving the human resources is a very important part of assessment system.
- There should be perception of fairness of evaluation process. Those who are evaluated should have a perception of fairness. The assessment system must be humanistic. The quality of interaction and amount of trust and empathy in performance assessment is very important. The committee system for performance evaluation has resulted in less biasness.
- The freedom of team work is limited in judiciary. In judiciary the scope of team work is required to be enhanced. At present there is some interaction of subordinate judges with district judge. Mediation and lok adalat are instances of team work. The trust and confidence with seniors is required to be enhanced. In some high courts the meeting is conducted with the judicial officers where they share their work. This kind of interaction improves their confidence. The institutions should have signals of equality and mutual respect to functionaries of all ranks. These signals becomes extremely important for developing an organizational culture.
- Changing the culture of the bar is very important and it should have a democratic culture. There should be academy for bar members for continuous education.
- There is lack of uniformity on the visitation of judges and interactional level and their frequency are not same across different high courts. For instance some high courts have interaction sessions while in other high courts there is no such thing as interaction session.

SESSION 2

12:00 PM – 01:15 PM

Impact of Judicial Reforms towards Enunciation of Parameters of Judicial Performance Assessment

- National Mission for Justice Delivery and Legal Reforms
- National Court Management System

-National Framework of Court Excellence

Speaker: Prof. (Dr.) G. Mohan Gopal

Chair: Justice Kurian Joseph

- People generally do what is measured and rewarded therefore measurement criteria that can improve the performance of court should be find out.
- Lack of measurable performance indicators is one of main issue concerning judiciary. There is need of institutional space within judiciary to undertake this task. National Court management System Committee [NCMSC] is a forum where judges can come together to start building institutional solution to what is missing in the administration of justice. It facilitate judiciary to develop new policies for judicial administration. The state court management systems committee and district court management systems committee at their own level discuss problems faced by the judiciary. Through such efforts there has been 25% increase in high courts' judges strength and 50% increase in subordinate courts' judges strength.
- The starting point of judicial performance assessment is that are we promoting justice according to Article 39A of the Constitution. Justice is a standard of human conduct. *Jus* implies right norm and *tice* means stand still. The word *justice* stands for eternal values. Here norms and eternal values prescribed in the Constitution. The mandate of Indian legal system is to promote Constitutional values. Is the judicial system is serving its purpose which is to promote constitutional values? The responsibility of judicial system is to change human mind and make it friendly to others so that we can live together in peace. Every case represents people and there is human face to each case. The approach of the court has to be humanistic. Court should be institutions which can brought social change. All stakeholders of the court have to make effort towards this. The law schools and colleges too should be integrated in this approach.
- We must not assess the performance of the judges but there should be assessment of performance of court as an institution. This is where the guardian judges can all play a very important role. Such type of assessment can reveal many useful information. For instance a study conducted on CJM court Bhopal reveals that there were unusual number of cases of obscene dances and songs and arms Act in CJM court. Cases were cut and paste and only time and place were changed. When asked from police then they said that when a big VIP visitor comes here and when there is a risk of trouble, we know the trouble makers and we catch them, we charge them and we remove them from circulation. This was done regardless of who the CJM is. The problem here lies with the CJM court and not with the CJM. The police was doing this because of shortage of police staff. Police here used the court to solve a problem where the court has nothing to do with this problem. The court is suffering because the police is misusing the laws. The suggestion was given to police to open a cell that would review all arrest and all charges to make sure that law is not misused.

- There is need of interaction and communication with all duty holders of the court if court as an institution is to be reformed. The court development plan is required to be prepared and then the assessment of court as an institution can be done. The performance of the judge has to be assessed in the context of whole institution and not in isolation. Court is an activity carried in prescribed manner by law. A judge cannot be evaluated for an activity which necessarily involves many others. We must identify essential duty holder, what is their role and how we can persuade them to perform their role. There are reasons for the poor performance of the court and they are beyond the control of judges. Therefore there is need to assess court as a whole and not judge alone. Many times individual judge face the criticism for low performance of the court due to laxity on the part of other stakeholders. The individual judge get negative remarks because of such situation. Therefore there is need of focus on all stakeholders of court and assessment of performance of court as an institution.
- For enhancing access of poor people to justice, the court as an institution is required to be reformed. The access of poor people to court becomes difficult not because of judge but because of other stakeholders who do not allow poor people into court. The court can have very good disposal rate but it can be below average in access of poor people to justice. The court culture is required to be changed if access of poor people to justice is needed to be enhanced. The assessment of court as a whole can reveal factors which is restricting access of poor people to court. The judge then accordingly can play the role of a captain and can motivate concerned stakeholder for improving access.
- The justice literacy of the bar, police and ministerial staff can be enhanced for improving access of poor to justice. The training of the ministerial staff can be taken care by the state judicial academies. At present in some high courts for instance in Tamil Nadu and Guahati the training is given to ministerial staff. In other states the training to ministerial staff is not a regular phenomenon. The training is usually given on computers and accounts but there should be training on their role in the administration of justice. The role of ministerial staff is very crucial as they are the first person in courts who interact with people.

SESSION 3

02:15 PM – 03:30 PM

Impact of Judicial Reforms towards Enunciation of Parameters of Judicial Performance Assessment

-National Mission for Justice Delivery and Legal Reforms

-National Court Management System

-National Framework of Court Excellence

Speaker: Prof. (Dr.) G. Mohan Gopal

Chair: Justice Kurian Joseph

- There is need of developing empathy among staff towards litigants through training. The training on “Mission of Justice and Court Excellence” should be given to ministerial staff to change the role and attitude of staff towards litigants. This will make court litigant friendly.
- The high court judges who are given the task of administration of district courts are designated differently in different high courts such as administrative judge, inspecting judge, portfolio judge, zonal judge and guardian judge. The nomenclature needs to be settled for uniformity and nomenclature “Guardian Judge” should be used in all high courts. The nomenclature “Guardian Judge” gives some comfort to subordinate judiciary.
- In Kolkata, Odisha, Jharkhand and Allahabad there is a provision of making senior most judge from service as member of the administrative committee of the high court. In other high courts the senior most judge from service in high court should be taken as additional member in administrative committee apart from 5 regular members of committee.
- The National Court Management System committee is anchored in the Supreme Court of India and it comprises of committee of senior judges, registrars and experts. There is an advisory committee also chaired by next Chief Justice of India and ex officio members including secretary of the Department of Justice and secretary general of the Supreme Court. The proposal on policy issues such as judge strength is prepared and put to the advisory committee and this committee discuss and approve policy issues. One of the initiative was 5 plus free related to delay and arrears where courts were required to identify cases pending for more than 5 years. Now 5 to 6 states becomes 5 plus free. Once the five plus free is achieved then we can focus on 4 plus free and 3 plus free. A study is being conducted by the NCMS on nature and types of delay. The hypothesis of the study is that there are different kinds of cases that are delayed. One is cases that are filed and forgotten. They are still listed as delays. Somebody filed a case to get an interim order and then nobody is interested in the case. Sometimes there are cases that are listed in lower courts, gone to high courts and Supreme Court and disposed of but still remain listed in lower courts. Another category of cases that are deliberately subverted and one or other party wants delay. The party pay money to the lawyer only for the delay. Third category of cases that are impractical or require action which is beyond the control of the judge for instance process have to be served in a foreign country or party has died or proceedings are stayed. Such cases are delayed for reasons beyond the control of the court. Then we have a set of genuine cases which may be complex in facts or law. Such cases are high risk cases having very complex issues of facts and laws and lots of witnesses. We need to know the proportion of cases in each category and then we will have better idea of arrears and delays.
- The cases in which there is possibility of trial for more than two years, the judge must prepare a tentative time table of the case. The time table must have some indication of the steps to be taken up and how long the steps will take. In Kerala and Tamil Nadu there is special list system where in civil cases three months ahead of the trial they prepare special

list. The time is given to parties for objection and then agreement of parties is taken. The special list is prepared and monitoring is done for ensuring proper pre-trial processes. Then trial takes place on the prescribed dates. The case has to be posted for many weeks for preparation towards trial. In other states the judge will only turn up when the trial take place. If the judge prepare a tentative timetable of case which will take 2 years to resolve then cases that will come into the category of delayed cases will be those which take more than 2 years to resolve. Today every case that is filed is immediately goes into pendency and is considered by public as a delayed case. This is happening because we don't have an indicative time plan. Any case within indicative time frame is not delayed till that time frame is complete. The performance assessment system for the judge and the court must include recognition to the extent to which they are doing it and whether the judges are preparing indicative time frame of cases. This will help in identifying the reasonable time within which a case of particular category must be disposed.

- In Patna high court there is criminal manual which obliges the committing magistrate while committing the case to Sessions court to make an estimate of number of days the trial is likely to take. The committing magistrate has to apply his mind and has to make a rough idea about the period for disposal of the case.
- NCMS is developing a Model Bench Book on case management which will be suggestive Bench Book synthesizing practices of various high courts. It will be provided to various high courts where they can accept or modify suggestions and then it can be given to district judiciary for implementation.
- NCMS is working on assessing the judge strength requirement in high courts. The time taken for disposing of most important category of cases for instance various kinds of writ petitions in high courts is taken into consideration. Then an average number i.e. how long on average it will take for a writ petition to be disposed of can be ascertained. This has to be calculated across several courts and several years. This will reveal how long it will take to resolve different kinds of writ petition i.e. an average time frame for disposal. This will be multiplied by number of cases and then you get the hours you need on the judicial side. Then you add the number of hours spent on administrative work and then you get the total number of judicial hours required in high court. Divide the total number by 2100 and then you get the number of judges required as a benchmark. Similar method can be followed for district judiciary.
- There are 5 baseline reports of the NCMS available on the internet. One of the report on Human Resource Development suggests that the assessment of judgment of district judiciary should be done on judicial side in appeal and revision rather than on the administrative side. It will save lot of time of administrative judges as they don't have to read judgement separately.
- For better assessment the judge must be assessed and rewarded for planning and management of the cases in front of him. A judge must distinguish the simple cases and complex cases and should set time frame for the purpose of defining delay in the case.

- Judges must prepare court development plan which should incorporate vision, timelines of cases, priority cases, steps to be taken for enhancing user-friendliness of courts and inputs and infrastructure required. This should define clearly the role and functions to be discharged by advocates, police and staff to improve the performance of courts. The role and functions should be monitored in non-binding cooperative manner. Such judges must get some incentives for planning and management and should get recognition for that. This will enhance transparency in the functions of courts. The Annual Confidential Report of judges must include parameter related to planning and management and should be duly rewarded.
- The performance assessment of courts must look at the extent to which the mission of the judiciary under Article 39 A of the Constitution to promote justice is being substantially realized. The extent to which social change and social justice is brought about should be measured.
- In performance assessment the judicial as well as non-judicial work and responsibilities of judges should be taken into account. The reasonable work load of judges must be defined.
- The high court judge must ensure proper functioning of state court management systems committee and should create district court management systems committee in every district. A monthly meeting of district court management systems committee must be organised and issues discussed and resolution taken must be communicated to the state court management systems committee and National Court Management Systems Committee. The basic task of the National Court Management Systems Committee is to find out solution to problems for which there is no guidance and forum.

SESSION 4

10:00 AM – 11:30 AM

Round Table Discussion

Review of Existing Judicial Performance Assessment Systems

-Unit System

- Assessment of Judgments

(Audit of Qualitative Analysis Protocols)

Chair: Justice Ruma Pal

- Judges must be evaluated at all levels i.e. Supreme Court and high Court and not only at the district judiciary level. Judges at all levels discharge the same functions. The question is who should evaluate Supreme Court Judges or high court judges? If the government or advocates assess judges then it will hamper judicial independence. There can be peer assessment or assessment by seniors.

- A Department of Justice funded study (undergoing) is analysing the phenomenon of judicial performance evaluation [JPE]. This is related to judicial accountability bill. The study enquires whether there should be judicial performance evaluation and if yes then at what levels. The draft conclusions of the study were based on responses from the members of judicial and legal fraternity.
- Some responses were that there should not be an evaluation of judicial performance because it can interfere with the independence of the judiciary. The majority of response were that there should be assessment. The largest percentage said that judges should be evaluated at lower judiciary level only. About half of responses said that there should be evaluation of judicial performance at all levels. The response to the question that what purpose evaluation of judicial performance served the answers were that it enhances transparency and accountability in the institution, help judges understand how they may improve their individual performance and it helps system take informed decision on who should be transferred, who should be promoted to high court and the Supreme Court and who should be allocated what work.
- Disposal should not be the only criteria for performance assessment of judges as it can lead to situation of justice without any deliberation. Justice should be effective and useful to the community.
- Preparation, attentiveness and control on courts should be major parameters of judicial performance assessment. Judicial control on court should be one of the strongest indicator for performance assessment of judges. Punctuality, quality of judgements, number of judgments appealed and strictures received are other criteria. Litigants' perspective is also a criteria.
- Irrespective of the outside assessment the performance assessment must help judges to improve from within. The reflexive process of the mind, the stereotypes in mind must be controlled. For instance in matrimonial proceedings, if the husband and wife are living in different cities and if wife makes an application to the court for travel and allied expenses when she has to travel to a different city for judicial proceedings then it is being allowed by the court as a matter of course. This shows a stereotype because in many cases the women may be financially well off and the husband may be in financially difficult situation. Some research have shown that individual who behave in fair manner can come under influence of unconscious biases. Decision making involve reliance on reflexive i.e. unconscious mind and reflective i.e. cognitive mind. The performance assessment should take into account these aspects of decision making.
- The standards of assessment in ACR are very different in different high courts. Parameters on which judges are assessed vary across the country. Therefore there is lack of uniformity in judicial performance evaluation in India. The ACR writing must take into consideration the professional development of judicial officers.
- The Annual Confidential Report is written in subjective manner and objective criteria should be adopted for writing ACR. Various subjective factors i.e. likeability of judicial officer among bar members specially the leaders of bar association and other social biases

play crucial role in writing of ACRs. Negligence in timely recording of ACR entries is another issue of concern.

SESSION 5

12:00 PM – 01:00 PM

Round Table Discussion

Review of Existing Judicial Performance Assessment Systems

-Integrity and Vitality of Maintenance of Annual Confidential Reports

Chair: Justice Ruma Pal

- There is need for reviewing the criteria of seniority cum merit in promotion matters and merit should be given preference in promotions. The hard working persons should get preference over others in promotions. There should be transparency in the appointment of judges. The judges and society must know why they are appointed and why they are not appointed.
- The question that whether the findings of judicial performance evaluation should be made accessible to public should be discussed. Transparency about the performance will provide motivation to judges to perform better. The society should not get the perception that there is something to hide. The information on performance evaluation of judges should be accessible to public. If somebody wants to research on this then it should be allowed.
- There is greater need of planning in the adjudication of case. The judges must insist advocates to submit written notes of arguments and then planning for time to be allotted to different advocates must be done. This will make task of judgment writing far easier. Judges should ensure that they adhere to time schedule and do not miss courts when advocates are supposed to be heard. Judges must adhere to the case list and should not adjourn matters. Judges must be very strict in granting adjournments. The motion list should be longer list and hearing list should be a shorter list. The judgment must be delivered immediately when the matter is not complex or issues are not required to be cleared. Many times the judgements are reserved and it pile up. In such situation it become difficult to recall matter after a long time. There are instances where judges get retired with undelivered judgements. There should be reasonable time limit for judgment writing if judgment is reserved. Administrative meetings of the judges should not be held during court hours as this is an administrative event.
- Judges must impose cost in frivolous litigation and unnecessary adjournments. In order to avoid any allegations from bar, the cost must be imposed equally on senior and junior advocates. In Calcutta high court the payment of cost is ordered to be paid to legal service authority instead of giving it to other party or the Registry. The advocates can be ordered to donate to Bar library for purchase of books. Judges must sit on time and there should

not be any misbehaviour with advocates. Judges can always control misbehaving advocates by taking strict action.

- Judges should maintain highest level of integrity. Judges having spouse in practice should keep their chamber separate. No litigant should come to the residence of the judge. The official functions of spouse too should be avoided.
