

**Minutes of Eighth Meeting of Advisory Council of the National Mission for Justice Delivery and Legal Reforms held on 15<sup>th</sup> July, 2015.**

The Eighth Meeting of the Advisory Council of the National Mission for Justice Delivery and Legal Reforms was held on 15<sup>th</sup> July, 2015 at Jaisalmer House, New Delhi under the Chairpersonship of Shri Sadanand Gowda, Hon'ble Minister of Law and Justice. The list of participants is attached.

The Hon'ble Minister of Law and Justice welcomed the Members to the eighth meeting of the Advisory Council. He thanked them for sparing their valuable time to support the cause of judicial reforms. He informed the members that the agenda placed before the Council encompasses a broad range of topics all of which have a crucial role to play in ensuring timely delivery of justice, a goal that Government and the Judiciary have been jointly working to accomplish. The Hon'ble Minister gave the members feedback on the deliberations which took place during the Joint Conference of the Chief Ministers and Chief Justices of the High Courts in April this year and informed them of the decision relating to setting up of a mechanism for regular interaction between the Chief Minister and the Chief Justice of the High Court to resolve issues relating to infrastructure, manpower and other facilities for the judiciary which are required to tackle the problem of pendency and backlog of cases.

The Hon'ble Minister dwelt upon the need for the States to increase their investment in Justice Sector on account of enhanced devolution of funds to them on the recommendations of the 14<sup>th</sup> Finance Commission. The Members of the Advisory Council were informed that Hon'ble Prime Minister has written to the Chief Ministers inter-alia calling upon them to initiate a campaign to strengthen the judicial system by meticulously implementing recommendations of the Finance Commission relating to Justice Sector.

Hon'ble Minister observed that several initiatives that are necessary for timely delivery of justice require the cooperation of diverse set of stakeholders, such as Courts at all levels, Ministries / Departments of the Central and the State Governments and Members of the Bar. All stakeholders need to play their respective roles for creating a conducive environment for the efficient functioning of justice delivery system. The Hon'ble Minister specifically highlighted the issue relating to time bound delivery of justice. Referring to the land mark decisions of the

Supreme Court, he observed that a procedure which does not ensure timely conclusion of trial cannot be regarded as reasonable, fair or just in the context of Article 21 of the Constitution. The Hon'ble Minister requested the members of the Advisory Council to share their views on the need for prescribing time frames for disposal of various categories of cases and the mechanism through which this objective can be achieved. With these opening remarks he asked the Joint Secretary and Mission Director to proceed with the agenda of the meeting.

**Agenda 1: Confirmation of the minutes of the meeting held on 21<sup>st</sup> January 2015.**

The minutes of the seventh meeting of Advisory Council were confirmed

**Agenda 2: Action Taken Report on the minutes of the meeting held on 21<sup>st</sup> January 2015**

The Chairman, Law Commission felt that it would not be appropriate to ask the Judicial Academies to train not only the judges but also government pleaders, public prosecutors, lawyers, police officials and other state functionaries as the available infrastructure and manpower with the judicial academies would not be able to cope up with the work load. He observed that State Governments can create adequate training facilities for police officers and public prosecutors and if need be Judicial Academies can be asked to depute their faculty members to impart them training on relevant subjects. He mentioned that in other countries it is the responsibility of the Bar Council to provide legal / professional training to the members of the Bar and requested the Chairman of the Bar Council to consider taking necessary initiatives for setting up separate training academies for members of the Bar at Central and State levels.

Chairman, Bar Council while agreeing with the views of the Chairman Law Commission felt that leaving aside government pleaders and public prosecutors, members of the Bar in general may not want to attend training programmes at Judicial Academies. He supported the idea of continued education of members of the Bar and wanted that necessary provisions should be incorporated in the Advocates Act so that regulations framed by the Bar Council in this regard are not struck down by the Courts. He mentioned that several requests have been made in

the past to the government by the Bar Council for setting up of lawyers academy headquartered at Delhi with branches at States. However, no financial support is forthcoming from the government in this regard. At this juncture, Secretary, Department of Legal Affairs gave the examples of Institute of Chartered Accountants and Institute of Cost Accountants which have been created under the law passed by the Parliament but are not being given any financial support by the Government for providing training facilities to their members.

Ld. Attorney General observed that training needs of the lawyers who enrol with the Bar Council after graduating through various institutions may not be the same. While students graduating from National Law Schools are ready for legal practice the day they enrol themselves with Bar Council, the students who come from various other institutions may need varied levels of guidance depending upon the areas they choose to specialise in legal profession. He felt that a lawyer and the judge may not feel the same way about the objective of timely conclusion of trials. Hence it is essential that initiative for change in attitude in this regard must come from the judiciary which should not allow frequent adjournments in the interest of timely completion of trials. While agreeing with the Ld. Attorney General, the Hon'ble Minister of Law and Justice requested the Chairman, Bar Council to work with the members of the Bar to change their mindset so that necessary cooperation is received by the judiciary from the Bar for timely delivery of justice.

### **Agenda 3: Comprehensive proposal on Judicial Reforms for Timely Delivery of Justice**

Initiating the discussion on timely disposal of civil cases, Prof. Madhav Menon felt that Section 89 of Code of Civil Procedure is not being implemented the way it was designed. He said that all civil cases are going for trial whereas they ought to be first referred to Alternative Dispute Resolution mechanisms provided under the law. He observed that different professional skills and aptitude are required on the part of the Bar to settle cases through mediation, conciliation and negotiations. He felt that due to inadequate training and professional skills even the provisions relating to plea-bargaining in the Code of Criminal Procedure are not being made use of appropriately.

Secretary, Department of Legal Affairs intervening in the discussion felt that Bar Council should also work on improving course curriculum of the law colleges other than National Law Schools. He felt that the law graduates after their enrolment with the Bar Council must make up their mind to specialise in one of the branches in law so that specific training courses could be designed for them in that area for imparting necessary skills. Chairman, Bar Council observed that they are ready to discharge their responsibility for improving the standard of legal education in the country and for providing a comprehensive mechanism for training and skill development for the members of the Bar. However, to achieve this purpose, some changes would be required in the existing provisions of the Advocates Act for which they will send the requisite proposal to Department of Legal Affairs.

Coming back to the main issue relating to providing a specified timeframe for conclusion of civil and criminal trial, Ld. Attorney General felt that we may adopt step by step approach in this regard. We may begin with fixing timeframe of three years for conclusion of criminal trials relating to petty offences. In case the judicial magistrates are not able to complete the criminal trials relating to petty offences within a time span of three years, the matter should be reported to the Chief Justices of the High Courts indicating the reasons for abnormal delays. Intervening in the discussion, the Hon'ble Minister for Law and Justice pointed out that Supreme Court has not found it practical to fix mandatory time limits for conclusion of criminal trials.

Chairman, Law Commission was of the view that this matter can be examined by the Law Commission and necessary recommendations can be made as the Commission is already in the process of finalizing a comprehensive review of criminal justice system. Prof. Madhav Menon observed that as we are suggesting the members of the Bar to specialize in a particular field of law, similarly the judiciary should also follow a personnel policy which encourages specialization on the part of the judicial officers in the subordinate courts as well as judges in the High Courts. Giving an example of judicial officers presiding over the Motor Accident Claims Tribunals he felt that it takes the presiding officer about a year or two to understand the complete mechanism with regard to functioning of these Tribunals. However, once the judicial officer is familiarised with the law and the procedure of the accident claim case he is transferred to another assignment. This prevents the judicial

system from taking maximum advantage of the skills developed by the judicial officers in a specialised field of law.

Agreeing with Prof. Madhav Menon, Ld. Attorney General felt that Income Tax Tribunals are able to dispose of a larger number of cases as compared to an ordinary court as the members of the Tribunals are not liable to be transferred to the other wings of the judiciary. He felt that in a similar manner judiciary should follow a personnel policy which focuses on creating competent cadre of judicial officers and judges in varied fields. Chairman, Law Commission felt that the Chief Justices of the High Courts have the authority to formulate a policy with regard to specialization of judges in different fields. Hence, matter can be taken up with them. At this juncture, Ld. Attorney General observed that in most of the High Courts a roster system is followed and judges are transferred from one branch to another in about 10 to 12 weeks. He felt that for specialized cases the tenure of the judge should be at least three years so that he gets well versed with the subject matter to dispose of the cases relatively in a shorter span of time. Prof. Madhav Menon said that he will prepare a paper on the subject which can be shared with Chief Justices of the High Courts.

Initiating the discussion on the reforms of criminal justice system, Chairman Law Commission informed that they are dealing with this complex subject. A comprehensive review of the criminal justice system has already been undertaken, however, he would like to discuss this matter with the Hon'ble Minister and Secretary, Department of Legal Affairs so that requirements of the Law Commission in terms of the resources are met to enable them to complete the task in a specified timeframe. Pointing out some recent developments, the Chairman Law Commission felt that matters relating to arrest and bail in criminal law have acquired added urgency for reforms. Supporting the observations of the Chairman, Law Commission, Ld. Attorney General observed that whatever be the nature of the offence, the arrested person has to wait at least 15 to 30 days to get a bail. He said the matters in which the bail could have been given in three days may take six months and during this period the case may have to travel from the district court to the Supreme Court. He said the fear psychosis among the subordinate judiciary in this matter is understandable but what is more serious is the casual manner in which

the arrest is being made merely because the law empowers the police to arrest accused in certain circumstances.

Intervening in the discussion, Prof. Madhav Menon observed that even after obtaining the bail, a large number of arrested persons are unable to get out of prison for lack of sureties. Prof. Madhav Menon requested the Government and the Law Commission to look into the remaining recommendations of the Malimath Committee as after 2006 these recommendations have not been processed any further. In particular he wanted the recommendations of the Committee relating to curtailing the powers of the police to arrest be implemented without any further delay. At this juncture, Joint Secretary (MD) drew the attention of the members of the Advisory Council to the observations of Ld. Attorney General in the last meeting for casting a duty on the Court at the stage of framing of charges to scrutinize the chargesheet and ensure that there are credible materials available to support the charges. Chairman, Law Commission observed that this issue needs to be taken on priority basis and if need be the Law Commission can give an interim report on certain urgent matters.

Initiating the discussion on the need of audio-video recording of court proceedings, the Hon'ble Minister of Law and Justice informed the Council that he has written a letter to Chief Justice of India in this regard. Ld. Attorney General and Chairman Law Commission supported this proposal. Ld. Attorney General observed that the Supreme Court could allow telecast of proceedings in cases of national importance such as the National Judicial Appointment Commission case which was heard recently. Chairman, Law Commission felt that the record of the proceedings will remain with the Court itself and it will help where members of the Bar are showing aggressive attitude. He observed that in some cases the reports of mis-behaviour have come on the part of the judicial officers / judges as well. Joint Secretary (J-I) gave an example of the Supreme Court in the United Kingdom where court proceedings of some of the cases are televised and audio-video recordings are made available on the website of the Court. The representative from the Supreme Court said that the communication from the Hon'ble Minister of Law and Justice has been received in this regard and shall be processed appropriately in the Supreme Court.

Prof. Madhav Menon raised the issue of lack of proper judicial data base in High Courts which is coming in the way of meaningful research on judicial reforms. In this context, he gave a brief accounts of the efforts made by Daksh, an NGO based in Bangalore who have initiated 'Rule of Law' project by collecting relevant data from ten High Courts and a couple of District Courts. The issues that have been covered under the project include the processes that are in place in judicial administration for budget preparation, infrastructure development, human resources and the role of legal profession. They have also analysed the process of judicial decision making by looking at the lifecycle of case in Subordinate Courts and High Courts. They have identified the bottlenecks which are coming in the way of timely disposal of cases as well as the issues of Access to Justice which affect the capacity of citizens to access the judicial system. They have evaluated the quality of the services offered by the Courts including socio-economic follow up of certain matters after judicial decisions. They have prepared a State of the Justice Report which is remarkable. He wanted National Mission to interact with this NGO and get more details about the work being done by them. He requested, Chairman Law Commission to invite this NGO for making a presentation of State of Justice Report. The Hon'ble Minister of Law and Justice agreeing with the suggestion of Prof. Madhav Menon observed that an interaction with the NGO and Registrar Generals of the concerned High Courts can be arranged after the monsoon session of Parliament.

Chairman, Law Commission raised the issue of large number of vacancies of judicial officers / judges in district and subordinate courts. Joint Secretary (MD) explained that the matter regarding filling up of vacancies in subordinate courts is being monitored by Supreme Court in Malik Mazhar Sultan case. In the Conference of the Chief Justices held in April this year, it was inter-alia decided that High Courts will look at the existing mechanism for filling up the vacancies in subordinate courts and take necessary appropriate action for removing the bottlenecks coming in the way. Hon'ble Minister has written to the Chief Justices of the High Courts in this regard and we are receiving encouraging response. At this juncture, Prof. Madhav Menon raised the issue of lack of adequate data on investment by States in Justice Sector. Joint Secretary (MD) informed the members that relevant details about the

expenditure incurred by the State Governments on judicial administration in the last three years has been called for and the same shall be presented before the Advisory Council in its next meeting. Intervening in the discussion, the Hon'ble Minister of Law and Justice observed that a large number of questions are being received on various aspects of judicial administration, however, the relevant details are not forthcoming from the High Courts and the State Government well in time. As a result of this a large number of parliamentary assurances are pending fulfilment for want of requisite information.

Representative from the Supreme Court pointed out that data on pending cases and various other judicial statistics need to be continuously updated however, the same is not adequately happening under the existing eCourts Project. Intervening in the discussion, Joint Secretary (J-II) mentioned that as per information received physically from the High Courts about 2.64 crore cases are pending in district and subordinate courts. However, the National Judicial Data Grid has information about 1.74 crore cases. The information about cases which are already on the data grid can be accessed easily but the information relating to cases in district and subordinate courts under the jurisdiction of High Courts of Gujarat, Madhya Pradesh and Delhi has not been uploaded on data grid because their software programme is different and eCommittee is working on this aspect.

Chairman, Law Commission felt that this matter must be taken up with the Chief Justices of High Courts. He observed that High Courts are not forthcoming to share the relevant details on the public platform. In particular, request must go to the Chief Justices of the High Courts that the information called for in respect of Parliament Questions be furnished on priority basis. At this juncture, Joint Secretary (MD) informed the members that a request has already been made to the Chief Justices of the High Courts to put real time data with regard to pendency on various category of cases in the High Courts and district and subordinate courts under their jurisdiction on the respective websites of these courts.

Chairman, Bar Council of India raised the issue regarding working of the State and District Legal Services Authorities. He mentioned that though huge funds are being allocated to the State and District Authorities, the legal aid is not reaching the needy and the poor. He observed that most of the members of the bar are



unsatisfied with their working and are unwilling to take up the cases. He felt that the Bar should have a major role as far as the working of the Legal Services Authority is concerned. Intervening in the discussion, Joint Secretary (J-I) informed the members that in the United Kingdom the funds for legal aid flow to law firms and not to the individual lawyers. He felt that there was a need to reform the present system. Joint Secretary (J-II) pointed out that in South Africa the 10% of the work of a law firm need to be done on pro-bono basis. Supporting the proposal for reforms in the law relating to legal aid to the poor, Chairman Law Commission expressed the need for better participation of the Bar and civil society in legal aid programmes. The Hon'ble Minister requested the Chairman Bar Council to send his suggestions in this regard for initiating necessary amendments to Legal Services Authority Act.

Concluding the discussions, the Hon'ble Minister observed that members of the Advisory Council may send their suggestions in all areas of judicial reforms included in the agenda note so that appropriate action is taken by all concerned to achieve the goal of timely delivery of justice. The meeting ended with a word of thanks to the Chair.

\*\*\*\*\*

**List of participants of Seventh Meeting of Advisory Council of the National Mission for Justice Delivery and Legal Reforms held on 15<sup>th</sup> July, 2015**

1. Justice (Retd.) Ajit Prakash Shah, Chairman, Law Commission of India
2. Shri Mukul Rohatgi, Ld. Attorney General of India
3. Shri P.K. Malhotra, Secretary, Department of Legal Affairs
4. Shri Manan Kumar Mishra, Chairman, Bar Council of India
5. Prof. N.R. Madhava Menon, Jurist
6. Shri Anil Kumar Gulati, Joint Secretary (MD), Department of Justice
7. Shri Praveen Garg, Joint Secretary (J-I), Department of Justice
8. Shri Atul Kaushik, Joint Secretary (J-II), Department of Justice
9. Shri Chirag Bhanu Singh, Registrar (Judicial), Supreme Court representing Secretary General, Supreme Court.
10. Dr. Geeta Oberoi, Acting Director, National Judicial Academy, Bhopal