

Minutes of Tenth Meeting of Advisory Council of the National Mission for Justice Delivery and Legal Reforms held on 18th October, 2016.

The Tenth Meeting of the Advisory Council of the National Mission for Justice Delivery and Legal Reforms was held on 18th October, 2016 at Jaisalmer House, New Delhi under the Chairpersonship of Shri Ravi Shankar Prasad, Hon'ble Minister of Law and Justice, Electronics & Information Technology. The list of participants is attached.

2. Secretary (Justice) welcomed the Hon'ble Minister of Law and Justice, Electronics & Information Technology, Minister of State for Law and Justice, Electronics & Information Technology, Minister of State for Home Affairs and other esteemed members of the Advisory Council. She informed the members that the mission has been working tirelessly for achieving its goals. She mentioned that since the last meeting of the Advisory Council, the Mission Directorate has taken forward the ideas that had emerged during the discussion. She observed that while good progress has been made on several fronts yet we have a long way to go before we achieve the overall objectives of the National Mission. Secretary (Justice) requested the Hon'ble Minister to make his opening remarks.

3. The Hon'ble Minister welcomed the members to the Tenth Meeting of the Advisory Council. He made a brief reference to the core issues included in the agenda slated for discussion during the meeting. Quoting from the latest statistics on pendency of cases, the Hon'ble Minister expressed his concern on the large number of criminal cases pending in district and subordinate courts. While making a reference to the report of the Malimath Committee on reform of the Criminal Justice System, he observed that the number of recommendations made by the Committee are yet to see the light of the day. He urged upon the Chairman, Law Commission to expedite the comprehensive review being undertaken for bringing about the necessary changes in procedural and substantive laws for expeditiously disposal of criminal cases. He emphasized the need to focus on the early conclusion of criminal trials in cases relating to heinous crimes which affect the society at large. At the same time he stressed on the need for protecting the interest and well being of the witnesses and the victims of the crime.

3.1 The Hon'ble Minister mentioned that strength of the judges of the High Courts has been increased from 906 in June, 2014 to 1079 at present. However, the manpower planning for the subordinate judiciary primarily falls within the domain of the State

Governments and the High Courts concerned. The Central Government on its part has been pursuing this matter at various levels from time to time. The sanctioned strength of the subordinate courts has gradually increased over the years and now stands over 21,000 posts as of June, 2016. The matter of concern here is the existence of nearly 5,000 vacancies of judges / judicial officers in district and subordinate courts. The matter relating to filling up of vacancies squarely falls within the purview of the High Courts. Central Government and State Governments have very little role to play in this regard.

3.2 He mentioned that adequacy of judge strength in High Courts and district & subordinate courts has been deliberated upon extensively in the previous meetings of the Advisory Council. It is a fact that Law Commission in its 120th Report (1987) had observed that we may endeavour to achieve a judge population ratio of 50 judges per million of population. However, it was simultaneously acknowledged that this assessment was based on the prevailing judge population ratio in the United Kingdom in the absence of availability of reliable data for a scientific analysis of workload on Subordinate Courts in India. The Supreme Court in the *Imtiaz Ahmed* case has felt that this matter needs to be revisited and directed the Law Commission to come with a scientific criteria for creation of additional courts. The report of the Law Commission is under consideration of the Supreme Court.

3.3 The Hon'ble Minister felt that the need of the hour is to streamline the court processes so that they become amenable to process automation under eCourts project. The High Courts need to comprehensively revisit their rules of procedures to bring them in line with the requirements of e-summons, e-filing and e-payment of court fee. The Hon'ble Minister was of the view that while National Judicial Data Grid has become operational, the lack of standard practices with regard to collection and maintenance of judicial statistics across the High Courts makes it difficult to use the available data for empirical analysis. Further, the authenticity and credibility of data needs to be enhanced.

4. Hon'ble Minister of State for Law and Justice, Electronics & Information Technology stressed on the need for improving the legal aid and legal awareness services. He was of the view that these services are basically administrative in nature and the States need not deploy judicial manpower for this work particularly in view of shortage of judicial officers. If need be amendments could be considered to the Legal Services Authorities Act, 1987 through which we may inter-alia enhance the role of the Bar and state officials for the work relating to legal aid and legal awareness.

4.1 Hon'ble Minister of State for Law and Justice also laid emphasis on strengthening of arbitration as a viable mechanism for contract enforcement. He was of the view that technology can play an important role in bringing transparency and efficiency in our judicial processes.

Agenda 1: Confirmation of the minutes of the meeting held on 16th February 2016.

5. The minutes of the Ninth meeting of Advisory Council were confirmed.

Agenda 2: Action Taken Report on the minutes of the meeting held on 16th February, 2016

6. The members noted the contents of the Action Taken report.

Agenda 3: Reforms of the Criminal Justice System

7. Introducing agenda item relating to Reforms of the Criminal Justice system, Mission Director noted that this issue has been invariably discussed during the previous meetings of the Advisory Council and there is broad consensus on the need for comprehensive reforms. These reforms may inter-alia include the introduction of the concept of 'restorative justice' in our criminal law. It was mentioned that out of over 18.6 million criminal cases pending in the subordinate courts of the country only 2.8 million cases pertain to serious crimes. As such a way needs to be found for summary disposal of cases pertaining to petty crimes so that the focus of attention in the criminal courts remain on the serious crimes which affect the society at large.

7.1 Ld. Attorney General observed that the maximum number of cases that are clogging the courts are either challan cases or cases under section 138 of Negotiable Instruments Act. He felt that these cases should be tried under a simplified procedure the framework for which already exists in the Code of Criminal Procedure in the form of summary proceedings. For cheque bounce cases, Ld. Attorney General was of the view that once it is established that a cheque which has been dishonoured was issued by the accused, he must be called upon to make a deposit of specified value of cheque before he is granted an opportunity to contest. In challan cases or the cases relating to petty offences compounding should be liberally allowed to bring down the docket considerably.

7.2 Ld. Solicitor General informed the members that in a recent judgment the Constitution Bench of the Supreme Court has elaborated upon the rights of the victims of heinous crimes and the details could be picked up from this judgment for suitable incorporation in criminal law. As regards, the low conviction rate in the criminal trials Ld. Solicitor General was of the opinion that some of the district judges face language problems which affect their ability to appreciate the available evidence. In most of the cases the translated scripts are provided by the advocates themselves and this practice needs to be curbed by courts by procuring the electronic translation systems which have now become available with the advancement of technology.

7.3 Chairman, Law Commission of India laid stress on providing statutory backing to the witness protection schemes being formulated by various State Governments. He pointed out that most of the State Governments have carried out amendments to the Code of Criminal Procedure for dispensing with the consultation with the High Courts and District Judges for appointment of public prosecutors. Under these circumstances, it becomes necessary to recognize the right of the victim to be represented in the trial along with the public prosecutor. Further there is also need to streamline the nature of offences which could be tried at the level of the magistrates and which require trial by the session judges so that the existing anomalies in this regard in the Code of Criminal Procedure are properly rectified. He acknowledged that there was reluctance on the part of the magistrates to grant bail which leads to frequent referral of such cases to higher courts. However, he was of the opinion that a stand alone law on the bail may not be necessary and requisite changes could be brought about by amending the relevant provisions of the Code of Criminal Procedure. Secretary, Legislative Department and Secretary, Legal Affairs were in agreement with the views of the Chairman Law Commission.

7.4 Hon'ble Minister for Rural Development & Panchayati Raj and Law and Justice, Government of Jammu & Kashmir said that investigation of criminal cases should be conducted by the separate wing of the police force who have necessary investigation skills with proper knowledge and training in the field of forensic sciences. He highlighted that lack of accountability on the part of investigating agency and public prosecutors results in inordinate delays in trial of cases and low rate of conviction. He also made a mention of financial constraints on the part of the State Government for development of adequate court infrastructure and manpower in the State.

7.5 Hon'ble Minister of State for Home Affairs agreed with the view expressed by the Hon'ble Minister of Law and Justice, Government of Jammu & Kashmir and mentioned that budgetary constraints were coming in the way of separation of investigation machinery from the ordinary duties of law and order being assigned to the police forces. He informed the members that he had held several meetings with the senior police officers in the recent past for laying down a road map for implementation of the various recommendations of the Expert Committees on Police Reforms. He expressed the desire to work in coordination with the Law Commission for implementing the major reforms in our Criminal Justice System. The Hon'ble Minister of Law and Justice supported this initiative.

Agenda 4: Manpower planning for subordinate judiciary

8. Initiating the discussion on manpower planning for subordinate judiciary, the Hon'ble Minister observed that any scientific criteria for determining the adequacy of judge strength must have its basis in proper analysis of workload of judiciary. This requires availability of authentic and reliable data on day to day working of courts. As such, the High Courts need to pay greater attention on data collection and data management so that they are in a better position to project manpower and infrastructural requirements of the subordinate courts to the respective State Governments.

8.1 Ld. Attorney General was of the view that instead of increasing the number of judicial officers, the focus should be on filling up of the existing vacancies. Solicitor General joined the discussion by suggesting that there should be some mechanism to curb the frequent litigation on selection of the judges for the subordinate judiciary. Chairman, Law Commission of India mentioned that the challenge lies in identifying the suitable candidates. He gave the recent example of selection conducted by a Delhi High court where against 80 vacancies for the post of Judicial Magistrate only 13 candidates were found suitable for selection. At this juncture, the Hon'ble Minister observed that recruitment to the subordinate judiciary primarily comes within the purview of the High Courts. They need to evolve a suitable mechanism to see that the existing vacancies are filled up on priority basis before a fresh demand is made for creation of additional posts for the subordinate courts.

8.2 Secretary General, Supreme Court informed the members that following the directions of the Supreme Court in the Malik Mazhar Sultan case clear timelines for each

stage of recruitment have been laid down and High Courts are required to update the Supreme Court on the progress made in this regard. He also made a mention of the online information being received by the Supreme Court from various High Courts on the dedicated portal which helps in monitoring the progress in filling up of the vacancies in subordinate judiciary. He pointed out that in some of the States, the selection for the subordinate courts are conducted through State Public Service Commission. It was pointed out that even in these cases the recruitment process is supervised by the High Court concerned. He gave a detailed account of various reports of the Law Commission and other Expert Committees where recommendations have been made for substantial increase in the sanctioned strength of the judges / judicial officers in the subordinate courts.

8.3 However, the members of the Advisory Council were of the opinion that unless and until we streamline the court processes, curb the frequent strikes by the lawyers and the High Courts exercise better supervision on the working of the subordinate judiciary, any further increase in judge strength would not lead to reduction in pendency. It was pointed out that in fact several States with low judge strength in subordinate courts have done much better in terms of the reduction of pendency than those States which had high judge population ratio. Hon'ble Minister while concluding the discussion on manpower planning for courts observed that all the stakeholders viz the Judiciary, the Bar, the Central Government and the State Governments should work in tandem to arrive at a scientific methodology based on proper analysis of data relating to judicial workload for creation of posts of the judges and judicial officers in various courts across the country.

Agenda 5: Streamlining Court Processes

9. The Hon'ble Minister highlighted the need for the High Courts to amend court rules to usher in the necessary procedural reforms for automation of court processes. He said that the judicial processes need to become IT complaint for success of eCourts Project.

9.1 Joint Secretary (AK) informed the members that a Conference on Process Re-engineering was organized by the eCommittee and Department of Justice in June, 2016. During the Conference, all High Courts were requested to provide inputs on improving procedures in the identified areas of civil and criminal trials. The process re-engineering work was allocated amongst the High Courts which were asked to review the existing rules in various fields to facilitate process automation. The reports in this regard have

been received from all the High Courts. A review of these reports has been undertaken which would help in developing model rules of the High Courts. He noted that the challenge would be to get the High Courts to adopt these rules to ensure uniformity in procedure.

9.2 On a query from the Hon'ble Minister about the procedure for timely release of undertrial prisoners the Member Secretary, National Legal Aid Authority informed the members that a committee comprising of District Magistrate, District Judge and Superintendent of Police has been set up in many States to gather data and get details of undertrial prisoners who have spent more than half of the sentence for the crime that they were accused of. While many States have already established the Committees and have started gathering the information, more concerted efforts are required in other States to streamline the process of release of undertrial prisoners on completion of half of the sentence period.

Agenda 6: Judicial database for policy formulation

10. The Hon'ble Minister expressed his concern that while the eCourts Mission Mode Project has entered its second phase and the National Judicial Data Grid has become operational, the challenges relating to availability of authentic data for empirical analysis and evidence still persist. He said that there is a compelling need to define a uniform standard for data collection and authentication. He clarified that the government can only play an advisory role and that it is for the High Courts to formulate a clear standard to gather data. Ld. Solicitor General was of the view that the eCommittee of the Supreme Court should take this responsibility as they have the resources and can seek the cooperation of the High Courts in this regard.

10.1 Participating in the discussion Secretary General, Supreme Court observed that the National Judicial Data Grid is now in a position to provide reliable data and generate necessary reports for supervision of the work of the subordinate courts. As decided by the eCommittee, the work relating to categorizing of data with uniform nomenclature at the national level is underway to deal with classification of cases amongst different High Courts. He highlighted the need to provide appropriate infrastructure to courts for IT enablement.

11. Concluding the discussion the Hon'ble Minister of Law and Justice summarized the actionable points which arose from the deliberations of the Advisory Council. The Hon'ble Minister emphasized the need of continuous and constructive engagement between Ministry of Home Affairs, various Departments of Ministry of Law and Justice and Law Commission of India so that the structured recommendations of the Law Commission with regard to Criminal Justice Reforms are available within a specified timeframe. He agreed with the suggestion of the Chairman, Law Commission that instead of piecemeal proposals for legislative reforms on various aspects of Criminal Justice System, a comprehensive legislative proposal needs to be formulated covering all aspects of Criminal Justice System.

11.1 The Hon'ble Minister desired that the process re-engineering exercise being undertaken under the supervision of eCommittee must be finalized at the earliest. The Supreme Court of India be requested to enlist the cooperation from the High Courts for modifying the High Court Rules in line with the outcome of process re-engineering exercise so that IT enabled court processes become a reality throughout the country in the near future.

11.2 Hon'ble Minister made a mention of the DAKSH Report on State of Indian Judiciary which has highlighted the huge amount of money being spent by the Indian litigants on attending the court proceedings alone. He requested the Ld. Attorney General, Ld. Solicitor General and Chairman Bar Council of India to provide necessary inputs to the Chairman, Law Commission of India so that necessary recommendations are formulated by them for saving the litigants from this huge expenditure.

The meeting ended with a word of thanks to the Chair.

**List of participants of Tenth Meeting of Advisory Council of the National Mission
for Justice Delivery and Legal Reforms held on 18th October, 2016**

1. Shri P.P. Chaudhary, Hon'ble Minister of State for Law and Justice, Electronics & Information Technology
2. Shri Kiren Rijiju, Hon'ble Minister of State for Home Affairs.
3. Shri Abdul Haq Khan , Hon'ble Minister for Rural Development & Panchayati Raj and Law and Justice, Government of Jammu & Kashmir.
4. Dr. Justice B.S. Chauhan, Chairman, Law Commission of India,
5. Shri Mukul Rohatgi, Ld. Attorney General of India,
6. Shri Ranjit Kumar, Solicitor General of India,
7. Smt. Snehlata Shrivastava, Secretary, Department of Justice
8. Dr. G. Narayana Raju, Secretary, Legislative Department, Ministry of Law & Justice
9. Shri Suresh Chandra, Secretary, Department of Legal Affairs, Ministry of Law & Justice
10. Shri Ravindra Maithani, Secretary General, Supreme Court of India, New Delhi.
11. Shri Manan Kumar Mishra, Chairman, Bar Council of India
12. Shri Srimantosen, Secretary, Bar Council of India
13. Shri A.K.Gulati, Joint Secretary/Mission Director, National Mission, D/o Justice
14. Shri Atul Kaushik, Joint Secretary (J-II), D/o Justice
15. Shri S.C. Barmma, Joint Secretary, D/o Justice
16. Shri Rajinder Kashyap, Joint Secretary (J-I), D/o Justice
17. Shri T. Narayana Reddy, Addl. Secretary, Law Department, Andhra Pradesh
18. Shri Alok Agarwal, Member Secretary, NALSA