



EFFECTIVE DISTRICT COURTS ADMINISTRATION

JUDICIAL ACADEMY JHARKHAND

Collective Consciousness

*Meet together, Speak Together,
Let our Mind be one accord
Let our Hearts of one accord
Let our aims be common and
All of us be of one mind, so
We may achieve our target well together*

Rig Veda

Effective District Courts Administration

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EFFECTIVE ADMINISTRATION

In

DISTRICT & SUBORDINATE JUDICIARY

Justice R. Banumathi
Chief Justice, High Court of Jharkhand

Our country is a Democratic Republic governed by the Constitution of India and qualified with the expression “Rule of Law”. 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 dignity, integrity and importance of the position as District Judge.

PRINCIPAL DISTRICT JUDGE AS A TEAM LEADER OF JUDGESHIP:-

Principal District Judge is the administrative head of the District Court and the team leader of the Judicial Officers in the District. As the Administrative head of the Judgeship, 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 places such as Sub Divisional Civil Court, Juvenile Justice Board etc. situated within the District. It is the obligation of the Principal District Judge to maintain proper judicial tempo of functioning in his/her District and be responsible for the efficiency in the District.

Speedy disposal of cases and delivery of justice is an ongoing agenda. Unable to settle the disputes, the litigant approaches the Court seeking justice by paying court fees and heavy fees to the lawyers. The seekers of justice approach Courts of Justice with pain and anguish in their hearts on having faced legal problems and having suffered physically or psychologically. People’s faith in our judicial system has continued to remain firm in spite of the backlog and delays. Accordingly, the judiciary has an obligation to deliver timely and

inexpensive justice. For substantial number of litigants, District Court is the final Court.

As the administrative head of the District, the Principal District Judge has to ensure that filing of cases and their registration 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/judgments without delay; periodical consignment of records, periodical destruction of records and organizing legal aid programmes under his/her direct supervision. He has to ensure discipline among the staff members and motivate them to excel in their discharge of duty.

Unlike other services, Judicial service is not merely an employment. 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, integrity and efficiency of Judicial Officers. It is for District Judge to set an example to other Judicial Officers and encourage them to bring out their best.

PUNCTUALITY & PERFORMANCE:-

As the administrative head of the Judicial 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 Dias. 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 Zonal Judge/High Court.

There is no substitute of hard work. Up-gradation of knowledge, punctuality, courtesy and conscientiousness are the key words to make a system viable and meaningful and it is a continuous process. A hectic social life and distraction detract from the discharge of judicial duties. It is also true that Judges need not be an ascetic, but a certain degree of aloofness has to be observed by him to see that probity, impartiality and objectivity are not only maintained but also seemingly observed.

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 orders. In case of any difficulties, the Principal District Judge has to bring it to the notice of the Hon'ble Zonal Judge and thereafter do the needful.

MONTHLY REVIEW:-

The Principal District Judge has the administrative responsibilities 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 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, the District Judge could look into the system as to the work done by the Officer in the previous months and to see whether the Officer has secured the points. Unless the review is fed into the computer, it would be difficult to go through the entire File maintained by the Office for the previous months.

PERIODICAL MEETINGS:-

As Judgeship 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 of the judgeship and 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 Judgeship head – Principal District Judge. Such meetings are to be convened preferably on second 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 Court.
- 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 organize such programmes.
- Get feedback on the implementation of the instructions earlier given.

Periodical 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. Such meetings would also enable the Principal District Judge to get firsthand 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 with Judicial Officers or in the meeting of **Monitoring Cell Committee**, effectively communicate with other Officers as to what they should accomplish in their Courts and collectively in the District. Even though the Principal District Judge is the administrative head of the District and make the decisions, the Principal District Judge should always seek the opinion of other Officers and try to incorporate their best part of suggestion wherever possible.

Monitoring Cell Committee meeting must be held regularly for taking effective steps in the administration of justice. The deliberation of this meeting can be capable of producing intended result in the administration of justice because almost all the stake holders are supposed to participate in this meeting. This committee is presided by the Principal District Judge and it comprises of Deputy Commissioner, Superintendent of Police and supported by Chief Judicial Magistrate, Civil Surgeon, Forest officials, Engineers of Building Construction Department etc. In this meeting, the issues creating impediments in the dispensation of justice such as production of witnesses including official witnesses viz. Doctors, Investigating Officers, attendance of accused, service of summons, role and deputation of task force for service of summons, disposal of long pending petty offences of Excise and Forest etc. are discussed and implemented.

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

In the administration of justice one has to appreciate Courts and Case Management. The concept of Court Management is to render the judicial system more productive. The principles of Court Management enable improving efficiency. Irrespective of the rank of the Court in which the Judge works, he must acquire certain skills and qualities which improve his competence and consequently the productivity of the system. Court Management would include identifying the purpose of courts and court system, qualities of leadership, planning the goals, allocation of funds, case flow management, modernization and rationalization of court system including introduction of information technology, training of employees and enhancing their skills, human resource management and Bench-Bar relationship.

The Principal District Judges have to make an assessment of the case load which they can bear and then, having provided for availability of the requisite number of persons to bear the load, to distribute the work flow between Judges fairly and equitably. Case Management, in its individual aspect, aims at retaining managerial control over the flow of an individual case in such a manner that the control is never lost and the flow never stops. In both aspects of Case Management, computers are of great help. They enable maintaining statistics and information. The records can be digitalized into electronic files. The electronic diary enables keeping a record of hearing and its follow up.

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 their knowledge.

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.

During Periodical meetings, the Principal District Judges can also select important judgments or latest topic for discussion and collectively share the knowledge.

POSTINGS AND TRANSFER:-

The Principal District Judge has administrative responsibilities of recruitments, postings, promotions and transfers of ministerial staffs. Every year the Principal District Judge has to consolidate the vacancy position in the posts of Class III employees including Stenographer, Typist and Assistant. Since the Principal District Judge is the Appointing authority for Class III and the process of appointment is executed at the Hon'ble High Court of Jharkhand level, therefore, prayer for the filling up the vacancies of Class III staffs in the District must be made to the High Court. Similarly the vacancy position of the Class IV employees be also consolidated and since for Class IV employees, process of recruitment is done at District level, the action for their appointment be worked out promptly by the Principal District Judges as per the rules and regulations.

The Principal District Judges must be acquainted with the relevant Civil Court Staff Rules. The departmental examination must be conducted regularly so that no employee be debarred or delayed in his due promotion, increments, ACP etc.

Further with the increase in the load of cases and creation of new courts, the consequential requirement of Class III and IV staffs should be evaluated intermittently and figure out the exact need and accordingly the Principal District Judge should request the Department of law, Govt. of Jharkhand to do the needful with a copy to the Hon'ble Court so that the matter could be expedited for timely recruitment.

Insofar as transfers and postings of Class III and Class IV staff are concerned the Principal District Judges are responsible for their transfer within their respective Judgeship itself and they should take action accordingly for the betterment of the administration in the interest of institution in objective manner.

Inter-District Transfer:- In case of administrative exigency, if the Principal District Judge is of the opinion that one or some of the staff are required to be transferred to another judgeship, he should make a request to the High Court narrating all the relevant facts justifying the transfer of the concerned staff.

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 Land Acquisition Cases and also in such 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. More often than not it comes to light that CCD amount has not been deposited in the Fixed Deposits for quite a long time, causing heavy loss of interests to the litigants. 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 the Judgeship to be prompt in investing the amount in Fixed Deposits. Likewise, Fixed Deposits on maturity are to be renewed for further time, so that party may not lose any further interest.

ISSUANCE OF CHEQUE:-

There are a number of cases in the judgeship where the cheques are deposited in the court to be handed over to the parties. In such cases the Principal District Judges are to ensure:-

- Judicial Officers in the Judgeship are to be impressed upon to see that Cheques are to be handed over 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 distributed in the open Court only in the presence of parties concerned.
- That there is no delay in disposal of Cheque applications.

RECORD ROOM:-

As Principal District Judge, you must ensure that periodical consignments are sent to the Record Room. Principal District Judges must ensure that the records are destroyed periodically. Annual vacation is to be fully utilized for destruction of records of the Record Room. This has to be planned well in advance in March-April of every year.

As Judgeship head, you must ensure that proper steps for destruction of records are taken by publication and thereby taking steps for disposal etc. as per the Civil Court Rules and all the Register related to Records are thoroughly maintained.

ANNUAL INSPECTION OF EACH DISTRICT AND SUBORDINATE COURT BY THE RESPECTIVE HON'BLE ZONAL JUDGES OF THE HIGH COURT OF JHARKHAND:-

The Annual inspection is in a way, evaluation of the work done and its quality. The Annual inspection 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)**].

Annual inspection of the District and Subordinate Court is conducted by the Hon'ble Zonal Judge of the High Court of Jharkhand to strengthen the administration of justice in the judgeship and also to ensure that the work of Judicial Officers and Ministerial staff are being conducted strictly according to law and according to Rules prescribed by the High Court with regularity, punctuality and efficiency. The inspection is to observe and correct errors and irregularities. The inspection of a judgeship is carried out by the Hon'ble Zonal Judge with a constructive approach, to discuss the general problems relating to the dispensation of justice, to point out the shortcomings to be rectified and corrected and to make suggestions and proposals and specific recommendations for policy decision. A copy of the inspection note is given to the Principal District Judge for making necessary compliance. Therefore, in the light of the inspection by the Hon'ble Zonal Judge of High Court of Jharkhand, if the inspection of Courts as discussed above is done by the Principal District Judges annually in their respective judgeship, the inspection by the Hon'ble High Court would be a fruitful and meaningful inspection in the interest of Justice Delivery System.

The inspection by the Hon'ble High Court is done exhaustively to cover all the fields which are integral parts of the administration of justice. A 12 point guidelines has been prepared by High Court of Jharkhand with for effective inspection of Judgeship to the Hon'ble Zonal Judges for making a thorough inspection so that very purpose of the inspection may be fulfilled and all things are brought to order. The questionnaire has been formulated separately for different wings of the Civil Courts in order to have complete information of all the wings of the Civil Courts. These questionnaires contain 12 parts which are as under:-

- Inspection and Audit
- Building and Compounds

- Establishment matters
- Budget and Financial matters
- Misc. Administrative matters
- Library
- Record Room
- Nazarat
- Copying Department
- Civil Courts
- Criminal Court of Magistrate
- Sessions Court

CONTINGENCY FUND-

The Principal District Judge is solely responsible for the judicious and timely utilization of the contingency fund. The contingency fund has to be used as per the provisions of treasury code and guidelines of the finance department issued from time to time.

The contingency fund is allotted under Head 3 “administrative expenses” and as per rule 290 of treasury code, contingencies include all incidental and other expenses which are incurred for the management of the office other than those prescribed under rule of classification of expenditure and falls under some other head of expenditure i.e. work, stock, tools and plants etc. Contingency fund has to be utilized as per the directive of the finance department and shall include those expenses which is essential for the smooth functioning of office like furniture, postal expenses, stationeries, purchase and maintenance of machines and tools used in office, printing of forms, water tax, draperies etc.

The Principal District Judges through the nazarat shall quarterly take report from every court regarding their requirement of stationeries including judgment paper, deposition forms, format of charge under various heads, furnitures including almirahs, chairs bench etc., the genuine requirement should be effectively and promptly addressed.

Periodical inspection of stationery and form section should be carried

out and in case of any shortage of forms or papers, immediate steps should be taken to replenish the same.

As the treasury is connected on line with the finance department, the quantum of contingency fund lying unused is monitored by the department. If the fund remains unused the finance department has reservation in further release of fund. Contingency funds should be utilized promptly as per requirement and should not be left unused for utilizing the same at the end of the financial year.

IMPROVING PHYSICAL INFRASTRUCTURE:-

The Principal District Judge is in charge of the Court Buildings in the District and the infrastructure. He must play an active role in securing the required physical infrastructure on yearly basis and for this they have to co-ordinate with the Deputy Commissioner/District Collector and other Officers in the District. In Case new buildings are proposed to be constructed, the Principal District Judge has to monitor the preparation of the plan and estimate for the construction of buildings by the officials of Building Construction Department at District level. There is a monitoring committee in pursuance of the directions dated 12.07.2010 of Hon'ble Supreme Court in Writ Petition (Civil) No.1022/1989, **All India Judges Association & Ors. Vs. Union of India & Ors.** at District level in each District of the Jharkhand consisting of Principal District Judge as Chairman and Deputy Commissioner, Executive Engineer of Building Construction Department and Chief Architect as the members for the speedy and effective completion of the proposed work in the development of physical infrastructure. While sending the plan for construction of buildings, the Principal District Judges are to send the proposal with estimate to the Department of Law, Govt. of Jharkhand with a copy to Hon'ble High Court 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 and also for the staff of the courts.

Similarly the Principal District Judges are supposed to take action on annual basis in the said committee of the District level with respect to **“the Repair and Maintenance”** of Court rooms, Chambers, bathrooms, toilets, administrative blocks such as Nazarat and other wings of the Court premises and also **“the Repair and Maintenance”** of the Quarters of the Judicial Officers and staff in the Judgeship.

The Principal District Judges are to ensure that they take steps for purchase of new furniture and also for repairing of the furniture available in the Courts.

INHOUSE MANAGEMENT:-

Maintenance is very important to upkeep the institution in good working order.

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

For outside Maintenance the Principal District Judges should coordinate with Executive Officials including the Municipal authorities to ensure cleanliness of the Court premises. The **Electricity bill** of both the Court and Quarters, **Municipal Tax** and other **statutory financial liabilities** must be paid regularly without fail by the concerned. If the Electric Meters are not installed in the Court premises or Quarters, the Principal District Judge are to ensure their installation within 15 days from today.

JAIL INSPECTION:-

The Principal District Judge shall inspect the jail each month and shall submit the report to the High Court regarding the various aspects of the jail such as number of inmates, capacity of the inmates, quality of food, cleanliness, social activities in the jail etc. as per the guidelines issued by the Hon'ble Supreme Court in this regard or any other matter which under his opinion should be brought to the notice to the High Court. If in a particular month the Principal District Judge is not in a position to inspect the jail himself, he may direct the Chief Judicial Magistrate to inspect the jail and submit a report accordingly.

HAZAT:-

Hazat is a place where inmates from the jail are brought for the production in the concerned Court. The Principal District Judge should always supervise the place for its proper security. It is also to be ensured that female and male sections are separated with adequate drinking water and toilet facilities. At present if they are not running properly immediate steps are to be taken to bring them in proper order with an intimation to the Hon'ble High Court.

COMPUTERIZATION 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 Sub Divisional Courts will be computerized shortly and the work is under progress. Principal District Judges must monitor the progress made in computerization of Sub Divisional Courts. Technical man power has been provided to all the Districts.

As per the direction of the e-Committee, the date of pending cases, institution and disposal are to be uploaded. All the Principal District Judges are required to personally monitor the same and if not done as of now it should accomplish on priority basis.

Under the Directions of the e-Courts Committee, Supreme Court of India and E-Committee of the Jharkhand High Court, 10 Judicial Officers in the State of Jharkhand have already been trained on Ubuntu Operating System and on change management as **master trainers**. As per the directions of the E Courts committee, Supreme Court of India, all the Judicial Officers in the State of Jharkhand have been 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 have also been recently enhanced.

All the Principal District Judges/District Judges have to make notes of the following facts:-

- In all the Judgeships Central Filing of fresh cases must be made mandatory.
- Let it be made mandatory for the Assistants who have got training to do all works on computers and they be directed to give training to other staffs.
- The day to day proceedings of the court to be updated by the Bench Clerk / Steno of the court concerned and it should not be allowed to become backlog.
- Bench Clerks may be directed to replace the manual cause-list as well as proceeding report with the system generated cause-list & proceeding on daily basis. Generated cause-list & proceeding should be hanged daily as per the cause-list outside the court room.

- A team may be created with mutual co-operation between the Office Clerk/Bench Clerk/Steno to work on the system.
- All the internet connectivity issues to be discussed sincerely with the officials of the district BSNL authorities and should be sorted out.
- Principal District Judge to monitor working of the e-court project on fortnightly basis and take necessary steps to sort out the problems and ensure proper implementation of the project.
- In case the Principal District Judges face any difficulties in implementing the project of e-courts, they must bring it into the notice of Central Project Coordinator e-committee, High Court promptly.

NEED FOR TRAINING THE STAFF:-

Staff members play key role in the Justice Delivery System. Staff member are responsible for the effective functioning of the 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/order. 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 of the District & Subordinate judiciary. For the system to be efficient, systematic training of staff members is very much essential. As Principal District Judge, the District Judges are to organize such trainings within the Districts using the services of Judicial Officers within your District, Head Ministerial Officers, retired staff etc. By imparting in service training and continuous learning, the staff members are motivated and we take them along in the judicial reforms we foresee.

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, Jharkhand Judicial Academy, Jharkhand State Legal Services Authority (JHALSA).

All the communications to the High Court are to be addressed only to the Registrar General, High Court of Jharkhand. The Judicial Officer shall not address any communication directly to the Hon'ble Judges of the High Court.

As and when appeal intimations are received from the High Court,

records are to be sent to the High Court without any delay. Any details required by the High Court must be promptly sent without any delay.

MAINTENANCE OF ACCOUNTS & AUDIT BY ACCOUNTANT GENERAL:-

The principal District Judge of the judgeship is to ensure proper maintenance and updating all the registers related to accounts. Regular AUDIT of judgeship must be ensured by the Principal District judges who shall personally supervise the audit process conducted by the Accountant General Office. The Principal District Judges shall meet out the objections raised by the Audit Party within fifteen days and report the matter to the Hon'ble High Court and thereafter, it is to be further ensured that the AUDIT objections should be complied with regularly in future.

For proper maintenance of the Accounts, Reconciliation Statement of the Court and the Treasury must tally. Non-tallying of the Reconciliation Statements causes major AUDIT objections. In District and Subordinate Courts, since the amount involved in cases and cheque petitions are substantive amounts, staff members of proven 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. The Principal District Judges should hold periodical meetings with the concerned and they should impress upon the concerned staff and Judicial Officers about the importance of the Reconciliation Statement and compliance of the objections raised by the Audit Party in future.

DELEGATING ADMINISTRATIVE RESPONSIBILITIES:-

Being responsible for judicial as well as administrative work, for efficiency, I would like to suggest de-centralization 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, organizing training programme for staff members, organizing legal aid programmes, conducting Mega Lok Adalats, the responsibilities could be entrusted to 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:-

Whatever I have said is all with good hopes, good intentions and mostly in the interest of Institution. Even though the problems of justice delivery system are many and varied but these can be overcome through effective Court Administration and Case Management under the able leadership of the Principal District Judge.

The District Judge should motivate the people around them viz. the Judicial Officers, staff members and others and inspire them 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.

The Principal District Judge at the District level must work in co-ordination and not in confrontation with the other wings of the governance of the District who are the stake holders in upkeeping the administration of District and Subordinate Judiciary in order. The members of the other wings of governance of District administration include Deputy Commissioner, Superintendent of Police, Engineers, Doctors and other Executive officials because all have an important role to play in the administration of justice. In nutshell, each one of us individually and all of us collectively should be able to exert with all sincerity and probity. In the words of **A. Homer- “Always to be the best and be distinguished about the rest”**.

We have to pursue our work with excellence.

Administration of Justice and Management of Courts in the District Judiciary – Some Tested Hints.

Justice Narendra Nath Tiwari
Judge, High Court of Jharkhand

District court is the foremost pedestal of the judicial edifice. The litigant public first interact with the district courts and seek redressal of their causes. Their perception and experience of the court builds the image of judicial system in their mind. If they are satisfied with the working of the court, they carry positive impression about the working of judicial system and that strengthens their confidence and faith in the system. The Judicial Officers working in the district courts or Muffasil courts and who are in constant direct view of the litigants have to take responsibility of representing the judiciary and maintaining its high position, lustre and stature.

The Judges discharge the sovereign duty, which in ancient time used to be discharged by the king. The responsibility of a Judge becomes more onerous due to the unflinching trust reposed in them by the society. Administration of court is of different nature unlike other administrative duties. The administration of courts has to be viewed in terms of accountability of the Judges to the people, ensuring them quick and effective justice. In order to achieve the object and satisfy the expectation of the public, the district judiciary has to be well tuned and trained to cope with the mounting arrears and changing need of the modern society.

Though the Judges should not be panicky of the hue and cry about pendency of the cases, which is contributed by various other factors and not due to failure of the judiciary, a duty is cast and responsibilities imposed to come up to the expectation of the public and minimize their sufferings and utmost has to be done to avoid delay in delivery of justice.

For achieving that end and object, both the administrative side as well as judicial side of the district administration are to be focused. The Judges, who are responsible for discharging the judicial as well as administrative duties have to imbibe and develop leadership quality and have to be alert and well equipped in their field. Following suggestions may help them in improving the said qualities:

(I) Fair and equal treatment to the staff and subordinates.

- (ii) Fix responsibility and keep control over them;**
- (iii) Deal with unbecoming staff with iron hand;**
- (iv) Be always alert and watchful against factors, which impede the early disposal of administrative jobs as well as judicial work;**
- (v) Periodical review of each branch has great effect in smooth running of administration;**
- (vi) Framing of time for all important steps to be undertaken by the officer and staff works a wonder;**
- (vii) Periodical inspection by the officers, both in judicial and administrative side is very useful;**
- (viii) Special attention is to be given on the maintenance of all important records of the court;**
- (ix) Reshuffling of the staff falling within the jurisdiction by way of transfer or deputation from time to time, in accordance with the prescribed rules and circulars, adds to the efficiency of the court and wards off the lethargy of working at the same seat or place for a long time;**
- (x) Giving timely promotion, admissible benefit etc. provides new impetus and adds to the efficiency of the employees and that should be always taken care of;**
- (xi) Pending matters of suspension and disciplinary proceeding should be taken on priority basis. There are several instances of prolonged suspension of employee for a long time causing him embarrassment on the one hand and paying almost half of the pay and sometimes more than that for doing nothing and in cases of exoneration of the employee of the charges, paying full salary for no work is not in the interest of public.**
- (xii) The superior authority must be always kept informed about the progress as well as reasons impeding the desirable result.**
- (xiii) Enhancing knowledge and skill of using computer and other modern techniques and gazettes.**
- (xiv) Continuing learning process and training, particularly for acquainting with the new laws and technological developments.**

These are, in brief, capsule guide for effective court administration and management. The only object is to improve efficiency for reducing the time in dispensing justice on minimum cost and with maximum satisfaction of the litigant public and to ensure effectiveness of the courts and justice delivery system. Much has been said for improving the working of the judiciary in the past and the discussion is still on. There cannot be an all time set formula for administration and management of courts. We have to keep pace with the time and changing needs of the society and develop a dynamic system so that the vibrant judiciary can be felt by all the stake holders especially justice seeker. What is required above all are independence, fairness and boldness- in the judges- which are in abundance in the judicial officers of this State.

ADMINISTRATIVE POWER AND RESPONSIBILITIES OF PRINCIPAL DISTRICT JUDGE

***Justice R.R. Prasad
Judge, High Court of Jharkhand***

Our Judicial system is a time tested system but trust and confidence of the people can not remain for a longer period unless we rejuvenate the system by improving thinking process, sharpening knowledge, imbibing work culture and capacity building. The Courts are to ensure the attributes of constitutional mandates e.g. human rights, social justice , equality and gender justice. Subordinate Courts are the Courts, who are to impart justice to the masses of the states including poor or rich, irrespective of caste or class and members of the Scheduled Caste, Scheduled Tribes and other backward classes. It enjoy a vast jurisdiction in the matter of imparting justice but working of subordinate Courts has substantially been adversely affected on account of various reasons including explosion of dockets. These deficiencies are to be tapped and need to be addressed. In these exercises pivotal role is to be played by the Administrative head, i.e. Principal District Judge. First and foremost responsibility would be to take step for reduction of pendency for which resources have to be harnessed for having data base in order to find out the bottlenecks in early disposal of cases particularly old cases. Upon identification of those impediments steps need to be taken to curb it. All these exercises would help in reviewing the entire working so as to improve the management of the Courts after taking knowledge from past working so as to make the system active. In order to achieve it the Principal District Judge needs to have strong control/supervision of management over staffs. At the same time, staffs are not only to be motivated but their efficiencies are supposed to be evaluated. These exercises would not be enough to achieve the target unless he overviews the judicial work of the officers for impressing upon them to stick to time limit fixed for taking particular steps under the C.P.C. either for issuance of summon to defendant or for filing written statements, failing which the Court should invoke the provision of the Code stipulating awarding cost and also the other provisions which speak about the consequences. Further the Courts need to be sensitized to adhere to provision relating to adjournment as major deficiency in the procedure appears to be allowing adjournments in all stages of proceeding. That apart it is also to impressed upon the Officers

not to grant unnecessary adjournments on the ground of time for obtaining stay from Appellate, Revisional or Writ Court. Thus, the strict vigilance by the District Judge would make the Officer follow the procedure strictly which would automatically reduce the pendency.

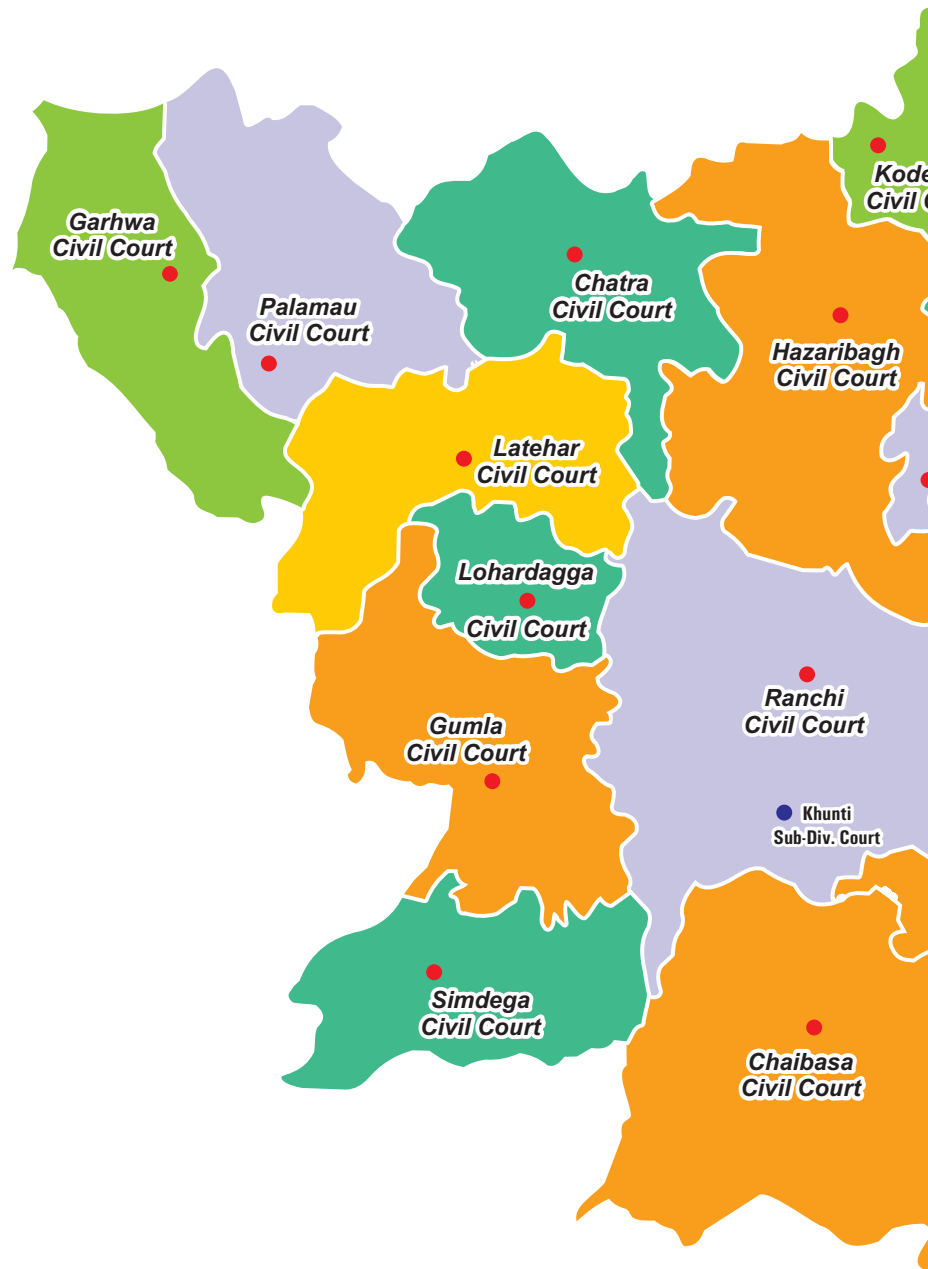
Other important responsibility lies with the District Judge is to promote access to justice to all. It is well known that the weaker sections of the society have been deprived of justice for long long years. They have had no access to justice in account of their poverty, ignorance and illiteracy. They are not aware of the right and benefits conferred upon them by the Constitution and other laws. On account of their socially and economically disadvantaged position they lack the capacity to assert their rights. They do not have the material resources with which to enforce their social an economic entitlement and combat exploitation and injustice. With a view to have access to justice to all, the Legal Services Authorities Act, 1987 was enacted to fulfill the constitutional objective incorporated in Article 39 A of the Constitution of India for ensuring that opportunities for securing justice are not denied to any citizen by reasons of economic or other disability. Therefore, now responsibility lies to utilize this tool effectively to make a deprived sections of the society aware about their Constitutional as well as other statutory rights and also of the rights, given under different Schemes of the Government by holding legal awareness camps. It has now also become prime duty to give assistance of the Court of providing judicial redress to the person wronged or injured so that the legal wrong or injury caused to such person does not go un-redressed and justice is done to him.

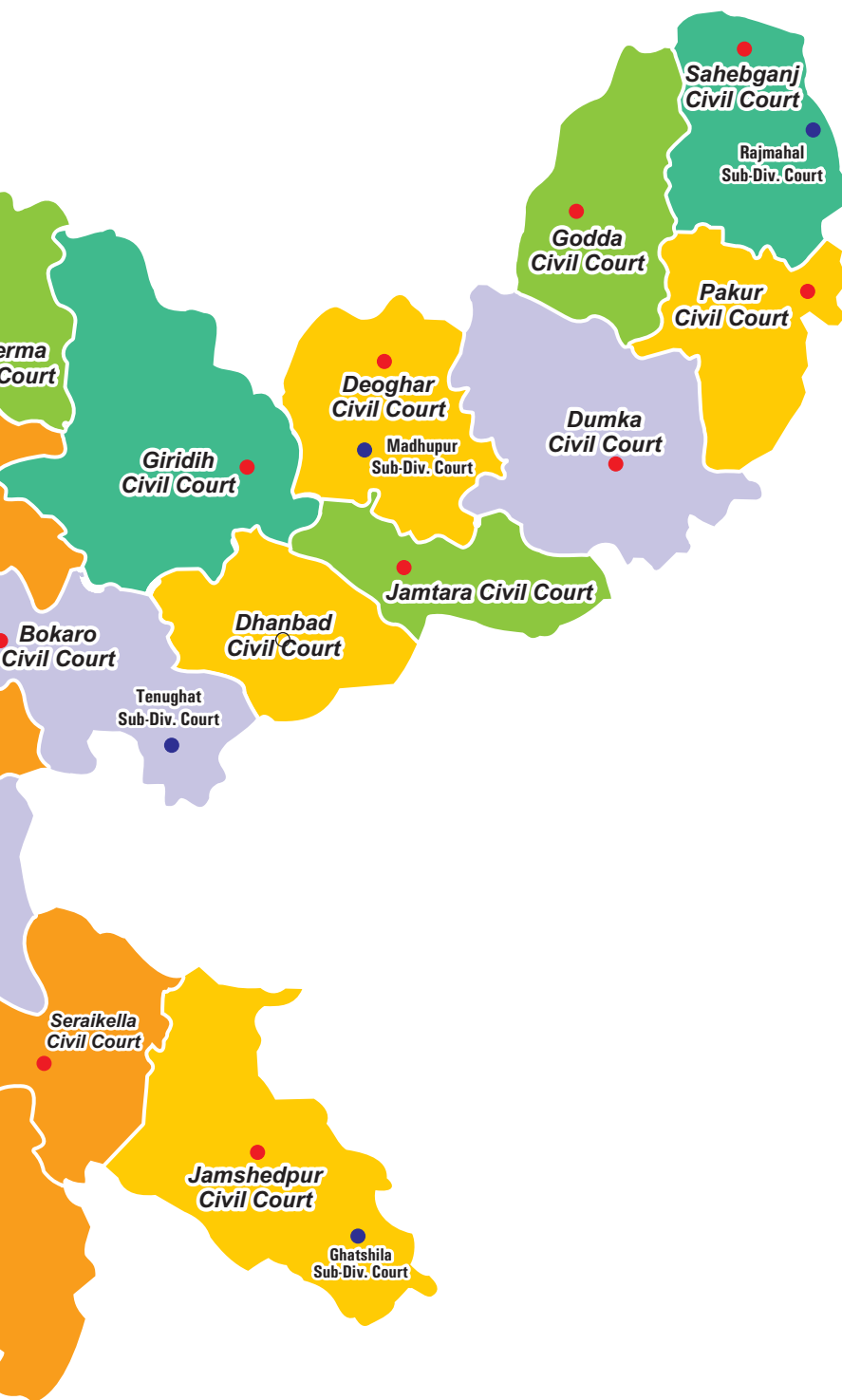
Advent of said legislation has thrown another responsibility to make the ADR system more viable which would go long way in reducing the arrears of cases.

Thus, the responsibilities which lie with the Principal District Judge if are discharged diligently to impress upon the Courts and supporting staff to adhere to the provision of law and to utilize other instruments improvement would be certainly there in justice delivery system.

Article 39 'A' of the Constitution of India

[30A. 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 ROLE AND RESPONSIBILITIES OF THE PRINCIPAL DISTRICT JUDGES IN EFFECTIVE DISTRICT COURTS' ADMINISTRATION AND INSPECTION :

*Justice P.P. Bhatt
Judge, High Court of Jharkhand*

India, the biggest democracy has one of the largest Judicial systems in the world. On account of literacy, awareness and economic development inflow of new cases into judicial system is likely to increase. As a consequence, the District Judiciary is required to equip itself with managerial skill to cope up with the challenges.

An independent and efficient District Judiciary is one of the basic features required under the constitutional frame work. Therefore, role of the Principal District Judge becomes utmost important for effective court management system. The Principal District Judge must cultivate the art of court management.

In Judicial set up of the State Judiciary, the District Judiciary has a very significant and important role to play. The statistical data of pending cases clearly indicates that a large number of cases are pending before the District Judiciary. Therefore, it can be said that the District Courts are the real face of Judiciary where a large number of Advocates, litigating public, Government/ Police Officials and other witnesses used to visit. The Principal District Judge being the head of the District Judiciary, has to play very important role for making judicial administration of the District effective and vibrant. The Principal District Judge is required to perform his duty in respect of judicial work as well as administrative work. The Principal District Judge is supposed to work on different fronts and has to deal with multiple issues and challenges. In this context, the Principal District Judge has to play very crucial and multidimensional role in respect of responsibilities attached to the post. Thus the role and responsibility of the Principal District Judge is very significant and he is the key Officer in the entire set up of District Courts Administration. The District Judges have to play the role of a leader and should possess managerial quality and capacity to manage efficiently different segments/components of District Administration of a Judicial district.

For the purpose of having effective management, the Principal District Judge is required to evolve a plan for the District Judiciary. The planning is

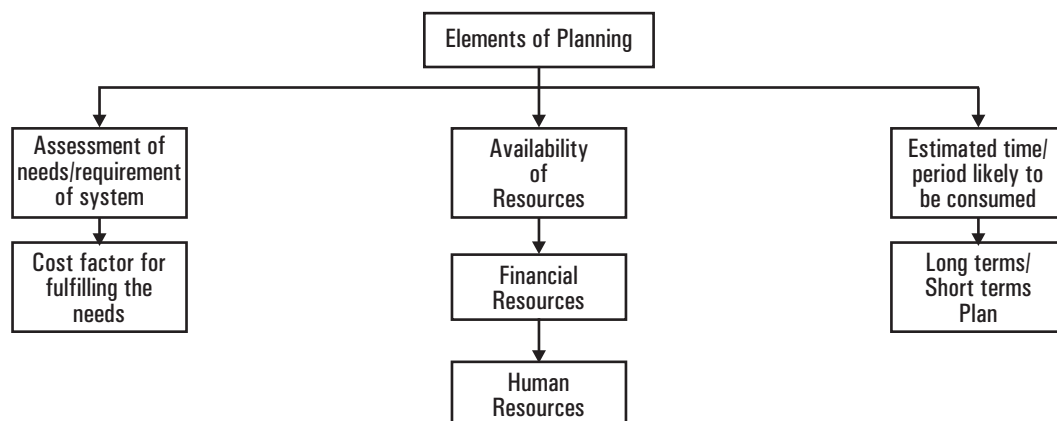
the essence for the effective and efficient administration, desired results can not be achieved in a haphazard and unplanned manner. Therefore, the Principal District Judge, being head of the District, is required to have proper understanding about the nature and scope of the work and the responsibilities attached to the post and accordingly, planning is required to be evolved. There may be short term plan as well as long term plan.

COURT MANAGEMENT:-

In order to have efficient and effective management of the Courts, the Principal District Judge is required to apply and make use of management techniques. With the help of 13th Finance Commission now the services of Court Managers are made available to each District Court. The Principal District Judge, in consultation with Court Manager, should prepare short term plan as well as long term plan. It may be five-year plan as well as one-year plan. The Principal District Judge, in consultation with stake holder of a court, should prepare and update annually five-year Court Development Plan.

For the purpose of having a proper plan, the Principal District Judge is required to assess the needs of District Judiciary in respect of infrastructure, human resources etc. After considering the needs, estimated value and estimated period to fulfill those needs are required to be assessed. Based on such estimation, the resources are required to be explored. Accordingly, target is required to be fixed so as to achieve the desired results.

The Elements of Planning are indicated by way of flow chart:-



The Principal District Judge for the purpose of having proper planning may call for a meeting of all the Judicial Officers working in the District and ask

them to prepare court-wise plan by each of them and after collecting court-wise data, the Principal District Judge is required to prepare a composite plan of action for the entire district. The Principal District Judge for the purpose of having proper action plan has to divide the administration of District Judiciary into following different components/segments:

INFRASTRUCTURE – COURT COMPLEX :

Sub-ordinate courts are the place of open trial. Litigants have direct access to trial courts. Therefore infrastructure of District Court Complexes and Sub-Divisional Courts cannot be overlooked. Ambiance of the Court Complex should be environment friendly, having all the required facilities for litigants, lawyers, staff and Judges. The court premises and court rooms shall be maintained in neat and tidy condition. There should be adequate facilities for the Judges, lawyers and staff. There should be proper arrangements and facilities for litigants and witnesses coming from distant places for participating in the judicial proceedings in the court. This kind of arrangement and facilities are more important due to the fact that some litigants may be of old age, ladies and physically challenged and they have to wait for their turn for the whole day.

So, it is the responsibility of Principle District Judge to ensure such required facilities and should take periodical round to supervise the court complex.

The Principal District Judge is also required to see that proper electricity supply as well as water supply arrangement is made for the District Court Complex.

To provide required infrastructure to the District Judiciary is one of the duties and responsibilities of the Public Works Department of the State Government. The Principal District Judge is required to co-ordinate with concerned officials, such as Chief Engineer, Superintending Engineer or Executive Engineer of Public Works Department so as to provide the required facilities.

The Principal District Judge is required to develop short term as well as long term infrastructures development plan for his District, which includes the up gradation of existing facilities in the District Courts Complex as well as creation of new facilities of physical infrastructures keeping in mind existing and future requirements. The plan of District Courts Complex is required to

be prepared keeping in mind the existing courts, establishment, work load, number of lawyers etc. For future expansion also provision is required to be made, keeping in mind the work load, likely to be increased, Judges strength, establishment, lawyers strength, etc. in view of geographical, economical and social conditions of the District and the nature and trend of litigations, which is likely to emerge in the coming years.

According to the present and future needs, the planning for the District Courts Complex is required to be made in respect of physical infrastructure. For example, at present there may be need of 6 to 10 court considering work load and accordingly the physical infrastructure for court, chambers, office facilities for the registry, facilities for the Bar and Government Pleaders and litigants may be required. But while preparing long term plan, the Principal District Judge is required to keep in mind the scope of further expansion and shall get it prepared considering future requirement of end user.

FURNITURE:

Likewise requisite furniture for the court, Chambers, Registry, Computer Center Lawyers and litigating Public is required to be made available. Necessary proposal for the same should be prepared and forwarded well in time and necessary follow up should be made to get clearance and approval of such proposals. As and when new court complexes are planned as far as possible provision for required furniture items should be included in the tender itself so that after completion of court building work, it can be made functional immediately. If such provision is not made, we have to wait till the proposal for furniture items are processed separately and after getting approval, it can be purchased and installed. In fact, it should be done simultaneously and should be installed at the time of finishing work of the court complex.

COMPUTERIZATION :

The computerization is one of the important segments and it is done under the supervision of e-Committee and the Principal District Judge is the key Officer at the District level to implement and supervise the computerization project in the District and sub-ordinate Courts. The first and foremost work, which is required to be undertaken by the Principal District Judge in respect of computerization, is the proper data feeding. Unless and until, the proper data feeding is made of all the pending cases, the computerization will not help. Once the entire data of pending cases as per the format given by e-committee is feeded, the computerization will help to a large extent in

the effective functioning of judicial system. For the purpose of data feeding, the services of the existing staff having the knowledge of computer, can be utilized and they can be asked to undertake the task of data feeding within stipulated time. A target can be fixed for data entry and accordingly, the entire data can be generated with the help of existing staff. Wherever, the volume of work/pendency is more and the existing staff members are not in a position to complete the said task within stipulated time, the help of the law students studying in law colleges and University can be availed by the Principal District Judge as the law students are having knowledge of the legal terminology and they are also computer friendly.

Another alternative for availing assistance for making data entry is to outsource the good professional agencies having expertise in data feeding. The data feeding work can be done within stipulated time by availing any of the above mentioned sources.

Once the data feeding work is over, the court-wise cause list can be generated. The Centralized Filing Center should be set up and made functional in each District with a completely updated data system. Two ministerial staff may be assigned for civil and criminal matters. Information counter can be set up in the District Courts Complex, which can provide the status of the cases to the litigants as and when required. Notice and summons can also be generated with the help of computerization. The Advocates can be given code numbers and the advocate-wise cause list can be generated for their convenience and it can be given to the lawyers on nominal payment basis.

Simultaneously, website may also be generated and the judgments and orders can be put on web after it is signed by the concerned Judge/Judicial Officer. The computerization will help in making the system transparent and the transparency will make the system effective and corruption free. For the purpose of having proper computerization, the Principal District Judge is required to prepare a time bound programme and accordingly make endeavour to execute the same so that optimum use of computerization can be availed for better and effective administration and management of a judicial district.

STATIONERY :

The Principal District Judge is also required to have an assessment of required stationery items and shall take necessary steps for procurement and distribution amongst the Courts and Staff members. This exercise is

also required to be undertaken timely so that there may not be shortage of stationery items which are required in day-to-day's work.

CO-ORDINATION :

The Principal District Judge is also required to have proper co-ordination with the District Administration so that the matter relating to physical infrastructure and other issues can be attended timely with the help of government agencies. Periodical meetings with Deputy Commissioner, Superintendent of Police, Superintending or Executive Engineer of Public Works Department etc. must be encouraged for smooth functioning of judicial system.

JUDICIAL WORK :

The Principal District Judge being head of the judicial district is required to monitor the institutions, pendency and disposal of cases and shall also identify problems that are contributing delay in trial. The problem, if any, regarding service of summons and notices can be resolved with the help of Noddle Officer that may be deputed by the Police Department. Classification/ bunching of cases is required to be made and thereafter the proper allotment of cases can be made to the different courts. It also helps in forming a group of matters having similar questions and the same can be assigned to one Judge. The priority is also required to be given to old cases and for that purpose figures of cases which are more than 10 years and the cases which are more than 5 years old are required to be collected. The learned Judges can be requested to give priority to the old cases. The Principal District Judge is also required to monitor the pendency and disposal of the cases every month.

ESTABLISHMENT :

Staff members who are working in the establishment of District Judiciary are the backbone of the system. The Principal District Judge being head of the District Judiciary is having responsibility to make such congenial environment, so that these staff members may feel that they are part of the organization. This kind of atmosphere will generate work culture. It is also necessary to create team spirit amongst them by motivating them from time to time. Apart from this, periodical supervision of their work by evolving suitable method is also essential. There should be element of accountability, punctuality and commitment towards their duties and responsibilities. The work arrangement and distribution of work between the staff members should be done properly.

The Principal District Judge should also consider the difficulties of the staff members and shall make endeavour to remove those difficulties for smooth functioning of the establishment of the District Judiciary.

The establishment of District Judiciary is also one of the important segments and, therefore, the Principal District Judge being a head of the District is required to have proper understanding of the entire establishment, working under him and for that purpose, he should have knowledge of sanctioned posts, the number of vacant posts and as to whether any step has been taken for filling up the posts, if not so by his predecessor, then the Principal District Judge is required to initiate the process of recruitment at the earliest so that there may not be shortage of staff in the establishment of District Judiciary. So far as recruitment of Class-IV employees are concerned, the same is required to be initiated at District level and in respect of other category timely requisition should be sent to the High Court. The Registry/ministerial staff are the support system of Judicial Administration at District Level. The effectiveness of District Administration depends upon efficiency of its staff. Therefore, the Principal District Judge being the head of the District is also required to see that amongst the staff proper discipline is maintained. Distribution of work amongst the staff is also required to be made in a proper manner. The Principal District Judge is also required to have periodical meetings with the Officers and staff so as to take the stock of pending work. The Principal District Judge should also make endeavour during such meeting to motivate the Officers and staff which may help in enhancement of their efficiency. The Principal District Judge is also required to initiate the process for grant of promotion to staff members as and when becomes due. The Principal District Judge may also be in consultation with Director, Judicial Academy to evolve training programmes for the Officers and staff looking to the nature of the work, performed by them.

ANNUAL CONFIDENTIAL REPORT :

The Principal District Judge is required to maintain the A.C.R. Properly and on regular basis.

TRAINING TO THE JUDICIAL OFFICERS :

The training of a Judicial officer as part of the continuous legal education programme is the most important factor for the enhancement of knowledge for a Judicial officer. The subject of law is very wide and, therefore, with a view to have up dated knowledge, regular and continuous programme for legal education will definitely help in the capacity building of Judicial Officers.

The Principal District Judge with the co-ordination of Judicial Academy of the State shall organize seminar, symposium and workshop every three months on different topics of law, which is useful in day to day functioning of the District Judiciary and for that purpose also, the Principal District Judge is required to chalk out a plan, a yearly calendar for each district so that the continuous legal education programme can work efficiently.

ACCOUNTS & BUDGET :

As an Inspecting authority, the Principal District Judge has a great role to play in the proper and effective maintenance of books of accounts. First of all, he has to ensure that a good system of recording the transaction is followed in his office. The staff working in the office has basic idea of maintaining books of accounts like entries in journal, ledger etc.

From time to time he shall inspect that whether accounts registers are maintained properly or not. He shall see whether there is any discrepancies, fraud, misappropriation in the maintenance of books of accounts. The Principal District Judge shall also ensure that no unnecessary harassment is caused to the litigants while making payment. He shall also see as to whether any complaint is received about the clerk/staff, extracting money from the litigants or advocates, if so, it should be attended forthwith.

The Principal District Judge is also required to take keen interest while preparing the Budget and shall prepare Budget proposal keeping in mind the requirement of funds for the next financial year. Budget should neither be excessive nor too short.

The Principal District Judge is required to pay proper attention at the time of preparation of proposals. The said proposals are required to be forwarded to the authorities concerned timely so that it can be incorporated under appropriate head at the time of finalization of Budget. The Principal District Judge is also required to see that the amount/funds sanctioned and received during previous financial year may also be utilized in a proper and effective manner.

The Principal District Judge, as discussed above, has to play a very important and significant role as a manager and his managerial skills and ability will make the administration of a Judicial District very effective and goal of access to justice can be achieved by effective administration.

SELECTION & APPOINTMENT OF ADDITIONAL PUBLIC PROSECUTOR:

The Principal District Judge is also required to see that vacancies of A.P.P. in the District and Sub-ordinate Courts may not remain for a longer period, otherwise it will have effect on disposal of criminal cases. In this context, the Principal District Judge in co-ordination with Deputy Commissioner shall initiate the selection process of A.P.P. and shall see that timely appointments are made.

INFORMATION UNDER R.T.I. :

The Principal District Judge is also required to designate Information Officer under R.T.I. Act for providing information as per the provisions of R.T.I. Act.

INSPECTION :

Before discussing the topic on inspection, first I would like to discuss the literal meaning of term Inspection. In Black's Law Dictionary, 'Inspectio Corporis' has been defined as an inspection of the person. An 'Inspectio Corporis' was an actual physical examination. In Oxford Advance Learners Dictionary, inspection has been defined as the act of looking closely at something/somebody, especially to check that everything is, as it should be.

Now, coming to the topic specifically, 'Inspection' has many dimensions, superintendence, surprise inspection, court building, state of file, Accounts, Establishment, library, Record Room etc.

District Judiciary is the back bone of the Judicial system. Civil Courts are the place where public trial is held. People have direct and face to face interaction with judicial system in the Civil Courts. The Constitutional mandate of fair trial, timely justice cannot be attained unless; inspection process of the subordinate judiciary is done in effective manner and not a mere routine exercise. If judiciary, do not maintain its internal system of inspection in a proper manner it will have adverse effect on the overall functioning of Judicial System.

The object of inspection is to have better accountability and to raise efficiency. Quality of work in the Court can be improved by systematic well planned inspection. Inspection shall be done with a view to find out deficiency in work. As and when such deficiency is noticed, immediate steps for eliminating such deficiency should be taken.

Inspection may be done in two ways. First, inspection may be done by giving due notice and other inspection may be surprise inspection. The purpose of inspection after giving due notice is to collect information. The purpose of surprise inspection, is to check that whether work is discharged efficiently and properly, as per rules and regulations. Both type of inspection has its own benefit and are complementary to each other.

To control, encourage, protect and correct the functioning of Subordinate Court and its Staff, the following things are required to be inspected in order to ensure effective functioning of the District Court :

1. Things are being done as per Law and Rule.
2. Hygienic function, healthy atmosphere.
3. Periodical and annual Inspection of office by concerned court and its report.
4. Periodical and annual inspection by the Principal District Judge and its report.
5. Periodical and annual inspection by the office to its court and office.
6. Inspection of Diary by the Seristedar on clearance day.
7. Inspection of Nazarat its register process issued report etc.
8. Inspection of Administrative office of the Principal District Judge.
9. Inspection of Jail.
10. Checking of inspection note of CJM, ACJM by the District Judge and further guidelines.
11. First Aid Box with requisite medicines.
12. Complaint Box.
13. Proper maintenance of following Registers :
 - Court Diary
 - G.R. Registers with its pagination
 - Court Fee Register
 - Witness Register

- Cause List Destruction Register
- Register for requisition of record receipt.
- Register of requisition of record issued.
- Register for letter received /issued.
- Fine Register
- Register of requisition relating to supply of copy
- Fine check book
- Money suit Register
- Execution Case Register
- Misc. Case Register
- Bail Register
- Sessions Register
- Trial Register
- Process Register
- Register of Criminal Appeal
- Register of Rent Appeal
- Register regarding Decree received from other Districts or States
- Money order received Register
- Register for documents of reports
- Commission issued register
- Trial appeals Register
- Misc. appeal Register
- Matrimonial Cases Register
- Register of Inspection of Records
- Misc. Appeal Register (Civil and Criminal)
- Statistical Register of Title Appeal/ Misc. Appeal/ Misc. Cases/ M.V.

Claim Cases/ Matrimonial Suit

- Register of Succession Case
- Register of Probate Case
- Register of Guardian Case
- Dispatch Register, etc.
- Register of requisition relating to supply of copy.

INSPECTION REGARDING JUDICIAL WORKING & PROCEDURE :

While making inspection of Judicial working and observance of procedure at the time of conducting trial by the Judicial Officers, the Principal District Judge is required to see the conduct of subordinate officers during the discharge of his duty in the court proceedings. This kind of inspection is concerned with the working of judicial officers in court room while discharging the judicial proceedings. Moreover, punctuality in sitting in court room, maintaining hours of work etc. are important aspect of maintaining judicial discipline.

LIBRARY :

Libraries are centre of knowledge, education and learning. Libraries have important role to play in understanding the law point, deciding the cases and ultimately in facilitating the justice. These are not possible unless, sub-ordinate courts are equipped with libraries having books, legal journals, periodicals, internet facilities etc. Here I would like to draw your attention that there are frequent changes in law by way of amendment, repeal, etc.

The Principal District Judge is also required to see that the Library of the District Court is properly maintained. The necessary Books and Journals are also required to be subscribed and for that purpose the funds available with Principal District Judge should be utilized well within time before the end of financial year.

LEGAL SERVICES AUTHORITY :

The Principal District Judge is an ex-officio Chairman of District Legal Services Authority and therefore, the role and responsibilities in respect of activities of legal services authority are equally important for the Principal

District Judge. The role of Principal District Judge as a Chairman of the District Legal Services Authority is altogether different than a traditional role of a Judge. Being a Chairman of District Legal Services Authority, the Principal District Judge is required to make his sincere endeavour for fulfillment of object of the legal Services Authority Act. The Legal Services Authority Act has cast certain responsibility upon the office bearers. The District Legal Services Authority provides free and competent legal services. The word 'legal services' has a very wide meaning which includes free and competent legal aid, holding of Lok Adalats as well as Permanent Lok Adalat, counseling, conciliation, mediation, legal awareness programmes and activities relating to para legal volunteers. The functions of the District Legal Services Authority can be effectively carried out only when the Chairman of the District Legal Services Authority, who is a leader of the District Legal Services Authority at District level is committed to the cause of Legal Services Authority. For the purpose of making activities of legal services authority effective, the Principal District Judge in the capacity of Chairman of District Legal Services Authority has to play pro-active role and shall co-ordinate with the legal aid functionaries, district administration, lawyers and litigating public, etc. so that various activities, which are required to be undertaken by the Legal Services Authority, can run effectively. The traditional and conservative or orthodox approach may not be helpful in achieving the object of the Legal Services Authorities Act, which is a benevolent legislation, made for the purpose of providing free and competent legal services and to promote Alternative Dispute Resolution (ADR) System as mentioned above. Therefore, the role and responsibilities of Principal District Judge is very crucial, significant and important to make the administration of a District Judiciary effective.

For the purpose of having effective court management, the Principal District Judge is required to set up a system. The system so developed can run effectively by sharing the responsibility and by creating team spirit. Being head of the District Judiciary, the Principal District Judge shall keep over-all supervision of the management and shall motivate the fellow officers and staff for effective functioning of the system. The element of the accountability should be evolved in a proper manner. The use of information and communication technology should be made in best possible manner to make the system more transparent and effective.

Collective Consciousness

**Meet together, Speak Together,
Let our Mind be one accord
Let our Hearts of one accord
Let our aims be common and
All of us be of one mind, so
we may achieve our target well together.**

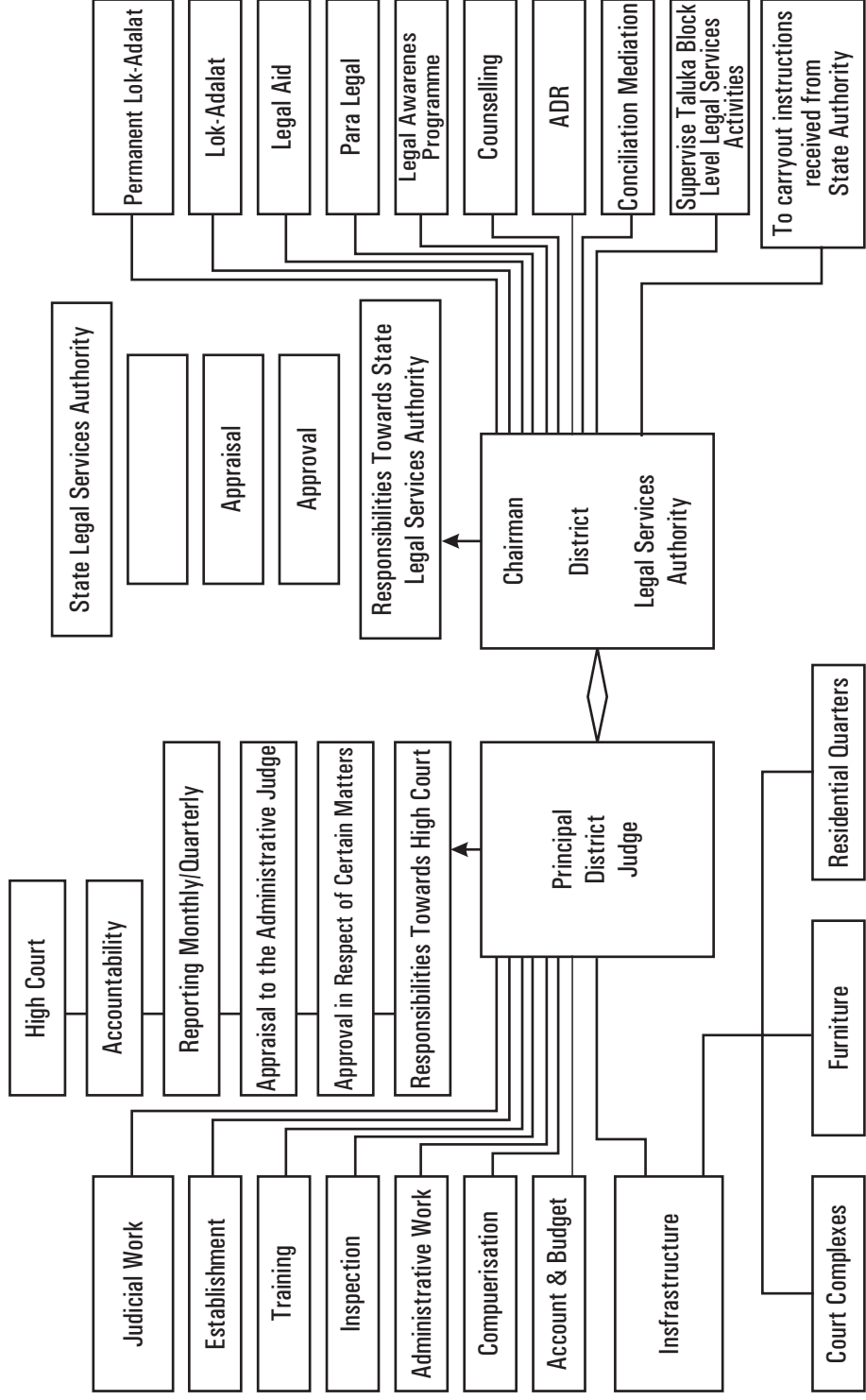
Rig Veda.

I have also tried to demonstrate the role and responsibilities of a Principal District Judge for effective Judicial Administration in the form of flow charts so that at a glance, one can see the various responsibilities attached to the post. The said flow charts are annexed with the article vide Annexures- 1 and 2, respectively.

**Coming together is
beginning
Keeping together is
progress
working together is
success!**

Flow Chart Showing

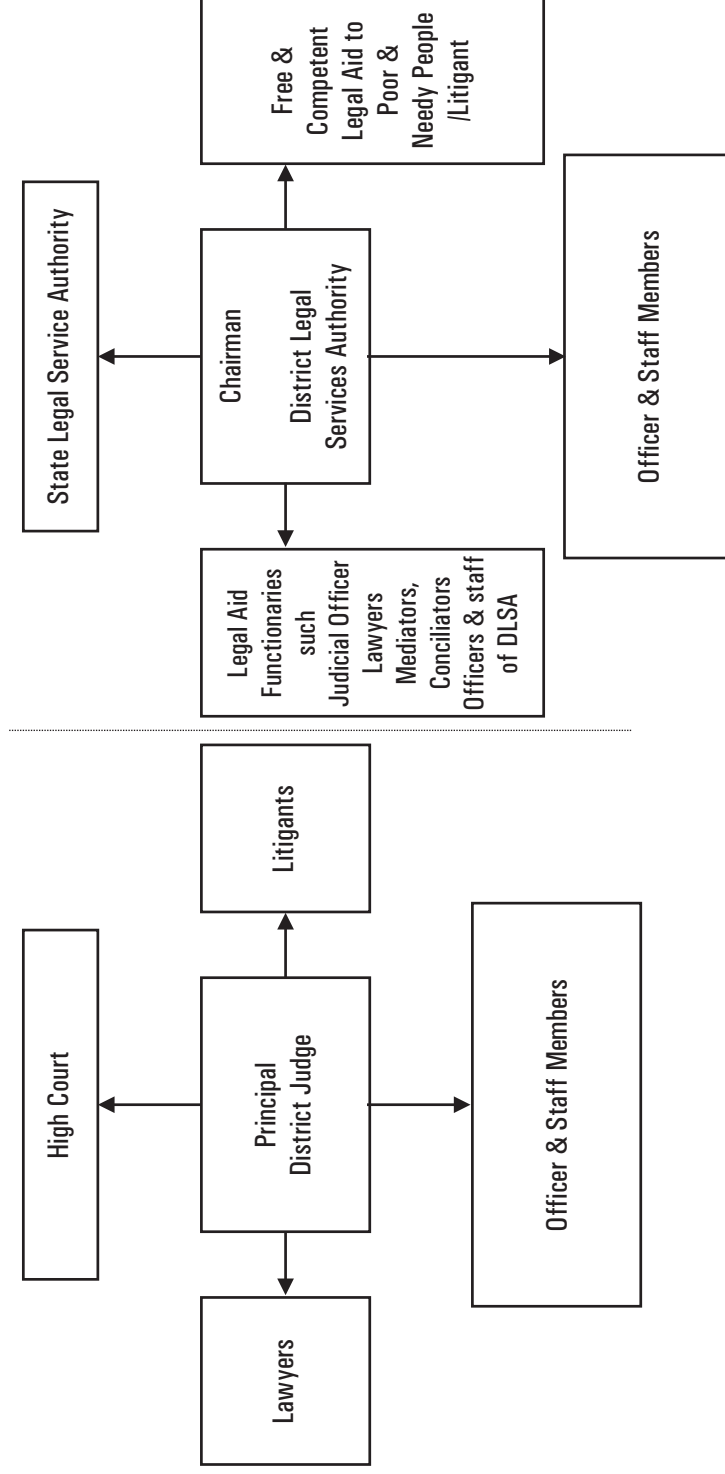
Responsibilities of Principal District Judge in Administration of a Judicial District



Annexure — 2

Flow Chart Showing

Role and Responsibilities of Principal District Judge towards Different Stake holder in Administration of a Judicial District



**DUTIES AND RESPONSIBILITIES
VIS-A-VIS
ISSUES AND CHALLENGES
BEFORE THE LEGAL SERVICES INSTITUTIONS**

Justice D.N. Patel
Judge, High Court of Jharkhand

“Without equal access to the law, the system not only robs the poor of their only protection, but it places it in the hands of their oppressors the most powerful and ruthless weapon ever created”.

... Reginald Heber Smith, Justice and the Poor, 1919

The theme of above cited quote is reflected in the establishment of various legal services institution under the Legal Services Authorities Act, 1987, i.e., **“Access to Justice for all”**.

We all know that Access to Justice is fundamental to Human Rights. Legal Services Institutions are and continues to be an instrument to ensure accessibility with various enactments and schemes of the Government to each individual. An egalitarian perspective underlines that social ordering does not endow individuals with equal opportunity to resources and benefits.

I consider it a golden opportunity for me to involve myself for the cause of poor, illiterate & Ignorant by striving to implement the aims and objectives of “The Legal Services Authorities Act, 1987” (hereinafter referred to as the Act, in short) in letter and spirit.

I reiterate the objects and reasons of the Act as set out in Article 39-A of the Directive Principles of State Policy as enshrined in the Constitution of India as under:

- ***To provide free legal aid and competent legal services to the weaker sections of the society.***
- ***To ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.***
- ***To promote Alternative Dispute Resolution Mechanism particularly by organizing Lok Adalat and resolving dispute through Mediation, Conciliation and Plea bargaining.***

- ***To secure that the operation of the legal system operates justice on the basis of equal opportunity.***

The Legal Services Authorities Act, 1987 is a powerful means to translate the preambular aspirations of the Constitution of India into reality i.e. Justice: social, economic and political; Liberty: of thought expression belief, faith and worship; Equality: of status and opportunity and to promote among them all Fraternity assuring the dignity of individual.

But still the preamble remains an aspiration and not an achievement to a large extent.

I must call attention to a large sections of the society in the State of Jharkhand comprising vulnerable human categories who do not enjoy the fruits of the Rule of Law not only because of poverty, illiteracy, tribal backwardness, poor communications and like factors but also because legal service in civilized terms is just absent. There are some areas in the State which are notoriously underdeveloped. Laws for the uplift of the villagers, protection got from the Courts and competent legal advice which gives confidence wither away in the rural soil. Situational victimization, social abuses and denial of the legal process through local tyranny are realities of the countryside in our State.

The Act aims to strengthen Access To Justice for the vulnerable group of the society which includes poor, illiterate, ignorant falling in the categories of women, Schedule Cast, Schedule Tribe, Children, disabled victims under circumstances of undeserved want such as trafficking in human beings, beggar as referred to in Article 23 of the Constitution, mass disaster, ethnic violence, caste atrocity, flood drought, earthquake or industrial disaster, an industrial workmen, inmates and other marginalized people by facilitating initiatives and supporting strategies to address the legal barriers they face. Legal Services Authorities are under obligation to provide efficient service for the needy people and also working for empowering poor and disadvantaged men and women to seek and demand justice through the free legal aid services available in our democratic set up of legislative, executive and judiciary.

Legal Aid has become a fundamental right of the deprived and marginalized people of society. The concept of equality envisaged in Article 14 of our Constitution cannot be promoted by exclusion of such deprived groups. The legal services Institution across the State must aim at the inclusive strategy of bringing up the marginalized groups to the mainstream of the society and providing them the benefits of equality contemplated under Article 14.

In order to provide free, competent, effective and comprehensive legal services, the legal services institutions are to implement innovative activities related to “**Legal awareness**” and “**Legal access**”. With the paradigm shift in concept of legal services the challenging issues, inter alia, to be undertaken by the legal services institutions are as under:

- (i) *Reaching out to the people and close monitoring for the free legal services in tune with National Legal Services Authority (free and competent legal services) Regulation, 2010.*
- (ii) *Setting up of legal aid clinics at district/subdivision/block/village/jails/colleges and other institutions and places and intensive continuous monitoring as per the guidelines vide National Legal Services Authority (Legal Aid Clinics) Regulations, 2011 and National Legal Services Authority (Legal Services Clinics in Universities, Law Colleges and other Institutions) Scheme, 2013.*
- (iii) *Strengthening and concretizing the role of Legal Aid Clinics.*
- (iv) *Strengthening the role of Para Legal Volunteers in legal services as per the provisions of National Legal Services Authority Scheme for Para-Legal Volunteers (revised) and model for the Orientation-Induction-Refresher Courses for PLV Training.*
- (v) *Widening the network of Lok Adalat including Mega Lok Adalat, National Lok Adalat and Mobile Lok Adalat.*
- (vi) *Institutionalizing the other A.D.R. methods including Mediation, Conciliation and Plea bargaining.*
- (vii) *Encourage and promote Pre-litigation Conciliation and Settlement through Permanent Lok Adalat.*
- (viii) *Intensive Legal literacy programme and awareness camp.*
- (ix) *Strengthening and training of legal aid lawyers.*
- (x) *Training for Child Welfare officers attached to every Police Station and the members of special Juvenile Police Unit and establishment of legal Aid Centres in the light of Hon’ble Supreme Court directions in Sampurna Behrua Vs. Union of India and others in W.P. (C) No.473 of 2005 vide orders dated 12.10.2011 and 19.08.2011 and the guidelines of National Legal Services Authority in this regard.*

- (xi) *Exclusive legal services focused on women.*
- (xii) *Increasing legal services to the children.*
- (xiii) *Legal services to workers in unorganized sector in tune with National Legal Services Authority (legal services to the workers in the unorganized sector) Scheme, 2010.*
- (xiv) *Legal services to the differently able persons, victims under the circumstances of undeserved want, inmates, sr. citizens, transgenders.*
- (xv) *Broad based activities by invoking cooperation and coordination with Governmental and non Governmental agencies, Universities and others promoting the cause of legal services to the poor.*
- (xvi) *Establishing greater coordination with Jails, Correctional Homes, Children's Homes, Observation Homes, Psychiatric Homes, Boarding Schools, Protective homes etc. to ensure that legal rights of these categories are not lost on account of lack of information and lack of assistance and support to enforce those rights.*
- (xvii) *Massive legal literacy campaign through booklets, pamphlets, writings, brochures, handbooks, manual etc.*
- (xviii) *Emphasis on visibility by participation in Melas/Exhibitions, Street-plays, Radio programmes and T.V. shows etc.*
- (xix) *Innovation and diversification.*

To implement the aforesaid activities the Principle District Judges are required to streamline the activities of their respective District Legal Services Authorities (DLSAs) in their districts. Keeping in mind that the legal services activities have expanded many fold, full time Secretaries have been appointed and posted in all the 22 District Legal Services Authorities across the State, after the creation of 22 posts in the cadre of Civil Judge, Sr. Div. by the Government of Jharkhand. The Secretaries appointed in this regard are supposed to act pro actively under the guidance of their Principle District Judges-cum-Chairmen of District Legal Services Authorities by reaching out to the communities who are denied Access To Justice and living in misery and hardship.

As a matter of fact, the District Legal Services Authority is a very effective and fruitful institution as it comprises officials of executive, judiciary, members

of the Bar, social worker, member of S.C./S.T. Rule 10 of Jharkhand State Legal Services Authority Rules, 2001 provides as under:-

The District Authority shall consist of

- (a) District Judge-Chairman
- (b) District Magistrate-Vice Chairman
- Members
- (c) Superintendent of Police
- (d) District Government Pleader
- (e) District Public Prosecutor
- (f) President, District Bar Association
- (g) One special worker, who is engaged in upliftment of the weaker sections shall be nominated by the State Government in consultation with the Chief Justice of High Court.
- (h) One S.C./S.T. member of the District Bar to be nominated by the State Government in consultation with the Chief Justice of the High Court.
- (i) An officer belonging to the State Judicial Service not lower in rank than that of a Sub-ordinate Judge of the District to be appointed by the State Authority in consultation with the Chief Justice-Secretary.

The meeting of the aforesaid members of the District Authorities under the guidance of Chairman and Vice Chairman must be held periodically in order to check out the programme and strategies in the area of their respective district to implement the action plan of a year as formulated by National Legal Services Authority (NALSA)/Jharkhand State Legal Services Authority (JHALSA) for that particular year. The following points need to be taken into consideration by each District Legal Services Authority in giving effect to the various kinds of legal services to the poor, downtrodden and disadvantaged people of the District.

- ***The entire region of a district should be divided into various areas, say, A,B,C..... comprising village or villages as per the geographical structure of the district.***

- *The Principal District Judge-cum-Chairman must constitute various groups comprising a Judicial Officer posted in the District, legal aid panel lawyers, Para Legal Volunteers to monitor different activities for different areas so constituted spread over in the district.*
- *Further each group so constituted shall look after the activities of the area or areas allotted to that group.*
- *Each group shall look after the legal services activities of its area or areas on day to day basis.*
- *Each group shall report periodically to the Principal District Judge-cum-Chairman of District Authority about its entire programme and activities concerning legal aid and services going on in its area.*
- *There shall be a calendar for the visit of the Secretary, DLSA to each area identified in that district to keep an eye about the ongoing legal services activities in the various areas.*
- *The Secretary of the District Legal Services Authority shall daily visit to one or more legal aid clinics depending upon their locations to monitor the activities of the clinics run by Para Legal Volunteers and Legal Aid panel lawyers.*
- *It shall be ensured that the legal aid clinics are running smoothly and discharging, inter alia, following activities:*
 - (a) Transmitting knowledge about the legal aid schemes being carried out in the district.
 - (b) Spreading consciousness about the legal rights and duties of the citizen with special reference to the tribal and rural populations, women, children, disabled, handicapped and the weaker sections of the society.
 - (c) Interviewing with the clients/aggrieved persons.
 - (d) Properly ascertaining facts of the case or problem.
 - (e) Counselling the clients.

- (f) Exposure of common people about mechanism of Legal Aid Schemes, Lok Adalat, Mediation, Conciliation, Plea Bargaining & Permanent Lok Adalat.
- (g) *Motivating the people to resolve their disputes through alternative redressal forum both at post-litigation or pre-litigation stage.*
- (h) *The legal Aid claims shall operate by its regular office to serve the people free of cost by hearing the problems of villagers relating to revenue, agriculture, bank loan, family matter, civil & criminal cases and advise them accordingly.*
- (i) *The legal Aid Clinics shall help people to draft simple petitions, applications and even to fill up Forms. The legal aid clinics shall serve as a 'Pre-litigation Centre'.*
- *A monitoring committee constituted vide Regulation 10 of the National Legal Services Authority (Free and Competent Legal Services) Regulation, 2010 shall efficiently monitor the functions of legal aided cases as enshrined in Regulation 11 of the aforesaid Regulation.*
- *The District Legal Services Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the income and expenditure account and balance-sheet as per the guidelines of Section 18 of the Legal Services Authorities Act, 1987 and Regulations 47 & 48 of Jharkhand Legal Service Authority Regulation, 2002 (as amended in 2013).*

In the State of Jharkhand with a varied culture, geography and with unique social legal problems, **a State jacket and inflexible plan** can hardly work. It is therefore required that all the Principal District Judges-cum-Chairmen of District Legal Services Authorities to evolve their own strategies to implement the Plan of Action of a year on the basis of the guidelines of National Legal Services Authority (NALSA)/Jharkhand State Legal Services Authority (JHALSA). Each District Legal Services Authority should set out strategies of confidence building and credibility among the general masses so that the common man must think to approach the concerned District Legal Services Authority as and when legal services arise to any person for the redressal of

their grievances. The strategies of the concerned DLSA should be inclusive in its form and contents. People friendly and committed Para Legal Volunteers, Legal aid lawyers and Pro active officers are the back bone of District Legal Services Authority. The people living in the villages must be provided competent legal services without any debilitating attitude of the concerned.

The District Legal Services Authorities must keep in mind the guidelines on various issues of Jharkhand State Legal Services Authority (JHALSA) and National Legal Services Authority (NALSA). In the recent past the NALSA has issued important regulations, schemes and guidelines which are extraordinarily helpful in discharging our functions in a more viable and scientific manner. Some of them are:-

1. *National Legal Services Authority (Lok Adalat) Regulations, 2009.*
2. *National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010.*
3. *National Legal Services Authority (Legal Aid Clinics) Regulations, 2011.*
4. *National Legal Services Authority (Legal Services Clinics in Universities, Law Colleges and other Institutions) Scheme, 2013.*
5. *Scheme for Para-Legal Volunteers (Revised) & Module for the Orientation-Induction- Refresher Courses for PLV Training.*
6. *Scheme for Legal Services to Disaster Victims through Legal Services Authorities.*
7. *National Legal Services Authority (Legal Services to the Mentally ill Persons and Persons with Mental Disabilities) Scheme, 2010.*
8. *National Legal Services Authority (Legal Services to the Workers in the Unorganised Sector) Scheme, 2010.*
9. *Guidelines for Training the designated Juvenile/Child Welfare Officers attached to every Police Station and the Members of the Special Juvenile Police unit established under Section 63 of the Juvenile Justice (Care and Protection of Children) Act, 2000.*
10. *Guidelines issued by National Authority (NALSA) for Legal Services in Juvenile Justice Institutions in connection with the*

compliance of the order dated 19.08.2011 of Hon'ble Supreme Court of India in Sampurna Behrua v. Union of India & Ors. W.P. No.(C) No.473/2005 to establish legal aid centres attached to JJBs.

11. *NALSA- A Quinquennial Vision & Strategy.*

12. *National Plan of Action For 2013/14 & Calendar of Activities.*

The Jharkhand State Legal Services Authority has also drastically amended its regulation, namely Jharkhand Legal Services Authority Regulation, 2002 as amended by Amendment Notification No.12 Dated 21.02.2013 and amendment Notification No.13 Dated 18.06.2013 and the provisions by virtue of the said amendments to provide quality legal services. The striking features of the said amendments are as under:

- (a) Fee for legal aid counsels in District & Subordinate Courts for civil & criminal cases have been enhanced many fold.*
- (b) The expenses in the legal proceedings including court fee, clerkage, typing charges, photocopy and other miscellaneous expenses have been made admissible.*
- (c) Provision for engaging any senior counsel in appropriate cases other than those in panel has been made.*
- (d) Provision of fees for Mediators in the process of Mediation/ Conciliation has been made.*
- (e) Provision for Honorarium/Fee for the Presiding Officers and members of Lok Adalat, retired Judicial Officers, legal aid counsels, legal experts, social workers, law students attached to legal aid clinics, jails, Juvenile Justice Board, remand home, observation home, probation home, shelter home or engaged in legal awareness or mobile awareness camp in colleges, universities and other places deputed by District Legal Services Authority.*
- (f) Expenditure to be incurred for holding Lok Adalat, legal awareness camps/programms, meeting of the legal services institution have been adequately enhanced.*
- (g) Provision for the scrutiny and evaluation of the application for free legal services has been simplified.*

One of the major obligations of District Legal Services Authorities to empower the ignorant with their legal rights and duties. Their most fundamental objective is to enhance awareness of marginalized and deprived people on basic concepts of their rights, entitlements and processes to Access To Justice through legal aid. The authorities are supposed to implement innovative activities related to legal awareness. They have to evolve the frame work for curriculum and contents of legal literacy. Some of the priority legal issues related to legal awareness are as under:

- ***Right To Education vide Right of Children to Free and Compulsory Education Act, 2009***
- ***Right To Work vide Mahatama Gandhi National Rural Employment Guarantee Act, 2005***
- ***Right To Free Legal Aid***
- ***Right To Information***
- ***Environmental laws***
- ***Women's Right*** (Commission of Sati (Prevention) Act, 1987, Dowry (Prohibition) Act, 1961, Immoral Traffic (Prevention) Act, 1956, Indecent Representation of Women (Prohibition) Act, 1986, The Medical Termination of Pregnancy Act, 1971, Protection of Women from Domestic Violence Act, 2005, Protection of Children from Sexual Offences Act, 2012, The Prohibition Child Marriage Act, 2006, Pre Natal Diagnostic Techniques Act, 1994, The Sexual Harassment of Women: at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- ***Labour Rights***
- ***Rights of Schedule Caste & Schedule Tribe***
- ***Personal laws***
- ***Criminal justice system***
- ***Children's Rights***
- ***Basic Civil Laws***
- ***Indian Constitution and Judiciary***

The aforesaid topics for the creation of awareness among the general masses are not exhaustive. The local issues must be taken into account and the Principal District Judges-cum-Chairmen of each District Legal Services Authorities must encourage to adopt local serious issues such as **Witch Practices, Trafficking, Child abuse, Mental illness, Drug abuse etc.** could be taken up as a project in the entire district, the choice being left to the concerned DLSA. The Jharkhand State Legal Services Authority would continue to monitor the activities of the districts as per their plans.

Since National Legal Services Authority has introduced **web-based monitoring system**. The District Legal Services Authority should develop ICT enabled software to appraise legal services work and statistics related to implementation of preventive and strategic legal aid.

The three qualities required of the functionaries of the legal services institutions are **innovation, intuition and introspection**. Unless innovative steps are taken for reaching out to the people, the legal services will not percolate down to the people in need of such services. Intuition is required to sense the needs of the voiceless and marginalized people. Introspection is required to analyse whether the legal service provided has been useful and effective to the beneficiaries and also to correct the mistakes.

The aim of all legal services institutions shall be to provide legal aid to people in such a way so as to empower them, thereby enabling them to enjoy the benefits of Article 14 of the Constitution. Even the risk of repetition, it must be stated that legal services shall not be confined to court-annexed legal services only, but shall be preventive and strategic nature which should eventually lead to empowerment of the marginalized and weaker sections of society, ultimately paving way to the overall development of the State.

Do better if possible, and that is always possible.

IMPORTANCE OF INSPECTION OF DISTRICT COURTS

*Justice Prashant Kumar
Judge, High Court of Jharkhand*

Introduction :- Imparting justice is a sovereign judicial function. While exercising the Judicial Power, the Judges at all the level act as sovereign authority, they are duty bound to exercise such power judiciously. However if they tips the scale of Justice, its rippling effect would be disastrous and result into miscarriage of justice. The powers exercise by the judges, if remain unchallenged, will become absolute and final. An absolute power makes a man corrupt absolutely. Thus it would be necessary to have a constant vigil on the functioning of Judges at all level.

At this stage, following observation of the Hon'ble Supreme Court in, **High Court of Judicature of Bombay Vs. Shrishkumar Kangaroo Patil (1996) 6 SCC 339**, is relevant to note:

“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 surgery lies on the judiciary itself by its self-imposed or corrective measures or disciplinary action under the doctrine of control enshrined in Article 235 & 124 (6) of the Constitution. It would, therefore, necessary that there should be constant vigil by the High Court concerned on its subordinate judiciary and self introspection.”

Under Article 235 of the Constitution of India, the High Court has complete administrative control over subordinate courts including the District court. The word ‘control,’¹ refer in the above Article, is used in the comprehensive sense including general superintendence of the working of subordinate courts, disciplinary control over the presiding officers of the subordinate courts, recommendation of imposition of punishment including suspension for the purpose of disciplinary enquiry, transfer, confirmation and promotion. In exercise of aforesaid powers the High Court issued various circulars for superintendence of working of subordinate courts. The High Court has also issued general direction to the subordinate courts for maintaining different registers for administrative management of courts subordinate to it. Thus, with a view to satisfy itself as to whether subordinate courts are conducting their business strictly according to law and according to the Rules

prescribed, the High Court does inspection of subordinate courts either itself or through District Judges.

The Hon'ble Supreme Court in **High Court of Punjab and Haryana through R.G. Versus Ishwar Chand Jain and Another reported in (1999) 4 S.C.C 579** at paragraph No. 32 has stated about the importance of inspection conducted by the High Court while exercising control over the subordinate courts. Which runs as follow :-

“Under Article 235 of the Constitution the High Court exercises complete control over subordinate courts which include District Courts. Inspection of the subordinate courts is one of the most important functions which the High Court performs for control over the subordinate courts. The object of such inspection is for the purpose of assessment of the work performed by the Subordinate Judge, his capability, integrity and competency. Since Judges are human beings and also prone to all the human failings inspection provides an opportunity for pointing out mistakes so that they are avoided in future and deficiencies, if any, in the working of the subordinate court, remedied. Inspection should act as a catalyst in inspiring Subordinate Judges to give the best results. They should feel as sense of achievement. They need encouragement. They work under great stress and man the courts while working under great discomfort and hardship. A satisfactory judicial system depends largely on the satisfactory functioning of courts at the grass-roots level. Remarks recorded by the Inspecting Judge are normally endorsed by the Full Court and become part of the annual confidential reports and are foundations on which the career of a judicial officer is made or marred. Inspection of a subordinate court is thus of vital importance. It has to be both effective and productive. It can be so only if it is well regulated and is workman-like. Inspection of subordinate courts is not a one-day or an hour or a few minutes' affair. It has to go on all the year round by monitoring the work of the court by the Inspecting Judge. A casual inspection can hardly be beneficial to a judicial system. It does more harm than good. As noticed in the case of R. Rajiah there could be ill-conceived or motivated complaints. Rumour-mongering is to be avoided at all costs as it seriously jeopardizes the efficient working of the subordinate courts”.

As noticed above, judicial officers and ministerial staffs of subordinate courts are part of the system engaged in dispensation of justice. They are highly responsive for the effective functioning of the courts and the system of dispensation of justice. Judicial Officers of subordinate courts are discharging the judicial function vested in them through various statutes, whereas, ministerial staffs of the subordinate courts are engaged in court management as well as case management. In order to ensure proper functioning of subordinate courts and also with a view to take corrective measures, the High Court does inspection of the subordinate courts either itself or through District Judges. The Courts at District level have various types of inspection, such as

- (i) Periodical inspection by the High Court,**
- (ii) Annual inspection by the District Judge,**
- (iii) Inspection by the Judicial Officers of their own court, and**
- (iv) Surprise inspection by District Judge**

Inspection by the High Court:- A complete system set up in the High Court for inspection of subordinate courts. Before the visit of Inspecting Judge, an inspection team sent to the subordinate courts for inspection of various registers and functioning of ministerial staff posted in different courts, administrative office, copy section, accounts office etc. The inspecting team after thorough examination of registers prepare a pre-inspection note and submit it before the Inspecting Judge for his perusal. Thereafter Inspecting Judge makes his visit to the subordinate courts and he personally examines the defects pointed out by the inspecting team and gives various directions to the subordinate courts for taking corrective measure. In course of inspection, the Inspecting Judge examines the functioning of the subordinate courts with a view to satisfy himself as to whether courts are functioning as per the norms fixed by the High Court. Mostly, inspection confined to the administrative functioning of the courts and its officers. If the Inspecting Judge found that the administrative staffs are not doing the assigned work or are causing delay in the process of administration of justice, he can give prompt directions for the smooth functioning of the court. In course of inspection, the inspecting judge also sit with the judicial officers to watch their conduct in the court and to judge their legal acumen and efficiency. During inspection, inspecting judge also goes through the judgments and orders passed by the judicial officers to have first hand information regarding his knowledge of law and whether the orders passed by them were judicious or not.

However, under no circumstance, the inspecting judge as part of his administrative duty enjoys the power to interfere with judicial functions of the subordinate courts in individual cases, except giving general directions in any matter concerning administration of justice. Any interference in judicial function of the presiding officers would amount to interference with the independence of subordinate judiciary.

Annual Inspection By District Judge :- Rule 598 of the Civil Court Rules requires that the District Judges of each District inspect annually each of the subordinate courts and the courts of small causes under them and submit a report of their inspection to the High Court. Rule 599 of the Civil Court Rules lays down the object of inspection and it provides that object of inspection is to satisfy the District Judge, and through him, the High Court that the judicial work and ministerial work of the subordinate courts are being conducted strictly according to the law and Rules framed by the High Court. The District Judge also require to see that the cases are disposed of with regularity, punctuality and efficiency. The Rule further provides that if they detect any error then they give prompt direction to the Judicial Officers and/or Ministerial Staffs to correct the error and irregularity. The object of such inspection is to correct the error and also to encourage the officers to do their job efficiently. During inspection, if District Judge found any difficulties in the functioning of subordinate courts then they are duty bound to remove them so that courts subordinate to them could do their duties smoothly.

Inspection by the Judicial Officers of their own Courts : Judicial Officers of subordinate courts are burdened with various judicial work. Thus it is not possible for them to maintain different registers themselves. For that purpose, various ministerial staffs posted in their courts, whose duties are to maintain the court's registers and do other functions as mentioned in the duty chart. Thus the presiding officers of each court have been instructed to do inspection of their own court and ensure that the ministerial staffs posted in their court are maintaining all the registers prescribed in the Rules and making relevant entries therein. Such Inspection by Presiding Officers makes the ministerial staffs alert and up to date in their function.

Surprise inspection by the District Judge :- District Judge of the Judgeship conduct surprise inspection of any court without any notice to ensure promptness of the courts subordinate to him. Surprise inspection also ensures attendance of the Judicial Officers and ministerial staffs in the court on time. Therefore, surprise inspection is being conducted by the District Judges

to ensure administrative discipline amongst the judicial officers as well as ministerial staffs.

Conclusion :- Thus inspection is one of the most important tool for the administrative control over the subordinate courts. The object of such inspection is to asses work performed by the subordinate judges, their capability, integrity and competency. It work as a catalyst in inspiring the subordinate judge to give best result, because it provides opportunity to the Judicial Officers to know their deficiencies and remove them.

DISCIPLINARY PROCEEDINGS AND OVERVIEW

*Justice Aparesh Kumar Singh
Judge, High Court of Jharkhand*

One of the facets of employee-employer relationship is disciplinary control over the employee by the employer. Good discipline means orderly conduct of the affairs by the members of an organization who adhere to its necessary regulation because they desire to cooperate harmoniously in forwarding the ends which the Group has in view. The establishment of good discipline is a joint responsibility of both the employers and the employees. The objects of disciplinary proceedings are not meant really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent employee also lies in the prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges his honour should be vindicated and if he is guilty, he should be dealt with promptly according to law. It is not in the interest of administration that a person accused of serious misbehaviour should be continued in office indefinitely. Every punitive action must be preceded by a quasi judicial proceeding called disciplinary inquiry or domestic inquiry. No punishment may be imposed on an employee unless it is supported by a findings arrived at in the disciplinary inquiry and every disciplinary inquiry must be held where statute, standing orders, settlement or any binding service rules lays down any procedure for conduct of such inquiry, then in accordance with disciplinary law and rules of Natural justice. Where no specific disciplinary law or express rules are provided then in accordance with the rules of natural justice.

Natural Justice is a pre-requisite of disciplinary action. The aim of rules of Natural Justice is to secure justice or to prevent miscarriage of Justice. The Principle of Natural Justice consists primarily of two main rules namely "*NEMO DEBET ESSE JUDEX IN PROPRIA SUA CAUSA*" (No man can be judge in his own cause) and "*AUDI ALTERAM PARTEM*" (hear the other side). It is the natural corollary deduced from these two rules that justice should not only be done but manifestly be seen to be done. Rules of Natural Justice embody the legal controls on disciplinary powers. The Rule of Natural Justice means and includes the following (i) that every person whose civil rights are affected must have reasonable notice of the case he has to meet; (ii) he must have reasonable opportunity of being heard in his defence; (iii) that the hearing must be by a impartial Tribunal i.e. a person who is neither directly or indirectly a party to

the case;(iv) that the authority must act in good faith and not arbitrarily and unreasonably.

However, Rules of Natural Justice are not be stretched too far. One of the requirement of Natural Justice is that the copy of the documents relied upon against the delinquent employee should be given to him. However, only material and relevant documents are necessary to be supplied to him (*see AIR 1988 SC 117*). Procedural fairness is as much essence of right and liberty as the substantive law itself. The purpose of supplying documents is to allow an opportunity to the delinquents to contest its veracity or give explanation. Therefore, the application rule of Natural Justice will require that every domestic inquiry should satisfy the following essential requirement (a) service of charge-sheet upon delinquent requiring explanation from the guilty employee; (b) if the explanation is not satisfactory and the employer wants to proceed further, holding of a disciplinary inquiry into the alleged misconduct;(c) the inquiry should be conducted by affording all reasonable opportunities of hearing to the delinquents;(d) if the misconduct is brought home to the employee punishment may be inflicted, but the same should not be out of proportion to the misconduct.

Meaning of Misconduct:- In Concise Oxford Dictionary the meaning of misconduct is as follows:- ‘Malfeasance or culpable neglect of an official in regard to his office’. In “Words and Phrases” the meaning given to misconduct is “improper or wrong behavior or unlawful behavior or conduct or Malfeasance”. The word ‘misconduct’ though is a generic term may include within its definition or scope any act or omission of an employee, which is breach of any duty/ obligation or/ assignment arising out or flowing from any law or instruction of an employer or service e rule etc. under the organization to which he belongs. The cases of specific misconduct are like insubordination, willful disobedience of any lawful order of his master. The gross misconduct means whether pecuniary or otherwise; negligence or conduct calculated to seriously injure his employer, conduct in-consistence with the due and faithful discharge of the duties of service; act which are subversive of discipline amongst the employees; acts involving moral turpitude. There can be cases of misconduct by person discharging judicial or quasi-judicial function and the disciplinary action can be taken in cases where(i) the officer had acted in a manner as would reflect on his reputation or integrity or good faith or devotions of duty; (ii) if there is *prima -facie* material to show recklessness or misconduct in discharge of his duties;(iii) if he has acted in a manner which is unbecoming of a government

servant;(iv) if he had acted negligently or that he omitted the prescribed condition which is essential for carrying out of statutory powers;(v) if he had acted in order to unduly favour a party;(vi) if he had been actuated by corrupt motive, however the small the bribe may be, because Lord Coke said long ago that “ though the bribe may be small yet the fault is great”. These instances are not exhaustive and each case will depend upon facts and no absolute rule can be postulated.

The power to appoint carries with it the power to determine the employment (*see AIR 1975 SC 641*). Therefore, appointing authority has inherent power to take disciplinary action. A Government servant covered under Article 311 cannot be dismissed or removed by any authority subordinate to the appointing Authority. The above provision itself implies that penalties other than dismissal or removal can be imposed by authority lower than the appointing authority, if such power is delegated to them. However Article 311 of the Constitution of India does not say that the departmental proceeding must be initiated only by the appointing authority. It is open for the Union of India or any State Government to make any rule prescribing that even the proceeding against any delinquent officer shall be initiated by any officer not subordinate to the appointing authority. But in absence of such rule its right or guarantee does not flow from Article 311 of the Constitution of India (*see 1993(1) SCC 419*). Punishment however should be awarded by the disciplinary authority and not by the appellate authority. If the appellate authority passes an order of punishment, the employee is denied the right to appeal. However, when the authority higher than the disciplinary authority imposes the punishment in a case where no appeal is provided to such authority, the order of punishment does not suffer from any illegality. (*see AIR 1995 SC 1053*) and (*2006(4) SCC 348*).

A preliminary inquiry is conducted to find out the person responsible for the lapses or the misconduct. It is relevant to find out against whom the departmental inquiry should be held. If the report of the preliminary inquiry is relied upon to prove the charges against the employee, the copy of the report of the preliminary inquiry is required to be supplied to the employee. However, in the absence of any rule or regulations it is not necessary that the departmental proceeding must be preceded with preliminary inquiry. The disciplinary proceeding is initiated when the charge- sheet is issued (*see AIR 1991 SC 2010*). In case where the employee has been acquitted by the Criminal Court, the employer / organization is not precluded to take any action if it is

otherwise permissible. The authority concerned has to bear in mind whether it is really worthwhile to continue the departmental inquiry after the acquittal. In the case of ***Capt. M. Paul Anthony Vrs. Bharat Gold Mines Ltd. And another*** reported in ***1993(3) SCC 679*** the Hon'ble Supreme Court while dealing with these issues has restated the law. The relevant para 13 and 22 is quoted herein below:-

“Para 13. As we shall presently see, there is a consensus of judicial opinion amongst the High Courts whose decisions we do not intend to refer to in this case, and the various pronouncements of this Court, which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. As we understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the disciplinary authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance”.

“Para 22. The conclusions which are deducible from various decisions of this Court referred to above are:

- (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.***
- (ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law***

and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

- (iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.*
- (iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.*
- (v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest”.*

It has also been held in the said judgment that payment of subsistence allowance during the period of suspension of an employee is linked to his right to life, the denial of which effectively precludes the employee in participating in the disciplinary inquiry. Such a disciplinary inquiry would be rendered vitiated. Suspension does not put an end to the employees' service. He continues to be member of service, though he is not permitted to work and is paid only subsistence allowance, which is less than his salary. While it is true that the employer has unqualified right to place the employee under suspension, but it is also true that person on joining government service does not mortgage or barter away his past right as a human being including his fundamental right in favour of Government. Para 27 and 31 of the Judgment of the Hon'ble Supreme Court in the case of ***Capt. M. Paul Anthony Vrs. Bharat Gold Mines Ltd. And another(supra)*** contains the authoritative pronouncement on the aforesaid issue. *(see also (2013) 1 SCC 598)*

Charge-sheet:- The disciplinary inquiry commences with the service of charge-sheet. It is the document containing the allegations of misconduct. The

delinquent officer is to be issued charge-sheet under the rules applicable to the concerned employee and should be clear, precise and accurate of the charges leveled against him. The rules of Natural Justice require that the person who is charge-sheeted for the offence should know the nature of offence and should be given the opportunity to defend himself and give proper explanation. The charge of misconduct should not be vague. For example, when the date of incidence is not given the ground is vague. If the charges are vague the charge-sheet itself is illegal and entire proceeding is vitiated. At the same time the charge-sheet should not use language which indicates prejudging of the issue or bias. (The disciplinary authority can amend or issue additional charges since the authority who can issue charges is also competent to withdraw charges or amend them or issue new charges. While fresh charge is given, the effect is that pervious charge is superseded and a fresh inquiry and not the charge is to be made. If the employer wants to amend the charges during the pendency of the inquiry into the original charge, the employee must be permitted to file reply to the amended charge and inquiry is to be held den-novo). (AIR 1958 SC 1018). If the rules so prescribed the charges are to be issued in the prescribed format containing the statement of articles of charge. It should also accompany the documents relied upon by the prosecution and the list of witnesses along with the statement of allegations. On issuance of the charge-sheet the inquiry officer is required to be appointed. The inquiry officer should be impartial man with open mind. He should not impart his own knowledge in the findings. The witness or complainant should not be appointed as Inquiry Officer. When the request is made for change of inquiry officer on the ground of bias such request should be decided by the disciplinary authority on the test that whether the employee has reasonable apprehension in mind regarding the impartiality of the inquiry authority. In other words the test is as to whether a man of reasonable prudence if placed in similar circumstances as that of the employee, would have thought the Inquiring authority to be biased against him. All objections regarding appointment of Inquiry Officer should be made while the enquiry is on and not after it is completed.

(The right to be represented through counsel or agents can be restricted, controlled or regulated by statue, rules, regulation or standing orders). Charge-sheeted employee is entitled to document of inquiry for proper defence. However, such document which has no bearing on the charges and are not relevant for the purpose in the inquiry need not be supplied. The question whether the document demanded by the delinquent employee ought to be supplied or not is to be determined in the facts and circumstances of each

case. The delinquent must show the prejudices caused to him by non supply of copy of the document where the other of punishment is challenged on the ground **(2002(3) SCC 443)**.

How to conduct the disciplinary inquiry:- The disciplinary inquiry needs to be fairly conducted and not accordance with the technical requirement of criminal trials. The condition of fair play and Natural justice must govern the conduct of the Inquiry Officer. Where the rules and regulations prescribe the procedure for conducting inquiries, the same must be followed. When the Inquiry officer is appointed and charges are denied by the employee, it is incumbent upon the inquiry officer to examine the witnesses in support of its charges. It is obligatory to afford opportunity of hearing to the employee to defend the charges. The inquiry officer is require to fix the dates for holding the inquiry proceeding. Even if the employee does not appear, the charges can be proved only after examination of witnesses and production of documents to support the allegation. The Inquiry officer must make all out effort to ensure the participation of charge-sheeted employee and avoid possibility of ex-parte inquiry. It is desirable that the Inquiry officer should maintain written record of the inquiry proceeding which should contain the details in respect of each hearing such as the date, time and place of hearing, Person present at the hearing from both sides. Summary of proceeding held during the hearing duly signed by the Inquiry officer, the charge-sheeted employee as well as presenting officer should be maintained. After the presenting officer closes the case the delinquent employee should be asked to enter upon his defence and produce his evidence. After the Presenting Officer as well as the charge-sheeted employee conclude their evidence, both the parties should be allowed to make oral and / or written submissions which may be drawn on the basis of materials on record. Even in ex-parte inquiry the charges are to be proved before any punitive action can be taken against the delinquent employee. In the disciplinary inquiry the Inquiry Officer should summon the necessary witnesses who are supposed to have knowledge of the facts and controversy. However, the Inquiry officer has discretion to decide if each and every witness called by the party should be produced. The omission to summon or examine witnesses will not vitiate the inquiry unless the delinquent is prejudiced on that account. However, the officer holding the inquiry cannot compel the attendance of any witnesses and the employer cannot be blamed for violation of Principles of Natural Justice for not producing the witnesses. The Inquiry officer can put question upon the witnesses to elicit truth. The employee should be allowed to cross examine every witness produced by the prosecution. When

the charge is based upon the statement of certain person, the delinquent should be allowed to cross examine such person. Normally the examination of witnesses should be done in the presence of the employee. The inquiry officer can dis-allow irrelevant question which have no connection with the subject matter of the inquiry or which will have no relevance with the question to establish or disproving the misconduct alleged against the employee. The Inquiry officer has the power to regulate the proceeding of the Inquiry. Re-examination of witnesses is permissible to clarify the points raised out in the cross examination of the witnesses and not cover the deficiency.

It is well settled that strict rules of Evidence Act and standard of proof envisaged therein do not apply to the departmental proceeding (**see 1991(2) SCC 716**). The standard of proof is not proof beyond reasonable doubt but the decision must be based on material of some probative value which tend to logically show the existence of facts relevant to the issue to be determined. The decision is to be based on the requirement of basis of proof on the preponderance of probabilities. After the conclusion of the inquiry the Inquiry officer is required to submit his inquiry report which would contain the findings and conclusion of the inquiry officer based on evidence where from it can logically and reasonably follow that the person charge-sheeted is guilty of the charges mentioned in the charge-sheet. The materials on record should support the findings. The findings should not be based on conjecture and surmises or ipse dixit of the Inquiry officer.

Role of disciplinary authority after receipt of report of inquiry:-

On receipt of the Inquiry Officer's findings the disciplinary authority should examine the matter himself by applying his mind independently. The disciplinary authority is not bound by the conclusion drawn by the Inquiry officer in his report. It is open to the disciplinary authority to differ from the conclusion drawn by the Inquiry officer and arrive at his own conclusion after consideration of the evidences available on the record. If the disciplinary authority differs with the view of the Inquiry Officer and proposes to differ with the conclusion, the charge- sheeted officer must be given opportunity to persuade the disciplinary authority to accept the favourable decision of the inquiry officer before the punishment is imposed. In case of disagreement, the disciplinary authority has to record the reasons for its disagreement. In the case of **Punjab National Bank and others Vrs. Kunj Behari Misra** reported in **1998(7) SCC 84** the Hon'ble Supreme Court has laid down the law as expressed in para 17 of the said judgment which is quoted herein below:-

“Para 17:- These observations are clearly in tune with the observations in Bimal Kumar Pandit case quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the enquiry officer had given an adverse finding, as per Karunakar case the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the enquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the findings of the disciplinary authority”.

It is also the requirement of the Principles of Natural Justice as held in the case of ***Union of India & others Vrs. Mohd. Ramzan Khan*** reported in **1991(1) SCC 588** that whenever the Inquiry Officer is other than the disciplinary authority and report of the Inquiry Officer holds the employee guilty of all or any of the charges, the delinquent employee is entitled to get the copy of the report to enable him to make representation to disciplinary authority against it and non-furnishing of report amounts to violation of Rules of natural justice. The inquiry report along with the second show cause containing the proposed punishment is to be served upon the delinquent employee as it has been read to be necessary requirement of Principles of Natural Justice before the disciplinary

authority can proceed to pass any other of punishment (*see AIR 1994 SC 1074*). The disciplinary authority must properly consider the representation made by the delinquent in reply to the show cause notice. If the past record of the delinquent officer is to be taken into account while determining the quantum of punishment, the same should be known to him that such record would be used against him and he had an opportunity to show cause against proposed penal action. The disciplinary authority after consideration of the inquiry report, the reply of the second show cause by the delinquent employee and after independent application of mind to all the materials, evidences (oral and documentary) has to come to a finding on the quantum of punishment to be awarded which should be commensurate with the gravity of the misconduct established against the delinquent employee.

The various facets of disciplinary inquiry have been considered and explained in the instant paper for the purpose of drawing a broad view of the object and manner of the conduct of the disciplinary proceeding by an employer against the employee for any alleged misconduct. They are however no exhaustive and illustrative instances in individual facts and circumstances of a particular case have to be dealt with the broad object and Principles to be followed in the manner of conduct of departmental proceeding.

Quantum of Punishment : A quantum question

***Justice Shree Chandrashekhar
Judge, High Court of Jharkhand***

For centuries, the question of punishment has ignited the mind of jurists, philosophers and reformists alike. The word 'quantum' has its origin in latin word '*quantus*' which means a quantity or amount. The American Heritage Dictionary of English Language, Collins English Dictionary, Random House Kernerman, Webster's College Dictionary and various other dictionaries also suggest a similar meaning to the word quantum.

The word 'punishment' suggests authoritative imposition of something undesirable or unpleasant in response to behaviour that is considered, unacceptable or a violation of the norm. The terms 'punishment' and 'penalty' are frequently used as synonym of each other and, indeed under Clause (1) of Article 20 of the Constitution of India, the word 'penalty' is used in the sense of 'punishment'. In "*Thomas Dana Vs. State of Punjab*", reported in AIR 1959 SC 375, Hon'ble Justice K. Subba Rao said, "punishment is the penalty for the transgression of law."

In modern times, the concept of 'quantum of punishment' has its origin in England. Since there is no guidelines formulated and indeed, there cannot be a formula for awarding punishment on a delinquent employee, taking clue from judgments of Hon'ble Supreme Court and various High Courts, illustrations can only be kept in mind by the departmental authorities while imposing punishment on a delinquent employee. One parameter which consistently has been adopted by the Courts for interfering with the order of penalty is, "the penalty being so excessive and disproportionate to the charge framed that it shocks the conscience of the Court". In the context, it would be useful to trace the history, how the law with respect to judicial review of administrative decision, has developed over a period of time.

The law on the subject first evolved in England. In "*Queen v. James Bolton*",(1841) 1 QB 66, Lord Denman, C.J., made the following observation which is considered authoritative and good law even today :

"The first of these is a point of much importance, because of very general application; but the principle upon which it turns is very simple: the difficulty is always found in applying it. The case to be supposed is one like the present, in which the Legislature has trusted

the original, it may be (as here) the final jurisdiction on the merits to the magistrates below; in which this Court has no jurisdiction as to the merits either originally or on appeal. All that we can then do, when their decision is complained of, is to see that the case was one within their jurisdiction, and that their proceedings on the face of them are regular & according to law. Even if their decision should upon the merits be unwise or unjust, on these grounds we cannot reverse it."

It was further observed by Lord Denman, C.J.,

"Beyond this we cannot go. The affidavits, being before us, were used on the argument; and much was said of the unreasonableness of the conclusion drawn by the magistrates, and of the hardship on the defendant if we would not review it, there being no appeal to the sessions. We forbear to express any opinion on that which is not before us, the propriety of the conclusion drawn from the evidence by the magistrates: they and they alone were the competent authority to draw it; and we must not constitute ourselves into a Court of Appeal where the statute does not make us such, because it has constituted no other."

A century thereafter, in *"Associated Provincial Picture Houses Limited Vs. Wednesbury Corpn."*, reported in (1948) 1 KB 223, which is famously known as 'Wednesbury case', the observation of Lord Greene is considered as basic principle relating to judicial review of administrative or statutory discretion;

It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers of the authority... In another sense it is taking into consideration extraneous matters. It is unreasonable

that it might almost be described as being done in bad faith: and in fact, all these things run into one another.”

Lord Green also observed (KB p.230: All ER p.683)

“.....it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body can come to. It is not what the court considers unreasonable.The effect of the legislation is not to set up the court as an arbiter of the correctness one view over another.”

In “*Council of Civil Service Unions Vs. Minister for the Civil Service*”, reported in (1984) 3 ALL ER 935, Lord Diplock observed,

“.....Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call ‘illegality’, the second ‘irrationality’ and the third ‘procedural impropriety’. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of ‘proportionality’ which is recognised in the administrative law of several of our fellow members of the European Economic Community;.....”

Lord Diplock said,

“by irrationality I mean what can by now be succinctly referred to as Wednesbury unreasonableness ----- it applies to a decision which was outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.-----”

However in “*R. Vs. Secy. of State for the Home Deptt., ex p Brind*” reported in (1991) All ER 720 (HL), the doctrine of proportionality was rejected as part of English Law. Lord Cooke in “*R. Vs. Secy. of State for the Home Deptt. ex p Daly*” reported in (2001) 3 All ER 433 (HL), observed as under:

“32.I think that the day will come when it will be more widely recognised that Associated Provincial Picture Houses Ltd. Vs. Wednesbury Corpn. was an unfortunately retrogressive decision

in English administrative law, insofar as it suggested that there are degrees of unreasonableness and that only a very extreme degree can bring an administrative decision within the legitimate scope of judicial invalidation."

In India the principle of 'proportionality' has always been applied to administrative action affecting fundamental freedoms. When administrative action is attacked as discriminatory under Article 14 of the Constitution of India, the Courts in India have applied the principle of proportionality. However, where administrative action is challenged as "arbitrary" under Article 14, the Courts have applied Wednesbury principle. The test laid down in "*E.P. Royappa Vs. State of T. N.*", reported in (1974) 4 SCC 3 that, if the administrative action is arbitrary, it can be struck down under Article 14 of the Constitution of India, is now being uniformly followed by the Courts in India. Thus, where an administrative action is challenged as "arbitrary" under Article 14, the Courts would then be confined only to a 'secondary' role to see whether the administrator acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether the view taken is one which no reasonable person could have taken.

In "*Chintamanrao Vs. State of M.P.*" reported in AIR 1951 SC 118, a Constitution Bench of the Hon'ble Supreme Court has held:

7. "The phrase 'reasonable restriction' [in Article 19(6)] connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public....."

In "*State of Madras Vs. V. G. Row*" reported in AIR 1952 SC 196, the Hon'ble Supreme Court has held that the test of reasonableness of restriction would depend on:

"The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions of the time, should all enter into the judicial verdict."

Thus, the principle of proportionality envisages that a public authority ought to maintain a sense of proportion between his particular goals and the

means he employs to achieve those goals so that his action impinge on the individual rights to the minimum extent to preserve public interest.

In *“B.C. Chaturvedi Vs. Union of India”*, reported in (1995) 6 SCC 749, and in *“Bhagat Ram Vs. State of Himachal Pradesh & Ors.”* reported in (1983) 2 SCC 442, the Hon’ble Supreme Court has held that if the penalty imposed is disproportionate to the gravity of misconduct, it would be violative of Article 14 of the Constitution of India.

In *“Bhagat Ram Vs. State of Himachal Pradesh & Ors.”* reported in (1983) 2 SCC 442, the Hon’ble Supreme Court has held,

“It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution of India.”

In *“Om Kumar & Ors. Vs. Union of India”*, reported in (2001) 2 SCC 386, the Hon’ble Supreme Court has observed,

“The quantum of punishment in disciplinary matters is primary for the disciplinary authority to decide and the jurisdiction of the High Courts under Article 226 of the Constitution of India or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the wellknown principles known as Wednesbury principles.”

In *“Union of India & Anr. Vs. G. Ganayutham”*, reported in (1997) 7 SCC 463, the Hon’ble Supreme Court has held that “in the matter of penalty imposed in a disciplinary case unless the Court/Tribunal opines in its secondary role that the administrator on the materials before him, made an irrational decision, the punishment cannot be quashed.”

In *“Apparel Export Promotion Council Vs. A.K. Chopra”* reported in (1999) 1 SCC 759, the Hon’ble Supreme Court has observed,

16. *“.....Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty.....”*

In *“Ex-Naik Sardar Singh v. Union of India”* reported in (1991) 3 SCC 213, it was held that fairness and reasonableness in the action of the State whether in a criminal proceeding or otherwise are the hallmark of Article 14 of the Constitution of India. The doctrine of proportionality is one of the grounds on the basis whereof the power of judicial review could be exercised.

In *“State of M.P. Vs. Hazarilal”* reported in (2008) 3 SCC 273, the Hon’ble Supreme Court has held that, an authority which is conferred with a statutory discretionary power is bound to take into consideration all the attending facts and circumstances of the case before imposition of an order of punishment. While exercising such power, “the disciplinary authority should dispense with inquiry against the government servant and to impose penalty under the relevant rule on the ground of conduct which has led to conviction on a criminal charge”, does not mean that irrespective of the nature of the case in which he has been involved or the punishment which has been imposed on him, an order of dismissal must be passed.

In *“Gopal Singh Vs. State of Uttarakhand”* reported in (2013) 7 SCC 545, the Hon’ble Supreme Court has observed, though in the context of a criminal case that, ‘a punishment should not be disproportionately excessive’. The Hon’ble Supreme Court has observed thus,

18. “Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive. The concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect — propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attractability of the doctrine of bringing the convict to the value-based social mainstream may be the guiding factors. Needless to emphasise, these are certain illustrative aspects put forth in a

condensed manner. We may hasten to add that there can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalised judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors which we have indicated hereinbefore and also have been stated in a number of pronouncements by this Court. On such touchstone, the sentences are to be imposed. The discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment.”

On the question of quantum of punishment the judgments of the Hon’ble Supreme Court are illuminating and would provide a safe guideline for the administrative authority while awarding punishment to the delinquent employee. I refer to a few.

In *“Management of the Federation of Indian Chambers of Commerce and Industry Vs. Their Workman, Shri R. K. Mittal”* reported in (1972) 1 SCC 40, the allegation against the workman was that he issued legal notices to the Federation and to the International Chamber of Commerce, which brought discredit to the Federation. In the departmental enquiry, the charge against the employee was found proved and an order of termination from service was passed. The Hon’ble Supreme Court while holding that the punishment was disproportionate to the misconduct alleged and established, has observed,

“The Federation had made a mountain out of a mole hill and made a trivial matter into one involving loss of its prestige.”

In *“Ranjit Thakur Vs. Union of India & Ors.”* reported in (1987) 4 SCC 611, the Hon’ble Supreme Court has held that even on proved charges of disobedience of order of superior officer to eat food, sentence of one year and thereafter, dismissal from service with added disqualification of being declared unfit for, in future, civil employment was disproportionately excessive. The Hon’ble Supreme Court has held as under,

25. *"Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review....."*

In *"Ram Autar Singh Vs. State Public Service Tribunal & others"* reported in (1998) 9 SCC 666, a case in which a police constable who went on a hunger strike for one day for opposing his transfer was dismissed from service, the Hon'ble Supreme Court held the order of dismissal from service a disproportionate punishment.

In *"Dev Singh Vs. Punjab Tourism Development Corporation Ltd. and Another"*, reported in (2003) 8 SCC 9, a case where official file was misplaced and for that the employee was proceeded in departmental enquiry and he was dismissed from service, the Hon'ble Supreme Court interfered with the order of penalty and observed thus;

6. *"A perusal of the above judgments clearly shows that a court sitting in appeal against a punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty, however, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof. It is also clear from the abovenoted judgments of this Court, if the punishment imposed by the disciplinary authority is totally disproportionate to the misconduct proved against the delinquent officer, then the court would interfere in such a case."*

It has also been held by the Hon'ble Supreme Court in series of judgments that, unless it is found that the misconduct committed by the delinquent employee was 'gravest' in nature, the penalty of dismissal from service cannot be inflicted upon the delinquent employee. However, in cases of misconduct relating to corruption, the Hon'ble Supreme Court has held that the penalty of dismissal from service is the proper punishment.

Conclusion: In a nut-shell, while awarding punishment on a delinquent employee the departmental authority must not leave his senses and judicial conscience 'on leave' and the disciplinary authority must not be guided by his own moral and socio-economic ideas.



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