Reforms Required in Sub-ordinate Judiciary

…. S.S. Upadhyay
Former District & Sessions Judge /
Former Legal Advisor to Governors
Uttar Pradesh, Lucknow
Mobile : 9453048988
e-mail : ssupadhyay28@gmail.com

1. **An overview of the sub-ordinate judiciary**: The court system and the structure of the sub-ordinate judiciary in India come from the British legacy. Equity, justice and good conscience used to guide the jurists and judges in England when no codified laws were there. Even in ancient India, the thrust of Indian jurists i.e. the sages and kings was on real and genuine justice and not on mere decisions or disposal of disputes by observing procedures. The Indian court system borrowed from England is based on adversarial litigation. The Indian masses were not familiar with the procedure-laden British system of deciding of disputes. After independence of India and introduction of the Constitution of India, achieving the constitutional vision of justice became the standard objective of the Indian courts. The long protraction of litigations in courts at all levels and the dispensation of justice when its purpose gets frustrated negates the efficacy of our judicial system and the same has been a matter of grave concern for the jurists, lawyers and the litigants-community in India. Despite all their anxiety and concern for speedy justice, the legal and judicial academia has not been able to find any effective solution to cut-short the delays in disposal of cases by the courts. Lack of collective will and effort on the part of the three organs of the Constitution i.e. the executive, legislature and judiciary to come up with effective judicial policy and reforms in the existing structure of the Indian judicial system is perhaps the main reason for delayed justice by the court system of India. Besides delays, getting justice from courts in our country, particularly from higher judiciary, has become quite expensive. The district judiciary being at the door step of the people may respond first to redress their grievances as it is comparatively lesser expensive and easily accessible too in comparison to higher judiciary. The district judiciary in India is headed by the Principal District & Sessions Judges and, subject to overall control and supervision of the State High Court, they have to play their role as the administrators, controllers and motivators of their respective units. Despite modernization of district judiciary in dimensions like computerization and infrastructural expansions, the rapid and huge upsurge in the litigations has virtually rendered the district judiciary and its resources inadequate to cope with the challenges of modern times. Aspirations of the litigant-public to get cheap, speedy and timely justice has proved to be a difficult and distant goal. Present system of permitting institution of all sorts of litigations including petty and frivolous ones has in fact rendered the courts helpless to devote time to genuine and serious matters concerning person and property to be heard and decided speedily. Engagement of the courts with frivolous and serious disputes simultaneously brought on their docket has left the courts overcrowded, overburdened and unable to overcome the delays in disposals and has created a situation where most of the time of the courts is got consumed in hearing and disposal of the petty and frivolous matters and the genuine and serious civil and criminal cases fail to receive the required attention of the courts and the same ultimately results into delays and miscarriage of justice. With the passage of time and

Indian society having undergone drastic socio-economic, industrial, scientific & technological transformations, the old administrative setup of the district courts has, to a great extent, become obsolete and inadequate to cope with the challenges that have emerged in the 21st century. All that an average litigant expects from our courts is genuine and timely justice. The litigants' community is hardly interested in the pedantic narration of lexical phrases and verbose in the judgments and orders passed by courts in their cases nor impressed by the pages and volumes which the judgments or orders cover. Litigants' community can also not be said to be responsible for the helplessness of the courts in delivering genuine and timely justice. Failing of the judicial system, or for that matter of the State, cannot be said to be the failing of the litigants' community. Public perception of the performance and responsiveness of our courts is quite dismal. Cheap, timely and real justice is still a distant and illusionary goal to be achieved through courts. Without certain radical reforms concerning the core problematic areas in the sub-ordinate judiciary, the malady of delayed and expensive justice cannot be obviated. Certain major problems facing the sub-ordinate judiciary and the possible remedial measures therefor are being discussed here as under:

2. **Reforms in administrative set up of sub-ordinate judiciary** : Because of the impact of globalization, transformation of society and upsurge in litigations, the traditional administrative set up of the district judiciary has become outdated and needs to be restructured by introducing therein managerial skill and expertise of modern times. The usual practice of dealing with the administrative, financial and infrastructural matters etc. of the district judiciary by the administratively and financially unskilled judicial officers has only compounded the problems of the district judiciary. There is, therefore, pressing need for examining the administrative composition of the district judiciary. Decentralization of many administrative matters from the administrative office of the District Judges is the need of the hour because the District Judge alone cannot discharge the vast judicial, financial and administrative works etc. The experience has been that many administrative matters which need to be tackled by the District Judges urgently go unattended with the result that many judgeships remain faced with much administrative chaos and mismanagement. Concentration of all powers in the District Judges alone is the biggest cause responsible for administrative mismanagement in the district courts. Even at the High Court level, there is decentralization of administrative powers amongst the various Judges of the High Court. Provision of Administrative Judges for each judgeship of the State and set up of Administrative Committee and Full Court to deal with the disciplinary, service and other related matters of the district judiciary is the example that there is already decentralization of powers at the High Courts' level to run the affairs of the district judiciary. It is, therefore, not understandable why the same administrative mechanism as is functional at the High Courts level cannot be introduced at the district judiciary level too. It is, therefore, suggested that in the district courts also there should be an Administrative Committee comprising of 7 or 9 judicial officers from all the three cadres of the district judiciary and a Full Court comprising all the judicial officers posted in the judgeship to take major decisions concerning disciplinary matters of the staff, budgetary expenditures, annual planning, infrastructural aspects and emergent situations emanating from the side of Bar and others. Decisions in such matters should be collectively and democratically taken by the Administrative Committee or Full Court under the Chairmanship of the Principal District Judge of the judgeship. It will also help in reducing corruption prevalent in the administrative offices of some of the Principal District Judges.

3. **Need of administrative code for sub-ordinate judiciary** : The major source of administrative guidelines for the district judiciary has been the different Circular Orders or administrative instructions issued by the High Courts during the past one and half century. A large number of such circular orders issued during the last 150 years have either become irrelevant and outdated or incapable of being implemented in modern times. In many judgeships, even the entire circular orders are not available for want of proper compilation and preservation. The suggestion is, therefore, that a new 'Code of Administrative Rules and Guidelines' for the sub-ordinate judiciary should be framed by scrapping the various Circular Orders and General letters etc. issued by the High Courts from time to time.

4. **Posting of judicial officers according to case-judge ratio**: The existing policy of posting of the judicial officers needs to be rationalized. Sometimes it is seen that the concentration of courts and judges in some judgeships with lesser pendency is quite high in comparison to the judgeships having higher pendency of cases. Transfer of judicial officers to a particular judgeship needs to be made on the basis of case-judge ratio. The general impression prevalent among the judicial officers that on account of proximity with this or that Judge of the High Court, transfers and postings to lucrative places or big cities can be managed needs to be obviated by introducing a fair and effective transfer and posting policy.

5. **Merger of High Court made rules & orders for sub-ordinate judiciary into CPC & CrPC**: The supplemental rules of procedures contained in General Rules (Civil) and General Rules (Criminal) in State like Uttar Pradesh and the High Court made rules and orders for sub-ordinate judiciary in other States are nowhere covered in the syllabus of the universities and the law colleges and in the competitive examinations of Civil Judges (Junior Division) and the Direct HJS. The judicial officers, therefore, are only very little familiar with the procedures contained in these procedural rules & orders and many a times fail to notice the provisions contained therein and commit procedural mistakes. These additional procedural rules supplement the already provided procedures in the CPC & CrPC. The suggestion is, therefore, that such residuary or supplementary procedures should be merged into CPC and CrPC respectively so that the judicial officers may conveniently find all the relevant procedure on any subject compiled in one book at one place.

6. **Rationalization of quota formula**: The existing quota system regarding disposal of cases by the judicial officers needs to be rationalized. The unit system of quota introduced since July, 2018 has only complicated the matter and has in fact made it nearly impossible for most of the judicial officers to give the required units under the new scheme. It is, therefore, suggested that there is urgent need to rationalize the existing quota formula and to make it humanly possible for judicial officers to comply with the quota formula. Many complicated proceedings of different natures consume much time, effort and energy of the judicial officers than in the original suits etc. with the result that the judicial officers focus on the disposal of only such comparatively easier cases which provide sufficient quota and the complicated ones wherein negligible quota has been prescribed are neglected. It is often seen that a civil suit instituted in the court of Civil Judge (Junior Division) containing valuation of few hundred Rupees and assessed on the basis of annual rent or land revenue of the disputed property involves complicated controversies for decision in comparison to a money suit involving lakhs or crores of amount filed in the court of Civil Judge (Senior Division).

7. **Formation of larger benches in sub-ordinate judiciary for decision in complicated cases**: Like the High Courts and the Supreme Court, formation of Division Benches,

Larger Benches and Full Court system should be introduced in the district courts also for hearing and deciding complicated cases and cases involving matters of public importance. Where a case involves death penalty as an alternate, at least two presiding officers of the HJS cadre of the concerned judgeship should sit together in a Division Bench to hear and decide on the quantum of penalty to be inflicted against the convict. In the cases where right to life of the convict as guaranteed by Article 21 of the Constitution is at stake is decided at the High Court level by not less than two Judges then what could be the rationale in not following the same practice at the district court level.

8. **Handing-over of recruitment of staff to Government recruitment bodies**: In recent times, there has been much controversy in regard to the recruitment of class III and class IV employees of the district judiciary and many Principal District Judges and other judicial officers involved in the recruitment process had to face problems and many of them had to suffer set back into their career. The public opinion is strongly against the fairness of such recruitments at the district courts level. It is, therefore, suggested that with a view to avoid all sorts of controversies concerning the recruitments and also to secure recruitment of only deserving and efficient staff in the district judiciary, the recruitment matters of the staff of the sub-ordinate judiciary should be handed over to expert recruitment bodies like Staff Selection Commission, State Public Service Commission or any other such Government recruitment body. For the first time in the entire history of Uttar Pradesh sub-ordinate judiciary, recruitment of 42 class III officials & stenographers of the Gonda judgeship was handed over to the Uttar Pradesh Public Service Commission, Allahabad in the year 2004 and the staff recruited by the State PSC was highly efficient and had quite higher performance skill of their jobs.

9. **ACR entries of judicial officers**: Objectivity and impartiality have got badly lost in modern times in recording of Annual Character Roll entries of the judicial officers at the district courts level. Many negative factors like personal likes and dislikes, extraneous and negative factors like caste, community and even region weigh heavily with many Principal District Judges in rating of the judicial officers. Judicial officers often jokingly express their anguish that an Outstanding rating by the Principal District Judges is awarded only to such judicial officers who keep standing outside the gate of the Principal District Judges to wait and serve their private commandments as well as of their family members. This ugly trend prevalent in the district judiciary over the past many decades has not only demoralized the upright judicial officers but the same has also been one of the causes of indulgence in corruption by the cunning and clever judicial officers so as to enable them to cater the needs of their assessors i.e. the Principal District Judges and their nears and dears. Expressing concern over the manner of recording of ACRs of the judicial officers, the Hon'ble Supreme Court has in the case reported in Registrar General, Patna High Court Vs. Pandey Gajendra Prasad & Others, AIR 2012 SC 2319 observed thus: "*The process of evaluation of a judicial officer is intended to contain a balanced information about his performance during the entire evaluation period. Experience however shows that it is deficient in several ways, being not comprehensive enough to truly reflect the level of work, conduct and performance of each individual on one hand and unable to check subjectivity on the other. Undoubtedly, ACRs play a vital and significant role on the assessment, evaluation and formulation of opinion on the profile of a judicial officer, particularly, in matters relating to disciplinary action against a judicial officer. The ACRs of such Officer hold supreme importance in ascertaining his conduct, and, therefore, the same have to be reported carefully with due diligence and caution. There is an urgent need for reforms on this subject not only to bring about uniformity but also to infuse*

objectivity and standardization." The Principal District Judges and the Addl. District Judges have equal powers in judicial matters and the Principal District Judges do not have any occasion to make judicial scrutiny in appeals and revisions etc. of the judgments and orders passed by the Addl. District Judges but still they have to record their opinion in the ACR of the Addl. District Judges regarding their knowledge of laws and quality of their judgments and orders. In the States like Bihar, Kerala, Delhi and others, the ACR entries of the Additional District Judges are recorded not by their Principal District Judges but directly by the Administrative Judges of the High Courts with the result that the Additional District Judges in these States not only freely raise their problems with the Principal District Judges but also raise the problems being faced by the junior judicial officers and the genuine problems of the staff too. But in many other States, Additional District Judges being fearful of being harmed by the Principal District Judges in terms of their ACR entries remain silent spectator and highly hesitant in raising with the Principal District Judges their own problems as well as of the junior judicial officers and of the staff. It is, therefore, suggested that the ACR entries of the Additional District Judges should be directly recorded by the Administrative Judges of the judgeships and not by the Principal District Judges and only then the Additional District Judges would be in a position to raise, discuss and seek solutions to the genuine grievances of the junior judicial officers and the staff in the monthly and periodical meetings of judicial officers with the Principal District Judges and also at other forums otherwise for fear of being harmed by the Principal District Judges no Additional District Judge, how much senior he may be, would dare to raise any such problems either with the Principal District Judge or with the Administrative Judge or with the Chief Justice of the State High Court.

10. **Eradication of corruption in sub-ordinate judiciary**: As regards greed and lust for money and wealth, Indian society had got divided into two schools since ancient times. One school believed in ''मातृवत् परदारेषु परद्रव्येषु लोष्ठवत्'' which means the wives of others are as respectable as one's own mother and the wealth of others is as discardable as the bit of soil. The other school lost no times to contradict the above motto and declared ''विषादपि अमृतम् ग्राहयम् विष्ठादपि च कांचनम्'' which means nectar should be taken out even from poison and gold from night-soil. With the passage of time, the second school of the society grew larger and became over-crowded while the first school has gradually come to near closure for want of admissions. Corruption is like a contagious disease. This infectious disease can be checked only by formulating strong and effective policy and the same also requires strong and honest will for implementation. Old and conservative mechanism of prevention of corruption evolved for sub-ordinate judiciary decades back has proved to be quite fragile, inadequate and ineffective. The problem is in varied forms and magnitudes in different parts of the State. This author finds it easier to write on some social or spiritual issues than the this one. After all, the popular perception among the judicial fraternity over the decades has been that the corrupts have been getting protection from within the institution. Caste and community bias for the corrupt provides him additional protection. Experience of the upright officers since long has been that they are not only neglected and ignored by some of the Principal District Judges for any important administrative assignments in the judgeships but are treated as liability rather than asset to the institution. Many also believe that the school of honest, upright and non-sycophant judicial officers are akin to vanishing species of certain creatures from this earth planet. It is further noticeable that the degree, scale and magnitude of corruption among officers is not uniform. The same is in varied quantum in individual corrupts. The corrupts, for purposes of understanding their degree of corruption, can be symbolically categorized among the

living organism like: (i) Raja Harishchandra, (ii) Nandi, (iii) Peacock, (iv) Crow and (v) Papeah. Officers like Raja Harishchandra have always been there in any institution including the judiciary and they are there in good numbers even today. Credibility of the sub-ordinate judiciary in the estimate of the public exists because of these Harishchandras and the institution can certainly boast of its credibility because of these absolutely honest judicial officers. Then there are Shiv ka Nandis who are undoubtedly honest in themselves but unlike Harishchandras do not take notice of the corruption indulged in by their staff for their gains. Peacock is known for taking water only once a day to quench his thirst. Peacock Nyayadheeshas are found in good numbers but they cannot be attributed with the blame to bring any major disrepute to the institution for they operate below the danger mark. Crows since their birth are known for their cleverness and cunningness. The crow soon after waking up in the morning puts his beak into dirt and filth and that's its regular routine. Crow Nyayadheeshas are also found in many districts and are easily identifiable both at the places of their postings and also in the department. It is for the institution to identify and weed them out. Papeah is a bird which takes water only once in a year and that too in Swati Nakshatra which falls during the period from mid of October to mid of November. Papeah does not take water from ponds, lakes, rivers are any other water reservoirs but keeps his mouth open while flying in the skies in Swati Nakshatra. If per chance, any drop of water comes into his mouth then it swallows the drop otherwise it remains content and is never demanding and wanting for the drops of water. Papeah Nyayadheesh are also found here and there and rarely quench their throat. Ultimate solution for eradication of corruption among the officers can be found only by infilling the element of spirituality in their personality and life philosophy but the same is not an easy task for the institution to devise ways to transform the life philosophy of individuals. Spiritual discourses to officers at intervals by spiritually enlightened preachers and teachers can be fruitful in this context to certain extent.

11. **Annual declaration of property by class-III officials of district judiciary**: It is often seen that the officials of doubtful integrity with numerous complaints against them from the Bar and the litigants community not only succeed in getting posted in important courts and offices known to be lucrative but continue to be posted over there for years together and in some cases with a dodging brief interval again and again get posted on the same very seats. The vigilance system at the District Courts level, therefore, needs to be strengthened. The class III officials posted in the district judiciary should be made to compulsorily declare their wealth, movable and immovable properties held/acquired annually as is done by the judicial officers. It will help prevent corruption prevalent among a section of the officials in any district court.

12. **Transfer of 5% staff of district courts**: Perhaps having realized that some of the officials of the district judiciary are the major source of corruption bringing disrepute to the judicial system at the district judiciary level, the All India Chief Justices' Conference held in New Delhi in the year 2007 passed resolution to evolve vigilance system at the district judiciary level too so that the corruption spread and indulged into by the officials in the district courts is checked and the system is made more transparent, clean and responsive. Prior to the introduction of the vigilance system at the district judiciary level, the general impression at different levels of our judicial system was that some of the judicial officers were the only ones responsible for bringing disrepute to the judicial institution. While it is true that no court or judicial system can function without the assistance of the officials but the reality cannot be belied that some of the officials posted and working on key posts in different judgeships exploit the weaknesses of the system to advance their personal

interests at the cost of the system. It is a matter of common knowledge that many corrupt officials in different judgeships have amassed huge wealth, movable and immovable property, quite disproportionate to their known sources of income. Unlike the judicial officers, such officials often being locals with strong nexus and proximity with the local lawyers and litigants, traders, businessmen and in some cases even with the local criminals and mafia, have got much influence in the system. Such unscrupulous and corrupt officials are, though in a small number in any judgeship, but they enjoy much influence to manage the things to their advantage. Many a times, corrupt officials manage to get posted on the important seats in the establishments of the district judiciary. In many cases such officials with known doubtful integrity also succeed in getting their kith and kin recruited and posted in different cadres of the officials of the judgeships. Such cunning and corrupt ones amongst the officials of the judicial establishments treat themselves as masters of the system and instead of serving and achieving the objectives of the judicial system, start implementing their own as well as their master's personal agenda at the cost of the judicial system. It has been seen that in many cases, such corrupt officials are treated as assets and boons by their Principal District Judges and their family members. With a view to materialize and achieve the objectives set out by the All India Chief Justices' Conference held in the year 2007 and for cleansing the district judiciary from different sorts of corruptions indulged in and spread by the corrupt officials and to dismantle the castle of corruption built by such unscrupulous officials, nearly 5% of the officials of district judiciary who are known for their indulgence in corruption and objectionable nexus with local litigants' community involving criminals, mafia, traders and businessmen should be transferred to other districts of the State after every five years.

13. **Scrutiny of complaints against judicial officers**: Anonymous complaints should be rejected outright and comments from the judicial officer concerned should not be asked for thereon unless it reflects negatively upon the integrity of the judicial officer. No complaint should be entertained unless the same is accompanied by an affidavit of the complainant. If on scrutiny, the complaint is found without substance and mala fide, punitive cost not below Rs. 25,000/- should be imposed upon the complainant and after realizing the same as land revenue through the collector of the concerned district it should be deposited with the District Legal Service Authority for providing legal aid to the poor & needy litigants. If the complainant is found to have sworn in false affidavit in support of his complaint he should be prosecuted for swearing in false affidavit and also for furnishing false information to the public officer. Normally no comments should be asked for from the judicial officer concerned and no action should be taken upon the complaint reflecting only mistake of law or fact and simply because the judicial order passed and complained of appears to be otherwise erroneous unless it transpires from the order itself and the evidence annexed with the complaint that it was passed for some extraneous considerations by the concerned judicial officer. Only those complaints should be referred to the vigilance department of the High Court for fact finding which are supported by evidence, documentary or otherwise, by the complainant and that too when the motive or extraneous considerations benefiting the judicial officer concerned appears to be involved behind passing of the order complained of.

14. **Training policy for district judiciary**: A comprehensive training policy for judicial officers of all levels needs to be evolved by keeping in mind the practical needs and difficulties faced by the judicial officers in their day to day working in their courts. Such training should be provided to the judicial officers both at induction level and also on certain periodical intervals. The syllabus and the methodology for training should be

designed after study of the practical working of the district courts and the views of the experienced judicial officers of different cadres should be assimilated therein to make the training policy practicable and meaningful. Posting judicial officers at the Judicial Training Academies to impart training to the judicial officers is one such important aspect which needs thoughtful attention of the High Courts. It is seen that sometimes judicial officers having no caliber or very little caliber are posted on deputation basis at the Judicial Training Academies with the result that because of such undeserving and incompetent judicial trainers the entire community of judicial officers of the State suffers.

15. **Training policy for court staff**: Untrained and unskilled staff in district courts, particularly the new recruits, are also a big problem in speedy and efficient discharge of their duties by the judicial officers. It is, therefore, suggested that a policy for providing induction-level and periodical training to the staff of the district courts needs to be evolved. The staff can be trained at the local level also by the senior and experienced judicial officers and the staff posted in the Judgeships.

16. **Construction & maintenance cell**: In the absence of any effective construction & maintenance policy for the sub-ordinate judiciary, many judgeships and the residential colonies of the judicial officers wear a deserted and gloomy look for want of proper maintenance and sanitary facilities. Outsourcing of services and facilities for maintenance and upkeep of the district courts is feasible and required in modern times. So far there is no cell or mechanism of the district judiciary of its own for maintenance and upkeep of its buildings and residential colonies of judicial officers and different agencies of the Government like PWD and Nirman Nigam have been doing this job. But the services of these agencies and necessary budget are hardly made available in time. Since private builders and contractors are available in good numbers in all the districts including small townships, therefore, outsourcing of the required services for maintenance etc. of the courts and residential buildings of the judicial officers may be quite helpful and the same is feasible provided necessary funds are made available to the district courts. A separate Construction & Maintenance Cell (CMC) can be formed in each judgeship of the State for proper and timely maintenance and upkeep of the court buildings as well as residential buildings of the judicial officers.

17. **Posts of personnel expert in computers etc**.: In modern times, the district judiciary, like any other institution, is not untouched with the impact of globalization. Keeping pace with the fast advancement in technology and time saving methodologies, new work culture is the need of the hour and the sub-ordinate judiciary cannot lag behind in this area. It is, therefore, suggested that the process of introducing modern technological advancements in the field of computerization, internet facilities and the allied facilities needs to be fast-tracked to enhance the performance-capacity and productivity of courts. It gives satisfaction that the target of computerization and digitization of the district judiciary has been achieved to great extent. It is, therefore, suggested that at least one or two expert personnel having BCA or MCA degree in computers should be appointed in district courts to train the judges and staff in computers and also to upkeep the computers and other allied facilities in the district courts.

18. **Creation of posts of finance officers in the sub-ordinate judiciary**: Creation of the posts of Finance Officers is the pressing need of the district judiciary. The financial matters of the district judiciary are so far dealt with by the class III level official of the district courts having no knowledge, training and skill in the matters of finances. With the expansion of district judiciary in many directions like computerization, infrastructure and strength of staff and judicial officers, a Finance Officer from amongst the Financial Services of the

State may be outsourced on deputation basis. The High Courts may also move the State Governments to separately create and recruit a cadre of Finance Officers for all the district judgeships of the State. It is, however, suggested that such separately recruited and posted Finance Officers should be transferred to other judgeships after every five years.

19. **Assessment of productivity of lok-adalats etc**.: Nearly four decades have passed since the inception of Lok Adalats and other Alternate Disputes Resolution systems. There is, therefore, need for examining as to whether the systems of Lok Adalats and ADR etc. have really been fruitful in reducing the backlog of cases and promoting harmony and good will amongst the litigant public or they have only additionally burdened the regular courts with extra-court activities without any fruitful objectives.

20. **Empowering sub-ordinate judiciary to punish contemnors**: The menace of non-observance of court orders and processes and the increasing incidents of criminal contempt of the sub-ordinate courts have posed grave risk towards the smooth functioning of the courts and also to the confidence of the people in the efficacy of the sub-ordinate courts. Many a times, even the Public Officers and the Government show neglectful attitude towards implementing the court orders & processes. The Contempt of Courts Act, 1971 does not empower the sub-ordinate courts to punish the contemnors and most of the contempt incidents of sub-ordinate courts go unnoticed and unpunished. Only in rare and exceptional cases, the contempt matters from sub-ordinate courts are referred to the High Courts. The data concerning ultimate outcome of cases instituted in the sub-ordinate courts under the existing provisions like Order 39, Rule 2-A CPC, Order 21, Rule 32 CPC and Section 228 IPC etc. would reveal the prevailing state of affairs regarding contempt incidents. If the district judiciary is also lashed with the powers of tackling the contempt matters at local level under the Contempt of Courts Act, 1971, it will increase confidence of people in the efficacy of the judicial system and will also save the litigant public from delays and monetary losses and harassment etc. It is, therefore, suggested that the Contempt of Courts Act, 1971 should be amended so as to empower the district judiciary also to punish the contemnors.

21. **Separate commission for sub-ordinate judiciary**: For a comprehensive study and understanding of the multifaceted problems of the sub-ordinate judiciary, a separate commission for study of the composition, working and reforms necessary in the sub-ordinate judiciary needs to be set up. Senior and experienced judicial officers and staff of the sub-ordinate judiciary, lawyers, police officers, social workers and law teachers should also be nominated in such commission to study the different aspects of the sub-ordinate judiciary. The quality of justice being imparted by the sub-ordinate courts needs to be thoroughly assessed. It should not be forgotten that mere delivering judgments and orders means doing justice in the cases. Justice is the soul of the judgments and orders. Judgment without justice is waste and lifeless like body without soul. The commission so formed may elicit the help of students from prestigious National Law Universities for study on various projects concerning the sub-ordinate judiciary. The recommendations of the commission so received then should be faithfully implemented.

22. **Raising representation of sub-ordinate judiciary in High Courts from existing 33% to 50%:** The present quota of sub-ordinate judiciary in the High Courts is 33% i.e. 2:1. This ratio being inadequate often causes dissatisfaction amongst the deserving members of the sub-ordinate judiciary who, even after having rendered long and meritorious service in the sub-ordinate judiciary, fail to get a berth in the High Courts. It is, therefore, important to obviate frustration and maintain confidence of the members of the sub-ordinate judiciary regarding progression in their career so as to encourage them to maintain higher standards

towards their judicial performance and probity. The legitimate aspirations of the members of the sub-ordinate judiciary to be accommodated in the higher judiciary of the State needs to be fulfilled by raising the representation of their elevations to the High Courts from existing 33% to 50%.

23. **Winding up of evening courts:** The recent concept of launching evening courts has not been productive and fruitful. Given the cumbersome nature of procedure of the judicial functioning of the courts, a judicial officer gets almost exhausted during the day hours in his court. Same is the position with the lawyers. Idea of running evening courts with the same set of judicial officers and the lawyers and the employees is not rational and well thought idea. Besides, the question of safety of the litigants and witnesses, availability of required facilities like transportation, electricity and the personal hardships of the supporting staff to run such evening courts are other important factors which need to be practically addressed. The experience and data of disposal of cases through evening courts where ever such courts are being run is not encouraging. The solution and substitute to the concept of the evening courts is, perhaps, to raise the number of courts and judges for which the State Governments should be persuaded to provide the required budgetary support. It is proper that the States like Uttar Pradesh have not shown any interest in implementing the evening courts policy.

24. **Formation of All-India Judicial Services (IJS)**: Article 312 of the Constitution of India read with Article 236 provides for the creation of one or more All-India Services. Provision for All-India Judicial Service was introduced in our Constitution by 42nd amendment in 1976. The idea behind introducing the said amendment in the Constitution was to attract best young talents in the sub-ordinate judiciary. The quality of the sub-ordinate judiciary and the quality of justice too would certainly improve if the young and talented law students particularly those from the National Law Universities are inducted at the initial level of judicial services in early age. Such talented new entrants in the lower ladder of the sub-ordinate judiciary may gradually be groomed into better judges of tomorrow for higher judiciary.

25. **Scrapping of departmental examination for promotions:** Testing and re-testing the judicial officers of the lower cadres to elevate them to the promotional cadres does not augur well with the judicial system. It is known to all that once having been recruited to the judicial services, most of the time and energy of judicial officers get consumed in deciding the cases and side by side keeping him up-dated with the new amendments and interpretation of laws by the superior courts i.e. the High Courts and the Supreme Court. Rider of promotion to higher cadres through tests creates undesirable burden on the minds of the judicial officers which forces them to divert their focus from the hearing and disposal of the cases pending in their courts and it reduces their productivity and output. The idea of promotion of judicial officers by subjecting them to various sorts of tests, therefore, needs to be done away. It also keeps them constantly under pressure which ultimately results into their health related problems. Many judicial officers, for reasons of being under constant stress for this or that factor emanating from their service conditions, are not in proper state of health.

26. **Setting up of a national commission to study the role of High Courts regarding their supervisory control over sub-ordinate courts**: Articles 227 & 235 of the Constitution of India confer supervisory powers on the High Courts over the sub-ordinate judiciary. Parliament has, in many matters, given equal powers to the District & Sessions Judges and the High Court Judges. Sections 439, 389, 397 to 405 of the CrPC, Section 115 and Order 41 CPC etc. are some of the provisions where the Parliament has kept the District &

Sessions Judges at par with the High Court Judges. For the last few decades, lawyers and the litigants' community are often heard complaining that reliefs even in genuine cases are often not given by the sub-ordinate courts despite the fact that the legislature has given equal powers to both the district judiciary and the High Courts in many matters. Power given to civil courts of the sub-ordinate judiciary by Sections 38, 39, 40, 41 of the Specific Reliefs Act, 1963 to issue prohibitory and mandatory injunctions is analogous to the powers of the High Courts to issue five writs under Article 226 of the Constitution i.e. writs of prohibition, certiorari , quo-warranto, mandamus and of the criminal courts in the form of habeas corpus to issue search warrants and bail orders etc. under the provisions of the CrPC. Controlling judicial powers including discretionary powers vested in courts as conferred by the legislature by issuing administrative circular orders by High Courts in the guise of Article 235 of the Constitution and to exercise the judicial powers and functions in particular manner has not only rendered the sub-ordinate courts bereft of discretions in many matters but the same has also adversely affected their autonomy in decision-making to large extent. This unhealthy practice is in fact subversive of the concept of judicial independence of courts envisaged in our Constitution. A new trend has been seen during the past one and half decades that the Supreme Court of India has started exercising direct control over the sub-ordinate judiciary of the country in many matters despite the fact that such power of control and supervision over the sub-ordinate judiciary has been exclusively given by Article 235 of the Constitution of India only to the High Courts. How is it happening despite clear dictum of Article 235 of the Constitution should be a matter of debate among the constitutional authorities. Time has come when it should be seriously debated whether the sub-ordinate judiciary is deliberately and willfully not exercising its legislature given powers and discretion in assuaging the grievances of the ordinary masses even in deserving cases and if the impression is that the sub-ordinate judiciary is really not exercising its powers and discretion in granting reliefs even in genuine and deserving cases for reasons nowhere codified, then conducting a survey to study and identify the factors responsible for preventing the sub-ordinate judiciary from granting reliefs in deserving cases becomes all the more important.

*****