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APPOINTMENTS TO THE LOWER AND HIGHER JUDICIARY

BACKGROUND NOTE FOR PANEL DISCUSSION ORGANIZED BY VIDHI CENTRE FOR LEGAL POLICY AND CAMPAIGN FOR JUDICIAL ACCOUNTABILITY AND REFORMS

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HIGHER JUDICIARY

A. BACKGROUND

Appointments to the higher judiciary in India has always been a contentious issue, a struggle between the judiciary and executive for primacy, and continues to be so. The process of appointing judges to the Supreme Court and High Courts is governed by Article 124 and Article 217 respectively of the Constitution, which provide for the President to appoint judges to the higher judiciary "in consultation with" the Chief Justice of India and other judges. These provisions have been subject to scrutiny and interpretation on multiple occasions, specifically in the Three Judges' Cases.

In order to avoid political interference, and believing judges to be best placed to assess the ability of a potential judge, the Supreme Court in 1993 accorded itself primacy in the matter of judicial appointments through its pronouncements in the Second Judges' Case [Supreme Court Advocates On Record Association v. Union of India (1993) 4 SCC 441]. The judgement also led to the creation of the Collegium and overturned the executive government's power to appoint judges, which was outlined in the First Judges' Case [S. P. Gupta v. Union of India 1981 Supp (1) SCC 87]. The judicial Collegium's practice and procedure were clarified in an advisory opinion in Special Reference No. 1 of 1998 [The Third Judges' Case (1998) 7 SCC 739], which also confirmed that no appointment could be made without the concurrence of the Collegium (Sengupta 2015).

The Collegium, comprising the Chief Justice and the next four judges in order of seniority, however, has come under sharp criticism for lack of transparency in its functioning, inefficiency, nepotism, arbitrariness, failure to control increasing vacancies in the higher judiciary, and most importantly its lack of accountability. In an attempt to address these flaws, the Parliament passed the Constitution (Ninety-Ninth Amendment) Act, 2014 and the National Judicial Appointments Commission Act, 2014 to establish the National Judicial Appointments Commission (NJAC). The NJAC comprised the Chief Justice and the next two senior-most judges, the Union Minister of Law, and two members of civil society, whose suggestions regarding appointments would be binding on the President. However,

following a challenge to its constitutional validity by the Supreme Court Advocates-on-Record Association, a constitution bench of the Supreme Court struck down the NJAC Act and the constitutional amendment, declaring them unconstitutional and void [Writ Petition (Civil) No.13 of 2015].

The Union Government had expressed surprise over the judgement, which revived the process of appointments through the Collegium, citing opacity and lack of transparency in the system. Interestingly, the judgement also recognized the grave need for reform in the Collegium system and recommended incorporating appropriate measures to improve its workings. In a separate order delivered in December 2015, the Court laid down specific guidelines to improve the Collegium system and directed the Union Government to finalize a revised memorandum of procedure (MoP) for appointment of judges to the higher judiciary.

The order recommended deliberating on and incorporating the following factors while redrawing the MoP:

1. Eligibility criteria for judges.
2. Provisions to infuse transparency in the appointments process by making eligibility criterion, procedure, and minutes available online, along with provisions to ensure confidentiality in the process is not compromised.
3. Establishment of a secretariat for each High Court and the Supreme Court and prescription of its functions, duties and responsibilities.
4. Appropriate mechanism and procedure for dealing with complaints against anyone who is being considered for appointment as a judge.

B. REVISED MEMORANDUM OF PROCEDURE (MoP): A CAUSE OF CONTENTION

Recent developments around the framing of the Memorandum of Procedure for the appointment of judges thus highlight the stalemate between the government and the judiciary, on matters of judicial appointments, that has been continuing since the Supreme Court struck down the constitution of the National Judicial Appointments Commission and revived the Collegium system for higher judiciary appointments. With the government and the judiciary at loggerheads on the

matter of appointments, and the completely opaque system of appointments to the higher judiciary that is currently in place, there is little scope for improvement in the present system, which is shrouded in secrecy, even if the Union Government were to respond to the recent appeal and clear the appointment of judges that have been sent to it for approval. With no criterion laid down for selecting judges and no methodical or objective evaluation of proposed appointees on any criteria, the system will continue to suffer inefficiencies.

Although the guidelines themselves were evolved after taking into account suggestions received from various stakeholders, no public consultation process has been proposed or conducted for the updated draft of the MoP, which is rumoured to be close to finalization by the Centre. The Campaign for Judicial Accountability and Reforms had written to the Union Government as well as the Chief Justice of India, requesting for a public consultation on the new MoP being drafted for Supreme Court and High Court appointments. The Campaign had also sent a draft memorandum which includes various sub clauses that will ensure transparency and the appointment of not only the most meritorious candidates but also of those persons who are in tune with the egalitarian philosophy embodied in the Constitution, and who have some sensitivity and understanding of the problems of the common people of the country.

Some of the contentious provisions that are being negotiated include:

1. **Merit over seniority –**

   In matters of promotion and appointment, the Union Government and the Collegium seem to disagree on whether the criteria of seniority must be given preference over merit and integrity, criteria that were not mentioned in the earlier MoP (Indian Express, March 2016). The Union Government is of the opinion that merit must be given primacy and that although seniority is relevant, it must necessarily be subject to merit and integrity of the judge in consideration. In order to do so, the revised MoP introduces performance appraisals as a standard for appointment and elevation, and this would allow a senior judge who is not the Chief Justice of a High Court to be elevated to the Supreme Court and a junior judge to supersede a senior for

the post of Chief Justice of a High Court. This has been rejected by the Collegium, which suggests that retaining primacy of seniority over merit is the only way to ensure fairness and avoid nepotism in matters of elevation and appointment.

2. Scrutiny of appointments under the Right to Information Act. –

Although exemptions under the Right To Information Act, 2005 do not include judicial appointments, the Union Government had expressed that the revised draft MoP made no provisions to bring appointments under the purview of the RTI Act, stating that transparency can be achieved without it. However, the Union Government had asserted the importance of any process of judicial appointments being open to scrutiny under the RTI Act while challenging the Collegium system, and this complete change of stance is disconcerting (Economic Times, May 28). Regardless, as recently as 17th August, 2016, the question of whether disclosure of information regarding judicial appointments under RTI amounts to interference in judicial functioning was referred to a constitution bench of the Supreme Court (The Hindu, August 17).

3. Appointment and control of the committee and secretariat –

The Supreme Court's order of December 2015 had suggested that an institutional mechanism in the form of a committee be set up to assist the Collegium in evaluating the suitability of prospective candidates. While the Collegium deemed this committee unnecessary, it has not rejected the idea of a permanent secretariat, provided that its constitution and functioning is vested with the CJI and the secretariat is under the ambit of Registrar of the Supreme Court. The Union Government, which proposed the idea of a secretariat that maintains a database of judges, schedules Collegium meetings, maintains records, and receives recommendations and complaints related to postings, to ensure wider consultation on candidates, wants the body to be directly under the Law Ministry (Indian Express, July 15).

4. Clause on right to reject a recommendation in national interest –

Current law on appointments dictates that a recommendation by the Collegium must be accepted if it is reiterated by the Collegium. However, the revised MoP contains a clause that provides the Centre the right to reject a recommendation in "national interest," and subsequently allows it to disregard the recommendation even after reiteration by the Collegium. Even though the Collegium unanimously rejected the clause, on the grounds that it amounted to judicial interference, the Union Government has reiterated that it must be vested with the power to reject any name recommended by the Collegium on grounds of "national security" and "public interest" (Indian Express, August 12). A newer draft, however, states that the Government will inform the Collegium about the reasons for rejecting its recommendation.

India has no written national security doctrine and the power to disregard a recommendation on the basis of a catch-all phrase, that has often been invoked arbitrarily, has been rejected by the Collegium.

5. Collegium to record written reasons for overlooking a senior Chief Justice for elevation to the Supreme Court –

A provision that seeks documentation of reasons for overlooking a senior judge for elevation is being opposed for being excessive and counter-productive. The Collegium is hesitant to record reasons in writing as it may hinder future prospects, and deems that recording of outstanding merit is sufficient, even though the Union Government claims that documentation of reasons in writing is necessary to avoid preferential treatment and infuse transparency in the process (Indian Express, July 15).

Lack of consensus on the issues highlighted above led to the Supreme Court Collegium rejecting a few clauses in the revised draft MoP and the same was sent back to the Law Ministry for corrections. Reportedly, the Government has decided not to accept many crucial recommendations and observations made by the Supreme Court Collegium in relation to the MoP. The Union Government has been

blamed for creating an impasse in the appointment of judges to the higher judiciary by those that suggest that it is attempting to secure the power of veto in the judicial appointments process, attempting "to circumvent judicial pronouncements and settled law on appointments in the higher judiciary" (Indian Express, May 6). The Union Government on its part, however, is asserting its right to reframe the MoP in order to improve transparency and instil confidence in the judicial appointments process. Delay in finalization of the MoP is stalling the process of appointments and leading to continued vacancies in High Courts across the country as the Government has decided against processing fresh recommendations. After the Centre declined to yield to the Collegium's objections in the MoP, especially with respect to the political executive having a veto to reject names, the Supreme Court warned that it would "be forced to interfere judicially" to break the deadlock created by the Government (Indian Express, August 13).

C. CIVIL SOCIETY SUGGESTIONS FOR THE MEMORANDUM OF PROCEDURE

The Campaign for Judicial Accountability and Reforms (CJAR) had proposed an alternate MoP to be adopted by the Union Government and the Collegium, focussing on a few areas that have not been addressed in the ongoing discussions relating to the MoP. In all the areas in which the Supreme Court has suggested amendments to the existing MoP, CJAR has proposed certain changes in the interests of creating a more effective, independent, and representative judiciary, in tune with the social realities of the country, and appointed through a transparent process which enjoys public confidence. Some of the amendments suggested by the CJAR are highlighted below:

Eligibility criteria:

The draft MoP prepared by CJAR identified several criteria for assessment and consideration of judges, lawyers, and jurists being considered for elevation and appointment to the higher judiciary. Alongside defining minimum and maximum ages, the CJAR draft identified the following criteria to assess the merit and integrity of a judge being considered for elevation:

- Number of cases disposed
- Number of journal-reported judgements
- Overall percentage of judgements overturned in appeal by Division Bench or Supreme Court
- Instances of sanctions imposed by a superior court or authority in respect of judicial functions
- Pending allegations of impropriety or misbehaviour.

For advocates being considered for appointment directly from the Bar, CJAR proposed the following assessment criteria:

- Number of reported judgements appeared in as lead counsel
- Instances of adverse remarks against the conduct of the advocate that have been noted in judgements
- Instances of malpractice pending enquiry
- Regular filing of tax returns along with asset declaration.

As the stated objective of the exercise of updating the MoP is to infuse transparency and avoid nepotism in the Collegium system of appointments, defining objective standards on which proposed judges are assessed is crucial.

Transparency and confidentiality

To ensure transparency in the appointments process, the CJAR proposal suggests advertising vacancies twelve months in advance, providing an opportunity for the public to object to proposed appointments, recording of the minutes of Collegium meetings, and uploading them within 24 hours of the meeting on the Supreme Court website. It also proposes that confidentiality be maintained by redacting identifying information regarding the decisions of specific members of the Collegium with respect to appointment or non-appointment of a certain judge.

Interaction with proposed appointees

The CJAR amendments propose the insertion of an enabling provision which will

allow the Collegium to interact with the candidates before making recommendations to the Union Government.

Complaints procedure

A complaints procedure that introduces safeguards and attempts to avoid abuse of the process was proposed by CJAR, which suggested rejection of anonymous complaints, unless accompanied by sufficient material and protection of the identity of the whistle-blower.

Although the Union and the Collegium have been engaged in negotiations over clauses that will form a part of the revised MoP, the Union Government has failed to identify objective standards, such as the ones proposed by CJAR, that should form part of the evaluation and appointments process to ensure transparency, fairness, and quality in higher judiciary appointments. In the absence of mindful deliberation on these standards and their inclusion in the final MoP, there is little hope for true reform in the manner that appointments to the higher judiciary are carried out.

D. AREAS FOR DISCUSSION:

To address the concerns that have been raised by the sequence of events described above, and to find ways to remedy the deficiencies in the present appointment process, Vidhi Centre for Legal Policy and CJAR propose to hold a panel discussion to obtain the views and responses of lawyers, judges, civil society activists, and informed members of the public on the reforms needed in the appointment process. To this end, the panel discussion on appointments to the higher judiciary will involve discussions on the following topics:

A. Considerations to be taken into account while appointing judges – The importance and weightage that integrity, merit, representation, and seniority carry in the appointments process must be clarified. It is also undeniably important to define "merit" in some objective terms and this needs careful thought and deliberation. The appointments process must strive to ensure that diversity and representation with respect to women,

SC/ST, Other Backward Classes, and distinct geographical regions are adequately reflected.

B. Ensuring transparency in the process – Public confidence in the merits of the appointment system for judges of the higher judiciary must be restored, without sacrificing confidentiality or in any way deterring meritorious candidates from being part of the process.

C. Institutional participation – While maintaining independence of the judiciary is paramount, it is necessary to examine what role the government, civil society and other institutions must play in the appointment of judges. Defining the contours of judicial independence and defining the roles of various other institutions in the appointment process is necessary to ensure accountability in the process.

D. Moving beyond the Collegium system – While the NJAC has been struck down, thus protecting the judiciary from excessive executive interference, problems with the admittedly opaque Collegium continue to persist. In order to ensure transparency and increase efficiency in the judicial appointments process, these flaws must be addressed either through a reform in the Collegium system or by imagining a new mechanism for appointments.

LOWER JUDICIARY

A. PROCEDURE FOR APPOINTMENT:

Under the Constitution, State Governors appoint judges to the lower judiciary:

1. in accordance with rules framed by the State Government (Art. 309); and

2. in consultation with

a. the State High Court for District Judges, (Art. 233 (1)) and

b. the State High Court and the State Public Service Commission for officers other than District Judges (Art. 234).

District Judges

In the Constitution, "District Judge" denotes a broader category than it does in the judiciary today. In effect, it comprises the entire higher section of the lower judiciary, since the Constitution explains the phrase to include joint, additional and assistant district judges; sessions judges, additional sessions judges and assistant sessions judges; judges of city civil courts, chief judges of small cause courts; and chief and additional chief presidency magistrates.

For such posts, the Constitution contains two further provisions. District Judges can either be appointed by promoting lower-ranking judges—which the High Court recommends and the Governor orders—or by recruiting advocates or pleaders with a minimum of seven years of practice (Art. 233 (2)).

In numerous judgements, the Supreme Court has clarified these two provisions, splitting them into three main ways of recruitment in 2002, in its judgement in *All India Judges Association and Ors.* vs. *Union of India and Ors.* (4 SCC 247):

a) Promotion based on merit-cum-seniority, from Civil Judges (Senior Division), who occupy the intermediate level between entering judicial officers and District Judges. The 2002 SC judgement also requires such judges to pass an exam on their knowledge of case law, and sets the quota for this category at 50%.

b) Promotion based strictly on merit, through competitive exams held among Civil Judges (Senior Division) with a minimum of five years of service. The Court initially set 25% as the quota for this method, but lowered it to 10% in 2010 when states complained that not enough judges were able to pass these exams.

c) Direct recruitment, from advocates or pleaders with a minimum of seven years' practice, through written and viva voce exams that the High Courts conduct. The quota for this is also 25%.

Officers other than District Judges

For lower-ranking judges, the Constitution does not specify any minimum requirements, leaving states free to decide their own. While most states require three years of practice at the Bar, others require four or five, and some require none.

In practice, thus, exact procedures for appointment vary by state, especially when it comes to the role of State Public Service Commissions vis-a-vis the High Courts. Lower-ranking judges are mostly recruited through written and viva voce exams, but precisely who conducts these exams is widely divergent across states. For example, while the High Court conducts these exams in Delhi, the State Public Service Commission does so for West Bengal.

B. AREAS OF CONCERN:

Vacancies

According to the latest Court News figures, as of 31st December 2015, around 21% of subordinate judicial posts are unoccupied, a key reason for the massive pendency of cases. This problem has long been recognized, with the 2002 SC *All India Judges Association* judgement directing that all existing vacancies be filled by 2003, but more than a decade later, the percentage of posts vacant has barely changed.

Delay and low pass rate in examinations

One problem contributing to vacancies lies with how lower judiciary exams are administered. The relevant authorities, either the State Public Service Commissions or High Courts, are supposed to anticipate vacancies and conduct exams accordingly, but these exams are not held regularly enough. When these exams are held, not enough candidates pass them.

As recently as July 2016, in its latest order in *Malik Mazhar Sultan and Anr.* vs. *U. P. Public Service Commission & Ors.,* the Supreme Court highlighted these twin problems in the case of Chhattisgarh, calling its process of filling lower judicial vacancies "slow" and "lethargic." The Court noted that in 2007, when it saw that states had not followed its order to fill vacancies by 2003, it detailed a timeline for appointments. It specified exact dates for states to notify vacancies, conduct exams, and issue appointment letters, and mandated High Courts to submit annual status reports. But seven to eight years later, Chattisgarh still had 101 vacancies, for which it only started the process of appointment in 2015 and 2016. When it finally held the exam for direct recruits to the post of District Judge, no candidate cleared it.

In the Court's various judgements, nearly all states have been shown to face similar issues, thus indicating that problems with the administration of exams are systemic nation-wide. We find another such instance in the 2014 Delhi Judicial Services exam, which garnered a fair amount of media attention. Only 15 candidates received the required marks to be interviewed, out of 9,033 candidates who appeared for the first round of examinations and 659 candidates who progressed to the second round. (For reference, according to the latest Court News figures available, as of 31st December 2015, there are 288 vacancies in the Delhi lower judiciary.) Even after judicial intervention, after allegations of misconduct on the part of examiners, the number of successful candidates increased only to 27. [*Centre for Public Interest Litigation* vs. *Registrar General of the High Court of Delhi*, WP No. 514 of 2015 (SC) (26 July 2016)]

Due to such issues in the administration of exams, unsuccessful candidates in states across India often file petitions against the relevant state authorities, usually alleging unfairness in the examination procedure and praying that they be appointed. These cases can take years to dispose, further delaying recruitment procedures, since state authorities allege they must first comply with court orders in these cases before they can undertake fresh rounds of recruitment.

Conflicts between State Public Service Commissions and High Courts

Another factor that compounds the problems of administering exams is conflict between State Public Service Commissions and High Courts. In some states, the mixed allocation of responsibility between the state executive and judiciary leads to confusion and issues in co-ordination, and thus, to further delays. In the Chhattisgarh case described above, for example, the High Court told the Supreme Court it needed a notification from the executive before it could conduct a fresh round of exams, though the High Court counsel was unable to point out which regulation required such a notification.

Recruiting meritorious candidates

While the low pass rate in exams might, as discussed above, at least partially have to do with unfair evaluation procedures, it might also be necessary to incentivize more meritorious candidates to sit for lower judiciary exams. Lower judicial officers have low salaries and thin chances for being promoted to the higher judiciary, since many High Court and Supreme Court judges are appointed from High Court Bars instead of being promoted from the lower courts. (Only 3 of the current Supreme Court justices, for instance, worked in the lower judiciary.) Chances of promotion within the lower judiciary too remain low, leading to widespread discontent among lower judiciary officials, which the government-appointed Shetty Commission outlined in its 2003 report. It cited the case of Bihar, which held no direct recruitment exams for District Judges from 1982-1990, but then appointed 30 additional District Judges from the Bar in 1991, and 53 more in 1997, severely reducing promotional opportunities for lower-ranking judges.

Instances like this led the Shetty Commission and the Supreme Court to

recommend a 25% cap for direct recruitment for District Judge posts, and we can thus expect the situation to have somewhat improved (though no recent survey has been conducted of lower judiciary officers concerning this). Problems, however, of maintaining such promotional avenues while also recruiting meritorious candidates remain. At the central level of policy-making, executive and judicial bodies recommend different procedures at different times. The Shetty Commission, for instance, recommended that lower-ranking judges should be given one year of additional weightage for every five years of service while deciding District Judge appointments, but a few years later, the Supreme Court rejected this recommendation. At the state level of implementation, such changing directions are merely added to a long list of orders that states have yet to comply with.

Relatedly, government bodies have also changed their mind on the minimum three-year requirement for practice for lower-ranking judicial posts. The Supreme Court had supported such a rule in 1993, reasoning that some experience in candidates is necessary to ensure an efficient judiciary. It later accepted the Shetty Commission recommendation advising states to do away with this requirement, since it found that after three years of practice, many meritorious lawyers would no longer be attracted to judicial service.

Lack of uniformity across states

Though Supreme Court judgements have tried to introduce some uniformity in lower judiciary appointment procedures, they remain divergent across states, which in turn contributes to a host of problems, including that of recruiting meritorious candidates. For instance, some state provisions allow government officials to be appointed as judges without adequate checks on their competence. In a recent case, an ad-hoc Fast-Track Court judge from Arunachal Pradesh was appointed as a District Judge though he had failed the necessary exam. He failed to answer basic questions on law and procedure in front of the Supreme Court, and his appointment was thus stayed. In light of this lack of uniformity among states, many academics and government officials have proposed creating an All-India Judicial Services Commission, similar to the Commission in charge of Civil Services. Many states, however, have strongly opposed this proposal, citing the vast

differences between the legal cultures of lower courts in different states.

C. ISSUES FOR DISCUSSION:

To address concerns such as the ones highlighted above, Vidhi Centre for Legal Policy and CJAR propose to hold a panel discussion, involving lawyers, judges, civil society activists and informed members of the public, to solicit their views on ways to reform the lower judiciary appointment process. To this end, the panel will discuss the following topics:

A. Implementation of SC directions: As discussed above, numerous judgements of the Supreme Court have tried to enforce timelines for High Courts to fill up vacancies, and issues relating to lower judiciary appointments have also been brought up in Joint Conference of Chief Ministers and Chief Justices of High Courts 2009, 2013 and 2015, and during meetings of the Advisory Council of the National Mission. The Union Ministry of Law and Justice has further tried to address these problems, writing to High Courts with a list of actionable points, and requesting information from them on compliance. All these efforts, however, have effectively failed to change the percentage of vacancies in the lower judiciary. How then can we now work on ensuring that state executive and judicial branches implement the various directions they have received?

B. All-India Judicial Services Commission: The Law Commission recommended such a body as early as 1953, in its 14th Report, and has since reiterated this recommendation in various reports. This has also since been discussed in various Conferences of Chief Justices of the High Courts, but many High Courts objected to this proposal, stating that such a Commission would interfere with their control over the lower judiciary, which they argue is explicitly sanctioned under the Constitution. The Supreme Court, in dicta in various judgements, has suggested that it might support such a Commission, but the constitutional issue raised by the High Courts remains to be ironed out, as does the issue of who would bear the expenditure for this Commission--the Centre, the states, or both and to what extent. In light of

the various problems plaguing judicial appointments today, would such a Commission be desirable or feasible? Are there other ways of standardizing procedures across states that would minimize the need to amend the Constitution? Relatedly, if such a Commission is not constituted, the exact role of the High Courts and State Public Service Commissions might have to be delineated more clearly or uniformly across states. While High Courts cite the difficulty of coordinating with the latter and the importance of judicial independence, they must also defend against recent charges of unfairness and nepotism.

C. Procedures for appointment: Given the decade-long delays in filling up vacancies, many contend that exams for recruitment should be held annually or bi-annually, though the Supreme Court has not come out with clear directions on this. Further, the Court has also stayed away from specifying the syllabi of examinations, though other reports such as the Shetty Commission have tried to do so. Further study might be needed to explain the abysmally low pass rate in these exams, and to examine whether the exams can be restructured to test more relevant syllabi without compromising the quality of recruits. Other recruitment-related procedures are clearly in need of streamlining as well, not least because nearly every round of recruitment seems to attract litigation. The Supreme Court has recommended various measures in this regard, including guidelines to the Delhi High Court for conducting future exams (see Annexure I), and nationwide directions to adopt a 40-point roster [*All India Judges Association* vs. *Union of India* (2002) 4 SCC 247], with quotas specified in relation to posts and not vacancies. The SC has stated that such a roster would minimize litigation, based on the experience of other government departments with such policies, but it is unclear whether the need of the hour is the creation of fresh procedures as much as the implementation of existing ones.

D. Eligibility criteria: Linked to the question of procedures is the question of exact criteria for appointment. As aforementioned, government bodies have gone back-and-forth over whether there should be minimum requirements for practice at the Bar, and whether more uniformity should be introduced across states, on rules such as requirements for speaking local languages.

Many of these criteria, such as age limits, in turn depend on various other issues relating to the administration of exams—if exams are not held yearly, a higher age limit might be needed to allow interested candidates to sit for them.

E. Attracting talent and bettering infrastructure: As we have seen, the problem of incentivizing more trained and competent candidates to appear for lower judicial service exams is linked to the terms and conditions of service of judicial officers, mainly their chances of promotion. In addition, essential court infrastructure—such as provision of sufficient courtrooms, administrative staff, etc.—might also need to be strengthened and supplemented in various cases, before courts can support the fully sanctioned strength of judges.

ANNEXURE I

According to the Supreme Court's final order in *Centre for Public Interest Litigation* vs. *Registrar General of the High Court of Delhi*, dated 26th July 2016, four directions were issued to the Delhi High Court in conducting future examinations. These directions come from an original list of six measures suggested by the petitioner, of which the first two below were accepted by the respondent before the SC issued its final order:

a) In the Preliminary exams, the OMR sheets must be filled by pen and not pencil, to minimize chances of tampering with the answer sheet.
b) As per the RTI Act, and SC judgements in *Central Board of Secondary Education* vs. *Aditya Bandopadhyay* (2011) and *Kerala Public Service Commission* vs. *State Information Commission* (2016), candidates must be provided with a copy of their answer scripts.
c) In the Preliminary examination, the names of successful candidates must be mentioned, to encourage transparency in the process of evaluation.
d) In checking the Mains papers, the procedure laid down in *Sanjay Singh & Anr.* vs. *U.P. Public Service Commission, Allahabad & Anr.* (2007) 3 SCC 720, *Prashant Ramesh Chakkarwar* vs. *U.P.S.C. & Ors.* (2013) 12 SCC 489, and *Sujasha Mukherji* vs. *High Court of West Bengal* (2015) AIR SCW 1582 shall be kept in view. As outlined by the petitioner, these three judgements directed that there must be a chief examiner, who sets the paper and makes model answers. Additional examiners are then appointed who check the paper according to the model answers. The chief examiner then conducts a "rationalization" where she checks if the additional examiners evaluated the paper according to her specifications.

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