



## *The Curious Case of Court Manager in India: From its Creation to its Desertion*

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### Abstract

*The initiative to employ Court Manager in the courts was taken to relieve judges from their administrative tasks in field of human resource management, communication, protocol, finance management, computerization, digitalization and infrastructure development of the courts. But most judges in India view their responsibility as their power-cum-jurisdiction over things and people. Therefore subtracting any assignment from them, even if trivial or administrative, is viewed as deduction in their power-cum-jurisdiction over things and people. This mindset poses major challenge to any outsider who wants to enter in the business of the court administration at par with judges. Judges are strong believers in the hierarchy business and therefore any kind of subordinate help is welcomed but any kind of equal position – even if it is meant to reduce their burden – is resisted and even failed. The court managers appointed to experiment were not treated well by the system and they were removed from many courts. This shunning happened as the court managers did not get its promoters in the higher echelon of the judicial system like other reforms got their proponents within the system be it court computerization project or mediation project. Due to heavy backlog of cases, judges need to concentrate on their primary professional duty of judging and shift their administration burden to the court manager. But leadership from the highest court – the Supreme Court of India is awaited to reduce resistance and suspicion against the court managers. Leadership can cut down unfounded fear amongst judges against involvement of management experts in the courts and insist on performance of judicial work by judges. Till that leadership comes, the court managers will have to wait to make an impact and get work suited to their stature in the courts.*

**Keywords:** court manager, court management, judicial leadership, non-judicial functions

### 1. What led to the creation of the post of CM for India?

Advanced jurisdictions have benefited by engaging services of management experts in internal organizational tasks relating to operations of courts.<sup>2</sup> There are now reports available on tremendous improvement brought about by such engagement of management expert known as the court manager (CM) in those jurisdictions.<sup>3</sup> As criticism against the courts in India for huge pendency of cases<sup>4</sup> became vociferous, judicial reform experts began to explore west to import solutions for the system ailing from delay, arrears and pendency. This led to idea of having a CM for performing non-judicial tasks.

Further, during the judicial education discourse at the NJA<sup>5</sup> it emerged that judges at all levels, right from magistracy to the level of judge of the Supreme Court of India, are engaged in numerous organizational administrative tasks concerning engagement of human resources in the courts, development of court infrastructure, managing functions related to finance, communication, protocol etc.<sup>6</sup> These tasks consume more than 40 to 60 % of time of each judge be at any level in the judicial hierarchy, and therefore each judge in his/her tenure of judgeship can only devote remaining time to the files crying for justice from the courts.

Also non-judicial functions<sup>7</sup> involve risk of compromising judicial independence and judicial ethics. Many non-judicial functions

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<sup>2</sup> *The Role and Functions of Court Managers in Member States of Council of Europe*, available at [https://www.coe.int/t/DGHL/COOPERATION/CEPEJ/cooperation/Turkey\\_JPCOMASYT/Exploratory\\_study\\_marco\\_fabri\\_en.pdf](https://www.coe.int/t/DGHL/COOPERATION/CEPEJ/cooperation/Turkey_JPCOMASYT/Exploratory_study_marco_fabri_en.pdf)

<sup>3</sup> Richard B. Hoffman, *Beyond the Team: Renegotiating the Judge-Administrator Partnership*, 15(2) *The Justice System Journal* 1991, p. 652-666; Mark A. Zaffarano, *Understanding Leadership In State Trial Courts: A Review Essay* 10(2) *The Justice System Journal* 1985, p. 229-242; Harry O. Lawson and Barbara J. Gletne, *Cutback Management in The Judicial Branch: Controlling Costs Without Courting Disaster*, 7(1) *The Justice System Journal* 1982, p. 44-69.

<sup>4</sup> At present 50826 civil cases and 10874 criminal cases are pending adjudication before the Supreme Court of India; 2843272 civil cases and 1047804 criminal cases are pending before 24 high courts and 8518926 civil cases and 19133992 criminal cases await adjudication in trial courts of India. See [http://doj.gov.in/sites/default/files/LS-Eng\\_5.pdf](http://doj.gov.in/sites/default/files/LS-Eng_5.pdf)

<sup>5</sup> On this debates and deliberations that took place in years 2006 to 2010 at the National Judicial Academy (NJA), Bhopal.

<sup>6</sup> See <http://supremecourt.gov.in/committees> for details on involvement of Supreme Court justices in non-judicial functions.

<sup>7</sup> See Nuno Garoupa and Tom Ginsburg, *Judicial Roles in Non-Judicial Functions*, 12 *Washington University Global Studies Law Review* 2014, p. 755-782.

even lead to litigation.<sup>8</sup> The NJA therefore suggested the government to create a post of CM for courts in India to carry out non-judicial functions to provide judges more time for deciding pending cases seeking justice from their courts. This request was accepted, and the government vide circular F.NO.32(30).FCD/2010 issued by the Ministry of Finance in the year 2010, allocated funds to create position of the CM.<sup>9</sup> The relevant extract of F.NO.32(30).FCD/2010 reads:

12.1 With a view to enhancing the efficiency of court management, and resultant improvement in case disposal, Rupees 3 Billion is allocated for employment of professionally qualified Court Manager to assist judges. The Court Manager, with MBA degrees [Master in Business Administration], will support the judges to perform their administrative duties, thereby enabling the judges to devote more time to their judicial functions. The post of a Court Manager would be created in each judicial district to assist Principal District Judge. Two posts of Court Manager may be created for each High Court, and one for each Bench of the High Court.

## 2. Functions outlined in the circular F.NO.32(30).FCD/2010:

Annexure III of circular F.NO.32(30).FCD/2010 identified ten areas of functions for the CM: (i) Policies and Standards; (ii) Planning; (iii) Information and statistics; (iv) Court management; (v) Case management; (vi) Responsiveness management; (vii) Quality management; (viii) Human resource management; (ix) Core system management; (x) IT System management.

Relating to *policies and standards*, the CM was expected to establish performance standards applicable to the court on timeliness, efficiency, quality of court performance, infrastructure and human resources, access to justice, for systems of court management and case management and evaluate compliance of individual courts with those standards.

Relating to *planning*, the CM was expected to consult stakeholders (the bar, ministerial staff, executive agencies supporting judicial functions such as prosecutors/police/process serving agencies and court users), to prepare and update Court Development Plan (CDP) and monitor this CDP and report for its compliance.

For *information and statistics*, the CM was asked to ensure that statistics on all aspects of the functioning of the court are compiled and reported accurately and promptly in accordance with systems established by the high court and provide them as required.

Relating to *court management*, the CM was asked to check compliance of processes and procedures of the court (for filing, scheduling, conduct of adjudication, access to information and documents and grievance redressal) with the policies and standards established by the high court for court management to safeguard quality, efficiency and timeliness, and minimize costs to litigants.

Relating to *case management*, the CM was asked to check compliance of case management system developed by the high court with the policies and standards established by the high court and if they met legitimate needs of litigant in terms of quality, efficiency and timeliness, costs to litigants.

Further, the CM was asked to ensure compliance with standards established by the high court (i) on access to justice, legal aid and user friendliness for *responsiveness management*, (ii) on quality of adjudication standards for *quality management*, (iii) on Human Resource Management standards for *human resource management*.

For *core systems management*, the CM was asked to ensure that the core systems of the court are established and function effectively (documentation management, utilities management, infrastructure and facilities management, financial systems management like audit, accounts, payments). Further, for *Information and Technology systems management*, the CM was asked to check compliance of IT systems of the court with standards established by the high court and feed the proposed national arrears grid as and when it is set up.

## 3. Ground level realities in courts did not allow CM to contribute effectively

Though high courts adopted functions specified in circular F.NO.32(30).FCD/2010 as job description for engaging the CM in their jurisdiction, in practice, no one particular from the judiciary was delegated the task of developing details on such engagement. Loose discussions in administrative meetings led to formulation of rules which adopted the circular as it was and also adopted suggested qualification of engaging management graduates as the CM. No one from the judiciary paid attention to broad parameters like number of CMs to be engaged, their placement in existing hierarchy of staff, their remuneration and conditions of service, their team and staff, their source of information and autonomy in performance of tasks etc.

<sup>8</sup> *Tej Prakash Pathak and Ors. v. Rajasthan High Court and Ors.* (2013)4SCC540 where litigation started because after the examination was conducted, the Chief Justice ordered that the examination be treated as a Competitive Examination and only those candidates who secured a minimum of 75% marks be selected to fill up the posts of Translators. In view of the decision of the Chief Justice, only 3 candidates were found suitable for appointment. This triggered the litigation by those who could not secure minimum 75%.

<sup>9</sup> Available at [http://doj.gov.in/sites/default/files/Annexure\\_A-Part-I.pdf](http://doj.gov.in/sites/default/files/Annexure_A-Part-I.pdf)

However, under the urgency to utilize the government grant for which time was running out<sup>10</sup>, the high courts engaged CMs on contractual basis with inferior salary package. As there was no institution where persons were being trained to become the CM, most jurisdictions decided to offer the position to management graduates and some jurisdictions asked also for law degree apart from degree in management discipline. However, none of the jurisdictions, which engaged the CM, gave the CM the status comparable to that of regular court staff and judges.

Due to their insignificant status within the court system, CM could not contribute in *policy making* as spelt in circular F.NO.32(30).FCD/2010. It was naturally difficult for the CM who was not legally qualified to find applicable directives of the superior courts on timeliness, efficiency, quality of court performance, infrastructure, human resources, access to justice, as well as for systems of court management and case management. Even if the CM was provided these directives<sup>11</sup>, questions still remained as to (i) how could the CM develop the performance standards for judges based on these directives and check for their compliance with the directives? (ii) For whom these performance standards were to be established - for the judges or for the staff of the court other than judges or for the registry officials who are staff to the high court deputed from judges? (iii) How will the CM know which directives are latest and which are old ones or which one are to be applied and which one to be discarded when there are conflicting judgments and directions on all these aspects from different high courts and the Supreme Court?<sup>12</sup>

Similar problems were faced by the CM while contributing to the tasks outlines under the *planning* head by the circular F.NO.32(30).FCD/2010. It was almost impossible to expect preparation of CDP from the CM considering their new entry into the system, which is functioning from past more than 100 years. Only the CM retained in the system for a long period by virtue of their experience in the system will know nuances and loopholes of the system and would be in a position to develop the CDP. At present, there is no CM in any jurisdiction in India who has completed even 4 years at the job as a CM. Also, to develop the CDP, the CMs were not provided access to resources by the system. They were hardly allowed access by registry of the high court to superior court judges in consultation with whom the CDP needs to be prepared.<sup>13</sup>

Concerning *compiling and preparation of judicial statistics*, both the government circular and the high court rules on engagement of the CM forgot to note that management degree course in India does not cover subject of statistics.<sup>14</sup> From the curriculum of leading universities, it is evident that statistics component is not offered to the management graduates, and therefore, they are not proficient in statistics. Though the CMs help in preparation statistical data in jurisdictions which asked them to do so, courts need to take help of professionals in this area. Alternatively, persons holding graduation, post graduation and doctoral degree in Statistics could also be engaged as the CM for that limited purpose.

It was unrealistic to expect from newly appointed CM that they should learn about all the process and procedures of the court and evaluate these processes and procedures to see if they are being complied with the standards developed by the high court. It takes years for even law practitioners to learn about all processes and procedures of regular trial court and even senior law practitioners rely heavily on court clerks and chamber clerks. The CM could not at short notice learn intricacies and complexities of court processes and procedures. They could not therefore, ask for compliance from the district courts on standards developed by the high court. Even those CM who had both management degree and law degree would not find it easy to learn all procedures and processes from the court and chamber clerks who make their living out of these processes and procedures operating in the courts and are unwilling to share the secrets of their trade and livelihood. Traditional court staff in all likelihood will not share knowledge with the CM and may even misinform newly recruited CMs about actual process and procedures prevailing under the criminal and civil manuals and different circulars notified by the high court from time to time.

*Case management* implies establishment of uniform case management procedures: the establishment of time limits to ensure that a case will proceed or move expeditiously; the court monitoring of pleadings and established time limits; and the enforcement of time limits to ensure that a court's management and control over its docket is effective.<sup>15</sup> Even in advanced jurisdictions, there is considerable reluctance to delegate case management functions to the CM. There are many studies in the US that indicate that few trial judges effectively utilized their CMs in case flow management.<sup>16</sup> Therefore, for India, where the concept of the CM was just introduced, involvement of the CM in existing practices followed for case management was beyond imagination.

Though in common law world, the executive handles *Access to Justice* area, the judiciary in India continues to hold dear to this function as it feels that it was because of their initiative and efforts, the government was forced to establish machinery for administering legal aid.<sup>17</sup> Judges at the constitutional courts therefore are keen to retain their hold over legal aid distribution.

10 See details at [http://doj.gov.in/sites/default/files/Annexure\\_A-Part-I.pdf](http://doj.gov.in/sites/default/files/Annexure_A-Part-I.pdf)

11 Most of these directives from the high court to the staff or to the judges are in the form of internal circulars. Only staff members of the high court dealing with circulation of such directives and judges as recipients of those directives have access to them.

12 Each year the Chief Justices' Conference is organized and chaired by the Chief Justice of India. Every year different directions are given. See [http://supremecourtindia.nic.in/FileServer/2016-05-06\\_1462510021.pdf](http://supremecourtindia.nic.in/FileServer/2016-05-06_1462510021.pdf)

13 Registry comprises career judiciary members who take transfer to work on administrative side of the judiciary.

14 <http://www.cibmrd.com/cms/new-syllabus.html>

15 Edward D. Re, *The Administration of Justice and The Courts* 18(1) Suffolk U.L. Rev. 1984, p. 1-12

16 Burton W. Butler, *Presiding Judges' Perceptions of Trial Court Administrators* 3 Justice System Journal (1977) p. 181.

17 See text of article on this at <http://www.commonlii.org/in/journals/NALSARLawRw/2013/13.pdf>

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Till the composition of the courts is changed to judges who believe in disassociating judiciary from legal aid management and distribution functions, which may take some more decades, involvement of the CM in various legal aid related functions seems to be only option to reduce non-judicial burden imposed on trial courts. Some jurisdictions like Andhra Pradesh, Madhya Pradesh and Karnataka took help of the CM in these functions.

*Quality of adjudication* is an area where the CM can only provide the court support services, in the context of the goal of efficiency.<sup>18</sup> To improve the quality of adjudication, judges have to be given an opportunity to enhance their professional skills, and to use those skills in an interesting way. For this, the CM will need status and recognition within the system to have any say in training matters especially with respect to nomination of judges at different training institutions. Only few high courts in India, delegated training related responsibility to the CM, and that too, for ministerial staff. Thus the CM could not contribute effectively to the goal of achieving quality of adjudication.

At present, the CM are delegated only small portion of *human resource management* functions like preparing for exams for recruitment or checking attendance of employees. At the trial court level, the *principal district judge* in every district is responsible for the court business like controlling the staff, recruitment, promotion and transfer of the staff. He/she is responsible for court administration in all courts falling under his/her jurisdiction. He/she has to prepare a policy for recruitment, promotion, writing confidential reports, inspection of courts etc. for his/her district.<sup>19</sup>

Due to increased public demand for accountability and transparency from courts in practices and procedures adopted for engaging *human resources* in courts<sup>20</sup>, judges have to work in partnership with the CM to bring reform in identifying, attracting, recruiting, selecting human resources for court positions, as the CM are trained in critical Human Resources Management fundamentals<sup>21</sup> in which judges are not. There is need felt to curtail involvement of judges in recruitment process as it has been often found that their involvement may bring them disrepute or even present conflict of interest. However, judges will have to be provided discourse to rise above their suspicious of non-judges like the CM. Only then one can hope that the CM would be given free hand in human resource management for courts.

What the Chief Justice Burger of the United States Supreme Court observed in 1969 on the record management in the trial courts of the United States, hold true for the Indian court system of 2017 which is "in terms of methods, machinery and equipment... most courts have changed very little fundamentally in a hundred years or more....As litigation has grown and multiple-judge courts have steadily enlarged, the continued use of the old equipment and old methods has brought about a virtual breakdown in many places and a slow-down everywhere in the efficiency and functioning of courts. ..."<sup>22</sup>

Under the *core system management*, the court record management must be the first task to be delegated to the CMs for overhauling the paper system that exists now. Virtually every court in the country handles records at least 100 years old, and many have in their custody records of the colonial period. Problems in the management of these records range from physical deterioration to high volumes of paper, as well as timely and accurate reference. Also, in recent years, regular ministerial staff has been found compromising security<sup>23</sup> and privacy<sup>24</sup> of court records. The CM can help the courts in establishing a system for storing these records at minimum cost with high accessibility and retrieval. However, till date no CM has been given free hand in the court records management because of temporary nature of their employment.

Concerning the tasks outlined for *IT system management*, remuneration of the CM is not attractive enough to get for courts the services of management graduate with specialization in information and technology. Secondly, under the E-Court project, all high courts have created the position of Registrar (IT) who is technically qualified person engaged for managing information technology issues for the high court and district courts functioning under the high courts. Therefore, there is no point in dragging the CM in highly technical field which is still evolving and making progress every day. Third, the CMs cannot be wasted by utilizing them for data entry work. For such jobs, there is a position of DEO (Data Entry Operator) in every government department and the courts too can hire these DEOs either directly or on deputation to work under the directions of Registrar (IT). Last but not the least, the CM and the Computer System Analyst (CSA) are two different posts with different educational backgrounds. Whereas the CM is a management graduate, the CSA is an engineering graduate with hardware or software or network engineering specialization.<sup>25</sup> It would be more helpful to get the services of the CSA in the E-Court Project than the services of the CM.

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18 See Carl Baar, *Judicial Appointments and the Quality of Adjudication: the American Experience in a Canadian Perspective*, 20(1) *Revue Juridique Themis* 1986, p. 1-26

19 See text at <http://www.garph.co.uk/IJARMSS/Apr2014/4.pdf>

20 Prashant Bhusan and Cheryl D'Souza, *Forgotten cogs in the wheels of justice*, *The Hindu*, MAY 24, 2017 accessed at <http://www.thehindu.com/opinion/op-ed/forgotten-cogs-in-the-wheels-of-justice/article>

21 HRM report by NACM available at <https://nacmnet.org/CCCG/hr-management.html>

22 ABA Journal May 1971, p. 425-430

23 *Naranjan Singh v. Punjab and Haryana High Court through its Registrar and Another* in CWP No. 14849 of 2006 decided on 17/04/2009 provides how court staff responsible for loss of files in the Court of Magistrate, Ludhiana in several cases was prosecuted and suspended.

24 *Matadin Mour v. Prahlad Kr. Mour* (1998)2GLR221 - The record of the copying section made some shocking revelations. There was tampering with record, full of interpolations at places mentioning date and these interpolations, were made solely with a view to gain time, as appeal was filed beyond period of limitation.

25 See Kerala High Court notification for employment of CSA at [http://www.hckrecruitment.nic.in/app\\_notif.php#](http://www.hckrecruitment.nic.in/app_notif.php#)

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#### 4. Additional functions of the CMs under the high court framed Rules

There are 24 high courts in India. These are constitutional courts for 29 states. Any judicial reform initiative has to be implemented by these high courts. Out of 24 high courts, 3 high courts did not create the post of CM for their jurisdiction (Delhi, Sikkim and Jammu and Kashmir) and 2 high courts abandoned the project citing lack of funds (Andhra Pradesh and Punjab and Haryana).

Those high courts which created the post of CM, adopted functions outlined in the circular F.NO.32(30).FCD/2010<sup>26</sup> for their CMs. Some also made specific Rules on functions of the CM. These Rules further increased tasks of the CM. For instance, the Allahabad high court Rules<sup>27</sup> expected the CM to implement and manage data entry initiation, monitor the e-court project at the court posted and perform any other job as determined by high court or district judge or nodal officer.

A report from CMs working under jurisdiction of Andhra Pradesh high court revealed that their responsibilities were not fixed but prescribed from time to time by the high court. In their one-year tenure, they had: (i) submitted month wise biometric attendance reports and daily attendance report of all sections to the registrar general; (ii) physically inspected every evening functioning of biometric attendance machines to resolve minor technical issues/for reporting faults found in normal functioning of the machines; (iii) co-ordinated with the budget section of the high court, State Judicial Academy, State Legal Service Authority to collect their proposals to be submitted for budget demands from the state government and participated in budget meetings; (iv) developed a software package for reducing maintenance of manual registers and developed file tracking system to prevent loss of files from its origin in the new filing section till the record rooms where finalized cases are stored; (v) prepared agenda notes for national conferences held on direction of the registrar general; (vi) supervised staff training programmes, recruitment of administrative staff; (vii) monitored copy application sections to make copies available to parties without delay; (viii) gave feedback to the High Court on status of installation of software and hardware in various mofussil courts.

Under jurisdiction of Bombay high court where more than 2000 trial court judges and 94 high court justices preside over different levels of courts, only 45 positions of CMs are created on contractual basis. *The Maharashtra Court Manager Recruitment and Conditions of Service Rules, 2011*<sup>28</sup> prescribed functions for the CM, mostly beyond their intellectual or physical capacity.

The report<sup>29</sup> from CMs working under Karnataka high court revealed that they were asked to speed up the recruitment process, enhance and develop employee skills, improve employee motivation, manage space crunch, improve inter and intra office communication, assist in access to justice services and e-court project, index record rooms, prepare backlog statements, ensure safety and health hygiene of court premises, help in financial management and in training and event management.

Gauhati high court rules, Rajasthan high court rules<sup>30</sup>, Himachal Pradesh high court rules directed the CM to perform any work as assigned to them.<sup>31</sup> The Jharkhand high court rules directed the CM to (i) assist registry in preparation of statistical data relating to institution, disposal and stay matter of all categories of cases pending in the trial courts across districts; (ii) promptly act upon the instructions received from the CM of Jharkhand high court who will be instructed by Joint Registrar (Judicial) / Central Project Coordinator; (iii) help district judiciary in preparation of statistical report on institution, disposal, pendency; (iv) suggest judge of each district court ideas for improving the working in the courts with special reference to “20 year old cases” Scheme as well as *Mission Mode Programme*; (v) monitor and to ensure that all kinds of summons, notices and processes issued are delivered timely and promptly; (vi) involve in the field of e-Courts Project.<sup>32</sup>

Kerala high court rules asked the CM to (i) prepare notes in connection with the conference of chief justices organized by the supreme court and joint chief justice–chief minister conference; (ii) prepare item-wise progress and action taken report in connection with the resolutions adopted in the aforesaid Conferences; (iii) prepare replies to the queries received from the Supreme Court and various high courts; (iv) liaison with the registry section and route those files / papers through the identified registry officials from the high court.<sup>33</sup>

Madhya Pradesh high court rules and report on impact of deployment of the CM in Madhya Pradesh<sup>34</sup> mention that the CM assisted the district judge in - supervising monthly inspection reports and statements of different courts; in evaluation of judicial officer; in handling and disposal of cases, in monitoring of old cases pending for 5 years or more; prepared database of pending cases, supervised e-court entries and assessed implementation of e-courts project; improved working of different sections of district courts; helped disposal/ elimination of cases in record room, disposal of copying applications and disposal of properties

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26 See website <http://ecourts.gov.in/krishnagiri/court-manager-responsibilities>

27 Available at [http://www.allahabadhighcourt.in/rules/court\\_manager\\_16-04-12.pdf](http://www.allahabadhighcourt.in/rules/court_manager_16-04-12.pdf)

28 Available at <http://bombayhighcourt.nic.in/recruitment/PDF/recruitbom20111021100050.pdf>

29 See <http://karnatakajudiciary.kar.nic.in/recruitmentNotifications/cm-appointment-12062014.pdf> , [http://hckrecruitment.nic.in/pdf/COURT\\_MANAGER\\_FUNCTIONS.pdf](http://hckrecruitment.nic.in/pdf/COURT_MANAGER_FUNCTIONS.pdf) and report submitted to the National Judicial Academy, Bhopal by the High Court of Karnataka

30 <http://hcraj.nic.in/notificationcourtmanager.pdf>

31 <http://hphighcourt.nic.in/pdf/CondCourtManagers31072013.pdf>

32 Dated 2/2/2012 and further Registrar General order dated 7/11/2012

33 Order no. A5-99842/2011 dated 7.8.2014

34 Sent to the State Government vide Memo No. C/752 dated 23/02/2015

in court warehouse; monitored disposal of cases as per the targets set by national and state legal service authorities; assisted access to justice machinery, helped in recruitment of clerical staff at the district court level.

For Manipur, which created 3 posts of CMs, the high court rules<sup>35</sup> asked the CM to assist judges, registrars and officers to enhance the efficiency of the court management; prepare statistics on all aspects of the functioning of courts; prepare employee database for courts; prepare case status in all courts; involve in preparation of budget, supervise the proper utilization of budget allocations received for different purposes from the State and the Central Government, assist in Gender Budgeting, gather requirement for implementation of e-Courts Project which includes digitization of record rooms, library software implementation, co-ordinate functions and trainings for all judicial officers and staff of high court and subordinate courts, help in designing and reviewing calendar and newsletter for publication, involve in issuing, receiving and screening of application forms for recruitment to various posts in all courts, prepare database to identify vacant posts and for monitoring the status of under trial prisoners, procure appropriate and quality products for IT infrastructure development, etc.

Orissa high court Rules asked the CM to (i) look after the infrastructural requirements of the high court, (ii) work out requirement of staff, get government approval from time to time as per necessity and initiate the recruitment process in co-ordination with the Establishment Section and the Recruitment Cell of the high court, (iii) plan, prepare and process the budget proposals in coordination with the accounts section, (iv) ensure proper functioning of the IT section in co-ordination with the computer technicians.<sup>36</sup>

Punjab and Haryana high court rules<sup>37</sup> asked the CM to (i) manage and co-ordinate the processes involved in case flow which includes managing the filling of cases, their listing, disposal, keeping track of the old cases and creating and maintaining data to help in proper distribution of work amongst the judges in each district, including consignment of files to the judicial record. (ii) Deploy proper staff as per their educational qualifications and work experience and timely submit requirement of new staff to the authorities having regard to retirements of old staff, establishment of new courts and increased workload. (iii) Facilitate administrative work for the staff like pay fixation, grant of increments, redressal of grievances of employees, organising induction training, timely submission of pension papers, etc. (iv) Visit court complex to ensure cleanliness, regular attendance of staff and liaison with authorities like Public Works Department, Public Health Department, etc. for repair and maintenance work, for infrastructure development of court complexes and for awarding contract under the guidance of the district judge for cleanliness of the court complexes. (v) Assist judges on training/functions and inaugurations. (vi) Assist accounts department in preparation of budget, supervise proper utilization of the budget allocations received for different purposes. (vii) Implement and manage requirements under the e-Courts project which includes data entry initiation as well as managing the service roll out under e-Courts project, preparing report regarding the LAN, switches, power point, internet points installation in the court complexes for Computerization, feed data into National Judicial Data Grid and take up computerization of provident fund accounts of court employees. (viii) Provide training to the court staff regarding daily uploading of cause list / interim orders and judgments on website for ensuring delivery of Citizen Centric Services. (ix) Coordinate with other departments on IT issues. (x) Remove bottlenecks in the working of copying agency for ensuring timely delivery of certified copies of the judgments / orders to the general public by monitoring the performance of copying agency periodically. (xi) Supervise preparation of inventory of all the articles in the courts and ensure timely supply of stationery, computer peripherals like printers, printer toners and its annual maintenance. (xii) compile statistics on functioning of the courts and timely submit returns to the High Court.

## 5. Diagnosis on failure of the CM project under Indian set up

First reason: The Government Funding and the Government Support?

The Government of India provided one time support of rupees 50 Billion to the judiciary through the 13th Finance Commission Grant, to utilize the same in period from March 2010 to March 2015. In this grant itself, some high courts were supported while others were not, for the creation of the post of CM. Further, the government, out of 3 billion rupees earmarked for the CM project, could release only rupees 1 billion to different states as the high courts could not submit utilization certificates for grants released to them in time to the department of justice.

Whereas Uttar Pradesh (380 million), Madhya Pradesh and Maharashtra (266 million each), Rajasthan (184 million), Tamil Nadu, Orissa and Bihar (163 million each), Karnataka (157.5 million), Gujarat (141.3 million), Andhra Pradesh (125 million), Jammu & Kashmir and Jharkhand (119.8 million each), Assam (114.1 million), West Bengal (103.3 million), Chattisgarh (87 million), Haryana (97.8 million) received substantial funds to create the post of CM for their courts, the north-east states like Arunachal Pradesh and Nagaland and union territories like Delhi did not get any fund at all and some other states received an insignificant amount.

<sup>35</sup> [http://hcmimphal.nic.in/Documents/recruitment\\_rules\\_CM.pdf](http://hcmimphal.nic.in/Documents/recruitment_rules_CM.pdf)

<sup>36</sup> Vide office order No.4944 dated 28/06/2012

<sup>37</sup> Due to complaints made to the Prime Minister of India by the CMs, the high court dispensed services of CM from 31/3/2015, i.e. on completion of the 13th FC scheme.

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Once the period of 13th Finance Commission got over, the government in its next finance plan, the 14th Finance Commission, asked the high courts to draw the funds from the state governments if they were keen to continue with the CM positions. This detachment to the CM project from the government side was also because of fact that the Government of India received written representation from the CMs working in Jharkhand and Punjab states related to their role and treatment.

Therefore, for the period (2015-2019), high courts have to take their own call on whether to retain or abolish the positions of CMs. Many high courts have abolished these positions citing reasons that no funds are allocated in the 14th Finance Commission by the government to continue these positions. This fact itself shows disinterest in the CMs.

Second: Were CMs adequate in number to make any difference?

There are 24 high courts supervising 600 district courts in India. Further, each district court has its own judicial hierarchy. At the top end of this hierarchy is the Principal District and Sessions Judge and below this position, there are several district judges, additional district judges, civil judges senior and junior division to decide civil matters, magistrate and chief judicial magistrate for conducting criminal trials. The total sanctioned strength of these judges working below 24 high courts for different jurisdictions of India is 20,502 but only 16,513 courtrooms have been established.

Out of 700 CM positions that were to be created in period between 2010-2015, the judiciary could create only 462 posts of CMs. The CMs were appointed in the states of Haryana (88), Tamil Nadu (70), Punjab (46), Rajasthan (39), Odisha (32), Bihar (32), Andhra Pradesh (27), Jharkhand (24), Assam (23), Maharashtra (22), Karnataka (21), Gujarat (14), Madhya Pradesh and Chhattisgarh (12 each).

Now assuming that there are say 12,000 to 15,000 trial judges operating in different districts across India, who all apart from their judicial work have large number of non-judicial tasks to be performed, would it be practically possible for even 400 CMs to really make any impact? How could 400 to 500 CMs serve 15,000 courts? Their insignificant strength too added to much confusion amongst everyone as to what work had to be allocated to them.<sup>38</sup>

Third: Nature of employment offered to the CM in different jurisdictions

The gulf in the status between judge and CM in India is much wider than that prevailing in any other country where the position of the CM is created. No doubt in many jurisdictions of the world, the CM is denied participation in decision making related to core fundamentals concerning courts and is not treated equal to judge in most jurisdictions with exclusion in judges' meetings, social occasions, method of addressing etc.<sup>39</sup>, but in India, things are further worse because of nature of employment offered, poor compensation package, absence of all allowances given to regular court staff, poor service conditions and disrespect.

The salary and status of the CM in most jurisdiction in India is inferior even to a magistrate who is junior most entrant in the judiciary. Further, salary scales lag behind the private sector, and those in other government agencies. Further, there is no consensus amongst jurisdictions as to what should be compensation offered to the CM, or what should be qualifications for appointment of the CM or what work should be allocated to the CM. Different qualifications were prescribed in the whole country for appointment of the CM. A great variance exists in compensation offered to the CM from rupees 30,000 per month contract in the state of Himachal Pradesh to the pay scale of rupees 37400- 67000 with grade pay of rupees 8700 as offered by the Patna High Court which recently appointed the CMs.

Offering no fringe benefits for the CM position, not addressing the cost of living issues at the place of posting and at the same time asking the CM to meet diverse needs of local courts is unjustified and will in the long run make the CM join the court system only for gaining experience in the system rather than making any substantive contribution to the system.<sup>40</sup>

Though employment conditions for the CM are better in the southern region of India than the northern region of India – still these conditions cannot by any standard matched to service conditions of even junior most court employees. This made CM more vulnerable even in front of very less educated junior most staff of the courts who feel more confident due to their secure regular job, which cannot be as easily terminated as compared to the post of CM.

The nature of employment offered to the CMs - contractual appointment - was on yearly contract basis, which could be renewed if appointing authority was satisfied with the performance of the CM. This made both the staff of the court as well as the CM operate in atmosphere of distrust, suspicion and fear of each other. The regular court staff who is skilled in court practices and procedures after knowing that the CM is appointed on one year contract showed reluctance to transfer any knowledge about the system to the CM based on uncertainty of the CM and on the other hand, even the CM who is not fully assured of continuance and the growth within the system, is reluctant to go extra mile to learn about the system.

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38 See [http://www.nja.nic.in/TOC\\_and\\_PS/P-897%20PR.pdf](http://www.nja.nic.in/TOC_and_PS/P-897%20PR.pdf) for report from different states.

39 John M. Greacen, *An Administrator's Perspective: Relationships between Judges and Court Administrators*, The Judges' Journal 2001, p. 38-42

40 Marcus Wm. Reinkensmeyer, *Compensation of Court Managers: current salaries and related factors*, 75(3) *Judicature* 1991, p. 154-160

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The CMs employed by Jharkhand High Court collectively made a representation to the Prime Minister of India in the year 2014 complaining about their service conditions, their functions not being as per appointment order, how some of them were not given any work, how some of them got some unusual work with no clear guidelines regarding authority for the post, how their ideas and suggestions were turned down, that they were not even given a proper office, minimum infrastructure and minimum staff to assist them.<sup>41</sup> The CMs complained about the distrust placed on them due to contractual nature of their employment and how they were assigned superfluous work like liaising with the forest department to get some plants for the garden of the Court or of the residence of the Judges/ or getting telephone lines repaired, or liaising with the police officials to conduct meetings and to order refreshments for the meetings. The CMs also complained about the work assigned to them to check the correctness of the statistical data and that no suggestions were entertained to improve that data. They also pointed out to issue of not allowed to sit in the monthly meetings held on distribution of work and caseload. Further, the CMs also brought to the fore issue of not being paid their salaries in time. The CMs from Punjab and Haryana high court also filed similar complaint to the Prime Minister of India regarding their inferior status, salary, nature of works allocated, etc.

#### Fourth: Professionally trained CM?

When the Chief Justice Warren Burger of the United States Supreme Court called for a professional field of Court Management, based on his call, the Institute of Court Management was created in the year 1970 in the United States. This programme created CMs suited to work in the court environment in the United States. In India, only one law school NALSAR is offering combined LLB and MBA course to produce graduates professionally trained in court management principles. However, as salary and fringe benefits offered are not attractive enough to employ these graduates as the CMs for courts in India, there are reports that this programme too would be closed.<sup>42</sup>

#### Fifth: Relationship between CM and judges?

The CM project was undertaken to relieve judges from their administrative jobs/tasks. But most judges in India equate their administrative responsibility as their power-cum-jurisdiction over things and people. Therefore, subtracting any assignment from them, even if trivial or administrative, is viewed as deduction in their power-cum-jurisdiction over things and people. This mindset poses a major challenge to any outsider who wants to enter in the business of the courts at par with judges. Judges are strong believers in the hierarchy business and therefore, any kind of subordinate help is welcomed but any kind of equal position – even if it is meant to reduce their burden – is resisted. Many judges openly criticized the idea of having CMs. They even suggested for training judges in management principles rather than involving management persons in the courts. Some very senior judges have also shown open dislike for the management principles.

### **6. Conclusion: How to create acceptability for the CM in India?**

The management of courts has features in common with that of all other organizations. Key management concerns involve planning, human resources, budget and finances, use of information technology, creating facilities and other assets, and day-to-day operations. To do well, organizations need certain basic management conditions—leadership, commitment to a shared vision, effective communications, and (especially in a fast-changing world) a learning environment. Organizational success also requires that leaders and managers set goals and objectives, monitor actual performance, and ensure accountability. In these respects, managing a court is no different from managing any other organization.<sup>43</sup> Therefore, involving judges in managerial roles for which they have not been trained is imposing heavy burden on them and it is right time to take a leaf from other jurisdictions and free district judges and other trial court judges from non-judicial tasks. These could be entrusted to the CMs who can be provided some basic training on court processes and procedures and court cultures.

However this role delegation will not take place unless it is so endorsed by the senior most judges of high courts and the supreme court. The roles, responsibilities, and authority of the CMs will depend on how constitutional court judges value their contribution in court management. The more knowledgeable and comfortable judges are about the CM, the more power would be given to the CMs.<sup>44</sup> Therefore, the need of the hour, in India, is to get senior supreme court and high court justices exposed to jurisdictions in the west wherein judges are operating courts in comfortable partnership with the CMs. We have regular visits by political and executive branches to other jurisdictions to learn operational realities on administration and governance, which could be emulated for India. Similar educational visits should also be arranged by the department of justice of the government to provide exposure to judges so as to help them to come out of their biases against involvement of non-judicial personnel in managing the courts and registry. Such exposure will also create leadership in the higher echelon of the judicial system necessary to reduce resistance of fellow judges who harbor feeling that CMs would in some way impinge on judicial independence. Leadership can cut down this

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41 This letter was forwarded by the Prime Minister's Office to the Department of Justice. Letter on file with NJA.

42 See report at <http://www.legallyindia.com/lawschools/nalsar-hyderabad-mba-program-progress-report-20150219-5622>

43 See David Steelman, John Goerd, and James McMillan, *Caseflow Management: The Heart of Court Management in the New Millennium* (Williamsburg, Va.: National Center for State Courts, 2000), chapters IV and V (pp. 87–124), where authors argue that most of the essential elements of successful caseflow management in a court are the very same ones that are also critical for managing courts in general, and indeed for managing any organization well.

44 Ibid.

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unfounded fear and encourage courts across the country to hire the CM in the same way they hire skilled secretaries and court reporters who do for the judge what they cannot do for themselves.

Further such practical exposure must be continuous and a routine affair rather than one time travel opportunity for judges because senior judges are neither trained for their leadership role nor given adequate time to accomplish its duties. They get leadership by virtue of their seniority in terms of taking an oath to the office. At both high court and the supreme court level chief justices being administrative head within their courts install their own leadership agenda, which differ significantly from that of their predecessor and is non-binding on their successor.<sup>45</sup> This structure makes it difficult for any court to implement and sustain significant change over time. Therefore, regular exchange programmes for all senior judges to create positive mindset and acceptance for the role of CMs becomes an inevitable and necessary tool till the time enough judicial leaders rise to lobby the executive to fund administrative/managerial positions in the courts at a level that will attract suitably qualified individuals.

Also, court being highly constrained environment where judges are unquestionably key figures, their level of receptivity to the CM will spell success or failure of the CM. Unless judge acknowledges the role of the CM in enhancing judicial operations, the CM will continue to face tremendous disaffection from the court staff members. The Chief Administrative officers and Sheristadar<sup>46</sup> in the district courts being unsure about what will happen to them if they lose the trappings of the office to the CM, will continue to escalate differences and conflicts between them and the CM. There is a perception that there would be a war game.<sup>47</sup>

The complicated nature and dynamics of the courts and the temptation of individuals in the courts to use power inappropriately or ineffectively coalesce in such a way that the task of CM will be a constant challenge.<sup>48</sup> In such challenging scenario, adequate support of senior judges can turn around the table in favour of CM. Therefore it is right time to press the government for allocation of exclusive funds to sponsor exchange programmes for senior judges from India to jurisdictions where the CM are comfortably accepted and doing well.



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<sup>45</sup> See report at <http://cj.msu.edu/assets/JERITT-Monograph-13-Developing-a-Court-Leadership-and-Management-Curriculum.pdf>

<sup>46</sup> Senior clerks in the district courts. For their duties and place in the hierarchy of administration visit <http://ecourts.gov.in/namakal/duties-responsibilities>

<sup>47</sup> *Traits of CM in challenging environment* @ <http://www.lawyersclubindia.com/articles/Traits-of-court-managers-5385.asp>

<sup>48</sup> *Ibid.*