

A PANORAMA ON PERFORMANCE INDICATORS AND EVALUATION OF JUDGES: AN ANALYSIS

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Abstract

Access to justice is one of the fundamental rights of every citizen. States are bound to protect this right by providing justice through a fair, impartial and competent judicial system. It is thus intrinsic that States must ensure to establish and maintain an impartial, competent, efficient and effective judiciary. Like other public institutions, judiciary, is also run by public funds, thus its performance may also be subjected to social audit. Internally the judicial decisions are cheked through the scheme of appeal and revision. However, such evaluation are merly confined to see the exercise or non-exercise, use or mis-use of certain judicial powers. This evxercise has nothing to do with the quality of juducial decision making. There is no other formal mechanism to evaluate the performance of judges both qualitatively and quantatevly. Arguably, independence of the judiciary demands that the performance of judges may not be subjected to evaluation. However, there is an emphire of litrature to show that one way or the other, different states have adopted different approaches to evaluate such performance. After encompassing the available litrature, this article argues that independence of judiciary in the strict sense does not exonerate judges from evaluation of their performance. Based on best practices, the article discusses different types of performance indicators, approaches and modes of performance evaluation, and challenges to the evaluation mechanism. The articles review the evaluation system prevalent in Pakistan. Emphasizing the efficient use of technology, court and case management, the article presents a model of evaluation for judges in Pakistan. The paper

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concludes that a quality control cell at the level of each high court shall be indispensable before starting any evaluation program.

Key words: Performance indicators, evaluation, judiciary, case management, integrity.

Introduction

Delay in disposal of cases has greatly stigmatized the justice system of Pakistan. Critics argue that the judiciary may very frequently pass directives for reforming policing and land revenue systems, appointments, promotions and transfers in the civil service generally – but not for reforming the judicial system itself¹⁵⁵. A very heavy duty is, thus, placed on the shoulders of the judiciary to reform its own evaluation system. While judiciary may very well point out a number of contributory factors for delay— litigants unwillingness, non-cooperation of the bar, non-attendance of revenue staff in civil, and police officials in criminal cases— to name a few, it has no other option but to bring dramatic changes in measuring its service delivery. A very visible, effective and efficient system is thus need of the hour. Critics argue that, “It (judiciary) will devote the full-time services of a SC judge to various inquiry commissions ranging from electoral malpractices or even into the purchase of a couple of London flats – but the only half-hearted attempt at court system reform in recent years (by way of the Judicial Policy, 2009) merited nothing more than the part-time attention of the apex court’s registrar¹⁵⁶.”

This and some other disparaging remarks¹⁵⁷ have made out a case for judiciary, as an institution, to put an effort, at least to overhaul the present outdated evaluation system. Not only from the standpoint of delay in disposal, the judiciary have to shoulder some other daunting tasks—court management, case management, performance evaluation— to name a few. While evaluating the performance of judges, the judiciary has to set some performance indicators.

¹⁵⁵ Salaudin Ahmed, justice delayed is justice denied, Daily Dawn 20 December, 2016

¹⁵⁶ Ibid

¹⁵⁷ Day in and day out, delay in disposal of cases are criticized on print, electronic and social media

Judged by their legal acumen, communication skills, judicial decision making, case and court management techniques, knowledge of law, appreciation of evidence, maintenance of court decorum, administrative qualities, liaison with other stake holders¹⁵⁸, watch on court staff and level of patience, a comprehensive set of performance indicator and performance evaluation program seems indispensable.

An Introduction to the Present Performance Evaluation

As a career judge, this author has had the opportunity to experience different methods of measuring the performance of judges. In the province of Khyber Pakhtunkhwa, in the first decade of 2000, a time bound delay reduction (TBDR) plan was in vogue. Cases were classified in different categories. Through each disposal, the concern presiding officer would get units. In some areas, judicial officers, earning highest units were granted incentives¹⁵⁹. At present, the performance of judges is evaluated through a cumbersome procedure of “Disposal based Performance Evaluation Policy (DPEP)”. The policy is replicated in a DPEP profarma. It distributes cases to different areas. The areas include old— cases filed before 31 December 2011 is placed at area “old/target”. The second area is called “backlog”. All those cases, which are not disposed in the stipulated period is placed in backlog category. The third area is called “new cases”. Fresh institution and cases not converted to backlog is placed in this area.

The profarma starts with performance sheet. The sheet consists of personal information of the judge, court and station. It also contain entries in respect of pendency, fresh institutions, disposal, transferred in and transferred out cases, stay matters, misc application etc. It is followed by the next sheet, called “control centre”. It controls the whole profarma. It contains the personal ID of the Judge and the number of working days. This sheet is followed by a “check list” sheet.

¹⁵⁸ Litigants, lawyers, revenue officials, district administration and police are some of the important stake holders

¹⁵⁹ The practice was in field in Malaknd division till 2008

This sheet shows disposal and pendency of different civil and criminal cases. The performance is evaluated through a scoring system. Based on disposal, judges are placed in category A, A+, A-, B, B+, and B- and so on.

“A” category is assigned to those officers who have no target case in their diaries. A+ is assigned to those judges, when there is no backlog case in his/her court. The profarma nowhere guides the judges how to improve performance. Say for example, what would a judge do if he/she wishes to score A or A+? Judged by the contemporary standard of evaluation, the present system could not be termed a wholesome performance evaluation system for various reasons: Firstly, the policy is quantitative in nature. It ignores the quality of judicial decision making and other allied traits of judge craft. Secondly, the profarma can only be termed as Data collection apparatus. It does not portray the performance of judicial officers. For instance, fresh, backlog and target cases are fixed in the diary of court “A”. The DPEP would show the scoring somewhere in D, D+ or D-. On the other hand, court “B” has only fresh cases. The profarma will automatically show the score/category either A or A+. If through an order of the competent authorities, target cases are transferred from court A to court B, the entire scoring system would dramatically change. Without disposing a single case, the score of court A will change to A or A+ while score of court B will change the same way in the opposite direction. It may happen that court staff manipulates the scoring system. Without proper check and balance machinery, the profarma seems least effective for the evaluation of performance of judges.

In the Federal capital Islamabad, provinces of Punjab and Sindh the situation is different. The performance of judges is measured through a unit policy. The performance is replicated in a monthly statement showing institution, disposal and pendency of the cases. The profarma shows the name of the judicial officer, number of pending cases, number of fresh institutions, number

of contested judgments. The focus is only on *numbers*, the quality of judgments/decision is nowhere taken in to consideration. The system is quantitative in essence.

Performance Indicators

Performance indicator is a measure that helps answer the question of how much, or whether, progress is being made toward achievement of certain objectives¹⁶⁰. Usually Indicators are used to measure progress in the accomplishment of certain significant goals. In justice sector institutions, these goals may range from delay reduction, timeliness, effectiveness, access to justice on the basis of gender, ethnicity, or economic class. Organizations working in the development sector define indicators in nearly the same way. For instance the Organization for Economic Co-operation and Development (OECD) defines an indicator as, a ‘direct and valid statistical measure which monitors levels and changes over time in a fundamental social concern¹⁶¹.while the smaller Performance Assessment Resource Center (PARC), based in Birmingham, England, says, “An indicator is something that can be seen, experienced, or recorded. It is a sign that something exists, or has happened, or has changed¹⁶². The World Bank defines an indicator as ‘information [that] can be used...to assess performance and assist in planning for the future¹⁶³. Similarly, indicators can be used to measure the daily activities through which an institution can attain its objectives¹⁶⁴.

¹⁶⁰ Handbook of Democracy and Governance Program Indicators (Washington, DC: U.S. Agency for International Development, 1998)’ (Judicial Sector Indicators (JSI),a World Bank Information System available on the web at http://www4.worldbank.org/legal/legop_judicial/whatisjsi.html.)

¹⁶¹ Measuring Social Well-Being: A Progress Report on the Development of Social Indicators, Paris: OECD, 1976.)

¹⁶² (Good Monitoring and Evaluation Practice: Guidance Notes (Birmingham: PARC, October 2001.

¹⁶³(Judicial Sector Indicators (JSI),a World Bank Information System available on the web at http://www4.worldbank.org/legal/legop_judicial/whatisjsi.html.)

¹⁶⁴ Measuring Progress toward Safety and Justice: A Global Guide to the Design of Performance Indicators across the Justice Sector, Vera Institute of Justice, November 2003, p5

Difference between Actual Performance and Performance Indicators

A delicate difference exists between actual performance and performance indicator. A performance may be defined as “the complete set of characteristics of a product or a service, which enables it to satisfy needs or demands”. A performance indicator can be defined as “a variable which provides information on one of the characteristics that are important for the quality of a product or a service.

Approaches to Performance Evaluation

Performance evaluation of judges is a hypersensitive undertaking. While evaluating judges or the institution of judiciary care must be taken to fully safeguard the independence of the individual judges and judiciary as institution. This necessitates designing of such a program which could not only achieve the purpose of evaluation but also ensure that the judges do not feel that either they are distrusted or that their independence has been encroached upon. Around the world, keeping in view the purpose of evaluation, different approaches are adopted for performance evaluation. The most common approaches to performance evaluation are “soft” and “tough” approaches.¹⁶⁵ These approaches are also called as “developmental” and “judgmental” evaluation by various commentators¹⁶⁶. In the soft version, learning and dialogue are focused. The tough version creates explicit incentives for performance. The table below¹⁶⁷ makes some distinctions between the two;

¹⁶⁵ Ibid p-19

¹⁶⁶ See for example Crohen, Madeleine(2004). A Radiography of the Judicial System in Romania from the perspective of young judge”. Article published in DilemaVech nr. April 2004.

¹⁶⁷ Note 3 supra p-20

Soft Version	Tough Version
<ul style="list-style-type: none"> • This version is aimed at learning and improving the performance • Low degree of specification of expected performance • Evaluation is made by colleagues. Opinions are exchanged on the degree of performance and assistance provided for improvement. • The output of the performance evaluation process is mainly verbal text. • The evaluation results in identification of training needs and stimulate self-improvement. 	<ul style="list-style-type: none"> • Incentives for performance are created • High degree of specification of expected performance • The evaluated is subordinate to the evaluator, who delivers an authoritative judgment on the performance of the evaluated • The output of performance evaluation process is mainly quantified • Good performers earn career progression or increase in salary. Bad performance is grilled and may sometime end in dismissal from service.

However, to get fruitful results, the evaluation program shall be an excellent combination of both the versions.

Performance Evaluation in other Jurisdiction

Different jurisdictions are confronted with different challenges. Thus the purpose and mechanism of performance evaluation differs from jurisdiction to jurisdiction. So much so different methodologies are adopted in different parts of the same jurisdiction. Take the case of the United States of America. Among others, four states, including the District of Columbia, use

performance evaluation in the process of and as a basis for reappointing judges, two states use them to enhance public confidence in the courts and judges and therefore publish the outcome of performance evaluations, and five states only use them for self-improvement and capacity building of judges¹⁶⁸. Other countries, such as France and Germany, use performance evaluation of individual judges for career advancement and promotion purposes¹⁶⁹. Whilst the Netherlands do not have a formal system of performance evaluation of individual judges that is linked to promotions, their system enables self-improvement and general administration of justice by identifying capacity building needs. This allows court chairs to see which judge is under-performing and to adjust resources to support such a judge¹⁷⁰. To have a model evaluation program for Pakistan, the evaluation systems of some other jurisdictions are examined below.

Individual evaluation of magistrates in Austria¹⁷¹

In Austria Judges are evaluated after two years of their appointment to a new position. However, court presidents, vice-presidents and the heads of panels in the courts of appeal are exempted from any evaluation. A judicial board is constituted which carries out evaluation. The judicial board is composed of two ex officio members (the president and vice-president of the court) and of three members elected by the judges of these courts. In addition to carrying out the evaluation, the judicial boards are also responsible for appointment of judges as well. The evaluation form covers a number of areas. Some of the key areas are: formal knowledge, decision making ability, working speed, capacity to work under stress, mode of expression, social and personal behavior.

¹⁶⁸ National Centre for State Courts 'Guidance for Promoting Judicial Independence and Impartiality- Revised edition' 2002. The National Centre for State Courts' mission is to improve judicial administration in the courts of the United States and courts throughout the entire world, see [http:// www.ncsc.org/](http://www.ncsc.org/).

¹⁶⁹ United Nations Office on Drugs and Crime, 'Resource Guide on Strengthening Judicial Integrity and Capacity' 2011

¹⁷⁰ Ng, Gar Yein, 'Quality of judicial organisation and checks and balances', Intersentia, Antwerp 2007 p.94.

¹⁷¹ Source of information: Stava (2005) and Kodek (2005).

The evaluation is graded. The judge will receive one of the five possible grades: “Excellent”, “Very good”, “good”, “passed”, and “failed”. The result of the evaluation is delivered to judges evaluated. Feeling aggrieved of the grading, they have a right to appeal to the judicial board of the next higher court. If the grade is below “very good”, the evaluation is repeated the following year. A gradation below “good” may result in a financial disadvantage.

Individual evaluation of magistrates in Belgium¹⁷²

Until 1998, there was no individual evaluation of the magistrates in Belgium. Keeping in view the public discontent and erosion of trust in the institution, the government introduced the system of evaluation of judges with the following dual objectives:

1) To identify dysfunctional magistrates. The evaluation aimed at identifying the problems being faced by a particular magistrate. As an internal management tool, the evaluation helped the institution to take action against the concern magistrate. It also enables the magistrates to help themselves and improve grey areas.

2) To allow for a comparative assessment of the magistrates. The assessment was used for career development of the magistrates. The system evaluates; judicial knowledge, work efficiency, communication skills, ability to make decisions, professional ethics, loyalty to one’s colleagues, self management, interest in continuous learning, ability to adapt, spirit and engagement. Magistrates will receive an overall mark of either “very good”, “good”, “satisfactory” or “not satisfactory”. Deductions from salary are made of magistrates whose performance is rated as “not satisfactory”. There is no right of appeal against the rating decision, but the magistrate is allowed to record his own remarks. The system allows magistrates to perform self-assessment. At final stage of the evaluation, a conversion takes place between the

¹⁷² Source of information: ConseilSuperieur de la Magistrature (2005), HogeRaadvoor de Justitie (2003, 2004), and Depré&Plessers (2005)

evaluated and the president of the respective jurisdiction which is considered as part of evaluation.

Individual evaluation of magistrates in France

France is one of the pioneer States in judicial performance evaluation. Its evaluation process dates back to 1850¹⁷³. In France the performance evaluation form includes the following four major themes, which are again composed of several sub-themes:

- General professional abilities: To make decisions; listen; and adapt to new circumstances
- Technical and legal skills: Knowledge of the law and ability to utilize this knowledge; chair sessions and meetings and keep record
- Organizational and management capabilities: To lead a project; motivate others; set goals and determine the means to achieve them
- Professional engagement: Capacity to work; readiness to engage in continuous learning; willingness to maintain professional relationships with other institutions.

The magistrate's performance is marked on every sub-theme using 5 grades: "Exceptional", "excellent", "very good", "satisfactory" and "not satisfactory. The rate "exceptional" has recently been added to the model, and is supposed to be given only to the truly outstanding performers¹⁷⁴. The system has, however, exempted certain areas from being evaluated. It includes;

- The contents of judicial decisions
- Religious or sexual orientations
- Personal life
- Commercial, political or philosophical activities

¹⁷³Jesper Wittrup (2006)

¹⁷⁴ Source of information: Conseil Superieue de la Magistrature (2005) and Errera (2005)

Performance Indicators for Judges¹⁷⁵

Deliberation on the performance of courts always remained a delicate subject. Commentators argue that the independence of judiciary in general and judges in particular resulted in what is called an “overestimation” of the attention to the subject of performance. It is argued that judges do not like to compare their judicial work with for example administrative work that is carried out in another department or governmental agency¹⁷⁶. The question whether the protection of independence of judiciary is a valid argument to over sight the significant issue of setting performance indicators and then evaluating the judges is a contested one. Though preservation of independence of the judiciary and judges may still be a valid defense but since the independence of a judge is closely connected with the freedom of decision making and non interference by the executive and legislatures in the judicial work, therefore, by any stretch of imagination, it does not mean that a judge is not accountable for the work s/he is delivering. Someway or somehow, the performance of a judge and a court must be evaluated, because courts are financed by public means and play an important role in the protection of the rule of law in countries and the day-today life of citizens¹⁷⁷.

Purpose of Evaluation

Around the world, performance evaluations are conducted for a number of purposes, thus performance indicators vary from state to state. If the real purpose of the evaluation is to improve professional development, it can be accomplished by different means. Performance evaluation is one of them. Keeping in view the judicial culture, the ethnic diversity, disparity in economy, education, class and culture, an indigenous performance evaluation mechanism needs to be put in

¹⁷⁵ Perhaps a minute discussion on each and every performance indicator may be beyond the mandate of this paper. However, deliberations on the issue may still sound good to a number of practitioners and academicians

¹⁷⁶ Dr. Pim Albers Special advisor of the CEPEJ, Council of Europe, “Performance indicators and evaluation for judges and courts” www.coe.int/cepej.

¹⁷⁷ Note 3 supra

place in Pakistan. In doing so, however, the evaluation mechanism of a number of jurisdictions may be helpful. The available literature on the subject suggests that performance measurement may be used to¹⁷⁸:

- a) Evaluate and learn
- b) Budget and allocate resources
- c) Motivate staff to improve performance
- d) Promote the organization by convincing stakeholders that the organization is doing a good job
- e) Control behavior

Arguably performance measure must help the policy makers to identify the gaps and make efforts for improvement. Evaluation with this aim, portray the performance of the individual and the institution as a whole that what works and what need to be worked upon. Evaluation in such form helps the judges in self correction. However, when evaluating courts we may, with inspiration from the so-called Balanced Scorecard approach¹⁷⁹, distinguish between two major types of indicators: “Goal indicators” and “alarm indicators”. Goal indicators are about aspects of performance we should always be concerned about. Standards and goals for improvement should be assigned to these indicators. In courts, indicators for timeliness would be typical goal indicators. Alarm indicators are on the other hand indicators that tell us whether we have reason for concern about some aspect, or not. Normally, we don’t have to care much about improving the status of this indicator, but on rare occasions it may go into alarm status, and we will have to

¹⁷⁸Jesper Wittrup (2006) p- 75

¹⁷⁹ Kaplan & Norton (1996)

take some action. Indicators for cassations may be considered to be an alarm indicator for courts¹⁸⁰. In judiciary, performance indicators revolve around the following areas¹⁸¹;

1. Indicators for Setting time standards
2. Indicators for workload and productivity
3. Indicators based upon internal evaluation of quality and service
4. Indicators based upon external evaluation of quality and service

Modes of Performance Evaluation

In Pakistan, performance evaluation of the judges of the district judiciary is the responsibility of the respective high courts. However, unfortunately no indicators are set against which to measure the performance. This has resulted in an ad hoc interpretation of the notion, and inconsistencies in the policies surrounding the concept. At the institutional level, no serious efforts have ever been made to evaluate the performance of the judges. Except a half hearted attempt, in the shape of a by product of a research study, has been made by the KP Judicial Academy¹⁸² to explore whether the justice system prevailing in Malakand can deliver justice services¹⁸³? The issue of evaluating the performance of the system in general and judges in particular remained a mystery. With the establishment of the judicial academies at the provincial level, it is hoped that the respective high courts may set the record right and explore some performance indicators and provide a mechanism for performance evaluation.

Around the world, a court of law is described as a “system-model”. In this system model, while keeping in view the involvement of a number of stake holders, three performance

¹⁸⁰Jesper Wittrup (2006) p-76

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¹⁸² A recently established judicial training school for the personnel of all justice sector institutions at the province of Khyber Pakhtunkhwa. www.kpja.edu.pk

¹⁸³ The study was conducted with the help of UNDP’s rule of law in Malakand Project. The author was a member of the project. Detailed report of the study is available at www.kpja.edu.pk

indicators could be set up. They are; input, throughput and output indicators. The input part of a court can be resources and cases. Generally, personnel (judges and court staff), material (court buildings, office equipment, etc.) and finances (the budget of a court) are some of the major resource of the courts. The level of these three types of resources greatly affect the productivity of a court. For instance, lack of resources (in terms of judges, staff, equipment, and budget) can lead to an increase in the length of proceedings, mounting the backlog of cases. Incoming cases fall in the category of input part. A high influx of cases with the same level of court resources can lead to an increased pendency in the courts¹⁸⁴. Before arriving at a conclusion, a number of processs are carried out e.g attendance of the opposite party, and recording of evedince. These are the throughput. On the completion of the process, the court pronounces judgement which is the output part. One of the indicators to measure the throughput of courts is – logically – the length of proceedings and the backlog of cases.¹⁸⁵

The performance of judges is influenced by a number of external factors. Changes in: society, the budget of the State, legislation, etc. can lead to a fluctuation of cases filed in the courts wchich may lead to a fluctuation in the workload of cases that can be handled by judges. For example if some legal steps are reduced or time bounded¹⁸⁶ in the procedural law, it may lead to a high productvity of the judges.¹⁸⁷. Thus, perhaps, an independent evaluation mechanism may take into account these external factors. On the other hand it is argued that any policy to

¹⁸⁴ Dr. Pim Albers Special advisor of the CEPEJ, Council of Europe, “Performance indicators and evaluation for judges and courts”http://www.coe.int/t/dghl/cooperation/cepej/events/onenparle/MoscowPA250507_en.pdf_truncated

¹⁸⁵ Note 5 supra p. 2

¹⁸⁶ The Sharia Nizam Adal Regulation (Regulation) can be a best example. The regulation has made it obligatory on the plaintiff to send a copy of the plaint to the defendant before its submission in the court. It has also bound down the plaintiff to submit the statements of the prospective witness in the shape of affidavits.

¹⁸⁷ Note 6 supra p3

improve the performance or quality of the judiciary can be grouped into four major areas: 1) governance policies; 2) structural policies; 3) procedural policies; and 4) managerial policies.¹⁸⁸

The Need for Evaluation

Needles to say that judiciary is the third and one of the most important pillars of the state. It guarantees the protection of human rights, and ensures rule of law. Since, the efficiency of the justice system has become a central issue in several communities, therefore, while keeping in view its important role in good governance and rule of law, a number of states are working on reform agenda.¹⁸⁹ It is also noteworthy that a number of states are bringing drastic changes in their civil procedures rules and/or to implement methods of case management (such as the USA and United Kingdom). As has been pointed out, courts function on public funds. Therefore, a social audit of its performance is not only desirable but has also become indispensable. Leaving the cost-benefit analysis aside, the high courts shall measure the performance quantitatively and qualitatively.

Around the world, even developing countries, are focusing on qualitative evaluation¹⁹⁰. It is highly desirable that instead of accumulating statistics, the high court should concentrate on the quality of the work as well. This will, on one hand improve judicial opinion writing, and increase public confidence on the institution on the other. This can be done through the involvement of researchers and academicians. Even a quality control/enhancement cell can either be established at the high court or in judicial academies. The cell shall be made independent and given a mandate to evaluate the performance of judges after issuance some performance indicators to all the judges. The cell, after evaluation, may recommend the names of best performers to the high

¹⁸⁸Jesper Wittrup, "Analysis of the system for measuring and monitoring judicial performance in Romania" 2006

¹⁸⁹ While a number of states, to reform its justice system, has started specialized trainings in judicial academies, the KP Judicial Academy is a recent effort to achieve this objective

¹⁹⁰ See for example, Maria Dakolias, "Court Performance Around the World: A Comparative Perspective" Yale Human Rights and Development Journal, Vol 2, 2014, pp 87—144

court for award or incentives. This will, on one hand, encourage the judicial officers, and ensure transparency on the other.

Who can Evaluate?

Every evaluation program should not only be obsessed by the aspiration of public accountability but should be equilibrium of independence of judiciary and public accountability. Commentators argue that in order to keep the equilibrium, the evaluation shall ideally be carried out by the judiciary itself. Although some external factors¹⁹¹ also affect the evaluation but executive should be kept out of the process of evaluation. The existing scholarship shows that in the majority of the countries, evaluation is carried out by the judiciary itself. In some European countries, special evaluation committees/councils¹⁹² are established. In the other countries evaluation is carried out by the judicial boards¹⁹³ and judicial academies¹⁹⁴.

Whether the evaluation is carried out by a board, an academy or a council, the evaluators must be trained properly. They are supposed to be impartial, having expertise in the field and in close connection with the evaluated. It is also desirable that before starting any evaluation program, the evaluators should know the purpose of the evaluation. Ideally there should be a committee of experts to train the evaluators how to evaluate. To make the program successful it would be better that the committee shall monitor the evaluation process. The High Court shall introduce a new grading scale. Such grades must account for the knowledge of law, ability to apply the law, conduct with the litigants, temperament, honesty, integrity, qualification, and special aptitude in a field. Only speedy disposal should not be the sole insignia for good performance. Speed must correspond with the quality of judicial opinion writing, appreciation of

¹⁹¹ For example the infrastructure and budget of the court, indicators relevant to lawyers, litigants, prosecutors and other relevant stake holders

¹⁹² See for example Italy and Germany discussed above

¹⁹³ For example Austria and Belgium discussed above

¹⁹⁴ See for example Indian evaluation system

law and facts and sturdy communication skills. A fallacy should also be detached. Performance evaluation is and can never be used as disciplinary proceedings. Thus it should not be aimed at trapping the judges. It should rather be used to promote professional development resulting into better service delivery. Thus evaluation for the sake of punishment should be avoided. It is also advisable that the contents of the judgment should not be discussed. It would ensure independence.

Challenges in Performance Evaluation

Countries in transitions, including ours, are facing a number of challenges¹⁹⁵. There is a public perception that institutions are weak and professionalism is scarce. In such eventuality, a number of stumbling blocks have to be detached before launching any new program. Thus a range of challenges must be taken in to consideration before starting any evaluation program.

They include;

- Lack of professionalism: Due to lack of experts/professionals in the field it is possible that the program may be mishandled. If evaluators are not properly trained or if they had no prior experience of evaluation, there will be a feeling of anxiety and distrust on the program. The evaluated will feel that they have been evaluated by amateurs. Such a clumsy program will bound to fail. Thus lack of professionalism is a gigantic challenge.
- Developing and Internal stress: Although the best way of evaluation is that the judiciary shall be evaluated by the judiciary itself. However, it will lead to an internal tension. The evaluated will feel that they are being evaluated by non-professionals. The evaluators may sometime misuse the evaluation out of professional jealousy and some time by settling scores. Thus lack of experience and unreliability of the evaluators may lead to internal conflicts and tensions.

¹⁹⁵ Bad governance, rule of law, red tapism to name a few

- Impartiality: When the evaluated and the evaluators are working colleagues, it is apprehended that they may, out of courtesy, do not evaluate impartially. There is every probability that they will award the same category to the majority of the officers at the same station in order to avoid a feeling of discrimination. Thus a distinction could not be truly reflected in the evaluation about the actual performance of two officers with different aptitudes.
- Defective self-assessment: unless the evaluation questionnaire is not professionally prepared, there is always a possibility that the self-assessment may not truly reflect the personality and professional competence of the evaluated. When the individual officers apprehend that their shortcomings may adversely affect their professional progression, they will never point out their own inadequacies.
- Discontent in the officers: Psychologists argue that people in general react more severally in response to the possibility of losing something than they do with regard the chance of gaining something. Thus if performance evaluation is made with the single agenda of pin pointing the inefficient, it may lead to a discontent in the officers.
- Lack of ownership: Unless the officers are made to understand that the evaluation is made for some good reasons, they will never own it. Due to indiscriminate policies, officers do develop a sense of hatred for the institution, thus they will not easily own the system. Before starting an evaluation program policies should be rationalized and made officers friendly so that they own the institution.

Conclusions

Administration of justice in the strict sense does not necessarily denote disposal of cases alone. It is a collective endeavor which includes timelines, effectiveness and excellence. Omission of anyone of it may tint the image of the judge in particular and the judiciary in general. To measure the performance of judges, the high court ought to adopt contemporary means of evaluation. It should identify performance indicators, design a questionnaire survey, pilot test the questionnaire and then evaluate the performance of judges. Such evaluation may not be necessarily for the sake of evaluation only. The program may be scientifically designed and expert human resource allocated to it. The program should be made transparent. The focus should be on professional development. Some incentives for the judges may make it more effective. The evaluators must be properly trained. In order to achieve maximum satisfaction of the litigants, case and court management techniques have to be revisited. Judges may be trained in grey areas. The evaluators should be closely monitored. The evaluation shall not be used for taking disciplinary actions. The system so designed shall be properly improved to achieve excellence.

The present system of equalization of cases must be done away with. Cases may be weighted. It must be divided in different stages. Time be allocated to each stage. This will help identify the root cause of delay. External and internal evaluation tools be identified and worked upon. While evaluating, the contents of a judgment should not be discussed to ensure the independence of the judge. After comparison of performance, judges scoring high must be publically recognized. This will on one hand encourage them to work with more zeal while motivate others to follow suit on the other.

Before launching any such program, the evaluators and the evaluated must be consulted. A quality control cell in the high court may be established. The cell shall monitor the whole program. It is supposed to be fully equipped with up to date IT equipments and enjoy full independence. Ideally a judge of the high court, having strong academic back ground with some experience in the field of research may be made the overall In charge of the program. Such a judge must have exceptional communication skills and excellent analytical reasoning with an unyielding grasp on the contemporary methods of evaluations. The system be re-visited after every four years and amended according to the requirements. If we did this, we may expect that our future generation will remember us in good words.
