10 RMLNLUJ (2018) 139

I-T in Law: Ease of Doing Litigation vs. Ease of Preventing Litigation

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by

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ABSTRACT

Creation of informed citizenry asserting their fundamental and statutory rights is a healthy sign of a progressive democracy. Technology is empowering people in becoming more vigilant and cautious of their rights against any form of exploitation or omission or commission by the organs of the State or an individual. Citizens are no more the dormant partners in the democratic society and democratic process of nation building. They are active participants in the decision making and alert about their human rights. And when technology can aid the people in such pursuits, the role of legal and judicial fraternity increases manifold. This paper is thus an attempt to make an ontological assessment about the role of technology in justice dispensation system in India. The Supreme Court of India started connecting the dots between the need of employing technology to meet the demand and supply requirements of the legal and justice services across the country. E-Committee of the Supreme Court in 2004 commenced work on computerization of Indian judiciary, to employ technology for strengthening our administrative capacities, to enhance our outreach to the consumers of justice and also to generate series of management reforms in handling pendency and delays in the courts. It devised the 'National Policy and Action Plan for implementation of Information and Communication Technology in the Indian Judiciary' more than a decade ago in August 2005. The objective of this paper is to examine and suggest suitable measures to enhance judicial productivity both qualitatively and quantitatively as also

make the justice delivery system affordable, accessible, cost effective, transparent and accountable by using information technology tools.

Keywords: Information Technology, Access to Justice, E-governance, Digital Courts, Process-re-engineering.

I. INTRODUCTION

1.3 billion Indians are constitutionally entitled to a life of human dignity and happiness as a fundamental principle of the governance of India encrypted in the Directive Principles[1] Fundamental Rights[2] and the binding Supreme Court judgments.[3] However, the mandate operating through governmental and private activity has not resulted in the production and distribution of opportunities, goods and services to ensure such constitutional happiness in a framework of aggravating inequality[4] inherited by independent India from the British. This results in disputes at all levels of life, which are increasingly resolved by force, especially since the justice machinery from the subordinate to the Supreme Court is choked by arrears of disputes awaiting judicial resolution. Today, the endless wait for court justice mocks the very idea of justice. Judicially managed legal aid, basically meant to resolve disputes and secure

the promised constitutional happiness without resorting to the courts, is unable to deliver the constitutional promise of justice social, economic and political through the very same machinery of the existing legal system which has choked the courts to deny judicial justice. All of us have impressive statistical figures to show that this has happened and continues to happen. Yet for this failure of constitutional governance none from the three governing wings---- legislative, executive and judicial--- is held accountable, responsible and punishable to push towards a meaningful solution.

II. LEGAL INFORMATION AND ARREARS

One of the key reasons for this de facto continuing mandamus of increasing injustice is the absence of relevant information for those suffering the denial of constitutional happiness. They are not told what they are entitled to within how much time, how and by whom. They are not told as to what should be done if the first administrative tier of justice delivery fails. The complete neglect of information as a key and critical input to ensure constitutional happiness, blocks the changes necessary, by preventing the buildup of legally enforceable demand for such information and its effectiveness. The principle of governance seems to be that a billion people struggling for their minimal life of dignity, cannot know what they are being deprived of illegally, since they do not know what they legally have. In this context we map out the arrears driven information technology and process led by the Supreme Court for the judicial system, without any such effort for the country wide legal services[5] managed by it. The information technology for arrears deals with injustice that has already occurred, quite some time ago. The information technology for legal aid or services is necessary to deal with the prevention of injustice and immediate remedying of injustice. But it does not exist. Preventive justice, based on arming citizens with relevant legal information will check the generation of litigation for lawyers and courts. Since this undermines the legal business of the lower court system, preventive justice has no significant voices in this system.

III. ACCESS TO JUSTICE — SC'S ATTEMPTS

Preventive Justice to deliver constitutional happiness timely and inexpensively becomes a far cry, as the Supreme Court has been trying to secure adequate manpower and facilities for the existing judicial system itself. This directly distresses the basic structure of the Constitution i.e. judicial independence. This judicial independence cannot be guaranteed if judicial strength is not sufficiently adequate to effectively render justice to all persons. Effective justice means that cases are decided within a judicious time. This becomes impossible if the number of judges in the subordinate courts, the high courts and the Supreme Court are inadequate to deal with the new inflow of cases per annum and the old cases already pending.

An analysis by the Centre for Research and Planning, Supreme Court of India, of the Law Commission Reports, Central Government and Parliamentary Committee Reports shows a uniform recommendation to increase the strength of judges based on the

evidence of institution and disposal of cases and the net annual building up of arrears adding to the already pending arrears.[6] Hence, pushing courts in a situation where Judges are unable to render effective and timely justice, another judicially declared fundamental right i.e. access to justice,[7] stands violated. This denial of access to justice not only destabilizes the judicial independence and the constitutionalism but also undermines the meaningful delivery of constitutional happiness. The Supreme Court as a *pater familias* of the judiciary has constantly been trying to overcome the problem of inadequate judge-strength and infrastructure, through its judgments.

A. All India Judges Association Case

The Supreme Court in *All India Judges' Assn. (3)* v. *Union of India*[8] documented that subordinate judiciary is the backbone of the Indian Judicial System and impressed that the acute shortage of judges has been weakening the backbone. The Bench directed:[9]

> *"Apart from the steps which may be necessary for increasing the efficiency of the judicial officers, we are of the opinion that time has now come for protecting one of the pillars of the Constitution, namely, the judicial system, by directing increase, in the first instance, in the Judge strength from the existing ratio of 10.5 or 13 per 10 lakhs people to 50 Judges for 10 lakh people. We are conscious of the fact that overnight these vacancies cannot be filled. In order to have Additional Judges, not only the post will have to be created but infrastructure required in the form of Additional Court rooms, buildings, staff, etc., would also have to be made available."*

The court also took notice of the fact that considerable time and infrastructure are required to be devoted in the appointment of additional judges. Given the fact that a large number of vacancies are lying in the sanctioned strength, the court directed:

> *"We are also aware of the fact that a large number of vacancies as of today from amongst the sanctioned strength remain to be filled. We, therefore, first direct that the existing vacancies in the subordinate Court at all levels should be filled, if possible, latest by 31st March, 2003, in all the States. The increase in the Judge strength to 50 Judges per 10 lakh people should be effected and implemented with the filling up of the posts in a phased manner to be determined and directed by the Union Ministry of Law, but this process should be completed and the increased vacancies and posts filled within a period of five years from today. Perhaps increasing the Judge strength by 10 per 10 lakh people every year could be one of the methods which may be adopted thereby completing the first stage within five years before embarking on further increase if necessary."*

B. Ramachandra Rao Case

A question of far-reaching constitutional implication was raised before a seven-Judge bench in *P. Ramachandra Rao* v. *State of Karnataka*.[10] The following observations made by this bench show the anguish of the court:

> *"A perception of the cause for delay at the trial and in conclusion of criminal proceedings is necessary so as to appreciate whether setting up bars of limitation entailing termination of trial or proceedings can be justified. The root cause for delay in dispensation of justice in our country is poor judge-population ratio. Law Commission of India in its 120th report on man power planning in Judiciary (July 1987), based on its survey, regretted that in spite of Article 39A added as a major*

Directive Principle in the Constitution by 42nd amendment (1976), obliging the State to secure such operation of legal system as it promotes justice and to ensure that opportunities for securing justice are not denied to any citizen. Several reorganization proposals in the field of administration of justice in India have been basically patch work, ad hoc and unsystematic solutions to the problem. The judge-population-ratio in India (based on 1971 census) was only 10.5 judges per million population while such ratio was 41.6 in Australia, 50.9 in England, 75.2 in Canada and 107 in Unites States. The Law Commission suggested that India

required 107 judges per million of Indian population; however, to begin with the judge strength needed to be raised to five-fold, i.e. 50 judges per million population in a period of five years but in any case, not going beyond ten years. Touch of said sarcasm is difficult to hide when the Law Commission observed (in its 120th report, ibid) that adequate reorganization of the Indian Judiciary is at the one and at the same time everybody's concern and, therefore, nobody's concern."

C. Brij Mohan Case

One of the most repeatedly debated issues concerning the judicial workforce once again came under scrutiny in *Brij Mohan Lal* v. *Union of India*.[11] The Bench noted that, in order to deal with long pending cases especially the sessions cases, the (Eleventh) Finance Commission allocated Rs. 502.90 crores for setting up of 1734 Courts in various States. Considering the fact that allocation of funds mandated a time bound utilization within a period of five years, the bench directed the State Governments to take necessary steps.

The various aspects of the scheme of Fast Track Courts (FTC) and its implementation were discussed in this case. The recommendations of the Finance Commission to consider retired judges for a limited period for the disposal of pending cases was also challenged in various high courts on the ground that there is no constitutional approval for re-employment of retired judges. However, a suggestion was made to engage eligible members of the Bar instead of retired judges. Infrastructural deficiency, as it was highlighted another impediment to make this scheme a reality.

The Supreme Court rejecting the contentions of counsel approved and allowed the scheme of FTCs initially contemplated for a limited period of five years - extended and continued in force under court's directions in *Brij Mohan Lal* v. *Union of India*,[12] and *Madhumita Das* v. *State of Orissa*.[13] The Central Government however, ultimately took a decision not to finance the FTCs Scheme beyond 30th March 2011. Some States continued with FTC Scheme, while some decided to discontinue it, citing the non-availability of funds.

The Supreme Court while dealing primarily with Fast Track Courts and the absorption and regularization of judges appointed to these courts on ad

hoc basis, touched upon many constitutional and policy questions of high public importance. The Court thus observed that:

"It is, thus, clear that it is the constitutional duty of this Court to ensure

maintenance of the independence of Judiciary as well as the effectiveness of the Justice Delivery System in the country. The data and statistics placed on record, of which this Court can even otherwise take judicial notice, show that certain and effective measures are required to be taken by the State Governments to bring down the pendency of cases in the lower Courts. It necessarily implies that the Government should not frame any policies or do any acts which shall derogate from the very ethos of the stated basic principles of judicial independence. If the policy decision of the State is likely to prove counter-productive and increase the pendency of cases, thereby limiting the right to fair and expeditious trial to the litigants in this country, it will be tantamount to infringement of their basic rights and constitutional protections. Thus, we have no hesitation in holding that in these cases, the Court could issue a mandamus. The extent of such power, we shall discuss shortly hereinafter."

The rising population, prosperity and awareness about their rights tremendously increased the quantum of civil and criminal litigation in the country. Empirical studies supply substantial evidence that higher litigation rates are natural consequence of economic development and improved human well-being.[14] But, there is no corresponding increase in strength of judges and judicial infrastructure. It is therefore essential to prepare a systematic plan by all the governments of state and the union to deal with already pending cases and avoid further piling of new cases. Speedy disposal of existing pendency is naturally the primary concern with concurrently increasing the cadre strength. The court directed the Union Government to ensure funds in a scheduled manner and without any delay as allocated by 13th Finance Commission or re-allocate if necessary to give effect to the directions of this court. Direction was also made to create an additional 10 percent of posts in the existing cadre, the burden of which is to be borne by Centre and states equally.[15]

D. Malik Mazhar Sultan Case

In a special leave petition pertaining to the recruitment of Civil Judge (Jr. Div.) under U.P. Judicial Service Rules 2001, a Bench of Supreme Court in *Malik Mazhar Sultan* v. *U.P. Public Service Commission*[16] cautioned the government for their inaction in relation to timely filling up the vacant positions of judicial officers:

"The non-filling of vacancies for long not only results in the avoidable litigation but also results in creeping of frustration in the candidates. Further, non-filling of vacancies for a long time, deprives the people of the services of the Judicial Officers. This is one of the reasons of huge pendency of cases in the courts. It is absolutely necessary to evolve a mechanism to speedily determine and fill vacancies of Judges at all levels. For this purpose, timely steps are required to be taken for determination of vacancies, issue of advertisement, conducting examinations, interviews, declaration of the final results and issue of orders of appointments. For all these and other steps, if any, it is necessary to provide for fixed time schedule so that the system works automatically and there is no delay in filling up of vacancies".[17]

The court further directed governments of State and UTs and also the High Courts to prepare a time-schedule for timely recruitment of judicial officers so that vacancies are timely filled in each State every year and submit the plan within three months.

E. Imtiyaz Ahmad Case

Questions of serious magnitude cropped up in *Imtiyaz Ahmad* v. *State of U.P.*[18] which led to appoint, the then Solicitor General of India, Mr. Gopal Subramaniam as Amicus. This court also directed all the Registrars General of High Courts to submit a report on the status of pending cases. The Court, upon a detailed consideration of the enormous pendency of cases in several High Courts, directed the Law Commission of India, to commence a serious inquiry and submit its report in relation to the following issues:

(I). To develop a rational and scientific definition of pendency, arrear and delay and the instantaneous measures required to be taken for speedy disposal of cases, elimination of existing arrears and

reduction of costs without compromising the quality component of justice.

(II). To make specific recommendations with respect to each State after going through a systematic consultative process with all the stakeholders including the Bar.

The court also directed that Commission will take all possible help form the Central and State Governments and accordingly Governments were directed to render all possible support to the Commission. The court desired that Commission will submit its report within six months from the date of this order.

In compliance, the Law Commission submitted its 245th Report in 2014. To calculate the judge strength in subordinate judiciary, it adopted the rate of disposal method instead of Ideal case-load method, Time-based method, judge-population method and judge-Institution ratio method. The report recommended that that:

> *"the system requires a massive influx of judicial resources in order to dispose of the backlog and keep pace with current filings. The data indicates the need for taking urgent measures for increasing judge strength in order to ensure timely justice and facilitate access to justice for all sections of society."*[19]

Since then there has been no clear and forth right statement from the Executive that it will comply with the Law Commission's Report. On Chief Justice of India Justice T.S. Thakur publicly wept before the Prime Minister in a function at Vigyan Bhawan, Delhi, pleading that the Union Government issue the notifications for filling up the vacancies in the Supreme Court as the decisions of the Supreme Court Collegium. Meanwhile other administrative steps, in cooperation with the Union Government, have been taken in an attempt to be regularly informed of arrears. On this basis various management systems have been put in place from the Supreme Court to the district court. The last input so far has the Supreme Court's push to digitization of court records and an integrated e-system for paperless courts. We elucidate these developments.

IV. THE NATIONAL COURT MANAGEMENT SYSTEM (NCMS)

An imperative need for a comprehensive National Court Management Systems *was* recognized to improve the quality, receptiveness and timeliness of justice delivery system. In furtherance of this, the Chief Justice of India in consultation with Ministry

of Law and Justice, directed to establish National Court Management Systems (NCMS) [20] with following mandate:[21]

(1) To prepare a National Framework of Court Excellence (NFCE) to address the issues of quality, timeliness and responsiveness and to set measurable performance standards for Indian courts;

(2) To devise a system for monitoring and enhancing the performance parameters established in the NFCE;

(3) To develop a user-friendly scheme of Case Management;

(4) To develop a common national platform viz. National System of Judicial Statistics (NSJS), for recording and preserving complete judicial statistics of the country;

(5) To prepare a systematic five-year plan for individual court development and overall future development of the Indian judiciary; and

(6) To develop a Human Resource Development Policy and mechanism for selection and training of subordinate courts judges.

With the pendency exceeding three crores, the Indian judiciary is faced with a serious problem of clearing the backlog. Causes of delay and finding out solutions to clear as many cases as expeditiously as possible are one of the most important agendas of NCMS. The Supreme Court *vide* order dated 20.08.14 in *Imtiyaz Ahmad* v. *State of U.P.*[22] directed the NCMS Committee to study the 245th Law Commission Report and file their recommendations. According to NCMS while the number of judges or courts has expanded six-fold, the number of cases has gone up 12-fold in the last three decades. The NCMS in its study observed that:

> *"Judicial system is set to continue to expand significantly over the next three decades, rising, by the most conservative estimate, to at least about 15 crores of cases requiring at least some 75,000 Courts/Judges. Human Resource Development, therefore, is at the core of judicial reforms,*

both as an end and as a means of attaining other reform objectives."[23]

The NCMS in its report has reasoned for a scientific method to fix the judicial strength in Subordinate Judiciary based on total number of judicial hours required for disposing the case load in each court as it is done in case of High Courts. The method though entails data for calculating required judicial hours. However, as an interim measure, the NCMS Committee recommended calculation of additional judge-strength constructed on Unit System. It suggested that when the annual total Units required to be disposed of exceeds 150% of the disposal norm for a "very good performance" of a Judge, a new court is required. The work of consolidating the diverse unit system of the subordinate courts, in terms of the systems of each High Court for superintending the subordinate courts, is yet to be completed, especially that of creating a uniform unit system for all the subordinate courts.

V. ADMINISTRATIVE REFORMS

Consistent efforts have been made year after year by the courts across the country in taking justice delivery closer to the people. These measures included making the judicial services mobile, by way of organizing Lok Adalats. This led to an ease of access to justice to a great extent. Such efforts are continuing with manifold improvements in different parts of the country. Today the Supreme Court manages with the High Courts, a countrywide system of legal services, right down till the villages, to provide access to justice to those who cannot afford it at market rates. The Supreme Court

managed National Legal Services Authority (NALSA) has also developed a national programme of Preventive and Strategic Legal Aid based or bare foot law helpers called para-legals.

A. The Advent of Information Technology

As we arrived in the third millennium, the Industrial Revolution that commenced three centuries ago, has provided way to earth shaking Information Age. It has revolutionized our working culture. How to work, how to communicate and how to stock and retrieve information have been transformed prodigiously. But, when we assess and compare our work with the champions of information technology, we find ourselves still in the age of infancy. As aptly remarked by Jean-Francois Rischard:

> "*...the plummeting costs of communicating and computing present enormous opportunities for developing and developed countries alike, to do things, cheaper, differently. This is the heart of the information revolution, a tectonic shift that differs from previous economic breakpoints because it is not about transforming energy or matter, but about manipulating, transporting and storing information and knowledge".*[24]

Transport and communication, education, manufacturing, banking, trade and commerce, hospitality, medical aid, governance and so forth, virtually every kind of goods and services industry is setting new milestones, increasing its outreach, enhancing its performance and also accomplishing its targets with the use of apposite technology suiting their needs and assessment. There seems no reason for judiciary to not embrace the new way of life made easier, simpler and performance oriented by technology. It must ensure the advanced use of appropriate technology in boosting the timely, inexpensive and effective delivery of justice services to the people of our country.

B. I-T and Indian Courts

The Supreme Court has steadily sustained its efforts towards the little Indian's problem of arrears delaying justice. Accordingly, it has focused its attention on the judge-population ratio as a factor contributing delay and arrears. However, it has also been concerned with the issue of access to justice by the rural population. The right to information movement led by advocates has resulted in display on the Supreme Court website of the annual asset declaration by judges. This psychological push to ensure probity has been taken further by the e-committee of the Supreme Court making facts and figures about several aspects of the court available to the public. The electronic pressure for transparent accountability of the judiciary continues concerning the court's administration by the Chief Justice of India and the digitization process. In this context the constitution bench of the Supreme Court has marked a significant advancement by stating that access to justice is a right guaranteed under article 14 of the constitution of India. It has declared that the fundamental right to equality before the law and the equal protection of the laws is available *"in relation to proceeding before courts and tribunals and adjudicatory for a where law is applied and justice administered."* On this basis the court has declared that even the inadequacy of adjudicatory mechanism negates Article 14 and reduces it to a mere "*teasing illusion*".[25]

C. ICT To Ease Litigation

Following the example of Singapore and several Latin American Countries, the Supreme Court has set in motion the steps required for a paperless court. The pace of change in this direction depends upon several factors like the capacity of the high courts to digitize their recods so that there will no need to send massive paper files to the Supreme Court for every appeal. Each high court has a different profile of its problems in this regard. One of the key problems vis-à-vis the Supreme Court will be standardization of data and its formats for communication to the Supreme Court. There will be issues of inter-connectivity and inter-operability. Above all, the capacity and capability of the litigants in each high court to access and use the electronic system will vary hence, simply having ICT will not be enough. It may become essential to undertake programmes of litigant education or training to use the electronic kiosks installed in each high court for effective information and access to justice. The Supreme Court is considering a possible TV channel and starting a pilot project for live streaming of its hearings from a few courts. When this happens, the Supreme Court would have established through ICT a direct connection with its litigant population specifically and the citizens in general.

D. Judiciary & ICT---Challenges

It is obvious that incorporating ICT in the judicial system is going to be a disruptive exercise. Many in the judicial administration could see it as a threat to their job. The changes that ICT requires in the methods of work by the advocates could raise protests and bring resistance for using ICT in court administrant and judicial process. The transparency brought about by ICT will do away with the monopoly of the advocates and his clerk on information concerning the case of a litigant. Many would feel that ICT will render them useless or sharply reduce their value for the litigants. ICT is likely to compel advocacy towards a greater research in drafting and preparing the briefs of the courts. The normal excuses of a file being misplaced, documents not being available or that judgment order could not be found will probably not be available anymore to the members of the bar. In short, ICT will demand advocates to be up to date on the law and to be on the toes for the hearing of their cases. But before these benefits of ICT can be reaped, a strategy may have to be prepared by the courts for meeting the normal resistance to change by traditional cultures of the bench and the bar which have been in place for so long. The new online culture will demand a tech-savvy bench and bar. Whether ICT will enhance justice for the citizen, therefore depends on how it disruptions is managed.

E. ICT & the Social Context

A national judicial technology programme can succeed only if it is accompanied by a national technology justice programme. If social context of introducing technology in the judicial process is one of increasing inequality of opportunities of livelihood and wealth, then ICT is likely to only increase such inequality. This danger in the use of ICT from its social context is a reality because of the sharply increasing digital gap in India. This will open a new frontier for judicial consideration and pronouncement,

namely digital inequality. If justice social economic and political becomes digitally concentrated in the hand of a few and the marginalized sections of the citizens becomes more marginalized then digital inequality will in itself become a source of denial of a life of dignity. Hence, the successful introduction of ICT in the courts and adjudicatory bodies depends upon political and executive action to prevent the rise and growth of digital inequality.

VI. SUPREME COURT'S POLICY & ACTION ON E-GOVERNANCE

Since 2005, the e-Committee of the Supreme Court has been working to customize ICT for the courts in India. The e-Courts project of the Supreme Court is being implemented since 2007 as a mission mode project. It is part of the National e-Governance Plan (NeGP), in terms of which, a National Policy and Action Plan for Implementation of ICT in Indian Judiciary has been conceptualized. Today, the Supreme Court and High Courts are linked to district courts and many of the administrative services are being provided in terms of this project.[26]

A. National Portal

The entire project is data based. This has been possible due to the establishment of the NCMS set up at the Supreme Court and the SCMS set up in each high court. Accordingly, the autonomy of the high courts under the Constitution has been preserved and the federal system of the judicial administration has been continued even as the district court provides data provides to high court and the high courts supply data to the Supreme Court. On August 2013, the then Chief Justice of India launched the *e-Courts National portal of the e-Courts project*. This is how the National Judicial Data Grid (NJDG) emerged. Today, with a single click, data about the courts in India is available throughout the country to every citizen, administrator and adjudicator. More than 8000 courts and more than 2.5

crore pending and disposed cases are part of this Grid Portal, ecourts.gov.in. the portal provides case statues, cause list online. More than 10 lakhs hits per day demonstrates the usefulness of this portal.[27]

B. Digital Courts

With 400 District Courts having launched their websites, the Supreme Court has reiterated the needs for courts managers and probably a revised plan for hiring such managers would be put into operation. The training of judicial officers (more than 15000), court's staff (more than 4500) and the positioning of master trainers and system administrators (more than 220) has been going on simultaneously. The operating system used is that use of *Ubuntu-Linux Operating* System.

C. Process-Re-Engineering

The use of ICT for putting into place a full-fledged case information system for court management and public consumption necessitates a complete reworking of the internal administration and data flow of the courts. Accordingly, all High Courts have set up process re-engineering committees and with the help of the NIC Pune, a *Unified National Core Case Information System Software* has been developed. This common software has now been incorporated in district and taluka courts. The key to the success of process re-engineering to enable access to justice for public is data entry. The court's data must be generated within the time required by the process and put across regularly on the websites of the courts.

Needless to say, there are critical pre-conditions for the successful operation in the public interest of technology in the courts. Some of these pre-conditions are

availability of adequate qualitative and quantitative manpower, infrastructure, electricity, network connectivity and optimum and increasing automation of case work flow. Even when all this available there will be no substitute for the sincerity and integrity of those managing and running this system.[28]

D. New Website of Supreme Court

The Supreme Court in a bid to save the environment launched the integrated case management system (ICMIS) on 10th May 2017 in presence of the Prime Minister Shri Narendra Modi. The newly launched website would henceforth put to rest many such inabilities which acted as handicap of the litigants awaiting regular update about their case. The new website has been

especially designed to be highly interactive. It can be said to be virtual help desk that would prove to be vital in making flow information available to the litigants by just a click of a mouse. Given, India is a rising smart-phone generation today, this new website is user friendly and would be handy to be accessed from any smart-phone, I-pad, or similar devices. This is an indigenous effort of the Supreme Court to generate a mechanism of paperless courts. This would enhance the capacity of the young India and the future generations manifold in reaching out to the highest court of justice timely and with least procedural hassle.

VII. JUDICIAL CREDIBILITY—CUSTOMIZING ICT

Public faith in judicial institutions and the judiciary is in direct proportion to the extent that judicial pronouncements are actually enforced. It is this credibility that ensures the vital element of judicial independence.

Justice P.N. Bhagwati in this dissenting note[29] observed in *Union of India* v. *Sankalchand Himatlal Sheth:*[30]

> *"The independence of judiciary is a fighting faith of our Constitution. Fearless justice is a cardinal creed of our founding document.... Justice, as pointed out by this Court in* Samsher Singh *v.* State of Punjab[31] *can become 'fearless and free only if institutional immunity and autonomy are guaranteed".*

Justice Bhagwati re-affirmed the worth of judicial independence again in *S.P. Gupta case*:[32]

> *"The concept of independence of the judiciary is noble concept which inspires the constitutional scheme and constitutes the foundation on which rests the edifice of our democratic polity. If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the rule of law and under the Constitution, it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the rule of law meaningful and effective.... But it is necessary to remind ourselves that the concept of independence of the judiciary is not limited only to independence from executive pressure or influence but it is a*

much wider concept which takes within its sweep independence from many other pressures and prejudices".

This idea of ensuring the independence of judiciary and restricting the rising

interference of government in the appointment and transfer of judges led the filing of several petitions in the form of public interest litigation (PIL) in different High Courts and later transferred to the Supreme Court.[33] These petitions raised vital questions of constitutional significance distressing the independence of the judiciary. The Supreme Court's seven-judge Bench in *S.P. Gupta* v. *Union of India*[34] unanimously agreed[35] with the view of Bench in *Union of India* v. *Sankalchand Himatlal Sheth* with reference to the meaning of the term *'consultation'*.[36] The Bench laid down that the word 'consultation' in Article 124(2)[37] has the identical meaning as in Article 217[38] and Article 222[39] of the Constitution. The decision of the Government can be tested by the courts only on the ground of '*mala fide*' and irrelevant considerations. In effect, the ultimate power of appointment of judges of the constitutional courts is vested in the Union Government. This judgment received severe criticisms by bar and bench and it was publicly stated that the Supreme Court has relinquished its power by deciding that power of appointment and transfer of judges of constitutional courts is exclusively vested in the Union Executive and the Supreme Court and the High Courts have only a consultative role.

This issue led the creation of a nine-judge bench famously known as *Second Judges Transfer case*[40]. This petition revolved around two major issues: first, reconsideration of the *S.P. Gupta case* contending that in the matter of appointments to the Supreme Court and the High Courts and transfers of the High Court Judges, Chief Justice has primacy, with the executive having the role of merely making the appointments and transfers in accordance with the opinion of the Chief Justice of India. This was necessary to ensure the judicial independence, and second; the matter of fixation of the judge-strength under Article 216 is justiciable. The majority judgment was delivered by Justice J.S. Verma while Justice A.M. Ahmadi and Justice M.M. Punchhi delivered the minority opinion.

The National Judicial Appointments Commission (NJAC) Act[41] was devised to substitute the two-decade old collegium-system. It was

challenged and a Constitutional Bench of the Supreme Court in *Supreme Court Advocates-on-Record Assn.* v. *Union of India*[42] while enabling the collegium system to continue, struck down the NJAC Act and declared the 99th Amendment to the Constitution violative of the basic structure of the Constitution. But interestingly, the bench made a confession that all is not going well in the collegium system. The Supreme Court asked the government to work coordinately in order to improve the functioning of collegium system. The majority concluded this judgment:[43]

> *"Article 124A constitutes the edifice of the Constitution (99th Amendment) Act, 2014. The striking down of Article 124A would automatically lead to the undoing of the amendments made to Articles 124, 124B, 124C, 127, 128, 217, 222, 224, 224A and 231. This, for the simple reason, that the latter Articles are sustainable only if Article 124A is upheld. Article 124A (1) provides for the constitution and the composition of the National Judicial Appointments Commission (NJAC). Its perusal reveals that it is composed of the following: (a) the Chief Justice of India, Chairperson, ex officio; (b) two other senior Judges of Supreme Court, next to the Chief Justice of India — Members, ex officio; (c) the Union Minister in charge of Law and Justice — Member, ex officio; (d) two eminent persons, to be nominated — Members. If the inclusion of anyone of the Members of the NJAC is held to be unconstitutional, Article 124A will be rendered nugatory in its entirety. While adjudicating upon the merits of the submissions advanced at the hands of the*

learned counsel for the rival parties, I have arrived at the conclusion, that clauses (a) and (b) of Article 124A(1) do not provide an adequate representation, to the judicial component in the NJAC, clauses (a) and (b) of Article 124A(1) are insufficient to preserve the primacy of the judiciary, in the matter of selection and appointment of Judges, to the higher judiciary (as also transfer of Chief Justices and Judges, from one High Court to another). The same are accordingly, violative of the principle of 'independence of the judiciary'."

The bench further elaborates:

"that clause (c) of Article 124 A(1) is ultra-vires the provisions of the Constitution, because of the inclusion of the

Union Minister in charge of Law and Justice as an ex officio Member of the NJAC. Clause (c) of Article 124A (1), in my view, impinges upon the principles of "independence of the judiciary", as well as, "separation of powers". It has also been concluded by me, that clause (d) of Article 124A (1) which provides for the inclusion of two "eminent persons" as Members of the NJAC is ultra vires the provisions of the Constitution, for a variety of reasons. The same has also been held as violative of the "basic structure" of the Constitution. In the above view of the matter, I am of the considered view, that all the clauses (a) to (d) of Article 124 A (1) are liable to be set aside. The same are, accordingly struck down. In view of the striking down of Article 124A (1), the entire Constitution (99th Amendment) Act, 2014 is liable to be set aside. The same is accordingly hereby struck down in its entirety, as being ultra vires the provisions of the Constitution".

VIII. CONCLUSION

Hence to retain judicial credibility and independence the Supreme Court needs to refine its approach by identifying the classes of litigants and tailoring its information technology according to their respective needs. There is a vast diversity of litigants in the courts in terms of class, caste, literacy, physical and mental well-being. A one size fits all approach to technology in courts without paying attention to the litigant context of the respective courts could bring the technology a bad name. That would only then delay further the use of technology for ensuring access to justice through the courts.

A transparent and effective mechanism of dispute resolution involving judges and lawyers committed to the cause of justice is hallmark of every modern constitutional democracy. It has to consistently prepare itself for technologically driven and rapidly changing world. There is not even an iota of doubt that technology can play a phenomenal role in improving government-citizen relationship and make it more communicative and participatory, but conditions for using technology must be conducive. Short-term and stop-gap arrangements may improve the efficiency in short term but an intelligible national plan with long term political commitment will go a long way in ensuring constitutional equality and happiness.

It must also be remembered that all court-centered ICT processes are only meant to ease the business of litigation. But that then may result in court arrears never ending. That surely is not the aim. But then that may

inevitably happen unless serious attention, money and professionalism are directed to

preventive justice. In this context access to justice through legal aid needs another approach to the use of information technology, while ensuring that technology itself does not become a bar to such access. The challenge of all new technology is its relevance and use for whom, how and at what cost. These, unfortunately, remain unanswered in the information technology and access to justice documents of the Supreme Court, which spearheads the use and incorporation of technology in the court and the legal aid services throughout India.

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[1] Arts. 36-51, Constitution of India.

[2] Arts. 2-35, Constitution of India.

[3] *Francis Coralie Mullin* v. *UT of Delhi*, (1981) 1 SCC 608 : AIR 1981 SC 746.

[4] According to Credit Suisse Research Institute, 2017, the richest 10% of Indians own 80% of India's wealth. Between 1988 and 2011 the incomes of the poorest 10% Indians rose by Rs 2000 or 1% per year but the income of the riches during this period increased by almost Rs 40,000 or by 25% per year.

[5] The National Legal Services Authority provides free legal aid and runs many legal awareness programmes through its wide network of 20,134 legal services clinics in villages, prisons and other communities. More than 5,00,000 (5 lakh) people avail the services of these facilities every year. The Ministry of Law and Justice runs special programs for people of the North Eastern Region of the country through legal literacy programmes for over 700 villages. Training of para-legal volunteers and village level entrepreneurs are being done in order to reach out to the masses.

[6] Subordinates Courts of India: A Report on Access to Justice, 2016, (eds.) Krishan Mahajan, Yogesh Pratap Singh, Nachiketa Mittal & Ajay Agrawal, Centre for Research and Planning, Supreme Court of India (2016).

[7] *Anita Kushwaha* v. *Pushap Sudan*, (2016) 8 SCC 509.

[8] (2002) 4 SCC 247 : AIR 2002 SC 1752.

[9] *Ibid.*

[10] (2002) 4 SCC 578.

[11] (2012) 6 SCC 502.

[12] (2002) 5 SCC 1.

[13] (2008) 6 SCC 731.

[14] Sital Kalantry, Theodore Eisenberg & Nick Robinson, "Litigation as a Measure of Well-Being", vol. 62:247 DePaul Law Review, p. 248 (2013).

[15] *Ibid.*

[16] (2006) 9 SCC 507.

[17] *Ibid.*

[18] (2012) 2 SCC 688.

[19] *See*, the Law Commission 245th Report 2014.

[20] The NCMS was established by an order dated 2.5.2012.

[21] *See* National Court Management System: Policy & Action Plan, Supreme Court of India. Available at http://www.sci.nic.in/ncmspap.pdf.

[22] (2012) 2 SCC 688.

[23] *See* National Court Management System: Policy & Action Plan, Supreme Court of India. Available at http://www.sci.nic.in/ncmspap.pdf.

[24] Eduardo Talero & Philip Gaudette, *Harnessing Information for Development: A Proposal for a World Bank Group Strategy*, Bank Discussion Papers, 313, April 1996.

[25] *See Anita Kushwaha* v. *Pushap Sudan*, (2016) 8 SCC 509.

[26] *See* Policy and Action Plan Document — Phase II of the E-Courts Project. Available at http://supremecourtofindia.nic.in/ecommittee/PolicyActionPlanDocument-PhaseII-approved-08012014-indexed_Sign.pdf.

[27] *Ibid.*

[28] *Ibid.*

[29] For himself and Justice N.L. Untwalia.

[30] (1977) 4 SCC 193.

[31] (1974) 2 SCC 831.

[32] *S.P. Gupta* v. *Union of India*, 1981 Supp SCC 87.

[33] *See* Art. 139-A, Constitution of India.

[34] *S.P. Gupta* v. *Union of India*, 1981 Supp SCC 87 : AIR 1982 SC 149.

[35] Popularly known as *First Judges Transfer case*.

[36] (1977) 4 SCC 193 : AIR 1977 SC 2328.

[37] *See* Art. 124(2), Constitution of India.

[38] *See* Art. 217, Constitution of India.

[39] Art. 222, Constitution of India.

[40] *Supreme Court Advocates-on-Record Assn.* v. *Union of India*, (1993) 4 SCC 441.

[41] *See* the 99th Constitutional Amendment Act.

[42] (2016) 5 SCC 1.

[43] Paras 254-256 of the judgment.