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C7.1 APPRAISAL:

India adopts constitutional practices by Rule of law. Be it legislative, executive or judiciary - all are creatures of the Constitution of India, 1950. In this democratic setup, the judiciary is an important umpire that resolves disputes within the boundaries laid down by a written Constitution and the distribution of constitutional power between different organs, namely, Parliament, State Legislatives and Executive.

An independent judiciary is expected by every citizen of the country. It is not only a fundamental right but is also a part of the basic structure of our constitution. Judicial independence and Judicial accountability are also taken care of under the Constitution. The federal setup embraced by Indian Republic has so far less intra and inter-branch disputes in exercise of Sovereignty. The Constitution has elaborate mechanism for distribution of legislative powers. Inter-branch relations between legislative / executive on one side and Judiciary on the other side. In the area of amendment of Constitution, unpleasantness is expressed between Judiciary and other two branches. When Judiciary which is accountable to people expressed fundamental rights - attitude in cases challenging parliamentary amendments to the Constitution, the legislative, largely controlled by executive came forward with amendments either to nullify the court judgements or deny the legitimate due to the judges. With the exception in this area, by and large, the independence of judiciary in India is accepted and practised.

Inspite of settled principles of judicial accountability and stringent impeachment procedure adumbrated in the constitution, dispensing justice without fear or favour, affection or ill will, judges are accounted for their conduct in their trust to the founder of the society- Judicial
independence and accountability are inseparable in India. They co-exist and the former never ignore the latter either in its relations with other two branches of the State or in discharging its functions as the official arbiter between competing rights. In deep, the apex judiciary in India has also adopted activist innovations like legal-aids to the down trodden people of the society and public interest litigation (PIL) to help millions of these in low visibility area. The method of historical and purpositive interpretation of Constitution divorced from textual interpretation is another innovation which help in discharging its accountable role.

In India, judiciary also is unified institution though administrative responsibilities are distributed. The Chief Justice of India is parens patrias of Indian Judiciary. Like Lord Chancellor of Great Britain, he protects all the persons in judicial office, whatever the hierarchical level be. Like in all other jurisdictions, the judiciary and judges are expected to be impartial, indifferent and independent in judging the cause that is brought before them.

All the judges in the judiciary in deed represent judicial branch of the State entrusted with judicial functions. They are not employees of the State holding office during the pleasures of President/ Governor of the State as the case may be. The judiciary up holds rule of law and prevent the State from violating the rights of the individuals and compelling the State to discharge its duties. It is part of their accountability factor that they stand as impenetrable bulwark against every assumption of power. It is founding faith of the constitution of India. It is part of their duty to independence of judiciary and by being wedded to principles of constitution, rule of law and justice, they acknowledge their accountability to the people and constitution.
As a unified institution charged with dispensing justice, it is part of their duty that judges as individuals and as part of a monolithic organ find ways and means for delivering justice in least possible time at lesser expense. Time-consuming and enormously high cost solution to any legal problem is worse than the legal problem. It is in this area that we are concerned with financial independence and fiscal autonomy of the judiciary.

Independence of judiciary and rule of law are the basic features of the constitution. It can not be abrogated even by constitutional amendments. When one contemplates independence of judiciary in a narrow sense, deals with independence and impartiality of individual judges in relation to the appointment, tenure, payment of salaries and procedure for removal from office. In a broader sense at second level, the concept is about institutional independence of the judiciary. Accountability of the judges (Judiciary) is essentially in relation to independence of individual judges where as financial or fiscal autonomy is connected with institutional independence of the judiciary.

The appointment procedure to higher judiciary at State level and Union level are independent and are free from executive control as per Article 124 and Article 217 of the constitution. Though textually Constitution is not explicit that the judiciary has final say in appointment to higher judiciary, by reason of Supreme Court rulings, doctrine of primary of Chief Justice of India and his senior colleagues is in place as per Supreme Court Advocates on Record Association v. Union of India\(^{(1)}\), ruling and in Re: Presidential reference \(^{(2)}\), the doctrine of primacy of CJI envisages that CJI shall consult four senior most associate judges of Supreme Court in case of appointment to Supreme Court and two senior most associate judges of Supreme Court in case of appointment to High Court.
The judiciary and the judges are accountable to people. A judge of the superior judiciary is expected to adopt certain non-binding values formulated as Restatement of Values of Judicial Life considered in the Full court meeting of the Supreme Court on 7th May 1997 and adopted in Chief Justices’ conference in December 1999 for due observance by all judges of the Country. It is a 16 point standard conduct for judges by way of rules and self-imposed discipline. Steps have also been taken by laying down an in-house procedure for remedial action.

The Law Ministry of Union of India has announced that the Judges (Inquiry) Act, 1968 would be replaced by another innovated Judges Act, 2010. The Bill is yet to be introduced whereby and where under inquiry against the judges would be conducted by a Judicial Council which consists of Supreme Court Judges and Chief Justices of High Courts. In removal of the judges from their office, judges are immune from being subjected to unfounded allegations and can not be removed from Office except by a special parliamentary procedure for impeachment, as mentioned in Article 124(4) and Article 217(1)(b) of Constitution of India.

The conditions of service of judges while in Office can not be varied during the tenure nor their salaries can be reduced. Until their salaries are determined by or under a law made by Parliament, their remuneration or allowances are as specified in the II schedule of Constitution of India as per Articles 125 and 221 of the constitution.

The powers to appoint officers and servants of the Supreme Court absolutely vests in the CJI and in case of High Court, the Chief Justice as per Article 146 and Article 229 of Constitution of India.
The plenary power to control the judiciary and the judges at District level or still lower level of administration vests in the State High Court. This power embraces all aspects of the conditions of service of subordinate judiciary and the officers and servants working in the District level including appointment, transfer and disciplinary action enumerated in Article 233(7) and Article 237(8) of Constitution.

The District Judiciary consists of a Judicial service and a Higher Judicial service. Selection of Judicial Officers in judicial service is made after conducting a written test followed by an interview. The written test is conducted by the State Public Service Commission (itself a constitutional body) or by the High Court directly. Even where a Public Service Commission conducts a written test, the High Court is associated with the process and a Judge of the High Court (nominated by the Chief Justice) conducts the final interview and it is his opinion that usually prevails. In the event, a High Court decides to hold selection process itself, it conducts the written test as well as the interview. Selection to Higher Judicial Service in terms of Article 233 of constitution of India is also conducted by the High Court. The powers to make rules to regulate service conditions of officers and servants is vested in the CJI or the CJ of the High Court as the case may be. But the rules relating to salaries, allowances or pensions require the approval of the President of India in case of Supreme Court and the approval of the Governor in case of a High Court.

The Constitution has provisions which control and regulate Union (Central Government) and the State (State Government). All taxes and money collected by the Union go into Consolidated Fund of India (CFI) or Consolidated Fund of State (CFS). Constitution provides for and declares that the withdrawal of money from C.F.I. or C.F.S. shall be regulated by law made by the Parliament or the State, as the case may be.
referred in Article 283 of the constitution. For this purpose, every fiscal 
year (from 1st April of current year to 31st March of succeeding year), the 
Union Executive Presents Budget or Annual Financial Statement to the 
Parliament and if approved fertilizes in to Finance Bill as per Article 
112(9) of the Constitution. Similar procedure is to be followed by the 
State as per Article 202(10) of the Constitution. These two provisions 
enumerate certain estimates of expenditure, which shall have to be 
embodied in the budget. These are charged upon CFI or CFS as the case 
may be.

In an effort to remove salaries of judges from the discretionary 
area of executive, Article 112(3)(d)(i)(11) of Constitution of India, 
requires that budget shall contain a provision for payment of salaries, 
allowances and pension to judges of Supreme Court of India. Article 
202(3)(d)(12), contain a provision for payment of salaries, allowances, 
pension of judges of High Court.

In so far as the judiciary at the grass root level is concerned, the 
budget is prepared by various unit heads, consolidated at the State level 
and presented to the State legislature. The Budget Manual which is a 
compilation of all executive instructions from time to time, provides for 
this and treats the High Court at the State level as one of the many 
departments under the State Government. Every head of the Department 
(Treasury) to prepare the annual financial statement. So is the court. 
More often than not, the demands of judiciary are not completely met.

This is not to suggest that the judiciary in India is in a financially 
precarious state. The Eleventh Finance Commission has sanctioned 
Rupees 502.90 Crores for creating Fast Track Courts for the period 2000-
2005 for speedy disposal of crime cases. Another Rupees 500 Crores has 
been sanctioned for extension of Fast Track Courts for the next five years
period (2006-2010) and Rupees 700 Crores during Tenth Plan was released by Government.

While it is true that judiciary can not expect an undue share of the finances as compared to certain other important items of governmental expenditure having higher priorities, the fact remains that the judiciary has not received in the last 50 years- even a reasonable proportion of what was due to it.

The CJI in case of Supreme Court and CJ in case of High Court have absolute powers in matters of conditions of service of officers and servants and the expenses of the court. But if any rules made by Chief Justice regarding salary, allowances, leave, transfer, pension etc., those require approval of President or Governor as the case may be under Article 146(2) or under Article 229(2) respectively.

In India, ordinarily, it is only the State which establishes the court and regulate by law and conditions of service of judicial officers other than High Court and Supreme Court Judges.

The Supreme Court ruled in B.S. Yadav v. State of Bihar and State of Bihar v. Balmukund Sah that Judiciary has no legislative powers to make rules governing the conditions of service of judicial officers.

Another important aspect is though the principles of judicial review in India have evolved to an advanced stage, in the scheme of constitution, such power does not enable the constitutional Courts like Supreme Court of India and High Courts of various states to issue Mandamous to legislature to make a law, much less to make Annual Financial Statement/ Budget in a given manner. In the State of Himachal
Pradesh v. Umed Ram\(^{15}\), it was held that the power to make financial bill authorizing the executive to appropriate consolidated fund of India is in the domain of the legislative branch. The Court can not impinge upon the field nor the Court impeach the judgement of the executive as to the priorities.

The judges are accountable to dispense speedy justice to all those aggrieved. This function can be discharged only when the judiciary has at his disposal either to meet the cost of infrastructure or for human resources and their training. The bulging court dockets hackle at the justice administration system rendering judicial endeavour difficult. This is one area where judicial reform is urgently needed. The constitutional text is silent as to what is the quantum of amount required year after year by the judiciary to achieve the norms in discharge of its functions.

The Judge-Population Ratio of 107 judges for one million population like in the UK and 147 judges for one million population like in the Germany do not compare well with judge-population ratio in India, which as present is one judge for one million population. It is a distant dream and rather illogical to have 13,000 judges in all and 13 judges per one million population in a country like India with more than one billion population.

In recent times and particularly after the decision of the Supreme Court in All India Judges Association v. Union of India \(^{16}\), judicial education of in-service judicial officers and fresh recruits has been taken up very seriously by all the High Courts by setting up Judicial Academies. The broad policy in continuous Judicial Education is to keep judicial officers up-to-date about the latest developments in judiciary. Attempts are being made to broad base the curriculum of judicial
academies to include education of district court staff who are also the stakeholders in justice delivery system and can support judicial reforms.

Access to justice is not merely superficial attendance in Court. It connotes access in letter and spirit. At the forefront in facilitating access to justice has been the Supreme Court that has not hesitated to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who were denied their basic human rights to whom freedom and liberty have no measuring as expressed in S.P. Gupta v. Union of India\(^{(17)}\). All courts in India, subject to judicial discipline and hierarchy of courts provide access to justice through an innovative technique of entering Public Interest Litigation (PIL). This is essentially intended to benefit the unprivileged, the larger number of deprived and disadvantaged people who have now been given a voice and have been activated. Any public spirited person can bring forth a case on their behalf before a High Court or Supreme Court, even though such a person is not seeking any relief for himself but agitating the case for the benefit of an interminate mass of people with a similar grievance. PIL has been seen as answering many of the problems thrown up by the formal legal system in providing access to justice. Any letter or even a telegram addressed to the court serves the purpose. The Court can in a given Court even investigate facts through other sources, such as by appointing an expert body as a fact-finding commission. Wherever necessary, the court appoints amicus curiae for assisting it.

Some practical measures that have been taken, of late in bringing about judicial reforms and to speed up the justice delivery system include introduction of Alternative Dispute Redressal (ADR) system, particularly mediation. The Parliament amended the code of Civil Procedure by inserting section 89 of the code of Civil Procedure as also order X, Rules-1A, 1B and 1C enabling the judicial officers, in the event, they are of the
opinion that the issues involved in a suit can be resolved by amicable settlement; refer the dispute for resolution through mediation, conciliation, arbitration and judicial settlement. The Supreme Court of India which upholding the validity of the said provisions, appointed a committee headed by Hon’ble Justice M.J. Rao, Chairman, Law Commission to suggest other and further amendments which may be necessary for speedy disposal of cases as also framing appropriate rules in regard to court management, case management, mediation and conciliation. Report of the said committee was submitted in three volumes and the same has been accepted by the Supreme Court. The High Courts have also directed to frame appropriate rules following the rules framed by the committee. The Supreme Court also directed the Central Government to consider the recommendations of the committee as regards payment to be made and expenses to be incurred in cases where the court compulsorily refers the matter for mediation and /or conciliation and if agreed, request the Planning Commission and Finance Commission to make specific financial allocation for the judiciary for including the expenses involved for mediation/ conciliation under section 89 of the Civil Procedure stated in Salem Advocates Bar Association v. Union of India (18). The Supreme Court further directed impact assessment to be made and budget prepared in financial memorandum to every bill.

Under the Leadership and Supervision of a committee constituted by the Supreme Court, a pilot project of implementation of mediation scheme has been initiated in the District Court at Delhi with effect from August 2003. This has so far been successful and yielded encouraging results. The Prime Minister of India in August 2003 unveiled a National Plan for Rupees 830 Crores, which is expected to deliver justice delivery system more responsive to the needs of the people. Through the medium of judicial education, better management practices are being introduced
in the functioning of the Courts and best practices the world over, are being encouraged for introduction in the judiciary, training of advocates in advocacy skills for better presentation of cases in courts is being encouraged and a systematic programme in this direction has been continuing for a couple of years.

The National Commission to review the working of the constitution has also considered the question of Finance Planning and Judicial Autonomy. The Commission had issued a detailed consultation paper for eliciting public opinion on financial autonomy for the judiciary. The commission, upon consideration of the responses, reached certain conclusions which are contained in the volume-II (Book-2) of the Report of the Commission. The judicial administration in the country is highlighted but suffers from deficiencies due to lack of proper planning and adequate financial support for establishing more courts and provide them with adequate infrastructure. For several decades the courts have not been provided with any funds under five year plans nor has the Finance Commission been making any separate provisions to serve the financial needs of courts.

While the courts never shun away from their duty of providing access to justice for the teeming millions of this country, it would not be incorrect to state that the objective would be impossible to achieve unless justice dispensation mechanism is reformed. There are two ways in which such reform can be achieved, (1) through changes at the structural level and (2) through changes at the operational level. Changes at the structural level challenge the very frame work itself. This requires an examination of the viability of the alternative frame works for dispensing justice. It might require an amendment to the constitution itself or various statues. On the other hand, changes at the operational level require one to work within the frame work trying to identify various ways of improving
the effectiveness of the legal system, discussed in the "Access to Justice and Judicial Reforms" by Justice S.B. Sinha\(^{(19)}\).

Perhaps the most important aspect of judicial reform in India has been the realizations that theoretical suggestions made over a period of time have not really made any difference. The need of the hour is to implement those ideas and experiments with improvements. This is the view that is gaining grounds and will, in a few years, give shape to the justice delivery system, making it more efficient, speedy and inexpensive so as to subserve the constitutional goals.

Reform can not generate immediate results. What is needed is a little more time and plenty of patience. Some of the reforms that have been initiated have already had a positive reaction and there is optimism that the next few years will see a transformation in the justice delivery system in India.

There is no punitive jurisdiction or alternate instrument of inquiry. No judgements being delivered points to an alarming failure, yet such judges get promotions or are elevated to the highest court. The collegiums would often seem to have not done any investigation before an appointment is made. The selection process is kept secret from the Bar, the Legislature and the People. Judges of the Supreme Court also share these failings because there is no code of conduct or performance commission with penal jurisprudence and jurisdiction. Some judges would seem to have no behavioural propriety and so many courts suffer from functional anarchy. Still they are final and by fiction infallible. Judges demand immunity and secrecy beyond the law and above all citizens, covered by iron curtain from revelation or disclosure. These facts constitute corrupt conduct which leaves them disqualified from administering socialist justice in a democratic republic.
With privatisation and globalisation, mega-corporations are competing for power, holding our wealth and bribing our executive. It is obligatory that our rules, executive, parliamentarian and judicative are scanned so that they can uphold the interest of the masses and the suppressed. These criteria apply to the judiciary in which power vests finally over the validity of the two other crucial instrumentalities. The judiciary, claiming counterfeit finality, with no one to question its constitutionality usurps even executive roles and challenges legislative autonomy.

The judicature has a sublime status and commands the reverence of the people which is a great tribute to this national institution. Necessarily, judges have the highest duty to the people of administering justice, based on fearless truth, moral rectitude and negation of addiction to power. Austerity is the essence of forensic parameters. Declaration of wealth and high code of conduct are binding principles. Higher education, professional ability, advanced technology and mega-factories and wealth belong to the rich and they control the country's resources, police power. If this superior class manages to gain judicial power too, Indian law is likely to be interpreted and adjudicated in favour of the creamy lawyer and robber sector. The weaker sector finds law to be its enemy if the instrument of law is in the hands of the higher class.

**Independence of judiciary may be said to consist of five elements:**

1) Independence from the legislature and executive (including independence from local governments) - this type of judicial independence is known as External Independence.

2) Independence from judicial colleagues and superiors – this is known as Internal Independence.

3) Independence from litigants, complainants, prosecutors, accused, witnesses and counsel.
4) Independence from society or groups thereof.
5) Personal Independence (Security of tenure and reasonable conditions of service and remuneration).

It may be useful to say on the independence from judicial colleagues and superiors and the one form society and group thereof, as these two types of judicial independence are more technical in character than the other three. Judicial independence will be incomplete if a judicial officer is not free from interference by his colleagues or superiors in discharge of his judicial functions. While his superiors are subject to the law entitled to give him administrative directions or guidance aimed at ensuring quick disposal of business in his court, he can not be directed as to how he should determine the matter or dispute before him or as to what sentence, if any, he should impose on an accused person he has found guilty.

These are matters entirely in his hands. If he strays into an error on any one of them, a higher court will, on appeal on in revision, correct him.

The necessity of the judicial independence from colleagues and superiors has been raised to by a number of jurists. The independence from colleagues and superiors were also discussed and incorporated in the commentary on the Bangalore Principles of judicial court.

The steps to be observed for impeachment process of a judge of higher judiciary are:

1) Under the Judges Inquiry Act, 1968, proceedings to impeach (remove) a judge of a Supreme Court or High Court can be initiated if a motion signed by 100 Lok Sabha M.Ps. or 50
Rajya Sabha M.Ps. serves a notice to the presiding Officer of the House in which they wish to move the motion.

2) After the notice is accepted, the Lok Sabha speaker or the Rajya Sabha Chairman (depending on the House it has been served) forms a committee comprising a Supreme Court judge, a High Court Chief Justice and a jurist to prove the allegations.

3) The committee submits its report to the presiding officer after completing the probe in which the judge against whom the impeachment motion has been served is given the opportunity to defend himself or herself.

4) In case the probe report finds the allegations, against the judge have been proved, the presiding officer admits the motion for debate and vote in the House.

5) A judge can be impeached only if the motion is passed by a two-third’s majority of the M.Ps. present and voting in both Houses of Parliament.

However, the only case in which Supreme Court Justice v. Ramaswami was to be impeached but the Congress Party saved him by not voting and he escaped from impeachment.

The moral authority of Chief Justice of India is of no value or significance if he can not make an erring judge fall in line viewed by Justice D.V. Shylendra Kumar of Karnataka High Court.

Issues unheard of higher judiciary - corruption, indiscipline, caste bias etc. are the main reasons behind such views. However, opinion is divided on the extent to which a serving judge should exercise his freedom of expression - the way Justice Kumar has done.
Justice Kumar had in another context said, “a majority of judges were in favour of making their wealth details public”. This led to a voluntary disclosure of wealth by Supreme Court Judges.

K.G. Balakrishna, the then CJI wanted (as per collegium’s views) Justice Dinakaran against whom impeachment proceedings have been initiated in Rajya Sabha, to go on leave. Justice Dinakaran refused to go on leave and rejected the demand of collegiums of Apex Court.

Following the rejection of his demand, Justice Kumar took an unusual step. He made his views public by posting on the blog on 17.12.2009. Justice Kumar wrote in the blog: “This kind of response from the Chief Justice of Karnataka (Justice Dinakaran) has only confirmed the worst fears that he may even now continue to abuse and misuse powers, including powers to recommend the names of persons to be appointed as Judges of the High Court after eliciting views of his colleagues in the collegiums - even when he is no more discharging his duties as Chief Justice of High Court.”

This was only a precursor to the bombshell he dropped on 25.12.2009 without attacking CJI Balakrishnan, Justice Kumar said bluntly in public what was being whispered in legal circles so far. Referring to the Justice Dinakaran issue and the helplessness of the CJI in the matter, he wrote on his blog, “The concept that the CJI being the head of judiciary in the country and therefore can exercise his moral authority to ensure that erring judges fall in place and behave themselves, is a misnomer and misconception”.

An arrant judge breaches the moral code of conduct. No moral authority binds on such judge nor does he respect the moral authority
meaning the CJI as the head of the judicial family, has virtually no effect on such errant judges.

Veteran Lawyer and former Law Minister, Shanti Bhushan said, what do you do when the High Court Chief Justice who should be sitting at home, is still discharging administrative functions and the CJI has no power to take action? (against Justice Dinakaran).

It is wrong to assume that CJI has limited powers and can not intervene in matters related to High Courts. There are many examples in the past when CJI forced high court judges found involved in corruption and other unethical practices to resign who became controversial.

Justice Shamit Mukherjee of Delhi High Court resigned on 31.03.2003 after it was found that there were serious allegations of corruption against him. Chief Justice A.M. Bhattacharya of Bombay High Court resigned in 1995 following allegations that he had received a disproportionately large amount of $ 80,000 as royalty from a Publisher in West Asia. Justice Arun Madan of Rajasthan High Court resigned on 21.03.2003 after being indicated by a judge's committee in a corruption case. He also faced charges of sexually harassing a lady doctor.

CJI K.G. Balakrishnan on 04.08.2008 recommended impeachment of Justice Soumitra Sen of Calcutta High Court following his indictment in a corruption case by a Judge's committee. He was found guilty of having misappropriated Rupees 33 Lakh public fund in his capacity as a Court-approved receiver when he was a lawyer in 1993. While impeachment proceedings against Justice Sen was pending in the Rajya Sabha, he resigned.
Former CJI P.N. Bhagawati is of the view that judges should sit down and resolve issues amicably. Every judge must be given a chance to air his/her views on the appropriate forum and they must feel valued to avoid erosion of credibility of the institution.

Our judicative process needs to be transformed. The Legislative is competent to make meaningful law, has the backing of the masses who voted for its members. The executive have force at its command. The judiciary has the bench to sit and the authority of the constitution to back it. If its verdict is ignored, it has no means to enforce its rulings. Without justice, judges are powerless power.

What is then wrong with our courts that have lost their credibility and prestige? Corruption has crept in. Delay of dockets and Himalayan arrears frustrate the hop of justice. While the system is accessible and open to the rich and those from the creamy layer, the underprivileged have no money and are priced out of the institution. The Bar, an indispensable factor in the adversial system is too expensive for the lowly and the forlorn. The fees and the formalities make the law too dear of the have-nots. The hierarchy adds to the cost, the delay and the uncertainty of the final verdict.

Appeals upon appeals make justice through litigation inordinately dilatory and costly. The law becomes the last means for the aggrieved to get relief. One appeal is necessary, two is too much but we have four or five docks to spiral up. The litigant has one life but the litigants have several lives to see its end. Judgement typically takes years to pronounce and some judges do not pronounce any judgement at all. They would seem to be unaccountable since there is no performance commission in operation.
Another great deficiency is that a collegium that is untrained in the task, select judges in secret and in a bizarre fashion. There could be room for nepotism, communalism and favouratism in the absence of guidelines. The selection process excludes the executive. No where in the world do judges alone select other judges. The collegium has become disaster. The episode of Justice P.D. Dinakaran is one glaring example. A new code by a constitutional chapter has become an imperative. Appointment of judges is earnestly desired peacefully.

Judges have a heavy responsibility in the matter of Chronic docket arrears. No where in the world, except in India, litigation last upto half a century in some instances.

Let us look at the discipline that Justice V.R. Krishna Iyer showed in the stay proceedings of the Indira Gandhi case. Originality, imagination and talent have become scare commodities. These are mostly covered up by demands for 10 times of incompetent judges and none to expose them for fear of contempt. K.G. Balakrishnan, the earlier Chief Justice of India has been repeatedly urging that we must have thousands more as members of judiciary as the solution to the problem of arrears. But that will only be a remedy which could aggravate the malady. This is a mediocre recipe that could prove counter-productive.

This view is supported by two great jurists. M.C. Setalved commented in his autobiography “My Life (1970)” on the statement of Dr. K.N. Katju, when he was Home Minister, that the greater the number of judges in Court, the lesser the rate of disposal for each judge. Though one may regard this an overstatement, it is undoubtedly true that a larger judicial personnel frequently makes the courts cumbrous and slow moving. He added, “What is needed is the appointment of really able persons who can rapidly and satisfactorily deal with the accumulation work”.
Like wise, M.C. Chagla observed in Roses in December 2009, "To my mind the solution is simple. See that the men you appoint, are proper ones. Find judges with an alert and active mind. What is more important, pay the judges better, give them a better pension and enforce better conditions of service. The usual solution put forward is to increase the number of judges. But if the men selected are not really competent, Parkinson's Law will come in to play. The more the judges, the greater will be the load of work".

Justice V.R. Krishna Iyer observed: What we now have as weaknesses of the system is Parkinson's law and peter principle. The first creates vacancy after mediocre judges cause arrears to mount. The second elevates officers to the highest level of their incompetence. Even if you have 10 times the present number of judges, so long as there is no accountability, the arrears will multiply. The judicial budget will escalate and the disgrace of judiciary will grow. A revolution is necessary and a sense of scientific spirit and reason is needed if the judicature is not to become a caricature or a torture of right to justice.

V. Sudershan said, "A survey of supreme Court's docket finds a court overwhelmed by petitions from those with money and resources". One can get a quick sense of disparities in access to the Supreme Court by looking at the appeal rates to the court. While on an average, nationally, there was about a 2.5 percent chance in 2008 that a case will be appealed from a High Court to the Supreme Court in States close to Delhi, such as Punjab, Haryana and Uttarakhand, the appeal rates were more than double. In Delhi itself the appeal rate was 10 percent. Meanwhile in the four southern states, there were only a 1.7 percent appeal rates. In Tamil Nadu it was about 1 percent only. These regional difference in appeal point to a far larger problem than under representation of certain geographic areas on court's docket.
The farther one from Delhi, the more expensive it becomes to bring a case and many potential litigants simply can not afford that cost. Odisha, for example, has the lowest appeal rate at less than 1 percent, seemingly the result of a combination of state’s low income levels and distance from national capital.

Fighting a case in Supreme Court can be very expensive. With multiple hearings, delays and several trips to Delhi, the cost quickly becomes prohibitive for all but a few. The greatest chance of both winning and moving more quickly through the system, the best bet is one of the handful of top advocates. These lawyers are among the most expensive in the world. Ironically, they are specially sought-after on admission day when a judge quickly hears the merits of dozen of cases to decide whether an appeal should have a full hearing on a later day.

The high cost of access to the Supreme Court has had a defining effect on the types of matters the Supreme Court spends its time on. In 2007, almost 40% of the Supreme Court’s regular hearing decisions were on cases relating to tax, labour or service issues. These matters, along with arbitration cases, were also amongst the most likely to be admitted by the Court for regular hearing. A disproportionate number of appeals are made up to these cases, which generally involve the more affluent litigants or governmental lawyers (who do not bear the cost of appeal themselves).

Meanwhile the mechanisms created to allow the poor and the disenfranchised, greater access to the court seem themselves marginalised. In 2008, writ petitions, where people approach the Supreme Court directly to enforce their fundamental rights, accounted for only about 2 percent of all admission matters and none was admitted.
To compare this with the 1970s, when as Rajiv Dhavan has documented, one will find in his book, 'The Supreme court under strain', fundamental right petitions constituted, on an average, about 10% of admission matters and over half of them were admitted.

In 2008, the court received 24,666 letters, postcards or petitions asking for its intervention in cases that might be considered public interest litigation. Of these, 226 were even placed before judges on admission days and only a small fraction of these were heard as regular hearing matters. The rest were rejected. (22)

Recent analysis by Varum Gauri, an economist and legal school of cases relating to fundamental rights and public interest litigation, heard over the past 30 years, find that the Supreme Court has ruled increasingly against the socially disadvantaged. During the same period, more privileged litigants have become more successful in such cases. This research lends credence to the critics such as Senior Advocate of Supreme Court Prashant Bhushan, who argue that public interest litigation is being used increasingly for the concerns of the middle class and the wealthy (23).

Constitutional benches, where significant matters of constitutional law are heard, now makeup for fewer than 1 percent of Court’s regular hearing cases are civil, criminal, service, labour, tax, land and business matters, which are generally fairly routine requests to correct a lower court’s decision (24).

To handle all of these cases, most Supreme Court benches now consist of two judges, who can not even overturn a verdict by a two-judge or stronger bench. As a result, in most sittings, the Supreme Court is essentially acting a just another High Court for those who can afford to appeal, lengthening the litigation process for everyone involved. This
system diverts the Court’s attention from pressing constitutional issues and working to make the judicial system more just for those without the resources to reach the Supreme Court’s corridors (25).

A Constituent Assembly Member, Sri Biswanath Das, who would later become Chief Minister of Odisha, spoke in the Assembly about how “families have been destroyed by long appeal processes and labeled lawyers as parasite on the people”. In deed, Members of the Constituent Assembly seems to believe that the Supreme Court would exercise its special leave jurisdiction (where the court can accept an appeal even if a High Court has not certified it) only under exceptional circumstances and so it would rarely be used. This miscalculation would prove glaring in hindsight.

A former Chief Justice of India, M.C. Mahajan, who sat on the court in 1950s had recalled that soon after independence, “the judges were soon flooded with applications for special leave to appeal wherever a litigant could afford the high cost of such a proceeding in the Supreme Court”. To-day, these uncertified petitions constitute about 90% of the Court’s docket.

Driven largely by special leave petitions, there has been a steady increase in filings in the court since 1950s and in 2008 as many as 63,346 petitions were filed. In response to this enlarged case load, the number of judges on the Supreme Court has been raised to 31 by 2010. Simply adding more judges, has been a temporary fix. In 1950s and 1960s only about 20% of cases in the Supreme Court had been filed more than 3 years earlier. By 1977, over 60% of cases were older than 3 years. In 2008, almost half the number of cases before the constitutional bench were instituted more than 5 years ago, indicating a disproportionate backlog of vital constitutional matters (26).
The Media often highlight the pendency crisis in the Supreme Court. An over emphasis on backlog can become counter-productive. A Court’s ability to decide lots of cases quickly does not say anything about the quality of those judgements. More importantly, it does not indicate whether the court should have even accepted these petitions. In any court system, appeal to a higher court is used to alleviate concerns about the judgements of the lower courts. In India, there is a concern that some High Court judges favour or discriminate based on parochial interests such as caste, that some judges may be corrupt and that overall the quality of judgements across High Courts is inconsistent.

Still, if these are the reasons for allowing such broad access to the Supreme Court, appeal can only be a part of the answer. Instead, the court should investigate which High Courts or Tribunals give poor quality judgements, which seem to discriminate more, and which are perceived to be more corrupt.

Anecdotal stories about the court reaching out to a down trodden litigant or a man of humble means appealing an injustice all the way to Delhi, are generally just that; anecdotal. The numbers give a more accountable tale. Most of the cases the court decides are brought on appeal by those with money and resources. In August 2008, a Law Commission Report recommended that the Supreme Court be broken up in to a Constitutional Bench, to better priorities constitutional cases and cessation Benches that would sit in four or five different regions of the Country in order to improve access to the Court (27).

Meanwhile the proposed cassation Benches outside Delhi would hear issues that did not involve substantial questions of constitutional law to help reduce “the unbearable cost of litigation for those living in far-flung areas of the country”. Such sittings of the Court outside Delhi have been a
long standing demand of many Members of Parliament and under the Constitution, the Chief Justice may setup these benches at his discretion. In deed a small panel of judges of Supreme Court sat in Hyderabad for 3 months in 1950 to deal with cases left over from Nizam area (28).

K.G. Balakrishnan, former Chief Justice of India remarked in a interview to “The Hindu”, that the Supreme Court must “Think seriously” about setting up a Constitutional Court. Many countries have separate constitutional court and some have also separate highest courts for criminal, civil and administrative matters. By segregating the type of matters explicitly, a smaller group of judges can dedicate it self to managing a smaller docket of cases, prioritizing neglected areas of law or those that have a broader effect on ordinary Indians (29).

However, successive Chief Justices have not been sympathetic to this demand because it would further disperse a Supreme Court that already has difficulty acting as a cohesive whole. Further, if this step is taken in isolation, it will likely to lead to more cases being filed, owing to the lower cost involved in filing an appeal and additional delay.

If the Supreme Court denied appeals more strictly either in its current or a reworkable structure, it could focus on laying down clearer principles for the lower courts to follows. Lawyers and lower court’s judges often complain that the Supreme Court produces unclear on conflicting precedents.

Prioritising access in the Supreme Court for cases that affect ordinary Indians should be encouraged but for most Indians, the lower judiciary is where their interactions with the justice system begin and end. CJI Balakrishnan made a forceful argument in December 2009 that the number of subordinate courts should be doubled to 35,000 to reduce
backlog. More judges in lower courts are needed but they almost must be of good quality and must be monitored effectively.

Moreover, there is one more item of great relevance to be considered by Parliament. This involves the collegiums created by a judgement of the Supreme Court to make appointments and recommend the transfer of judges of the higher courts. This instrumentality is the creature of a judgement with no foundation in the constitution. It consists an usurpation of the power of the executive with no guidelines whatsoever. It has played havoc and deserves to be demolished by Parliamentary correction, by means of an amendment to the law. The collegiums is answerable to none, and acts without transparency. Instead of waiting for a larger bench to eliminate it, a constitutional provision must extinguish this instrument, emphasized Justice V.R. Krishna Iyer (30).