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Nautiyal



Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

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M.A, LL.M, Ph.D,

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Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

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More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

JUDICIAL ARCHITECTURE, CAPACITY & SUBORDINATE COURTS IN INDIA

AUTHORED BY - AMISHA SINGH

The doctrine of 'Separation of Powers' enunciated by Montesquieu in the 18th century has led to the creation of a model of governance wherein power is divided between the legislature, executive and judiciary, with each organ being guaranteed autonomy, subject to certain checks and balances. The principal role of the judiciary is to uphold the law and ensure the delivery of justice, alongside being the authority for interpreting the Constitution of India. This paper will seek to analyze Nick Robinson's 2014 article, *Judicial Architecture and Capacity* which provides insight into the framework and functioning of the Indian Judicial system that he calls an "isosceles trapezoid rather than a pyramid".¹ Thereafter, this paper will address the need for reform in the subordinate judiciary. The paper has been divided into four parts; the first contains the introduction; the central focus and analysis of Robinson's article are presented in the second; discussion on the top-heaviness of the judiciary forms the third; judicial reforms for the subordinate judiciary are reviewed in the last part.

II

Nick Robinson's succinct article delves into the multifaceted judicial framework in India and its correlation with the capacity of the judiciary as an institution. The judiciary has a hierarchical setup, comprising the Supreme Court (SC) at the apex, followed by High Courts (HC) at the state level and subordinate courts at the district level, along with specialized tribunals². The subordinate judiciary at the district level is categorized into civil and criminal, with respective hierarchical structures in place. The higher judiciary has constitutionally and via precedents, been vested with power and authority over the entire judicial framework and as a result, there is a "top-heaviness"³ in the judiciary on account of its power and case-load *vis-a-vis* the lower judiciary. In attempting to make the 'courts of

¹ Nick Robinson, *Judicial Architecture & Capacity*, in THE OXFORD HANDBOOK IN INDIAN CONSTITUTIONAL LAW 366 (Sujit Choudhry et al., Oxford University Press 2016).

² *See Id.* at 370.

³ *Id.* at 367

law' accessible to the citizenry, the framers of the Constitution introduced provisions that allowed litigants to approach the HCs and SC directly, in constitutional matters, thereby depriving subordinate courts of the opportunity to hear certain constitutional matters.⁴

Considering the vast scope of interpreting the Constitution, many non-constitutional matters are directly filed in the higher judiciary, unnecessarily increasing their caseload.⁵ The Constitution and legal procedures allow litigants to appeal against decisions of the lower courts in the higher judiciary and this facility is being increasingly availed. Over time, this has led to a huge backlog of cases and as of May 2022, nearly 4.7 crore cases are pending, of which 87.4% are in the lower courts, while the remainder lies pending in the HCs and SC.⁶ The problem can also be attributed to the paucity of judges, substandard case management, complex procedures, high litigation costs of experienced lawyers, and the rare use of plea-bargaining and settlement in criminal and civil matters, respectively.⁷

Judicial activism and entrepreneurship by the higher judiciary in recent years has not only bestowed them with more power and authority to address socio-political and public policy matters but has also furthered the 'top-heaviness' and caseload of the upper judiciary.⁸ In this regard, Public Interest Litigation (PIL) has come to be recognized as a double-edged sword. The management of courts is centrally controlled by the upper judiciary; states have their own judicial service to recruit judges to the lower courts and this process is supervised by the High Court through certain administrative committees.⁹ Article 227 of the Constitution ensures that a High Court has superintendence over all courts under its jurisdiction¹⁰ and resultantly controls promotions and transfers of lower court judges. Robinson's essay then proceeds to explain the appointment procedures and remuneration of judges at all levels and the inherent opposition of the judiciary to creating an All-India Judicial Service and a National Judicial Appointments Commission, which could ensure transparency, accountability, and

⁴ See also MP Singh, *Situating the Constitution in the District Courts*, 8 DELHI JUDICIAL ACADEMY J. 47, (2012) (Art. 32 (3) of the constitution allows the SC to extend the writ jurisdiction to the local subordinate judiciary).

⁵ Robinson, *supra* note 1, at 368.

⁶ Sumeda, *Clogged State of the Indian Judiciary*, THE HINDU (May. 13, 2022, 14:13), <https://www.thehindu.com/news/national/indian-judiciary-pendency-data-courts-statistics-explain-judges-ramana-chief-justiceundertrials/article65378182.ece>

⁷ Robinson, *supra* note 1, at 373.

⁸ See Nick Robinson, *Judicial Architecture & Capacity*, in THE OXFORD HANDBOOK IN INDIAN CONSTITUTIONAL LAW 366, 377 (Sujit Choudhry et al., Oxford University Press 2016).

⁹ Robinson, *supra* note 1, at 378.

¹⁰ Indian Const. art. 227, cl.1.

establishment of a streamlined process of working.¹¹

The central focus of this article in explaining the judicial architecture of the Indian legal system is to highlight the shortfalls that have compromised its working capacity and led to the top-heaviness, backlog, and poor management of cases. The makers of the Constitution in failing to address the scope of a ‘substantial question of law’ have opened doors for unnecessary usurpation of power by the upper courts. This has led to the “disproportionate reliance” on HCs and the SC, which is now causing delays in justice delivery and is creating uncertainty in decision-making and underperformance at all levels.¹² While the intricately designed judicial framework and role of the upper judiciary are credit-worthy, there is much scope for improvement which will ensure that all courts function at optimal capacity to ensure speedy justice delivery in a streamlined and accountable manner. Robinson asserts that grassroots reforms need to be brought, starting with the subordinate courts, and going upwards in a manner that ensures the actualization of the ‘pyramid-like structure’ of the Indian judiciary.¹³ Additionally, controlled appeals can aid in ‘restabilizing’ the doctrine of *stare decisis*, i.e., the application of and adherence to priorly set precedents in adjudicating cases.¹⁴

III

In recent years, there has been a substantial rise in the number of cases being filed before the HCs and the SC. This has been on account of the increase in writ petitions being filed, acceptance of numerous appeals, more PILs and judicial activism by the upper judiciary. The lesser legal experience of lower court judges also raises doubts among the public about their capability and capacity to resolve important matters, which results in the public, especially the elite and the government, trying to bypass the lower courts whenever possible or pursue vexatious litigation in the higher courts, which could easily have been avoided if a little faith was placed in the subordinate judiciary¹⁵. Unfortunately, this move has been encouraged by the SC and HCs because it allowed them to become actively

¹¹ Robinson, *supra* note 1, at 379-81.

¹² Robinson, *supra* note 1, at 367.

¹³ Nick Robinson, *Judicial Architecture & Capacity*, in THE OXFORD HANDBOOK IN INDIAN CONSTITUTIONAL LAW 366, 382 (Sujit Choudhry et al., Oxford University Press 2016).

¹⁴ Indian Const. art.141.; Indian Const. art.142.

¹⁵ Robinson, *supra* note 1, at 373.

involved in the “Indian political and social life”.¹⁶ On the one hand, the top-heaviness can be ascribed to the heavy caseload and backlog but on the other hand, the power vested in the upper judiciary, by law and through its activism, along with the control it exercises over the subordinate judiciary adds to this top-heaviness.

The Supreme Court is responsible for the overall court and case management in the nation, thereby performing the role of coordination and information facilitator.¹⁷ The Chief Justice of India and Chief Justices in the HCs play the role of “unifying and policing the system”¹⁸ since they directly control the allotment of cases and the creation of rosters. In the states, Chief Justices and judges of the HC control and administer the working of the lower judiciary by reviewing their cases, day-to-day performance, allocation and appointment of judges and related matters. The SC indirectly influences the lower judiciary through its interaction with HC judges, who together bring resolutions to aid and improve the functioning of the subordinate courts. Due to the direct control exercised by the High Court, lower court judges often work towards pleasing HC judges than focusing on speedy justice delivery and upholding the rule of law. Despite the overburdening of the upper judiciary, the upper courts haven’t directly addressed this issue as it would involve the dilution of power that is currently vested in the upper judiciary.

IV

The foremost reform proposed to resolve the rising caseload and backlog is introducing more judges at all levels, especially in the lower courts. There has been a heavy reliance on ensuring a near adequate supply of judges, which rarely meets the actual demand¹⁹ ; thereby creating a deep imbalance rather than an equilibrium in society. In December 2021, the judge-to-population ratio was 21.03 judges per million population, when the SC wanted it to be 50 per million.²⁰ While increasing the number of judges in the judiciary is crucial, this reform needs to be brought in conjunction with

¹⁶ Nick Robinson, *Judicial Architecture & Capacity*, in THE OXFORD HANDBOOK IN INDIAN CONSTITUTIONAL LAW 367 (Sujit Choudhry et al., Oxford University Press 2016).

¹⁷ Robinson, *supra* note 1, at 379.

¹⁸ Robinson, *supra* note 1, at 377.

¹⁹ Robert S. Moog, *Delay in Indian Courts: Why the judges don't take control*, 16 THE JUSTICE SYSTEM J. 19, (1992) (demand for court resources is always exceeded by the supply of the same).

²⁰ Sneha Rao, *What is India's judges to Population Ratio*, LIVE LAW (Dec. 13, 2021, 11:11 AM), <https://www.livelaw.in/know-the-law/what-is-indias-judges-to-population-ratio-187497>

other empirically tested reforms that rely on providing incentives to actors in the legal system, which would ensure optimal use of “dispute resolution services” and efficient functioning of the judiciary.²¹ Reform and empowerment of the lower courts are crucial in bringing about comprehensive judicial reform and in essence, democratizing the Indian judiciary.

Empowerment of the lower judiciary would ensue when more autonomy is provided to judges in the lower courts. Autonomy can be achieved by implementing this four-fold approach; *firstly*, ensuring transparency and accountability in the working of the upper judiciary so that the senior judges cannot influence the working of lower court judges through administrative processes; *secondly*, vesting in District & Session judges, with over 10-15 years of experience, the power to try certain constitutional matters to reduce the non-essential top-heaviness in the judiciary; *thirdly*, creating an All India Judicial Service and bringing out reforms suggested by Chief Justice Ranganath Mishra in the *All India Judges’ Association v Union of India* case²²; and *lastly*, constructing a strong social status for judges in the subordinate judiciary, to prevent them from succumbing to the influence of attorneys and the governing elite that have acted as a roadblock in subordinate judiciary reform.²³

Plea-bargaining and settlement of smaller matters at the trial stage can reduce the burden on lower courts²⁴ and increase their functioning capacity. Separate committees in the district courts can screen cases and thus persuade parties to settle matters, ensuring an organized and streamlined mechanism for managing cases. This reform is easily achievable if supported by the upper judiciary. Studies have shown that providing incentives to lower court judges will aid the process of reform since judges will play an active role in creating an optimally functioning judiciary at the lower levels, which in turn will translate into a lesser workload for the higher courts.²⁵ Delinking judicial oversight and administrative control by the higher judiciary, and vesting the administrative control of subordinate courts in an independent authority will help strengthen the functioning of the subordinate courts and wean them off the domination of the higher judiciary. Certain checks and restraints also need to be

²¹ Sudhir Krishnaswamy et al., *Legal and Judicial Reform in India: A Call for Systematic & Empirical Approaches*, 2 Journal NLUD. 1 (2014) (adopting empirically test reform will aid in resolving disputes faster).

²² Moog, *supra* note 18, at 22.

²³ See Robert S Moog, *Elite Court Relations in India*, 38 ASIAN SURVEY 410, 413 (1992).; Singh, *supra* note 4.; V Ravindra Sastry & K Saibaba, *Good Governance: The Imperative of Judicial Reforms in India*, 74 IJPS 9, 13-15 (2013) (the article highlights important judicial reforms that need to be adopted).

²⁴ Krishnaswamy et al., *supra* note 20.

²⁵ Moog, *supra* note 18.

brought in place regarding the courts' judicial activism,²⁶ which is often overreached. Further, the Right to Information (RTI) Act should be introduced and made applicable to judicial processes and matters too. In essence, subordinate courts will become empowered when the higher judiciary places more faith in the lower courts by relinquishing some of its power and bestowing it on the subordinate judiciary.

BIBLIOGRAPHY

1. Nick Robinson, Judicial Architecture & Capacity, in THE OXFORD HANDBOOK IN INDIAN CONSTITUTIONAL LAW 366 (Sujit Choudhry et al., Oxford University Press 2016).
2. MP Singh, Situating the Constitution in the District Courts, 8 DELHI JUDICIAL ACADEMY J. 47, (2012).
3. Sumeda, Clogged State of the Indian Judiciary, THE HINDU (May. 13, 2022, 14:13), <https://www.thehindu.com/news/national/indian-judiciary-pendency-data-courts-statistics-explain-judges-ramana-chief-justiceundertrials/article65378182.ece>
4. Indian Const. art. 227, cl.1.
5. Robert S. Moog, Delay in Indian Courts: Why the judges don't take control, 16 THE JUSTICE SYSTEM J. 19, (1992).
6. Sneha Rao, What is India's judges to Population Ratio, LIVE LAW (Dec. 13, 2021, 11:11 AM), <https://www.livelaw.in/know-the-law/what-is-indias-judges-to-population-ratio-187497>
7. Sudhir Krishnaswamy et al., Legal and Judicial Reform in India: A Call for Systematic & Empirical Approaches, 2 Journal NLUD. 1 (2014)
8. Robert S Moog, Elite Court Relations in India, 38 ASIAN SURVEY 410, 413 (1992)
9. V Ravindra Sastry & K Saibaba, Good Governance: The Imperative of Judicial Reforms in India, 74 IJPS 9, 13-15 (2013)

²⁶ V Ravindra Sastry & K Saibaba, *Good Governance: The Imperative of Judicial Reforms in India*, 74 IJPS 9, 13-15 (2013).