(2018) 17 Supreme Court Cases 27

(BEFORE ADARSH KUMAR GOEL AND UDAY U. LALIT, JJ.)

KRISHNAKANT TAMRAKAR .. Appellant;

Versus

STATE OF MADHYA PRADESH .. Respondent.

Criminal Appeal No. 470 of 2018†, decided on March 28, 2018

A. **Courts, Tribunals and Judiciary — Judicial Process — Delay/Speedy disposal — Central Government directed to file affidavit within three months regarding enhancement of judicial infrastructure, All-India Judicial Service, elimination/reduction of strikes by lawyers, etc.**

— (a) Feasibility of All-India Judicial Service or creation of appropriate fora to de-congest constitutional courts to achieve constitutional goal of speedy justice

— (b) Pending consideration of above, filling of vacancies as per proposal of Central Selection Mechanism

— (c) Ministry of Law may compile information and present a quarterly report on strikes/absenteeism from work by Advocates and Bar Associations obstructing access to justice — This should be considered in the contempt or inherent jurisdiction of court — Steps should be suggested/considered for tackling frequent uncalled for strikes by Advocates and Bar Associations including steps like removing office bearers of Bar Associations, restraining them from appearing in court till they purge themselves of contempt to satisfaction of Chief Justice of High Court by giving undertaking and said actions may be in addition to other action that may be taken for illegal acts for obstructing access to justice

— (d) Central Government should consider other relevant considerations like: (i) full time experts to evaluate candidates for judicial appointment as well as their work performance after appointment, (ii) process of evaluation for judicial appointment so that no wrong candidate is appointed and (iii) steps required for righteous conduct of Judges — Advocates — Strike/Boycott by Lawyers — Impermissibility of — Measures to be taken to reduce/ eliminate the same — Directions issued — Human and Civil Rights — Fair Trial (Paras 17 to 32 and 38 to 52)

B. **Courts, Tribunals and Judiciary — Judicial Process — Delay/Speedy disposal — As matter concerns fundamental rights, Court cannot refuse to look into problem even if issues are primarily policy matters — Access to speedy justice is a part of fundamental rights under Arts. 14 and 21 of the Constitution**

† Arising out of SLP (Crl.) No. 9393 of 2017. Arising from the Judgment and Order in *Krishnakant Tamrakar* v. *State of M.P.*, 2017 SCC OnLine MP 1511 (Madhya Pradesh High Court, Jabalpur Bench, Criminal Appeal No. 1823 of 2009, dt. 3-5-2017)

— Constitution of India — Arts. 21 and 14 — Human and Civil Rights — Universal Declaration of Human Rights, 1948 — Art. 10 — International Law — International Conventions — International Covenant on Civil and Political Rights, 1966 — Arts. 9 and 14 — Criminal Procedure Code, 1973, Ss. 167 and 436-A (Paras 6 to 19)

Possibility of decision of five-year-old cases pending in the High Courts particularly the criminal appeals within the existing system — Need to consider decongestion of constitutional courts

The available figures show that long pendency, particularly of more than five years, remains a serious challenge. Volume of work in the High Court was likely to further increase on account of increased disposal of cases in subordinate courts with the increased strength of Judges, infrastructure and other steps being taken. New laws are being enacted providing statutory remedies before the High Courts. If number of constitutional courts is to be increased to match the volume of work being entrusted to such courts, it may have its implication unless it is possible to find sufficient number of suitable persons. Needless to say that nature of work before the constitutional courts particularly laying down of law is time-consuming. Such courts cannot be overburdened. (Para 22)

Krishnakant Tamrakar v. *State of M.P.*, 2017 SCC OnLine MP 1511, *not interfered with*

Kashmira Singh v. *State of Punjab*, (1977) 4 SCC 291 : 1977 SCC (Cri) 559; *Krishnakant Tamrakar* v. *State of M.P.*, 2017 SCC OnLine SC 1647; *Vineet Narain* v. *Union of India*, (1996) 2 SCC 199 : 1996 SCC (Cri) 264; *Prakash Singh* v. *Union of India*, (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417; *State of Punjab* v. *Brijeshwar Singh Chahal*, (2016) 6 SCC 1 : (2016) 3 SCC (Civ) 1 : (2016) 2 SCC (Cri) 475 : (2016) 2 SCC (L&S) 1; *Anita Kushwaha* v. *Pushap Sudan*, (2016) 8 SCC 509 : (2016) 4 SCC (Civ) 80 : (2016) 3 SCC (Cri) 530 : (2016) 2 SCC (L&S) 463; *Imtiyaz Ahmad* v. *State of U.P.*, (2012) 2 SCC 688 : (2012) 1 SCC (Cri) 986; *P. Ramachandra Rao* v. *State of Karnataka*, (2002) 4 SCC 578 : 2002 SCC (Cri) 830; *Imtiyaz Ahmad* v. *State of U.P.*, (2017) 3 SCC 658 : (2017) 2 SCC (Civ) 311 : (2017) 2 SCC (Cri) 228 : (2017) 1 SCC (L&S) 724; *Imtiyaz Ahmad* v. *State of U.P.*, (2017) 3 SCC 658; *Akhtari Bi* v. *State of M.P.*, (2001) 4 SCC 355 : 2001 SCC (Cri) 714; *L. Chandra Kumar* v. *Union of India*, (1997) 3 SCC 261 : 1997 SCC (L&S) 577, *referred to*

Woolf Report of 1996; Report titled "Delaying Justice is Denying Justice", by the Canadian Standing Senate Committee on Legal and Constitutional Affairs; United States Speedy Trial Act, 1974; 245th Report of the Law Commission of India, 2014; Resolution of the Joint Conference of Chief Justices and Chief Ministers; Resolution of the Chief Justices' Conference held in April 2015; Court News—October-December, 2016 in Supreme Court website (www.supremecourtofindia.nic.in) or (http://supremecourtofindia.nic.in/pdf/CourtNews/COURT_NEWS_Vol_XI_Issue_No4_October_to_December_2016.pdf); Minutes of the meeting of the Arrears Committee held on 23-3-2017, *referred to*

From the data available it is clear that all the steps taken by the Central Government so far have not significantly improved the situation of speedy disposal of criminal appeals. The steps taken are set off by increased volume of work or otherwise. Accordingly, the Union of India ought to consider whether it is viable to have criminal appeals and other matters before the High Courts decided within reasonable time as per existing system. If not, whether it is possible to provide any other suitable forum for such appeals so as to ensure enforcement of fundamental

right of speedy justice or how else the situation can be remedied. The issue of non-viability of providing routine statutory appeals to constitutional courts as observed in *Gujarat Urja Vikas Nigam Ltd.*, (2016) 9 SCC 103 may also need to be considered. (Paras 24 to 32)

Radhey Shyam v. *Chhabi Nath*, (2015) 5 SCC 423 : (2015) 3 SCC (Civ) 67; *Sita Ram* v. *State of U.P.*, (1979) 2 SCC 656 : 1979 SCC (Cri) 576; *Gujarat Urja Vikas Nigam Ltd.* v. *Essar Power Ltd.*, (2016) 9 SCC 103; *Dadu* v. *State of Maharashtra*, (2000) 8 SCC 437 : 2000 SCC (Cri) 1528, *referred to*

Relevant extract from the Minutes of meeting of the Arrears Committee held on 8-4-2017; Minutes of the interaction of the Arrears Committee for Supreme Court and High Courts held on 8-4-2017; Minutes of the interaction of the Arrears Committee for Supreme Court and High Courts held on 22-4-2017; Para 8.23 of the Law Commission 272nd Report (2017) titled Assessment of Statutory Frameworks of Tribunals in India; 124th Report of the Law Commission of India (1988) titled "High Court Arrears — A Fresh Look", *referred to*

Filling up of vacancies at all levels with the best available talent

Primacy in appointment of constitutional courts is to be of the Chief Justice of India. At the same time, even without affecting such primacy improvement in working of collegium is a felt necessity There is a need of a Secretariat and also incorporation of other factors for improved and effective working of the collegiums system. This apart, corrective measures against post appointment conduct or inadequate performance or failure to uphold righteous conduct need to be evolved. These aspects require urgent attention of authorities concerned. (Para 38)

All India Judges Assn. v. *Union of India*, (1992) 1 SCC 119 : 1992 SCC (L&S) 9; *Malik Mazhar Sultan (3)* v. *U.P. Public Service Commission*, (2008) 17 SCC 703 : (2010) 1 SCC (L&S) 942; *All India Judges Assn.* v. *Union of India*, (2002) 4 SCC 247 : 2002 SCC (L&S) 508; *Central Selection Mechanism for Subordinate Judiciary, In re*, 2017 SCC OnLine SC 1694; *Supreme Court Advocates-on-Record Assn.* v. *Union of India*, (1993) 4 SCC 441; *Special Reference No. 1 of 1998, In re*, (1998) 7 SCC 739; *Supreme Court Advocates-on-Record Assn.* v. *Union of India*, (2016) 5 SCC 1; *C.S. Karnan, In re*, (2017) 7 SCC 1 : (2017) 3 SCC (Civ) 545 : (2017) 4 SCC (Cri) 46, *referred to*

See Schedule VII List III Entry 11-A to the Constitution; (2016) 5 SCC 1 — Chelameswar, J. — para 1236; Lokur, J — para 969; Kurian, J. — para 990; Goel, J. — para 1111, *referred to*

Supreme Court Advocates-on-Record Assn. v. *Union of India*, (2016) 5 SCC 1 : (2016) 5 SCC 803 (2), *cited*

If a High Court remains without a permanent Chief Justice, process of speedy justice certainly suffers. In spite of timeline in the Memorandum of Procedure (MoP) for appointments in pursuance of judgment of the Supreme Court in *Supreme Court Advocates-on-Record Assn.*, (1993) 4 SCC 441 that there will be no Acting Chief Justice for more than one month, timely appointments of Chief Justices is not taking place. The Central Government must take all steps to ensure such appointments as per prescribed timeline. The process may require thinking, planning and acting on a continuous basis. Identification of candidates, scrutiny, evaluation and post appointment performance measurements and conduct are time-consuming processes and at least some independent full-time experts are required, if timely and best appointments are to be ensured and requisite in-house oversight is to be a reality. A full-time body consistent with independence of judiciary appears to be immediate need for the system. Absence thereof contributes to denial

of justice. The Central Government must also ensure that MoP in pursuance of order of the Supreme Court in *NJAC case* dated 16-12-2015 brings about the improvements in working of the Collegiums as stipulated. (Para 39)

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

Accountability in terms of performance measurement and righteous conduct at all levels of judicial hierarchy including constitutional courts

There is also a need for mechanism to evaluate and compile performance of the judicial system as per observations in 245th Report of the Law Commission so that there is non-mandatory timeline for decision of cases and accountability consistent with the right of speedy justice. Such mechanism may provide norms for performance measurement for all Judges in the hierarchy. The same has to be done without affecting independence of judiciary. There is also need for an in-house mechanism manned by experts but with safeguards consistent with independence of judiciary for measures against erring Judges other than impeachment as observed in Shri Justice *C.S. Karnan, In re*, (2017) 7 SCC 1. (Para 40)

C.S. Karnan, In re, (2017) 7 SCC 1 : (2017) 3 SCC (Civ) 545 : (2017) 4 SCC (Cri) 46, *referred to*

Reforms in the legal profession — Remedying uncalled for strikes

It is well known that at some places there are frequent strikes, seriously obstructing access to justice. Even cases of persons languishing in custody are delayed on that account. By every strike, irreversible damage is suffered by the judicial system, particularly consumers of justice. They are denied access to justice. Taxpayers' money is lost on account of judicial and public time being lost. Nobody is accountable for such loss and harassment. (Para 41)

Constituent Assembly Debates Vol. 11, *referred to*

Lawyers have no right to go on strike or to give a call for boycott of courts nor can they abstain from the courts. Calls given by Bar Association or Bar Council for such purpose cannot require the court to adjourn the matters. Strike or abstaining from court is unprofessional. (Para 44)

Harish Uppal v. *Union of India*, (2003) 2 SCC 45, *relied on*

Mahipal Singh Rana v. *State of U.P.*, (2016) 8 SCC 335 : (2016) 4 SCC (Civ) 1 : (2016) 3 SCC (Cri) 476 : (2016) 2 SCC (L&S) 390; *Mahipal Singh Rana* v. *State of U.P.*, (2016) 8 SCC 335, *referred to*

The Law Commission, examined the relevant aspects relating to regulation of the legal profession. The Law Commission in its 266th Report found that such conduct of the advocates affects functioning of courts and particularly it contributes to pendency of cases. It analysed the data on loss of working days on account of call of strikes. (Para 46)

Hussain v. *Union of India*, (2017) 5 SCC 702 : (2017) 2 SCC (Cri) 638; *Ramon Services (P) Ltd.* v. *Subhash Kapoor*, (2001) 1 SCC 118 : 2001 SCC (Cri) 3 : 2001 SCC (L&S) 152; *Hussainara Khatoon (1)* v. *State of Bihar*, (1980) 1 SCC 81 : 1980 SCC (Cri) 23, *cited*

266th Report of Law Commission on The Advocates Act, 1961 (Regulation of Legal Profession), *referred to*

Since the strikes are in violation of law laid down by the Supreme Court, the same amount to contempt and at least the office-bearers of the associations who give call for the strikes cannot disown their liability for contempt. Every resolution to go on strike and abstain from work is per se contempt. Even if proceedings are not initiated individually against such contemnors by the court concerned or

by the Bar Council concerned for the misconduct, it is necessary to provide for some mechanism to enforce the law laid down by the Supreme Court, pending a legislation to remedy the situation. (Para 49)

124th, 272nd and 14th Reports of the Law Commission of India; The Minutes of the Arrears Committee of Supreme Court dated 8-4-2017, *referred to*

SS-D/60654/S

Advocates who appeared in this case :

Gopal Subramanium (Amicus Curiae), Senior Advocate (Talha Rahman, Pavan Bhushan, Hitesh Saini, Dr Ajay Kumar, Tuhin Lavania, Mahendra Singh, Nandlal Kr. Mishra, Ram Kishor Singh Yadav, Ms Sunita Yadav, Ms Miranda, Kaushal Yadav, S.S. Shamshery, Ms Hari Priya and M.K. Maroria, Advocates) for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. (2017) 7 SCC 1 : (2017) 3 SCC (Civ) 545 : (2017) 4 SCC (Cri) 46, *C.S. Karnan, In re* 45*a*, 46*f*
2. (2017) 5 SCC 702 : (2017) 2 SCC (Cri) 638, *Hussain* v. *Union of India* 49*d-e*
3. (2017) 3 SCC 658 : (2017) 2 SCC (Civ) 311 : (2017) 2 SCC (Cri) 228 : (2017) 1 SCC (L&S) 724, *Imtiyaz Ahmad* v. *State of U.P.* 37*d-e*, 37*e*
4. 2017 SCC OnLine SC 1694, *Central Selection Mechanism for Subordinate Judiciary, In re* 42*c*
5. 2017 SCC OnLine SC 1647, *Krishnakant Tamrakar* v. *State of M.P.* 32*f-g*
6. 2017 SCC OnLine MP 1511, *Krishnakant Tamrakar* v. *State of M.P.* 32*c*, 32*d-e*
7. (2016) 9 SCC 103, *Gujarat Urja Vikas Nigam Ltd.* v. *Essar Power Ltd.* 41*a-b*, 41*f*, 51*a-b*
8. (2016) 8 SCC 509 : (2016) 4 SCC (Civ) 80 : (2016) 3 SCC (Cri) 530 : (2016) 2 SCC (L&S) 463, *Anita Kushwaha* v. *Pushap Sudan* 36*d*
9. (2016) 8 SCC 335 : (2016) 4 SCC (Civ) 1 : (2016) 3 SCC (Cri) 476 : (2016) 2 SCC (L&S) 390, *Mahipal Singh Rana* v. *State of U.P.* 47*e*, 47*e-f*, 47*f*, 47*f-g*
10. (2016) 6 SCC 1 : (2016) 3 SCC (Civ) 1 : (2016) 2 SCC (Cri) 475 : (2016) 2 SCC (L&S) 1, *State of Punjab* v. *Brijeshwar Singh Chahal* 34*c*
11. (2016) 5 SCC 1, *Supreme Court Advocates-on-Record Assn.* v. *Union of India* 43*a*
12. (2016) 5 SCC 1 : (2016) 5 SCC 803 (2), *Supreme Court Advocates-on-Record Assn.* v. *Union of India* 44*a*, 44*a-b*
13. (2015) 5 SCC 423 : (2015) 3 SCC (Civ) 67, *Radhey Shyam* v. *Chhabi Nath* 40*b*
14. (2012) 2 SCC 688 : (2012) 1 SCC (Cri) 986, *Imtiyaz Ahmad* v. *State of U.P.* 36*d-e*
15. (2008) 17 SCC 703 : (2010) 1 SCC (L&S) 942, *Malik Mazhar Sultan (3)* v. *U.P. Public Service Commission* 42*a*
16. (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417, *Prakash Singh* v. *Union of India* 33*d-e*
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18. (2002) 4 SCC 578 : 2002 SCC (Cri) 830, *P. Ramachandra Rao* v. *State of Karnataka* 37*a*
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22. (2000) 8 SCC 437 : 2000 SCC (Cri) 1528, *Dadu* v. *State of Maharashtra* 41*c-d*

23. (1998) 7 SCC 739, *Special Reference No. 1 of 1998, In re* 42*d-e*
24. (1997) 3 SCC 261 : 1997 SCC (L&S) 577, *L. Chandra Kumar* v. *Union of India* 38*d-e*
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27. (1992) 1 SCC 119 : 1992 SCC (L&S) 9, *All India Judges Assn.* v. *Union of India* 42*a*, 51*c*
28. (1980) 1 SCC 81 : 1980 SCC (Cri) 23, *Hussainara Khatoon (1)* v. *State of Bihar* 49*c-d*
29. (1979) 2 SCC 656 : 1979 SCC (Cri) 576, *Sita Ram* v. *State of U.P.* 40*b*
30. (1977) 4 SCC 291 : 1977 SCC (Cri) 559, *Kashmira Singh* v. *State of Punjab* 32*f*

The Judgment of the Court was delivered by

ADARSH KUMAR GOEL, J.— Leave granted. This appeal has been preferred against the order dated 3-5-2017 of the High Court of Madhya Pradesh in *Krishnakant Tamrakar* v. *State of M.P.*[1] whereby prayer for bail, pending disposal of criminal appeal against life sentence has been declined though the appellant has been in custody for more than ten years.

2. The appellant stands convicted under Sections 148, 302/149 IPC and sentenced to life imprisonment, apart from other sentences. According to the prosecution, on 23-6-2005 at 11.30 a.m., the appellant along with the co-accused caused the murder of one Shahid. In view of evidence in support of the charge, the trial court convicted and sentenced the appellant. The appellant applied for bail pending consideration of appeal before the High Court. After the said prayer was rejected, another application was filed. The High Court rejected[1] the second bail application with the observation that the evidence on record did not warrant grant of bail.

3. In this appeal, the order of the High Court is challenged mainly on the ground that the appellant had been in custody for more than ten years and the remedy of appeal will be meaningless if he has to remain in custody for the full term of sentence. Reliance has been placed on the judgment of this Court in *Kashmira Singh* v. *State of Punjab*[2].

The issue

4. When the matter came up for consideration before this Court, the following order[3] was passed:

> "The grievance of the petitioner is that he has been in custody for more than ten years. He has neither been granted bail nor his appeal is heard. It is stated that there is no likelihood of the appeal being heard before the High Court in the near future.

1 2017 SCC OnLine MP 1511
2 (1977) 4 SCC 291 : 1977 SCC (Cri) 559
3 *Krishnakant Tamrakar* v. *State of M.P.*, 2017 SCC OnLine SC 1647

While we are not inclined to grant bail, we issue notice confined to the question as to how the situation can be remedied ensuring that the appeal is heard within a reasonable time at the appellate forum.

Issue notice. Notice be also issued to the Convenor, National Mission for Justice Delivery and Legal Reforms i.e. the Secretary Justice, Union of India and also the Attorney General for India.

Shri Gopal Subramanium, learned Senior Counsel who is present in the Court is requested to assist the Court as Amicus."

5. Accordingly, we have heard the learned Attorney General and the learned Amicus on the question as to how the problem of delay in hearing of the appeals can be remedied.

Submissions of the learned Amicus

6. The learned Amicus submitted that timely justice is essential for the rule of law. Access to justice is a fundamental right under the Constitution of India. It is also recognised under Article 10 of the Universal Declaration of Human Rights, 1948 as well as Articles 9 and 14 of the International Convention on Civil and Political Rights, 1966. There is, thus, dire need to find practical, effective and achievable system for speedy disposal of appeals. In its 245th Report* in the year 2014, the Law Commission of India made an analysis of the method of computing adequate Judge-strength and recommended increase of number of Judges on that basis. In *Vineet Narain* v. *Union of India*[4], this Court held that the government agencies must perform their legal obligations as per mandate of Article 14 of the Constitution. In *Prakash Singh* v. *Union of India*[5], this Court directed police reforms to be brought about for scientific, speedy and quality investigation. The United States Speedy Trial Act, 1974 provides timelines for steps in justice delivery. Timeline provided in different statutes in India, such as filing of charge-sheets under Section 167 CrPC is required to be implemented. Project of National Arrears Grid was required to be implemented. The Woolf Report of 1996 emphasised generation of accurate judicial statistics on a daily basis. The Grid should help identify the steps for dispensation of justice concerning the poor and the underprivileged. Case management practices should be implemented. In its Report titled "Delaying Justice is Denying Justice", the Canadian Standing Senate Committee on Legal and Constitutional Affairs stated "the lack of robust case and case flow management is perhaps the most significant factor contributing to delays". In England and Wales, pre-trial case management is rigorously followed in all criminal cases at both the trial and the appellate levels. Active case management includes:

"(*i*) The early identification of the real issues;

(*ii*) Achieving certainty as to what must be done, by whom, and when, in particular by the early setting of a timetable for the progress of the case;

* **Ed.**: On Arrears and Backlog: Creating Additional Judicial (Wo)manpower?

4 (1996) 2 SCC 199 : 1996 SCC (Cri) 264

5 (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417

(*iii*) Monitoring the progress of the case and compliance with directions;

(*iv*) Discouraging delay, dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary hearings;

(*v*) Encouraging the participants to cooperate in the progression of the case, and

(*vi*) Making use of technology."

7. Reference was also made to Case Management Criminal Procedure in England and Wales.

8. The learned Amicus further submitted that in appeals against acquittal efforts should be made to weed out unmeritorious appeals. Competent Government Advocates should be appointed by a fair and transparent mechanism as laid down in *State of Punjab* v. *Brijeshwar Singh Chahal*[6].

9. Vacancies of the High Court Judges should be filled up well before the date a Judge demits the office. Ad hoc Judges should be appointed to deal with the pending appeals.

10. Wherever there is higher pendency of appeals, the same can be transferred to the courts of concurrent jurisdiction of other States. Technology ought to be used to facilitate speedy conduct of trials and disposal of appeals. Electronic copy of all papers should be served as soon as a charge-sheet is filed. The technology can be used for speedy and summary disposal of certain cases such as the traffic offences. Evidence can be recorded by videoconferencing, especially for doctors and investigating officers who may be on outstation job and engaged in official duties which suffer if they have to physically come to the court. There must be change in the work culture amongst the members of the Bar as well as the police. Efforts should be made to avoid adjournments. Timetable should be laid down for hearing of appeals which should be strictly adhered to.

Submissions of learned Attorney General

11. The learned Attorney General submitted that the Government has adopted a coordinated approach to assist the judiciary for liquidation of arrears and pendency by providing better infrastructure for courts including computerisation, increase in strength of Judges, policy and legislative measures in the areas prone to excessive litigation and emphasis on human resource development. E-Courts Integrated Mission Mode Project has been introduced. Computerised courts have been increased to 16,089. Cost of Rs 1670 crores has been approved for the purpose. Videoconferencing facility has been operationalised in 500 courts and prisons. National Judicial Data Grid has information regarding 6.36 crore decided and 2.5 crore pending cases. 5.24 crore orders/judgments are available. Steps have been taken to fill up vacancies in the Supreme Court and High Courts. Appointment of Judges and judicial officers in district and subordinate courts is within the domain

6 (2016) 6 SCC 1 : (2016) 3 SCC (Civ) 1 : (2016) 2 SCC (Cri) 475 : (2016) 2 SCC (L&S) 1

of the High Courts and the State Governments. A total of Rs 5956 crores have been released under Centrally Sponsored Scheme (CSS) for Development of Infrastructure Facilities for the Judiciary. 17,576 court halls and 14,363 residential accommodations are available for the Judges/judicial officers of District and Subordinate Courts. In addition, 2852 court halls and 1622 houses are under construction. 14th Finance Commission has endorsed the proposal to strengthen the judicial system by establishing 1800 Fast Track Courts (FTCs) for five years for specified offences at a cost of Rs 4144 crores. As per resolution of the Joint Conference of Chief Justices and Chief Ministers, the Government has requested the State Governments to strengthen institutional mechanism between the State and the Judiciary. Steps have been taken for timely completion of infrastructure and e-Courts Integrated Mission Mode project. There is need to implement Section 436-A CrPC and ensure periodic monitoring of Undertrial Review Committee Mechanism. The Commercial Courts, Commercial Division and Commercial Appellate Division of the High Court Act, 2015 has been notified to streamline the conduct of cases in Commercial Division and Commercial Courts. Amendments have been made in the Arbitration and Conciliation Act, 1996 and the Negotiable Instruments Act, 1881. In pursuance of the resolution of the Chief Justices' Conference held in April 2015, Arrears Committees have been set up to clear backlog of cases pending from more than five years. The Supreme Court has also constituted the Arrears Committee to formulate steps and reduce pendency of cases in the High Courts and district courts. National Legal Services Authority provides mechanisms for access to justice for the poor. Lok Adalats have been held resulting in disposal of number of cases on the basis of compromise not requiring adjudication, apart from adjudication in public utility Lok Adalats. The Government has approved scheme for engaging Nyaya Mitras to assist the litigants.

12. The learned Attorney General submitted that delay in disposal of appeals can be tackled by appointing more Judges and by better coordination and planning. It was also submitted that by proper scrutiny, application for leave to appeal or even appeals can be summarily disposed of which will reduce the burden of the courts.

13. We place on record our gratitude for the learned Amicus and the learned Attorney General for their valuable assistance rendered.

Consideration of the issue

14. Even though initially notice was issued to consider the issue of remedying the situation of delay in hearing of the criminal appeals before the High Courts, the learned Amicus and the learned Attorney General addressed the Court generally on the issue of speedy justice at all levels. We consider it appropriate to reflect on some important aspects of speedy justice as these aspects are integral to the issue of delay in hearing of criminal appeals by the High Courts:

14.1. First question which we take up for consideration is whether, having regard to the nature of jurisdiction of the High Court and the present volume of

the work, the expectation for speedy disposal of criminal appeals is realistic or there is need for re-engineering of the judicial structure.

14.2. Secondly, when speedy justice is directly linked to timely appointment of best talent, whether there is need to revisit the existing system of appointment of Judges at all levels.

14.3. Thirdly, what can be the mechanism to plan and oversee the best management practices, including employment of technology, for optimum performance and righteous conduct.

14.4. Fourth, how uncalled for frequent strikes obstructs access to justice and what steps are required to remedy the situation.

15. We are conscious that the above issues are primarily policy matters. The subject-matter of restructuring of courts and administration of justice is a matter to be gone into by the executive and the legislature. However, since the subject affects fundamental right of speedy justice, this Court cannot refuse to look into the problem repeatedly presented to it with a view to draw attention of all concerned, leaving to the authorities concerned to consider and act in the matter.

16. There can be no dispute that access to speedy justice is part of fundamental right under Articles 14 and 21 of the Constitution. The National Commission to Review Working of the Constitution recommended that access to speedy justice may be incorporated as an express fundamental right[7].

17. The matter has been subject of consideration in several decisions. In *Imtiyaz Ahmad* v. *State of U.P.*[8] the issue taken up for consideration was delay in disposal of criminal cases where stay was granted by the High Court. On consideration of a report, the Court noted: (SCC p. 697, para 17)

> "(*a*) As high as 9% of the cases have completed more than twenty years since the date of stay order.
>
> (*b*) Roughly 21% of the cases have completed more than ten years.
>
> (*c*) Average pendency per case (counted from the date of stay order till 26-7-2010) works out to be around 7.4 years.
>
> (*d*) Charge-sheet was found to be the most prominent stage where the cases were stayed with almost 32% of the cases falling under this category. The next two prominent stages are found to be "appearance" and "summons", with each comprising 19% of the total number of cases. If "appearance" and "summons" are considered interchangeable, then they would collectively account for the maximum of stay orders."

18. This Court directed the Law Commission to examine the matter with a view to set up additional courts to eliminate delays. Accordingly, the Law Commission examined the matter in its 245th Report* given in July 2014 and recommended review of cadre strength. The Commission noted that the system was unable to deliver timely justice because of huge backlog for which

7 *Anita Kushwaha* v. *Pushap Sudan*, (2016) 8 SCC 509, para 31 : (2016) 4 SCC (Civ) 80 : (2016) 3 SCC (Cri) 530 : (2016) 2 SCC (L&S) 463

8 (2012) 2 SCC 688 : (2012) 1 SCC (Cri) 986

* **Ed.**: On Arrears and Backlog: Creating Additional Judicial (Wo)manpower?

the Judge strength was inadequate. It noted that mandatory time-frames were provided in some countries. In *P. Ramachandra Rao* v. *State of Karnataka*[9], this Court was not in favour of mandatory time-limit. Non-binding directory guidelines could be adopted. 14th Report** of the Law Commission suggested time-frame which was reiterated in subsequent Law Commission reports. The Malimath Committee recommended use of two-year time-frame as the norm by which delay and arrears in the system should be measured. Case specific timetables are adopted to meet the object of individualised timely justice. *The Commission observed that all cases pending for more than one year be categorised as backlogged. All cases backlogged in three years and current cases be decided within one year.* The Commission considered various methods for fixing the Judge strength so as to meet current institution of cases within the expected time-frame as well as also to clear the arrears within the targeted time. One of the problems noticed was huge vacancies and failure in timely filling up of vacancies. Delay and arrears was a concern not only in the trial courts but throughout the judicial system. If the disposal in trial courts increased, the matter may be held up in the higher courts. Adequate infrastructure and support staff was also of importance. Good judicial management practices such as timeliness and performance benchmarks were also discussed. It was observed that the High Courts are already backlogged and not able to keep pace with new filings. It was observed that there was need to establish non-mandatory time-frame for different types of cases. Unless Judges and litigants have clear expectations, there will be little accountability for delays.

19. Thereafter, the matter was considered in *Imtiyaz Ahmad* v. *State of U.P.*[10] This Court gave directions for review of cadre strength in terms of principles laid down therein. However, the said judgment appears to have dealt with the issue of fixing up of strength of Judges for the subordinate judiciary and infrastructure for the district judiciary[11].

Possibility of decision of five-year-old cases pending in the High Courts particularly the criminal appeals within the existing system — Need to consider decongestion of constitutional courts

20. In *Akhtari Bi* v. *State of M.P.*[12], this Court requested the Chief Justices of the High Courts to take immediate effective steps for disposal of criminal appeals pending for more than five years.

21. The matter was considered by the Joint Conference of Chief Ministers and the Chief Justices held in April 2016 and it was resolved:

> "8. DELAY AND ARREARS COMMITTEE.—
>
> Resolved that
>
> (*i*) all High Courts shall assign topmost priority for disposal of cases which are pending for more than five years;

9 (2002) 4 SCC 578 : 2002 SCC (Cri) 830

** **Ed.**: On the Reform of Judicial Administration.

10 (2017) 3 SCC 658 : (2017) 2 SCC (Civ) 311 : (2017) 2 SCC (Cri) 228 : (2017) 1 SCC (L&S) 724

11 *Imtiyaz Ahmad* v. *State of U.P.*, (2017) 3 SCC 658, para 43

12 (2001) 4 SCC 355 : 2001 SCC (Cri) 714

(*ii*) High Courts where arrears of cases pending for more than five years are concentrated shall facilitate their disposal in mission mode;

(*iii*) High Courts shall progressively thereafter set a target of disposing of cases pending for more than four years;

(*iv*) while prioritising the disposal of cases pending in the District Courts for more than five years, additional incentives for the Judges of the district judiciary be considered where feasible; and

(*v*) efforts be made for strengthening case-flow management rules."

22. The available figures[13] show that long pendency, particularly of more than five years, remains a serious challenge. In High Courts, 16.29 lakh cases were more than five years old. 7.43 lakh cases were more than 10 years old. Since current disposal itself was less than the institution of fresh cases, there was no likelihood of old cases being decided in a reasonable time. There could not be increase of strength of High Court Judges beyond a limit. The system could not be top heavy. Volume of work in the High Court was likely to further increase on account of increased disposal of cases in subordinate courts with the increased strength of Judges, infrastructure and other steps being taken. Disposal of cases in subordinate courts is not enough if the same are thereafter held up in the High Courts. New laws are being enacted providing statutory remedies before the High Courts. Moreover, oversight mechanism for Judges of the constitutional courts is not the same as for other Judges[14]. While, there can be no doubt about need for such protection, appointment of large number of such Judges can be counterproductive. If number of constitutional courts is to be increased to match the volume of work being entrusted to such courts, it may have its implication unless it is possible to find sufficient number of suitable persons. The fact that there are large number of vacancies in such courts shows the difficulty in identifying adequate number of suitable

13 Please refer to Court News—October-December, 2016 in Supreme Court website (www.supremecourtofindia.nic.in) or (http://supremecourtofindia.nic.in/pdf/CourtNews/COURT_NEWS_Vol_XI_Issue_No4_October_to_December_2016.pdf)

14 *L. Chandra Kumar* v. *Union of India*, (1997) 3 SCC 261, para 78 : 1997 SCC (L&S) 577

"*78.* ... The Judges of the superior courts have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence. *The constitutional safeguards which ensure the independence of the Judges of the superior judiciary, are not available to the Judges of the subordinate judiciary or to those who man tribunals created by ordinary legislations.* ..." (emphasis supplied)

persons for constitutional courts. Needless to say that nature of work before the constitutional courts particularly laying down of law is time-consuming. Such courts cannot be overburdened.

23. The Arrears Committee of this Court considered the issue of filling up of vacancies in subordinate courts and the issue of arrears. It was noted that while better monitoring, better management and other steps such as the Central selection may help speedy disposal in subordinate courts, the working of constitutional courts stands on different footing. There being mismatch in pendency and disposal, the Committee recommended an interaction with the stakeholders to explore the issues of judicial reforms including re-engineering of structure of administration of justice and the legislative changes necessary for the constitutional goal of speedy justice[15]. Accordingly, a meeting with the stakeholders was held on 8-4-2017. The issues considered were:

"(*i*) Decongestion of Supreme Court and High Courts from civil and criminal appeals.

(*ii*) Performance of Tribunals in contribution to decongestion of cases in Supreme Court and High Courts.

(*iii*) Central Selection Mechanism to fill up vacancies in subordinate courts.

(*iv*) Video recording and conferencing in courts and video investigation by investigating authorities.

(*v*) Reforms in legal profession.

(*vi*) Issue of granting bail and undertrials."

24. In the said meeting, it was noticed that in most of the High Courts disposal was less than the institution. This called for re-engineering of structure of administration of justice. One of the suggestions was that statutory remedies provided before the constitutional courts may be shifted to alternative fora. It was suggested that Courts of Appeals may be set up higher to the District Courts but below the High Court. Such Courts of Appeals could comprise more than one member, partly drawn from the Senior District Judges and partly recruited directly from the Bar through a Central Selection Mechanism[16]. If

15 Minutes of the meeting of the Arrears Committee held on 23-3-2017

16 Relevant extract from the Minutes of meeting of the Arrears Committee held on 8-4-2017:

"Reference to the available statistics shows that pendency of more than five-year-old cases in the High Courts was more than 40% of the total pendency in the High Courts and figures of five-year-old cases were on the increase. Criminal appeals in most of the High Courts were pending for more than five years and there was no possibility of such appeals being taken up for hearing to satiate the aspirations of the common litigant of speedy justice. In most of the High Courts, disposal of criminal appeals was less than the institution. Delay in decision of criminal cases, particularly in category of serious cases where granting bail was not safe, was not a satisfactory situation. Unless there was an alternative to ensure speedy disposal for criminal cases in the High Courts, search for structural alternative was the imperative need of the hour. There are other areas of appellate jurisdiction in the High Court including second appeals, matrimonial matters, accidental claim cases, land acquisition cases which also require prompt disposal, but the same get clogged at the

above proposal is considered, pending appeals before the High Court could be transferred to such Benches whose decisions will be final.

25. An enabling statute could be enacted whereby the State could, in consultation with the High Courts, transfer all or certain categories of appeals or other statutory proceedings from the High Courts to the alternative fora. Constitutional remedies will remain intact. It was explained that this would not be creating one extra forum resulting in longer duration of litigation instead of speedy disposal. The constitutional remedy under Article 227 was different from statutory appeal[17].

26. Suggestions considered in the meeting also include restructuring of the Tribunals, reforms in legal profession, online grievance redressal mechanism against administrative decisions with specified time-limits on a par with the Right to Information Act (RTI), summary procedures for civil and criminal disputes of certain categories[18]. The matter was also considered thereafter in the meeting of the Arrears Committee of the Supreme Court with the Arrears Committees of the High Courts[19].

27. In 124th Report of the Law Commission of India (1988) titled "High Court Arrears — A Fresh Look", the Law Commission observed that wherever possible, proliferating appellate and wide original jurisdiction should be controlled and curtailed without impairing the quality of justice. It was

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(footnote 16 *contd.*)

High Court level because of the high pendency of the cases in the High Courts and time taken in decision of such appeals. The statistics show that in most of the High Courts the disposal was less than the institution and as many as 16.29 lakh cases were more than five years old. Figure of 10-year-old cases is 7.43 lakhs in the High Courts and more than 20 lakhs in the subordinate courts.

Thus, there is need for re-engineering of the structure of administration of justice by which the Supreme Court and the High Courts may discharge only core constitutional functions while the statutory appeals or other statutory functions can be dealt with by an alternative mechanism by Courts of Appeal which, in hierarchy will be higher to the District Judges but below the High Court. Such cadre may comprise of members drawn partly by selection from the Higher Judicial Service and partly from the Bar through centralised recruitment mechanism. It may be possible to lay down disposal norms/targets to be achieved by such Benches and in light thereof number of Benches within the jurisdiction of each High Court may be assessed. Pending appeals or at least certain categories of appeals can be transferred to such Benches. Based on performance, integrity and suitability, members of the appellate Benches may be considered for elevation to the High Courts. Remedy to move the High Court under Articles 226/227 will remain intact. Apprehension was expressed by some of the participants that creating another appellate forum may not necessarily result in reducing the docket load of the High Courts and Supreme Court. Because, going by the present trend there is a tendency of every litigation being carried to the higher forum and at least till the High Court if not the Supreme Court. However, the scope of interference in constitutional jurisdiction of the High Courts under Articles 226/227 is circumscribed and not the same as deciding appeals on facts and law."

17 *Radhey Shyam* v. *Chhabi Nath*, (2015) 5 SCC 423 : (2015) 3 SCC (Civ) 67; *Sita Ram* v. *State of U.P.*, (1979) 2 SCC 656 : 1979 SCC (Cri) 576

18 Minutes of the interaction of the Arrears Committee for Supreme Court and High Courts held on 8-4-2017

19 Minutes of the interaction of the Arrears Committee for Supreme Court and High Courts held on 22-4-2017

observed that the approach of the Law Commission is to reduce number of appeals, set up specialist courts/tribunals to reduce the inflow of work to the High Courts.

28. Desirability of amending provisions of direct appeal to this Court was also considered in *Gujarat Urja Vikas Nigam Ltd.* v. *Essar Power Ltd.*[20] Therein, this Court considered the unique role of the highest court and observed that overburdening of constitutional courts was undesirable for functioning of the Constitution. Heavy work of routine nature before constitutional courts affected their assigned core role. The Law Commission was asked to look into the matter.

29. In 272nd Report***, the Law Commission observed that the forum for challenging the order of Tribunal should be appellate Tribunals, which decision should be final. No statutory appeal should be provided before the High Courts or Supreme Court in routine manner[21]. No action appears to have been taken on the said recommendations.

30. Since one trial and one appeal are considered to be components of fair system of administration of justice in criminal cases of serious nature[22], adjudication at the original forum and at one appellate forum must be within reasonable time which should not normally exceed one to two years, as noted by the Law Commission and the Malimath Commission. At the same time, multiple layers of remedies need to be eliminated. Article 227 remedy, as earlier observed, is meant primarily against perversity or patent error in a judgment.

31. From the data available it is clear that all the steps taken by the Central Government so far have not significantly improved the situation of speedy disposal of criminal appeals. The steps taken are set off by increased volume of work or otherwise.

32. Accordingly, we are of the view that the Union of India ought to consider whether it is viable to have criminal appeals and other matters before the High Courts decided within reasonable time as per existing system. If not, whether it is possible to provide any other suitable forum for such appeals so as to ensure enforcement of fundamental right of speedy justice or how else the situation can be remedied. The issue of non-viability of providing routine statutory appeals to constitutional courts as observed in *Gujarat Urja*[20] may also need to be considered.

Filling up of vacancies at all levels with the best available talent

33. Apart from the above, the steps which need immediate consideration include timely filling up of vacancies at all levels with the best available talent. The 14th Law Commission in its Report in the year 1958 examined the issue of having best talent for subordinate judiciary. It suggested selection by all-India level competition and constitution of All-India Judicial Service. In *All India*

20 (2016) 9 SCC 103

*** **Ed.**: Assessment of Statutory Frameworks of Tribunals in India.

21 Para 8.23 of the Law Commission Report

22 *Dadu* v. *State of Maharashtra*, (2000) 8 SCC 437, para 17 : 2000 SCC (Cri) 1528

Judges Assn. v. *Union of India*[23] this Court observed that the Union of India should take steps in the matter as early as possible. This Court also directed that vacancies at all levels be filled up in a time-bound manner[24]. The uniform method of recruitment was directed to be followed by amending the applicable rules[25].

34. Relying upon the minutes of the Arrears Committee of this Court dated 8-4-2017 that a central selection mechanism may be introduced to timely fill up all the vacancies with the best available talent, the Department of Justice, Government of India vide Letter dated 28-4-2017, addressed to the Secretary General of this Court, stated that the idea of Central Selection Mechanism ought to be considered. The said Letter was treated by the then Chief Justice of India as Suo Motu Writ (Civil) No. 1 of 2017 (*Central Selection Mechanism for Subordinate Judiciary, In re*) and notices were issued. Learned amicus gave a note on the Central Selection Mechanism which was circulated to all the States and the High Courts vide order dated 28-7-2017[26]. The matter is, however, still pending. We refrain from expressing any view on the judicial order to be passed. Needless to say that setting up of Central Selection Mechanism will go a long way in having timely appointments of best available talent. Steps in this regard may be taken by the authorities[27] concerned without delay so that timely and quality appointments can be ensured.

35. Appointment to constitutional courts is governed by the Collegium System as laid down in judgments of this Court in *Supreme Court Advocates-on-Record Assn.* v. *Union of India*[28] and *Special Reference No. 1 of 1998, In re*[29]. Vide 99th Amendment to the Constitution, the said system was sought to be replaced by the National Judicial Appointment Commission (NJAC). The said amendment was struck down by this Court in *Supreme Court*

23 (1992) 1 SCC 119, para 12 : 1992 SCC (L&S) 9

24 *Malik Mazhar Sultan (3)* v. *U.P. Public Service Commission*, (2008) 17 SCC 703, para 7 : (2010) 1 SCC (L&S) 942

25 *All India Judges Assn.* v. *Union of India*, (2002) 4 SCC 247, para 27 : 2002 SCC (L&S) 508

26 *Central Selection Mechanism for Subordinate Judiciary, In re*, 2017 SCC OnLine SC 1694, wherein it was directed:

> "1. We are tentatively of the view, that the objections raised by a few of the High Courts for centralisation of the selection process of Subordinate Judges, have been suitably dealt with in our order dated 10-7-2017 [*Central Selection Mechanism for Subordinate Judiciary, In re*, 2017 SCC OnLine SC 1644]. It, however, seems that some confusion still persists. This obviously is out of a possible miscommunication. We, therefore, consider it just and appropriate to request Mr Arvind P. Datar, learned Amicus Curiae, to prepare a "Concept Note", highlighting the various aspects of our order dated 10-7-2017 [*Central Selection Mechanism for Subordinate Judiciary, In re*, 2017 SCC OnLine SC 1644] and indicating how the objections raised stand satisfied. The "Concept Note" shall be placed on the record of this case, and circulated amongst learned counsel representing the States or the High Courts, before the next date of hearing.
>
> 2. List again on 4-8-2017, at 3.00 p.m."

27 *See* Schedule VII List III Entry 11-A to the Constitution

28 (1993) 4 SCC 441, paras 478(13), 480 and 486

29 (1998) 7 SCC 739, para 44

Advocates-on-Record Assn. v. *Union of India*[30]. However, it was observed that the functioning of Collegium System needed to be improved[31]. Accordingly, while upholding (*sic* striking down) the amendment, the Court vide order dated 16-10-2015[32] directed:

30 (2016) 5 SCC 1, para 1255

31 (2016) 5 SCC 1 — Chelameswar, J. — para 1236; Lokur, J. — para 969; Kurian, J. — para 990; Goel, J. — para 1111:

"*1236.* … The abovementioned two are not the only cases where the system failed. It is a matter of public record that in the last 20 years, after the advent of the Collegium System, a number of recommendations made by the Collegia of the High Courts came to be rejected by the Collegium of the Supreme Court. There are also cases where the Collegium of this Court quickly retraced its steps having rejected the recommendations of a particular name made by the High Court Collegium giving scope for a great deal of speculation as to the factors which must have weighed with the Collegium to make such a quick volte face. Such decisions may be justified in some cases and may not in other cases. There is no accountability in this regard. The records are absolutely beyond the reach of any person including the Judges of this Court who are not lucky enough to become the Chief Justice of India. Such a state of affairs does not either enhance the credibility of the institution or good for the people of this country." (SCC pp. 800-01)

"*969.* The result of this declaration is that the "Collegium System" postulated by the *Second Judges case*, (1993) 7 SCC 441 and the *Third Judges case [Special Reference No. 1 of 1998, In re*, (1998) 7 SCC 739] gets revived. However, the procedure for appointment of Judges as laid down in these decisions read with the (Revised) Memorandum of Procedure definitely needs fine tuning. We had requested the learned counsel, on the close of submissions, to give suggestions on the basis that the petitions are dismissed and on the basis that the petitions are allowed. Unfortunately, we received no response, or at best a lukewarm response." (SCC p. 681)

"*990.* All told, all was and is not well. To that extent, I agree with Chelameswar, J. that the present Collegium System lacks transparency, accountability and objectivity. The trust deficit has affected the credibility of the Collegium System, as sometimes observed by the civic society. Quite often, very serious allegations and many a time not unfounded too, have been raised that its approach has been highly subjective. Deserving persons have been ignored wholly for subjective reasons, social and other national realities were overlooked, certain appointments were purposely delayed so as either to benefit vested choices or to deny such benefits to the less patronised, selection of patronised or favoured persons were made in blatant violation of the guidelines resulting in unmerited, if not, bad appointments, the dictatorial attitude of the Collegium seriously affecting the self-respect and dignity, if not, independence of Judges, the court, particularly the Supreme Court, often being styled as the Court of the Collegium, the looking forward syndrome affecting impartial assessment, etc., have been some of the other allegations in the air for quite some time. These allegations certainly call for a deep introspection as to whether the institutional trusteeship has kept up the expectations of the Framers of the Constitution. Though one would not like to go into a detailed analysis of the reasons, I feel that it is not the trusteeship that failed, but the frailties of the trustees and the collaborators which failed the system. To me, it is a curable situation yet." (SCC p. 689)

"*1111.* Since the system existing prior to the amendment will stand revived on the 99th Amendment being struck down and grievances have been expressed about its functioning, I am of the view that such grievances ought to be considered. It is made clear that grievances have not been expressed by the petitioners about the existence of the pre-existing system of appointment but about its functioning in practice. It has been argued that this Court can go into this aspect without revisiting the earlier decisions of the larger Benches. I am of the view that such grievances ought to be gone into for which the matter needs to be listed for hearing." (SCC p. 740)

32 *Supreme Court Advocates-on-Record Assn.* v. *Union of India*, (2016) 5 SCC 1, p. 801, para 1239

"*1239. … 5.* To consider introduction of appropriate measures, if any, for an improved working of the 'Collegium System', list on 3-11-2015."

36. After due consideration of various suggestions, this aspect of the matter was dealt with vide order dated 16-12-2015[33] as follows: (*Supreme Court Advocates-on-Record case*[33], SCC pp. 806-07, paras 1255-1256)

"*1255.* In view of the above, the Government of India may finalise the existing Memorandum of Procedure by supplementing it in consultation with the Chief Justice of India. The Chief Justice of India will take a decision based on the unanimous view of the Collegium comprising the four seniormost puisne Judges of the Supreme Court. They shall take the following factors into consideration:

1256.1. Eligibility criteria: The Memorandum of Procedure may indicate the eligibility criteria, such as the minimum age, for the guidance of the Collegium (both at the level of the High Court and the Supreme Court) for the appointment of Judges, after inviting and taking into consideration the views of the State Government and the Government of India (as the case may be) from time to time.

1256.2. Transparency in the appointment process: The eligibility criteria and the procedure as detailed in the Memorandum of Procedure for the appointment of Judges ought to be made available on the website of the Court concerned and on the website of the Department of Justice of the Government of India. The Memorandum of Procedure may provide for an appropriate procedure for minuting the discussion including recording the dissenting opinion of the Judges in the Collegium while making provision for the confidentiality of the minutes consistent with the requirement of transparency in the system of appointment of Judges.

1256.3. Secretariat: In the interest of better management of the system of appointment of Judges, the Memorandum of Procedure may provide for the establishment of a Secretariat for each High Court and the Supreme Court and prescribe its functions, duties and responsibilities.

1256.4. Complaints: The Memorandum of Procedure may provide for an appropriate mechanism and procedure for dealing with complaints against anyone who is being considered for appointment as a Judge.

1256.5. Miscellaneous: The Memorandum of Procedure may provide for any other matter considered appropriate for ensuring transparency and accountability including interaction with the recommendee(s) by the Collegium of the Supreme Court, without sacrificing the confidentiality of the appointment process."

33 *Supreme Court Advocates-on-Record Assn.* v. *Union of India*, (2016) 5 SCC 1 : (2016) 5 SCC 803 (2)

37. Improvement contemplated in the above judgment does not seem to have seen the light of the day. In *C.S. Karnan, In re*[34] observations have been made as to the need to revisit the process of appointments and to set up mechanism for corrective measures other than impeachment against conduct of an erring Judge.

38. We make it clear that we are in no manner deviating from the law laid down by this Court that primacy in appointment of constitutional courts is to be of the Chief Justice of India. At the same time, even without affecting such primacy improvement in working of collegium is a felt necessity as held above. Five-Judge Bench of this Court directed setting up of the Secretariat and also to incorporate other factors for improved and effective working of the collegiums system. This apart, corrective measures against post appointment conduct or inadequate performance or failure to uphold righteous conduct need to be evolved. These aspects require urgent attention of authorities concerned.

39. We may particularly note that if a High Court remains without a permanent Chief Justice, process of speedy justice certainly suffers. In spite of timeline in the MoP for appointments in pursuance of judgment of this Court in *Supreme Court Advocates-on-Record Assn.* v. *Union of India*[35] that there will be no Acting Chief Justice for more than one month[36], timely appointments of Chief Justices is not taking place. Appointment of a Chief Justice for few days for a High Court other than the place where the candidate is already working serves no purpose of the system. The Central Government must take all steps to ensure such appointments as per prescribed timeline.

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34 (2017) 7 SCC 1 : (2017) 3 SCC (Civ) 545 : (2017) 4 SCC (Cri) 46, pp. 56-57, paras 77-78:

> "*77.* This case, in our opinion, has importance extending beyond the immediate problem. This case highlights two things:
>
> (*1*) the need to revisit the process of selection and appointment of Judges to the constitutional courts, for that matter any member of the judiciary at all levels; and
>
> (*2*) the need to set up appropriate legal regime to deal with situations where the conduct of a Judge of a constitutional court requires corrective measures—other than impeachment—to be taken.
>
> *78.* … What appropriate mechanism would be suitable for assessing the personality of the candidate who is being considered for appointment to be a member of a constitutional court is a matter which is to be identified after an appropriate debate by all concerned—the Bar, the Bench, the State and civil society. But the need appears to be unquestionable."

35 (1993) 4 SCC 441, para 478

36 Para 5 of the "Memorandum showing the Procedure for Appointment and Transfer of Chief Justices and Judges of High Courts" (MoP).

> "5. Initiation of the proposal for the appointment of Chief Justice of a High Court would be by the Chief Justice of India. The process of appointment must be initiated well in time to ensure the completion at least one month prior to the date of anticipated vacancy for the Chief Justice of the High Court. The Chief Justice of India would ensure that when a Chief Justice is transferred from one High Court to another simultaneous appointment of his successor in his office should be made and *ordinarily the arrangement of appointment of an acting Chief Justice should not be made for more than one month.*" (emphasis supplied)

Even if it may not be possible to make initial appointments to High Courts till suitable candidates are identified, appointment of Chief Justices may stand on different footing as selection is to be made out of available candidates. To speedily identify such candidates, availability of data and involvement of persons who can spend time may be needed. The process may require thinking, planning and acting on a continuous basis. Primacy with the judiciary is necessary but for the job of such onerous nature, effective assistance is a must. Felt needs of time must be addressed. The system cannot remain static or unconcerned even when problems are patent. As already noted there appears to be dire need to strengthen the system of timely appointment of Judges, particularly Chief Justices. Identification of candidates, scrutiny, evaluation and post appointment performance measurements and conduct are time-consuming processes and at least some independent full-time experts are required, if timely and best appointments are to be ensured and requisite in-house oversight is to be a reality. A full-time body consistent with independence of judiciary appears to be immediate need for the system. Absence thereof contributes to denial of justice. The Central Government must also ensure that MoP in pursuance of order of this Court in *NJAC case* dated 16-12-2015 brings about the improvements in working of the collegiums as stipulated.

Accountability in terms of performance measurement and righteous conduct at all levels of judicial hierarchy including constitutional courts

40. There is also a need for mechanism to evaluate and compile performance of the judicial system as per observations in 245th Report of the Law Commission so that there is non-mandatory timeline for decision of cases and accountability consistent with the right of speedy justice. Such mechanism may provide norms for performance measurement for all Judges in the hierarchy. The same has to be done without affecting independence of judiciary. There is also need for an in-house mechanism manned by experts but with safeguards consistent with independence of judiciary for measures against erring Judges other than impeachment as observed in *C.S. Karnan, In re*[34].

Reforms in the legal profession — remedying uncalled for strikes

41. We may also deal with another important aspect of speedy justice. It is well known that at some places there are frequent strikes, seriously obstructing access to justice. Even cases of persons languishing in custody are delayed on that account. By every strike, irreversible damage is suffered by the judicial system, particularly consumers of justice. They are denied access to justice. Taxpayers' money is lost on account of judicial and public time being lost. Nobody is accountable for such loss and harassment.

34 (2017) 7 SCC 1 : (2017) 3 SCC (Civ) 545 : (2017) 4 SCC (Cri) 46

42. Dr Ambedkar in his famous speech on 25-11-1949 had warned: (CAD Vol. 11)

> "The first thing in my judgment we must do is to hold fast to constitutional methods of achieving our social and economic objectives. It means we must abandon the bloody methods of revolution. It means that we must abandon the method of civil disobedience, non-cooperation and satyagraha. When there was no way left for constitutional methods for achieving economic and social objectives, there was a great deal of justification for unconstitutional methods. But where constitutional methods are open, there can be no justification for these unconstitutional methods. These methods are nothing but the Grammar of Anarchy and the sooner they are abandoned, the better for us."

43. The above warning of the Constitution-maker needs to be adhered to at least by the legal fraternity. The Bar has the tradition of placing their professional duty of assisting the access to justice above every other consideration. How is the situation to be tackled. Competent authorities may take a final call.

44. In *Harish Uppal* v. *Union of India*[37], this Court held that lawyers have no right to go on strike or to give a call for boycott of courts nor can they abstain from the courts. Calls given by Bar Association or Bar Council for such purpose cannot require the court to adjourn the matters. Strike or abstaining from court is unprofessional. Even though more than 15 years have passed after the said judgment was rendered, the judgment of this Court is repeatedly flouted and no remedial measures have been adopted. Regulation of right of appearance in courts is within the jurisdiction of the courts. This Court also asked the Law Commission to suggest appropriate changes in the regulatory framework for the legal profession[38]. The Law Commission has submitted 266th Report*. The problem continues seriously affecting the rule of law.

45. In *Mahipal Singh Rana*[38], this Court noted that the High Courts can frame rules to lay down conditions on which advocates can be permitted to practise in courts. An advocate can be debarred from appearing in court even if the disciplinary jurisdiction for misconduct is vested with the Bar Councils[39]. This Court requested the Law Commission to look into all relevant aspects relating to regulation of legal profession[40].

46. The Law Commission, accordingly, examined the relevant aspects relating to regulation of the legal profession. The Law Commission in its 266th Report found that such conduct of the advocates affects functioning of courts

37 (2003) 2 SCC 45

38 *Mahipal Singh Rana* v. *State of U.P.*, (2016) 8 SCC 335 : (2016) 4 SCC (Civ) 1 : (2016) 3 SCC (Cri) 476 : (2016) 2 SCC (L&S) 390

* **Ed.**: On The Advocates Act, 1961 (Regulation of Legal Profession)

39 *Mahipal Singh Rana* v. *State of U.P.*, (2016) 8 SCC 335, paras 20, 30 to 35

40 *Mahipal Singh Rana* v. *State of U.P.*, (2016) 8 SCC 335, para 58

and particularly it contributes to pendency of cases. It analysed the data on loss of working days on account of call of strikes. The analysis is as follows:

"7.2. In the State of Uttarakhand, the information sent by the High Court for the years 2012-2016 shows that in Dehradun District, the advocates were on strike for 455 days during 2012-2016 (on an average, 91 days per year). In Haridwar District, 515 days (103 days a year) were wasted on account of strike.

7.3. In the case of the State of Rajasthan, the High Court of Judicature at Jodhpur saw 142 days of strike during 2012-2016, while the figure stood at 30 for the Jaipur Bench. In Ajmer District Courts, strikes remained for 118 days in the year 2014 alone, while in Jhalawar, 146 days were lost in 2012 on account of strike.

7.4. The case of Uttar Pradesh appears to be the worst. The figures of strike for the years 2011-2016 in the subordinate courts are alarmingly high. In the State of Uttar Pradesh, the District Courts have to work for 265 days in a year. The period of strike in five years period in worst affected districts has been as Muzaffarnagar (791 days), Faizabad (689 days), Sultanpur (594 days), Varanasi (547 days), Chandauli (529 days), Ambedkar Nagar (511 days), Saharanpur (506 days) and Jaunpur (510 days). The average number of days of strike in eight worst affected districts comes to 115 days a year. Thus, it is evident that the courts referred to hereinabove could work on an average for 150 days only in a year.

7.5. In this regard, the situation in subordinate courts in Tamil Nadu had by no means, been better. The High Court of Tamil Nadu has reported that there are 220 working days in a year for the courts in the State. During the period 2011-2016, districts like Kancheepuram, 687 days (137.4 days per year); Kanyakumari, 585 days (117 days per year); Madurai, 577 days (115.4 days per year); Cuddalore, 461 days (92.2 days per year); and Sivagangai, 408 days (81.6 days per year), were the most affected by strike called by advocates.

7.6. As per the responses received from the High Courts of Madhya Pradesh and Odisha, the picture does not emerge to be satisfactory.

7.7. The Commission noted that the strike by advocates or their abstinence from the court were hardly for any justifiable reasons. It could not find any convincing reasons for which the advocates resorted to strike or boycott of work in the courts. The reasons for strike call or abstinence from work varied from local, national to international issues, having no relevance to the working of the courts. To mention a few, bomb blast in Pakistan school, amendments to Sri Lanka's Constitution, inter-State river water disputes, attack on/murder of advocate, earthquake in Nepal, to condole the death of their near relatives, to show solidarity to advocates of other State Bar Associations, moral support to movements by social activists, heavy

rains, or on some religious occasions such as shraadh, Agrasen Jayanti, etc. or even for kavi sammelan.

7.8. The Commission is of the view that unless there are compelling circumstances and the approval for a symbolic strike of one day is obtained from the Bar Council concerned, the advocates shall not resort to strike or abstention from the court work."

47. Thereafter, the Law Commission referred to observations in the judgment of this Court in *Harish Uppal case*[37] that there should be no strikes by the Bar except in rarest of rare situations which should also not exceed one day. The Bar Councils were called upon to take appropriate action in the matter. The Law Commission noted that the strikes were continuing and causing great obstruction to the access to justice. It was observed: (Report No. 266)

"8.3. In spite of all these, the strikes have continued unabated. The dispensation of justice must not stop for any reason. The strike by lawyers have lowered the image of the courts in the eyes of the general public. The Supreme Court has held that right to speedy justice is included in Article 21 of the Constitution. In *Hussainara Khatoon (1)* v. *State of Bihar*[41]; and in some other cases, it was held that the litigant has a right to speedy justice. The lawyers' strike, however, result in denial of these rights to the citizens in the State.

8.4. Recently, the Supreme Court while disposing of the criminal appeal of *Hussain* v. *Union of India*[42] deprecated the practice of boycotting the Court observing that:

'*27.* One other aspect pointed out is the obstruction of court proceedings by uncalled for strikes/abstaining of work by lawyers or frequent suspension of court work after condolence references. In view of judgment of this Court in *Harish Uppal* v. *Union of India*[37], such suspension of work or strikes is clearly illegal and it is high time that the legal fraternity realises its duty to the society which is the foremost. Condolence references can be once in a while periodically say once in two/three months and not frequently. Hardship faced by witnesses if their evidence is not recorded on the day they are summoned or impact of delay on undertrials in custody on account of such avoidable interruptions of court proceedings is a matter of concern for any responsible body of professionals and they must take appropriate steps. In any case, this needs attention of all authorities concerned—the Central Government/State Governments/ Bar Councils/Bar Associations as well as the High Courts and ways and means ought to be found out to tackle this menace. Consistent with the above judgment, the High Courts must monitor this aspect

37 *Harish Uppal* v. *Union of India*, (2003) 2 SCC 45
41 (1980) 1 SCC 81 : 1980 SCC (Cri) 23
42 (2017) 5 SCC 702 : (2017) 2 SCC (Cri) 638

strictly and take stringent measures as may be required in the interests of administration of justice.'

8.5. In *Ramon Services (P) Ltd.* v. *Subhash Kapoor*[43], the Apex Court observed that if any advocate claims that his right to strike must be without any loss to him, but the loss must only be borne by his innocent client, such a claim is repugnant to any principle of fair play and canons of ethics. Therefore, when he opts to strike or boycott the Court he must as well be prepared to bear at least the pecuniary loss suffered by the litigant client who entrusted his brief to that advocate with all confidence that his cause would be safe in the hands of that advocate."

48. Examining other aspects of the regulation of legal profession, the Law Commission recommended review of regulatory mechanism of the Advocates Act as follows: (Report No. 266)

"17.1. There is a dire necessity of reviewing the regulatory mechanism of the Advocates Act, not only in matters of discipline and misconduct of the advocates, but in other areas as well, keeping in view the wide expanse of the legal profession being involved in almost all areas of life. The very constitution of the Bar Councils and their functions also require the introduction of a few provisions in order to consolidate the function of the Bar Councils in its internal matters as well."

49. Since the strikes are in violation of law laid down by this Court, the same amount to contempt and at least the office-bearers of the associations who give call for the strikes cannot disown their liability for contempt. Every resolution to go on strike and abstain from work is per se contempt. Even if proceedings are not initiated individually against such contemnors by the court concerned or by the Bar Council concerned for the misconduct, it is necessary to provide for some mechanism to enforce the law laid down by this Court, pending a legislation to remedy the situation.

50. Accordingly, we consider it necessary, with a view to enforce fundamental right of speedy access to justice under Articles 14 and 21 and law laid by this Court, to direct the Ministry of Law and Justice to present at least a quarterly report on strikes/abstaining from work, loss caused and action proposed. The matter can thereafter be considered in its contempt or inherent jurisdiction of this Court. The Court may, having regard to the fact situation, hold that the office-bearers of the Bar Association/Bar Council who passed the resolution for strike or abstaining from work, are liable to be restrained from appearing before any court for a specified period or until such time as they purge themselves of contempt to the satisfaction of the Chief Justice of the High Court concerned based on an appropriate undertaking/conditions. They may also be liable to be removed from the position of office-bearers of the Bar Association forthwith until the Chief Justice of the High Court concerned so permits on an appropriate undertaking being filed by them. This may be in addition to any

43 (2001) 1 SCC 118 : 2001 SCC (Cri) 3 : 2001 SCC (L&S) 152

other action that may be taken for the said illegal acts of obstructing access to justice. The matter may also be considered by this Court on receipt of a report from the High Courts in this regard. This does not debar report/petition from any other source even before the end of a quarter, if situation so warrants.

51. We may now sum up our conclusions:

51.1. In the light of 124th and 272nd Reports of the Law Commission of India, judgment of this Court in *Gujarat Urja*[20], the Minutes of the Arrears Committee of Supreme Court dated 8-4-2017 and all other relevant considerations, the authorities concerned may examine whether there is need for any changes in the judicial structure by creating appropriate fora to decongest the constitutional courts so as to realistically achieve the constitutional goal of speedy justice.

51.2. In view of 14th Report of the Law Commission of India, judgment of this Court in *All India Judges Assn.* v. *Union of India*[23], the Minutes of the Arrears Committee of this Court dated 8-4-2017, and the experience on the subject, pending consideration of issue of All-India Judicial Service, there is need to consider the proposal for Central Selection Mechanism for filling up vacancies in courts other than the constitutional courts and also to consider as to how to supplement inadequacies in the present system of appointment of Judges to the constitutional courts at all levels.

51.3. There is need to consider in the light of observations hereinabove and all other relevant considerations whether there should be a body of full-time experts without affecting independence of judiciary, to assist in identifying, scrutinising and evaluating candidates at pre-appointment stage and to evaluate performance post appointment. The Government may also consider what changes are required in the process of evaluation of candidates at its level so that no wrong candidate is appointed. What steps are required for ensuring righteous conduct of Judges at later stage is also an issue for consideration.

51.4. Pending legislative measures to check the malady of frequent uncalled for strikes obstructing access to justice, the Ministry of Law and Justice may compile information and present a quarterly report on strikes/ abstaining from work, loss caused and action proposed. The matter can thereafter be considered in the contempt or inherent jurisdiction of this Court. The Court may direct having regard to a fact situation, that the office-bearers of the Bar Association/Bar Council who passed the resolution for strikes or abstaining from work or took other steps in that direction are liable to be restrained from appearing before any court for a specified period or till they purge themselves of contempt to the satisfaction of the Chief Justice of the High Court concerned based on an appropriate undertaking/conditions. They may also be liable to be removed from the position of office-bearers of the Bar Association forthwith until the Chief Justice of the High Court concerned

20 *Gujarat Urja Vikas Nigam Ltd.* v. *Essar Power Ltd.*, (2016) 9 SCC 103
23 (1992) 1 SCC 119, para 12 : 1992 SCC (L&S) 9

so permits on an appropriate undertaking being filed by them. This may be in addition to any other action that may be taken for the said illegal acts of obstructing access to justice. The matter may also be considered by this Court on receipt of a report from the High Courts in this regard. This does not debar report/petition from any other source even before the end of a quarter, if situation so warrants.

52. Accordingly, we dispose of this appeal in above terms. We direct the Union of India to file an affidavit in the light of the above observations within three months. First report in terms of para 52.4 may be filed by 30-6-2018. The matter may be listed for consideration of the above affidavit on Wednesday, 4-7-2018 before the appropriate Bench.