

How to Modernise the Working of Courts and Tribunals in India

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Abstract

Indian courts are clogged with large backlogs. Part of the reason for the problem is that cases take a very long time to move through the courts. The slow progress of court cases is harmful for the Indian democracy and economy.

We suggest that part of the reason for the backlog is the poor administrative support available to judges. Following several Supreme Court judgments, we propose that a separate organisation (The Indian Courts and Tribunals Services, ICTS) be set up to facilitate administrative functions.

Care needs to be taken while designing ICTS to ensure the protection of judicial independence. The functions of ICTS would also involve a re-engineering of the business processes of the courts to take full advantage of modern technology.

Contents

1	Introduction	
2	The Problem	
2.1	Judicial Inefficiency	
2.2	Solutions proposed so far	
3	Separating the Judicial and Administrative Functions	
3.1	Judicial versus Administrative Functions of Courts	
3.2	A well accepted idea in India	
3.3	Process re-engineering	
4	The proposal: Establishment of Indian Courts and Tribunal Services (ICTS)	
4.1	Objectives	
4.2	Corporate Structure	
4.3	Governance	
4.4	Functioning	
4.5	Developmental work which has taken place	
5	Way forward	

1 Introduction

One of the great strengths of the Indian state is the independence of its judiciary. Judges have generally not been hesitant to strike down actions of the executive or the legislature when these actions have been in violation of the constitution. This is a remarkable achievement of Indian liberal democracy.

However, there are major problems in the judiciary as well. Courts are clogged with enormous backlogs, and cases take very long from start to finish. The slow progress of court cases has important adverse consequences for Indian democracy and economy. Citizens lose faith in the functioning of key state institutions; individuals and firms become comfortable renegeing on contracts, knowing that contract enforcement is weak. Worse, the incentive to renege is high since the only cost is to spend on a long and slow litigation, which too is to be run by the counter-party.

This issue cannot be fixed merely by improvements in laws; good laws are not a substitute for weak justice delivery systems. One big problem has been that of judicial vacancies. But appointing additional judges in itself is not a solution. The productivity of judges needs to be increased. For this, it is important to separate the administrative functions of courts from their judicial functions, and hive these administrative functions off into a separate agency.

This agency should also be given the task of re-engineering court processes to achieve greater efficiencies. This re-engineering should not be just a sprinkling of technology on top of existing processes. Instead, it should involve a thorough re-conceptualisation of court processes, using technology wherever appropriate to drastically reduce delays and achieve better judicial outcomes.

In this document, we propose that the government create a dedicated administrative agency to —

1. Redesign court procedures, bringing in best practices;
2. Administer courts and tribunals efficiently; and
3. Advise the legislature and judiciary on legal reforms.

This proposal is not novel. Many other common-law countries such as UK, USA, Australia and Canada have such court administration agencies. In India, the Supreme Court has repeatedly suggested the creation of an agency to support tribunal administration.¹ Great care needs to be taken in the design of this agency. Institutionally, it should be independent of the executive and the legislature. It should be under the control of, and accountable to, the judiciary.

2 The Problem

2.1 Judicial Inefficiency

Indian courts are clogged with enormous backlogs, and cases take very long from start to finish. As on 9th January, 2019, there are more than 29 million cases pending in the lower courts across India,² about 5 million cases pending in High Courts,³ and about 60,000 cases in the Supreme Court.⁴ In many

¹Supreme Court, *L. Chandra Kumar vs Union Of India*, Mar. 18, 1997, URL: <https://indiankanoon.org/doc/1152518/> (visited on 05/09/2016); Supreme Court, *Union of India v. R. Gandhi*, May 11, 2010, URL: <https://indiankanoon.org/doc/748977/> (visited on 07/20/2016); Supreme Court, *Madras Bar Association v. Union of India*, Jan. 18, 2016, URL: http://www.mayin.org/ajayshah/lfs/sc20160118_madBarAssn.pdf.

²National Judicial Data Grid, *Summary Report of India as on Date 19/07/2016*, URL: http://164.100.78.168/njdg_public/main.php (visited on 07/19/2016).

³*ECourts Services Database*, Online database, URL: http://www.ecourts.gov.in/ecourts_home/ (visited on 01/09/2019).

⁴Ministry of Law and Justice, Government of India, *Pending Court Cases*, URL: <http://pib.nic.in/newsite/PrintRelease.aspx?relid=137291> (visited on 07/19/2016).

Box 1: India pays \$4 million in damages because of non-functioning judiciary

India and Australia have a **Bilateral Investment Treaty (BIT)** to promote international investments. One of the clauses of the **BIT** is that the host nation provide investors with “*effective means of asserting claims and enforcing rights*”.

An Australian company, White Industries, had a commercial dispute with Coal India. The dispute was resolved through an international commercial arbitration in Paris. The arbitrator ruled in favour of White Industries in May 2002. In September 2002, Coal India applied in the High Court of Calcutta to set aside the arbitration order. White Industries applied to the Delhi High Court for the enforcement of the international arbitration order, also in September 2002. This led to a dispute over who had jurisdiction: the Delhi High Court or the Calcutta High Court? The matter went up to the Supreme Court and was not heard until June 2010, eight years after the arbitration award.

In 2010 White Industries initiated arbitration against the Republic of India for not providing the “*effective means of asserting claims and enforcing rights*” required by the India-Australia **BIT**. The treaty arbitrator held in favour of White Industries and ordered India to pay A\$ 4,085,180 with interest. India was also required to pay litigation expenses of USD 84,000 with interest.

This case highlights how a company could not even *enforce* an arbitration order after *winning* an arbitration.^a

^aUNCITRAL *Arbitration between White Industries Australia and The Republic of India*, Singapore, Nov. 3, 2011, URL: <http://www.italaw.com/sites/default/files/case-documents/ita0906.pdf> (visited on 05/09/2016).

courts, the rate of institution of new cases is higher than the rate of disposal, meaning that the number of pending cases is increasing.

The slow progress of court cases has important adverse consequences for Indian democracy, and also for the working of the economy. Important constitutional questions are left unanswered for long periods because of the inability of the Supreme Court to constitute adequate Constitutional Benches;⁵ meanwhile, firms and individuals may feel comfortable renegeing on contracts knowing that contract enforcement is weak. As an example, slow enforcement encourages bad behaviour by borrowers which may detrimentally impact markets.⁶ The consequence is that there may be immense numbers of contracts that are beneficial, but not entered into because of lack of trust in the enforcement mechanisms of the state. These losses can be immensely harmful to the economy.

The World Bank’s *Ease of Doing Business Report 2016* index measures judicial performance (among other related matters) under the heading ‘Enforcing Contracts’. Of the 190 countries in the index, India ranks amongst the very worst, just 12 ranks from the bottom. Our neighbours Nepal, Pakistan, and even war-torn Afghanistan rank above us. Malfunctioning Indian courts have become an international problem and caused embarrassment to the country, as the example in Box 1 shows.

2.2 Solutions proposed so far

Most judicial reforms focus on visible symptoms of absence of quality in justice delivery (disposal, pendency, judges’ appointment). Inadequate attention is given to enhancing the quality of administra-

⁵Nick Robinson et al., “Interpreting the Constitution: Supreme Court Constitution Benches since Independence”, in: *Economic and Political Weekly* Vol. 46, Issue No. 09 (Feb. 26, 2011).

⁶Matthieu Chemin, “Does Court Speed Shape Economic Activity? Evidence from a Court Reform in India”, in: *Journal of Law, Economics, and Organization* 28.3 (2012), pp. 460–485, DOI: [10.1093/jleo/ewq014](https://doi.org/10.1093/jleo/ewq014), URL: <http://jleo.oxfordjournals.org/content/28/3/460.full.pdf+html> (visited on 01/20/2016).

tive functions — the back-end administrative functions that are vital for efficient performance of the judicial functions.

In the public discourse, there is a great emphasis upon increasing the *number of judges*. It is, indeed, possible to sharply increase the number of judges, and increase the rate at which cases are processed, while holding all else unchanged. However, it is important to ask whether the environment in which judges are placed is at all conducive to productivity. The Law Commission has expressed a concern that increasing the number of judges without adequate infrastructure may not reduce delay.⁷ The main argument that we present ahead is that there are opportunities for substantial productivity enhancement of courts.

The most useful indicator of judges' productivity is the ratio of judges to disposals per year. A study commissioned by the Law Ministry found that in 2004 the Delhi District Court judges had 654 disposals per judge. As an international comparison, the comparable figure for Australian judges is 1,336 disposals per judge — around double the level of Delhi disposals. The evidence suggests that Australian judges have double the disposal capacity of Delhi judges.⁸ If this problem is to be solved only by appointing additional judges, then India has to achieve twice the judge to population ratio of Australia. Appointing so many judges may not be feasible. Regy and Roy, show that substantial number of hearings in a debt recovery tribunal is not productive because parties have not filed appropriate documents.⁹

Thus the problem of judicial delays may not be solved by just increasing the number of judges. Instead, the productivity of Indian judges should be improved by streamlining the administrative functioning of the Indian judiciary. This note focuses on this aspect. It explains the need for institutional reforms through a clear separation between judicial and administrative functions of the Indian judiciary.

3 Separating the Judicial and Administrative Functions

3.1 Judicial versus Administrative Functions of Courts

Judicial performance has various dimensions: independence, fairness, quality of justice delivered etc. However, for the present purpose, we focus on the time elapsed, and the transactions costs experienced, over the time period of the judicial proceeding. It is useful to decompose the working of the judiciary into judicial versus administrative aspects:

Judicial function The core judicial function of judges is allocating, listing and deciding of cases.¹⁰

Judges have to perform these functions in a time bound manner and in compliance with applicable procedures. Judicial time is precious and should be sharply focused on completing the core judicial function.

Administrative function For effective functioning, courts require competent administration to ensure that processes are followed, documents are submitted and stored, facilities are maintained, and human resources are managed. Court administration must support the judges in performing their core judicial function efficiently. Efficient administrative function is a pre-requisite for efficient judicial function.

⁷See Law Commission of India, *Report No. 245, Arrears and Backlog: Creating Additional Judicial (wo)manpower*, 2014, URL: <http://lawcommissionofindia.nic.in/reports/Report245.pdf> (visited on 05/10/2016).

⁸See India Development Foundation, *Judicial Impact Assessment: An Approach Paper*, May 2008, URL: <http://lawmin.nic.in/doj/justice/judicialimpactassessmentreportvol2.pdf> (visited on 05/14/2016), at pg.46.

⁹Prasanth Regy and Shubho Roy, "Understanding Judicial Delays in Debt Tribunals", in: *NIPFP Working Paper* (2017).

¹⁰This is based on allocation of responsibilities followed by the UK HMCTS. HMCTS is subject to the directions of the judiciary in relation to the conduct of the business of the courts and tribunals in matters such as listing, case allocation and case management. Pratik Datta, "Towards a Tribunal Services Agency", in: *NUJS Law Review* 8 (2015), pp. 181–204, URL: <http://nujlawreview.org/wp-content/uploads/2016/12/Pratik-Datta.pdf> (visited on 03/07/2019), p. 182.

Box 2: Surgeon and Judge

Consider a super-specialist senior heart surgeon. Before the senior surgeon enters the operation theatre, the anaesthetist would have administered anaesthesia to the patient; the nurses would have kept the necessary equipment ready; junior doctors would have done the basic preparatory work before the senior surgeon starts his work. The senior surgeon would come into the operation theatre, perform the surgery at a stretch, finish it and leave. The junior doctors and other staff members would finish the rest of the procedure. In other words, the senior surgeon's task is more focused since he is able to operate with a team, which is supported by the hospital administration.

The entire surgery may run for many hours, but the time utilised of the senior heart surgeon may be as little as 20 minutes. One heart surgeon is able to do much more work by focusing on the most critical function, while an array of juniors surrounding the surgeon perform support functions. If the heart surgeon had to do all other work (e.g. administering anaesthesia, setting up a heart-lung machine, collecting up instruments, preparatory work, cleaning up, etc) then this would be a poor use of his time. The number of surgeries that he could do per day would go down substantially.

If, in addition, the heart surgeon is given the responsibility of managing the hospital administration, this would have further negative effects. It would hamper the *focus* of the heart surgeon, which runs against the requirement of extreme concentration in doing heart surgery.

Nation	Office
UK	Her Majesty's Courts and Tribunals Service
USA	Administrative Office of US Courts
Canada	Court Administration Service
Australia	Court Services, Victoria

Table 1: Dedicated court management offices in other nations

As an analogy, consider how a senior surgeon works. Box 2 shows how the time of a master heart surgeon is utilised, with an array of support functions being performed by teams surrounding the surgeon. In terms of demands on intellectual capability, judges are exactly like a surgeon. In Indian courts, the responsibility for administration is assigned to the chief judicial officer of the court. However, judges are not given adequate support teams or adequate administrative support. This places significant demands on their time. Their focus is repeatedly interrupted, which hampers the process of imbibing the facts and legal arguments about the case in front of them.

Just like a senior surgeon does not have to worry about hospital administration, a judge should not have to worry about day-to-day court administration. Like the surgeon, judges need to work in a team supported by a specialised company for administrative support functions. Many other nations with a common law background have created dedicated organisations to support the judiciary. Table 1 is an illustrative list which names a few.

India, too, needs to separate the judicial functions of its courts and tribunals from their administrative functions. These administrative functions should be performed by a dedicated company (with majority board level representation from the judiciary). This will free up judicial time, which can be used only for judicial work.

3.2 A well accepted idea in India

The idea of a separate administrative agency for Indian judiciary owes its origin to multiple judgments of the Indian Supreme Court.¹¹ Way back in 1997, the Supreme Court in *L. Chandra Kumar vs Union Of India*, while recommending reforms to the Indian tribunal system, observed that ‘one reason why these Tribunals have been functioning inefficiently is because there is no authority charged with supervising and fulfilling their administrative requirements’. The Court found the current framework where different tribunals constituted under different enactments are administered by different administrative departments of the Central and the State Governments to be unsatisfactory since there was no uniformity in administration. Therefore, taking into account the Indian context, the Court suggested creation of a single umbrella organisation.¹²

We are of the view that, until a wholly independent agency for the administration of all such Tribunals can be set-up, it is desirable that all such Tribunals should be, as far as possible, under a single nodal Ministry which will be in a position to oversee the working of these Tribunals. For a number of reasons that Ministry should appropriately be the Ministry of Law. It would be open for the Ministry, in its turn, to appoint an independent supervisory body to oversee the working of the Tribunals. [...] The creation of a single umbrella organisation will, in our view, remove many of the ills of the present system.

Again in 2010, the Supreme Court in *Union of India v. R. Gandhi* extensively referred to Sir Leggatt’s review of UK tribunals,¹³ based on which **Her Majesty’s Courts and Tribunals Service (HMCTS)** was set up. The Court held that ‘unless wide-ranging reforms as were implemented in the United Kingdom (UK) and as were suggested in *L. Chandra Kumar vs Union Of India* are brought about, tribunals in India will not be considered as independent’.¹⁴

In an interim order in *Madras Bar Association v. Union of India* in 2016, the Supreme Court had again instructed the Central Government to consider the observations made in *Union of India v. R. Gandhi* (in paras 64 to 70) dealing with the recommendation of creating an independent agency, like UK HMCTS, to provide administrative support services to Indian tribunals.¹⁵

After originating in the Supreme Court, the idea has found proponents even within the Parliament. Mr Rangasayee Ramakrishna MP, in his speech before the Rajya Sabha, proposed the setting up of a public sector organisation to support the administrative functions of the Indian judiciary. He stated:¹⁶

[...] there are very good experiments in UK and in the State of Victoria, in Australia, where all the procedures and formalities, pre-hearing formalities, have been converted into a corporatised structure. This, in the United Kingdom, is called Her Majesty’s Courts and Tribunal Services. I think we should study this procedure and introduce a system by which all the back office formalities are taken over by a public sector organisation and the Judges will be left only for hearing the cases.

Recently, the **Financial Sector Appellate Tribunal (FSAT)** Task Force chaired by Justice N.K. Sodhi conducted an extensive study on this issue. It reviewed international practice in this regard and observed that many advanced jurisdictions usually have a specialised court administration agency to support

¹¹A somewhat similar suggestion was made ever earlier by the Law Commission of India in 1988 when it recommended setting up of a National Judicial Centre for coordination and development of court staff, their condition of service, training procedure, standardised court room facilities, recording of cases in computers. However, the Law Commission did not discuss the potential structure of the Centre. Datta, see n. 10.

¹²Supreme Court, *L. Chandra Kumar vs Union Of India*, see n. 1.

¹³Andrew Leggatt, *Tribunal for Users: One System, One Service*, Mar. 2001, URL: <http://webarchive.nationalarchives.gov.uk/+http://www.tribunals-review.org.uk/leggatthtm/leg-fw.htm>.

¹⁴Supreme Court, *Union of India v. R. Gandhi*, see n. 1, paragraph 23.

¹⁵Supreme Court, *Madras Bar Association v. Union of India*, see n. 1.

¹⁶Rajya Sabha Session 235, *Official Debates Part 2, Discussion on Working of Ministry of Law and Justice*, Apr. 29, 2015, URL: http://rsdebate.nic.in/bitstream/123456789/649313/2/PD_235_29042015_p408_p484_35.pdf, pp. 464.

administrative functions. The Task Force took note of the National Information Utilities model which was proposed in the *Report of the Technology Advisory Group for Unique Projects* to run technology intensive projects within the Government.¹⁷ Accordingly, it suggested setting up of a company – Financial Sector Tribunal Services – to provide administrative support to all financial sector tribunals. This work is described in more detail in section 4.5.

Clearly, the idea of setting up an administrative services entity to assist Indian courts and tribunals is already well accepted across a broad set of institutions, including, most importantly, the Supreme Court of India. Such an entity will be well placed to redesign court processes and to administer them effectively.

3.3 Process re-engineering

The most scarce resources in the working of courts are the time and the attention of the judges. Court processes should be re-engineered to encourage efficient judicial proceedings by optimising the use of these key resources.

One element of this lies in effective use of the attention of the judges, thus reducing the cognitive challenges faced by them. Suppose a case requires, in total, 20 hours or 1200 minutes of judicial time. If this time is fragmented as 120 sessions of 10 minutes each, judges find it difficult to keep track of the issues and form a good judgement. In many Indian courts, a judge may handle as many as 60 matters in a day. Each new matter requires understanding the progress of the case so far before the judge can issue further orders. Such a large number of cases lead to extreme levels of cognitive burdens on judges.

The other element of process re-engineering should be to use the court's time better. Existing court processes do not encourage the efficient use of judicial time. For instance:

- Oral arguments are often initiated before the judge without complete pleadings or evidence.
- Pre-hearing conferences are not held to pre-fix the time schedule for carrying out the hearing. Lawyers are uncertain of their schedule till the last moment, leading to higher absenteeism and thereby compelling the judges to adjourn cases often.
- Oral hearings spill over across days and months, causing immense delays in disposing of cases.

These lead to huge delays and backlogs, tremendous waste of time of litigants, and fragmented attention of judges. Thorough and careful improvements in the processes will present judges with an environment where it is easier to fully master each case, and write high quality rulings, while ensuring that less time is wasted.

A key element in the process re-engineering will be the use of information technology. Computer and telecom technology has made possible dramatic improvements in process efficiency in all domains. However, the mere use of computers does not imply that process efficiencies will arise. These gains are obtained through deeper process improvements.

Aadhaar would not have been possible by hiring thousands of registrars of births and deaths and computerising them. It was possible by radically redesigning the method of identity document creation. Similarly, we need to move beyond 'computerising' the judiciary and instead focus on process re-engineering.

The entire process starting from filing to disposal and archiving of cases can be digitised using available technology. However, presently this is either not being done, or is being done without adequate

¹⁷See chapter 1.2 at pg 10 of Technology Advisory Group for Unique Projects, *Report of the Technology Advisory Group for Unique Projects*, Jan. 31, 2011, URL: http://finmin.nic.in/reports/tagup_report.pdf (visited on 05/15/2016).

Box 3: Income Tax e-filing

The 2006 Budget Speech envisaged that the income tax department will undergo process re-engineering. Accordingly, a global tender was floated and a management consultant firm was appointed as an external consultant for the project.

This was not a mere reimplementation of the paper based system using computers. The system was completely moved online. This even required statutory changes which did away with the requirement to send a physically signed confirmation of filing of records. It is because of this extensive project that today income tax returns can be easily filed online.

Today *no physical documents* have to be submitted for tax return filing.

thinking about business process re-engineering. To illustrate, there is an online e-filing mechanism in the Supreme Court of India. The Advocate-on-Record doing the e-filing is notified online of the defects. He is supposed to rectify the defects and ultimately submit a *hard copy*. The requirement of a physical document defeats the very purpose of e-filing. It is not surprising that e-filing never took off. This system has not improved the Supreme Court's efficiency.

Instead of such superficial sprinkling of technology over old processes, what is needed is an institutional reform to enable full business process redesign of Indian judiciary based on contemporary technology. This leads us to the deeper issue: Indian court administration has not adequately engaged the right professional talent necessary to improve court functioning through technology solutions. Most court automation committees usually comprise judges, lawyers and registrars (who too are civil judges). Such persons —

1. Typically lack knowledge on business process engineering. They may be experts in law but not in the specialised discipline of systems design;
2. Are either trained in or are deeply invested in the present ways. They are experienced practitioners who have risen to the top of the profession under the present arrangements, and they may tend to treat the present system as broadly sound.

While judges and lawyers may regularly experience the problem of judicial delays in courts, they may not be in a position to solve them. This requires external help in *systems design* of computerisation of court processes. Consequently, although the Law Commission envisaged e-filing in Indian courts way back in 1988,¹⁸ till now there are very few successful examples of e-filings in Indian courts.¹⁹ For contrast, Box 3 shows the approach used by the Income Tax Department to computerise the filing of tax return. A similar, ground-up redesign is required in the judiciary.

4 The proposal: Establishment of Indian Courts and Tribunal Services (ICTS)

4.1 Objectives

The **Indian Courts and Tribunals Services (ICTS)** shall be an entity that provides high quality administrative support services to a court or tribunal. **ICTS** should not in any way perform any judicial function — listing, allocating or deciding cases. It would enter into service level agreements with different courts or tribunals based on which it would charge fees for the services it provides.

¹⁸Law Commission of India, *The Supreme Court - A Fresh Look*, 125, 1988, URL: <http://lawcommissionofindia.nic.in/101-169/report125.pdf> (visited on 07/20/2017).

¹⁹The Delhi High Court is a notable exception.

The major roles to be fulfilled by the **ICTS** would be:

1. Providing leadership to the task of re-engineering court procedures;
2. Providing administrative support to courts and tribunals by implementing these procedures.
3. Advising the legislature and judiciary on legal reforms.

4.2 Corporate Structure

The following options are available for setting up **ICTS**:

Company **ICTS** could be set up as a profit making but not profit maximising company limited by shares under the Companies Act, 2013. However, the **ICTS** must not have any private shareholder neither should it be listed at any point of time. Instead, the shares of **ICTS** should be held by the Central Government, subject to the Board composition being encoded into the Memorandum of Association.

Executive Order Agency A Government Order could also set up **ICTS** in the same way as **Unique Identity Authority of India (UIDAI)**.

National Trust A trust settled by the Government of India.

Statutory Corporation A body corporate under appropriate legislation.

If necessary, a phased approach could be adopted, where a body is first made under an executive order, then turned into a company.

4.3 Governance

Whatever be the structure, the top governing body of the **ICTS** (referred to as the “**ICTS** Board” here) should comprise judicial members, a chief executive officer and independent members. The judicial members must always be more than half of the total number of Board members - this is necessary to ensure judicial independence. They should ideally be senior puisne judges of Supreme Court or such other judges as may be nominated by the Supreme Court. The chief executive officer should preferably be a professional manager and need not necessarily have any qualifications in law but should have skills in delivery of public goods.

The independent members should be nominated by the Central Government and should bring in technical knowledge in non-legal disciplines like finance, accounting, and public administration, which would be needed in running this agency. The technical legal knowledge will naturally be provided by the judicial members. Based on the Board’s decisions in the form of board resolutions by majority vote, the CEO will execute the necessary actions required to provide the relevant administrative support services to the courts or tribunals. This corporate board model will allow the **ICTS** to scale up its services and support more judicial institutions if required in the future.

The **ICTS** should incorporate the best features of corporate governance. It should follow the Companies Act 2013 wherever it is not in conflict with its functioning and has obtained a specific exemption from the government. This will automatically bring a level of transparency in the functioning of the **ICTS**.

The overarching principles of the organisation (such as supporting the independence of the judiciary, being responsive to the needs of the judiciary, providing professional and efficient support for the administration of justice) should be codified in the Memorandum of Association of the organisation.²⁰

²⁰See, as an example, *HM Courts & Tribunals Service: Framework document*, Framework Document, Official Policy Document, July 2014, URL: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/384922/hmcts-

4.4 Functioning

ICTS should be a very lean body, that provides intellectual leadership in re-designing court processes, and implements these processes through contractors. Accordingly, it should have very few permanent staff. An indicative list of its functions is given below:

- Providing leadership to the task of re-engineering court procedures:
 - Act as a centre for on-going discussion, debate, and analysis of court-process redesign;
 - Create an overall plan for the redesign of court processes;
 - Procure high-quality management consultants to create a detailed design;
 - Procure IT, HR, and other consultants to implement the design;
 - Supervise the work of these consultants and ensure successful implementation.
- Providing administrative support on an ongoing basis to courts and tribunals by implementing these redesigned procedures.
 - Arrange for systems and manpower to implement these processes.
 - Ensure smooth and continuous operation of the court procedures, including maintenance of systems.
 - Facilitate incidental processes such as real estate management, facility management, etc, again through contractors.
- Advising the legislature and judiciary on legal reforms.
 - Act as a public think-tank in the area of judicial and legal reforms;
 - Analyse reform proposals, conduct (in coordination with the judiciary and the legislature) experiments to try out these proposals, and evaluate their results;
 - Promote reform by providing proposals and draft laws to the government.

To begin with, the **ICTS** could provide these services to tribunals, high courts, and district courts located in Union Territories. It could also provide these services to state courts if approached by them.

4.5 Developmental work which has taken place

Some work has already been done in India towards thinking through the detailed design and implementation of an administrative service company for courts and tribunals. This work is described below.

The Ministry of Finance, Government of India, constituted the **Financial Sector Legislative Reforms Commission (FSLRC)** on March 24, 2011, with a view to rewriting and cleaning up the financial sector laws to bring them in tune with the current requirements. The Terms of Reference required **FSLRC** to ‘examine a combined appellate oversight over all issues concerning users of financial sector’. Accordingly, **FSLRC** suggested expansion of the **Securities Appellate Tribunal (SAT)** to **FSAT**, which would hear appeals from all financial regulators. It was envisaged as a modern tribunal with a well-designed registry following international best practices in court management. The key outputs of the **FSLRC** were:

framework-document-2014.pdf (visited on 05/15/2016).

1. The *Report of the Financial Sector Legislative Reforms Commission*, which suggested, among other things, the creation of a combined financial appellate tribunal, **FSAT**. It also contained recommendations to ensure the efficiency of the administration of the tribunal. These recommendations related to the standardisation of procedures, the use of information technology, and requirements for accountability.²¹
2. The draft *Indian Financial Code*, which creates an institutional architecture for the financial sector in India. It devotes an entire chapter to the administration of **FSAT**, and casts a duty on the Tribunal to develop efficient systems to enable submission of documents, schedule hearings, record evidence, etc. The Code also provides for the possibility of an agency such as **ICTS**.²²

The administrative functions of the Tribunal may be supported by a separate agency or body corporate approved by the Central Government in consultation with the Presiding Officer pursuant to an agreement.

Subsequently, the Ministry of Finance constituted a Task Force on **FSAT** to support the Ministry in the preparatory work for **FSAT**. In June 2015, the **FSAT** Task Force submitted its deliverables to the Ministry of Finance. These deliverables include:

1. Vision Statement, describing the front-end features of the **FSAT** and the back-end support services that are required to achieve them;
2. Background Note, detailing the proposed structure of the Tribunal Services Agency, drawing from UK **HMCTS**;
3. Draft Request for Expression of Interest, as well as a draft Request for Proposal, to hire a primary consultant through which consulting and IT companies would be utilised to build the Tribunal Services Agency; and
4. Draft Procedure Rules for the **FSAT**, to ensure efficient functioning of the Tribunal.

The work done by the **FSLRC** and by the **FSAT** Task Force represents an important body of knowledge that can be used to create **ICTS**.

5 Way forward

1. Department of Justice, Ministry of Law and Justice, should get Cabinet approval on setting up **ICTS**. The knowledge developed by **FSLRC** and by the **FSAT** Task Force should be used to build the **ICTS**. The Cabinet should also identify an eminent person with experience in large project execution to lead the **ICTS**.
2. Once a minimal staff is recruited into **ICTS**, it should procure a management consultant to help build the capacity within the **ICTS** by developing relevant job profiles and organisation design. The management consultant should hand-hold the **ICTS** for a reasonable period of time.
3. There should be a phased approach to functioning of **ICTS**. In the first few years, only a limited number of courts and tribunals can be served by **ICTS**. As it gains experience and expertise, its remit can be increased.

²¹Financial Sector Legislative Reforms Commission, *Report of the Financial Sector Legislative Reforms Commission*, Mar. 2013, URL: http://finmin.nic.in/fslrc/fslrc_report_vol1.pdf.

²²Financial Sector Legislative Reforms Commission, *Indian Financial Code*, Mar. 2013, URL: http://finmin.nic.in/suggestion_comments/Revised_Draft_IFC.pdf.

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