judgements delivered by the decision-makers in the apex court. The significance of the judgements is more or less restricted to the immediate parties and not to the large number of groups and sections of the Indian society and others.

The second part of this paper presents what has essentially been an attempt to consider the quantitative aspect of judicial activity and in particular judicial productivity and judicial benchmarking.

Part 2: Quantitative Review

Traditionally, the quality of a judicial system has been analysed by the quality of judgements delivered by the judges vis-à-vis commonly accepted benchmarks. However, any qualitative review would be meaningless, where the practical reality entails that Courts take decades to render a judgement or when over a million people are languishing in jails waiting for the trials to commence. This fact has necessitated the review of the judicial system not from the perceived quality of judgements or from the qualitative aspects of judicial behaviour but from the obligation of the Judiciary to the community.

The saying that, 'Justice is defined by the society which it serves' could not be more axiomatic when seen in context of the functioning of the Indian judicial system and the general breakdown of the administrative machinery in the country.

For large sections of the society, 'justice delayed is justice denied.' The rate of disposal of cases is as crucial as the quality of decisions rendered. The endemic delays in the judicial system has resulted in huge backlog of pending cases and the reduced number of cases actually being adjudicated, thus affecting the quality of the judicial process. The huge backlog of cases, which are clogging the justice administration system, is probably the biggest issue confronting the judiciary.

Pendency of Cases in Various Courts

The growing inability of the courts to resolve disputes expeditiously threatens to erode the remaining legitimacy of the judicial system. Urgent steps are required to address the issue squarely.

As per the figures made available by the Supreme Court Registry, there were a total of 37,780 cases filed for admission in the Supreme Court during the year 2002, approximately 85 per cent of which got dismissed or disposed of during the year. On the whole, the Supreme Court has reduced its pendency from l,04,936 as on 31.12.91 to 23,012 as on 31.5.2002 primarily through better use of Information Technology, bunching of similar cases, etc.[63]

The performance of the Supreme Court is only one part of the complex reality. As on 28 November, 2002, a total of 36,40,870 cases were pending in various High Courts in the country.[64] It is estimated that there are over 20 million cases pending in the subordinate courts. Unfortunately, neither the Government nor the Supreme Court has shown any genuine concern in addressing the issue, even though both share the administrative jurisdiction over these lower courts.

A broad and inclusive perspective is extremely important to bear in mind, so that judicial development is not been seen in an artificially narrow way, focusing on one part of the interlinked structure and ignoring others.

63. Reply to unstarred question No. 1303 answered on 2.12.02 by law minister in Rajya Sabha.
64. Ibid.

Reasons for Delay in Justice Delivery

The pendency of cases in courts are, inter alia, due to various factors including shortage of judges, increased institution of cases on account of increased awareness of rights on the part of the citizens, rise in population, adjournments, increased complexity of laws, industrial development in the country, increase in trade, commerce and socio-economic activities, lawyers' strike, etc.[65] The following are the main reasons of delay in the judicial system.

1. Failure to fill up vacancies in the judiciary

The shortage of judges is one of the causes of huge arrears of cases in courts. Against the approved strength of 647 judges in 21 High Courts, 505 judges were in position as on 12.12.2002 leaving 142 vacancies to be filled up.[66] The Law Commission in its 14th Report on the Reform of Judicial Administration (1958) recommended that the strength of judges of High Courts be fixed on the basis of the average annual institution of all types of proceedings in a particular High Court during the previous three years and the strength so fixed should be reviewed at an interval of two or three years. Accordingly, the judge strength is reviewed every three years. The judge strength was last reviewed in 1999 and 43 posts of judges were approved in various High Courts. The next review, due in 2002, is expected to be completed shortly.[67]

In the year 2002, seven new judges were appointed to the Supreme Court due to vacancies arising out of retirements of previous judges. At present, the post of one judge is vacant, and the total number of judges in the Supreme Court is 25. Appointments of Judges of the Supreme Court of India and the High Courts are made under Article 124 and 217 of the Constitution of India respectively, which do not provide for reservation for any caste or class of persons.

2. Poor rate of disposal of cases

The Malimath Committee has recommended that the rate of disposal of main cases per judge, per year should be 800. However, as per the latest figures (on 28 November, 2002), the estimated national rate of disposal per judge per year in the High Courts is 1745 cases, calculated on the basis of the formula suggested by the Malimath Committee.[68]

As per the latest available information, the Madras High Court disposed of the highest number of cases and the Sikkim High Court the lowest number of cases during 2001-02.[69] The highest disposal rate of cases per judge per year is 2221 cases in the Madras High Court and the lowest is 831 cases per judge in the Delhi High Court.[70] It is understood that the High Courts have been requested to implement the recommendations of the Malimath Committee to streamline the procedure which will, inter alia, expedite the disposal of pending cases.[71]

3. Low judge to population ratio

The Eleventh Law Commission in its 120th Report on 'Manpower Planning in Judiciary: A Blue Print' in July 1987, inter alia, observed that the strength of Judicial Officers in India was far less as compared to certain other countries. The Commission recommended that the present strength of 10.5 judges per million population be increased to 50 judges per million population in a phased manner. At present, there are 14.7 judges per million population in the country.[72]

65. Reply to unstarred question No. 1902 answered on 9.12.02 by law minister in Rajya Sabha.
66. Reply to starred question No. 372 answered on 16.12.02 by law minister in Rajya Sabha.
67. Ibid.
68. Supra, note 62.
69. Source unknown. See pg 4 of the printout. Only date given as 28.11.02. However, the Sikkim High Court has the lowest institution and the lowest pendency of cases. The disposal of cases, therefore, is the lowest in the Sikkim High Court.
70. The annual disposal rate of cases per judge in the Madras High Court is followed by 2202 cases per judge in the Karnataka High Court, 1640 cases per judge in the Patna High Court, 1581 cases per judge in the Andhra Pradesh High Court, 1477 cases per judge in the Madhya Pradesh High Court, 1447 cases per judge in the Allahabad High Court, 1368 cases per judge in the Rajasthan High Court and 831 cases per judge in the Delhi High Court. Source: PIB Press Release dated 3.10.2002.
71. The average slow pace of disposal of 1363 cases per judge per year in the High Courts has led to accumulation of arrears of more than 3.6 million cases as on date.
72. Ibid.

The Supreme Court, in its judgement of 21 March, 2002, in All India Judges' Association & Ors Vs. Union of India & Ors, has directed that an increase in the judge strength from the existing ratio of 10.5 or 13 per one million people to 50 judges per one million people should be effected and implemented within a period of five years in a phased manner to be determined and directed by the Union Ministry of Law. A seven member committee comprising Registrar Generals of High Courts and Law Secretaries of states/UTs has been constituted to examine and recommend norms for creation of judge strength in district/subordinate Courts keeping in view the judgment of the Supreme Court of 21st March, 2002 in the case of All India Judges Association & Ors Vs. Union of India & Ors.[73]

Instead of tackling the root cause of judicial delays, the three wings of government, viz. the Legislature, Executive and Judiciary are taking potshots against each other. According to a report on 'Laws Delays' submitted to Parliament by a standing committee headed by Pranab Mukherjee in its winter session, the ball is in the court of the judiciary. 'The judiciary in whom the power and responsibility now vest has failed to fill up vacancies in judicial posts promptly and punctually and those vacancies of judges in all courts contribute to the huge pendency in a big way', the report holds. It further contends that after the judgement of the Supreme Court in the Advocates-on-Record Vs. Union of India case in 1993, the initiative to appoint new judges and fill up vacancies is now the responsibility of the judiciary.

The Judiciary in turn blames the government for failing to provide funds to set up more courts, contending that less than one per cent of the gross national product was spent on the Judiciary and the state would not be meeting its obligation of making justice available to the people if it failed to spend more on the Judiciary on the grounds of financial stringency. The Judiciary has upped the ante against State Governments who said that they were not going to bear the extra cost of court infrastructure and salary costs. In this regard the court has issued directions against the state governments, making it mandatory.[74]

4. Failure to adopt information technology in courts

As with all aspects of modern day life, technology has significantly advanced the ability of professionals to collect and collate data and this capacity will continue to improve. Justice Geoffrey Davies said,[75]

If I were to nominate the factors which I thought would be most likely to affect both the substance and procedure in civil justice systems during the course of this century I would unhesitatingly say information and communication technology …Technological changes in recording, storing and finding information and in communication have already had a substantial effect on procedure, and it is not difficult to see that the extent of that effect will grow rapidly.

In India, apart from the Trial Courts, there is no application of information technology for court management even in the State High Courts or the Supreme Court of India. There is no systematic database application for case retrieval, scanning of court records or electronic filing. Commenting on the similar conditions in the British justice system which existed long ago, Lord Devlin then said:

If our business methods were as antiquated as our legal system, we would have become a bankrupt nation long back.[76]

The benefits of judges accessing internet databases for legal content could be several fold. First, it could enable judges to have access to faster, comprehensive and more economical research tools. Second, it could improve the quality of judgements delivered due to access to the latest case-law and related precedents on the subject; and third, it could increase the productivity of the judges.

73. Reply to starred question No. 277 answered on 9.12.02 by the law minister in Rajya Sabha.
74. Ibid.
75. *All India Judges Association Vs. UOI (2002) 4 SCC 247.*
76. 'Justice in the 21st Century' a paper delivered at the Family Court Conference, Sydney, 7 July 2000.

Benchmarking Productivity for Judges

Public confidence in the courts along with the legitimacy of the judicial systems are essential prerequisites of a judicial system. Public confidence is built when the courts are accountable, responsive, accessible and efficient whatever the administrative structure happens to be. This is important when one considers that the core function of the court system is to 'deliver justice according to law to the people as expeditiously and economically as it is reasonable practicable to do so.'

Judicial accountability should not only address qualitative aspects of judicial behaviour but quantitative aspects, which in turn raises consideration of productivity and benchmarking. Although it is not intended in this paper to exhaustively deal with, and attempt to answer, the questions that may be raised as a consequence of a quantitative analysis is the need for benchmarking the productivity of judges.

In 1976 Professor Ian Scott wrote:

If the resources of the court system, both human and physical, are to be used at an optimum efficiency it is essential that the administration be able to monitor its day-to-day performance. The collection of data requires the co-operation of all persons involved, judges, lesser judicial figures, administrators and supporting personnel. It is an irksome chore and some judges have resented having to participate in it by, for example, keeping a note of the time taken to dispose of each case and matters of that kind.[77]

What was identified as an issue in Australia in 1976 continues to be an issue in India today. The present authors found that there is no system even today for the courts in India to provide information at a glance —compiled data regarding the total cases listed for trial; total number of days listed; total actual days taken; number of trials closed and their reasons; number of trials listed that settled and when; number of trials adjourned and the reasons number of trials finished; number of judgments delivered; and time elapsing from completion of trial and delivery of judgement. This information is important because it permits identifying whether the court is accountable for judicial activity to the community. The benefits of recording such information is as much about breaking down the barriers of 'sacred cows' as they are about better planning and understanding of the needs and demands on the court.

The Judiciary must consider internal benchmarking so that there can be accountability to the public of the collective productivity of the Judiciary. The benchmarking, however, must be driven from within the Judiciary. In its absence there may be uniformed and idiosyncratic external benchmarking from the Executive, which would threaten and undermine judicial independence.

Budgetary Allocation For Judiciary

The total budget of Supreme Court for all its various activities was Rs 299.30 million in the previous financial year. This constitutes a significant share of the total budgetary allocation set aside for the Judiciary. In the year 2002, the Central allocation for the Judiciary in the states under the Centrally Sponsored Scheme had been increased to Rs 7 billion during the Tenth Five Year Plan period as compared to Rs 3.85 billion during the Ninth Five Year Plan.[78] In addition, Rs one billion has been provided for upgradation and improvement of infrastructure of High Courts during the Tenth Plan period. Out of which, Rs 180 million has been allocated for the High Courts during the current financial year 2002-03.

No reliable formula that allocates resources among courts according to comparative workload has been noticed in the distribution of funds for the Judiciary.

77. Justice Jagannatha Shetty, *Preface of the Report of the First National Judicial Pay Commission* constituted by the Government of India on 21st March 1996.
78. *'Court Administration'* (1976) 50 ALJ 30.