Day 1: Dispute Resolution Process in Asia Session I: Dispute Resolution Process in Asia: Theory and Reality "Alternative Dispute Resolution System in India : Problems and Prospects"

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ALTERNATIVE DISPUTE RESOLUTION SYSTEM: PROBLEMS AND PROSPECTS

by

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Themes and Issues

The following are the themes and issues taken up in this presentation:

1. How has the present court system served the people? What are the problems involved therein?
2. How far the tribunals, commissions and special courts set-up by the Government fulfilled the need of common man for simple and quick justice?
3. Have the alternative dispute resolution fora available in India such as
   - (i) Arbitration
   - (ii) Conciliation & Mediation
   - (iii) *Lok Adalat* (People's Court)
   - (iv) *Gram Nyayalaya* (Village Court)
   - (v) Ombudsman and *Lok-Ayukta*

   been able to fulfill the need and aspiration of common people? If not, what steps need be taken to make them effective?
4. What are the parties' viewpoint with regard to ADRs?
5. How the ADRs are different from court system and what are the preferences of the people and why?
6. What are the dispute resolution processes in consumer protection, labour and environmental matters?

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I. Court System in India

1. Overview of the court system in India

The Indian Constitution though federal in character, provides for unitary judicial system. The Supreme Court and the high courts form one single integrated independent judiciary. Below the high courts in each state, there are subordinate courts. The subordinate courts represent the first tier of the entire judicial structure. As a general rule, civil cases are dealt by with one set of hierarchy of courts known as civil courts and criminal cases by another known as criminal courts. The organization and growth of the present hierarchy of courts of justice with the superior courts at the apex and inferior courts at the base owes its origin to the advent of the British rule in India. Every court in this chain, subject to the usual pecuniary and territorial jurisdiction, administers the whole law of the country whether made by Parliament or by the State Legislature. The general hierarchy of civil and criminal courts is given in Annexure I.

2. Problems of the court system

The court system in India, which is based on adversarial model of common law, is cumbersome, expensive and hopeless. Although as a result of the various initiatives taken by the Supreme Court of India, the pendency of cases in the Supreme Court, which was 1,04,936 on 1st January 1992, has come down to 21,936 as in February 2001, the situation in the high courts and lower courts is static and dismal. The high courts and lower courts are overburdened and have to tackle with voluminous pending and fresh litigation arising everyday. Indeed high courts and various state governments, who have the power to appoint judicial officers, are very slow in taking steps to fill the vacancies in trial courts on time. Out of a total of 647 sanctioned posts of judges in various high courts, 177 posts were vacant as on August 10, 2001. The hierarchy of courts, with the right to appeal at different stages, adds to the magnitude of the problem. As on 10 August, 2001 there were 3.47 million cases pending in the high courts. During 1998, the number of cases filed in high courts was about 1.5 million and the disposal was about 1.3 million cases. Besides, as on June 30, 2001 approximately 20.3 million cases were pending in the lower courts in the country.

These delays are perennial because of the loopholes in the procedural laws, viz., Code of Criminal Procedure, Code of Civil Procedure and the Indian Evidence Act. In criminal cases, conviction rate is also very dismal, which has shaken the faith of people in the judicial system. In-spite of the constitutional guarantees, judicial decisions and the reports by various high-powered committees, the concept of speedy justice has remained an elusive goal. The backlog in the disposal of cases has always remained a big problem, which is not conducive to meet the challenges of globalisation, liberalisation of economy and achievement of welfare state ideals. With an aim to salvage the situation, the 11th Finance Commission has given direction to the government to take specific measures to address the issue. Accordingly, to tackle the pendency of cases at the sub-ordinate courts the government has envisaged setting up of 1734 Fast Track Courts at various places and permanent *Lok-Adalats* in all the districts. As of June 2001, the government has set-up 459 fast track courts all over the country. These courts will continue till March 2005 and are expected to dispose of about two million cases by the year 2005.

3. Tribunals, commissions and special Courts

Two decades after framing of the Constitution, it was realized that the existing courts of law were insufficient to meet the judicial aspirations of the people and deal with all types of disputes. Various new problems arose in the new socio-economic context and as a result of this, besides traditional judicial system, it became imperative to evolve other foras to address new problems as well as provide speedy disposal of cases. This led to the setting up of tribunal, commissions and, among others, district boards, by amending the Constitution. Part XIV A, consisting of Articles 323A and 323B, was inserted by the 42nd Amendment Act, 1976 in the Constitution. Article 323B, incorporated in the Constitution empowers the appropriate State Legislature to provide for the adjudication or trial by tribunals of any disputes, complaints or offences with respect to all or any of the matters, namely; (a) levy, assessment, collection and enforcement of any tax; (b) foreign exchange, import and export across customs frontiers; (c) industrial and labour disputes; (d) land reforms by way of acquisition by the State; (e) ceiling on urban property; (f) election to either house of Parliament; (g) production, procurement, supply and distribution of food stuffs and such other foods as the President by notification declares essential goods; (h) rent, its

regulation, control and tenancy issues including the right, title and interests of landlords and tenants.

The appropriate legislature is also empowered to establish a hierarchy of tribunals. In pursuant to the provisions of the Constitution, and also to make the justice delivery speedier and economic, several tribunals, commissions and special courts have been set up, as given in Annexure-II. Quite apart from the above, special Commissions have been set up to protect, among others, the human rights of various sections of population such as the National Human Rights Commission, the National Commission for Minorities, the National Commission for Women, the National Commission for SC/ST, the National Commission for Backward Classes etc., through enactment of specific legislations. These commissions are vested with the powers of civil court in dealing with complaints of violation of rights and investigation of cases. Further, there exist special Boards called Juvenile Justice Boards in every district to deal exclusively the cases of Juveniles under the Juvenile Justice (Care and Protection of Children) Act, 2000, and special courts such as Family Courts, Mahila Courts etc.

II. Alternative Dispute Resolution (ADR): How Out of Court Systems Are Used as Dispute Resolution Mechanism

In addition to tribunals, commissions and special courts, simultaneously the movement of Alternative Dispute Resolutions (ADRs) originated in India out of the pressure of litigation and accompanying expenses and delays. In India, the Village *Panchayats* have acted as one of the Dispute Resolution Mechanisms since time immemorial.. The disputants are given the choice to choose their own elders, either one or two or more depending on the agreement between the parties and each arbitrator chosen by the parties try to find amicable settlement without jeopardising the legitimate rights of the party on behalf of whom, he/she is acting as an Arbitrator. This traditional mechanism is still available in our villages throughout the country for the settlement of disputes. At present, this method has been further explored towards the reduction of judicial work and replacement of adversary process with informal, short and more satisfying mechanism. The most common forms of ADRs are arbitration, mediation, conciliation, *Lok Adalats*, *Nyay Panchayats*, and the new emerging ADR of Ombudsman.

a) Arbitration

Arbitration is a well-established form of ADR and the one that most closely mirrors court adjudication. Arbitration remains the preferable means of determining a wide range of disputes, involving technical and commercial issues. The major variables in arbitration are the degree of informality in the proceedings and the extent of appeal rights, compared to court adjudication. Prior to the enactment of the Arbitration & Conciliation Act, 1996, the law of arbitration was governed by the Arbitration Act of 1940, the Arbitration (Protocol and Convention) Act 1937 and the Foreign Awards (Recognition and Enforcement) Act 1961. The Arbitration (Protocol and Convention) Act, 1937 and the Foreign Awards (Recognition and Enforcement) Act, 1961 provided for the enforcement of foreign arbitral awards mainly in commercial disputes in India. The Arbitration Act, 1940 standardized the law relating to arbitration throughout the British India. The Act dealt with (i) arbitration without intervention of a court; (ii) arbitration with intervention of a court and (iii) arbitration in suits.

In 1985, the United Nations Commission on Trade Law (UNCITRAL) adopted the UNCITRAL Model Law on International Commercial Arbitration. Taking into account UNCITRAL Model Law and Rules, the Parliament enacted the Arbitration and Conciliation Act, 1996. The Act made a significant change in the law relating to domestic arbitration. By section 85 of the new Act, the aforesaid three Acts of 1937, 1940 and 1961 have been repealed. The Act, apart from updating the law of arbitration has provided statutory frame-work for conciliation. Arbitration and conciliation, under the new legislation are independent and autonomous procedures, which derive support from the courts, though they do not require constant supervision and control from courts.

The Act widens the powers of arbitral tribunal. Under the previous law, an arbitrator had no power to decide on his own jurisdiction, now the arbitral tribunal may rule on its own jurisdiction. Further, prior to 1996, the arbitrator had no power to give orders about interim measures, which he can do now. Under the present law, the arbitral tribunal may also require a party to provide appropriate security in connection with any measure ordered by it. Section 11 is innovative in the new Act. Sub-section 6 thereof enumerates circumstances under which the Chief Justice of a State or Chief

Justice of India may appoint an arbitrator. The Chief Justice or his nominee may appoint an arbitrator when the parties have not agreed on the arbitrators to be appointed. Previously a party could make an application for appointment of an arbitrator. Such application could be made under section 8 (2) or section 20 of the Arbitration Act 1940. Now under the present Act, a party will have to make a request to the Chief Justice or his designate for appointment of an arbitrator. Besides, in order to promote arbitration, the Code of Civil Procedure (Amendment) Act, 1999 contain elaborate provisions, which facilitate arbitration and conciliation.

Problems of the Arbitration

The arbitration, however, is not without problems in India. The law does not prescribe any specific time-frame or procedure to complete/conduct the arbitration. The long delays that take place in the completion of the arbitration proceedings, the number of adjournments sought either by consent of the parties or through the intervention of the court and the enormous expenses incurred by way of fees payable both to the arbitrators and the counsel are some of the problems that are faced by those who opt for arbitration. In certain cases, it has come to light that the arbitration proceedings have been pending for a number of years. The amount spent on the arbitrator and the counsel by way of fees exceeded the amount of claim that was ultimately awarded to the claimant. Even after the enactment of 1996 Act, demands have been voiced asking for making amendments in the 1996 Act. For example, the provision of appointment by the Chief Justice or his nominee an arbitrator when the parties have not agreed on the arbitrators to be appointed under section 11 has become a issue of debate in the recent times (*Konkan Railway* case (2000) 7 SCC 201).

b) Conciliation and mediation

Under the 1996 Act, conciliation can be used in all civil cases. Mediation, as a matter of fact, is being used quite widely. Unlike arbitration, a conciliator does not give a decision, but his main function is to induce the parties themselves to come to a settlement. An arbitrator is expected to give a hearing to the parties but a conciliator does not engage in any formal hearing though he may informally consult the parties separately or together. The arbitrator is vested with the power of final decision and, in that sense, the arbitral award is binding on the parties, whereas, it is not so in conciliation.

Conciliation and mediation are frequently used process for resolving labour and family disputes. Counseling plays a crucial role in settlement of a dispute. The Government, keeping in view the long pendency of cases and resultant inconvenience caused to the parties and also in pursuance of the 59th Report of the Law Commission of India, has enacted the Family Courts Act, 1984. This Act lays emphasis on conciliation and achieving socially desirable results and elimination of adherence of rigid rules of procedure and evidence. Besides, it also provides, among others, (i) for the establishment by the state governments family courts in every city or town with a population exceeding one million; (ii) dispensed with the appointment of law graduates as judges of these courts and makes social workers with relevant qualifications eligible to become judges; (iii) section 6 provides for appointment of counselors in each family court and section 9 mandates the family courts to endeavour to settle the cases through conciliation and persuasion; (iv) simplifies the rules of evidence and procedure so as to enable a family court to deal effectively with a dispute. As on August 2001 there are approximately 85 family courts set up throughout the country. The main reason for its slow development is the restriction on advocates practice unless courts grant permission.

It is also to be noted that in the majority of the commissions for protecting the rights of various sections constituted at national and state levels and also in all the districts, the legal services authorities are assisted by a team of counselors to deal with family disputes.

The Arbitration & Conciliation Act of 1996, in Part III under Section 61 to 81 specifically deal with the settlement of disputes through conciliation. Under the Act conciliation can be restored to in relation to disputes arising out of a legal relationship, whether contractual or not. But the courts have important role in arbitration and appeal may be made against the award in certain cases, it is not so in conciliation.

c) ***Nyay Panchayats***

In order to reduce the mounting arrears of cases pending for years in the courts and to make the concept of door delivery of justice a reality, the Government set-up various committees to review the situation and provide alternate solution thereto. The 14th Report of the Law Commission of India recommended for adopting the *Nyaya*

Panchayats system. These *Nyaya Panchayats* received constitutional recognition with the enactment of the Constitution 73 and 74 (Amendment) Acts. The Acts provided for creation of village *Panchayats* and reservation of 33% of seats for women in the election for members and chairman of these *Panchayats*. This *fora* for resolution of disputes with people's participation in the administration of justice is very popular in India and is adopted by almost every state in the country by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen on the grounds of economic or other disabilities. In this respect, *Nyaya Panchayats* constitute an aspect of over-all development of legal system.

Experience has shown that these *Panchayats* have not succeeded in bringing the desired result. These *Panchayats* are empowered under specific legislations to deal mainly with civil cases (the pecuniary jurisdiction varies from state to state) and in few states they also deal with petty criminal cases and the serious crimes are not brought before these *Panchayats*. The major problem is that there is no mechanism to ensure compliance with the decisions of the Panchayats, though in reality they are invariably followed. This does not rule out access to courts, thereby increasing the long pendency of disputes.

d) *Lok Adalats*

In India, *Lok Adalat* (people's court) has been developed as an alternative to dispute resolution mechanism for providing quick disposal of disputes between the parties. This is in conformity with Article 39-A of the Constitution of India, which requires the state to take measures for speedy disposal of disputes and provide legal assistance to parties who are in need of it. The Legal Services Authorities Act, 1987 has institutionalised the concept of *Lok Adalats*. Prior to the enactment of the Legal Services Authorities Act, 1987, the Committee for Implementing Legal Aid Schemes (CILAS) used to organize *Lok Adalats*.

The Legal Services Authorities Act, 1987 provides for organizing *Lok Adalats* from the Revenue *Taluk* (village) level to the national level. The *Lok-Adalats* are being co-ordinated at the district, state and national levels by the District, State and National legal services authorities respectively. The law relating to organization of *Lok Adalats* is contained in sections 19, 20, 21 and 22 of the Legal Services

Authorities Act, 1987. In pursuance of the provisions of the Act, the Government has recently set up permanent Lok Adlatas in every district throughout the country. Besides, in states like Delhi and Gujarat, *Lok Adalats* have been set up to dispose of different categories of cases such as electricity, housing allotment, tax, telephones, insurance etc. Further, the National Commission for Women also sponsors *Lok Adalats* throughout the country for redressal of disputes related to women and family.

A *Lok Adalat* has jurisdiction to determine and arrive at a compromise or settlement between the parties to a dispute in respect of not only disputes pending before a court but also in respect of any matter which is falling within the jurisdiction of and is not brought before any court for which the *Lok Adalat* is organized. The *Lok Adalat* has no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law. The procedure as to how the disputes can go before *Lok Adalats* is specified in Section 20 of the Act. The *Lok Adalat* while facilitating a settlement between parties has to keep in mind the principles of justice, equity, fairness and other legal principles. The settlement facilitated in the *Lok Adalats* are called awards of the *Lok Adalat*. These awards are final and binding on all parties to the dispute and no appeal shall lie to any court against the award, obviously because of the reason that these awards are compromise settlements. Every award of the *Lok Adalat* shall be deemed to be a decree of a civil court.

The popularity of *Lok Adalats* can be measured from the fact that as on December 31, 1999 a total of 49,415 *Lok Adalats* were held, to settle 9,720,289 cases. This figure improved a year later when on June 30, 2001, total number of 108,026 *Lok Adalats* were held to settle 13,003,356 cases.

e) Ombudsman

The institution of Ombudsman is slowly gaining momentum in India. Keeping in view the time constraints, the economy and the resources involved in regular courts some of the institutions have preferred to have an ombudsman for settlement of disputes arising against their institution. In this process the State Bank of India, which is considered as one of the largest establishment in the banking sector, has appointed its own ombudsman for settlement of disputes. Quite apart from this,

some of the state governments such as Delhi, Andhra Pradesh have set up the offices of *Lok Ayukta* (the synonym Ombudsman) at the State level by enactment of legislations. The *Lok Ayuktas* are empowered to deal with complaints of maladministration involving government officials, which includes Ministers. The setting up of office of *Lokpal* at the Central level is under consideration of the Government of India.

f) Comparison of ADRs and traditional judicial systems

India is a common law country, which follows the adversarial system in court procedure. Broadly speaking, adjudication in the adversarial system of conducting proceedings refers to a system in which a judge or adjudicator determines a dispute on the basis of information presented by the parties, who have the primary responsibility for defining the issues in dispute and for carrying the dispute forward. The system is based not only on substantive and procedural law but also on an associated legal culture and ethical base. Fighting litigation to its bitter and final end apart from generating tension and leaving a trail of bitterness, burdens the parties with heavy financial expenditure. Besides, the successful party has to wait for years before enjoying the fruits of litigation.

The Alternative Dispute Resolution System, on the other hand, provides procedural flexibility, saves valuable time and money and avoids the stress of conventional trial. The use of ADR processes can promote a more cooperative litigation culture. The two principle reasons for incorporating ADR into the litigation system are: (i) to enhance access and participation of parties in appropriate dispute resolution services, and (ii) to reduce costs and delays in court and tribunal proceedings.

g) Parties viewpoints with regard to ADRs:

The ADRs system in India in the form of arbitration, conciliation and mediation, *Gram Nyayalaya,* is not new. It is quite popular at the grass-root level to solve disputes, though followed in a very informal manner. In the early 70's few new systems such as the *Lok Adalats* and Ombudsman etc., were added to this list of ADRs. They have been given more attention and attempts have been made to make them more effective in the changed scenario of increasing backlog of cases and to meet the new challenges of globalisation. This, however, has not made much dent on

the existing system of dispensation of justice. Despite long pendency of cases and undue delays in the court system, availability of alternative dispute resolution mechanisms and special tribunals, parties still flog to the courts. The ADR system, particularly arbitration and conciliation under the Act, desires much to make it effective. The power to challenge the award of a tribunal, or limited jurisdiction of special tribunals, commissions, to settle disputes do not make it a preferred mode of settlement of disputes. This is evident from the number of appeals that come before the high courts and the Supreme Court of India from awards of tribunals. Almost on every important issue, people look to apex court. Indeed even after setting up of special tribunals, dealing specifically with matters pertaining to service conditions, compensation claims, customs disputes, etc have come up, still cases are plenty, which are pending in appeal before the Supreme Court of India. One of the main reasons for this being the immense faith in higher judiciary. In the case of ADRs, either parties do not believe in their sanctity or otherwise in order to delay unfavourable outcome in its favour, they avoid resorting to ADR procedures or even if it proceeds with ADR, later on it tries to wriggle out. With the power to approach the court on specified conditions of violation of principles of natural justice etc., to avoid penalties and this, many a times, discourages parties and thereby defeating the very purpose of speedy justice. This entire vicious cycle delays justice. All this induces parties to shun ADR mechanisms and resort to normal courts.

III. Dispute Resolution Process in Consumer Protection

In India, the enactment of the Consumer Protection Act, 1986 is a historic milestone in the history of the consumer movement in the country. It is one of the benevolent pieces of legislation intended to protect a large body of consumers from exploitation. The Act provides an alternative system of consumer justice by summary trial. The Act applies to all goods and services. It provides a framework for speedy disposal of consumer disputes and seeks to remove the evils of the ordinary court system. The Act provides for a three-tier consumer disputes redressal machinery (consumer forums) at the national, state and district level, which provides inexpensive and speedy redress for consumer disputes/complaints against defective goods,

deficiency in services, unfair and restrictive trade practices, or a matter of charging excessive prices etc. The structure of the same is given in Annexure III.

In India, there exist 569 District Forums, 32 State Commissions and a National Commission at New Delhi, to redress consumer grievances. These agencies are in addition to the civil courts and other redressal agencies available under various other legislations. A consumer can simply file a complaint on plain paper requesting compensation. The Act mandates these bodies to dispose a complaint as far as possible within a period of three months from the date of receipt of notice by the opposite party, and within five months of it requires analysis or testing of the goods. But due to the popularity of these forums, which made them cramped with cases, and some inherent difficulties in the Act to frame the foras have been unable to observe the time frame strictly. To remove the procedural delays, other lacunae and to make the dispute redressal easier and speedier, the Government has proposed amendments to the Act and a Bill is pending before the Parliament for enactment.

Since their inception nearly 1,602, 706 cases under different heads have been filed in the consumer courts out of which about 79% cases have been disposed of. As of December 11, 2000, the National Commission has dealt with 20,622 complaints and disposed off 11, 185 and in all the states Commissions 197,870 filed and 115,553 disposed of and in district for a a total of 1,384,214 cases pending and 1,136,661 cases been disposed of. This shows a disposal rate of 54.2% in the National Commission, 58% in the State Commission and a whopping 82% by the District fora.

IV. Dispute Resolution Process in Labour Matters

In India the Industrial Disputes Act, 1947 provides for the constitution of various authorities for the resolution of industrial disputes. At the lowest level is the work committee. The various methods involved for settlement of industrial disputes under the Act are (i) conciliation; (ii) court of enquiry; (iii) adjudication; and (iv) voluntary arbitration.

Quite apart from the aforesaid statutory machineries, several non-statutory machineries such as Code of Discipline, Joint Management Council, Tripartite Machinery and Joint Consultative Machinery play an important role in the process of preventing and settling industrial disputes.

1. Conciliation- The Industrial Disputes Act, 1947, provides for the appointment of conciliation officers and constitution of Board of Conciliation by the appropriate Government for promoting settlement of industrial disputes. For the successful functioning of the conciliation machinery, the Act confers wide powers and imposes certain duties upon them.

During 1959-66 the percentage of disputes settled by conciliation machinery varied from 57 to 83 in the Central sphere. During 1988, 10,106 disputes were referred to conciliation out of which the number of failure report received was 3,183 in the Central sphere. From period 1990-2000, in 39,521 labour disputes conciliation proceedings were held out of which, 10,985 were successfully settled. The statistics of the working of the conciliation machinery, however, reveals that it has made no remarkable success in India. Several factors may be accounted for the same.

First, failure of conciliation proceeding may lead to the reference to adjudicating authorities under the Industrial Disputes Act, 1947; s*econd*, lack of proper personnel, inadequate training and low status enjoyed by conciliation officers and too frequent transfer; *third*, undue emphasis on legal and formal requirements; *fourth*, considerable delay in conclusion of conciliation proceedings; and *fifth*, lack of adequate powers of conciliation authorities.

2. Adjudication Machinery- The Industrial Disputes Act, 1947, as originally enacted, did not contain provisions regarding the creation of separate Labour Courts. The Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 introduced a three tier system for industrial adjudication. The machinery provided under the Act consists of Labour Courts, Industrial Tribunal and National Industrial Tribunal. The Labour Courts, Industrial Tribunals and National Industrial Tribunals are *ad hoc* bodies and consist of single member, called presiding officer. The appointment of the tribunal may, however, be for a limited duration. There are 17

Central Government Industrial Tribunals -cum-Labour Courts constituted by the Labour Ministry dealing with industrial disputes. The number of Industrial Tribunals and Labour Courts set up by the state governments and the Administrations of the Union Territories as on October 31,1998 was 333. As on November 30, 2000 the CGIT-cum-Labour Courts have handled (since their inception) 10,433 industrial disputes (received during 2000 a total of 2,035 complaints) and disposed during the year 2000 a total of 722 disputes. Besides it has received a total of 4,638 applications and disposed 835 applications during the same period.

A survey of the time taken by Labour Court and Industrial Tribunal reveals that it is a time consuming. The following reasons may be attributed for delays in disposal of cases:

(a) Quality of Personnel: The practice of appointing retired personnel which are likely to be retired or who are uninterested in adjudication of labour disputes or who have no aptitude or background of labour legislation.

(b) Status of pay: Low status of the Industrial Tribunal may also be responsible for the delay.

(c) Procedural delay: The complicated procedure laid down under the Industrial Disputes Act may also be responsible for the delay.

(d) Interference by the High Courts and stay of Proceedings: A survey of reported cases reveals that generally delay exceeding more than one year (and particularly the delay exceeding three years) occurs due to stay order of the high court through its writ jurisdiction.

(e) Attitude of the Parties: The unhelpful attitude of the parties towards adjudication may also lead to delay particularly where the parties either do not appear or are represented through lawyers (wherever applicable) or trade union officials or other authorised representatives. Further the delay in producing witnesses and documents may also affect the speedy disposal of the case.

(f) Problem of adjournments: Indiscriminate adjournment granted by the Presiding Officer of Labour Court or Tribunal add to the problem. This is so because the Industrial Disputes Act does not prescribe the number of adjournments which may be granted.

3. Voluntary labour arbitration: Section 10-A(1) of the Industrial Disputes Act, 1947 authorizes the parties to make a reference to voluntary arbitration. But, before the reference may be made to arbitrator, four conditions must be satisfied:

1. the industrial dispute must exist or apprehended;
2. the agreement for reference must be in writing;
3. the reference must be made before a dispute has been referred under section 10 to a Labour Court, Tribunal or National Tribunal; and
4. the name of arbitrator/arbitrators must be specified.

Unlike the early 60's the number of disputes referred to voluntary arbitrators is generally declining after 1990's with the evolution of new foras for redressal of labour disputes. From this it is evident that the response to arbitration machinery under section 10A is not encouraging. Some of the factors for this trend have already been referred to. Others which are responsible for this trend are: (i) the lack of proper atmosphere ; (ii) the reluctance of the parties to resort to arbitration machinery; (iii) lack of persons who enjoy the confidence of both the parties, and (v) the question of bearing the cost of arbitration.

V. Dispute Resolution Process in Environment Matters

Economic advancement through industrial development is also an imperative need of the day. The foremost duty is to harmonise the interest of economy with those of ecology. The fundamental question is about increasing economic growth and decreasing environmental pollution to save the future generation from disastrous consequences about its survival in times to come. This becomes more delicate for a developing nation like India. The welfare state in its nature is under an obligation to enact adequate laws to control the pollution and to maintain ecological balance.

In India at present 41 legislations have been enacted to regulate environmental pollution. Some of these being: the Water (Prevention and Control of Pollution) Act, 1974, the Water (Prevention and Control of Pollution) Rules, 1975, the Water (Prevention and Control of Pollution) (Procedure for Transaction of Business) Rules, 1975, the Water (Prevention and Control of Pollution) Cess Act, 1977, as amended by Amendment Act, 1991, the Water (Prevention and Control of Pollution) Cess Rules, 1978, the Air (Prevention and Control of Pollution) Act, 1981, as amended by Amendment Act, 1987, the Air (Prevention and Control of Pollution) Rules,1982, the Air (Prevention and Control of Pollution) (Union Territories) Rules, 1983, the Environment (Protection) Act, 1986, the Environment (Protection) Rules, 1986, etc.

Prevention and Control of Pollution

As on December 31, 2000, out of 1,551 industries, 1,326 industries have provided the necessary pollution control facilities, 172 industries have been closed down and remaining 53 industries are defaulting in the 17 categories of identified highly polluting industries, legal actions under the Environment (Protection) Act, 1986 were taken for all the defaulting units. A survey of decided cases reveals that the prosecutions launched in ordinary criminal courts under the provisions of the Water Act, Air Act and Environment Act never reach their conclusion either because of the work-load in those Court or because there is no proper appreciation of the significance of the environment matters on the part of those in-charge of conducting those cases. Moreover, any orders passed by the authorities under Water and Air Acts and the Environment Act are immediately questioned by the industries in courts. These proceedings take years to reach conclusion. Very often, interim orders are granted, disabling thereby the authorities from ensuring the implementation of their orders.

To combat the above problems, the first step taken in this direction was the enactment of the NATIONAL ENVIRONMENT TRIBUNAL ACT, 1995. This Act has been enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment and for matters connected therewith or

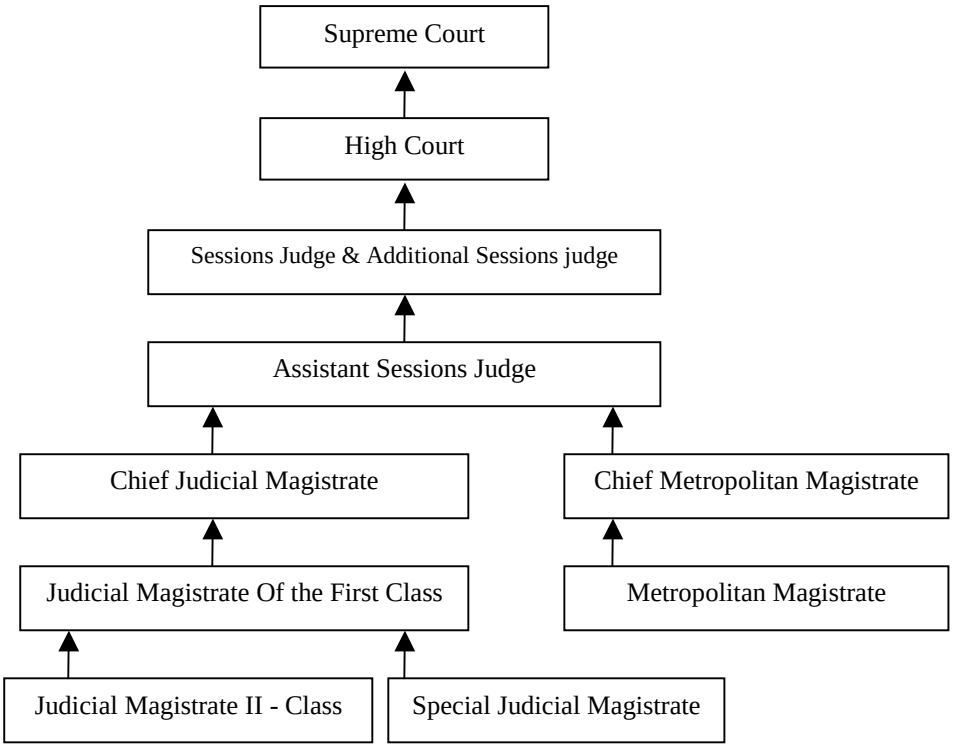
incidental thereto. This tribunal is to be set up by Central Government. Along with it, benches can be set up under the Act at different places at the discretion of the Central Government. They are yet to be established. But this Act is limited to cases related to hazardous substances and processes and does not deal with the whole spectrum of environmental cases arising otherwise.

Thus, at present there is no specific dispute resolution mechanism available under these Acts except setting up of boards at the Central and State levels with the powers to monitor the pollution and issuing notices to the violators.

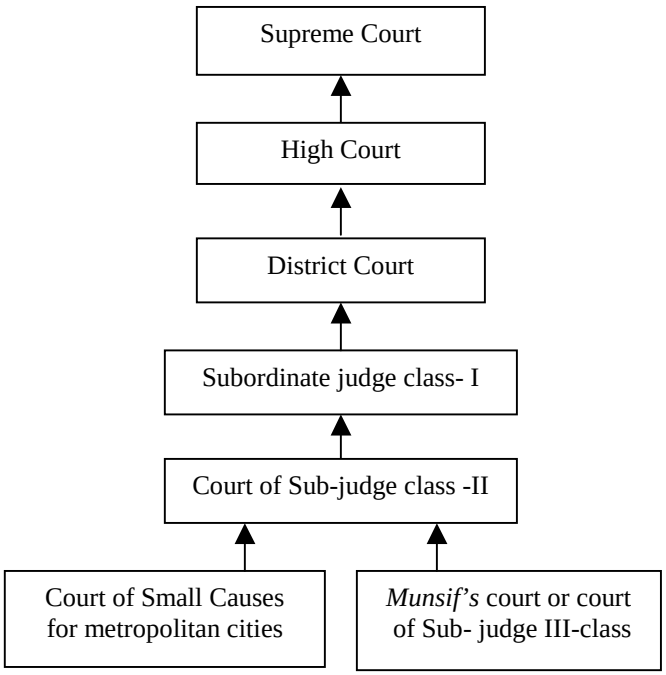
In this backdrop it is felt that, till these environment tribunals come to exist, mechanisms and procedures for the adjudication of environment disputes will remain unsatisfactory, due to inadequacy or insufficiency of the foras available for consideration of the matters.

Annexure I Hierarchy of Judicial set-up

Hierarchy of Criminal Judicial System

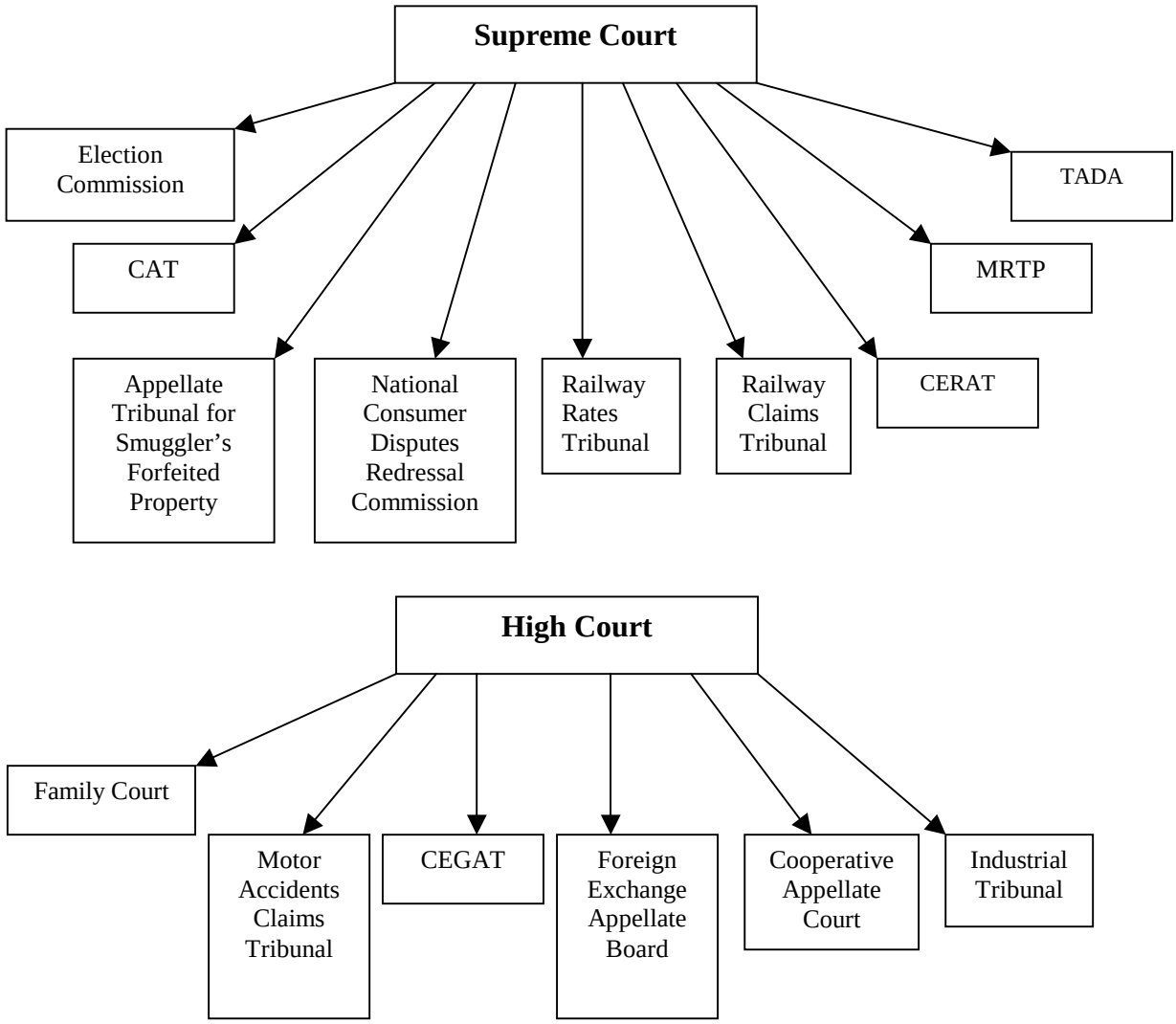


Hierarchy of Civil Judicial System



Annexure II

Tribunals and Commission in India



Annexure III