Judicial Reforms in India

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JUDICIAL REFORMS IN INDIA

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I. Judiciary

India has long history of dispensation of justice. The Vedic and other texts also speak about the delivery of justice. Though there were no courts constituted during the monarchial period, the king used to act as a judge and dispose of the complaints. With the advent of the East India Company and British for trade and later as rulers significant changes took place. The judicial developments and reforms took placer during the British period mainly in three Presidencies of Bombay, Madras and Calcutta, separately. The high courts at Bombay, Madras and Calcutta were established in the year 1862. However, a uniform and well-organized judicial system came to be established for the whole country, which was later inherited on becoming independent on August 15, 1947. After independence, constitution provided for establishment of the supreme court of India, and a high court for each state or states.

The Court structure in India is pyramidal in nature. Unlike the American model of dual court system – federal and state – India has monolithic system. The judicial service has practically the same structure with variations in designations. Designations of courts connote their functions. Workload determines whether the presiding officer should preside over both courts with power under relevant statutes conferred on him. The courts at the base level cater to the needs of the society in respect of disputes not involving high pecuniary stakes though the designations of the courts and the personnel manning them differ from state to state. By and large, they fall into a pattern starting from the bottom, known as Subordinate Judiciary, High Courts and finally the Supreme Court of India, as given under.

Subordinate Judiciary

At the base level, there are courts variously described as Munsif Magistrate or

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Civil Judge (Judicial Division), Judicial Magistrate First Class(JMFC). In some states, Munsif is also described as District Munsif. In some states, there are posts of Judicial Magistrates, Second Class but they have ceased to exist. The situation at the present is (as evident from the data collected), that at the base level, there is the court of Munsif/ District Munsif/ Magistrate or civil Judge/ JMFC. This is what is called the court of primary or initial jurisdiction. Most of the disputes, subject to a ceiling on pecuniary limit, are brought to these courts for their resolution. In some states where workload does not justify existence of two separate cadres, the Munsif is also invested with power of JMFC. Similar is the situation with regard to Civil Judge (Junior Division) as in the case of Maharashtra and Gujarat. Members of this cadre, when posted in large urban areas are assigned either exclusively civil or exclusively criminal work. When they are posted in Metropolitan areas, they are described as Metropolitan Magistrates. Vertically moving upward, the next set of courts are described as courts of District and Sessions judge which also include the courts of Additional Judge, Joint Judge or Assistant Judge. In some states there is a court called court of Civil and Sessions Judge. These courts generally have unlimited pecuniary jurisdiction and depending upon the power conferred on the incumbent officer in charge of the court, it can handle criminal cases where maximum punishment would not exceed 7 years. In some states, these courts with unlimited pecuniary jurisdiction are called courts of Civil Judge (Senior Division) and in some states they are described as Courts of subordinate judge. Courts have also been set up under two statutes called the Provincial Small Causes Court Act applicable to places other than Presidency Town and the Presidency Town Small Causes Court Act applicable to Presidency Towns. The first mentioned is subordinate to District Court and the last to High Court. The judges in charge of these courts are designated as Small Causes Court Judge, the first among equals called the chief judge of the court. The Court of the District and Sessions Judge at the district level is the principal court of original jurisdiction and is presided over by an officer called the District and Sessions Judge. The designation district court is derived from the Code of Civil Procedure and Sessions Court from the Code of Criminal Procedure. As a rule, same officer invested with power under both the statutes preside over the court known as District and Sessions Court. The next hierarchical stage in the pyramid structure of courts at state level is the High Court is the highest court set up under Article 214 of the Constitution.

High Court

The high court stands at the head of a state's judicial administration. Before independence 3 high courts were established in the country by the then British Government. After independence, 16 more high courts have come to exist, thereby increasing total strength at 19. No high court is superior to other and has territorial jurisdiction only over matters and cause of action rising within the periphery of its territory.

The Supreme Court of India

The supreme court of India, as the highest court of the country was established on January 26, 1950. The Supreme Court has wide jurisdiction over original, appellate and advisory matters. The court occupies the most vital and dignified position under constitutional set up and is entrusted with the power to give final verdict in all matters relating to interpretation of constitution, laws and their enforcement. It is empowered to issue directions, orders, writs. The court encourages settlement by arbitration, and gives acknowledgment to international arbitration as well. The court has wide appellant jurisdiction over all courts and tribunals set up in the country. The constitution has empowered the court to grant special leave from any judgment, decree, determination, sentence, or order in any cause or matter made by any court or tribunal in India. The Parliament is authorized to confer on the court any additional powers to entertain and hear appeals from criminal proceedings. The court has special advisory jurisdiction in matters specifically referred to it by the President of India. Constitution of India declares the Court to be a court of record, whereby it is vested with powers to punish for its contempt. The Court consists of 26 Judges including the Chief Justice of India, who is described as the sole head of Indian Judiciary.

Over the years in tune with the changing times, new rights have come to be recognized. This spearheaded the reforms in the justice delivery system. For example, to deal with specific legal issues the concept of special courts and tribunals is recognized and these have been constituted at various levels. Besides, the concept of Public Interest Litigation and Social Action Litigation has been recognized. One of the most significant developments during the 80's is the relaxation of the traditional *locus standi* rule. A brief description of the developments that have taken place in the other areas of justice delivery system in India are given as under:

II. Public Prosecutors and Judicial Reforms:

The independence of public prosecutors and their role in dispensing justice has contributed in the justice reforms in India. The history of functioning of Directorate of Prosecution or public prosecutors in India reveals that, during the British rule, the public prosecutors were under the direct control of the police department. Later keeping in view the Law Commission of India's recommendations and also in pursuance of the constitutional mandate for separation of executive from judiciary they are brought under the control of home department and legal departments.

Despite these developments the statistics reveal that there are large number of acquittals due to various reasons including the poor performance of public prosecutors. Various recommendations have been made from time to time for strengthening the prosecution and thereby justice delivery system.

III. Legal Profession and Judicial Reforms:

The Advocates Act is an epoch-making enactment in the history of legal profession in India. It marks the realization of a long cherished dream of the members of the Bar, namely the unification of the Bar in India. The delivery justice system mainly depends on the quality and conduct of legal professionals since they are the persons who are appointed and elevated to various judicial positions depending on their experience. Prior to the enactment of the Advocates Act in 1961, there were various enactments governing the legal profession with different grade of practitioners. All this has been given go-by. The Act now prescribes identical qualifications for enrolment throughout India, there being one All – India Bar Council, presiding over all the state Bar Councils. The enrolment of advocates rests with the Bar Councils. During the year 1995 the Central Bar Council introduced one-year compulsory apprenticeship after graduation in law as necessary qualification for enrollment as an advocate. However, the Apex court of the country struck it down in 1999. Judiciary has played a considerable role in shaping path of legal profession and in maintaining good conduct and adherence to high standards and professional ethics in legal practice. The recent judgment of the apex court clearly exemplifies the high standards set by the judiciary by prohibiting strikes by lawyers. The court went to the extent of suggesting compensating litigants by the errant lawyers. Further the Law Commission of India in 1998 made recommendations to be implemented by the government for strengthening and streamlining the legal profession

in India through the amendment of the Advocate Act.

IV. Legal Education and Judicial Reforms:

Legal education in India has its roots in English history. This heritage has had a profound effect on the development of legal education, on the evolution of legal institutions, and on outlook of law in India. The structure of Indian Law is erected on the foundation of the English Common law. Before independence, there was no uniform pattern of legal education in the country. At the time of independence and before it law colleges did not hold a place of high esteem, nor was the law during that period an area of profound scholarship or enlightened research. During those days most of the lawyers did not educate themselves from India, but went to Europe and mainly to England for the study of law. Though British Government had established law schools in various parts of the country, preparation for the most part, was through apprenticeship in the offices of the members of the Bar. After independence, a period from1958 to 1962, witnessed growth in number of law schools. These were opened indiscriminately with scarce or no resources by municipalities, without any rational planning. Law examinations were thrown open to students who did not even attend any formal course of law. Major development took place in this field after 1961. Parliament enacted Advocates Act in year 1961 incorporating recommendations of Law Commission of India. This Act constituted the Bar Council of India, conferring on it powers to prescribe standards of legal education and recognize law degrees for enrollment of persons as advocates. Consequently some uniformity and desired changes were introduced in this sphere. After 1975, no non-collegiate degree holder in law was enrolled as advocate. And after 1967, the degree in law is of no value if the course of study in law was not pursued by regular attendance and by attending requisite number of lectures, tutorials and moot courts. After 1979, the Bar Council of India took complete control over the area of legal education. In 1980, the Government of India for the first time constituted a working group for examining the status and quality of legal education in the country and to suggest necessary changes for improving quality of legal education being imparted in the country. In 1983, the Bar Council of India gave recognition to five year integrated course in law in addition to three-year course that is recognized by it. In recent years the legal education committee of the Bar Council of India has taken to the task of inspecting law schools in the country and it is taking action against those who are not

adhering to standards prescribed by it. After 1998 every law school has to compulsorily submit annual report to the Bar Council of India, detailing out number of students on its roll, teachers, their pay scale, expenditure, library resources, etc. failing which the errant law school either has to pay fine of Rupees 50,000/- or face risk of cancellation of license to run law school. Legal education has thus travelled a long journey and introduced desirable changes.

V. Procedure

Civil Procedure: The procedural law of the country governing and regulating civil matters is enacted in a very detailed statute called the Code of Civil Procedure. Before 1859, there was no uniform procedure regulating civil matters. Different parts of the country had different procedural requirements. In 1859, the first uniform Code of Civil Procedure was enacted. Due to defects found in its working amendments were introduced to it in the year 1877. In the year 1908, new Code was enacted that worked until 1976 when by way of amendments some major changes were brought into it. This Code provides for establishment of civil courts in the country, their jurisdiction, their powers, functions as well as manner in which civil suit is instituted and trial is conducted. It details out every thing minutely, living no gap for speculation. Due to some lacunae found in the working of the present Code, Parliament has enacted Amendment Act of 1999. This Code is still in the way of enforcement due to stiff opposition from legal professionals who are opposing certain changes. It is expected that it will be enforced soon with some minor alterations.

Domestic Procedure: Speaking in the past, even while the affairs of the country were responsibility of the East India Company, there used to be regulations in the nature of administrative instructions in regard to the conditions of service of the company's employees. The first batch of the rules was framed in 1920. They applied to all officers in India. These rules were amended from time to time and were re-issued in 1924. These rules continue in force even after independence by virtue of constitutional provisions. They constitute an exhaustive code as regards disciplinary matters. Apart from these safeguards provided to employees, various enactments and rules constituted domestic tribunals to adjudicate such disciplinary matters. Not only employees of industry / state but even private employees by virtue of Article 21 of constitution are provided procedural safeguards. Judiciary has always been vigilant and applies

principles of natural justice in adjudicating any matter before them.

Criminal Procedure: Before 1882, there was no uniform law of criminal procedure for the whole of India. However, there existed separate Acts, mostly rudimentary in their character, to guide the courts in the erstwhile provinces and presidency towns. In 1882, the first uniform criminal procedure code came into existence. The Code of Criminal Procedure1898 supplanted it. This Act of 1898 has underwent changes in 1955.

In 1955 extensive amendments were made with intent to simplify the procedure and expedite the trial.

In 1973 the Act of 1898 was repealed by the Code of Criminal Procedure, 1973 which was brought into force in 1974.

In 1976 in pursuant to 41st Report of Law Commission of India, major amendments were brought to the Code. The committal proceedings were omitted and only aggrieved person is given right to start proceedings. After 1976 every government was given power to declare any area as metropolitan area if the population of the same exceeds one million. The revised set up of criminal courts and allocation of magistrate functions between judicial and executive magistrates brought out in 1976 was in conformity with the constitutional goal of separation of executive from judiciary.

In 1978 additional duty was imposed on the police officer of reporting and transporting the seized property to the court or any person on bond who undertakes to produce the same before area Magistrate. Before this amendment the police officer seizing any property had to report to the officer in-charge of the police station. In 1978 some additions were made to the Code to enable the Magistrate to detain the accused for a period over 15 days if adequate ground exists. Further an exception to general rule that complaint must be made by the aggrieved person was made by allowing in certain specific circumstances complaint from his near relations if he or she is lunatic or idiot or incapable of complaining because of some sickness or due to any other valid reason. The Code was further enlarged to empower state government for speedy disposal of petty cases and in this context, gave power to the Magistrate to impose fine on the accused of petty offences and release him. In the same year defamation was made a compoundable offence. Besides the amendment prescribed minimum imprisonment of 14 years to those who are convicted of an offence punishable with death.

In 1980 new provisions were incorporated in the Code empowering the court as well as the police officer to release the accused on bail in a bailable case unless it

appears reasonable ground like accused is guilty of offence punishable with life imprisonment or death or has been previously convicted of the same. Further Executive Magistrate has been given duty as well as certain powers for keeping peace in his area.

In 1983 while keeping in view the increasing number of dowry deaths in the country, the government while creating new offences under the Indian Penal Code, 1860 has incorporated a provision under the Code of Criminal Procedure to deal with incidents of dowry deaths and cruelty to married women by the husband and in-laws. Provision was made for inquest by Executive Magistrates for post-mortem in all cases where a woman has died within 7 years of her marriage under unnatural circumstances. Further to end police torture leading to deaths of accused persons inside the jails/prisons the same amendment provided for inquest by nearby Magistrate in case of death of a person in police custody. Further a new provision was added to the Code to allow a criminal court hold trial of cases relating to rape and other offence against women in-camera.

In 1990 two new provisions were added to facilitate ongoing investigations in the matter of kickbacks and commission by a foreign gun factor AB. BOFORS of Sweden finalizing sale of its product to the Ministry of Defence, Government of India. The necessity of such a provision was felt because of money paid was all to be deposited in the accounts of the accused persons in the banks of Switzerland.

In 1993 to enlarge the list of all those who are under duty to report to the police or nearby Magistrate if they happen to be aware of the commission of any offence or intention of any person to commit offence of kidnapping for ransom.

VI. Alternative Dispute Resolution in India

ADR or Alternative Dispute Resolution – as a concept – is not new in India, though the nomenclature ‘ADR’ is. The basic idea of resolving disputes and discords between members of the community through the intervention of men of goodwill and standing within the community and abiding by their verdict is not new to the Indian ethos. There is a historical evidence to suggest that in many parts of India closely-knit communities of artisans, tradesmen and other had their own system of dispute resolution and their own for a with well developed procedures. These institutions, known as *Pugas, Srenis* and *Kulas* functioned as alternative for a for resolution of disputes outside the King’s courts. These systems gradually declined and diminished in importance with the

advent of the English legal system introduced during the British period starting from the Bengal resolution of 1772. The establishment of hierarchical structure of courts by the East India Company on the lines of the King's Courts, the enactment of elaborate Codes, the emergence of the legal profession modeled on the lines of its British counterpart and the doctrine of precedents – all contributed to the gradual formulation of the dispute resolution procedures and its rigid institutionalisation in the form of the Court system prevailing today. In many parts of the country, the system known as *Panchas* and *Panchayats* functioning at the present, within village and tribal communities, contain the quintessence of the ancient system.

With the adoption of the Constitution guaranteeing freedoms to the citizens and the establishment of an independent and powerful judiciary, with powers of judicial review, the spread of literacy and the considerable increase in the level of awareness of their social, economic and political rights by larger sections of the populace, the demands on the justice delivery and dispute resolving institutions came under tremendous pressure, as reflected in the number of cases that are taken to the courts. The most telling index of the malaise is the sheer size and number of cases pending in courts. In 1995 that there were over 25 million cases pending in about 80000 courts in India. While the number of fresh institution of cases steadily increased, the rate of disposal of cases, especially at lower levels, remained static or worse. All this prompted the search for alternatives to court litigation.

The first initiative that was taken was the drafting of a new law of arbitration for the country to replace the outmoded and antiquated Arbitration Act, 1940. With the new law, a new Chapter in the history of legal and judicial reforms began in India.

Again in 1996, new enactment apart from updating the law of arbitration gave a comprehensive, statutory framework for Conciliation. Arbitration and Conciliation are, under the new legislation, independent and autonomous procedures deriving support from the courts. They do not require constant supervision and control from Courts. They do not require constant supervision and control from Courts. It has opened up tremendous possibilities. These alternative mechanisms are less expensive, quicker, and less intimidating than the machinery of courts. Also, they are more sensitive to the concerns of the disputing parties. They dispense better justice, result in less alienation between the parties and satisfy their desire to retain a certain degree of control over the process of resolution.

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 result of this, besides traditional judicial system it became imperative to look out for other for a, which addressed these new problems as well as provided speedy disposal. Hence, were set up tribunal, commissions, district boards, etc., which entertain and dispose of large number of disputes every year. These are constituted by the Act of Legislature and are invested with specific judicial powers. They have a permanent existence and are adjudicating bodies. The basic and fundamental feature common to both the courts and the tribunals is that both discharge judicial functions and exercise judicial powers inherently vested in a sovereign state. Some of these are:

CAT : The Supreme Court sits only in Delhi and High Courts in capital cities of the States and, the number of complaints against administration is very large. For every infringement of right, it is impossible for an ordinary citizen as well as government servant to move the proper court. Administrative tribunals were therefore, set up, with the aim and object to provide speedier justice to public servants regarding their service complaints or dispute and ease burden of the judiciary. Besides the principal bench at Delhi, the benches of the tribunal are established at seven additional places, at Allahabad. Calcutta, Guwahati, Madras, Bombay, Nagpur and Bangalore. Until 1997, it exercised the entire jurisdiction, powers and authority exercisable by all courts except the Supreme Court of India in relation to recruitment and service but after the declaration of section 28 of the Administrative Act, 1985 as unconstitutional by the Supreme Court of India in *L.. Chandra Kumar v/s UOI*, power of judicial review of legislative action of Administrative Tribunal is limited and made subject to the High Court to judicial review.

Customs, Excise and Gold Control Appellate Tribunal (CEGAT) : set up in 1982, for hearing appeals of Excise, Customs and Gold Control matters.

Family Courts : were established in 1984 to provide effective and less expensive remedy and to promote conciliation in securing speedy settlement of disputes relating to marriage and family affairs.

Commission for Protection of Consumers : In 1986 Consumer Protection Act was passed to directly protect consumers. It provided a three-tier system for settling consumer disputes, via: District Level Fora, State Commissions and finally National

Commission.

The list of other such tribunals, commissions and special courts that have been constituted to deal with particular types of cases is endless. For example, Appellate tribunal for smuggler's forfeited property; Income Tax Appellate Tribunal; Railway Claims Tribunal; Railway Rates Tribunals; TADA Tribunal; Motor Accident Claims Tribunal; Authorities under the Industrial Disputes Act, 1947-Labour Courts, Board of Conciliation, Industrial Tribunal; Environment Tribunal; Special Court for trial of offences Relating to Transactions in Securities Act, 1992; Special Courts in relation to Andhra Pradesh Land Grabbing (Prohibition) Act, 1982; MRTPC; Cooperative Appellate Tribunals and many other such courts constituted under Acts of State Legislature according to exigencies arising.

Evolution of Legal Aid Boards, Lok Adalats in the Country:

Since 1952, the Government of India also started addressing to the question of legal aid for the poor in various conferences of Law Ministers and Law Commissions. In 1960, some guidelines were drawn by the Govt. for legal aid schemes. In different states legal aid schemes were floated through Legal Aid Boards, Societies and Law Departments. In 1980, a Committee at the national level was constituted to oversee and supervise legal aid programmes throughout the country under the Chairmanship of a Judge of the Supreme Court of India. This Committee came to known as CILAS (Committee for Implementing Legal Aid Schemes) and started monitoring legal aid activities throughout the country. The introduction of Lok Adalats added a new chapter to the justice dispensation system of this country and succeeded in providing a supplementary forum to the litigants for conciliatory settlement of their disputes. In 1987 Legal Services Authorities Act was enacted to give a statutory base to legal aid programmes throughout the country on a uniform pattern. This Act was finally enforced on 9th of November, 1995 after certain amendments were introduced therein by the Amendment Act of 1994. The National Legal Service Authority was constituted on 5th December 1995 replacing CILAS.

Provision of Free Legal Aid

If a person belongs to the poor section of the society having annual income of less than Rs. 18,000/- or belongs to Scheduled Caste or Scheduled Tribe, a victim of natural calamity, is a woman or child or a mentally ill or otherwise disabled person or an

industrial workman, or is in custody including custody in protective home, one can avail free legal aid from the legal aid boards functioning in the district courts, high courts and the Supreme Court. The aid so granted by the Committee includes cost of preparation of the matter and all applications connected therewith, in addition to providing an Advocate for preparing an arguing the case. Any person desirous of availing legal service through the Committee has to make an application to the Secretary and hand over all necessary documents concerning his case to it.

VII. Public Interest Litigation

Although the proceedings in the Supreme Court arise out of the judgements or orders made by the Subordinate Courts including the High Courts, but of late the Supreme Court has started entertaining matters in which interest of the public at large is involved and the Court can be moved by any individual or group of persons either by filing a Writ Petition at the Filing Counter of the Court or by addressing a letter to Hon'ble the Chief Justice of India highlighting the question of public importance for invoking this jurisdiction. Such concept is popularly known as 'Public Interest Litigation' and several matters of public importance have become landmark cases. This concept is unique to the Supreme Court of India only and perhaps no other Court in the world has been exercising this extraordinary jurisdiction. A Writ Petition filed at the Filing Counter is dealt with like any other Writ Petition and processed as such. In case of a letter addressed to Hon'ble the Chief Justice of India the same is dealt with in accordance with the guidelines framed for the purpose.

VIII. *Amicus Curiae*

If a petition is received from the jail or in any criminal matter if the accused is unrepresentated then an Advocate is appointed as *amicus* curiae by the Court to defend and argue the case of the accused. In civil matters also the Court can appoint an Advocate as *amicus curiae* if it thinks it necessary in case of an unrepresentated party; the Court also appoint *amicus curiae* in any matter of general public importance or in which the interest of the public at large is involved.