Access to Justice

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Submitted to: **LOK SATTA**, Hyderabad on 12th June 2004

TABLE OF CONTENTS

ACKNOWLEDGEMENT

I am highly grateful to Dr. Jayaprakash Narayan for giving me an opportunity to work in this organization. I would also like to thank Mr. Sanjay and Nisar Fathima for guiding me through out this research and for their valuable advice and help. Lastly, I would like to convey my thanks to all the members of Lok Satta as it has been a wonderful experience working here.

CHAPTER 1: INTRODUCTION

Access to justice is one of the fundamental and essential characteristics of any legal system in the world. Infact,access to justice is one of the factors which addresses and which is a measure of the effectiveness and the efficiency of a country's judicial system, the incidence of poverty in the country and the varying degrees of the distance present between the judicial system and the people.It also is the determinant of the efficacy of the judicial system in terms of the approach, attitude and mind-set of the people towards the system at large. Both these are directly related.If the country's judicial system is easily approachable equally to all the sections of the society, especially to the disadvantaged and down-trodden,it indicates that the system is very flexible with simple procedures and it upholds the basic right of every man,viz.,right to judicial remedy.On the other hand, if the system is such that justice becomes a dream for the poor,then it only throws light on the inefficiency of the system in discharging its basic objective.

Easy access to justice should be the top most priority of any judiciary. This is because life has become so complicated today that each and every activity is either directly or indirectly related to law. And in such a situation, the least that can be provided for the people is a judicial system where people do not have to think twice before they approach the courts. All this depends on various factors which have been thoroughly discussed in the project.Further, the issue of law and access to justice also raises enduring questions about the nature of law and the concept of justice. There are also operational problems that are associated with these phenomena. The alien nature of the legal system,the public's unfamiliarity with the nature of litigation process, the technical nature of law and its procedure combine to compound the problem of accessing justice. The fact that legal services are unaffordable by the majority of the population and the corruption that blights system create additional distortions.

This study basically deals deal with the concept of access to justice embarking upon the factors that influence it and also the present fate of the Indian judiciary.There is a lot of substantive material on the reforms that are required to the system at present which is followed up by a comparitive analysis of the attempts made by various countries in order to provide easier and speedy access to justice for the people.As such,the main aim of this research is to put forward and realize the fact that: "EASY ACCESS TO JUSTICE IS THE NEED OF THE HOUR".

1.1: RESEARCH METHODOLOGY

The research methodology employed during this project is basically doctrinal in nature. Most of the information has been taken from the internet and from the library of Lok Satta.

CHAPTER 2: ACCESS TO JUSTICE

Access to justice is one of the main features of a justice system of a country.When one is talking about access to justice ,then it is basically with reference to the disadvantaged groups in the society.Access to justice,according to the UNDP,is defined as **"Ability of people from disadvantaged groups to prevent and overcome human poverty by seeking and obtaining a remedy, through the justice system, for grievances in accordance with human rights principles and standards".**[1]

As such,a core government function is to provide an effective system of justice for its citizens. Yet many governments fail to deliver on the basic services of protecting physical safety, securing personal property and settling disputes quickly and fairly. Recent studies have highlighted the fact that for poor people, access to justice may be as important as access to health care or education. This is because,poor people typically lack access to courts or even police protection. When they do have contact with the justice system, it is most frequently as victims of crime, or as targets of harassment or corruption.[2] The idea that the justice system is available to vindicate legal rights, settle disputes and safeguard citizens is supported in theory, but seldom realised in practice. This ultimately leads to a growing alienation between the poor and the justice system because of which the mindset of the poor towards the courts and the justice system in their country tends to be fixed ,i.e., law and courts are something beyond their reach and understanding, the courts are absolutely inaccessible and the whole procedure of justice delivery is not for common man.A similar thinking exists in India too.

Top

Substantive Scope of Access to Justice

The scope of access to justice cannot be accurately defined.This is because it is a very relative aspect.Access to justice differs widely in different countries.It depends on various factors and circumstances.Now,coming to access to justice with reference to India,the justice system of our country is not suited to meet the demands and needs of the down trodden or the people who are at the lowest rungs of the ladder in the society.It is not within the reach of the common man.The whole mechanism of justice delivery, right from the ambiguity and highly complex legal language to the procedures involved in dispensing justice, is beyond what a layman can conceive.All this has lead to a feeling of disbelief and lack of trust in the legal system in our country.Infact,inadequate access to justice is one of the defining features of our justice system.

Furthermore,there are certain factors affecting access to justice.Dr.Jayaprakash Narayan in his article: "Local Courts-An Idea Whose Time Has Come"[3],has mentioned the follwing as the factors affecting access to justice:
1.Number of judges
2.Physical proximity
3.Procedures
4.Language
5.Speed

6.Costs
7.Perjury
8.Fairness

Apart from the above,there are certain other factors that I would like to enumerate as those affecting access to justice:

a)**Mindset of the people**:This is a very important factor that affects access to justice.The mindset of the people is very much fixed.They have fixed notions in their mind regarding the judicial system.They think that the judicial system-the courts,lawyers,procedures etc. are something they do not have access to in terms of physical proximity and in terms of understanding too.Their thinking is very traditional,fixed, closed and narrow.They are not in a position to appreciate the moves being made by the government in order to improve their access to the judicial system.So,even if the government tries to provide for better mechanisms and procedures,they will not be received with the right spirits by the people.The problem here lies not with the implementation but with the thinking. So,in order to see that the reforms introduced achieve some success,the problem that has to be dealt first is to change the mindset of the people.

b)**Picture presented by the courts**:This factor is somewhat related to the above factor.The kind of picture presented by the courts affects the opinion of the people which ultimately affects the concept of access to justice.If the courts system in a country is plagued by backlogs,delays,complex procedures etc.,then the kind of picture that the people have in their mind is very negative which eventually makes them lose faith in the system.On the other hand,if the courts are easily accessible with simple procedures providing for faster settlement of disputes,then this reinstates faith in the mind of the people.in the latter case, people will also respond positively to any reforms which are introduced by the government unlike in the former case.Therfore,access to justice is also influenced by the kind of picture presented by the courts.

c)**Attitude of the lawyers**:The attitude of the lawyers also is related to the first point above.It also influences the access to justice.If the lawyers are easily approachable and there is no gap prevelant between the lawyer and the client ,then the people find access to justice much easier.This is because lawyers are the representatives of their clients in the court of law.There has to be some kind of understanding between the both of them;only then will goodwill and easy access prevail.On the other hand ,if the lawyers are absolutely inaccessible,charging exuberant fees and if there is lack of co-operation and understanding between the lawyer and the client,then the people get disillusioned about the whole system. The lawyers need to possess good communication skills(especially the lower court lawyers who need to communicate in the local lawyers) and also need to gel well with the client.The lawyers need to realize the fact that the persons who are coming to them with their disputes are absolute laymans knowing nothing about the law.So,they have to keep in mind the amount of trust that the clients have in them .They need to give an impression to the client that access to justice is not something which is not meant for common man.

Approach of the UNDP:
According to the UNDP,Lack of access to justice is a defining attribute of poverty, and an impediment to poverty eradication. Using a rights-based approach UNDP practitioners have four major objectives in order to deal with the problem:

1. To focus the problem on the immediate causes impeding access (lack of safeguards to access or insufficient performance of them);
2. To define who are those most affected (the poor and other people who are disadvantaged) – claim holders,
3. To define who is in the position to ensure performance (institutions, groups and individuals) – duty bearers;
4. To focus capacity development analysis on the capacities of both of them to address the problem.

Further,The substantive scope on the access to justice involves the following steps:

1. Problem identification (Immediate causes*):* What types of safeguards are not performing and impeding access?
2. Role and capacity analysis: Underlying causes
3. Accountability Analysis: Identification of who are duty-bearers in those areas, and what type of capacity problems they have to perform their duties effectively.
4. Empowerment analysis: Identification of the capacity problems that the poor and other disadvantaged people have to claim and exercise those safeguards.
5. Lessons and other resources needed to support strategies that strengthen their capacities for accountability and empowerment accordingly.[4]

Top

Access to Justice Reform

Since the 1960s, reformers have called for changes in national legal systems to enhance "access to justice" for disadvantaged groups and citizens at large. The concept arose in an era of the welfare state and growing rights consciousness, and was usually identified with committing the state to increasing social services and widening opportunities for dispute resolution. But in the 1980s and 1990s, the rise of neo-liberal politics stimulated cuts in social spending and an emphasis on efficiency across many countries. These changes pitted traditional, rights-conscious concepts of access to justice against models that focused on the resource constraints forcing choices among social objectives. At the same time, at a conceptual level, traditional access to justice ideas were critiqued as being narrowly directed at procedural access rather than substantive justice. Today, the goal of access to justice is adopted across the political and ideological spectrum, from poverty advocates seeking expanded legal assistance to reformers concerned about the impact of costly procedures on citizens' ability to seek redress through the courts.

In an international study that popularized the idea of access to justice, Cappelletti and Garth in 1978 identified **three waves of reform** aimed at making the formal right to justice effective. The first wave consisted of efforts to **make legal aid and advice more available to the poor**; the second phase **promoted representative actions** and other

procedures that would allow a single lawsuit to resolve a large number of claims; and the third wave addressed **broad reform to the legal system,** including **alternative dispute resolution**, small claims courts, and other procedural change (Cappelletti and Garth 1978). Access to justice remains identified with legal aid, representative actions, alternative dispute resolution, and other strategies of court reform.

Advocates for the poor in the 1960s and 1970s sought to institute legal aid as an entitlement of the welfare state. Many countries, industrialized and developing alike, established a right to legal representation or legal assistance through constitutional amendment or statutory law. The **U.S. Supreme Court held in 1963** that criminal defendants had a right to counsel in serious cases, and in 1974 the Congress established the **Legal Services Corporation** to provide legal assistance to indigent civil litigants. **India enacted a constitutional amendment in 1976 requiring the government to provide free legal aid, and established an extensive network of legal aid schemes to reach Indian villages**. While many countries today are cutting back on their swamped legal aid schemes, others are embarking on implementing assistance: in China, for instance, local and state legal aid initiatives have mushroomed since the early 1990s (Liebman 1999).

Meanwhile, the development of class action suits, liberalized rules on who can bring different kinds of representative actions to court, and public interest and social action litigation permitted greater representation of collective interests (Jolowicz 2000). **Class action lawsuits, most established in the United States** but now being introduced in some civil law countries and spreading in China, allow large numbers of similar claims to be aggregated. Their economic rationale is clear: group suits reduce the systemic cost of litigating multiple claims, while making awards available to individuals for whom pressing an individual claim would not be cost-effective, particularly when small sums are at stake (Miller 1998). At the same time, relaxed criteria for legal standing in the 1970s permitted new public interest firms to raise suits on behalf of consumers, victims of environmental damage, and other groups of "diffuse interests" (Cappelletti and Garth 1978). Similar considerations lay behind the expansion of public interest or social action litigation in South Asia (Hossain, Malik and Musa 1997).

In the 1970s, interest in making dispute resolution more accessible yielded the **Alternative Dispute Resolution (ADR)** movement in the United States. ADR has since spread internationally, and most donor-supported judicial reform projects today include mediation or arbitration programs. In theory, ADR offers procedures that are not as costly, time-consuming, or complex as formal litigation. Its use is intended to address not only the financial barriers to the courts, but also the cultural,geographic, and psychological factors that deter people from formal court procedures. However, both the efficiency and justice of various ADR schemes have been questioned. For example, it is argued that ADR based on traditional social relationships may reduce women's access to justice when prevailing norms discriminate against women. Critics also argue that ADR, small claims procedures, and other less formal mechanisms for dispute resolution may increase the quantity of output at the expense of quality of justice—as well as divert resources from necessary reform of a deeply flawed legal system.[5]

Now looking at the judicial reforms from the point of view of India,some of the above reforms have been introduced and a moderate amount of success has also been achieved. For example,efforts have been made to make legal aid schemes more effective,there has been a considerable increase in the number PILs in the recent years(because of the relaxation of the rule of locus standi,there has been a greater interest shown from the public spirited individuals and subsequently there has been and increase in the number of PIL's involoving environment,governmental lawlessness and repression ,consumerism etc.), and above all the use of ADR is also fast spreading.This is a very positive picture and it promises future progress too.But I feel what is most required now is to make reforms in the judicial system to improve access to justice for the poor and the rural people.This calls for the establishment of Local Courts(Dr.Jayaprakash Narayan;above) at the grass root levels at the lowest level of the judiciary.The idea of Local courts has been explained in the following chapters too.This is because use of Information Technology,ADR and other modern methods will enable for better performance of the Supreme court and the high courts but not at the lowest level.but at the time,use of IT,ADR should be encouraged. This ultimately will result in a balanced growth of the system as a whole.Apart from the above , the idea of Class action Lawsuits which has become very famous in the United States should also be considered.All this requires a lot of input in terms of efforts and money; only then will access to justice be within the reach of people.

Top

CHAPTER 3: LEGAL AID

Legal aid refers to the financial assistance given to those people who are unable to bear the cost of legal proceedings.It includes rendering of free services by the lawyers and also the introduction of various schemes to provide monetary help for the commencement of proceedings.Over a period of time, various countries including India have tried to introduce legal aid schemes and have been quite successful in implementing it. Legal aid is the only tool available with the poor by which they can successfully take their disputes to the court.This is because it will be virtually impossible for the poor and rural masses to bear the heavy costs of the court fees and lawyers fees in case they have a dispute to be settled in the court.These people,because of their economic backwardness and impoverishment,do not have the knowledge and means to approach lawyers directly.It is at this point where the importance of legal aid can be seen. Also, availabilty of legal aid also results in easier access to justice for the people because of which people begin to have more trust in the legal system of the country.If there are no proper legal aid schemes,then is denies the people who are unable to financially afford the litigation,the basic right of access to justice.

Factors affecting Legal Aid

The delivery of legal aid and legal services for the poor in any country depends on the **financial resources** available, the **structure of the legal profession**, the **nature of the criminal justice system**, the **constitutional imperatives**, the **national legal aid structures** and the **modes of delivery** used.
The available financial resources will determine the nature and extent of the legal aid that may be provided in a country. Whereas it is estimated that developed countries such as the United Kingdom and United States spend about US$ 32 and US$ 2.25 respectively per person on legal aid, developing countries like South Africa and Nigeria spend about US$ 0.50 and US$ 0.002 per person.

Also,the **size and structure of the legal profession** in a country will determine whether there are sufficient lawyers to serve the needs of the poor and whether there is scope to employ salaried lawyers or law graduate interns as public defenders for criminal cases. The following is a graph which the number of law providers per 10,000 population.There is Italy at the top with 91.99 whereas India is in the fourth place with 10.74.this is abysmally low if one takes onto account the number of law graduates and the number of lawyers in the country.Unless the lawyers themselves take the initiative and voluntarily take part in legal aid programmes,the delivery of legal aid will only be a dream.This is because the lawyer is the peron who has to represent the client and unless he comes forward accepting to provide assistance,legal aid programmes will not succeed.

Law providers per 10,000 population	
Italy	91.99
USA	28.45
UK	16.99
India	10.74
Nepal	6.94
South Africa	4.27
Senegal	2.67
Burundi	1.42
Chad	1.29

Source: American Bar Association Journal, Sept 1992

Further**,Constitutional imperatives** also play a major role in ensuring that poor people have access to legal aid, particularly in criminal matters. For instance, in South Africa the establishment of a constitutional right to counsel in criminal matters at state expense, if substantial injustice would otherwise result, has meant that the state has had to increase its funding of legal aid fourfold since the first democratic elections in 1994. Although the South African Legal Aid Board has been in existence for over 30 years, over sixty per cent of the more than one million cases handled since 1971 have been after 1994, research shows. The financial and administrative cost of these demands has compelled the Board to change from a predominantly judicare referral system involving private lawyers to one that employs its own salaried lawyers.

Lastly,the nature of the **national legal aid structure** will determine how effective the delivery of legal aid services is to poor people. For example, South Africa has tried a variety of methods of delivering legal aid - some borrowed from other countries and some home grown. These include charitable work by lawyers, judicare or legal aid-funded private lawyers, public defenders employed by legal aid, legal aid-funded law clinics, and legal aid partnerships with paralegal advice offices.

Three lessons have been learnt from the South African experience:

- For legal aid to be delivered successfully to poor people, lawyers must be paid for their services.
- For countries with limited resources, a holistic approach must be adopted that involves government, non-governmental organisations, university law clinics and private lawyers
- Law graduate interns can be employed successfully as legal aid lawyers in rural law firms and as public defenders in legal aid-funded justice centres.[6]

Top

Common Problems these Aid Programs Face: Regardless of the scope of civil justice reform programs, the Legal Aid programmes invariably encounter similar problems. Four of the most common are:

1) Unpredictable outcomes
2) Delays and Backlogs
3) Lack of Access
4) Lack of resources

- Unpredictable outcomes: Perhaps the most often registered complaint about developing country civil justice systems is that decisions are unpredictable. Even if a creditor has a notarized document establishing the existence of an overdue debt, in many countries he cannot be sure the court will rule in his favor. This unpredictability, in turn, defeats one of the primary purposes civil justice courts are meant to serve: fostering private transactions. In Peru a World Bank survey found businesses would not change suppliers even if a new supplier offered a lower price. Why? Out of a fear that if the new supplier failed to deliver, the buyer would have no way to enforce the contract.

  The causes of this unpredictability are many.Some of them are as follows:

  - *Corruption*. Although we lack accurate tools for measuring it, observers of many developing country court systems believe it pervades their system. In Venezuela we do know that once the public was assured that the filing of a corruption complaint against a judge would bring action, the system was overwhelmed. Of the 1300 or so judges there, fewer than 50 have no complaint alleging corruption outstanding against them.
  - *Lack of independence.* Judges are under tremendous pressure from the executive, powerful private interests, and even local government. And this pressure can affect their decisions. The Philippine courts are so dependent on local officials for courthouse maintenance – water, electricity, and the like -- that some judges admit they are reluctant to rule against local government.
  - *Untrained personnel.* One source of unpredictability is that judges simply do not know what the law is. Magistrates in the lower courts in many African countries need have little more than a secondary school education to be a judge. In many developing countries, once a judge is appointed he or she receives little or no in-service training or continuing education.[7]

Therefore,it can be seen as to how the Legal Aid programs try to deal with the basic problems faced by the judiciary.It is this function of the legal aid programs that bestows so much importance on them.As such,delays and backlogs,lack of access and lack of resources are problems which every country faces.This means that legal aid programs are an integral part of every judicial system and do play a very important role in bringingthe necessary changes in the system.

Now,coming to the position in India,the National Legal Aid Association of India was set up in 1970 in order to provide free legal aid for the poor and organise, foster, nourish and propel a network of Legal Aid branches all over the country so that Equality before Law may become a reality overcoming all discrimination between the rich and the poor before the Courts of Justice.Then the National Legal Services Authority was also set up in 1995 and this also has achived a quite a lot of success in providing legal aid especially for the rural masses.Few achievements are given below:

> Upto 30.6.2000 about 31.47 Lac persons have taken benefit of legal aid through Legal Services Authorities out of whom about 5 Las belong to Scheduled Castes, over 2 Las to Scheduled Tribes, about 2.75 Lac are women and about 9,000 are children. Most of the offices of the State Legal Services Authorities are now equipped with FAX machines, computers and E-mail facilities. These modern gadgets shall surely help legal services functionaries to act swiftly to provide legal aid and assistance to the eligible persons in a meaningful manner.8

Therefore,it can be said that Legal Aid has taken a good start in India and is also achieving success at a moderate pace.But,this is not it.Majority of the people atill remain far away from the reality of courts and justice which is their fundamental right.What is required is an extensive Legal aid programme which will specifically deal with the grass root levels of the society.These legal aid programmes should also be able to get to know the pulse of the people,their need,problems and try to introduce and bring about changes in the judicial system accordingly.Also,the establishment of more and more legal aid clinics will also help in educating the people about their rights and how they can avail of the services for their benefit.In case the idea of local courts also is accepted,then these legal aid clinics will be of a lot of help.These clinics can educate the people about the advantages of such a system of courts,about the working and functioning of these courts and how one can approach these courts etc.And all this should be done in the local language only. This will help the people to trust the legal system and inturn instills confidence in them.Such availability of legal aid also has an indirect effect on the standard of living and economy of the country too.As such, I think that there is one important aspect that has to be kept in mind while administering legal aid,i.e.,**LEGAL AID IS AN IMPERATIVE SOCIAL NEED.**

Top

CHAPTER 4: JUDICIAL REFORMS

Judicial reforms are virtually the need of the hour in the present Indian context.This can be ascertained from the present working and functioning of the system.It only throws light on the ineffective of the system in not being able to meet the demands of the people and also not provide adequate access to justice for the people,the poor especially. Dr.Jayaprakash Narayan in his article observed that an independent and an impartial judiciary and a speedy and efficient justice system are the very essence of civilazion.This is absolutely true because,in today's world,every human activity is directly or indirectly linked to law. However,our judiciary has become ponderous,. excruciatingly low and inefficient.Infact the whole damage to our governance and society started from the time the alien system was introduced to us with archaic and dilatory procedures and our justice system still remains in its rudimentary form even after 57 years of independence. The court procedures,the working ,functioning, the time taken for the disposal of cases ,the number of litigations and cases being filed.etc remains constant throughout without trying to bring any definite changes which are beneficial to the people and the society as such. Reforms are being made but there is no proper implementation of those reforms and above all there is no balanced growth or planning, as such. In our judicial system, one tier is directly tied to the other and therefore reforms at one level should immediately be backed up by reforms at another level.

Further ,coming to the spate of the judiciary at present ,one of the most important problems it is facing is the delay in disposal of cases. Cases have been lying pending in courts for decades now.Also,the courts have tended to condone delays and encourage litigation and a spate of appeals even on trivial matters.In the process,a whole new practice of administering rough and ready justice using strong-arm tactics to achieve the desired goals has been set up by local hoodlums in almost all of our cities and towns and increasingly in the rural areas also. The clout and money these hoodlums acquire make sure that they are the ones who later enter politics and eventually acquire state power. There are countless examples in almost every sate of India where there are slum-lords, faction-leaders and hired hoodlums acquiring lot of political power. Therefore,it can be seen as to what kind of activities are trying to substitute the whole formal process of dispensation of justice by courts.This presents a very degraded picture of our whole system. So,there comes the need for judicial reforms.Judicial reforms,in simple words, may be defined as the changes brought about to the judicial system of a country from time to time taking into account the needs and aspirations of the people at large in order to make the system more effective, efficient and accessible to people and also do away with the present discrepancies present.In India ,judicial reforms are not all together absent. Reforms are being made but no with much effectiveness. And there are some persistent problems that the judicial system is facing because of which the need for judicial reforms is more.A brief outline of the need for judicial reforms in India is given below:

- **Delay in disposal of cases leading to pendency and huge back-logs:**``A magistrate who cannot find time to write a judgment within a reasonable time of hearing arguments ought not do any judicial work," said the Patna High Court in 1961, castigating magistrates for undue delay in delivering judgments. Forty years down the line, the Supreme Court dealt with the same high court when a prisoner petitioned it saying the high court had taken two years, since reserving the verdict,

in passing the final order. One wonders whether the high court's exhortation was not intended to apply to itself. Delay, when undue or unexplained, causes distrust. Citizens lose faith in the justice delivery system. Quick justice saves innocent under-trials from unwarranted incarceration. Similarly, if an accused is guilty his constitutional right to appeal must be sustained. The law says a person convicted by a trial court can only be branded as guilty when he loses the last legal battle. Expeditious disposal of cases has vital relevance in the present context particularly when politicians convicted by trial courts legitimise their holding of public offices by contending ``we are not convicts in the eye of law as our appeals challenging the conviction are pending in the higher court".

Twenty five years ago, the apex court had felt the need for delivering early judgments. It said litigants' confidence would be ``shaken if there is excessive delay between hearing and delivery of judgments".[9] But, unfortunately,the apex court could not succeed in establishing a procedure for the speedy disposal of cases. The rate of disposal of cases in our country is abysmally low. The number of cases pending before the supreme Court and the high courts are increasing day by day.

- As on July 5, 2000, the total number of cases pending before the Supreme Court was 21,600 against 1.05 lakhs a decade ago. As for the High Courts, pending cases number 34 lakhs now, against 19 lakhs 10 years ago. The number of cases pending for more than 10 years is 645 in the Supreme Court and 5,00,085 in the High Courts.
- One of the reasons attributed to the huge increase in the number of pending cases in High Courts is the non-filling of Judges' vacancies in time. There are more than 100 such unfilled vacancies.
- The number of cases pending district and subordinate courts in the country is estimated to be about two crores. Of the 12,205 posts of judges and magistrates in these courts, 1,500 are vacant. [10]

Furthermore,delay in disposal of cases can be attributed to other factors also.Firtsly,one can talk about the number of adjournments given.Adjournment literally means asking for more time. And this has no limit. A case may go on for years only because of adjournments. Anyway ,this depends on the lawyers attitude and approach towards that case too. Secondly, delay can also be related to the complex court procedures and the inadequate number of courts and judges in relation to that of the number of cases. For example, the judge-population ratio in India is 11/million whereas in UK it is 50.09/million,Australia-57.07/million,US-107/million,OECd countries 113/million.[11]Further,the requirement of the total number if judges is 75000 whereas the total sanctioned strength is only 13000 out of which there are 1874 vacancies.[12] With such figures one cannot expect nothing but delay and pendencies because there is more burden on the judges as they have to hear more cases that what they are actually supposed to hear.

These figures present a very sad state of affairs of the Indian judicial system at present. The number of cases pending in the lower levels of the judiciary is estimated to be two crores. This is astonishing.One can imagine the plight these litigants must be going through. At this stage ,there is the need for reforms.

Lastly,if the aspect of delay in disposal of cases is dealt with effectively by the government,then it will have an indirect effect on various other problems that the judiciary is facing now.For example,reducing the delay means adoption of simpler procedures, setting up more courts and other necessary changes ;this will help in improving the access to justice for the people. This is because when more courts are set up to deal with the pending cases then there will be better opportunity for the people to take their cases to these courts. Especially if more courts come at the lower level which deal with the minor disputes then, the public confidence in the judiciary will also increase. Also,if the lower courts are established keeping in mind the needs of the poor by trying to introduce very simple working mechanisms ,then this will have an effect on the delay in disposal in the higher courts. This is because,if the cases are disposed of at a faster rate at the lower courts then the number of cases coming to the higher courts may decrease. Or even if an appeal is preferred to the high court, the case can be disposed of at a much faster rate than in a case where the case is still in the trial process for two to three years. Also,if the delay in disposal of cases is dealt with,then it will help in building up an efficient,transparent and an 'easy to approach' justice system

Therefore,one can see how judicial reforms can bring about a complete change in the structure and working of a system. The needs may be many more but the ultimate aim should be to build up an impartial,speedy and efficient justice system. This is because justice literally has become a dream for the poor and it has to be made reality for them. And to make it a reality,we will need the culmination of many factors,reforms and efforts. A brief strategy for the introduction and implementation of reforms is given below:

- study the present state of affairs.
- study the required changes
- suggestion of reforms
- analysis of those reforms
- taking public opinion before implementation of the reforms
- if public opinion is favourable ,then there should be effective implementation of those reforms.
- after implemntation,study the working once again and look out for the changes whether positive or negative.
- if positive,provide for more implementation of those reforms. If negative,study why it failed and analyse the situation and suggest alternative reforms.
- most important,take public opinion from time to time so that required changes can be made from according to the needs of the people.
- organize legal aid clinics to make people aware of their right and also of the effects of the reforms.

- Study the effect of these reforms on the other levels of the judiciary and analyse whether it a viable option.
- think of more reforms for more results.

As such,judicial reforms do play a very important role in the smooth running of the judicial system of a country and this has been recognized by almost all states now.As far as India is concerned, I think there should be more seriousness on the part of policy makers and take immediate steps to bring about the necessary changes. Otherwiswe ,it seems as if our judicial system seeped in all malaise will in no way be able to uphold our basic right of access to justice.

Top

CHAPTER 5: RECENT EFFORTS TO COMBAT THE PROBLEM

The problem of pendency of cases,delay in diposal,huge back-logs etc.has been a prevailing problem now for a long time.The courts in India are overburdened with cases which have been pending for decades now.This has been a long standing feature of our judicial system.Added to this,the complex procedures,the inaccessibility to courts,the low number of judges,and the lack of use of modern technology have also contributed to the fate of the judicial system today.In the subordinate courts too, there have been inordinate delays and varying levels of efficiency.All the problems being faced by the judiciary has been dealt with in the preceding chapter.

In order to deal with the problems that have plagued the judicial system of our country,efforts have been made at various levels and instances.The Government has endeavoured constantly to bring about improvements in the functioning of courts with a view to simplifying procedures and delivering cost effective and speedy justice. There was the introduction of **fast track courts** for the speedier disposal of cases,the **lok adalats** popularly known as the **people's courts,**development of ADR,the use of information technology etc.Changes have been made not only in the supreme court but also at the state level with reference to the high courts.Only the grass root levels have not been touched as yet . The Government has also been constantly reviewing the accumulation of arrears in courts. Besides, increasing the judge strength from time to time, the Government has also set up and encouraged alternative modes of disposal including conciliation, mediation and arbitration. Special tribunals like Central Administrative Tribunal, State Administrative Tribunal, Income Tax Appellate Tribunal, Labour Courts and Consumer Courts. Information technology is being used in generation of causelists, providing information to the litigants and advocates for speedy disposal of cases. Various steps have also been taken by the courts, like grouping of cases involving common questions of law, constitution of specialized benches and organising Lok Adalats at regular intervals.

A brief summary of the progress made has been given below:

FAST TRACK COURTS:

About 450 fast track courts have been launched across the country to try long-pending cases, but doubts have been raised about their efficacy in curtailing judicial delay.

V.VENKATESAN
in New Delhi

THE consequences of judicial delays for ordinary litigants are immense, and in some cases even tragic. Recently a senior citizen who had invested his life's savings in a non-banking financial company attempted self-immolation after a Delhi court granted yet another postponement of the proceedings for recovery of his savings from the defaulting company. This is a very common feature of any cases in the high court or supreme court

today. Cases are being adjourned daily with the result that it culminates into a huge back-log for the courts.And cases being filed are no less today.In today's world,every dispute has to be resolved only through the courts.As such,judicial delays, whether in cases involving high-profile persons or those relating to ordinary litigants, are indefensible, and so there is a dire need to mitigate their consequences.[13]

As already seen,the number of cases pending before the supreme court and high courts are alarming. Therefore,in order to cut down on judicial delays,there have been several proposals before the Union government. The launching of about 450 fast track courts on April 1,2000 at the district level in various States has been one of the measures in this direction. Initially 1,734 such courts are proposed to be set up, at the rate of five in each district.

The Centre's proposal stems from the recommendation of the Eleventh Finance Commission (EFC), which has provided a grant of Rs.502.90 crores for the creation of additional courts, specifically to dispose of long-pending cases. Of this, more than Rs.200 crores has already been disbursed to the States. Funds have been provided for salaries and for building infrastructure, at the rate of Rs.29 lakhs for each court. Each fast track court will be asked to dispose of 14 sessions trial cases in a month.

In the first year, these courts are expected to dispose of all the 1.8 lakh cases involving undertrials. According to N.C. Jain, member, EFC, the scheme will help make enormous savings in terms of the expenses incurred over the maintenance of undertrials, who numbered 1,88,241 as on December 31, 1998. Jain estimates that the average cost per undertrial a day is Rs.55, covering food, medicine and clothing, with extra provision for sanitation and water, correctional programmes, and transportation to the courts and back. The annual expenditure on each undertrial thus comes to about Rs.20,000.

The maintenance of the 1.2 lakh undertrials in prisons across the country costs the government Rs.240 crores a year. This amount could be saved if cases against them were expeditiously tried and disposed of. The EFC has estimated that the annual recurring expenditure in respect of fast track sessions courts at the rate of five a district would be approximately Rs.87 crores. The net saving for the government would, therefore, be Rs.153 crores a year. Speedy trial of the cases against undertrials would also be an answer to charges of human rights violations.

The fast track court scheme envisages the appointment, for a tenure of two years, of ad hoc Judges from among retired sessions or additional sessions Judges, members of the Bar, and judicial officers who would be promoted on an ad hoc basis. The selection of Judges will be made by the High Courts. The Centre has directed the State governments to fill the vacancies that might arise in the wake of ad hoc promotions through a special drive.

The scheme suffered a setback when the Andhra Pradesh High Court issued an interim order on April 27 suspending the constitution of fast track courts in the State and the appointment of judicial officers to these courts. The High Court held that the scheme

prima facie suffered from serious legal and constitutional infirmities. The Union government challenged the High Court's order through a Special Leave Petition (SLP) in the Supreme Court. The SLP contended that the High Court had committed an error of law in virtually allowing the writ petition through an ex-parte order on a mere prima facie view of the legality of establishing fast track courts without specifying the grounds. On May 2, a Supreme Court bench, comprising Justice B.N. Kirpal and Justice Ruma Pal, stayed the High Court's order.

IRONICALLY, even as the Supreme Court stayed the order, a Bench, consisting of the Chief Justice of India (CJI) Justice A.S. Anand, Justice R.C. Lahoti and Justice Doraiswamy Raju, while hearing on May 2 a case on the status of undertrials in various States, regretted that the scheme of fast track courts, despite its crucial nature, was not brought to the notice of the CJI before the government made an announcement in that regard. The Judges observed that the funds released to the State governments to set up fast track courts should have been placed at the disposal of the Chief Justices of the High Courts, for proper utilisation. "If you are going to build buildings, and then select Judges, the fast track courts would become absolutely slow track," the Bench said.

The Bench observed that if the identification of the cases that the fast track courts should try and the areas they should cover was left to the discretion of the Chief Justices of the High Courts concerned the scheme would have worked better. The Bench also wondered how retired District Judges could be recruited as presiding officers and under whose jurisdiction they would be. Its critical observations have led to dismay, as Law Ministry sources claimed that the draft of the scheme had been sent to all States and the Chief Justices of all High Courts and it was introduced only after effective consultation with the judiciary at every level. These sources also claimed that only the Chief Justices of the High Courts would select Judges for appointment in fast track courts.

Although the scheme envisages that its functional aspect be left to the judiciary, it appears that the judiciary is not yet prepared to own responsibility for the scheme's success. Justice Anand observed: "It is very easy to pass the buck. The government first creates a mess and then requests the judiciary to clean it up."

There are genuine fears that litigants wielding influence at the district level could make use of the scheme in their favour to press for the expeditious disposal of cases they are interested in, which sometimes would result in the miscarriage of justice. The scheme leaves no scope for infusing fresh and young judicial talent, which is available in plenty. It is pointed out that the scheme proposes to appoint the very same retired Judges who had contributed to the creation of the huge backlog of cases.

There is no bar even under the present system to expedite the hearing of urgent cases by evolving formal court procedures rather than leaving it to chance. In the existing process decisions on applications for early hearing are routinely disposed of without considering the implications of any delay for poor litigants. It is highly probable that in the absence of a rational and sensible procedure to facilitate the expeditious disposal of cases, the fast track courts would make no difference to the huge backlog of cases.

The EFC has recommended the introduction of fast track courts primarily in view of the Union government's financial constraints. In fact, the grants the States had sought from the EFC to upgrade their judicial administration, which included the establishment of new courts, totalled Rs.4,870 crores. The EFC found it too large a demand and recommended the establishment of fast track courts as a way out. It was felt that the scheme of fast track courts would require a much smaller amount but help clear the backlog to a substantial extent by the end of 2004-05.[14] Whether the scheme would really help address the larger issue of curtailing judicial delay in a big way is, however, a moot point.

States that set up fast track courts:

Fast Track courts were set up in almost every state following the SC directive but there were varying levels of success in various states.At one stage,the Supreme Court also sent n notice to 13 States warning them that the centre's grants will be taken back if the proposed fast track courts did not come upbefore 31st Dec.2003.At the same time.Rajasthan and Madhya Pradesh were commended by the Supreme Court for implementing the fast track courts in an excellent manner.The position in A.P. is given below:

ANDHRA PRADESH:31 fast track courts came into being in 2001 in A.P.and another 55 of them were set up in October,2003.These were established to reduce the pendency of cases at the level of district sessions courts.The centre had released Rs.25 crore for the functioning of the courts on the basis of a five-year term.The State government welcomed this move because the pendency of the cases in district courts had been quite high. For example,as on Dec.31st,2002 the pendency was 8.33 lakhs in the districe courts.Of the 86 courts set up in A.P.,73 of them were of the status of district courts and the rest were sub-judge courts.And each court was assigned to dispose 14 cases per month.[15]

Problems faced by the fast track courts:The fast track were introduced for the primary objective of reducing the penedency of cases.But,they have not been able to achieve much of a success.They have been criticized as being very expensive for litigation whereas their purpose was to reduce the cost of litigation.Also,the states are required to spend a lot of money on these court more than what has been granted to them.So the maintenance and running of these courts becomes quite difficult for that state.Also,the fast track courts are themselves facing the problem of pendency of cases.For example,the fast track court in A.P.which was assigned with all the corruption cases has a pendency rate of about 11000 cases approximately. This means that the whole purpose of establishing these courts is lost.

Therefore,it can be seen that the fast track courts which were established with much enthusiasm and high hopes have not been upto the mark as their smooth functioning has been marred by their inherent diasadvantages.Anyway,this is not the end of fast track courts. Maybe with more patronage and more financial help from the government,they will be successful in meeting their ends.

LOK ADALATS:

'Justice delayed is justice denied.' This phrase is legitimate and justified, against the backdrop of the current status of the judicial process in India . With over two million cases flooding the various courts and tribunals in the country, the primary concern of jurists and legal luminaries today is to speed up the judicial process. With this in mind the following suggestions have been made:

- . a much needed emphasis on the Alternate Dispute Resolution machinery [ADR], incorporating suitable amendments in the Civil Procedure and Criminal Procedure laws,
- setting up fast track courts,
- . enhancement of the strength of the judiciary,
- decentralisation of the judicial process, etc.

One such commendable step, in the judicial reform process, is the concept of Lok Adalats. Literally translated, the words mean "peoples' court". [16]

Of late, this concept has been gaining much ground, especially in the area of dispute settlements, involving public utilities and motor vehicle accident claims tribunals. In simple terms, **Lok Adalat** refers to a forum for settlement of disputes, employing ADR techniques, such as negotiation, conciliation, mediation, etc. It is a **forum which ensures easier access to justice for the poor**. It enables the speedy disposal of cases through a settlement between the parties, supervised by a body of legally competent personalities. Lok Adalats have been endowed a statutory recognition by the Legal Services Authorities Act, 1987.

The structure of Lok Adalats

- Lok Adalats can be set up at any level – Central, State, District or taluka. The number, qualifications and experience of members of the Lok Adalat, other than judicial officers, are to be prescribed by the State Government, according to the rules.
- Lok Adalats have been conferred jurisdiction to settle civil, criminal, matrimonial, Motor Accident Claims and revenue cases, at the pre-litigation level or when the disputes are pending in court. It also deals with the settlement of bad loans.
- Lok Adalats, generally, consist of a judicial member, a legal practitioner and a social worker (generally, a woman). Lok Adalats settle matters by applying the principles of equity and fair justice.
- Essentially, they devise their own procedure. They have the power of a Civil Court , in respect of summoning evidence and examination of witnesses, discovery of documents, requisitioning of public records, etc. An award, made by the Lok Adalat, pursuant to a settlement reached between the parties, is deemed to be a decree of a Civil Court .It is final and is not appealable.

Salient features of Lok Adalats

- Lok Adalats motivate the parties to settle the disputes, amicably, without resorting to the lengthy, tedious and expensive process of litigation.
- The process before a Lok Adalat is quicker and efficacious.
- The decree, passed by a Lok Adalat, is not appealable and is final.
- Lok Adalats can pass awards in any pending legal disputes, even at the pre-litigation stage, except for non-compoundable criminal offences.
- No expenses are involved in the process. Therefore, the Lok Adalats endorse the **right to legal aid**, which is a part of the Human Right Law in India , under the Constitution and has been upheld in several cases, before the Supreme Court of India. Lok Adalats can be approached, even with a simple application on a piece of paper.
- The Lok Adalats ensure the decentralisation of the judicial process. Consequently, a speedy remedy is provided for all, including the poor, who cannot afford to initiate judicial proceedings for the vindication of their rights. " Judiciary at your doorstep"- this may just be a dream but it may well materialize with the incorporation of Lok Adalats into our judicial system.
- No lawyers are involved in the process. This does away with the extortion some of the legal practitioners exercise on their clients. Often lawyers prolong the cases and, consequently, delay the course of justice.
- The procedure, followed in the Lok Adalats for the settlement of cases, is simple, informal and flexible.
- The awards, passed by the Lok Adalats, have to be complied with, within a month. This affords quicker relief to the people. [17]

Criminal Matters, vis-à-vis Lok Adalats

As per the rules of the Criminal Procedure in India , only compoundable offences can be settled outside the court. Once a criminal complaint is registered, in the case of non – compoundable offences, it cannot be withdrawn, even if a compromise is reached between the parties.

The rationale behind this is that serious criminal offences are crimes against society and, not, merely, against individuals. However, Lok Adalats can be extremely helpful in case of compoundable offences as compensation can be awarded by the Lok Adalats, without resorting to long drawn out court procedures.

Experiences at the National Human Rights Commission's Pilot Project for Students Voluntary Prison Services at Tihar Jail, Delhi , show that thousands of inmates of the jail are implicated in petty offences, which are compoundable and are lingering in Jail, much beyond the period they would have been reasonably sentenced to, in case of conviction.

The delay is caused either for want of resources to furnish bail or, for want of adequate legal aid. Lok Adalats can come in handy to afford relief to such victims of circumstances and to ensure that due process and the right to equal and fair justice are provided to them.

States may, on their own, initiate the setting-up of such local forums to recommend the dropping of charges and the release of those who are accused of petty criminal offences. Often, they have been in prison, undergoing trial for periods longer than the sentence that their respective crimes carry. [18]

Besides this, Lok Adalats can be set up to settle serious criminal matters between parties, before the criminal proceedings are initiated.

Therefore,it can be said that Lok Adalats have accomplished admirable success by offering inexpensive and expeditious settlement of disputes. Still, much is left to be desired as Lok Adalats are, only, accorded a status of 'a mere ad-hoc arrangement, extraneous to the justice delivery system.' The open flexible procedure has also come in for criticism. Despite the criticism, the laudable objectives and accomplishments of the Lok Adalat(dealt with above) can be seen to be a definite step in the right direction, thus rendering the judicial apparatus more efficient.

Other Reforms: Apart from the introduction of fast track courts and lok adalats,the use of Alternate Dispute Resolution(ADR)and the introduction of Information Technology has also taken place.ADR mechanisms include arbitration,mediation and conciliation.The advantage of ADR is that it enables the parties to settle disputes outside courts and also helps in the much faster resolution of the dispute unlike the litigation that takes a considerable period of time in the courtroom.The first attempt in the form of a statute was the Arbitration Act,1940.Then there was the Arbitration And Conciliation Act,1996.

The dominant features of the new law are that it recognizes the autonomy of the parties in the conduct of arbitral proceedings. The law promotes transparency in the matter of decision making by the arbitral tribunal by providing that the arbitral tribunal shall give reasons for its arbitral award.

The supervisory role of courts has been minimised as it is practically nil till the award is made. The old system of making the arbitral award a rule of court before it is enforced has been dispensed with. The arbitral award itself, once it becomes final, will be enforced as if it was a decree of the court, without going through the erstwhile process of its becoming a rule of the court.

A significant feature of the new law is the provision relating to the appointment of arbitrators by the Chief Justice of India (i.e. the Chief Justice of the Supreme Court of India) or the Chief Justice of a High Court or their nominees when the parties are not in a position to agree on a procedure for appointment of arbitrators. Arbitrators should be independent. In case of International disputes, the Chairman arbitrator should be from a neutral country, i.e. from a different country.

Under the new law, the arbitral award must contain reasons unless the parties have agreed that no reasons are to be given. This is a significant departure from the provisions of the Arbitration Act, 1940, which contained no mandatory provision requiring the arbitrator to

record reasons for his award and the court could not interfere with the findings of the arbitrator on the ground of non-provision of reasons.

However, the new law also restricts the scope of judicial scrutiny of the award. It clearly defines the grounds on which an application for setting aside an award can be entertained by a court. These grounds are confined to lack of capacity of a party, invalidity of the arbitration agreement under the law, violation of principles of natural justice and the arbitrator exceeding the terms of reference.

The new Act, for the first time in the country, provides a detailed statutory framework for the conduct of independent conciliation proceedings outside the court. It is based on the conciliation rules adopted by the United Nations Commission on International Trade Law (UNCITRAL) in 1980 which were conceived primarily in the context of dispute resolution in international commercial relations.

A settlement agreement reached by the parties and signed by them with the help of the conciliator shall be final and binding on them and the persons claiming under them.

The parties may terminate a conciliation proceeding by giving a written notice addressed to the conciliator to the effect that the proceedings are terminated from the date of notice. The conciliation proceedings are entirely dependent on the continued goodwill of the parties and could be terminated by the parties at any time before the signing of the settlement agreement.

The new law provides that notwithstanding anything contained in any other law, the principle of confidentiality shall be maintained by the parties as well as the conciliator except where its disclosure is necessary for the implementation and enforcement of the settlement agreement.

The demand for ADR has led to an increase in demand for arbitral institutions. A systematised approach and effective institutions to conduct ADR are the needs of the day.

Keeping in view such a requirement, the Indian Society of Arbitrators (ISA) was set up through the instrumentality of a trust. ISA is a non-profitable society for the promotion and development of Arbitration and ADR techniques. [19]

The main objectives of the ISA are:

(i) The society shall promote and popularise the concept of arbitration by organising seminars, conferences, workshops, training programmes, etc. on international and domestic arbitration.

(ii) To provide facilities for settlement of disputes by ADR methods including arbitration.

(iii) To undertake research activities in the field of arbitration and ADR techniques and publish books, journals and newsletters.

(iv) To maintain panels of experts from various professions to act as arbitrators, mediators and conciliators.

(v) To interact with national and international institutions related to arbitration for their cooperation.

The society has established an Indian Court of Arbitration and Conciliation at New Delhi and State Courts of Arbitration and Conciliation in each state capital. [20]

Therefore,it can be seen as to how ADR has slowly and steadily taken roots in the judicial system of our country.ADR is highly successful in other countries such as America and Africa too.The ADR mechanisms provide an adequate respite from the never ending litigation in the court where the parties are never aware as to when the case will be decided.Also,ADR is becoming a viable option as a full time job for many law graduates these days.ADR need not be necessarily cheap.An experienced and a reputed arbitrator may charge a fee which is more than what would be charged by a lawyer had the case be taken to court.But,the advantage with ADR is the speedy resolution of dispute and mostly it is a win-win situation.The essence of ADR lies in the fact that neither party stands to lose completely.There are chances of conciliation and a very amicable resolution of dispute.But,if asked my opinion about ADR,I feel that that whole essence of lawyering is presenting and arguing one's case in the court and ADR does not give one such an opportunity.ADR may be an immediate need to deal with the problems the system is facing but how far can ADR be a substitute for a court case ,only time can tell.And if one day,all the cases are resolved through the various mechanisms of ADR,then the whole sanctity of courts,laws and the judiciary will be lost.Hence,I feel that ADR should only be a temporary mechanism for the speedier resolution of disputes and cases but should not become the back-bone of the Indian judiciary.

Lastly,there have been efforts to use Information Technology and its various branches in the administration of justice and the Supreme court has been quite successful in this.The causelists are now available online one day before the case is to be heard on the web at **www.causelists.nic.in**. This is a very strategic move because this will help the lawyers prepare in advance for their cases and also make the job easier for the judges too.There have been various other efforts too.The use of I.T. in the judicial system has been very successgul in Australia,America and various other countries.Then, in order to reduce the pendency and delay,the Supreme court has also introduced the concept of bunching of similar cases for faster disposals. Thus,new strategies are being incorporated into the system in order to make it more transparent and flexible.

Therefore,it can be seen as to how efforts are being made from time to time to bring about the required changes and how much has been achieved.But,this is not it all. The judiciary is still plagued with these problems persistently.So,there can be no end to the introduction of reforms. More and more reforms are necessary especially to deal with the problem at the grass root level,i.e.at the village and district level.The lok adalats have achieved a fair amount of success.There should be more changes made there because the lowest level of the judiciary is the point from where the problem of delay in disposal of

cases arises.But,in spite of all the criticisms,one must accept the fact that considerable and very successful changes and reforms are being introduced in order to make access to justice more easy.

Top

CHAPTER 6: VIABLE OPTION - LOCAL COURTS

As it can be seen from the above reforms,most of them were mostly concentrated towards the higher levels of the judiciary,i.e.mostly benefiting the Supreme court and the High courts. But there have not been many successful efforts to bring about changes at the grass root level,i.e.at the village and district level,except of course,the Lok Adalats which have been very successful.In 2002,S.P.Bharucha,the then CJI, had courageously acknowledged that the country's stream of justice was sullied especially at the level of subordinate judiciary.Then,later in 2004,the amazing story of an Ahmedabad magistrate issuing bailable warrants against the President,the CJI and others allegedly for a consideration of Rs.40,000/- just comes as more evidence of this ugly trend.[21]

Infact,the lower courts are the most crucial to the dispensation of justice in the country.After all,it is this level that most concerns the ordinary litigants and the evidence from Ahmedabad seems to suggest that there is fairly widespread corruption marking the functioning of these courts,with local bigwigs using the system to file false complaints to target their enemies and business rivals.The fact that this state of affairs is benefiting not just corrupt judicial officers but the lawyers who work in tandem with them became quite obvious in Ahmedabad when the legal fraternity chose to attack the journalists covering the story.

This is precisely the reason why the Law Commission has time and again pressed for training judicial officers in order to provide then with not just the necessary intellectual inputs but also the required ethical framework. When the importance of such an intervention cannot be emphasized ,there is another aspect that demands scrutiny and that is the general welfare and working of the subordinate judiciary.[22] This includes the procedures involved in their working,their working and living conditions,their mode of treatment of cases, time taken for the disposal of every case etc.As such ,the subordinate judiciary is infact like the base of the judicial system.This is because,invariably, all the cases have to be first filed in the lower courts after which they come on appeal to the higher courts.This calls for a very efficient,transparent,fast working,effective and an impartial subordinate judiciary. If the lower courts are still in the rudimentary stage whereas the other levels of judiciary have developed,then the judicial system remains highly imbalanced and all the problems being faced by the lower courts tend to seep into the other courts thereby making the higher courts ineffective. In this way,the whole system becomes ineffective and people slowly start losing faith in courts.Only if the subordinate judiciary is developed will there be a smooth and a progressive working of the whole judicial systyem.Therfore,one can come to a conclusion that all the problems that are being faced by the judicial system emanate mainly from the lower courts and slowly plague the whole system. Therefore,its high time that reforms are introduced in the lower levels of the judiciary in order to do away with the basic problem that the Indian judicial system faces,i.e.delay in the disposal of cases.

Local Courts: Addressing the above issue ,Dr.Jayaprakash Narayan,in his article: "Local courts-An Idea Whose Time Has Come",put forward his views about the establishment of

local courts at the lowest level of the judiciary.He also laid lot of emphasis on the existence of similar systems in the U.S.A and U.K.

Features of a Local Courts system:

- Increase in the number of trial courts at the lowest level .
- Adoption of simple,informal procedures for adjudication.
- Ensuring speedy and fair justice
- use of local language in courts
- low cost of functioning
- very simple rules of evidence
- system to be completely independent of the executive or legislature and must enjoy the confidence of the people
- provision for appeal to ensure corrective measures in case of miscarriage of justice
- jurisdiction to be exclusive so that all civil and criminal cases below a certain level come directly to these courts.
- decisions given by the local courts must be enforced in a very simple easy ,fast and simple manner.[23]

Model of Local courts:

As put forward by **Dr.Jayaprakash Narayan**,the model of **Local Courts** is as follows:

- one court for every 25000 population in rural areas and every 50000 population in urban areas.
- A law gradute,or a retired judge or government officer, or a reputed person can be appointed by the District and Sessions Judge the judge of the local court in consultation with his two senior most colleagues.
- These will be honorary offices carrying monthly honorarium, and fixed allowance for travel and secretarial services is provided.
- All costs put together **will not exceed Rs 15,000** per month. This means that the government will not have to incur heavy expenditure for the eastablishment of these courts.
- There shall be no permanent staff.
- The existing infrastructure of the local governments or state government will be utilized for holding court.
- The tenure of the magistrate will be **three years**, with a provision for reappointment.
- The age of the magistrates must be atleast **45 years**.
- The local court will hold hearings at the place where cause of action has arisen or offence has been committed as far as practicable.
- The court can inspect any locality to collect evidence locally.
- Parties can represent themselves, or be represented by any lawyer or authorized agent.
- All proceedings will be in the **local language only**.

- **Summary procedures** will be followed in the trial of cases.
- The local courts will have exclusive jurisdiction of say **Rs 100,000 (One lakh) in civil cases**, and **under one-year's imprisonment in criminal cases.**
- Cases shall be disposed of **within 90 days** of filing.
- There will be an appeal to the Assistant Sessions Judge in criminal cases, and Senior Civil Judge in civil cases.
- Appeal shall be disposed of within 6 months. There is no second appeal. This will help in reducing unnecessary delay in disposal of cases.
- The **first class magistrate** will periodically inspect these courts and send reports to the District and Sessions Judge.
- District Judge will have the power to remove a local magistrate after due enquiry.
- District judge can also transfer cases.
- The Junior Civil Judge will have the power to enforce **the verdicts of lower courts**.
- High Court will have the power to frame rules for **conduct of the local courts' business.**[24]

ADVANTAGES OF LOCAL COURTS:

- Firstly, the number of judges can be significantly enhanced in a short span of time. All it needs is a state-level legislation. About 30,000 local courts can be established through this simple, practical, flexible method allover India, thus almost quadrupling the number of magistrates in the country.

- Secondly,this can be accomplished at a very low cost less than Rs.600 crore per year for the whole country. In a major state this expenditure will be of the order of Rs 50 crore per year. Costs can be controlled because there will no permanent establishment, nor is there need for vast physical infrastructure involving huge capital investment.

- Third, most simple cases affecting ordinary citizens can be handled by these courts in a short span, dramatically reducing pendency by almost 9 million cases an year. This will enhance public confidence in the justice system, and many more cases which are now settled by private squads for a price using coercion and violence will come before courts.

- The whole concept of the establishment of local courts will also help refurbish the lowest level judiciary into a very effective ,efficient and a easily accessible entity. Now,the poor will be able to bring their disputes to the courts and voice out their grievances directly to the judge.They will not have the burden of paying any lawyers fees or court fees or get entangled in any complex legal procedures.They will also have the advantage of the courts using their local language which will inspire them to bring their disputes to courts.As such,justice in its elementary form becomes easily accessible for the poor and also becomes a reality for them.

- the establishment of local courts will also have a very long lasting and a positive effect on the other levels of the judiciary.For example,if the local courts can help in the faster disposal of cases,then the number of cases pending before the higher courts will also decrease .As such,it leads to a cyclic reaction.

- Finally, it will be fully integrated with the existing judiciary, and there will be no dislocation or dilution of judicial independence or integrity. Lawyers can represent clients, and the interest of the general public, legal profession, litigants and lawyers are fully protected.

Public Education

Public education is the most essential step to be taken before and after the introduction of any reforms.This is because it is the public needs that mould the whole judicial system of our country and it based on those needs that changes take place. For example,the lack of access to justice and the delay in the disposal of cases are the most important factors that are actually addressed by the local courts. So,before the local courts are actually started,the pulse of the people should be known :what is it that people want ?what are the reasons for the discontent amongst the people?and other essential queries that actually deal with public needs.After all that is studied ,then the whole mechanism and the outline of the local courts should be moulded according to the public reaction. This is because every village and district may not have the same problems,needs and requirements.Then,once the local courts are started,then there should be legal awareness programs educating people about the mechanism, working, functioning, advantages and disadvantages of the local courts.They should also educate the people about that way in which they can get access to these courts and what are the minimum formalities that they have to undertake to take their case to court.This is very essential because, if the courts are started without the people knowing anything about them ,then there will be the same alienation prevailing between these courts and the people akin to that of the higher courts and the poor people.Further,once the courts are started ,the public opinion of the people of that particular district should be taken and based on their responses, needs and aspirations ,further changes can be made.Such monitoring of the system at regular intervals will ensure greater transparency and efficiency which will help in the overall smooth functioning of the system.

Therefore,looking back at the whole system of Local Courts,it seems to be a viable option taking into account the present state of the judiciary. Access to justice is literally the need of the hour. And this cannot be got by making improvements only at certain levels of the judiciary.There has to be a sustained and balanced development.Thus ,it is high time that the Government realized the need and addressed the issue immediately because only by improving access to justice will the judicial system progress as access to justice is the fundamental element of any judicial system.

Top

CHAPTER 7: ACCESS TO JUSTICE- A COMPARITIVE STUDY

The judicial system is ideally conceived of as "blind" to power, wealth, and social status. Courts are supposed to offer a forum where the poor and powerless can stand with all others as equals before the law. In reality, the courts of many countries are often overtly or subtly biased against the poor. Many of the world's poor have chosen to avoid their legal systems altogether rather than face intimidation, cost, and time lost in proceedings they know they cannot win. Those living in the countryside, as well as those with claims that are small for the court system but important to the claimant, and those who need speedy justice, sometimes find the courts completely inaccessible.[25] Recognizing this situation as a serious problem, many reformers in both developed and developing countries are interested in programs that will improve "access to justice".

Dr.Jayaprakash Narayan in his article-"Local Courts-An Idea Whose Time Has Come" has delved on the importance of establishing local courts at the grass root level of the judicial system in India.These local courts have the potential to combat the problem of the ever increasing pendency in the disposal of cases and also the problem of inadequate access to justice for the rural and poor people.Further,these Local Courts also encompass a mechanism which lays importance on the adoption of simple and informal procedures for the adjudication of disputes and also help in the speedy disposal of cases to remove the ever increasing burden on the High Courts.

Futhermore,efforts have also been made in other countries to deal with the problem of the delay in the disposal of cases and the inadequate access to justice for the rural and poor people. Some of the countries have come out with certain mechanisms and procedures to minimize the incidence of the above problems and also try to make justice speedy, accessible and simple,particularly in respect of those ordinary cases in which most people seek justice.A brief description of the procedures in various countries has been given below:

ENGLAND

Over a period of time,England has adopted various mechanisms and procedures to deal with the above problems and to make access to justice more easier.Apart from introduction of various procedures,she is also trying to bring about adequate and necessary changes to the system according to the needs of the situation from time to time because of which she has been able to fairly achieve her goals to a certain extent.A brief description of the procedures adopted by England is given below:

SMALL CLAIMS PROCEDURES

Small claims procedures provide a mechanism by which legal disputes involving small sums of money can be resolved without disproportionate expense. In most small claims

proceedings, hearings are much more informal than in traditional civil court hearings. An **"interventionist"** adjudicator is expected to help the parties present their cases, and there is little or no legal representation.These proceedings provide a easy and speedier brand of justice, where laypersons commonly assume sole responsibility not only for preparing their cases but also for presenting them in court. Adjudicators,meanwhile, have wide latitude in the methods they use. Indeed, in England adjudicators are allowed to use whatever method of proceeding at a hearing they consider to be fair.England and Wales introduced small claims procedures in 1973. For the first 20 years of small claims, the official approach was decidedly modest. A specialized small claims court, as exists in some other countries,was not established. Instead the procedures were grafted onto the existing county court structure, with proceedings conducted in judges' chambers rather than in formal courtrooms. The small claims limit was set in 1973 at £75 ($175), a very low level, and raised on four occasions in the next 20 years to keep pace with inflation.By the mid-1990s the limit stood at £1,000 ($1,600).
But in recent years the position of small claims within the English civil justice system has been transformed. It has moved out of the backwaters and now provides the dominant method by which the courts resolve contested civil actions. This fundamental shift began in 1996, when the limit on small claims was tripled. That decision followed an inquiry into the civil justice system by Lord Woolf, one of England's most senior judges, who argued that it would enhance access to civil courts. The government agreed, perhaps mindful that this move would also keep in check spending on legal aid. In 1998 the limit was raised again, to **£5,000 ($8,300).** At this level, England's small claims limit is among the highest in the world.England's experience shows the potential of small claims procedures in expanding access to justice. While such informal mechanisms may not provide the refined procedures one expects in a formal court system, without them many otherwise meritorious claims could go unresolved. Thus policymakers in developing countries may wish to consider whether introducing informal mechanisms like small claims procedures,within or outside the formal court structure, would enhance their citizens'access to justice.[26]

Advantages of small claims Procedures

Small claims procedures have many advantages over traditional civil litigation.**First**, losing parties are not required to pay the costs of the winning parties. In England,as in most countries, the prevailing party in a civil lawsuit is generally entitled to reimbursement for expenses incurred during the course of the litigation. Because this includes attorney fees, an award of costs can prove financially ruinous, even when the sums at issue are relatively small. Research in England shows that removing the threat of having to pay costs makes an enormous difference to litigants' perceptions of legal proceedings.

Second, based on interviews with several hundred litigants, it appears that most lay litigants favor informal hearings over formal court processes in civil courts . The average litigant in England makes no demand for a refined brand of justice.Instead, people are more likely to be satisfied with court decisions if they can understand them, if they accept that they have been made by an independent and authoritative adjudicator, and if they

feel that they have been able to participate effectively in proceedings. In marked contrast to traditional court procedures, the small claims system can be said to score highly on these measures.

Third, most district judges who hear small claims cases appear to be willing and able to adapt to the spirit of informality required at such hearings. Observations of civil courts throughout England and Wales show that most judges know how to intervene effectively, how to put laypersons at ease, and how to encourage them to present their cases intelligibly and to good effect. Most judges seemed to enjoy the immediacy of the occasion and to relish having to deal directly with lay parties.[27]

Problems with small claims
Procedures

These results suggest that England's small claims procedures are working remarkably well. They also give the impression that English judges have succeeded in providing a standard of justice acceptable to most litigants.While both points are largely true,the success of small claims courts in England should not obscure some unresolved problems with them.

Inadequate preliminary legal advice

However informal they might be, small claims hearings are still legal proceedings. Although some English judges say that in small claims they will occasionally turn a blind eye to the law in the interests of "doing justice," there is nonetheless a requirement that legal principles be applied in resolving these claims. That means that small claims litigants need an assurance before the hearing that their cases have legal validity.They cannot, however, be expected to know this unaided—or indeed, to know how they should go about establishing a legal claim (or a defense) or arguing a legal case in court. Lay litigants frequently arrive in court empty-handed and fail to bring relevant evidence and witnesses (or indeed, anything at all) to hearings. Litigants need preliminary advice, provided at reasonable cost, about whether their case is likely to stand up in court.

Wide variations in judges' approaches

Given the great latitude granted to judges in resolving small claims, it is no surprise that judges adopt very different approaches and methods. Some judges say that they "go for the jugular" at hearings, requiring the parties to restrict themselves to the key legal issues. Other judges allow the parties to present their cases in any way they wish. Still others seek mediated settlements between the parties. Judges interviewed also expressed different attitudes about how much they felt bound to apply the ordinary law in small claims. Yet if consistency and certainty are fundamental requirements in a civilized system of judicial administration, it cannot be right that judges, sometimes in adjacent courtrooms, adopt such disparate approaches.

Undefined role of lawyers

The appropriate role for lawyers in informal hearings like small claims is unclear in England and remains problematic. Many judges do not welcome the participation of legal representatives because it inhibits them from playing an interventionist role.This is particularly so in cases where one of the parties is represented and the other is not.Again, the approach of judges varies widely. Some allow lawyers to play a full part in hearings, while others sideline them,addressing questions directly to the parties.With the dramatic rise in the small claims limit in England, legal representation is becoming more common. Thus further thought needs to be given to defining the role of lawyers.

Ineffective enforcement of judgments

Many jurisdictions have experienced serious problems in the enforcement of civil judgments—and small claims in England are no exception. Only about one-third of successful small claims plaintiffs received the payment ordered by the court on time. Most had to take further action (and incur additional expense) to secure payment. One-third received nothing at all.Plaintiffs in civil actions involving more formal court procedures fared little better.Although a committee has been appointed in England to examine these problems,they will not be easy to overcome. More than any other factor, ineffective enforcement procedures undermine the credibility and integrity of civil courts.[28]

LAY MAGISTRATES

The part played by lay magistrates, also known as **Justices of the Peace**, in the judicial system of England and Wales can be traced to the year 1195. In that year, Richard I commissioned certain knights to preserve the peace in unruly areas. They were responsible to the King for ensuring that the law was upheld. They preserved the "King's Peace", and were known as Keepers of the Peace.

In 1264, Simon de Montfort appointed men to keep order in their area. They were known as Keepers of the Peace. The title **Justice of the Peace (JP)** first appeared in 1361, in the reign of Edward III. By this time, JPs had been given the power to arrest offenders and suspects. They could investigate crime and, in 1382, were finally given the power to punish. For centuries, justices had local government responsibilities.

The office went through many changes. From 1439 onwards, for example, a JP had to have a certain amount of property in the county. This had two effects. It ensured that JPs could support themselves as the office was unpaid. It also meant that JPs came from the higher social classes.

This is far from the case today and magistrates are drawn from a broad cross section of society. Magistrates must be of good character and have personal integrity; they should have sound common sense and the ability to weigh evidence and reach reasoned

decisions. Magistrates must live or work in the area and need to have a good knowledge and understanding of the local community. They need to be firm yet compassionate and be able to work as a member of a team.

There is no requirement for any formal qualifications.

With a few exceptions anyone is eligible to serve as a magistrate. However, the Lord Chancellor will not appoint:

- anyone over 65 years of age or under 27 unless there are exceptional circumstances
- anyone who is not of good character and personal standing
- an undischarged bankrupt
- anyone who, because of a disability, cannot carry out all of the duties of a magistrate
- a serving member of Her Majesty's Forces; a member of a police force or a traffic warden or any other occupation which might be seen to conflict with the role of a magistrate
- a close relative of a person who is already a magistrate on the same Bench.[29]

Role and Power of Magistrates

There are some 30,374 lay magistrates in England and Wales, 15,858 men and 14,516 women, appointed by the Lord Chancellor or the Chancellor of the Duchy of Lancaster, in the name of the Crown. **Magistrates** are ordinary members of the community who sit in the Magistrates' Courts and who dispense justice at the lowest level of the English court system. They are unpaid for what they do and therefore are not servants of the Crown. This supports their position of impartiality between the Crown and the public whom they serve. English lay magistrates are not learned in the law - they do not hold legal qualifications, nor have they formally studied law to any level other than that which they may have done at school. There may be some exceptions - there are legal professionals who are also lay magistrates - but the vast majorities are just ordinary members of the public. They do, however, undergo a vast amount of training so that they can perform their judicial functions correctly and within the law. There are three Magistrates (also known as justices of peace) who make decisions in court. Only one magistrate has very limited powers e.g. warrants. Magistrates take part in summary trials, committal proceedings, and ancillary matters e.g. issuing warrants, bail applications, and youth court and family court. Cases heard in the Magistrates' Court are termed summary cases and are, supposedly, to be dealt with quickly with summary justice. **Summary Trial** is for minor offences, such as most traffic offences. These tend to be the simple, petty crimes of everyday existence. The **Magistrates' Court** used to be known as **Petty Sessions**. For more serious crimes the accused is charged on indictment and sent to the Crown Court to be tried there. In between summary and indictable offences there are a whole range of offences that are termed either-way offences. These are offences that vary in their seriousness. The best example of an either-way offence is theft. These offences can either be tried summarily by the magistrates or sent up to the Crown Court. The

process of deciding where an either-way offence will be heard starts with what is known as **Plea Before Venue**. The accused is asked to indicate whether he will plead guilty or not guilty. If he indicates he will plead guilty, then the magistrates immediately accept the case and try it as if it were from the start a summary offence. There then follows what is becoming known as **Mode of Sentence**. The magistrates have to decide whether their maximum powers **(5000 pounds and/or 6 months in prison)** are sufficient to punish the offender or whether their powers are insufficient and they need to commit the defendant to the Crown Court for sentence. If they commit the defendant to the Crown Court for sentence, then the matter is dealt with by a judge and two lay magistrates. If he indicates a plea of not guilty, there then follows a process called **Mode of Trial**. Firstly, on the basic facts of the case as outlined by the prosecution, and with a prosecution recommendation and a defence recommendation, the magistrates decide whether they accept jurisdiction. If they decide the case is too serious for them to hear, then they will commit the accused to the Crown Court for trial. If they accept jurisdiction and are prepared to try the case summarily, then, secondly, the accused is asked where he would like to be tried - for he still has the right to be tried by a jury with a judge in the Crown Court. If he elects the Magistrates' Court then the case is tried summarily. If he elects for the Crown Court then the magistrates will commit him to the Crown Court for trial. Only then is the plea formally taken. By whichever route, if the magistrates, on hearing more detail and other factors about the case (and associated charges) including previous convictions, consider that their powers are insufficient then they can commit the defendant to the Crown Court for sentence at any stage in the proceedings between conviction and disposal. Many cases can only be tried in a Magistrates' Court. These are the summary ones, the most serious of these carrying **the maximum penalty of a Magistrates' Court of a fine of 5000 pounds or six months imprisonment**. Bail procedures exist to enable an accused to stay out of jail and to insure that the accused will appear for trial. Magistrates decide the terms of bail by examining certain facts about the accused such as the nature and circumstances of the offense charged, weight of the evidence, character of the accused, the accused's family ties, employment, financial resources, length of residence in the community, involvement in education, and past record. If possible, the magistrate will release the accused on a written promise to appear in court with or without an unsecured bail bond. If, after examination of these facts, magistrates are not reasonably sure that the accused will appear for trial, the magistrates, in their discretion, will require the execution of a bail bond with surety in a reasonable amount and may impose such other conditions deemed reasonably necessary to insure appearance at trial. The monetary sum of the bail bond can be forfeited as a penalty if the accused fails to appear in court or violates any condition of bail. When magistrates issue a search warrant, they are giving a law enforcement officer authority to conduct a search to aid an official investigation. The officer seeking the search warrant must make a complaint, under oath, stating the purpose of the search to the magistrate. The complaint must be supported by a written affidavit from the officer. In issuing the search warrant, the magistrate must describe the place to be searched, the property or person to be searched for, and state that the magistrate has found probable cause to believe that the property or person constitutes evidence of a crime or tends to show that a person has committed a crime. Before magistrates can issue an arrest warrant in a criminal case, they must use their discretion to decide if there is **"probable cause"** to issue a process.

Probable cause is a reasonable belief, based on facts, that would cause a prudent person to feel that the accused committed the offense. To determine probable cause, magistrates must decide that there are facts logically indicating that the accused committed and offense and there must be some basis for determining that the facts are reliable. The facts are obtained form the complaint which consists of sworn statements of a citizen or a law enforcement officer relating the commission of an alleged offense. These statements are made under oath before a magistrate, and the magistrate may require the sworn statements to be reduced to writing and signed. If the magistrate decides that probable cause exists, an arrest warrant will be issued so that the accused may be brought to trial.[30]

Cases heard by Magistrates

In 1999, magistrates' courts dealt with 1,884,000 cases.

72,000 cases were committed for trial in the Crown Court and 19,000 cases were discharged at the committal stage (cases where the prosecution does not proceed or the magistrates find there is no case to answer).

Of the 1,793,000 dealt with by the magistrates, 877,000 were for motoring offences.

1,351,000 pleaded or were found guilty. 35,000 were found not guilty at a summary trial.

12.5% of those pleading or found guilty in magistrates' courts received a custodial sentence[31]

JURISDICTION OF THE MAGISTRATES COURTS

The civil jurisdiction of Magistrates' Courts is concerned with matters such as licensing of premises which sell alcohol, pubs, clubs, restaurants and shops, the licensing for gaming of betting shops and casinos, nuisance orders, family matters such as maintenance orders for children and a whole hotchpotch of matters considered best dealt with summarily. Appeals go to a Divisional Court by way of case stated.

County Courts

The County Courts are creatures of statute. They are known as "inferior courts of record". They were originally created in Victorian times to provide a cheap local venue for small civil claims as an alternative to bringing a claim in the High Court which at that time only sat in London.

There are about 400 County Courts throughout England and Wales divided into Regional Circuits. Some Courts are now located in **"Combined Court Centres"** where Magistrates Courts' Crown Courts and County Courts and a District Registry of the High Court are all located together so that Judges sitting there can deal with various classes of business.

The jurisdiction of County Courts is now greatly expanded. Some matters, such as many housing or consumer credit matters can only be commenced in the County Court. In other matters, the County Courts have concurrent jurisdiction with the High Court.

However, where an action is commenced in the High Court, the Court will consider whether it is a matter which could more conveniently be dealt with in the County Court and will transfer it to a County Court unless good reason can be shown why it should continue in the High Court. For example, personal injuries litigation will ordinarily be transferred to the County Court. Some County Courts now have "Mercantile Lists" for resolution of smaller value commercial claims with specially designated judges hearing cases in those lists. A number of County Courts are specially designated to have admiralty, bankruptcy or family jurisdiction.

Very small claims in the County Court will be determined by a District Judge. Other matters will be determined by a Circuit Judge.[32]

FAST TRACK COURTS

Lord Woolf's Interim Report on Access to Justice proposed a new system of civil litigation in which the courts would take an active part in managing and monitoring the progress of cases. Defended cases would be allocated, for purposes of case management, to one of three "tracks":

a) small claims (with an increased financial limit of £3,000);

b) a new fast track, with limited procedures and costs proportionate to the amount in issue (for relatively straightforward cases up to about £10,000); and

c) a new multi-track (for more complex cases over £10,000).

The Interim Report makes it clear that the benefit of the fast track will depend on devising a straightforward procedure which is readily understood by all participants in the system and which will ensure that the costs of such litigation are commensurate to the issue at stake. The procedure must be:

a) **practicable** for litigants, practitioners and the courts; and
b) **predictable** in its requirements of litigants and their professional advisers.

In developing the procedure the Working Group has taken into account what ordinary litigants want the system to provide for them. These are:

a. fairness
b. economy
c. simplicity
d. speed

e. certainty.[33]

Aim of the Fast Track

1. The aim of the fast track is to provide a speedy, simple and cost effective procedure for ***dispute resolution*** for the great majority of ***defended*** actions across the board within the monetary band **£3,000 - £10,000**. Personal injury cases up to £10,000 will also be allocated to the fast track. The fast track will also deal with non-monetary claims such as injunctions, declarations and orders for specific performance which are not suitable for the small claims procedure. Undefended debt actions will not be affected by the present proposals.

Scope

2. The outline proposals for the fast track proposed in the Interim Report are:

a) a set timetable of 20 -30 weeks;

b) a "warned week" or fixed date from the outset of the case;

c) limited discovery;

d) maximum trial length of 3 hours;

e) no oral evidence from experts;

f) limited oral evidence from witnesses as to fact; and

g) standard fixed costs.

The Working Group has aimed to develop procedures which should enable the vast majority of cases up to £10,000 to be progressed fairly within the fast track. There may be classes of case which are inherently so complex that they might not normally be accommodated within the simplified fast track procedure. Most medical negligence cases are unlikely to fit within the constraints of the standard fast track procedure separate. In addition there are actions such as jury trials which, because of the need for the oral presentation of evidence, are inherently unsuitable for the fast track. There are also some categories of case, such as undefended fixed date possession and return of goods actions, which already have an existing straightforward procedure that would not be speeded up by the new procedure. These cases will continue to follow their separate procedure.

In addition, individual cases which do not fall into any of these categories might need to be transferred to the multi-track but these will have to meet strict criteria to do so.

Cases which would ***not*** normally be dealt with on the fast track are:

a) medical negligence cases;

b) jury trials;

c) fixed date possession and return of goods actions until defended;

d) individual cases meeting the criteria for transfer out.[34]

Access to justice

The litmus test of any civil justice system is whether it provides the average citizen, facing simple everyday legal disputes, with mechanisms through which he or she is able to secure redress. Considerable progress has been made in England and Wales, and in many other countries, in providing access to civil courts to those involved in such disputes. Adaptations to traditional litigation procedures seem largely to have succeeded in allowing laypersons to present their cases in a satisfactory and competent manner.But small claims procedures are not infinitely elastic, and their use should not be hastily expanded in place of formal court proceedings. Small claims procedures,entailing do-it-yourself representation,provide **"bargain basement"** justice.Although this might be appropriate and acceptable for a limited range of disputes involving small sums of money, applying the procedures in inappropriate circumstances —as where large sums of money are at stake or complex legal points arise—runs the serious risk of producing unjust results.If greater access to justice is the objective,the key is to design a civil justice system that provides costs and procedures that are realistic and proportionate to the issue in dispute. Calls from legal purists for an unrealistic level of legal refinement should be ignored, as they will restrict access to the courts to the wealthy. For most lay litigants,the alternative to cut-price solutions is not **Rolls Royce justice: it is no access to justice at all.**[35]

Therfore,it can be seen as to how England has been quite successful in reaching its objective of providing easy access to justice for the poor and rural people.Especially the SMALL CLAIMS PROCEDURES have been very successful in providing for a very smooth and easy mechanism for the adjudication of petty disputes, for the easy and fast disposal of cases and for reducing the number of appeals to the higher courts.As such,there are advantages and disadvantages,and both have to be taken into consideration when they are applied to systems in other countries .The idea of the Local Courts in India can also adopt certain procedures of the above systems and try to do away with the demerits to establish a very transparent and flexible system.

Top

SINGAPORE

Singapore has also chalked out some procedures to deal with the problem of inadequate access to justice,the most important being The Small clams Tribunals; a description of which is given below:

The Small Claims Tribunals are part of the Subordinate Courts of Singapore. The Tribunals were established on 1st February 1985 to provide a quick and inexpensive forum for the resolution of small claims between consumers and suppliers.

The Tribunals have jurisdiction to hear claims not exceeding S$10,000, where the claims relate to disputes arise from:

a) contract for the sale of goods; or
b) contract for the provision of services; or
c) tortious damage to property (but not including damage arising in connection with motor vehicle accidents.

- With both parties' written consent, the jurisdiction of the Tribunals can be raised to $20,000.
- All claims must be lodged or filed at the Small Claims Tribunals within one year from the date on which the dispute arose.
- Lawyers are not allowed to represent any of the parties in the proceedings before the Tribunals.
- Usually, costs are not awarded to the winning party.
- To lodge or file a claim at the Tribunals, a party is required to pay a lodgement fee as follows:

	up to $5,000	$5,001 - $10,000	$10,001 - $20,000
Consumer	$10	$20	1% of claim amount
Non-consumer	$50	$100	3% of claim amount

- Claims may be lodged at the Small Claims Tribunals on the following days :
- Mon - Fri : 9am - 12pm; 2pm - 4pm
- Sat : 9am - 12pm
- Claims may also be lodged via facsimile. Forms can be obtained through their teleresponse system at (65) 6435 5937. Payment of fees can be made by post. Currently, filing over the Internet is available ONLY to certain authorised users.
- A Consultation/Mediation before the Registrar is held within 14 days. If the dispute is not settled, a Hearing is convened within 7 days after the Consultation/Mediation. For tourist or urgent claims, both the Consultation/Mediation and the Hearing are held within 24 hours.[36]

Court Mediator :

Where the dispute does not fall within the Small Claims Tribunal's jurisdiction, it will be referred to a court mediator. Parties will work out their disagreements online with the mediator to achieve a speedy and impartial resolution of the dispute. The mediator will explore the facts and the parties' respective positions, help the parties to exchange information, and move towards a mutually acceptable settlement using ordinary internet access and e-mail. In this way, parties can achieve a resolution through a constructive and conflict-free interactive process.

Judge-mediator in Court Dispute Resolution International

Where the case is complex or involves a substantial claim, it will be channelled to the Court Dispute Resolution International (CDRI) service, and e.CDRI (which is the electronic version). CDRI and e.CDRI are settlement conferences co-conducted by a Singapore judge-mediator and a judge from a foreign jurisdiction. The co-mediation provides a forum in which additional judicial perspectives and views are brought to bear on disputes.

Filing a suit in court

If the dispute cannot be resolved by mediation or settlement conference, parties may wish to file a formal action in the Singapore Subordinate Courts, and use the facilities of the e-Courts and e-Chambers.

SMC or SIAC

In addition, parties may opt for mediation provided by the Singapore Mediation Centre (SMC), or arbitration offered by the Singapore International Arbitration Centre (SIAC).

Role of the moderator

1 The moderator's role is essentially administrative. He will collate the forms and bring the parties together for the use of e@dr.

2 The moderator will determine the appropriate channel for resolution, based on the nature and complexity of the dispute. The moderator may channel it to the judge-mediator, the Small Claims Tribunal (SCT), SMC or SIAC. This is subject to the consent of the parties as to the mode of determining the dispute, and does not preclude a subsequent change of the forum of settlement.

Role of the mediator

1 The mediator will assist the parties to reach an amicable resolution of the matter. He will not decide on the outcome of the dispute, nor give an award, verdict or judgment.

2 The mediator will facilitate the drafting of a settlement agreement between the parties, but will not himself draft the settlement agreement.

3 The mediator will set the timeframes for the resolution of the dispute, taking into consideration the nature and complexity of the dispute, the parties circumstances, and the parties suggested timeframes.[37]

Enhancing Access to Justice
Night Mediation Services

Mindful of the need to provide a dispute resolution forum for the working public, the Tribunals also conduct night Consultation and Hearing sessions on selected week days from 5.30pm to 9.00pm.

This option allows parties to pursue their legal rights in the evening, without unduly affecting their work during the

Technology at the Tribunals

Since its opening in 1985, technology at the Tribunals has grown.

The Tribunals have, in line with its objective to be an inexpensive forum of dispute resolution, leveraged on technology to serve the public better.

Electronic Filing (from 15 July 1997)

Claimants have been able to file or lodge their claims via fax. Claimants choosing to file their claims by fax have to submit the lodgement or filing fees by way of post.

The Claimants can also obtain the claim forms through our teleresponse system at 6435 5937.

Teleresponse System

Members of the public can utilise the teleresponse system at 64355937 for pre-recorded information as to the Tribunals.

Claim forms can also be obtained on demand via facsimile through this system.

Telephone Admission

To further reduce the need for parties to physically appear at the Tribunals, Respondents are now able to admit their claim through the telephone.

A serial **PIN** number is sent to all Respondents together with the Notice of Consultation so that they may be able to admit to the claim against them by telephone. This facility was introduced on the 16th of March 1998.[38]

Northern Ireland

Existence of a specific Small Claims procedure

There is a Small Claims Procedure in Northern Ireland. Small claims courts are designed to allow certain types of small claims to be decided informally in the county court, usually without the need for legal representation.

- **Scope of Procedure**

In general, the small claims procedure may be used where the amount of money or the value of the goods involved is not more than £2000. However some types of claims are excluded, for example, claims involving personal injuries, libel or slander, a legacy or annuity, ownership of land, property of a marriage and road traffic accidents.

- **Application of Procedure**

The procedure is optional and the judge has the power in certain circumstances to direct that an application be transferred to the county court.

- **Forms**

The County Court Rules (Northern Ireland) 1981 [S.R.1981 No.225] contains forms which should be used during the small claims procedure. Forms are prescribed for commencing proceedings, disputing the claim and accepting liability. There is also a form to apply for a default judgment as well as a form to have the judgment set aside.

- **Assistance**

The small claims procedure is designed to be informal. Court staff will be able to assist in completing the necessary forms and in explaining the process. However, they cannot offer legal advice.

A **Citizen's Advice Bureau** or consumer advice centres may also be able to assist litigants. If a litigant has a disability which makes going to court or communicating

difficult, he or she should contact the Customer Service Officer of the court concerned who may be able to provide further assistance.

- **Rules concerning the taking of evidence**

The small claims court is informal and the strict rules of evidence do not apply. Accordingly the court may adopt any method of proceeding at a hearing that it considers to be fair. All parties must, subject to any legal objection, agree to be examined by the judge on oath.

- **Written procedure**

If the case is not disputed and is for a set amount, the claim can be dealt with without a hearing using only written evidence.

- **Content of judgment**

The judge will usually give an oral decision outlining his reasons. He may however, choose to give a written judgment.

- **Reimbursement of costs**

There are restrictions on the reimbursement of costs. Currently, the judge may order that the following costs are paid:

- Court fees;
- Expert witness expenses.

If there has been unreasonable conduct by one of the parties the judge may award costs against that party. If the proceedings were properly started in the county court, the judge may award appropriate costs.[39]

- **Possibility to appeal**

a. Where the losing party was either present or represented at the hearing - At present, an appeal can only be taken by asking the judge to state the reasons for his decision and applying to the High Court for a determination as to whether the judge's decision was correct in law.

b. Where the losing party was neither present nor represented at the hearing - If the losing party contacts the small claims office, after any decree has issued, stating that he did not receive the application or did not receive it in sufficient time to reply, or for any other reason he did not reply in time then he will be advised to issue an application asking that the decree be set aside. The winning party will be

sent a copy of the application and will be invited to reply in writing to it within 14 days. The Judge, having considered the application and any reply may either:

- Decide that there is a valid reason for the failure to reply and may set the judgment aside without a court hearing and may give a direction on how the case is to proceed. The parties will be notified by the small claims office of any order made by the Judge or
- Fix a date for hearing the application to set aside the decree. The parties will be notified of this date and invited to attend. The small claims office will also send to the parties a copy of any order the Judge makes after dealing with an application of this type.

Likewise if the losing party's documentation is returned to the small claims office by the post office and it is clear that he was not aware of the claim being made, then the court office will ask the Judge to revoke any decree that has been made and will contact the winning party to supply additional information e.g. a new address for the respondent.[40]

Top

JAPAN

There have been significant changes taking place in the judicial system of Japantoo.Since May 2002, all classes of civil actions commenced in the Supreme Court are being filed via the Electronic Filing System. With that, all the cases in the Supreme Court are now filed, processed and tracked electronically. This has allowed court operations to be more efficient. Technology has been exploited to serve the needs of the Judiciary and the legal profession. . For its innovative harnessing of technology through the e-litigation system, the Supreme Court was the first public organisation to be conferred the prestigious National InfoComm Award in the award's inaugural year. The e-litigation system encapsulated the realisation of Japan's vision of a virtual court – an ideal forum for international business litigation involving parties and witnesses from the world over. This award was a timely affirmation and recognition of her efforts in pushing the frontiers of technology over the past decade.As such, technology has played a critical role in the overhaul and modernisation of the operations of the Judiciary in Japan.

Now coming to the subordinate courts,these courts consist of the best legal service officers. The quality of their judgments has improved over the years. Their Annual Report 2002 sets out in sufficient detail their work. These judicial officers discharged a prodigious load of some 246,960 criminal cases, 78,220 civil matters, 16,510 family and matrimonial cases, 2,480 juvenile cases and 36,890 small claims disputes. This was done within an established and technologically supported case and event management framework. There was again no backlog of cases. Only 0.03% of all these cases went on appeal to the High Court. The caseload per judicial officer is a high 5,220. These Courts have received international recognition now. They are recipients of various local and overseas quality awards too. Public trust and confidence have remained high, as

reported in their publication on international rankings. They have discharged their constitutional duty well.[41]

Use of Technology

In Japan,Justice online was launched in 2001. This is an innovative, web-based video-conferencing system to enable lawyers to conduct multi-party court hearings and other business with the Subordinate Courts, from the convenience of their offices. JusticeOnLine now covers almost every facet of court litigation. It is in use for settlement conferences at the Primary Dispute Resolution Centre, for virtual pre-trial conferences in the Civil and Criminal Justice Divisions, for contentious and non-contentious civil interlocutory matters, as well as for adoption matters; and it is available for use in Registrars' Appeals. This system adds on to the layers of technology infrastructure and applications which are currently in effective use in these Courts.

Recommendations Of The Justice Reform Council,2001-JAPAN[42]

>Reinforcement and Speeding Up of Civil Justice

- ☞ The following measures should be carried out, aiming to reduce the duration of proceedings for civil cases by about half:
- ☞ In principle, for all cases, conferences to establish a proceeding plan should be made compulsory, and planned proceedings should be further promoted. Methods for the parties concerned to collect evidence at an early stage, including the period before instituting a suit, should be expanded.

With regard to civil trials, the new Code of Civil Procedure was enacted to make procedures user-friendly and easily understandable for the people, and efforts were made to provide easy access to the courts, such as through the **special procedure for small-claims litigation**. Various efforts were also made to reinforce and speed up proceedings. Examples of such measures to reinforce and speed up proceedings included coordination of procedures to arrange the contested issues and evidence,the establishment of new regulations for concentrated examination of evidence, the reform of the explanation (shakumei) system, the conversion from the submission at-any-time principle to the timely submission principle, and the expansion of procedures for collecting evidence. Examples of the expanded procedures for collection of evidence are expansion of the order to produce documents and introduction of a system for interrogatories to the parties concerned. Furthermore, a draft of the revised law concerning orders to produce official documents has already been submitted to the 151st Diet session (in 2001).) Also, the Rules of Civil Procedure newly establish sessions for conferring on progress and also make it obligatory to confer to set a proceeding plan for large-scale litigation.

As a result of these steps, the duration of proceedings in civil procedure on the whole has been decreasing. The average duration of proceedings for all first instance civil cases at district courts is 9.2 months (as of 1999). However, for cases in which examination of

personal evidence, such as examination of a witness, has been conducted because of a dispute over the facts of the case or for other reasons, the average duration of proceedings rises to 20.5 months (as of 1999). In order to respond to public expectations, the following measures should be carried out, aiming at reducing the proceeding period (20.5 months in 1999) of civil cases involving examination of personal evidence by about half by further reinforcement of proceedings.

(1) Promotion of Planned Proceedings

Planned proceedings should be further promoted in the following manner: In principle, for all cases, conferring to establish a proceeding plan should be made compulsory. At an early stage in the proceedings, a proceeding plan should be fixed, based upon conferrals by the court and by both parties, containing an estimated time for the conclusion of the proceedings. Proceedings then will be carried out in line with that plan.

(2) Expansion of Procedures for the Collection of Evidence
Methods for parties concerned to collect evidence at an early stage, including the period before instituting a suit, should be expanded. For this purpose, new measures should be studied and introduced, including a system of independent examination of evidence such as the one under German law (a system under which, as long as there is a legal interest, it is possible to demand "court-ordered expert opinion in writing" for specific matters before institution of a lawsuit without the requirement of a purpose for preservation of evidence) and a system that enables the use of specific methods of collecting evidence when one party has sent advance notice of the intention to institute a suit. At the time of adoption, it is necessary to pay attention both to securing the rights of those who hold evidence and to the danger of adverse effects through abuse of the new measures.

(3) Expansion of the Human Base

In order to reduce the duration of proceedings for civil cases by about half while aiming at the reinforcement of proceedings, it is necessary to shorten the intervals between trial dates by expanding the human base of the legal profession. For that purpose, the personnel system of the courts should be reinforced by significantly increasing the number of judges and staff connected to the courts, while the work structure of lawyers should be reinforced by greatly increasing the number of lawyers and by promoting the incorporation of law firms and the use of joint law firms.

Whether or not the district courts should introduce, in addition to ordinary legal proceedings, a trial procedure that enables simple, prompt processing, based on the amount in controversy, should be studied continuously as a future problem from the standpoint of increasing

effectiveness as a whole by concentrating the limited human and material resources of the courts on complicated and sophisticated cases as well as by processing simple litigation promptly.

- **Expansion of the Jurisdiction of Summary Courts and Substantial Increase in the Upper Limit on Amount in Controversy in Procedures for Small-Claims Litigation**

☞ With regard to the subject matter jurisdiction of summary courts, the upper limit on the amount in controversy should be raised by taking trends of economic indices into account. The upper limit on the amount in controversy in procedures for small-claimslitigation should be raised greatly.

The summary courts handle, in principle, cases involving claims not exceeding 900,000 yen. Of these cases, the cases covered by the simpler, faster procedure for small-claims litigation consist of cases involving claims of less than 300,000 yen. The upper limit on the subject matter jurisdiction of the summary courts was set at 900,000 yen when the Court Law was revised in 1982. The limit should be raised by taking account of the trends of economic indices, etc., for the purpose of summary and fast settlement of minor cases and from the standpoint of facilitating people's access to the courts by making the best use of summary courts' characteristic of being closer to the people.

The procedure for small-claims litigation, which was established by the new Code of Civil Procedure, is evaluated highly by its users. From the standpoint of making it easy for more people to use the procedure, the upper limit on the amount in controversy that limits the scope of cases covered by the procedure for small-claims litigation should be raised greatly.

- **Expansion of Access to the Courts**

(1) Lightening of Cost Burden on Users

a. **Filing Fee**

☞ Filing fees should be reduced within the scope needed, while maintaining the indexation system.

☞ As for the filing fees for small-claims litigation cases in the summary courts, study should be undertaken, including study of the possible introduction of a fixed-fee plan, and necessary measures should be taken.

When filing a suit with a court, the people must pay a filing fee (petition fee). The amount of the fee is calculated in accordance with the value of the object of the suit (amount in controversy), this being the so-called "slide" or indexation system. Under the existing indexation system, depending on the case, the filing fee can be quite high. While maintaining the indexation system, filing fees should be reduced within the scope needed, so as to reduce the cost burden on users. As for the filing fee for small-claims litigation cases in the summary courts, study should be undertaken, including study of the

possible introduction of a fixed-fee plan, and necessary measures should be taken in order to make it easy for the public to use that system.

b. Introduction of Information Technology (IT) to the Courts, etc.

☞ In order to promote the strong introduction of information technology (IT) to various phases of the courts' work, such as litigation proceedings (including electronic submission and exchange of lawsuit-related documents), clerical work, and furnishing of information, the Supreme Court should work out and publish plans for introducing information technology.

Each court has made progress in equipping judges and court staff with personal computers, sharing schedule deadline management information through section-by-section networks, and the development and introduction of case disposition systems in such areas as real estate execution, bankruptcy, conciliation and demands for payment. In addition, a clerical disposition system has begun to be introduced, covering ordinary civil cases from the filing stage to the close of the case. Furthermore, the new Code of Civil Procedure has opened the way for the use of teleconferencing in civil procedures.However, in view of the remarkable advances in information technology, it is necessary to further promote the active use of IT in legal procedures from the standpoint of making proceedings more efficient and speedy and increasing services for users. To this end, information technology, such as databases and the Internet, should be introduced and used more positively in various phases in the work of the courts, such as litigation proceedings, clerical work, and furnishing of information. Submission and exchange of proceeding-related documents through the Internet also should be studied. From these standpoints, the Supreme Court should work out and revise plans for introducing information technology and announce such plans in order to cope with future technological innovation flexibly and positively.

c. Nighttime and Holiday Service

☞ The nighttime service of the courts, which is already in place, should be made well known to the public, and studies should be made to further expand the nighttime service and to introduce holiday service.

At present, courts do not exercise their functions on legal holidays, except for warrant-related business, and even on weekdays, their functions are exercised in general only during working hours. However, some family courts in large cities adjudicate or conciliate domestic relations matters, offer advice on domestic relations, and accept cases after 17:00, in accordance with the actual situation of each region. Similarly, summary courts in Tokyo and Osaka offer conciliation and offer advice on civil affairs after 17:00.From the standpoint of expanding people's access to the courts, each court should actively work to make the nighttime service of the courts well known to the public. As to expanding the nighttime service to other courts and hearing cases at nighttime and on holidays, these measures should be positively studied from the standpoint of expanding people's access to the courts, while watching the future use of such service and grasping

the degree of the people's needs and giving due consideration to the burden on the parties concerned (adverse party to be summoned at night, preparedness of court officials, etc.).

d. Geographical Distribution of Courts

☞ The geographical distribution of courts should be readjusted constantly, taking account of population, traffic conditions, the number of cases, etc.

The current geographical distribution of summary courts and branches of district and family courts is based on reviews made in accordance with the revised law of 1987 and the revision of the Supreme Court rules in 1989.
The reviews were conducted taking account of the future population and population trends, trends in the number of cases, geographic scope of the jurisdictional area, changes in traffic conditions, etc. From the standpoint of ensuring the convenience of courts, the geographical distribution of courts should be readjusted constantly, taking factors such as the above into account.

- **Reform of the Criminal Justice System**

The purposes of criminal justice are to maintain the social order and to secure the safety of the people by accurately identifying crimes and arresting criminals, by finding out the truth of cases through fair procedures, and by fairly and speedily realizing the authority for punishment, bearing in mind the maintenance of public welfare and the guarantee of individual fundamental human rights. As the criminal procedure, by its very nature, inevitably constrains and limits the rights of the suspects, the defendants and other persons involved, such constraints and limitations can only be justified for such purposes and in accordance with due process .

Criminal justice is further strongly required to properly check the violations of the rules and to effectively sanction such violations through fair procedures in order to support a free and fair society in the coming age. In order to have criminal justice in Japan meet the expectations of the people and secure their trust hereafter, it is necessary to establish an appropriate system, perceiving the demands of the times and of society, paying attention to the above-mentioned purposes of criminal justice, checking the current problems of related systems in a composed and fair manner, and respecting the ideal of the guarantee of human rights set forth in the Constitution, including the guarantee of the defense rights of the suspects and the defendants.In connection with designing the system of criminal justice as a whole, it is indispensable to introduce a concrete framework for the criminal procedure, which can directly reflect the sound social common sense of the people, in order to secure and further raise the trust of the people in

criminal justice, and this must be said to have important significance as a part of the measures to establish the popular base for the justice system.

1. **Reinforcement and Speeding Up of Criminal Trials**
   Most criminal trials are managed promptly, but among the complicated cases of grave public concern, there are some cases in which trials in the first instance alone take a considerably long period of time. Since this is one of the factors causing the people's loss of trust in criminal justice as a whole, we must study measures to realize thorough and speedy criminal trials.
   In particular, in relation to newly introducing a system for popular participation in the trial proceedings for a certain portion of criminal cases, this demand becomes even more pronounced, and reexamination of the systems concerned, with cases not subject to popular participation also in the perspective, is critical.

2. The basic direction for this reform is to realize efficient and effective trial proceedings for truly contested cases through active allegation and presentation of evidence by the parties, focusing on clarifying the contested issues, under the appropriate direction of the trial by the court, in concentrated proceedings (holding court sessions over consecutive days), premised on sufficient advance preparation by both parties, and to reinforce the human base and revise the procedures so as to accomplish this.[43]

The following new preparatory procedures should be introduced:

- A new preparatory procedure presided over by the court should be introduced in order to sort out the contested issues and to establish a clear plan for the proceedings in advance of the first trial date.
- To achieve the thorough ordering and clarification of the contested issues, it is necessary to expand the disclosure of evidence. For that purpose, rules regarding the timing and the scope of the disclosure of evidence should be clearly set forth by law, and a framework that enables the courts to judge, as necessary, the need for the disclosure of evidence should be introduced as part of the new preparatory procedure
- Trials should in principle be held over consecutive days, and necessary measures should be taken in order to secure the realization of this principle. Consideration should be given to how the related systems should be so as to realize the principles of directness and orality.
- Consideration should be given to concrete measures that secure the effectiveness of trial direction by the courts in order that trials are managed in a thorough and smooth manner.
- A system should be established that enables defense counsel to concentrate on individual criminal cases, including the establishment of the public criminal defense system; and at the same time, the human base of the courts and the public prosecutors offices should be enriched and strengthened.

All the above recommendations to bring about adequate reforms and changes in the judicial system of Japan can prove very useful to other countries also if implemented according to the needs of that particular country.For example,the need for the

geographical distribution of courts is very much apposite to the Indian situation also.Courts must be set up taking into account the population of a region,the number of cases and so on.This will enable the judicial system to be very flexible and accessible to people.

BANGLADESH

The administration of judicial or justice delivery system in Bangladesh is time consuming and un-affordable to the poor people. A case usually takes about ten to twenty years on average from date of filing to date of judgment. The district court judges are the administrator of the district court, responsible for managing, scheduling and delivering decisions. **Justice delayed is justice denied is one of the principles of equity**. Public confidence in the legal system is lost. The Law Minister Barrister Moudud Ahmed in a recent workshop said that the present judicial system is old, traditional and corrupt and needs reform. He informed that a total of **Ten million (96, 83, 305)** cases are now pending in different courts of the country and under existing procedure **hundred** years will be required for disposal. The breakup of this backlog is: **4,946 cases in the Appellate Division of the Supreme Court**; **1, 27, 244 cases in the High Court Division**, **3,44,518 civil cases**; **95,689 criminal cases in the Judges courts ; 2,96,862 cases with Magistrate courts** and **99,004 cases with Metropolitan Magistrate courts**. Independence of judiciary, amendment of existing laws, alternative dispute resolution, case management by judges, court administration by court administrators - are a few recommendations that the reformers had in mind.[44]

Legal reform committees and commissions in Bangladesh

Several legal reform committees and commissions have been formed since the independence of Pakistan in 1947.The recommendations (both legal and administrative) of those committees and commissions include, inter alia,to create Judicial Ombudsman, Commercial Courts, setting time limit for disposal of both civil and criminal cases. The Government has tried fixing time limit with repeated amendments of Cr. P. C within which hearing and different steps in both civil and criminal cases are to be completed. Unfortunately defects in penalty provision for not following the time limits led the judges go on disposing cases in their own way and the result is the judicial logjam of today. The government enlarged number of magistrate courts, district courts and divisions of the High Court for speedy disposal of cases. Recently the government under its legal reform programme has enacted **Speedy Trial Tribunal Act, 2002** and formed **six speedy trial tribunals** for early settlement of certain cases. Bangladesh is also making efforts to adopt modern technology for better case and court management.

Legal reforms in Bangladesh

The law minister in a recent seminar on "Rule of Law and Judiciary in Bangladesh" said that the present government is working continuously to establish an independent Human

Rights Commission, Anti-Corruption Commission, an Ombudsman to ensure rule of law in the country. He also mentioned that work is in progress for comprehensive reforms for judicial capacity building, training of judges and lawyers, and also to remove flaws from the judicial system. Recently the Law Commission, on reference from the government on flaws in the Code of Criminal Procedure (CrPC), 1898 submitted its report incorporating recommendations for necessary changes to sections 54 and 167 of the CrPC. The government also plans to introduce **Alternative Dispute Resolution (ADR)** in judicial system to ensure justice by amending the Code of Civil Procedure, 1908. ADR introduced earlier in Family Courts of **15 districts as pilot project** had proved successful and the minister envisaged the introduction of the same to other districts also. The government also recently decided to establish separate investigation units and law and order units in all thanas of the country with their own manpower and to work independently under the supervision of the OC of the respective thanas. Manpower of one unit will not be transferred to the other unit before three years and DIG or Metropolitan Police Commissioner will be the competent authority for such transfer after three years, unless otherwise in emergency cases by the IGP.This system has the ingredients of local governance too.[45]

RECENT DEVELOPMENTS:

Trial of 30 important cases starts soon in speedy trial Tribunals in Bangladesh

DHAKA, Nov 21 (BSS) - The Bangladesh government has transferred 30 important cases pending in different courts to the newly formed six tribunals for speedy trial for immediate disposal.

The sensational double murder case and Advocate Habib Mondal killing case in the city, Advocate Nurul Islam murder case and principal Gopal Krishna murder case outside capital Dhaka are included in the important cases.

Though most cases were filed under the arms act, the rest cases included rape, drug, explosive and murder.

In a notification, the Home Ministry today said the government empowered by the Article 6 of the Tribunal for Speedy Trial Ordinance, 2002 has transferred these 30 important cases to six tribunals for speedy trial for public interest.

According to the provisions of the ordinance, cases filed with the tribunals for speedy trial must be disposed of within 135 days from filing of the cases. The cases shall go to the previous courts if not disposed of within the specified date and the judges have to be accountable for their failure

Six judges were appointed on November 13 through a government notification following the permission of the Chief Justice of the Supreme Court. A few clauses of the tribunal for speedy trial have also been amended

The six tribunals, situated in six divisional cities, will try five cases each.[46]

The above study shows that the judiciary of Bangladesh is also facing the problem of pendency in the disposal of cases resulting in heavy back-logs and that of inadequate access to justice.But,efforts are being made to curb this problem in many ways(as can be seen above).The setting up of tribunals is a very promising step undertaken by the Bangladesh Government and there is scope for further improvements too.

CALIFORNIA

California is one of the places where reforms have been introduced into the functioning of the tribes in the local areas.These reforms embody high degrees of transparency, impartiality,security,fairness,easy understanding and ultimately pave way for easy access to justice.A brief picture of the whole system is given below:

California tribes have long struggled to exercise their rights and authority as sovereign nations -- and to overcome social, political, and economic barriers that undercut their ability to effectively protect the safety, health, and welfare of their communities. Today, California tribes are making important advances towards establishing comprehensive tribal justice systems that afford their members and communities access to fairness and justice. The growth and development of tribal justice systems throughout the California Indian community is only one example of the commitment and perseverance of California tribes, but it is a particularly significant one given the historical challenges to creating tribal justice systems here.

Tribal Systems

While tribes can and do exercise their authority and jurisdiction through many different mechanisms, law enforcement and dispute resolution systems (such as tribal courts) for both civil and criminal matters are becoming more common in California. Today, tribal law enforcement systems throughout California take many forms: **tribal police forces, fire code enforcement officers, environmental code enforcement officers, employee and patron grievance bodies, tribal TANF hearing officers**, and other enforcement officials. Examples of tribal justice systems include: tribal courts such as the **Cabazon Tribal Court** and **the Hoopa Tribal Court**, among others; Indian dispute resolution and mediation services such as Indian Dispute Resolution Services; and regional court systems such as the Intertribal Court of California, which is housed under the Regional Tribal Justice Center serving tribes in Lake, Mendocino, and Sonoma Counties; other regional court systems are under development. [47]

Tribal Jurisdiction in California

The development of tribal justice systems in California was slowed down by a misunderstanding of tribal and state jurisdiction under Public Law 83-280 (P.L. 280). Under P.L. 280, the state governments of Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin have concurrent criminal jurisdiction and limited civil

jurisdiction within the exterior boundaries of Indian reservations. In the not-too-distant past, the BIA erroneously claimed that the passage of P.L. 280 in 1953 ended tribal criminal and civil jurisdiction on Indian reservations. As a result, they did not support the development of tribal justice systems in California. In important cases won by California Indian Legal Services (CILS) and opinions issued by the U.S. Department of Justice in the past few years**, it has been affirmed that although states acquired some civil jurisdiction, tribes retain virtually all of their civil jurisdiction and that they have concurrent jurisdiction over certain crimes**. Because the U.S. Supreme Court continues to examine and reshape - and, sometimes, limit -- tribal jurisdiction (in recent cases such as Nevada v. Hicks, Atkinson Trading Company v. Shirley and Bishop Paiute Tribe v. Inyo County), Congress should affirm the jurisdiction of tribal governments over their lands and the people and activities within them.

Tribal Justice Systems Provide Certainty and Security

Justice systems provide a community, and other people and institutions who interact with that community, with assurance that there is a forum for the **fair hearing** of any disputes that arise. As efforts to promote community and economic development on Indian reservations have blossomed, non-Indian people and institutions have become more knowledgeable about Indian Law and the sovereign immunity of Indian tribes. Often, as a condition of engaging in joint ventures with tribes, they seek broad waivers of tribal sovereign immunity-especially where there are no tribal dispute resolution systems in place. In order to facilitate community and economic development, tribes often execute limited waivers of tribal sovereign immunity that grant individuals and institutions the right to sue in tribal court. This development mirrors the historical evolution of both state and federal courts and governments: once court systems were developed, state and federal governments removed some of the limitations on citizens' right to seek redress against those governments in their court systems.

Tribal Justice Systems Addressing Community Needs

The development of tribal justice systems is not an all-or-nothing proposition. Many tribes and tribal consortia have identified their communities' most pressing tribal justice needs and have located resources available from both government and private organizations. Organizations involved in a specific issue may make funds available for the development of courts with limited subject matter jurisdiction: an organization promoting child welfare might fund a tribal court to hear Indian Child Welfare Act cases transferred out of state courts, or an organization prioritizing environmental protection might fund a system to enforce tribal environmental codes. Tribes may - and do -- establish **traditional and alternative dispute resolution mechanisms** to suit the specific needs and practices of their communities. Each of California's more than 100 Indian nations are evolving some form of dispute resolution that demonstrates their creative response to community needs and their sense of justice.

Model Tribal Housing Court Project

An example of how the development of tribal justice systems provides certainty and security while at the same time addressing community needs is well illustrated by the **Model Tribal Housing Court Project**. With the financial support of Fannie Mae, a consortium of tribes in the Eastern Sierras is working with CILS to develop model Indian housing codes and establish a tribal court to hear housing issues. As a result of this project, tribes and tribal members should gain greater access to conventional mortgages, favorable interest rates, and loan packages for new homes or home renovations where trust lands are involved. CILS and Fannie Mae hope that the project will serve as a model that can be replicated to increase opportunities for lending on other California Indian reservations. This is but one example of the many creative ways that California tribes with limited resources are collaborating with public and private sector partners to develop tribal justice infrastructure.

Training and Technical Assistance for California Tribes

Many tribes have received planning and implementation grants from the U.S. Department of Justice through the Bureau of Justice Assistance (BJA) and get training and technical assistance in conjunction with these grants. In the past, much of the training and technical assistance has been provided by organizations from outside of California - but these organizations often are not familiar with California tribes and do not have a history of working with California tribes. Within California, support for the development of tribal justice systems comes from a range of organizations, including CILS, the National Indian Justice Center, the Regional Tribal Justice Center, the Tribal Law & Policy Institute (TLPI), the Southern California Tribal Chairmen's Association, and the Native Nations Law & Policy Center of the UCLA School of Law. In order to provide effective training and technical assistance from within the state, organizations such as TLPI, the Native Nations Law & Policy Center, and CILS are now pooling their collective resources, experience, and knowledge. More funding continues to be available through the BJA grants and tribes should take advantage of such funding since nearly every tribe that applied for fiscal year 2003 funding received a grant. [48]

SOUTH AFRICA

In South Africa,the Pro Bono System has been in vogue for a long time.*Pro Bono Publico*, also referred to simply as *Pro Bono*, is commonly understood as the provision of legal services to poor, marginalised and indigent individuals, groups, or communities, without a fee or expectation of compensation, in order to enhance access to justice for such persons who cannot afford to pay for legal services.

>A PRO BONO system should:
1. Be integrated- it should include all in the legal realm and not just candidate attorneys;
2. Have clear eligibility criteria- this could include a means test, a thorough referral system that would also look into the type of matter.
3. Render services for free;

4. Have a disbursement policy- the client could pay, for example, the revenue fees or they should be waived. Other experts could also contribute free services e.g. medical expertise, psychologists etc.
5. Render high quality service- if pro bono work is second rate, it will fail;
6. Deal in appropriate cases- this will ensure the proper utilisation of the experience and expertise of the pro bono lawyer;
7. Be flexible- this could include hosting legal workshops, printing pamphlets etc;
8. Limit referrals;
9. Be monitored- referring agencies could follow up to ensure continuity and coordination;
10. Give recognition for services rendered- this could be done through an annual pro bono awards, published results or other forms of recognition.

There are certain interesting conclusions and thoughts that came out of the conference that was held on pro bono work on the aspects of access to justice and the role of lawyers in society.

- The discussions concurred that above and beyond being a Constitutional imperative, access to justice is pivotal in the delivery of human rights. **Being a lawyer needs to be understood as a national calling to assist in deepening the hard fought democratic gains achieved thus far. Access to justice is key to 'making human rights real'**. Often communities express a growing cynicism of our emerging democracy with comments such as, 'we cannot eat human rights.' The role lawyers play in fulfilling this was aptly captured by Prof. Jeremy Sarkin in highlighting that the poor depend on legal entitlements to meet basic needs such as food and housing. Lawyers have a monopoly on legal services and thus being a lawyer is a privilege that comes with obligations. The Conference participants agreed that there is a need for pro bono work.There was acknowledgement that the state cannot meet the legal needs on its own and that there was therefore a difference between legal aid and pro bono work. Although resources do exist through legal aid, there is a gap that needs to be filled.

The above concept of Pro Bono adopted by the South African judiciary is a very important step taking into account the needs of the society and especially the poor.This step or the essence of Pro Bono can also be applied to the Indian situation wherein many lawyers and judges voluntarily take part in public interest litigation and try to solve many problems faced especially by the down trodden so that it may help them in raising their standard of living and also change their view about the judicial system.[49]

Top

UNITED STATES OF AMERICA

The big news about small claims is they aren't so small anymore.

America's trial court system is costly, constipated and complicated beyond reason. Small claims court, with its simple rules, low cost, and easy, fast access for non-lawyers, is a powerful alternative.-RALPH WARNER,ATTORNEY

Small Claims Court

Small claims court judges resolve disputes involving relatively modest amounts of money. The people or businesses involved normally present their cases to a judge or court commissioner under rules that encourage a minimum of legal and procedural formality. The judge then makes a decision (a judgment) reasonably promptly. Although procedural rules dealing with when and where to file and serve papers are established by each state's laws and differ in detail, the basic approach to properly preparing and presenting a small claims case is remarkably similar throughout the United States. In a handful of states, including California, Nebraska and Michigan, one must appear in small claims court on his/her own. In most states, however, one can be represented by a lawyer if he wants. But even where it's allowed, hiring a lawyer is rarely cost-efficient. Most lawyers charge too much given the relatively small amounts of money involved in small claims disputes. Also, several studies show that people who represent themselves in small claims cases usually do just as well as those who have a lawyer.[50]

Small claims court offers people a chance to participate directly in their own cases. This fundamentally democratic aspect of the process is popular with most participants. And directly experiencing the problems, imperfections and ambiguities of presenting their cases often affords them a more realistic view of how our legal system works, as compared to a formal court, where most people participate secondhand through lawyer surrogates. Few participants in small claims court end up concluding that "I was robbed."

The great majority of common, everyday disputes are easy to understand and require relatively little money to resolve. These include spats over auto and home repairs, landlord-tenant problems, unpaid bills and substandard services. It's not worth the time or money to take these disputes to regular court. With attorney fees routinely running upwards of $150 or $200 per hour, a dispute must be worth at least $20,000 before it becomes cost-effective to hire a lawyer. It it's any less, the costs of resolving the problem-including lawyers' and court fees-loom larger than the problem.

The very act of bringing in lawyers, no matter what their cut, may ill serve the cause of justice. According to California Superior Court Judge Roderic Duncan, "People are much more likely to stand up and tell the unvarnished version of what happened when they

represent themselves. Something about a lawyer being in the process, coaching people to alter their stories, results in victory becoming more important than telling the truth."[51]

KINDS OF CASES RESOLVED IN THE SMALL CLAIMS COURTS

Small claims courts primarily resolve small monetary disputes. In a few states, however, small claims courts may also rule on a limited range of other types of legal disputes, such as evictions or requests for the return of an item of property (restitution). You cannot use small claims court to file a divorce, guardianship, name change or bankruptcy, or to ask for emergency relief (such as an injunction to stop someone from doing an illegal act).

When it comes to disputes involving money, you can usually file in small claims court based on any legal theory that would be allowed in any other court -- for example, breach of contract, personal injury, intentional harm or breach of warranty. A few states do, however, limit or prohibit small claims suits based on libel, slander, false arrest and a few other legal theories.

Finally, suits against the federal government or a federal agency, or even against a federal employee for actions relating to his or her employment cannot be brought in small claims court. Suits against the federal government normally must be filed in a federal District Court or other federal court, such as Tax Court or the Court of Claims. Unfortunately, there are no federal small claims procedures available except in federal Tax Court.[52]

JURISDICTION OF THE COURTS:

The limit is normally between $3,000 and $7,500, depending on the state. For instance, the maximum is $3,000 in New York, $5,000 in California, $7,500 in Minnesota and $3,500 in Vermont. Recently, there has been a trend toward increasing small claims court.[53]

APPEALS:

Many states allow either party to appeal within a certain period of time, usually between 10 and 30 days, and obtain a new trial. In many states, appeals must be based solely on the contention that the judge made a legal mistake, and not on the facts of the case. Other states have their own unique rules. In California, for example, a defendant may appeal to the Superior Court within 30 days. A plaintiff may not appeal at all, although she can make a motion to correct clerical errors or to correct a decision based on a legal mistake.[54]

COMPARISION BETWEEN SMALL CLAIMS COURTS AND TRIAL COURTS:

The jurisdiction of the Small Claims Courts is limited to the extent of 5000$.this means that people with larger claims are in a disadvantage as they will not be able to represent themselves in the case.For example, that a homeowner and a contractor disagree about whether a $20,000 kitchen remodeling job was done properly. Angry words are exchanged, and attempts to compromise prove futile. Each person hires a lawyer and the case goes to trial two years later. The lawyers each bill for 40 hours of time at $175 per hour, costing each side $7,000. Court fees, document preparation and expert witness fees add another $1,000 each. Assume now that the homeowner wins a partial victory -- he need only pay the contractor $14,000 for the substandard work. Add that to the $8,000 in legal expenses, and the homeowner is out $22,000. The contractor fares little better, netting only $6,000 out of the $20,000, once legal fees are paid. In short, both sides lose, and spend needless hours and energy fighting in the process.

If the same case were brought in a small claims court with a strong mediation program, both the homeowner and contractor would have a much better shot at justice. Filing fees would amount to about $25, and each side could choose whether or not to spend a few hundred dollars to have the kitchen work evaluated by an expert witness. The case would then be promptly sent to a mediation program. With the help of an experienced mediator, there would be a good chance of the parties agreeing to a settlement.

If mediation failed, the case would be heard in small claims court within six weeks of filing, with each side getting the chance to have its say and present evidence. By keeping costs low, both parties would benefit almost no matter what the small claims judge decided. For example, even if the judge only knocked 10% off the contractor's bill, as opposed to 30% in the scenario above, the homeowner would pay a total of $18,000 plus a few dollars in fees as opposed to $22,000.[55]

So basically,the above case lays down that mediation along with the small claims courts will prove beneficial to both the parties to the litigation with neither party losing any amount and without wasting huge amounts and time in hiring lawyers and filing a suit in a trial court.But,in spite of the advantages the Small Courts may possess,trial courts still form the basis of any dispute involving large amounts.

Small Claims courts in America proved to be a very useful measure from the point of view of reducing the burden of cases on the higher courts and also reduce the delay in the disposal of cases.As such, these courts,by dealing with disputes which basically involve low costs,help in disposing of the cases at a faster rate than the cases at the trial courts. This in turn reduces the number of cases in the trial courts which helps them to reduce their back-log.Also,the advantage with the Small Claims Courts is that ,if the cases involving disputes over small amounts are brought to the higher courts,then the litigants will end up spending more than the value of the dispute in the form of lawyer’s fees and court fees. So,these courts,with their simple and informal procedures,enable people to present their own cases instead of engaging a lawyer(this is at the option of the parties) and decide the case immediately instead of making the litigants wait for a number of

years by which time they stand impoverished. Some of the features of the Small Claims courts can be adopted by other countries too,such as India.

TEXAS

The Texas Constitution created a local court system known as the Justice Court (usually called Justice of the Peace Courts). These courts have exclusive jurisdiction over civil cases where the amount in controversy is $200 or less. It has concurrent jurisdiction (along with the Small Claims Court and the District Court) if the amount is not more than $5,000. The difference between a Justice Court and a Small Claims Court is largely in the type of cases that each court hears. A Justice Court in the precinct where real property is located, such as a home, has original and exclusive jurisdiction over forceable entry and detainer cases (FED). The only issue tried in a FED suit is the right to possession of property. An example would be an eviction case for failure to pay rent. The claim for unpaid rent is not part of the FED case and is heard by the Justice Court only if it's less than the $5,000 limit of court. The suit does not determine who owns the property. It only decides who has the right to be there. Justice Courts also have jurisdiction to foreclose mortgages, to enforce liens on personal property, to garnish wages and to enforce deed restrictions. Justice Courts may not hear suits for divorce, slander or defamation, suits to try title to land or to enforce liens against land.

Small Claims Courts, on the other hand, are much less formal than Justice Courts. Frequently parties choose to represent themselves instead of have representation by lawyers. A Justice of the Peace is also the Judge of the Small Claims Court. The amount of money over which the Court has jurisdiction is the same for both courts, a maximum of $5,000. One special feature of the Small Claims Court is that actions may not be brought by "assignees" of someone else's claim. This means that a person may not take the debt of another person and try and collect it; hence collection agents may not use the Small Claims Court to collect third party debts. A familiar example of a Small Claims Court would be Judge Wapner on television. Small Claims Courts are excellent ways to handle problems that require no formal knowledge of the law and do not involve enough money to justify the hiring of an attorney for representation. The JP Court has all the forms necessary, and it costs $70 to file a one person suit.

AFRICA-LEGAL AID FOR PRISONERS

Legal aid in Africa exists in name only in most countries. Prisons across the continent are congested with high remand populations. The few with the means to retain a lawyer may get bail or a prompt trial, but most suffer unseen and unnoticed by a system that is itself under-resourced and over-stretched. The situation in Malawi is no different.

In May 2000, Penal Reform International (PRI) proposed a pilot paralegal scheme to provide legal aid to prisoners. The Paralegal Advisory Service (PAS) now operates in the

four main prisons that hold 75% of the total prison population (8500). It represents a unique partnership of four national NGOs and the Malawi Prison Service.

The PAS comprises 12 paralegals - set to rise to 29 - each of whom have signed a highly restrictive code of conduct. They provide basic legal literacy, assistance and advice to prisoners. They help link criminal justice agencies by following up individual cases and convening monthly meetings of local court users where they discuss problems encountered.

Legal literacy is provided through daily Paralegal Aid Clinics for remand prisoners, covering a course of six modules. The emphasis in the clinics is placed on self help (i.e. how to conduct your own bail application, plea in mitigation, defence and cross examination of witnesses).

Legal advice and assistance is provided to remand prisoners who have overstayed or are being held unlawfully or inappropriately. Priority is given to vulnerable groups (women, women with babies, young people in conflict with the law, foreign nationals, the mentally and terminally ill, and the elderly). Paralegals assist prisoners in filling out bail application forms and then lodge them with the relevant court, and advise convicted prisoners who wish to appeal against their sentence. Both instances use standard forms developed by the PAS in consultation with the judiciary.

Results

After two years of operation, more than 550 paralegal aid clinics have been held, reaching over 10 000 prisoners. In 2002 an independent evaluation report found that prisoners had become more sophisticated in their understanding of the law and court procedure. In addition, the PAS facilitated the release of over 1000 prisoners, whether through bail, discontinuance or discharge.

The key to the success and sustainability of the project, according to the evaluation report, has been the 'highly co-operative and trusting spirit' the paralegals have developed with the various criminal justice agencies. This has given them unprecedented access to the prisons. Since they do not offer representation to individuals but restrict their services to education, advice and assistance, lawyers do not view them as a threat. Also, since they do not seek to find fault with individual agencies in the system, but to assist the system as a whole to function better, they are valued by the police, courts and prisons.

ADVANTAGES:The advantages of such legal aid clinics is that these help in catering to the needs of the people who are in the lowest rung of the society and especially the uneducated masses and other people too in making them aware of their legal rights and also make them understand the mechanism for approaching the courts and filing their claims and enforcing their rights.Such legal aid clinics will also be very useful if the Local Courts are established as these clinics can educate these people about the working and functioning of the courts and also take feedbacks from these people and bring about the required changes to suit and meet the needs of the people.[56]

NOVA SCOTIA

Nova Scotia also has introduced Small Claims Courts on the similar lines as that of U.S.A.

Small Claims Court - in Small Claims Court one can make a claim for up to $15,000 or for the return of goods valued up to a maximum of $15,000. One cannot use this court for matters dealing with ownership of land, wills or for malicious prosecution, false imprisonment, or defamation (libel and slander).

Small Claims Court is less formal than other courts. The case is heard by an adjudicator, not a judge and the adjudicator is a lawyer.[57]

CANADA

The judicial system of Canada too encompasses the concept of **Small Claims Courts:**

Small Claims Courts in Canada provide a way for the average person to resolve simple disputes concerning money or property with a neighbour, a merchant and even a customer for amounts up to $10,000, (varies in each province) without having to hire a lawyer. They are quicker and cheaper than regular courts and are run fairly informally.

- In these courts,one can sue for sue for damages in auto accidents, property damage, some landlord tenant disputes,broken verbal or written contracts, bad cheques, unpaid wages, or the collection of personal debts. This is a partial list and rules vary by province.[58]
- The amounts one can sue for are set by the province in which one is suing. The highest amount one can sue for in Small Claims Court in Ontario is currently $10,000.00

At the end of it all,it seems that many countries have tried and been trying to bring about the necessary changes to provide for easy access to justice for the people.There have been efforts to set up Tribunals and courts to deal with the small disputes,to prove for Alternative Dispute Mechanisms for the speedy disposal of cases and so on and so forth.As such,changes have been made not only at the grass root levels but also at the other stages when changes were required.In India,ADR and other Tribunals set up have achieved a fair amount of success.Now,there is a need to set up courts such as the Local Courts at the grass root level in order to improve access to the courts to the people.If such changes according to the needs are brought about,then ther is a possibility that the heavy back-log of cases with the higher courts may reduce and the unpopular notion in the minds of the people as courts being absolutely inaccessible may change.But ,it is not going to be an easy task for the reformers.Only over a period of time can steady growth

be achieved and this can be possible only if one aspect is always kept in mind,i.e., ACCESS TO JUSTICE IS THE BASIC RIGHT OF EVERY PERSON AND IS THE PILLAR ON WHICH HUMAN RIGHTS REST.

Top

CHAPTER 8: LOCAL GOVERNANCE AND ITS ADVANTAGES

Local government is a very crucial institution. It is at the local level that people can best define their priority problems and organize to deal with them. Moreover, the poor and the hungry interact almost exclusively with the local government, from which they seek services and support. Local governments are capable of providing public services, mobilizing community resources, stimulating private investment, expanding rural-urban linkages, adapting national development policies to local conditions, and investing in local infrastructure. They can also be a crucial source of empowerment, by offering opportunities for long-neglected citizens to participate in the local decision making process, acting as a voice for local needs at higher levels, and providing adapted support for local people's initiatives. They can also be centers of dispute resolution within that particular area and can play a very important and supportive role in trying to deal with the basic problems faced by the community and also settle the minor disputes arising between the people.

In the past, most developing country administrations were highly centralized: orders emanated from the higher officials and were relayed down to the field through layers of national, regional, district, and local officials. Local administrations were simply the lowest levels in these systems, and they were under strong central control with no independence and transparency in their working and functioning. This hierarchical manner of doing things has failed in most countries. It has been **expensive and inefficient**, contributing to the **financial crises** faced by so many developing countries. It has also been **heavy-handed and inflexible**, allowing for very little input or supervision by the local people themselves.

The failure of this centralized approach has led to renewed calls for **devolution of powers** with more responsibility placed on local governments (as well as local communities) to achieve a more effective and sustainable provision of services. This reorientation gained greater importance as structural adjustment reforms cut down the size of the central State, in both its financial and human resources, and in the extent of its power. Increasingly, such initiatives are associated with those advocating improved local governance and increased popular participation in the management of local affairs.

However, none of the positive attributes of local government listed above come about automatically. Local governments in many instances are agencies controlled by local economic, political, or social elites. Without effective supervision, local governments can easily fall under the control of coalitions between bureaucrats and local elites designed to serve minority interests and foster corruption. Moreover, most local governments severely lack financial and material resources, as well as competent personnel that is respectful of the needs of the poor and capable of satisfying them. Whether local governments fulfill their potential will depend on the type of pressures and encouragements they receive from above (central governments) and from below (civil society).[59]

Therefore,local governments ,as it can be seen,can play a very important role especially in addressing the needs of the poor. What is required is to suggest some reforms that can help do away with the disadvantages that may plague that system and deter it from working efficiently. I feel that the advantage with local governments is the ability of the people of that particular village or locality to take part in the decision making process. This is because the people of that locality are the ones who are best acquainted with the problems faced by them and can also suggest remedies depending on the resources and their needs instead of some government official working arbitrarily.

Top

CHAPTER 9: CONCLUSION: ACCESS TO JUSTICE-THE NEED OF THE HOUR

Access to justice ,thus,becomes the prerequisite for the existence of a free society. The Indian judiciary and the legal profession have set high standards of excellence but the system as a whole is somewhat beyond the reach of the ordinary man. Justice in India has virtually become a dream for the poor. This must not be the case. It's high time we realize that access to justice is one of the basic factors that can help in lifting the standard of living of the people,especially the poor. And to achieve this,we need reforms, and not just reforms;we need proper implementation of those reforms. We need to restore faith and confidence in the minds of the people about the legal system and ensure peace,harmony and order in the society.

Further,many reforms are required to provide for speedier and easy access to justice. There is also the need for reforms to make the whole judicial system efficient,transparent and effective. All this may take a long time,but efforts should be there. Also ,according to me,when reforms are being introduced, one very important point to be noted is that what will be the impact of the reforms on the other levels of the judiciary. We should not blindly introduce reforms without studying its effect on the system as a whole. For example,if reforms are being introduced in the lowest level of the juiciary,then we must also take into consideration ,the effect of implementation of those reforms on the other sectors. Only in this way will we be able to achieve a balance between all the levels of the judiciary. In other words,the emphasis should be on a balanced and slow growth of the whole system. If reforms are introduced in such a pattern, then it may help in building up an efficient and effective judiciary.

Therefore,as already said ,access to justice should be considered as the need of the hour and adequate and necessary efforts should be made to improve access to justice for all sections of the society,especially the poor. And the efforts must follow a planned and defined strategy-preferably a step by step approach to deal with the problem. Only then will one be able to a legal system wherein justice does not remain in the dark-infact becomes a reality.

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