

Judicial Reforms

Presentation by

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to

the National Advisory Council

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Problems of Rule of Law

- Law's delays and huge pendency of cases
 - Erosion of public confidence in justice system
 - Rise of criminal groups to “settle” disputes for a price
 - Many “missing cases” resulting in grave injustice to the poor and weak.
 - Low level of competence of judges
 - Credible allegations of arbitrary approach and doubtful conduct of several judges
 - Appointments to higher judiciary “usurped” by peers
 - Absence of judicial accountability
 - Political interference in crime investigation
 - Loss of faith in the police functioning.
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Proposals now before the NAC

- Local Courts system for speedy justice as an integral part of independent judiciary
- An all-India Judicial Service for recruitment to subordinate judiciary

Law's Delays - Cases Pending (2002)

- Supreme Court : 23,012 (1,04,936 in 1991)
 - High Courts : 3.62 million (2.65m in 1993)
 - Allahabad : 0.87 m
 - Kerala : 0.41 m
 - Madras : 0.35 m
 - Bombay : 0.30 m
 - Delhi : 0.18 m
 - Andhra Pradesh : 0.15 m
 - Gujarat : 0.14 m
 - Rajasthan : 0.13 m
 - Average : 5600 cases / Judge
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Law's Delays - Cases Pending

- District and Subordinate Courts : 20 million (2002)
 - Civil : Less than 1 year : 2.52 m (1998)
 - 1 - 3 Yrs : 2.2 m ,,
 - 3 - 10 yrs : 1.73 m ,,
 - Over 10 years : 0.34 m ,,
 - Criminal : Less than 1 year : 5.56 m ,,
 - 1 - 3 Yrs : 4.52 m ,,
 - 3 - 10 yrs : 2.85 m ,,
 - Over 10 years : 4.84 m ,,
 - Average : 1660 cases / judge

Judge – Population Ratios

- UK : 50.09 / million
 - Australia : 57.07 / „
 - US : 107 / „
 - OECD countries : 113 / „

 - India : 11 / million

 - Total sanctioned strength : 13,000
 - Requirement : 75,000
 - Vacancies : 1,874
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Justice Denied

- 2 Cases
 - The case of the Dog Bite
 - The case of the Police Van Accident

Recent Efforts

- Supreme Court pendency declining
 - Use of Information Technology
 - Bunching of similar cases
 - Faster disposals
- Lok Adalats
 - Legal Services Authorities Act-1987
 - Claims under Rs 10 lakhs
 - Matters relating to public utilities
 - LA and MV Act compensation cases

Recent Efforts

- Fast Track Courts (Tenth Finance Commission)
 - 1,734 proposed – total cost : Rs. 5.03 million (5 years)
 - 980 established
 - 295 notified
 - Only sessions criminal cases
 - 1,88,271 cases transferred
 - 77,000 disposed of
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Access to Justice - Factors

- Number of Judges
- Physical proximity
- Procedures
 - Written submissions
 - Need for legal language
 - Need for skilled lawyer
 - Complexity in service of summons
 - Immediate mechanism for enforcement of decree

Access to Justice - Factors

- Language
- Speed
 - Singapore : 35 days
 - Norway : 90 „
 - Japan : 60 „
- Costs
- Perjury
- Perception of fairness

Speedy Justice – US Experience

- Small Claims Courts (people's courts)
 - Municipal, city or regional
 - Civil suits – \$1000 to \$5000
 - Minor violations of law – eg: traffic cases
 - Simple procedures
 - Lawyer allowed (except in California, Nebraska & Michigan)
 - 100 million cases tried annually

Speedy Justice –UK Experience

- Lay and Unpaid Justices of the Peace (JPs)
 - 30,500 in number
 - Ranked above local MP
 - Date back to 1361 AD
 - Handle over 90% of all criminal and many civil cases

Speedy Justice –UK Experience

- Small claims procedures in formal courts
 - Limit:
 - £1000 in 1990s
 - £5000 now
 - Informal procedures
 - Speed of disposal
 - Costs not awarded
 - Popular and effective

Historical Perspective

- Ancient India – dispensation of justice was decentralized
 - Colonial rule stifled people's participation
 - The Indian Police Commission, 1902 – “it is expedient to relegate the trial of petty offences to the village headmen and the Panchayats”
 - Ashok Mehta Committee 1978 suggested Nyaya Panchayats presided by qualified judge
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114th Law Commission Report

- Panchayat courts are capable of dealing with petty civil litigation and criminal cases
- Panchayat courts can dispose of cases more cheaply and expeditiously
- Grama Nyayalayas suggested to distinguish from elected or traditional Nyaya Panchayats and from voluntary or optional Lok Adalats
- Grama Nyayalaya proposed with one professional judge and two lay judges

Need for Local Courts

- Justice accessible to the people
 - Geographical
 - Psychological
 - Financial
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Need for Local Courts

- Excessive formalism and alien language
 - Poor getting alienated
 - Losing faith in the judicial process
 - Perjury has become endemic
 - Costs of litigation prohibitive
 - People resorting to rough and ready justice through muscle power
 - Rule of law vitiated

Difficulties of Nyaya Panchayat Concept

- Appointment by government/district magistrate makes it partisan
 - Politicization inevitable
 - Factions and caste vitiating society
 - Three or five member court cumbersome
 - Legal representation denied
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Requirements of Local Courts

- For a limited population (25,000 to 50,000)
 - Physical proximity – no more than 10 kms
 - Integral part of judiciary
 - Independent
 - Low costs
 - No burden of establishment or infrastructure
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Requirements of Local Courts

- Simple procedures
 - Local language
 - Lawyer, or agent, or self-representation
 - Exclusive jurisdiction – civil and criminal
 - Provision for appeal
 - Regular inspections
 - Accountability to formal judiciary
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A Model of Local Courts

- Honorary magistrate:
 - Lawyer or retired official or reputed person
 - 3 – year tenure
 - One per 25,000 for rural; one per 50,000 for urban
 - Appointment and removal by District Judge
 - Honorarium + fixed travel and secretarial allowance — total not to exceed Rs 15,000 per month
 - Existing infrastructure
 - Representation through lawyer or agent or parties themselves
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A Model of Local Courts

- Exclusive jurisdiction
 - Rs 100,000 civil
 - 1 year's imprisonment: criminal
 - Court in area of cause of action / offence
 - 90 days for disposal – day-to-day hearings
 - Appeal to Senior Civil Judge / Asst. Sessions Judge
 - Inspection by JMFC
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Advantages of Local Courts

- 30,000 courts in short span
- Low cost
 - Under Rs 600 cr / yr – India
 - Under Rs 50 cr / yr – major states
 - Under Rs 2 lakh / yr / court
- No permanent establishment

Advantages of Local Courts

- Integral to independent judiciary
 - No political role
 - No elective component
 - Local language
 - Time-bound justice
 - Appeal provision
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“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.....

For most lay litigants, the alternative to cut-price solutions is not Rolls Royce justice: it is no access to justice at all”

All-India Services

- Article 312 provides for creation of All-India Services by a resolution of Council of States (2/3 majority), followed by a law of parliament.
- Article 312 (4) already envisages creation of an all-India Judicial Service

Case for Indian Judicial Service (IJS)

- First Law Commission recommended it in its 14th report.
- Quality of Judges is widely held to be unsatisfactory.
- The best lawyers and brightest youngsters are not attracted to judiciary.

Support for IJS

- Chief Justices conferences favoured IJS – in 1961, 63 and 65.
- Chief Justice of India recommended creation of IJS in 1972.
- Eighth Law Commission recommended IJS in its 77th report.
- Article 312 was amended in 1976 by 42nd Amendment, providing for IJS
- Law Commission in 116th report again strongly recommended IJS

Steps Required Now

- Repealing of clause (3) of Article 312, to enable longer experience for IJS officers in subordinate judiciary before they are elevated to High Courts

Or

- Framing of rules to provide for 5 years on-the-job training for IJS officers as subordinate judges below the rank of District Judge
 - A resolution of Council of States by 2/3rd majority
 - A law of parliament creating IJS
 - All other conditions similar to IAS and IPS
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