LAW COMMISSION OF INDIA

ONE HUNDRED AND FOURTEENTH REPORT

ON

GRAM NYAYALAYA

AUGUST 1986

Shri Ashok Kumar Sen,
Minister for Law and Justice,
Government of India,
Shastri Bhavan,
NEW DELHI.

August 12, 1986

Dear Minister for Law and Justice,

I feel happy to forward the first report of the present Law Commission (One Hundred and Fourteenth Report of the Law Commission) on the topic of 'Alternative Forum for Resolution of Disputes at Grass-roots Level'.

The present Law Commission was set up effective from September 1, 1985. Having regard to its terms of reference, it was resolved by the then members of the Law Commission to give top priority to the question of tackling the mounting arrears in courts. It was a two-pronged drive. One was to introduce a participatory forum of justice within the mandate of the Constitution of India. Another was to examine its impact on the question of backlog and ever increasing arrears in courts.

Browsing through the report, you would be able to find that a comprehensive working paper was issued and a national debate was developed. In the meantime by your letter dated February 17, 1986, you conveyed to the Law Commission the decision of the Government to entrust the work of recommending judicial reforms to the present Law Commission. Comprehensive terms of reference drawn up for the proposed Judicial Reforms Commission was annexed to your letter. The first term of reference in the matter of recommending judicial reforms was to some extent overlapping with the first term of reference of the Law Commission. Therefore, the Commission continued its enquiry, dialogue and deliberation with regard to the working paper issued by it. I have, therefore, great pleasure now in forwarding the report.

There is undoubtedly some delay in preparing and submitting the same. The Law Commission had a tentative working schedule and it was hoped to submit the report by the end of June or latest by the middle of July, 1986. However, as you are aware that I was designated as High Legal/Judicial Authority for identifying and specifying certain areas pursuant to para 7.2 of the Punjab Accord. It was a time-bound programme. Consequently, the schedule of the Law Commission got disturbed by more than a month. This could have been avoided if the Commission had full quota of prescribed membership. Save with the presence of Member Secretary, I am the lone full-time Member. Hence this delay.

I hope that the report will be expeditiously placed before the Parliament and printed and circulated so that effective and expeditious steps can be taken for its implementation.

With regards.

Yours faithfully
Sd/-
D.A. DESAI

Encl : A Report

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CHAPTER I

CONSTITUTION AND TERMS OF REFERENCE OF LAW COMMISSION OF INDIA

Terms of reference of Law Commission.

1.1. The Eleventh Law Commission was constituted on September 1, 1985 with the following terms of reference :

1. To keep under review the system of judicial administration to ensure that it is responsive to the reasonable demands of the times and in particular to secure—

(*a*) elimination of delays, speedy clearance of arrears and reduction in costs so as to secure quick and economical disposal of cases without affecting the cardinal principle that decisions should be just and fair;

(*b*) simplification of procedure to reduce and eliminate technicalities and devices for delay so that it operates not as an end in itself but as a means of achieving justice;

(*c*) improvement of standards of all concerned with the administration of justice.

2. To examine the existing laws in the light of Directive Principles of State Policy and to suggest ways of improvement and reform and also to suggest such legislation as might be necessary to implement the Directive Principles and to attain the objectives set out in the Preamble to the Constitution.

3. To revise the Central Acts of general importance so as to simplify them and to remove anomalies, ambiguities and inequities.

4. To recommend to the Government measures for bringing the statute book up-to-date by repealing obsolete laws and enactments or parts thereof which have outlived their utility.

5. To consider and to convey to the Government its views on any other subject relating to law and judicial administration that may be referred to it.

Terms of reference of Judicial Reforms Commission.

1.2. Subsequently on February 17, 1986, the work to be assigned to the proposed Judicial Reforms Commission was entrusted to the Law Commission. The terms of reference relevant to judicial reforms on which the Law Commission was invited to work are as under :

1. The need for decentralisation of the system of administration of justice by-—

(*i*) establishing, extending and strengthening in rural areas the institution of Nyaya Panchayats or other mechanisms for resolving disputes;

(*ii*) setting up of a system of paticipatory justice with defined jurisdiction and powers in suitable areas and centres;

(*iii*) establishing other tiers or systems within the judicial hierarchy to reduce the volume of work in the Supreme Court and the High Courts.

2. The matters for which Tribunals (excluding services Tribunals) as envisaged in Part XIV-A of the Constitution need to be established expeditiously and various aspects related to their establishment and working.

3. The procedural laws with a view generally to disposing of cases expeditiously, eliminating unnecessary litigation and delays in hearing of cases and reform in procedures and procedural laws and particularly to devising procedures appropriate to the terms envisaged in items 1 (i) and 1(ii).

4. The method of appointment to subordinate courts/subordinate judiciary.

5. The training of judicial officers.

6. The role of the legal profession in strengthening the system of administration of justice.

7. The desirability of formulation of the norms which the Government and the public sector undertakings should follow in the settlement of disputes including a review of the present system for conduct of litigation on behalf of the Government and such undertakings.

8. The cost of litigation with a view to lessening the burden on the litigants.

9. Formation of an All India Judicial Service; and

10. Such other matters as the Commission considers proper or necessary for the purposes aforesaid or as may be referred to it from time to time by the Government.

Constitution and Composition of Law Commission.

1.3. The notification constituting the present Law Commission for a period of three years from September 1, 1985 to August 31, 1988 provided that the Eleventh Law Commission shall consist of : (*i*) Chairman (*ii*) Three full-time Members (*iii*) Member-Secretary (*iv*) Special Secretary Legislative Department, ex-officio Member and (*v*) Three or more part-time specialised Members depending on the nature of the topic referred to the Commission for study. By the notification dated September 2, 1985, over and above the Chairman, Justice K.N. Goyal of the Allahabad High Court was appointed as a full-time Member. The Member-Secretary and Special Secretary were notified. They belong to permanent service in the Ministry of Law. Later on Mr. Justice K.N. Goyal ceased to be a full-time Member and has become a part-time Member. The post of Special Secretary is abolished. Therefore, the Commission today consists of Chairman and Member Secretary, an officer belonging to Indian Legal Service and a part-time-Member.

Reform in Judicial Administration.

1.4. Having regard to its first term of reference, namely, 'to keep under review the system of judicial administration to ensure that it is responsive to the reasonable demands of the times', the Commission decided to give highest priority to the question of basic reforms in judicial administration. The present disturbing situation clearly visible to all in the administration of justice will require consideration of numerous structural changes. The Commission identified the rural poor as the victims of the present judicial system and accordingly, drew-up its agenda of work in which the rural poor were assigned the highest priority. The Commission had before it the well researched analysis of the work of the first ten Law Commissions made by Dr. Upendra Baxi in his book 'The Crisis of the Indian Legal System'.[1] The analysis shed light on the working procedure then in vogue and the need to recast the same on the lines suggested in the analysis. It was felt that law reform is not the preserve of a few technocrats working in the office of the Law Commission. It must be a participatory process and the width and range of participation must be cast wide so as to include those who suffered by the colonial legal system which has become wholly stratified. Accordingly, the Commission was of the view that it should have consultation with the widest range of informed public opinion before it finalised its recommendations for various changes in the system. Therefore, it devised a procedure whereby a working paper on its terms of reference should be prepared, translated into Hindi through the good offices of the Official Languages Wing of the Legislative Department. It was also decided to hold numerous discussions, organise seminars and workshops and invite consultations as it could reasonably handle on the draft paper. Invitations were specifically extended to lawyers, practising at grass-roots level, Judges belonging to subordinate judiciary, legal academics and social activists.

Circulation of working paper.

1.5. The working paper of the Law Commission on the 'Alternative Forum for Resolution of Disputes at Grass-roots Level' was circulated to various bodies and persons to elicit their views and comments thereon. Its English text as it was circulated, appears in Appendix I to this Report. The working paper was translated in Hindi by the Official Languages Wing and a voluntary organisation also produced its translation in Tamil. A copy of the working paper prepared by the Commission was sent to the Chief Justice and Judges of the Supreme Court, Chief Justices and Judges of the High Courts, Chairman of the Bar Council of each State and Bar Council of India and leading advocates, editors of the leading daily newspapers etc. Initially, the last date for the receipt of views and comments was kept on December 1, 1985 but on public demand, it was extended upto March 31, 1986.

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[1](1982) Ch. 9, pp. 244 to 294.

1.6. The Commission launched a nation-wide debate on the subject by meeting a well attended Press Conference on December 27, 1985 with a request that a wide coverage may be given to the proposals of the Law Commission so that the message could reach to as many people as possible. The Press responded enthusiastically and an extensive coverage was given to the proposals of the Law Commission in national dailies and language newspapers. A good coverage of the proposals was transmitted through Doordarshan and Akashvani also. Keeping in view the importance of the subject and for an indepth study of the matter, the Commission held in collaboration with Law Faculties, Legal bodies, social organisations, Judges and Advocates, academics, social activists, seven workshops at Delhi (Union territory), Salem (Tamil Nadu), Jaipur (Rajasthan), Varanasi (Uttar Pradesh), Ranchi (Bihar), Calcutta (West Bengal), and Indore (Madhya Pradesh). With a view to establishing a rapport with the people in remote villages, we paid visits to villages, one to a tribal village inhabited by members of Munda tribe and another to a village near Varanasi where Panchayat members and other elders of eight nearby villages assembled. Persons from all walks of life were invited to participate in the workshops. Response to the Commission's proposal has been varied and extensive. A truly national debate developed.

Nation-wide debate.

CHAPTER II

THE OVERALL APPROACH OF THE ELEVENTH LAW COMMISSION

Public impression on implementation.

2.1. There exists a dominant public impression that the Law Commission's reports are usually not implemented. From time to time, the national dailies have carried, over the last decade or so, features entitled "*Reports That Never Get Off Paper*" or "Law Commission's Reports Gather Dust". That such an image should persist is a sad reflection on the image and status of law reform in India. Compared with this, the Law Commissions in other Commonwealth countries, for example, enjoy a unique public standing and enviable attention from the government.

Real position.

2.2. The Eleventh Law Commission is aware that this public image is, as all images, not based wholly on facts. As the analysis offered by Dr. Upendra Baxi reveals that of the first fifty-nine reports of the Indian Law Commission, at least twenty were legislatively implemented and four were partially implemented. On the other hand, Dr. Baxi has also been able to highlight the fact that while six reports were filed or rejected, as many as eighteen were yet awaiting implementation, eleven were still awaiting publication.[1]

Status position.

2.3. Dr. Baxi has pointed out the many "puzzles" in arriving at any quantitative or qualitative understanding of the implementation process. But we accept the legitimacy of the criticism levelled by him that it is "not possible.....to lay all the blame on the Government for the 'state of implementation' of the Law Commission of India reports".[2] We agree that the Law Commission's own "lack of concern for its effectiveness may have been a major factor for the present state of affair."[3] The Eleventh Law Commission has, accordingly, decided to prepare an authoritative status paper on the process of implementation of the Commission's reports thus far.

General approach to Law Reform.

2.4. Dr. Baxi has also drawn compelling attention to the fact that the successive Commissons have failed to formulate a general approach to the task of law revision and refrom. Surely, a national law reform body must have a policy perspective on the nature and state of law revision and reform in India. The Commission intends, as a part of its work, to propose for national debate the entire question of perspectives, methods, processes and goals of law reform in a traumatically changeful contemporary Indian society. The Commission may even venture to express the hope that its formulations in this regard may eventually pave the way for a national statement, by way of Parliamentary resolution, on law reform and law revision policy.

Approach of the Present Law Commission.

2.5. As the next Chapter illustrates in detail, the Eleventh Law Commission has already taken into account, rather fully, the constructive advice on law reform processes and tasks offered by Dr. Baxi. But in this chapter we consider it necessary to broadly outline the approach that the Eleventh Law Commission proposes, generally, to adopt.

First, this Commission feels it necessary to state that law reform and revision to be fully informed by the constitutional perspectives emanating from the Preamble, Fundamemtal Rights and Duties, and the Directive Principles of State Policy enshrined in the Constitution of India. Article 39-A provides a succinct charter of law refroms for India. Our prexent Report identifies how this article can provide fresh points of departure, and of arrival, in the process of conceiving law reforms and, hopefully, in the process of the implementation of law reform proposals by the Government.

Second, the Commission believes that legal order is an inestimable resource for national development, the unity and intergrity of the Nation, and for the pursuit of the lofty ideals enunciated by the Preamble of the Constituation of India.

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[1] See U. Baxi, *The Crisis of the Indian Legal System* (1982) pp. 276-285.

[2] *Id.* at 284.

[3] See U. Baxi, *The Crisis of the Indian Legal System* (1982) pp. 284.

Cynicism concerning the nature and future of law and the capabilities of the law, its processes and instituations in protecting and promoting these values is we think, constitutionally forbidden. Every act of purposeful law reform must be regarded as an act of investment in the regime of constitutional democracy.

Third, the preambulatory recital of a "socialist, secular, democratic, republican" India created by the Constitution, necessarily implies that law reform must be a participatory affair. All affected interests must be adequately consulted. Law reform, as Dr. Baxi has reminded us, must not be conceived merely as a sectoral affair involving merely the reform of the lawyer's law.[1] Laws affect people and it is people whom we must consult in the law reform process. And people include more categories than lawyers, judges and administrators, indispensable and valuable though their participation is, the consumers of law, its beneficiaries, as well as the victims of the administration of laws and justice must have a voice, a say in the process of the formulations of the law reform proposals. In one word, such proposals must be formulated with the widest possible participation. Law reform must be a truly participatory process.

Fourth, this Commission believes that simultaneously with reform of substantive and procedural laws, its task, constitutionally conceived, requires it to formulate chages in the institutions of the law as well. Normative revolutions without corresponding institutional renovation create merely 'symbolic' reform exercises and earn, through unfulfilled expectations, for the processes and institutions of law reform a just measure of cynicism and contempt in course of time. This, in turn, rubs off to the symbolism of the law itself creating exhorbitant social costs — including disrespect for the law —which a developing nation like ours simply cannot afford.

Fifth, and for the same reason, the Commission would like to urge the Government of India, and parliament, to evolve time-bound procedures for consideration of the Commission's reform proposals. This would include a prompt publication and dissemination of its reports and a set of time-bound procedure for inter-mini sterial consultations.

Sixth, as its further contribution to the elaboration of these procedures, the Commission declares its willingness to associate itself with the process of ministerial and inter-ministerial considerations, communication of the Commission's points of view, beyond the printed word, to the ministries responsible for responding to its proposals is vital to the process of law reform. This procedure should not merely help expedition but also assist a wider dialogue within the Government for the maturation of the law reform processes and proposals. As a related aspect, the Commission itself will, in the processs of formulation of the proposals, seek consultation with the Governments of the States and Union territories and law reform commissions, and other related centres of decision-making across the country.

Seventh, law reform, conceived as a process of systemic change, will require some degree of co-ordination in the future. While it is true that the Commission can never, even when its present meagre resources are astronomically increased, become an exclusive body for preparing law reform proposals, there is need to accord some consultative status to the Commission when other law reform committees are set up by various Ministries, especially when these involve *structural* changes in the legal system. Such a consultative status will ensure that the best advice of the Commission is available to other law reform committees, mostly task-bound and *ad hoc* in nature. It will also provide to the Commission sources of learning and experience in diverse areas, which ultimately are related to the structural renovation of the Indian Legal System. We urge the Government to consider this suggestion with the urgency and seriousness it so obviously merits. The Commission must gracefully acknowledge the beginning made in this direction when Reports of Justice Mulla Committee on Jail Reforms has been forwarded to it for comments, analysis and method of implementation.

Finally, (without being exhaustive) since all changes affecting legal system involve outlays of expenditure, it will be necessary for the Commission to always prepare a first draft, as it were, of the magnitude of the investment needed. The Commission, naturally, hopes to receive the fullest co-operation of the Ministry of Finance by way of advice in this connection. By the same token, law reform should be viewed as a dynamic component of planning. There is need for according some consultative status to the Commission both in the Planning and the Finance Commission.

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[1]See U. Baxi, *The Crisis of the Indian Legal System*, (1982), pp. 255-259.

Wider role for Law Commission.

2.6. In the foregoing, we have indicated our conception of the process of dynamic and feasible law reform. The Commission has to cease to remain an eclectic appendage of the Government if it is to perform its mission of assisting in the restructuring of the Indian Legal System. In order to play its full role in the tasks of using law as a means of national development and the unity and integrity of India, it must necessarily not merely initiate the process of law reform but also coordinate the consideration of the law reform proposals. The participatory character of law reform, as conceived by us, includes not just the crucial task of gathering of views on law reform proposals from the people. It also includes continuing participation within the government for a fuller realisation of the potential for law reform towards the constitutional goals and continuing reinforcement of these goals.

CHAPTER III

APPROACH DISCLOSED IN THE WORKING PAPER

Past attempts for reform.

3.1. Unmanageable bakleg of cases, mounting arrears and inordinate delay in disposal of cases in courts at all levels—lowest to the highest—coupled with exhorbitant expenses—have attracted the attention of not only the members of the Bar, consumers of justice (litigants), social activist, legal academics and Parliament but also the managers of the courts. The Chief Justice of India has gone on record saying that the 'justice system as in vogue in this country is about to collapse'. The disturbing situation so disclosed attracts attention of anyone concerned with law reform. Numerous suggestions have been made by the earlier Law Commissions for introducing redical reforms in the system of administration of justice. The sole governing consideration till then was how to reduce the delay in disposal of cases, make the system resilient by removing its stratification, making the system less formal and truly inexpensive i.e. to bring it within the reach of the poor. The Fourteenth, Fifty-fourth, Seventy-seventh and Seventy-ninth amongst other reports of the Law Commission, recommending numerous changes keeping the system in its basic frame-work intact were directed towards peripheral changes. The fall-out of these changes, we observe with regret, has been further deterioration in the efficacy of the system. The law Commission accordingly, decided to approach the matter from a hitherto unexplored end.

Participatory justice.

3.2. Both the law making and the judicial administration since the British days were non-participatory in character and continues to retain that feature till today. 'Participation by broad masses of people, or even by the interests immediately affected by it, in the process of the making and implementation of laws was virtually unknown; unless of course, we regard protest and disobedience as forms of group participation in law making.'[1] The new approach must strike at the root of this non-participatory method. While retaining the acceptable features of the present system, the working paper focussed its attention on inter-linking it with participatory model which may help in deprofessionalisation of the administration of justice. Participation was to be invited in the process of recommending law reforms and participation may be advisedly introduced in the administration of justice. These were the twin objectives in formulating draft proposals in the working paper. History, it is said always sheds light on the future action to be taken and provides a feedback. The historical perpective was extensively examined in the Working Paper and the inevitable conclusion that emerged therefrom was that tinkering with the system at its fringes was foredoomed to failure. It is self-evident that litigiousness could not be reduced by merely tinkering with procedures of regular courts of law. What has become necessary is a new institutional forum stripped of technicalities and the procedural rituals of the regular courts. The non-participatory British model of administration of justice alienated the people from the system because of its foreign origin, technicality, extreme formalism, rigid rules of procedure and relevance and foreign language. It has till today remained an alien system which has no living contact with the masses and is not meaningful to them.[2] The historical perspective shaped the thinking of the Commission and an attempt was made in the draft proposals to structure administration of justice on participatory model.

Justice at Grass-roots level.

3.3. Once a tentative decision was taken to model judicial administration on participatory basis, it had to be decided at what level it should be introduced. Judicial administration in this country is hierarchical in character. There is a court variously named as Munsif/Civil Judge (Jr. Divison) at the grass-roots level. It is subordinate to the court at the District level styled as Court of District and Sessions Judge which in turn is subordinate to the High Court at the apex of the State Judiciary. The Supreme Court has appellate jurisdicton over the decisons of the High Court.

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[1] U. Baxi, *The Crisis of the Indian Legal System*, (1982), pp. 44-45.

[2] *Report of the Legal Aid Committee*, (Govt. of Gujarat, 1971), para 13.12, p. 209.

Any structure pyramidic in character must have strong foundation and, therefore, the draft proposals centered upon restructuring the foundation. Accordingly, a forum for resolution of disputes emanating from rural areas and participatory in character was received. In reaching this tentative conclusion, the Commission took notice of the obivious fact that while the system of administration of justice in our country is one integrated whole, it ignores or overlooks the wide social and cultural divides between the rural population, urban population and the metropolitan elite. This approach ignores the vital fact that the nature of disputes arising in rural areas is wholly dissimilar from those in metropolitan areas and both required an altogether different model for resolution of the same. Commercial and mercantile litigation, enforcement of corporate laws, foreign exchange regulations, monopolies and restrictive trade practices and complex constitutional issues figure in the litigation in metropolitan areas. Labour disputes dominate the courts in industrialised cities and towns. The disputes that arise in rural areas are largely related to ownership and possession of agricultural land, problems of cultivation, boundary disputes, land records, petty family and property disputes. Ignoring the stark difference between the nature of disputes, the present system requires complex voluminous procedural laws for the dispensation of justice at both the levels. This realisation dictated the approach of the Commission to devise a different kind of forum for resolution of disputes at grass-roots level. The nature of the dispute must determine the procedure and the forum for its resolution. Prior to the introduction of the imperial courts' structure, socialisation on finding as well as the disputed issues, resolved with the appearance of a third party, and usually the third party was a respectable member of the same community.

One more realisation shaped the approach of the Commission. A popular though *unwarranted belief* generated and fed by the legal profession has been that no one is capable of rendering of dispensing justice unless he is trained in law. To support this unsustainable proposition it is oft-repeated that justice must be done according to law. It is not suggested that to render justice one must violate the law, but knowledge of law is not an essential pre-requisite for rendering justice. 'An interesting point that has been noticed by number of scholars in the sociology of law is that the differentiation of legal dispute and the slight shift from the traditional court procedures is related to the increased requirement for non-legal specialised knowledge in order to read the judgement. Wolfgang Friendmann stressed that most of the members of Government Committees, administrative organisations and special courts are non-legal experts.(1). Similarly, an arbitrator selected by the parties can decide and disposal of any dispute irrespective of the fact whether he was equipped in law. If law is commonsense then its development does not necessarily and wholly depend upon the knowledge of lawyers law or statutory law. The Commission, therefore, adopted the approach that rendering justice is not the preserve of legally trained mind. In rendering justice knowledge of local culture, traditions of the society, behavioral pattern and commonsense approach are primary and relevant considerations. More the administration of justice became characterised by the application of law, a view developed that too much legalistic approach hinders justice. Knowledge of local interest and local customs must be allowed to continue to operate and taken note of in dispensation of justice. The Commission also accepts the notions of the juristic talents of Indian people embodied in various systems of what has been termed as "peoples law".(2) All these considerations shaped the approach of the Commission in devising a participatory forum for resolution of disputes at grass-roots level.

New Forum.

3.4. The prejudice that the Nyaya Panchayats composed of elected representatives suffered at the hands of the elite and the superior courts cannot be wished away. The growth of Nyaya Panchayat was thwarted by the superior courts, but could not subscribe to the view that a lay person not trained in technicalities of laws is capable of resolving disputes and rendering justice. The question then arose : whether an attempt should be made to unify both the points of view. The approach of the Commission was that in order to ward off the fate that Nyaya Panchayat suffered, a synthesis must be made by providing the compoition of the forum consisting of a legally trained Judge and two lays Judges. This system is in vogue in numerous countries, a notice of which has been taken in the working paper.

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[1]Kalman Kulscar, *Peoples Assessors in the courts*, (1982), p. 24.

[2]See U. Baxi, *The Crisis of the Indian Legal System* (1982), Ch. II, p. 328.

After tentatively defining the composition of the new forum, the Commission approached the question of jurisdiction to be conferred on this forum. In order to be realistic, the Commission proceeded to collect information about the institution of the cases and the nature of disputes coming before the grass-roots level courts at present. The Commission also enquired the nature of disputes coming before the revenue authorities. The analysis of the cases instituted within a given period revealed the nature of disputes coming before the court at the lowest level. From this examination, the Commission worked out various heads of disputes which largely emanate in rural areas. The approach of the Commission was that simple and uncomplicated disputes which can be resolved in a short time should be entrusted to the new forum. The nature of disputes thus would show that the participation of local population would contribute greater towards their expeditious disposal. That approach was accordingly adopted.

Selection/nomination of lay Judges.

3.5. It was not easy for the Commission to devise the method of selection of lay Judges. There are two known view points in this behalf, election v. selection. Various statutes in operation in various States dealing with Nyaya Panchayats have provided for election of members of Nyaya Panchayats either directly by the village community or indirectly by the elected members of the Nyaya Panchayat. The Commission was not unaware of the fact the the system of election has comparative advantages and disadvantages. Undoubtedly, the country elects its political managers. Political justice of 'one man one vote' has considerably politicised even the rural community. One may elect a representative to the Assembly or the Parliament and he would operate from a distance, but if one has to elect Judges in a Small politicised village community, the disadvantages would for outweigh advantages of elective system. The Commission in order to establish that justice must not only be done but must seem to be done opted in favour of selected/nominated lay judges.

Preparation of Panel of lay Judges.

3.6. Once nomination was tentatively decided as the method of selecting lay Judges, an authority had to be devised on whom power had to be conferred to select the Panel of Judges. If power is conferred upon an exclusive executive authority to draw up the panel, there was likelihood of overt interference of executive in the selection of judges. If, on the other hand, an exclusive judicial forum was to select members of the panel, difficulty will be experienced in finding out reputable social workers who could be trusted to become lay judges. Judicial fora, by the very nature of their duties, keep away from mass contact. Their sources for information about genuine, honest, social workers whould be very limited. The executive, with its vast network of officers right upto the village level and in view of its mass contact would be able to spot persons in rural areas who could be trusted to be judges. The working paper, therefore, devised a compromise by providing an interaction between the executive and the judiciary in devising the panel. Accordingly, a suggestion was put forth in the working paper that the District Magistrate of the District and the District and Sessions Judge would both form a committee to devise a panel. To exclude any extraneous interference, a further safeguard was introduced in the form of supervision of the Chief Justice in the matter of drawing up of the panel. It was proposed that after the agreed panel. with recommendations, is submitted to the Chief Justice of the State High Court, he, with the assistance of two of his colleagues, would finalise the panel. The approach in the working paper was to exclude extraneous and irrelevant considerations in preparing the panel of lay judges so that the panelists would inspire confidence of the village community.

Composition of Gram Nayayalaya.

3.7. Once participatory model was accepted as the starting point of discussion, the composition of the forum had to be devised with such care that it inspires the confidence of the consumers of justice. Rejecting a purely elected body and simultaneously rejecting a purely State-nominated judge, the Commission devised a forum composed of a legally trained mind to be designated as Panchayati Raj Judge who would preside over the forum consisting of himself and two lay judges to be selected by him from the panel drawn up for the purpose. The three would constitute the new participatory forum. In devising such a forum, the Commission had in view the mandate of article 39A of the Constitution as also the Directive Principles of State Policy. Such a forum would be free from the orchestrated atmosphere of the present day courts; theirs would be an informal approach and the attempt would be to resolve the dispute by consensus. It would have the advantage of what is known as justice by one's own peers. The working paper accordingly suggested a sort of a village court consisting of a judge drawn from the State cadre of judges to be set up for the special purpose, called the Panchayati Raj Judges, and two lay judges. Its advantage, according to the Commission in the working

paper, was that the legally trained judge would assist the lay judges in application of law and the two lay judges would bring their commonsense approach, formed and guided by the local traditions and culture, and the behavioural pattern of the village community in resolving the disputes.

3.8. The Fifty-fourth Report of the Law Commission exhaustively examined the Code of Civil Procedure, 1908, with a view not only to streamlining the procedure but to make it less formal, more simple and conducive to expeditious disposal of cases and controversies coming before the court. The Seventy-seventh Report also made certain suggestions in this direction for reducing the delay in trial of suits before the trial courts and marginalise the arrears. Pursuant to these Reports, certain amendments were carried out. The Commission was interested in ascertaining the impact of these amendments. The statistical information furnished to the Commission revealed that instead of improving, the situation had considerably deriorated and the pendency, since the reports, had practically doubled. In para 2.3 of the working paper, the figures have been set out. The Commission was aware of a possible pitfall in that merely devising a participatory forum by itself would not effectively tackle the problem if it is burdened with the same procedure in dealing with the disputes coming before it. Processual justice, in the opinion of the Commission, has overtaken substantial justice. Numerous decisions rendered by the High Courts and the Supreme Court on the provisions of the Code of Civil Procedure would bear out this statement. Therefore, the Commission suggested that the Code of Civil Prorcedure, 1908, and the more cumbersome Indian Evidence Act, 1872, will not apply to the proceedings before the participatory forum. The Commission, accordingly, proposed that a very simple procedure which permits a decision to be reached expeditiously and effectively, informed by justice, equity and good conscience would govern the proceedings before the new forum.

Transport.

3.9. If litigants can be appropriately described as consumers of justice and the court system is devised to render service to such consumers on payment of fee for the service in the form of court fees, it is implicit therein that the service must be within the easy reach of the consumers of service. If consumerism approach appears crude in relation to the noble task of rendering justice, it can be said that in this age of the common man, justice must be taken to the doorstep of the people, people in search of justice at present have to go to the courts wherever they are established. Often times, people have to travel long distance to have access to justice. It is shown to be time consuming, expensive and even occasionally unproductive. It is implicit in the setting up of the new forum that it would not only be easily acessible but that it would try to assemble at the place of dispute or near the subject matter of dispute. Accordingly, it should have easy mobility. Towards that end, a transport vehicle must be provided so that this new forum can speedily travel to the place of dispute, carry justice to the doorstep of the people and dispose of the matter on the spot.

Execution of orders of forum.

3.10. A decision of a court or a body set up to adjudicate the dispute by itself has hardly any relevance to the person who complains of a justice having been done to him. After the decision is arrived at, the benefit granted by the decision must be translated into action. Execution of the judgments and decrees of the courts have been a fruitful source of further and more expensive litigation. The Commission was aware of the observation of the First Law Commission in its Fourteenth Report that "inordinate delays would frequently occur at various stages of the progress of an exectuion application." [1]The First Law Commission accordingly made certain recommendations to expedite disposal of execution proceedings, however, retaining Order 21 of the Code of Civil Procedure almost intact. The Eighth Law Commission in its Seventy-seventh Report, dealt with the problem of execution. Briefly it observed that "the courts do not devote as much attention to execution cases as they do to regular suits for the reason that the disposal of an execution case does not add to the unit of cases disposed of by the courts."[2] Some other marginal amendments were suggested. While the disease is diagnosed, the remedies have proved to be ineffective. The problem is thus further accentuated. The Commission accordingly invited debate by proposing that the orders of the proposed new forum shall, wherever permissible, be executed forthwith on the spot. As an illustration it was suggested that if the dispute was with

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[1] *LCI Fourteenth Report*, Vol. I, Ch. XVIII, para 8, page 435.

[2] *LCI Seventy-seventh Report*, Ch. IX, para 11.3, page 39.

regard to a right of way or a water channel or disturbances to easement of air and light, the decision must be implemented by removing the obstacles and translate the benefit given by the decision into action. And on the spot disposal which the Commission proposed, is likely to have lasting effect than a protracted court proceedings.

Jurisdiction (Civil).

3.11. Lastly, the question which engaged the attention of the Commission while drawing up the working paper was the limits of jurisdiction to be conferred on the new forum. The area of civil jurisdiction to be conferred on the forum did not present a very serious problem. The Commission collected statistical information from some Taluka level courts about the institution and disposal of cases and the nature of disputes brought before such courts for resolution. A common feature which appeared at that level was that the disputes emanating from rural areas centred round agricultural land, right ot cultivate, tenancies, possession, boundary disputes, records in respect of cultivation, right to take water from a channel or tubewell and incidental questions arising under the various agrararian reforms Acts. The information also revealed that there were petty disputes relating to marriage, customary divorces, maintenace, custody of children and partition of ancestral property. There were some disputes with regard to possession of farm houses, courtyards and right to graze cattle in commom pastures. This information was of a revealing nature and accordingly the Commission tentatively proposed area of jurisdiction on the matter of civil disputes under various heads as set out in para 2.7 of the working paper.

Jurisdiction (Criminal).

3.12. The problem of criminal jurisdiction presented some difficulty. Past experience showed that Law Commissions and committees dealing with Panchayat Raj Administration were reluctant in conferring extensive criminal jurisdiction on these village level tribunals. This Commission wanted to make a noticeable departure in this behalf because the proposed new forum was to include a legally trained Judge on whom, in the State cadre, the powers of a Judicial Magistrate First Class could be conferred without controversy. If such a trained person is to preside over the new forum, it would be grossly inpertinent not to confer extensive criminal jurisdiction on such a body, The commission was, therefor, tentatively of the opinion that the new forum will have jurisdiction to try all criminal cases which are presently tried by a Judicial Magistrate of the First Class.

Jurisdiction (Miscellaneous).

3.13. The Commission invited debate on the question whether the Civil jurisdiction can be further enlarged to include disputes having a flavour of denial of social justice, such as, non-payment of minimum wages, denial of the benefit of agrarian reform laws, etc.

Extent of Debate.

3.14. The Law Commission having set up its tentative formulations in a broad working paper invited a national debate on all the issues raised. It was also suggested that it would be open to everyone interested in the matter of judicial reforms to raise a debate on the subjects analogous to, or allied to, those set out in the working paper. The Commission records with satisfaction that a truly national debate developed.

CHAPTER IV

GENERAL FEATURES OF RESPONSE ON THE WORKING PAPER

Views of State Governments.

4.1. The establishment of courts subordinate to a High Court is constitutionally required to be undertaken by the State Governments (Articles 233-236 and Entry 65 in State List). Accordingly the, working paper was specifically circulated to all the State Governments for eliciting the views and comments thereon. In all, fourteen States have responded to the paper. The State Government of Madhya Pradesh, while generally concurring with the proposals, felt that the system when introduced may entail appointment of large number of judges and as such it would involve enormous financial requirement. On this premise, they expressed their inability to adopt the system due to financial constraints. The then Minister of State for Law in the State of Rajasthan, while extending full support to the proposals, forwarded number of suggestions to make the system more effective. The State Govcrnment of Orissa welcomed the proposal but voiced an apprehension that it might be difficult to find suitably trained judicial officers to hold the type of courts envisaged in the proposal. The State Governments of Punjab and Haryana while welcoming the proposal cautioned that the jurisdiction of Nyaya Panchayats should be such that there is minimum possible risk of party politics contaminating the decision of cases. The State Governments of Bihar, Kerala and Jammu & Kashmir supported the proposal. States like Karnataka and Maharashtra did withhold their support. A majority of States expressed broad agreement with the change envisaged in the working paper. However, Governments of certain States and Union territories like the State of Meghalaya and the Union territory of Arunachal Pradesh, where indigenous judicial system is in vogue for the tribal people, were of the view that the existing system should not be disturbed as they not only effectively dispense justice but the system is inexpensive and speedily available at the door-step of the tribals. Let it be clearly understood that where the system of judicial administation at village level is quick, inexpensive and easily accessible, it must not be disturbed. However, as and when they would like to get into the national mainstream, then the question of adopting the forum which is herein recommended must be adopted.

Workshops.

4.2. The workshops organised by the Commission attracted a broad spectrum of intelligentia interested in legal judicial system. Judges of the Supreme Court and High Courts, Judges of the Subordinate Judiciary and Members of the Tribunals, Advocates, academics, social activists, votaries of public interest ligtigation, officials manning the Law and Justice Department of the Governments and consumers of justice participated and enriched the debate. There was a broad consensus with the proposals set out in the working paper. There was near unanimity on the question that the present justice system has not only outlived its utility but, in fact, has become counter productive. Divergence in views appeared not on the requirements of change but the scope, volume, direction and degree of change. Votaries of status quo, while conceding that the justice system has become stratified, advocated peripheral changes. This ignores the past experience. Some centrists were of the opinion that the system which is in vogue over a century should be given a further lease of life and to make it resilient, they suggested such inputs as additional manpower and modern electronic gadgets.

On behalf of the Law Commission, after explaining the salient features of the proposals, the debate was listened to with rapt attention so that any suggestion worth considering may not escape its notice. Whenever, necessary the Commission intervened in the debate. When more clarifications were offered, those who came with reservations were ready to reconsider their views and finally a broad consensus emerged. A free and uninhibited democratic discussion was bound to throw-up hardcore negativists. While they advocated hands off from the present system, they were unable to explain its present tragic position and how to make it resilient and effective. No suggestion in that behalf worth-considering was put forth. An analysis of the views expressed by participants revealed a broad

consensus in favour of the propsols. Speakers repesenting social service institutions desired some changes in certain proposals while concurring with the suggestion of introducing a new forum for resolution of disputes. They were activists in the field of legal aid movement, social service and Lok Adalats. Their reservations were on the question of qualifications for panelists, method of election versus selection and the authority to drawup a panel of lay Judges.

There were votaries of the retention of the present Code of Civil Procedure with some further changes to be introduced in the same. They were of the opinion that substantial justice can only be rendered by following a detailed prescribed procedure.

Some participants coming from rural areas had genuine apprehension about the lay Judges remaining judicially independent while participating in decision making process. Their apprehension was that the village life has so much been politicised that it is impossible to come across any 'social animal, who is a political'. Add to it, according to them the factious village atomsphere disloving divisive tendencies along caste, class and religious denomination and, therefore, it would be impossible to find honest, socially-oriented village people who can be trusted for rendering even handed justice. While appreciating that knowledge of law is not a *sine qua non* for dispensing justice, they voiced their reservation on the question whether a society governed by rule of law can have judicial administration not manned by legally trained persons. They were disconcerted by the fact that in a caste dominated bureaucracy, the system of selection of lay Judges would effectively exclude persons belonging to Scheduled Castes, Scheduled Tribes, minorities and women, who must find representation in administration of justice.

These difficulties connot be dismissed as being without merits. All safeguards have to be devised to protect against such vicissitudes that the new forum may face.

4.3. Before dealing with the apprehensions voiced herein, a minor point raised by certin State Governments may be disposed of first. Some State Governments apprehended that the proposed system of administration of justice is likely to cast a heavy financial burden on the State exchequre and it is beyond their means to provide necessary finance for effectivley implementing the proposal. The Commission sees no merit in this apprehension. It is the fundamental obligation of every centralised governmental administration to provide for mechanism for resolution of disputes arising wihthin their jurisdiction. No civilised government can escape this responsibility. No government can afford to have their citizens perpetually engaged in finding solutions to their disputes by an unending process which may be simultaneously costly and open-ended. This fundamental duty cannot be diswoned under the pretext of non-availability of requisite of requistite finance. While the Commission is not satisfied that the proposed change would involve a heavy financial burden, it is of the opinion that outlay on taking justice to the door-step of the people is development expenditure. The approach till today to treat it as a non-development expenditure, enquires reconsideration.

Financial constraints.

Again the States do levy court fees. It is a tax on the administration of justice. It is not the purpose of the Law Commission to examine the various nuances of the levy of the court fees. The commission, for the present, accepts it as a necessary evil. A Committee of the Law Ministers on rationalisation of court fees collected the statistics of expenditure on the administration of justice. For the year 1981-82, the total expenditure of 22 States was Rs.112.71 crores and surely their collection of court fees was in excess of the same. This was also the view of the Gujarat High Court when it pointed out that the amount collected by court fees is always higher than the expenses on the administration of justice. The Commission is, therefore, not impressed by this submission of financial constraints because administration

with explanatory notes attached to it. But this time-honoured approach has always resulted in perpetuation of the disputes distracting the attempt of resolving the main dispute between the parties. As soon as the Commissioner files his report, both the parties are invited to file their objections and one or the other party is bound to object both to the report, the sketch and the explanatory notes. The objections are set down for regular hearing and end in an order of the Court. Thereafter, the cases are not unknown when the party challenging the court's order approaches the High Court by way of revision petition u/s 115 of the Code of Civil Procedure. On rare occasions, the jurisdiction of Supreme Court is also involved in this behalf. A number of civil disputes gets side railed by the controversy as to in what manner the court should have access to the first-hand and direct knowledge of the site of the dispute. If the Judge visits the site of the dispute, and this comes to the notice of the superior courts, the judge would be accused of bias and it is believed that instead of remaining an impartial and unbiased judge, he has become partisan in his attitude.

It cannot be gainsaid that in a number of simple trivial disputes, a visit to the site offers a solution. In a number of cases emanating from rural areas and reaching the courts, the dispute centres round a road or passage to the house or field and to be used by men, cart and cattle. These disputes are embroiled in technical rules, and complex legal formulations involving foreign decisions which have modulated the law. Ascertainment of easement by prescription, easement of necessity, presumed lost grant and all these technical rules thwart the resolution of such a simple dispute. If the presiding judge instead of getting embroiled in this exercise visits the site in presence of the parties, the solution would appear on the spot. Same is true of disputes as to water channels, traditional as well as State prescribed. It is equally true of the disputes as to disturbance of passage of air and light. Now if the orchestrated atmosphere of the court is substituted by the assembling of the court at the site in the presence of local people, there is greater chance of the truth emerging because one shudders at the idea of uttering untruth in the presence of or in the vicinity of ones own kith and kin and village community of which he is a member. Accordingly, in the Working Paper, a suggestion was put forward for consideration whether the Gram Nyayalaya should hold sitting whenever convenient and conducive to the resolution of dispute, by keeping in view the nature of the dispute, at the site of the dispute or in the vicinity of the subject matter of the dispute.

One feature of the debate in various centres really struck our face. In every centre when a departure from the present state court system was voiced, three discernible views surfaced in the debate. The first, and what can be described without any disparaging tone, is what should be styled as conservative, traditional or status-quoist. In the present context, the suggestion was that the court has already been devalued and if it goes on moving from place to place or village to village like a mobile dispensary, its dignity and credibility would be further eroded. The second view which can be appropriately styled as the centrist view was that while the court ordinarily should continue to sit at its pre-determined seat, where the situation, the site and the environment of the subject matter of the dispute warrants that it would be conducive to the disposal of the dispute, the court should not hesitate to visit the place after notice to and in the presence of the parties. The third view which can be labelled as left of the centre, was that it is time to translate the constitutional mandate of taking justice to the door steps of the people. Expanding the last mentioned view, it was said that for benefit of the consumers of justice, the mechanism for rendering justice on the analogy of making commodity available at the doorstep, should be made available also. As purchasers of commodity have not to roam in search of commodity, so also the consumers of justice must be spared the same. Its service must be available at the door steps. Approaching the matter from the constitutional angle, it was pointed out that article 39A mandates that the State must "ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities." It is, therefore, said that if the justice is taken to the door steps of the people, it would result to some extent in the fulfilment of the objects underlying article 39A.

Now when a new forum is to be established, it must have an office. It should be called "Gram Nyayalaya Karyalaya". It must be set up at the headquarters of Taluka/ Tehsil. Ordinary requirements of staff, office, books stationery etc. must be provided at the office. The Presiding Judge must be available at this office. The office will provide the nucleus for the activities of the Gram Nyayalaya. It must be a self-sustaining unit, not dependent for any of its requirements on the allied offices at taluka/tehsil level. Adequate funds must be provided for its effective functioning.

Any one having a dispute under any of the heads prescribed under the jurisdiction of Gram Nyayalaya has to approach in the first instance, the office of the Gram Nyayalaya at taluka/tehsil headuarters. On receipt of the complaint to be noted in the manner to be prescribed, the Presiding Judge, after perusal of the complaint or the statement of dispute should apply his mind to the question whether the Nyayalaya should assemble at the situs of the dispute. Thereafter, he can issue notice to be served by his own staff without the slightest default, requesting both the parties and their witnesses to appear at the time and on the date fixed by the Presiding Judge of Gram Nyayalaya at the situs. Most disputes coming before the Gram Nyayalaya can be more satisfactorily disposed of at or near the subject matter of dispute or in the village where the dispute has arisen. It is not envisaged that every village must provide some office for the holding of its sitting by Gram Nyayalaya. A Government building including the panchayat house, can be requisitioned for this purpose without any obligation to make any payment for its use. Even in the matter of family disputes, if the sitting is held in the village either of the husband or the wife, or the father or the son and if both the parties are in the same village, in that particular village, experience shows that the resolution of the dispute would be easy, expeditious and more satisfactory. In cases where the presence at the subject matter of the dispute is not considered relevant, Gram Nyayalaya must hold its sitting at the office of its headquarters.

Non-application of certain laws.

6.7. The root cause of the present malaise in disposal of cases in court as at present functioning have been often attributed to long, complex, unending procedures prescribed both in the Code of Civil Procedure, 1908, and in the Code of Criminal Procedure, 1973, for disposal of civil and criminal cases. Whosoever one may try, it has been found impossible to extricate oneself from stages prescribed in the procedural laws. A cliche has come into existence that before one can hope to get substantial justice he should be able to procure processual justice. There is enough direct evidence on the subject that the court accords more time and spends more energy in disposing of larger number of processual issues than issues involving disposal of substantial dispute. Innumerable decisions of the High Courts and the Supreme Court are on the question of interpretation of the provision of the Code of Civil Procedure, 1908, and Code of Criminal Procedure, 1973. The Indian Evidence Act, 1872, and the Limitation Act of 1963 have made no small contribution to the present confusing and confounding situation. The warp and woof of procedural laws are so inter-twined as to make progress in the course of resolution of a dispute, almost impossible. Certain procedural orders are amenable to appellate jurisdiction (See Order XLIII, CPC). Where there is no provision for appeal, section 115 of the Code of Civil Procedure is resorted to. As if this does not set up sufficient insurmountable road blocks in the pilgrims' progress towards resolution of disputes, the interpretation of article 227 of the Constitution has further accentutated the situation.

The nature of the disputes which would be coming before the Gram Nyayalaya are, more or less, likely to be simple, uncomplicated, easy of solution and should not be enmeshed in procedural claptrap. If Gram Nyayalaya is to resolve the dispute about the passage to or discharge of water from a field from a nearby irrigation channel, following the prescribed procedure at evey stage in the Code of Civil Procedure would have disastrous results. Rain God is not subject to court's jurisdiction and is not likely to obey any injunction. Weather is equally unamenable to court's jurisdiction. Now without urgent relief crops cannot be raised in a field, apart from personal loss, it is a national loss. To resolve such a disute, putting on shelf the Code of Civil Procedure, if the gram Nyayalaya assembles at or near the field to which passage for water is in dispute, it can be resolved within a couple of hours and that too more satisfactorily. This satisfying result can be achieved without the assistance of the Code of Civil Procedure. Examination and cross-examination of witnesses, objections as to the relevancy, form of question, leading questions, Sections 91 and 92 of the Evidence Act, all may have to be kept aside for resolving such a simple dispute

In the past, all those who have advocated either retention of Nyaya Panchayat or expansion of its jurisdiction or a different forum permitting participatory justice, are agreed that this forum should be kept free from the tentacles of Code of Civil Procedure. It is recommended that neither the Code of Civil Procedure nor the Evidence Act should apply to the proceedings before Gram Nyayalaya.

Procedure in Civil Proceedings.

6.8. A simple procedure has to be devised. Its specific stages can be briefly narrated here. Whoever has a complaint or a dispute falling withing the jurisdiction of Gram Nyayalaya must go to the office of the Gram Nyayalaya and fill in a simple form stating the name and address of the complainant, the name and address of the

opponent/respondent, brief statement of the nature of the dispute and how the dipute emanated. If the person having a grievance can fill in the form, the office of the Gram Nyayalaya must provide him with a form, and if he is illiterate, he must be assisted by the office of the Gram Nyayalaya in filling in the form. The same should be placed before the Presiding Judge within 24 hours. A notice accompanied by a copy of the complaint should be served upon the opposite side. If the dispute brooks no delay, the Gram Nyayalaya will be entitled to pass *ex parte* interim prohibitory orders to be enforced within one week within which the Nyayalaya must visit the site and then determine in the presence of both sides whether to continue the interim order for a further period or not. For the final hearing as stated earlier, the Nyayalaya shall ordinarily meet at the situs of the dispute. Having assembled as herein indicated, it may inform the parties there and then as to the nature of the dispute, briefly hear the witnesses and if the lawyers appear on either side, allow a very brief cross-examination and make a short note of it. If lawyers so think, they may make submissions for a period not exceeding a few minutes. If possible, the decision must be rendered there and then. Whatever documents are produced, must be accepted. If any extract from the Government records kept at village level are necessary, the officer in charge of the village records must be sent advance intimation to remain present with the same and he should be asked to supply the records if the Nyayalaya needs the same. The decision of the Nyayalaya will be governed by the principle of justice, equity and good conscience.

The Presiding Judge of the Gram Nyayalaya must control the cross-examination of the witnesses and confine it to specific issues and directly relevant to the point under consideration and should not permit any rambling or fishy examination. In fact, it must be kept as a time bound programme. It will be open to the Gram Nyayalaya to accept affidavits in lieu of oral evidence, if the party so chooses to give. It shall not condemn anyone unheard and minimum principles of natural justice shall be observed in the trial of the disputes brought before it. By minimum principles of natural justice is meant that (1) no one shall be condemned unheard; and (2) no one shall be a judge in his own cause. The decision will always be informed by justice, equity and good conscience. At the end of the trial, if the decision is not by consensus between the parties, the Presiding Judge shall draw a brief statement of the dispute, the evidence led, the decision and the reasons in support of the decision. It shall be signed by all the three Judges. In the event of a difference of opinion, the decision of the majority will be binding. On a question of law , the view expressed by the Presiding Judge shall be binding on the lay Judges.

If it appears to the Gram Nyayalaya while conducting the proceedings before it that the case is one which ought to have been tried by a different court and for which it has no jurisdiction, it may make over the same to the District Court having jurisdiction for transfer of the same to the court having jurisdiction to try the same. Similarly, if some other court has a proceeding before it which ought to be tried by Gram Nyayalaya, the court will forward that proceeding to the District Court having jurisdiction who would transfer it to the Gram Nyayalaya having jurisdiction to deal with the same.

Constitution of the court.

6.9. Upon a receipt of a complaint by an aggrieved person at the office of the Gram Nyayalaya at Taluka/Tehsil level, it shall be placed before the Presiding Judge forthwith, if he is available or as soon as he returns to the headquarter but not later than 24 hours from the time of its receipt. When the complaint is placed before the Presiding Judge, after acquainting himself with the nature of the dispute and the place where the dispute has arisen, the Presiding Judge sha'l select from the Panel already furnished to him two persons residing as far as possible at some distance from the situs of the dispute and invite them to be the court for the case. If anyone of them discloses an interest either in the dispute or parties to the dispute on a questioning by the Presiding Judge, he should be discharged from the performance of the duty and in his place some other person form the panel should be selected. Where one of the parties to the dispute is a member of the Scheduled Caste or Scheduled Tribe or a woman, the Presiding Judge should as far as possible try to enlist as one lay Judge either a member of the Scheduled Caste or Scheduled Tribe or a women. They should also be selected for other disputes but in the aforementioned circumstances ordinarily one of them must be a member of the court. A valid charge of bias shall disqualify the member. It would be open to the Presiding Judge to continue the two members so selected even for other cases if they are not otherwise disqualified. All the three would constitute the court and all the three would sit as a court. The decision will be either by consensus or by a majority.

Procedure in criminal proceedings.

6.10. Having regard to article 21 of the Constitution, and further having regard to the conferment of criminal jurisdiction of a fairly extensive nature, a fair procedure has to be devised for trial of criminal cases by procedure prescribed in the Code of Criminal Procedure, 1973, for trial of summons and warrant cases has stood the test of article 21. Lawyers participating in the debate very vehemently stressed that if a bold step of conferring extensive criminal jurisdiction on Gram Nyayalaya is to be taken, a safeguard must be provided that the trial before it shall take place according to the provisions of the Code of Criminal Procedure, 1973. Provisions of the Code of Criminal Procedure, 1973, for trial of offences lean heavily in favour of the accused and more often a real culprit escapes on account of over-emphasis on adherence to procedure. But even with this reservation, as a first step, it is advisable to retain the procedure prescribed in the Code of Criminal Procedure, 1973, for trial of offences before Gram Nyayalaya. The Evidence Act as such *stricto sensu* would not apply. Some of its provisions have literally an inbuilt guarantee for miscarriage of justice. An illustration would convey the message in a cogent manner. Ravi Shanker Maharaj, renowned Gandhian Social worker was carrying on an experiment for improving equality of life in rural areas near Dholka in Gujarat with a view to weaning people away from criminal activities. He had raised a cadre of dedicated social workers. Those who thrived on criminal propensities found the activities of Ravi Shanker Maharaj a hindrance. One of the closest colleagues of Maharaj was murdered. The police appeared on the scene but was not making any headway. In his true Gandhian tradition, he went on fast for change of heart. One evening two persons appeared before him and confessed having committed murder of the social worker. Ravi Shanker Maharaj heard them and requested them to surrender to the police and permit the law to take its own course. Accordingly, the culprits surrendered. Investigation was completed and they were challenged. The case was committed to the Court of Session. In the trial before the Session Judge, Ravi Shanker Maharaj was cited as a witness to prove the extra judicial confession of the culprits as they had retracted their confession. No one, not even the Judge, had any doubt about the truthfulness veracity and credibility of Ravi Shanker Maharaj. He gave his evidence. There was no reason why his evidence should not be accepted. If it were accepted, there would be an iron clad case against the accused. In the cross-examination, the defence counsel did not try to shake the testimony of Ravi Shanker Maharaj. He asked only one question : whether the police was there near the door of the room when the culprits appeared before him and confessed that they had committed murder. The answer was in the affirmative. The provision of section 25 of the Evidence Act was involved and the evidence of extra-judicial confession was ruled inadmissible. The accused were acquitted. Later on, Ravi Shanker Maharaj said that the system of justice as administered by the British rulers had an inbuilt tendency of promoting injustice. Such illustrations can be multiplied. The Commission is, therefore, of the view that the Evidence Act enacted about a century back *stricto sensu* should not apply even in the matter of criminal proceedings before the gram Nyayalaya. However, the trial shall be held according to the procedure prescribed in the Code of Criminal Procedure. An attempt, however, should be made to devise still simpler procedure which may stand the test of article 21 of the Constitution.

Appearance of lawyers.

6.11. There has been near unanimity on the controversial question about appearance of lawyers in proceedings before Gram Nyayalaya. Most of the statutes dealing with Nyaya Panchayats have unequivocably recommended the exclusion of lawyers in the proceedings before the Nyaya Panchayat. Participants in workshops and those who submitted their views, save lawyers, were unanimously of the opinion that lawyers should not be permitted to appear before Gram Nyayalaya. Commencing from the Fourteenth Report of the Law Commission, all other Reports and Committees dealing with the topic have reaffirmed the same view. This Commission wants to introduce a slight departure from the earlier view in this behalf for very weighty reasons.

All the previous Reports of the Commission and the Committees recommended trivial jurisdiction to be conferred on Nyaya Panchayat. Approach now adopted is to confer fairly wide civil and criminal jurisdiction on Gram Nyayalaya, though the disputes in their nature are bound to be simple and uncomplicated. Further, lawyers cannot be excluded from appearance in the criminal proceedings in view of the provision contained in article 22 of the Constitution. Any suggestion to that effect would be violative of the Constitution. The approach should not be to exclude lawyers but it should be to minimise, if not eradicate, their propensity to delay proceedings, formalise the procedure and introduce technicalities. It is the cardinal feature of our Constitution that India is to be a society governed by the rule of law.

Of course, law means not only lawyer's law but law which is defined as common sense. One additional reason for making departure in the matter of app arance of lawyers stems from a further experiment of inducting legally trained persons in the participatory forum. Therefore, the Commission is of the opinion that the parties appearing before Gram Nyayalaya will be entitled to appear through the lawyers of their choice both in civil and criminal proceedings. However, in order to thwart the repetition of the past experience, the appearance will be subject to two specific conditions, namely, (1) Gram Nyayalaya will have no jurisdiction to adjourn the case for the convenience of the lawyers of the party; and (2) the venue of the hearing shall not be changed to accommodate the lawyer. No adjournment will be given to enable the parties to engage the lawyers. Thus all the parties appearing before the Gram Nyayalaya who are desirous of availing assistance of lawyers should make their arrangements in advance. It would be no argument that as one party did not know whether the other party has engaged a lawyer, the matter should then be adjourned to give an opportunity to engage a lawyer. Such an approach must be wholly avoided.

Legal aid.

6.12. In order to mitigate any hardship in this behalf, the Commission is of the opinion that the proposed Legal Services Commission for States and Union territories which may be set up under the proposed National Legal Services Act should assign two lawyers to be attached to each Gram Nyayalaya whose services would be readily available to the parties if they so desire. These lawyers would be independent of party influence and would assist as Court officers in disposal of the disputes. As they are attached to the Court, there will be no question of adjournment to suit their convenience. With these safeguards, the Commission favours this retention of participation in the proceedings by lawyers and, therefore, the parties should be permitted to appear through the lawyers of their choice in proceedings before the Gram Nyayalaya.

In the criminal proceedings, the accused would be entitled to appear by a lawyer as a matter of right, but the Gram Nyayalaya will have no jurisdiction to adjourn the case to suit his convenience or to shift the venue for the convenience of the parties.

Power to call for information.

6.13. The Gram Nyayalaya will have power to call for information from any source which is considered necessary for the just decision of the dispute brought before it. While retaining the adversary format, the Gram Nayayalaya shou'd not be handicapped in rendering just decision in the case by the failure of the parties to bring available material before it. At present the court cannot act *suo motu*. In order to remove the present handicap, it is desired to empower the Gram Nyayalaya to adopt, as and when necessary, inquisitorial approach, so that no material which can shed light on the issues arising before it in a dispute, would escape its attention. The Gram Nyayalaya must always remain conscious of its role that more or less it is desired that it should adjudicate the disputes without the assistance of lawyers. Initially its approach must be to bring about reconciliation between the parties by acting almost as a Conciliation Board. But even if it fails to reconcile the parties and has to assume the adjudicatory role, it should not dispose of the dispute by merely saying that the decision is referable to what material is brought before it. It should attempt to adjudicate dispute satisfactorily and conclusively by having recourse to its power to call for material from any source including government records. The Gram Nyayalaya will accordingly have power to :

(*a*) enforce the attendance of any person and examine him on oath;

(*b*) compel the production of documents and material objects;

(*c*) issue commissions for the examination of witnesses; if the witness is unable to appear before it on account of physical incapacity; and

(*d*) do such other things as may be prescribed.

Language.

6.14. The proceedings before the Gram Nyayalaya shall be conducted in the State language permitting the dialect of the locality to be used. The record of the Gram Nyayalaya shall be maintained in the State language and copies shall be furnished to those who desire the same. This approach will ensure that the litigant will understand what is going on in the court. The decision shall be, if not by consent of the parties, recorded in the language of the court.

Court fees.

6.15. There was a lively debate whether court fee should be levied in the proceedings before the Gram Nyayalaya. In the past, the Minister of Law and Justice of the Government of India was an ardent votary of abolition of court fee. Nothing concrete has been achieved in this direction so far. Even the exercise undertaken by the Conference of Chief Justices, Chief Ministers and Law Ministers held in the year 1985 has not revealed a consensus in this behalf. A number of States stoutly opposed the proposal. Those who are votaries of abolition of court fees contend that court fee is a tax on justice and no civilised society can tax justice. Another view was that an indigent person suffers serious handicap in access to justice by not being able to pay court fees. Keeping aside the wider issue of the justification or otherwise of levying court fee, there was near unanimity with the view expressed by the Commission that in respect of proceedings before Gram Nyayalaya, which will be catering largely to the needs of the rural poor, the levy of the court fees would be anachronistic. The approach may not be misinterpreted to suggest that the Commission is against levy of court fees. In fact, the elite and the corporate sector, who use courts for a shadow-boxing in respect of issues which are unreal, heavy court fees should be levied and it must be so high as to make them pay the entire cost of the court establishment. There is nothing new or startling in this suggestion. A begining has already been made in California (U.S.A.) in this behalf. Having regard to the discernible tendency of corporate sector aggrandising court time arguing non-issues, this view will have to be developed later on. However, in the proceedings before the Gram Nyayalaya, looking to the nature of disputes, the class of litigants, the economic status of the parties ordinarily coming before it, the levy of court fees would be inappropriate . It is the considered view of the Commission that no court fees shall be levied in the proceedings before the Gram Nyayalaya.

Transport.

6.16. If the treble objects behind devising a new forum for resolution of disputes at grass-root level, namely, (1) participatory system of justice; and (2) expeditious disposal of disputes; and (3) justice to be taken to the door-step of the people, have to be realised, it is imperative that the Gram Nyayalaya should have easy mobility. Therefore, every attempt to hold court in a formal manner at the headquarter should be thwarted. If there is not to be any laxity in this behalf, it is essential that a transport vehicle should be provided to each Gram Nyayalaya. As the approach roads in villages may be either fair-weather roads or not in a very good shape, it is essential that a Jeep should be provided to the Presiding Judge of the Gram Nyayalaya. It should be available for all official purposes including the transport of lay Judges. Somehow or the other, it is disconcerting *albeit unpalatable fact that modern techno*logical advances have passed by the Indian legal system leaving it untouched. Till very recently, even the District Court Judge was not provided with the telephone and even now he is not provided with a transport vehicle. It is time that this shell is broken and the modern gadgets are freely used. Transport is one of the most essential modern gadgets.

Appeal or revision.

6.17. Should there be a provision for a higher level review of the decision of the Gram Nyayalaya ? Views were equally divided on both sides but the balance tilted in favour of at least one appeal against the decision of Gram Nyayalaya. The question posed is : whether an appeal would lie against the decision of the Gram Nyayalaya or a limited revision can be permitted on the questions of law by the next higher court. This is a point. The belief that a review of the decision by a higher court ensures justice, lacks foundation. Appeal creates a peculiar illusion in the mind of a litigant against whom adverse decision is rendered. It is no doubt true that even the best of legally trained mind may commit an error. A power of review of decision by an appellate forum also ensures against arbitrary or biased decision. It also ensures against the decision contrary to the well-accepted legal principles. But it has also generated an egocentric activity most especially where the parties are unequal and the weaker of the two parties has obtained a decision in his favour. In such a situation, the opponent who is economically better off considers his defeat, a slur on his status and he has twin objectives in preferring the appeal. He wants to satisfy his ego and simultaneously wants to tire-out the opponent or to put him to such heavy expenditure by way of appeal and further appeal that the pursuit of justice becomes a mirage.

A provision of an appeal by itself is no guarantee of a just decision. It has some supervisory flavour. An assumption that an appeal to the higher court ensures justice is wholly misleading. Numerous cases can be cited in which the plaintiff won in the trial court, lost in first appeal before the District court, won in second appeal in the High Court and lost in the appeal by his opponent in the Supreme

Court. Which of the four is a just decision. And it is a trite saying in the corridor of courts that if a higher forum for appeal against the decision of the Supreme Court is devised, the Judgement of the Supreme Court there is ever likely of it being reversed. After all it said and done, a total eradication of a subjective point of view in decision-making process is wholly impossible. Coupled with that is the fact that while interpreting socially beneficial legislation, the social philosophy and value system of the Judge at various levels in the hierarchy of courts plays an important part in decision making process. How can one explain the reversal of numerous decisions of the High Court by the Supreme Court, and how can one explain the reversal of the decision of the Supreme Court by its larger Bench ? This proves, if proof was needed, that there is an element of subjectivism in all decision making process. It has to be curtailed, controlled, restrained and as far as possible eliminated. Having said that it must be confessed that it looms large for whatever worth it is. It is equally fallacious to assume that the errors are not committed at higher level. Number of decisions of the Supreme Court can be cited to substantiate the proposition that the decision of the trial court which was set aside by the High Court was restored by the Supreme Court. It can, therefore, be said with confidence that a provision for appeal is not a guarantee of justice nor a bulwark against arbitrary or biased decision.

It is equally true that no one is infallible. The court of appeal accordingly has been described a court of error. Therefore, its jurisdiction has been held to be co-extensive with the trial court. It was said that atleast there must be one forum which must have power to correct the errors of newly created forum of Gram Nyayalaya.

In the past when the Nyaya Panchayat enjoyed very limited jurisdiction, there was near unanimity of opinion that no appeal should be permitted against its decision. A revision by the next higher court was generally provided. Its net effect has been, as pointed out earlier, in the view expressed by Punjab[1] and Madras High Courts[2] is to completely strangulate the Nyaya Panchayat. Literally, every decision save the one arrived at by consent of parties of Nyaya Panchayat was interfered with thereby destroying the confidence of lay judges in their ability to render decision and the confidence of litigants. In some of the Judgements, severe strictures were made against the lay Judges composing the Nyaya Panchayat. This was one single major reason why the entire experiment of Nyaya Panchayat was stillborn.

It was further said that now that a very wide jurisdiction is being conferred on the Nyaya Panchayat, atleast one appeal should be provided for. The Law Commission has considerable hesitation in making a provision for appeal against the decision of the Nyaya Panchayat in any matter save the criminal cases in which substantive sentence is imposed as the past experience of appeals over appeals not permitting a final decision to be arrived at in the lifetime of the litigant as revealed in the Bleak House by Charles Dickens stares in the face.

As the Gram Nyayalaya ensures to some extent a trial and decision by one's own peers or compatriots, attempt must be made to generate faith in their decision making process. Experience also teaches us that a forum for appeal cannot necessarily cure all errors. It may, in fact, introduce or multiply errors. Again provision for appeal against a decision of a body composed amongst others of lay Judges to a body consisting of a Judge alone, would introduce an inner contradiction. The last apprehension is that once an appeal is allowed, it would strike at the root of the decision by consensus which ought to be the primary object of Gram Nyayalaya. Therefore, having regard to all these circumstances, the Commission is of the opinion that no appeal would lie against any decision of the Gram Nyayalaya except the one in which at the end of a criminal trial a substantive sentence is imposed.

Another view expressed was that if the Commission is not in favour of providing an appeal against the decision of Gram Nyayalaya, in order to correct possible errors of law which, if not corrected, would affect subsequent decisions by the same Gram Nyayalaya, a provision should be made for a revision on a question of law involved in the decision of Gram Nayayalaya and the forum for the same must be the District Court. The Commission is not unaware of the fact that even this is a danger signal. Prior to its deletion by Code of Civil Procedure (Amendment) Act, 1973 (49 of 1973), Sec. 110 incorporated the expression 'substantial question of law'. Sec. 30 of the Workmen's Compensation Act, 1923, provides that the appeal shall

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[1] *Marwa Manghani* vs. *Sanghram Sampat*, AIR 1960 Punjab 35.

[2] *Venkatachair Naicker* vs. *The Panchayat Board of Ethapur*, AIR 1953 Mad. 388.

not lie against any order unless substantial question of law is involved in the appeal. Whenever an appeal was preferred limited to a substantial question of law, a very interesting debate ensued : what constitutes a 'substantial question of law' ? There is no dearth of precedents in which it was held that a perverse appreciation of evidence, or no reasonable person would ever come to the decision which is under appeal or a construction of a document by itself without anything more is a substantial question of law. One has, therefore, to tread warily because a limited jurisdiction, by process of interpretation, can be widened to defeat the very purpose of conferring limited jurisdiction.

Some compromise has to be arrived at, which would guard against proliferation of litigation from court to court and a valve to provide an escape route against the dissatisfaction arising from a palpable error in a decision by Gram Nyayalaya.

The Commission is of the opinion that a revision petition to correct errors of law which had affected the decision of the Gram Nyayalaya to the District Court of the district in which Gram Nyayalaya is functioning would meet the requirement. The revising court may correct the errors in a revision petition filed by a party against whom adverse decision is rendered. But if error of law has not substantially affected the decision of the case, the same shall not be interfered with. The errors of law are to be corrected to guard against future repetition. It would not be open to the court exercising revisional jurisdiction to interfere with the decision of the Gram Nyayalaya on the ground that if the revisional authority would have appreciated questions of fact, it would have come to a different conclusion. Only errors of law can be corrected by this revisional forum. Even if it comes to the decision that another view is possible, it would have no jurisdiction to interfere with the decision of the Gram Nyayalaya. A decision by the peers should not be interfered with by a court presided over by a judge approaching the matter from a purely technical legal approach. This limited revisional jurisdiction should be conferred to correct patent errors of law or to prevent miscarriage of justice. The Commission accordingly is of the view that a revision petition would lie against substantial question of law involved in the decision of the Gram Nyayalaya to the District Court within whose jurisdiction the Gram Nyayalaya is functioning.

To put the matter beyond the pale of controversy, no revision would lie against the decision of the revisional authority or against the decision of the Gram Nyayalaya to the High Court under sec. 115 of the Code of Civil Procedure or Art. 227 of the Constitution. Both the jurisdictions will have to be extinguished by appropriate amendment.

An appeal would lie to the Sessions court against the decision by Gram Nyayalaya in a criminal case in which the Gram Nyayalaya has imposed substantive sentence of imprisonment. The appeal would lie both on questions of fact and of law. The appeal should be dealt with according to the provisions of the Code of Criminal Procedure applicable to the appeals entertained against the decision of a Judicial Magistrate, First Class. Any other view is likely to infringe article 21 of the Constitution.

Ouster of the jurisdiction of courts.

6.18. The jurisdiction conferred on the Gram Nyayalaya is exclusive to the extent that in respect of matters covered by the jurisdiction conferred on the Gram Nyayalaya, the jurisdiction of any other court is ousted. To put the matter beyond pale of controversy, the jurisdiction conferred on Gram Nyayalaya is not optional as was in the case of Nyaya Panchayat of the yester years. In order to avoid conflict of jurisdiction, the exclusive jurisdiction in respect of matters herein specified is conferred on the Gram Nyayalaya and to that extent correspondingly, the jurisdiction of the civil court and criminal court is ousted and excluded.

Execution of the orders of Gram Nyayalaya.

6.19. It has been repeatedly observed that by superior courts and critics of the court system that Order 21 (Execution of Decrees) of the code of Civil Procedure 1908, is a heaven for lawyers. It is a trite saying that the trouble of the decree-holder starts after he obtains a decree. Execution proceedings last over decades. In certain types of suits, a preliminary decree has to be passed : *to wit* in a suit for dissolution of partnership and accounts (Order XX, rule 15), in a suit for redemption of mortgage (Order XXXIV, rule 7) and similar other cases. A preliminary decree is appealable. Therefore, till the highest court confirms the preliminary decree, further proceedings are virtually frozen. Then a final decree is made and the gamut starts all over again. If the final decree provides for portion of revenue paying estate, the decree has to be sent to the revenue authorities for effecting partition. It has

become a cruel joke that in a contested suit, the fruits of the decree are not availble in the lifetime of the litigant. To avoid such a calamity befalling the Gram Nyayalaya and in tune with the spirit of its functioning, a simple method for execution of its order must be provided for. The nature of the execution would depend upon the relief granted by the decision of the Gram Nyayalaya. If the relief granted is carving out a passage either to the field or to the courtyard for men, cart or cattle, while rendering the decision, the Gram Nyayalaya must take effective steps with the assistance of the revenue authorities to demarcate and carve out the passage and injunct any one from interfering with the same. Similar procedure can be followed for providing water channels, use of common pastures, partition and division of ancestral property. In other words, depending upon the relief granted, the fruits must be made available forthwith in or soon thereafter. What is to be borne in mind is not that a dispute has been adjudicated-upon by the Gram Nyayalaya but the wrong-doer has been made to part with his wrongful gain. No prayer for granting interim stay till the party aggrieved by the decision prefers a revision petition should be entertained.

Undoubtedly, there will be some decisions of Gram Nyayalaya the execution of which may entail some delay. In the case of a money decree, it would be open to the Gram Nyayalaya to grant payment by instalment. If it becomes necessary to attach and sell property for recovering the dues payable under the decree, the Gram Nyayalaya shall proceed expeditiously. The sale has only to be advertised in the Tehsil and no elaborate proclamation of sale need be drawn-up. The effort must be to finally dispose of the dispute by granting the benefit provided for in the decision.

All authorities of the revenue department operating at village and Tehsil level, all police authorities at both the levels, forest authorities operating at both the levels should be put under obligation to assist the Gram Nyayalaya in discharging its functions and performing its duties. Failure on the part of any such authorities shall be treated as misconduct and a Gram Nyayalaya should be empowered to take effective action against such defaulting authority.

A simple code providing for various matters in connection with the functioning of the Gram Nyayalaya may have to be drawn-up. The State Government in consultation with the High Court may enact simple rules in this behalf so that a uniform pattern of functioning of all Gram Nyayalayas can be achieved.

Liaison Officer.

6.20. India is a society governed by rule of law. It is an accepted maxim that the society should be governed by laws rather than by men because even the best of men can in a given situation act in an arbitrary manner. Art. 14 of the Constitution guarantees equality before the law and equal protection of laws. At the dawn of independence, Indian society was a feudal society vertically hierarchical in character and more or less based on exploitation of class by class. The Constitution envisages an egalitarian society in which justice, social, economic and political will inform all the institutions of the national life. Basic transformation of the society was to be brought about by law. Sociology of law thus acquired a dominant consideration.

Numerous laws have been enacted towards equitable redistribution of wealth, abolition of caste domination, eradication of untouchability, removal of poverty etc. Numerous laws have been enacted for the amelioration of the conditions of the rural poor. Part IV of the Constitution has now received its legitimate recognition(1). If by mere enactments of laws, a basic transformation of the society can be ushered in, this country should have achieved its goal long back. It has now dawned on all concerned that mere enactment of laws is only the first step in the direction of social transformation.

After the requisite laws are enacted, the execution and implementation of the same is the next step, in order to undertake effective implementation of laws, the knowledge of the benefits, rights and duties enacted in the laws must percolate down to the persons to whom these laws would apply. Our advance towards free compulsory primary education and expansion of adult educational programmes has been shown to be halting. There is still a large segment of society who can be styled as illiterate. Enactment of laws have still a colonial flavour. Knowledge of law is the preserve of technocrats, namely, judges, lawyers and Law academics. The unfortunate fall-out of this situation is that those for whose benefit the laws are enacted have no knowledge of these laws. Legal literacy and legal awareness are recent phenomena.

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1 Art. 31C of the Constitution.

If people for whose benefit the laws are enacted are unaware of it, it is not possible to expect them to claim the rights conferred by the laws or agitate for the same. Even if knowledge of rights grow upon them, they have to take steps to translate the benefits into reality. Different types of courts have been devised as media for implementation of the laws. It is a sad experience noted by numerous authors on the subject that for want of legal literacy and awareness of rights the beneficiaries of laws have taken no steps to enjoy the benefits. The result has been that while the statute book shows numerous laws enacted for the benefit of the weak, the downtroden and the needy, in terms of benefit, the balance sheet is highly unsatisfactory.

The question that must be posed is : why this has happened ? Two things stare in the face. The first is, as stated earlier, want of knowledge about rights but the second and the worst is incapacity to take recourse to litigative process to enjoy the benefits of the rights. This report at this stage is concerned with the second part.

A discernible tendency which has attracted the attention of sociologists and social workers is that the rural poor are reluctant to approach the court. The reason for this reluctance appears to be that the litigative process is so expensive, so formal, highly technical and dilatory that a daily bread-earner can ill-afford the luxury of it. The second disturbing reason that manifested itself is that the fight between the seekers of the benefit of law and one from whom the benefit is to be snatched is so grossly unequal that in the end on account of the class structure of Indian Judiciary, the member of the weaker section is generally the loser. By the combined operation of these two formidable reasons, it appears that the rural poor are ill-equipped to enjoy the benefits conferred by the laws. In such a situation, enacting the law becomes at best a paper exercise or at worst a cruel joke.

Even when a highly informal forum is set up at the doorstep of the consumer of justice, it is feared that that by itself would not allay the apprehension of the rural poor in seeking redress by recourse to court. If an individual suffers some harm, occasionally, he takes courage to seek redressal of the wrong done to him. But when it comes to mass violation of group rights, the scenario is distressing. Organised labour may have shown a tendency to vindicate its rights. The concern of this report at this stage is about the rural poor who are generally unorganised and who are ill-equipped to have recourse to court. Should the Commission overlook such gross violation of group rights ? Should it wait for groups to awaken themselves and approach the court ? If it does not come about, should the society fold-up the hands and turn a blind eye to such violation of group rights ?

The Commission is of the opinion that time has come where a mechanism must be provided for invoking the courts' jurisdiction for redressal of violation of group rights. The group may be mobilised to take recourse to the forum. Even if the group cannot be mobilised on the ground that it is defused and scattered, it must be treated as a State obligation under Part IV of the Constitution to set up an authority whose duty is to move round villages regularly and as soon as it comes across violation of individual or group rights, on their behalf, to take recourse to the court. A Liaison Officer must accordingly be appointed, posted and attached to each Gram Nyayalaya, who would not be a part of the Gram Nyayalaya.

It would be the primary duty of the Liaison Officer to tour villages within his jurisdiction regularly, to contact people belonging to poorer strata of the society, to ascertain from them whether certain benefits which have been conferred by the statutes are made available to them, to collect data where breach comes to his notice and then motivate the group to have recourse to the Gram Nyayalaya and failing which to himself becomes the petitioner on behalf of the deprived group to seek the benefit. A statutory provision shall be made not permitting his *locus standi* to be questioned by the party against whom the action is commenced. When such a dispute is brought before the court, Gram Nyayalaya will have power to call for information from experts, records from the concerned government department and assistance of non-governmental social service organisations. The Gram Nyayalaya must be empowered to seek assistance of any institution or organisation operating within its jurisdiction for carrying out welfare activities for the benefit of the rural poor. Accordingly, a Liaison Officer with a legal background should be appointed and attached to each Gram Nyayalaya.

The State Government shall draw up a list of non-governmental voluntary organisations operating in rural areas for carrying on welfare activities for the benefit of the rural poor. The information shall include the names of office-bearers, object

for which the organisation has been set up and its speciality in the field of welfare activity. Every Gram Nyayalaya will be furnished a copy of the same. It would be open to the Gram Nyayalaya to enlist services of the office bearers or other workers of the organisation to assist it in bringing about the reconciliation between parties before the adjudication proceeding is undertaken. The list can also be useful in selecting the Panel of lay Judges. This will make the participatory process far more effective.

CHAPTER VII

CONCLUSION

Conclusion.

7.1. While assigning the work of the judicial reforms to us, the Minister for Law and Justice, Government of India, informed us that—

> "the problem of delays and arrears in Trial and Appellate Courts has, over the years, assumed serious proportions. The extent of pendency of cases in various courts in the country is very high. Increase in the number of Judges has not been able to halt the mounting arrears in the courts. The recommendations made in the past by various bodies, like the Law Commission and the High Courts Arrears Committee (Committee presided over by Justice J.C. Shah, former Chief Justice of India), have been found to be inadequate to effectively deal with the rigidities and dilatoriness of court procedures. A fresh approach is necessary to examine to which extent decentralisation and other changes in the Constitution and functioning of the courts should be brought about and what basic changes in structure and procedures should be devised to eliminate delays in the disposal of cases of all categories pending before all courts".

As a matter of fact, he, way-back in 1958, in the course of a discussion in the Rajya Sabha, had also observed:

> "There is no doubt the system of justice which obtains today is too expensive for the common man. The small dispute must necessarily be left to be decided by a system of Panchayat justice—call it the People's Court, call it the Popular Court, call it anything—but it would certainly be subject to such safeguards as we may devise—the only means by which for ordinary disputes in the village level the common man can be assured of a system of judicial administration which would not be too expensive for him and which would not be too dilatory for him".

Since then the situation has worsened considerably.

The Law Commission, free from pre-possession and any prejudice, probed into an hitherto unexplored region in search of solution which must have both newness and utility. The search ends here. There is no attempt to claim originality. A solution may appear to be a synthesis between old values of lasting durability and new values which require to be enthroned in the field of judicial administration. Talking, discussing, deliberating and provoking a discussion, helped us in understanding the existing infirmities. Care has therefore, been taken to devise the forum in which, at any rate, the existing infirmities will have no entry door to corrupt it. Restructuring a system while reforming it permits retention of the acceptable part and rejection of the redundant. That was the approach we set out with and we are concluding in the hope that a start may be made, even if need be, as an experimental measure, in selected areas in every State to give the recommended system the chance to prove its credentials. A watchful observation in the initial stage will help in removing impediments that may appear in the process of implementation. The law Commission would always be available to amend, reform and revise, if need be, to make the system effective in the service of the people for whom it is devised.

(D.A. DESAI)
Chairman

(V.S. RAMA DEVI)
Member Secretary

New Delhi, dated the 12th August, 1986.

APPENDIX I

LAW COMMISSION OF INDIA

WORKING PAPER

ON

ALTERNATIVE FORUM FOR RESOLUTION OF DISPUTES AT GRASS-ROOTS LEVEL

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CHAPTER I

INTRODUCTORY

Genesis.

1.1. Amongst the terms of reference of the Law Commission, high priority deserves to be accorded to the first term, namely, "to keep under review the system of judicial administration to ensure that it is responsive to the reasonable demands of the time".

Of late, the delay in the disposal of cases and the consequent arrears in all the courts had been the subject of discussion at various forums and a number of suggestions, including changes in the system of administration of justice, have also been made. The Law Commission has also dealt with this aspect in a number of reports. In view of the importance of the subject and the need for speedy administration of justice, the Law Commission has decided to examine this subject in all its ramifications on its own and submit a report.

Previous reports of Law Commission and other Committees.

1.2. Keeping in view the historical perspective of a number of attempts made in the past by various Commissions making eleborate, well-considered and valuable suggestions for re-structuring the justice delivery system so as to make it effective, cheap, speedy and people-oriented, attention of the Commission was drawn to the earlier reports being Fourteenth, Twenty-Seventh and Seventy-seventh Reports of the Law Commission.

Fourteenth Report of the Law Commission.

1.3. The Fourteenth Report exhaustively dealt with the question of reform of judicial administration. It took notice of the fact that 'the post-independence period witnessed a powerful demand for a complete re-orientation of the legal and judicial systems of the country.[1] The response to this powerful demand was the setting-up of the Fitst Law Commission in 1955. By a resolution which specifically refers to the functions of the Law Commission amongst others to devise ways and means to realise that justice is simple speedy, cheap, effective and substantial.[2] 'The judicial system introduced by the empire buiders is unsuited to the Indian conditions and is something alien transplanated on the Indian soil.[3] In order to answer this query, an attempt was made to find out whether there is any indigenous justice delivery system. In the Fourteenth Report of the Law Commission after observing that 'in suggesting ways and means for the improvement of our present system of judicial administration, it does not preclude us from considering radical and revolutionary measures which may make it more suitable to our needs' expressed its opinion 'that the way to reform does not lie in the abandonment of the present system and in replacing it by another. The true remedy lies in removing the defects that exist in the present system and making it subserve in a greater degree our requirements for the present and the future.'[4] Accordingly, the criticism that the justice delivery system then in vogue (1955-58) was not in accord with the genius of the country, was rejected as being without any substance. Having thus reached an affimative conclusion that the system requires to be remedied, but not replaced even in parts, though calling for revolutionary measures to make it more suitable to the needs of the time, the Commission recommended certain changes.

Seventy-seventh Report of the Law Commission.

1.4. The exercise was again taken in 1978. The Commission took note of 'the criticism that the present system of administration of justice is not suited to the genius of our people, is based on the ground that our society basically is an agrarain society not sophisticated enough to understand the technical and cumbersome procedure followed by our courts.[5] The conclusion reached was that 'the present system is not a product of one day and that it will be a retrograde step to revert to the primitive method of administration of justice by taking our disputes to a group of ordinary laymen ignorant of the modern complexities of life and not conversant with legal concepts and procedures.' There appears a lurking respect for the system as it is administered, coupled with a fond hope that 'the real need appears to be to further improve the existing system to meet modern requirements in the context of our national ethos and not to replace it by an inadequate system which was left behind

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[1] LCI *Fourteenth Report*, Vol. I, Ch. 2, para 12, p. 15.

[2] Lok Sabha Debates : Vol. III Part II, 1954 columns 1860, 1861.

[3] LCI, *Seventy-seventh Report*, para 3.1, p. 7.

[4] LCI *Fourteenth Report*, Chapter 4, para 20, p. 31.

[5] LCI *Seventy-seventh Report*, Chapter 3, para 3.3, p. 7.

long ago.[6] There was, however, a body of contrary opinion which unmistakably felt that 'the British system of administration of justice in our country has not been an unmixed good.....it has also, at the lowest level, alienated the people from the system because of its foreign origin, technicality, extreme formalism, rigid rules of procedure and relevance and foreign language. It has, at the village level, and even at the level of taluka towns, remained an alien system which has no living contact with the masses and is not meaningful to them.[7]

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[6]LCI *Seventy-seventh Report*, Ch. 3, para 3.20, p. 10.

[7]*Report of the legal Aid Committee*, (Govt. of Gujarat) 1971, para 13.12, p. 209.

CHAPTER II

NEED FOR RESTRUCTURING THE JUDICIAL SYSTEM

Reasons for inducting the alien system in India.

2.1. Let it not be forgotten that for *pax britannica* the colonial masters inducted in India by and large, the judicial system in vogue in their country. One does not build-up an empire for some altruistic purpose. If charity begins at one's own home, empire begins at the home of other people. Amongst various motivations, the one central to the empire building is economic exploitation of the colonies for ensuring higher standard of life of the elite of the ruling masters. This economic exploitation necessitates internal peace and external security. Internal peace is guaranteed by first maintaining a foreign military, loyal police and legal justice system which would keep the parties continuously litigating in law court with hierarchy of appeals so that the Indian illiterate, the victim of injustice struggles through the labyrinths of courts and loses all initiative for settling the dispute by resort to force, is drained of all his vitality and physical power to assert his rights and his economic wherewithal in paying for the costs of litigation and his political will by loss of precious time in the litigating processes. Jarndyce v. Jarndyce (Charles Dickens) is the ideal set forth to the seekers of justice. If people complaining of injustice remain glued to the court, they do not disturb law and order, maintain peace and permit naked economic exploitation and the beguiled and the believers and the beneficiaries (Legal profession) go on paying tribute to British system of justice.

Basic changes not manifested in the past.

2.2. This reverence of an entrenched few for the system thwarted every move for its re-structuring. While admitting on all hands in 1958 and 1978 that the system has been over-reached, dilatory, expensive and injustice-ridden, the will to suggest basic changes did not manifest itself. In between, efforts were made to rejuvenate it by suggesting some reforms so as to reduce the time in obtaining justice, to clear backlog of arrears, to make it comparatively less expensive so that the criticism against it can be met to some extent.

Failure of earlier efforts.

2.3. The question we must pose is : have these efforts yielded results ? The answer is emphatically in the negative. The mounting arrears[8] (1237566 cases were pending in the High Courts as on 31st December, 1984), in various high courts and the ever-rising graph of arrears in the Supreme Court of India will affirmatively establish that all this tinkering at the fringes have not only not yielded the desired results, but have in fact aggravated the situation. The consumers of justice have been patiently waiting since the setting up of the Law Commission in 1955 till today for restructuring the system so that it may become both justice and people-oriented.

Working paper on restructuring at grass-root level.

2.4. The task is gigantic and has to be tackled in parts. It is proposed to deal with a radical restructuring in the matter of resolution of disputes at grass-roots level.

Rural Majority.

2.5. India lives in its villages. 80% of the population reside in what are described as rural areas, seven lakhs villages accommodate 80% of the population.

Cumbersome provisions of C.P.C. not suited for settling rural disputes.

2.6. The disputes arising in these rural areas have a distinct local rural flavour. The irony is that these disputes are sought to be resolved by a procedure uniformly applied from the small village to metropolitan areas like Bombay, Calcutta, Madras, Delhi, etc. Disputes involving crores of rupees, raising intricate questions of law and constitutional issues of far-reaching importance on the one hand and possession of petty occupancy, minor dispute as to passage to the field, dispute as to location of irrigation channel, dispute as to a share in a small occupancy land on the other hand are all dealt with by the same cumbersome procedure prescribed by the Code of Civil Procedure, 1908, as amended from time to time. Is this not an anomaly ? Does it need a change ? Reform of substantive law may be kept aside for the time being because according to Prof. Michael Zander of the London School of Economics 'what matters in the matter of law reforms is the cheapness, accessibility, and expedition of the legal process; that the substantive law is of less importance than the procedural law'[9]. This paper proposes to suggest restructuring of dispute resolution mechanism at grass-roots level in respect of disputes arising in rural and semi-urban areas.

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[8]. Information supplied at the Conference of the Chief Justices of the High Courts, Chief Ministers and Law Ministers of the States held in September, 1985.

[9]. As quoted in Lord Scarman "*Law Reforms in a Democratic Society*" (1985) p. 31.

Nature of disputes in taluka/ tehsil Courts.

2.7. A cursory examination of the institution of cases in taluka/Tehsil courts variously described as court of Munsif/District Munsif/Civil court (Junior Division), etc. reveal the following broad classification of the nature of disputes :

I. Civil Disputes

Disputes arising out of implementation of agrarian reforms and allied statutes.

(*i*) Tenancies-protected and concealed and contested.

(*ii*) Boundry disputes and encroachment.

(*iii*) Right to purchase.

(*iv*) Use of common pasture.

(*v*) Entries in revenue records.

(*vi*) Regulation and timing of taking water from irrigation channel.

(*vii*) Disputes as to assessment.

II. Property Disputes

(*i*) Village and farm houses (Possession).

(*ii*) Sehan.

(*iii*) Easements : Right of way for men, cart and cattle to fields and courtyards.

(*iv*) Water channels.

(*v*) Right to draw water from a well or tubewell.

III. Family Disputes

(*i*) Marriage

(*ii*) Divorce

(*iii*) Custody of children

(*iv*) Inheritence and succession-share in property.

(*v*) Maintenance.

Stakes in disputes disproportiona e to relief claimed.

2.8. If the stake involved in each of the disputes falling under any of the heads herein above enumerated is evaluated in forms of cost benefit analysis, it would appear to be fairly disproportionate to relief claimed and disputed in the litigation though to the parties concerned, that may appear to be of some considerable importance. These disputes at present land in the court of the lowest denomination, namely, Munsif/Civil Judge (J.D.) or Revenue Officer. They have to be processed according to the procedure prescribed in the Civil Procedure Code or in respect of disputes falling under revenue jurisdiction, according to the code prescribed for processing disputes of this nature. Civil Procedure Code has been universally accepted as formal, hyper-technical, dilatory, time-consuming and prolix. Occasionally the procedural wrangles outweigh the real dispute whose resolution is pushed aside and acquires a secondary importance. In what manner can one appreciate the 1576 judgements upto 1971 rendered by the Supreme Court on various topics under the Code of Civil Procedure touching purely procedural aspects such as amendments of pleadings, framing of preliminary issues, interim injunctions, framing of issues, discovery and inspection, etc. Some of the afore-mentioned disputes are simple and wholly uncomplicated and can be disposed of in a few hours more so if handled at the spot. In an adversary system, spot resolution of disputes is generally frowned upon. The Judge must sit at an ordained place where parties must go with the lawyers, witnesses and documents and the Judge hears both the parties after all the formalities prescribed at various stages in the Code of Civil Procedure are gone through and then leisurely decides the disputes. The average duration for disposal of such cases noticed in the year 1954 varied from 369.8 days in Assam to 762.6 days in Bihar.[10] 'A total number of original civil suits pending at the end of the year 1954 was 6,12,635.'[11] 'The total number of suits and miscellaneous cases pending in the subordinate courts on 31st December, 1977 was 21,09,986.'[12] The average duration now exceeds three years.

Too much involvement in procedural wrangles.

Defects in the present adversary system.

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10. LCI *Fourteenth Report*, Vol. I. Ch. 11, para, 7, p. 261.

11. *Ibid* para 3, p. 253.

12. LCI *Seventh-seventy Report*, p. 69.

In between 1954 and 1977, the Law Commission submitted three reports recommending changes in the Civil Procedure Code for reducing the delay in the disposal of cases. The figures hereinabove extracted tell their own tale. And all throughout the effort was to suggest radical changes in the Civil Procedure Code. [13] A very cautious approach adopted in recommending amendments and modifications in the Code of Civil Procedure by the Law Commission of India in its Twenty-Seventh Report was replaced by a proposal to suggest radical changes and 'caution was not to act as a constraint where the expenses of procedure and the necessities of the times require radical changes.'[14] The exercise was specifically undertaken to make available justice to the consumers at a price they can afford. It was accepted that "an expensive procedural system is a self-defeating instrument of justice." [15] The Fifty-Fourth Report recommended numerous amendments in the Code of Civil Procedure, 1908. This led to the enactment of the Code of Civil Procedure (Amendment) Act, 1976. Several alterations have been made in the then existing provisions of the Civil Procedure Code and new provisions have been added based on the recommendations made in the Fifty-Fourth Report. The Amendment Act came into force on February 1, 1977 except certain sections. Accordingly, the exhaustively amended Code of Civil Procedure designed to reduce the time spent in disposal of suits and to make the system speedy, effective and less-costly, has been in vogue for over 8 years. It is acknowledged on all hands that apart from making no impact in the manner, method and mode of resolution of disputes, it has proved to be counter-productive.[16] The powerful impact which the justice delivery system has on a vast number of citizens has to be taken note of so that it may be properly appreciated that the reform of the system is a matter of vital importance 'not only to the lawyer and the Judge, but also to the State and average citizen.' [17] The priority thus delineated has to be reversed and the true test would be the pains and gains of the average citizen, the consumer of justice. The harsh *albeit* unpalatable outcome of this bizarre exercise cannot be washed away in that by keeping the structural part of the Civil Procedure Code intact and tinkering with it at various places would not be conducive to making the system resilient, effective and responsive to the felt needs of the times. The inescapable conclusion thus is that a basic structural change in the mode, method and forum for resolution of disputes is the *sine qua non,* before the system is engulfed by its own debris.

Effects of amendments to C.P.C. Failure to achieve the desired objective.

Need for basic structural change in the system of resolution of disputes.

2.9. It would be unwise to look at the problem from the point of view of court management only. In other words, it would be very imprecise to examine the matter from the aspect of ever-growing court dockets. Such an endeavour has to be guided by the aspirations proclaimed in the Constitution of India. Article 39A of the Constitution of India directs the State to secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall, in particular provide free legal aid, by suitable legislation or schemes or in any other way,to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. This is the constitutional imperative. Denial of justice on the ground of economic and other disabilities in nutshell referred to what has been known as problematic access to law. The Constitution now commands us to remove impediments to access to justice in a systematic manner. All agencies of the Government are now under a fundamental obligation to enhance access to justice. Article 40 which directs the State to take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government, has to be appreciated afresh in the light of the mandate of the new article 39A.

Problem to be examined in the light of Directive Principles-Renovation of the system imperative.

2.10. How does one develop an approach to access to justice contemplated by article 39A ? Hitherto, as we will shortly note in our discussion of the organization of Nyaya Panchayats, the dominant consideration has been to ameliorate the burden on the court-system, not so much to prevent denial of justice to any citizen by reason of economic or other disabilities. The command of article 39A now is to focus on these disabilities and to develop schemes for their removal. The managerial consideration of ameliorating the burdens on court-system through creation of local fora for dispute settlement cannot predominate any longer.

Shift in the emphasis on the border in the court system to denial of justice to the citizen as a result of article 39A.

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[13]. LCI *Fifty-Fourth Report*, Ch. I, para 1.5, p. 2.
[14]. *Ibid.*
[15]. *Ibid.*, para 1.6, p. 2.
[16]. Judges with vast experience of the handling of civil litigation from grass-root level brought their experience into making recommendations and this empirical research helped them in recommending extensive amendments in the Code of Civil Procedure. These recommendations as suggested were largely accepted but pursuant to their implementation, the outcome is the most undesirable which could not have been foreseen.
[17]. LCI *Fourteenth Report*, Ch. 3, para 1, p. 17.

Disabilities in the Indian legal system.

2.11. The other disabilities referred to in article 39A, distinct from the economic disabilities, are assuredly diffieulties posed by the existing profiles of the Indian Legal System. This system, as has been pointed out, itself imposes disabilities on people in their quest of justice. The disabilities arise because of lack of suitable local fora for dispute handling and an emphasis on professionalized justice. The renovation of the system, now contemplated by the Constitution, requires us to remove these disabilities. The professionalized model of justicing cannot be extended to Bharat, not merely because India has about 2,50,000 lawyers only but also because bulk of them are located in urban areas and given the voluntary nature of the profession, it is at this stage not possible through the law to plan their dispersal in a manner which would adequately and equitably serve the needs of the Indian masses. Such a measure ought to be atleast proposed and discussed. But, for the time being we accept the realities as they are.

Alternative system.

2.12. If professionalized model of justice delivery thus cannot be extended to meet the legal needs of the Indian masses, it becomes incumbent to consider alternatives. The alternative is deprofessionalized model of justice. In this model, the indigenous juristic potential of the people, including their own sense of justice, is allowed room for development. This has been sought to be done through people's participation in justice.

Re-structuring start at grass-root level.

2.13. Any pyramidic structure to survive must have strong foundations. The re-structuring must, therefore, start from the bottom and then move vertically upwards. The edifice of the present day justice delivery system is hierarchical in character. At the bottom, there are grass-root courts variously designated as Munsif/ District Munsif/Civil Juge (JD) courts. The litigants come primarily in direct contact with these grass-root courts. The view of the system at this level shapes the general evaluation of the whole system. Petty disputes arising in rural areas are brought to these courts for their speedy and effective resolution. If a new mode and method is devised for resolution of such petty disputes, it will account for 75% of the litigation being dealt with in a speedy, effective and less-costly non-cumbersome manner. It has an impact on vast masses. If the disputes brought to the grass-root courts are settled by a less formal or informal speedy procedure and more or less on the spot with people's participation, the feed stock for appeals will be substantially reduced. While devising such a forum coupled with a less-formal procedure, care has to be taken of not disturbing the susceptibilities of the rural population about their confidence in the court system. In devising such a system, attempt must be made to combine the best from all sources. The resolution of each and every dispute does not call for the expertise on the technical aspects of substantive law. Settlement of disputes arising in a locality by a body of laymen of the locality is almost universally recognised. Number of such institutions all over the world may be briefly noticed to substantiate this statement.[18] The institution of Justice of the peace in England and United States of America, 'Peoples Court' in USSR and with minor variations in all Eastern European countries and the Institution of Lay Justice all entail people's participation in the administration of Justice. Yugoslavia 'is making an attempt in the direction of setting-up exclusively lay tribunals more or less based on the ideology similar to that underlying our Indian Panchayats.[19] So is the remarkable experience of Hungary in the System of People's Assessors. [20] The concept of lay participation in judicial decision making made its appearance centuries back and it "began with the appearance of a 'third party'who establishes the ransom following the periods of self judgment or blood feud". [21] Mediation model for settling disputed issues developed when and where the third party intervening in the dispute had sufficient prestige and power to enforce decision, ransom indicated State intervention, private injury became public injury which assisted the process under which passing judgment became a state fuction. [22] In some form or the other, lay local participation in the mode

New and better method for resolution of petty disputes in rural areas would result in the majority of cases being dealt with in a speedier and cheaper manner.

People's participation in the administration of justice.

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[18]. The Institution of 'Justice of the Peace' in U.K. dealing with the greater part of criminal jurisdiction and a small but not unimportant part of civil jurisdiction 'is the wonder of all foreigners for nothing like it exists in any other part of the word'. 'With few exceptions, this institution has worked quite satisfactorily and it is quite cheap; C.K. Allen, *The Queen's Peace* (The Hamlyn Lectures, Fifth Series, 1953), p. 178.

[19]. *Report of the Study Team on Nyaya Panchayat*, Government of India Ministry of Law (April 1962), Ch. III, para 16, p. 29.

[20]. See Kalman Kulscar : *People's Assessors in the courts; A study on the Sociology of Law* (1982).

[21]. *Ibid.*, p. 17.

[22]. *Ibid.*, p. 18.

and method of resolution of dispute was always in existence. Before the advent of justice, there undoubteldy was an indigenous system for resolution of disputes. The impact of English language, western literature, the British system of Justice and the universal rationality of Western Law have combined to induce an inbuilt prejudice for anything ancient. However, while trying to unearth and evaluate the indigenous system, it was found that the essentials of our ancient system were not very different from those of our present system.'[23] While comparing the two systems, it was accepted that the subsidiary features of the present system includes clumsy and cumbrous procedure, while the earlier one was simple and less-formal. Undoubtedly, 'as the society advances from stage to stage, its needs alter from time to time and any system which governs the functioning of society or its component parts would also call for progressive modification.'[24] One has, therefore, to keep in mind while devising the modern system, the changes that have occurred in the conditions and structure of the society for which the system is to be devised.

Indigenous system in India.

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[23]. LCI *Fourteenth Report*, Ch. 4, para 5, p. 25.

[24]. *Ibid.*

CHAPTER III

NYAYA PANCHAYATS

History of Nyaya Panchayats.

3.1. Leaving aside the Hindu system, the Muslim system, the Royal Tribunals, etc., let us turn to Nyaya Panchayats which appear to be of historic antiquity.Prior to the Mughal period, village communities created their own Panchayats. There was no element of election. Respectable members of the village community formed the Panchayat and the decisions were generally accepted by the village community. Few disputes landed in courts. They were resolved more or less by a process of conciliation at the village level. Undoubtedly, during the Mughal period, some attempt was made for centralisation of justice system but the Britishers realised that there is a sort of an emotional attachment to Panchayat system and it might provide a reliable basis for decentralisation of administration including judicial administration. The Royal Commission of 1907 upon Decentralisation in India recommended the constitution and development of village Panchayats with certain administrative powers and jurisdiction in petty civil and criminal cases. [25] Panchayats were largely responsible for revenue administration of the village. 'Nyaya Panchayat' so named dealt with resolution of disputes. These Nyaya Panchayats are in vogue in one or the other form, sometimes active, more often dormant. Earliest statutory recognition came in the form of the village Courts Act, 1888 in Madras and the work done by such court with its very limited jurisdiction was appreciated by the High Courts of Madras by expressing the hope that more and more people will resort to the village courts. Number of other provinces adopted legislation similar to the Madras Act. The Civil Justice Committee of 1924-25 observed: "The Village Panchayat—villagers mediating between contending parties in their own village has, in some form or other, existed in this country from the earliest times and that without resort to any elaborate or complicated machinery. The judicial work of the panchayat is part of that village system which in most parts of India and Burma has been the basis of the indigenous administration from time immemorial." [26]

Report of the Study Team on Nyaya Panchayats.

3.2. After the introduction of the Government of India Act, 1935, various provinces as part of their programme of democratic decentralisation enacted legislation for the revival or revitalisation of Panchayats including Nyaya Panchayats. Government of India appointed a Study Team under the Chairmanship of Mr. G.R. Rajagopaul, a Member of the Law Commission, on the functioning of the Panchayat courts in various States keeping in view the conclusions recorded by the Law Commssion in Chapter 43 of its Fourteenth Report. The Study Team submitted its report. It *inter alia* recommended that villagers must be given a free hand in electing members of the Nyaya Panchayat and it totally ruled out the system of nomination. Rejecting the suggestion of voluntary submission of disputes for resolution of Nayay Panchayats, it recommended that the jurisdiction of Nyaya Panchayats should be exclusive but in the first instance, it must be confined to simple, money and other suits and the upper pecuniary limit of civil jurisdiction may be Rs.250/-which may go up to Rs. 500/- with the consent of the parties. It was not in favour of conferring jurisdiction in matrimonial causes. It recommended conferment of jurisdiction for trying criminal cases in respect of petty matters where the punishment in the form of a fine would be an adequate corrective. It was not in favour of conferring revenue jurisdiction on the Nyaya Panchayats. It advocated introduction of conciliation as the method of resolution of disputes to be undertaken at the discretion of the Nyaya Panchayat. The Committee also drew up a formal bill to give effect to its recommendation called the Nyaya Panchayats Bill, 1962.

Recommendations of Panchayat Raj Committee and Legal Aid Committee set up by the Government of Gujarat.

3.3. The Government of Gujarat appointed a Committee styled as the High-Level Committee on Panchayati Raj.It submitted its report in 1972. Nyaya Panchayats have been dealt with in Chapter XIII of the Report. Before this report is taken into consideration, it would be necessary to refer to the Chapter on Nyaya Panchayats in the Report of the Legal Aid Committee, 1971 set up by the Government of Gujarat under the Chairmanship of the then Chief Justice of Gujarat High Court Justice P.N. Bhagwati. The Committee recommended a new pattern of Nyaya Panchayat

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[25]. LCI *Fourteenth Report* Vol. II, Ch. 43, para 3, p. 874.

[26]. Extracted at page 874, Vol. II, LCI *Fouteenth Report*.

with a Panchayati Raj Judge to be assisted by two members from amongst a panel of persons to be drawn-up by the Collector of the District to act as Members of Nyaya Panchayat. It advocated as far as possible on the spot resolution of dispute by Panchayati Raj Judge and its two Members. It recommended a simple procedure more or less guided by justice, equity and good conscience. It in terms said that the procedure should be simple and uncomplicated and it should not be befogged by technicalities or complexities. The Panchayati Raj Committee more or less agreed with the recommendations of the Legal Aid Committee save and except that it was opposed to nomination of two Members of the Panchayati court by the Collector and it advocated election.

Re-introduction of Nayaya Panchayats best example of people's participation in the administration of justice.

3.4. No stronger case can be made out in favour of peoples' participation in the administration of justice with the reinduction/revitalisation of the historically popular institution of Nyaya Panchayat.

Apprehensions about the Nyaya Panchayat system dispelled.

3.5. Let us at this stage recall the apprehensions voiced by the earlier law Commissions on conferring wide jurisdiction on Nyaya Panchayats. The Civil Justice Committee (1924-25) observed that 'communal differences and factions are in the way of any further extension of the jurisdiction of these tribunalss'. There is some force in this objection, but it is in our opinion overstated. In villages where there are common interests to be protected, common services to be rendered and common funds to be administered, it is idle to ignore the common life of the village in which the necessities of neighbourhood have held their own or have prevailed against the divisions of caste.[27] The Law Commission in its Fourteenth Report after taking note of this observation, futher observed that 'these factions and divisions, have increased by reason of the introduction of adult franchise all over the country and the appearance of political parties in the villages.' Rejecting this criticism and discounting the apprehensions, the Law Commission concluded that 'there is no reason why, with proper safeguards, these courts (Nyaya Panchayats) should not function with a fair amount of success and either conciliate or decide the petty disputes arising in the villages.'[28] Similarly, the Legal Aid Committee set up by the Government of Gujarat took notice of the factious atmosphere in villages further sub-divided by caste, community and politics, they entertained a genuine apprehension that 'it would be difficult to expect even-handed justice to be meted out by members of Nyaya Panchayats who would belong to one faction or group or the other[29]. These hesitations were dispelled by the overriding consideration that the Nyaya Panchayats with a slightly different pattern would be an effective vehicle for rendering justice on the spot or at the doorstep of the litigants. It would have an healthy impact on the village economy inasmuch as it will be a low cost justice system and man days in securing justice would not be lost,. The psychological change that the rural poor would undergo by this altered system of administration of justice by their own peers in substitution of an alien system would be immeasureable. Trust them, provide safeguards for possible pitfalls, but do not reject them. Any innovation is always fraught with unseen danger but that by itself cannot be a road block to change.

Nyaya Panchayats formed by the Rajagopaul Committee.

3.6. Even the Rajagopaul Committee after taking note of these apprehensions strongly advocated retention and revitalisation of Nyaya Panchayats.

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27. *Report of the Civil Justice Committee*, page 116, cited in LCI *Fourteenth Report*, Vol. II, Ch. 43, para 7, p. 876.

28. LCI *Fourteenth Report*, Ch. 43, para 25, pages 911 and 912.

29. *Report of Legal Aid Committee*, (Govt. of Gujarat, 1971) page 211. Para 13.14 (iii),P 211.

CHAPTER IV

PROPOSAL FOR ADOPTION OF A NEW FORUM OF NYAYA PANCHAYATS

Composition of existing Nyaya Panchayats.

4.1. It is at this stage advantageous to refer to the composition of Nyaya Panchayats at present in vogue. The Nyaya Panchayats at present are composed of directly elected members, and in some cases elected members of Gram Panchayat forming Nyaya Panchayats. The method is wholly elective. Undoubtedly, with adult universal sufferage and democratic decentralisation, political parties have penetrated into the smallest village. Even the Panchayat elections are more or less fought on political party lines. To that extent, the village landscape is politicised.

The purely elective system may bring in politicised individuals to man Nyaya Panchayats and with it would come inevitably political confrontations, prejudices and divisions. This may hamper administration of even handed justice. And even if these elected representatives act in an wholly judicious manner their political attachments would cause dissatisfaction amongst litigants to different political hue. This would cut at the root of one of the facets of justice, namely, justice must seem to be done. Therefore, having regard to this existing unquestionable situation, it is necessary to devise a scheme which permits people's participation simultaneously avoiding the pitfalls of elective system.

Constitutional justification for a new forum of Nyaya Panchayat.

4.2. A forum for resolution of disputes with people's participation in the administration of justice is justified in terms of Article 39A mandate. It may also seem to be justified in terms of providing simple procedure which may help in fighting the delay in the disposal of disputes simultaneously reducing the cost of making justice effective and substantial in character[80]. A body variously described as Nyaya Panchayat, Lok Adalat, Jan Panchayat, People's Court is the goal intended herein. Its basic details are worked out in the succeeding paragraphs.

Composition of Nyaya Panchayats Panchayat Judges.

4.3. The constitutional goal is to set up an egalitarian society governed by rule of law. It is oft repeated with some emotional attachment that we may better be ruled by laws than by men. The wholly elective method of choosing members for Nyaya Panchayats may not permit a legally trained mind to get into it. Basic knowledge of laws to render justice according to law is must. Therefore, any composition of Nyaya Panchayats must ensure for a legally trained Judge. It is, therefore, suggested that persons recruited to the civil judicial service of a state as Munsif, District Munsif or Civil Judge (JD) should preside over the Nyaya Panchayats. They would also be subject to the jurisdiction of the High Courts under Article 235 of the Constitution. They would, however, be eligible for promotion as subjudges, District Judges, etc. as at present prevalent in the Subordinate Judicial Service of the States.

Continuation of existing Nyaya Panchayat laws.

4.4. In some states, the local Nyaya Panchayat laws provide for voluntary submission of disputes for resolution of Nyaya Panchayats constituted under the local law. The jurisdiction is minimal and has hardly been proved to be effective. However, if voluntary submission of jurisdiction to such Panchayat can be retained without in any way impinging upon the new forum herein suggested, no exception need be taken to it.

Panel of laymen to be kept for appointment of Panchayat Judges.

4.5. To provide effective people's participation in the administration of justice, the District Magistrate and the District and Sessions Judge for each District should draw up a panel of laymen from respectable residents in villages comprised in the district having educational attainments preferably upto a University degree or atleast a Higher Secondary School Leaving Examination. It is not intended to exclude marginal farmers, farm workers or other local residents from being empanelled and it would be in the discretion of the District Magistrate/District Judge to include such persons even if they do not possess necessary educational qualifications. Depending upon the size of each Taluka/Tehsil, the list of panelists may vary from ten to twenty. The list should be got approved by the High Court. Provision may be made in the law that the High Court should approve the panel within a specified period and shall be deemed to have been approved after the expiry of the period.

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[80]. See for a comprehensive Critical Review of Nyaya Panchayat System : U. Baxi; *The Crisi of the Indian Legal System*, (1982), Ch. 10, pp. 295-327.

4.6. Whenever a dispute is brought to the Panchayat Judges having his headquarters at Taluka/Tehsil level, he would first proceed to select two from the panel of laymen drawn up as afore-mentioned, keeping in view the fact that their inhabitant must be as far away as possible from the geographical location of the dispute. The Panchayat Judge and the two members of the panel will constitute a Nyaya Panchayat for the disputes. This constitution of Nyaya Panchayat will have legal expertise and people's participation and would avoid caste, communal or political contaminations. Composition of Panchayat Court for specific cases.

4.7. Keeping in view the nature of the dispute, the Panchayat Court shall, after notice to parties, assemble in the village where the dispute has arisen or if it is not accessible, then in the nearest village, accessible by public road transport, hear parties, examine witnesses, if any, produced making a brief note of the evidence and dispose of the dispute there and then on the same day. In 90% of the disputes this procedure will provide adequate safeguards for judicial and judicious disposal of disputes. Procedure.

4.8. The Panchayat Judge shall be provided with a transport vehicle preferably a jeep so that he can frequently move to the villages for on the spot disposal of the cases. Simultaneously, the vehicle must be made available to the other two Members of the Nyaya Panchayat for attending the court wherever it is to be held. This will save such voluntary Members from incurring cost and wasting time in reaching the place where the court is to be held. Transport to be provided to the Panchayat Judges.

4.9. If the two Members of the Panel constituting the court with the Panchayat Judge are employees working on wages, it is necessary to provide either that while working as the Members of the Panchayat, they are deemed to be on duty and should not suffer loss of wages or alternatively they must be paid daily allowance not less than the daily minimum wage earned by each of them. Employed lay members of Panchayat deemed to be on duty.

4.10. Order XXI (Execution) of the present Code of Civil Procedure has been variously described by the High Courts as lawyer's heaven and the starting point of all the torture of the successful litigant. To avoid this tragic outcome, a decision of the Nyaya Panchayat must be immediately executed so that justice is effectively rendered. If the Nyaya Panchayat itself can there and then execute the decision, namely, a water passage or a cart road is to be prescribed by putting it on the paper and asking the revenue authority to map it out. In all other respects, it can take the assistance of the local officers of the revenue department and the development department as it suits its requirement for effective execution of its order. Execution of orders of Nyay Panchayats.

4.11. The jurisdiction of such Nyaya Panchayats would extend to all disputes falling within the various heads set out in paragraph 2.7. To substantiate wide jurisdiction sought to be conferred on Nyaya Panchayats, it may be stated that in its Fourteenth Report, the Law Commission recommended that the civil jurisdiction of Panchayats should be Rs. 200 /- or Rs. 250/- and with the approval of the High Court their jurisdiction may be increased to Rs. 500/-. If the value of the rupee in 1954 is compared to the present value, one can easily confer jurisdiction upto the value of Rs. 10,000/- Therefore, it is best not to prescribe any pecuniary limits as the jurisdiction and all the disputes comprehended in the afore-mentioned heads must come within the purview of the Nyaya Panchayats. Civil Jurisdiction of Nyaya Panchayats.

4.12. Similarly, in respect of the criminal jurisdiction, the Law Commission in its Fourteenth Report recommended that Nyaya Panchayat should have jurisdiction limited to incfliting a fine of Rs. 50/-, applying the same measure, it must have jurisdiction to try all petty offences which foremerly a Magistrate of First Class was competent to try and must have power to inflict sentence of imprisonment also. This change is desirable, because the Nyaya Panchayat will now be composed of a legally trained Judge also. Criminal jurisdiction of Nyaya Panchayat.

4.13. While hearing a dispute, the Judges will evaluate and appreciate the evidence and the Panchayat Judge will render assistance with regard to simple formulations of law relevant to the dispute. Ordinarily, the Nyaya Panchayat will try to resolve the dispute by consensus. A decision by majority should not be ruled out. The decision must be drawn up in the local language supported by brief reasons. Simple procedure for the resolution of disputes.

4.14. When the dispute is before the Nyaya Panchayat, ordinarily, parties should be discouraged from enagaging lawyers but if any party chooses to engage one, the lawyer so engaged may be heard but on no account an adjournment shall be granted for his accommodation nor the venue of the hearing be changed to accommodate him. Appearance of lawyer not favoured.

Revision against the orders of Panchayat Courts.

4.15. Even though the Law Commission of India in its Fourteenth Report deprecated any suggestion of an appeal or revision against the decision of the Nyaya Panchayat, it is necessary to provide for one revision petition to the District Court in the initial stages for correcting errors of law.

Exclusion of certain areas where courts with people's participation are Successful.

4.16. At present a unique experiment is being carried on by Anand Niketan Ashram, Rangpur, covering literally number of Talukas where voluntary Lok Adalat is functioning successfully. This was initiated by one Shri Harivallabh Parikh.[31] Similar experiment with a slight variation is being carried on in Dholka Taluka. It was initiated by Ravi Shanker Maharaj and Muni Santbalji. If people in these and similar areas where such successful experiments with peoples participation in the administration of justice are carried on, so desire, it would be open to the authority to exclude these areas from the operation of the Nyaya Panchayat that may be set up as herein envisaged. Drawing inspiration from the success achieved by the Lok Adalats in Gujarat which at present is a voluntary effort sustained by the local Legal Aid Committee, some Lok Adalats were convened in various cities of Uttar Pradesh. A Lok Adalat presided over by retired Judges of the Delhi High Court was convened in Delhi for settling claims of victims of motor accidents. The attempt is to give it a concrete shape and form.

Impact on appeals to District Court.

4.17. It is hoped that a large number of disputes will be resolved by consensus and the feed stock for appeals in the District Court will be considerably reduced with the result that it will have an impact on the reduction of arrears in the District Courts as also in the High Courts.

Views invited.

4.18. The Law Commission invites views/comments on the subject with specific reference to the question whether there is need to constitute a body variously described a Nyaya Panchayat, Lok Adalat, Jan Panchayat, People's Court in rural and semi-urban areas on the lines indicated in the preceding paragraphs.

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[31]. See U. Baxi, 'From Takkar to Karar : The Lok Adalat at Rangpur, A Preliminary Study' 10 *Journal of Constitutional and Parliamentary studies*, (1976), pp. 52-116, at p. 54.

APPENDIX II

WORKSHOPS

Participants

DELHI—18tn and 19th January, 1986.

1. Sh. G.R. Rajgopaul.
2. Justice V.R. Krishna Iyer.
3. Justice O. Chinnappa Reddy.
4. Prof. Upandera Baxi.
5. Justice M.L. Jain.
6. Prof. N.R. Madhava Menon.
7. Prof. J.S. Gondhi.
   J.N.U.
8. Sh. S.S. Vats.
9. Mrs. Khuller,
   D.S. Planning Commission.
10. Sh. Punnuswamy.
11. Sh. Sivaramayya,
    Law Faculty.
12. Sh. Bose
    Law Faculty.
13. Mrs. Swaroop,
    D.S. Planning Commission.
14. Sh. M.P. Singh.
15. Mrs. Kapila Hingorani,
    Advocate.
16. Justice, Rajinder Sachar.
17. Sh. Pawan Chaudhary,
    Advocate.
18. Mrs. Jose Verghese.
19. Mr. K.L. Sharma,
    J. N. U.
20. Sh. D.V. Malhotra,
    Sub-Judge.
21. Prof. K.S. Shukla,
    Indian Institute of Public Administration.
22. Mrs. Chandramani Chopra,
    Advocate-cum-Teacher.
23. Dr. Sundram,
    Joint-Director,
    Planning Commission.
24. Mrs. Pinki Anand,
    Advocate.
25. Mrs. Urmila Kapoor,
    Advocate, Supreme Court.
26. Mr. S.N. Kapoor,
    Addl. Distt. & Sessions
    Judge.
27. Sh. Gupta.
28. Sh. Ramanuja,
29. Sh. Krishan Kumar,
    Advocate.

30. Prof. A.K. Kaul.
31. Mr. O.P. Shukla.
32. Sh. Krishan Kumar Mahajan,
    Journalist.
33. Sh. P.D. Mathew.
34. Prof. Mohanty.
35. Sh. Pande.
36. Sh. Kateswar,
    IIIrd Year LLB. Student.
37. Sh. Irovi.
38. Mrs. Usha Kumar,
    Advocate.
39. Mrs. Messy,
    Litigant.

SALEM—1st and 2nd February, 1986

1. Prof. R.V. Dhanpalan,
   Central Law College.
2. Justice S.T. Ramlingam,
   Judge, H.C. of Madras.
3. Sh. K.A. Palaniswamy,
   Advocate.
4. Sh. R. Manikam,
   Chief Metropolitan,
   Magistrate,
   Madras.
5. Sh. A.P. Chinnaswamy
   Advocate.
6. Sh. Vanniyar Adigalar
   Social Worker.
7. Sh. D. Gangappa,
   I.A.S.
8. Sh. Henry Thiagaraj,
   Madras.
9. Sh. Thangamani,
   Distt. & Sessions
   Judge.
10. Sh. E. Padmanabhan,
    Advocate,
    Madras.
11. Mrs. Asha Latha,
    Advocate,
    Madras.
12. Miss Radha Srinivasan,
    Advocate,
    Madras.
13. Sh. Kalyanam,
    Member,
    Gold Control,
    Tribunal.
14. Sh. Thulasi Das,
    Advocate.
15. Prof. Thirumalai,
    Salem.
16. Sh. K. Govindrajan,
    Advocate,
    Madras.

17. Sh. C. Natarajan,
Advocate.
18. Sh. K.A. Penchapakeshan,
Madras.
19. Sh. Krishna Kumar,
Pondicherry.
20. Sh. V. Arulappan,
Advocate.
21. Sh. N. Gandhi,
President,
Madras H.C.
Bar Association,
Madras.
22. Prof. D. Vijayanarayana Reddy,
Deptt. of Law,
Nagarjun University.
23. Dr. K.N. Chandrasekaran Pillai,
Reader,
Deptt. of Law,
University of Cochin.
24. Prof. P.G. Viswanathan,
Central Law College.
Salem.

JAIPUR—1st and 2nd March, 1986

1. Sh. D.D. Achareya,
Minister for Irrigation,
Power and P.W.D.
2. Sh. Harideo Joshi,
Chief Minister of Rajasthan.
3. Mr. Justice G.M. Lodha.
4. Sh. Dev Narain Thanvi,
Advocate.
5. Sh. N.L. Jain,
Advocate General.
6. Sh. Jagdip Dhankar,
Advocate.
7. Sh. Mardul Mridhur.
8. Dr. Raghav Prakash.
9. Sh. Ram Krishan Kalla,
Advocate.
10. Sh. N.S.H. Gupta,
Lecturer,
Law College.
11. Mr. Justice S.N. Bhargava.
12. Mr. Ramesh Purohit.
13. Prof. S.L. Jain.
14. Sh. Satya Vrat.
15. Sh. Dhani.
16. Sh. Durga Lal Baoddar,
Adovocate.
17. Sh. J.P. Vyas,
Assistant Professor, Law.
18. Sh. G.S. Singhur,
Advocate.
19. Sh. Poonam Chand Kandgawat.
20. Mrs. Sunita Satyarth,
Advocate.

21. Sh. S.N. Sharma.
22. Prof. G.S. Sharma.
23. Mr. Justice Dave.
24. Sh. R.S. Verma.
25. Sh. Ugam Raj Bhandari,
    Retired District and Sessions Judge.
26. Mrs. Kamla Jain.
27. Sh. R.P. Pahwa,
    Assistant Professor of Law.
28. Sh. N.D. Sharma.
29. Dr. S.K. Khumbas.
30. Mr. Justice M.L. Shrimal,
    Lok Ayukt.

VARANASI—15th and 16th March, 1986

1. Sh. Udai Shankar Pandey.
2. Sh. Krishan Deo Singh,
   Advocate.
3. Sh. Suresh Prasad.
4. Sh. Prem Bhai.
5. Sh. Nagendra Prasad Singh.
6. Sh. Sagar Singh,
   Advocate.
7. Mr. A.H. Khan,
   Reader in Law.
8. Sh. Gauri Shankar.
9. Sh. K.N. Verma,
   Advocate.
10. Dr. M.P. Singh,
    Reader in Law,
    B.H.U.
11. Sh. R.S. Jaiswal,
    Lecturer,
    Law School.
12. Dr. R.A. Malviya.
13. Sh. Yogendra Singh.
14. Sh. B.N. Mohilla.
15. Sh. Ganesh Dutt Dubey.
    District Judge.
16. Sh. Sah.
17. Prof. R.K. Mishra.
18. Sh. S.N. Mishra.
19. Kumari Abha Trivedi.
20. Sh. A.B.L. Srivastav.
21. Sh. Brahm Prakash,
    Advocate.
22. Prof. Krishan Bahadur.
23. Sh. B.S. Nirmal.
24. Sh. Dharamsheel Chaturvedi.
25. Sh. Som.
26. Sh. S.K. Singh.
27. Dr. U.C. Sankla.
28. Prof. Satyendra Tripathi.
29. Sh. Asha Ram Tiwari Pradhan.

30. Sh. Kishore.
31. Sh. Ram Shankar Mauriya.
32. Dr. Muniruddin Lohta.
33. Sh. Shiv Narain Srivastava.
34. Sh- Ram Subey Singh.
35. Sh. Ram Pradhan.
36. Sh. Sita Ram Singh.
37. Sh. Suresh Prasad.
38. Sh. Lallan Prasad Sanghat.

RANCHI—22nd and 23rd March, 1986

1. Sh. Justice S. Roy.
2. Sh. Kameshwar Prasad, Advocate.
3. Sh. A. Sahay.
4. Dr. Schitanand, V.C. Ranchi Uni.
5. Sh. R.N. Trivedi, Head of Political Deptt., Ranchi University.
6. Sh. Prem Shankar Dayal, Advocate.
7. Justice, M.M. Prasad.
8. Sh. Sartaj Sharma.
9. Sh. Vipun Nath Samant.
10. Sh. N.K. Narayan.
11. Sh. Arjun Singh.
12. Sh. C.D. Choube, Advocate.
13. Sh. Kameshwar Nath, Advocate.
14. Sh. Bama Pato Rundra, Advocate.
15. Sh. C.A. Guriya.
16. Sh. Rajaji and Kiran Guria.
17. Sh. Kale Munder, Sarponch.
18. Sh. Masi Prakash Guriya, Mukhiya.
19. Sh. Jakhariya Pahan.
20. Dr. N.K. Lall.
21. Sh. Jai Govind Verma.
22. Dr. K.N. Sahai,
23. Sh. Purshottam Das Boni.
24. Sh. Samanta, Advocate.
25. Sh. Narendra Kishore Narain.
26. Sh. Arvind Prasad.
27. Sh. Rajani Kumar Singh, Advocate.
28. Sh. Jagat Mani Mahto.
29. Sh. Ashwani Kumar.
30. Sh. Sudershan Pandey.

31. Sh. Satendra Singh,
    Labour Court Judge.
32. Sh. K.N. Giri.
33. Sh. R.K. Prasad.

CALCUTTA—29th and 30th March, 1986.

1. Justice A.K. Sen Gupta,
   Judge,
   H. C. of Calcutta.
2. Dr. (Mrs.) Sarla Ghosh.
3. Sh. G.R. Bhattacharya,
   D.J.,
   Howarh.
4. Sh. Mangalmoy Sarkar.
5. Sh. B.K. Das,
   Advocate.
6. Mrs. Mina Das,
   Secretary,
   Nistha.
7. Sh. Prabir Kumar Gupta,
   Deputy Magistrate,
   North 24 Pgs.
8. Sh. Moti Lal Bera,
   School Teacher.
9. Sh. P. Dutta,
   Asstt. Legal,
   Remembrancer,
   West Bengal.
10. Sh. Gobordhan Bhattacharya.
11. Sh. A.R. Singh,
    Advocate,
    Ranchi.
12. Sh. Sudhir Mandal,
    Secretary,
    B.U.P.
13. Sh. Biswanath Bajpaee,
    Advocate.
14. Justice M.M. Dutt,
    Judge, S.C.
15. Mrs. Shanti Dutta,
    Principal.
16. Sh. Raktim Mukhopadhyay,
    Hon. Director,
    B.U.P.
17. Dr. L.K. Khanra,
    Calcutta.
18. Sh. Ram Kishore Prasad,
    Advocate.
19. Prof. A.K. Mitra.
20. Justice R.N. Pyne,
    Judge,
    H.C. of Calcutta.
21. Prof. Sachidananda Maity,
    Midnapore.
22. Dr. Sudhendu Mukherjee.
23. Prof. Gitanath Ganguly,
    Law College,
    Calcutta.

24. Sh. Rabindra Nath Rocychowdhury,
Howrah.

25. Sh. K.L. Rathi,
Purulia.

26. Sh. Barendra Bhushan Nandy.

27. Sh. Amiya Kumar Saha.

28. Prof. Mrs. Arati Ganguly.

29. Litigants
to. (Ladies)
36.

37. Justice B.P. Banerjee,
Judge,
H.C. of Calcutta.

38. Sh. Bikas Ch. Ghosh,
Former Chief Judge,
City Civil & Sessions Court,
Calcutta.

39. Sh. Ashwani Kumar Sinha,
Advocate,
Ranchi.

40. Sh. Satyendra Singh,
Judge,
Labour Court,
Ranchi.

41. Justice Mukul Gopal Mukherjee,
Judge,
Calcutta H. C.

INDORE—5th and 6th April, 1986

1. Sh. Joshi,
President,
High Court,
Bar Assoc.

2. Dr. Manohar Lal Dalal.

3. Justice R.K. Verma,
Judge,
H.C. Bench at Indore.

4. Sh. M.A. Khan,
Advocate.

5. Justice Mouley,
H.C. Bench at Indore.

6. Sh. K.L. Sehti,
Advocate.

7. Sh. P.G. Anikihandi,
Advocate.

8. Sh. D.M. Kulkarni,
Advocate.

9. Sh. Yashwant Kulkarni,
Advocate.

10. Sh. S.K. Gangele,
Advocate.

11. Dr. U.R.K. Rao.

12. Sh. S.C. Kansal.

13. Justice Gyani,
Judge,
H.C. Bench.

14. Prof. G.C. Kasaliwal.

15. Prof. C.S. Chhaze.

16. Sh. M.D. Arya,
Advocate.

17. Mrs. S. Joshi,
Advocate.

18. Sh. S. Joshi,
Govt.
Advocate.

APPENDIX III

A. State Governments

1. Government of Rajasthan (Judicial Department).
2. State Law Commission, Government of Meghalaya.
3. Government of Meghalaya (Law Department).
4. Government of Orissa (Law Department).
5. Government of Karnataka (Department of Law and Parliamentary Affairs).
6. Government of Madhya Pradesh (Law & Legislative Department).
7. Government of Mizoram (Law and Judicial Department).
8. Government of Punjab (Department of Legal and Legislative Affairs).
9. Government of Bihar (Law Department).
10. Government of Arunachal Pradesh (Law & Judicial Department).
11. Government of Maharashtra (Law and Judiciary Department).
12. Government of Kerala (Law Department).
13. Government of Andhra Pradesh (Law Department).
14. Government of Jammu and Kashmir (Law Department).

B. High Courts and Judges of the High Courts.

1. Justice P.B. Sawant,
   High Court of Bombay.
2. Justice Kamleshwar Nath,
   Allahabad High Court.
3. High Court of Orissa.
4. Justice Guman Mal Lodha,
   Rajasthan High Court.
5. Justice V.S. Dave,
   Rajasthan High Court.
6. High Court of Gujarat.
7. High Court of Madras.
8. Justice S.T. Ramalingam,
   High Court of Madras.
9. Justice A. Raghuvir,
   High Court of Andhra Pradesh.
10. Justice David Annonswamy,
    High Court of Madras.
11. Justice Gulab Chandra Gupta,
    High Court of Madhya Pradesh
    Jabalpur (M.P.).
12. Justice P.C. Jain,
    Rajasthan High Court,
    Jaipur.
13. Justice K.N. Misra,
    High Court of Allahabad.
14. Justice J.R. Chopra,
    Rajasthan High Court,
    Jodhpur.
15. Justice S.M. Jain.
    Rajasthan High Court,
    Jodhpur.

C. District Judges

1. Shri M.S. Vaidya,
   District & Sessions Judge,
   Akola (Maharashtra).
2. Shri H.B. Padate,
   District & Sessions Judge,
   Jalgaon (Maharashtra).
3. Shri A.B. Palkar,
   District & Sessions Judge,
   Solapur (Maharashtra).
4. Shri P.N.S. Chauhan,
   Distt. & Sessions Judge,
   Mandasaur (M.P.).
5. Shri R.M. Bapat,
   District & Sessions Judge,
   Ratnagiri (Maharashtra).
6. Shri K.K. Verma,
   District & Sessions Judge,
   Balaghat (M.P.).
7. District & Sessions Judge,
   Indore (M.P.).
8. Shri V.A. Kamkanwadi,
   District & Sessions Judge,
   Satara (Maharashtra).
9. Shri P.V. Nirgudkar,
   District & Sessions Judge,
   Thane (Maharashtra).
10. Shri R.P. Awasthi,
    Distt. & Sessions Judge,
    Damoh (M.P.).
11. Shri P.V. Namjoshi,
    Third Addl. Judge,
    District Court of Damoh (M.P.).
12. Shri G.K. Kulshreshtha,
    District & Sessions Judge,
    Vidisha (M.P.).
13. Shri S.S. Dami,
    District & Sessions Judge,
    Ahmednagar (Maharashtra).
14. Shri Prakash Mehta,
    District & Sessions Judge,
    Bilaspur (M.P.).
15. Shri M.B. Majumdar,
    District & Sessions Judge,
    Sangli (Maharashtra).
16. Shri V.N. Nimbalkar,
    District & Sessions Judge,
    Parbhani (Maharashtra).
17. Shri P.K. Chavare,
    2nd Additional District & Sessions Judge,
    Parbhani.
18. Shri P.P. Bafna,
    Additional District & Sessions Judge,
    Parbhani.
19. Shri Ranganath Rath,
    District & Sessions Judge,
    Dhenkanal (Orissa).
20. Shri Sundar Lal Mehtra,
    Judge,
    Family Court.,
    Jaipur.

D. Bar Councils/Bar Associations

1. Sangli Bar Association, Sangli.
2. Bar Council of Rajasthan, Jaipur.
3. Bar Council of Orissa, Bhubaneshwar.
4. Bar Association of Khurai, Sagar (M.P.).
5. Bar Association, Kavathe-Mahamkal, District—Sangli (Maharashtra).
6. Bar Coucncil of Tamil Nadu, Madras.
7. Satara District Bar Association, Satara.
8. Cuddalore Bar Association, Cuddalore.
9. Bar Association of Tiruchengodu, District-Salem, Tamil Nadu.
10. Salem Bar Association, Salem.
11. Bar Association of Tiruvallur.
12. Bar Association, Sagar (M.P.).

E. Associations

1. Rajasthan Judicial Service Officers' Association, Jaipur.
2. Progressive Law Association, Bombay.
3. Institute of Public Affairs, Madhuban.
4. Indian Procedural Law Orientation Association, Sangli (Maharashtra).
5. A.P. Democratic Lawyers' Association, Hyderabad.
6. United Artists' Association, Ganjam (Orissa).
7. Common Cause, New Delhi.
8. Greater India League, Bangalore.
9. Delhi Hindustani Mercantile Association. Delhi.
10. Haryana Legal Aid to the Poor Committee, Chandigarh.
11. All India Ambedkar Peoples Movement.
12. Social Action Interest Litigation, Ranchi.
13. The All India Federation of Scheduled Caste/Tribes, Backwards and Minorities Employees Welfare Association, New Delhi.
14. Sanjivayya Institute of Socio-Economic Studies, New Delhi.

F. Advocates

1. Sh. M.A. Khan,
   Indore (M.P.).
2. Sh. Ugam Raj Bhandari,
   Jaipur.
3. Sh. R.R. Prasad,
   Ranchi.
4. Sh. V.M. Tarkunde,
   New Delhi.
5. Sh. G.L. Sanghi,
   New Delhi.
6. Sh. S.K. Sundaram,
   Madras.
7. Sh. G. Lingareddy,
   Guntur (A.P.).
8. Sh. A.C. Pathak,
   Nava Dahora,
   Broad,
   (Gujarat).
9. Sh. Syama Sumer Salon,
   Gandhi Nagar,
   Berhampur (Orissa).
10. Sh. Mahabalishwar N. Morje,
    Bombay.
11. Shri K.N. Varma, Varanasi.

G. Individuals

1. Sh. Phiroze Amroliwalla,
   Bombay.
2. Sh. K.P.S. Mahalwar and
   Shri P.C. Juneja,
   Maharashi Dayanand University,
   Rohtak (Haryana).
3. Sh. Ras Mohan Tiwari,
   Pali,
   Ranchi.
4. Dr. M. Narayanaswamy,
   Madras.
5. Sh. H.D. Shonrie,
   New Delhi.
6. Dr. Paras Diwan,
   Chandigarh.
7. Sh. Dharam Pal Mehta,
   Faridabad.
8. Sh. Shamshad Ahmed,
   Lucknow.

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