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An Overview of the Indian Justice Delivery Mechanism

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India, being a common law country, derives most of its modern judicial framework from the British legal system. There exists a uniform system of justice dispensation, with the Supreme Court at the apex and High Courts in the States (provincial units in India), as well as numerous other subordinate courts. Thus, in the strict sense, the Indian judicial system does not operate on wholly federal lines, as may be seen in the United States. It does not have a dual system of courts and the judiciary is one integrated whole. There are no federal courts as such to decide federal questions exclusively.

The decisions of the subordinate courts are appealable in the High Courts. However, though the High Courts function independently in their area of jurisdiction, their decisions can be challenged in the Supreme Court. The procedures for this mechanism are laid down in the Constitution and various rules have also been framed by the courts for this purpose. It may be said, therefore, that the Indian judiciary operates on “quasi-federal” lines.

A Brief History of the Development of the Indian Judicial System

The British rule in India brought about the introduction and development of the common law legal system, on which India has based its present judicial framework. In the early seventeenth century, the Crown, through a series of Charters, introduced a judicial system functioning under its authority in the three “presidency” towns (Bombay, Madras and Calcutta), i.e. the largest and most important towns under British rule (the courts were called ‘Admiralty Courts’ in

Bombay and Madras and 'Collector's Court' in Calcutta). These judicial systems were formulated independently by the Governor and the Council of those towns, and had authority to decide both civil and criminal matters. However, the towns functioned independently, and there was a lack of coherence due to dissimilarities in functioning. Moreover, the courts did not derive their authority directly from the Crown, but from the East India Company. This also contributed in making the system unsystematic.

In the eighteenth century, with the strengthening of the British yoke in India, a more uniform pattern emerged. All "presidency" towns now had a uniform judicial system (called a Mayor's Court). Soon thereafter, by Royal Charter, the courts derived their authority directly from the Crown. A system of appeals to the Privy Council was initiated, and this marked a historic landmark in the development of the Indian Judicial system, because the Privy Council functioned as the last court of appeal in India for more than 200 years. However, the courts functioned under the English law, without any regard for local laws, which raised questions regarding their effectiveness. Moreover, much of the local criminal justice, at the grass root level, was left in the hands of local landlords.

In the late eighteenth century, the Mayor's Court was replaced with a Supreme Court (in presidency towns). This was the first attempt to create a separate and independent judicial organ in India, under the direct authority of the King. The Chief Justice and Pusine Judges were appointed by the King. This court had jurisdiction over civil, criminal, admiralty and ecclesiastical matters and was required to formulate rules of practice and procedure. Appeals from this court lay to the Privy Council.

In the beginning, the territorial jurisdiction of the court extended only to British subjects and "His Majesty's" subjects (all those in employment of the East India Company and those entering into a contract with one of "His Majesty's" subjects). In areas except the presidency towns (called "mofussil"), the Company reigned supreme over all judicial matters. Its jurisdiction had no relation with the Crown. Local civil and criminal justice was left in the hands of the locals, functioning under a system known as the "adalat system".

By the mid nineteenth century, a regular hierarchy of courts and a sound procedural practice had evolved. The declaration by Queen Victoria that made India a British dependency called for absolute sovereign control over India. The adalat system and Supreme Court were abolished, a High Court was established in each presidency town, and more were envisaged in other provinces as well. Appeals from them went to the Privy Council. Thus, this created a uniform judicial system in India, which, in substance, has largely continued till today. The predecessor of the present Supreme Court of India was the Federal Court (established in 1937), which heard appeals from the High Courts, and whose decisions were appealable to the Privy Council. The current Supreme Court of India enjoys the combined jurisdiction of the Privy Council and the Federal Court, which are no longer in existence.

Development of Personal Laws

India is imbued with diverse religions, and each religious community has its own personal laws that govern marriage, adoption, succession and the like. The British maintained a policy of non-interference with custom and personal laws, and so it was decided that Hindus were to be governed by Hindu Law and Muslims, by Muslim laws. The British administration attempted to give a framework to these laws by enacting specific legislations governing various religions. Few examples are the Indian Christian Marriage Act, 1872, Parsi Marriage and Divorce Act, 1936, Dissolution of Muslim Marriage Act, 1939, Hindu Marriage Act, 1955 and the like. The term 'Hindu' has been viewed flexibly to include Sikhs, Jains and Buddhists.

The development of personal laws is largely influenced by customs and manners of communities. As these customs change with time and development of society, the legislations have been amended from time to time. Many ancient practices have been recognized, while others done away with, in line with public policy and societal moral values. The legislations contain mechanisms for the protection of divorced spouses, education for minor children, maintenance etc. In respect of Muslim Law, marriages are legalized by the process enshrined in the

dictates of Mohammedan Law. However, no specific law exists for adoption for Muslims, Christians and Parsis, and they are covered by the general law governing guardians and wards.

Development of the Civil and Criminal Legal System

Much of the common law introduced in India has been codified. The basic statutes governing civil and criminal justice are the Indian Penal Code, 1860, Indian Evidence Act, 1872, the Code of Criminal Procedure, 1973 and the Code of Civil Procedure, 1908.

The Indian Penal Code, 1860 was drafted by the First Law Commission, established in 1835, of which Lord Macaulay was the Chairman. This classic piece of legislation was reproduced in most other British colonies and even today, forms part of the laws of countries like Malaysia, Singapore and Sri Lanka. These legislations have undergone several amendments, which address the changing needs of society. This code is the basic governing statute for determining criminal liability for offences stated in it and also for declaring exceptions to the questions of criminal liability for offences covered under special or local laws. This legislation has stood the test of time, and has been amended very few times.

The Indian Evidence Act of 1872, based on the work of Sir James Fitzjames Stephen, was a historical measure that consolidated the rules of evidence which were hitherto based on the traditional legal systems of a plethora of social groups existing in India. They also varied, at times, according to a person's religious faith or social standing. This differentiation was removed and the judicial system had a comprehensive guide for admissibility of evidence in courts, which include subordinate courts, high courts as well as the Supreme Court.

The Code of Criminal Procedure elucidates the procedure that is to be followed while prosecuting an accused. The present code dates to 1973, but was first enacted into law in 1861, after the second Law Commission presented the draft of the code.

The Code of Civil Procedure, 1908 was first codified in 1859, after the revolution of 1857, which resulted in the dissolution of the East India Crown and the Government of India was taken over by the British sovereign and this led to a surge in legal and administrative reforms. Before this time, the law in this important branch was almost chaotic. Subsequently, the re-enacted code of 1908 was adopted and has again been amended in 1976.

Codification of laws made the law uniform throughout the country and fostered a kind of legal unity in fundamental laws. The Codes apply uniformly throughout the nation. The great value of this achievement of maintaining a basic unity in the area of fundamental laws has been recognized by the present Constitution and it seeks to maintain the same even in the face of a federal structure. Though, to some extent, local variations are permitted to be made by the provincial units of India (called 'States'), but the essential unity of the country in the matter of basic laws is maintained (basic laws include penal and criminal procedure laws, marriage and divorce, wills, adoption, intestacy, succession, partition and joint family, insolvency, civil procedure, trusts, evidence etc.).

Functioning of the Supreme Court, High Courts and Subordinate Courts

The Supreme Court is primarily a court of appeal and has extensive appellate jurisdiction. Its primary function is to interpret the Constitution and declare whether or not any legislation or administrative action is unconstitutional. The Supreme Court is the final arbiter in all constitutional controversies. The law declared by the Supreme Court is binding on all courts in India, and is the law of the land. The Court is a court of record and can also punish for its contempt. Any judgment of the High Court can be brought before it, if the High Court certifies that the matter at hand concerns a substantial question of interpretation of law or the Constitution. Appeal to the Supreme Court is not a matter of right. In cases where a High Court does not issue certificate of appeal, and there exists an important legal question, recourse to "Special Leave" may be made, as per the Constitution of India. This provision (Article 136 of the Constitution) enables the Supreme Court to grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any

court or tribunal in India. This power is extremely wide and enables the Supreme Court to act as a check against improper exercise of jurisdiction by judicial or quasi judicial bodies as well as maintain a uniformity of legal approach. In certain special circumstances, the Supreme Court can also transfer to itself any case from any of the High Courts. This usually takes place when cases are pending before the Supreme Court and High Court, or before two or more High Courts, involving same or similar questions of law and the Supreme Court is satisfied either *suo motu* or on an application made by the attorney general or any party to any case that such questions are of general importance, the Supreme Court may withdraw the cases from the High Courts and dispose them itself. Thus, the Supreme Court possesses the ultimate jurisdiction over all courts and legal proceedings in India and enjoys a wide appellate power.

The Supreme Court also enjoys advisory jurisdiction, by which the President of India may refer any question of law or a question of public importance to the Court for its opinion. The court also has the power to review its own decisions.

In no other Constitution there are to be found such detailed provisions regarding the highest judicial organ, as in the Indian Constitution. This Court is one of the most potent judicial organs in the world today, and plays a fundamental role in shaping constitutional jurisprudence in India.

The High Courts are courts of record and as such can punish for their contempt. The Constitution makers realized that the High Courts were destined to play a pivotal role in the administration of justice not only in deciding civil and criminal matters but also by way of protecting fundamental rights guaranteed under the Constitution (for which High Courts are also conferred with Writ jurisdiction.). Therefore, a high degree of judicial independence was given to the High Courts. They enjoy original as well as appellate jurisdiction and derive their jurisdiction from the Constitution, Codes of Civil and Criminal Procedure and various statutes. They also exercise supervisory jurisdiction over subordinate courts. They are vested with the power to hear references for the confirmation of death sentences and may also be consulted in the matter of exercise of the prerogative of mercy by the President or Governor. Revisional powers are also granted to the High Courts.

The High Courts have jurisdiction and superintendence over all courts and tribunals within its territorial jurisdiction. The power of High Courts extends also to the other judicial or quasi judicial bodies within its territorial limits, in judicial and administrative matters. Thus, the Constitution of India has empowered the High Courts with significant and effective powers to administer justice, to ensure that lower courts espouse the cause of promoting justice, to take prompt action when there is a miscarriage of justice, to secure the rights and liberties of the people, and to ensure that the administration functions within the limits of the law without arbitrariness.

The Subordinate Courts in each State function under the authority of the High Court and have fixed pecuniary, territorial and sentencing limits. There exists a hierarchical structure in the lower judiciary and these limits are fixed accordingly, in ascending order.

India thus has a single integrated judiciary having jurisdiction in all cases, civil, criminal and constitutional. Such a system plays an important role in maintaining the unity of the country. A uniform interpretation of laws by the Supreme Court has a great unifying effect because the unconscious process of consolidation which a uniformity of laws and interpretation involves makes the unifying unconscious and therefore more stable.

Relationship between the Supreme Court and High Courts

The Supreme Court of India, in a 2004 case (*Tirupati Balaji Developers Pvt. Ltd. v. State of Bihar*, AIR 2004 SC 2351), delved into the nuances of the nature of the relationship between the Supreme Court and High Courts.

Generally speaking, the High Court is not subordinate to the Supreme Court. In a way, the canvass of judicial power vested with the High Courts is wider inasmuch as its writ jurisdiction is concerned. However, if the Supreme Court and the High Courts both were to be thought of as brothers in the administration of justice, the High Court has larger jurisdiction but the Supreme Court still remains the elder brother. This is because though the Constitution allowed a certain degree of independence to the High Courts, certain

constitutional provisions were incorporated to give supervisory powers to the Supreme Court. This was done to create a unified hierarchical judicial system in India, with the Supreme Court at the pinnacle.

There are a few constitutional provisions which give an edge, and assign a superior place in the hierarchy, to the Supreme Court over High Courts. So far as the appellate jurisdiction is concerned, in all civil and criminal matters, the Supreme Court is the highest and the ultimate court of appeal. It is the final interpreter of the law. Secondly, the Supreme Court may transfer any case pending before one High Court to another High Court or may withdraw the case to itself. Thirdly, the law declared by the Supreme Court shall be binding on all courts, including High Courts, within the territory of India. Lastly, all authorities, civil and judicial, in the territory of India, including the High Court are under a constitutional obligation to act in aid of the Supreme Court.

Therefore, in a unified hierarchical judicial system which India has accepted under its Constitution, vertically the Supreme Court is placed over the High Courts. Because of the fact that the Constitution confers an appellate power on the Supreme Court over the High Courts, certain consequences naturally flow and follow. Appeal implies in its natural and ordinary meaning the removal of a cause from any inferior court or tribunal to a superior one for the purpose of testing the soundness of decision and proceedings of the inferior court or tribunal. The superior forum shall have jurisdiction to reverse, confirm, annul or modify the decree or order of the forum appealed against and in the event of a remand the lower forum shall have to re-hear the matter and comply with such directions as may accompany the order of remand. The appellate jurisdiction inherently carries with it a power to issue corrective directions binding on the forum below.

Appointment to the Courts

To be appointed as a judge of the Supreme Court, a person must be an Indian citizen and should either have been a High Court judge for 5 years or an advocate of the High Court for 10 years, or must be in the opinion of the President, a distinguished jurist. Judges are appointed by the President, after

consultation with the Chief Justice of India and other senior judges forming a collegium. Usually, the seniormost judge of the Supreme Court is appointed as its Chief Justice. The sanctioned strength of the Supreme Court is 26.

A judge of the Supreme Court enjoys a fixed tenure insofar as he retires at the age of 65. He cannot be removed except by a Presidential order passed after an address of each House of Parliament supported by a majority of the total membership of each House, and by a majority of not less than two-thirds of the members of each House present and voting, and has been presented to the President in the same session for such removal on the ground of proved misbehavior or incapacity. Salaries of Supreme Court judges are fixed by the Constitution and may be varied by law made by the Parliament. The salaries and allowances cannot be varied to the disadvantage of the judge during his tenure. No discussion can take place in Parliament or State Legislature with respect to the conduct of a Supreme Court judge in the discharge of his duties except when a motion for his removal is under consideration of a House of Parliament.

To be appointed as a judge of the High Court, a person must be a citizen of India and must either have held a judicial office in India or been an advocate of a High Court for at least 10 years. Judges are appointed by the President of India in consultation with the Chief Justice of India and other senior Supreme Court judges forming a collegium. A judge of the High Court enjoys a fixed tenure insofar as he retires at the age of 62 years. Provisions for removal are similar to those for Supreme Court judges. On many occasions, additional judges are appointed to High Courts for a 2 year period to take care of the arrears or increase in work. Such additional judges may be made permanent judges. High Court judges are transferred from time to time by the President after consulting the Supreme Court Collegium. At present there are 21 High Courts in India and more may be established by the Parliament.

Thus, the Supreme Court has been given a wide power in High Court appointments. The candidature of all the eligible judges is scrutinized by the Chief Justice of India and his senior colleagues and only those candidates who have displayed the highest standards of integrity in work, innovativeness in

thinking and steadfastness in the resolve to uphold the cause of justice are recommended for elevation to the High Courts.

Appointments to the subordinate judiciary are made by way of State Judicial Service examinations. Senior judges of the subordinate judiciary also get opportunity of being elevated to the High Court. There is a District Court (each province or State is divided into a number of sub-parts, called a District) and a number of subordinate courts from which appeal lies to the District Court and then to the High Court. Appointments, posting and promotion of District Judges are made by the Governor in consultation with the concerned High Court. All other matters are controlled by the High Court of the particular State. There is a separate hierarchy for subordinate courts on the civil side and on the criminal side.

Function of Tribunals

Tribunals are established for discharging specific judicial functions in certain definite and demarcated areas. For example, The Central Administrative Tribunal has been established for adjudication of disputes with respect to recruitment and conditions of service of persons appointed to public services and posts. Tribunals also exist for areas such as securities and capital market disputes; inter state water disputes, debt recovery, industrial labour disputes and the like. Tribunals derive their powers from various statutes constituted for the specific purpose. For example, Administrative Tribunals were established by the Administrative Tribunals Act, 1985. Tribunals are empowered to prescribe their own rules of practice for discharging their functions subject to the legislation from which they derive their authority. Employees of the tribunals are required to discharge their duties under the general superintendence of the Chairman, whose powers are equivalent to a High Court judge.

Jurisdiction of the Supreme Court of India

The Supreme Court of India is the protector of the rights of the people and upholder of justice. This is its inherent and most fundamental role. The welfare of the people and progressive development of the nation in an organized civil society is of utmost significance for the Court, and towards this end, it has taken

several historic measures. The judiciary has been the greatest bulwark against executive excesses and protector of individual liberty. A judiciary independent of the executive and legislature is necessary in the maintenance of the rule of law.

In India, Article 21 of the Constitution of India guaranteeing Right to Life stands at the fulcrum of the rule of law. Article 21 confers positive rights to life and liberty, which goes beyond mere animal existence. It has been given a multidimensional interpretation by the Supreme Court, in order to check legislative excesses on the rights of the people.

Through various judgments, the apex court has widened the scope of Article 21 and has provided within its ambit, a wide gamut of rights, including the right to education which has been included as apart of right to life. The Court has held that, *“the right to education flows directly from the right to life”* as *“the right to life and the dignity of an individual cannot be assured unless it is accompanied by the right to education”*. [*Mohini Jain v. State of Karnataka* (1992) 3 SCC 666]

Thus, in their endeavour to promote the Rule of Law, the Court has given these Rights and Principles their real meaning. They have adopted substantive equality, and aimed for a result oriented approach. This approach tends to encourage the downtrodden and underprivileged to redeem themselves of previous inequalities, and has resulted in greater judicial activism, and has opened new vistas for judicial innovation and creativity, in order to fulfill the mandate of achieving social equality.

Public Interest Litigation is another innovation by the Supreme Court that has greatly furthered the Rule of Law. This arose because the poor did not have the capacity to represent themselves, or to take advantage of progressive legislation, and thus the Supreme Court, sensitive to the grim social realities, gave relief to these oppressed people, by allowing any member of the public to maintain an action or petition by way of Public Interest Litigation. Notable cases include: *Shiram Food & Fertilizer case* AIR (1986) 2 SCC 176 [on lethal chemical and gases posing danger to life and health of workmen]; *M.C Mehta v. Union of India* (1988) 1 SCC 471 [Ganga Pollution case]; *Parmanand Katara v. Union of India* AIR 1989 SC 2039 [Public Interest Litigation filed by a human right activist.

The Supreme Court held that it is a paramount obligation of every member of medical profession to give medical aid to every injured citizen] and *Council for Environment Legal Action v. Union of India* (1996) 5 SCC 281 [Public Interest Litigation filed by registered voluntary organization regarding economic degradation in coastal area].

The Court has also widened its power of judicial review to include any executive decision that may be marred with arbitrariness. Through judicial review, the other organs of the State, namely, legislature and executive are kept in check from excesses.

The Rule of Law has also been furthered by the Supreme Court on various other occasions, through refreshingly creative strategies and judicial activism. Instances include, The Right to Health [(*Consumer Education and Research Centre v. Union of India* (1995) 3 SCC 42)]; Bonded Labor (*People's Union for Democratic Rights v. Union of India* [Asiad Workers' Case], AIR 1982 S.C. 1473 and *Bandhua Mukti Morcha v. Union of India*, [(1984) 3 SCC 161]); Rights of Indigenous People [(*Samatha v. State of A.P.* (1997)8 SCC 191)] and Gender Justice [*Vishaka v. State of Rajasthan* (1997 6 SCC 241)]. Thus, through stellar judicial pronouncements, the Rule of Law was given a clear and coherent meaning by the Supreme Court, and this guides us to this day.

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