CHAPTER - VII

CONCLUSIONS AND SUGGESTIONS
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At the time of its inauguration\(^1\) on the 28\(^{th}\) day of January 1950, Justice Harilal Kania, the first Chief Justice of the Supreme Court of India, said that "the Supreme Court would declare and interpret the law of land and with the tradition of the judiciary in the country it would work in "no spirit of formal or barren legalism" within the limits prescribed by the Constitution. The Supreme Court would be able to make a substantial contribution towards the formation of India into a great unit retaining its own civilization, traditions and customs. He trusted that the people of India would also maintain the "independence, honour and dignity" of the Supreme Court".

The constitution of India contains elaborate provisions relating to the Judiciary.\(^2\) Though, India had the Judicial System even before the independence of the Country but it was not fully independent, impartial and supreme. The cases of great Indian Patriots like those of Bhagat Singh and others are a clear verdict on its functioning at that time. The framers of the constitution were under a binding commitment to have a impartial, independent and Supreme Judiciary to protect the human rights of people as well as to uphold the values and the principles enshrined in the Constitution of India.

Now more than 58 years have passed to require a thorough evaluation and critical appraisal of the working of the Judiciary in general and the Supreme Court in particular.

The Supreme Court stands at the apex of the Indian Judicial System. The High Courts are the highest court of jurisdiction at the state level. Each state is divided into districts. The Courts at the district level i.e.

\(^1\) Of the Supreme Court of India

\(^2\) Articles 124 to 147 of the Constitution of India lay down the composition and jurisdiction of the Supreme Court of India.
Court of District and Session Judge is presided over by the District and Session Judge. Below him there are courts having civil jurisdiction and criminal jurisdiction. (Additional and Assistant session Judge) Chief Judicial Magistrate and Judicial Magistrate class I and class II.

The Supreme Court has original, appellate and advisory jurisdiction. It has exclusive original jurisdiction over any dispute between the Government of India and one or more States. In addition, Article 32 of the Constitution grants an extensive original jurisdiction to the Supreme Court in regard to enforcement of Fundamental Rights. It is empowered to issue directions, orders or writs, including writs in the nature of Habeas corpus, Mandamus, Prohibition, Quo Warranto and Certiorari to enforce them.

Under Article 142 the Supreme Court in the exercise of its jurisdiction, pass such order as is necessary for rendering complete justice in matters pending before it. This power of the court cannot be curtailed even by a legislature. It is a residuary power, supplementary and complementary to the power specifically conferred on the court which it may exercise whenever it is just and equitable to do so and in particular to ensure the observance of the due process of law, to do complete justice between the parties while administering justice according to law.

The appellate jurisdiction of the Supreme Court can be invoked a certificate granted by the High Court concerned under Articles 132(1), 133(1) or 134 of the Constitution in respect of any judgement, decree or final order of a High Court in both civil and criminal cases, involving substantial questions of law as to the interpretation of the Constitution. The Supreme Court can also grant special leave to appeal from a judgement or order of any non-military court or Tribunal.

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3 Supreme Court Bar Association vs. Union of India (1998) 4 SCC 409.
4 Article 136 of the Constitution
The Supreme Court has special advisory jurisdiction in matters which may specifically be referred to it by the President of India.\(^5\)

The Supreme Court has been vested with power to punish anyone for contempt of any court in India including itself.\(^5\) Under this power, it can also punish anyone for the contempt of any of the High Courts, the Subordinate courts and the Tribunal In Vinay Chandra Mishra’s case\(^7\) The court punished Sri Vinay Chandra Mishra, a senior advocate and president of the Bar council of India for his misbehaving with Justice Kishote of Allahabad High Court, as it amounted to contempt of the said court.

In Delhi Judicial Services Association Vs State of Gujarat\(^8\) The Supreme Court has given a broad and expansive interpretation to Article 129 and has thus made a significant contribution towards maintaining the integrity and independence of subordinate courts by taking them under its protective umbrella. The Court has ruled that under Article 129, it has a power to punish for contempt not only of itself but also of High Courts and that of the lower courts. This is the inherent power of the Court as ‘a court of record’ as laid down in Article 129.

In the case of Income Tax Appellate Tribunal vs. V.K. Aggarwal\(^9\), the Supreme Court held that it has the jurisdiction to punish for the contempt of Income tax Appellate Tribunal as it is a national tribunal.

The Jurisdiction of the Supreme Court under Article 129 of the constitution is independent of The Contempt of Courts Act, 1971 this cannot be denuded, restricted or limited by The Contempt of the Courts Act. Thus, there is no restriction or limitation on the nature of

\(^5\) Under Article 143 of the Constitution. Till date eleventh references are made by the president for the advisory opinion of the Supreme Court.

\(^6\) Under Articles 129 and 142 of the Constitution

\(^7\) AIR 1995 SC 2349

\(^8\) AIR 1991 SC 2176

\(^9\) AIR 1999 SC 452
punishment that the Supreme Court may impose while exercising its contempt jurisdiction.\textsuperscript{10}

In Zahira Habibulla H. Sheikh vs. State of Gujrat\textsuperscript{11} known as the best Bakery Case, having held that Zahira was guilty of having committed contempt, the Court sentenced Zahira to undergo simple imprisonment for 1 year and to pay Rs. 50,000 as Fine and in case of default of payment of fine within two years she shall suffer further imprisonment of 1 year.

The Supreme Court took an unprecedented action when it directed a sitting Minister of the state of Maharashtra, Swaroop Singh Naik, to be jailed for 1 month on a charge of contempt of court on May 12 2006. This was the first time that a serving Minister was ever jailed.

The Constitution seeks to ensure the independence of Supreme Court Judges in various ways. The Judges of the Supreme Court are appointed by the president in consultation with chief justice of India who in turned is required to consult the collegium\textsuperscript{12} comprising of four seniormost judges of the Supreme Court. The opinion of judges should be in writing and the decision should be unanimous. The appointment to the office of chief justice of India shall be on the basis of seniority unless there is any doubt as to the fitness of senior most judge to hold the office.

A Judge of the Supreme Court cannot be removed from office except by an order of the President passed after an address in each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of members present and voting, and presented to the President in the same Session for such removal on the ground

\textsuperscript{10} Ajay Kumar Pandey, In re, AIR 1997 SC 260

\textsuperscript{11} (2006) 3 SCC 374

\textsuperscript{12} In view of guidelines laid down by the Supreme Court in SC Advocates on record vs Union of India (1993) 4 SCC 441 and in re Presidential reference AIR 1999 SC 1. The present position as to the appointment of judges removal of judges and transfer of judges in detail in chapter 3 of this thesis under the heading Appointment, Transfer and Removal at p 101-136
of proved misbehaviour or incapacity. The salary and allowances of a judge of the Supreme Court cannot be reduced after appointment.\textsuperscript{13} A person who has been a Judge of the Supreme Court is debarred from practising in any court of law or before any other authority in India and who has been a judge of High Court is debarred from practicing in any court except the Supreme Court or any other High Court.\textsuperscript{14}

The Constitution of India has made the Supreme Court as custodian of the Indian Constitution and it has the power to exercise judicial control over the acts of both the Legislature and the Executive. The court as a part of federal system and as defender of democracy is responsive to the changes in the society. A.S. Anand CJI observed

"In retrospect it is satisfying to note that its (Supreme Court) achievements have been significant in all the areas of nation’s life. It has not shied away from its responsibility of upholding the goals laid down in the Constitution. One of the most powerful institutions of the world, the court decides cases touching all walks of human life and relationship. It has acted as the defender of the constitution and the principles enshrined therein, guardian of human rights, and promoter of peace, cordiality and balance between different organs of the Government. It has intervened to protect the democracy and rule of law on which Constitution rests."\textsuperscript{15}

While interpreting the various provisions of the constitution, "the court has always been guided by the Latin maxim boni judicis est amliare jurisdictionem i.e. the law must keep pace with the society to retain its relevance for if the society moves but the law remain static, it shall be bad for both. In order to create civil society in which respect for human dignity is the cornerstone of its functioning, the Supreme Court has zealously protected the human rights of individuals. In a number of cases, it has given directions and also prescribed guidelines for the enforcement and achievement of human rights of various groups such as children, women, disabled, scheduled castes, scheduled tribes, bonded labourers, minorities, and socially and economically backward classes.

\textsuperscript{13} Except in case of financial Emergency under Article 360 of the Constitution

\textsuperscript{14} Article 220 of the Constitution

\textsuperscript{15} Dr. A.S. Anand CJI in foreword to Fifty Years of Supreme Court in India (2000) I.L. Publication
It is a fact now that the judges no longer merely apply the law. They have added new dimensions to the various statutory provisions by their liberal interpretation and by applying the principles of Justice, Equity and Good Conscience.

During the early period of its establishment, the Supreme Court adopted ‘literal’ rather than the ‘liberal’ view of various expressions which came up before it for interpretation; for instance, in the case of A.K. Gopalan vs. State of Madras the phrase ‘personal liberty’ was said to mean liberty relating to person/body of an individual. The term ‘procedure established by law’ was held to mean procedure laid down by law made by the State and the court refused to infuse, in that procedure, the Principles of Natural Justice. The judgment was mainly based on the language of the constitution. Article 32 too was interpreted in a narrow manner. The rule of locus standi was that only the person whose fundamental right was infringed could file a petition under Article 32. So access to justice for protection of the fundamental rights became an illusion for the weaker section of the society.

The history of the past 58 years of the Indian republic has witnessed the emergence, sustenance, growth and progressive development of the Constitution. In the initial years, our country required large scale changes as well as regulations in all spheres of national life. Therefore large scale reforms in the Zamindari laws were introduced from time to time. The Supreme Court felt that in the bargain the fundamental right to hold and enjoy property by the citizens under Article 31 was being sacrificed. The Supreme Court held that the method of deprivation was irrelevant and the compensation must be as per the market value. There, thus, arose a conflict between the ideals of fundamental rights on the one hand and the socialist ideals in the Directive Principles and the policy of the Congress party on the other. Interference by the courts in implementing agrarian reforms was seriously resented by the Executive and the Parliament.

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16 AIR 1950 SC 27
17 Article 21
The conflict between the Parliament and the Supreme Court emerged particularly with regard to the power of Parliament to make/amend laws relating to payment of composition for acquisition of property which affected Fundamental Rights.

Faced with a situation where Parliament was amending the Constitution to neutralize judgment after judgment of the Supreme Court, in I.C. Golaknath vs. State of Punjab, the Supreme Court ruled that Article 368 of the Constitution only provided for the procedure to amend the Constitution and was not to be construed as any independent source of power. It held that the amendments to the Constitution made by the Parliament could not encroach upon fundamental rights and if they did so, the amendments had to be declared void by reason of Article 13(2) of the Constitution. The Court, however, consciously adopted the principle of prospective overruling in that judgment and did not upset anything that had been done hithertofore.

Parliament was once again quick to react and neutralize the effect of Golak Nath. Article 368 as well as Article 13 were amended by the Constitution (Twenty fourth Amendment) Act in 1971. Even the marginal note to Article 368 was amended. The validity of the Twenty-Fourth Amendment Act came up for consideration before the Supreme Court and in Kesavananda Bharti vs. State of Kerala. The court ruled that the Parliament was competent under article 368 to amend any provision of the constitution including fundamental rights subject to the condition that the basic structure of the constitution cannot be amended. The majority ruled that while Parliament can amend any constitutional provisions by virtue of article 368, such a power is not absolute and unlimited and the courts can still go into the question whether or not an amendment destroys a fundamental or basic feature of the constitution. Any amendment which destroys the basic structure of the constitution shall be void.

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18 (1973) 4 SCC 225
The Supreme Court in this case and in the subsequent cases\textsuperscript{19} went on to explain as to what features\textsuperscript{20} will constitute the basic structure of the constitution.

Though the Supreme Court has laid down the features that constitute the basic structure, nevertheless these should not be construed to be the only ones which make it up. So uncertainty still exists as to what else constitute the basic structure. This uncertainty viz-a-viz basic structure is removed by the Supreme Court's decision in I.R. Coelho vs. State of Tamil Naidu\textsuperscript{21} where in the Supreme Court has made a distinct contribution towards the development of basic structure doctrine.

In this landmark judgment a 9 Judge Constitution Bench\textsuperscript{22} held that any law placed in the Ninth Schedule after April 24, 1973 when Kesvananda Bharti's judgment was delivered will be open to challenge. The Court said that even though an Act is put in the Ninth Schedule\textsuperscript{23} by a Constitutional amendment its

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\textsuperscript{19} Indira Nehru Gandhi vs. Raj Narain AIR 1975 SC 2299; Minerva Mills vs, Union of India AIR 1980 SC 1789

\textsuperscript{20} The following features have so far, been declared to constitute the basic structure of the Constitution so as to be beyond the amending power of the Parliament under Article 368:-


\textsuperscript{21} AIR 2007 SC 861

\textsuperscript{22} headed by Chief Justice Y. K. Sabharwal (also comprising Ashok Bhan, Arijit Pasayat, B.P. Singh, S.H. Kapadia, C.P. Thakkar, P.K. Balasubramanyan, Altmas Kabil and D.K. Jain, JJ.

\textsuperscript{23} The Ninth Schedule was introduced through Article 31 (b) by the First Constitution (Amendment) Act, 1951. The object of the Ninth Schedule was to save land reforms laws enacted by various States from being challenged in the Court. Later on, it became an omnibus and every kind law whether it related to election, mines and minerals, industrial relations, requisition of property, monopolies, coal or copper nationalisation, general insurance, sick industries, acquiring the Altcock Ashdown Company, Kerala Chilies Act, Tamil Nadu reservations of 69% and so on were inserted in it. No principle underlies this selection. The Tamil Nadu law in
provisions would be open to challenge on the ground that they destroy or damage the basic feature, if the fundamental rights are taken away or abrogated pertaining to the basic feature or the basic structure.

it has broadened the base of the basic structure doctrine. Instead of simply saying that such and such articles of the Constitution would constitute the basic features of the Constitution, the violation of which would be the violation of the basic structure, it has shifted the focus from the 'rights' to the 'essence' or 'underlying principles' of those rights.

In 1970's the Judiciary frequently came in conflict with the Executive on several significant constitutional issues, The Executive tried to influence the Judiciary by all possible means. The out-of-turn elevation of a junior Judge Mr. Justice A.N. Ray to the post of Chief Justice of India by superseding three senior most judges, transfer of Judges on frivolous grounds, appointment of Judges based on favoritism and nepotism are some of many such instances.

The internal emergency was declared on June 26, 1975. Articles 19 stood automatically suspended and the Government suspended Articles 14 and 21 also the government put behind the bars a large number of political activists. The fate of hundreds of political detenus came up for consideration before the courts. While many of the High courts in the country faced the situation rather bravely, the Supreme Court, in the infamous case of ADM Jabalpur\(^2\) by a majority with a lone dissent of Khanna J, declared that the very right to life and liberty was no more available to persons detained by the State during the emergency. The consequences of independence and courage exhibited by Justice H.R. Khanna resulted in his supersession on the retirement of the Chief

\(^2\) A.D.M. Jabalpur vs. Shukla AIR 1976 SC 1207
Justice Ray. On January 29, 1977. Justice M.H. Beg and not Justice H.R. Khanna was appointed the Chief Justice of India.\textsuperscript{25}

The year 1978 was a turning point in the history of the Judiciary. Maneka Gandhi vs. Union of India\textsuperscript{26} is a landmark case of the post-emergency period. This case shows how liberal tendencies have influenced the Supreme Court in the matter of interpreting Fundamental Rights, particularly, Article 21. A great transformation has come about in the judicial attitude towards the protection of personal liberty after the traumatic experiences of the emergency during 1975-77 when personal liberty had reached its nadir, as became clear from the Supreme Court pronouncement in Shukla's case.\textsuperscript{27} This case showed that Article 21 as interpreted in Gopalan could not play any role in providing any protection against any harsh catalytic agent for transformation of the judicial view on Article 21.

While interpreting the various provisions of law, the Supreme Court does not follow the rule that unless a right is expressly stated as fundamental right, it cannot be treated as one. Over a period of the time, it has been able to imply, by its creative interpretive process, several fundamental rights out of the ones expressly stated in the Constitution e.g. Article 19 (1) (a) guarantees freedom of speech to the citizens of India. The freedom of press is not expressly mentioned therein, but this concept has been inferred from and read into the freedom of speech and expression guaranteed by the said article.

An outstanding development in the sphere of fundamental rights during the last 25 years has been the expansion of the scope of Article 21 by the Supreme Court. The Supreme Court has given a new content and meaning to Article 21 firstly by giving expansive meaning to the words 'life', 'personal liberty' and 'procedure established by law' contained in

\textsuperscript{25} Dr. A.S Anand; Indian Judiciary and challenges of 21st Century: JIIPA, Vol. XLV 1999 p 292
\textsuperscript{26} AIR 1978 SC 597
\textsuperscript{27} A.D.M. Jabalpur vs. Shukla AIR 1976 SC 1207
Article 21 of the constitution and secondly by reading Article 21 along with several Directive Principles of State Policy.

The Supreme Court has held that the 'right to life' includes within its ambit several rights like the Right to Livelihood, Right to Shelter, Right of the Accused Against Custodial Violence, Right to Health, Right to Medical Assistance, Right to Free Legal Aid and Speedy Trial, Right to Live with Human Dignity, Right to Privacy, Right to Education, Right to Reputation, Right to Claim Compensation under Article 32 or 226 for violation of fundamental rights.

An immediate beneficial impact of the Maneka Gandhi case has been felt in the administration of criminal justice, which is in an extremely unsatisfactory condition. Prison conditions are deplorable and sub-human; prisoners are maltreated; criminal trials are inordinately delayed; police brutality is legendary. Using the newly established mantra that one can be deprived of his personal liberty only through procedure which is ‘fair, just and reasonable’, the court has since 1978 begun laying down new liberal norms for every aspect of criminal justice, thus endeavoring to humanize and liberalize the administration of criminal justice.

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28 Olga Tellis vs. Bombay Municipal Corporation AIR 1986 SC 180
29 Shantisthar Builders vs. N.K. Totane AIR 1990 SC 630
30 Sheela Barse vs. State of Maharashtra AIR 1983 SC 378
31 Vincent Panikulangra vs. India AIR 1987 SC 990
32 Parmanand Katria vs. Union of India AIR 1989 SC 2039
33 Parmanand Katria ibid
34 H. Hoskot vs. State of Maharashtra AIR 1978 SC 1548
35 Francis Coralie vs. Union Territory of Delhi AIR 1981 SC 746
37 Smt. Kiran Bedi vs. Committee of Inquiry AIR 1989 SC 714
38 Khatri vs. State of Bihar (Popularly known as Bhagalpur blinding case, Nilabati Behera vs. State of orissa AIR 1993 SC 1910
39 M.P. Jain: The Supreme Court and Fundamental Rights: Fifty years of Supreme Court in India, p-26
In this context, the court has emphasized ‘speedy trial’ of criminal cases. Though not a specific fundamental right, speedy trial ‘is implicit in the broad sweep and content of Article 21’. A fair trial implies a speedy trial. No procedure can be regarded as ‘reasonable, fair, and just’ unless ‘that procedure ensures a speedy trial for determination of the guilt of such person’, and that speedy trial is ‘an integral and essential part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution’.40

The court ordered the release of hundreds of undertrial prisoners who had undergone imprisonment for period longer than the maximum sentence they would have been awarded for the offences committed by them.41 The Supreme Court has said in this connection: ‘it is a crying shame upon our adjudicatory system which keeps men in jail for years without a trial.42

In Moti Lal Saraf vs. State of Jammu & Kashmir43 the court held that right to speedy trial begins with actual restraint imposed by arrest and consequent incarceration. It continues at all the stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of commission of offence till it consummates into a finality, can be averted.

The concern of the Supreme Court for the underprivileged and poor sections of society was reflected in a number of decisions. In M.H. Hoskot’s Case44 providing free legal aid to the poor and the needy was held to be an essential element of reasonable, fair and just procedure.

41 Hussainara Khatoon v. State of Bihar (1) AIR 1979 SC 1360, 1369,
42 Kandra Pahadiya vs state of Bihar AIR 1982 SC 1167
43 AIR 2007 SC 56
44 M.H. Hoskot vs. State of Maharashatra AIR 1978 SC 1548
Free legal aid to the indigent has been held to be the state’s duty and not official charity contingent on government largesse.

Again, in Hussainara Khatoon (1) vs. Home Secretary, Bihar\textsuperscript{45} the court held that the right to free legal service was clearly an essential ingredient of reasonable, fair and just procedure, for a person accused of an offence. In Khatri vs. State of Bihar\textsuperscript{46} and in Suk Das vs UT of Arunachal Pradesh\textsuperscript{47} the court held that it is the duty of every Magistrate or a Sessions Judge before whom the accused appears to inform the accused that if he is unable to engage a lawyer, he is entitled to free legal service at the cost of the State.\textsuperscript{48}

The court has also issued several directions. In Joginder Kumar v State of UP\textsuperscript{49}, the court issued directions regarding arrest. It emphasized that a police officer may have the power to arrest but justification for exercising the power is quite another matter.

The court in D.K. Basu vs. state of West Bengal\textsuperscript{50} has said that the arrested man has certain rights, namely, he has a right that a relative/friend of his be informed about his arrest and the place of his detention and he also has a right to consult his lawyer privately.

The role of the Supreme Court in humanizing the criminal law is commendable.

The Supreme Court has also sought to humanize prison administration. T Valtheeswaram vs. State of Tamilnadu\textsuperscript{51} the guiding motto is:

\textsuperscript{45} AIR 1979 SC 1360
\textsuperscript{46} (1981)1 SCC 627
\textsuperscript{47} (1986)25 SCC 401
\textsuperscript{48} These cases are discussed in detail in Chapter 4
\textsuperscript{49} AIR 1994 SC 1349
\textsuperscript{50} AIR 1997 SC 611, 623
\textsuperscript{51} AIR 1983 SC 361
imprisonment does not ipso facto mean that the fundamental rights desert the prisoner; prisoners also have fundamental rights.\textsuperscript{52}

The court has adversely commented upon the practice of causing physical injury to prisoners in the name of prison discipline. It has laid emphasis on the prisoner’s right to the integrity of his mental and physical being and personality. The court has stressed that the ‘goal of imprisonment is not only punitive but reformative, to make an offender a non-offender’. It has given several directives regarding treatment of prisoners and improvement of several aspects of prison administration.

As regard the right of an accused against custodial violence, the court has taken a very positive stand against police atrocities, intimidation, and harassment and the use of third degree methods to extort confession. The court has characterized all these as being against human dignity. The expression life in Article 21 means right to live with human dignity and this includes a guarantee against torture and assault by the state.\textsuperscript{53} The court has often awarded exemplary compensation to the victims of police brutality.

The question of custodial deaths, i.e., deaths in police lock-up, and the question of modalities for awarding compensation to the members of the family of the deceased as well as to the victims subjected to police torture, has been considered in depth by the Supreme Court\textsuperscript{54} The court further held that “Custodial violence, including torture and death in the lock-ups, strikes a blow at the rule of law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law”.

The court has ruled that a cruel punishment ought not to be imposed. The execution of death sentence by hanging has been held to be not a

\textsuperscript{52} Premshankar vs. Delhi Administration AIR 1980 SC 1535

\textsuperscript{53} Sheela Barse vs State of Maharastra AIR 1983 SC 378: Francis Coralie vs UT of Delhi AIR 1981 SC 746

\textsuperscript{54} D.K. Basu vs. State of West Bengal. AIR 1997 SC 610: (1997) 1 SCC 416
cruel punishment\textsuperscript{55} but the court has ruled that the ‘death penalty’ be an exception rather than the rule and has to be awarded only in the ‘gravest cases of extreme culpability’ or in ‘rarest of rare cases’\textsuperscript{56}.' The court has also objected to the delayed execution of a death sentence, holding that prolonged delay in the execution of a death sentence would be an ‘unjust, unfair and unreasonable procedure’ to execute the death sentence\textsuperscript{57}. In several cases, the court has held that death sentence does not mean slow and lingering death sentence and has commuted the death sentence to a sentence of life imprisonment because of prolonged delay in the execution of the death sentence.\textsuperscript{58}

Decisions on such matters as the right to protection against solitary confinement as in Sunil Batra vs. Delhi Administration\textsuperscript{59}; the right not to be held in fetters as in Charles Sobraj vs. Superintendent, Central Jail\textsuperscript{60}, the right against handcuffing as in T.V. Vatheeswaran vs. State of Tamil Nadu\textsuperscript{61}, the right against custodial violence as in Sheela Barse vs. State of Maharashtra\textsuperscript{62}, the rights of the arrestee as in D.K. Basu vs. State of West Bengal\textsuperscript{63}, the right of the female employees not to be sexually harassed at the workplace as in the case of Vishaka vs. State of Rajasthan\textsuperscript{64} and Apparel Export Promotion Council vs. A.K. Chopra\textsuperscript{65}, were rendered by expanding the conceptual ambit and the operational scope of Article 21.\textsuperscript{66}

\textsuperscript{55} Bachan Singh v State of Punjab AIR 1980 SC 898.
\textsuperscript{56} Machhi Singh v State of Punjab AIR 1983 SC 957.
\textsuperscript{57} Sher Singh v State of Punjab AIR 1983 SC 465.
\textsuperscript{58} Javed Ahmed v State of Maharashtra 1984 Cri. L.J. 1909 (delay of 2 years and 9 months)
\textsuperscript{59} (1978) 4 SCC 494
\textsuperscript{60} (1978) 4 SCC 104
\textsuperscript{61} (1983) 2 SCC 68
\textsuperscript{62} AIR 1983 SC 378
\textsuperscript{63} (1997) 1 SCC 416
\textsuperscript{64} (1997) 6 SCC 241
\textsuperscript{65} JT 1999 (1) SC 61
\textsuperscript{66} Discussed in detail in Chapter 4 of the Thesis

387
In many of its decision the Supreme Court started a new era of compensatory Jurisprudence in Indian legal history. i.e. it has recognized the right of all those persons whose Fundamental Rights are violated or who are the victim of torture by state or its agencies. This compensatory Jurisprudence took a clear shape in Rudal Shah's case although the foundation was laid in Khatri's case. This newly forged weapon of granting compensation has been sharpened by the Supreme Court in number of its subsequent decisions.

Further the court, through the judicial process, has tried to uphold the human dignity. It has brought about social justice and just and humane conditions of work. The court has also been aware of and sensitive to the changing social, culture and environmental needs of the society. It has filled the gap between statutory legislation and decision-making by laying down extensive guidelines, which have the force of law in several matters. The judgment on inter-country adoptions in L.K Pandey vs Union of India and on sexual harassment at workplace in Vishakha vs. State of Rajasthan & Apparel Export promotion council Vs. A.K. Chopra are good examples. The plight of women has been a matter of deep concern for the Indian Judiciary. In a number of cases, the Supreme Court has come to the rescue of women to improve their lot. Because the Indian society is male-dominated, it is often seen that working women have to undergo sexual harassment silently. In the

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68 Rudal Shah vs Union of India AIR 1983 SC 1086
71 AIR 1984 SC 469
72 AIR 1997 SC 3011
73 JT 1999 (1) SC 61

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above said cases\textsuperscript{74}, the Supreme Court has formulated effective measures to check the evils of sexual harassment of women at the workplace.

The court has held that each incident of sexual harassment at the place of work results in violation of the fundamental right to gender equality and the Right to Life and liberty – The two most precious Fundamental Rights guaranteed by the constitution. The Fundamental Rights guaranteed in our constitution are of sufficient amplitude to encompass all facets of gender equality including prevention of sexual harassment and abuse and the courts are under a constitutional obligation to protect and preserve those Fundamental Rights. Post – Vishakha, several institutions have adopted concrete policies and code combating sexual harassment and many more are in the process of evolving similar measures. As a result of all this, Complaints Committees have been constituted in the various departments and institutions where working women can lodge their complaints.

These days many incidents of female foeticide have come to limelight. Female foeticide has led to an alarming situation as the male female sex ratio has declined to worrisome levels. It is not only immoral and unethical but also an offence to abort the foetus of the girl child. In the Centre for Enquiry into Health and Allied themes (CEHAT) vs. Union of India,\textsuperscript{75} the Supreme Court gave a number of directions to the Central Government, State Governments, Union Territories and other authorities for proper implementation of the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994. The object of this PNDT Act is to prevent the misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide.

The Supreme Court has played an active role in protection of democracy. In a constitutional democracy election provides an opportunity to ascertain the popular will regarding governance of the country. The Supreme Court through

\textsuperscript{74} i.e. Vishaka and Apparel Export Promotion Council cases
\textsuperscript{75} AIR 2001 SC 2007
its significant decisions has contributed substantially by: Ensuring free and fair elections\textsuperscript{76} right of the electorate to information about the antecedent of candidates and freedom of politics from criminalization\textsuperscript{77} upholding rule of law\textsuperscript{78} and establishing supremacy of constitution over electoral verdict\textsuperscript{79}

The most important contribution/achievement of the Supreme Court during late 1980's and early 1990's has been judicial activism. Judicial activism is a bold effort by the court to revitalize the judicial system by providing the common man simple, fast and cost-free access to the courts. The court's role in protecting the interests of all sections of society through public- interest litigation and overcoming the procedural hurdles has made the court a common man's court and judges the social engineers.

Earlier Articles 23 and Article 24 of the Constitution remained dormant for almost 32 years and were hardly ever invoked by any litigant, however, since 1982, these articles have assumed great significance and have become potent instruments in the hands of the Supreme Court to ameliorate the pitiable conditions of poor labourers in the country.\textsuperscript{80}

The Courts in the process of judicial interpretation played creative role by protecting the interests of bonded labour, child labour, contract labour, women workers, labour getting less than minimum wage and labour becoming jobless on closure of the establishment Indeed the court assumed the role of a protector of the weaker, poor and struggling masses of the country.

\textsuperscript{76} Indira Nehru Gandhi vs Raj Narain 1975 Supp SCC I; Kanwar Lal vs Amar Nath AIR 1975 SC 308; Common cause vs Union of India AIR 1996 SC 3081


\textsuperscript{78} Maneka Gandhi vs Union of India, ADM Jabalpur vs S. Shukla AIR 1976 SC 1207 Yustif khan vs Manohar Joshi (1999) SCC (Cri) 577 M. C Mehta vs Union of India (2006) 3 SCC-399

\textsuperscript{79} B.R. Kapoor vs State of Tamil Nadu (2001) 6 SCALE 312

\textsuperscript{80} M.P. Jain: Supreme Court and Fundamental Rights: The Fifty years of Supreme Court in India p-17
The Supreme Court and the various High Courts have entertained PILs for securing justice to workers working in various industrial establishments by enforcing various labour welfare legislations like the Child Labour (Prohibition and Regulation) Act, 1986; The Minimum Wages Act, 1948; The Bonded Labour System (Abolition) Act, 1970 and Equal Remuneration Act, 1976. In one of the earliest decisions\textsuperscript{81} the Supreme Court gave a direction to all the states to amend the schedule of the Employment of Children Act, 1938 and include construction industry as hazardous and dangerous activity to prohibit the employment of children in the construction industry. This decision of the Supreme Court led to the insertion of construction industry among hazardous industries in the Employment of Children Act, 1938.

The Supreme Court has stretched its protective arms to all aspects of bonded labourers, viz., their identification, release and rehabilitation.\textsuperscript{82} Further it gave wide dimensions to Article 23 by holding that it is enforceable against the whole world. Further, the court expressed its concern over non-implementation of the provisions of the Bonded Labour (Abolition) Act, 1976 and in particular the failure to provide effective rehabilitation for identified bonded labour\textsuperscript{83} The default on the part of the government would be violative of Article 21. The courts have ruled that forced labour in any form is a violation of human dignity and contrary to basic human rights. It has also held that article 23 not only includes physical or legal force but force arising from compulsion of economic circumstances which leaves no choice or alternative to a person in want and compulsion to provide labour or service for less than minimum wages.\textsuperscript{84} This interpretation has succeeded in preventing exploitation of labour to a certain extent. The Supreme Court has tried to protect the

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\item People Union for Democratic Rights vs. Union of India AIR 1982 SC 1473
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interests of child labour by ordering abolition of child labour, imposing obligations upon the state and the employers and providing for compulsory education of the children affected by the judgment. However the real difficulty lies in its implementation. It not only involves legal but also socio-economic problems. To begin with, there is a need to identify hazardous and non-hazardous employment so that no child be allowed to take up work in any hazardous employment. In another case\(^{85}\), the Supreme Court held that children should not be employed in match factories as it is a hazardous employment within the meaning of the Employment of Children Act, 1938.

Rapid industrialization and environmental pollution are issues that have attracted the attention of legislatures and the Judiciary during the past few years. The apex court has played a central role in creating an Indian jurisprudence on the environment\(^ {86}\) and has come down heavily on eco-killers. As a result of court directions, various laws for the protection of environment have been enacted. The Supreme Court has played an important role in the protection and preservation of environment. The Supreme Court has held, in a number of cases, that there should be sustainable development i.e. objective of all laws on environment should be to create a harmony between development on the one hand and preservation of environment on the other hand. The Supreme Court is of the view that merely laying down laws on environment protection will not be sufficient; awareness about environmental protection should also be spread among all. The Supreme Court's endeavour to spread awareness about environment protection\(^ {87}\) has resulted in the introduction of Environmental Studies as a compulsory subject in schools and colleges. The Supreme Court has made a significant contribution to combating pollution. It has issued various directions from time to time to be implemented by the polluting industries and Motor vehicles. The Supreme Court's direction has lead to shifting of various industrial units.

\(^{85}\) M.C. Mehta vs. State of Tamil Nadu AIR 1991 SC 417

\(^{86}\) Cases relating to the Role of Supreme Court in protection of Environment and are already discussed in detail in Chapter IV of the thesis.

\(^{87}\) M.C. Mehta vs. Union of India AIR 1988 SC 1115
from Delhi to safer and open areas, away from residential localities. This has also led to the introduction of CNG in public transport system in Delhi. As a result, during the past few years, pollution level in Delhi has shown a welcome downward curve. Moreover Euro-I & Euro II & Euro III model (in 11 Cities) cars, which are pollution-free vehicles have been introduced. Many new concepts and doctrines have been added to environmental jurisprudence. In the case of M.C. Mehta vs. Union of India the Supreme Court has laid down the principle of absolute liability.

In M.C. Mehta vs. Union of India Supreme Court has laid down "precautionary principle" which requires the state to anticipate, prevent and attack the causes of environmental degradation.

The Supreme Court has laid down the "doctrine of public trust" based on legal theory of the ancient Roman empire. The idea of this theory was that certain common properties such as river, seashores, forest and the air were held by the government in trusteeship for the free and unimpeded use by the general public. The doctrine enjoins upon the government to protect natural resources for the enjoyment of the general public, rather than permitting their use for private ownership or commercial purpose.

In its landmark judgment in A.P Pollution Control Board Vs M.V Nayudu, the Supreme Court has made useful suggestions for the improvement of the adjudicatory machinery under various environmental laws. The court is not satisfied with present-day system of adjudication. The fact remains that scientific and technological issues arising in

88 AIR 1987 SC 1086
89 (1997) 3 SCC 715
90 The Vellore Citizens Welfare Forum vs Union of India (1996) 5 SCC 647 More recently the Supreme Court invoked the 'public trust doctrine' evolving methods for arriving at 'Net Present Value' to be paid by the State for the diversion of forest land to non-forest use to be paid to Compensatory Afforestation Fund Management and Planning Agency (CAMPA)
91 AIR 1999 SC 812
environmental matters are extremely complex and, therefore, there is a need for technical person, well versed in environmental laws, to handle these issues. In Doon Valley Case\(^92\), the court held that the right to clean environment is a part of right to life under Article 21 and held that the permanent assets of mankind cannot be allowed to be exhausted.

During 1990's, the Supreme Court and High Courts were flooded with Public Interest Litigations ranging from child labour to environmental issues. The range, volume and variety of Public Interest Litigation worried the government. The government's approach was to curb the courts' power of Public Interest Litigation affecting the Executive and various other instrumentalities.\(^93\) The tough stand by the judiciary, the people and the Non Government Organization (NGOs) forced the government to drop the proposed legislation curbing the Public Interest Litigation.

The present mood of the Supreme Court is that of dignified restraint after a long period of judicial activism. It has been clarified that it is not the Fundamental Right of every citizen to approach the court with a Public Interest Litigation. At the time of granting leave to a petitioner to raise an issue, the Court says "it will be admitted as a PIL only after due deliberation and after finding out whether it was in the nature of representative action."

Admittedly, there are some inherent dangers in the conceptual and operational aspects of Public Interest Litigation. The Supreme Court itself opines that the public interest litigation is a weapon to be used with great care and circumspection. It has been said that the courts must be careful in entertaining public interest litigation, which necessitates a

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\(^92\) (1985) 2 SCC 431

\(^93\) According to this Proposed Legislation any person or group of persons approaching the Supreme Court or the High Courts by way of PIL is required to deposit Rs 1 Lakh or Rs 50,000 respectively which will be refunded if the out come is in favour of the petitioner and confiscated if the petition was not allowed. Dr. Vijay Chandra : Legislative restriction on PIL. AIR 1997 J p 14
careful scrutiny into the petitioner’s petition, apart from winnowing the genuine from frivolous petitions.\textsuperscript{94}

One can safely say that the Judiciary, being the sentinel of constitutional and statutory rights of the people, has a special role to play in the constitutional scheme of things. It is vested with the jurisdiction to review all legislative and administrative actions on the touchstone of the Constitution. Economic, social and political issues to a great extent are constantly under the lens of judicial scrutiny. It, therefore, becomes its duty to render justice in tune with objectives enshrined in the Preamble, Fundamental Rights and the Directives Principles of state policy.

**TASK BEFORE THE JUDICIARY**

An analysis of the working of the justice delivery system in India makes one feel that certain serious defects have crept into the system.\textsuperscript{95} The Judiciary has failed to deliver justice expeditiously, resulting in huge pendencies. The matter has become so serious that it has become the subject matter of debates – of a number of reports discussed in Parliament and State Legislature, in judicial conferences and judicial seminars and the media.

The high cost of litigation is another challenge before the Judiciary. Administration of criminal justice in our country appears to be at the crossroads. Then there are instances of corruption in Judiciary. These defects required urgent solutions. The suggestions to remove these defects are as follows:

\textsuperscript{94} Neetu Vs State of Punjab 2007(2) SCJ 162 SP Gupta vs Union of India AIR 1982 SC 149; In Vishal Jeet Vs. Union of India AIR 1990 SC 1412; In Shri B. Krishna Bhatt V Union of India 1990 (1) SCALE 155

\textsuperscript{95} The defects are discussed in detail in chapter-V of the thesis at p 333-348
Suggestions:

Need to Modernize Judiciary

If the functioning of the judiciary is computerized, it would surely help in reducing errors and delays. Therefore, drastic steps must be taken to modernize the judiciary. All the judgments of the court could well be computerized so that it would be easy to lay hands on any of the old judgments and other references. Moreover a list of pending cases of each and every court in India could well be prepared and maintained regularly with the help of computers.

The Supreme Court has to be interlinked with the High Court and the High Courts with the sub-ordinate Courts including those situated in the remotest corners of the states. A litigant (through his lawyer) sitting in North-East or down in Kanya Kumari should be able to find out the progress or status of his case in the Supreme Court or the High Court as the case may be, just at the push of a button, dispensing with the need to contact someone in Delhi or travelling to Delhi or district headquarters for this purpose alone. There are numerous uses of computers and it will definitely give a new shape to the judiciary in solving its problems if micro films are used. It would help in maintaining court files in proper condition. There are many such files lying in a very shabby condition with the subordinate judiciary. Many times the files are half torn and papers are kept loose in the files. Not only this but the roznamchas are also made in hand-writing by the concerned clerks and most of the time their hand writing is so bad and illegible that it gives a chance to another to dispute it. Large shelves and rooms are required in the courts to keep the files of pending cases. If micro films are used, only a small cabinet could accommodate thousands of files. Voice Recognition Software (a relatively inexpensive device) can be made available to the Judges to enable them to dictate judgment to the computers. It will minimize dependence on the court staff and also save time. Facilities for e-filling has been introduced in the Supreme Court on 2-10-2006. It is now possible for any advocate on record or petition in person to file his case through internet, sitting anywhere in the world.

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96 e-filing has been introduced in the Supreme Court on 2-10-2006. It is now possible for any advocate on record or petition in person to file his case through internet, sitting anywhere in the world.
and hearing through Video Conferencing:\textsuperscript{97} needs to be introduced in the High Court at any early date. The system thus introduced will be fast, neat and clean and will be accessible with more ease. It would add to the efficiency of the Judges. The tape recorders are also required to be introduced in the courts for recording the evidence of witnesses. Although some courts have started computerizing records, the change is so gradual that it has no effect on the case dockets that are getting heavier and heavier by the day. Therefore drastic steps must be taken to modernize the Judiciary.

In this regard CJI R.C. Lahoti had put forward a proposal to the central government for establishing a cell in the Supreme Court consisting of experts having knowledge of the judicial system, information technology and management who will prepare the blueprint and oversee the implementation of the plans once finalized. The experts in the cell will also be available to assist the High Courts and ensure uniformity in the system and implementation of projects throughout the country. Computerization in courts does not need very substantial investment and the results would far outweigh the amount of expenditure involved.\textsuperscript{98}

In a recently held conference of the chief ministers of states and the Chief Justices of the High Courts (April 19, 2008) Item No. 3 on agenda was the progress made in modernization and computerisation of justice delivery system.

\textbf{All the Chief Ministers, Law Ministers as well as the Chief Justices acknowledged the need for rapid use of Information Technology in management of Courts at all levels and use of various IT tools to accelerate disposal of cases and reduce arrears and concluded that}

\textsuperscript{97} Video conferencing is also a convenient and secure option not only for giving demand of accused person lodged in jails but also for recording evidence, particularly of the witnesses who are not local residents or one afraid of giving evidence in open Courts. We need & make extensive use of this facility.

\textsuperscript{98} Keynote address delivered by CJI R.C. Lahoti at the conference of Chief Justices of High Courts and Chief Ministers of states on 18th Sept, 2004 at Vigyan Bhawan, New Delhi.
adequate steps be taken for modernization & computerization of courts and enhancing the use of various I.T. tools including video conferencing, internet usage, e-mail based communication, electronic dissemination of information and use of digital signatures, particularly at the level of subordinate courts.

**Shift System:**

No doubt, because of financial constraints the creation of new courts is not feasible. To establish a new court at any level involves enormous expenditure. The appointment of whole time staff - judicial and administrative to new courts and building infrastructure involves considerable recurring expenditure which the government cannot afford. There is a way out. If the existing court could be made to function in two shifts with the same infrastructure, utilizing the services of retired judges and judicial officers reputed for their integrity and ability, who are physically and mentally fit, it would ease the situation considerably and provide immense relief to the litigants. The accumulated arrears could be reduced quickly and smoothly.

The Law Commission has in its 125th report (1988) recommended interalia introduction of shift system in the Court to clear the backlog of cases by employing retired judges. In November 1999, the then union Law Minister Mr. Ram Jethmalani had also proposed introducing shift system in all courts where the backlog of arrears was high.

The shift system has been in practice in industrial establishments and educational institution since long to cope with heavy workload and demand for judicial redress of cases. It is high time that it be introduced in courts as well. As the then law minister rightly pointed out that the great advantage of the shift system is that with minimum expenditure it

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99 The law commission's 125th report dated May 11, 1988 has recommended introducing shift system in the supreme court to clear backlog of cases by deploying retired judges

100 P.P. Rao: Access to justice and delay in disposal of cases published Sournier on in All India Seminar on judicial reforms with special reference to arrears of court cases p. 92 held on 29th & 30th April 2005 at Vigyan Bhawan.
can yield maximum output. The existing court buildings, furniture, library and other infrastructure and equipment could be used for the second shift by re-employment of retired judges. Judicial officers and administrative staff which would not be an unbearable burden on the exchequer as they would be paid only the difference between pension and salaries and emoluments payable to serving judges and officers of the same rank. The induction of experienced judicial personnel who enjoy high reputation for their integrity and ability will add to the credibility of the judicial system as a whole. “The reservoir of judicial experience readily available in the shape of retired judges is a precious human resource, which is being wasted now. They can be easily persuaded to accept re-employment in public interest for running the second shift in courts by assuring them of their pre-retirement seniority inter se. To be a judge in the second shift would be more dignified and satisfying than looking up to the executive for discretionary assignments.”\textsuperscript{101} With their rich experience, they will be able to dispose of cases quickly and clear the arrears fast for the reason that the duration of the second shift could be less than that of the first one. The prospects of re-employment after retirement of the most upright and efficient judges and judicial officers will encourage them to remain honest. It will also act as an incentive to serving judges and judicial officers to remain honest and discharge their duties to the satisfaction of all concerned. The shift system will result in distribution of work among more lawyers, breaking the monopoly of a few in every court. The proposal of introduction of shift system in the court is a welcome step. However, reemployment of retire judges has been criticized by lawyers as they are of the view that young lawyers could be appointed as adhoc judges to speed up the disposal of cases.

Evening courts have already started functioning in the state of Gujrat since 14-11-2006.\textsuperscript{102} In a recently held (April 19, 2008) joint conference of chief ministers

\textsuperscript{101} Ibid
\textsuperscript{102} Presently there are 60 such courts and have disposed of 57,422 cases between 14-11-2006 and 31-3-2007. CJI Justice K.G Bala Krishnan : Efficient functioning of Indias Justice delivery System (2007) 4 SCC J 19.
and High court chief justices, item no. 10 on agenda includes setting up of evening shifts in subordinate courts.

**Setting up of Fast Track Courts of Magistrates**

On the recommendation of the 11th Finance Commission, 1734 Fast Track Courts of Sessions Judges were sanctioned for disposal of old pending cases and the said scheme was to end on 31-3-2005. Out of 18,92,583 cases, 10,99,828 have been disposed of by these courts. Keeping in view the performance of Fast Track Courts and contribution made by them towards clearing the backlog, the scheme has been extended till 31-3-2010. In view of the contribution made by the Fast Track Courts of Sessions Judges towards clearing of backlog, and number of huge pendency of cases tribal by Magisterial Courts being 1, 66, 77, 657 as on 31-12-2006, there is an urgent need to formulate a similar scheme for setting up of Fast Track Courts of Magistrates in each State and Union Territory.103

**Urgent need for filling of old vacancies and creation of new posts:**

Vacancies of judges in courts must be filled on top priority. The law commissions in its 120th report and apex court through its judgement has examined the problem of under staffing of judiciary and recommended 50 judges per million of population instead of existing 10.5/million. The sanctioned strength of High Court was 877 and working judges were 593 as in January, 2008 leaving 284 vacancies. Similarly sanctioned strength of sub-ordinate judges was 15917 and working strength 12524 leaving 3393 vacancies on 14 January, 2008 We have to develop zero vacancy or nearly zero vacancy culture.104 So there is an urgent need for filling the existing vacancies and creation of new posts.

In recently held conference of the chief ministers of states and the chief justices of the High Courts (April 19, 2008) item no. 4 on Agenda was

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103 Justice B.N. Aggarwal Pendency of cases & Speedy Justice (2007) 6 SCC J P-4
that what steps are required to be taken to reduce the arrears and ensure speedy trial of cases. All the speakers were unanimous in expressing their concern on inability of the system to ensure disposal of the cases within a reasonable time. None of the participants disputed the need to enhance strength of Judges at all levels, so as to enable the system to reduce backlog and provide an efficient, speedy and effective justice to our people. They also stressed on the need to fill-up existing vacancies in High Courts as well as Subordinate Courts.

It must not be forgotten that it is not merely raising the strength of judges in the court, which is the pressing need, it is crucial that right appointments are also made on the basis of merit, intelligence, ability and integrity. An unfilled vacancy may not cause as much harm as a wrongly filled vacancy. A competent and an efficient judge is not only an asset to the judiciary but is also a blessing to country. An efficient judge, whenever a case is put up before him, understands the problem at once and can deal with it immediately. He can distinguish between a frivolous case and a genuine one and will discourage unnecessary litigation. This is not possible for an inefficient judge before whom the trial may continue for years together as he is not in a position to have proper control over the proceedings. Thus the need for appointment of meritorious and efficient persons as judges can hardly be over emphasized. Complaints are mounting that the judges do not deliver the judgments quickly. Instances are cited of the cases wherein the judgments have not been delivered after the conclusion of arguments for months/years together. In certain cases, the judges retired without delivering the judgments, leaving the litigant in the lurch. The litigant has to start fresh wherefrom he had begun. Thus a time-bound judgment after the conclusion of arguments is imperative to satisfy the ends of fair justice. Only persons possessing the qualities of honesty, integrity, impartiality and efficiency should be appointed as Judges.

Need for increasing working days in the courts:
The vacations in the Courts must be curtailed. There are too many holidays in the court. In fact, India possibly enjoys the dubious
distinction of having the largest number of public holidays and vacations. We have so many holidays to celebrate birth or death anniversaries of national leaders. We have so many celebrations of different religions and communities. And above, all the usual bandh calls, strikes and curfews etc affect the working of the courts as well. Taking into consideration all these things, the country as a whole practically does not work for almost six months in a year. In the Courts, we have vacations over and above holidays and bandhs. If calculations are made about working and non-working days in a year, a shocking fact emerges - the Courts don't work for about 192 days out of 365 days in a year. Besides these holidays judges are also entitled to casual leave, Earned leave & Medical Leave etc. Looking at the above Holidays, the question naturally arises: can we afford to enjoy so many holidays? And more so particularly when we have so many pending cases to be disposed of. We should abolish all the court vacations and reduce the holidays to minimum till a good part of the arrears is not cleared. So the number of working days must be increased as also work culture must be developed.

So far as the court timings are concerned, officially the court sits from 10 AM to 4 PM (this includes tea breaks and lunch time). Again if there is some meeting (to discuss some administrative matter, then after-lunch session’s, work suffers. The Judges, of their own, can sit for one hour extra each day so that the pendencies can be reduced.

Thus one way to improve the efficiency of the judicial system is: Increasing the number of working days and hours by cutting down on vacations. This will result in higher availability of court time, which will

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52 Sundays
52 Saturday
16 public holidays declared by the government.
42 summer vacations (in the Supreme Court they last perhaps for 2 ½ months) 10 Diwali holidays (perhaps the Supreme Court enjoys other two small vacations as well) 10 unexpected holidays due to strike, bandhs, death of national leaders etc.

Total holidays: 192 Days
be equivalent to increase in the number of Judges. So the immediate need is to increase the number of working days and hours in the courts.

**Litigation should not be Encouraged**

Another method to reduce the backlog is that the quantum of cases coming to the courts must be reduced. The Judges should be very strict at the first stage itself. They should distinguish between frivolous and genuine litigation and should discourage frivolous litigation. A sample survey conducted by National Law school in various courts found that in 60% of the civil cases, the government was the litigant, sometimes on both the sides. Again most of the government litigation is in the form of appeal and out of the total number of appeals 95% appeal fails\(^{106}\). So in a way these appeals should not have been admitted in the first instance.

In 1994, a meeting of law ministers and law secretaries was held whereby it was resolved that, disputes between the government and Public Sector undertaking (PSUS) and one PSU and another PSU ought not to go to courts or tribunals and that such disputes should be settled between the parties amicably. Unfortunately this has not happened. The government must ensure that this decision is implemented. This decision, along with a better assessment of which judgments are to be appealed against, would help in reducing the quantum of litigation to some extent.

Thus government, being the biggest litigant, should try, as far as possible, to voluntarily withdraw any frivolous litigations that it chose to pursue needlessly. Here the role of the law ministry and the government lawyers becomes important because they can cut short frivolous litigation without standing on prestige or ego. Moreover the courts of their own can also help in reducing litigation. The courts, should decide cases fully and should not leave some issues for future litigation. Moreover same relief should be ordered to be given in similar other cases rather than asking them to file new cases.

\(^{106}\) The Survey was conducted in the year 1993 in the state of Karnataka: NR Madhav Menon & B. Debroy Edited : Legal dimension of economic reforms 1995

403
Revision of Judicial Procedure

The entire procedural law needs overhauling to meet the requirements of the present day judicial administration. While the principles underlying the procedural laws are valid, till date, in real practice, these procedural rules have led to delays. These rules of procedure should prescribe a time limit for adjudication as far as possible. The right to appeal should also be limited and only single appeal should be allowed in civil cases. The appeal should be heard and verdict given within a period of three months in criminal cases and six months in civil cases. The stay should be granted only where they are really required and no stay should exceed 15 days. The time-limit for adjudication should be strictly adhered to even in cases involving stay orders. In addition, the procedure of the courts should be made simple and uncomplicated giving room for sufficient flexibility to render justice.

Need for Creation of National Judicial Commission

There is a need for creation of National Judicial Commission which will be entrusted with the matter of appointments, removal and transfers of Judges. Besides, the Judges should be accountable to this body for their performance. Both aspects, accountability of the Judiciary and transparency in its functioning, should be taken care of by it.

Moreover as the provision for removal of a Judge of the Supreme Court or High Court under Article 124 (4) & proviso to Article 217(1) has practically become inoperative (This is amply demonstrated by Justice Rama Swamy's impeachment case) no Judge can ever be removed (in practice), no matter howsoever serious misconduct or how inefficient his functioning might be. Such a situation can only lead to judicial terrorism and result in unmitigated disaster to the governance process and the society. Therefore the Judicial Commission should be empowered to try an errant Judge and upon the recommendation of the Judicial Commission, the President should be empowered to remove the Judge found guilty of serious crimes and misdemeanors.
The Idea to set up a National Judicial Commission is not a new one. In S.P. Gupta's case, Justice P.N. Bhagwati who delivered the main judgment, himself made the suggestion for collegium to make recommendation to the president with respect to the appointment of judges to the higher judiciary.

Senior Advocate F.S. Nariman has suggested:
1. that judges of the Superior courts be appointed after a much wider measure of consultation than at present.
2. that as a convention, the three senior most judges (the CJI and his two senior most colleagues)—who after the decision in the Second Judge's Case are virtually the appointing authority (all but in name)—should themselves suggest the formation of a Judicial Appointment Committee to help and advise them, in the exercise for their exclusive function of choosing the best person for the Highest Court and for the High Courts—the mode and manner of such interaction could be worked out by the CJI himself. The Judicial Appointments Committee having a crucial, though only an advisory role, must consist, in my opinion) of wide ranging constitutional dignitaries: e.g., Chairman of the Rajya Sabha, the Speaker of the Lok Sabha, the Prime Minister and Leader of the Opposition, and representatives of the legal profession: including the Attorney General of India, The Advocate-General of a particular State, and representatives of the State Bar Associations may also be consulted by the Committee when making suggestions or considering suggestions regarding appointments to a particular High Court in that State, or when suggesting or considering suggestions regarding filling of vacancies in the Supreme Court of India.

For this, a select list of senior High Court judges of merit with their biodata; and in the case of appointments to High Courts a similar select list of persons proposed to be

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107 S.P. Gupta vs Union of India AIR 1982 SC 149
108 As early as 1986, Upendra Baxi, in an article published in the Times of India, suggested a different composition of the collegium as follows: (1) President of India; (2) Speaker of the Lok Sabha; (3) Chairman of the Rajya Sabha; (4) Leader of the Opposition (if there be one); (5) Minister for Law and Justice, Government of India; (6) Chief Justice of India; (7) Five senior Judges of the Supreme Court; (8) Attorney General of India.
appointed (with their CVs) should be prepared. The Judicial Committee could then come back with written comments and suggestions. The judges of the Supreme Court would then be better informed who should not be appointed. This is of great importance particularly in the context of the enormous power claimed and exercised by Justices of the Supreme Court of India, and now, more recently, by the judges of High Courts as well the Law Commission, under the Chairmanship of Justice D.A. Desai, in its 121st Report(1987) on ‘A New Forum for Judicial Appointments', also advocated setting up of a national judicial commission and tentatively, it has suggested that it should comprised of the chief justice of India (chairman), three senior most judges of Supreme Court; retiring chief justice of India, three chief justices of High courts according to their seniority; minister of law and justice, the government of India; Attorney General of India and an outstanding academicians law.

In June, 1997, the committee on Judicial Accountability favoured a constitutional amendment to set up a National Judicial Commission which will be entrusted with the matter of appointments, removal and transfers of Judges. This Committee had prepared a draft bill for amendment to the Constitution providing for the establishment of National Judicial Commission consisting of a chairman and four other members to be appointed by the President. The relevant provision in the draft Bill reads as follows:

Chairman shall be appointed on the recommendation of a collegium consisting of all sitting judges of the Supreme Court. One member of the Commission shall be appointed on the recommendation of a collegium consisting of all the Chief Justices of the High Courts. One member shall be appointed on the recommendation of Union Cabinet. One member shall be appointed on the recommendation of the Leader of the Opposition in the Lok Sabha, who will act in consultation with leaders of other opposition parties in both Houses. One member shall be appointed on the recommendation of a collegium consisting of all the members of the Bar Council of India.

The demand for formation of National Judicial commission is coming from different quarters. However, there is no unanimity of the composition of commission. The fact remains whatever the composition of National Judicial Commission may be,
one thing should be kept in mind that the independence of the judiciary is paramount and cannot be compromised whatever be the circumstance.

**Need to enhance Salary etc of the judges:**
There has been an abundance of discussion about emoluments and service condition of Judges. Many people in the legal Profession feel that judges emoluments must be made more attractive so as to encourage more competent people to join the judiciary. Unless the bench is made a more attractive option, it is doubtful whether the quality of judiciary would improve because the other avenues such as a practicing advocate or even officer in multinational are much more lucrative.

**Need to set up All India Judicial Services**
To improve the quality of justice, it is necessary to improve the quality of men, who have to dispense justice. So really competent people should be appointed on the bench. All India Judicial Services should be created, the recruitment to which should be in the same manner as that for the I.A.S. and then training be provided to them. This would probably improve the quality of Bench by ensuring that only persons suitable to hold such an office get in. The mandatory training period (as in the case of IAS Probationers) for judges would help improve their efficiency. Once judges are recruited in the All India Judicial Services, they must start from the Lowest rung as munsiffs as this will give them enough experience and training before they occupy benches of High courts and Supreme Court. For this, the sub-ordinate judiciary should be spruced up, and their service conditions must be improved.

**In-service training for the Judges**
Now-a-day there are new trends in litigation such as those related to Intellectual Property Right; Cyber Crimes, Environment, Money laundering, Competition, Telecom, Taxation, International Arbitration. These areas require special expertise to deal with them. The Judges need to be trained and updated for achieving and maintaining Professional excellence. Need for providing in-service training to the
Judges of the Higher Court is to large extent fulfilled by establishment of the National Judicial Academy at Bhopal. The States Judicial Academies have already come up in 14 states. While state level academies will provide training to the members of sub-ordinate Judiciary, the National Judicial Academy would aim at catering to the requirements of the Higher Judiciary.\textsuperscript{110}

\textsuperscript{110} The National Judicial Academy (NJA) at Bhopal became functional in October 2003. Its main activities may briefly be stated under five heads:

(i) Education and training of higher judicial officers and court administrators.
(ii) Judicial research and judicial policy development.
(iii) Dissemination and management of judicially relevant information.
(iv) Capacity building of judicial training institutions for better performance.
(v) Establishing a centre of excellence in judicial education and administration.

The Academy through a process of consultation with the High Courts and their training divisions has evolved a standard training curriculum based on its survey of needs and resources. A series of training and continuing education programmes for judges of High Courts and District Courts on a variety of subjects relevant to administration of justice have been initiated. A training calendar for a full judicial year (July to May) has been prepared and nominations from the High court are obtained for all the programmes for the year in advance. Continued.....

Continued...Till date over 510 District and Additional District and Sessions Judges as well as 50 High Court Judges have had the benefit of 10 residential programmes organised by the Academy. Every participant judge has acquired computer literacy at the Academy's computer laboratory. Each programme conducted by the Academy is associated with lessons in ethics and morality and stress management training through its yoga programmes.

The Academy has produced over 22 volumes of study material for trainees. It has generated empirical data both for better judicial training and for improvement in administration of justice. A project on barriers for access to justice on the part of disadvantaged sections of people, supported by UNDP is undertaken in seven High Court jurisdictions. This research study will generate useful data to reform court proceedings and make the courts easily accessible to the disadvantaged and downtrodden.

The publication of quarterly newsletter called 'Judicial Education', a series of occasional papers on topics of judicial interest and an Annual Journal of professional interest has been undertaken. The Academy has produced a CD-Rom on one of its programmes -- Intellectual Property Adjudication and proposes to enlarge its electronic publication facilities. NJA has networking with judicial training institutions and State academies for standardising judicial training programmes and activities.
Settlement of disputes at the threshold

The Civil Procedure Code, 1908 as amended in 1976 inserted Rule 5B in order XXVII, casting a duty on the court, in suit against the government or public officer to assist in arriving at a settlement in the first instance. The potential of this provision does not appear to have been tapped fully. The reason is obvious: unless the government or the public officer or their lawyer is prepared to settle the dispute at that stage, the trial court can do nothing. If the trial Judge make sincere efforts and the bar members too assist in settling disputes, the litigants will have immediate relief. The settlement of dispute in the court in the first instance will leave no scope for appeal or revision. Even if it requires two or three sittings involving a couple of adjournments, the settlement would be worth the time and trouble. A similar provision can be made requiring the appellate and revisional courts also to endeavor to bring about the settlement of disputes pending before them to the extent possible. Unless the legal profession switches over to non-adversial and conciliatory approach, such provisions cannot bear fruit. The bar councils and bar associations should come forward to promote the change of attitude on the part of advocates by impressing upon them speedy resolution of disputes. This will result in more and not less work to lawyers, as the volume of litigation will go up as more and more aggrieved citizens will rush to courts instead of adopting extra judicial methods or suffering injustice.

Reforms in the field of substantive laws:

There are several drawbacks in the field of substantive laws. The first is old and dysfunctional laws, which need to be scrapped. India does not have a system of desuetude. Therefore unnecessary statutes do not die a natural death and continue on the statute book unless they are lopped off. Dysfunctional statutes are eliminated on an ad hoc basis where the Law Commission prepares reports identifying such statutes and its recommendations are accepted by the government. It would make sense to introduce a system of desuetude. The law must change to adapt to the changed circumstances.
There are lakhs of pending suits concerning debt recovery. One reason why debt recovery is such a major problem is outdated legislation like Transfer of Property Act. Again, there are certain areas where legislation is missing e.g. Credit Cards, ATMs, hire purchase and leasing etc. Relevant laws need to be framed in these areas to meet the ends of justice.

Again statutes have been enacted at various points of time in the same area, for example, in the field of labour legislation. There are 47 different central acts that deal directly with labour laws. There are many more legislations indirectly dealing with labour laws. There is lack of unanimity about definition of wages, workman, employees, factory and industry among them. Judicial decisions also differ causing confusion, thus there is a need for unifying and harmonizing the laws.

**Brief and Precise Judgments**
The judges should be brief and concise while writing their judgments. Now-a-days some of the Judges write long judgments. In the past, the Judges used to write very brief judgments running into 3 to 4 pages. A litigant is more concerned with the dispensation of justice than with the quality of judgment. A Judge is not required to write a thesis except in those few cases where he is required to lay down the law. Verbosity in judgment should be avoided at every cost. It facilitates an early disposal of cases.

**Saving judicial time: Section 80 Civil Procedure Code**
Sec 80 of the Code of Civil Procedure (CPC) provides that before instituting a case against the government, a party must give two months’ advance notice to the government. The purpose is to make the government aware about the grievance caused to the affected person by it and enable it to resolve the matter. The government is not utilizing section 80 CPC for settling cases out of the court as no one wants to take responsibility for the decision. To avoid institution of unnecessary cases in the courts, the state government should establish independent legal cells in all the departments to consider the representations and
notices with the proper follow-up and then take appropriate steps to redress the grievance. Such action would reduce the number of cases filed in the various courts. Not only this, it has also been observed in a number of cases that, once a decision is give by a court which has gone against the government, instead of implementing the just order passed by the court, prefers to file an appeal or revision, against the adverse orders.

The general tendency to raise all technical pleas to defeat the just claims of citizens is widely prevalent, not-with-standing the admonition by the Supreme Court in the Madras Port Trust vs. Hymanshu International\[sup]111\[/sup] wherein it was held that in all morality and justice, a public authority should not take up a technical plea to defeat a just claim of the citizen. It is high time that the government and public authorities should adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens.

Of the late there is a tendency on the part of the government and its instrumentalities to evade or delay implementation of writs and judicial orders giving rise to a large number of contempt petitions, which consume precious judicial time which could be saved if public authorities are sensitive to their duty and obey the courts’ orders and injunctions promptly. The time thus saved could be utilized for disposal of pending cases.

Again, the advocates appointed by the government on considerations other than merit adds to the vows of the government. They are not aware of the latest decisions of various courts and all the existing laws. Many a time such suits are filed in the courts wherein the legal points involved in instant cases have already been conclusively decided by the superior courts (in the earlier decision) and therefore, the concerned departmental head could have resolved it outside the court by taking legal opinion.

\[sup]111\[/sup] (1979) 4 SCC 176
The state government can play a significant role in reducing the institution of the cases in the courts if it gives weightage to merit and acts in a planned and systematic manner.

**Research and Development Wing**

Every High Court should have a Research and Development Wing which should study the needs of society, efficacy of the existing legislation, and the judicial decisions vis-à-vis society and point out the defects and suggest improvements. It should study the contemporary legal developments around the world and their applicability in India. We have a massive social welfare legislation and many welfare legislation and many welfare schemes under them. The enforcement of those schemes is the right of the society. The R & D Wing should suggest ways for improving those schemes so that the benefits percolate to really deserving socially and economically disadvantaged people. Research should be conducted in procedural techniques for delivering speedy and inexpensive justice and the required amendments in the existing procedure may be suggested.

**Alternative Dispute Resolution forums:**

In the Civil Procedure Code, 1909, there was a provision under section 89 for referring the matter to the Arbitrator, but section 89 was deleted in the amendment of 1976. But now by the amendment of 2002, this provision has been restored with the addition of Conciliation, Mediation and Lok Adalat. Once a case is filed before the regular judicial court, that court itself can make efforts for getting the matter settled by mediation and conciliation and there are no reasons for referring the matter to some other forum except Lok Adalat concerned which is now a statutory forum under the Legal Services Authority Act, 1989 and any dispute can be referred to Lok Adalat\(^{112}\) for disposal only on the basis of mutual settlement and such disposal is binding on both the parties as a decree is prepared on the basis of recommendation of the Lok Adalat, by

\(^{112}\) The advantages of referring the dispute to these forums are already discussed in details in Chapter 3 of the thesis at p 198-206
the court. Invoking of the provisions of mediation and conciliation depends upon the consent of the parties and it cannot be thrust upon them to take their matter to the Lok Adalat. So far as mediation and conciliation is concerned, the court can itself, taking into account the approach of the parties concerned, do it.

In recently held conference of the chief ministers of states and the chief justices of the high courts (April 19, 2008) item no. 7 on agenda was with regard to strengthening of A.D.R. mechanisms including mediation, conciliation, arbitration and plea-bargaining. There was unanimity amongst participants that the efforts of regular courts need to be augmented by resolution of disputes through Negotiation, Mediation, Conciliation and Lok Adalat so as to reduce congestion in Courts and bring about a satisfactory solution to the disputes. For this purpose they decided that

1) More Mediation Centers be set-up so as to have at least one such center in each district and necessary infrastructure and funding be provided to them.

2) State Legal Services Authorities be strengthened and be encouraged to hold more Lok Adalats and Mediation Camps so as to bring about a peaceful settlement to the disputes.

In spite of so many ills which plague our judicial system, the overflowing docket of court cases is a positive sign of people’s faith in the judiciary. Honest efforts must be made by the Bar, Bench and the Government to strengthen this pillar of justice. Yet no system, not even the justice delivery system can be better than the men who man it. We may make the best laws and introduce new procedures, yet it may not have done enough to achieve the constitutional promise of providing justice. It may be totally useless to make even good laws for bad people.

More than good laws, society needs good men. It needs men who have righteous principles, who can fight temptations, who can tell the truth, who believe in work culture rather than shirking work and those who can
stand for principles. Such men can be the real pills for all the ills that the society faces.