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**CONCRETE APPROACH TO
JUDICIAL REFORM**

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CONCRETE APPROACH TO JUDICIAL REFORM

Dr. P.K. Agrawal¹

1. Judicial Reform - Defined

The term Judicial Reform involves a critical study of the existing system of laws and administration of justice highlighting the areas of deficiencies and improving upon them by plugging the loopholes.

Judicial reform as understood in the context of justice delivery system in order to make it manifold and more effective would not simply encompass amendments in procedural and substantive laws but would also include reformative and corrective measure aimed at strengthening and systematising the law and order mechanism operating in the country. In ordinary parlance, reform should not have been understood to mean defeat or disenchantment with the past. It is to keep pace with changing times. India has an integrated system of judiciary having the Supreme Court as the apex Court. There are High Courts in between the Supreme Court and the District Courts. The High Courts exercise control and supervision over District/Subordinate Courts. The Supreme Courts and the High Courts are governed by their own rules of procedure as regards writ jurisdiction etc. where the District Courts are mostly governed by the civil and criminal procedural laws i.e. Code of Civil Procedure, Code of Criminal Procedure, Indian Evidence Act etc.

2. Judicial Reforms in Historical Perspective

The gradual increase in institutions coupled with the failure of disposals to keep pace with them has resulted in an alarming rise in the pendency of cases in the High Courts and Subordinate Courts. The problem of pendency of old cases is not a new phenomenon and it existed in the pre-independence era also. But due to massive increase in the pendency of cases after independence, the problem has become unmanageable and the Courts alone are not in a position to bear the entire burden, since the quality of justice is also to be maintained. The following Committees/Law Commission constituted by the Government from time to time have gone into the problem of arrears of cases in various courts in India:

2.1 Rankin Committee, 1924

In 1924, the Civil Justice Committee under the chairmanship of Mr. Justice Rankin, then puisne Judge of the High Court of Judicature at Fort William in Bengal, was set up to enquire inter alia as to whether any and what changes and improvements should be made

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so as to provide for the more speedy, economical and satisfactory dispatch of the business transacted in the Courts. The Committee, after a thorough and careful enquiry into the various aspects, forwarded an exhaustive report in 1925.

2.2 Arrears Committee of 1949

In 1949, a High Courts Arrears Committee was set up by the Government of India under the chairmanship of Mr. Justice S.R. Das, for enquiring and reporting as to the advisability of curtailing the right of appeal and revision, the extent of such curtailment, the method by which such curtailment should be effected and other measures, if any, should be adopted to reduce the accumulation of arrears. A number of recommendations including an immediate increase in the Judge Strength of the High Courts were made by the Committee.

2.3 Law Commission's 14th Report

The Law Commission of India which was constituted in 1955, undertook the task of reviewing the system of judicial administration in all its aspects and suggested ways and means for improving it and making it speedy and less expensive. The Commission in its 14th Report submitted to Government in 1958, had made several recommendations with regard to increase in Judge strength, recruitment procedure, setting up of an All India Judicial Service, training to Judges, supervision and control of Subordinate Courts, Original and Appellate Jurisdiction of High Court, organisation of Criminal Courts, investigating and prosecuting agencies, civil revisions, unlimited pecuniary jurisdiction to subordinate courts, investigation by Police, setting up of separate prosecuting agencies, separation of Judiciary from executive, criminal appeals, committal proceedings etc.

2.4 Review Committee Appointed by the Government of India

In 1967, the Government of India, greatly concerned at the problem of accumulation of arrears in various High Courts, conducted a review of the state of work in each High Court and found that inadequacy of judges was the main cause of the accumulation of arrears. The Government increased the strength of judges in some of the High Courts, taking into account the arrears of cases then pending, fresh institutions and disposal. Though this had some effect, no appreciable result was produced.

2.5 Arrears Committee, 1972

In 1969, the Government of India constituted a Committee presided over by Mr. Justice Hidayatullah, the then Chief Justice of India to suggest ways and means for reducing arrears of cases pending in the High Courts. Upon the retirement of Mr. Justice Hidayatullah, Mr. Justice Shah was appointed the chairman of the Committee. The Committee has made a number of recommendations.

2.6 Satish Chandra Committee Report, 1986

The Government of India also constituted a Committee under the chairmanship of Justice Satish Chandra for studying the delay in disposal of pending cases in the High Courts. The Committee submitted its Report to the Government in 1986. The Government set-up a Committee of officers to examine the Report and also to indicate

the recommendations which should be accepted by Government. The recommendations accepted by the Government were circulated to State Governments/High Courts.

2.7 Committee Appointed in Various States

Apart from the above three Committees which worked at all India level, some Committees were appointed in different States to look into the problem of delay and other matters concerning judicial administration.

One such Committee was in West Bengal, constituted in 1949, under the chairmanship of Sir Tervor Harries, the then Chief Justice of the Calcutta High Court. Another committee was constituted in 1950, in Uttar Pradesh under the chairmanship of Mr. Justice K.N. Wanchoo.

2.8 Other Reports of the Law Commission

The successive Law Commissions in their various reports viz; 77th, 79th, 97th, 99th, 124th, etc., have dealt with the pendency of cases in the courts and had made several recommendations to expedite the disposal in various courts of the country.

2.9 Malimath Committee, 1989-90

To specifically make an in-depth study of the problem of arrears in the High Courts and Subordinate Courts, a Committee of Chief Justices of High Courts under the chairmanship of Justice V.S. Malimath, the then Chief Justice of Kerala High Court was constituted by the Government in January, 1989. The Committee inter-alia, examined as many as 16 reports of the earlier such committees and reports submitted by the 11th Law Commission. The Chief Justices Conference held in 1990 considered the recommendations made by the Malimath Committee and passed certain resolutions with regard to certain recommendations. The Report of the Malimath Committee was received by the Government in 1991. The recommendations covering various aspects like jurisdictional and procedural modifications/improvements in the judiciary; improvements in the infrastructural facilities including modernisation of office equipments in courts and in day-to-day working of the courts, setting up of Conciliation Courts and also making it applicable to proceedings before Motor Accidental Claims Tribunals, etc., were forwarded to all the High Courts/State Governments/UT Administrations for necessary follow-up action. The recommendations pertaining to Central Ministries/Departments were forwarded to them for making suitable amendment in Civil Procedure Code, Criminal Procedure Code, Indian Divorce Act, Commissions of Inquiry Act, Article 226 and 227 of the Constitution, extension of jurisdiction of Central Administrative Tribunal to the employees of the universities, setting up of Labour Tribunals etc. The matter was pursued by the Department of Justice, Ministry of Law and Justice with all concerned.

2.10 Law Ministers' Conference

A meeting of the Law Secretaries and Law Ministers of the States/UTs was organized at Bangalore in October, 1992 so as to implement the recommendations made by the Malimath Committee. As per the decision taken in the Conference, three working groups of State Law Ministers were constituted to suggest measures for the implementation of the recommendations of the Malimath Committee. The report of these working Groups was discussed in the Chief Ministers and Chief Justices

Conference held on 4th December, 1993 under the chairmanship of the Prime Minister. The Chief Ministers and Chief Justices among other things, were also of the opinion that courts were not in a position to bear the entire burden of justice system and that a number of disputes lent themselves to resolution by alternative modes such as arbitration, mediation and negotiation. They emphasised the desirability of resolving disputes taking advantage of alternative dispute resolution. The Conference had made a number of recommendations relating to appointment of Judges, judge strength, transfer of judges, appointment of Judges as Commission of Enquiry, alternative dispute resolution, appeals and original jurisdiction, appointment of a committee by the State Governments for the elimination of frivolous litigation, appointment of special judicial magistrates to deal with petty criminal cases and traffic cases, special summary procedure for rural litigation, modernisation of Courts, curtailment of oral arguments, etc. These recommendations were already been commended to all the State Governments/UT Administrations and High Courts and Central Ministries for necessary follow up action. Three working Groups of Law Ministers, therefore met to consider the recommendations contained in the above Resolution with regard to rural litigation, arrears of cases in administrative tribunals and alternative disputes resolutions. The implementation of December, 1993, resolution and recommendations made by the working groups were reviewed by the Law Ministers at their plenary meeting held in Calcutta and Hyderabad in November, 1994 and November, 1995 respectively. The resolutions adopted in these meetings have been commended to all concerned authorities for necessary follow-up action. A conference of Law Ministers was held on 30th June and 1st July, 1997. The conference discussed the various issues relating to appointment of judges in courts, creation of an All India Judicial Service, pendency of cases in courts and measures for their expeditious disposal and the 154th Report of the Law Commission on Judicial Reforms.

2.11 154th Report of the Law Commission on Cr. PC. (1996)

The Law Commission of India submitted its 154th Report on the Code of Criminal Procedure, 1973 has suggested for reaching amendments for speedy justice in criminal cases such as separate and exclusive cadre of investigating and prosecuting agencies, dispensing with summons procedure, trial on day-to-day basis, extensive compounding of offences, plea-bargaining compensation to crime victims, constitution of Nyaya Panchayats, protection to women, restriction on adjournments like in Code of Civil Procedure.

2.12 156th Report of the Law Commission on the Indian Penal Code (1997)

The Law Commission undertook a comprehensive review of the Indian Penal Code and submitted its 156th Report. The Report, inter alia, suggested extensive amendments in various offences and their punishments including inclusion of new offences considering socio-economic scenario in the country. The Report was tabled in Lok Sabha and Rajya Sabha on 8th and 9th June, 1998, respectively. The Report of the Law Commission is being examined/processed in consultation with the State Governments as the Criminal Law is a subject in the Concurrent List of the Constitution and Criminal Laws are administered through the State Governments.

2.13 Report of the Shetty Commission (1999)

The First National Judicial pay Commission in its Report submitted in 1993 has suggested for increase in court hours by 36 hour per week and for reduction in

vacation period by 15 days in a year.

The Shetty Commission has also recommended for constituting of the All India Judicial Service.

2.14 Amendments in the Code of Civil Procedure, 1999 and 2002

The amendments in CPC may be termed as magna carta for the Indian Judicial System. The amendments have been implemented with effect from July 01, 2002. The amendments inter alia provide for time limits at various stages of a suit like service of plaint to defendant within 30 days of institution of suit even through courier filing of written statement within 30 days extendable upto 90 days, restriction of number of adjournments to three to a party to a suit, examination of witnesses through Commissioner's general power of court to extend time upto 30 days, delivery of judgement within 60 days after the having compulsory pre litigative settlement before the cases are taken up by the regular courts etc.

2.15 Recommendations of the National Commission to Review the Working of the Constitution, (2002)

The Commission has suggested for more liberal disciplinary action against High Court Judges, the National Judicial Commission for appointment of the judges of the Supreme Court, 'truth' as defence under the Contempt of Courts Act, more financial resources and financial autonomy to the judiciary, proper mechanism for training of presiding officers of courts, delivery of judgement within 90 days, award of exemplary costs for abuse of process of law, encouragement of ADR System of Urban litigation and setting up of Gram Nyayalayas, evidence recording by Commissions, time bound clearance of arrears, two tiers of subordinate judiciary only etc.

3. Need for Judicial Reforms

The Courts in India are functioning according to the procedure laid down in the Criminal Procedure Code, Civil Procedure Code, Indian Evidence Act etc. The Judicial Reform has become a great challenge to the polity because there is undue delay of disposal of cases in India. Justice delayed is justice denied. If the stream of justice is dried up, there will be discontent, upheaval and explosion in the society. The judicial system works as safety valve in the society. The purpose of Judicial Reforms is to build a credible justice system that will provide agency/channel for citizens to secure their rights through legitimate process. The government is accountable to them. The citizens should be enabled to resolve their mutual disputes in a free, fair and speedy manner including disputes against the mighty government.

Nani Palkhiwala, the famous journalist, observed once, the progress of a civil suit in our courts of law is the closest thing to eternity we can experience! Our laws and their interpretation and adjudication led to enormous misery for the litigants and forced people to look for extra-legal alternatives.

It is therefore, essential to provide an independent and impartial judiciary with a speedy and efficient system. At present in India, there are about 25 million cases pending in various courts in the country. Out of above, 20 million cases are pending in District Courts, 3.5 million in the High Courts and about 22,000 cases in the Supreme Court. Other courts, tribunals may account for total pendency of about 15 million or more

cases. Many of these cases in High Courts and District Courts are pending for many years. The cases in these two courts are pending for about five years on an average. The increase in pendency of cases is due to various reasons such as increased institution of cases on account of the awareness of the rights on the part of citizens, population explosion, industrial and commercial developments, emergence of socio-economic measures, touching the life of the citizens at all levels, lawyers' strikes etc. The Supreme Court has shown the way by reducing its pendency from about 1,04,936 as on 31.12.91 to 22,551 as on 22.02.2002. The steep decrease in pendency of cases in Supreme Court is due to their concerted steps taken viz; fixing of cases and their allocation to Benches through computer network, grouping and classification of cases involving similar question of law, setting up of specialised benches, computerisation of records etc.

It is said that increase in judge strength and providing additional infrastructural facilities will provide impetus for reduction of pendency of cases in District Courts and High Courts alongwith necessary amendments in various procedural and substantive laws. There are few takers of this concept that the courts by their own efforts will bring down the pendency of cases to a respectable level.

4. Purpose of Judicial Reform

According to Daniel Webster, the outstanding American Lawyer, 'Justice is the greatest end of man. Justice is the end while law is a means'. The purpose of Judicial Reform are as follows:

- a) improving the independence, integrity and professionalism of the judiciary by developing and maintaining a professional cadre of judges and legal professionals, through a combination of appropriate training, incentive systems and improvement in working conditions.
- b) increasing the efficiency of the judiciary through improved resource allocation and management as well as case management and capacity building.
- c) ensuring the transparency and accountability of the judiciary through the establishment of an effective control and supervision system, the gathering and dissemination of legal information.
- d) ensuring access by the poor to judicial services and the delivery of quality judicial services.

5. Components of Judicial Reforms

We can attempt to concretise Judicial Reform through an empirical formula. According to Parkinson law, Judicial Reform is a complex subject.

The more judges, the more inefficiency creeps into the legal system. This is also true from the American experience. If corrective measures are not taken to solve the problem of huge pendency of cases in Indian judiciary, it may fall under its weight. There is an urgent need for check on frivolous litigation and weeding out infructuous cases.

The simple empirical formula based on addition is attempted taking total Judicial

Reform as 100 per cent. The following 15 factors can be given the inter se weightage to constitute total Judicial Reform:

Judicial Reform (Total)	100%
1. Judge Strength and appointment of judges	20%
2. Procedural Laws	20%
3. Quality of Substantive Laws	5%
4. Court Procedure	7%
5. Court's mechanism/demeanour including intentional delays by parties	7%
6. Working hours of Courts	2%
7. Service of notices of courts and submission of reports including investigation reports etc. to courts	6%
8. Delay in delivery of judgements	1%
9. Training of Judges	5%
10. Quality of legislative drafting	1%
11. Observance of professional conduct by Judg	2%
12. Legal Profession and Legal Education	
13. Alternative Disputes Resolution and setting up of Tribunals- conciliation and arbitration-as part of regular proceeding	4%
14. Setting up of Gram Nyayalayas	4%
15. Infrastructural facilities for Judiciary	10%

Weightage of the factors can be given on the basis of extent of that particular factor present in the system of courts for the particular State. The weightage can be arrived at as follows:

The weightage inter se can be determined by developing closed-ended response based on the concept or decision of the research. Here, one cannot avoid subjectivity. To reduce the subjectivity, even detailed discussion can be made to determine the allocation of the weightage. For this purpose, a rating scale may be fixed. Rating scales, by and large, try to secure the intensity of the respondents feelings on a predefined sets of response alternatives. Here, guidance has been taken from Likert Scale which is also called a 'summated ratings' scale. Let us construct the following six statements or decisions relating to issues under investigation, very adequate, so so, inadequate, very inadequate, nil. Let us assign the numerical values or rank ranging from 0 to 10 to different categories as follows:

Very adequate	assigned	10 marks
Adequate	assigned	8 marks
So so	assigned	4 marks
Inadequate	assigned	2 marks
Very Inadequate	assigned	1 mark
Nil	assigned	0 mark

Using this method of scoring, total scoring is calculated depending on the strength of the factor and we may lay down the formula as follows:

$$JR(T) = JR_1 * S_1 + JR_2 * S_2 + \dots + JR_{10} * S_{10} + \dots + JR_{15} * S_{15} = 100\%$$

$$\text{i.e.} = 2 * S_1 + 2 * S_2 + \dots + .1 * S_{10} \dots + 1 * S_{15} = 100\%$$

Let us now study each factor separately;

5.1 Judge Strength and Appointment of Judges

In India, there are about 14 judges per million population whereas in USA there are 50 judges per million population. Most of the countries except China have higher judge strength in the judiciary. The 120th Report of the Law Commission has laid down that India should adopt USA's judge strength. The Department-related Parliamentary Standing Committee on Home Affairs in its 86th Report has also suggested that judge strength at the ratio of 50 per million population should be achieved in India. The Supreme Court in the case of All India Judges Association Vs. UOI & Ors has also laid down on 21st March, 2002 that the judge strength at the rate of 50 per million should be achieved in the next five years.

This is not acceptable to the State Governments and the Union Government because it will involve huge expenditure of more than Rs. 14000 crores. It is suggested that the additional judge strength should be created on the basis of work load and disposal of cases so as to tackle the pendency of cases within next five years. It can be easily achieved because in all the courts, the present institution of cases is being tackled by the existing strength of judges. Therefore, if additional judge strength is created to tackle the pendency of cases in five years, the additional judge strength will be available to tackle subsequent pendency of cases after the pending cases are completely disposed of and eliminated after five years.

There is a huge vacancy of judges in District Courts which runs to about 2200 judicial officers as in August, 2002 and there are vacancies of about 150 judges in various High Courts in the country. The Hon'ble Supreme Court has rightly directed the Government to fill up the vacancies by March, 2003. However, if the period of five years is not agreed to for reduction of pendency of cases, at least it should be agreed to for a period of three years. Addition of judge strength on the basis of population will

perhaps be not in keeping feasible with the bad financial position of the State Governments. They will have to bear major brunt of increase in judge strength because they are bearing the financial expenses of High Courts and District Courts. Thus, the weightage of judge strength may be given 20 per cent and actual weightage will vary according to the vacancies being filled up or not in a particular State or the Court. If the vacancies are large and unfilled to achieve disposal of pending in five or three years, the State or the particular Court will get less weightage under this category.

5.2 Procedural Laws

Procedural Laws are the bulwark of Judicial Reform. It is a common knowledge that courts in India are slaves of archaic laws made by the British authorities to perpetuate their rule.

To accelerate the disposal of cases and to remove the bottlenecks coming in the way of providing speedy and inexpensive justice, there is need to amend certain provisions in the existing statutes i.e. the High Court Acts and Rules, Civil Procedure Code, the Criminal Procedure Code, the Indian Evidence Act etc.

The following procedural amendments in respect of civil suits and criminal suits are basic to Judicial Reform:

Civil Suits

- a) In speedy disposal of Civil suits, time limit be prescribed. For that, if necessary amendments in Civil Procedure Code and the concerned Rules and Orders of Courts be made.
- b) Fixing of time limit for disposal of Interlocutory Applications is also a must.
- c) Adjournments should not be granted liberally. In any case, adjournment not more than once be granted. That too for a day or two but not more than one week.
- d) Time limit for arguments be fixed. It will be better if written arguments are encouraged and entertained.
- e) Time limit for giving the judgements/passing the orders should strictly be followed.
- f) To curtail time limits, the counsels of parties should first exchange Interlocutory applications and give replies amongst themselves supported with affidavits and then file before the Court for passing suitable orders thereon.
- g) It was also suggested that for issuing notices to the defendants/ Non-Applicants at the first hearing itself. Alongwith ordinary process, notices be also issued by registered notice/Hamdas process simultaneously if desired to avoid unnecessary delay in service.

Criminal Cases

- a) Adjournments should strictly be avoided.
- b) Strict observance of Rules be followed in passing the orders and delivering

judgements

- c) Bail Applications and Interlocutory Applications be given priority. They may be disposed of as early as possible.
- d) Prosecution witnesses be kept present on the date of hearing fixed by the prosecution at the risk of the prosecution.

5.3 Substantive Laws

Substantive laws play a very important role. According to the Jain Commission's Report on Administrative Laws, there are about 1300 Laws, Act and Regulation in India which are required to be repealed or abrogated. We have major statutory laws in the country like the Indian Penal Code (1860), Indian Evidence Act (1872), Code of Civil Procedure (1908), etc. Which are pre-Independence Laws. Sometimes, these laws have no relevance with the modern times and, therefore, there is dichotomy arises when these laws are interpreted by the Court in the present day context. There are Central Acts which sometimes are overlapping. Sometimes, Statutes of two or more States overlap due to huge volume of statutes. The list of Central Laws are about 340. New lists are added to these laws every year. In achieving public cause in a time bound manner, sometime the quality of laws is sacrificed. The laws are not always in the knowledge of the public and it violates the basic provision of law that everybody is supposed to know law of the land. In case of the pre-independence laws like the Indian Penal Code, the punishment prescribed in the Act is not commensurate with the updated price index. There has been lot of change in life style and thinking of people. Parliament and the State Legislatures are trying to amend these laws but they are unable to keep pace with the socio-economic changes taking place. As a result, old and obsolete law should the field. Sometimes a clever litigant takes the shelter under the obsolete law and gets away from the clutches of the law. Many of the substantive laws have inherent procedure of judicial adjudication which was once in the favour of the accused person and the one who is seeking redress from the court. The earlier pre-independence criminal law was based on the principle that let hundred of accused persons are set free but not a single innocent person be punished. Now, these basic concepts are being misused by the rich and clever litigants due to financial and oilier resources at their disposal.

The Law Commission of India has been reviewing the substantive laws of the country from time to time but these recommendations are not implemented with the required promptness. The amending procedure takes a lot of time to affect the amendment in the substantive laws. As a result, a Statute Book of India has become irrelevant to the socio cultural developments in the society. Thus, weightage to this factor given is up to the extent of five percent (5%). The bulky statute book of India is because of increase in population also. Some of the substantive laws provide procedure for disposal of cases. The overlapping procedures should be done away so that justice is not only done; it is also seen to have been done.

5.4 Court Procedure

Court procedure is one of the important areas which is relevant in judicial reform. The High Courts and Supreme Court have their own rules of procedure and they will not go by the procedure laid down by the Code of Civil Procedure or Criminal Procedure. The Malimath Committee (1989-90) known as Arrears Committee, has

suggested extensive reforms in procedure of the High Courts which are as follows:

- (i) Abolition of Court ordinary original Civil jurisdiction of High Courts.
- (ii) Abolition of Letters Patent Appeals.
- (iii) Discouraging multiplicity of appeals, especially in the context of orders of quasi-judicial tribunals.
- (iv) Filing of certified copy of decree to be dispensed with (operative part of the judgement to be accepted along with the appeal).
- (v) High Courts to specify categories of cases which could be heard by Single Judge or by a Division Bench.
- (vi) Convention to be evolved that would discourage granting of adjournments.
- (vii) Limitation on presentation of oral arguments, long elaborate judgment, etc.
- (viii) Courts should avoid writing of long and elaborate judgments.
- (ix) Reserved judgments should ordinarily be delivered within a reasonable time.
- (x) Court to prepare lists of old cases and arrange their early disposal.

Many of the High Courts have implemented these recommendations but some are still in the process even after the lapse of 10-12 years. It is, therefore, suggested that uniform rules should be adopted by the High Courts in their original as well as in appellate jurisdiction. The Supreme Court by way of grouping and of categorisation of cases, involving same point of law, fixing of cases through computers etc. has reduced the pendency of cases to an impressive figure but all the High Courts are still to follow that. The writ petitions in High Courts and Supreme Court are governed by the procedure of these Courts. In the case of District/Subordinate Courts, the following procedure of the Court may be very relevant:

- (i) Court should also be well prepared with the facts of the case, relevant law applicable and the law laid down by High Courts, i.e. High Court and Supreme Court relevant to the facts of the case.
- (ii) Courts should maintain the punctuality of time and discipline of timely disposal of the case as far as possible.
- (iii) Parties should be encouraged for reconciliation or settlement, if possible.
- (iv) Courts should have control over Daily Diary of Cases.
- (v) Rules and orders should strictly be followed.
- (vi) Once the Case comes on board for disposal, it should not be adjourned except when the Court itself thinks it proper and necessary to do so, that to for a very short time.

- (vii) Hearing of the case adjourned due to absence of Presiding Officer, be adjourned and fixed for the same purpose as and when the presiding officer is expected to be present.
- (viii) Revisions against interlocutory orders be curtailed until and under the whole case is likely to be disposed off in such revision by the Revisional Court, otherwise right to consider that point be left open for Appellate Court in an Appeal against final decree.
- (ix) Heavy Costs be imposed for adjournments.
- (x) In case the Court considers that the examination of the witness is necessary for fair disposal of the Case, the Court after passing such order can call that witness as a Court witness.

The latest amendments in Code of Civil (Amendment) Acts, 1999 and 2002 provide for restriction of three adjournments to a party to the suit, prelitigative conciliation and mediation of disputes, delivery of judgments within 60 days after the hearing and time limits at various stages of a suit.

It is expected that coupled with these amendments in the main procedural law in India, High Courts will lay down procedure for subordinate courts which will have cascading effect and civil disputes will be finally disposed of within one year to two years' period. Considering the significance of this aspect, maximum 7 per cent weightage is given to this factor.

5.5 Court's Manoeuvre/Mechanism

The court is made of judges, counsel and litigants. Counsel is a very important organ of the court and can help or can obstruct administration of justice. He is a buckle between the judge and the litigant. It is a well-known fact that adjournments are sought by lawyers and the counsels on flimsy grounds and the courts grant them adjournments as a matter of routine. Though the Code of Civil Procedure Amendment Act, 1999 contains that not more than three adjournments will be given to a party and many other reforms have been brought by the Code of Civil Procedure Amendment Act 2002. But these amendments to shorten the life of suits, cannot be implemented unless there is whole-hearted cooperation from the lawyers' community. The court's adjournments are considered to create a conducive atmosphere but now, these have gone beyond all limits. One wonders whether courts serve the interests of lawyers or the interests of the litigant public. The object of the court is to ensure justice to the party before it. In India, it is a well-known fact that justice is what the lawyers dictate. Therefore, the lawyers' community has to give willing cooperation in the administration of justice. During proceedings of the courts, many occasions arise where the intelligent or crafty lawyer who quickly responds to the court proceedings, can twist the direction of the judgment in his favour. Secondly, the lawyer apt in the art of argument, always says 'Yes My Lord', and can win the confidence of the court and can get the judgment he desires. Even the debating skill or method of delivery by the Counsel makes a difference to the case to the extent of 2 to 3 per cent. If Counsels have due clarity in their thought and approach alongwith uprightness and simplicity in their presentation, the cases can be decided fast. There was an attempt to restrict long and elaborate proceedings of the court by the Civil Procedure Amendment Act, 1999 but these could not be implemented because of opposition by lawyers all over the country.

Thus, the lawyers will continue to play an important role in delivery of justice in courts and to expedite the process of disposal of cases. It is also a fact that we live in a country which is prone to delays. Even the litigants are not always responding to the demands or requirements of lawyers at all times. A mid-way solution has to be arrived at but the courts should not function to the convenience of lawyers only and should help in achieving the ends of justice. In view of foregoing, weightage to the whole gamut of court mechanisms may be given as 7 per cent. The counsels should also observe the following professional duties/ethics in the interest of justice:

- It should be the duty of the Counsel to help the Court in not only to arrive at a Just Conclusion of the Case but ensure for its speedy disposal.
- Advocates should take least possible adjournments.
- He should be well read and well prepared for his case when the case is fixed. It will minimise the time of the Court and help in speedy trial of the case.
- Applications intended only to delay the proceedings should be avoided.

5.6 Working Hours of Courts

It is debated in public that the working hours of the courts should be increased and should be at par with the working hours with other Government offices. The High Courts and Supreme Court are working for about 221 days in a year but the Government offices are working for more days. Judiciary has been enjoying these privileges from the British days and feels it essential because they do intellectual work and have to dictate judgments even after office hours. It is also a fact that unless the judgments are written, no purpose of drawing up proceedings will be served. There should be adequate provision of time for writing of judgments. The First National Pay Commission (The Shetty Commission) has suggested that vacation of District/ Subordinate Courts should be cut by 15 days and the District Courts should work for at least 36 hours in a week. These recommendations have yet to be implemented. It is also estimated that if the court hours are increased by half an hour each day in the High Courts, the pendency of cases will be reduced to a large extent. However, this cannot be done without the consent of the Judiciary and they should exercise fair amount of independence and autonomy in the interest of judiciary. However, it is not disputed that the courts should work punctually and should not shun work. This itself indicates that courts should play a major role for judicial reforms in reduction of arrears through the doctrine of self-restraint or self-discipline.

Therefore, weightage to this factor can be assigned as 2 per cent only.

5.7 Service of Notices etc. and Submission of Reports including investigation Reports to Courts

The service of notices, summons and warrants is a big problem for the judiciary because the Indian judicial set up does not have its own mechanism for service of these summons. In criminal cases, summons and warrants are generally served through police administration. Police administration is mostly busy in many other activities. As a result, the service of summons/warrants are delayed to a great extent.

The Law Commission in its 154th Report has suggested that these summons/warrants

of courts be served through machinery of the court itself but the votaries of the present system feel that if the warrants are served through any other agency except the police, the warrants will not be served and will not have the salutary effect on the accused persons. If it is not possible to provide additional hands to the courts, there should be earmarking of the personnel in the police station who may exclusively be dealing with the service of notices, summons or warrants from the courts.

The 154th Report of the Law Commission suggests setting up of a separate investigation agency and separate Directorate of Prosecution in each State as recommended by the National Police Commission. These recommendations are awaiting implementation by all the State Governments. Some of the State Governments have already implemented these suggestions. It is also suggested in the 154th Report of the Law Commission that the cases should be fixed in such a manner that the witnesses summoned are positively examined on that day or on the next day. The cases may be fixed police station wise. It is observed that the success of Fast Track Courts scheme in Rajasthan is due to the fact that the service of warrants or summons from the Fast Track Courts is being monitored by the Inspector General (Police), Rajasthan, specially assigned for the purpose. In civil cases, a positive dent has been made by the Code of Civil Procedure (Amendment) Act, 1999 and 2002, according to which the summons shall be served by the plaintiff himself within 7 days from the order of the court. The summons can now be served by the plaintiff through registered post, speed post or through courier service along with service by the court. There is a revolutionary change which strives to involve the plaintiff in service of summons and introduces a new system of service of summons through courier service which was earlier dependent on the age old methods of service of summons. The process got rusted over the passage of time. It is a well known fact that courts cannot proceed further without due service of notices.

Similarly in criminal cases, the submission of reports by police officers/investigating officers delays the proceedings. The separation of investigation will be very effective. It is also suggested that generally officers may not be transferred during investigation and he may be held personally responsible for production of witnesses in order to help early completion of prosecution. But it is doubtful to implement the same in a practical way because if the cases drag on for 5 years or more, the police officers/investigating officers may have their own vested interest in delaying the proceedings to remain at a particular place.

There is lack of scientific investigation in the country. The investigative machinery is also not properly equipped with modern gadgets of investigation. Also there is dearth of personnel for investigation machinery at the disposal of normal police administration. In the sensational Priyadarshini Mattoo rape-cum-murder case, the Trial Judge, Delhi observed that "the accused is a criminal but I cannot convict him for lack of evidence". The Trial Judge also said the manner in which the CBI investigated the case, puts question marks on its credibility as a premier investigation agency of the country. If it is the case with the premier investigation agency, the things are worse with the ordinary police machinery. In Russia and other countries, the investigation is completed within 2-3 days after commission of the crime and everybody gathers at the spot after commission of the crime. It is therefore, proposed that 6 per cent weightage should be given to be component of service of notices and submission of reports before the courts.

5.8 Delay in Delivery of Judgment

There were a number of recommendations by various Committees/Commissions that the judgment should be delivered just after the hearing is over. The original Code of Civil Procedure also provided for speedy delivery of judgment. However, judgments are delivered after lapse of considerable time in some of the cases. That increases the anxiety of the parties to the suit and puts a question mark on the performance of the court.

According to the Malimath Committee, the courts should avoid writing of long and elaborate judgments, atleast at the level of higher judiciary. The parties are interested to know the order of the Court because they have no further forum of appeal. Though it is a fact that the judgment should be a speaking one, yet it will suffice if judgment is a speaking one as regards pros and cons of both sides. The judgment need not discuss the presentation of both sides in unnecessary details which is already on file. According to the recent amendment in the CPC, the judgment should be delivered within 60 days after hearing of the case. This is a mandatory provision as per the Code of Civil Procedure Amendment Act of 2002 effective from 1st July, 2002. This will go a long way in influencing early delivery of judgment in civil, criminal and other cases in the country. However, the weightage to the delivery of judgment is linked with the conduct of proceeding of a case. Therefore, the significance of the factor is allocated only one per cent.

5.9 Training of Judges

Training of judges can improve the system of judiciary as a whole. The Human Rights Commission in their Report for the period 1999-2000 has suggested that there should be provision for continuous training and re-training of judicial officers for prompt administration of justice. The First National Judicial Pay Commission has suggested extensive training mechanism for the judicial officers including the use of latest technology in the administration of court. The training will enhance the competence of the judges so that they can be updated with the latest judgments on various subjects. There are new dimensions of laws being opened up in the field of gender equality, human rights, liberalisation of economy, patent law, competition law and others. These new laws and local laws are sometimes complicated. The judicial officers, who were trained at the time of entry into service earlier, could not keep abreast with the latest developments in the field of law because of excess workload with them.

The FNJPC (The Shetty Commission) has suggested that the Judicial Academy should be set up in all States alongwith apex Judicial Academy by the Central Government. So far, only 7 or 8 State Judicial Academies have been established in 7-8 States. Fortunately, National Judicial Academy has been inaugurated by the Hon'ble President of India at Bhopal on 5th September, 2002. Apart from the training of judicial officers, it will also undertake the work of research in the field of court management and judicial delays. It is also clear that the primary reasons for judicial delays, repeated appeals and legal uncertainties, *inter-alia*, can be traced to the lack of required competence in terms of updated knowledge and skills on the part of judicial officers at several levels of the system. In short, there is no substitute to organized and appropriate training on a continuing basis which requires priority attention in the judicial reform agenda.

In view of foregoing, five per cent (5%) weightage has been assigned to the factor of training of judges in the whole gamut of judicial reform.

5.10 Quality of Legislative Drafting

It is often said that the unsatisfactory quality of legislative drafting is also largely responsible for vexatious litigation. In India, there is no proper system of training in legislative drafting. As a result, the States Acts, Rules and Regulations are interpreted by different courts in different ways in the country. Sometimes, delays in drafting suffers because of haste in bringing about new laws. Sometimes there is overlapping among various Acts. That causes unwarranted litigation. The laws sometimes are drafted without public debate and not by experts of competence, professional bodies, etc. which results with more cases in the High Courts. Many of the Acts are declared ultra vires, being violative of the Constitution of India. This could have been avoided. Thus, there is an urgent need for addressing to the need of proper and scientific legislative drafting mechanism. If the laws are drafted properly, the volume of precedents will be less and people can know the law of the land before coming to the courts. The Central Government has set up a Legislative Institute for Legislative Drafting in the Legislative Department, Ministry of Law and Justice but the State Governments have to do a lot in this field.

As the drafting of these laws is not within the ambit of the court, it has been given one per cent weightage only.

5.11. Observance of Professional Conduct by Judges

The judiciary is a highly respected institution in the country. Self-restraint by the judiciary is the only way out. There can be no choice for outside reforms or control by some other organ of the Government. The Chief Justice of India after the meeting with the Chief Justices of High Courts has adopted a Code of Ethics of the judges in 1997. That is to be implemented in all respects. In the subordinate courts there are complaints of corruption in judiciary. The High Courts, who supervise the subordinate judiciary, have a well-laid down mechanism for prevention of corruption in the subordinate judiciary but that is inadequate. It is, therefore, suggested that the mechanism to prevent corruption in the District Judiciary/Subordinate Judiciary should be more elaborate and more foolproof. Though many a times, the judicial officers are given exemplary punishment by way of dismissal from service, yet the menace of corruption is also having its pernicious effect on Judiciary. Though the concerned administrative judges of the High Courts perform inspections of the District Courts, yet it is felt that these are not adequate. Some mechanism has to be set up at the District level itself as corruption is spreading tenaciously. According to the Hon'ble Justice Bharucha, former Chief Justice of India, more than 80 per cent of the Judges in the country across the board are honest and incorruptible. Thus, about 20 per cent judges are under cloud of corruption. The weightage to this factor is therefore given as 2 per cent. The proper observance of good personal conduct by judges will itself create an aura of judiciary which will enthuse people to respect the orders of the judiciary. The orders of Courts will then be followed without any resistance or pressure.

5.12 Legal Profession and Legal Education

The legal profession in India was governed by the Bar Council Act, 1926 which was replaced by the Advocates Act, 1961. Thus, the Bar was unified and an All India

Bar Council at the apex with the State Bar Councils at the State level were set up.

Under the Advocate Act, the rules framed by the All India Bar Council for admission into law course is for a period of three years after graduation and a five years course of study in law after 10 plus 2. The five years' course alongwith the eminent Law Schools have improved the quality of legal education.

The law Degree granted by the various Indian Universities are not preparing graduates in law to suit the needs of legal profession of legal competency. There is an urgent need for modern legal education.

The legal qualifications are prescribed for appointment of law officers and judicial officers from bottom to top, i.e. from Munshiffs to the Supreme Court Judges. Therefore, the very basis and background of legal education is the basis for the legal profession in the entire country to become and occupy the judicial, quasi-judicial, administrative and all other legal Departments, either public or private undertakings. The aim, purpose and object of legal profession must also be to realise the social responsibilities and shall endeavour to improve the quality of legal services and the efficiency of judicial delivery system.

At present, the appointments of law officers, both at the Centre and in various State in India have been politicised and criticised widely because of the inefficiency and incompetency of the persons who are appointed as Law Officers. The strike by the legal profession has been declared illegal by the Supreme Court on more than one occasions. Lawyers' strikes contribute to laws' delays. Sometimes lawyers go on strike on trivial issues in Court administration. Sometimes, they go on strike for establishment of new bench of High Court like in the Western UP which has become a regular phenomenon or on amendment in procedural laws like Code of Civil Procedure. These strikes can be avoided.

The legal education is the basis for maintaining the character, conduct, integrity, honesty, and sincerity including the professional discipline in the legal profession. This will also face the new challenges of new situations posed by PILs (Public Interest Litigations), Judicial activism and also the matters of judges exceeding their limits. The legal profession is a part of administration of justice. Without a competent and sincere legal profession, speedy disposal of cases will be a dream.

There should be proper design of courses, stiff admission and evaluation tests, and candidates for legal practice should not be enrolled without adequate training and proper education.

The weightage to the factor, therefore, given is to the extent of 4 per cent.

5.13 Alternative Dispute Resolution (ADR), Setting up of Alternative Tribunals to Reduce Pendency and Prelitigative Settlement

Lok Adalats have been set up as effective mechanism for alternative resolution of disputes through persuasive and conciliatory efforts with the enforcement of the Legal Services Authorities Act, 1987. The Lok Adalats have now been provided a statutory base and are vested with powers of civil courts. They are being extended to all the States and Union Territories. So far, the Lok Adalats have disposed of about one and half (1.5) crore cases. The Act has now been extended to create permanent Lok Adalats in selected

public utilities where the order of the Lok Adalat will be final upto a claim of Rs. 10 lakhs. The Act of 1987 is also a benevolent instrument to provide legal aid to the poor and needy people. In fact justice has no meaning to the poor strata of people in India unless it is made inexpensive because they cannot afford to go to the regular courts. There are 30 per cent people below the poverty line in the country and their condition is that they find it difficult to make both ends meet in their life. Therefore, they cannot be expected to pursue their court cases if they are implicated in some civil or criminal cases and therefore, the court becomes an instrument of exploitation unless they are given financial assistance to fight cases. The legal aid system naturally defends or strengthens their cause. The Supreme Court has also held, in *M.H. Rao Hosket Vs. State of Maharashtra* (AIR) 1978 SC 1548), that it is the duty of the State to provide legal aid to the poor. The Lok Adalat along with legal aid to the poor can work as useful arm of the present day judicial institutions. Along with this alternative method, it is of utmost importance that endeavour is made that the litigants find it is cheaper to compromise than to take their disputes to any court for resolution of their controversies. Section 89 has been added by the Civil Procedure Code (Amendment) Act, 1999, which provides for compulsory pre-litigative settlement. The dispute before the court will be referred for conciliation or settlement by way of mediation, conciliation or arbitration through Lok Adalat. This also refers to the 129th Report of the Law Commission of India. It is, therefore, considered necessary to set up permanent Lok Adalats every day in each district in the country so that the parties can approach these courts for settlement of their disputes before they are stuck up in courts. For most of the dates in courts, hearing is limited to extension of dates, adjournment of case or injunction granted. The litigants keep on seeing towards the court for final decision like a farmer who looks towards the sky for rains during the month of June. It is expected that the popular governments will place adequate mechanism for providing relief through the fora like Lok Adalat where people can go and settle their disputes before regular proceeding starts.

It is also a well accepted fact that the alternative tribunals or quasi-judicial forum will be helpful in expediting disposal of special types of cases on specified subjects. These courts will have experts in respective fields and the normal courts should not be bogged down by these cases where subject matter expertise is vital for just and speedy disposal of the matter. These courts are generally set up under the specific Acts and sometimes under Sections 13 and 18 of the Criminal Procedure Code for early disposal of particular types of criminal cases. Many tribunals like Central Administrative Tribunal, Income Tax Appellate Tribunal, Rent Control Tribunal, Family Courts, Labour Tribunal, Debt Recovery Tribunal, Monopolies and Restrictive Trade Practices Commission, Consumer Redressal Forum at various tiers and so many other tribunals at the Central and State level have been set up by various Acts of the Central Government and State Governments. These tribunals like CAT have been helping the normal courts in a big way but after the recent decision of the Supreme Court, their appeals will go to the High Courts where there is already choking due to large pendency. To deal with petty offences like traffic and other cases, more than 700 Special Judicial Magistrates have been appointed in the country. More Special Judicial Magistrates including Honorary Magistrates are to be appointed so as to take away unimportant and petty cases from the regular courts.

As per the request of the Chief Justice of India, Chief Judicial Magistrate or Chief Metropolitan Magistrate are holding courts in jails once or twice in a month to hear cases of undertrial prisoners who are languishing in jail for a long time without any trial and are unable to pursue their cases due to poverty or other reasons. The suggestion made by Hon'ble Chief Justice of India to Chief Justices of High Courts had

some salutary effect. He has also appealed to hear the cases of senior citizens of the age of 65 years and above on priority basis by various courts in the country and to dispose of cases more than 7 years old on priority. Such initiatives had positive effects and have substantially contributed towards judicial reforms.

To tackle the long pending Sessions cases, the Eleventh Finance Commission has recommended for setting up of 1734 additional adhoc courts known as Fast Track Courts. The Supreme Court has also upheld the validity of these courts in the case of Brij Mohan Lai & Ors. Vs. UOI on May 6, 2002. So far 1200 courts have been notified by the States and about 900 courts have been made functional upto September, 2002. These Fast Track Courts are disposing of Sessions cases and important criminal cases involving under trials on priority basis. These Fast Track Courts have been proved effective in controlling the crime situation in the States like Rajasthan and Maharashtra. The Sessions cases in some Districts of Maharashtra could be heard after one month of their filing. Similarly, the known criminals and mafia were booked under the Fast Track Courts like in the States of Bihar (District of Madhubani) and in Uttar Pradesh (Allahabad District), who otherwise were at large or on bail, due to huge pendency of cases in normal courts and were perpetuating crimes and creating terror in the society.

5.14 Setting up of Nyaya Panchayat

The system of Nyaya Panchayat got eroded because of the ineffectiveness of the election system of Nyaya Panchayats.

It also got discredited because the educated citizens, who have little or no faith in the common sense and wisdom of the rural populace, have scant respect for the Nyaya Panchayat. To this infirmities was added a provision of appeal to the District Judge, usually a city born allied group product and with his technical approach to problem, reversed every single decision of Nyaya Panchayat.

Gram Nyayalaya when set up and operated would be wholly informal and not technical. The expenditure being reduced to a minimum, it would make justice available at the hand of their own persons at the door steps of litigants. No dispute probably would last over a period of three years. Thus, the grass root structure would help in laying a durable foundation for the pyramidal edifice of the justice delivery system in this country. Law Commission in its 154th Report has recommended setting up of Nyaya Panchayats headed by legal professionals. It will meet the needs at the door steps of the litigants and petty cases will not add to the docket explosion in the regular courts.

The Law Commission in its 154th Report has suggested to adopt Andhra Pradesh Mandala Nyaya Panchayats Bill, 1995.

Earlier when Nyaya Panchayats were set up in UP and other States in 1950s and 1960s, they have disposed of crores of cases.

In view of the above, the weightage to setting up of Gram Nyayalayas or Nyaya Panchayats is prescribed at 4 per cent.

5.15 Infrastructural Facilities for Judiciary

It has been suggested by successive Chief Justices of India that more financial autonomy should be accorded to the Judiciary. The Government of India has taken up this matter with the State Governments to provide financial autonomy to all the High Courts on the basis of Karnataka model. But the State Governments are finding it difficult to provide requisite autonomy to the Judiciary as because the top level of judiciary finds it difficult to appear before the Public Accounts Committee of the State Legislature. However, there is agreement on this issue and it is hoped that the courts will enjoy increased autonomy in financial matters so that there should be a real meaning of independence and autonomy of the judicial organ of the State because without due financial strength, autonomy has no meaning. The Government has been continuously investing more funds in judiciary from time to time. The Governments should invest more in judiciary as per cost-benefit analysis because due to early disposal of cases, thousands of crores of rupees of taxes, duties etc. of Government locked in various cases will then be available to Government for developmental works.

There is a Centrally Sponsored Scheme relating to development of infrastructural Facilities for the Judiciary. Under this programme, the Central Government provides 50 per cent grant to the States as per the norms set by the Planning Commission and the State Governments have to provide the matching share. For Union Territories, it is cent per cent grant. The grant is for construction of court buildings and residences of judges covering High Courts and the District Courts. So far about Rs. 500 crores have been released by the Central Government and the State Governments have spent more than matching amount of Rs. 500 crores. If the infrastructural facilities are created for more judges in the form of additional court rooms and additional residences for judges, there would be no problem in enhancing the judge strength which will address the problem of huge arrears in courts. The Scheme has really improved the standard of courts and residences of judges. The popular Governments have also been introducing modern office equipments in the courts from time to time.

The computerisation of courts is a very popular scheme in judiciary and the Central Government has been allocating funds under the Centrally Sponsored Scheme every year. According to former Chief Justice of India, Justice M.N. Venkatachalaiah, during the year 1993, a litigant service cell was started in the Supreme Court where litigants could retrieve information on the status of their cases fed into a network run by Nicnet. With more sophisticated technology, it should work better now. However, it has to be integrated with a flexible policy of disposal of cases. Mr. Justice Ahmadi, Ex-Chief Justice of India, implemented computerisation in a big way inspire of resistance. The results are now forthcoming. The Supreme Court has become an ideal Apex Court for the country. The Central Government during the year 2001-2002 has launched a pilot project for computerisation of City Civil Courts in four metropolitan cities in the country at a cost of about Rs. 15 crores. It is expected that the State Governments will follow suit and start such schemes of computerisation in all the District Courts under their jurisdiction. The computerisation has been completed in almost all the High Courts and the Supreme Court. The Supreme Court has brought down their arrears by extensive use of computers in their working. The cause list and details of cases are being made available by High Courts and Supreme Court through computer networking. At the Supreme Court, status of cases is available on Internet and anybody can know the latest position of his case including judgment delivered. Litigants can also get copy of the judgment from the Internet.

In the Supreme Court and almost in all High Courts, Facilitation/ Enquiry Centres have been set up where the litigant public can know the status of their cases on Internet and on voice mail. Computerisation has reached almost all the District Courts in the country but it is yet to be fully made operational. National Informatics Centre has yet to exert a lot. It is hoped that computerisation of courts will facilitate the public to have direct contact with the courts even without going to their lawyers. It will also increase the capabilities of courts. The videoconferencing has also helped the courts and the police administration not to take the accused persons every day to the courts unnecessarily and create law and order problem in the courts specially for the law abiding litigants. The days are not very far off when every thing will be transacted in courts through computerisation and these courts will be known as 'E-courts'. The requirement of funds is very huge for the judiciary. However, the popular governments will try their best to further meet the requirements as much as possible.

In view of the utmost importance of provision of infrastructural facilities for judiciary, this component is given 10 per cent weightage for judicial reforms as a whole.

6. Assessment of Judicial Reforms

Based on the foregoing discussions, we can discuss the extent of each factor present in judicial reforms in India as follows:

6.1 Judge Strength and Appointment of Judges

The Supreme Court is more or less having full judge strength whereas the High Court is having generally 20-25 per cent vacancies. The District Courts also have vacancies of about 2000 which come to about 15 per cent. On the other hand, the judge strength should be increased. If it is not possible to increase judge strength at the level of 50 per million of population, it should be increased by about 1500 judicial officers in the country after filling up about 2000 posts so that they can dispose of all the pending cases in the District Courts within the next five years. This comes to about 10 percent of the total sanctioned strength of judicial officers i.e. about 14,000 in the country. Thus, there is further requirement of about 25 per cent of judicial officers in the country. Therefore, the weightage of this factor can be assigned as 8 though it should be exactly 7.5. Therefore, it will be 8. Thus, this factor should contribute $20 * 0.8 = 16$ per cent.

6.2 Procedural Laws

The Code of Civil Procedure, 1908 has been recently amended fixing time schedule at various stages of suits. Though it is not a perfect amendment as lawyers have opposed it. But it is a major break-through. The amendment in Code of Criminal Procedure is awaited as because the report of the Malimath Committee for revamping of criminal justice administration is awaited. After that, it will take 2-3 years for affecting amendments of Code of Criminal Procedure. The Court Fees Act, Law of Limitation, Indian Stamps Act, Indian Evidence Act will also have to be amended to further assist the expeditious judicial processes.

As the Code of Civil Procedure is the major Code, it will have cascading effect on other laws of the country. The achievement can be weighted as 'so so' and we can assign 4 marks. Thus, the total weightage comes to $20 * 0.4$ i.e. 8 per cent. This is more because the adjournment has been restricted to three to a party under the recent

amendment of the CPC.

6.3 Substantive Laws

The amendment in the Criminal Procedure Code are still awaiting passage in Parliament. Similarly, laws like the Indian Contract Act etc. are also to be considered with a view to keep pace with the liberalised economy. The Indian Companies Act has been amended. Thus, only microscopic amendments have been taken up so far. Substantive Laws are mostly pre independence laws and do not fulfil the requirements of modern age. So this factor can only be rated as inadequate and can be assigned marks 2 i.e. $5 * 0.2 = 1$ per cent.

6.4 Court Procedure

Many of the High Courts have amended their rules and procedure following the recommendation of the Malimath Committee Report (1989-90) known as the Arrears Committee. But most of the High Courts are still to undertake the process in all respects. Therefore, this factor can also be given weightage to the extent of 'adequate.' category and can be assigned marks as 8. Many of the High Courts like High Court of Allahabad etc. have issued instructions to District Courts not to give adjournments. Therefore, this factor will be in adequate category. Thus, the total weightage will come $7 * 0.8 = 5.6$ per cent.

6.5 Court Manoeuvre/Mechanism

We are a country that believe in delays. The delay starts from filing of suit by litigants. The Advocates are a pressure lobby before the court. The court are not generally allowed to go ahead with the expeditious process by the lawyers. Sometimes, the Presiding Officer also indulges in delay tactics. One third of the court's time is wasted in fixing the case and bringing the case record before the court just to postpone the hearing. The cases are not finally disposed of and in this vicious circle, lot of judicial time is wasted. Therefore, this factor can also be rated as 'very inadequate' and can be given one mark i.e. $7 * 0.1 = 0.7$ per cent.

6.6 Working Hours of Courts

The working hours of the courts requires to be increased. However, this is a very sensitive issue and the courts feel that the working hours need not be increased and therefore this component can be given weightage 8. Total $2 * 0.8 = 1.6$ per cent.

6.7 Service of Notices and Submission of Reports Including Investigation Reports to Courts

There is a poor arrangement of service of notices of court through police. Investigation processes are always delayed inviting outside interference. Other processes like submission of investigation reports, inspection reports, reports by science laboratories are also delayed. This is also a part of delay in the whole bureaucratic system in the country. Therefore, this can be given 'inadequate' category and can be rated as 2. Total weightage is $6 * 0.2 = 1.2$ per cent.

6.8 Delay in Delivery of Judgment

There is delay in delivering the judgment only in few cases. Therefore, this factor can be assigned 'adequate' category and can be rated as $1 * 0.8 = 0.8$ per cent.

6.9 Training of Judges

The facility for training of judges is just 'so so' as only 7-8 judicial academies have been established in the country so far. But many High Courts have made some arrangements for training of judicial officers. The training facilities is being increased as the National Judicial Academy has become functional at the national level. Therefore, this factor can be assigned 'so so' category and can be given 4 marks i.e. $5 * 0.4 = 2$ per cent.

6.10 Quality of Legislative Drafting

The Legislative drafting is quite good but it requires improvement because of changing circumstances and change in environment due to explosion of information technology. The existing laws are not keeping due pace with the scientific and technological changes. Therefore, it can be given weightage 8 i.e. $1 * 0.8 = 0.8$ per cent.

6.11 Observance of Professional Conduct by Judges

The Judges of the Supreme Court are ideal in all respects. The judges of the High Court also observe proper conduct. However, at the lower level of District Judiciary, sometimes there are lapses and there are many complaints of corruption against them. As the Subordinate Judiciary is the cutting edge of Judiciary, we can give weightage only 'so so' and this factor can just be rated as $2 * 0.4 = 0.8$ per cent.

6.12 Legal Profession and Legal Education

The legal profession in the country requires lot of updation at the level of District Judiciary. Frequent strikes by lawyers in Courts are to be discouraged. Legal education also requires to be improved. A few Law Schools have come up in Bangalore, Bhopal and other places which can be compared with the best law institutes in the world. At present this can also be placed in the 'so so' category and can be assigned weightage 4. Total $4 * 0.4 = 1.6$ per cent.

6.13 Alternative Dispute Resolution (ADR), Setting up of Special Tribunals and Arrangement for Prelitigative Settlement

The ADR mechanism is working very well after the Legal Services Authority Act has come into force. The Fast Track Courts have also infused confidence in public. Special courts have also increased faith of public in Judiciary. Therefore, this factor can be placed in 'very adequate' category. However, there is still scope for establishing the permanent system of pre-litigative system at the District level to implement provisions under Section 89 of the Code of Civil Procedure recently added. After this has been added, it will be 'very adequate' and can be so rated 'very adequate' and can be assigned total weightage $6 * 0.8 = 4.8$ per cent.

6.14 Setting up of Gram Nyayalayas

This factor is still in the discussion stage and nothing is being done. Some efforts

are made by the State Government like Madhya Pradesh and others. Just after the independence, the Panchayat Systems in many States like UP, Panchayat system had inbuilt Nyaya Panchayat System and they worked very well. However, later on, they fell in trap of local village politics and were made defunct. Now, they require to be revived again. Thus, they can only be placed in 'very inadequate' category and can be assigned only 1 mark making contribution of this factor as $4 * 0.1 = 0.4$ per cent only.

6.15 Infrastructural Facilities of the Judiciary

Judiciary as an important organ of the State requires lot of investment. Information technology requires to be implemented in a big way in the Judiciary. The State Governments are giving increased financial autonomy to the Judiciary. The modern facilities of Xerox machines, computer, fax are being installed in the District Courts. There are no proper enquiry/facilitation centres in District Courts. However, these facilities are available in High Courts and in a big way in the Supreme Court. Therefore, it can be kept in 'so so' category and can be given strength of 4 out of 10. Total weightage is therefore, assigned as $10 * 0.4 = 4$ per cent to this component.

Thus, adding above, we arrive at the total judicial reform in the country as follows:

$$T (JR) = 16 + 8 + 1 + 5.6 + 0.7 + 1.6 + 1.2 + 0.8 + 2 + 0.8 + 0.8 + 1.6 + 4.8 + 0.4 + 4 = 49.3$$

Thus, judicial reform in the country is just less than 50 percent. However, it is happily learnt that it is better than 'so so' category. Efforts should be made so that it can be pegged at 70-80 per cent level. This can be achieved by encouraging Gram Nyayalayas, Expeditious services of notices of courts, adequate training of judges, improvement in legal profession and education and by way of necessary amendments in substantive and procedural laws.

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