“A King who administers justice in accordance with ‘dharma’, evidence, customs, and written law will be able to **conquer whole world**”

-Kautilya
Overview of Justice Delivery System in India

- The Preamble of the Constitution guarantees the people of India “JUSTICE, Social, Economic and Political.

- Justice has basically two modes:
  - Criminal Justice, which includes investigating agencies such as police, prosecution, defendant and courts.
  - Civil Justice, which includes plaintiff, respondent, government machinery and courts.
Administration Of Justice

- Most essential function of State.
- Power exercised by State through Judiciary to enforce rights and punish wrongs.
- Judicial Process involves:
  - Right claimed or wrong complained by one party against other.
  - Hearing of parties by the Court.
  - Judgment of the court delivered at the end of trial
  - Execution of the operative part of the judgment.
Constituents of Justice Delivery System

- Aggrieved Person (Plaintiff in Civil Cases and Complainant in Criminal Cases)
- Alleged wrongdoer (Defendant in Civil Cases and Accused in Criminal Cases)
- Police
- Prosecutors
- Lawyers
- Courts (from lower courts to Supreme Court)

- It is the Courts which ultimately delivers Justice.
Hierarchy of Courts in India

Supreme Court

High Courts

District Court & Subordinate Courts
General Functions of Courts

- Administration of justice in accordance with law
- Adjudication of civil and criminal cases
- Decides on Constitutional questions
- Administrative functions
- Advisory functions
- Protection of fundamental rights in form of Writ Jurisdiction
- Guardian of Constitution
Function of District Courts and Subordinate courts

- Proceedings of civil cases in accordance with the Code of Civil Procedure.

- Proceedings in criminal cases in accordance with the Criminal Procedure Code.
Function of High Courts

- Original Jurisdiction
- Appellate Jurisdiction
- Writ Jurisdiction
- Court of Record
Function of Supreme Court

- **Original Jurisdiction** -
  - Dispute between States, or, between State/States and Centre
  - Writ Jurisdiction for protection of Fundamental Rights of Citizens

- **Appellate Jurisdiction**

- **Advisory Jurisdiction**

- **Revisory Jurisdiction**

- **Court of Record**
Pendency of Cases: Bare Facts

- Total number of Pending Cases: >3 crores
- Pending Cases in Supreme Court = ~65000
- Pending Cases in High Court = 45 lakhs.
- Pending Cases in Lower Courts = 2.6 Crores
- Proportion of pending Civil Cases = 35 lakhs (in HC)
- Proportion of pending Criminal Cases = 10 lakhs (in HC)
## Pendency of cases: More Facts

<table>
<thead>
<tr>
<th></th>
<th>High Courts:</th>
<th>Subordinate courts:</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of cases instituted</td>
<td>1311552</td>
<td>7713130</td>
</tr>
<tr>
<td>No. of cases disposed</td>
<td>1213089</td>
<td>7928238</td>
</tr>
<tr>
<td>No. of cases pending</td>
<td>1984405</td>
<td>10544695</td>
</tr>
<tr>
<td>Judges Strength</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sanctioned strength:</td>
<td>2623</td>
<td>7157</td>
</tr>
<tr>
<td>Present:</td>
<td>1782</td>
<td>5436</td>
</tr>
</tbody>
</table>
Factors responsible for delay in Judicial Proceedings

- Poor Judge to people ratio
- Frequent Adjournments due to inexplicable reasons
- Ineffective/unethical lawyers
- Fraudulent litigations
- Under-resourced and over-burdened system
- Poor infrastructure
- Delay on part of Investigative agencies
- Incompetent Judges
Role of investigative agencies

- Examination of witnesses
- Collection of evidence
- Arresting accused if prima facie of their involvement in crime is established
- Filing of chargesheet
The role of police, however, does not end with the filing of chargesheet.

It also has to deliver summons to witnesses, send relevant case files to the prosecutor on time and to ensure that witnesses are not intimidated or bribed during the trial.
Issues with the role of Investigative Agencies

Police
- Failure to submit chargesheet in time
- One police force, lots of duties and responsibilities
- Unable to prevent intimidation/bribery of witnesses

FSLs
- Only 25 FSLs with 60 experts functioning in the country (PSC Report, 2013)
“I usually get DNA results within 4-5 months. If they are available within 15 days, the chargesheet could be filed within a month.”

- A New Delhi Police Official
Police Perspective – the Malimath Committee Report

- Excessive workload
- Non cooperative attitude of public at large
- Inadequacy of logistical and forensic backup support
- Interrupting investigation by being withdrawn for L&O work during investigation (NPC Recommendation)
- Lack of coordination with prosecution
Philosophy of Prosecution

- Any crime committed is not merely against the victim, but against the social order.

- State acting on behalf of victims
## System of prosecution in India

<table>
<thead>
<tr>
<th>Pre-1973</th>
<th>Post-1973</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Police prosecutor for lower court</td>
<td></td>
</tr>
<tr>
<td>- Public prosecutor for sessions court (a lawyer from the local Bar)</td>
<td></td>
</tr>
<tr>
<td>- CrPC 1973 Sections 24 and 25</td>
<td></td>
</tr>
<tr>
<td>- Separation of prosecution and police</td>
<td></td>
</tr>
<tr>
<td>- “Degree of detachment necessary” – 14th Law Commission Report</td>
<td></td>
</tr>
</tbody>
</table>
Role of the prosecutor

- Not to merely seek conviction, but to ensure justice
- To present all evidence in front of the courts
- Statutory responsibility to decide upon withdrawal
- Zahira Habibullah vs. State of Gujarat i.e. Best Bakery Case (SC indictment)
Duties of the Public Prosecutor

- To ensure that adequate number of witnesses are called at each hearing and none go unexamined
- To ensure that documents are put up to the Court in time
- To ensure that police officers appear in courts as per the schedule fixed by the court
Directorate/Department of Prosecution

- List iii of the 7th Schedule of the Constitution

- Home ministry vs. Law ministry

- Police Officer vs. Judicial Officer

- Post-1973 lack of coordination, especially at the district level
Appointment of Prosecutors

- Section 24, CrPC 1973

- HC/Sessions Court – lawyer from the Bar - Political Appointees

- Magistrate’s court – cadre based APP

- Kerala HC Observation on Political Appointees
The problem of political appointees

- “Such appointments (if incompetent) are affecting the functioning of the judiciary, and the lawyers’ lack of expertise is undermining the government’s chance of fighting its cases in an efficient manner.” – Kerala HC, Sep 2013

Lacunae in the prosecution system

- Appointment of prosecutors – permanent cadre vs. political appointees
- Competence of prosecutors
- Police perception – lack of coordination between prosecutors and police
- Lack of independence in cases where the State is the defendant e.g. corruption cases, Best Bakery Case
Recent amendments in CrPC

- 2005 – Plea bargaining was introduced. (Chapter XXI A, CrPC)

- Plea bargaining – “process whereby accused and prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval.”

- 41A CrPC and Arsensh Kumar Vs State of Bihar Judgement
Amendment to the Code of Civil Procedure Code in 2002

- Aim: To Provide Speedy Justice
Amendment to CPC: Highlights

- **Institution of Suits:** that is plaint to be accompanied by an Affidavit.
- **Time limit to serve the summons:** 30 days time limit provided for this.
- **Alternate Dispute Resolution:** Courts were given power of referring the disputes to:
  - Arbitration
  - Conciliation
  - Judicial Settlements including settlement through Lok Adalats
  - Mediation
Alternate Dispute Resolution

- Basically means different methods of resolving disputes outside traditional legal and administrative forums.

- Has four basic methods.

- Generally guided by Arbitration & Conciliation Act, 1996
Statutory Recognition

- Code of civil procedure amendment act, 1999 (section 89).
- Arbitration and conciliation act, 1996
- Legal Services Act, 1987
Why ADR??

- Huge **pendency** of cases in regular courts
- **Empowerment**
- To ensure the **faith** of common man in the justice delivery system.
- **U/A 21**: right to speedy and fair trial.
- Inexpensive **justice**
- Prevents reliance on **informal means of justice delivery**.
<table>
<thead>
<tr>
<th>ADR</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Arbitration</strong></td>
<td><strong>Conciliation</strong></td>
</tr>
<tr>
<td>• Private Process</td>
<td>• Process of finding amicable solution between parties</td>
</tr>
<tr>
<td>• No formal rules of evidence</td>
<td>• No need of a prior agreement</td>
</tr>
<tr>
<td>• Disputed party select adjudicators</td>
<td>• Any party can request the other party to appoint a conciliator</td>
</tr>
<tr>
<td>• Can start only if a prior arbitration agreement exist between the parties</td>
<td>• If both the parties sign the settlement document prepared by conciliator then it shall be final and binding on both</td>
</tr>
<tr>
<td>• Dissatisfied parties may approach civil court</td>
<td></td>
</tr>
<tr>
<td><strong>Mediation</strong></td>
<td><strong>Negotiation</strong></td>
</tr>
<tr>
<td>• An old and fundamental process</td>
<td>• Simplest and most powerful method of settling commercial disputes</td>
</tr>
<tr>
<td>• Develop mutually acceptable proposals.</td>
<td>• Does not require a third party</td>
</tr>
<tr>
<td>• Embrace the philosophy of democratic decision making.</td>
<td>• When this method fails then only other alternative methods are used</td>
</tr>
</tbody>
</table>
Gram Nyayalaya

- GN Act 2008
- Fourth tier of jud. (village courts @ panchayat levels)
- Both civil and criminal (cases attracting less than 2 yrs punishment or less than Rs 20,000 property involved)
- Can be represented by lawyers
- Decisions appealable to subordinate courts.
Alternate Dispute Redressal

Advantages

- Lesser time
- Cheaper
- A win – win situation
- Less formal procedures than courts
- Held at more suitable venues.

Disadvantages

- Not suitable for all disputes
- May still end up in courts
- Voluntary participation is required
- Not legally binding (except arbitration)
Problems in implementation ??

- **Infrastructure** paucity, ex: a neutral place to conduct the proceedings
- Lack of proper **institutional** framework
- Lack of **finances** and their proper allocation.
- **Trained human resources** ex: mediators required.

Solution ?

- Institutional framework @ 3 stages i.e. Awareness generation, Acceptance, and Implementation.
- Separate **budget** allocation like the fast track courts.
National Legal Services Authority (NALSA) Act, 1987

to provide free legal services to the weaker sections of the society

to organize Lok Adalats for amicable settlement of disputes

WHAT? WHOM? BY
Services & Eligibility

Free Legal Services

- Payment of court, processing fee & other charges
- Providing advocate in legal proceedings
- Providing certified copies of orders & other documents in legal proceedings
- Preparation of appeal including printing & translation
- Prelitigation settlement by mediation/conciliation

Eligibility

- Women & children
- Members of SC/ST
- Industrial Workmen
- Victims of trafficking in human beings or beggars
- Victims of mass disaster
- Disabled persons
- Persons in custody
- Persons whose annual income does not exceed Rs. 1,00,000/-
Service providers

NALSA

State Legal Services Authority

District Legal Services Authority
Lok Adalats

Forum where disputes/cases pending in the court of law or at pre-litigation stage are settled/compromised amicably

Deemed to be a decree of civil court

Final & binding on all parties with no appeal provision

Draws from CPC

- Summoning & enforcing the attendance of witness
- Discovery & production of any document
- Reception of evidence on affidavits
- Requisition of any public record/document
Way Forward...

- Few steps have already been taken:
  - Fast Track Courts
  - ADRs (Already Explained in previous sections)
Fast track courts

- **Timely** delivery of justice (no adjournment normally)
- Eleventh Finance Commission recommended
- for the period 2000-2005
- For criminal cases
- (Outside regular court system)

- **Nearly 33 lakh cases** were disposed of by the fast track courts over a period of 11 years of central assistance from 2000-01 to 2010-11
Way Forward...

- Other Initiatives:
  - National e-Court Project
  - Court Cases Monitoring System
  - CCTNS
  - And Most Importantly.....
    - Judicial Reforms.
Judicial Reforms

- 2 major goals in judicial reform:
  - Increasing access by reducing delay
  - Enhancing accountability through structural changes & setting benchmarks

- Identify & remove bottlenecks
- Categorization & clubbing of cases
- Greater requirement of financial resources

- Staffing & recruitment
- Bridging the demand & supply
- Training & performance management

- Database
- Modernization
- E-courts

Re-engineer procedures
Focus on HRD
Leverage ICT tools
Final Goal

Ensuring Fast and Free Justice to all.
“In India, the law may or may not be an ass, but it is definitely a snail.”

- Nani Palkhiwala

THANK YOU.
Any Questions 😊
References

- [http://ajayshahblog.blogspot.in/2015/05/reforms-of-prosecution-in-indian.html](http://ajayshahblog.blogspot.in/2015/05/reforms-of-prosecution-in-indian.html)
- “Public Prosecution – Need for Reform” by Bikramjit Batra, July 2005
- “The Police in India” by M B Chande, 1997
- “Strengthening the Prosecution System” by N R Madhava Menon, July 2008