

A New Managerial Approach to the Judiciary in India: Critical Review of the Irrational Bureaucratic Structure and a Call for Change

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ABSTRACT

The structure of Indian Judiciary is very similar to the common law British structure and it was designed to be exploitative in nature. It being a power institution that constitutes a part of the modern state, Indian Judiciary not only exercises authority over all of India it is also at the same time a democratic institution. The structure of the colonial euro-centric institutions is such that the *locus* and *focus* of responsibility can never be realised at the same time and at the same place. This naturally creates the paradox in institutional responsibility which is a natural consequence of irrational bureaucratic structure within the institution of judiciary.

The first half of this paper starts critically reviewing the problems facing the Judiciary in India from the point of view of its euro-centric structure and the various malaise that this irrational structure results into. In the second half the paper reviews and recommends the application of New managerial philosophies to the structural aspects of Indian Judiciary with the aim of structurally rationalising it.

Keywords: Bureaucratic rationality, Judicial responsibility, New managerialism, Organisational sociology, Organisational structure, Rule of law.

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I. JUDICIARY THE POWER INSTITUTION

Somehow because of events, some of which were totally out of its control, the judiciary has had to *usurp* the powers of the legislature and the executive, in order to keep things under a leash (Kmiec, 2004). The Euro-centric Indian Judiciary has always been an exploitative power institution. It is a remnant of the colonial era that was full of examples of atrocities that the colonial masters amassed upon the masses to keep their power and position in place (Orren, 1991). The only difference being; in those days it was the word of the king that was law, today it is the constitution. But luckily for the judges, law is not what the constitution says the law is; it is what the judges interpret, that the constitution says the law is¹ (Segall, 2016).

In a democratic setup it is the will of the people² that is supreme and logically this would mean that the legislature should be the most powerful democratic institution, however, it is the executive, and lately it has been seen that the Judiciary has steadily become more and more powerful than both the legislature and the executive (Mate, 2015; Paulsen, 1994). India's is one of the longest written constitutions of the world. The members of the constituent assembly discussed every intricate bit of this constitution and did their best to create checks and balances for every arm of the government. Yet conspicuously, they failed to mention *Judicial Review* (Sathe, 1974) anywhere in that document. Was it simply bad drafting; or was it done with purpose? Instead of specifically including the power of *Judicial Review* among the various powers of the judiciary as defined in the constitution, they included specific articles like; 13, 32, 226 etc... defining in very specific terms when and to what extent the courts could review a law or any act of the legislature or executive (Basu, 1984). Clearly, it was done with the sole purpose of limiting the power of judicial review in India. The will of the people in indirect democracies is represented through the elected legislature and every few years they are held responsible through the process of an election. Judiciary is not elected by the people, it is not responsible to the people, and it does not represent the will of the people. Therefore; ideally it should not be allowed to make laws, yet in India, Judiciary does pronounce laws as it deems fit (Pandey & Srivastava, 2015). The *Doctrine of Basic Features* is one such example; something which was

¹Addresses and Papers of Charles Evans Hughes, Governor of New York, 1906–1908 (1908), p. 139 accessed via <https://catalog.hathitrust.org/Record/009567346> on 09.03.2021,

²For the purpose of this essay, the Will of the people and the General Will are assumed to be the same. In order to understand the difference, readers can refer to Honig's or Benhabib's critique of Rousseau's paradoxes of Democracy.

necessitated by the absolutely undemocratic manner, in which our legislature and the executive behaved at the time (Kumar, 2007). But nevertheless, it is a doctrine that was born out of the failure of our democracy and it further perpetuates more failure of our democracy (Buss, 2004).

II. COURTS OF INJUSTICE

Judiciary in India is basically divided into 3 parts; Supreme Court (for the whole of India), High Courts (for the states) and Subordinate Courts (Local Jurisdiction), the first two being courts of appeal and one of its biggest problems is accessibility. The procedure that is followed in these courts is so complicated that even well-educated men cannot understand it (Singh, 1998). To add to that these courts are monopolized by ill-trained attorneys who themselves have no idea of the laws in effect. The Judges are no better either, but the problem lies not with the lawyers or the judges or their competence levels, it is humanly impossible to be aware of each and every single law that is in effect in India, so innumerable they are to start with. Furthermore, the structure of Indian judiciary does not allow for specialists to evolve (Sklar, 1983). The problem of accessibility of courts can be gauged by simply looking at the number of judges in the Supreme Court of India; basically, there's ONE judge per 42 million people in India and the pendency of litigation keeps on rising every day (Stratmann & Garner, 2004). The problem of accessibility is also compounded by the cost of legal proceedings; the per capita income of an average Indian is roughly \$ 2120 per annum³. For most Indians it is practically impossible to get involved in court cases. In fact, the Higher Courts in India are a scary nightmare for even the middle class let alone the poor. In any democratic setup, if the common man does not have access to a concrete grievance redressal system and a justice system, it is no democracy at all (Greenberger, 1964).

According to Government of India figures more than 37 million cases were pending before the subordinate courts and almost 5 million cases in the Higher Courts.⁴ Miscarriages of Justice are very common. Guilty usually go unpunished and innocent are frequently harassed by the Indian Judicial system. Even if in some cases justice is delivered, it is so delayed that it becomes meaningless (Burger, 1980).

III. AN ETHICAL MUD-SLINGING

The incompetence of the officers of our courts is multiplied by the absolute ludicrous way of selection of these officers and their training. In the higher judiciary in India the selection of judges is primarily through the Bar. In the lower judiciary are officers are selected through a written /oral competitive exam. These officers of the lower judiciary have little chance of getting promoted to the higher judiciary and subsequently, very little motivation to perform. They have a stagnant career where they keep going around the same routines every day. Not only does this perpetuate incompetence, but also corruption (Sengupta, 2011; Stratmann & Garner, 2004). In the higher judiciary because of selection through the Bar, there is no separation between the bar and the bench. This is a breeding ground not only for nepotism, but also favouritism and corruption (Sengupta, 2011).

The officers of subordinate judiciary are appointed, transferred, suspended, promoted and dismissed by the higher judiciary, they even control their pay and pensions. Everything drags on as long as it can, and then has to go to the higher courts for resolution, only when higher courts instruct the lower courts to act, do they act, creating a vicious cycle of rank incompetence and the cases keep piling on (Ram Mohan *et al*, 2020; Walker & Brewer, 2008; Heise, 1999). The process of selection of judges in the higher courts is full of Nepotism. Bar Associations are extremely political in character and divided on caste and communal lines similar to the state and national political scene in India. Furthermore, when it comes to recommending candidates for the bench, horse-trading is the norm much the same way as it is in political parties (Solimine, 2002). Although, the judges in these courts are very much empathetic towards the poverty-stricken masses, it is still very much a remnant of the colonial setup that typified medieval 18th – 19th century Europe (Galanter, 1984). The judges are still addressed to as lords, their dress typifies the colonial past and they wield unrestrained, unbridled and unlimited power and their behaviour inside and outside the courts betray no responsibility whatsoever. The Judiciary in India is typified by an extreme excess of discretionary power in the hands of judges (Sathe, 2001).

In any modern judicial setup, there's a *rule of precedence* which states that an order/judgment of a superior court shall be binding upon all lower courts in similar cases. The sole principle behind this rule is avoidance of multiplicity of cases. If a case that has already been decided upon by a superior court; similar cases should be similarly decided upon by lower courts so, multiple cases of similar nature are not filed in superior courts (Goodhart, 1934). In India; the word *similar* is practically read as *same*, and the judges in the lower courts simply refuse to follow any precedence; unless an order from a higher court specifically

³Data obtained through world bank (<https://data.worldbank.org/country/india>) accessed on 09.03.2021.

⁴https://ecourts.gov.in/ecourts_home/ accessed on 09.03.2021.

instructs them to apply that rule of precedence to case in question; result being multiplicity of cases.

IV. THE MISSING GUARDIANS

Like any other arm of the Government, there is no Quality Assurance mechanism for the judges. There is no punishment for bad performance and no reward for good performance. Instead, rewards and punishments are arbitrarily awarded based on no standard criteria, but solely on political considerations, nepotism and judges' discretion. Furthermore, there is no Performance Management system in place and there is no mechanism for '*professional development*' of judicial officers in India (Geyh, 2003). There is the Bar Council of India, which presents itself as a professional body, but in fact is a political body, has nothing to do with the professional standards of advocates practicing in Courts in India and only vaguely describes the professional ethics to be followed by the Lawyers. No such body exists for the Judges in India (Menon, 2008; Lubbers, 1993; Visser *et al*, 2019).

Moreover, even though the Indian Judiciary claims to be an Independent Judiciary and passionately protects its independence, by striking down laws that have the potential of causing infringement; it is far from being independent when it comes to being influenced by external sources. The biggest external influence on our judiciary is that of Politicians. Because the appointment of Judges is mired by Nepotism, the decisions are vitiated by political affiliations. Since there is no separation of Bar and Bench and Judges in Higher Judiciary are appointed through the Bar, the politics of Bar Councils affect recommendations to the bench. The political ideologies of the judges affect their decisions and furthermore, since the judges of Higher Courts are not permitted to practice after retirement, they are always on the lookout for some plum political appointments after retirement⁵ (Geyh, 2003). Another, big influence on the Judiciary in India is the mainstream media. In most high profile cases; even before accused are provided with an opportunity to defend themselves, the media passes a judgment and continuous telecast of news reports vilifying the accused creates a strong public opinion against them. Nine times out of ten; judges play to the gallery and follow the media (Schauer, 1999).

V. THE INEVITABLE PARADOX

The problems described in the preceding section can all be reduced down to a single major factor, which is the bureaucratic structure of the Indian Judiciary, which is legitimised through democracy and even though neither of these can ever be realised in its ideal type format, the only way to find a fix to the problems of the Indian Judiciary is to rationalise it structurally as much as possible (Weber, 1978).

Judiciary being a power institution is riddled with the inherent paradoxes of both democracy and bureaucracy. Neither of these modern ideas are realised into Indian judiciary, nevertheless they do create the paradox of institutional responsibility, which is the realization of the paradoxes of politics and democratic legitimation (Honig, 2007) into the irrational bureaucratic structure of the Indian Judiciary. The problem with modern state like India is that the bureaucratic exercise of authority does not get democratically legitimised at the same time and place and thus creating the crisis of legitimacy of state on the one hand and also creating grounds for populism and anarchy to get a hold in the society on the other hand. All of these situations occur because under the irrationally structured colonial power institutions, the legitimate expectations of the citizens that the power institutions will behave responsibly is not met (Goodsell, 2006). People can hold the elected representatives responsible during elections, but those elected representatives are not responsible for the actual exercise of power which is exercised by the bureaucrats who cannot be held responsible by the people. Therefore, it creates the *Paradox of Institutional Responsibility* and for the common people the ones who exercise power cannot be held responsible and those who can be held responsible do not exercise power⁶ (Smiley, 2010).

VI. EXPLOITATIVE COLONIAL STRUCTURE

A three-tier structure is very good, two out of three should get it right most times, but the Supreme Court sits in Delhi, at least a thousand miles away from each of the four corners of India. Similarly, the High Courts sit in the state capitals, quite far from the reach of the poorest man. ***In a democratic society, the courts should be situated at the doorstep of the poorest man.*** Rich can access the courts anywhere and everywhere, it is the poor who are denied justice (Rhode, 2000). It may seem a bit implausible, but in this age of Information Technology, nothing is impossible. Today, multinational corporations are able to

⁵<https://theprint.in/opinion/the-honourability-index-a-look-at-supreme-court-judges-who-took-post-retirement-jobs/383450/> accessed on 23.03.2021.

⁶ For the two connotations of responsibility namely 'who is responsible to do what' and 'who is to be held responsible if something is not done' please see Collective Responsibility by Smiley (2017) in Stanford Encyclopedia of Philosophy accessed through <https://seop.illc.uva.nl/entries/collective-responsibility/> on 23.03.2021.

customize their solutions (both products and services) according to the taste and needs of individual consumers (Piller and Christof, 2002). We can apply the same principles to guarantee justice to everyone at their doorsteps. It should not be the job of the public to seek justice and pay to get it rather; it should be the duty of the state to provide justice to every citizen as a matter of right. **Right to Justice** should be the most important fundamental right afforded to any person, yet it is more often denied than afforded (Rhode, 2000). Ambedkar (the chairman of the drafting committee of the constitution of India) called article 32 of the constitution of India (Right to Constitutional Remedies against the state) as the very heart and soul of the Constitution without which the entire Constitution of India was a nullity (Austin, 1999).

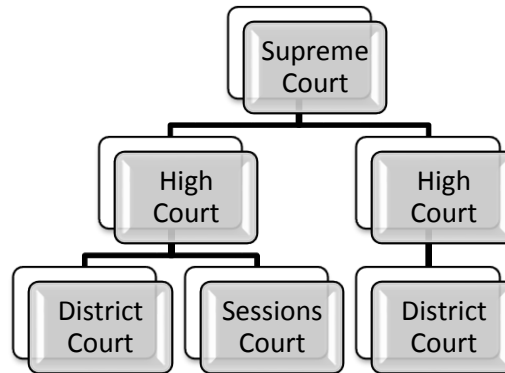


Fig. 1. Structure of Indian Judicial Administration

The colonial structure of Judiciary also defines the procedures that create delays and huge pendency of cases. These procedures were defined by the British colonialists to make the job of the British Civil Servants easy, rather than the life of the litigant (Miller, 2013). The judges and lawyers in the current setup (colonial design) are all *'jack of all trades'*; this perpetuates incompetence across the board. This level of incompetence means that judges avoid making tough decisions and leave it for next man to make it. This creates more delays in justice and also provides for an opportunity for corruption. Because the judges have absolute discretion, they can sell judgments and orders to the highest bidders and that's what they do (Higgins and Rubin, 1980) (Main, 2006). Although some attorneys do specialise in one particular field like, criminal law or corporate law, there aren't any specialised training available to lawyers like those available to engineers or doctors who are specialists in their fields (Posner, 1984). A LL.B (legum baccalaureus) degree makes anyone eligible to practice law in India. Even for a Judge the eligibility criteria is the same. There are no specialists; **period**.

VII. RATIONALIZING THE COURTS

A structural redesigned of the Indian Judicial Administration is required to make it people friendly, democratic and responsible. The three-tier system is good, but couldn't it exist at the bottom at a place where it is accessible to all (Rice, 2011; Cameron and Kornhauser, 2005)?

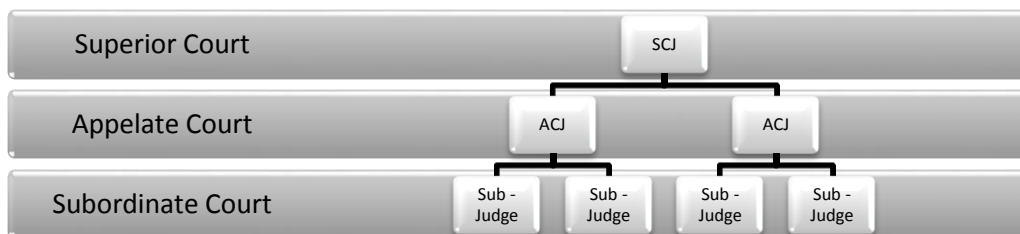


Fig. 2. Proposed Hierarchy at the lower judiciary level (Nason et al, 2013).

Judiciary must be accessible to all at their doorsteps. Instead of the victim or the complainant approaching the courts for justice it should be the courts who should reach out to the [victims or complainants] and [accused or defendants]. In a democratic society, justice should be afforded free to all, anytime and any place (Keunzel, 1963). At present Subordinate Courts are broadly categorised only into two category; Criminal Courts (Courts of Session) or Civil Courts (District Courts). This broad categorisation was done in India as far back as 3rd century BCE by *Kautilya* in *Arthshastra* (Trautmann, 2012), and this is no longer sufficient.

In the below figure, the Subordinate Judiciary is divided into 4 broad categories, further dividing them

into a total of 16 different types of courts. There is a need for innovative ideas to deal with a fast changing legal environment in this information era (Castro, 2012) and the needs of our present times cannot be fulfilled without specialist courts⁷. All the above need to be specialized courts dealing specifically in their area of expertise and this categorisation provides for adequate balance between generalisation and specialisation (Pandit, 1975). Except for the first category, all other type of courts can deal with both criminal as well as civil matters and therefore clearing the path for cross-functional matrices within the Judiciary (Denison *et al.*, 1996).

In order to rationalise the procedure of the courts, cases must be treated as individual projects, with a beginning and an end. It should follow a life cycle similar to that of a project life cycle, must have its own budget, cost limitations and time limitations (Mian & Dai, 1999). Furthermore, a structurally rational Judiciary in order to perform its functions properly shall need the support of various software, middleware and hardware systems like *Decision Support Systems, Knowledge Management Systems, Executive Support Systems and Management Information Systems* (Alavi & Leidner, 2001; Vandenbosch, 1999; Simon, 1959).

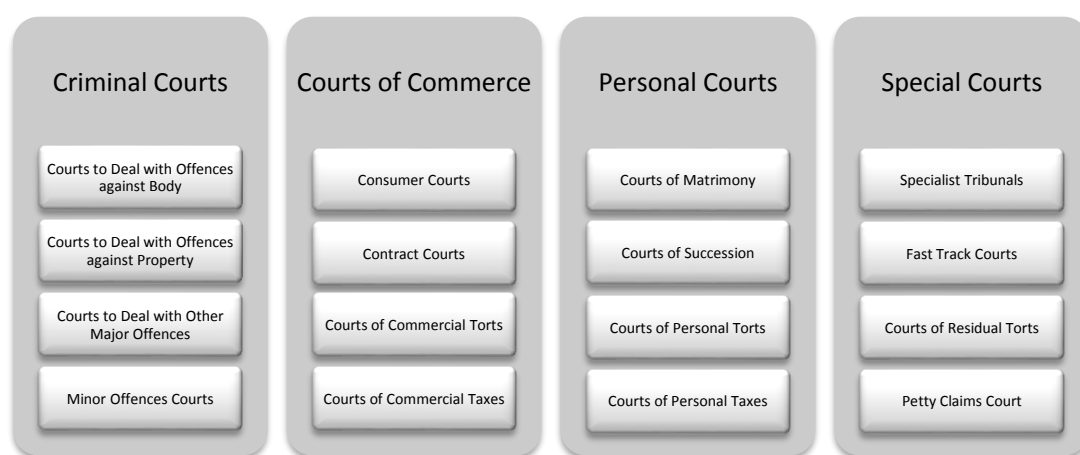


Fig. 3. Proposed Categorization of Courts.

VIII. RATIONALIZATION OF FUNCTIONAL SPECIALISATIONS

Indian Judiciary is Pyramidal and Hierarchical in character which means that it is irrationally bureaucratic. This architecture needs to be rationalized in the form of a matrix or in other words a rationally structured bureaucracy (Huang and Newell, 2003; Eisenhardt, 1985). Below diagram explains the functional specialisations; the 4 columns demarcate a clear separation among the 4 specialist functional arms of Judiciary and ideally should be completely separated. The workers in these categories have unique goals, and those goals are not the same. **The purpose of the Judiciary is achieved only when all these functional specialists achieve their assigned goals which may be conflicting in nature** (Desmidt, 2016). For example; it is the assigned goal of the judge to be impartial, whereas the sole mission of attorneys is to be partial towards their client (Kozinski, 2004; Kaufman, 1957). The job of the magistracy is to be omnipresent and ensure that justice is delivered right at the doorsteps of the citizenry. The sole purpose of the management is to ensure smooth functioning of the entire organisation, manage case loads of individual officers of the court, manage citizen services, manage registration of cases, manage accounts and payroll. All these functions are highly specialised in nature and if we do not have specialists to perform these functions, these will never be concluded in a rational manner (Nason *et al.*, 2013).

The 4 rows distinguish the relative experience and skill level required by various functional specialists in the same category. Scope for career growth is a very important motivating factor within any work environment. At present, career growth is solely based on number of years of service. Skill, vision, creativity and most importantly integrity has practically no say in career progressions of judicial workers (Dokko *et al.*, 2009; DeFillippi and Arthur, 1994).

Fig. 3 above categorises the judiciary into 16 different types of courts, primarily on the basis of the type of cases that they deal with. All these courts must have the same matrix structure as explained in Fig. 4, but the level of expertise and experience of the workers in each of these 16 types will depend on their relative importance. Clearly, the importance of some of these courts is more than the others; not because of the type of cases that they deal with, but because of the *punishment that they may inflict*.

⁷It is important to understand that this categorisation is not exhaustive in character and is definitely open to improvements through further research and criticism. Also, it is nothing new, similar informal categorisations have been made in the past through specialised courts like; vigilance courts or fast track courts created specifically for one particular case or family courts to deal with cases of matrimonial disputes of civil nature. https://ecourts.gov.in/ecourts_home/ accessed on 09.03.2021.

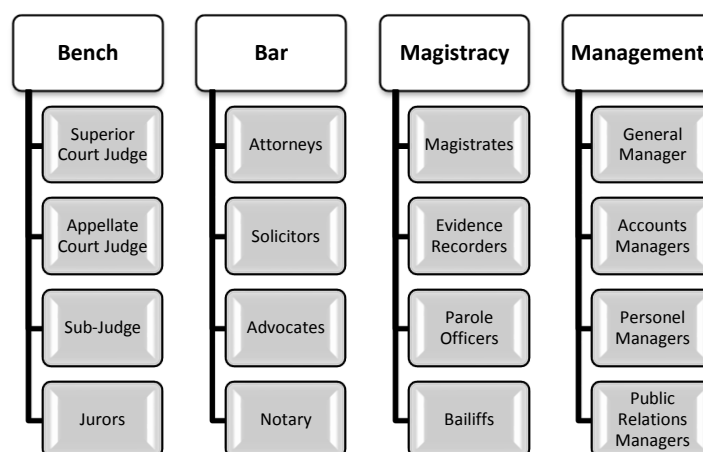


Fig. 4. Proposed Specializations in Judiciary.

IX. INDIGENISED SELECTIONS

The judiciary in India was borrowed from England, and is primarily based on the Common Law System. Its structure, procedures and laws are all borrowed from common law systems that the British imposed during the colonization of India (Buss, 2004). After independence, when the constitution was drafted a few minor changes were made which were borrowed from the Continental system and the American system. All these systems have evolved over hundreds of years in euro-centric societies, which have become *Diffracted Societies* as compared to India which still remains a primarily *Fused Society* (Wen, 2008). Different communities in India obey different laws, customs and practices, **the entire colonial system of justice is out of tune with the Indian society** (Knox, 2001).

There is a reason Village Panchayats evolved into a centre of justice in India over thousands of years, culturally Indians are more inclined towards conciliation than decision. They also realized that multiplicity of judges usually ensures fair trial, and therefore the Panchayats consisted of five-members rather than a single judge as in the euro-centric courts (Madsen, 1991). The only way forward is through harmonization of this traditional Indian system of justice with the modern system that the colonial administration supplanted in India. Rather than decision-based system of justice the people of India should firstly have a choice of conciliation and only if it fails should a decision be pronounced⁸. This also means that in those cases where conciliation can be a choice there must be an element of popular choice in the appointment of judicial officers similar to the nominations of *panch* as in case of the *nyay panchayats* (Meschievitz & Galanter, 1982).

X. RIGOROUS AND SPECIALISED TRAINING

At present, the system of appointments of judges is fraught with corruption and nepotism. Judges are the only people who decide, who gets to be a judge (Sengupta, 2011). There is no transparency in the process; people have no say at all, neither directly nor indirectly. Figure 4 above lists out the various functional specialists or judicial officers required to be appointed in each of the 4 specialist categories in the Indian Judiciary. The members of the Bench are Judges and Jurors, they need to know the law as it should be applied to any particular case and also be impartial towards any party to the case (Minow, 1991) (Moschzisker, 1921).

If we take a look back at Fig. 3, there are 16 different types of courts at each level of Judiciary. Judges must be adequately trained in order to perform their duties in the best possible manner in their respective area of expertise. A simple three years bachelor degree LL. B (*legum baccalaureus*), can never be sufficient to impart the level of expertise required to perform such complicated duties impartially (Arguelles and Torres, 1985). A more complex and rigorous training that includes apprenticeships under established practitioners needs to be designed. Apart from a general instruction in Law they must receive specialised training in their chosen area of expertise, which should make them eligible to appointments in only those specialised courts. There should be provision for sandwich year(s) during which the trainees should be sent on apprenticeships under established Judges and also participate in the functioning of the courts as non-voting jurors (Edmunds, 1999). Additionally, they must also be taught specific skills that they will need to

⁸It is important to note that this cannot be applied to every case, questions of heinous crimes like those of rape or murder cannot be arbitrated.

acquire in order to look at things impartially (Minow, 1991). For the members of the Bar; the training should be the same *mutatis mutandis* except the emphasis should be more on advocacy rather than impartiality with apprenticeships under established Attorneys or Solicitors (Miyazawa, 2001; Miller, 2011).

The magistracy is common to all courts and does not require any specialized training in any specific area of law; instead they require generalist knowledge of all law that is applied across all courts. The LL. B (*legum baccalaureus*) degree which imparts a Bachelor of Law degree should be sufficient for any person who wishes to start a career in magistracy.

Management indeed is the most unique part of the Judiciary. This is also the most specialized branch of judiciary; although at present judges double up to perform these functions. As we can see from the below diagram Porter (2001) has divided the activities carried out within an organization into two categories, primary (in case of the judiciary it's performed by the Bench, Bar and Magistracy) and support activities, that support the smooth functioning of all primary activities. Management is the essential support activity that supports the entire judicial architecture. The four main support activities are Operations, Human Resource, Accounts & Finance and Public Relations.

Value Chain Model For Judiciary

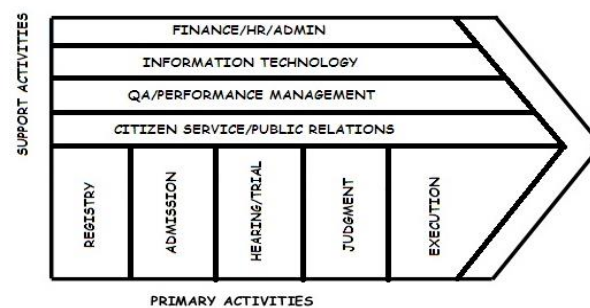


Fig. 5. Porter's Value Chain Model adopted for Judiciary⁹

A couple of other support activities need to be performed by organizations which are separated from the Judiciary altogether;

- 1) Information Technology Support & Contact Centre (Outsourced) to ensure efficiency (Jensen & Stonecash, 2004).
- 2) Quality Assurance and Performance Management (Separate and Independent Organization) in order to ensure disinterest (Hoecht, 2006).

XI. ASSURING JUSTICE

Traditionally it has been the opinion of the Bench, Bar and Jurists that the procedure of appeals is sufficient to ensure justice in every single case (Brudney and Ditslear, 2001). It is in itself a substantial check on the Judiciary, but in the Indian context this opinion is changing rapidly, because the present mechanism of appeals has been failing to ensure timely justice in almost each and every case, which in turn has resulted in a crisis of faith in the judicial setup (Dulude, 2005; Ram Mohan *et al*, 2020). This crisis of faith is more pronounced in the lower judiciary than the higher judiciary, which also means that justice is hugely delayed and at times totally meaningless (Rhode, 2000; Ram Mohan *et al*, 2020).

One of the most widely accepted and popular models for managing performance within any organisation is that of **Balance Scorecards** (Kaplan & Norton, 2000). Under usual circumstances the primary indicator of any organization's performance will be the amount of profit that it makes. But in case of the judiciary, there is no profit to be made, so the performance has to be measured by quantifying justice (Sandler and Arce, 2007). It is a difficult proposition but it is not something that has not already been done. Balance Scorecard methodology describes in detail how performance indicators that cannot be expressed in quantifiable terms can be quantified. In order for any performance management system to work properly, a pre-requisite is the setting up of a level of professional standard to be followed by each and every worker within the organization. These standards must be achievable and realistic. Failure to attain such standards on part of any worker means they may require further training and development or if it is repetitive, even after support is provided, reprimand (Van Thiel and Leeuw, 2002). Quality Assurance in the Judiciary cannot be performed by people from within the organization. There is high probability of corruption and favouritism. In order for it to be unbiased, it should be free from all political as well as internal and external

⁹http://www.cimaglobal.com/Documents/ImportedDocuments/PDF_NBotton_Value_Chain_Oct_08.pdf accessed on 09.03.2021.

influences. For appointment of performance managers, the following recommendations are worth considering;

- 1) There must not be any further opportunity of promotion.
- 2) The appointments must not be political and the security and independence of the job, salary, perks and tenure must be absolute.
- 3) After retirement, performance managers must not be eligible for any further appointments of any kind whatsoever.
- 4) After retirement, performance managers must be barred from holding any political position and contesting any elections whatsoever.

XII. CAREER DEVELOPMENTS

The colonial Judiciary is based on a system of time bound promotions. Once a public servant is appointed, they will get time bound promotions throughout their career. The reason behind this is to avoid chances of favouritism in matters of promotion. However, this creates a situation where workers' career growth is no longer dependent on their performance. It is important that we learn from our mistakes of the past and do away with this archaic and stagnating system that breeds mediocrity. It would be a more rational approach if all appointments were done through advertising of positions at each level and through an equal opportunity assessment centre that will pick out the best from available pool of candidates without taking into account the number of years of service or the age of the applicant (Klimoski & Brickner, 1987).

In order to structurally rationalise the legitimacy of authority of the judiciary in the democratic state, people must be involved in the decision-making process of who sits as a judge, like they used to do in case of the *nyay panchayats* (Meschievitz & Galanter, 1982) (Muhlberger and Paine, 1993). Such elections could be conducted through the method of proportional representation in order to ensure maximum representation (Pukelsheim, 2017) (Volcansek, 1981), however, like panchayats the office should be a five-member commission instead of a single person with options for recall and no one should be eligible for re-election in the same constituency (Sharma, 2001).

Furthermore, in any democratic setup **justice should be afforded absolutely free to all citizens** and therefore all Advocates, Solicitors and Attorneys must also be in the permanent employment of the Judiciary (Kuenzel, 1963). Private practice of lawyers may be allowed for ensuring free competition; however, it must also be remembered that free competition leads to unequal access to justice. **Competition must also be fair** and any lawyer in the appointment of a rational judiciary must receive competitive remuneration. One of the most important aspect of this recommendation is the fact that now the Attorney's Fees is a part of the total cost of Justice (Kuenzel, 1963).

XIII. CONCLUSION

As identified at the beginning of this paper; **cost of Justice** is one of the biggest issues concerning the current state of our judiciary. If justice is not delivered free then it is no justice at all. If every person living in a society is forced to spend their hard-earned cash in order to obtain justice, then in essence they get nothing but injustice every time and all the time, which is what the position is at present under the exploitative system of justice that exists in India (Majd and Puritz, 2009). However, it is also a fact that to operate such a huge organization that dispenses justice, the state must be able to finance it. Prevalent opinion is that, the victim must never be charged anything by the courts; it is the party that causes the grievance who must pay the cost of justice. Also the cost of justice not only must be appropriate and sufficient to the case in hand but it must also be proportional to their station in life. A rich person must be charged more than a poor man. In case where a person is not in a position to pay the cost of justice, they must be declared insolvent and must be made to work off their debt to the society (Rosenberg and Shavell, 2005). There is also a downside to this argument though; what if the litigant had a *bona fide* reason to initiate proceedings, but the result was not expected because of some unforeseen reasons? Do we still make the loser pay (Vargo, 1992)?

There is no doubt that with the simplification of procedure, and the rational change in the structure of judiciary shall have a big impact on reduction of the litigation costs. Because of the new hierarchy of courts justice shall be readily available at the doorsteps and will reduce the cost of justice. Also the ideas of Performance Management and DRIFT (do it right the first time) could cut the cost of litigation hugely (Liao, 2007). Further, because the cost of attorney is included in the cost of litigation a large amount of pilferage in the name of silly procedures will be saved and since they won't be charging the parties anything, that cost will be uniformly applicable to all citizens for the exact same quality of service.

Another big issue was that of **corruption**; the specialization of courts will ensure that the skill level of judges and advocates will be a lot better than what it is at present. Quality Assurance and Performance

Management in each case will ensure that there is little chance of misusing the judicial procedure in order to unlawfully favour any litigant. Once the procedures of the court are automated, there will be very little chance of exercising discretion at any level and in any branch of the judiciary. Also the fact that all interactions with the public will be recorded and archived shall act as a huge deterrent against corruption. Specialization of courts and the automation and simplification of procedures shall also cut the litigation time, remove all kinds of external influences, streamline the existing procedures, make provisions for automatic records to be created, which cannot be tampered with and make things transparent to the extent that it can be. The provision of Quality Assurance at each level of judiciary shall also help in removing external influences as it is their performance that will decide their career growth.

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