Constitutional Adjudication: Reforming The Judicial Process In India

Jamshed Ansari

Ex- Guest Faculty at Faculty of Law, University of Delhi, Delhi (India)
E-Mail- jamshedansari024@gmail.com

Abstracts: The object of this paper is to review how the constitutional issues are adjudicated by the Supreme Court as it is only the Supreme Court which can authoritatively say what the law is. And also reviewing the judicial process involved in constitutional adjudication and suggesting measures to review the judicial process. This paper also seeks identify the factors to reform the judicial process. A descriptive and analytical method has been followed throughout of this paper and all aspects have been carefully considered and authenticated before arriving at any conclusions.
[Ansari, Jamshed. **Constitutional Adjudication: Reforming The Judicial Process In India.** *Academ Arena* 2014;6(8):21-27]. (ISSN 1553-992X). http://www.sciencepub.net/academia. 5

Key Words: Adjudication, Judicial Process, Supreme Court, Access to justice etc.

1. Introduction

The judiciary is part of our democracy and all its implications must be imported into the judicial process. Once we accept the proposition that in a democratic society the court system plays a crucial role in seeing that neither license nor absolutism becomes dominant, the difficult tasks of the court vividly stare us in the face. As Chief Justice Burgess has noted:

"A sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free people and three things could destroy that confidence and do incalculable damage to society: that people come to believe that inefficiency and delay will drain even a just judgment of its value; that people who have long been exploited in the smaller transactions of daily life come to believe that courts cannot vindicate their legal rights from fraud and over-reaching; that people come to believe the law – in the larger sense – cannot fulfill its primary function to protect them and their families in their homes, at their work, and on the public streets".

Constitution which mandates that the state shall secure that the operation of the legal system shall promote justice, on the basis of equal opportunity and shall ensure that opportunities for securing justice are not denied to any citizen. The Judiciary is bound to shape the processes of the law to actualize the constitutional resolve to secure equal justice to all. A people who are illiterate by and large, indigent in no small measure, feudal in their way of life, and tribal and backward in large numbers, need an unconventional cadre of jurists and judges, if equal justice under the law is to be a reality. If there is breach, judicial power must offer effective shelter. Even if a legislation hurting or hampering the backward sector is passed, the higher courts have to declare the statute void, if it be contra-constitutional. In sum, the judicial process, in its functional fulfillment, must be at once a shield and sword in defending the have-nots when injustice afflicts them. And this must be possible even if the humbler folk, directly aggrieved, are too weak to move the court on their own and a socially sensitive agency advocates the cause. Securing justice - social, economic and political to all citizens is one of the key mandates of the Indian Constitution. This has been explicitly made so in the Article 39-A of the Constitution that directs the State - to secure equal justice and free legal aid for the citizens. But the experiences of last 6 decades show that the State has failed squarely on addressing some very basic issues--quick and inexpensive justice and protecting the rights of poor and the vulnerable.

2. Constitutional Adjudication

Adjudication is the legal process by which an arbiter or judge reviews evidence and argumentation including legal reasoning set forth by opposing parties or litigants to come to a decision which determines rights and obligations between the parties involved. Three types of disputes are resolved through adjudication: dispute between private parties such as individuals or corporations; disputes between private parties and public officials; disputes between public officials or public bodies. American Constitutional theorists and judges have struggled with problems of constitutional interpretation, exploring how meaning is properly derived from the Constitution and, insofar as the answer may be different, how courts ought to derive such meaning. Without entirely abandoning debates over constitutional debates over constitutional interpretation, constitutional theorists have started increasingly to wonder about those judicial outputs that feature in the enterprise of constitutional adjudication and yet are something other than court's

determination as to what any given provision of the Constitution means. Theorists have turned their attention from constitutional meaning to what we may call, at least on a first pass, constitutional doctrine. Justice Felix Frankfurter has said that "ultimate touchstone of constitutionality is the constitution itself and not what the (Judges) have said about it."

Our Constitution is a long and detailed instrument of government, and our fundamental rights are subject to explicit and specific limitations. Our Constitution did not leave to the judiciary the wide discretionary power which was left to the judiciary in the United States, and the express exclusion of "due process" in our Constitution points in the same direction. Constitutional adjudication affects several aspects of culture of institutions and life of the people of a nation governed by it. Therefore, there can be no fixed or rigid rules of interpretation of the Constitution. American legal experts on the working of the Constitution of USA which is the oldest of an oldest democracy, have identified certain trends of interpretation in the long working of the Constitution and have identified certain principles — study of which may be beneficial for interpreting our Constitution, which is merely little more than fifty years old.

3. How Cases Get To the Supreme Court

The cases the court decides must fall within its jurisdiction, that is, it can decide only those cases it is empowered to hear by the Constitution or by the Statute. Once this requirement is fulfilled, the court has broad discretion what cases it will decide. The range of discretion available to the court has increased over time, and with this expanded discretion has come significant shifts in its case load.

Jurisdiction of the Supreme Court

1) A Court of Record – Article 129 makes the Supreme Court 'a court of record' and confers all the powers of such a court including the power to punish for its own contempt. A court of record is a court whose records are admitted to be of evidentiary value and they are not to be questioned when they are produced before the court. Once a court is made a court of record, its power to punish for contempt necessarily follows from that position. In *Delhi Judicial Service Assn. v. State of Gujarat*, it has been held that under Article 129 the Supreme Court has power to punish a person for the contempt of itself as well as of its subordinate courts. The object for vesting such a power in the court was to uphold the majesty of law, the rule of law which is the foundation of democratic society.

2) Original Jurisdiction - The Supreme Court in its original jurisdiction cannot entertain any suits brought by private individuals against the Government of India. The dispute relating to the original jurisdiction of the court must involve a question of law or fact on which the existence of legal rights depends. The term 'legal right' means a right recognized by law and capable of being enforced by the power of a State but not necessarily in a court of law.

Article 32 confers non exclusive original jurisdiction on the Supreme Court to enforce Fundamental Rights. Under Article 32 every citizen has a right to move the Supreme Court by appropriate proceedings for the enforcement of the Fundamental Rights. The Supreme Court is given power to issue directions or orders or writs including writs in the nature of habeas corpus, mandamus, prohibition and certiorari whichever may be appropriate.

Supreme Court has also a original jurisdiction under Article 71(1) of the Constitution relating to disputes to the appointment of president and vice-president.

3) Appellate Jurisdiction- The Supreme Court is the Highest Court of Appeal in the country. The writ and decrees of the court run throughout the country. The appellate jurisdiction of the Supreme Court can be divided into four main categories:-

Constitutional Matters **–** Under Article 132(1) an appeal shall lie to the Supreme Court from any judgment, decree or final order or a High Court whether in civil, criminal or other proceedings, if the High Court certifies under Article 134-A that the case involves a substantial question of law as to the interpretation of this Constitution. Where such a certificate is given any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided. The object of the new Article 134-A is to avoid delay in granting certificate by the High Court for appeal to the Supreme Court. Under Article 134-A the High Court can grant a certificate for appeal to the Supreme Court under Article 132 on its own or on the 'oral' application of the aggrieved party.

Under Article 132(1) three conditions are necessary for the grant of certificate by the High Court:-

1) The order appealed must be against a judgment, decree or final order made by the High Court in civil, criminal or other proceedings.

2) The case must involve a question of law as to the interpretation of this Constitution, and

3) If the High Court under Article134-A certifies that the case be heard by the Supreme Court.

Appeal in civil cases **-** Article 133 provides that an appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court only if the High Court certifies (under Article 134-A) –

a) that the case involves a substantial question of law of general importance; and

b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

It is not sufficient that the case involves a substantial question of law of general importance but in addition to it the High court should be of the opinion that such question needs to be decided by the Supreme Court. In *Kiranmal v. Dnyanoba*, the High Court dismissed the appeal by one word order "Dismissal" against the judgment of the Civil Judge. The Supreme Court found that the appellant could have raised serious questions of law and facts before the High Court and, therefore, held that it was a fit case which ought to have been admitted and disposed of on merits. The case was remitted to the High Court for disposal on merits.

Appeal in Criminal Cases- Article 134 provides for the provision of appeal in criminal cases. The power of the High Court to grant fitness certificate in the criminal cases is a discretionary power, but the discretion is a judicial one and must be judicially exercised along with the well established lines which govern these matters.

Appeal by Special Leave- Under Article 136 the Supreme Court is authorized to grant in its discretion special leave to appeal from (a) any judgment, decree, determination, sentence, or order, (b) in any case or matter, (c) passed or made by any court or tribunal in the territory of India. The only exception to this power of the Supreme Court is with regard to any judgment etc. of any court or tribunal constituted by or under any law relating to the Armed Forces.

The power given under this Article is in the nature of a special residuary power which are exercisable outside the purview of the ordinary law. Article 132 to 135 deal with ordinary appeals to the Supreme Court in cases where the needs of justice demand interference by the highest court of the land.

In *Jyotendra Singhji v. S.T. Tripathi* it has been held that a party cannot gain advantage by approaching the Supreme Court directly under Article 136 instead of approaching the High Court under Article 226. This is not a limitation inherent in Article 136 but it is a self imposed limitation by the Supreme Court.

4. Impact of Supreme Court Decisions and Analyzing Supreme Court Decisions

Article 3 of the American Constitution vests judicial power in the Supreme Court of the United States. The term 'Judicial Power' as explained by Marshall CJ, in Marbury v. Madison (1803), means stating authoritatively what the law is. The constitution of India does not expressly vest Judicial Power in the Supreme Court of India. It however declares under Article 141 that the law laid down by the Supreme Court shall be binding on all the courts in the country. So analyzed one can fairly draw the conclusion that in India the judicial power is exercised only by the Supreme Court. The decision of the Supreme Court not only resolves the disputes between the litigants but they also affect the nation as a whole. In ruling on the Constitutionality of a provision, the court also indicates the likely validity of similar provisions. In Constitutional adjudication the court have a two approach one is the interpreting of the Constitution and other is non – interpreting. In former the court looks into the legislative intent of the makers of the Constitution frames and in the later the court decides the constitutional issue considering the present scenario. In interpreting a constitutional provision, the court announces standards that can guide future decisions involving that provision.

Under Article 141 the law declared by the Supreme Court shall be binding on "all courts" in the territory of India. The expression 'law declared' is wider than the 'law found or made' and implies the law creating role of the court. In *Bengal Immunity Co. Ltd. v. State of Bihar* the Supreme Court has rightly held that the words of Article 141, "binding all courts in India", though wide enough to include the Supreme Court, do not include the Supreme Court itself and that it is not bound by its own judgments but is free to reconsider them in appropriate cases. The 'precedents' which enunciates rule of law form the foundation of administration of justice under our system. If Article 141 embodies as a rule of law, the doctrine of precedents on which our judicial system is based, it is necessary to set out briefly the circumstances under which precedents would not be binding on the courts.

On many occasions the Supreme Court for example in cases of *T.M.A Pai Foundation* and *Islamia Karimia Society's* case, gave the decision which was vague and the clarification was required in this regard as to what actually the Supreme Court wanted to achieve through the judgment. The time count spectrum of the Power Spectrumdeals with the time factor in context of law. It stresses on the point of power relation of law in their stability through time. Law is sometimes self promotive which grows stronger by its continuance therefore the Supreme Court while pronouncing decisions, should keep in mind the time count of the power spectrum and should not overrule its decisions so frequently as it affects the time count.

The role of the Supreme Court is to policy control and not the policy making, so the Supreme Court should not take up the legislature's role of policy making, however if there is a vacuum in the law, the Supreme Court can issue legislative

guidelines as the Supreme Court has done in *Visakha v. State of Rajasthan*.

The process of constitutional adjudication as existing in practice is exactly the opposite of this. What the Supreme Court does is to resolve disputes and perform its essential function of policy control as incidental to dispute resolution. The result, the mismatch between 'is' and 'ought' is never corrected. For instance the in case of *State of Madras v. Champakkam Dorairajan*, where the Supreme Court struck down a communal government order (executive order) of the then State of Madras on the grounds of violation of Article 15(1). However subsequently in the case of *Balaji v. State of Mysore* and *Chitralekha v. State of Mysore*, they upheld the reservation made through an executive order. Since then, the Supreme Court have been upholding reservations provided through executive order, example can be given of case of *Indra Sawhney v. Union of India*, *Vasant Kumar v. Board of Trustees*, Article 15 and 16 provides, reservation should be provided through law and not executive order.

Presumption of Constitutionality of State Action disturbs the parity of power and this leads to the denial of equal protection of law. As Article 14 of the Constitution provides 'Equal protection of law and equality before law.' In the case of *Chiranjeet lal Chowdhary* the court supported the presumption of constitutionality of state action. The majority held that, the presumption is always in the favour of constitutionality of a statute, and the burden of proving its unconstitutionality lies on the party who challenges it. Unless proved otherwise, the Court will presume the statute to be constitutionally valid. It is a gross misapplication of the justice as it tends to presume a preponderance of power in favour of one party and tilts the balance unjustly. This totally upsets the principle of parity of power, which is ensured through the guarantee of "equal protection of laws" under Article 14, as well as Article 13 (1) and (2) of the Constitution, respectively. In such a situation the proper course of action, is to immediately injunct the impugned law or executive action and direct the state to justify the legal/constitutional validity of the impugned law or action in order to ensure that the guarantee of equal protection of laws is maintained. In other words the burden of justifying the constitutional validity of the law as well as the fact that the state action was in accordance with such law should be on the state, and not on the person who challenges its constitutional/legal validity. Asking the injured party to prove the wrong or injury suffered destroys the guarantee of equal protection of laws. Such an opinion on the part of Court is extremely low on the ethical count of the power spectrum.

There are two modes followed in deciding the cases, one is the inductive reasoning and the other is deductive reasoning. In inductive reasoning, a conclusion is reached first and reasons are given to suit the conclusion but in deductive reasoning the decision is reached with the reasoning. In a controlling constitution like ours deductive reasoning is required to be followed.

But the Supreme Court has been following the inductive reasoning which is not in accordance with the Constitution. Recently in Bihar's case (*Rameshwar Prasad v. Union of India*), the Supreme Court accepted that the dissolution of the Bihar Assembly was unconstitutional and the role played by the governor was criticized by the Supreme Court and it said that "the proclamation of May 23 dissolving the Assembly is unconstitutional. Despite the unconstitutionality of the proclamation the facts and circumstances of the case at present is not a case where the status quo ante can be restored and the legislative assembly revived,". If the dissolution was unconstitutional the Supreme Court should have set aside the order of dissolution and restored the assembly which would have been the correct approach on the part of the Supreme Court.

The Supreme Court while interpreting the Constitution should keep in mind the following:

4.1. Textual interpretation — plain meaning rule

American courts from case to case expressed a consistent view that such is the character of human language that no word conveys to the mind, in all situations, one single definite idea; and nothing is more common than to use words in a figurative sense. The words thus are used in the text of the Constitution in various senses and their construction, the subject, the context, the intention of the person using them, are all to be taken into view. So far as our Supreme Court is concerned, it has always held that there is a greater reason in giving to its language a liberal construction so as to include within its ambit the future developments in various fields of human activities than in restricting the language to the state of things existing at the time of passing of the Constitution.

4.2. Taking recourse to original history or the intention of the framers

The possible sources for interpretation of the Constitution include the text of the Constitution, its "original history" including the general social and political context in which it was adopted, with due regard to the ongoing history of the interpretation of the Constitution and the social, political and moral values of the society.

4.3. Preamble of the Constitution

In this context, when the attempt of the interpreter is to understand the "spirit" rather than the "letter" of the Constitution, importance of the preamble of the Indian Constitution deserves to be highlighted. Normally, a preface or a preamble of a statute is not to be read into the contents of the statute. At best, it can be read as an aid to construction of the contents of the statute. This, however, is not the approach of the courts so far as the preamble of the Indian Constitution is concerned.

4.4. Role of precedent — stare decisis

Constitutional disputes typically arise against the background of earlier decisions on similar subjects. A complete theory of constitutional interpretation, therefore, must deal with the role of precedent. Interpreting a judicial precedent is different from interpreting a constitutional provision in itself. The precedent is required to be read, not only in terms of its own social context but against the background of the precedent it invokes or ignores.

4.5. Interpretation of the Constitution as part of power of judicial review

Constitution is a supreme law governing conduct of government and semi-governmental institutions and their affairs. It regulates inter se relationship of the Government and the people governed. It is not an ordinary statute enacted on a particular topic of legislation.

5. Need for Reform

In ancient India the king was the fountain head of justice. Sage Yajnavalkya declared that 'the king, divested of anger and avarice, and associated with the learned should investigate judicial proceedings conformably to the sacred code of laws'. In ancient India legal procedure was governed by the principle of 'Rajdharma'. All *Dharmas* merged into the philosophy of 'Rajdharma' and it was therefore, the paramount *Dharma*. It is a classic example of trans-personalized power system. According to Rajdharma if one was injured due to violation of law he just had to inform the King and the victim was required to do nothing else.

The Adversarial System lacks dynamism because it has no lofty ideal to inspire. It has not been entrusted with a positive duty to discover the truth as in the Inquisitorial System. When the investigation is perfunctory or ineffective. Judges seldom take any initiative to remedy the situation. During the trial, the judges do not bother if relevant evidence is not produced and plays a passive role as they have no duty to search for the truth. As the Prosecution has to prove the case beyond reasonable doubt, the system appears to be skewed in favour of the accused. It is therefore necessary to strengthen the Adversarial System by adopting with suitable modifications some of the good and useful features of the Inquisitorial System.

It is worth whole to recall the following observations of Dr. R. Venkataraman, former President of India.

"The Adversarial System is the opposite of our ancient ethos. In the panchayat justice, they were seeking the truth, while in adversarial procedure, the judge does not see the truth, but only decides whether the charge has been proved by the prosecution. The judge is not concerned with the truth; he is only concerned with the proof. Those who know that the acquitted accused was in fact the offender, lose faith in the system."

The Supreme Court reiterated the similar view in the case of Ram Chandra v. State of Haryana, when it said:

"….there is an unfortunate tendency for a judge presiding over a trial to assume the role of referee or umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortion flowing from combative and competitive elements entering the trial procedure."

Again in the case of Mohanlal v. Union of India, where best available evidence was not brought by the Prosecution before the court, the Supreme Court observed as follows:

"In such a situation a question that, arises for consideration is whether the presiding officer of a court should simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost or is thee not any legal duty of his own, independent of the parties to take an active role in the proceedings in finding the truth and administering justice? It is a well accepted and settled principle that a court must discharge its statutory functions – whether discretionary or obligatory- according to law in dispensing justice because it is the duty of the court not only to do justice but also to ensure that justice is being done."

6. How to Reform Judicial Process.

A) **Court fees to be abolished –** The purpose of justice is delivering the promise of law and hence the role of the state is not merely limited to establish the judicial institutions but also fulfill the expectations of the people which they attached to the state while conferring role and seat of power. To charge fees for justice is like sealing the promise of law and flouting the constitutional duty of state to provide justice to the people at their doorstep, merely laying down the foundations of judicial shops and washing their hands of from the process of justice delivery is not warranted on the part of the state. To get revenue for the enforcement of rights and to charge it in rigorous ways, failure to pay would entail the justice not access able because one can not afford it in terms of

money, is the misery and apathy, the courts in India are continuing with. The proper course would be abolition of court fee because it seriously undermines the parity of power principles as it places the richer one in advantageous position which offends the spirit of constitutional goals.

B) **Supreme Court to have benches throughout the Country** – Article 130 of the Constitution provides that, the Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint. This provision of the Constitution has not been applied so far. If the Supreme Court has a seat at other places, that is one seat in every state then it will be a relief to the aggrieved and justice will be assessable to them, which will result in reduction of cost of litigation and will cause less hardship to the litigant.

C) **Reference of cases to Division Bench should be discouraged** - The present times are such that people have in these words of Pandit Nehru "to hurry and stumble and fall and get up and go on." Proceedings before a pluralistic bench, such as division bench court lack tempo of the times and should therefore be discontinued. Comprehension of the human mind is of varying degrees and it therefore takes more time to argue before such a court presided over be a Single Judge. Reference of cases to the division bench should be discouraged.

D) **Limited Number of Adjournments should be granted** - One of the main problems that has resulted into delaying the justice is the adjournments granted by the court on flimsy grounds presented by the advocates. Section 309 of Code of Criminal Procedure and Rule 1, Order XVII of Code of Civil Procedure deals with adjournments and the power of the court to postpone the hearing. These adjournments are granted only when the court deems it necessary or advisable for reasons to be recorded. It also gives discretion to the court to grant adjournment subject to payment of costs. However these conditions are not strictly followed and the bad practice continues not by litigants but by sitting judges also. It thwarts the right to a speedy trial. By granting regular adjournments the value of time and importance of the remedy sought for the cause of action also get degraded. "Justice" is called "justice" when it in the real sense delivers justice to the grieved person at the proper time.

E) **No presumption should be raised in favour of any one** - The presumption is always in the favour of constitutionality of a statute, and it is a gross misapplication of the justice as it tends to presume a preponderance of power in favour of one party and tilts the balance unjustly. This totally upsets the principle of parity of power, which is ensured through the guarantee of "equal protection of laws" under Article 14, as well as Article 13 (1) and (2) of the Constitution, respectively. The burden of justifying the constitutional validity of the law as well as the fact that the state action was in accordance with such law should be on the state, and not on the person who challenges its constitutional/legal validity. Asking the injured party to prove the wrong or injury suffered destroys the guarantee of equal protection of laws. Such an opinion on the part of Court is extremely low on the ethical count of the power spectrum.

F) **Authorize subordinate judiciary to issue writs to ensure effective access to justice**– Article 32(3) provides that sub-ordinate judiciary can have the power of the Supreme Court under clause (2) of Article 32 that is to writs, if the Parliament confers such power by a law. But the Parliament has been reluctant to confer such power on the sub-ordinate judiciary. In order to make justice easily assessable, there is a need to confer the power to issue writs on the sub-ordinate judiciary.

G) **Judges should play active and not the passive role while deciding cases** – Article 14 of the Indian Constitution makes it obligatory on the state to provide justice to all at the doorstep. Thus the Indian Constitution necessarily envisages inquisitorial mode. So the judges should go a mile extra in deciding cases as the judges supervising the cases are independent and bound by law to direct their enquiries either in favour or against the guilt of any suspect and play an active role while deciding the cases.

H) **Accountability of Judges**- In India, the judiciary is a separate and independent organ of the state. The Legislature and the Executive are not allowed by the Constitution to interfere in the functioning of the judiciary. The functioning of the judiciary is independent but it doesn't mean that it is not accountable to anyone. In a democracy the power lies with the people. The judiciary must concern with this fact while functioning. The High Courts have the power of control over the Subordinate Courts under Article 235 of the Constitution of India. The Supreme Court has no such power over High Courts. The Chief Justice of High Courts / India has no power to control or make accountable other judges of the court.

The Woolf Report of 1996, emphasized to make the judiciary accountable for their functioning by generating accurate judicial statistics, revised on daily basis. It was observed by the report committee that a statistic report pertaining to the Judges functioning and flow of such information ultimately make judges more accountable to the judiciary and it was also suggested that it is a more important and a

useful mean to tackle these arrears, than increasing financial and human resources. But these suggestions remain on paper and have never been put in practice.

I) **Reluctant approach of Supreme Court to accept petition under Article 32** – The rules made by the Supreme Court under Article 145 laying down the procedure to be followed by the Supreme Court in performing its functions involves lot of technicalities. It is the duty of the Supreme Court to grant relief under Article 32 and it is mandatory as it is obvious from the words "the Supreme Court shall" in Article 32. But the Supreme Court has been reluctant to perform its functions. In *P.N. Kumar v. Delhi Municipal Corporation and Shah v. State of Rajasthan* are the examples where the Supreme Court has returned the petition.

Conclusion:

It is 'desirable to create constitutional bench, within the highest court in the country, to deal with the constitutional matters. The Supreme Court of India should consist of two divisions, namely, (1) Constitutional Division, and (2) Legal Division. In fact, the Supreme Court itself has recently strongly advocated the creation of a National Court of Appeal leaving the Supreme Court to deal with constitutional matters only. A petition was filed by Bihar Legal Support Society complaining that while the rich and affluent can persuade the court to hear a case against a policy decision taken by the court even if it be at unearthly hour, yet, in the name of policy decision, the poor and the underdog are kept away from the doorsteps of the Supreme Court. Occasion for filing the writ petition, as appears from the judgment, was that 'a Bench of the Court sat late at night on September 5, 1986, for considering the bail application of Shri Lalit Mohan Thapar and Shri Shyam Sunder Lal and that the same anxiety which was shown by this Court in taking up the bail application of these two affluent gentlemen must permeate the attitude and inclination of the Hon. Court in all matters where question relating to the liberty of citizens, high or low, arises and that the bail application of small men must receive the same importance as the bail application of big industrialists'. Responding to this contention, a Constitution Bench, presided over by the then Chief Justice, noticed the clogged dockets of the Court which lead to such court practices as adumbrated hereinbefore and suggested a remedial measure that 'it would be desirable to set up a National Court of Appeal which would be in a position to entertain appeals by special leave from the decisions of the High Courts and Tribunals in the country in civil, criminal, revenue and labour cases and so far as the present apex court is concerned, it should concern itself only with entertaining cases, involving questions of constitutional law and public law. This observation of the Constitution Bench of the Supreme Court presided over by the Chief Justice lent a powerful support to the recommendation of the Law Commission made in the 95th Report. The Government must, therefore, develop the necessary will to give effect to it; otherwise, an impression is likely to be formed that where a slight resistance comes, the will to deal with the recommendation of the Law Commission withers away forthwith.

References:

1. Ralph A. Rossum/ G. Alan Tarr - American Constitutional Law- The Bill of Rights and Subsequent Amendments; Volume II.
2. H.M. Seervai – Constitutional Law of India; Volume III; Fourth Edition.
3. Henry J. Abraham – The Judicial Process; Third Edition.
4. Ch. Ramakrishna Rao – Judicial Reforms; Preethi Publications.
5. Dr. J. N. Pandey – Constitutional Law of India; Thirty Ninth Edition.
6. Stone Julius. Social Dimensions of Law and Justice; Universal Law Publishing Company Pvt. Ltd. Delhi, Chapter 13, p.597.
7. http://www.hinduonnet.com/thehindu/thscrip/print.pl?file=2003010700561000.htm&date=2003/01/07/&prd=th& www.jstore.com.
8. http://www.hinduonnet.com/thehindu/thscrip/print.pl?file=2003010700561000.htm&date=2003/01/07/&prd=th&.
9. Mitchell N Berman; Virginia Law Review Vol.90; March 2004; Number 1.
10. United Provinces v. Governor- General, AIR 1939PC58.
11. AIR1983 SC 461.
12. AIR 1993 SC 1991.
13. (1955)2 SCR 603.
14. AIR2003 SC 355 (2002)8 SCC 481.
15. AIR1988 MP22.
16. AIR 1997 SC 3011: (1997)6 SCC 241.
17. AIR1951 SC 525: 1951 SCR 525.
18. AIR 1963 SC 649.
19. AIR1964 SC1823,1827: (1964)6 SCR368.
20. AIR1993 SC477.
21. AIR1991 SC 14: (1991) 1 SCC761.
22. AIR1951 SC 41.
23. AIR2006SC980.
24. AIR, 1981. SC 1036.