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**Democratization of Justice:
The Indian Experiment with Consumer
Forums**

by

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During the course of the past ten to fifteen years, justice system reform has become an essential component in the struggle for both economic and political development around the world. It is a period when the immediate post-Cold War wave of democracy combined with rapid economic liberalization in many regions of the world. Inextricably woven into these surges in democratic politics and market economics is the concept of the rule of law. The fascination with this concept has taken on such currency and import in development circles, that Erik Jensen and Tom Heller, in their introductory essay, refer to this period as the “rule of law era,” and Bryant Garth can speak of a “global industry promoting the import and export of the ‘rule of law.’”¹

As Jensen and Heller note (borrowing from Thomas Carothers’ typology) in their introductory article for this collection, the rule of law movement can be divided into three levels for programmatic purposes: changes in substantive law; reform of law-related institutions; and government compliance with the law.² Included within reform of law-related institutions is the concept of access to justice and the strategy of developing forums for alternative dispute resolution (ADR). When discussing rule of law reforms, Jensen and Heller suggest a stepchild status for access to justice strategies with their notion of “lip-service intervention” from some donor organizations.³ Yet absent a broadening of the availability of independent, competent, efficient, and enforceable justice services to as wide a spectrum of the population as possible, the

¹ Erik Jensen and Thomas Heller, “Rule of Law, Governance and Judicial Reform,” at 1; Bryant G. Garth, “Rethinking the Processes and Criteria for Success,” in *Comprehensive Legal and Judicial Development*, Rudolph V. Van Puymbroeck (ed.) (World Bank: 2001) at footnote 2.

² Jensen and Heller, *supra* n. 1, at 9-10.

³ *Id.*, at 11-12.

rule of law remains a largely hollow concept in many societies.⁴ The question then becomes, how best to broaden such services in any particular context.⁵

When considering enhancement of access to justice services, there are two broad avenues to pursue, which are not mutually exclusive. The first involves reform of the core institutions within the formal justice system, the second creating alternatives to it. The former can incorporate a wide variety of strategies, some of which are outlined by Blair and Hansen in their 1994 report for USAID. These include instituting or expanding conventional legal aid, legal literacy campaigns, and paralegal activities.⁶ Other reforms designed to facilitate access to the formal system would involve simplification of procedures and lowering of costs. The alternative path of ADR encompasses a bewildering array of possibilities, which can be court-annexed or outside the control of the judiciary, mandatory or voluntary, and procedurally can be described as conciliation, mediation, arbitration or adjudication. Which label(s) apply in any given case, is not always clear,⁷ however the objectives remain the same. The fascination with ADR results from its proponents' claims that these forums offer at least a partial solution to the problems of high cost, delays, and the questionable quality of justice delivered to litigants by the formal systems in many countries. In addition, they are often expected to benefit the formal system by reducing caseload, and thereby expediting the flow of cases that remain. However,

⁴In addition to Jensen and Heller's discussion of access to justice, see, e.g., Harry Blair and Gary Hansen, "Weighing in on the Scales of Justice: Strategic Approaches for Donor-Supported Rule of Law Programs," *USAID Program and Operations Assessment Report No. 7* (USAID: 1994), at 38-40 at www.usaid.gov/democracy/techpubs/weighingin.pdf; Scott Brown, Christine Cervenak and David Fairman, *Alternative Dispute Resolution Practitioners' Guide* (USAID Technical Publication Series: March 1998), at 3; and Maria Dakolias, Legal and Judicial Development: The Role of Civil Society in the Reform Process," 24 *Fordham International Law Journal* 26-55, at 35 (2000).

⁵ At least one donor organization (USAID) has provided a "nuts and bolts" guide regarding under what conditions ADR would be an appropriate response to the goal of strengthening the rule of law (including enhancing access to justice services) Brown, Cervenak and Fairman, *supra* n. 4, at 9-20.

⁶ Blair and Hansen, *supra* n. 4, at 14.

⁷ The *lok adalats* in India are an interesting example of an ADR forum that is difficult to categorize. They appear to be one thing on paper, and quite another in practice. See Robert Moog, "Conflict and Compromise: The Politics of *Lok Adalats* in Varanasi District," 25 *Law & Society Review* 545-69 (1991).

these alternatives have not always met the lofty goals set for them, and not surprisingly, raise concerns regarding unintended consequences.⁸

India is somewhat unusual within the rule of law movement because of its relatively long history of democracy when compared with many nations in eastern and central Europe, Latin America, southeast Asia and elsewhere. Since independence in 1947, its democracy has remained in place except for the approximately twenty-one months of emergency rule from June 1975 to March 1977. Even then, the emergency ended as the result of Indira Gandhi's defeat in national elections. Despite India's democratic history over the last fifty-four years, it remains a country struggling with certain liberal democratic norms, one of which is enhancing the public's access to justice, and in so doing, dealing with problems plaguing its lower courts. As in other developing countries, local courts in India confront debilitating delays, underfunding, and accusations of corruption, all of which act to restrict access to and confidence in the judiciary. India does have a long history of recognition of the need for reform, even if it has not always gotten beyond the talking or studying stage.⁹ Still today, that tradition of recognizing and studying the need for reform continues.¹⁰ However, one area of reform in which India has been

⁸ See Jensen and Heller, *supra* n. 1, at 44-45. With so many ADR forums operating in such a wide variety of contexts and aiming to achieve multiple goals, it becomes quite dangerous to generalize about their success or failure. In addition to the Rand study cited by Jensen and Heller, see, e.g., Blair and Hansen, *supra* n. 4, at 38-45; Carrie Menkel-Meadow, "Do the 'Haves' Come out Ahead in Alternative Judicial Systems?: Repeat Players in ADR," 15 *Ohio State Journal on Dispute Resolution* 19-61, at 13-14 (1999); and "Reducing Court Delays: Five Lessons from the United States," PREM Notes # 34 (World Bank: 1999).

⁹ Many of the problems confronting the courts predate Indian independence in 1947. Probably the most exhaustive study along these lines from the British period is the *Civil Justice Committee Report, 1924-25* (Government of India, Civil Justice Committee: 1925), better known as the Rankin Committee Report. In the post independence period, the Indian Law Commission has periodically issued reports regarding the plight of the lower courts. See, e.g., *Law Commission of India, 14th Report* (Ministry of Law: 1956) and *Law Commission of India, 77th Report* (Ministry of Law and Justice: 1978).

¹⁰ An ex-Chief Justice of India, A.M. Ahmadi, was recently involved in a policy review of the civil justice system. See, Hiram E. Chodosh et. al. "Indian Civil Justice System Reform: Limitation and Preservation of the Adversarial Process," 30 *New York Journal of International Law and Politics* 1-78 (1997). In addition, the Law Commission of India is charged with performing an ongoing review of the justice system. Since its inception in 1955, the Commission has issued 175 reports on a wide variety of issues.

quite active, and continues to be is that of alternatives to the formal justice system. Attempts at state sponsored ADR have ranged from the less formal *nyaya panchayats*, *lok adalats*, and court conciliation, to more formal tribunals.¹¹ The widespread resort to tribunals represents an important element in India's attempts to broaden access to justice. This process of "tribunalization" refers to the creation of specialized tribunals/courts/forums to handle specific types of disputes within an adjudicatory framework, while reserving an ultimate appeal to the formal court system. While some of these may be ad hoc in nature in order to deal with a specific situation, many are permanent bodies. Among the latter are the Income Tax Appellate Tribunal, the Customs and Excise Tribunal, the Central Administrative Tribunal (dealing with service matters of employees of the central government), the Railway Claims Tribunal and the Motor Accidents Claims Tribunal. There also has been much talk, some of it emanating from the Supreme Court, of creating special environmental tribunals that would consist of both judicial and technical members.¹² Perhaps the most recent addition to this list is the consumer forums, or courts, that were mandated by the Consumer Protection Act, 1986 (CPA). While the Act was passed in 1986, for the most part the forums were not established until the beginning or mid 1990s. It is these new consumer bodies that are the focus of this paper, and the questions raised are similar to those asked of alternative forums elsewhere. Do they increase access to justice, and

¹¹ These less formal institutions have generally not met with much success. The *nyaya panchayats* were a short-lived experiment and now are effectively defunct (Catherine S. Meschievitz and Marc Galanter, "In Search of *Nyaya Panchayats*: The Politics of a Moribund Institution," in Richard Abel, ed., *The Politics of Informal Justice* 2:47 [Academic Press: 1982]), while court conciliation appears to be rarely used, at least in Uttar Pradesh (Robert Moog, *Whose Interests Are Supreme? Organizational Politics in the Civil Courts in India* [Association for Asian Studies: 1997] at pp. 144-46). For a review of the workings of *lok adalats* see Marc Galanter's and Jayanth K. Krishnan's article, "Debased Informalism," in this issue. Earlier studies of these bodies gave them no better than mixed reviews. See, e.g., Gene Kassebaum, "ADR in India: The *Lok Adalat* as an Alternative to Court Litigation of Personal Injury and Criminal Cases in South India," Working Paper Series, Program on Conflict Resolution (University of Hawaii at Manoa: 1989); Moog, *supra* n. 7; and Sarah Leah Whitson, "'Neither Fish, nor Flesh, nor Good Red Herring' *Lok Adalats*: An Experiment in Informal Dispute Resolution in India," 15 *Hastings International and Comparative Law Review* 391-445 (1992).

if so for whom? Do they improve on the quality of justice otherwise available? And lastly, what effect(s) do they have on the working and possible reform of the formal civil justice system?

Consumer Forums/Commissions¹³

Structure and Organization

The CPA calls for three levels of “redressal agencies” to be established – district forums for each district in a state; a state commission for each state; and a national commission located in New Delhi.¹⁴ The composition of these bodies and the methods of selection clearly distinguish them from the civil courts. District forums consist of three members – the president, who is, has been, or is qualified to be a district judge, and two other members who must meet certain very broad experiential guidelines, one of whom must be a woman. Appointments are made by the state government on the recommendation of a three person selection committee consisting of two state secretaries and the president of the state consumer commission. Members of the district forums hold office for a term of five years or until age sixty-five, whichever comes first, and are not eligible for reappointment.¹⁵ The state commissions also consist of three members – the president who is or has been a judge of a high court, and two additional members, one of whom must be a woman, with the same experiential requirements as those required for the district forums. The state commission is selected in the same manner as the district forums,

¹² See *M.C. Mehta v. Union of India*, (1986) SCC 176 at 201-02 and *Andhra Pradesh Pollution Control Board v. Professor M.V. Naydu*, (1999) SCC 718 at 736-38.

¹³ The terminology used in relation to these institutions is confusing. “Tribunals” has been used by the Supreme Court, and at least one author who went to great lengths to distinguish them from the civil courts (Dr. Farooq Ahmad, *Consumer Protection in India* [APH Publishing: 1999] at 264, 269 and 271). Ahmad cites the Supreme Court as referring to these bodies as tribunals in *Union of India v. Paras Laminates (P) Ltd.* (1990) 186 ITR 722 (at 271). Despite this, “courts” is commonly used by the press, but “forums” is the term that appears in the CPA with reference to the district level institutions, and “commissions” is used for the state and national level institutions. For the sake of consistency, the terms used in the Act will be used here.

¹⁴ Consumer Protection Act, 1986, Ch. III, 9. (Hereafter referred to as CPA.)

¹⁵ *Id.*, at Ch. III, 10. It has been recommended in the Consumer Protection (Amendment) Bill 2001 (Hereafter referred to as CPA Amendment Bill), introduced in the upper house of Parliament in April 2001,

except that the Chief Justice for the high court of that state must be consulted before the selection of the president is made. The term of office is identical to that of the district forums, except the age limit is sixty-seven.¹⁶ The national commission consists of five members – the president who is or has been a justice of the Supreme Court, and four additional members, one of whom must be a woman, and who meet the same experiential requirements as required for the district forums and state commissions. The national commission is selected by the central government on the recommendation of a selection committee consisting of two central secretaries and a current justice of the Supreme Court. The selection of the president can only be made after consultation with the Chief Justice of India. The term of office is the same as for the other two levels, except the mandatory age limit is seventy.¹⁷

Jurisdiction and Procedures

The district forums have original jurisdiction over consumer complaints ranging up to *rupees* (Rs) five *lakhs* (i.e., Rs 500,000).¹⁸ This is a substantial sum, and one would expect that the overwhelming majority of complaints would therefore originate at the district level. The limit was originally set at Rs 100,000, but revised to 500,000 in 1993. Even at the lower figure, one author noted that few consumer items in India, other than an automobile, would fall outside of the scope of the jurisdiction of the district forums.¹⁹ By raising the limit, the legislature made clear its intent that the work of the two upper levels be limited to major liability cases and appeals. The state commissions handle original complaints exceeding Rs 500,000, but under

that the reappointment of Presidents and members be permitted to all three levels of forums/commissions. See Consumer Protection Act at fcamin.nic.in/cpa.htm (visited Feb. 11, 2002).

¹⁶ CPA at Ch. III, 16.

¹⁷ Id at Ch. III, 20.

¹⁸ Id at Ch. III, 11. At the time this research was conducted (fall of 2000), the exchange rate was fluctuating between Rs 45 and 48 to the dollar.

¹⁹ D.N. Saraf, *Law of Consumer Protection in India* (N.M. Tripathi:1990) at 147.

2,000,000, as well as any appeals from district forums.²⁰ The national commission hears original complaints in excess of Rs 2,000,000, in addition to appeals from the state commissions.²¹

Procedurally, these forums and commissions operate in an adversarial manner, possessing many of the same powers that the civil courts have. This is not a case of creeping adversarialism or cooptation by those who would prefer to see these bodies operate more along the lines the civil courts do.²² Rather, the similarities to the regular courts are clearly intended. Many of the provisions are expressly provided for in the CPA itself. However, one that is not, is the presence of attorneys. Still, they are permitted in these proceedings, and are apparently commonly involved in them, as was made clear by those involved in the process.²³ The proceeding is triggered by the filing of a complaint with the appropriate forum, and proceeds much as a civil case would. Notice to the opposite party is required and he/she is given an opportunity to respond. The forum then proceeds to take evidence in the dispute, and the Act specifies that the powers of these forums are identical to those of the civil courts regarding subpoenas, discovery, affidavits, and the requisitioning of laboratory reports.²⁴ As far as possible, within a three month period from the date of notice received by the opposite party, the forum is expected to issue an “order” in the matter.²⁵ At the district and state levels, in order for the proceedings to take place

²⁰ CPA at Ch. III, 17.

²¹ Id at Ch. III, 21. Included in the CPA Amendment Bill, supra n. 15, is a clause increasing the monetary limit for filings in the district forums to 20 *laks*, and in the state commissions to one *crore* (Rs 10,000,000).

²² Carrie Menkel Meadow referred to this concern as the “colonization of alternatives,” resulting from the clash in some ADR forums of an adversarial culture represented by lawyers with that of the intended settlement culture. “Pursuing Settlement in an Adversary Culture: A Tale of Innovation Co-opted or ‘The Law of ADR,’ ” 19 *Fla. St. U. L. Rev.* 1-46, at 34 (1991).

²³ One of the consumer organizations in New Delhi keeps a list of attorneys it can call on to assist consumers in preparing cases, as well as representing them in court (*Annual Report 1999-2000* [VOICE: 2000] at 24).

²⁴ The rules regarding the complaint and hearings process are found in the CPA at Ch. III, 12 –13.

²⁵ Id., at Ch. III, 14 (1). The Act itself does not mention the three month time limit, but it does appear in the Consumer Protection Rules, 1987 at Rule 14 (4) with reference to the National Commission. It is also the standard commonly referred to in judging the performance of the state commissions and district forums, although each state has the power to determine its own time limits for these proceedings.

and an order to be signed, the president and at least one other member must be present.²⁶ At the national level, the president and at least two other members must attend.²⁷ Appeals from the district forums go to the state commissions, from there to the national commission, and lastly there is an appeal to the Supreme Court. Each of these must be made within a period of thirty days of the preceding order, although exceptions are allowed for “sufficient cause.”²⁸ The execution process is also designed much as it is in the regular courts. These forums/commissions have the power to enforce their decisions “in the same manner as if it were a decree or order made by a court,” and when necessary, can also request the assistance of the regular courts in executing on an order.²⁹ In addition, the CPA also provides them with the power to fine and/or imprison for failure to comply with an order.³⁰

Although they are not referred to as courts in the CPA, and they do not fall under the supervision of the judicial branch, they are clearly designed to function in an adjudicatory or adversarial manner. This is made clear by attorney participation in conjunction with the rules regarding filing of complaints; notice; opportunity to respond; evidentiary matters; issuance of findings; appeals; and execution. According to the Central Consumer Protection Council (CCPC), the goal of these forums is “to provide speedy, simple and inexpensive redressal to consumer disputes through summary trials.”³¹ How effectively these forums and commissions

²⁶ CPA at Ch. III, 14 (2) and 18.

²⁷ Consumer Protection Rules, 1987 at Rule 15A.

²⁸ CPA at Ch. III, 15, 19, 23.

²⁹ Id., at Ch. III, 25.

³⁰ Id., at Ch. III, 27.

³¹ Proceedings of the XXth Meeting of the Central Consumer Protection Council (CCPC) (Nov. 8, 2000) at 4. The creation of the CCPC was authorized by the CPA to “promote and protect the rights of the consumers” (at Ch. II, 6). In the role of promoting and protecting consumer rights, the Council acts as a clearinghouse for data nationwide on the functioning of the consumer forums/commissions. The specifics regarding its members and procedures are found in the Consumer Protection Rules, 1987 at Rules 3-4. There are comparable councils at the state level as well.

accomplish these objectives, and what unintended side effects may result are discussed in the remainder of this paper.

Functioning of Consumer Forums/Commissions

Although the CPA was passed in 1986, by the early 1990s it was still not unusual for many districts to be without forums. In the southern state of Tamil Nadu, for example, the district forums and state commission were not established until 1991.³² However, by 2000, the CCPC reported that out of 556 districts in the country, 532 had forums “set up,” and because some had more than one, the total for the country was 563. Out of that number, it was reported that 509, or approximately 90 percent, were functioning.³³ Among the thirty-two state commissions, all except Assam, West Bengal and Daman and Diu were listed as functioning.³⁴

Frequently, the forums that were set-up but not functioning were missing one or more members. One of the more common complaints heard regarding these bodies concerned the delays in naming replacement members when a vacancy occurs. In mid 1999 in Chennai, the capital and largest city in Tamil Nadu, not only were both of the district forums located in the city not functioning, but that was also the case with the state commission. The commission was missing its president, as was one of the district forums, while the other was short both of its non-legal members.³⁵ As noted previously, at the district and state levels the president and at least one of the other members must be present for the forum or commission to hold hearings.³⁶ The vacancy in the presidency of a state commission for any length of time can have a domino effect because he/she acts as the chair of the selection committee for vacancies at the district level.

³² *CAG Reports* (Citizen, Consumer and Civic Action Group: Aug. –Sept. 1999) at 3.

³³ CCPC, *supra* n. 31, at 19-20.

³⁴ *Id.*, at 21-22.

³⁵ *CAG Reports*, *supra* n. 32, at 2. Also see CCPC, *supra* n. 31 at 5 regarding the delays in appointments.

³⁶ CPA at Ch. III, 14(2) and 18.

Once established and functioning, these bodies have had little trouble attracting disputes, but this has led to concerns regarding overworked staff and delays in the process. The CCPC listed twelve problems affecting the functioning of these bodies, many of which relate directly to the issue of delays. In addition to the aforementioned lag time in filling vacancies, other factors cited as slowing the process down include: poorly supplied facilities; inadequate supervision of the district forums by the presidents of state commissions; inadequate qualified staff; part time working schedules for many forums (this is particularly a problem when the President of a district forum is a sitting district judge); frequent and long adjournments; delays in issuing initial show cause notice; delays in passing of final orders; and failure to establish additional forums where needed.³⁷

The data supplied by the CCPC offers some insight into how popular these institutions are, and how serious the problem of delays has become in the relatively short time the district forums have been functioning. The total cases filed nationwide at the district level since the inception of the individual forums was given as 1,357,730. Out of these, 1,110,915 had been disposed of by the time the state commissions reported the numbers from their district forums. The report then broke out the cases by length of time to disposal, using the ninety day period as the measuring device. Among the cases reported in this section of the table, 28.8 percent were decided within ninety days, 20.8 percent between ninety and one hundred fifty, and 50.4 percent in excess of one hundred fifty. Some states were clearly having more problems than others in meeting the goal of ninety days for disposal. Gujarat reported 44,100 disposals, but not one within one hundred fifty days.³⁸

³⁷ CCPC, *supra* n. 31, at 5-6.

³⁸ *Id.* at 17. The reporting dates varied from September 1998 for Nagaland to as recently as September 2000 for seven other states. Among the thirty-two states and union territories, Nagaland was the only one to report 1998 figures. Four reported 1999 data, and the rest all were from 2000. When the total cases

Among the state commissions, the delays appear even worse. Out of 190,969 cases filed since the inception of the individual commissions, the disposal rate is 58.7 percent. Here again, the ninety day goal presents serious problems. Only 24 percent of the cases were decided within ninety days, 19.6 percent between ninety and one hundred fifty, and 56.3 percent took more than one hundred fifty. As in the case of the district forums, the state of Gujarat stands out, having all 4,762 of its disposals take more than one hundred fifty days.³⁹ Lastly, at the national level, as of September 2000 20,622 cases had been filed and 54.2 percent had been decided. Unfortunately no figures were provided concerning length of time to disposal.⁴⁰

Since less than one-half of all filings in these forums/commissions are being resolved within one hundred fifty days, and less than one out of every three within the generally accepted goal of ninety days, the concerns over delays are well founded. Unquestionably, one of the reasons is unfilled vacancies, but additionally the adversarial nature of the proceedings appears to be a cause of the slowdown. Sitting judges or ex-judges are the presidents of these forums, and as such tend to dominate the proceedings. As the head of one consumer advocacy group in Chennai noted, they prefer to run the proceedings much as they do their courtrooms. He felt the process too easily becomes bogged down in procedural details, and the granting of too many adjournments.⁴¹

This concern over the link between the adversarial nature of the process and delays was not limited to Chennai, nor was it only the judges who were held responsible. The participation

disposed of since inception were broken down by the states into time periods for disposal, the total of those from the three categories (within ninety days, from ninety to one hundred fifty days, and over one hundred fifty days) did not match the total from the original disposal column. Therefore, the percentages given reflect the total gotten when adding the three individual categories together.

³⁹ *Id.*, at 18. The reporting periods for the state commission data were similar to those for the district forums, although not identical for each state. They also ranged from September 1998 for Nagaland through September 2000 for seven states, with four states reporting in 1999. The same problem occurred in this table regarding the breakdown in elapsed time of disposed cases as was referred to in the previous note.

⁴⁰ *Id.*

of attorneys in the process adds to the contentiousness of the proceedings, and therefore, some argue the length of proceedings, as well as the cost. The evidence here is largely anecdotal, supported by a few figures, but it does give the image of an adversarial process being largely driven by legal professionals. Included among the recommendations emerging from a workshop in the northern city of Chandigarh for improving the dispute resolution process in consumer matters, was a call to discourage the use of attorneys in order to expedite the process.⁴²

The data available on the extent of the use of attorneys in these forums are sparse. One very limited study of eighty-six cases involving allegations of medical negligence in three cities (Delhi, Lucknow and Hyderabad) provides some sense of the frequency of legal representation, at least in this subcategory of disputes. Seventy percent of the providers hired outside lawyers, but there were no figures provided for how many of the remaining thirty percent were represented by in-house counsel.⁴³ As for the consumers, no totals were provided for those represented by counsel. However, from among the forty-six cases that were still pending at the time of the survey, thirty-nine lawyers were interviewed, thirty of whom were representing the consumer.⁴⁴ While the data base is small, at least in cases involving medical negligence attorney participation appears to be quite high. How typical this is of consumer cases in general is impossible to say with any certainty, however, the report does suggest that this may be developing into a flourishing source of business for some attorneys. Seventeen of the thirty-nine lawyers interviewed who were working on pending cases reported that they currently had a caseload of over fifty consumer cases. The report concludes that many of these may be using the

⁴¹ Interview, Editor *CAG Reports* (Chennai, India: Oct. 2000).

⁴² *A Report on Media Workshop on Citizens' Charter* (Consumers Forum Chandigarh: Sept. 23, 2000) at 13. Chandigarh is the shared capital city of the states of Punjab and Haryana in northwestern India.

⁴³ Bejon Misra, *A Study on the Regulatory Framework for Consumer Redress in the Health Care Sector in India* (VOICE: 2000) at 17.

⁴⁴ *Id.*, at 19.

adversarial process to stretch out the proceedings and benefit from the delays, which seemed particularly troublesome in these cases where in ninety percent the time to final resolution went beyond the ninety day standard.⁴⁵

The professional inclinations of lawyers and judges combined with the procedural guidelines laid down in the CPA promote a highly adversarial process. This extends to the execution stage as well, where the CPA treats these orders as if they were orders of a civil court, and allows for their referral to the regular courts. While no data were found regarding successful/unsuccessful execution on consumer forum orders, there is again some anecdotal evidence that it may be a problem.⁴⁶ Referral to the civil courts, however, may not provide much relief. There is strong evidence to suggest that serious barriers exist to successful execution on judgements in the civil courts.⁴⁷ Whether there is something peculiar about consumer disputes, or certain subcategories of them, which results in higher rates of successful implementation remains to be seen. It is certainly not unreasonable to assume that private businesses might be more concerned than other groups of judgment debtors about public opinion, and therefore less inclined to exploit the adversarial process to avoid execution of what, in many cases, for them may involve relatively insignificant sums.

⁴⁵ Id., at 19, 21.

⁴⁶ The president of the Delhi State Consumer Dispute Redressal Commission expressed concern that the orders of the forums may become meaningless in the eyes of consumers due to problems in implementation (*Legal Outreach: State of the Consumer Courts*, Vol. I Issue III, at 3, [Consumer Coordination Council: 1997-98]).

⁴⁷ Recent data on the lower courts are quite difficult to find. As of 1995, the only state I was aware of that was still publishing district-by-district data on an annual basis was the southern state of Kerala. However, taking samplings of older data it is clear that successful execution in the lower courts was the exception rather than the rule. For example, the most recent figures I could find for Tamil Nadu were for 1985, and they showed full satisfaction of the court order in 25.5 percent of the cases, partial satisfaction in 21.7 percent, and 51.4 percent were listed as valueless. The remaining 1+ percent were unaccounted for. Government of Tamil Nadu, *Administration Report of the Civil Court Statistics for the Year 1985* at 31 (1989). Earlier data from the northern state of Uttar Pradesh shows similar percentages. For every year between 1948-1976, the number of applications for execution which turned out to be totally valueless outnumbered those in which at least some money was collected. Unfortunately no figures are available after 1976 (Moog, *supra* n. 11, at 44-49).

One other set of players that influences the functioning of these forums and commissions is the consumer advocacy groups spread throughout the country. The Consumer Coordination Council (CCC) in New Delhi acts as a national coordinating body and resource center for these groups. As of August 2000, the CCC had listed forty-three member organizations divided into northern, southern, eastern and western regions. In addition, there were eight organizations spread throughout the country listed as affiliate members, and one co-opted member, Friedrich-Naumann-Stiftung a German non-profit institution working to support democratic development around the world. The importance of these groups goes beyond their roles as consumer watchdogs, and educators increasing public awareness regarding consumer issues. Once a dispute arises they also fill the multiple roles of advisors, negotiators, and in some instances even representatives in the forums. Acting as advisors and negotiators, they can have a significant impact on the workload of the forums. All three of the consumer groups I met with in the fall of 2000 provided these services.⁴⁸ One of the groups, the Consumers' Forum Chandigarh, estimated that after weeding out unfounded complaints, sixty-five percent of those remaining are settled without resort to the local consumer forum. By the year 2000, this represented over 3,000 cases, a significant number when compared with the total of 9,224 filings which the forum in Chandigarh reported receiving from the time of its inception in March 1989 through 1996.⁴⁹ Not only do those complaints settled represent a savings of time for the forum (assuming many of the complainants would have gone there), but many of those weeded out (for which there are no

⁴⁸ The three I visited were: Citizen, Consumer and Civic Action Group (CAG) in Chennai; Voluntary Organization in Interest of Consumer Education (VOICE) in New Delhi; and Consumer's Forum Chandigarh in Chandigarh.

⁴⁹ The data on settlements is from the *Consumers Forum Chandigarh Annual Report 2000* (2000) at 17, and represents the total number of cases settled by that organization from its inception in 1979. The report does not break out numbers of settlements per year. However, it is unlikely that many settlements were achieved prior to the CPA and the establishment of the local forum, which could then be used as threats to uncooperative businesses. The figure on total filings in the consumer forum is from *Legal Outreach: State of Consumer Courts*, Vol. I Issue VIII, 2 (Consumer Coordination Council: 1997-98).

numbers) may also have resulted in complaints being filed absent the intervention of the consumer organization.

What these organizations have been able to accomplish through their educational, advisory, and representative functions is to increase access to justice by publicizing the existence of the consumer forums and providing the technical support necessary to take advantage of them.⁵⁰ At the same time, certainly in Chandigarh and probably elsewhere, they also act as a filtering device to weed out nonmeritorious claims. What the net result of this is on the workload of the forums, both in quantity and quality of disputes, is impossible to gauge without further research. The same can be said as to the replication of the success of the Chandigarh group elsewhere.⁵¹

Analysis

This essay began with the assumption that the consumer forums and commissions in India are a form of ADR. For some, the question of what is and is not ADR has become somewhat troubling, and it has been suggested that even the use of the label ADR may have outlived its usefulness.⁵² Certainly, these institutions, regardless of the label applied, look and

⁵⁰ This is an excellent example of what Maria Dakolias, supra n. 4, meant by the role that civil society can play in enhancing access to justice.

⁵¹ There were some characteristics associated with the Chandigarh organization which may provide a model for others to follow when possible.

Decentralization - The city has been divided into sectors with a "convenor," a representative of the group, appointed for each sector.

Status of Officers - Many are retired, some from the military, and the chairman has a law degree.

As a group, they appear to be well respected within the city.

Experience of officers- Among those working at the central office there is relatively little turnover. Out of the five people interviewed, the most recent addition to the staff had been there for eight years.

Specialization - Those at the central office specialize in different types of consumer disputes which enables them to develop expertise and working relations with particular repeat respondents.

Public Relations - Among the strategies used to publicize the organization are: consumer *melas* (fairs); periodic specialized workshops; convenor system; and flyers.

⁵² Jean Sternlight has raised this argument suggesting that a simple dichotomy between litigation and the "other," i.e., ADR, oversimplifies a far more complex situation and establishes a "false barricade." She argues that all forms of dispute resolution should be seen as part of a larger whole, with the practical effect of lawyers viewing themselves as problem solvers selecting from a diverse menu of dispute resolution

act like courts due to the adversarial process that drives them, and it is not unreasonable to question their alternative status. Despite the use of the term “settle” in the CPA with reference to the work of these bodies, neither mediation, or even arbitration, is considered part of their responsibilities.⁵³ Pre-hearing settlement conferences are not required. These forums may not even be suitable to qualify for Jack Sabatino’s concept of “Litigation Lite,” in which analogues to many of the procedural devices in the civil justice system find their way into various forms of ADR.⁵⁴ In fact, there appears to be little that is “lite” about them.

However, despite the similarities with the regular courts, these bodies are not part of the judiciary. They can come under the supervision of different departments, depending upon the state involved. In Delhi, for example, they fall under the Department of Consumer Affairs. Therefore many, if not all, of the forums/commissions are staffed by personnel, other than the president, with little or no experience in the courts or with dispute resolution of any kind.⁵⁵ More significant is the presence of lay persons on the bench, somewhat removing control of the process from legal professionals and supposedly bringing to it their own expertise in consumer related matters. Most important, these bodies do offer an alternative path to pursue outside of the civil courts in consumer disputes if the complainant so desires. Regardless of the similarities, the process is designed to be cheaper (there are no fees) and significantly faster. Indicative of the latter is a Supreme Court decision holding that these forums can not pass interim orders, which

possibilities. (“Is Binding Arbitration a Form of ADR?: An Argument that the Term “ADR” Has Begun to Outlive its Usefulness,” 2000 *Journal of Dispute Resolution* 97-111 at 111.)

⁵³ CPA at Ch.III, 13(2)(b).

⁵⁴ Jack M. Sabatino, “ADR as ‘Litigation Lite’: Procedural and Evidentiary Norms Embedded within Alternative Dispute Resolution,” 47 *Emory Law Journal* 1289-1349 (1998).

⁵⁵ The President of the Delhi State Consumer Dispute Redressal Forum found this to be one of the problems with the forums. He complained that the staff in Delhi was drawn from the Department of Civil Supplies, and therefore untrained in the functioning of courts. The absence of any disciplinary control over them exercised by the presidents of individual forums adds to the problems concerning the quality of work, as well as the general impression that most wanted to return to a post in their home department (*Legal Outreach, State of Consumer Courts*, supra n. 46, at 3).

removes from the arsenal of lawyers one of the weapons frequently exploited to delay resolution of disputes in the regular courts.⁵⁶ It is not just the interim orders themselves, but the appeals from them that produce extensive delays as cases bounce from one level of court to another. That has been effectively removed from the process in the consumer forums and commissions. Also, when “complex questions of fact and law” are involved which make it difficult or impossible to decide a case within the time frame provided under the rules, complainants are encouraged to take the matter to civil court.⁵⁷ Therefore, while this is designed as an adversarial proceeding, and procedural safeguards have been incorporated to protect the rights of the parties, these forums are not simply intended to duplicate what the courts are presently doing. Potentially they do provide a cheaper, faster and, perhaps, better quality of justice for many consumer disputes than the regular courts can provide.

As alternatives to the formal court system, the empirical question of their impact remains. Borrowing from Carrie Menkel-Meadow, there are two broad justifications supporting ADR – quantitative efficiency and qualitative justice. The former referring to the goal of reducing the burden on the courts, resulting in more expeditious dispute resolution for both those who opt out of the courts, as well as those who remain. The latter is linked closely to notions of democracy and is characterized by increased “community empowerment, party participation, and access to justice.”⁵⁸ The information available on these institutions is minimal, but some tentative conclusions can be drawn regarding progress towards meeting these justifications.

⁵⁶ *Morgan Stanley v. Kartik Das, II* (1994) CPJ 7 (SC). The CPA Amendment Bill, supra n. 15, would give consumer courts the power to issue interim orders in those situations where immediate relief is deemed necessary. The downside is the delays these may add to the system as they do in the formal system.

⁵⁷ *Harbans & Co. v. State Bank of India, II* (1994) CPJ 456.

⁵⁸ Menkel-Meadow, supra n. 22, at 6.

The issue of quantitative efficiency requires not just more detailed data on the functioning of the consumer forums, but just as obviously, accurate data on civil court caseloads. Those data are unavailable for the most part, and therefore, any attempt to do a quantitative analysis of the cases the consumer forums draw from the civil courts, and its impact on those courts is out of the question. However, drawing upon the anecdotal evidence collected, and the knowledge of the civil courts that is available, it would appear highly unlikely that these institutions would have any significant impact on the caseload of the civil courts. While there is no breakdown available on numbers of consumer disputes that have made their way into the civil courts, there are reasons to believe that relatively few are filed there. The available research indicates that the majority of cases filed in civil courts relate to real property.⁵⁹ However, as the country continues to urbanize and consumer awareness continues to grow, one would expect the landscape of litigation to change as well. As urbanization and consumerism increase, and more traditional, village based methods of dispute resolution prove irrelevant for these consumer disputes, do more of them find their way into the civil courts? It seems unlikely that a significant number do considering the costs and time involved in using the lower courts. Where the dispute involves Rs 1,300 from a dry cleaners for damage to a *saree*, or replacement of a defective Timex watch, the costs of using the courts in terms of time and money far outweigh any benefits that might accrue to the consumer three to five years in the future.⁶⁰ This assumes he/she will win and can successfully execute on the order. In most consumer disputes it is reasonable to assume that the complainant will not pursue a case unless it is economically rational to do so. That is, the consumer will “lump it” because the costs associated with pursuing the case will

⁵⁹ See, e.g., Moog, *supra* n. 11, at 102-04.

⁶⁰ The dry cleaners case (*Dhashmesh Dry Cleaners and Dyers v. Geethanjali Nair*) was cited in *Consumer Voice*, Vol. 1 Issue No. 6 (VOICE: Sept.-Oct. 2000). The Timex watch case (*Shri K.K. Das v. M/s. Titan*

exceed whatever compensation can be expected if successful. This differs from the reasoning behind many cases filed in the lower courts, where, for example, defense of honor, harassment, or local political battles may take precedence over purely economic rationales for using the courts.⁶¹ This conclusion was corroborated by the head of a consumer advocacy group in Chennai, who added that prior to the creation of the consumer forums people there simply did not think in terms of court filings to resolve these types of disputes.⁶²

If the argument above is correct, and these forums have had no significant effect on the workload of the lower courts, have they improved the quality of justice available? Looking at the three measurements for quality of justice mentioned by Menkel-Meadow (community empowerment, party participation, and access to justice), there appears to be only one that has been improved noticeably by the creation of these forums.

It is difficult to see how they have expanded community empowerment, other than through the appointment of the lay members. While under different circumstances this could greatly enhance community involvement with the process, at least two problems arise. First, the requirements for appointment limit the possible pool to a relatively small, educated elite in order to draw on their expertise in economics, law or other related areas.⁶³ Second, and more important, the adversarial nature of the proceedings and the common presence of lawyers further enhance the influence of the judge, or ex-judge member, who already sits as president of the forum. The lack of any working familiarity with court procedures in addition to the status

Industries Ltd.) was cited in, *Legal Outreach: State of Consumer Courts*, Vol. 1 Issue IV (Consumer Coordinating Council: 1997-98) at 7.

⁶¹ For an explanation of why people file, see Bernard Cohn, "Anthropological Notes on Disputes and Law in India", 67 *American Anthropologist* no. 6, pt 2, 82 at 105. Also see, Moog, *supra* n. 11, at 100-02.

⁶² Interview, Editor CAG Reports (Chennai: Oct. 2000).

⁶³ CPA at Ch. III, 10(b). The CPA Amendment Bill (*supra* n. 15) would further tighten these requirements and, thereby, further limit the pool of possible members.

attached to the judge/president will in many cases leave the lay members with a greatly diminished role, and community empowerment insignificantly enhanced, if at all.

In the case of party participation as well, the adversarial nature of the proceedings along with what seems to be a heavy reliance on attorneys leaves little room for the parties to significantly increase their direct involvement in the settlement process.⁶⁴ Just as with the lay members of the forums, the lack of familiarity with judicial proceedings would tend to encourage many complainants, as well as respondents who do not have an attorney on retainer, to seek out professional legal help.⁶⁵ In addition, the complainants, who overwhelmingly will be “one-shotters,” in all likelihood will have little or no familiarity with the substantive law.⁶⁶ This differs from the lay members of the forums who may come to the job with some knowledge of the relevant law, or who would be expected to acquire a working knowledge of it after a certain amount of time involved in the process.

The consumer forums/commissions have had their greatest impact on quality of justice by increasing access to dispute resolution. Quality here refers simply to the argument that something is better than nothing. The state has created a forum for hearing consumer disputes where before there did not exist any practical course for many consumers to pursue. The costs of resorting to the civil courts in terms of time, money, and difficulties in execution, far outweigh any benefits that might accrue in the overwhelming majority of consumer complaints. The numbers of complaints filed at all three levels since their inception (national commission - 20,622; state commissions – 190,969; and district forums – 1,357,730) are indicative of the

⁶⁴ This was confirmed in the VOICE study of medical negligence cases (Misra, supra n. 43, at 23).

⁶⁵ The 2001 amendment bill to the CPA (supra n. 15) would also place greater control in the hands of the complainants over the appearance of lawyers. Under the proposal, the respondent can be represented by a lawyer only if the consumer engages one, is a lawyer himself, or if the consumer does not object.

⁶⁶ The concepts of one-shotters and repeat players are borrowed from Marc Galanter’s article, *Why the Haves Come out Ahead: Speculation on the Limits of Legal Change*, 9 *Law & Society Review* 95-160 (1974).

market for their services.⁶⁷ Of course, there is much these few numbers do not reveal. They represent the tip of the iceberg, but what lies below the surface? We do not know the magnitude of the increase in access, but can only take educated guesses based on anecdotal evidence that most of the total of 1,569,421 complaints filed would not have gone to the civil courts. On the other hand, in a country of slightly more than one billion people, which is still predominantly rural, what does a total of 1,569,421 consumer complaints filed nationwide over a span of approximately ten years mean? It would seem that there remains a large pool of potential complainants who are dealing with their disputes in other ways. Some certainly are still “lumping it,” believing that the effort is not worth whatever compensation may result. Are they doing so even though they are aware of these forums, or would they use the forums if they knew of them and had assistance in approaching them, and in handling the proceedings? This raises the related issue of the role of consumer advocacy groups in publicizing the forums, acting as a screening device for them, and also in providing expert assistance when complaints are filed. Where such groups exist, is the workload of the forums increased? At the same time, does the combination of such groups together with the existence of consumer forums lead to settlements in situations where before the complainant would have had no effective recourse? If the CPA and the threat of filing in a consumer forum, together with the assistance of experienced consumer advocates, is convincing suppliers of goods and services to settle in large numbers when before they would not have done so, that may be far more important than the number of actual complaints filed in the forums. One student of these forums has observed in at least some of the cases he reviewed, a reversal of “the traditional hostile business attitude toward the

⁶⁷ CCPC, *supra* n. 31, at 4.

public,” and a greater willingness to reconcile with consumer demands.⁶⁸ While he was specifically referring to cases that had been filed in the consumer forums, it could be expected that any such change in attitude would be reflected in grievances settled prior to filing as well.

While they do appear to have filled a void by providing access to justice for some consumers,⁶⁹ many of whom, in all likelihood, had effectively been shut out of the formal system, the potential flaws in these forums remain glaring. In certain ways they may reflect the problems plaguing the civil courts, particularly concerning delays and execution on judgments. Complaints about delays come from all sides (complainants, consumer advocates, respondents, and the forum members). At a workshop sponsored by the Consumer’s Forum Chandigarh, one participant even suggested that the consumer forums themselves needed their own ADR forums to alleviate the delays overtaking them.⁷⁰ Whether these delays primarily result from resource shortages, or a more deeply embedded set of incentives and disincentives built into the system or carried over from the civil courts is unclear. However, one significant difference between the disputes in the consumer forums and many of those filed in the civil courts that weighs in favor of relatively expeditious resolution in the former is the rationale behind the filings. Consumer disputes are more likely to be driven by economic rationalism rather than harassment, defense of honor, political revenge or other motives that authors have observed often drive actions in the civil courts and lead to delaying tactics. As in the case of delays, there are also incentives at work in consumer disputes that should make execution on judgments simpler in many cases. The concern of many businesses with negative publicity combined with the relatively small

⁶⁸ Gurjeet Singh, “Business Self-Regulation and Consumer Protection in India: A Critique,” 16 *Journal of Consumer Policy* 1-33 at 8 (1993).

⁶⁹ There are categories of consumers that remain largely shut out of the process. The VOICE study of medical negligence cases indicated that access to these forums was restricted to a great extent to those with a “fixed source of income” (Misra, *supra* n. 43, at 21).

⁷⁰ *Report on Media Workshop on Citizens’ Charter*, *supra* n. 42, at 11.

amount of money involved in many of these disputes should weigh in favor of rapid payment of judgments. In addition, when consumer advocacy groups are present, the threat of negative publicity may be greatly enhanced. Still, when a significant legal precedent could be set by a given case, a greater level of resistance resulting in delays and appeals would be expected.

These forums also confront a problem common in the universe of ADR, the inherent tension between the desire to simplify, expedite and lower the cost of the dispute resolution process, while not diminishing safeguards against possible advantages held by repeat players (RPs – e.g., hospitals; banks; and large scale retailers). The resource advantages of RPs remain a troubling aspect of the system. Their familiarity with and expertise acquired regarding the system, the quality of their legal representation, and their ability to simply outspend most complainants, may present the consumer with insurmountable barriers to overcome, at least in those cases where the respondent decides it is worth the effort. The less formal the proceedings and the fewer procedural safeguards that are built-in, the more likely it is that these discrepancies will be exacerbated. But it is those safeguards that often add to the adversarial nature of the proceedings, as well as the time and cost. In the case of the consumer forums, there may be a specialized complainants' bar developing (see page 12 above) that could serve to negate some of the RP advantage with their own experience. But they may detract from the speed while adding to the cost of the process.⁷¹ This is likely in light of the culture of the Indian bar, which has been to litigate, not negotiate.⁷² Here is where consumer advocates may play a key role by themselves being RPs with significant experience. They could keep costs down and expedite the process,

⁷¹ Id., at 12.

⁷² See, e.g., Marc Galanter, "The Study of the Indian Legal Profession," 3 *Law & Society Review* 201-217 (1968-69); Charles Morrison, "Kinship in Professional Relations: A Study of North Indian District Lawyers," 14 *Comparative Studies in Society in History* 100-25 (1972); Robert Kidder, "Formal Litigation and Professional Insecurity: Legal Entrepreneurship in South India," 9 *Law & Society Review* 11-37 (1974-75); and Moog, *supra* n. 11, at 75.

while possibly draining it of some of its formality, particularly if they emphasize negotiated settlements.

The third problem raised by these forums pertains to their effects on efforts to reform core institutions in the formal justice system. It was previously argued that the consumer forums probably have had little impact on civil court caseloads. While they seem to do little or nothing to alleviate the burden on the civil courts, they may also lessen any incentive to reform that system. As part of a larger “tribunalization” process, these forums are removing a potentially influential constituency (one that when compared to the population as a whole is probably highly literate, urbanized and has some disposable income) from those who might voice their demands for reform of the courts. This is not an unusual strategy to follow. Due to vested interests in the courts, reform can be difficult and creating alternatives much simpler.⁷³ The danger is a bifurcated justice system, between those with the political clout to escape the formal system, and the rest left behind.⁷⁴ Judging by caseloads and anecdotal evidence, effective reforms for the civil courts have not been implemented,⁷⁵ but what effect tribunalization has had on this is unclear. One suspects the causality flows in both directions. Tribunals are created because of the state of the courts, and that in turn decreases any pressure for reform.

While we do not know all that we need to concerning the functioning of these institutions, some preliminary conclusions can be drawn regarding their effects on efforts to

⁷³ Resistance to reform by those with a vested interest in the status quo is a commonly cited problem. See, e.g., Blair and Hansen, *supra* n. 4, at 11; Brown, Cervenak and Fairman, *supra* n. 4, at 25; Thomas Carothers, *Aiding Democracy Abroad: The Learning Curve* (Carnegie Endowment for International Peace: 1999) at 174-76; Richard E. Messick, “Judicial Reform and Economic Development: A Survey of the Issues,” *World Bank Research Observer* (World Bank: Feb. 1999) at 4-5; and Dakolias, *supra* n. 4, at 3.

⁷⁴ This concern is not unique to India. See, e.g., Podgers, James, “Chasing the Ideal,” 80 *ABA Journal* 56, (1994) and Jack Weinstein, “Some Benefits and Risks of Privatization of Justice Through ADR,” 11 *Ohio State Journal on Dispute Resolution* 241-95, at 261-62 (1996).

⁷⁵ A recent estimate placed the number of cases pending in the Indian courts at 25 million, and suggested that at the current rate of disposals if no new cases were filed it would take 324 years to clear the backlog (*New York Times*, “In India the Wheels of Justice Hardly Move,” [June 1, 2000]).

strengthen the rule of law in India. Their greatest asset is providing access to dispute resolution for a broad and growing group of consumers who without them were effectively left to their own devices against providers of services and goods. This incorporates not only those disputes that are filed and go to a hearing, but also those that are settled, with or without a filing. Absent the CPA, the forums, and the participation of consumer advocacy groups, it is likely that many providers would have felt no compulsion to participate in negotiations. In terms of cost, more data are needed, although the absence of filing fees represents an immediate savings over the formal courts. The figures available regarding time from filing to resolution, while disturbing in terms of the ninety day goal set for these bodies, at first glance represent a significant improvement over the civil courts (49.6 percent of the filings in the district forums have been resolved within 150 days). However, delays remain a troubling prospect for these forums and commissions, and there is some dissatisfaction because of them. A majority of consumers and providers interviewed in medical negligence cases reported their experience with these forums as largely negative, with delays listed as a major shortcoming.⁷⁶ Linked to the issue of delays is the dilemma of achieving the proper balance between the desire for a less formal, more expeditious process and the need for safeguards to counterbalance the advantages repeat players normally bring to the table.

What must follow is a far more extensive piecing together of information relating to a variety of issues. This includes: numbers of disputes resolved outside of these forums; who are the complainants and respondents and the types of complaints filed; frequency of wins for complainants and providers; frequency of appeals, and who appeals; frequency of use of attorneys by each side; rates of successful execution; and satisfaction of participants to the process.

⁷⁶ Misra, *supra* n. 43, at 21.

India's consumer forums have opened to mixed reviews. Despite the weaknesses, the benefits of opening up an avenue of dispute resolution for a significant and growing segment of the population, whether through negotiation or the hearing process, justifies the continuation of the experiment.