Conference 2012

First Azim Premji University International Conference on Law, Governance and Development

Indian Legal System Reform: Empirical Baselines and Normative Frameworks

May 18-19, 2012

at TERI, 4th Main, Domlur II Stage, Bangalore

The Law, Governance and Development Initiative (LGDI) was established at the Azim Premji University in 2010 to analyze the relationship between development and governance with a particular focus on the structure and practices of government and the constitutive and instrumental role of the legal system. The Initiative seeks to investigate and reconfigure our understanding of governance problems in India and relocate legal system reform as a central element of governance reform in India. The annual conference of LGDI aims to create a forum for academic enquiry and debate on law and its relationship to governance and development, and explores empirical and theoretical questions of reform of the Indian legal system using a multi-disciplinary approach. The theme for this year's conference is *'Indian Legal System Reform: Empirical Baselines and Normative Frameworks'*.

This Conference will be organized around a set of original research contributions, made available to all the participants prior to the Conference. The Conference will encourage informed debate on the central issues of legal system reform in India, organized around panel themes described below. This year's conference will be held on ***May 18th and 19th, 2012*** at TERI, 4th Main, Domlur II Stage, Bangalore.

R. Dhavan and P. Kalpakam in *The Supreme Court Under Strain: the Challenge of Arrears* (1978) first developed an empirical approach to legal system analysis in India with their study of the performance of the Indian Supreme Court in the first three decades after Independence. Upendra Baxi's *The Crisis of the Indian Legal System* (1982) was the first book length study of the legal system that brought together empirical analysis with a wider theoretical and normative

understanding of the role and significance of the legal system. In this work, three decades ago Baxi warns us that the crises facing the Indian legal system had reached a point where the legality and legitimacy of the system had substantially eroded and the institutional capacity for self-correction seemed bleak. R. Moog's more recent work on the problem of delays in the lower courts reflects on the role of judges in Indian lower courts using an ethnographic perspective (Moog, 1992, *Delays in the Indian Courts: Why Judges Don't Take Control*). Hazra and Debroy's edited collection titled *Judicial Reforms in India* (2007) makes the case for a judicial reform using a law and economics approach to understand delays in the Indian legal system. Despite these varied academic engagements with the problems of reform of the Indian legal system, in the last two decades the sense of crisis has only deepened as piece-meal policy reform and glaring media scrutiny has hollowed out any remaining faith in the possibility of meaningful change. This Conference seeks to reconnect the policy and academic engagements with judicial reforms by identifying key empirical baselines and methods and to revisit the normative frameworks that should guide efforts towards reform of the Indian legal system.

> *Clarification: Single authored student submissions are strongly encouraged and preferred over co-authored pieces. This clarification does not apply to faculty submissions.Extension: The Call for papers deadline has been extended to May 7, 2012 for both faculty and student submissions.*

The proposed panels for this two-day conference are:

Session 1: Legal System Reform – A Context

The academic discourse around legal system reform in the last two decades has adopted either of two approaches: rule of law or the access to justice. The rule of law approach emphasizes that individuals, organizations and the government submit to, obey and be regulated by law, and not arbitrary action. This approach emphasizes neutrality towards the ends of a legal system and provides for autonomy of persons to regulate their legal obligations and duties within the bounds of law (LGDI draft Working Paper 2012, *Approaches to Legal System Reform*).The access to justice approach on the other hand, challenges this neutrality. It focuses on how the justice system should be made to efficiently deliver outcomes that are fair and accessible to all, irrespective of wealth and status (P. Baxi, 2007, *Access to Justice and Rule of [Good] Law*).Recent legal system reforms in India including the National Litigation Policy (2010) have adopted the rule of law approach (for a contrary view see M. Gopal, 2009, *Development and Implementation of Reform Initiatives to Ensure Effective Judiciaries*) while various civil society

groups and international organizations have emphasized the achievement of greater access to justice. (World Bank, *World Development Report*, 2006 and UNDP, 2004, *Access to Justice: A Practice Note*). This panel will assess whether this framework of debate around Indian legal system reform adequately addresses contemporary concerns. In particular we ask whether earlier concerns about the colonial character of the legal system and the autonomy of the legal system from the political and economic systems remain relevant.

Session 2: Civil Justice Reform

The Code of Civil Procedure Amendment Act, 2002 was the last significant attempt at statutory reform of the civil justice system. This Act sought to streamline court procedures and *inter alia* introduced time limits for the filing of plaints and written statements and sought to limit the number of permissible appeals from particular suits. It also put the number of permissible adjournments to three and mandated that suits need to be adjudicated within a year. These statutory reforms were undone by the legal fraternity and the courts which reduced these statutory limits to be merely directory. Subsequently, over the last 5 years, the bench has been pre-occupied with the large-scale adoption of information technology and allied case management strategies by the courts as means to eliminate pendency. In this panel we review and evaluate the evidence from these attempts at civil justice reform and examine the prospects for meaningful reform. (LGDI draft Working Paper 2012, *Pendency and Vacancy: A Necessary Connection?*)

Session 3: Criminal Justice Reform

The submission of the reports by the Committee on Reforms of Criminal Justice System headed by Justice Malimath (2003) and the Committee on Draft National Policy on Criminal Justice headed by Dr. N.R. Madhava Menon (2007) has framed recent efforts towards criminal justice reform in India. Despite the introduction of fast track courts in 2000 (following the recommendation of the Eleventh Finance Commission) and plea bargaining (Criminal Law Amendment Act, 2005) in recent years the problems of delay, cost and inequity persist in the criminal justice system. Moreover, the debate around criminal justice reform has failed to develop a criminological understanding of crime in India and its relationship with other social, economic and political factors. This has reduced the problems of the criminal justice system to a problem of managing the exploding case docket. This panel will attempt to bring new insights to case pendency in the criminal justice system by analyzing the pendency data and by trying to

situate the criminal justice reform debate in India within a social, political and economic understanding of Indian society. .

Session 4: Alternative Dispute Resolution

The most significant effort at reducing pendency and speeding up justice delivery in the judicial system in the recent past is the attempt to divert cases to alternate dispute resolution mechanisms. The introduction of Section 89 to the Code of Civil Procedure by the Code of Civil Procedure Amendment Act, 1999 (which was brought into effect on July 1, 2002) has resulted in the mushrooming of mediation centres under the auspices of various High Courts. Unlike other efforts at legal systems reform, mediation centres have been very successful at settling a large number of cases in quick time and may well be the most promising effort at legal system reform in India (LGDI draft Working Paper 2012, *Does Mediation Work? Reviewing Evidence from the Bangalore Mediation Center*). Simultaneously, arbitration has become commonplace for resolving domestic and international commercial disputes but most foreign parties avoid India as an arbitration venue and significant problems remain with the enforcement of foreign arbitral awards. Recent research into the functioning of Lok Adalats raises serious questions about the perils of informal dispute resolution (M. Galanter and J. Krishnan, 2003, *Bread for the Poor: Access to Justice and the Rights of the Needy in India*). The establishment of Gram Nyayalayas is motivated both by the need to expand the dispute resolution system by the creation of a new tier of courts as well as to avoid the hidebound formality of court system (V. Kumaraswamy, 2007, *Courting Trouble*). However, the Bills in Parliament have been subject to severe criticism for failing to meet these objectives in a meaningful fashion. (M. Guruswamy and A. Singh 2011, *Village Courts in India: Unconstitutional Forums with Unjust Outcomes*). This panel will explore the promises and the threats of alternative dispute resolution as viable reform of the formal legal system.

Session 5: Reforming the Appellate Courts

The challenges faced by the appellate courts in India are quantitatively and qualitatively different from the challenges faced by the lower tiers of the court system. The Supreme Court and the High Courts have succeeded in keeping problems of delay and pendency within manageable proportions. However, this has been achieved at the level of High Courts not by efficient court management or through specialized benching arrangements but by the diversion of a significant number of cases to specialized tribunals. While the early debates on tribunals

were anchored on the creation of central and State administrative tribunals (I.P. Massey 2008, *Administrative Law*), more quantitative research is available on the performance of the Debt Recovery Tribunals which were established in 1993. (S. Visaria 2009, *Legal Reform and Loan Repayment: The Microeconomic Impact of Debt Recovery Tribunals in India*). The pace at which tribunals have been constituted has accelerated in the last decade and the consequences and the effect of this strategy deserve serious analysis. The Bill to create a Commercial Division of the High Courts is a belated recognition of the need to resolve issues of expertise and delay in the appellate court system through a reorganization of the High Court. At the level of the Supreme Court, the Indian legal system displays the lowest levels of pendency and arrears. However, the Indian Supreme Court combines the functions of a constitutional court and a court of appeal and has among the highest caseloads of any Supreme Court in the world (K.K. Venugopal 2010, R.K. Jain Memorial Lecture, *Towards a Holistic Restructuring of the Supreme Court of India*). The court's failure to adhere to rigorous rules in administering its appellate jurisdiction has resulted in a flood of cases into the highest court in the country (N. Robinson 2010, *Too Many Cases*). This panel explores pending proposals for reform of the appellate court system and identifies the key challenges that academic and policy actors must respond to.

Session 6: Institutions for Legal System Reform

The institutional responsibility for legal system reform is divided between various branches of the government. The Law Ministry and the Law Commission initiate policy reform while State legislatures and Parliament develop the legislative framework. At the national and State level the judiciary and Judicial Academies lead internal management reform and tackle problems of quality and staffing. While this institutional framework promises continuous engagement with the Indian legal system, there is a lack of empirical and analytical rigour in the processes of reform initiated by such institutions. The Supreme Court and the High Courts do not produce periodic empirical reports of the cases entering and leaving the system (R. Dhavan 2011, *Judiciary Must Chew on its Ills This Recess*).This panel will examine the role of these institutions in the recent past and the conditions necessary for them to carry out their mandates effectively.

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