Accessing Economic and Social Rights: Perceptions and Experiences of Litigating in Maharashtra's Lower Courts

Executive Summary

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INTRODUCTION*

This report has been developed on the basis of findings from a research study that sought to understand the systemic factors and constraints that affect the extent to which Indians in urban and rural sectors are able to access their economic and social rights. Till date, scholarly investigation on the legal system in India – and the manner in which people access justice – has focused primarily on the upper tier of High Courts and the Supreme Court, those who practice in them, and the constitutional jurisprudence that they produce. But a knowledge vacuum surrounds the vast majority of parties who toil in what might be called the lower judiciary – the lower courts, sub-district courts, and administrative and quasi-judicial tribunals – where an astounding twenty-to-thirty million cases are pending, many for more than a decade.

This scope of this study has enabled us to better understand:

i) whether and how people access their economic and social right through claims in the lower judiciary; and
ii) public perceptions towards these forums and the extent to which they are seen as instruments of justice by all involved.

Economic and Social Rights:

Our focus on economic and social rights has been purposive. In 1979, India became a signatory to the International Covenant on Economic, Social, and Cultural Rights (ICESR) that officially came into force in 1976. This treaty guarantees to people (whose governments are participating parties) entitlements to "progressive" rights from their state representatives. These include the right to equitable and humane employment-conditions and the right of employees to form as organized interests, the right to social insurance, a life with a family, safe living conditions, health-care, education, and access to civic organizations and a cultural life.

These various entitlements have already been incorporated in the Indian Constitution in the form of Directive Principles of State Policy (DPSP). The DPSP which themselves emerged as a result of being influenced by, among other sources, the United Nations Universal Declaration of Human Rights is the same document that also played a role in framing the ICESR.

Some sections of this summary report have been adapted from the Maharashtra state report and from "Grappling at the Grassroots: Litigant-Efforts to Access Economic and Social Rights in India", by Jayanth K. Krishnan, Shirish N. Kavadi, Azima Girach, Dhanaji Khupkar, Kalindi Kokal,Satyajeet Mazumdar, Nupur, Gayatri Panday, Aatreyee Sen, Aqseer Sodhi, and Bharati Takale, Harvard Human Rights Journal, Vol. 27 (2014). Both papers have been developed on the basis of findings from the same study supported by the Ford Foundation and carried out by The National Centre for Advocacy Studies (Maharashtra), Centre for Social Justice (Gujarat) and Jagori Grameen (Himachal Pradesh)

The broad powers of constitutional review combined with far-reaching legislation have proved critical in the judicial enforcement of economic, social and cultural rights, which has produced a vast body of case law in the Supreme Courts and High Courts. Studies dating back decades have documented that the upper judiciary has been the central institution that has engaged in the serious adjudication of these types of matters.

The findings in this study, however, reveal that even the regular lower judiciary, specialized alternative forums, and administrative courts at the grassroots deal with such issues. As our data reveals, though, while cases in the lower tier involve discrete parties who are keen to pursue their respective individual claims, the questions of law and policy that are raised and that the judges hear in fact have broader economic and social ramifications.

Based on the findings in this study and the experiences from interactions with the people at the grassroots, it was found that those who are disadvantaged from an ESR-perspective receive little support from local elected representatives and relevant civil servants. We, therefore, argue that it is incumbent upon judges within these forums at the district and taluka levels to embrace the role as protectors of claimants who bring forth legitimate social and economic grievances. Judges must play more of an active role in ESR-cases on behalf of needy-claimants. This indeed is the need of the hour, else the suffering of these litigants will continue to go unabated, which would run counter to the principles of ICESR and the spirit of India's constitutionally democratic foundation.

SELECTION OF DISTRICTS:

The study focused on district and taluka courts in two districts in Maharashtra. These districts were selected in a manner such that both the developed and underdeveloped regions of the state would be represented. District A is part of Western Maharashtra which is considered developed primarily because of its long history of industrial development, the presence of sugar cooperatives which have transformed the rural economy of this part of the state. District B is, on the other hand, in the Marathwada region which was part of the former Hyderabad state before independence; it is drought prone and has no industries to speak of. Even sugar cooperatives in this area are a very recent development and these are few in numbers. The economy is predominantly agriculture based. As compared to District A, District B has a larger rural population.

FORUMS OF DISPUTE RESOLUTION:

The research findings are based on the observation of and interaction with judges/presiding members, lawyers and litigants in the following forums:

a. District court
b. Taluka court
c. Family court
d. Labour court
e. Juvenile Justice Board
f. Gram Nayayalay
g. Quasi-judicial bodies
h. Lok Adalat
i. Dispute Free Village Committees

ACCESSING THE JUDICIARY

The concept of 'accessibility' was understood amongst the lawyers, litigants and judges in terms of the extent to which the court procedures are comprehended, expenses incurred in pursuing a suit, levels of fairness, physical access to the court and availability of lawyers.

The following factors were perceived to constrain litigants' smooth access to justice in the various judicial and quasi-judicial forums of dispute resolution.

A. Delay:

There was consensus on the fact that there is no quick justice when a matter was filed in court. Time consuming procedures, adjournments, slow execution of decrees in land related disputes, non-appearance of the opposite party and slack working of the supporting machinery such as revenue departments (in case of document procuring) and police personnel (in case of issuing summons) were seen as the primary causes of delay. In a few cases, delays were also attributed to corrupt practices and cases not being studied carefully by either lawyers and/or judges. The several possibilities of appeal, multiplicity of suits related to one dispute and disparity in the proportion of judges to the number of cases being filed were causes of delays specifically cited by lawyers and judges.

B. Illiteracy:

Lawyers and judges tended to use the term illiteracy quite loosely. Extended interactions revealed that the term included the inability to read and write, lack of legal awareness and ignorance of rights. As a result of illiteracy, litigants did not know their rights, did not understand court procedures and were unable to understand the best way of procuring the documents required in evidence of their claim. The gap in knowledge also caused many litigants to be intimidated by judicial processes. Lawyer-litigant relations were impacted as well leading to either total dependency on the lawyer or increased suspiciousness of the lawyers.

C. Public Transport:

Scarce and/or irregular public transport facilities, particularly in taluka areas resulted in many litigants being unable to attend their cases, either because they arrived late or had to leave early in order to catch the last bus back home. Spending an entire day away from work and home was not uncommon experience for litigants from remote villages. The situation was especially trying for lady litigants who were compelled to request a male member from their family to accompany them to court. Related to the difficulties in transport was another issue namely delays in service of summons and notices which was at least partly caused by the absence of or an inadequate public transport system to remote rural areas.

D. Financial Hurdles:

In the experience of most litigants litigation was an expensive affair. Exhaustion of finances mid-way through litigation resulted in many litigants just abandoning the case. Very often litigants ended up selling or mortgaging substantial portions of their movable/immovable property and even taking loans in order to meet court expenses and payment of lawyers' fees.

WORKING OF THE JUDICIAL SYSTEM: CHALLENGES

According to lawyers and judges the following factors hurdle smooth justice delivery:

A. Illiteracy and ignorance of law among litigants:

Lawyers and judges claimed that illiteracy on part of the litigants hinders efficient pleading and trial of a dispute. As a result of the inability to read and write and lack of awareness regarding the law litigants were unable to relate the facts of the case properly and sometimes did not file cases on time. Lawyers were burdened with an additional responsibility of helping such litigants procure the necessary documents and preparing them for cross examinations.

B. Recruitment of Judges:

Several lawyers and senior judges expressed disappointment with the present system of recruiting judges to the lower court benches after a series of civil-service exams following their law school graduation. A major drawback of the latter approach, according to the judges themselves, is that often they preside over cases where seasoned lawyers are involved. On these occasions, the lawyers regularly tend to know more about the law than the judges, and that made the judges feel insecure, cautious, and unwilling to take more assertive leads during the case. Conversely, in cases where the lawyers are relatively new, there is an opposite effect that occurs. Here, younger lawyers frequently look to the judges for advice and guidance on legal issues pertaining to the case. Unfortunately, as those judges without a practice background conceded, because of their lack of experience, they are unable to provide this needed assistance. The resulting behavior by judges in both circumstances is to try to minimize any potential damage to their reputation and legitimacy.

C. Cases involving Government Authorities:

In cases against the government, lawyers, both senior and junior, highlighted that the government pleaders were extremely slack and worked very loosely. Often times a lot of corruption also took place in order to get the government pleaders to act efficiently. But lawyers representing the government had their own set of grievances. A wide communication/information gap between the lawyer and the concerned department against

whom the case has been filed placed advocates representing the government authorities in a tricky position. Unlike in their regular practice where the client provides them [the lawyers] with all the necessary documents of evidence and the real facts of the case, lawyers on the panel of a government body not only had to plan their pleading but had also to chase the government officials for the relevant documents and information. The problem only becomes more complex when officers get transferred and those who come as replacements have no idea about the history and background of the pending litigation. Possibly, what results from this is the non-appearance of lawyers for the government body, which is the exact problem highlighted by the lawyers appearing for litigants who have filed cases against a government body.

D. Inefficiency of Supporting Machinery:

Lawyers pointed out that the slack working of supporting machinery such as police officers, investigation officers and lower level revenue officials posed a grave hurdle in the pursuit of matters and their delay in the lower court.

E. Miscellaneous:

Lawyers highlighted that litigants' inability to pay fees as a result of their [the litigants'] financial constraints, absence of witness protection and lack of infrastructural facilities also posed a challenge to litigation in lower courts.

PERCEPTIONS ABOUT THE LOWER JUDICIARY:

A. About Lawyers:

Lawyers are appointed mostly through references from relatives and friends. In specialized quasi-judicial forums, such as the Maharashtra State Electricity Commission or the Maharashtra State Water Regulatory Authority, litigants usually appear in person as they [the litigants] have not found lawyers equipped enough to handle these cases which involve arguments on many technical issues requiring a specialized degree of knowledge so that the case is pleaded properly.

The primary causes for dissatisfaction with lawyers were: insufficient time given to the litigant, not appearing promptly when the matter is called out in court, demanding large sums of money as fees and not spending enough time to inform litigants of the case status and its progress. Good services were defined in terms of whether the lawyer was punctual, whether s/he [the lawyer] had been successful in the case, whether the lawyer heard the litigant out patiently and kept the litigant updated about the status of the case. Litigants whose lawyers were efficient and trustworthy claimed that they did not mind the increasing burden of fees, which they felt was worthwhile in this context. Lawyers who were close relatives were often well spoken off.

Judges had mixed opinions about lawyers. While there was consensus on the fact that there was a good rapport between the bar and the bench, in taluka courts particularly, judges felt that lawyers did not come well prepared to court, did not read their briefs properly; made improper pleadings; used the procedure in filing of applications and cross-examination periods as excuses to seek adjournments and were not very fair and honest. Judges emphasized the need for motivating lawyers towards improvement on these aspects considering that the fate of most litigants is actually written by the lawyer.

While lawyers were aware of people's views held about legal practice and their profession, they believed that the system was not empathetic to their position. Their practice was also a source of their livelihood and therefore insistence of timely payment of fees was only necessary. The amount of fees they could charge was limited by high court directions and competition, amongst other things. Lawyers shared how they often ended up paying for the commutation and court fee expenses of litigants who were constrained financially.

B. About Judges:

Opinions about the integrity of judges were positive. However, litigants and lawyers did highlight drawbacks in the working practices of judges and certain aspects of their approach and attitude. Judges were observed to be working only towards meeting the target rate of disposals. In comparison to the higher courts, in the lower courts cases were getting adversely impacted as a result of prejudiced approaches, inadequate knowledge, narrow perspectives, partiality and acceptance of weak evidence records on part of the judges.

Judges too do not dismiss the need to look at cases from beyond the mere procedure. They understand that law and procedure alone cannot assure 'justice'. However, the lower court being a procedural court, judges expressed that the scope of their engagement with cases was constrained. "That every dispute cannot be understood and decided within the four corners of law" is a fact that judges accept and acknowledge. What this entails therefore is for judges being able to exercise freedom.

C. About Alternative Forums of Dispute Resolution:

Alternative forums included state supported informal forums and additional forums and methods of dispute resolution that may or may not be working in tandem with the judiciary.

i) INFORMAL FORUMS:

The whole idea of 'absence of procedure' that dominates the working of informal dispute resolution forums was not well received by many judges and lawyers. It was felt that that the success of informal forums of dispute resolutions indicated a failure of the judiciary. This study looked at the state supported Tanta

Mukta Gaav Samiti (Dispute Free Village Committee) as a case study. While, the success of these Samitis has not been overwhelming, the fact that they are being accessed widely at the village level cannot be overlooked. The Samitis are formed in most villages in Maharashtra but the level of their activity depends on the enthusiasm and willingness of its members. In most instances, the absence of procedure and guidelines for functioning seems to have made space for power politics and undue biases. The Samitis are mostly accessed for petty criminal disputes, boundary disputes and a large number of matrimonial disputes. Litigants prefer brining land related disputes to court because land related disputes were perceived as 'complicated' and the members of these Samitis lacked the legal knowledge required to decide land disputes. It was felt that selection of presiding member on the basis of those who are empowered, educated and honest and have an intention to settle the dispute would go a long way in establishing the efficacy of this forum.

ii) LOK ADALAT:

The Lok Adalat was perceived to be functional, but slow. Most lawyers did not express any faith in the dispute settling capacities of the Lok Adalat as they claimed that only disputes that were already in the process of being compromised were placed before the Lok Adalat for quicker disposal.

iii) GRAM NYAYALAY:

Only a handful of Gram Nyayalayas are actually in existence in Maharashtra. However, these too are not active on a regular basis because the rules under the Act establishing these forums are still to be formed. However, the absence of formal procedure and encouragement of pleading sans lawyers had already made several lawyers and judges apprehensive about the establishment of this forum.

iv) QUASI-JUDICIAL BODIES:

Quasi-judicial authorities under the revenue department are most often approached both at the taluka and district levels where land related cases are in large numbers. At the taluka level approaching quasi-judicial authorities for dispute resolution is thought to be less expensive and quicker than litigating in court. The quasi-judicial authorities seemed to understand the on-ground situation; there was neither requirement of court fee nor a lawyer for pleading and most importantly these authorities are more amenable to public pressure, which fact was considered advantageous. In large towns and cities, however, quasi-judicial forums were not very popular and perceived to be politicized, marked by rampant corruption and lack of legal knowledge amongst the authorities and staff.

v) EVENING COURTS:

This was not considered a successful programme of the judiciary. Evening courts being arranged in the later hours of the evening, judges presiding over the regular court continuing to preside over the evening court and lack of time of lawyers to interact with their clients were some of the factors that slackened the efficacy of this forum.

vi) MEDIATION:

Mediation as a method of dispute resolution was promoted widely by lawyers and judges. It was found particularly appropriate for matrimonial disputes because the method gives the parties a chance to talk directly to one another and helps them to arrive at an appropriate solution themselves.

D. About Legal Aid:

Legal aid centres at both the district and taluka level court face a lot of challenges. There is very little awareness regarding availability of legal aid. The lawyers appointed to legal aid panel receive very meager fees, as a result of which they must strike a balance between their private practice and the requirements of the legal aid centre. This often hampers the quality of their work as panel lawyers. Litigants' claims represented by the legal aid panel, however, receive a lot of support from judges in terms of priority on the daily board and speedy hearings and disposals.

FAITH IN THE JUDICIARY: IN CONCLUSION

Analysing the litigants' experiences in court it can be observed that at the beginning they were very optimistic and hopeful about approaching the court for dispute resolution and only as time passed, did they eventually tend to get frustrated because they found that the processes were not easy to understand and matters were not disposed of speedily. With all the hurdles and frustrations, it may seem only natural that litigants would feel utter hopelessness, and perhaps even disdain towards the judiciary. Ironically such sentiment was not the case. In fact, when it came to attitudes vis-à-vis the courts, the litigants' faith in the judicial process, and specifically the judges, remained strong. Why?

As we were told, while the above issues prompted great dissatisfaction they paled in comparison to how these individuals felt treated by their elected officials, the police, and other civil servants. There was no scope for disputes against government agencies to be resolved at the village level and in the instance of private disputes litigants reported that seeking the assistance of elected officials or bureaucrats was not useful. The obvious isolation from legislators and civil servants leaves many litigants with little choice but to pursue the judicial route if they are interested in finding a governmental venue to redress their concerns. But it is also important to note the personal-agency aspect to this analysis.

The fact is that litigants are generally quite affirmative in their decision to engage in litigation. Even though there are many problems associated with pursuing claims in the lower tier, there remains faith among litigants that this process has legitimacy and that the judges, in particular, are comparatively more trustworthy and rights-oriented than their legislative and bureaucratic counterparts.

For these reasons, therefore, out of sheer necessity and hopeful aspiration, we argue that in order to best preserve and protect the economic and social rights of individuals at the grassroots, the judiciary needs to be the primary site of empowerment.

RECOMMENDATIONS:

It is obvious that more resources and greater financial commitment by the central government to the lower tier of the judiciary are critical to a transformation in how effectively and efficiently this institution functions. While fully cognizant of the previous studies, government commission reports and other proposals pertaining to the working of the lower judiciary, the recommendations that follow are based on one of the most extensive studies till date and add an important, empirically-based layer to the discourse.

i) An increase in the number of judges in district and taluka courts.
ii) An enhancement in the training and education for current judges as well as for those students studying to become judges.
iii) Establishment by the local Bar Associations of a clear structure of fees for lawyers.
iv) Improved infrastructure facilities for judges in terms of more judicial staff, better court rooms, and consistent electricity supply.
v) Better and increased infrastructure for lawyers and litigants, particularly at the taluka level courts.
vi) Curtailment of the inordinate number of appeals that lawyers are allowed to make under the procedural codes.
vii) Procedurally, the system could be better streamlined and the regular, specialized, and administrative courts could be organized in more efficient ways.
viii) Ensuring a court staff that is better equipped to deal with claimants' queries regarding the litigation process.
ix) Urgent addressing of the gender disparity and gender discrimination as reflected in lack of available and clean washrooms, the absence of security to protect them from routine harassment and intimidation, the unavailability of safe transportation to bring them to-and-from the courts to their residences, not enough seating in (male-dominated) waiting areas, and the gender-based verbal prejudice they receive are just a handful of reprehensible conditions that require remedies.

Much more needs to be done, but it is hoped that the lessons from this study will begin a substantive dialogue on how best to understand the problems plaguing claimants at the grassroots and then to find ways to make their lives better.

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The National Centre for Advocacy Studies (NCAS) is a social change resource centre that aims to strengthen people centred and rights based advocacy in order to empower advocates and facilitate the creation of a just and humane society. Though the focus of its activities is in India and the rest of South Asia, NCAS is emerging as a premier centre for people centred advocacy throughout the Global South. NCAS works to support and strengthen people-centred advocacy through capacity development programmes, research and documentation, and campaign support and networking

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