THE REFORM OF CIVIL PROCEDURAL LAW AND OTHER ESSAYS IN CIVIL PROCEDURE (1982). By Jack I.H. Jacob. Sweet and Maxwell, London. Distributors : N.M. Tripathi Pvt. Ltd., Bombay. Pp. xii+359. Price £18.50.

THE BOOK[1] consists of 15 essays, some of them are lectures delivered by the author. They deal with the defects in the law relating to civil procedure in the United Kingdom and suggestions for their removal. The problems discussed are peculiar to English law, though some suggestions are relevant in the context of Indian law.

The first topic, 'The reform of Civil Procedural Law',[2] is the 8th Lord Upjohn lecture delivered in 1979. The author points out the importance of civil procedure in any civilised country and says that an ideal system of civil procedure should satisfy the following requirements, namely, (*i*) unimpeded access to justice at all levels open to all citizens, irrespective of whether the claims are large, modest or small ; (*ii*) equality in the operation of the machinery of justice and adequate and effective legal aid, advice and assistance ; (*iii*) elimination of technicalities and formalities in the administration of justice ; (*iv*) removal of conflicting jurisdictions between courts and tribunals ; (*v*) reduction in the burden of costs, making available resort to courts ; (*vi*) delays be avoided ; (*vii*) extension of pre-trial procedures to encourage settlements; (*viii*) conciliation procedures be tried ; (*ix*) provisional and protective measures be extended pending trials ; (*x*) gearing of adversarial methods to the merits of the case and not legal tactics ; (*xi*) increasing efficiency in judicial administration ; and (*xii*) simplification of appellate procedures.

The advantages of integrating the county courts, other courts and tribunals with the High Court and the alternatives to such fusion are next discussed. The author then proceeds to say that selection of judges should be such as to evoke public confidence in the judiciary ; and that judges and legal practitioners should be better trained. The author makes some suggestions about written procedures, pleadings, discovery, injunctions, pre-trial procedures and appeals. This reviewer is of the opinion that all these suggestions are already incorporated in the (Indian) Civil Procedure Code 1908. What is basically wrong with the Indian judicial system is that there are not enough courts, the recruitment is not of the best men, but based on communal reservations and other considerations, and the advocates do not fight a case on merits but resort to legal tricks. The presiding officers know this but they do not use the provisions of the code and put them down ; and so, the vicious circle goes on.

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1. Jack I.H. Jacob, *The Reform of Civil Procedural Law and Other Essays* (1982).
2. *Id.* at 1-35.

In the essay 'Courts and Methods of Administering Justice',[3] the author develops more fully the theme of reorganisation of various courts and tribunals in the United Kingdom. Various suggestions are offered regarding the procedure to be adopted in the trial and appellate courts. These are geared to certain objectives, namely that there should be, (*a*) minimum of delay ; (*b*) minimum of expense to the litigants ; and (*c*) maximum of effectiveness. The suggestion for the provision of only one appeal is boldly made. Eight questions are then posed which require a thorough examination for overhauling of the methods of administration of justice. One of these is the question whether the House of Lords should continue as the final court of appeal.

Many of the author's suggestions, as for instance a more effective use of affidavits of witnesses, are already available in the Indian code. One suggestion, namely, the use of written arguments in the appellate court, is a matter on which the reviewer is in full agreement, his view being that written arguments may be read out in court and elaborated *only when necessary* by oral arguments. Such necessity would arise only in the event of the court requiring a further clarification. It is submitted with respect that the idea of written arguments be fully explored in the Indian appellate courts.

Under 'The Administration of Civil Justice',[4] the issues and main suggestions put forth are : (*a*) greater ease in the access to justice for every citizen ; (*b*) without going to the opposite extreme of an 'inquisitorial system', whether a proper balance can be struck between the present 'adversarial system' prevailing in English courts, where the judge is merely an umpire to make sure that the rules of the game are properly played, and a system where he plays a more active part before and during trial of cases ; (*c*) the structure of courts and tribunals; (*d*) pre-trial proceedings; (*e*) the appellate court and written arguments ; and (*f*) legal aid.

The Indian code does not prevent anyone—even the poorest—from having access to courts or tribunals. Both the Civil Procedure Code and the Evidence Act, permit Indian judges to take an active part in the trial. In fact, they are designed for that purpose. As has been pointed out above what is wrong with the Indian judicial system is that the courts do not vigorously enforce the provisions of the code. As regards written arguments also, the reviewer has already expressed his views. As far as legal aid is concerned, while steps are being taken to see that legal advice and assistance are available to the poorest litigant, the main problem in India is the citizens' ignorance of their rights. This can only be eradicated with the spread of education. Religious fundamentalism is another obstacle in the progress of our country. Unless the population growth is controlled and until the size becomes manageable, no reform can work and illiteracy cannot be got rid of.

3. *Id.* at 37-57.
4. *Id.* at 59-90.

How delay affects justice is pointed out in 'Accelerating the Process of Law'.[5] Jacob discusses the bane of delay in judicial process and observes that if procedure lies at the heart of law, expedition lies at the heart of procedure. In his view the challenge is within the peculiar domain and responsibility of lawyers. He reverts to his theme of restructuring the courts and tribunals in the United Kingdom, the adversarial system, written arguments, the responsibility of litigants, their witnesses and the lawyers representing the litigants, and of the judiciary, while discussing other remedies like pre-trial procedures.

In India, while the courts should strictly enforce the salutary provisions of the code and refuse adjournments, the main responsibility lies with the advocates appearing in the case. Their anxiety is more often to win a tactical victory over the opposite side than to get on with the case. Unless there is a real change of heart among the advocates and the judges are more strict, the problem of delay in India can never be seriously tackled. A lawyer from the United States once remarked that the legend which Dante saw at the portals of Hell—Abandon hope all ye who enter here—should be inscribed on every court, unless delays in the administration of justice are rooted out.

Under the head of 'Access to Justice in England',[6] the author once again reviews all his previous suggestions, but in greater detail. He has discussed a few new topics like public interest litigation, restrictive trade practices and the necessity for a change in some areas of substantive law. Attention has been drawn to the difficulties existing in enforcing decrees, the high costs of litigation, delays and uncertainties of the law, the inaccessability of courts due to distance, the necessity for legal aid, the advantages of, and alternatives to, tribunals. With respect to public interest litigation it appears that the House of Lords is insistent upon *locus standi* being established strictly. On this aspect, it is refreshing to note that the Indian Supreme Court is much more liberal. As regards restrictive trade practices the jurisdiction of the Indian Monopolies Commission has been considerably enlarged. With respect to other aspects like enforcement, costs, delays and uncertainties of law, inaccessability of courts on account of distance, we in India suffer very much more. One reason is that courts easily grant adjournments. Unless advocates stop asking for them on frivolous or false grounds and the courts are more strict, delays would be unavoidable. It is, therefore, necessary that we should also bestow urgent attention on these matters as urged by the author. As regards tribunals, the reviewer is of the view that they are not necessary in India and the work can easily be handled by the courts. What we really need is more courts. The necessity for tribunals arose in the United Kingdom because the strict rules of the English law of evidence would not allow evidence

5. *Id.* at 91-123.
6. *Id.* at 125-170.
7. *Id.* at 171-191

of economic and social data to be brought before the court. But in India, the law of evidence and a liberal use of affidavits permitted by the code enable even an ordinary court to deal with socio-economic questions.

The topic 'The English System of Civil Proceedings', is really a description of the system and is necessarily similar to that of India, because of its really being based on the English system without many of its technicalities.

The next topic dealt with is 'Civil Procedure since 1800',[8] which again is a description of the English system. This traces the history of the system very succinctly—the development of common law and equity as well as procedures of the courts.

Under the head of 'The Inherent Jurisdiction of Courts',[9] the author after discussing its historical development seems to conclude that the (Indian) Code of Civil Procedure meets the requirements of inherent jurisdiction better. He observes:

> [T]he inherent jurisdiction of the court may be defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, and in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them. A definition somewhat to this effect may be found in the Indian Code of Civil Procedure, which provides:
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> > 'Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.'
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> It may be objected that this view of the nature of the inherent jurisdiction of the court postulates the existence of an amplitude of amorphous powers, which may be arbitrary in operation and which are without limit in extent. The answer is that a jurisdiction of this kind and character is a necessary part of the armoury of the courts to enable them to administer justice according to law.[10]

From a discussion of "The Present Importance of Pleadings",[11] the author concludes that "pleadings can serve the best interests of the administration of justice, which is after all what concerns all of us."[12]

Merely because a hundred years ago, the Judicial Committee of the Privy Council observed that 'pleadings in India are not drawn up properly,'

8. *Id.* at 193-220.
9. *Id.* at 221-242.
10. *Id.* at 242.
11. *Id.* at 243-257.
12. *Id* at 257.

courts, even today are not strict about what pleadings should contain and the effect of bad pleadings. It is very necessary that young advocates be trained in drafting of pleadings and it is equally necessary that courts should not easily allow amendments to them. It is only if they are more strict that the advocates will be more careful.

All the remedies discussed in 'Pre-Trial Remedies in England'[13] are available under the Indian code, but alas! they are seldom made use of except injunctions. The 'Enforcement of Judgment Debts',[14] deals with what we in India call 'execution'. There does not seem to be much difference in the English law and order XXI of the (Indian) Code of Civil Procedure. Difficulties appear to be there in both countries in the way of a successful decree holder realising the fruits of his decree, but in India it is well-known that its execution takes as much time as that in obtaining it.

The last four topics namely 'The Judicature Acts 1873-1875—Vision and Reality',[15] 'The Machinery of the Rule Committee of the Supreme Court',[16] 'Later Legal Records and the Historians'[17] and 'The Masters of the Queen's Bench Division',[18] are informative but of special interest only to an Englishman or perhaps a legal historian of comparative law.

The book written in a clear but racy style, makes enjoyable reading. Today in India we are trying to reform the judicial system and successive Chief Justices and law ministers are trying to evolve methods of dealing with arrears and delays in courts. Insight after all lies in asking questions. The questions have been asked by Jacob and he has attempted answers. The questions are staring at us in India. This book is bound to help the reformers in their search for a suitable method for India.

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13. *Id.* at 259-277.
14. *Id* at 281-300
15. *Id.* at 301-321.
16. *Id.* at 323-334.
17. *Id* at 335-348.
18. *Id.* at 349-354.

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