

Judicial Reforms – Need of the Hour

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1. An independent and impartial judiciary, and a speedy and efficient system are the very essence of civilization. However, our judiciary, by its very nature, has become ponderous, excruciatingly slow and inefficient. Imposition of an alien system, with archaic and dilatory procedures, proved to be extremely damaging to our governance and society. As Nani Palkhiwala observed once, the progress of a civil suit in our courts of law is the closest thing to eternity we can experience! Our laws and their interpretation and adjudication led to enormous misery for the litigants and forced people to look for extra-legal alternatives. Any one, who is even remotely exposed to the problem of land grabbing in our cities, or a house owner who finds it virtually impossible to evict a tenant after due notice even for self-occupation, can easily understand how the justice system failed.
2. In the process, a whole new industry of administering rough and ready justice by using strong-arm tactics to achieve the desired goals has been set up by local hoodlums in almost all of our cities and towns, and increasingly in recent years in rural areas. The clout and money these hoodlums acquire makes sure that they are the ones who later enter political parties, and eventually acquire state power. There are countless examples in almost every state in India of slum-lords, faction leaders, and hired hoodlums acquiring political legitimacy. Most of them started their careers attempting to fill the vacuum created by judicial failure through extra-legal, and often brutal methods. In addition, the courts have tended to condone delays and encourage litigation and a spate of appeals even on relatively trivial matters.
3. The higher courts have taken on themselves too much, making it impossible for them to be able to render justice speedily and efficiently. The writ jurisdiction became pervasive and everything under the sun is somehow made a subject matter of the writ. For instance, the transfer of an employee in a public sector undertaking has become a matter of writ jurisdiction by very involved and dubious logic. Such absurdities undermined the authority of judiciary and caused enormous damage to public interest. To take another instance, the courts have time and again ruled that cooperatives are public institutions, and are creatures of state, whereas in fact cooperative theory and practice throughout the world clearly envisage that a cooperative is a collective private body, created to further the economic interests of the members in accordance with the principles of cooperation. This mind-set that state could intervene everywhere, and that such intervention by definition is good, ensured that the people's institutions could not flourish in an atmosphere of freedom, self-governance and autonomy. At the same time, state's power even to control its own employees and enforce discipline has been severely eroded. As a net result, the judicial process only helped to accelerate the decline in governance.
4. Right to life and liberty, the most vital freedoms guaranteed in the Constitution, could not be adequately safeguarded. Judiciary is over-burdened and rendered ineffective with unnecessary litigation, delayed procedures, obsessive concern with the livelihood of advocates at the cost of justice to litigant public and indiscriminate application of writ jurisdiction. Excessive case load meant that most orders emanating from courts would be by nature of granting stays instead of adjudication. The age-old village institutions for justice were allowed to wither away completely. Local people, who know all the facts, have neither the means nor access to go through complicated, incomprehensible court procedures. Touts flourished and justice suffered. As a result, most citizens avoid courts except in the most extreme circumstances, when they have absolutely no other recourse available.
5. Essentially, the failure of the civil and criminal justice system is manifesting in abnormal delays in litigation and huge pendency in courts. While accurate statistics are not available, it is estimated that approximately 38 million cases are pending in various law courts all over the country. While 20 million cases are pending in district courts, High Courts and Supreme Court, about 18 million cases are said to be pending in lower courts. At the end of 1995 it was estimated that around 58 lakh criminal cases were pending trial, while 17.3 lakh cases have been disposed of during the year accounting for 23 percent. In 1994 for example, disposal of cases in our courts was around 17 percent. The conviction rate is abnormally low with only 6 percent cases resulting in conviction. Even in cases involving

extremely grave offences with direct impact on public order and national security, there are abnormal delays. For instance, it took our criminal justice system more than seven years to convict the murderers of Rajiv Gandhi in Sriperumpudur in 1991. There are harrowing tales of innocent citizens accused of petty offences languishing in jails as under-trial prisoners for decades. Most often, the time spent in prison during trial exceeds the maximum punishment permissible under law even if the person is proved guilty!

6. The delays, the habitual use of English as language of discourse even in trial courts and the extreme complexity and the tortuous nature of our legal process made justice highly inaccessible to a vast majority of the people. It is estimated that India has only about 11 judges per million population, which is among the lowest ratios in the world. The cases pending exceed about 30 thousand per million population. Obviously it is unrealistic to expect the law courts to deal with this abnormal case-load or to be accessible to people. The delays, the complexity and the unending appeals make litigation inordinately expensive in India. While astronomical fees are charged for legal consultation by high-priced lawyers practicing in the higher courts, even in the lower courts cost of litigation is prohibitive and beyond the reach of most citizens.
7. The failure of the justice system has several disastrous implications in society. As Gladstone observed, the proper function of a government is to make it easy for the people to do good and difficult for them to do evil. The only sanction to ensure good conduct and to prevent bad behavior in society is swift punishment. In the absence of the state's capacity to enforce law and to mete out justice, rule of law has all but collapsed. Even in civil matters, the sanctity of contracts and agreements has lost its relevance because of the courts incapacity to adjudicate in time. Equality before law, though constitutionally guaranteed, has remained a notional concept on paper. In reality the vast masses of the poor and illiterate people are relegated to the margins of society in the absence of a fair and effective justice system which is accessible to all. As a result, extra-legal mechanisms for redress of grievances and for providing rough and ready justice has sprung up all over the country. The foremost cause for increasing criminalisation of society and politics is the failure of the justice system. The Election Commission estimates that more than 700 of the 4072 legislators in all the states have criminal records against them. Even if heroic and successful efforts are made to disqualify all these persons with criminal record from contesting, the problem will continue to grow unless justice administration improves dramatically. While a section of criminal gangs indulges in violent crime and graduates into politics using the money power so acquired, most organised crime in recent years is involved in informal adjudication of disputes backed by a threat of brute force and violence. As the courts have failed to deliver justice, there is a growing demand for such gangs which can enforce rough and ready justice.
8. In a large measure, the failure of justice system meant that no entrepreneur or businessman or even ordinary citizen could rely on law courts to enforce contracts and agreements. The undermining of the sanctity of contracts and agreements has had a very debilitating impact on investment production and economic growth. The failure of the criminal justice system has led to the near break down of public order in many pockets of the country. This, coupled with the many inadequacies of functioning of the police have led to a crisis of governability in India. The arbitrary and unaccountable functioning of the police has led to complete alienation of many citizens from the state. Added to this, the complete politicization of the police force led to highly partisan crime investigation. Elected governments have been habitually abusing their powers to drop serious criminal charges against their supporters and to foist false cases against their opponents. The broad nexus between the politician, criminals and policemen has come to stay, vitiating the governance process and undermining social stability and harmony.
9. This alarming situation calls for speedy remedial matters. These measures should be practical and effective while they are in consonance with the basic features of the Constitution. The judicial reforms as envisaged should be capable of providing speedy and efficient justice accessible to the ordinary citizens. At the same time, they should respect and protect the independence of the judiciary. Equally important, measures should be taken to enforce accountability of the judiciary. Several Law Commission reports and Police Commission reports have eloquently made out a case for many specific

and practical judicial reforms. However, no effort has been made to implement these recommendations. While a lot has been, and is being said about the failure of the justice system, precious little has been attempted to address this growing crisis. The following are some of the major reforms that need to be implemented without further delay.

Rural Courts for Speedy Justice

10. Perhaps the most important practical reform would be constitution of rural courts for speedy justice. As already stated, the number of judges in our society is slightly over 10 per million population. This density is roughly ten percent of the density of judges (per unit population) in more advanced and law-abiding societies. Even this low number is highly skewed with pitiful shortages in subordinate judiciary and ridiculously large numbers in higher courts. The Supreme Court, which was originally designed to consist of a chief justice and not more than 7 other judges has now been expanded to a total strength of 26. The high courts have even larger numbers of judges. The Andhra Pradesh High Court for instance has 39 judges! All these hundreds of high court judges in effect sit as constitutional courts every day with the power of interpreting the Constitution, and quashing laws on the ground that they are unconstitutional! In contrast the United States Supreme Court has only 9 judges and the Supreme Court alone sits as constitutional court, though other Federal Courts have limited powers to interpret the Constitution. Obviously what is needed is a substantial increase in the number of judges at the local level giving access to the ordinary people. In addition to the number and access, the procedures of these local courts should be simple and uncomplicated giving room for sufficient flexibility to render justice. These courts should use only the local language and they should be empowered to visit the villages and hear the cases and record evidence locally. Above all they should be duty bound to deliver the verdict within the specified time frame. There could be several models like the 'gram nyayalaya' advocated by the Law Commission in its 114th report. Essentially, there should be such rural courts with special magistrates with jurisdiction over a town, or a part of a city or a group of villages. These special magistrates should be appointed by District Judge for a term of 3 years. They should have exclusive civil and criminal jurisdiction of, say all civil disputes up to Rs one lakh in civil cases and up to an imprisonment of one year in criminal cases. In addition, certain civil disputes arising out of implementation of agrarian reforms and allied statutes, property disputes, family disputes and other disputes as recommended by the Law Commission could be entrusted to these rural courts. In civil cases there should be only a provision for revision by the District Judge on grounds of improper application of law and on no other ground. In criminal cases where imprisonment is awarded, there could be a provision for appeal to the Sessions Judge. The procedures must be simplified and these courts should be duty bound to deliver a verdict within 90 days from the date of complaint.

Indian Judicial Service

11. In the subordinate courts there have been inordinate delays and varying levels of efficiency. It is high time that the Indian Judicial Service (IJS) is created as an All India Service under article 312 of the constitution. All the offices of the District and Sessions Judges should be held by persons recruited to such a service after adequate training and exposure. Only such a meritocratic service with a competitive recruitment, high quality uniform training and assured standards of probity and efficiency would be able to ensure speedy and impartial justice. A fair proportion of the High Court Judges could be drawn from the Indian Judicial Service.

Judicial procedures

12. The civil and criminal procedure codes and the laws of evidence have to be substantially revised to meet the requirements of modern judicial administration. While the principles underlying the procedural law are valid even to day, in actual practice several procedures have become cumbersome,

dilatory, and often counter-productive. Simultaneously in all trial courts the local language should be the only language used. There should be time limits prescribed for adjudication. The stays, and endless adjournments should be firmly curbed. The right to get justice within one year in a criminal case and 2 years in a civil case should be constitutionally guaranteed. All the procedural laws should be suitably amended to ensure that such a constitutional right is enforced. There should be strict limitation of appeals and only one appeal should be permitted in civil cases. The appeal should be heard and verdict delivered within 3 months in a criminal case and within 6 months in a civil case. All stays should be prohibited except in exceptional circumstance for reasons specifically recorded in writing and no stay should exceed 15 days. The time limits for adjudication should be strictly adhered to even in cases involving stay orders.

Higher Courts

13. The number of judges in the higher courts should be substantially reduced and their appellate jurisdiction should be severely restricted. The Supreme Court jurisdiction should be limited only to matters involving interpretation of the Constitution or disputes between two States or Union and States. In effect, the Supreme Court should function only as a Constitutional Court and a Federal Court. The high courts should not have the power to interpret the Constitution except in matters involving the State legislation. The appellate powers of high courts should be severely restricted in order to reduce the case load and ensure the sanctity and authority of the high courts. The number of judges in high courts should be significantly reduced. Matters relating to taxation, disciplinary action against employees and labour disputes should be completely beyond the purview of ordinary law courts. They should be entrusted to the special tribunals with no provision for appeal to higher courts except on grounds of interpretation of the Constitution. The writ jurisdiction which has now become all-encompassing should be strictly focused on right to life, liberty and equality before law. The creative expansion of writ jurisdiction that has become the order of the day should be firmly curbed. Where the writ is applicable, the courts should have complete and unfettered powers to enforce their directives.

Judicial Commission

14. The present mechanism for appointment of judges of higher courts has become very dilatory and ineffective. The Supreme Court's judgement arrogating to itself the complete power of appointment of judges has made the remedy worse than the disease. It is absurd to assume that in a democratic society any organ of state should perpetuate itself without any degree of accountability to the people as the ultimate sovereigns. Nowhere in the democratic world have the executive and legislature been made so utterly impotent in matters relating to judicial appointments as in India. This incestuous practice of judiciary being managed entirely by itself is both self-serving and often counterproductive. Society has great stakes in judicial appointments, and judges, however exalted their position is, are mere mortals and servants of the public. Obviously, it is high time that a Judicial Commission of high standing is appointed with members drawn from the judiciary, the executive and the legislature and their recommendation is made binding on the President in all appointments to the higher judiciary. Similarly the provision for removal of a judge of the Supreme Court or High Court under article 124 (clause 4) has become inoperative in practice. As Justice Ramaswamy's impeachment case has amply proved, the Indian Parliament has lost the capacity to act as a court in such impeachment trials. As a result, under the present dispensation a judge is appointed solely on the recommendation of the judiciary, and no judge can ever be removed in practice no matter how horrendous his conduct is or how inefficient his functioning is. Such a situation can only lead to judicial terrorism and result in unmitigated disaster to the governance process and society. Therefore the Judicial Commission should be empowered to try an errant judge and upon the recommendations of the Judicial Commission the President should be empowered to remove the judge held guilty of high crimes and misdemeanors.

Crime Investigation

15. The combination of several functions including crime investigation, riot control, intelligence gathering, security of state properties and protection of important citizens – all in a single police force has had a

devastating effect on criminal justice system. The police forces have become inefficient and increasingly partisan. As the government of the day has complete powers over the crime investigation machinery as well as the legal authority to drop criminal charges against the accused, crime investigation has become a play thing of partisan politics. It is therefore vital to create an independent wing of police force fully in charge of crime investigation and functioning under the direct control of independent prosecutors appointed as constitutional functionaries. The criminal courts should hold the prosecutors and the crime investigation police force accountable to them in their overall functioning. Only when crime investigation is thus insulated from the vagaries of politics can there be any fairness and justice to ordinary citizens. Equally important, only when crime investigation machinery is accountable to judiciary can the obnoxious and inhuman practice of torture, third degree and extra judicial executions in fake encounters be stopped.

16. As can be seen, there is an extremely strong case for urgent and far reaching reforms in our judiciary. For about two decades after independence, most people reposed their faith in the political class to govern wisely and to ensure freedom and justice to all. Over the next two decades, as politicians have become the objects of scorn and ridicule, the public relied heavily upon the higher civil services for ensuring probity, efficiency and impartiality in administration. As the bureaucracy also has lost the trust of the general public in a large measure, in recent years the people have come to recognise the judiciary as the last bulwark against the abuse of executive authority and for providing justice. However the judiciary is collapsing under the weight of the case load. Also there are serious questions about the efficacy, impartiality and integrity of judiciary at certain levels. There is an increasing unease and disquiet about the functioning of the judiciary and the character, competence and commitment to public service of several judges, particularly in the subordinate judiciary. If these challenges are not recognised immediately and if far reaching judicial reforms are not initiated with a great sense of urgency and devotion, the judiciary may also fall in public esteem endangering the whole civil society and adversely affecting the public good. The judiciary should recognise that it is an organ of state with the sole objective of serving the public in a fair, efficient and accountable manner. Its loyalty should only be for public good and speedy justice and not to the convenience of advocates or politicians or bureaucrats. We have been singularly fortunate that several outstanding judges over the decades have ensured that judiciary can function in an independent and fearless manner. The time has now come when concerted efforts should be made to make judiciary efficient and effective without usurping the functions of the other organs of state.

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