BOOK REVIEWS

SEARCHING FOR SUCCESS IN JUDICIAL REFORM: VOICES FROM THE ASIA PACIFIC EXPERIENCE (2009). By Asia Pacific Judicial Reform Forum. Oxford University Press, New Delhi. Pages xv + 330. Price Rs. 750/-.

THE BOOK under review has been arranged under five different chapters excluding the introductory chapter along with a couple of annexures. In the introductory chapter, Livingston Armytage outlines the objectives of this book. In this, the emerging experiences of judges, court administrators, lawyers and researchers engaged in judicial reforms have been gathered. This collection focuses more on the experience rather than theory, to develop insights which build from authors' learning from their work as judicial reformers. This analysis indicates the existence of ten themes, or what Armytage called, the overarching challenges, that have confronted the passage of judicial reform over the recent years. These challenges are related to goals, leadership, independence, capacity for change, training, integration, community, donors, data and results. The experiences contained in this book ultimately suggest that it is the nature and quality of leadership which is crucial to the success of judicial reforms. In doing so, the leadership is expected to interact with other stakeholders in the executive, community and with donors that need to be managed effectively.

Explaining the reform context, it is observed that the judicial reform is important because it is concerned with the quality of justice that embodies the fundamental notions of fairness and equality that are essential to human civilization. Judicial reform has more recently spread in the form of 'rule of law revival' across the developing world to Asia and the Pacific as a means to promote human rights, good governance, and poverty eradication. As such it has become a big business that has been supported by numerous multilateral and bilateral donors in a variety of programmes involving billions of dollars. The reforms have been broadly classified as procedural or 'thin' reforms and substantial improvements in justice or good governance or 'thick' reforms, the latter being rather elusive. As such the lack of visible results are attributed to two deficiencies, the first being the 'development practice' that relates to the need to redefine objectives, development logic, and implementation strategies to improve the linkage between purpose and results. The second deficiency, the 'evaluation practice' requires increased investment in improving performance data, monitoring and evaluation.

In an attempt to search for a theory, two competing schools exist. The first one which is prevalent comes from the economic domain, defined by legal economic philosophers who see the role of the state as being to support

the market by providing key institutions such as the courts, the ability to secure investments and property rights and to adjudicate commercial disputes. In this context, judicial reform often coexists with legal reform, and makes up a package of three core components involving changing substantive laws, focusing on law-related institutions; and addressing the deeper goals of governance, compliance with the law, particularly in the area of judicial independence. The second theory provides a more defensible justification and approach for judicial and legal reform, relying on Amartya Sen who saw justice as fundamental to the creation of social opportunities and the expansion of human capabilities because they contribute directly to the quality of life and links with state's role to supply public goods such as health, education, and effective institutions for the maintenance of local peace and order. Observations also relied on the themes of John Rawls, David Trubek, Alvaro Santos as well as the approach of the United Nations.

After briefly explaining the contents of each of the chapters, the ten challenges to judicial reforms as mentioned earlier have been identified by Livingston Armytage along with the techniques of overcoming these challenges. They have been discussed in the context of the experiences from the Asia Pacific region, both donor driven or otherwise. No specific format of judicial reform could be suggested as the complexities in the region are diverse. However, he viewed that the experience and insights contained in searching for success will provide an inspiration for judiciaries to seize the leadership of reform, to refine understanding of the purpose and means to improve substantive as much as procedural justice, to engage more closely with other reform actors towards improving justice.

In the first chapter on Securing Justice, Mohan Gopal's contributions on 'Development and Implementation of Reform Initiatives to Ensure Effective Judiciaries' focuses more on the Indian experience on judicial reform. Mohan Gopal has rightly observed that judicial reform cannot be manufactured based on what the donors want, but it must be grown based on local conditions (home grown). Only then, there will be higher chance of sustainable success. Citing judicial reforms in India, Mohan described the result as irreversible and effective. Pointing out that the central difficulty in evaluating the judicial reform is the lack of clarity about the goals of judicial reform and on the role of judiciary. In the absence of such clarity, evaluation is of limited value. Again, he pointed out that assessment of judicial evaluation is based on the evaluation of outputs rather than outcomes (impacts). While quantity is used as an indicator of the performance of judicial system, quality indicators are more difficult to establish.

He also observed that the agenda for judicial reforms must be developed and managed in a participating manner involving all stakeholders like civil

society organizations, academia, government and the judiciary itself. He raised the question as to who should lead the judicial reforms, executive or judiciary, and observed that different models have emerged in this regard. Enhancing justice should be the central focus of judicial reforms. He cited V. R. Krishna Iyer's J contribution to judicial reforms in India that has been initiated by the court itself. The most important consequence of judicial reforms in India has been the emergence of public interest litigation that has had a profound influence not only on the judicial system but on the course of national development in India as well.

Mohan concluded by saying that the home grown judicial reforms in India has left little or no role for the external donors, without even being referred to as judicial reforms. Such a reform has come from the jurisprudence of the courts on justice, rather than organizational reforms, thereby reversing the traditional sequencing of reform programmes.

Thus the Indian example is an argument for reversing the sequence of judicial reforms as currently approached, and for an integrated approach involving three dimensions viz., institutional frameworks, efficiency of judiciaries and the role of justice. He even went further to compare the Indian experience as more closely approximating the judicial reforms in industrialized countries. He observed that certain issues like judicial arrears are yet to be fully addressed in India. In spite of this, Indian judiciary has transformed itself to a key force promoting not only democracy and human rights but sustainable development as well as economic investment and growth, he observed.

In the second chapter by Zenaida N. Elepano on 'Case Management Reform: The Philippine Experience', an attempt has been made to look at the impact of the pilot project and the way forward. The 'Case and Caseflow Management' (CFM) project was implemented in the Philippines during 2003 for the trial courts has been a ground-breaking reform in resolving many issues in the judicial process. Apart from this, the project had challenged the judges to assume a more activist-interventionist role in the management of cases. The CFM is basically a management technique to supervise the time and events involved in the movement of a case through the court from the filing till its final disposal. With the adoption of CFM, the courts were able to dispose of cases much faster than before. Towards achieving this end, the timelines for case events were fixed reasonably. Secondly, the CFM also adopted the 'Differential Caseflow Management' (DCM) that categorized cases into fast, complex and standard tracks depending upon their needs of management and monitored systems and other strategies like referral of cases to mediation, modes of discovery, and effective pre-trial techniques to reduce litigation costs in terms of time and money, thereby promoting access to justice.

It was also realized that the nexus between case management and information technology (IT) is crucial. Based on this link, it was possible to modify the CFM software programme wherever required. This involved regular and ongoing training programme to develop required competency among the staff. This pilot promgramme was monitored and it revealed that 95% of CFM civil cases and 90% of CFM criminal cases were disposed off in accordance with the designated timeframes at the level of metropolitan trial courts. However, at the regional level, it was only 23.5% disposal of all cases at the regional trial court level owing to a failure to administer time limits, insufficient technical know-how and unexpected vacancies.

Thus CFM can work effectively provided there is genuine commitment exhibited by the courts. It was also observed that a successful case management programme should be coordinated with activities of other government agencies that relate to the administration of justice, bar associations, the prosecution, the office of public defender, the social welfare and services department, law enforcement and corrections, and rehabilitation agencies. It is to be noted here that the role, if any, of the legal educational institutions seems to have skipped the attention of the authors and the project as a whole.

An interesting observation has been made in this chapter, that 'there is unanimity in the belief that unless the court actively controls the progress of its cases, the caseload will control the court' makes a lot of sense and sums up the conclusion of this study. Thus the need for a paradigm shift in the judicial attitude towards responsibility for case management got further strengthened. Along with CFM, a technique called 'Differential Case Management' (DCM) was also adopted in which the cases were clustered into those needing very little judicial intervention, those requiring more judicial attention, and those where ordinary judicial effort was sufficient. To address the needs of these clusters, fast track, complex track, and standard track processes were formulated. Similarly, the traditional approach of 'the first in – first out' policy of case handling must also be abandoned. Reliance on electronic forms, considered as part of the CFM, should be encouraged. Apart from these findings, a series of lessons learned are also provided in this chapter.

In the third chapter, 'Backlog Reduction: The Indonesian Experience' by Paulus E. Lotulung, Aria Suyudi, Rifqi S. Assegaf and Wiwiek Awiati, provides insights into how along with the technical aspects, other factors can also contribute to the backlog reduction. The object kept in mind was not simply to reduce the backlog, but to establish a caseflow management system. However, it failed to address the fundamental causes that generated the backlog.

The Supreme Court of Indonesia developed an action agenda and by establishing a permanent caseflow management system in an attempt

not only to reduce the backlog, but also to reduce the chance of backlog reoccurring. The reliance on information technology, defining the phrase 'backlog', consultative process within the judicial system as well as with its partners, supportive leadership, organizational change and simple information management procedures have contributed to the reduction of backlog. All these could be realized with the Supreme Court transferring to itself the financial and human resource management of all lower courts from the executive and encouraging wider participation of stakeholders.

The Supreme Court of Indonesia took the following initiatives. The Parliament consistently enacted necessary laws to shorten the duration of each stage in litigation process, reduced the steps required to pass the final decision and have a fixed time schedule within which the litigation must be completed. Provisions were also made to move the Supreme Court directly. Improved case management system, defining backlog as cases pending up to 2007 and lack of reliable case data were addressed. An improved approach to respond to the problems, case audit, analysis of case audit data, post audit reform initiatives have all contributed to the successful change in the case management process. All these and other future successes can be sustained only by court support staff who need to have a series of objective work performance standards and indicators that can be used to measure the efficiency of their work and provide clear performance standards.

The fourth chapter on 'Barriers to Accessing Justice: The Vanuatu Experience', Anita Lowitt defines justice as 'a standard of human conduct based on the values of freedom, equality, dignity, equity and fairness which is based on the generally accepted standards of human conduct found in various international human rights documents. Four key messages from the experience of Vanuatu were identified. Firstly, the improvement of access to courts is only one part of access to justice. Improving the quality of justice is a multifaceted challenge. Secondly, judges can act as agents or leaders of change by proactively improving the operation of the courts. Critical in this process is creating the climate in which the judiciary sees leading change as a legitimate role. In the third place, community and stakeholder involvement in identification, development and implementation of reforms is also necessary. Finally, it was argued that the court system can draw on commonly used, local, non-formal dispute resolution systems to strengthen its relevance and reach. In addition to this, this island nation's experience proves that the reform process is home grown and not imposed from above.

Anita while explaining the reform experience, mentioned about 'double-marginalization', meaning thereby the inability of some marginalized people from accessing justice either through the customary law system or through the

court system. The impact of erratic economic status, weak human development performance and the deficiency in English language has barred access to justice. With a couple of case studies undertaken, Anita was able to prove that the traditional courts were not able to handle the land disputes through customary institutions and procedures.

However, she observed that the attempt to improve the Island court was partly successful because of the fact that the problems and solutions were developed locally. It was also suggested that in implementing any reform, there must be follow-up evaluation. The patriarchal nature of the society and very limited women's participation in social and political sectors, the Parliament have not contributed to the protection of the vulnerable in Vanuatu. However, during the past couple of decades various measures have been taken up to provide some specific status to women in that country.

The next chapter by Ayesha Dias entitled 'Shared Challenges in Securing Access to Justice: The Indian and Sri Lankan Experiences' began with the two core propositions for judicial reform as per the Manila Declaration. The first one is that a twenty-first century civilization must be grounded in the rule of law and must provide access to justice for all and the second one that an independent judiciary is needed to secure the rule of law and to promote and provide access to justice for all. Towards this, the states are required to remove any regulatory, social or economic obstacles that prevent or hinder access to justice. Again, such obstacles are to be addressed at the regional as well as national context that makes judicial reforms meaningful. She also emphasized that the distinctions between 'real' and 'perceived' barriers and address them for effective judicial reforms. Referring to the distinction between social action litigation (SAL) and public interest litigation (PIL), she asserted that ultimate goal of access to justice is achieved only when everyone in society can readily access justice as it is meant for all and more specifically the disadvantaged, vulnerable, and marginalized groups.

The challenges to access to justice both in India and Sri Lanka include a high incidence of poverty, lack of information and assistance, corruption, judicial backlog and the like. She referred to the reforms in India that involves conceptual development of constitutional rights in the light of international human rights law and standards by the courts as well as the ability of the courts to function by forging partnership with disadvantaged groups, the NGOs and the civil society. The author, referred to P. N. Bhagwati and V. R. Krishna Iyer JJ in evolving the social action litigation (SAL). The ability of the courts in India to liberally interpret the provisions of the Constitution in realizing series of benefits to such under-privileged groups was appreciated.

The challenges Sri Lanka has to face in the judicial process in the light

of post conflict scenario, natural disaster (tsunami) and for economically disadvantaged segments of the society were highlighted. Referring to series of propositions after analyzing the comparative experiences in India and Sri Lanka on judicial reforms, the author observed that much of the judicial reform had focused on basic institutional frameworks and on institutional efficiency using IT and ICT to enhance the efficiency and effectiveness.

In the next chapter, entitled 'The Evolution of the Judicial Council: The Nepal Experience', Hari Phuyal observed that the establishment of Judicial Council in Nepal mandated to uphold ethics, integrity, and accountability is a significant one. The judicial council had developed a recording and reporting system to track the professional behavior and performance of judges as well as a special procedure to investigate and deal with the complaints. However, he felt that this system lacks effectiveness due to the peculiar situations in Nepal. He traced the developments through the six Constitutions along with the Judicial Council Act, 1991, in realizing judicial accountability. The absence of a Code of Conduct for the Court Staff in Nepal was specifically mentioned. Similarly, the lacunae in the Act of 1991 read with the Constitution dealing with the enforcement of judicial accountability was also mentioned along with the lack of specific provisions for review of the decisions taken by the council was also mentioned. Yet, it is interesting to note that a judge could be suspended during the pendency before an inquiry committee established under this Act.

The features of the Judicial Council Act, 1991, included a system of regular review of the private property of judges and court staff, a judgment review system, a code of conduct, grounds of discipline and removal of judges and the like. In order to check corruption, a procedure to prosecute a judge following removal from office was included. A National Judicial Academy was established in 2004 that has been training judges on judicial ethics, integrity and accountability. The fact that on being found guilty by the judicial council, two Supreme Court judges resigned and one was demoted go to prove the point beyond doubt. Personal inspection and complaints records as well as evaluation reports are now maintained at the judicial council. Constructive self-criticism from within the judiciary has also emerged. Although the professional capacity and an inquiry system in the judicial council are lacking, it works on a consensus model in the decision making process. Hari Phuyal concluded by saying that the judicial council is crucial for the enhancement of ethics, integrity, and accountability of judges to regain the public trust in the judiciary in Nepal.

In the second part of the same chapter, written by Myrna Feliciano on 'the Philippine Experience' observed that a number of key messages emerged from the current and recent experience in promoting judicial ethics, integrity, and accountability. Four such messages include, firstly that the judges and

members of the judiciary must be guided by a defined code of ethical standards to which they must be held accountable for violations, if any. Secondly, that transparency in judicial appointments protects the integrity of the judiciary. The third one indicates that the judicial conduct complaint process should be streamlined to ensure that disciplinary proceedings are heard and decided fairly and expeditiously. Finally, judicial leadership and ownership of judicial reforms are necessary to encourage participation of members of the judiciary and ultimately ensure the success of reform programmes.

As the society's ethical standards of right or wrong conduct are influenced by very many factors including time, culture, tradition and religion, the author observed that it is important to set the baseline standards that should be generally applied and against which conduct should be measured. The judicial ethics for the guidance and observance by all judges was for the first time based on the Administrative Order No. 162 of August 1946. During 1989, it was adopted by the Supreme Court of Philippines. Again on 1 June 2004, the Supreme Court had adopted a New Code of Judicial Conduct for the Philippines judiciary that is based on the Bangalore Principles with slight modifications. A corresponding Code of Professional Responsibility for lawyers as well as retired judges is also in place.

To facilitate these developments, the Constitution of Philippines, 1987, created a Judicial and Bar Council to screen and prepare a shortlist of three nominees for every vacated position from whom the President should choose. The Action Programme for Judicial Reforms of 2001 - 2006 further strengthened this process through series of activities. Yet, the lack of financial autonomy seems to be undermining this process.

Analysing the impact of the reform process, the author raised key questions. They are: (1) Does the programme enjoy the support of leadership? (2) Is the reform programme based on the actual needs as perceived by the leadership? (3) Is the proposed programme comprehensive and professionally designed? (4) Is the magnitude of the programme manageable, considering available human and physical resources and time intended for its implementation? (5) Do judges and justices already practice ethics and integrity or otherwise possess the requisite qualities even before their appointment as members of the judiciary? (6) Is the disciplinary procedure fair in all respects? and (7) Are there alternative measures or practices that may augment the limited budget of the judiciary? These questions, though raised in the context of developments in Philippines, seem to be relevant to all other developing countries as well.

The next chapter contains two experiences, one from Cambodia and the other from Nepal on issues relating to 'Judicial Education and Skills Development for Judges and Court Staff.' Describing the 'Cambodian

Experience', Sathavy Kim and Ly Teysang observed that the state had to start from scratch after the war. The developments since 2003 resulted in the establishment of the Royal School of Judges and Prosecutors (RSJP), the first one in the history of Cambodia. Shortage of resources during the post war period, developing training capacity against the lack of judicial culture and the like led to the initiative on 'training the trainers' programme.

The RSJP has developed a two year long structured curriculum for initial judicial orientation and continues to be further strengthened from time to time. As against the lack of ongoing support from donors, RSJP was able to work closely with other justice sector institutions and courts at all levels. Judicial education is conducted by local and international trainers of experienced judges and law professors. RSJP also organizes continuing legal education (CLE) for in-service judges and prosecutors. During 2005, the government established the Royal Academy of Judicial Profession (RAJP) and trains students, practicing judges and prosecutors. Yet, Cambodia lacks the necessary human resources in the legal and justice sectors and remains as a challenge to RSJP.

One among the important developments during the post war developments is the establishment of an Extraordinary Chamber within the courts of Cambodia (ECCC), a hybrid court integrating both Cambodian and international laws in its operations and proceedings to try the senior leaders of Khmer Rouge. Lack of language skills in English or French continues to bog down the developments. The authors observed that in spite of all the odds, both existing judicial officers and new graduates from the RSJP are conscious about the reform of justice and are able to meet the needs of the courts. They concluded by saying that RSJP and RAJP should seek to extend its collaboration with other regional judicial educational institutions like Philippines and Australia.

The second part in this chapter, by Ananda Mohan Bhattarai, provides 'The Nepal Experience'. He observed that the experiences in Nepal has shown that judicial education is essential for promoting standards of justice and has helped the courts to address a number of challenges that have arisen from within the justice delivery system and outside it in the post-conflict environment. Internal challenges, according to him included the concept and definition of 'justice', judicial culture, impartiality, competence, efficiency and effectiveness of judicial officers. The external challenges included the emerging international economic, human rights and legal order. The Nepali legal system, with a blend of common law norms with local customary norms, provided an ongoing evolution of the judicial system and according to him it is too early to evaluate the Nepali experience in judicial reforms.

Identifying some of the hurdles, he mentioned that the constraints of

resources, capacity building among judicial officers and quality of justice delivery system. He suggested for constant monitoring system to ensure results. The judicial system in Nepal seems to have deficient laws, delays, procedural anomalies, lack of research, deficiency in communication and collaboration among different stake holders. The National Judicial Academy (NJA) established in 2000 had to face the financial constraints as the Asian Development Bank support to this programme came to an end. The identification of the target community for training, framing the objectives and curriculum of such training in the light of poor quality of legal education and the like continue to plague the reform initiatives. Apart from these, the NJA has series of institutional challenges that need to be addressed in the continuum in judicial reforms, he opined.

Graduating the ordinance into a law in 2006 provided a permanent status to the NJA. It receives full support of the Supreme Court of Nepal and there is also emerging local ownership of this institution. The research publications of NJA have been received with keen interest and there is emerging consensus on training methodology as well.

Yet there are constraints in the implementation of the scheme like the resources required, over dependence on a limited pool of trainers, providing training materials in soft and hard forms, effective monitoring system and the like. Regional collaboration with institutions similarly situated, exchange of training materials, case management, mediation, information on case law and the like coupled with judicial leadership would contribute to the further strengthening of the initiative already underway.

Out of the two, the second annexure provides the key country context background with some infirmities as on the date of publication of this book. The facts on India seem to reflect old statistics as to the number of judges in the Supreme Court and the number of High Courts in India.

This book, on the whole makes the reading interesting as it contains the diverse experiences of various countries, particularly, the developing ones. While this book can be an excellent resource material for the national and state judicial academies in India and elsewhere, it can equally be a good material for courses in law schools and university departments on judicial process as well. The central theme of this book seems to reflect one among the essential functions of the state *viz.* 'administration of justice' that has been long ignored in the developing countries that can be performed well only when the judges are effectively trained for such reforms.

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