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JUDICIARY IN INDIA: PROBLEMS AND PROSPECTS*

*K.G. Balakrishnan***

LAW DAY is significant not only to celebrate our journey on the path of constitutional democracy and rule of law, but also to take stock of the promises which WE, THE PEOPLE OF INDIA, have given unto ourselves almost six decades ago. In the comity of nations, India's justice system is appreciated and well received. Despite the problem of numbers, the quality of justice delivered has not been compromised. The scope of fundamental freedoms and the space for democracy have both been enlarged and increased over the years. Shortcomings are definitely there and lot of criticisms as well. No institution in a democracy is above criticism. What is important is that criticisms should be based on facts and performance. As head of the judicial system it may be appropriate to answer the criticisms, clarify the facts and defend the institution for enabling it to serve the litigant public better.

It needs to be reiterated that it is the commitment of every member of our judicial establishment to uphold the purity of justice and to ensure its timely delivery to the millions who knock at our doors. This should be seen as a sign of our commitment to rule of law and of our convictions on the ability of courts to give fair and impartial justice. Yes, it might create congestion in courts and cause delay in the delivery of justice. But that is no ground to dissuade people having legitimate claims and grievances from seeking judicial time. The answer lies in the efficiency of the court system and expanding the infrastructure to cope with the situation. Efforts are being made and steps are being taken in this regard to facilitate the judiciary to perform its onerous task.

I The problem of arrears and delay

Increasing productivity through improved infrastructure, employment of alternative methods of settlement and adoption of better strategies of management and training have been the key elements of the drive against delay and pendency during the last few years.

* Law Day Address to the nation on the occasion of Eve of National Law Day, 25.11.2008.

** Chief Justice of India.

For any organization, efficiency and productivity are directly linked to the infrastructure it commands. Infrastructure in terms of judiciary includes both human and physical infrastructure. On both fronts, the situation of the subordinate courts which handle 90 percent of litigation continues to be far from satisfactory. This is the responsibility of the state governments even when the subordinate courts do devote considerable time in adjudicating cases under central laws as well. A committee appointed by the Government of India to study the impact of new legislation on the workload of the courts has recommended that the Union Government has constitutional obligation under entry 11 A of the concurrent list read with article 247 to provide adequate financial provision for implementation of central laws through state courts. The state governments under the same principle are likewise obliged to meet expenditure of courts for implementing laws on subjects in the state and concurrent list. Hopefully the above recommendations will receive favourable consideration of the central and state governments and the infrastructural needs of subordinate courts will be met in the near future. Meanwhile, the continuation of the fast track courts which have reduced pendency of nearly 20 lakh criminal cases will accelerate the process to the advantage of litigant public.

The central government was approached to create more special courts for disposal of corruption cases and family disputes which cannot brook delay without causing greater damage to public interest. In several states at the instance of the respective high courts, evening courts have been established to clear pending cases requiring priority attention. In Tamil Nadu, Andhra Pradesh and Gujarat, such courts have proved to be quite effective in disposal of cases involving minor offences which are clogging our criminal justice system. Delhi has recently started evening courts initially for cases under section 138 of the Negotiable Instruments Act, 1881 involving small amounts. Other states are soon expected to follow suit by establishing evening or morning courts to deal with cases involving petty offences. If these efforts of the judiciary are supported by governments by providing better infrastructural facilities, productivity can be further improved to bring down pendency and delay in the near future.

There isn't any requirement to dwell on the statistics of cases filed, disposed and pending at each level of the judicial structure. All that needs to be stated is that while the number of fresh cases instituted has been steadily increasing year after year, the number of cases disposed off has also increased substantially as compared to previous years. It indicates that our judges, overworked as they are, have been making every effort to steadily improve productivity even in adverse circumstances. Judges are conscious of the problem of arrears and are making every effort to contain the rise of pendency of cases at all levels of the judicial system. Timely justice is the

right of every litigant and speedy justice is the obligation of every functionary of the judicial system.

II Judicial education and training

In this context two significant initiatives undertaken by the judiciary need to be noted. Judges, like any other professionals, need continuing education and training to improve professional competence to deal with new challenges thrown up by changes in society, economy, polity and technology. Taking this into account, the Supreme Court had set up the National Judicial Academy five years ago that is now offering regular courses of training designed to cater to the needs of superior court judges. Simultaneously, each high court has set up judicial academies to train judges newly inducted in the subordinate courts and to provide continuing education to judges in service. The National Judicial Academy has devised year long training plans in consultation with state academies to ensure that every judge throughout the country has opportunity once in every year to learn and improve court and case management capabilities with support of technology and professionalism.

Simultaneously an E-Committee directly under the Supreme Court was set up to devise and implement a national policy on computerization of judicial administration in order to expedite delivery of justice in civil and criminal cases. The project is being implemented in three phases over a period of five years. At the end of the first phase, reports indicate that a cost and time effective procedure is under way providing greater transparency, expedition and accountability to the system.

III Alternative methods of delivery of justice

Litigation is time consuming and relatively expensive. In a country with a vast population of poor people, justice has to be necessarily cheap and expeditious. For this, alternatives to litigation must be produced by the justice system. Parliament has provided the statutory basis for it by the recent amendments to the Civil Procedure Code, 1908 and the Criminal Procedure Code, 1973. Taking advantage of these, the judiciary has prepared a national plan for mediated settlement of disputes which included training of mediators, development of mediation manuals, setting up of mediation centres in court complexes and spreading awareness about it among litigants through the legal aid services. Other modes of settlement are also being encouraged and judicial officers are instructed to promote ADR as a movement especially at the first level of courts where the bulk of poor litigants seek justice.

As standards of quality of justice delivered cannot be compromised, the ADR process cannot be accelerated without preparation and without demand from litigants themselves. It is hoped that in the next few years, like other jurisdictions outside India, litigants here would also prefer settlements outside litigation through negotiated arrangements. And proportionately it would reduce the problem of delay and pendency in litigation as well.

On the issue of arrears what needs emphasis is that we are on the right track with a multi-dimensional, well-planned national programme, which has started giving rich dividends. With support from the central and state governments and co-operation from the bar and litigant public, in the next couple of years substantial reduction in the number of cases pending in courts and in the time taken for disposal of cases are expected to take a downward spiral even if fresh filings are going to increase continuously.

IV Judicial corruption to be rooted out mercilessly

Another subject which is worrying the public as media reports indicate should be taken note of. This is about judicial corruption, a subject which was not an issue in public discourse till recently. It needs reiteration that corruption and impartiality cannot co-exist. Under no circumstances can judiciary tolerate corruption even in its administrative staff.

For an organization which is nearly a million strong including 16,000 odd judges, five to six lakh lawyers and another 3 to 5 lakh ministerial staff to be free from corruption is a tall order, however desirable it be. The legal profession is independent and its discipline is the responsibility of the elected bar councils. The public perception of judicial corruption includes corruption by the lawyers and their staff. Similarly, a substantial section of people who consider judiciary to be corrupt attribute it to the ministerial staff of courts and related offices. It is unfortunate that judiciary has to bear the burden for corruption of people on whom the judiciary has no or little control.

So far as the 16,000 and odd judges who constitute the Indian judiciary is concerned, it is the Chief Justice who is responsible for their conduct as head of the system though he personally does not have any legal and administrative control over them. Nonetheless, it will be worthwhile to explain how the judiciary is enforcing discipline among the judges to ensure that people who approach the courts will get fair and impartial justice. Therefore, the steps that have been taken as head of the judiciary to ensure a corruption-free judicial system may be noted:

(a) Declaration of assets by judges

The Supreme Court adopted a resolution as early as 1997 to declare assets voluntarily. Chief justices of all high courts have been requested to adopt similar resolutions for declaration of assets by the judges of high courts as well.

(b) Restatement of values of judicial life

Again the Supreme Court in 1997 unanimously adopted a resolution restating certain time-honoured best practices for judges to follow while they hold the high office. They form a code of ethics for judges to comply in public and private lives. The high court justices also have been advised to follow similar guidelines and the respective chief justices have been requested to circulate the said code of ethics among the judges of the high courts for compliance.

(c) Model code of conduct for subordinate judiciary

It was observed that the conduct of certain subordinate court judges particularly during visits of high court judges to their places of work have not been of the standard expected of them. Therefore, certain norms of conduct have been formulated for them to follow and the same has been sent to the high courts to consider and adopt for action by subordinate judges.

(d) Strengthening and streamlining vigilance cells in high courts

The vigilance cells in high courts are the primary mechanism available to deal with complaints against subordinate judges. The Chief Justices' Conference discussed the strategies to strengthen the cells to instil confidence and to expedite inquiries in appropriate cases, so that dishonest judges are eliminated and honest ones are protected.

(e) In-house inquiry procedure invoked against high court judges

On receipt of allegations, an inquiry through a committee of senior judges was initiated against two sitting high court justices, of whom one was recommended to be removed through impeachment proceedings. The finding of the inquiry committee in the other case is awaited.

(f) Periodical performance evaluation and removal of judges and officers of doubtful integrity

Chief justices of high courts have been informed in writing to utilize

their authority to review the work of all judicial officers firstly on attaining the age of 50 years and then when they attain the age of 55 years and to prematurely retire those found unfit, ineffective or having doubtful integrity. They have been reminded that this is expected under the fundamental rules and the service rules can be accordingly amended so that deviant behaviour can be effectively prevented. Such review of officers and employees of the Supreme Court is being carried out when they reach the age of 50, 55, 56, 57, 58 and 59 years. Experience has proved it to be an effective remedy particularly against ministerial corruption. Several judges of doubtful integrity are being retired under this provision.

(g) Tightening the selection procedure of superior court justices

A more detailed check-list to gather adequate information on suitability of prospective candidates for judgeship has now been evolved and sent to all high courts. The chief justice who initiates the recommendations for his high court has been asked to gather the details including personal antecedents on the new questionnaire from advocates and judicial officers being considered for appointment and get them verified. These data with supporting documents have to be forwarded along with recommendations. This is to avoid discovering a black sheep at a later stage when very little can be done, except resorting to the impeachment process. There are several more steps being undertaken to rid the judiciary of corrupt elements spoiling the fair name of the justice system. All that can be done is to assure the public that the judiciary will not tolerate corruption and everything will be done, whatever be the cost, to uphold the purity of justice. In doing so, what needs to be ensured is that the independence of judiciary is not compromised and the reputation of honest judges is not harmed.

V Legal aid and access to justice

Another issue which concerns a vast section of people seeking justice is the ability to access equal justice under law. The government has accorded a crucial role to the judiciary to administer the Legal Services Authority Act, 1987 which has multiple objectives. Rules have been framed under the Act and appropriate bodies have been set up at various levels to reach out the message of rule of law and equality in access to justice to every nook and corner of this vast country.

The Supreme Court Legal Services Committee grants legal aid to litigants in the Supreme Court which has over 200 advocates including senior advocates to render aid to deserving litigants. It maintains its own website and e-mail through which assistance can be obtained from anywhere.

For middle income group the committee renders assistance at subsidized rates through eminent lawyers.

Similar arrangements are in place at the high courts and subordinate courts. Apart from giving litigational aid including the services of lawyers to represent in court, the Legal Services Authority organizes *lok adalats* to facilitate negotiated or mediated settlement of disputes. The programmes and policies are evolved and supervised by the National Legal Services Authority presided over by a senior Supreme Court judge. It has undertaken a series of programmes to assist different sections of needy people particularly from the weaker sections.

As part of the legal literacy mission and social justice goals, NALSA has launched several campaigns for the successful implementation of the national rural employment programme, protection of rights of women, children, *dalits* and the disabled persons. Legal aid is conceived as a social movement for the legal empowerment of all sections of people for equal justice under law. In this effort a national network of legal aid centres and civil society groups is being set up which can mobilize social action for good governance under law. This is a silent revolution under way to make a success of our democracy. In a small way the judiciary is extending a helping hand in this social empowerment mission though it is outside their usual function of adjudication and settlement of disputes.

The great efforts that are being made by the brother judges in the Supreme Court, high courts and subordinate courts to render timely justice to all litigants needs to be acknowledged and appreciated. Their sacrifices and commitment to cause of justice have made rule of law an abiding principle of constitutional democracy in our Republic. It may be appropriate to take a pledge on this Law Day that everything possible will be done to uphold the values of the Constitution and render justice to the people without fear, favour or ill will.