STRENGTHENING THE JUDICIAL SYSTEM IN INDIA

*Ashutosh**

I. INTRODUCTION

The foundation of any democratic society is based on "rule of law". Our country is no different. The rule of law governs all aspects of our State and it is guaranteed by Part III and other provisions of the Constitution.[1] But where the citizens are largely illiterate and poor, and mediocrity is at a premium, population explosion is nobody's concern and the illiterate poor feel that extra hands in the family would be a small financial help, what happens to the rule of law? Our country is the best example of working democracy with these evils, at great strains trying to keep the system work at tremendous odds.[2]

Laws in India have elaborate provisions for safeguarding the rights of its citizens. However, these rights are not available to the accused belonging to poverty class and the same are being availed only by those belonging to elite class of the society, who have got the means to exploit those rights. Due to this reason, accused persons belonging to poverty class are not able to get justice in our judicial system and on the other hand the people of means are able to get out of the clutches of law and hold the key to unlock the door of the justice. Hence, because of this disparity in availability of the rights to different sections of the society, the weaker sections of the society are not able to avail the economic opportunities nor they are able to participate in the political processes and local decision making. They are exposed to ill treatment by institutions of State and the society. This has also made poor people more vulnerable to insecurity in life i.e. vulnerable to ill health, economic shocks, crop failure, policy-induced dislocations, natural disasters and violence. All these things have led to increasing of gap between poor class and rich class. However, if democracy uses its mighty weapon of rule of law, which is foundation of any democratic society, to restore equality before law and balance the economic structure, the problem of poverty, world's greatest challenge, can be met successfully.

* Guest Lecturer, Law Centre–II, Faculty of Law, University of Delhi, Delhi.

1 *Director of Rationing* v. *Corporation of Calcutta,* AIR 1960 SC 1355: 1960 Cri LJ 1684.

2 R. Damodar, *Custodial Crimes and Procedural Safeguards*, Cri LJ (Journal) 1994 at 117.

II. Rule of Law

A. Concept of Rule of Law

"The major problem of human society", observed the Supreme Court of India, "is to combine that degree of liberty without which law is tyranny with that degree of law without which liberty becomes license".[3] The perennial dilemma is to discover a measure of right balance appropriate to the ever shifting tangle of human affairs. "A large part of the effort of man over centuries has been expended in seeking a solution of this great problem." There are two aspects of Government: governing the governed and the Government controlling itself. The device adopted by all self-governing peoples devoted to the values of liberal democracy is the 'rule of law' as a moral, cultural and constitutional underpinning of this process. The predicament of many of the emergent democracies in the post –World War-II scenario indicates that the mere adoption of loftily worded constitutional documents without the spirit of liberty and constitutionalism, is mere rope of sand.[4]

Rule of law is a dynamic concept and must keep pace with the changes to suit the current needs of the society. Protection of human rights and implementation of the legal framework is essential to prevent resort to rebellion against tyranny and oppression. In the Act of Athens, 1955, the rule of law is described as springing "from the rights of the individual developed through history in the age-old struggle of mankind for freedom; which rights include freedom of speech, press, worship, assembly and association and the right to free elections to the end that laws are enacted by the duly elected representatives of the people and afford equal protection to all."[5]

B. Role of Legal Profession and Rule of Law

The aforesaid description of rule of law by the International Commission of Jurists is universally accepted and is a general definition in conformity with the legal system in every democracy. The first prerequisite of justice is rule of law and the true role of the legal profession is to

---

3 *Indira Gandhi* v. *Raj Narain*, AIR 1975 SC 2299 (para 318).

4 J.S.Verma, *50 years of Freedom under Rule of Law: Indian Experience*, in New Dimensions of Justice (Delhi: Universal Law Publishing Co. Pvt.Ltd., 2000) at 37.

5 J.S.Verma, *Convocation Address* delivered on 16th June, 1997 at Calcutta University in New Dimensions of Justice, (Delhi: Universal Law Publishing Co. Pvt.Ltd., 2000) at 175.

endeavour to equate law with justice to achieve the ideal form of administration of justice. Court of law is described as 'Temple of Justice.' The judges and lawyers who constitute the legal profession discharge the role of priests in the Temple of Justice to worship the idol of justice.[6]

C. Poor People and the Rule of Law

The rule of law means that a country's formal rules are made publicly known and enforced in a predictable way through transparent mechanisms. Two conditions are essential: (i) the rules apply equally to all citizens, and (ii) the state is subject to the rules. How State institutions comply with the rule of law greatly affects the daily lives of poor people, who are very vulnerable to abuses of their rights.[7]

The rule of law is upheld through many channels, the most formal being the legal and judicial system. The legal and judicial system constraints and channels Government action and maintains clear rules and procedures for upholding an individual's constitutional rights. This system is essential for guarding against abuse of power by the state or other actors, and it requires that the judiciary be independent of the executive and legislative branches. The rule of law protects life and personal security and guards against human rights abuses. Thus defined, the rule of law is tremendously important for all citizens – but especially for poor people, who have few private means of protecting their rights.[8]

D. Rule of Law and Role of Police

Although the rule of law benefits poor people in many ways, laws and statutes are not necessarily geared to protecting their interests. Legal systems, the product of power relations between different groups in society, typically focus on protecting the interests of those with political strength and representation. Making laws and their interpretation more sensitive to the needs of the disadvantaged requires building coalitions to this end. This is the goal, for example, of efforts to make laws more equitable in their treatment of women and minorities. Legal obstacles leave poor people vulnerable to exploitation by local bosses and the police, and arbitrary harassment, lawlessness, and violence are constants in their lives. For poor people, a crucial aspect of the rule of law is the ability to live without fear of lawlessness and harassment. An effective modern police force is needed

---

6 *Id.* at 176.

7 World Bank, WORLD DEVELOPMENT REPORT 2000-2001 – ATTACKING POVERTY (New York: Oxford University Press,2001) at 102.

8 *Id.* at 103

to maintain order by enforcing the law, dealing with potentially disorderly situations, and attending to citizens in distress. [9]

The police force is meant not only to apprehend the perpetrator of the crime and to prosecute him in the law court but also to take effective measures for prevention of crimes. An efficient police force is to emphasize on prevention of crimes to generate a general feeling of security and well being in the community. Criminalisation of society disturbs the even tempo of life in the community, even if the offenders are apprehended and punished. Greater orderliness is achieved by maintaining an even tempo in the life of the community by reducing lawlessness to the minimum. Such a result itself ensures preservation of human rights of the people since every infraction of law occasions infringement of human rights of the victim. 'Prevention is better than cure' in State administration as it is in medi-care. This is the primary role of the police force in the preservation and enforcement of Human Rights of the members of the community.[10]

The above, however, is the ideal State. It is the utopia. Pragmatism requires an efficient machinery for implementation of the rule of law. In a society ruled by law, public institutions and officials must act in accordance with law. In democratic societies, fundamental human rights and freedoms are more than paper aspirations. They form part of the laws. In dealing with situations created by breach of law, the offender has to be dealt with in accordance with law. There has to be derogation from the human rights and freedoms of the offender to some extent. However, derogations from human rights and freedoms even when necessary must be limited so as to avoid weakening the substance of the rights and freedoms themselves, it must be only to the extent necessary in a democratic society. The delicate balance between the conflicting interests of the individual offender and the community has to be maintained. Extent of restriction of individual rights must be tested on the anvil of larger interest of community.[11]

III. Making the Legal System More Responsive to Poor People

Even when the legal system is well run, poor people face constraints in using it. Poor people typically have little knowledge of their rights and may be deliberately misinformed. Contemporary legal systems are written and are conducted on the basis of written documents – making access

---

[9] *Ibid.*

[10] J.S.Verma, *Human Rights and Policing* in New Dimensions of Justice (Delhi: Universal Law Publishing Co. Pvt.Ltd., 2000) at 187- 88.

[11] *Ibid.*

inherently difficult for poor people, who usually have little formal education. Language, ethnic, caste, and gender barriers and other exclusionary practices add to these problems. The intrinsic complexity of legal system is exacerbated in many developing countries by the superimposition of the new laws and constitutional rights over colonial legislation and customary law. The resulting confusion makes it difficult to know one's rights, introduces arbitrariness in law enforcement, and enables the powerful to choose which legal system to apply. This reduces poor people's confidence in the legal system. It also gives enormous discretion to authorities, often making connections and bribes central to negotiating the legal system. Making the rules simpler and clearer is especially important in the areas of greatest concern to poor people, such as labour disputes, land titling, human rights abuses, and police violence.[12]

A. Access to Legal System

Although poor people need to access the legal system for registration and other administrative purposes, they use the judicial system much less frequently than the non-poor. Court systems are poorly funded and equipped, and mechanisms for enforcing judgements often weak. These add to the other problems poor people face in using the judicial system, such as financial costs. Waiving court fees for people with low incomes could provide some relief. To assist poor people, legal aid is provided but often more in principle than in practice. To be effective, such aid must be delivered promptly. In addition to Government-provided services, legal aid can be provided through alternative sources.[13]

B. Streamlining the Operation of the Judicial System

Streamlining the operation of the judicial system to reduce costs and delays will address some of the problems poor people face in the courts. Reforming court procedures helps – simplifying rules (while respecting due process), shortening proceedings, and allowing parties to represent themselves. Broader reforms, such as changing the structure of the courts, also help increase poor people's access to justice. Small claims courts and other informal proceedings can reduce the backlog and widen access. The teaching and practice of law can be amended to sensitise the legal profession to the needs of poor people and to the use of the law to further the public interest.[14]

---

[12] *Supra* n. 7 at 103-04.

[13] *Ibid.*

[14] *Ibid.*

C. Alternative Dispute Resolution Mechanisms

The population growth and increasing awareness of rights in the people are major factors contributing to the increase of the workload in courts. Arbitrariness in State action with activity of the welfare States extending beyond the traditional governmental functions, is yet another contributory factor. The inadequacy of existing infrastructure of the justice delivery system to cope with the growing need during recent years has further widened the gap. However, to maintain the quality of performance this gap has to be bridged in a phased manner. Some years back an ominous warning was sounded by a few concerned with the administration of justice that our system was on the verge of collapse being antiquated and inadequate to meet the new challenges faced by the modern judiciary.[15] Alternative dispute resolution is another area that can rescue the system from crumbling under its own weight. Whatever be the form of legal system, the mandatory mediation particularly judicial mediation and court ordered mediation is one of the most significant modes of alternative dispute resolution. It is proving to be an effective alternative to traditional judicial systems be it United States or Germany. Experience has shown that resolution through arbitration though widely availed is less effective as at every step the parties seek court action causing enormous delay. It has become counter productive. Delay always operates as incentive for breaching obligation.[16]

The requirement of the judicial mediation is to first narrow down the disagreements between the parties and then persuade them for settlement by way of pointing out the strength and weakness of the claims and counter claims as well putting up the proposals for settlement projecting success or failure of the disputes on merits. Dr. Don Peter, Director of the Institute for Dispute Resolution at the University of Florida has suggested implementing steps in this regard. Some of these are – (i) creating statutory or rule based authority for the referrals; (ii) creating necessary procedures regarding the mediations; (iii) creating a means to ensure minimal mediator competence, which often includes mandatory training or certification requirements, ethics codes and mechanism for their enforcement; (iv) securing adequate funding and determining who will coordinate the programme. The theory is that if you set the people down with authority they will make good use of the time and talk.[17]

---

[15] J.S.Verma, *Remedies to Reduce the Laws' Delays*, in NEW DIMENSIONS OF JUSTICE (Delhi: Universal Law Publishing Co. Pvt.Ltd., 2000) at 102.

[16] J.D. Kapoor, J., *Strengthening Administration of Justice*, AIR (Journal) 2002 at 88.

[17] *Ibid.*

There is dire need for providing necessary services to the public at large in settlement of claims, resolution of conflicts and adjustment of family and business relationships. As in England, provision for issuing certificates by area committees on the basis of which lawyers may be provided for opinion. giving notices, writing letters, negotiating settlements and filing suits and contesting criminal actions may be included in the Legal Aid and Advice Act.[18]

Thus, alternative dispute resolution mechanisms hold considerable potential for reducing the delays and corruption that characterise much dispute settlement. These alternative mechanisms may provide more predictable outcomes than the formal system, because community mediators are typically more familiar with the details of cases than are judges. The risk of such mechanisms is that they can give undue power to conservative forces in a community (which might, for example, be biased against gender equity) and be subverted to serve the interest of local elites. To minimise these risks, alternative dispute resolution mechanisms need to be carefully regulated and supervised by more formal legal structures. They can also be introduced gradually – for example, through pilot programs sponsored and supervised by regular courts.[19] At this juncture it would not be out of context to mention five principles, as prescribed by Buddha, long ago, with prescient wisdom that must be observed by a wise ruler when resolving disputes amongst his subjects. This is how they have been recorded: firstly, examine the truthfulness of the facts presented; secondly, ascertain that they fall within his jurisdiction; thirdly, enter into the mind of parties to the dispute so that the judgment to be rendered be a just one; fourthly, pronounce the verdict with kindness, not harshness; and lastly, judge with sympathy.[20]

These five percepts prescribed for a wise ruler are applicable to a wise judge as well; they are indispensable to an arbitrator.[21]

D. Promoting Legal Service Organisations

Civil society organisations such as legal service organisations seek to help poor people gain access to the benefits and protection of the legal system inside and outside the court system. Protecting individuals against unlawful

---

18 *Ibid.*

19 *Supra* n. 7 at 104.

20 Bukhyo Dendo Kyokai, TEACHING OF BUDDHISM (Tokyo: Buddhist Promotions Foundations).

21 F.S.Nariman, *Arbitration Law – Change in Law Must Get Reflection in Changing Attitudes to Arbitration and Arbitral Awards*, 8th Foundation Day Lecture delivered at the Indian Law Institute on Monday 22nd March, 1999.

discrimination at work and eviction from their homes, such organisations help people collect their entitlements, obtain basic services, and get court orders to protect women from domestic violence. They can also protect communities from being dispossessed. Legal service organisations can help poor people by taking legal action on behalf of a group of plaintiffs. Often, large numbers of poor people suffer from similar injuries, so seeking redress as a group provide poor people with otherwise inaccessible judicial protection. Public interest litigation is one such form, which in India has improved the delivery of some public services and reduced environmental contamination.[22]

The most effective legal service organisations work outside the judicial system, protecting rights without resorting to lawsuits – important, because the costs of lawsuits can sometimes outweigh any resulting gains. This goes far beyond the conventional idea of offering free legal representation to poor individuals and helping people or communities assert their rights through the courts. More generally, the work of legal service organisations helps create a culture of rights that changes the way people think about themselves relative to those who have power over their lives – spouses, landlords, employers, and government agencies. This encourages poor people to avail themselves of the protection that the formal legal system offers. These organisations also generate pressure for changing the way the rules are applied by judges, bureaucrats, and the police. Legal literacy and legal aid have the maximum benefit if they help create a process of self-empowerment and social empowerment that moves citizens to activate their rights and to redefine and reshape inequitable laws and practices. Legal service organisations help change the rules that affect poor people, whether in Constitutions, statutes, regulations, municipal ordinances, or myriad other codes.[23]

E. Role of Judicial Institutions

State institutions play an important role in how markets affect people's standards of living and help protect their rights. They can promote inclusive and integrated markets, and ensure stable growth and thus dramatically improve people's incomes and reduce poverty. It is about equal opportunity and empowerment for people, especially the poor. Without strong judicial institutions that enforce contracts, entrepreneurs find many business activities too risky. Without effective corporate governance institutions that check managers' behavior, firms waste the resource of stakeholders. And weak

---

[22] *Supra* n.7 at 104-05.

[23] *Ibid.*

institutions hurt the poor especially. For example, estimates show that corruption can cost the poor three times as much as it does the wealthy.[24]

IV. Judicial Reform Efforts

When building effective judicial institutions, policymakers aim to establish courts that decide cases cheaply, quickly, and fairly, while maximizing access. These variables are independent of one another. However, the evidence indicates that tradeoffs among them exist only at the margin. For example, when judicial performance is very slow, improvements in speed can be made without compromising fairness.[25] Three key themes run through the successful initiatives to improve judicial efficiency.

A. Increased Accountability of Judges

The existence of power must be accompanied by accountability. The accountability of the Judges is to the people in whom the ultimate sovereignty vests. It is, therefore, imperative to retain public confidence, which is the real source of strength of the judiciary. Erosion of credibility in the public mind resulting from any internal danger is the greatest latent threat to the independence of judiciary.[26] When judges are accountable for their actions, judicial systems can become more efficient, with judges providing faster and fairer solutions to cases. The incentives judges face affect judicial performance. Institutional design, in turn, affects judges' incentives. One of the primary factors affecting incentives is information on judicial performance, which allows the performance of judges to be monitored. A frequently used alternative is the imposition of legislated time limits on the resolution of particular types of cases. While legislated time limits have been a popular response to slow trials, the results to date have not been very encouraging. For example, in the United States time limits originally set by the Supreme Court have proved unenforceable. This is partly because it is difficult to monitor judicial effort. There is no objective way to tell whether a case drags on because it has legitimate difficulties or because a judge fails to do his job. As another example, judges in Argentina and Bolivia are given mandatory time limits to conduct and decide cases, but these are rarely enforced.[27]

---

[24] World Bank, World Development Report 2002 – Building Institutions for Markets (New York: Oxford University Press, 2002) at III.

[25] *Id.* at 124.

[26] J.S.Verma, *Independence of Judiciary – Some Latent Dangers* in New Dimensions of Justice (Delhi: Universal Law Publishing Co. Pvt.Ltd., 2000) at 26.

[27] *Supra* n. 24 at 125.

There is dire need for treating judicial management as a philosophy. Efficiency, competence, merit and fairness have always been the hallmarks for success of judicial institution. Efficient system always promotes fairness. Thus we need to develop a judicial management philosophy of merit-oriented selection of judges and adopt informed and sensitive management by delegating the operational tasks to professionally trained administrators. There is need to establish the Institution of Court Administrators on state level as well national level as it is existing in USA (it is in Denver) for monitoring, operating, analyzing the case flow, developing the research into paper flow studies, case processing strategies and goal rationalization and to evolve measures and formulae to reduce the backlogs besides imparting training to judges and judicial personnel in court craft.[28]

B. Working according to Individual or Master Calendar

Systems where each judge works on the basis of an individual calendar have had some success. In such systems a single judge follows a case from beginning to end. This is in contrast to the master calendar, where the court can assign different parts of a case to different judges. The master calendar has some advantages; a case can go on if a judge is sick or has a large workload and judges can specialise in the procedural tasks that fall in their area of expertise. But there are drawbacks as well. No judge is fully familiar with the case, indifferent judges can rule inconsistently in the same case, and – when a case takes a long time in a master-calendar jurisdiction – it is hard to know who is responsible. Some studies have found that the individual calendar is associated with reduced times to disposition, not only because the judge in charge is more familiar with her own cases, but also because judges feel more accountable.[29]

C. Generating Accurate Statistics

Generating accurate statistics reduces delay, since judges care about their reputation. The experience with delay reduction programs in the United States suggests that because problems on a case, such as excessive delay, can be uniquely traced to a judge, individual calendars make judges work harder and manage cases more effectively. More broadly, reputational effects are a crucial determinant of whether delay in courts is severe. Reputational concerns are however, difficult to measure. Reforms such as reporting judicial statistics are effective because they provide a basis on which to assess judges' efficiency and therefore affect their reputation.[30]

---

[28] *Supra* n. 16.

[29] *Supra* n.24 at 125.

[30] *Ibid.*

D. Transparency

Apart from hard statistics, greater transparency in the conduct of judicial business, coupled with a judge's interest in his reputation and desire for prestige, improves judicial efficiency. This has been documented in several industrial countries. When judges have open trials, lawyers, litigants, the media, and the general public observe their conduct. A review of the impact of televising judicial proceedings in New York State found that such scrutiny raises the efficiency of judges by one-third while at the same time increasing the quality of their judgements.[31]

E. Role of Civil Society Groups

Civil society groups can play an important role in helping to increase accountability in the judiciary. For example, in 1994 Argentina's *Fundacion para la Modernizaction del Estado* and *Instituto para el Desarrollo de Empresarios en la Argentina* published a report on the need for greater transparency as part of a judicial reform proposal. Also in Argentina, Poder Ciudadano formed a commission with other civil society organisations to follow the work of the new Judiciary Council. This group requested public access to hearings of the council and issued report on its functioning. In the Philippines the Foundation of Judicial Excellence, the National Citizens Movements for Free Elections, and the Makati Business Club established the Court -Watch project in 1992. They sent two observers, usually law students, to court rooms over an extended period of time. The observers rated judges after each visit, based on direct observation and surveys of lawyers and prosecutors involved in the case. The ratings included the judge's familiarity with the law, as well as the conduct of the proceedings, on such measures as promptness, efficiency, and courtesy. Soon after the program began, the media noticed that judges' behaviour had changed and that the efficiency of the court had risen significantly[32].

F. Simplification and Structural Reform

Simplification of procedures and enforcement has been found to improve judicial efficiency. Three main types of simplification or structural reform are important: the creation of specialised courts, alternative dispute resolution mechanisms, and the simplification of legal procedures.[33]

---

[31] *Ibid.*

[32] *Ibid.*

[33] *Id.* at 126.

G. Specialised Courts

The structure of adjudication can be changed by creating specialized courts. These courts may be specialised around the subject matter. Specialised courts also introduce simplified steps if they cut some of the general court procedures.[34]

H. Alternative Dispute Resolution

We have already discussed this aspect of the matter above. However, it would be useful to mention that the main criticism of alternative dispute resolution methods, voluntary or otherwise, is that such mechanisms generally work better when the courts are efficient. In other words, parties to a dispute have incentives to settle when they know what court judgements they will get; courts complement ADR systems. However this is clearly not the case in many developing countries, where ADR systems function as substitutes. But to function in this manner, they need to effectively represent the community for whom they adjudicate. The *Lok Adalats* in India, for example, are not very popular since they do not offer adequate compensation for victims, who face high costs in the courts to enforce their rights. These are more likely to be the poor people.[35]

I. Simplifying Procedural Law

Case studies also show that simplifying procedural law can increase judicial efficiency. A factor commonly associated with inefficiency in civil law countries is the predominance of written over oral procedures. A move towards oral procedures has produced positive results in some countries, for example, Italy, Paraguay, and Uruguay. Simplification of procedures tends to have a positive impact on efficiency because greater procedural complexity reduces transparency and accountability, increasing corrupt officials' ability to obtain bribes. Procedural simplification tends to decrease time and costs and increase litigant satisfaction. The overall impact of procedural simplification depends on how burdensome the procedures were previously. Reforms in clogged systems may bring about a large increase in filings in the short run but in the long run will be associated with improved service, greater litigant satisfaction, and improvements in access.[36]

Streamlining the system by which judicial procedure itself is determined can be beneficial. If every procedural change must go through the legislature,

---

[34] *Ibid.*

[35] *Id.* at 127.

[36] *Id.* at 128.

experimentation and innovation become difficult. Powers of the legislature to determine the organisation and procedural rules of courts could be partially delegated to the judiciary or the legislature could partially delegate these powers to individual courts to encourage more flexibility, as has been done in the United Kingdom, where small claims judges have the ability to adopt any procedure they believe will be just and efficient. Many procedures have been adopted because they were believed to serve fairness, protect the accused, and improve access of the poor. But the judiciary itself needs checks and balances. Such authority is best devolved to judges when there are also measures established to enhance accountability. Another constraints on the ability of procedural reform to deliver greater judicial efficiency is the law itself. When the substantive rules are unclear and other institutions are weak, there may be a limit as to how much judicial efficiency can be improved through procedural reform. For instance, when most land is untitled, land tenure is insecure because no one is sure how courts will rule on a contested claim.[37]

J. Increased Resources

The lack of resources and staff has been cited as the main factor constraining efficiency in the judicial system. However, data from the Unites States and from Latin American and Caribbean countries show no correlation between the overall level of resources and times to disposition. Further, many efficiency-improving efforts include funding increases along with other initiatives, making it difficult to isolate the impact of increased resources relative to other factors. The evidence indicates that funding increases help alleviate temporary backlogs in systems that have made a serious effort to work better but are of little use when inefficiencies are large. Crash programs to reduce backlogs through large infusions of resources have shown good results in the short term, but without deeper change, these results cannot be sustained. Introducing computer systems or other mechanisation in the judiciary has helped reduce delays and corruption. Resource increases are needed to introduce computer-based systems. Much of the reduction in corruption as a result of such a reform is probably due to the increased accountability in mechanised systems. Computerised case inventories are more accurate and easier to handle than the paper-based procedures they replace, and more than one person can have access to them, which makes them harder to manipulate.[38]

Overall resource levels are often un-correlated with judicial efficiency, but in cases of extreme under-funding, an infusion of resources can be

[37] *Ibid.*

[38] *Id.* at 128-29.

effective. Resources may also help judges improve management. A major inefficiency in many judicial systems is judges' responsibility for administrative work, such as signing pay cheques and ordering office supplies. Centralising administrative work in a single office, where the employees have administrative training, increased efficiency.[39]

K. Independence of the Judiciary

Good governance requires impartial and fair legal institutions. This means guaranteeing the independence of judicial decision-making against political interference. A judiciary independent from both government intervention and influence by the parties in a dispute provides the single greatest institutional support for the rule of law. If the law or the courts are perceived as partisan or arbitrary in their application, the effectiveness of the judicial system in providing social order will be reduced.[40]

Care has been taken in the Constitution to ensure independence of Judiciary. As a matter of fact it is also treated as a basic feature of the Constitution which cannot be touched. But the full import or meaning of the expression "independence of the judiciary" is often not realized. There are many facets to it. Independence of judiciary does not mean merely independence from outside influences but also from those within. Danger from within have much larger and greater potential for harm than dangers from outside. To protect Judges from dangers, which emanate from sources outside there are many others who help. So far as the dangers from within are concerned, Judges are the one primarily responsible for them and they are the ones primarily who can avoid them – at a time, when the need for independence of the Judiciary and its preservation is the greatest. It is necessary that Judges are fully alive to this danger.[41]

'Be you ever so high, the law is above you.' Judges have to remember that when they say this it is not meant only for others. It applies equally to them – with the added responsibility, which they have of implementing it on themselves. For everyone else, they do it. For them, it will have to be done. There cannot be any doubt because no one can claim to be above law. If Judges are wise and they do it themselves then there is no need for any outside agency to do it. If they don't do it, and if some outside agency does it and then judges would only have themselves to blame. That would be an erosion of the independence of the judiciary for which no one else can be

[39] *Ibid.*

[40] *Ibid.*

[41] J.S.Verma, *Constitutional Obligation of the Judiciary* in NEW DIMENSIONS OF JUSTICE (Delhi: Universal Law Publishing Co. Pvt.Ltd., 2000) at 10.

blamed. Just as everyone else is accountable, judges are also accountable. Accountable to the same law, accountable to the same standards, which they set up for others.[42]

L. Court Administration

Next comes the need for making the Judiciary a single over arching authority. Responsibility of court administration has to be exclusively that of the judiciary, that is, the practice of supply of administrative component and financial sanctions by the executive have to be stopped. Transfer of power is not a gift but a burden to be shouldered with. Ultimately the public blames the judiciary. No house can have two masters and be strong. Judicial administration has been operating with beggarly budget because it does not generate profit. It is high time that the Judiciary should alone be made a sole authority to take care of the administration of Justice.[43]

M. Control over Subordinate Courts

There is another important facet of independence of the judiciary provided under the Constitution, according to which the control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, person belonging to the judicial service of a state and holding any post inferior to the post of district judge is vested in the High Court.[44] It is not mere conferment of power on the High Courts, the provision has been enacted to ensure that the subordinate judiciary also is immune from executive influence. That is why the control over the subordinate judiciary is entrusted to the High Court and to no one else because the control remains within the Judiciary itself which is what ensures the maintenance of independence of the subordinate judiciary. Article 235 is really the power in the High Court to discipline the subordinate judiciary with care and affection as an elder would discipline with care and affection, younger members of his family. It is, therefore, a power to be discharged with great responsibility to ensure that the subordinate judiciary realizes its true potential and is able to discharge its function as the foundation of the judicial system because the maximum exposure of the people is to the judiciary at the grassroots level. This is necessary to retain public confidence in our judicial system.

N. Duration of Appointment

When judges have life long tenure, they are both less susceptible to direct political pressure and less likely to have been appointed by the

[42] *Ibid.*

[43] *Supra* n. 16.

[44] Article 235, Constitution of India.

politicians currently in office. Independence is particularly important when judges are adjudicating disputes between citizens and the state (for example, freedom of speech issues and contract disputes). Therefore, the study focuses on the tenure of two different sets of judges: those in the highest ordinary courts (the Supreme Courts), and those in administrative courts, which have jurisdiction over cases where the state or a government agency is a party to litigation. Countries in which judges are independent from the influence of the state also tend to be countries where the judiciary is free from interference by private parties. The tenure of judges matters in both cases. Peru is frequently rated as the country with the least judicial independence. Former President Fujimori kept more than half of judges on temporary appointments from 1992 to 2000.[45]

O. "Faceless" Judges

Intimidation by powerful private interests is as likely to result in arbitrary decisions, as is intervention by the State. In Colombia, for example, powerful drug lords threaten the lives of judges and their families. In the 1990s alone more than 60 judges were assassinated. One solution to the problem is the creation of "faceless" judges or juries, who decide on cases without the public knowing their true identity. This method has been successfully tried in Colombia. But even this solution may be inadequate. In a corrupt society the identity of faceless judges can be revealed. Another channel of influence is through bribes and corruption. In a number of countries judges' salaries are lower than those of other public servants and much lower than the salaries of private sector lawyers. This creates incentives to sell justice. While wages increases would not eliminate high-level corruption in the judiciary, they may eradicate small-scale bribery. Judges will have less need to supplement their income. To date, however there has been little systematic evidence on this issue.[46]

P. Reducing Laws' Delays

Another latent danger to guard against is the consequence of mounting arrears in the law courts. Unless corrective measures are taken expeditiously, the malady would progressively de-generate the justice delivery system and erode its credibility. The malady has already given rise to resort to extra-legal remedies by many, and frustration in others with a feeling that the promise of justice to all is a mirage on account of law's delays. Immediate action is required in this regard otherwise, there would be no rule of law and without rule of law, democracy cannot survive.

[45] *Supra* n.24 at 130.

[46] *Id.* at 131.

Some of the remedial measures which can be taken with the available infrastructure and require only the zeal to perform the duty with true devotions, are:

(i) full utilization of the court working hours;

(ii) avoid absenteeism except for an unavoidable good cause. Provision of vacation is for this reason;

(iii) curb frivolous litigation by proper check at entry and quick disposal. One has to remember, delay breeds frivolous litigation;

(iv) identify and eliminate artificial arrears; and

(v) encourage alternative dispute resolution mechanisms

Failure to adopt above measures may be construed as lack of devotion to duty. A standard higher than that applied to control the subordinate judiciary under the Constitution[47] is expected to be followed by the superior Judges.[48]

V. Conclusions

The goal of an ideal society can be achieved through a strong legal system, providing equal protection of laws to each section of the society irrespective of caste, religion, creed, sex and other factors affecting social status. Efficacy of the laws is the test with regard to an efficient and strong legal system. The acceptance of law by the society is the surest guarantee of its efficacy. In India, it is the ready acceptance by the society of the need for such laws and their faithful enforcement, which realises the promise, held out by the Preamble of the Constitution. Natural acceptance by the majority of this phenomenon is ingrained in the Indian ethos. This is the grandeur of the Indian Mosaic.

A stateman's vision and perception is needed in enacting laws. Short-term political gains must give way to long-term stability and progress of the nation. Judicial statesmanship must influence judicial interpretation of the laws to promote cohesion. The objective must be continuing cohesion by promoting fraternity among all the citizens. Equality is the core value to be observed and cherished. This is the real purpose of laws in a multi-cultural society. Laws in India seek to achieve this end.[49]

---

47 Article 235, Constitution of India.

48 *Supra* n.26 at 34-35.

49 J.S.Verma, *The Law in a Multi-Cultural Society* in New Dimensions of Justice (Delhi: Universal Law Publishing Co. Pvt.Ltd., 2000) at 58.