

ALL INDIA SEMINAR ON “JUDICIAL REFORMS”

VIGYAN BHAVAN, NEW DELHI

23RD - 24TH FEBRUARY 2008

Her Excellency Mrs. Pratibha Devisingh Patil, the President of India, Dr. H.R. Bhardwaj, Union Minister for Law and Justice, my esteemed colleagues of the Supreme Court, Mr. Milon Kumar Banerji, Attorney General for India, Mr. Goolam E. Vahanvati, Solicitor General of India, Mr. Harish N. Salve, Senior Counsel & Chairman of the Reception Committee, Mr. Pravin H. Parekh and distinguished delegates.

I am extremely happy that a seminar is being held on “Judicial Reforms”. “Judicial Reforms” is a theme, which is so much of talked about but too little done. Indian judicial system has a long history right from the pre-British days. In the 18th century a uniform pattern of judiciary emerged and during the British regime High Courts were established in presidency towns. Thereafter, in 1937, the Federal Court was established to hear the appeals from the High Courts. Because of complexities of personal laws of Muslims and Hindus and various customs & practices, there were initial difficulties in administration of justice. After independence,

we wanted to have a systematic judicial system throughout the country and many new subordinate courts were established in various parts of the country. We have now got a network of over 14 thousand courts all over India and these courts are dealing with 4 crores of cases. Out of 14 thousand judges, the working strength would be about 12,500 judges and nearly 4 thousand cases are being handled per-Judge. This is too high as compared to the average load per-Judge in other countries.

The general impression of the people is that a large number of cases are being delayed and, if any case is filed, it would take years to get a relief. This impression about the performance of Indian Judiciary is not fully correct. Out of total pendency of these cases, only 40% cases are less than one year old. 90% of delayed cases are pending in the subordinate courts. We should have a national planning and management system for the administration of justice. What the Indian judicial system lacks is a systematic plan at the State and National levels to overcome the delay and arrears of cases. Our National Judicial Academy is preparing a proper case management system to avoid the delay and arrears of cases. We want long-term reforms on various aspects. We should have (i) legislative reform to remove the

bottlenecks that are adversely affecting the adjudication; (ii) strengthening of the Bar; (iii) strengthening of legal education; (iv) legislative reform to strengthen the powers of judges to control judicial processes to ensure just and efficient outcomes in line with international reforms in this direction; and (v) satisfactory framework for judicial accountability. These broad outlines have to be discussed and designed by competent people and a planned outlay should be submitted to the Government.

We should also address the question as to how our courts are crowded and to what extent this situation could be remedied. There could be so many administrative reforms that can prevent the number of litigation coming to courts. In a large number of cases pending in Courts, especially in higher Courts, Government is one of the parties either as defendant or as appellant. These litigations are on account of lack of proper governmental administration. If the decision making authorities take firm, independent and impartial decisions, the citizens would not normally be driven to litigations. Lack of proper and good governance largely contributes to the number of cases in subordinate courts.

For example, weak and inefficient revenue administration, which results in poor land rights recording system is the main reason for large number of civil litigations. If the revenue administration is streamlined and every one in this country is given proper title deeds with computerized diagrams, a large number of land disputes could be avoided. In States where the revenue administration is poor, there are large number of civil cases and these disputes relate either to title or boundaries of their properties and these cases could be avoided, if proper re-survey operations are done and proper revenue records are maintained by the authorities.

Now, a large number of financial institutions are trying to recover money through criminal proceedings by making use of the provisions of the Negotiable Instruments Act. The courts have become the collecting agents for these financial institutions. Most of them are privately owned by people who engage in the practice of giving usurious loans. Because of these types of cases, trial of ordinary criminal cases is seriously hampered.

A large number of motor accidents claims are pending in various Tribunals. In some States, it takes more than 4/5 years to settle the claim despite the fact that large number of cases are

settled through Lok Adalats. The Insurance Companies should have proper settlement methods whereby they must acknowledge their liability and disburse the amount to the claimants even before they come to courts. Such a streamlined procedure is not available in our system. When the claimants are before the courts, the Insurance Companies are not in a position to settle the claims even in cases where they admit their liability. Considering the large number of cases pending in various courts, it is better that we should have a “structured formula” whereby Insurance Companies can pay the amount and those who are dis-satisfied with the settlement can approach the Tribunal for enhancement.

This is also the situation in respect of land acquisition cases. The amount awarded by the land acquisition officer has never been reasonable or proper. The parties are driven to litigation in large number of cases. At the district level, if there is a District-wise High Power Committee to fix the compensation at reasonably good amount, most of the claimants may accept it and only very few would resort to file land acquisition cases for enhancement.

As regards criminal cases, there are other contributory factors which cause large pendency of cases. In some of the cases, the investigation is tardy and inefficient and takes long time

to file the final report. Even after we have achieved advancement in science and technology, the fruits of such scientific developments are not being tapped by the police to have investigation in a scientific manner. We do not have enough scientific laboratories and many a time the report of the forensic laboratory is delayed inordinately. Inept policing and weak prosecution are hugely responsible for slowing down and protracting the criminal trial in many courts. We are trying to have planned approach to delay and arrears reduction. We are trying to have National Minimum Court Performance Standards that will set the minimum that the people of India can expect from the subordinate courts. We propose to have the following elements :-

- (i) Disposal level of the national system should be raised from 60% of total case load (as of now) to 95%-100% of total case load in five years. This will require this target to be established at the court, district, State levels as well.
- (ii) Each court to ensure that not more

than 5% of the cases in that court should be more than 5 years old (5x5 rule) within the next three years; and in 5 years to ensure that not more than 1% of the cases should be more than 1 years old (1x1 rule).

- (iii) Timetables to be established for every contested case and monitored through a computerized SIGNALLING SYSTEM (NJA has developed and piloted a model).
- (iv) Case numbers to indicate “litigation start dates” prominently in addition to filing dates.
- (v) Use of ADR for civil cases and plea bargaining for criminal cases to be enhanced and monitored through a nation-wide computerized tracking system.
- (vi) Bottleneck Monitoring: Four keys

bottlenecks causing delays in civil and criminal process to be monitored through a computerized system and special attention to be provided through a special cell at the High Court and District level to resolve issues in coordination with Executive Agencies : (a) Service of process; (b) Adjournments; (c) Interlocutory Orders; and (d) Appearance of witnesses and accused.

We are also thinking of having Common Minimum Human Resources Management Standards and also Common Minimum Judicial Infrastructure Standards. Our National Judicial Academy is imparting training to judicial officers and we have successfully completed about 12 judicial training programmes last year.

I, once again, express my gratitude to the Confederation of Indian Bar for having organized this seminar. We would like to have the views of all the eminent personalities who participated in this seminar and the ideas that would emerge from this discussion would be seriously considered and any suggestion made by the

participants which is worthy of implementation would be seriously considered, pursued and implemented. I beseech the co-operation of the Bar for a better administration of justice.

Thank you. Jain Hind.