SPEECH DELIVERED IN CHINA ON
"JUDICIAL REFORMS"
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The Indian judicial hierarchy had been quietly built up over the years on the basis of the British pattern by the end of the 19th Century. The High Courts were considered as the highest judicial tribunals within their respective jurisdictions subject to appeals to the Privy Council. The Government of India Act of 1935 accepted the administrative and judicial supremacy of the High Courts within their respective territorial jurisdictions and conferred appellate power in the Privy Council against judicial decisions of the High Courts in India both in the civil and criminal matters subject to certain conditions. The Constitution of India, 1950 maintained the administrative independence of the High Courts and gave control over the District Courts and Courts subordinate thereto to the respective High Courts. Under the Indian Independence Act of 1947 the appellate jurisdiction of the

Privy Council came to an end and the Federal Court became the final court of appeal. With the enforcement of the Constitution, the Supreme Court became the apex judicial institution, and appeals against civil and criminal decisions by the High Courts was provided to the Supreme Court by Articles 132, 133 and 134 of the Constitution and under Article 136 provision was made for special leave to appeal against decisions of the High Courts and tribunals. It is clear, therefore, that the scheme of the 1935 Act had been sustained and while the judicial orders of the High Courts were subjected to appeals to the Supreme Court, in regard to the administrative side, the independence of the High Court was sustained.

By 1950, both the High Courts and the Subordinate Courts had too many cases pending before them for disposal and the problem of backlog had become a cause for concern. Within a few years, the Law Commission of India gave a close look at the issue and its 14th report projected the problem with due emphasis. Fundamental rights were enshrined in the

Constitution with a place of primacy; the writ jurisdiction of the superior courts was plenary and an innumerable number of cases came before these courts asking for enforcement of fundamental rights. The volume of cases, both civil and criminal, increased beyond imagination and the problem of backlog started becoming acute.

In the Judges' case (1982), the Supreme Court knocked out the common law defence of locus standi and permitted Public Interest Litigations (PIL) to be instituted by a friend of society in support of the cause of action of a person who was not able to help himself through court. Within the last quarter of a century the number of public interest litigation in the High Courts and the Supreme Court has tremendously increased, in spite of the fact that the Bar and Judges are aware of the menace of arrears. While the Supreme Court has reduced its arrears and in some High Courts, a system of control has visibly emerged, on the whole, the arrears are too many and the litigants' waiting is too long. There have been instances where the waiting period has been thirty to thirty

five years. No one can wait for that length of time to obtain the judicial verdict. Human life is not intended for litigation. Indefinite delay, heavy cost of litigation and the concomitant harassments make it difficult for a litigant to get justice within a reasonable period.

The Law Commission has recommended steps to improve the situation. Several measures have been suggested.

In 1947, when we became independent following the partition of India, our population was about 350 million. In these fifty years, the Indian population has increased to about 1000 million. Law abiding conduct has vanished. Social control of individual behaviour is also very much reduced. The result has been proliferation of litigation. Though the population is almost trebled, the number of Courts has not adequately increased.

In the eighties, the conciliation process had been made operative. On the basis of reports given to the Union

Government a Committee of Implementation of Legal Aid Schemes (CILAS) was set up. Pending cases were handled at Lok Adalats and by now nearly twenty million cases have been disposed off. Encouraged by the results, a statutory base was attempted to be provided to the Lok Adalat system by enacting the National Legal Authority Act, 1887. Courts should have statutory responsibility to bring about settlement by conciliation. In fact, before the litigation comes to court, the lawyers should have the responsibility of attempting settlement of the matter by conciliation. Lawyers should be called upon by law to certify that attempt to get out of court settlement before instituting the case had been made. All pending cases should be scrutinised from the angle of conciliation without delay and every effort should be made to settle these matters. After the conciliatory exercise has been pursued, the cases that require judicial disposal should be earmarked for hearing.

The members of the Bar have a heavy responsibility in dealing with the problem. Recent scrutiny showed that many

cases without cause of action or without properly examining the question of maintainability are brought before the Court. The lawyer is an officer of the Court and should be called upon to certify that the case, in his opinion, is a fit one to be examined by the court and that attempt for pre-litigation conciliation has failed. The lawyer should realize his responsibility and be made accountable professionally.

Vacancies in Courts are not filled up in good time. The vacancies position is not very encouraging. Every attempt should be made - it is not difficult to work out - to fill up the vacancies without even a day's delay. During the British regime, very often one judge was going out on retirement at the end of the day and his successor was entering into the court the following day without a day's time being lost. This should be enforced.

Statutes and rules very often prescribe the period during which the case of a particular type should be disposed off. The

court and the counsel should feel bound by the prescription and every effort should be made to.

As an experiment second shift in Courts has been attempted. A set of retired judges of good physique, capacity and known integrity should operate in a second shift utilising the same court complex. If a set of retired judges are called to work, it would cost 50 percent of salary and same establishment being used would save a lot of money. Lawyers who have no adequate work in the regular shift can practise before the evening courts. Similarly, with extra remuneration judicial officers and staff can work in the second shift. With the introduction of Fast Track Courts the disposal rate has considerably gone up.

Public interest litigation should be controlled. It cannot be doubted that public interest litigation are useful, but their utility can't lead to the conclusion that the Court can have public interest litigation in every matter. Discretion must be carefully used and before entertaining the PIL the Court

should apply its mind and satisfy itself about the legitimacy of the matter. PIL are pending in different High Courts without having any cause of action and having been instituted in an irresponsible manner. Exercise of good control could reduce the number and only such cases which should be looked into should be handled.

The Supreme Court introduced the computer system in 1990 in its Registry. The benefit of this innovation has been felt in the following years. The pendency has been substantially reduced and today it is under controllable limits. Along with computerization, the tagging system of similar cases was also adopted. Both of these have proved their utility. It is necessary that the system should be extended to judicial forums of every level and the entire process should be subjected to tagging as also computerization. Under guidance and directions of the Hon'ble Chief Justice of India, the benefit of computerization is being extended to Sub-ordinate Courts.

Change is a natural phenomenon and challenge is man made. Any change that occurs by efflux of time can possibly be tackled positively by means of reforms.

The term ‘Judicial Reforms’ denotes a wider meaning, and needs multi-dimensional approach. In the process of judicial reforms, not only the Judiciary, but also the Executive and the Legislature – the three wings of the Government on the one hand, and also the litigant public, on the other hand, are equally required to share equal responsibility, but the initiation must start first at “Home” i.e., by the Judiciary itself. Self realization, self criticism and self judgment are the three angles of any reforms so the judicial reforms.

At the micro level, the process of “Judicial reforms” shall start from the “Bench”. Bench is the beacon light in the ocean of judiciary, and it plays a major role in bringing reforms in the Judiciary, inasmuch as it is reposed with the responsibility of not only assuring justice, but also doing justice to the needy.

The administration of criminal justice in our country appears to be at crossroads. Large-scale acquittals are eroding confidence in the effectiveness of criminal justice system. It is natural also because when people see persons accused of heinous and ghastly offences getting acquitted, they believe that either courts are too liberal or pro-criminal or are not functioning the way they ought to function. Unfortunately, they do not know nor do they try to know the reasons for such acquittals. It is common knowledge that most of the acquittals are on account of the fact the witnesses produced by the prosecuting agencies do not support the prosecution cases. A very large number of acquittals are also on account of faulty, non-scientific and dis-oriented investigation. The courts have to decide cases on the basis of the evidence produced before it and not on the basis of the evidence which ought to have been produced. When a crime goes unpunished, the criminal is encouraged, the victim of crime is discouraged and the society in the ultimate analysis suffers, which has an adverse impact on the law and order situation in the country. The situation needs remedial measures at once so that Rule of Law and

effectiveness of criminal justice delivery system is maintained. Perhaps, substantial improvement in criminal justice delivery system can come about if investigators are properly qualified and well trained and if the investigating agencies are separated from the law and order wings of the police.

Rising crime against women requires particular attention. The need of the courts to be more sensitive while dealing with such cases is too obvious to be emphasised. The court must always keep in mind the human psychology and behavioural probability of the victim while assessing testimonial potency of the evidence. The courts should examine the broader probabilities of the case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix. Where evidence of the prosecutrix inspires confidence, it must be relied upon without insisting upon corroboration of every statement made by her so long as there is corroboration of her testimony in material particulars by direct or circumstantial evidence. Testimony of the prosecutrix must be appreciated in the background of the entire case,

keeping in view the fact that a victim of rape has undergone a traumatic experience. There is an urgent need to amend section 155(4) of the Indian Evidence Act, 1872 which provides that in cases involving sexual offences, the credit of the prosecutrix may be impeached by showing that she was of "generally immoral character". This is irrelevant, because the prosecutrix has every right to refuse to submit herself to sexual intercourse against her will as she is not a vulnerable object or prey sexual assault by anyone wanting to satisfy his sexual lust. Let us not forget that rape is a crime against the entire society and violative of the right of a woman to live with human dignity. It is an irony that while woman's right is being celebrated in all spheres, little or no concern is shown for her honour. It is also a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. A rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault, it is often destructive of the whole personality of the victim. A murderer

destroys the physical body of his victim, a rapist degrades very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. Statutory minimum sentence for child abuse, without any proviso to the type contained in section 376 (2) IPC, also needs to be provided especially in case of child victim below 12 years of age.

The Courts are obliged to act in furtherance of the intention expressed by the legislature and not to ignore its mandate and must invariably take recourse to the provisions of Section 327 (2) and (3) Cr.P.C. and hold the trial of rape cases in camera. It would enable victim of crime to be little more comfortable and answer the questions with greater ease in not too familiar a surroundings. Trial in camera would not only be in keeping with the self-respect of the victim of crime and in tune with the legislative intent but is also likely to improve the quality of the evidence of a prosecutrix because she would not be so hesitant or bashful to depose frankly as she may be in an open court, under the gaze of public.

While considering procedural reforms, we must show proper concern for the dignity and honour of the women in our country who still live in a tradition bound non-permissive society and suggest appropriate reforms in the Evidence Act, the Indian Penal Code and the Code of Criminal Procedure in that behalf.

Unimpeachable integrity, merit and suitability with due regard to seniority are the qualities which one must look for while appointing Judges at all levels. To err is human and best insulation against error lies in pooled wisdom and wider consultation for selecting the best available.

All reforms reflect a progressive attitude in the absence of which no institution can survive the onslaught of rust and dust it gathers in the course of its functional movement. Reforms to an extent are aimed at throwing out the obsolete and outdated and bringing in new, modern and the latest. Reforms should not be understood to mean defeat, or

disenchantment with the past. Changing mores of the society always call for the review and updating of laws. In a marching society, laws have to be modified, amended and changed to keep pace with the advancement. No institution can survive without undertaking timely reforms in the absence of which it is bound to be rejected as o*tiose.* Reforms have to be a continuous and ongoing process. "Judicial Reforms" do not simply mean procedural and substantive laws but include corrective endeavours aimed at strengthening and systematizing the law and order mechanism operating in the country.

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