STRENGTHENING JUSTICE DELIVERY SYSTEM – SOME CHALLENGES & SOLUTIONS

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BACKGROUND

1.1) Indian Judiciary presently consists of around 30 Supreme Court Judges, 700 High Court Judges, 15,000 Trial Judges for a population of 122 crores. This leads to a Judge-Population Ratio of 13 judges per million as against 110 per million in U.S.A. and 60 per million in Australia.

1.2) The number of cases pending in Indian Courts is about 27 million in the trial courts, about 4.5 million before State High Courts and about 70,000 before the Supreme Court. This means an average case load of 2,000 cases per judge. All trials, either civil or criminal, are non-jury trials. Except review petitions in the Supreme Court, all cases are heard in open court and all parties have the opportunity to put forth their cases in writing supported by oral submissions.

1.3) After independence, for several years, the number of civil cases and number of criminal cases pending in courts were of equal proportion. Gradually, the proportion of criminal cases has increased. At present, out of the 27.5 million cases pending in trial courts in the country, only about 83 lakhs are civil cases and 192 lakhs are criminal cases, that is, a ratio of 2:5. In most of the States, the criminal cases far outnumber civil cases. In the states of Bihar, West Bengal, Madhya Pradesh, Orissa, Uttarakhand and Delhi, the ratio between civil and criminal cases is around 20:80; in the states of Uttar Pradesh, Chattisgarh, Assam and Rajasthan the ratio is around 25:75; in the states of Maharashtra, Gujarat and Kerala, the ratio is around 35:65; and in the states of Andhra Pradesh (united), Punjab, Haryana and in Chandigarh and other union territories, the ratio is almost equal, that is,

50:50. The exceptions appear to be only Karnataka and Tamil Nadu where the civil cases are much more and the ratio between civil and criminal cases is 60:30.

1.4) There are two views about this skewered ratio. The first view is that this shows an unhealthy situation, that is increase in civil cases shows the confidence of the common man in the judiciary, as he voluntarily approaches the courts with a desire to find a solution to a pending dispute in a civilized manner through the decision of a public adjudicator; and increase in the number of criminal cases shows increase in criminal activities, unrest and violence. It is stated that the existing skewered ratio on account of high pendency of criminal cases shows that the common man is losing confidence in the judicial system (on account of delays, uncertainty of outcome, inflexible results, high costs, etc); and as a result more and more are disinclined to approach civil courts for relief and take law into their own hands, thereby increasing crimes and consequently increasing the criminal cases. The second view is that the common man's trust and faith in the judicial system remains unshaken; and the steep increase in criminal cases is on account of criminalisation of various acts which were not earlier crime, but merely civil wrongs. They refer to the example of dishonour of cheques being made a criminal offence (which was not so earlier) by an amendment to Negotiable Instrument Act, which has led to an increase in the criminal pendency by as many as 2.5 million cases. Another example given is in regard to wrongs relating to marital relations being criminalised by creating the offences of domestic violence, marital cruelty and dowry harassment, etc. which has led to a large number of criminal case. Be that as it may.

1.5) Out of the criminal cases, the cases relating to offences triable by court of Sessions constitute hardly 5%, other warrant cases triable by Magistrates constitute 20 to 25% and summons cases constitute the remaining 70 to 75%.

1.6) Disputes relating to lands and buildings, employment (in particular relating to government and quasi-government employees), family relations and compensation claims (motor accidents and land acquisition) constitute the bulk of civil disputes. Consumer disputes are dealt with by special fora outside the judiciary. About 80% of the civil cases go to trial and only about 20% of the cases get settled at pre-trial stage.

1.7) The Indian judiciary has been statutorily entrusted the following legal service functions under the Legal Service Authorities Act, 1987: (i) spreading legal awareness; (ii) providing legal aid; and (iii) implementing Alternative Disputes Resolution processes.

1.8) The pluralistic Indian Society is multi-religious, multi-caste, multi-

lingual, multi-regional and multi-layered. Arable land is limited. Unemployment is high. By Indian Standards, about 27% of the population that is nearly 300 Millions are below the poverty line. By international standards, nearly 75% of Indians are poor and 45% are extremely poor. The poorer sections, due to their social and economical backwardness, find it difficult to access justice. Caste and community based differences, strifes, fights, rivalries are eroding the peace and prosperity of the country.

1.9) Most of the contested cases, civil and criminal, take two to five years for disposal. In some states and in some category of cases, the period of pendency may go up to ten years. In some states, due to heavy pendency of cases, criminal and civil appeals can take even two decades for hearing and disposal. Indian courts have become synonymous with delay.

1.10) The Supreme Court enjoys the reputation of being the only hope for the country against political nepotism, arbitrariness and inefficiency. When public interest litigations espousing public causes or exposing scams come up before the Supreme Court, and the court makes populist observations or scathing remarks or pulls up the establishment, the court is very 'popular'. But when it comes to delays in disposal, its reputation takes a beating. Another harsh reality is that credibility of High Courts is lower and the credibility of lower courts is much lower.

1.11) These social, economic, and political factors throw four challenges to the Indian Judiciary: (i) How to render speedy effective justice? (to deal with the problem of delays and lack of effective justice). (ii) How to popularize ADR processes? (to improve personal and commercial relationships in the socity, to take the load from the shoulders of courts,k to reduce cost and save time for litigants and to provide flexibility/choices in solutions/reliefs). (iii) How to provide access to justice to the needy and downtrodden? (to deal with lack of access to justice to the poorer and weaker sections of society) (iv) How to maintain its credibility and regain the trust and confidence of the general public? (to deal with erosion of credibility of judiciary as an institution and the gradual loss of trust and confidence of the common man in courts).

2) Providing an effective solution depends upon identifying the problem and its various dimensions. There is a famous Chinese proverb '*How effective an answer depends upon how clear the question*.' Let me, therefore, first identify and describe the problems which have given raise to the challenges.

CHALLENGE I: RENDERING SPEEDY & EFFECTIVE JUSTICE

2.1) The biggest challenge is the huge back log and the delay in disposal of *cases*. The pendency in High Courts and Trial Courts is steadily increasing. A

decade ago, that is at the end of 2004, about 34 lakh cases were pending in the High Courts and about 246 lakh cases were pending in the Trial Courts. This has increased to around 44 lakh cases in the High Court and around 275 lakh cases in the Trial Courts.

2.2) Courts function under procedural Laws which are old and somewhat outdated. The Code of Civil Procedure is a century hold. The new Code of Criminal Procedure is more than 40 years old and it is only a rehash of an earlier Code which was a century old. The Evidence Act is of the year 1872. These procedural laws were enacted when litigation were few. They were made with meticulous care to ensure fair play, uniformity and avoidance of judicial error. They provide for appeals, revisions and reviews. They enable filing of innumerable applications which often results in the main matter itself being lost sight of. They enable motions for adjournments which are routinely sought and given. Delay has thus virtually became a part of the judicial process. The Chief Justice Warren Burger of American Supreme Court once remarked: "*All litigation is inherently a clumsy, time consuming business*".

2.3) The proliferation of laws and increase in population has resulted in an enormous increase in the quantum of litigation. There has been no Judicial Impact Assessment in regard to new legislations. To give an example, insertion of a provision in Negotiable Instrument Act making dishonouring of cheques, a criminal offence, has resulted in an annual filing of about 2 million criminal complaints. There is no increase in the strength of Judges corresponding to the increase in litigation. The overloaded judicial system has to struggle with huge pendency, insufficient manpower and elaborate procedural laws. A powerful bar with a mindset tuned to think of life-cycle of cases in terms of years and decades rather than months and a vested interest in adjudication of cases rather than negotiated settlement, does not help matters. The response of the Executive to the demands for more Judges, more Courts, and better infrastructure has been lukewarm. The response of the Legislature to the demand for better laws has been slow. It has become quite common for civil disputes, in particular litigations involving family divisions (partitions/succession), evictions, easements and specific performance, to be fought for several decades through the hierarchy of courts. In commercial litigations, delay destroys businesses. In most criminal cases the major punishment is the harassment of pending criminal prosecution rather than the ultimate result. In family disputes, delay destroys peace, harmony and health turning litigants into nervous wrecks. The delays, when considered with other factors associated with litigation, in particular, the inflexibility in decision making, technicalities in laws, high cost in regard to some category of cases, make the litigants feel that justice

has become elusive and illusive. Consequently, there is a real danger of confidence in the rule of law and the existing justice delivery system, getting eroded.

2.4) As a result, people with grievances, causes of action, and complaints start thinking of solutions outside legal framework to get quick relief. A landlord who wants possession from a tenant, knowing that litigation may take years, starts thinking of engaging the services of musclemen to evict the tenant. More and more reports are received about citizens approaching the underworld or unscrupulous police officers to settle claims and recover properties. Moneylenders, and even Banks, instead of approaching Law Courts, have started entrusting debt collection to dubious agencies who coerce, threaten and bully borrowers to repay the amounts due. Though well aware that such methods are illegal, costly and risky, more and more persons are misled into believing that recourse to illegal methods, will give swift, decisive and effective result. In this process, the society gets criminalized. This is the most dangerous among the several fallouts of delay.

2.5) The injustice caused on account of delay in criminal cases also requires to be noticed. At any given point of time, there are about three lakh under-trials in prisons, which is about two-third of the prison population. In some states like Bihar, nearly 80% to 85% of the prison population is made up of under-trials. Only in a few states, the percentage of under-trials in prisons is around 50%. More than three thousand undertrials are rotting in jails for more than five years. There are nearly two thousand children behind bars as their mothers are under-trial prisoners. Empirical studies show at least 50% to 60% of the under-trials in jail will be acquitted on completion of trial. When the under-trials who are behind bars for two or three or four or five years and thereafter acquitted, he/she has no remedy for the years lost, freedom lost, reputation lost. Same is the position in regard to convicted accused, who continue in jails during the pendency of their appeals, hearing of which may take anywhere between one to two years, and even 20 to 25 years in some states.

CHALLENGE II: POPULARIZING ADR PROCESSES

3.1) A litigation ending in a contested decision invariably leads to bitterness, hostility and enmity between the parties to the lis, as the losing party continues to nurture a grievance against the successful party. In a civilized society, parties are expected to accept the decisions of Court with grace, but that seldom happens in reality, particularly in suits relating to partition among family members, disputes between neighbours, disputes between partners and disputes between spouses. On the other hand, if there is a settlement by conciliation, there are neither winners nor losers, as the result is acceptable to all. It is said that decision on contest creates two enemies whereas a consensual decision creates two friends. Settlement

of a good percentage of cases by a continuous process of conciliation has the following other beneficial fall-outs also : (i) The pressure on Courts and Legal Practitioners on account of heavy pendency is eased with the result that the Court's Board comes to manageable limits. As a result, Courts can deal with contested cases, more effectively, thoroughly and expeditiously. (iii) The cost of litigation is reduced considerably as the expenses of a long litigation are avoided. There is enormous saving of time and energy for litigants and witnesses. (iv) The average period of pendency of cases will come down drastically and it will be possible to have decisions in any litigation within a short and reasonable period. But is it happening? The answer unfortunately is 'no'. Hardly 15% of cases get settled in India at Pre-Trial stage. 85% of cases go to trial. If so, what are the reasons for ADR processes not attaining the required popularity and acceptance among litigants?

3.2) *Reluctance of litigants* - Every litigant believes that he has a very strong case. Such impression is based either on his own perception of the case, or on the assurance of success given by his counsel. He, therefore, feels that any settlement involves giving up a part of his right or claim by showing a concession to the other side. As a consequence, when a matter is brought to the negotiating table, many a litigant starts with an initial resistance and prejudice, as he believes that he will get a larger relief by prosecuting or contesting the litigation and there is no need to settle the matter by agreeing for a lesser relief. The awareness about the efficacy of ADR processes is sketchy. The litigants largely go by the advice of their counsel who are not favourably inclined towards ADR processes.

3.3) *Reluctance of lawyers* - The reluctance on the part of some sections of Advocates, to settle cases by ADR methods, stems from their fear that they may not be able to charge or receive the full fee, if the case is settled. The fee received for a case involving a full-fledged trial with possibilities of one or more appeals, it is felt, is several times more than the fee that can legitimately be claimed if a matter is settled without trial. In mofussil areas where the lawyer population is high in proportion to pending litigation, there is a feeling of insecurity associated with ADR process. At many places, the members of the Bar are of the view that encouraging settlements and early disposal of cases will affect their livelihood. In small towns, say where the number of lawyers is 30 to 40 and the total pendency of cases is about 600 to 800, many members of the Bar have hardly 10 to 20 briefs. Such lawyers feel that longer pendency provides them with a steady income and that they can ill-afford to settle cases by adopting ADR method*s.* Such insecurity is prevalent among sections of City Lawyers also. Lawyers also express reluctance to persuade their clients to arrive at a negotiated settlement for another reason. It is stated that when a Lawyer suggests a settlement, many

a client start doubting his capacity and integrity. Therefore, a section for the Bar feels that when they have been engaged to conduct cases, their duty is to conduct cases, and not to assist in settling them.

3.4) *Proliferation of Lawyers* - One paradox is more the lawyers, less the settlements by ADR processes. Let us see how. There are more than 1000 Law Colleges in India. There are nearly one and a quarter million lawyers in India. Every year there is an influx of 70,000 to 75,000 law graduates into the legal profession. Most of them became litigators. Comparatively, very few go into corporate legal field. As a result, the saturation point has already been reached with reference to the existing quantum of litigation. Let me illustrate its adverse effect. If there are 10,000 cases in a town with 100 lawyers, each lawyer would have an average of 100 briefs. In such a situation, the members of the Bar would all have sufficient work. Consequently, they will settle cases which deserve to be settled and fight only those which merit a fight and also advice clients against unnecessary litigation. On the other hand, for the very same 10,000 cases, if there are 1000 lawyers, then the average number of cases per lawyer becomes ten. If a lawyer has only ten cases and he has to eke out his livelihood from those ten cases, his entire attitude changes. He naturally will not let go of any of those ten cases. Even if any case deserves to be settled, he will not permit it to be settled. His tendency would be to hold on to each case and prolong the case to the maximum extent, so that his meagre income is not affected. Quality of the Bar is not improving by proliferation.

3.5) *Absence of compelling need to use ADR processes* - Yet another reason for non-development of ADR processes, is the absence of any compelling reason for the litigant to prefer ADR settlement route. Contrary to popular belief, except in some high flier cases, litigation is not costly in India. Further the litigant incurs the major part of the expenditure when he initiates the litigation by way of court fee and lawyer's fee. The court fee payable is usually a nominal fixed amount (except in a few categories of cases, where the court fee is payable *ad valorem* on the claim or market value). Even where *ad valorem* court fee is payable, in the case of agricultural lands (which constitutes the subject matter of majority litigation in rural areas) court fee is payable, not with reference to the actual market value of the property, but with reference to a nominal value based on the revenue assessment of the land. The lawyers' fee is traditionally fixed on a lump-sum basis. The subsequent expense is not much. In developed countries when a civil dispute *goes to trial*, the litigation becomes prohibitively expensive. The loser has to pay *actual* costs of the other side. Therefore, litigants in those countries think twice before proceeding to trial and make a genuine effort to settle their cases before trial. Consequently, hardly 15% of cases go to trial in developed countries.

Unlike developed countries, a litigant in India, on losing a litigation does not bear or pay the actual costs of the other side, but only pays a very nominal amount as costs and that too not in all cases. The absence of fear of being mulcted with heavy costs, in the event of the case going to trial and ending against him, therefore, acts as a dis-incentive to the litigant to adopt ADR process.

3.6) *Non-use of ADR process in government litigation* - Wherever the Government or a Statutory Authority is a party to litigation, the chances of a negotiated settlement are rather dim. The reluctance is not on the part of the government or the statutory body, but on the part of the officers in charge of the litigation. Where the Government or a statutory body is a litigant, the reluctance to settle by adopting ADR process, stems from the self-interest of the government servant to 'cover' himself against accusations of graft. The officers concerned always have an apprehension that corrupt motives may be attributed to them, if they agree to a settlement, or that they may be found fault with, by their Official Superiors or by the Audit. This results in a 'pass the buck' syndrome. There is a tendency on the part of the officers of the Governmental and Statutory Authorities to shift the responsibility for dispute resolution to an adjudicatory forum. An officer of the government will refuse to settle a claim for One Million, but will readily accept a decision of the court or the Arbitrator and pay Ten Million to a claimant.

CHALLENGE III: PROVIDING ACCESS TO JUSTICE

4.1) Each grievance and complaint of weaker sections, poor and down-trodden is invariably a cry for justice, involving a human problem relating to life, liberty, food, shelter, safety or security. Poverty and ignorance are the twin barriers denying them the access to justice. Financial aid, legal awareness and easy access to justice, can remove these barriers and give them a level playing field to seek and secure justice.

4.2) The socially and economically backward classes and the poor, when subjected to injustices and inequalities, when not able to access effective and speedy justice, either on account of ignorance of their rights and remedies, or want of funds to litigate, tend to take law into their own hands. Several disputes which ought to have found solution in civil litigation end up as crimes. As a result, there is an alarming trend of reduction in civil cases and increase in criminal cases.

4.3) There are also political and social ramifications of discontent arising from the inability to get justice. If the poor and weaker sections cannot go to Police for fear of being ignored, harassed or being falsely implicated, and if they cannot approach courts, for want of easy access, then they do not have any effective forum to ventilate their grievances. That leads to resentment, frustration, and a

feeling of injustice and helplessness which, becomes a dangerous mix erupting into sudden and serious violence. Those subjected to injustices and not having access to justice, became easy prey to calls for terrorism, anarchy, insurgency and vigilantism, tearing the very fabric of democracy.

4.4) Indian Judiciary, by tradition, follows the British system where the Judge is considered to be a neutral umpire who is not expected to investigate into truth, but merely consider the oral and documentary evidence placed before him, hears the arguments and then decide in favour of one who has made out a better case on law and facts. He takes no active or positive part in moulding or guiding the case nor seeking truth. Of course, in an ideal adversarial litigation, where the parties are evenly matched and are represented by competent lawyers, truth and justice may ultimately prevail and it may be proper for the judge to merely sit, listen and watch. But what happens where the dispute is between a rich and powerful on one side and a poor and down-trodden on the other? What happens when the litigation is between the poor citizen on one side and the mighty state on the other? What happens if persons in power act against the interests of the government for personal gain? What happens if the person who comes knocking at the doors of the court is a woman, child, aged, infirm or disabled who do not have any resources to fight? What happens when a native tribal, who does not know what his rights and obligations are, is catapulted into a litigation, where the adversary is either the government or a scheming land shark or a ruthless loan shark? Should the Judges keep quiet and watch when the interests of the poor and weak are mauled and destroyed? Should the judge merely sit and watch when a false and trumped charge is brought against an innocent by the police or when the rich and powerful cover up their misdeeds and draw red-herrings with the help of smart lawyers? Should the Judge sit and watch when sabotaging the trial begins from the very stage of registering the complaint and the basic evidence is not presented by the prosecution? Is it not the duty of courts to not only do justice, but also to ensure that justice is being done?

CHALLENGE IV: MAINTAINING CREDIBILITY

5. It is John Marshall, I recall, who said : “Power of Judiciary lies, not in deciding cases, not in imposing sentences, not in punishing for contempt, but in the trust, faith and confidence of the common man.” Great institutions when they grow, tend to become unwieldy and lethargic and find it difficult to keep pace with the growing expectations. Resultantly, there is erosion of credibility and trust. Let us examine some factors leading to such erosion in the case of Judiciary. I have already referred to delay and access to justice. Improving the efficiency of Judiciary is a separate subject.

The uncertainty of the outcome

5.1) Litigants hate uncertainty. Lawyers hate uncertainty. A lawyer likes to be able to predict the outcome of a case, with reference to the prevailing legal position as applied to the facts of the case. Citizens arrange or conduct their affairs in accordance with the settled position of law. If a citizen is before a court, he expects the same treatment and same relief as others who are in a similar position.

5.2) The outcome of a case depends on several thing - the facts, the legal position, the manner in which the case is presented, the ability and efficiency of the Advocates, the care taken by the litigant to place all relevant facts on record, and the capacity, integrity and impartiality of the Judges at trial and appellate level. In short, there are several factors beyond the control of the litigant which lead to uncertainty regarding to the outcome. A litigant may win in the trial court, but lose in appeal. He may win in the trial court and first appellate court, but may lose in a second appeal. On the other hand, he may lose before the trial court as also in the first appellate courts but succeed in the second appeal. The hierarchy of appeals and revisions lead to reversals and further reversals. This again leads to uncertainty as to what the result will be, when someone wants to initiate a legal action. Nothing is certain.

5.3) The law declared by the Supreme Court is binding on all courts in India and the legal position enunciated by the State High Court is binding on all the courts in the respective States. To deal with the large number of cases, the Indian Supreme Court normally sits in divisions, that is, either Benches of two or three Judges. In High Courts, the Judges sit either singly or in a bench of two Judges. Due to work pressure, many a time, the previous binding decisions are not noticed. This leads to divergence and inconsistency and lack of uniformity in the decision-making.

5.4) The personal philosophy of the Judges also adds to the uncertainty and inconsistency in views. Benjamin Cardozo in *The Nature of the Judicial Process – Lecture I*, put it aptly thus :

> "There is in each of us a stream of tendency, whether you choose to call it philosophy or not, which gives coherence and direction in thought and action. Judges cannot escape that current any more than other mortals. All their lives, forces which they do not recognize and cannot name, have been tugging at them – inherited instincts, traditional beliefs, acquired convictions ……It is often through these sub-conscious forces that Judges are kept consistent with themselves, and inconsistent with one another."

On account of their personal philosophies, some Judges are identified as acquitting Judges and some as convicting Judges; some as liberal and some as strict in compensation cases; some as pro-labour and others as pro-management. Resultantly, many similar cases may end up with different results with different Judges.

5.5) Uncertainty and lack of uniformity is a serious problem. But when coupled with other aggravating factor like the capacity (knowledge and commitment) or the integrity of the Judges, it becomes a credibility/confidence eroding factor.

Disproportionately high number of acquittals

6.1) An eminent lawyer, recently wrote with anguish, in a newspaper article – "In India, many major crimes are not reported. If reported seldom registered. If registered, the true perpetrator is not identified but an innocent is framed (who himself becomes a victim). Even if the true perpetrator is identified, he is, not prosecuted and charged. Even if charged, not usually convicted. Even if convicted, not adequately punished. At each crucial stage – reporting the crime, registering FIR, investigation, prosecution, charging, letting evidence and conviction, the system has enough loopholes to allow criminals to walk free."

6.2) Large number of acquittals in criminal cases is mainly due to three reasons. The *first* is the criminal procedure which is tailored to give effect to the doctrine that "Let hundred guilty go unpunished but not one innocent should be wrongly punished" is constantly misused by defence lawyers. The *second* is the lacunae in investigation (by the police) and in prosecution (by the prosecuting agency). The sabotaging of trials due to corruption or political pressure is not unknown. Recording of complaints/first information is delayed. Many a time, cases are not even registered. Material documents are fabricated, tampered, interpolated. Cognizable offences are discreetly converted into non-cognizable offences. Search and seizures are tailor-made. Third degree methods are used to extract false confessions. The *third* is delay. When there is delay witnesses forget; witnesses die; witnesses are threatened, or witnesses are bought and either their mouths are shut or they are made to turn hostile. As a result, majority of contested criminal trials result in the acquittal of the accused, by giving benefit of doubt, on the ground that guilt has not been proved beyond reasonable doubt. Emboldened by the lack of convictions, slowly and steadily, more and more commit crimes as they believe that they can get away with the crime, creating a crime ridden society. Unfortunately, the blame for the high percentage of acquittals (almost 75% in contested criminal trials) is placed at the doorsteps of the Judiciary.

Inadequacies in the legal system

7) The justice delivery system will be considered to be satisfactory when it renders speedy, fair and efficient Justice at a reasonable and affordable cost which results in maintenance of rule of law, securing human rights and ensuring constitutional good governance. To achieve this goal, it is not sufficient to merely improve the performance of Judges but a parallel effort should be made : (i) to reform the legal profession; (ii) to improve legal education; and (iii) to ensure that better laws are made and bad laws are repealed.

Murmurs regarding integrity of Judges

8.1) When there are murmurs about lack of integrity, Judiciary should maintain a constant vigil to ensure that corruption in any form does not enter its halls and corridors.

8.2) There are different views on the question whether corruption in judiciary should be discussed and dealt with. One view is that instances of corruption should be considered as mere aberrations and there should be no open debate as that tends to erode the confidence in the judiciary. It is pointed out that the trust and confidence will continue only if the judiciary is seen as a noble, virtuous and incorruptible institution; and if there is a constant talk or debate about corruption in the judiciary, even when the corruption is negligible, people will lose their faith in the judiciary, thereby eroding the strength of the judiciary. Another view is that the corruption in the judiciary is to be openly discussed and widely published, so as to send a warning signal to erring Judges and to instil confidence in the system. Proponents of this view argue that corruption should be exposed and dealt with publicly instead of sweeping it under the carpet. Transparency, they say, is the key. There are others who take the middle path and argue that while there is no need for unwarranted publicity and debate in regard to corruption, there is need for firm and swift internal action whenever corruption raises its head. As the standard of probity expected of Judges is high, and as the expectations from the judiciary are also high, it is argued that the damage to the institution on account of unnecessary adverse publicity would be irreparable; and that therefore, there should be more internal debate within the Judiciary for devising ways and means to eradicate corruption and take firm and prompt action in regard to complaints of corruption.

8.3) There is also considerable disinformation about the extent of corruption. Firstly, some honest judicial officers have a strange tendency. Each think that he alone is the personification of honesty and that it is his exclusive virtue. They tend to look down upon all others with a supercilious high-brow that others are not maintaining their standards and levels of honesty, probity and impartiality. On the

other hand, a corrupt judicial officer, to ease his conscience, forces himself to believe that everyone else is also corrupt and therefore there is nothing wrong in his being corrupt. The result is that in the judiciary itself, many may be responsible for creating a wrong perception about the extent of corruption in the system.

8.4) There are several instances of lawyers, when they lose cases, attributing the result to the inefficiency of the Judge and much worse, alleging lack of integrity of the Judge, rather than admitting the weakness in the case or slipshodness in conducting the case. Some designated court officials and touts operating in courts also spread baseless rumours of corruption, to settle scores for the strictness of the Judge. When a Judge has a particular philosophy, as for example, when a Judge is an 'acquitting Judge', everyone in the legal fraternity will know that his judgments will have a high percentage of acquittals. Unscrupulous court-clerks and lawyers knowing about the 90% chance of acquittal will inform the accused or his relatives that they can influence the decision and take money in the name of the Judge. When the innocent Judge renders the judgment of acquittal, he earns the sobriquet of a 'corrupt Judge' from the litigant or his family. When the judge convicts the accused, the money is returned by the clerk/lawyer saying that the deal did not go through. There are several other instances where Judges are wrongly blamed of corruption. Be that as it may. That subject needs a separate article.

PROBLEMS AND SOLUTIONS IDENTIFIED DURING SEVERAL CONFERENCES AND WORKSHOPS OF JUDGES

Discussions and debates among judges in various law conferences have repeatedly identified the following causes for the delay: (i) Inadequate number of judges; (ii) Lack of infrastructure; (iii) Lack of efficient secretarial assistance; (iv) Incompetence of court staff; (v) Lack of co-operation from members of the Bar; (vi) Shortage of Public Prosecutors; (vii) Incompetent or shoddy investigations by police and other investigating agencies; (viii) Delay in service of summons/notices to accused/defendants/respondents by Process Servers and Police; (ix) Judges being burdened with extra-judicial work (like Legal Services) diverting their focus and time from judicial work.

Conferences and workshops of judges also throw up the following standard solutions: (i) Adopting case management techniques; (ii) Revamping of registry; (iii) Effective use of information technology; (iv) Levy of high costs as deterrent; (v) Shortening pleadings, evidence and arguments (that is Members of the Bar making an effort to be brief in pleadings, evidence and arguments by better preparation and research);(vi) Grouping and classification of cases wherever possible for wholesale disposal; (vii) Discouraging unnecessary leave and absence

by judges and court staff; (viii) Improving the efficiency of the registry by strict supervision and by proper training of the court staff; (ix) Increasing number of judges so as to maintain a healthy judge-population ratio; (x) Improving the infrastructure; (xi) Providing technology aids and better secretarial assistance to judges; (xii) Building awareness among litigants and prospective litigants about alternative dispute resolution procedures.

In spite of identification of some problems and some solutions, very little has been done or is being done to address the problems and put in place effective solutions. This is because, some of the solutions are in the hands of judges, some of the solutions can be provided only by other stakeholders, namely the government, the Bar and the general public. Therefore, it is necessary to identify the problems that can be addressed by High Court, problems that can be dealt by judges themselves, problems that can be sorted out by the government and the problems that can be tackled only with the assistance from the Bar and members of the public. Let us now see what can be done by each:

I - What Judges can do?

1. Judges should improve their judicial skills and administrative (management) skills.
2. Judges should use technology and apply and adopt case management/ case flow management principles, for enhancing the quality and increasing the quantity of decisions for providing access to justice and for expediting the disposal of cases.
3. Judges should keep in mind the constitutional values and goals and make a sincere attempt to render justice, rather than mechanically 'disposing of' cases being obsessed with statistics.
4. Judges should maintain ethical standards and values in judicial life.
5. Judges should encourage ADR process and meaningfully participate in ADR processes.

II - What High Courts can do?

1. Train the judges to increase their potential – capability and efficiency.
2. Train the court officers, secretarial assistants, clerks and sub-staff, so that they can function as efficient support staff.
3. Should support judges in their work and protect them from unwarranted criticism, media influence and political interference. This means that the

High Court should not take note of the complaints against judges, in particular anonymous complaints not supported by some material.

4. Regulate and streamline the reporting of decisions, so that they are not deluded with divergent views or wrong views. All and sundry decisions should not be marked for reporting.

5. Avoid, or at least reduce, deputing or posting judges to non-judicial/non-adjudicatory work.

6. Liberate judges from Legal Services, in particular organising and conducting legal awareness progress and lok adalats.

7. Periodically assess the performance of judges and offer them guidance and counselling and redress their grievances.

8. Recommend measures for institutional reforms, adequate infrastructure, and facilities for the judges.

III - What Government can do?

1. Assess the number of courts required periodically and provide additional courts with adequate infrastructure and staff, in consultation with the High Court.

2. Entrust the services relating to Legal and non-adjudicatory dispute resolution by Alternative Dispute Resolution methods to the Executive for implementation in consultation with the High Court/other stake holders, by appropriate amendment to Legal Services Authorities Act, 1976.

3. Simplify procedural laws to expedite hearing and disposal of cases.

4. Improve the legal system by improving Legal Education and providing for compulsory apprenticeship.

5. Establish an All India Judicial Service and create a Judicial Management Cadre to manage the administration of judiciary at all levels.

6. Establish a Research & Training Centre for development of Legislative Drafting, Judicial Impact Assessment and training the Law Officers.

7. Ensure for proper and timely investigation by investigation agencies and prosecution of accused.

IV – What the Bar can do?

1. Render proper assistance to Courts.

2. Protect the reputation of the Judiciary.

Let me refer to some of these solutions in greater detail.

I. Role of Judges

I (1): *Improving the potential, capability and efficiency of the members of the judiciary*:

A judge has to develop five judicial skills to discharge his functions efficiently. They are: (i) thorough knowledge of the procedural laws; (ii) broad acquaintance of the legal principals and substantive laws; (iii) skill of conducting a proper hearing, in particular, in recording evidence and hearing arguments; (iv) marshalling the facts to deduce findings of fact and apply the law appropriately, to reach proper conclusions and decision, and put the facts, reasons and conclusions in the form of a cogent judgment/ order; (v) skill of disposing interlocutory applications and dealing with requests for adjournments, to ensure that they do not impede the progress of the case. A judge also requires five administrative skills to be effective, that is (i) time management; (ii) board management; (iii) staff management; (iv) Bar management; and (v) self- management. I have dealt with these judicial and managerial skills in detail in my article '*How to be a Good Judge – Advise to new Judges'* [published in 2012 (9) SCC-J5].

I (2): *Effective use of information technology and case/case-flow Management Techniques*:

Information Technology has helped in making the judicial administration more efficient and transparent, apart from reducing corruption in the Court Registries. The older judges will recall the days of chaos, delays and irregularities in issuing certified copies, listing cases, tracing files, etc. before computerisation. Information Technology has also helped on the judicial side in recording evidence, in maintaining judicial records and in accessing case laws. Status of cases of Supreme Court and High Courts and some trial courts are now web-hosted. Lawyers can keep track of cases at the click of a button and litigants can ascertain the status of a case without visiting the lawyer's office or court. This facility should be extended in regard to all courts. The next stage is to convert courts into e-courts fully or at least partially, so that filing, maintenance of records, recording of evidence and hearing arguments, are all computerised. Video conferencing will avoid personal appearances of parties and lawyers at routine hearings. Video recording of evidence and hearing of arguments through video conferencing can also avoid travel of parties and lawyers, congestion in courts and speeding of hearings. Information Technology can also play crucial part in effective grouping of cases and in following up of the progress of the old or sensitive cases.

Most of the High Courts have formulated case/case flow management rules. The Judicial Academies, both National and at State levels, have been training judges in adopting management techniques for expediting hearing and early disposals. The said Rules require revision and modification/fine tuning to usher in an era of efficiency, transparency and quality.

I (4): *Emphasis should be on rendering 'justice' and not 'disposals'*

Every judge should imbibe the constitutional goals and values, in particular Fundamental Rights, Directive Principles, as also Charter of Human Rights, and keep them in view while rendering justice. This becomes relevant while dealing with cases relating relating to weaker sections – social backward, economically backward, physically weak and infirm (due to age or illness, etc.; women, children, mentally challenged. The goal of every judge should be to render justice fairlyand equitably, but in accordance with law. Unfortunately, there is a growing tendency on the part of judges to lay emphasis on 'disposals' rather than rendering 'justice.' The obsession or importance to 'disposals' rather than 'justice' is obviously due to the tremendous pressure on judges mainly as a result of the following:

(a) Fixing of quotas by the High Court, which requires the judges to decide minimum number of cases and earn minimum number of units every month. Fixing of quotas, many a time, is unrealistic, impractical and statistics oriented and requires constant revision.

(b) Directions by the Supreme Court and by the High Courts to dispose of cases expeditiously, either by fixing time limits for disposal, or by directing that hearings be held day to day.

The Supreme Court and High Courts, while issuing such directions, consider only the urgency of the case before them and the need to dispose of such case expeditiously. They do not take note of the fact that there may be several older matters or there may be several more urgent matters requiring the attention of the judge. The pressure on account of such directions comes in the way of judges doing justice to deserving cases by making their own assessment of the comparative urgency of the cases. An observation about the need for early disposal rather than a positive direction for time bound disposal would be more appropriate and enable the judge to render better justice.

While certain amount of pressure to dispose of the cases is inevitable, an effort should be made by the concerned to reduce such pressure so that judges can function freely, equitably, justly and fairly.

I (4): *Improving the Ethical Standards, Work Culture and Morale of Judges:*

Improving the ethical standards, work culture and moral of judges is a vast subject which requires a separate article.

I have already dealt with the aspects relating to ethical standards of judges (integrity, judicial aloofness, independence, judicial humility and impartiality) in detail in my Article '*How to be a Good Judge – Advice to New Judges*' – 2012(9) SCC J5.

I (5): *Improving ADR Mechanism*:

Considerable effort has been put in to popularise ADR processes, particularly in court annexed mediation and an indigenous form of conciliation (known as Lok Adalats or People's Fora where the Judges act as conciliators). The focus in these Adalats is on motor accidents claims and petty criminal cases. The court annexed mediation centres concentrate on family disputes and commercial disputes.

The Legal Service Authorities and Mediation Committees, have been attempting to spread awareness in regard to ADR processes. Special workshops are held to educate Judicial officers about the relevance and importance of ADR processes and need to refer pending cases to court annexed ADR processes. The Civil Procedure Code has made it mandatory for all courts to refer pending cases to ADR process. Government is slowly encouraging ADR process where it is a litigant. Programmes are also held with the co-operation of Bar associations to familiarise members of the Bar with ADR processes and its advantages, so as to remove their doubts about the efficacy of ADR processes, clear their apprehension that ADR will reduce their briefs and affect their livelihood. Once the Bar understands the need and efficacy of ADR process and realizes that it will provide easier and quicker remedies to the litigants, ADR process will become a meaningful tool for effective settlements.

But, either the efforts are insufficient or the methods used are not very effective. As a result, ADR processes have yielded only a limited success. We are nowhere near the target of settling 80% to 90% of the cases at pre-trial stage. Hardly 10% to 20 % of cases get settled in pre-trial stage, most of which are directly negotiated settlements between parties without the recourse to ADR processes. Experience shows that success of mediations and Lok Adalats is dependant upon the commitment and interest shown by the respective High Courts and the commitment and expertise of the Mediators/Lok Adalat Members. Institutionalisation and constant education of lawyers, litigants and judges by awareness programmes, is the solution for improving the ADR mechanism.

II. Role of High Courts

II(1): *Training to Judges*

Judicial Academies have been established for training Judges in almost all the states. The National Judicial Academy conducts special workshops for High Court Judges and member of members of District Judiciary. Newly appointed Trial Judges at entry level are given extensive initial training for about an year or two by the State Judicial Academies. All Judges are given opportunities to participate in periodical refresher inter-active courses and brain-storming sessions. They are giveng training in case management and case flow management techniques and use of information technology to enhance the efficiency of justice delivery system and to quicken the process of adjudication.

But the training is found to be inadequate in many States. Further, as several posts are lying vacant, many a time newly appointed judicial officers are posted without undergoing the full course of training. The quality and period of training differs from State to State. Many Judicial Academies do not have qualified, experienced and committed faculty. Another embarrassing problem arises when the Judicial Academies request sitting High Court Judges to give lectures regularly. Some very good and articulate Judges may be otherwise busy or not interested in giving lectures; and some High Court Judges who may be keen to get lectures, may be woefully inadequate as lecturers are not well versed on the subject. Bad or wrong training is worse than no training.

II (2): *Training to Support Staff*

Judges are not able to work at the optimum level of efficiency for lack of administration and secretarial support from the support staff. Judge requires assistance of competent support staff with integrity to function effectively and efficiently. For example, an inefficient or inexperienced steno-typist can slowdown the disposals of a judge, by recording evidence slowly or incorrectly, or by not transcribing orders/ judgments promptly and accurately, requiring considerable time for editing and redrafting. Similarly, a court officer, by not maintaining the order sheets properly or failing to call cases and organise the work of the court efficiently, may overburden the court on some days and under-burden the court on some other days, create confusion and commit mistakes, thereby affecting the efficiency of courts. Similarly, the pending clerk can delay the progress and disposal of cases by failing to maintain the case records properly; by failing to place the relevant papers in the file; by failing to issue summons, notices and reminders as and when necessary; and to safeguard the records. There have been repeated complaints from judges about lack of support staff or lack of support staff with

experience. Prompt filling up of vacancies, giving initial training and thereafter periodical refresher training to court staff and providing for regular supervision of their work will go a long way to improve the functioning of the courts.

II (3) & (4): *Moral Support and protection of judges*

Normally, the losing side is dissatisfied with the decision. Further, if a judge is firm and refuses unwarranted requests for adjournment, he incurs the displeasure of the lawyers. Parties are interested in getting interim reliefs and lawyers expect judges to be liberal in granting interim orders/bails, etc. The judges who are firm and strict in granting interim orders/bails become unpopular. This leads to certain unsuccessful litigants, and unfortunately a section of the Bar, indulging in unnecessary character assassination of judges, by sending anonymous complaints and sometimes even signed complaints. Even judges of High Courts are subjected to such frivolous complaints. While serious complaints supported by some material certainly require action, there is a tendency on the part of some High Courts/High Court judges/vigilance departments to suspect judicial officers or initiate action merely on the basis of anonymous complaints. High Courts should ensure that vigilance section acts fairly and properly without harassing judges and at the same time, taking action on genuine complaints. Instances are not wanting where disgruntled elements have unjustly heaped complaints on judicial officers who are on the verge of promotion, thereby denying them the benefit of promotion or delaying their promotions. High Courts should protect judges from malicious attacks, false propaganda, etc. to save judges from trauma, anxiety and depression.

II (4): *Regulating / Streamlining the reporting of decisions of Supreme Court and High Courts, to improve the efficacy of precedents*:

The *ratio decidendi* of the superior courts (Supreme Court and the respective High Court) is binding precedents and the lower courts are required to decide cases in accordance with the law laid down or interpreted in the binding decisions. In regard to the decisions of the Supreme Court, Article 141 of the Constitution contains a mandate that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The Supreme and High Courts sit in divisions and each Bench of the Supreme Court is also the Supreme Court and each bench of the High Court is also the High Court. This sometimes gives raise to divergence in views where the later decision does not notice or overlook an earlier decision on the point and proceeds to decide the issue, which is covered by the earlier decision, in a different manner. In fact, such divergence has itself given raise to several decisions laying down principles as to which decision should prevail and be followed. As the number of judges increases and the work load increases, there are more and more chances of different Benches laying down law differently,

creating enormous problems for the lower courts which have to follow the decisions. Courts waste valuable judicial time trying to harmonise divergent views or deciding which decision should be followed. As a result, many a case which can be decided by spending an hour or two, has taken days for being decided.

Further, many decisions which are reported are not worthy of reporting, either because they do not lay down any law or put forth any new interpretation, or because they are decided basically on facts and do not constitute precedents. But, there is no system of effectively curtailing the decisions which have the status of precedents and the decisions which do not constitute precedents. The only remedy is development of a system whereby preferably a Committee of Judges selects the cases, which have value as precedents and marks them accordingly for reporting, thereby weeding out the large number of cases which do not merit being reported as precedents.

Unless some filtering is done, existing system of reporting all and sundry cases will put unnecessary strain on the lower judiciary. I have suggested the following self-regulation guidelines for reporting of cases in my Article '*Rendering Judgements – Some Basics'* – 2009(10) SCC J1, which are extracted from the United States DC Circuit Rules:

(i) Is it the first case to resolve a substantial issue of law?

(ii) Does it alter, modify or significantly clarify a principle of law previously enumerated by the court?

(iii) Does it alter specifically call attention to an existing rule of law that appears to have been overlooked and forgotten?

(iv) Does it criticise or question or express any doubt about any existing principle of law?

(v) Does it resolve an apparent conflict between two divergent decisions or viewpoints?

(vi) Does it reverse a reported decision or affirm a reported decision on grounds different from those set forth in such decisions?

(vii) Is it of general public interest or importance in the light of other factors warranting publication?"

II (5): <u>*Restricting deputation of judges to non-adjudicatory function*</u>

Let me next refer to the consequences of indiscriminate use of judges to non-adjudicatory functions. A large number of judges are made to work on

deputation, that is, as Law Officers in Law Department, as Registrars of Tribunals, as Secretaries of Legal Service Authorities and Directors of Mediation Centres, etc. Further, a large number are posted as Registrars and Deputy Registrars in High Courts and City Civil Courts. In many States, an alarming number ranging between 15% and 40% of the judicial officers in the cadre of District and Sessions Judges work on deputation. Each District Judge spends a considerable part of his/her judicial career on deputation. This is not a healthy trend. Deputations to posts which do not involve adjudicatory work blunts the judicial skills and disturbs the judicial temperament and impartiality developed over a period of time; and when they are again posted to preside over courts after long deputations, their efficiency, productivity and sometimes, integrity, are adversely affected. Deputation should be restricted only to posts like Principal Law Secretary. There is no point in deputing judicial officers to work in the Law Department to give advise to the Government, thereby converting judges to Law Officers. Even within the judiciary, there is no point in appointing senior judicial officers to do purely administrative work as Registrar (Admin), Registrar (Statistics), Registrar (Recruitment), Registrar (Vigilance), Registrar (Judicial). Only the post of Registrar General in the Registry and Director of State Judicial Academy should be filled by senior judicial officers.

It is also necessary for the Government to provide the required infrastructure and periodically upgrade the same so that judges can function efficiently and effectively.

II (6) & III(2): *Liberating judges from legal services*:

Judges are specialists in adjudication who are required to maintain judicial aloofness and physical distance from lawyers, litigants and politicians. On the other hand, when they function as chairpersons and secretaries of Legal Service Authorities/Committees at High Court, District Court and Taluk levels, they are required to frequently organise legal awareness/legal literacy programmes and Lok Adalats. No legal literacy/legal awareness programme can be conducted without the effective co-operation and assistance of either the members of Bar or the district administration (which includes police) or the local elected representatives. Depending upon the nature of the legal literacy programme, it becomes necessary for a judge to work in close association with the members of the Bar/officials of the district administration/elected representatives (normlly MLAs and Members of Panchayats). Similarly, for holding Lok Adalats, judges will have to work in close association with the members of the Bar, officers of insurance companies, banks and government officials.

Many a time, judges are to put to embarrassment when the persons with whom they will have to work in legal services are litigants before them. Further, if

judges are obliged to take the assistance from elected representatives, district administration, members of the Bar, officers of Insurance companies and financial institutions,, there is a great risk of integrity of some of the Judges being compromised. There is every likelihood of some of these persons whose assistance is sought by judges for legal services, unscrupulously seeking favourable treatment from the judges; and if they are persons from whom the judge has to repeatedly seek assistance for future programmes, the judge will be constrained to show some kind of favour or concession. This feeling of 'obligation' towards officials of district administration, elected representatives, etc. increases where the High Court judges attend the legal awareness or legal literacy programmes, and huge memorable functions are expected.

Further, organising every legal literacy or legal awareness or mega Lok Adalat programme requires considerable preparation and organisation. On the date of the function, or the preceding day, the court work virtually stops, and no judicial work, or studying of files or dictation of orders/ judgments is possible for the judges, when High Court judges regularly visit for attending these functions. High Court judges are also required to frequently travel to attend these functions and they also lose the benefit of valuable weekends for reading/preparing judgments.

It is no doubt true that the Legal Services Authorities Act entrusts legal services to the judges. When the said Act was enacted, no assessment was done of the time required for this work and no provision was made for exclusive additional recruitments. Ideally, the organisation of all Legal Services-related activities including awareness events/workshops should be organised by the executive, or the non-judicial officers of the judicial department; and the role of the judges should be limited to merely attending the legal awareness/legal literacy camps/ workshops/functions, as guests/speakers.

I may also refer to another collateral fallout. Normally, in relation to their judicial functions, judges are not entrusted with any funds for expenditure, nor required to submit accounts. With the entrustment of duties relating to Legal Services, huge amounts running into crores of Rupees are being entrusted to the Judges, which are required to be spent for providing infrastructure for legal services and for organising legal service events. The Judges should be free from such responsibilities and financial distractions..

A time has come for revisiting the Legal Services Act to remove Legal Services from judges. Judges should not be required to organise events or functions connected with legal services. Sooner the judges are liberated from Legal Services, the better it will be for enhancing the quality and productivity of the judiciary and maintaining the judicial independence, aloofness and integrity.

II (7) & (8): *Redressal of Grievances of Judges*

While there are grievance redress mechanisms for lawyers, for litigants, for judicial staff, judges themselves do not have any realistic and effective mechanism for redressal of their grievances. The Principal District and Session Judge and the Administrative Judge (also known as Portfolio Judge) are required not only to supervise their respective districts, but should also function as Guides, Mentors and wise counsel whenever necessary. Either on account of pressure of work or on account of absence of specific procedures, if trial judges err they should be guided and counselled by the High Court Judges or the Principal District and Sessions Judges, as case may be. There should be a periodical review of the work of judges and counselling, to optimise their functioning and ensure that judges work peacefully and free from pressures, fears, influences.

III. Role of Government

III(1): *Increasing the number of judges*

As the quantum of litigation increases, there is a need for a corresponding increase in the number of judges to decide them. Apart from the general periodical increase in litigation, whenever the government criminalises wrongs by declaring certain wrongs as criminal offences, there is marked spurt in the number of criminal cases resulting from such newly created offences. The two classic examples (referred to above) relate to dishonour of cheques being made offences by amending The Negotiable Instrument Act and certain acts/omissions connected with marital relationships being made as offences relating to domestic violence, cruelty and dowry harassment under the Protection of Women from Domestic Violence Act, 2005, Indian Penal Code (Section 498A) and Dowry Prohibition Act, 1961 (Section 4).

All developed countries and several developing countries have systems in place for judicial impact assessment that is, assessing the probable increase in workload on account of enactment of a new law or a new provision in an existing law and providing for adequate increase in judges' strength and infrastructure to meet the spurt in the litigation as a result of such new law/provision. Such assessment and consequential provision for increase in judges' strength is lacking in India. At all events, there is no effort to identify the increase in workload and automatically provide for increase in the judges' strength. For example, the Parliament started providing direct first appeals to Supreme Court under the Terrorists and Disruptive Activities Prevention Act, 1985/1987 (TADA Act), Unlawful Activities (Prevention) Act. As a result, Supreme Court became the first Appellate Court dealing with facts. Each of these cases takes months for hearing and disposal.

I may give the example of Bombay blast case which had to be heard by a Bench exclusively for nearly six months. If all the first appeals provided to Supreme Court are to be heard without affecting the normal disposals of the Supreme Court, the strength of the Supreme Court may have to be increased by at least one-third.

III (3) *Simplifying procedural laws*

The Legislature has made efforts to amend the procedural laws to reduce delays and to expedite trials. In civil cases, examination-in-chief of witnesses is now permitted by way of affidavits. Recording of cross-examination by Advocate-Commissioners is permitted and is resorted to in regard to formal witnesses. The Civil Procedure Code is amended making it mandatory to refer all cases to ADR process. The Criminal Procedure Code is amended to provide for plea bargaining. Evidence Act is amended to make use of scientific advances.

Statutory amendments implementing the recommendations of Law Commission and Criminal Justice Reforms Committees will be a solution. Strengthening the investigation and prosecution wings and constant co-ordination between the concerned agencies will be another solution. Any alternative system which will protect the innocent but punish the guilty, and at the same time able to achieve a conviction rate of 80% to 90%, will act as a strong deterrent to crime. It is no doubt true that any reform of criminal justice system should also take note of the fact that many a time, the accused himself is a victim of framing by trumped up charges. While strengthening the existing system, the basic safeguards that are available to an accused should not be weakened. Nor should there be interference with fair trial or human rights. A fine balance will have to be worked out and achieved by law-enforcement agencies, keeping in view the interests of the society, interests of the victim and the interests of the accused.

Several quasi-judicial Tribunals have been constituted under various enactments to deal with specialized cases relating to labour, government servants, armed forces, consumer disputes, taxation etc. In addition, the Parliament has enacted Gram Nyayalaya Act 2008 (Village Courts Act) which contemplates establishment of nearly 10000 rural courts to deal with routine civil and criminal cases in a summary manner, with the object of "providing access to justice to the citizens at their doorsteps and to ensure that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities." Shift systems in courts, evening courts, and mobile courts, are tried in some areas. Several specialized Tribunals are being constituted to expeditiously deal with cases relating to specific subjects.

The tendency of criminalising wrongs as knee-jerk reactions whenever there

is a public outcry in regard to shocking incidents without proper research should be avoided.

III(4), (5) & (6): *Improving the legal system*:

In his Article "Building a world class legal system: Roles and Responsibilities", Prof. N.R. Madhava Menon suggests the following steps:

1. Segregate professional legal education from the rest and identify professional law schools to be given autonomy and infra-structural support towards giving a fair chance to show competitive excellence of world quality. Entrust legal education regulation to an independent Regulator.
2. Re-introduce compulsory apprenticeship and pre-admission professional entrance examination for all those seeking entry to the Bar. Make continuing education mandatory for all Advocates every five years.
3. Re-organize legal aid services under an independent authority with equal participation of lawyers, judges and consumers of justice.
4. Establish independent Mediation and Arbitration Councils on the model of the Bar Council and initiate separate licensing system with disciplinary bodies for mediators and arbitrators.
5. Develop an All India Prosecutorial Service with specialized training programmes for at least one year to all prosecutors. Install rigorous performance standards and weed out inefficient or corrupt. Reward performance.
6. Establish an All India Judicial Service and impart specialized training for at least one year on a prescribed curriculum. Introduce transparency in performance assessment. Fast track promotions be introduced to reward merit and hard work.
7. Establish Advanced Legal Research Centres with specific mandate for policy development, legislative drafting, judicial impact assessment, proposals for institutional reform and criteria for performance assessment of legal and judicial institutions/personnel.
8. Establish a separate Department of Criminal Justice at Central and State levels under a high-powered Board representing judiciary, police, prosecution and Home Department accountable to the Legislature and having control over all Forensic Science Laboratories.
9. Create a well trained and qualified managerial cadre to manage the judiciary

at all levels. Create a data base on judicial statistics and make judicial planning and budgeting evidence-based.

This requires a concerted effort by the Executive, Legislature, Judiciary and the Bar. Even a few of the reforms will make a marked difference.

III (7) – *Improving investigations and prosecutions*

Nearly 80% of the litigation in India is criminal cases. Investigation and prosecution are in the hands of government. The investigating agencies and prosecuting agencies have a crucial role to play in expediting disposal of criminal cases. At present, for want of proper investigation and prosecution, nearly 70% to 80% of the criminal cases end in acquittal. Such large number of acquittals and the visible delay in disposal of criminal cases affects the very credibility of the judiciary as an institution.

Therefore, there is an urgent need for the investigation and prosecution wings of the government being adequately staffed, properly trained & strengthened and strictly disciplined, so that their performance levels will increase. It should be remembered that in countries like Japan, even 2% to 3% acquittals are not tolerated; and in countries like USA, even 10% acquittals are not tolerated, whereas, in India, as noticed above, there are 70% to 80% acquittals. Strengthening of the judiciary will be meaningless unless there is a corresponding strengthening of the investigating agencies and prosecuting agencies.

IV . Role of the Bar

IV (1) Render proper assistance to Court

Though Judges are supposed to control the progress and conduct of cases, more often than not, it is the lawyers who control the progress of a case. They file unnecessary applications, seek unnecessary adjournments, examine unnecessary witnesses, indulge in unnecessary cross-examination and lengthy meandering arguments. Lawyers are more inclined to a decision after adjudication than negotiated settlement, as adjudication (with appeals and revisions thrown in) is more remunerative than negotiated settlement. For lawyers appearing for parties interested in dragging on the proceedings, adoption of methods for prolongation is part of the professional work. As a result, each judge is required to spend much more time than the what is actually required in regard to each case, thereby reducing the productivity of the court and increasing the longevity of the cases. Lawyers should be trained to keep the pleadings, evidence and arguments brief, so that there can be more effective and speedier decisions.

IV (2) Protect the reputation of Judiciary

Whenever a case is weak or without merit and is consequently lost, the lawyer should have the courage to tell the truth to the client. Instead if he tells the client irresponsibly that the case is lost because the judge is foolish or corrupt, just to save himself from the blame, he would bring down the good name of the institution and the client may never come back to Courts. Next time he has a grievance or problem, such client may choose to go to the local mafia (or even to police to exercise muscle) for getting the relief rather than approaching a Court. The survival of the Judicial System depends upon the confidence reposed by members of the public, in Courts and judges.

There is nothing wrong in lawyers expressing an honest opinion about the decision of the judges or criticising the flaws in a judgment. In fact, appeals and revisions are meant for that purpose. But it is common knowledge that some members of the Bar make unwanted derogatory comments about judges, in the corridors of the Court or in the Bar room, when they lose cases, which shake the faith of the common man, in Courts.

There are also complaints about some lawyers attempting to influence the judges. They should not indulge in such practices and should also discourage any such efforts on the part of their clients. On the other hand, if a lawyer comes to know that a particular judge is corrupt, he is duty bound to immediately bring it to the notice of the High Court or its Vigilance Cell, so that appropriate action can be taken against the erring judges.

Conclusion

It is hoped that all stakeholders, namely the judges, the High Courts, the governments and the Bar will discharge their respective obligations so that the justice delivery system is strengthened to achieve a vibrant rule of law.

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