STRENGTHENING THE JUSTICE DELIVERY SYSTEM: TOOLS AND TECHNIQUES

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The Indian judicial process is now commonly associated with inordinate delay. The entire court system is overburdened with cases and the slow disposal rate of cases greatly hampers the quality of justice delivered. The reasons for delay are numerous and stem from very layer of the justice system. There is a systemic failure to address the Issue of efficiency of the judicial process. The problem lies not only in the lack of institutional facilities, but also in the very mindset of the legal community.

Given the pervasive nature of the problem, which has now simply come to be accepted as corollary of the justice system, a range of reform is required legal institutional and technical. This has been widely noted among political and judicial circles. The Ministry of Law and Justice launched the National Mission for Justice Delivery and Legal Reforms in 2011 with this very goal in mind. Some measures towards legal reform have already been taken by the Parliament. Amendment of the Negotiable Instruments Act, 1881, to reduce the enormous number of cheque bounce cases and amendment of the Motor Vehicles Act, 1988, to reduce litigation related to challans are being considered. However, these changes do not address the root cause of the travails that plague the judicial system.

Institutional Reform

One of the most evident lacunae in the justice system is the poor strength of number of judges in the country. In the United States of America, there are 108 judges per million citizens, compared with a mere 12 judges per million in India. A good start to tackling this problem is the fIlling up of existing vacancies. As of

2012, there were 273 vacancies in the High Court and 3670 vacancies in the subordinate courts. In the Supreme Court itself, 3 vacancies remain. The process can be aided by measures like the consideration of the Parliament to increase the retirement age of High Court judges from 62 to 65. The constitution of an All India Judicial Service is also a welcome move in this direction. As the National Legal Mission suggests, senior law students and trained law graduates can be appointed as Court Managers to improve the efficiency of the system and to address the woeful inadequacy of judicial staff. Another measure that has been resorted to recently is the decentralisation of judicial power through the creation of a number of benches of the High Court as suggested by the Law Commission of India in its 230th Report. This move can be supplemented by the creation of special courts in the subordinate level like Morning / Evening Courts and Gram Nyayalayas.

Adoption ofICT systems

One way to greatly reduce the delay and better organise the judicial process is the adoption of Information and Communication Technology (ICT) at every level of the judiciary. Currently, most of the data systems in subordinate courts, where 90% of the total litigation occurs, are still manually managed. Computerisation of these records will not only save time and effort of court staff, it will provide a tremendous boost to the level of organisation and help interlink the various tiers of the judicial system. At a glance, the members of the higher judiciary can examine which courts face the most delay, which matters take up more of the court's time and what areas to focus most on in order to minimise delay.

The creation of the National Arrears Grid will help in review and monitoring of pendency in cases across the country.

The E-Courts project is a much needed step to increase access of all to justice. Using a centralised computer system, filing of applications, correction of defects, provision of certified copy of orders and payment of court fee can all be done online. Another way ICT can reduce time consumed on routine matters is through video conferencing connectivity between prisons and district courts which permits virtual interfacing of a Judge with witnesses, holding of conferences and production of under-trial prisoners. While this process is already in use in some of the subordinate courts, it urgentlyneeds to be brought to each and every judicial forum.

The use of ICT extends far beyond making the justice system faster. It, leads to palpable improvement in the quality of judicial decisions. For instance, the level and ease of research can be considerably improved with the provision of online research databases and tools to all judicial officers and judges. The quality of evidence such as statements of witnesses (under Section 161 of the Criminal

Procedure Code) can be improved by videotaping the evidence. The very first step to criminal justice, the FIR, can be electronically generated and stored and may be made available to the complainant and the accused, through use of a password or secure key. This is already being practised in Delhi with good results.

Finally, ICT can revolutionise court management both at a central and at a local level by building a vast database of judicial statistics. This will ensure systematic analysis of the judicial system and allow for the setting of measurable performance standards. A quantitative assessment of the court process is crucial to motivate all participants of the system to work towards defined goals.

Alternate Dispute Resolution Mechanism

Alternate dispute resolution has long been identified as a key component in the plan to reduce pending cases and fresh litigation burdening the courts today. Numerous civil and family matters can be settled to the satisfaction of all parties via mediation, arbitration and conciliation and can greatly reduce litigation costs. A number of steps have already been taken in this direction with the setting up of mediation and conciliation centres within courts and mandatory reference to mediation by courts. A number of commercial matters are resolved through arbitration. However, to avoid unnecessary litigation, lawyers and law students should be trained to draft sound arbitration clauses. Several instance of litigation have arisen due to faulty arbitration unnecessarily encumbering courts. A separate Bar for mediators, arbitrators and conciliators can help foster skills in negotiation and settlement that are substantially different from those required for court craft.

Attitudinal Change in the Legal Community

The delay in court system cannot be attributed only to institutional deficiencies. It must be acknowledged that the legal community itself has a cavalier attitude to the heath of the justice system. For instance, it is often seen that advocates unnecessarily ask for adjournments without good reason merely to delay the litigation process. Judicial officers need to actively concern themselves with management of the court process. In order to facilitate this, the existing curriculum of legal education and judicial training should incorporate courses on case flow management and court administration. In a commendable move, the National Judicial Academy initiated a model for a computerised signalling system for monitoring of timetables for cases, helping to reduce bottleneck arrears.

The Regional Judicial academics in the country should conduct workshops, seminars and interaction sessions on the various topics identifying the local issues at the regional level. There should be mechanisms deployed both by the National Judicial Academy and State Judicial Academies to review the training programmes

that may be arranged by them and research wings also should be established to evaluate the outcome of the training programmes, find out the causes for the delay and make suggestions to redress such issues. The High Court Judge who will be in charge of the District Judiciary should evince interest in monitoring their functioning periodically and give advisory notes and guidance from time to time to achieve efficiency of the judicial officers. Rigorous training should be given to judges of an cadres to write short orders and judgements by answering the issues that would arise either in the interlocutory matters or fInal adjudication of the cases on merits. The Bar Council of India and State Bar Councils should organise seminars and training programs to generate awareness among lawyers and judges about their duty to the justice system and the steps they can individually take to improve its efficiency.

Apart from imparting training to the legal community to discharge their professional duties and acquire legal knowledge, skill and efficiency to resolve disputes and conduct cases efficiently, concentrating on the issues that would arise in the cases by addressing those issues precisely and aptly either at the time of adducing evidence or making submissions. There should be training programmes for the lawyers to bring the attitudinal change in the system and effective functioning of the judiciary and officers of the court.

Judges can deliver a strong message to lawyers and litigants that unnecessary delay will not be tolerated. There should be no hesitation in employing statutory provisions to record evidence in the absence of the accused, issuing proclamation orders against absconding accused, denying frivolous requests for adjournments and imposing costs for litigants pursuing frivolous or malicious litigation. District Judges should inform the High Court of extraordinary delays being caused in specific cases while furnishing monthly / quarterly statements to the High Court. An encouraging example of such proactive attitude was demonstrated by the Supreme Court in the Imtiyaz Ahmad Case [2012(2)SCALE 81], where directions were given to tackle the problem of trials being held up on account of pendency of quash proceedings in the High Courts. The practise of grouping should be introduced whereby cases should be assigned a particular number or identity according to the subject and statute involved. Moreover, all judges and judicial officers should be trained in ICT systems and should develop an open minded attitude towards computerisation.

A recent policy move that directs its attention to this attitudinal problem, albeit in a limited fashion, is the National Litigation Policy. It identifies the government and its various agencies as the predominant litigant in India and aims to convert the government into an efficient and responsible litigant. False pleas, frequent

adjournments, constant appeals from tribunals to courts and poor drafting are discouraged. Instead, the policy aims to propagate the idea that litigation need not be fiercely adversarial where the case should be won at any cost. This belief should not be limited to the Government but extend to all litigants. Litigation itself should be perceived differently. For instance, there is a popular view that all PILs stem from governmental inaction and deficiencies of the statutory corporations, state owned undertakings and instruments of the state. In reality, several PILs are filed for superficial reasons such as publicity and lead to needless litigation. There is a need to inculcate a sense of responsibility amongst the legal community whereby it aids the smooth functioning of the judicial process instead creating road blocks delivery of juctice.

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