

JUDICIAL REFORM: TOWARDS THE RULE OF LAW

Dr. Akhilesh Yadav*

Abstract

There are some institutional changes that have become necessary, seven decades after 26th January 1950. The foremost is the process of appointment of judges. The Supreme Court of India, and the High Courts, have come to occupy a space of constitutional governance unlike their counterparts elsewhere, and have played a vital part in the survival of democracy. They have ensured the sensitization of the system to the need for transparency. The entry of private electronic media has revolutionized governance. If corruption and inept government have today upstaged caste and religion as primary electoral agendas, credit must rightly be given to the media for this evolution. Every powerful institution must have checks and balances. The media cannot be governed by the government - it can justly assert the right to be governed by a jury of its peers. However, this must be done in a statutory framework with a content regulator who can effectively deal with the black sheep. Labour reform is vital, as is the reform of environmental laws, including the set of Forest Acts. These must be adapted to enable India to break the cycle of poverty, reminding us that in the ultimate analysis, abysmal poverty is the primary cause of environmental degradation. Commercial litigation and dispute resolution must be on commercial timelines - the slow dance from now to infinity is a luxury that business disputes cannot afford. The laws must be changed - and more than that, the mindsets must change. The appointment of regulators with domain knowledge to provide effective, yet transparent and fair regulation should be the object of regulatory reform – not to create a second tier of jobs for the retired.

Keywords: *Judicial Reform, Corruption, Labour Reform, Dispute Resolution, Law.*

* Asst. Professor @ Motherhood University Roorkee; Email: aky86akhil@gmail.com; Contact: +91-9565119230

INTRODUCTION

The sole sentiment of this Article is inspired by the fundamental vision of creating an effective legal framework for an equitably growing and humane India. A democratic State needs the better governance through better laws. Better laws must be high-impact and capable of positively affecting the lives of the people they intend to serve. Here, I would like to suggest some of the most important reforms which are necessary to strengthen the constitutional influence in our judicial system and society. The suggestions are discussed below.

STREAMLINE JUDICIAL APPOINTMENTS

Making the process of appointments to the Supreme Court and High Courts participatory and transparent. The Supreme Court of India and the High Courts are the guardians of the Constitution of India. Given their exalted constitutional status, it is imperative that the method of appointing judges to these courts is such that only persons of the highest integrity and aptitude are chosen. Unfortunately, the current system of appointments, led by a collegium of senior Justices of the Supreme Court, pursuant to a decision of the Court itself, has proven unequal to this task. The corridors of the judiciary are rife with widespread charges of nepotism and factors other than merit guiding appointment decisions. The process is completely opaque without any possibility of holding decision-makers accountable. It is inconsonant with best practices worldwide which have shown a discernible pattern of moving towards optimally transparent and accountable processes of appointment. Finally, it proceeds on an indefensible interpretation of Article 124(2) and Article 217(1) of the Constitution which prescribes the method of judicial appointments.

There should be a participatory and transparent process of appointment to the Supreme Court and High Courts as well. Such reform will ensure that the best Candidates for judicial office are selected in an optimally transparent Manner. This will reaffirm respect for the institution of the judiciary currently Sullied by wanton speculation and rumour surrounding the appointments Process. Further, it will do so in a Manner that is perfectly consonant with the independence of the judiciary.

MAKE TRIBUNALS EFFECTIVE

Streamlining the nation's tribunals to improve efficiency and allow functional autonomy. The idea behind tribunals is to provide a more efficient and specialized means of dispute resolution between citizens, and between citizens and the State. At present 29 tribunals of various sizes and jurisdictions function under the aegis of different ministries. They operate outside the regular court structure, replacing the existing judicial structure in some cases, and providing for a specialized forum for dispute settlement in others.

However, three problem areas have called into question the very system of tribunals: first, there is a lack of functional autonomy as compared to courts- functionally, tribunals are dependent on allocation of funds by the appropriate ministry and do not always have the power to hire their own staff. Second, with respect to independence of appointees, tribunal members, unlike judges at all levels, have short tenures, subject to renewal by the Government at its pleasure. Further, in several tribunals the pool of possible appointees to the tribunal inevitably includes retired government officials whose administrative decisions are in fact being challenged before the tribunal. Finally, there is the problem of inefficiency – far from

improving the disposal rate of cases and providing quick and ready justice delivery, tribunals seem to have become bogged down with cases in the same manner as the regular judicial system, attributable to the lack of appointments and adequate infrastructure. Unsatisfactory dispute resolution in tribunals has resulted in increase in litigation at the High Court and Supreme Court levels, nullifying to some extent the benefits of having the tribunal supplement the Court. In addition, where tribunals were supposed to divert the flow of cases from overburdened courts, they are becoming overburdened themselves, due to inefficient functioning.

The reforms necessary to revamp the tribunal system in India will require legislative, procedural, and systemic changes to their function. The legislation should look to bring about uniformity in the administration of the tribunal, and in appointment, removal, and terms and conditions of service of the tribunal Members. The mechanism to fund tribunals must be changed to allow tribunals to raise funds directly where possible. Their functioning must also be closely monitored through proper collection and collation of data related to the functioning of tribunals.

ADVANCE POLICE REFORMS

Law enforcement in India is a legacy of the British Raj – a system put in place with the intention of controlling the public and stifling civil liberties. Since independence, efforts have been made to change the police into a force that is more integrated with the society it serves. But police reform remains one of those issues that is caught in an endless loop of commissions, committees, and Public Interest Litigation ('PIL'). In recent years, under pressure from the judiciary and the public, some states have acknowledged the importance of an effective and independent police force

and taken some positive steps in this area. The Delhi Police Act of 1978, however, has remained largely untouched.

SUGGESTIONS

Modernisation of Police Forces: The Modernisation of Police Forces (MPF) scheme was initiated in 1969-70 and has undergone several revisions over the years. However, there is a need to fully utilize the finances sanctioned by the government.

MPF scheme envisages –

- Procurement of modern weapons,
- Mobility of police forces,
- A National Satellite Network,
- Logistics support, upgradation of police wireless, etc.

Need For Political Will: The Supreme Court in the landmark **Prakash Singh case (2006)** gave seven directives where considerable work in police reforms is still needed. However, due to the lack of political will these directives were not implemented in letter and spirit in many states.

Revamping Criminal Justice System: Along with Police reforms, there is a need to reform the criminal justice system too. In this context, the recommendations of the *Menon and Malimath Committees* can be implemented. Some of the key recommendations are as follows:

- Creation of a fund to compensate victims who turn hostile from the pressure of culprits.
- Setting up separate authority at the national level to deal with crimes threatening the country's security.

- A complete revamp of the entire criminal procedure system.

REGULATE THE MEDIA

A mandatory system of self-regulation for the news media that balances media freedom and public interest. Calls for better governance of the news media have been heard in recent times around the world, not least in India. The debate on this issue, however, seems stuck in the binary of self-regulation versus institution of a statutory regulator. The existing regulatory framework demonstrates the shortcomings of both these approaches. News media regulation in India is fragmented, with multiple regulatory bodies. In most cases, decisions made by these bodies are not enforceable. The Press Council of India, a statutory body governing the print media may entertain complaints and issue admonishments for violation of its guidelines but does not have the power to enforce compliance. The self-organised News Broadcasting Standards Authority governing news broadcast media has the power to fine, but its jurisdiction extends to only those organizations that choose to be members of the News Broadcasters Association. Therefore, its efficacy depends on voluntary compliance with its orders. Calls for more vigorous statutory regulation, such as setting up a media regulatory authority to offset these drawbacks, lead to widely expressed fears of censorship and state suppression of free media. It is therefore necessary to move beyond a simplistic binary of self-regulation and statutory regulation, and to explore models that incorporate the best elements of each.

One such mechanism that incorporates elements of self-regulation and statutory regulation is the system of Bar Councils, established under the Advocates Act, 1961. Under the statute, the State Bar Council consists of members elected through the system of proportional representation by

means of a single transferable vote from amongst advocates on the electoral roll. The Bar Council of India comprises certain ex-officio members such as the Attorney General of India, and one member elected from each State Bar Council. The Bar Councils are responsible for admitting advocates on their rolls, setting standards of conduct, and enforcing compliance through suspensions or disbarment. The Advocates Act therefore does not leave it to the discretion of either the government or the industry to appoint a governing body, but instead sets up a framework according to which such a body shall be constituted.

The following principles must therefore be incorporated in a new comprehensive law that sets up a news media self-regulatory authority for print and broadcast media. While regulation of internet news media is also an important issue, it is best dealt with separately in a manner that considers the unique characteristics of the open internet.

- With the convergence of media platforms, it is necessary that such a self-regulatory authority's jurisdiction encompasses both print and broadcast media,
- Enrolment according to the procedures laid down by the authority must be made mandatory for all news media entities, so that it is not possible to opt out. The authority must lay down procedures for licensing and delicensing,
- The members of the authority must be media professionals selected by the industry in a transparent manner, along with some ex-officio members,
- The authority must be statutorily granted the power to lay down rules of conduct backed by punitive measures, including fines and directions to government for delicensing.

Here, after this, it is necessary to draw attention to some more legal reforms

which are important to ensure the rule of law. In short, they are as follows:

- ***Reduce Government Litigation:*** By Revising the National Litigation Policy to unlock the judicial gridlock.
- ***Expedite Arbitrations:*** By Amending the Arbitration and Conciliation Act to speed up arbitration in India.
- ***Clarify Forest Laws:*** By Reconciling statutory regimes for a better balance between conservation and the rights of indigenous forest-dwelling tribes.
- ***Prevent Water Wars:*** Providing more effective inter-state river water disputes tribunals.
- ***Harmonise Labour Laws:*** Standardizing definitions in labour law for more effective targeting in labour welfare.
- ***Reform The Corporate Insolvency System:*** Introducing institutional and substantive changes to the corporate insolvency regime in India to promote economic growth and entrepreneurship.
- ***Ensure The Safer Clinical Trials:*** Regulating clinical trials to promote safety and efficacy.
- ***Protect Net Neutrality:*** Introducing net neutrality regulation to protect a free and open internet.
- ***Expand RTE Coverage:*** Amending the Constitution to ensure quality primary education for all.
- ***Bolster Free Speech:*** Circumscribing criminal prosecution for literary works to bolster free speech in India.
- ***Draft A New Anti-Trafficking Law:*** Proposing a new comprehensive anti-trafficking law to better combat human trafficking.
- ***Consolidate Anti - Corruption Laws:*** Tackling graft through a consolidated and updated corruption legislation.
- ***Repeal Obstructionist Laws:*** Tackling archaic and obstructionist laws to

remove impediments to development.

CONCLUSION

Implementation of suggested legal reforms made in this Article must be implemented through careful drafting of new laws or amendments or repeal of existing provisions. There are some important steps which must accompany legal drafting, irrespective of the area being legislated upon, to confront the challenges facing law-making today:

Ensuring Constitutionality: Provisions and laws are often drafted such that they conflict with the Constitution of India, or with relevant Supreme Court precedent. This makes litigation inevitable, where provisions are struck down after protracted judicial proceedings. This difficulty can be easily remedied by ensuring constitutionality at the time of drafting, not at the time of implementation, as is the case today.

Ensuring Coherence: Many laws are drafted without reference to or knowledge of other existing statutory enactments that cover a similar field. This leads to complications ranging from confusion and contradiction to the dilution of standards in specific instances. Cognizance of other relevant legislations at the time of drafting is essential for legislative coherence.

Ensuring Compliance: Another challenge facing law-making and reform in India is lack of compliance with international law. India is a party to several international instruments and is under an obligation to incorporate them into domestic law. However, Indian laws are often drafted in complete disregard of international law. It is thus necessary to ensure that the body of international law which India is obliged to comply with is understood while framing domestic legislation.

Ensuring Clarity: The endemic problem afflicting law-making in India is that of badly drafted legislation – provisions that are circular, contradictory, vague and unclear. This leads to deficient implementation and adverse judicial interpretations. There is a need to ensure that Indian laws are clear and specific in both form and substance.

Ensuring Contemporaneity: An increasingly globalized world gives us the opportunity to learn from the experiences of other similarly positioned countries. Foreign law and comparative domain expertise is being increasingly recognized as an important source of information. Indian law-making often does not benefit from progressive developments in other jurisdictions, and it is desirable that contemporary comparative developments are systematically factored into this process.

Thus, based on the above description, it can be clearly said that in order to ensure the rule of law in this changing human society, we must emphasize on important legal reforms so that we can develop a well-being, developed and law-abiding society. By doing so, we will be able to perpetuate our constitutional values.