

Judiciary: Accountability & Reforms

We are India, a nation having got freedom from the yoke of British rule on August 15, 1947. On January 26, 1949, we adopted a Constitution, one of the longest legal documents in the annals of jurisprudential history of the world. It came into force on January 26, 1950. Our Founding Fathers distributed the power of governance balancing it on three pillars – the Legislature, the Executive and the Judiciary. Men of vision, assisted by learning, thinking and lessons learnt from constitutional democracies of the world, the framers of the Constitution did their best and exerted to draw the dividing lines between the three wings of governance as fine as they could and at the same time striking balance in division insulating against over-stepping and trespassing by one into the arena of other, a delicate task indeed. The three organs of governance as contemplated by our Constitution are independent and supreme each within its own field. None can claim to be superior over the rest. However still, the judiciary has been assigned a prime role of acting as trustee of constitutional democracy that is India, nation has a philosophy of the people of India collectively and individually.

A unique feature of Indian Constitution is that judiciary has been conferred with power of judicial view over all the three wings of governance. Each organ has been conferred with powers accompanied by obligation and circumvented by limits. Any one crossing such limits, exercising powers not vested in it or failing to discharge obligation cast on it acts unconstitutionally and is liable to be corrected by the judiciary. The Indian Judiciary is the final arbiter of all constitutional issues. It has also an advisory jurisdiction. The validity of any law enacted by the Parliament or any State legislature can be decided by judiciary on the constitutional anvil and struck down if it fails to satisfy the test in the

opinion of any constitutional court of the country. Indian Judiciary decides not only such disputes as relate to individuals but also those which arise between the State and its subjects. Indian Judiciary assigns life to the letters of laws and articles of Constitution.

Tracking the record of performance ever since independence of the several Constitutional institutions, it is common knowledge and often expressed so by well-meaning persons that the performance of Indian Judiciary has been heads and shoulders above the rest. It has done its job well. It has successfully faced the challenges of the times. And, it has wisely resolved the host of delicate constitutional and legal issues posed before it for resolution. The courts in India have never shied away from upholding the majesty of the Constitution and the human rights of individuals pitted against the mighty State. The volumes of law reports are not only mountains but also monuments of the law laid down and innovative judicial methodologies devised by the Indian courts resolving most complicated issues touching several aspects of human and institutional lives and relationships. The courts have, by their decisions, emboldened the just and tightened the noose over the unjust. Public Interest Litigation, letter petition, liberal interpretation of human rights jurisprudence giving dimension to international treaties and conventions coming up before them for interpretation, laying down guidelines amounting to law of the land in the areas left unoccupied by legislation or executive instructions and showing concern for the weaker, marginalised and down-trodden such as children, physically or mentally challenged women, bonded labour, minorities, socially and economically backward and so on have earned a name for Indian Judiciary with no parallel in other jurisdictions.

The Indian Judiciary, generally speaking, has been bold, independent and responsive. It has not hesitated in assuming jurisdiction where its conscience dictated it to do so in the interest of dispensing justice and upholding the cause and philosophy of Constitution. Judicial activism displayed by Indian Judiciary often misunderstood and also criticised at times, is nothing but a characteristic of an active judiciary. Not surprising that Shri K.R. Narayanan, Former President of India, minced no words while speaking on the Golden Jubilee of the Supreme Court in the year 2000 and proceeded to say – "It is not an exaggeration to say that the degree of respect and public confidence enjoyed by the Supreme Court is not matched by any other institution in this country".

It is not the encomiums alone which have been showered on the Indian Judiciary. It has faced several brickbats as well but without wounds, fortunately. The worst of the criticism levelled against Indian Judiciary is the lethal delays in disposal of cases leading to frustration in the minds of seekers of justice. At times voices have been raised accusing judges of corruption and inefficiency. Critics have, at times, been terse in expressing distrust and questioning if the Indian Judiciary would ever be able to cope with the task of clearing ever mounting arrears. There is some ring of truth in what is so said and, that is a matter of concern.

Availability of efficacious Justice Delivery System is the cause of civilisation in society. Availability of a just, quick and accessible Justice Delivery System avoids the need of people taking the law in their own hands. If they are assured that they will have their due at the end they don't mind waiting even longer. If the judiciary fails in coming up to the expectation of the people or loose the confidence of the people, it is the beginning of an

end of democracy and civilisation. Hence the need for thinking of Judicial Accountability and Judicial Reforms.

Let us familiarise ourselves with the huge pyramid which the Indian Judiciary is, the enormous judicial family including legal fraternity and the task which it faces. The following statistics speak for itself:-

Number of Judges: the judicial family

Court	Approved Strength	Actual Strength	Vacancies
Supreme Court of India	26	23	3
High Courts (21) (As on 01.06.06)	726	577	149
Subordinate Courts* (As on 30.04.06)	13,903	11,207	2,706

* Does not include figures relating to Mizoram, Nagaland, Andhra Pradesh, Punjab, Haryana and Chandigarh as not available to the author.

Pendency of Cases: filing, disposal and pendency

Court	Filing	Disposal	Pendency
Supreme Court of India (May 2006)	5,271	4,120	36,041
High Courts ((01.01.06 to 30.01.06)			
Civil Cases			

There are about 1 million lawyers practising in the country.

Our Justice Delivery System both civil and criminal has been inherited from the Britishers. Post independence there has been no serious thought even for Indianising the system, more so with Gandhian values and to bring it in conformity with the ideals of "Justice – Social, Economical and Political" as enshrined in the preamble to the

Constitution of India. Ever since independence, there has been no High Power Committee or Commission appointed to go in depth into studying the system and suggesting such changes therein, may be an overhauling of Justice Delivery System as to ensure the Constitutional goal of securing to the people of India justice, liberty, equality and fraternity – the ideals dreamt of by our founding fathers. There has been a Constitution Review Commission headed by the great jurist and experienced judge, Shri M.N. Venkatachaliah, who, at one time, also headed the Judicial System of the country in his capacity as Chief Justice of India but the main task before that Commission was something different and very generalised when the justice system was incidentally touched. Another Committee appointed in the recent times headed by Justice Marimath examined the Criminal Justice System and made a few recommendations touched thereto. However, the scope of enquiry entrusted to Marimath Committee was very limited. The Committee was not very wide-based by that edge it may. Its recommendations are yet to receive a consideration by the Government.

There are two very important reports available by reference to the United Kingdom to which it will be useful to make a reference.

Access to Justice:

Criminal Justice System the United Kingdom Experience

In December 2000, the then Lord Chancellor of England and Wales appointed Sir Robin Auld, a Lord Justice of Appeal in the U.K. and then High Court Judge to conduct a review of their Criminal System. The terms of reference were the broadest of any enquiry in the Criminal Justice System of United Kingdom as would be apparent from the terms of reference as under:-

- the management and funding of the criminal justice system including the relationship of the courts with others concerned in it – a subject which came to dominate almost every other in the review;
- the structure and organisation of the courts and the distribution of work between them;
- the composition of the courts, including the use of juries in the upper tier courts of first instance – the Crown Court – and of lay and professional judges in the lower tier, the magistrates' courts – not a topic, I know, of relevance to India's criminal justice system;
- case management rules of procedure and evidence, and the contribution to all three of information technology;
- treatment of all those concerned with criminal justice, including, in particular, witnesses and victims, and securing public confidence in it; and
- appellate structures and procedures in the Crown Court, the Court of Appeal and, to a limited extent, in our highest court the Appellate Committee of the House of Lords.

Instructions of Sir Robin Auld were to take a radical and long term look at the working of their criminal justice system and to make broad recommendations for improvement. Sir Robin Auld did his job well by looking for short and medium term improvements as a path to long term reforms. His report has been published in India by British Council in January 2004. The report indicates the width of the matters gone into. The role of information technology, case management (Pre-trial and at try) plea bargaining, several aspects touching the admissibility, appreciation and

weightage of evidence investigating expert evidence have been gone into for victims and witnesses. The report deals with victim support participation by the victim at the try and in sentencing process, victim protection have been touched. Sentencing policy, plea bargaining and mandatory sentences have been scientifically examined, dealt with and reported at. I was present at the function organised by British Council where Sir Robin Auld spoke and I was pleasantly surprised to learn that he has given attention even to such things as an ideal court building which rationally planned and built up would help in accelerating the process of criminal justice.

Any scrutiny of criminal justice delivery systems assumes significance and needs hardly any emphasis to highlight in the wake of several news reports as striking the head lines such as 1984 Riots, Gujrat incidents, Jessica Lal's Murder case, Tandoor Kand and so on. Sadly individual cases are getting publicity. Thanks to media highlight but still no serious thought is being given towards reframing the system.

The subject of judicial reforms assumes still higher significance in view of the trends of globalisation and breakthrough achievements in the filed of Information Technology. Traditional and localised approach is certainly gone outdated and any system which is not uptoned to cope with the demand of changing demands is sure to sink for which a heavy price shall have to be paid by the nation.

Another area demanding our attention is Alternate Dispute System.

National Judicial Academy.

Judicial Accountability.

*****.