JUDICIAL REFORMS WITH SPECIAL REFERENCE TO ARREARS OF COURT CASES*

I feel very happy to witness this All India Seminar on 'Judicial Reforms with Special Reference to Arrears of Court Cases' being organized under the aegis of the Supreme Court Bar Association. It is indeed a matter of pride and privilege to find His Excellency, Dr. A.P.J. Abdul Kalam, inaugurating this Seminar. Let me share it with you that His Excellency has a keen interest in the 'Judiciary' as an institution. In my every meeting with him, His Excellency has invariably enquired about the Judiciary and the judges and shown concern for what can be done to strengthen the judicial system so as to gear it up for clearing the backlog of arrears and dispensing speedy and quality justice to the teeming millions, waiting for decision in their cases.

The subject of delay in dispensation of justice has been so much talked about and continues to be highlighted in media, seminars and conferences that it looks like a beaten track. Justice seems to be evasive or elusive for common men. I am reminded of an Urdu couplet which is very appropriate to describe the feelings of a litigant, waiting for delivery of justice. The seeker-of-justice in-waiting prays to the Goddess of Justice:—

[It would be a pleasure to beseech of you but only if I can see you before me. You and I are far away from each other, how can I bow and surrender unto you.]

The Year - 2005 is the "Year of Excellence in Judiciary". The feed-back which I have been receiving from persons who move around the country who know well the justice-delivery system and are connected with it, is that in the year 2004-2005, the work culture in the Judiciary has shown an upward trend. Punctuality and prompt delivery of judgments have substantially improved. Some of the dead-wood has been ruthlessly weeded out consistently with the provisions of the Constitution and the laws. A message has gone around that those few individuals – isolated cases indeed – who conduct themselves in a manner ,not befitting to the highest traditions of Indian Judiciary would have no place in the system and at least would have no peace in their share. The credit for this achievement goes to the support of my brethren and sister judges here. The Chief Justices and the judges in the High Courts are now more vigilant than what they used to be. Undoubtedly, the co-operation of the responsible and well-meaning members of the Bar has also to be gratefully acknowledged. This momentum has to be maintained and increased in future.

The Task before us: Pendency of cases: Trend

On 1st January, 2005 there were 2,78,22,030 cases (civil and criminal, both included) pending in the subordinate courts. During the last five years, the subordinate courts have increased their disposal by 16%, but the filing of new cases has increased by 22%. During the year 2004, the subordinate courts have recorded a disposal of 36,73,397 civil cases and 1,06,32,769 criminal cases.

In the High Courts, during the year 2004, 8,63,286 civil cases and 3,75,917 criminal cases were disposed of, thus making a total disposal of 12,39,203 cases as on 31st December, 2004. As on 31st December, 2004, the total pendency of cases (civil and criminal taken together) in the High Courts was 34,23,448 cases.

In the Supreme Court of India, there were 30,792 cases, pending as on 31st March, 2005. This year, with the existing strength, the disposal of cases compared to the previous year, has increased by 16%, but, at the same time, there has been a 17% increase in the institution of cases.

Five years back, the 11th Finance Commission recommended a scheme for creation of 1734 Fast Track Courts (FTCs) in the country for the disposal of long pending sessions and other cases, involving serious offences. An amount of Rs. 502.90 crores was allocated for upgradation of judicial administration. As on 31st March, 2005, 1562 FTCs were functional. An amount of Rs. 426.13 crores was released to various States under the Central scheme. 13,14,477 cases were transferred to FTCs for being handled. The FTCs disposed of near seven and a half lacs of cases while less than 6 lacs cases were pending with the FTCs on 31st March 2005, the date by which these FTCs were faced with the danger of extinction. The Supreme Court had to intervene by passing an interim order so as to continue the FTCs for one month and expecting the Central Government to consider the issue. I am happy to learn that two days before, the Cabinet Committee on Economic Affairs (CCEA) has approved the proposal of Department of Justice for continuing 1562 FTCs for a period of another five years with 100% central funding to the tune of Rs. 509 crores.

Another proposal for creation of 1500 new Fast Track Courts at the magisterial level is under consideration of Department of Justice. The cost is proposed to be on equal sharing basis with the States. I take this opportunity for appealing to all the State Governments to convey their willingness to accept such a proposal and avail this opportunity for enabling the courts to clear the backlog of arrears of criminal cases at the magisterial level where mostly the poor people are facing trial on charges of comparatively minor offences.

The judges in the country are working to the best of their capacity. A former Attorney General for India, an eminent jurist by himself, has acknowledged in the Indian Express, dated 24th April, 2005 that the overwhelming majority of our judges conscientiously discharge their duties under a punishing work-load and in order to bear with the increasing work-load, they work after court hours and most arduously, during weekends and holidays. Such acknowledgements, coming from disinterested but well-conversant persons make persons like me feel proud of Indian judiciary.

Solution: a three-pronged strategy

It is necessary to know the relationship between the number of backlogged pendencies and the relevant court's case disposal record. A separate strategy has to be applied for the backlog and another strategy to take care of the annual excess over disposals.

We need to adopt a three-pronged strategy to meet the problem of arrears. One, checking the upward trend in the figures of pendency; two, a qualitative change in the performance; and three, quantitative strengthening of the system to bring the ratio of performance in proportion with the task posed before us.

Again, this seminar can, while working out solutions divide the strategies in two compartments: one, what judiciary can do from within and with the support of lawyers; and, two, for what we have to depend on the Legislature or the Executive.

We cannot stop, nor should we even think of preventing the inflow of cases, lest it should amount to obstructing people's access to justice. Alternate Dispute Resolution Systems, such as, mediation and conciliation have to be evolved and blended with the Indian

judicial system. A Committee, headed by Justice N. Santosh Hegde, ex-officio as Executive Chairman of the National Legal Aid Services Authority is working in the direction of creating awareness for resort to ADR systems and providing for education and training of mediators and conciliators. ADRs will be useful at pre-litigation, pre-trial and post-trial stages. The system has been successfully tried in other countries. We can safely adapt it to Indian needs.

A Committee, headed by a former judge of the High Court, attached with the Chief Justice of India and manned by experts of judicial system and information technology, working in cooperation and coordination with National Informatics Centre has developed an ambitious, but not expensive, plan for e-governance in judiciary. Hopefully, this plan will be presented before the legal fraternity within a fortnight. As I learn from the newspapers, the Government of India has announced the judges being given laptops within a period of nine months.

National Judicial Academy at Bhopal, which was inaugurated by His Excellency, Dr. A.P.J. Abdul Kalam, has become fully functional. It has successfully accomplished 17 training courses, participated by members of subordinate judiciary and the High Court judges during the year 2004-2005. Commencing 1st July, 2005, a calendar of events, incorporating 24 training courses has been chalked out and circulated. In the first week of July, 2005, before the Supreme Court will re-open after summer vacation, a residential programme, tailor-made to suit the requirements of the judges of the Supreme Court, shall be conducted in the campus of the Academy at Bhopal.

In every programme, conducted in the Academy, lessons in Ethics and Morality are associated with professional education and training. The quality of justice, dispensed by courts is a reflection of the quality of judges who sit in the courts.

Between 1st July, 2004 and today, 135 recommendations for appointment of High Court judges have been cleared by the Supreme Court Collegium which is a record in the judicial history post-independence. The target is, not to leave any vacancy unfilled by the end of this year. Every recommendation is subjected to rigorous scrutiny so as to eschew, as far as possible, any undeserving appointment.

There are 21 High Courts in the country of which 17 have State Judicial Academies, working under them. I am requesting the Chief Justices of the other High Courts to take up with the respective State Governments, proposal for establishing Judicial Academies in those states also where there is none.

The National Legal Services Authority is working with enthusiasm and innovation. In the year 2004, near 15 lacs of cases have been disposed of by Lok Adalats. Such, Lok Adalats and Legal Literacy Camps are being regularly held. On 6th March, the Hon'ble Prime Minister of India has launched Legal Literacy Mission and, on 27th April, 2005, only a day before, His Excellency, the Vice-President of India, has launched "*Jal Adhikar Abhiyan*" that is "Right to Water Campaign" under the aegis of NALSA.

The Indian Judiciary has a strong in-built foundation. It is capable of bearing further loads. It can perform still better. However, a few things need to be done in this direction. I would only briefly indicate today, at this moment, and leave the subject to be taken up later for a detailed discussion.

(1) Commission/Committee for Judicial Reforms

The Indian Justice Delivery System is a British legacy. During 57 years of independence, no step has been taken for a comprehensive and scientific study of the system. A High Power Commission or Committee, headed by a former Chief Justice of India deserves to be appointed to study the system in-depth and make recommendations for changes and modernisation. The Commission should be manned by experts in the field of Judiciary, Technology, Management & Human Resources and Academics. I may mention that two very ambitious research-oriented projects, sponsored by UNDP and Asian Development Bank, approved by Government of India, have been initiated for toning up justice-delivery system and to develop pilot programmes. One program is being conducted by NJA and the other is being handled by a Steering Committee, headed by Justice Y.K. Sabharwal.

(2) Impact of legislation upon the Court system

One of the important sources for the increased inflow of cases is the increasing number of laws which are being enacted by the Legislature. Every law creates some rights, imposes some duties or provides for punishment. These give rise to new causes of action which have to be adjudicated in the court of law. In certain countries, the impact of laws upon the court system is measured by using socio-metric techniques, using Judicial Impact Statements which accompany every Bill, introduced in the legislatures. It sets out the likely increase in litigation due to the enactment of the proposed legislation and the likely budgetary provision that is to be made to the judiciary. This has not been done in our country in the last fifty years and is one of the main causes for inadequate budgetary provision.

(3) Electronic Judicial Resource Management

Electronic Judicial Resource Management constitutes the principal agenda for the Indian Judiciary. Electronic Judicial Resource Management addresses one of the most important critical areas in judicial reforms, which is, reduction of judicial arrears. It enables the judiciary to manage its time in a more meaningful way. This helps the Judiciary to prioritize its resources and deliver justice more efficiently. Some important components of EJRM are:—

(i) Electronic Delivery of Notices and processes of Court;

(ii) Electronic filing;

(iii) E-record of administrative data and court registers;

(iv) Internet Kiosks and Para-legal Professionals to render litigation support;

(v) Quality Control; and

(vi) Judgments Electronic Format.

In an electronic environment, electronic records can be arranged in a multi-layer fashion, accessible through hypertext links. Hyper-linking will facilitate seamless navigation to the sites, linked in the record. Thus, electronic documentation will change the nature of documents, rendering it easy for the reader to quickly digest the essential features of the contents. Readers can scroll down further to read the details.

The legal XML tags in a document, enable searching documents more quickly and accurately. If an electronic filing includes caption that identifies the party's docket number, port etc., using XML tags, the court's case management software can extract the caption information and automatically enter the filing in an electronic case file without any human intervention.

(4) Performance Audit of Judiciary

The process of quality control does not stop with quality of justice, rendered in the court. It also permeates into the other areas of the judicial process as well. In the area of manufacturing, management experts make use of process improvement tools. Six Sigma and Balance Score Card are the mantras of quality control. These high sounding words are nothing but the standard setting goals which every institution organization has to set up and also measure its progress against the background of such standards. Management of any organization requires established standards for measuring its efficiency and for increasing productivity. In the field of business, productivity is measured in terms of profit or turnover. In the service sector there is no production or turnover. Administration of justice is one such area where efficiency and productivity are difficult to measure for various reasons. It is here that Six Sigma and Balanced Score Card can be of help.

The Supreme Court and some High Courts have started publishing Annual Reports. Such Reports should be published by all High Courts so that there is transparency and there can be proper analysis of the problems.

Six sigma and balanced score card

Six Sigma is a process improvement tool that helps us to focus on developing and delivering near-perfect products and services. It is a statistical term that measures how far a given process deviates from perfection. The central idea behind Six Sigma is that if you can measure how many "defects" you have in a process, you can systematically figure out how to eliminate them and get as close to "zero defects" as possible. Since Judiciary is also a process and delivery of justice is the end result or outcome, six sigma techniques can be applied to the judicial process also. The application of new quality management tools, like six sigma to Judiciary, will produce dramatic effect on the performance of the Judiciary. New techniques like Six Sigma and Balanced Score Card, combined with availability of real time data, renders it possible to measure efficiency in Judicial Process also.

(5) Executive to be more sensitive to the needs of Judicial System

Thomas Hobbs, the great thinker emphasised two attributes of sovereignity of the State: (i) to protect its people against external aggression; and (ii) to dispense justice to its people within the society and thereby maintain peace, law and order in the society. He emphasised that both are equally important. These are two preliminary functions and other functions of the State are residuary, in his opinion.

In the absence of an efficient and efficacious justice-delivery system, being available to redress the grievances by lawful, means there cannot be peace and harmony in the society nor investments (indigenous or foreign) would be attracted.

The Executive have to realise that they and the Judiciary are partners in the field of constitutional governance and law and order administration. They are complementary to each other in the service of people of India. Fortunately, a better understanding of this concept has developed during this year. But at times, we are pained to learn, the judiciary being given a step-brotherly treatment in the matter of allocation of funds or in the matter of consideration, by the Executive, of the proposals emanating from Judiciary. There is an abnormal delay in the decisions and at times, the proposals are taken very lightly and turned down without realising the consequences, which would befall the administration of justice.

(6) Judiciary – not insensitive to the financial constraints faced by the Government

The need for establishing more courts and appointment of more judges needs no emphasis. I do not want to give the impression that the judiciary is always crying for more, wanting to expand at the expense of the other organs of the Government. I am aware that the judiciary, like any other organ of the Government, shares the same financial constraints which face the Government. But, it may be considered whether an allocation of 0.071% in the Ninth Plan (1997-2002) and 0.078% under the Tenth Plan (2002-2007) is sufficient?

(7) Judge–population ratio

The judge-population ratio is usually fixed in the light of the overall population of the country. In a federal set up like ours, where we do not have any central or federal courts for dealing with cases arising out of Central laws, it is very difficult to relate the judge population to actual realities. Since the courts are under the control of States, and only the High Courts and the Supreme Court are funded by the Central Government directly, we need to understand what are the number of cases, actually flowing out of the Central Acts into the court system. The Jagannath Shetty Commission pointed out that 340 Central statutes are administered by the Courts, established by the States and therefore, the Central Government ought to share the financial burden. It is quite possible for the sake of targetting the backlog of cases, the Central Government may explore the possibility of setting up central courts, under Article 247 of the Constitution, to deal with cases, arising out of Parliamentary enactments and which are pending for more than five years or so.

According to a recent scientific study carried out our requirement of courts is as under:—

(i)	Population (as per Census 2001)	1,02,20,10,012
(ii)	Pendency as on 1.1.2005	
	(a) Civil	82,36,254
	(b) Criminal	1,95,85,776
	(c) Total (a+b)	2,78,22,030
(iii)	Total number of existing Courts	12,360
(iv)	Total number of additional courts required based on pendency of cases (Bench mark: 1000 per court)	16,998
(v)	Total number of additional courts required based on population (Bench mark: 50 courts per million)	38,741

(8) Need for change in approach towards judiciary

The approach of the States towards Judiciary needs a change. On principle, the Government shall have to accept that the Judiciary is a class by itself and the holders of the judicial office cannot be equated with ministers or with the members of bureaucracy. This was not done by the Britishers. But post-independence, this tendency has emerged and now gained the field. It needs to be given a re-look in the interest of more competent and efficient judiciary.

There is also a need for introducing an on-going system of legal education and training to maintain and upgrade the level of excellence in the profession. The Indian legal profession must gear up to face the challenge of competition from international legal fraternity under the new economic regime vis-à-vis the backlog of cases.

This Seminar is a declaration on the part of the members of the Bar that they are conscious of their equal obligation in solving the problem of arrears and true to their being named as officers of the Court they have a will to participate in solving the problem.

I may end by quoting what Dr. Sarvapalli Radha Krishnan, had said – "Don't be prisoners of past; Be the pilgrims of future."

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* Speech delivered on Judicial Reforms with Special Reference to Arrears of Court Cases on 29th April, 2005, at Vigyan Bhavan.