

# INDIAN JUDICIARY AILMENTS & CURE\*

## INTRODUCTORY

**W**e have assembled here, today, to pay our tributes to the late

Dr. Kailas Nath Katju who continues to live in our memory, by way of the annual Dr. Katju Memorial Lectures amongst other things. Dr. Katju's pleasant personality had endeared him to his contemporaries and everyone who came in close contact with him or knew about him. However, there is a special reason for me to remember him. Dr. Katju was born in Jaora, a place in the State of Madhya Pradesh – the State to which I belong. He bade goodbye to his active social and political life from the State of Madhya Pradesh, where he was a Chief Minister, and then settled down in Allahabad. Though I did not have the privilege of having ever met or seen late Dr. Katju but I have the feeling of having some affinity and proximity with him, which is more sentimental in nature, on account of both of us belonging to the same State.

I do not mean to belittle the towering height of this great man whose legacy belongs to the nation and not to a State only. As his life sketch would reveal, he was a gift of nineteenth century, to the twentieth century. Brilliance and spark in his personality were prominent even in his career as a student. He topped the High Court Vakil examination and was awarded the prestigious Lumsdon Gold Medal. He entered the legal profession and several judgments reported in law journals, document the brilliance of his performance as a lawyer. He was a contemporary of great stalwarts like Sir Tej Bahadur Sapru, Pt. Moti Lal Nehru, Durga Charan Banerjee, Satish Charan Banerjee and the like. He defended the accused in the Meerut conspiracy case of 1933 and also in the INA trial, at Red Fort. He took keen interest in education and guided, in various capacities, several educational institutions including the University of Allahabad. He actively participated in the Satyagraha movement of Mahatma Gandhi and suffered imprisonment for eighteen months. He became the Governor of two States and later on, Minister of Home, Law and State Affairs. After the Home Ministry, he took over the charge of the Defence portfolio. He was also entrusted with the leadership of Madhya Pradesh as its Chief Minister. The period of his governance is remembered as one of corruption free and efficient government. Whether in education or in government or at the Bar, he believed in justice being delivered to the people of the country. A discussion on the subject, "Can Judiciary meet the expectations of the people", is a befitting tribute of ours,' to the memory of this great man – Dr. Katju.

### **Rising Expectations of the People from Judiciary**

If the question is so simple and innocuous as it purports to be – "Can Judiciary meet the expectations of the people, my answer to the question is 'Yes'. Judiciary is one of the pillars on which constitutional democracy of India is resting. The possibility of the answer being 'No' is completely ruled out, for it would be a doom's day if the judiciary would fail to meet the expectations of the people of India. Justice is the basic human right of any civilised society. Upholding the Rule of Law is the first essential, for the existence of peace and order

in the society, and thereon depends its prosperity. No system of governance can survive unless it provides for a well-knit justice delivery system which can guarantee settlement of disputes in a peaceful way and within reasonable time. Next to divine justice is justice on earth. God, the creator of this Universe, does not sit in judgment over his creatures, during their lifetime. Whereas, a Judge is authorized to sit in judgment over the acts and deeds of fellow human beings, during their lifetime. That is why it is said that what judiciary performs is a divine function. The judiciary has no other option but to fulfil the expectations of the people for whom it exists.

It is an empty truism to say that each wing of constitutional democracy must perform its functions. So must the judiciary. That every wing must discharge its constitutional obligations, is another way of saying that every wing must come up to the expectations of the society to which it belongs. However, the hopes and expectations of people from the judiciary have risen high mainly on account of two factors.

Firstly, the judiciary, in spite of the odds, continues to discharge its functions, to the best of its ability and competence, while the other wings of governance have started fumbling. The judiciary continues to stand erect as the last hope of the Indian masses. Obviously, when one or more pillars go weak then the weight on the other pillar increases and it must be prepared to bear that additional burden. That is where the judiciary is right now. The large number of cases pending in law courts still a large number of cases being instituted everyday are suggestive of the peoples' increasing faith in the courts in India. People have faith that justice will be done some day, even if belatedly. There are some significant features which distinguish the judiciary from other institutions of governance. First, its doors are open. It is receptive and responsive to the seekers of justice. It is available at all times. Secondly, it listens to everyone. The courts do not take any decision without affording the parties, an opportunity of hearing. Thirdly, it takes decisions. When the order of the day is that those in power, generally speaking, avoid or delay taking decisions, the Judges do take decisions. Fourthly, every decision by a Judge is accompanied by reasons and this style of functioning of judiciary itself, assures accountability. The reasons accompanying decisions are a guarantee against whim, fancy and arbitrariness in taking decisions.

The second factor, responsible for arousing the expectations of the people, is – the spirit of innovation in judiciary. With the change in times, and to cope with new challenges, judiciary has innovated new methodologies. Public Interest Litigation is a unique device wherein, shedding the shackles of locus standi, the judiciary entertains grievances of public nature. A public spirited person or body, having no personal interest in the relief claimed, puts forth grievances of public nature, having far-reaching implications on the society, generally. The phenomenon of Public Interest Litigations has now come to stay and is consuming substantial time of the constitutional courts of the country. Similar is the device of letter petitions wherein, all formalities attached with the presentation of a petition to the Court, are dispensed with, if the grievance relates to enforcement of fundamental rights. The device of letter petitions has been successfully used by bonded labourers, persons in illegal detention and people subjected to violation of human rights, in far-off places wherefrom, they may not be able to access the Courts otherwise. The unique concept of continuing mandamus, where directions are issued and their implementation is monitored, has been able to keep corruption and inefficiency in governance under control. The Hawala case, closure of polluting industries operating in the non-confirming areas of Delhi, polluting

vehicles being substituted by CNG run vehicles and the Taj Corridor case, are some such examples.

Very often the Courts are criticised for having assumed such role unto themselves as was not contemplated by the Constitution. The criticism has no justification. The Constitution is a living organism and its limbs must have flexibility. The courts of law have assumed only such a role, as would enable them to fulfill the ideals of the Constitution. Role of the Courts is not just to interpret laws but to function as sentinels, safeguarding the fundamental, legal and human rights which legitimately belong to the people. The judiciary has to be independent, efficient and active if democracy has to have any meaning for the people of India.

What gives rise to the question – whether the judiciary can meet the expectations of the people? The question itself betrays a doubt, lingering in the minds of the people, about the competence and credibility of the judiciary. The three reasons, why such a question arises, are: (i) delay in disposal of cases, (ii) occasional question marks put on the credibility of judiciary, and (iii) incidents of corruption in the judiciary which have started showing their ugly face, though such instances may be very few, akin to casual aberrations.

#### **What ails the judiciary?**

There are two oft-used phrases, current in circles around the judiciary. It is said – ‘Justice delayed is justice denied’. It is also said, on the other hand, and with equal emphasis, – ‘Justice hurried is justice burried’. The correct position lies somewhere in between – striking a balance between the two extremes. Any civilised method of justice dispensation must have a procedure to follow and the reasonableness of procedure, takes its toll in terms of time.

The judiciary is over burdened. According to the 120th Report of the Law Commission of India, the number of Judges, we need, is ten times more than the existing strength, keeping in view the population of the country, the backlog of arrears and the continuing influx of new cases.

It will also be useful to look at some relevant statistics:

	Supreme Court	High Court	Subordinate Courts
No. of Judges (actual/sanctioned)	22/26	496/704	11,103/13,204
Pendency of cases	26,750	31,88,847	2,25,85,344

The Supreme Court disposes of around 50,000 cases per year. Almost an equal number of cases are being filed and thus the figure of pendency continues to remain almost static.

Post independence, there has been no sincere effort made in the direction of modernising the justice delivery system. While the world is moving in the direction of paperless offices, bookless libraries and wireless communications, there are outlying Courts which still work on manual typewriters or the clerks, taking dictation in long hand. There are Court buildings which are literally ‘open courts’, because the Court is held in a verandah with no doors to close!

Why is there a delay in judicial reforms? Firstly, the judiciary itself is conservative and believes in being traditional. Secondly, it is a neglected child of those who rule. Performance of the judiciary does not have a direct and visible correlation with the measure of popularity of the government with the electorate. The result is that the judiciary continues to be over-burdened and starving for means to carry the burden.

## **What can the Judiciary do?**

What must be done? Whatever be the problems and shortcomings, the judiciary, as an institution, cannot afford to belie the expectations of the people.

The steps for resolution can be divided into three heads: (i) Long-term planning, (ii) short-term planning and (iii) certain self-determinations, based on introspection, which for implementation, do not depend on any agency, external to the judiciary. I would like to enumerate the steps which need to be taken.

(1) The number of judges has to be suitably increased. In one of its judgments, the Supreme Court has expected the Central and State Governments to secure at least five to six times increase in the number of judges in a phased manner.

(2) With the advent of National Law Schools, five years' course of study in law and emphasis on instructions in upcoming branches of law, brilliant students, genuinely interested in taking up law as a career, are coming out. At the same time, in view of the trends of globalisation and liberalisation, multi-national business houses and well-established law firms are offering attractive packages to the students who then cease to be available for judicial services. Better service conditions need to be offered to attract the best of talent towards judicial service. With Shetty Commission Report, the implementation whereof is being monitored by the Supreme Court, the members of subordinate judiciary are feeling somewhat relaxed. It was but disturbing to note that neither the Central Government nor the State governments were willing to accept and implement the Shetty Commission Report. However, that is now a matter of the past and the process of implementation has begun.

(3) The potentials of Information Technology must be increasingly utilised in administering the justice system of our country. The court records need to be digitalized. E-filing, video-conferencing and similar other methodologies can save a lot of time and energy, of those associated with the justice delivery system and can also avoid unnecessary movement of persons and papers from place to place. We can think of having Twenty First Century court rooms where all parties participate from distances, dispensing with the need of assembling at the same place, same time.

(4) We can neither stop, nor try to stop the influx of cases in Courts. However, the outlets can be increased so as to prevent the overflow or clogging. Alternate Dispute Resolution systems have to be adopted and innovated upon. Lok Adalats have done a commendable job during the last four decades and lakhs of cases have been disposed of through them. In international commerce, arbitration is catching up. However, I have some reservations about the efficacy and utility of the system in settlement of domestic disputes. In India, arbitration is not institutionalised. It is more of free lancing. Mediation and Conciliation are more useful, simple and efficacious methodologies, which need to be tried in a big way.

(5) Judges need to be trained to face new challenges. Continuing education, refresher courses and orientation programmes have to be devised to enhance the professional competence of judges. The National Judicial Academy has been established at Bhopal with these objectives in view. At least 14 States have State Judicial Academies. Inter-linking of the State academies with the National Judicial Academy can result into coordinated networking of several programmes, relating to judicial training and education.

(6) Judges too are human-beings. But they cannot be permitted to compromise with the high standards of probity and performance, which they are supposed to maintain and exhibit. A vigilant watch needs to be maintained for insulating the judiciary from any aberration, entering into its roots. Any individual case of fall from virtue, such as corruption, must be dealt with a firm hand and promptly, so as to chastise the delinquent and deter the fence-sitters. The judiciary shall have to achieve the target of zero-tolerance so far as corruption and inefficiency are concerned.

(7) Last but not the least, the judiciary shall have to restore its faith in traditional values. Times may change but eternal values do not. As a member of the Indian judiciary, I have no hesitation in saying that the lessons of ethics and morality have to be told and re-told and learnt and continued to be learnt, throughout the judicial career as they provide the inner strength to judicial functionaries. It is the devaluation of ethics and morality which makes any system susceptible to corruption, inefficiency and other things, responsible for loss of credibility.

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\* *Can Judiciary Meet the Expectations of the People* – Annual Dr. Katju Memorial Lecture delivered on 23rd July, 2004, at New Delhi.