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LAW COMMISSION OF INDIA

REFORMS IN THE JUDICIARY – SOME SUGGESTIONS

Report No. 230

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LAW COMMISSION OF INDIA
(REPORT NO. 230)

REFORMS IN THE JUDICIARY – SOME SUGGESTIONS

Submitted to the Union Minister of Law and Justice, Ministry of Law and Justice, Government of India by Dr. Justice AR. Lakshmanan, Chairman, Law Commission of India, on the 5th day of August, 2009.

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D.O. No. 6(3)/163/2009-LC (LS)

5 August, 2009

Dear Dr Veerappa Moily ji,

Subject: REFORMS IN THE JUDICIARY – SOME SUGGESTIONS

I am forwarding herewith the 230th Report of the Law Commission of India on the above subject.

2. The Law Commission has already given varied recommendations in its earlier reports on the subject of reforms in the judiciary, which is a subject very dear to my heart. The present Report is in the continuum of those reports and has drawn on my very recent book titled *The Judge Speaks*.

3. The recommendations in this Report are the suggestions made by the Hon'ble Shri Justice Asok Kumar Ganguly, a Judge of the Supreme Court, which are as under:

[1] There must be full utilization of the court working hours. The judges must be punctual and lawyers must not be asking for adjournments, unless it is absolutely necessary. Grant of adjournment must be guided strictly by the provisions of Order 17 of the Civil Procedure Code.

[2] Many cases are filed on similar points and one judgment can decide a large number of cases. Such cases should be clubbed with the help of technology and used to dispose other such cases on a priority basis; this will substantially reduce the arrears. Similarly, old cases, many of which have become infructuous, can be separated and listed for hearing and their disposal normally will not take much time. Same is

true for many interlocutory applications filed even after the main cases are disposed of. Such cases can be traced with the help of technology and disposed of very quickly.

[3] Judges must deliver judgments within a reasonable time and in that matter, the guidelines given by the apex court in the case of Anil Rai v. State of Bihar, (2001) 7 SCC 318 must be scrupulously observed, both in civil and criminal cases.

[4] Considering the staggering arrears, vacations in the higher judiciary must be curtailed by at least 10 to 15 days and the court working hours should be extended by at least half-an-hour.

[5] Lawyers must curtail prolix and repetitive arguments and should supplement it by written notes. The length of the oral argument in any case should not exceed one hour and thirty minutes, unless the case involves complicated questions of law or interpretation of Constitution.

[6] Judgments must be clear and decisive and free from ambiguity, and should not generate further litigation.

[7] Lawyers must not resort to strike under any circumstances and must follow the decision of the Constitution Bench of the Supreme Court in the case of Harish Uppal (Ex-Capt.) v. Union of India reported in (2003) 2 SCC 45.

With warm regards,

Yours sincerely,

(Dr AR. Lakshmanan)

Dr M. Veerappa Moily,
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REFORMS IN THE JUDICIARY – SOME SUGGESTIONS

I. THEMES AND THOUGHTS

1.1 The formation and functioning of the High Courts in India need drastic changes so that the people of the country may have fair and speedy justice and more faith in the system.

Selection and appointment of High Court Judges

1.2 The post of the Judge of a High Court has importance under our Constitution and the incumbent is supposed to be not only fair, impartial and independent, but also intelligent and diligent. The general eligibility criterion is that a person should have put in ten years of practice/service in the legal/judicial field.

1.3 As a matter of practice, a person, who has worked as a District Judge or has practised in the High Court in a State, is appointed as a Judge of the High Court in the same State. Often we hear complaints about 'Uncle Judges'. If a person has practised in a High Court, say, for 20-25 years and is appointed a Judge in the same High Court, overnight change is not possible. He has his colleague advocates – both senior and junior - as well as his kith and kin, who had been practising with him. Even wards of some District Judges, elevated to a High Court, are in practice in the same High Court. There are occasions, when advocate judges either settle their scores with the advocates, who have practised with them, or have soft corner for them. In any case, this affects their impartiality and justice is the loser. The equity demands that the justice shall not only be done but should also appear to have been done. In government services, particularly, Class II and upward, officers are not

given posting in their home districts except for very special reasons. In any case, the judges, whose kith and kin are practising in a High Court, should not be posted in the same High Court. This will eliminate "Uncle Judges".

1.4 Sometimes it appears that this high office is patronized. A person, whose near relation or well-wisher is or had been a judge in the higher courts or is a senior advocate or is a political high-up, stands a better chance of elevation. It is not necessary that such a person must be competent because sometimes even less competent persons are inducted. There is no dearth of such examples. Such persons should not be appointed and at least in the same High Court. If they are posted in other High Courts, it will test their calibre and eminence in the legal field.

1.5 The post of Chief Justice should not be transferable. This practice was introduced in our country after the 'Emergency' had been imposed. If we look back, we find that the High Courts earlier had better reputation than what they have at present. The Chief Justice, who comes on transfer for a short period of six months, one or two years, is a new man, rather alien for the place and passes his time anyhow. He has to depend on others for policy decisions in administrative matters. If the Chief Justice is from the same High Court, he will be in a better position to not only control the lower judiciary but also to assess the persons both from the bench and the bar for elevation to the High Court. This will also curtail the unnecessary delay in filling up the vacancies in the High Courts. If the functioning of the High Courts is to be improved, the policy of transferring the Chief Justices should be given up forthwith.

When the policy of transfer of Chief Justices was finally upheld by the Hon'ble Supreme Court, an eminent jurist of the country commented that the judiciary had committed suicide. Now the time has come when this policy needs re-evaluation.

Age of retirement

1.6 When we adopted and gave to ourselves the Constitution in 1949, the retirement age of Judges was fixed at 60 years for High Courts and 65 years for the Supreme Court. For the High Court Judges, 60 years was increased to 62 years in 1963. At that time the normal life expectancy was about 60 years. With the changes in social and financial set-up as well as medical facilities, the present normal life expectancy is about 70 years. Barring few exceptions, a person is fit and fine at the age of 62 or even 65 years. In our country, except for the judges, the retirement age in some quasi-judicial bodies has been increased. The retirement age in different tribunals has now been increased to 70 for chairmen and 65 for members. In the circumstances, the constitutional provisions need a change for enhancing the age of retirement of High Court and Supreme Court Judges at least by three years.

Increase in number of judges and creation of new Benches

1.7 In almost every High Court, there is huge pendency of cases and the present strength of the judges can hardly be said to be sufficient to cope with the alarming situation. The institution of cases is much more than the disposal and it adds to arrears of cases. The litigating citizens have a fundamental right of life i.e. a tension-free life through speedy justice-delivery system. Now it has become essential that the present

strength of the judges should be increased manifold according to the pendency, present and probable.

1.8 It is also necessary that the work of the High Courts is decentralized, that is, more Benches are established in all States. If there is manifold increase in the strength of the judges and the staff, all cannot be housed in one campus. Therefore, the establishment of new Benches is necessary. It is also in the interest of the litigants. The Benches should be so established that a litigant is not required to travel long.

1.9 It is true that the new establishments will require money, but it is necessary as a development measure, particularly, when efforts are being made for all-round development of the country. Therefore, the money should not be a problem. We have to watch and protect the interest of the litigants. We must always keep in mind that the existence of judges and advocates is because of the litigants and they are there to serve their cause only.

1.10 Sometimes, some advocates object to creation of new Benches and selection of new sites for construction of new buildings. But they raise objections in their personal, limited interest. Creation of new Benches is certainly beneficial for the litigants and the lawyers and a beginning has to be made somewhere.

1.11 There is huge pendency of cases in the apex court also. Now the time has come when not only the strength of the Hon'ble Judges in the Supreme Court should be increased and recommendations are made to

fill up the vacancies soon but new Benches be also established in southern and eastern regions.

Number of working days and vacations

1.12 Considering the huge pendency of cases at all levels of judicial hierarchy, it has become necessary to increase the number of working days.

1.13 It has to be introduced at all levels of judicial hierarchy and must start from the apex court. With the increase in the salaries and perks of the Judges, it is their moral duty to respond commensurately. Opportunities to attend conferences/legal seminars in foreign countries should be given to all the Judges of the Supreme Court and Chief Justices of the High Court in turn. Frequent visits by the Judges to foreign countries at very high cost should be avoided in view of the austerity measures by the Government of India.

Work culture

1.14 Of late, there has been a general erosion of work culture throughout the country. Government servants avoid discharging their duties and responsibilities. The Judiciary has also been affected by this evil.

1.15 It is high time when all the judges at different levels of judicial hierarchy must devote full time to judicial work and should not be under any misconception that they are Lords or above the society. Though this feeling should come from within, but some guidelines are necessary.

Once judgments are reserved on constitutional matters by larger bench or otherwise, the judgments should be delivered within a reasonable time. There is long and inordinate delay in delivering judgments which should be avoided in public interest. If these suggestions are implemented, the functioning of the courts shall certainly improve.

Speedy justice

1.16 Speedy justice is the right of every litigating person. There is no denying the fact that delay frustrates justice. In the present set-up it often takes 10 – 20 – 30 or even more years before a matter is finally decided. In the recent past, litigation has increased immensely. The population growth, improved financial conditions, lack of tolerance and materialistic way of life may be some of the causes. But the delay in dispensation of justice has to be eliminated by taking effective steps otherwise the day is not far when the whole system will collapse. Recently, one Hon'ble Judge of Delhi High Court calculated that 464 years will be required to clear the arrears with the present strength of the judges in that High Court. The position may not be that gloomy but is still alarming.

1.17 In Allahabad High Court, more than eight and a half lacs of cases are pending. Criminal appeals of the year 1980-82, criminal revisions of the year 1990-95 are still pending. In second civil appeals and writ matters the position is almost same. The position is the same in all other High Courts. Institution of cases is much more than disposal and it adds to the arrears almost at all levels of judicial hierarchy. Even in subordinate courts, there is huge pendency of cases.

1.18 As stated above, in order to meet this contingency substantial increase in the number of judges and corresponding infrastructure is required at the earliest. Even if the judges and class III and IV employees are appointed, say, within three to six months basic infrastructure will need time. However, the money should be not a problem. It should be treated as a developmental work, a work to provide justice to all, a principle enshrined in the Preamble of our Constitution.

1.19 An effort has been made in Gujarat State and Delhi to have some evening courts. The same system can be introduced in other States as well.

1.20 The constitutional promise of securing to all its citizens justice, social, economic and political, as promised in the Preamble of the Constitution cannot be realized unless the three organs of the State i.e. legislature, executive and judiciary join together to find ways and means for providing to the Indian poor equal access to its justice system.

1.21 Speedy trial is guaranteed under article 21 of the Constitution of India. Any delay in expeditious disposal of criminal trial infringes the right to life and personal liberty guaranteed under article 21 of the Constitution. The debate on judicial arrears has thrown up number of ideas on how the judiciary can set its own house in order. Alarmed by the backlog of inordinate delay in disposal of cases, Fast Track Courts or Special Courts have to be constituted. Thus, Fast Track Courts are to tackle the section 138 Negotiable Instruments Act cases as the graph of

such pendency is very high and alarming. It is high time to restore the confidence of people in the judiciary by providing speedy justice.

1.22 It is not uncommon for any criminal case to drag on for years. During this time, the accused travels from the zone of "anguish" to the zone of "sympathy". The witnesses are either won over by muscle or money power or they become sympathetic to the accused. As a result, they turn hostile and prosecution fails. In some cases, the recollection becomes fade or the witnesses die. Thus, long delay in courts causes great hardship not only to the accused but even to the victim and the State. The accused, who is not let out on bail, may sit in jail for number of months or even years awaiting conclusion of the trial. Thus, effort is required to be made to improve the management of prosecution in order to increase certainty of conviction and punishment for most serious offenders. It is experienced that there is increasing laxity in the court work by the police personnel, empowered to investigate the case.

1.23 Judiciary today is more deserving of public confidence than ever before. The judiciary has a special role to play in the task of achieving socio-economic goals enshrined in the Constitution while maintaining their aloofness and independence. Judges have to be aware of the social changes in the task of achieving socio-economic justice for the people.

Justice at easy reach

1.24 The Indian judicial system is constantly exposed to new challenges, new dimensions and new signals and has to survive in a world in which perhaps the only real certainty is that the circumstances

of tomorrow will not be the same as those of today. The need of the hour is to erase misconception about the Judiciary by making it more accessible by utilizing the resources available to improve the service to the public, by reducing delays and making courts more efficient and less daunting.

1.25 Regarding decongestion, greater responsibility lies on the shoulders of the Governments of States or the Central Government. They are biggest litigants in the courts. They should approach the courts or contest cases only if necessary and not just to pass on the buck or contest for the sake of contesting. The time consumed in most of the cases by Courts of Sessions is somewhat under control and most of the cases are decided in a reasonable time-schedule. Main problem is about huge pendency in Magisterial Courts and the High Courts. It is absolutely essential to have additional courts for specifically trying the complaint cases filed under section 138 of the Negotiable Instruments Act. The present state of affairs defeats the very object with which the provision was inserted in the Negotiable Instruments Act. Further, large numbers of petty offence cases should be taken out of the normal court channel to be decided by the Special Magistrates by appointing retired officers as Special Magistrates.

1.26 A speedy trial is not only required to give quick justice but it is also an integral part of the fundamental right of life, personal liberty, as envisaged in article 21 of the Constitution. The Law Commission is putting forth few suggestions to identify and remedy the causes of such delays in this Report, of course, after identifying major hurdles and impediments which cause delay in the disposal of criminal cases.

1.27 The Law Commission of India is of the firm opinion that considering the alarming situation and the pendency of cases and the constitutional rights of a litigant for a speedy and fair trial, the Government of India should direct the State authorities to set up Fast Track Courts in the country, which alone, in the opinion of the Law Commission, will solve the perennial problem of pendency of cases.

Integrity, virtue and ethics

1.28 The term integrity when applied to human attributes refers to honesty, reliability, purity, trustworthiness, incorruptibility, sincerity, honour, decency, etc. Mahatma Gandhi at one time said that "purity of life is the highest and truest art".

1.29 And in the words of Marcus Aurelius, "a man should be upright, not be kept upright". A person of integrity will do the right thing even when nobody is watching. Mahatma Gandhi said that "the truest test of civilization, culture and dignity is character and not clothing".

Governance

1.30 The term 'governance' is derived from a Latin term that literally means steering. It refers to the processes and systems by which an organization or society operates; the processes by which decisions are made that define expectations, grant power, or verify performance.

1.31 The ideal concept of public officer, expressed by the words 'a public office is a public trust', signifies that the officer has been

entrusted with public power by the people; that the officer holds this power in trust to be used only for their benefit and never for the benefit of himself or of a few; and that the officer must never conduct his own affairs so as to infringe the public trust.

1.32 Citizens have a legitimate expectation that the public servants will serve the public interest with fairness and manage public resources properly on a daily basis. The increased democratization and globalization has resulted in increased visibility of the public officials. Critical questions are nowadays asked about the way in which cases have been dealt with, the justice of the decisions, the exercise of discretions, and the morals of public servants. Leaders are increasingly being called upon to account for their actions by the communities affected by those actions.

Anti-corruption

1.33 Corruption in reference to public office has been defined as the abuse of power for purposes of private gain.

1.34 In public affairs, there often arises a conflict between private wealth and public power. This is often the result of selfishness and greed. Mahatma Gandhi said that the earth provides enough to satisfy every man's needs, but not enough to satisfy every man's greed. The conflict needs to be mediated upon. Institutions that fail to mediate between private wealth and public power run the risk of becoming dysfunctional and trapped by wealthy interests. Corruption is one

symptom of such failure whereby personal interests overcome public goals.

1.35 Fighting corruption is one of the facets of promoting good governance. But governance issues are far much broader than anti-corruption alone. For example, a public officer may be honest and yet inefficient or incompetent. Efforts to promote good governance must therefore be broader than anti-corruption campaigns.

1.36 Article 14 of the 'Basic Principles on the Role of Lawyers' adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, in 1990 states:

> "Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all time act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession."

1.37 Continuing professional development is necessary for all legal practitioners, State law officers and judicial officers to improve and sustain their proficiency. There should be put in place mechanism for refresher courses and attendance at them as a pre-condition for renewal of practising certificates for advocates.

1.38 The Indian Constitution is the source of every law that was and is prevalent in our society. The Constitution guarantees to all Indian citizens equal protection of public as well as personal rights. But these rights are of no avail if an individual has no means to get them enforced.

The enforcement of the rights has to be through the courts, but judicial procedure is very complex, costly and dilatory putting the poor at a distance from justice.

1.39 The Britishers established the current pattern of legal system present in India today, after the establishment of the English rule in the country. In the year 1857, the first step was taken in the direction of imparting formal legal education in the country. The Britishers began enacting statutes, after the revolt of 1857, which resulted in the introduction of a legal system that was moulded along the lines of the legal system then prevailing in the United Kingdom with an exception to laws pertaining to religious denominations in India.

Access to justice

1.40 Traditional concept of "access to justice" as understood by common man is access to courts of law. For a common man, a court is the place where justice is meted out to him/her. But since the laws enacted were in English and the proceedings of all the courts were highly complicated, confusing and expensive for the Indian public, the 'English' illiterate Indian public found it difficult to get access to the justice-delivery system. As a solution, the need to have lawyers was felt as an effective mediator between the legal world and the common man. Therefore, we can see that a lawyer in addition to being champion at the various laws also has a social responsibility of helping the ignorant and the underprivileged to attain justice.

1.41 The State in contemporary scenario is welfare-oriented. It is one of the most important duties of a welfare state to provide judicial and non-

judicial dispute resolution mechanisms to which all citizens have equal access, for the resolution of their legal disputes and enforcement of their constitutionally guaranteed fundamental rights. Poverty, ignorance or social inequalities should not become barriers to it.

1.42 Article 39A of the Constitution provides for equal justice and free legal aid. The said article obligates the State to promote justice on a basis of equal opportunity and, in particular, provide free legal aid by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justices are not denied to any citizen by reason of economic or other disabilities.

1.43 Lok Adalats, Nyaya Panchayats, Legal Services Authorities are also part of the campaign to take justice to the people and ensure that all people have equal access to justice in spite of various barriers like social and economic backwardness.

1.44 Large population, more litigation and lack of adequate infrastructure are the major factors that hamper our justice system. Regular adjudication procedures through the constant efforts of Legal Services Authorities will act as catalysts in curing these maladies of our system.

1.45 Disposal of legal disputes at pre-litigative stage by permanent and continuous Lok Adalats would provide expense-free justice to the citizens of this country. It also saves the courts from additional and avoidable burden of petty cases enabling them to divert their court-time to more contentious and old matters. Legal literacy and legal awareness

are the principal means to achieve the objective for ensuring equality before law for the citizens of our country.

1.46 Legal profession of the country, as we know it today, is more than two centuries old. We can legitimately expect that the future of this profession ought to be very bright, particularly in the context of the enormous strides our country is making in various fields and human rights awareness. Public interest has to be its motto and service in the cause of justice its creed. Mahatma Gandhi was a barrister who practised law without compromising truth. Abraham Lincoln said: "*Discourage litigation, persuade your neighbours to compromise whenever you can. Point out to them how the nominal winner is often a real loser in fees, expenses and time*".

1.47 A stark reality that stares at our face is the fact that more than 70% of the people of this country are illiterate. The noble objective flowing from the Preamble of the Constitution and the earnest wish and hopes expressed in the Directive Principles shall remain on paper unless the people in this country are educated.

Alternate Dispute Resolution

1.48 With the march of time, new demands emerge, which sometimes make the existing system outdated or non-functional, requiring it to be replaced by a new one. Law should also respond to the demands of the society. The alternate dispute resolution methods have evolved as a result of this vision.

1.49 The first avenue where the conciliation has been effectively introduced and recognized by law is labour law, namely, the Industrial Disputes Act, 1947. Conciliation has been statutorily recognized as an effective method of dispute resolution in relation to disputes between workers and management. The only field where the courts in India have recognized Alternate Dispute Resolution (ADR) is in the field of arbitration. Another area where ADR is recognized in India is family law. The legislation which emphasizes ADR is the Legal Services Authorities Act 1987.

1.50 Provisions have been made in the Legal Services Authorities Act for settling cases through Lok Adalats; a Lok Adalat generally comprises a judicial officer, serving or retired, a lawyer, and a person of a social welfare association, preferably, a woman. Power has been given to Lok Adalats to dispose of disputes referred to them by arriving at a compromise or settlement between the parties; awards of Lok Adalats are deemed to be decrees of civil courts or orders of other courts or tribunals; every award made by a Lok Adalat is treated as final and binding on all the parties to the dispute, and no appeal lies to any court against the award.

Advantages of ADR

1.51 Advantages of ADR are many - it is less expensive, less time-consuming, free from technicalities vis-à-vis conducting of cases in law courts, parties involved are free to discuss their differences of opinion without any fear of disclosure before any law courts, and the last, but not the least, there is no winning or losing for any of the parties involved; so,

their grievances are redressed without causing any damage to the relationship between them.

1.52 Another right and welcome step taken was the enactment of the Consumer Protection Act 1986 (CP Act) for settlement of consumer disputes and for matters connected therewith. The aim of the CP Act is to provide for an effective, inexpensive, simple and speedy redressal of consumer grievances, which civil courts are not able to provide.

1.53 The Family Courts Act 1984 (FC Act) was enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith.

1.54 The Law Commission of India in its 59th Report (1974) had also stressed that in dealing with disputes concerning the family, the court ought to adopt a humane approach different from that adopted in ordinary civil proceedings, and that it should make reasonable efforts at settlement before commencement of the trial.

Appointment of judges

1.55 In selecting persons for appointment as judges, every endeavour should be made to ensure that persons committed to the need to protect and preserve the institution of marriage and to promote the welfare of children and qualified by reason of their experience and expertise to promote settlement of disputes by conciliation and counselling are selected. Justice in all its facets – social, economic and political – is to be

rendered to the masses of this country without any further loss of time – the need of the hour.

Three players in Judiciary

1.56 The first player is the Government. The Government is mostly at fault by not filling up vacancies which they know well in advance. The Government fails in appointing quality judges and providing proper infrastructure, including the basic things like a good library, typists, etc.

1.57 The second player is the lawyers. We should realize that adjournments, even if they are in favour of clients, are not in favour of the system. In a number of regulatory cases, there is no real need for appeals or adjournments. Given the huge backlog of cases, practical ways and means need to be thought of, to solve such problems. Ethics of lawyers has also become questionable. There is a Bar Council that has to look after ethics of lawyers, but it has rarely taken action against tainted lawyers. Everything becomes customary and loses meaning.

1.58 The third player, of course, is the judges. Unless they display work-ethics, no recommendations can be of use to them. Fairness, speed and quality should be key values for the judiciary, as for all other sectors.

1.59 The Judiciary is under great pressure. We have about 10-11 judges per million population right now. The Supreme Court has recently directed that we should have 5 times the number of judges we currently have.[1]

[1] *All India Judges' Association v. Union of India*, (2002) 4 SCC 247

Reforms

1.60 All reforms need to take place in an integrated manner. The police, prosecution, lawyers and courts, must be thought of as being cohesive. The topic of judicial reforms has of late become very important because the public has lost faith in the system. Judicial accountability is connected with the larger area of judicial reforms. Everyone is concerned about the large delays in disposal of cases, and the agenda for judicial reforms must first tackle the problem of this backlog. We have seen a lot of Law Commission Reports and various suggestions - one of which is the formation of tribunals to take away some of the workload of High Courts, but still, High Courts are burdened with a large number of cases. Increasing the manpower in judiciary is the need of the hour. Also, the problem faced by the judiciary can be solved, if we have scientific data about the cases that clog the dockets.

Pendency

1.61 Pendency is a normal feature of any system but is assuming great proportions in courts. This will necessitate courts to prescribe time-limits for all cases. To deal with this, there can't be one prescribed limit, but the kinds of cases need to be identified and prioritized. So setting time-standards is essential and it will vary for different cases, and also for different courts depending on their disposal-capacity. This will be necessary to assess the performance of the courts and judicial accountability.

Technology

1.62 We have modern technology, which facilitates us to collect a lot of information and making it available to Chief Justices, so that they are able to allocate their manpower efficiently. Digital techniques and tools are at our disposal, to collect information from an entire database from the time a case is instituted in a court of law to the final stages of appeal. Building up a judicial database will enable us to assess the performance of the courts as an institution, and the Chief Justices will be able to use it to assess the individual performance of judges. This will go a long way in identifying what the backlog is, what types of cases are clogging the dockets, etc.

1.63 As a part of digital resource management, we have home pages and websites, where judgments of courts can be instantly posted. At the moment, it takes a long time for courts to give copies of judgments; with being instantly posted on the home page, they will be easily and readily available to everyone. This is an important step for using the technology effectively, to expedite the process of judgments being accessible.

1.64 Now, digital technology offers us new packages like database, ERP tools, court management practices – these will help in increasing the productivity of courts; video-conferencing – through which we can record evidence. There is, therefore, vast technology available for the courtroom, for enhancing the quality of justice, and finding the truth - after all, justice is the finding of truth. Coming back to accountability, like any institution, judiciary is not devoid of vices, but still they are akin to temples of justice. But still, corruption cannot be acceptable. How does one deal with corruption? Impeachment was thought to be the

remedy to deal with errant judges, but we found that it is not working well; we have to find some internal institutional mechanism, a sort of peer committee, enabling judges to deal with such issues. We are not very sure that increasing number of courts and judges will ameliorate the situation, unless there is a simultaneous productivity increase in courts! We feel strongly about the issue!

1.65 Judicial reform, as is being looked at, is essential for the country's overall development, not just economic; in India, the problem is more human than economic. Ninety per cent of the litigation is by rural people; parties are fighting for even half an acre of land; families are being ruined. Therefore, there has to be an overall solution.

Computerization of lower courts

1.66 The government has proposed to computerize the lower courts in future. A scheme for computerization of all the 13,000 district and subordinate courts, prepared in accordance with the National Policy and Action Plan, has been approved by the government on 8th February, 2007 with National Informatics Centre (NIC) as the implementing agency. The coverage of the project includes Information and Communication Technology (ICT) enablement of all the district and subordinate courts and upgrading of the ICT infrastructure of the Supreme Court and all the High Courts.

1.67 The first phase of the project is being implemented in all the States and Union territories at an estimated cost of Rs.442 crores. All the lower

courts in the country including the courts in the States of Chhattisgarh, Madhya Pradesh, Orissa and Uttar Pradesh have been taken up for computerization in the first phase.

1.68 Court records can be digitized to improve the productivity and efficiency of the courts. Computerization of the Registry of the Supreme Court has had its beneficial effects in slashing down arrears and facilitated scientific docket management.

1.69 E-filing and video-conferencing by dispensing with physical appearance saves precious time and resources and makes justice more easily accessible and a less expensive option.

Fast Track Courts

1.70 The government has already taken several initiatives on the path of judicial reforms. 1562 Fast Track Courts have been set up which have disposed of more than 18 lakh cases transferred to them. 190 Family Courts, established in various parts of the country, have speedily settled matrimonial disputes through reconciliation.

Reforms at the village level

1.71 The Gram Nyayalayas Bill has been enacted to set up more trial courts at the intermediate Panchayat level. The welcome feature is that the procedures have been kept simple and flexible so that cases can be

heard and disposed of within six months. It is also envisaged that these courts will be mobile, to achieve the goal of bringing justice to people's doorsteps. Training and orientation of the judiciary, especially in frontier areas of knowledge, like bio-genetics, IPR and cyber laws, need attention.

1.72 The Constitutional promise of securing to all its citizens, justice, social, economic and political, as promised in the Preamble of the Constitution, cannot be realized, unless the three organs of the State i.e. legislature, executive and judiciary, join together to find ways and means for providing the Indian poor, equal access to its justice system.

1.73 However, we are of the view that not an inch of change can be brought about if the advocates do not work in accordance with the responsibility that is cast upon them by the Constitution. Every lawyer is vested with the responsibility to foster the rule of law and dominance of the Constitution.

1.74 Thus, it cannot be gainsaid that economic development and law go hand in hand. We can't think of economic progress, unless changing needs of the society are supported by appropriate law.

1.75 We need:

- Speedy justice
- Reduction in costs of litigation
- Systematic running of the courts
- Faith in the judicial system

1.76 The Indian Constitution provides a beautiful system of checks and balances under articles 124(2) and 217(1) for appointment of Judges of the Supreme Court and High Courts where both the executive and the judiciary have been given a balanced role. This delicate balance has been upset by the 2nd Judges' case (*Supreme Court Advocates-on-Record Association v. Union of India*)[2] and the Opinion of the Supreme Court in the Presidential Reference (*Special Reference No.1 of 1998*)[3]. It is time the original balance of power is restored. The Law Commission has in its 214th Report (2008) recommended accordingly.

1.77 The above recommendation for the need for an urgent and immediate review of the present procedure for appointment of judges is further fortified by his forthright views expressed by Shri Justice J. S. Verma, a former Chief Justice of India, who had written the lead judgment in the 2nd Judges' case, expressed in an interview to the Frontline Magazine published in its issue of October 10, 2008. When asked: "You said in one of your speeches that judicial appointments have become judicial disappointments. Do you now regret your 1993 judgment?" Justice Verma responded: "My 1993 judgment, which holds the field, was very much misunderstood and misused. It was in that context I said the working of the judgment now for some time is raising serious questions, which cannot be called unreasonable. Therefore, some kind of rethink is required. My judgment says the appointment process of High Court and Supreme Court Judges is basically a joint or participatory exercise between the executive and the judiciary, both

[2] 1993 (4) SCC 441
[3] 1998 (7) SCC 739

taking part in it. Broadly, there are two distinct areas. One is the area of legal acumen of the candidates to adjudge their suitability and the other is their antecedents. It is the judiciary, that is, the Chief Justice of India and his colleagues or, in the case of the High Courts, the Chief Justice of the High Court and his colleagues (who) are the best persons to adjudge the legal acumen. Their voice should be predominant. So far as the antecedents are concerned, the executive is better placed than the judiciary to know the antecedents of candidates. Therefore, my judgment said that in the area of legal acumen the judiciary's opinion should be dominant and in the area of antecedents the executive's opinion should be dominant. Together, the two should function to find out the most suitable (candidates) available for appointment."

1.78 The views of the Parliamentary Standing Committee on Law and Justice which has recommended scrapping of the present procedure for appointments and transfers of Supreme Court and High Court Judges are of great relevance in this context. The Hindustan Times of October 20, 2008 reported: 'The Law Ministry has agreed to review the 15-year-old system after the Parliamentary Standing Committee on Law and Justice recommended doing away with the committee of judges (collegium). Presently, the collegium decides the appointments and transfer of judges. Interestingly, the recommendations come close on the heels of recent cases of corruption against judges of the top courts in the country. Law Minister H. R. Bhardwaj told Hindustan Times that the House Committee's recommendation had been accepted, and an action-taken report prepared by the Ministry would now be placed before Parliament. "Collegium system has failed. Its decisions on appointments and

transfers lack transparency and we feel courts are not getting judges on merit. (……) The government cannot be a silent spectator on such a serious issue", Bhardwaj said. The House Committee had said: "Through a Supreme Court judgment in 1993, the judiciary wrested the control of judges' appointments and transfers. The collegium system has been a disaster and needs to be done away with". H. R. Bhardwaj, Minister for Law and Justice, said "It is the right time to review this important matter". "There was no problem till 1993 when the judiciary tried to re-write the Article of the Constitution dealing with appointments. They created a new law of collegium which was wrong. In a democracy, the primacy of Parliament cannot be challenged", he said.'

1.79 Dr. E. M. Sudarsana Natchiappan, Member of Parliament and the Chairman of the Department Related Parliament Standing Committee on Personnel, Public Grievances, Law and Justice, in its 28th Report presented to the Hon'ble Chairman of Rajya Sabha on 4th August, 2008, has stated thus:

> "I would like to conclude by saying that the Government should expeditiously see to it that appointments of Judges in High Courts and Supreme Court are done in a transparent way. We have recommended in two ways: One is, we have to see to it that the collegium system has to be done away with. Instead we have suggested that an Empowered Committee, which comprises representatives of the Judiciary, the Executive and Parliament, should be set up. That was our recommendation in the Judges (Inquiry) Bill. And, subsequently, since appointments will be delayed, we have said that from the very beginning of identifying the eligible persons, the various places of recommendations, be it at the level of the High Courts, or, at the Governor's level or at the level of the Departments, and finally be the Supreme Court, should be transparent, and this should be put up in the web site then and there so that the person, who is going to occupy the Constitutional

> place, is known to the public, and their background should be allowed to be discussed by the public and, finally, it has to go through the process of issuing warrant by the President of India. But, what is happening presently is that from the day one of identifying the person till the issuance of the warrant, nothing is known to anybody except to the persons who are involved in it. Even the persons, who are identified and who are going to be made as judges of the High Court or of the Supreme Court, may not know about it. This type of secrecy is not good for democracy."

1.80 It may be noted in this context that in every High Court the Chief Justice is from outside the State as per the policy of the Government. The senior-most Judges who form the collegium are also from outside the State. The resultant position is that the judges constituting the collegium are not conversant with the names and antecedents of the candidates and more often than not, appointments suffer from lack of adequate information.

1.81 As recommended in the Law Commission's 214th Report, two alternatives are available to the Government of the day. One is to seek a reconsideration of the three Judges' cases by the Hon'ble Supreme Court. The other alternative is to enact a law restoring the primacy of the Chief Justice of India and the power of the Executive in making the appointments.

II. RECOMMENDATIONS

2.1 Hon'ble Shri Justice Asok Kumar Ganguly, a Supreme Court Judge, in his article titled "Judicial Reforms" published in Halsbury's Law Monthly of November 2008 has suggested a few norms, which the

judges and lawyers must agree to follow very rigorously, in order to liquidate the huge backlog. The suggestions are quoted below:

> '[1] There must be full utilization of the court working hours. The judges must be punctual and lawyers must not be asking for adjournments, unless it is absolutely necessary. Grant of adjournment must be guided strictly by the provisions of Order 17 of the Civil Procedure Code.
>
> [2] Many cases are filed on similar points and one judgment can decide a large number of cases. Such cases should be clubbed with the help of technology and used to dispose other such cases on a priority basis; this will substantially reduce the arrears. Similarly, old cases, many of which have become infructuous, can be separated and listed for hearing and their disposal normally will not take much time. Same is true for many interlocutory applications filed even after the main cases are disposed of. Such cases can be traced with the help of technology and disposed of very quickly.
>
> [3] Judges must deliver judgments within a reasonable time and in that matter, the guidelines given by the apex court in the case of Anil Rai v. State of Bihar, (2001) 7 SCC 318 must be scrupulously observed, both in civil and criminal cases.
>
> [4] Considering the staggering arrears, vacations in the higher judiciary must be curtailed by at least 10 to 15 days and the court working hours should be extended by at least half-an-hour.
>
> [5] Lawyers must curtail prolix and repetitive arguments and should supplement it by written notes. The length of the oral argument in any case should not exceed one hour and thirty minutes, unless the case involves complicated questions of law or interpretation of Constitution.

[6] Judgments must be clear and decisive and free from ambiguity, and should not generate further litigation. We must remember Lord Macaulay's statement made about 150 years ago.

> "*Our principle is simply this –*
> *Uniformity when you can have it,*
> *Diversity when you must have it,*
> *In all cases, Certainty*"

[7] Lawyers must not resort to strike under any circumstances and must follow the decision of the Constitution Bench of the Supreme Court in the case of Harish Uppal (Ex-Capt.) v. Union of India reported in (2003) 2 SCC 45.

Things I know are easier written, than done and for all these reforms, what is required is a lot of discipline and introspection and a realization that without these reforms, the present system is under threat. Both, judges and lawyers, have to change their mindsets. Unless our mental barriers to reforms are mellowed, all doses of external remedies are bound to fail. We must remember what Gandhiji said: "*If you want to change anything, you be the change*".'

2.2 We adopt the above suggestions and recommend accordingly.

(Dr Justice AR. Lakshmanan)

Chairman

(Prof. Dr Tahir Mahmood)

Member

(Dr Brahm A. Agrawal)

Member-Secretary

Dr. Justice AR. Lakshmanan

(Former Judge, Supreme Court of India)
Chairman, Law Commission of India

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11.8.2009

Hon'ble Minister Moily Ji,

In the Law Commission's 230th report on "Reforms in the Judiciary – Some Suggestions", at para 1.37, it has been stated as under:-

> "1.37 – Continuing professional development is necessary for all legal Practitioners, State Law Officers and judicial officers to improve and sustain their proficiency. **There should be put in place mechanism for refresher courses and attendance at them as a pre-condition for renewal of practicing certificates for advocates**."

2. Since Advocates have to enroll with the State Bar Council concerned before starting their practice as is the case with other professions like doctors, etc. coupled with the fact that there is no provision in the existing statute for renewal of their enrolment, the second para of the said para would not apply to our Advocates. In fact, this was a citation culled out from: The Advocate – Magazine of the Law Society of Kenya (para 28-43). This portion of the report under the heading "Themes and Thoughts" is also not our recommendation. However, in order to avoid any controversy on the point, we have decided to delete the same. Accordingly, the second part of the said para may be treated as withdrawn.

With personal regards,

Yours sincerely,

(AR. Lakshmanan)

Dr. M. Veerappa Moily,
Minister of Law & Justice,
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