

A system designed to fail

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Radical restructuring of the judicial system is necessary if our aim is to administer justice to citizens, argues Govind Bhattacharjee

Thankfully, the Supreme Court of India has rejected the proposal of the Prime Minister to fast-track the trial of cases pending against MPs, urging instead that the entire judicial system in India needs to be fast-tracked. It has rightly pointed out that given the inadequate manpower and limited resources at the disposal of judicial apparatus, fast-tracking of some cases would inevitably mean slowing down of trials in all other cases.

We have heard it said so often that justice delayed is justice denied. Yet the justice delivery system in India remains one of the slowest in the entire world. Cases take years to merely come up for hearing, and often the parties involved move beyond the bounds of any earthly law while the trial is still on. The near-total ineffectiveness and complete lack of accountability of the legal system are responsible in no small measure for the loss of people's faith in judiciary, which in turn shows up in rising violence in society, arising from a sinister tendency increasingly being exhibited by people to take the law into their own hands to resolve matters the law would take years to settle.

The Indian judicial system, a legacy from colonial rule, is clearly incapable of meeting the needs and aspirations of 125 crore people of India in the 21st century. Vestiges of colonial rule can be found in scores of obsolete and anachronistic laws still prevailing. Rampant corruption prevails in the judiciary. With an opaque appointment process for judges who can be removed only through a process of impeachment so cumbersome that it is virtually unworkable, the Indian judiciary continues to enjoy the kind of protection and immunity that are denied to most Indians. Judges are treated with kid gloves for fear of attracting the draconian contempt provisions, which in a democracy are as dubious as they are ludicrous for stifling debate about their professional conduct (*I am not sure if only by saying this I shall attract the provisions of the Contempt of Courts Act, 1971*). The system, entrenched that it is with vested interests, has blocked all attempts at reform and absolutely brooks no criticism. This is probably the single instance of a pan-Indian system operating without a regulatory framework, for ensuring speedy justice and time-bound disposal of cases.

In a recent article, the noted lawyer Ram Jethmalani has candidly admitted: "While corruption continues to grow like galloping cancer in every branch of life, the judges seem to reciprocate by producing a strange jurisprudence that only protects the corrupt. The law of contempt and the difficulties of proving judicial corruption deter cautious lawyers." As he notes, the secretive process of their appointment and the unholy nexus with corrupt politicians has given rise to the 'tellingly sarcastic comment' that there are only two kinds of judges, those who know the law and those who know the law minister. The accusation of Shanti Bhushan, a former Union law minister, that half of the 16 Chief Justices of India had been corrupt is still fresh in public memory.

In his novel 'The Trial', Franz Kafka describes three kinds of acquittal in court cases: absolute acquittal, apparent acquittal and deferment. The protagonist of his novel, Josef K, who is arrested for an offence he has no knowledge of, is advised to opt for deferment, since the other two alternatives would be unattainable: "Perhaps deferment would suit you better...deferment consists of keeping proceedings permanently in their earliest stages...you can be reasonably sure that the trial won't get past its first stages." I wonder if Kafka who worked as a law clerk had the Indian judicial system in mind while writing the novel. In India, most cases take years to get past the first stage. Repeated adjournments are sought on the flimsiest of grounds and almost always allowed by judges – adjournments are available just for the asking. Interim reliefs and orders often assume the characteristics of final reliefs. Dilatory tactics and frivolous arguments benefit the lawyers, but hold the justice delivery system to ransom. Today's lawyers are tomorrow's judges - lawyers and judiciary therefore share a symbiotic relationship, both benefiting from a dysfunctional system whose perpetuation is in their mutual interest, at the cost of continued and heightened suffering of the common man unfortunate enough to be forced to seek justice from a futile, dated and inept system.

The gross inadequacy of the legal system is reflected in the continuous piling up of under-trial cases in every court across the country. As of 1 May 2014, there were 63,843 cases pending before the Supreme Court. As of December 2013, 44.62 lakh cases, including 32,080 cases of rape, were pending before various High Courts in India. Of these 10.43 lakh were pending in Allahabad High Court alone. No wonder, UP remains prone to crime and violence like no other state. Cases pending before the subordinate courts would be many times these numbers. Disposal of cases by High Courts during the first quarter of 2013 was only 8.96 per cent of the total 48.73 lakh pending cases. There cannot be more damning evidence of the gross inefficiency and inadequacy of our justice-delivery apparatus.

A dysfunctional judiciary provides cosy comfort to politicians, and naturally successive governments have turned blind eyes to the problems that plagued our justice delivery system. Of the total sanctioned strength of 906 judges in 24 High Courts across India, 266 posts (29 per cent) were vacant as of December 2013. Allahabad was the leader again, expectedly, having 78 vacancies in 160 posts of judges. Subordinate Courts have more than 4300 vacancies. As of December, 2013, total number of cases pending before the High Courts and subordinate courts stood at a whopping 3.2 crore, despite 1000 fast-track courts operating in the country. An Andhra Pradesh High Court judge has estimated that it would take 320 years – that is the life span of 10 generations - for clearing this massive backlog at the current rate of disposal. The National Litigation Policy released by the Law Minister in 2000 aimed to reduce the average pendency time of a case from 15 years to 3 years; it all remained on paper.

The rule of law and its proper enforcement are essential for investments to come and translate into economic activity, growth, income and employment. Studies indicate a strong correlation between the efficiency of justice delivery system and economic growth. In an article, Mr. Jay Panda, MP from Odisha, has quoted an estimate that unclogging of our judiciary and quick disposal of cases could boost our GDP growth by at least 2 per cent. In

2009, India had only 12 judges per million population, compared to 250 in Germany, 170 in China and 110 in USA. Way back in 1987, the Law Commission had recommended raising the judge-population ratio to 50 by the year 2000, for which the infrastructure would cost Rs 32000 crore per year. Presently this ratio is only 15.5. Only 12 per cent reduction in our subsidy would comfortably finance this additional expenditure.

In fact, funding for the judiciary has always been grossly inadequate. The number of courtrooms needed for the judges to sit was one important area that was always neglected, making the justice delivery system even more hamstrung. In 2011, the Law Ministry assessed the requirement of funds for infrastructure development for the existing subordinate courts to be Rs 7346 crore for the next five years, but only Rs 2033 crore were provided in the three years till 2014. In the 2014-15 budget also, only Rs 782 crore was provided for infrastructure.

No wonder a case trundles on in our courts for years and years. I know a gentleman who had to wait for 22 years for his divorce case to be settled, just one month before his retirement. Not having the liberty to marry without a legal divorce, he lived a lonely life, and will probably die a lonely death too. There are thousands of similar cases, which only highlight the insensitivity of a system that was intended to make the world a little more humane.

As the Jessica Lal murder case amply demonstrated, compliance with the labyrinthine procedures and mind-boggling technicalities rather than delivering justice becomes the ultimate objective of the legal process which can be sabotaged by the powers of money and position. The result has been almost total alienation and aloofness of the judicial system from the society it intends to serve. Judiciary's lack of interaction with the rest of society and a snobbish, holier-than-thou attitude towards others not only make it insular and arrogant, but also prevent it from adapting to the aspirations and needs of a society that is changing and modernising fast.

The patchwork solutions devised by successive Law Commissions have failed to address the structural problems that plague a system mired in colossal lethargy, endemic corruption and a self-righteous complacency combined with a status-quoism that best serves its interest. To expect administration of quick justice from such a paralytic system is unrealistic. Its dated forms, obsolete procedures and useless technicalities are hopelessly out of place, out of time and out of tune with an India that is increasingly leveraging modern technology in an information age. Till the time the poorest member of society feels encouraged to approach the judicial system without fear or hesitation, the country will not be able to shed its medieval image. What we need is radical restructuring of the entire judicial system and strengthening of the inexpensive alternative dispute-resolving mechanisms. The recently passed Constitutional (121st Amendment) Bill enabling establishment of National Judicial Appointments Commission only scratches a tiny part of the behemoth whose crushing weight on the national psyche becomes more and more stifling with every passing day.