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### **JUDICIAL REFORMS – A NEED OF HOUR**

“Judicial reforms” is a theme, which is discussed about but too little done. Indian Judiciary System has a long history right from Pre-British days. In the 18<sup>th</sup> Century, a uniform pattern of judiciary emerge and during the British regime, High Courts were established in Presidency Town. Thereafter, in 1937, the Federal Court was established to hear the appeals from the High Courts. After independence, it requires a Systematic Judicial System throughout the country and many new subordinate Courts were established in various parts of the country. We have now got a network of over 14 thousand courts all over India which are dealing with 4 crores of cases. Out of 14 thousand Courts, the working strength would be about 12,500 Judges and nearly 4 thousand cases are been handling per Judge. This is too high as compared to the average load per judge in other countries.

### **CANONS OF JUDICIAL ETHICS**

The Judicial Reforms are co-related with the canons of judicial ethics by the judges. Why the canons of Judicial ethics are essential in the judicial system in India ?

Canons are the first verse of the first chapter of a book whose pages are infinite. The life of a Judge ie the judicial living is not an easy thing. Things in judicial life do not always run smoothly. Performing the functions of a judicial office, an occupant at times rises towards the heights and at times all will seem to reverse itself. Living by canons of judicial ethics enables the occupant of judicial office to draw a line of life with an upward train travelling through the middle of peaks and valleys.

In legal circles, people are often inclined to remember the past as glorious and describing the present as full of setbacks and reverses. There are dark periods of trial and fusion. History bears testimony to the fact that there has never been an age that did not applaud the past and lament the present.

### **THE HISTORICAL ASPECTS OF JUDICIAL REFORMS**

In the Era of the Science and Technology, the India being developing Nation has to make

drastic change in the Justice Delivery System to boost the faith and confidence of general people on the system. The institution of judiciary and rule of law is essence of modern civilization and democratic governance. It is important that peoples faith in judiciary and the rule of law is not only preserve but enhanced as well as and simple way to achieve ie by ensuring and effective system of justice delivery. It is necessary to ensure that rule of law touch every individual including the last man in queue would go a long way to realize “simple, speedy, cheap, effective and substantial” justice. For decades judicial system has been crying for reforms as the cheap and speedy justice has been by and large elusive. There is huge pendency over 2.5 crores despite measures to reduce it. Over the last five decades, various legally constituted / government authorities such as the Law Commission of India, Parliamentary Standing Committees, and other Government Appointed Committees, several benches of the Supreme Court, eminent Lawyers and Judges, various legal associations / organizations and N.G.Os have identified problems in the judicial systems and call for addressing them speedily. The poor budgetary support the judiciary has been added as one of the reasons for not implementation of judiciary reforms. Rs. 700 Crores allocated to the Judiciary during 10<sup>th</sup> plan (2002 to 2007) constituted 0.078 % of the total plan outlay of Rs. 8,93,183 crores. During the 9<sup>th</sup> plan the location was even less only 0.071 %. But lack of resources cannot be a reason for denying justice to a citizens. The Hon'ble Supreme Court reiterated from Hussain Ara's Khatun Case in P. Ramchandra Rao Vs State of Karnataka (2002) observing that, “justice delay is justice denied”. It is the constitutional obligation of the State to dispense speedy justice, more so in the field of criminal law, and paucity of funds or resources is no defence to denial of right to justice emanating from Articles 21,19,14 and preamble of the constitution as also from the directive principles of State policy. It is high time that the government at central and state level shall do some concrete in the direction of strengthening justice delivery system.

### **CERTAIN AREAS WHICH CAUSES DELAY IN JUSTICE DELIVERY SYSTEM.**

#### **•In adequacy of staff**

The staff members in the judiciary system are very important for the effective administration of and smooth functioning of the Courts in India. The lack of adequate staff members affects the whole judicial procedure as the service of summons, warrants notice wholly depends on the court person. It tends to effect this arm of judiciary a shade more than others.

#### **•In adequacy of Prosecution wing -**

There is very shortage of Public prosecutors in sub-ordinate judiciary. The public prosecutors are appointed for 3 to 4 courts which cannot pay attention to each and every case. **3) Service of summons and warrants**

It is one of the important problem which is the root cause for not implementing speedy justice. The police stations who are bestowed with the responsibility for effective service of summons and warrants, but it is unfortunate that the summoning of S.H.O or I.O takes up lot of valuable court time. The special machinery needs to be constituted for the effective service of summons and warrants at every police station without giving any other work to them.

#### **4) Free legal aid**

As per provisions of Legal Services Authority Act 1987, the right of free legal aid given to the poor and needy person with certain criteria. But the counsels also burden with their private matters which cannot give proper attention to the under trial prisoners resulted into crowd of UTP in Jail.

#### **5) The attitude of Investigating Officer and police machinery**

Normally, the Investigating Officers are over burden with maintaining law and order which resulted into delay in trial. Therefore, separate investigation team needs to be made which does not have any nexus with the other officers who has to maintain law and order.

#### **6) Role of bar**

Unless and until, the bar which is very important part and parcel of the Judicial system take voluntarily interest for speedy disposal of the cases. The dream of zero pendency cannot be realized. The members of the bar are the Officers of the Court without their help and participation, the goal of speedy justice cannot be achieved.

#### **7) Plea bargaining**

154<sup>th</sup> Report of Law Commission first recommended the concept of free bargaining as an alternative mode to deal with the huge arrears of criminal cases. The Mallimath committee recommended that the system of plea bargaining be introduce in Indian Criminal Justice System to facilitate early disposal of criminal cases and to reduce the burden of the courts.

#### **8) Speedy trial**

Speedy trial is a constitutional guarantee. The constitution guarantee of speedy trial is an important safeguard to prevent undue and oppressive in carceration prior to trial; to minimize anxiety and concerned accompanying public accusation and to limit the possibilities that long delays will impair the ability to accused to defend himself. The concept of speedy trial is read into article 21 as an essential part of fundamental right to life and liberty guaranteed and preserved under our constitution. This is well reflected in Sec. 309 of Cr.P.C.

### **THE BEGINNING ERA OF JUDICIAL REFORMS**

Law Minister Dr. Virappa Moily unveiled the center's 'Vision Statement' containing the package of Judicial Reforms to reduce pendency of cases from 15 to 3 years and make justice delivery system efficient, transparent and more accessible to the poor. The statements calls for changes in the collegium procedure of appointment of judges.

#### ***Silent features of the Vision Documents -***

1) The Hon'ble Prime Minister at "the conference of Chief Ministers and Chief Justices"

held on 16<sup>th</sup> August 2009, described the huge arrears and case backlogs as the 'scourge' of the Indian Legal System.

***Immediate measures for implementation***

- Creation of National areas grid
- Identification of bottle necks in crisis area.
- Tackling the bottle neck areas
- adoption of innovative measures for expeditious case disposal.
- Focus on selection, training and performance assessment of judicial, personal and court management executives.
- Efficient utilization of judicial system with timely use of technology and management.
- Procedural changes, management and administrative changes.

- **Delay :**

It is settled view that justice shall not be done but it must appears to be done. Due to the bottleneck of huge arrears of pending cases, the wrong message has gone to the members of society and it results in delayed justice is denied justice. Therefore, Judicial Reforms can tackle somehow problem of this big mountain of arrears. We have seen various Law Commissions Reports and lots of suggestions. One of which is the formation of Tribunalsto take away some of the work load of the High Court but still the High Court are overburdened with large number of cases. Fulfilling the vacancy of the judges and staff members in comparison with proportionate report is need of our. The delay tactics by Advocate and Litigants shall not be bear by the courts and be false and frivolous complaint filed against Judges and staff member in that behalf shall not be entertained by Hon'ble High Court and Hon'ble Supreme Courts which down the moral the staff members and judges in order to curb the menanc of delayed justice.

- **E- COURTS**

The introduction of the computerization generator system, case information system, video conferencing, advance skill and technological knowledgeable recruitment of staff members will also support to get down the huge pendency. But for the implementation of coloured E-Court project, the proper infra structure to the Trial Courts in India. As per introduction of Information Technology Act 2000 and its amendment in 2008 the advance digital tools and techniques can be used for disposal and to collect information and for also identification of backlog.

- **The recent scenario of Pending Cases.**

| Courts             |           | 2008              | 2009              | 2010              |
|--------------------|-----------|-------------------|-------------------|-------------------|
| Supreme Court      | Admission | 26,863            | 30,834            | 33,352            |
|                    | Regular   | 19,024            | 19,329            | 21,512            |
|                    | Total     | 45,887            | 50,163            | 54,864            |
| High Courts*       |           | 3,743,060         | 3,874,090         | 4,060,709         |
| Lower Courts*      |           | 25,418,165        | 26,409,011        | 27,275,953        |
| Total (All Courts) |           | <b>29,207,112</b> | <b>30,333,264</b> | <b>31,391,526</b> |

## **CONCLUSION**

The Fast Track Courts (FTC) recommended by 11<sup>th</sup> Finance Commission have also prove effective in addressing pendency . The central Government proposes to set up more than 5000 gram nyayalayas at intermediate gram panchayat levels under the Gram Nyayalayas Act, 2008 in order to bring justice delivery system at the door step of Rural population. The procedure to be followed by these courts has been kept simple and flexible so that these cases can be heard and dispose of within 90 days period. Re-course to alternative dispute redressal (ADR), mechanism can greatly help in reducing pendency of cases through arbitration, negotiations, conciliation and mediation. To this regard, the Arbitration Conciliation Act 1996 and the Code of Civil Procedure has also been amended. These all measures has to be further strengthened and expanded. But it shall also keep in view that future needs as litigation is bound to increase in future as more sections of society are becoming aware about their legal rights due to spread of education.

### ***End Notes -=***

1. President's speech – In all India Seminar on Judicial Reforms, Vigyan bhavan, New Delhi, 23<sup>rd</sup> and 24<sup>th</sup> February 2008
2. National Judicial Academy, Bhopal, India by Justice R.C.Lahoti
3. N.J.A West Zone Conference on Enhancing Timely Justice – strengthening of criminal justice administration, Indore October / November 2009.
4. Justice Mallimath Committee report.
5. Vision Statement at The National Consultation for Strengthening the Judiciary towards Reducing Pendency and Delays.