

# FORUM FOR



# FAST JUSTICE

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## **SLOW JUDICIARY: A NATIONAL MISFORTUNE : REFORM OR PERISH**

### **1. STRONG LOKPAL, WEAK JUDICIARY RECIPE FOR FAILURE.**

The belief of Anna Hazare and his supporters that a powerful Lokpal with investigative powers will stem corruption might be dead wrong in the absence of strong courts.

**Swaminathan S Anklesaria Aiyer - Times of India 25-12-2011**

An old man filed a case in a munsif court. His grandson asked: 'Dada, when the case will be decided?' Pat came the reply from grandappa: "Beta, when you reach to my age".

But the irony is that a few in the country of 1210 million people are concerned and trying to correct the justice delivery system.

### **2. WHO ARE NOT INTERESTED?**

- (i) Government
- (ii) Parliament
- (iii) Judges
- (iv) Lawyers
- (v) NGOs

Why are they not interested?

Better ask them.

### **3. IS IT POSSIBLE TO REMEDY THE ROT WITHOUT THEIR CO-OPERATION?**

No, absolutely not.

What can be done?

Ask them to see the reason. Try to bring tremendous public pressure on them through mass movement coupled with the appeal of patriotism and warning of the danger of chaos and anarchy leading to the intense criminalisation of the country and ultimate collapse of the democracy.

Who can do this?

Mass multitude of the people, particularly the litigants, whose lives are being ruined by the unbearably slow, inefficient and at times corrupt judiciary.

### **4. A FEW SAMPLES OF TARDINESS OF OUR COURTS:**

- (i) At 175 yrs, it's India's oldest case. - Times of India 10-11-2008.
- (ii) Delhi HC will take 466 yrs to clear backlog: A.P.Shah, Chief Justice. - DNA 14-2-2009.
- (iii) Waiting for a court for 90 years. Igatpuri Taluka. - Hindustan Times 22-9-2009.
- (iv) Judge: 320 yrs to clear backlog, Justice V.V.S.Rao, Andhra Pradesh High Court. - Times of India 7-3-2010.
- (v) 60 years & counting. SC prolongs Ayodhya agony. DNA 24-9-2010.
- (vi) HCs struggle with 32% vacancies. Times of India 14-6-2011.
- (vii) India's oldest prisoner walks out of jail at 108. Times of India 18-6-2011.
- (viii) 250 Pakistanis in Indian Jails for 46 years without trial: Telegraph 18-11-2011.
- (ix) Rly Min. (L.N.Mishra) Murder trial on for 37 years. Times of India 16-12-2011.

(In the last case the accused, advocate Ranjan Dwivedi, was 27 when he was arrested and chargesheeted. He is now a frail 64 year old and has already suffered a heart attack. Of the 39 defence witnesses cited by him to plead his innocence, 31 have died and as many as 22 judges have handled the trial at various stages).

## 5. WHAT THE WELL MEANING JUDGES HAVE TO SAY ON THE SYSTEM?

### (i) Justice Ms.Ruma Pal, Former Judge, Supreme Court:

A collegium of senior judges together with the Chief Justice of the High Court or Supreme Court as the case may be (appoints the judges). From being a mere consultant, the Chief Justice of India and the Supreme Court collegium now have the final word.

The process by which a judge is appointed to the High Court or elevated to the Supreme Court is one of the best-kept secrets in the country.

Consensus within the collegium is sometimes resolved through a trade-off resulting in dubious appointments with disastrous consequences for the litigants and the credibility of the judicial system. Besides, institutional independence has also been compromised by growing sycophancy and 'lobbying' within the system.

Lord Hewart's classic dicta that "Justice should not only be done, but should manifestly and undoubtedly be seen to be done", because the belief of corruption is as damaging to the credibility in the independence of the judiciary as the act of corruption.

Injudicious conduct includes known examples such as judges using a guesthouse of a Private Company or a Public Sector Undertaking for a holiday or accepting benefits like the allocation of land from the discretionary quota of a Chief Minister.

### (ii) Justice A.K.Srivastava, Former Judge, Delhi High Court:

The crooks are taking full advantage of the situation. Stays and bails granted by courts give them full freedom to delay the trial of cases to their advantage fully knowing that due to huge arrears in courts, the cases will not come up for hearing for several years. It was officially stated before the Supreme Court in a PIL that the stays granted by a High Court remained in operation for more than thirty years in some cases. Even investigations in criminal matters remained stayed for ten, twenty and thirty years. In the meantime the accused dies without being tried and punished.

All brilliant law graduates passing out from National Law Colleges are going to corporate law practice and are not coming to the adjudicatory side as the career prospects of Civil Judges are very poor.

The litigants in Subordinate Courts are thoroughly dissatisfied and are frustrated. They get dates after dates and are fleeced by all. A majority of presiding officers sit late in the courts and then do not sit till end of the court hours. Their lunch time is half an hour but they mostly take an hour. Thus the actual working hours get reduced and cases get adjourned by a phrase 'no time left' and the litigants get lost.

Despite the proviso contained in Rule 1 of Order XVII CPC saying that no adjournment shall be granted more than three times to a party during hearing of the suit, the defendant was granted 47 adjournments.

It is commonly said that the grandchildren may perhaps get decree in the case filed by their grandfather.

The requirement from the Governments:

1. Increase the required number of courts.
2. Increase the required number of staff.
3. Give better infrastructure in courts.
4. Computerisation of all courts with interconnectivity.
5. Increase court buildings with adequate parking facility, underground and or multi story.

### (iii) Justice Kamleshwar Nath, Former Judge, Allahabad High Court:

Two instances are enough to illustrate. The notorious case of Ahmedabad Metropolitan Magistrate signing / issuing blindfolded bailable warrants of arrest on 15.1.2004 against A.P.J.Abdul Kalam (President of India), V.N.Khare (CJI), B.P.Singh (Judge Supreme Court) and R.K.Jain (leading lawyer), allegedly for a bribe of ₹ 40,000/- collected for him by 3 lawyers resounded in the Supreme Court in a PIL filed by Advocate Vijay Shankar where CJI V.N.Khare is reported to have observed: "By giving ₹ 40,000/- you can get a judicial order, and if this is the state of affairs, only God knows what will happen to the Country".

According to Corruption Perception Index 2010 by Transparency International (Berlin), Countries with noticeably little corruption having index between 9.7 and 7 (on scale of 0 to 10, where 0 is most corrupt) have a system of judicial Ombudsman, e.g. Finland, Denmark, Sweden, USA and India stands at the low index of 3.3 in 2010 (further falling 3.5 in 2007, and 3.4 in 2008 & 2009) it is bracketed with countries like Albania, Jamaica and Liberia (all at 3.3)!

Western democracies who have successfully adopted the institution of Judicial Ombudsman have largely confined Ombudsman's investigative process to procedural and administrative aspects of justice delivery system. There is no sound reason why it should not be adopted in India.

Supreme Court has held that it is the duty of every Advocate who accepts brief to attend the trial from day to day, otherwise he would be committing a breach of his professional duty. In Mahabir Singh's case, a strike call given by Bar Association came up for consideration, and Supreme Court ruled that the conduct of an Advocate who retains the brief of his client and at the same time abstains from appearing in Court is unprofessional and unbecoming of the status of an Advocate. Instances of Advocates extracting money from their clients for bribing judges, or withdrawing clients' money in Court deposits and misappropriating it or making gain for themselves by improper means in the names of the clients, and the like are all acts of misconduct by Advocates.

## **6. JUDICIAL ACTIVISM BY HIGHER JUDICIARY:**

Off course, in given socio-politico-economic situation, the judiciary is the last and the only hope for justice.

Our higher judiciary is highly respected all over the world for its independent, fearless and at times landmark adjudications of private and public issues. However this is a small solace in the wilderness.

## **7. OUR PIL IN THE SUPREME COURT.**

A PIL filed in the Supreme Court by Janhit Manch, the associate NGO of the Forum (Forum For Fast Justice) being W.P. (C) 122 of 2008 is being argued by Shri Prashant Bhushan, the renowned advocate and is ably assisted by advocate Ms.Indira Unninarayan in arguments and intense research work.

A few fact excerpted hereunder from Indira's research file submitted to the Supreme Court in November 2011:

- (i) In the year 2005, the Subordinate Courts and the High Courts had 257 lakh and 36 lakh (total 2.93 crore) pending cases respectively which rose to 277 lakh and 43 lakh (total 3.19 crore) respectively in 2010.
- (ii) About 21% of the posts in the Subordinate Courts and 33% of the posts in the High Courts lay vacant in the year 2011 as on August 2011. The figures for the year 2010 were 17% and 31% respectively for the Subordinate Courts and High Courts.
- (iii) India is known to spend only 0.2% of its GNP (Gross National Product) on the Judiciary.
- (iv) Other countries however, allocate far higher percentages of their GNP to the Judiciary. The U.S. is said to allocate 1.4% of its GNP to its judiciary. The U.K. 4.3% and Singapore 1.2%.
- (v) In fact, countries are moving towards video recording of proceedings. Australia already has, and the US and other countries have also introduced videography of court proceedings. Along with court orders, the transcripts of court proceedings of public hearings are made available on the court website itself.
- (vi) Such video recording would enable nearly real time transcripts that would provide complete recording of proceedings, and would promote transparency in court proceedings. The other advantage is that such transparency would automatically improve the conduct in court, as adjournment seeking and granting, making of false statements and other dilatory tactics would be under scrutiny, and therefore, avoided. The quality of dispensation of justice would improve. It would also be much easier to cut down sources of unnecessary delay.

## **8. OUR FORUM ON ITS 'SAVE JUDICIARY-SAVE NATION' MOVEMENT**

Just before last Parliamentary election in May 2009, we motivated about hundred citizens and NGOs to write separate letters to 33 political parties requesting them to make public commitment for judicial reforms in their respective manifestos. Seven of them did so including Congress and BJP. We personally met several top leaders of parties for this purpose.

Bhagvanji Raiyani, Forum's Chairman met Ramdas Athavale (RPI, Athavale), Eknath Gaikwad, Priya Dutt, Milind Deora, Kripashankar Singh and Dinsha Patel of Congress, Gopal Shetty, Gopinath Munde, Jaywantiben Mehta and L.K.Advani of BJP, Manohar Joshi and Subhash Desai of Shivsena, A.B.Bardhan, Chief of CPI, Sharad Yadav, JD(U) Chief, Mitrasen Yadav (BSP), Devendra Prasad Yadav (RJD), Y.P.Trivedi and Praful Patel of NCP, M.V.Reddy of DMK and Abu Azmi of Samajwadi Party. I talked on phone to Brinda Karat of CPM, Mamta Banerjee of Trinamool Congress and Maitreyan of AIDMK.

The Chairman also met Rahul Gandhi on 16<sup>th</sup> Jan. 2009 and requested him to provide for judicial reforms in Congress Manifesto for ensuing Parliamentary elections, he immediately phoned to Shri.Veerappa Moily, party's manifesto committee chairman and suggested to discuss the matter. Same afternoon he met Shri Moily at his residence with two Delhi activists and discussed the issue threadbare. He handed over Forum's brochure and other relevant material on the judicial reforms which he assured to go through carefully.

Incidentally he became the Law Minister and again Forum's Chairman met him on 27th June, 2009 with five activists from Delhi and one from Chennai. The Chairman meets him occasionally to discuss the reforms. He also Occasionally meets the Chairman and Member Secretary of the Law Commission of India for fruitful dialogue.

Shri Moily, himself a former Supreme Court Lawyer, Karnataka CM and the Chairman of the 2<sup>nd</sup> Administrative Reforms Commission, enthusiastically went on announcing his plans for judicial reforms after assuming the office of Law Minister in June 2009. In middle of 2011, Shri Salman Khurshid took over the Law Ministry and Dr.Moily was shifted to the Corporate Affairs.

## **9. FORUM'S NATIONAL AWARENESS CAMPAIGN: SETTING UP CENTRES, AWARD AND INCENTIVE**

We had organised seminars on judicial reforms in Mumbai, Valsad, Palanpur, Ahmedabad, Rajkot, Surat, Vadodara, Rajouri, Dwarka and Jammu for setting up Societies For Fast Justice. Our Chairman had addressed bar association members at Bhavnagar, Allahabad and Jaipur. He was also invited to speak at the National Conventions on Judicial Reforms organised by Shri Prashant Bhushan run Campaign for Judicial Accountability and Reforms during March 2007 and Feb. 2010 in Delhi.

The workshops were conducted on Judicial Reforms for smaller groups at Baroda, Bangalore, Chennai, Nagpur, Ahmedabad & Gurgaon.

Janhit Manch, under the Presidentship of our Chairman had organised a two days National Convention on Judicial Reforms in December 2007 and again the Forum organized 2 days Convention in January 2011 in Mumbai.

Our convention in 2007 was inaugurated by Hon'ble Justice R.C.Lahoti, and this year's convention 'NATCON JUSTICE 2011' held on 22/23<sup>rd</sup> January 2011, was inaugurated by Hon'ble Justice M.N.Venkatchaliah, both former Chief Justices of India. In our January 2011 Convention, we had the privilege of having Dr.Veerappa Moily, who delivered the keynote address. Various eminent jurists and acclaimed activists were invited as distinguished speakers from all over the country, over 350 delegates, including about 100 from outside Mumbai participated.

We have instituted an annual award of ₹ 1 lac for an individual or an organisation for outstanding services in the field of judicial reforms. Forum will donate once every year ₹ 1 lac towards the expenses to any organisation anywhere in the country which hosts a two days national convention on judicial reforms. Forum will also pay ₹ 10,000 to every Society For Fast Justice, registered anywhere in the country to meet its initial expenses.

We regularly send letters and e-mails in thousands appealing to judges, lawyers, citizens, MPs, journalists and NGOs for joining the movement. The work is so gigantic and we invite one and all to join this paramount mission. If all other persuasive efforts for innovating and overhauling judiciary fail, the only option left for us is to resort to Gandhian means such as satyagraha, fast, disobedience, non-cooperation, courting arrests, etc.

## **10. FORUM'S INITIATIVE: E CONNECTIVITY OF COURTS:**

**Our Shri Monga and Ms.Sherley went to Bangalore to meet Justice Venkatchaliah to discuss the possibility of creating software for case management in the courts. He advised to meet Justice Bharuka and Shri Nandan Nilekani, Chairman, Unique identification Authority of India. Justice Bharuka was the first e-Committee Chairman for connecting all courts of the country through internet.**

**Justice Bharuka and his advocate son Devashish has made extensive research on the pendency of cases and remedial measures for all courts across the country and also have collated the data for about 200 countries.**

**Forum's Chairman and trustees Shri Venkatraman and Manoj, a software engineer, alongwith Justice Bharuka met Shri Nandan Nilekani at his office on 19<sup>th</sup> May 2011 for over an hour. He liked the idea of creating a software for court cases management.**

**Shri Nilekani made a team of experts specially to fly from Bangalore for the purpose which had a 3 hour long meeting with Justice Bharuka. The team was highly impressed.**

**Dr.G.C.Bharuka has written a book on the subject of e-connectivity captioned 'Rejuvenating Judicial System Through E-Governance & Attitudinal Change'.**

## **11. FORUM'S " NATIONAL THINK TANK"**

**Forum wants to evolve a Think Tank of the like minded, well meaning and expert individuals of the country who support judicial reforms. About 300 such members will be enlisted during next three years which may include eminent jurists, acclaimed activists, expert professionals, corporate executives, industrialists, writers, journalists and philanthropists**

Besides above, all the Trustees and Advisory Council Members of the Forum For Fast Justice and office bearers of all Societies For Fast Justice will automatically become members of the National Think Tank. This will provide a unique opportunity for all Think Tank members to share a platform, exchange ideas and get acquainted with each others. National Think Tank Meetings will be held and hosted twice a year, by our Forum and such meetings will be held at different cities.

We are in the process of setting up centres, under the name of Society For Fast Justice in various cities all over the country and hope to have about 100 such centres within next three years.

### **Chairman & Managing Trustee, Forum For Fast Justice.**

**Bhagvanji Raiyani**

### **Board of Trustees:**

**O.P. Monga, Venkatraman Muralidhar (Honorary), Prakash Khatiwala, Ramesh Kanakia, Ashish Mehta, Pravin Doshi, Manoj Champanerkar and Ms.Shilpa Punjabi.**

### **Advisory Council:**

**Mukund Parikh, Kashyap Vyas, Dilip Gandhi, Ms.Sherley Singh, Rajendra Thacker and Padmanabh Vora**

### **Secretary (Adm)**

**Indravadan Shukla,**