JUSTICE: AN EXCLUSIVE RESERVE FOR THE ELITE

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Introduction

Aristotle, the renounced philosopher, warned the society in 4th century which has its relevance even in this new millennium. He said, "Man perfected by society is the best of all animals; he is the most terrible of all when he lives without law, and without justice." In normal parlance justice means what is just and fair. Meaning of justice in this sense has always been changing with time, place and circumstances. What is just and fair today may or may not be same tomorrow and the vice versa. For this reason no précise definition of justice which is universally acceptable and applicable for all time and places, is feasible. The dictionary meaning of the term justice is an act of rendering what is right and equitable towards one who has suffered a wrong. However, in a judicial sense, justice is exact conformity to some obligatory law. All human actions are just or unjust as they are in conformity

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with or in opposition to the law[1]. It is thus the virtue of being just and fair. While talking of its purpose, not only the plaintiff and defendant but whole of the subject matter of the suit and all person affected thereby is taken into consideration. The Court has to see the entire pattern of things from a detached height and make up its mind whether it will be for the greater good of everybody and everything concerned, that it should intervene and take upon itself the burden of trying the suit. Thus it could be said that judiciary is the last hope of the common man to get justice.

Whenever we think about a word it creates an image in our mind about that particular word so is about justice. The image created about it is its symbol, which is popularly known as "symbol of justice". It is one of the most fascinating things; often hold our attention, when we see it in the premises of the Courts or in the chamber of lawyers or judges. The symbol – a common representation of justice is a blindfolded woman holding a set of scales. It is said that it is the symbol of the goddess of Justice. The Roman goddess of justice was called "Justitia" and was often portrayed as evenly balancing both scales and a sword and wearing a blindfold. She was sometimes portrayed holding the fasces (a bundle of rods around an axe symbolizing judicial authority) in one hand and a flame in the other (symbolizing truth).

History of Goddess of justice may be traced back to the

[1] K.J. Aiyar's Judicial Dictitionary twelfth edition The Law Book Company (P) Ltd. PP 699-700

ancient Greeks. The goddess of justice was known as 'Themis', originally the organizer of the "communal affairs of humans, particularly assemblies". Themis was the personification of justice, the goddess of wisdom and good counsel and the interpreter of the gods' will. Her ability to foresee the future enabled her to become one of the oracles at Delphi, which in turn led to her establishment as the goddess of divine justice. Classical representations of Themis did not show her blindfolded (because of her talent for prophecy, she had no need to be blinded) nor was she holding a sword (because she represented common consent, not coercion). According to some sources, she was the daughter of Uranus (Heaven) and Gaea (Earth). She maintained order and supervised ceremonies.

She was a giver of oracles and one legend relates that she once owned the oracle at Delphi but later gave it to Apollo. She was and still is represented as a woman of sober appearance carrying the scales of justice and a sword as a symbol of justice enforcement.

Affordable justice, the perception

"Injustice anywhere is a threat to justice everywhere." said Martin Luther King. Author in this quotation takes justice in wider sense so as to include it in every aspect of life. However, this research scholar focuses on the justice which one is supposed to get through court of law. For justice to be meaningful it needs to be accessible and affordable for the common man. In this

context justice may be said to be accessible when it is given timely, effectively and at the same time affordable for everyone. According to Justice A.R. Lakshman, the chairman of 18th Law Commission of India, the 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 the courts have become inaccessible due to various barriers such as poverty, social and political backwardness, illiteracy, ignorance, procedural formalities and the like.[2]

One is pushed to look at it from the present look of things in the judicial system. The judicial process has always been seen as an exclusive reserve of the elite. It is said that the judiciary is the last hope of the common man. But how close or affordable is the judicial process to the common man? In some countries, one would be pushed to think that the woman was blindfolded not to see what is happening at all or that her scale had been removed because dispensation of justice seemed to favour the elite and left little or no hope for the common man. In those places the common man cannot afford the legal fees of learned gentlemen and the elite who can get best-learned ladies or gentlemen win most of their suits. The imprisonment, options of fine or bail conditions for the common man most of the time looks absurd. A man who cannot afford three square meals will get a sentence with conditions he cannot meet even if he has to

[2] Justice A.R. Lakshmanan, "Justice for all" Nyaya Deep, Vol. VII, issue 3, July 2006. PP 45

sell all his possessions.

To get justice through courts one must go through the complex and costly procedures involved in litigation. One has to bear the cost of litigation including court fee, stamp duties etc and of course the lawyers' fee. Thus, here the question arises a poor man who is hardly able to feed himself, how will he be able to afford justice or obtain legal redressal for a wrong done to him through courts. Further illiteracy and abject poverty prevails in most of the parts of India. Therefore they are totally ignorant about the court procedures and will be terrified and confused when faced with the judicial machinery. Thus most of the citizens of India are not in a position to enforce their rights, constitutional or legal, which in effect generates inequality contrary to the guarantees of Part III of the Constitution.

In this context, it will be appropriate to quote Justice V.R. Krishna Iyer, "India's poverty asphyxiated, down-trodden masses seek justice from an exotic, expensive, unapproachable system which responds even on holidays at home at odd hours if the patricians move its jurisdiction. But when the little Indian languishing in injustice pleads, he is in an ever lengthening queue. And the impatient judge complains of backlog when the poor worker or landless agrestic or pro bono litigant lands up in court and heedlessly dismisses his prayer. "What man is there of you, whom if his son ask bread, will give him a stone?" judges, in their hurry, sometimes do. Again, judges are rated as the cream of the elite and yet must repeat: "Ye are the salt of the earth: but

if the salt has lost his savour, wherewith shall it be salted?" Did not some leading lawyers complain to the Supreme Court about invidious discrimination between those with clout and the daridra narayanas in the urgency of hearing cases?"[3]

Constitutional Provisions to Secure Justice

The objectives enshrined in the Preamble of the Constitution inter alia include justice- social, economic and political. To implement it in letter and spirit a detailed provision in the name of social and economic Charter has been provided under Part IV of the Constitution[4]. The concept of justice provided under Article 38 has explained by giving wide interpretation by the Hon'ble Supreme Court of India, "The concept of 'social justice' consists of diverse principles essential for orderly growth and development of personality of every citizen. "Social justice" is then an integral part of justice in the generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic devise to mitigate the sufferings of the poor, weak, dalits tribals and deprived sections of the society and so elevate

[3] Justice V.R. Krishna Iyer, "Access To Justice", B.R. Publishing Corporation, PP 90-91

[4.] Article 38. State to secure a social order for the promotion of welfare of the people.1[(1)) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.2[(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.]

them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor etc., from handicaps, penury, to ward off distress and to make their life livable, for greater good of the society at large. The aim of social justice is to attain substantial degree of social, economic and political equality which is the legitimate expectation and constitutional goal. In a developing society like ours, where there is vast gap of inequality in status and of opportunity, law is a catalyst, rub icon to the poor etc. to reach the ladder of social justice. The Constitution, therefore, mandates the State to accord justice to all members of the society in all facets of human activity. The concept of social justice enables equality to flavor and enliven the practical content of life. Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law, therefore, is a potent instrument of social justice to bring about equality."[5]

Article 39A provides for equal justice and free legal aid. It says to provide free legal aid by suitable legislation or by schemes or in any other way so that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.[6] While deciding on the issue of free legal aid at the

[5] Air India Statutory Corporation v. United Labour Union, AIR 1997 SC 645.

[6] 39A. Equal justice and free legal aid.-The State shall secure that the operation of the legal system promotes justice, in on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

state cost the Supreme Court held that free legal aid at the state cost is the fundamental right of a person accused of an offence and this right is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21. In this case the appellant was tried and sentenced to two years imprisonment under Section 506 read with Section 34, IPC. He was not represented at the trial by any lawyer for reason of his inability to afford legal representation. The High Court held that the trial was not vitiated since no application was made by him. But Supreme Court set aside the conviction on the ground that he was not provided legal aid at the trial which was violative of Article 21 of the Constitution.[7] According to Justice V.R. Krishna Iyer to provide free legal aid at the cost of state is the state's duty and not Government's charity.

Article 21 of the Constitution provide for the protection of life and personal liberty. The scope of this fundamental right has been widened by the judicial pronouncement so as to include within the ambit of fundamental right *inter alia* right to free legal aid as well as right to speedy trial. Accordingly absence of free legal aid when required and delay in speedy justice violates Article 21.

What makes the justice unaffordable?

It is accepted unanimously among the people that by and large justice has become unaffordable. Before we discuss various

[7] Suk Das v. Union Territory of Arunachal Pradesh, (1986) 25 SCC 401.

factors responsible for this, it is pertinent to mention that the word affordable should not be given literal meaning but it should be given wide interpretation so as to include all the circumstances responsible for making justice delayed or denied because in one sense justice delayed is also justice denied. Following are some of the factors responsible for making the justice unaffordable.

Corruption – Corruption in judicial system prevails right from top to bottom. To make matters worse, professional ethics among lawyers are virtually nonexistent. A lawyer accepting money from both sides in a case is no longer news. Often, lawyers prefer adjournments of cases since each additional day of hearings fetches them money. Corruption is not limited to lawyers, however; they are just one component of a large machine. Therefore due to this corruption, the haves could easily turn the decision on their side. Even if a judge is not corrupt, a case could still be stalled due to the corrupt court staff. Officers ranging from the court registrar to the process server demand and accept bribes. It is almost impossible for papers to be processed in the court registry unless the court staffs are paid bribes. Judges are often aware of corruption, but they never initiate action against their own staff. Corruption is omnipresent, from the lowest court to the Supreme Court. The only difference is the amount of money demanded and paid. Even some judges are corrupt.

Over-loaded judicial system- The second problem that stares us all is that of mounting arrears resulting in inordinate delay in

dispensation of justice is our over-loaded judicial system as it suffers from manpower shortage, infrastructural constraints and procedural delays. Whatever may be the reason but it has been great concern of the apex court. In a recent matter decided by Hon'ble Supreme Court very interesting fact came into light. In the year 1947 a case was registered for the recovery of sum of Rs. 7000 and there was an order for attachment before judgment of the dry fish of the defendant. A third party claimed ownership of the dry fish and he applied for realize of attachment order. It took 60 years to reach the case before Hon'ble Supreme Court and finally on 23rd August, 2007 the case was decided. Court ordered that entire property which is the subject matter of this litigation may be divided in equal shares between the two shares. Half share should be given to the appellants and the other half given to the respondents. The matter didn't end here but to decide which part should go to the appellants and which part should go to the respondents, the apex court directed District Magistrate of Kanyakumari to decide himself or by the additional District Judge nominated by him. It also ordered that it would be opened for either of the party to approach this court for further clarification. Before parting this case court has given remarks coupled with warning. It said, "We saw in the media news of lynching of suspected thieves in Bihar's Vaishali district, the gunning down of an undertrial prisoner outside Patna City Civil Court and other incidents where people had taken law into their own hands. This is obviously because many people have started

thinking that justice will not be done in the courts due to the delay in Court proceedings. This indeed an alarming state of affairs and we once again request the concerned authority to do the needful in the matter urgently before the situation goes totally out of control."[8]

As far as pendency of cases in Supreme Court is concerned it has never been with the same pace.[9] In 1950, the pendency in the Supreme Court was 771 cases. By 1978, pendency was 23,092 and in 1983 pendency crossed 1, 00,000. On 31 December 1991, the number of cases pending before the Supreme Court was 1, 34,221. Then this number was substantially reduced to 19,806 in 1998 and it was 21,715 at the end of 2001. Since those days of reduction, the pendency has increased by between 13% and 15% every year and has more than doubled. The pending cases as close on 30th June, 2010 are 57,065.[10]

When one looks into the figures of High Courts, one should say a few words about old cases, often used anecdotally to drive home the point that the speed of dispute resolution in India is inordinately slow. The pendency in High Courts was 1.48 million in 1987. Pendency increased to 2.651 million in January 1994, 2.981 million in January 1996, 3.181 million in January 1998,

[8] Moses Wilson and others v. Kasturiba and others, AIR 2008 SC 379. And Vakil Parsad Sing v. State of Bihar AIR 2009 SC 1823.

[9] Refer the variations in the graph in appendix A to this Paper.

[10] The monthly statement of pending cases for the month of June, 2010 placed on the website of the Supreme Court of India.

3.365 million in January 2000, 3.557 million in January 2001 and 3.743 million in December 2007.[11]

As far as lower courts in India are concerned the age-specific data of pending cases no longer being available. Data from the late-1990s show that 31% of civil cases in Lower Courts are more than 3-years old and a comparable figure is 25% for criminal cases. On an average, across High Courts and Lower Courts, probably around 15% of cases are more than 3-years old and around 0.5% are more than 10-years old. Though High Courts, and their jurisdictions, vary widely, on an average, such old cases number between 7,000 and 8,000 for every High Court jurisdiction.[12]

Problem of cost and price- Today the scale of the judiciary seems to be tilted or swayed towards the elite. Lawyers, as a class, have little interest in speedy justice especially if they are paid by the hour or by the day. The longer it takes for a case to be settled, the larger the amount in fees and expenses that they can bill their client. This cost in itself can be a deterrent to small companies and individuals who are put off pursuing their legal rights simply because they cannot afford such protection. Thus it could be said that now you could only seek justice if you had a deep pocket. Stressing on the need to make legal services affordable to all, President of India, Pratibha Patil, today asked

[11] Refer the variations in the tabular form placed as appendix A to this on the website of the Supreme Court of India.

[11] Refer the variations in the graph in appendix A to this Paper

[12] The financial express of Mon, 26 Jul 2010

the lawyers to ensure that high costs do not act as a barrier to seek justice."Affordability of legal services is an issue on which there should be constant focus in legal circles, so that the right to judicial opportunity is not compromised due to high costs," Patil said. “Court fees and high lawyer's fees are impinging on the decision to opt for a legal remedy”.[13] The legitimate expectation of every consumer of the system is to obtain swift justice. There is an intimate link between speed and expense. More time consumed in court necessarily results in more expenses to the litigant. One should always remember what Warren Burger C.J. of the US Supreme Court, reminded us while campaigning for systematic reform that, “People come to believe that inefficiency and delay will drain even a just judgment of its value.”[14]

Suggestions to make Justice Affordable

At the outset it is desirable to think that which organ of the government needs to be reformed. Is it only judiciary to be blamed and to be reformed or the entire machinery responsible for making, implementing as well as adjudicating law? According to Justice B.N. Aggarwal, “Questions on the credibility of judiciary to deal with the mounting arrears of cases, delay in disposal and high cost of obtaining justice are still being raised,

[13] Address by Her Excellence, the President of India, Mrs. Pratibha Patil at Kochi on Monday, December 28, 2009, in Kochi

[14] Justice V.R. Krishna Iyer, “Access To Justice”, B.R. Publishing Corporation, P 92

but to blame the judiciary alone for its wrong as other limbs of the State need also play their role in solving this problem. But those who say that justice delivery system is on the verge of collapse make such statements by looking at the overflowing dockets only without peeping into the real scenario. These are the people who need to be told that influx of cases is also a sign of faith reposed by the people in the administration of justice and it is that faith which, inter alia, is one of the reasons for docket explosion. It is a matter of satisfaction that the public at large continues to hold our judicial institutions by and large in high esteem despite their shortcomings and handicaps."[15]

Considerable amount of ink has been flown by the jurists, legal scholars and law reformers to suggest legal reforms to make justice accelerated and affordable. The first time in the year 1924 ranking committee was constituted to report on pending cases, followed by the High Court arrear committee in the year 1949. In the year 1950 UP Judicial Reform Committee submitted its report on the ways to reduce backlogs. Not only this series of reports submitted by the Law Commission of India in particular 14th, 27th, 41st, 54th, 58th, 77th, 80th, 90th, 114th and 139th are full of suggestions for the judicial reforms. Time and again Supreme Court of India has also given guidelines to make the justice affordable. Right to a speedy trial is a fundamental right implicit in the guarantee of right to personal

[15] Justice B.N. Aggarwal, "Pendency of Cases and Speedy Justice", Lecture Series, 2004 by the Supreme Court Bar Association.

liberty enshrined in Article 21 of the Constitution.[16] Keeping into view these suggestions and guidelines put forward by eminent persons through the above quoted reports and also on the basis of guidelines given by Supreme Court, this researcher sums up following suggestive measures to make the justice affordable.

I. Grant of adjournment- There must be maximum utilisation of the court working hours. The judges must be punctual and lawyers must not ask for adjournments, unless it is absolutely necessary. While granting adjournment the provisions of Order 17 of the Civil Procedure Code must be followed in letter and spirit.[17]

II. Use of technology to reduce backlog- In every Court there are so many cases where same point of law is involved and one judgment can decide all these cases at a time. Clubbing of these cases may reduce backlog. Similarly, in old cases many of them may have lost their value and may be listed and decided separately. Disposal of interlocutory applications filed even after disposal of the main case may be made very easy with the help of latest technology.

III. Judgment in reasonable time- There must be some reasonable time fixed to decide a criminal as well as civil case and judges must adhere to it. In this way guidelines of the apex court may be strictly followed. [18]

[16] Hussainara Khatoon v. Home Secretary, State of Bihar, AIR 1979, SC 1369.

[17] Order 17, Rule 1(2) of Civil Procedure Court, 1908 (Refer Appendix B)

[18] Anil Rai v State of Bihar, (2001) 7 SCC 318

IV. Certainty in judgments- Vague and uncertain judgments always give rise to further litigation. In this sense a judgment must be clearly decisive and free from ambiguity so as to need no interpretation and no further litigation. According to Lord Macaulay, "Our principle is simply this – Uniformity when you can have it, diversity when you must have it, in all cases, certainty".

V. Enhancement of working period- It has been strongly recommended from all the corners that vacations of judicial officers in general and higher judiciary in particular may be curtailed by at least 10 to 15 days and at and the same time routine working hours may be extended by at least half-an hour.[19]

VI.Promotion of written arguments- It is seen that lawyers sometime waste valuable time of the court in prolix and repetitive arguments. It must be discouraged and maximum time limit for the written arguments should be fixed in every case followed by submission of written arguments compulsorily in every case. However additional time may be permitted by the court in the matters where complicated questions of law or interpretation of Constitution are involved.

VII. Strike in the Courts to be taken as professional misconduct- Strike is a tool in the hand of a person to forcibly submit his demands. But when it is applied in the Court where matters of life, liberty inheritance or so on are involved, it gives

[19] Justice Asok Kumar Ganguly, a Supreme Court Judge, 'Judicial Reforms', Halsbury's Law Monthly of November 2008

only frustration in general and makes justice unaffordable for poor. Hence without second thought strike in the courts must be banned and is to be taken as profession misconduct under the Advocates Act, 1961.

VIII. For the litigants- In number of cases litigants themselves are responsible to be trapped in avoidable litigation. It is in particular in these cases where one is opting for court to kill ones ego and starts litigation to start another litigation. To overcome this problem nationwide awareness campaign in this pattern was launch by Dainik Jagran newspaper in the name of JAN JAGRAN in July, 2010. Years before Abraham Lincoln said, "Discharge Litigation, Persuade your neighbours to compromise wherever you can. Point to them how the nominal winner is often a real loser- in fees, expenses and wastage of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will be business enough."[20]

IX.Resolution of disputes through ADR mechanism- It is a proven fact that ADR techniques have been successful in accelerating and making justice affordable all over the world. Arbitration, mediation, conciliation and negotiation have already been established through legislation in number countries of the world. Concept like plea bargaining has become part of life in United State of America. In our country Govt. is the largest litigant and pays crores of rupees as fees to lawyers every year. Awareness for the ADR options amongst the general public must

[20] Quoted by Justice Jitender N. Bhatt in 'Round Table Justice through Lok Adalats(people's court): vibrant ADR in India', Gujarat Law Herald 2001(3).

be done at government level and at the same time it should be compulsory for pre-litigation in general for the public and in particular for the government.

X. Legislation to resort ADR mechanism- We have provisions for implementation of ADR in the statutes like Arbitration and Conciliation Act,1996, Legal Services Authority Act, 1987, Code of Civil Procedure, 1908, Hindu Marriage Act,1955, Family Court Act,1984, Criminal Procedure Code, 1973 (plea bargaining) etc. . If these provisions are implemented in letter and spirit, it will definitely reduce the backlog and in turn make the justice affordable for everyone.

Conclusion

It is a proven fact and can be seen in every aspect of practical life that gradually and slowly justice is becoming unaffordable for a common man. As discussed the word unaffordable needs to be interpreted broadly so as to include all the hurdles in the way of obtaining justice. It is not only affordability in the sense of financial resources but also other disabilities like lack of awareness among the people, honour litigations put forward just to kill the ego, inadequate technical knowledge amongst judges, advocates and court staff, incompetency of legal professionals and so on. Now all these disabilities making the justice unaffordable is only for the have-nots and not for haves. For this it is not only the judiciary to be blamed and need reformation because it is only one organ of the system. Democracy becomes

meaningful when all the four organs including media are in coordination, cooperation and have the will to work together for the common cause. We should always remember what Earl Warren reminded the world in last century, "It is the spirit and not the form of law that keeps justice alive." The duty of the State does not end with enactment of laws. The statutory provisions designed to bring about social justice have to be supported by a system that enforces the rights and obligations thereby created. Democratic polity, like Indian states, rests on the principle of separation of powers. Each organ has its own set of duties to perform. But, in fact, the end of all activities of each of the organ is to secure justice and wellbeing for its people. Alexander Hamilton aptly put this in following words, "Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit." The symbol of justice should represent justice in our nation and not portray the judicial system as an exclusive reserve of the elite. Let equity, justice and rule of law prevail here in India!

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