

THE MISSION AND VISION OF INDIAN JUDICIARY

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Anyone who has ventured to study the functioning of the Indian legal system must have been alarmed by the mounting arrears in our courts. It is said that there are more than two crores of pending cases in the Indian Courts.

It is common knowledge that more than seventy percent of the judicial work in India is being done by the District Judiciary. Naturally, the pendency should also be more in the District Courts.

Added to the mounting arrears is the inefficiency, delay, lack of public confidence and loss of credibility of the courts that have been mentioned as the major challenges facing the Indian Judiciary. Since the main chunk of the work and the consequent problems pertain to the District Judiciary, it is but natural for everyone to scrutinize the functioning of the District Judiciary.

One of the main causes for the lack of efficiency of our courts is attributed to the courts' reticence to change the inherited pattern of their working. This inertia still continues despite the compulsions of the Indian constitution, which envisions this institution to be an instrument for establishing a welfare state based on equal justice to all. Article 38 and 39A of the Indian constitution are worth quoting:

“Art. 38(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 institution of the national life.

(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst groups of people residing in different areas or engaged in different vocations.

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

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It is a matter of concern that our District Judiciary does not give effect to the constitutional vision of justice. Justice Krishna Iyer had an occasion to advert to this situation in *Rajendra Prasad V. State of U.P.* (1979) wherein in the context of imposition of capital punishment he said thus:

“It is fair to mention that the humanistic imperatives of the Indian constitution, as paramount to the punitive strategy of the penal code, have hardly been explored by courts, in this field of life and death at the hands of the law. The main focus of our judgment is on this poignant gap in human rights jurisprudence within the limits of the penal code, impregnated by the constitution”.

The situation was succinctly put by Justice Desai in the 117th Report of the Law Commission (1986) thus:

“On the enforcement of the constitution in January 1950, this system was expected to adapt itself to facilitate the transformation of Indian society into a nation and to become an effective instrument for carrying out the mandate of Art. 38. Judiciary being an important instrumentality for exercise of state judicial power, it had to shoulder the burden along with other wings to set up a welfare state in which justice-social, economic and political – shall inform all the institutions of national life. It must also shoulder the primary responsibility of eliminating inequalities in status, facilities and opportunities not only amongst group of people residing in different areas engaged in different vocations. It had the added responsibility of becoming a guardian angel for the protection of fundamental rights of the citizens. Thus, from a purely colonial institution operating more or less as a wing of law and order enforcement machinery, it was to become a sentinel on the qui vive”

However, our courts at the District level could not rise upto this expectations. As late as in 2006, the Supreme Court in the context of a criminal case commented upon the disposal of cases thus:

“In our opinion, criminal cases are decided on facts and on evidence rather than on laws and precedents” (*Saira Bano @ Sultana Cr. App.No. 141 of 2006*)

The net result of this practice, without having regard to the applicable law, has also been captured vividly by the Supreme Court in *Himmat Sukhdeo Wahurwagh V. State of Maharashtra*, (2009) 6 SCC 712, wherein after narrating the factors inhibiting proper conduct of proceedings in a trial, the court observed:

“In this pernicious state of affairs, the judge, gravely handicapped, has to apply his knowledge of the law and his assessment of normal human behavior to the facts of the case, his sixth sense, based on his vast experience as to what must have happened, and then trust God and good luck that he strikes home and comes to a right conclusion. To our mind, the last two are undoubtedly imponderables but they come into play in negotiating the judicial minefield. This is an undesirable fact , whether we admit it or not”.

With respect, it has to be pointed out that the situation is not that disappointing as it is made out to be. However, it has also to be mentioned that there is cause for disillusionment inasmuch as our courts go on deciding cases on the basis of facts without commanding to their aid the philosophy of the Indian constitution, and not utilizing the possibilities for innovation within the framework of the statutes. The powers cabined in the various provisions of the statutes have to be explored and exercised by the courts to achieve the constitutional vision of equal justice to all.

The Indian citizenry has become more aware of their rights enshrined in the constitution. People realize that it is the courts that can ensure protection of their rights. Naturally they have expectations from the courts. They tend to look up on the judiciary as an institution that can fulfill their aspirations. In the event of this not happening it is but natural that they may try to interrogate the functioning of the judiciary. It is therefore necessary for the Indian Judiciary to acquire and develop skills to discharge its constitutional obligations. If the courts fail to carry out this mission our Democracy would fail in achieving its vision.