

Local Courts – An Idea Whose Time Has Come

Dr Jayaprakash Narayan

Local Courts – An Idea Whose Time Has Come

Ponderous Justice System

1. An independent and impartial judiciary, and a speedy and efficient justice system are the very essence of civilization. However, our judiciary, by its very nature, has become ponderous, excruciatingly slow and inefficient. Imposition of an alien system, with archaic and dilatory procedures, proved to be extremely damaging to our governance and society. As Nani Palkhiwala observed once, the progress of a civil suit in our courts of law is the closest thing to eternity we can experience! Our laws and their interpretation and adjudication led to enormous misery for the litigants and forced people to look for extra-legal alternatives. Any one, who is even remotely exposed to the problem of land grabbing in our cities, or a house owner who finds it virtually impossible to evict a tenant after due notice even for self-occupation, can easily understand how the justice system failed.
2. In the process, a whole new industry of administering rough and ready justice by using strong-arm tactics to achieve the desired goals has been set up by local hoodlums in almost all of our cities and towns, and increasingly in recent years in rural areas. The clout and money these hoodlums acquire make sure that they are the ones who later enter political parties, and eventually acquire state power. There are countless examples in almost every state in India of slum-lords, faction leaders, and hired hoodlums acquiring political legitimacy. Most of them started their careers attempting to fill the vacuum created by judicial failure through extra-legal, and often brutal methods. In addition, the courts have tended to condone delays and encourage litigation and a spate of appeals even on relatively trivial matters. Two simple cases of torts would illustrate the malaise affecting our justice system, and its inaccessibility to ordinary people, particularly the poor.

The Case of the Dog Bite

3. A poor, migrant watchman's family lives in a hut in a posh neighbourhood. One morning when walking along the road, a pet dog from a home rushed out and attacked him. It was several long minutes before the terrified watchman could free himself - but not before his right arm was severely bitten from wrist to shoulder. There were gaping wounds and severe bleeding, and almost half the skin on the

arm was hanging loose. The petrified man returned home with difficulty – drenched in blood and perspiration. After recovering from the shock, together with some relations he went back to the owner of the pet dog to seek some help. After an hour's haggling, he was given a hundred rupees! The owner showed no concern for his plight and certainly made no effort to get him medical attention. The watchman then went to a public-spirited resident of the locality, who did what he could to provide help and medical attention. The watchman couldn't work for about three weeks. He had to get dressing, full anti-rabies course, and antibiotics and wait for the wounds to heal. There was considerable pain, fever and suffering. The family, already poor, underwent severe privation, monetary loss, emotional trauma and uncertainty.

4. In any civilized society the above incident would be a fit case for a civil suit under torts, and a fair compensation would be assessed at Rs.10,000 or more. The owner, whose carelessness resulted in this casualty, has the vicarious responsibility, and should pay damages. In the absence of a mechanism that can legally take care of such simple torts or disputes in a speedy and fair manner, most such poor people have no realistic legal recourse to get a just compensation.

The Case of the Police Van Accident

5. A watchman in a local club in a big city was hit by a van belonging to a state special police battalion. He sustained severe injuries to the arm, involving fractures. First aid was administered to him, and the wounds were sutured, without any treatment for the broken bones. The police took no steps to ensure proper medical attention. When he was discharged from hospital several days later, his arm was hanging loose. The police did not offer any compensation. Nor did the matter come up for hearing before any court. The illiterate watchman lost his job because of his injuries, and was without work for over six months. Meanwhile the police frequently approached him to get his signature on a blank paper by threats and coercion, probably to absolve the department of any liability. Months later, he got medical attention and proper orthopaedic surgery for his fractures through the intervention of some good samaritans. The police failed to pay for that treatment. While the man's body is repaired, he was shattered by the whole experience. He suffered enormous pain, agony and monetary loss. But no compensation was ever

paid to him. And being poor and illiterate he did not know whom to approach for justice. In any fair system of justice, a compensation of Rs. 50,000 to one lakh would be the minimum required to meet the ends of justice in this case. And yet, there is no justice in sight for this poor labourer.

Shortage of Judges – Case Overload

6. The courts in India cannot be faulted for this failure of justice system. In fact the judges are bearing an enormous burden with inadequate resources and manpower. There are only about 11 judges in India per million population, which is among the lowest ratios in the world. In contrast, the OECD countries have 113 judges per million population on an average. A country like Germany, with only about 80 million population, has nearly 35,000 judges of all varieties put together, almost three times the number we have in India with over a billion population! The Law Commission in its report on manpower planning (1987) pointed out that the Indian judge – population ratio was 10.05 per million people as against 50.09 in the UK, 57.07 in Australia, 75.02 in Canada and 107 in the US. The sanctioned strength of judges in India is only 13,000, as against the requirement of 75,000 judicial officers. Out of this, 1874 posts are vacant. (The Hindu: Sept 24, 2002). The net result is predictable. The statistics relating to pendency of cases in various courts are revealing. With the exception of the Supreme Court, where the pendency is decreasing in recent years, courts at all other levels are overburdened with case load. In the High Courts, there were 2.65 million cases pending in December, 1993. This case load has increased to 3.62 million cases by September 1, 2002. Some cases have been pending for over fifteen years. The situation in subordinate courts is particularly unfortunate. In any justice system, the real burden of adjudication is borne by the trial courts. We have over 20 million cases pending in subordinate courts in India. The pending case load in High Courts is about 5,600 per judge, and over 1,660 per judge in trial courts.

7. Certain efforts were made to improve the situation in recent years. The Supreme Court's skillful use of information technology and bunching of similar cases and faster disposals have reduced the case load in the apex court. Similarly, Lok Adalats have made some dent in adjudicating matters relating to public utilities, where the face value of the claim is under Rs 10 lakhs. These Lok Adalats,

constituted under the Legal Services Authorities Act – 1987, have been particularly successful in dealing with land acquisition cases and compensation claims under Motor Vehicles Act. But many routine matters including torts and criminal cases cannot be addressed by Lok Adalats. The Tenth Finance Commission had taken note of the large pendency of criminal cases in sessions courts, and proposed a centrally-funded scheme for speedier disposal of such serious criminal cases. The government of India launched the fast-track-courts scheme (FTC) and proposed 1734 such courts at a total cost of Rs 5.03 billion over five years. So far 980 such courts have been established and another 295 notified. As on Feb 4, 2003 an amount of Rs. 3.19 billion has been released, and these courts disposed of 77,000 of the 1,88,271 criminal cases transferred to them. Over 200,000 criminal cases are still pending before sessions courts.

8. As can be seen, all these steps are necessary, but not sufficient. While they made some difference, they are not making a significant dent on pendency in trial courts. And in particular, they are not improving access to justice for ordinary citizens, the poor and the disadvantaged sections. The litmus test of any justice system is the access provided to average citizens, facing simple, day-to-day disputes. Unless suitable mechanisms are evolved to address these concerns, the justice system cannot enforce rule of law.

Factors Influencing Access to Justice

9. Access to justice system is dependent on several factors:
 - **Number of judges:** As we have seen, our judge: population ratio is less than one-tenth of that in many advanced democratic societies. Even this limited number is skewed, as trial courts are particularly depleted.
 - **Physical proximity:** In a vast country with high degree of poverty, illiteracy or semilliteracy, and ignorance, a law court, to be accessible, should be physically close to people. The poor in India are among the most immobile people in the world. A large proportion of our rural people would never have stirred out of their village or a group of villages constituting a revenue circle for a whole life time, with the exception of a once-in-a-life pilgrimage to a place of worship, or seasonal group migration in search of wage labour. In such circumstances, a court in a big town or taluk or sub-divisional headquarters is much too remote

and inaccessible to most people. Therefore many civil wrongs, disputes and torts remain unaddressed through the formal system of justice.

- **Procedures:** The more formal and rigid the procedures adopted by a court, the more inaccessible it is to most semi-literate and poor people. Written submissions, necessity of skilled lawyer's intervention even for simple cases, compulsion of legal representation, need for legal language or justification in different stages of the process, the level of complexity involved in the service of process or summons or notification of final judgment, lack of effective mechanism for speedy enforcement of court decree or order – all these make the judicial process remote, incomprehensible and inaccessible. (World Development Report: 2002).
- **Language:** Only about 3 percent of Indians can understand English well. The use of English as the language of the courts, coupled with unintelligible laws and procedures, has made the justice system beyond the reach of most people.
- **Speed:** In some countries, disposal of a commercial dispute takes only a few weeks. For instance, it takes 35 days for adjudication in Singapore, 90 days in Norway and 60 days in Japan. Delayed justice deters a large number of ordinary people from approaching courts for simple disputes or minor offences. As a result, most people either suffer injustices quietly, or take recourse to personal revenge or rough and ready methods of private justice through the intervention of armed gangs and crime syndicates. Many cases which would have normally come to courts for adjudication are thus suppressed leading to failure of rule of law and anarchy.
- **Costs:** Delays, procedural complexity and use of alien language escalate the costs of litigation enormously for most people, deterring them from seeking intervention of courts. This prohibitive cost is particularly detrimental to judicial redressal in simple cases of torts, commercial disputes, or civil or criminal wrongs.
- **Perjury:** The more remote a judicial system is, the more difficult it is to get reliable evidence. Witnesses far removed from their natural surroundings often tend to lie under oath, as there is no peer pressure to speak the truth. Many witnesses in fact go to great extents to avoid being summoned before a court. A system of false witness perjuring themselves for a price has been

established as a profession in most of our courts. Perjury laws are violated with impunity, as there is no social sanction against lying under oath.

- **Fairness:** The degree of perceived fairness of justice system determines its accessibility and acceptance. Given the deficiencies listed above, an ever increasing number of the poor and illiterate Indians are wary of approaching the courts. Though the people have great faith in courts as a rule, they perceive the judicial process to be inherently unfair and biased in favour of those with means and contacts.

Experience in the US and UK

10. Many efforts have been made all over the world to make justice speedy, accessible and simple, particularly in respect of the ordinary cases in which most people seek justice. For instance, in the US, small claims courts, better known as people's courts with limited jurisdiction at municipal, city, or regional level are usually confined to civil suits involving relatively small amounts of money and to minor violations of law. For instance, cases involving minor traffic violations are heard in these trial courts. The procedures are simple with very little formality, and those involved in litigation normally present their cases to a judge, magistrate or court commissioner. The maximum amount involved in a suit in these courts varies from state to state, ranging from \$1000 to \$15,000, but limited to \$5000 in most states. In most states the parties can be represented by a lawyer if they so wish. In a few states, including California, Nebraska and Michigan, parties come to appear on their own. About 100 million cases go through these courts annually.
11. In the UK, lay and unpaid justices of the peace (JPs) handle over 90% of all criminal cases and many civil cases. As Lord Phillips of Sudbury states (The observer, Dec2,2002), local justice, presided over by JPs dates back well beyond 1361 AD, when the first JP Act was passed, and even today a JP is placed much higher than an MP in official rankings. Lord Bingham, a senior lawlord, calls them 'a democratic jewel beyond price'. The 30,500 lay, unpaid JPs hold court in local magistrates' courts, which numbered around 900 in 1960's. About half of these magistrates' courts have since been closed, forcing the witnesses, families, police and JPs to travel 10 or 15 miles to the nearest court. Many scholars and law lords are sharply critical of this need to travel even a few miles in a country with excellent

infrastructure, motor transport accessible to all, and high levels of literacy and awareness.

12. Also small claims procedures in formal courts provide a mechanism for speedy and inexpensive resolution of disputes in the UK. These procedures were evolved in 1973. The small claims limit in mid 1990's was £1000. By 1998, this limit was raised to £ 5000. The informality of proceedings, speed of disposal and the fact that there is no threat of having to pay costs made the small claims procedures very popular and effective. As a World Bank report (May 2000) points out, "The litmus test of any civil justice system is whether it provides the average citizen, facing simple everyday legal disputes with mechanisms through which he or she is able to secure redress. Considerable progress has been made in England and Wales, and in many other countries, in providing access to civil courts to those involved in such disputes. Adaptations to traditional litigation procedures seem largely to have succeeded in allowing laypersons to present their cases in a satisfactory and competent manner. ... If greater access to justice is the objective, the key is to design a civil justice system that provides costs and procedures that are realistic and proportionate to the issue in dispute. Calls from legal purists for an unrealistic level of legal refinement should be ignored, as they will restrict access to the courts to the wealthy. For most lay litigants, the alternative to cut-price solutions is not Rolls Royce Justice: it is no access to justice at all."

A Local Courts Model for India

13. Given the experience in our own courts, and the successful practices in India and elsewhere, there is need for significant increase in the number of trial courts at the lowest level, with the adoption of simple, informal procedures for adjudication. The honorary second-class magistrates system which operated successfully in many states in the past, and still continues in some states, is a good example of such a system. Introduction of such a model should ensure speedy and fair justice, simple and uncomplicated procedures, use of local language in courts, low cost of functioning, low cost to people and hearings as close to the cause of action as possible to encourage truthful witnesses to come forward locally. Such a system must be completely independent of the executive or legislature, and must enjoy the confidence of the people. Therefore it must be an integral part of the independent

judiciary, and should be appointed by, and accountable to the existing judiciary. There must be a provision for appeal to ensure corrective steps in case of miscarriage of justice. The jurisdiction of such courts must be exclusive, so that all civil and criminal cases below a certain level will automatically be heard by these courts. Finally, once a decision is given by such a local court, its enforcement must be simple, easy and fast.

14. One such model of local courts is briefly outlined here. There could be one such court for every 25000 population in rural areas, and every 50000 population in urban areas. A law graduate, or a retired judge or government officer, or a reputed person can be appointed by the District and Sessions Judge in consultation with his two senior most colleagues. These will be honorary offices carrying monthly honorarium, and fixed allowance for travel and secretarial services is provided. All costs put together will not exceed Rs 15,000 per month. There shall be no permanent staff. The existing infrastructure of the local governments or state government will be utilized for holding court. The tenure of the magistrate will be three years, with a provision for reappointment. The age must be atleast 45 years. The local court will hold hearings at the place where cause of action has arisen or offence has been committed as far as practicable. The court can inspect any locality to collect evidence locally. Parties can represent themselves, or be represented by any lawyer or authorized agent. All proceedings will be in the local language only. Summary procedures will be followed in the trial of cases. The local courts will have exclusive jurisdiction of say Rs 100,000 (One lakh) in civil cases, and under one-year's imprisonment in criminal cases. Cases shall be disposed of within 90 days of filing. There will be an appeal to the Assistant Sessions Judge in criminal cases, and Senior Civil Judge in civil cases. Appeal shall be disposed of within 6 months. There is no second appeal. The first class magistrate will periodically inspect these courts and send reports to the District and Sessions Judge. District Judge will have the power to remove a local magistrate after due enquiry. District judge can also transfer cases. The Junior Civil Judge will have the power to enforce the verdicts of lower courts. High Court will have the power to frame rules for conduct of the local courts' business.

15. Such a model also has several great advantages, apart from speedy, accessible justice to ordinary citizens. First, the number of judges can be significantly enhanced in a short span of time. All it needs is a state-level legislation. About 30,000 local courts can be established through this simple, practical, flexible method all over India, thus almost quadrupling the number of magistrates in the country. Second, this can be accomplished at a very low cost less than Rs.600 crore per year for the whole country. In a major state this expenditure will be of the order of Rs 50 crore per year. Costs can be controlled because there will be no permanent establishment, nor is there need for vast physical infrastructure involving huge capital investment. Third, most simple cases affecting ordinary citizens can be handled by these courts in a short span, dramatically reducing pendency by almost 9 million cases an year. This will enhance public confidence in the justice system, and many more cases which are now settled by private squads for a price using coercion and violence will come before courts. Justice will be a reality for the poor citizens. Finally, it will be fully integrated with the existing judiciary, and there will be no dislocation or dilution of judicial independence or integrity. Lawyers can represent clients, and the interest of the general public, legal profession, litigants and lawyers are fully protected.

16. Formation of new local courts is ordinarily within the jurisdiction of states, and falls partly within item 65 of List II in the Seventh Schedule. However, such laws also have the effect of amending several procedural laws and other matters which fall under items 2, 12, 13 and 46 of List III in the Seventh Schedule. That is why such Bills are invariably sent to the President for his assent under Article 200 of the Constitution. Therefore, the subject squarely falls in List II (Concurrent List), and it would be appropriate if parliament makes a law which is applicable to all states and Union Territories. Also, the Supreme Court held that speedy justice is within the ambit of right to life and personal liberty guaranteed in Article 21, of the Constitution. It is also a right duly recognized in many international covenants. Therefore, Parliament is fully empowered to give effect to this fundamental right.

17. The Supreme Court, in the All India Judges Association case (March 2003; citation: 2002 SOL Case No. 204) held as follows:

"Under the circumstances, we feel it is our constitutional obligation to ensure that the backlog of the cases is decreased and efforts are made to increase the disposal of cases. Apart from the steps which may be necessary for increasing the efficiency of the judicial officers, we are of the opinion that time has now come for protecting one of the pillars of the Constitution, namely, the judicial system, by directing increase, in the first instance, in the judge strength from the existing ratio of 10.5 or 13 per 10 lakhs people to 50 judges for 10 lakh people. We are conscious of the fact that overnight these vacancies cannot be filled. In order to have additional judges, not only the posts will have to be created but infrastructure required in the form of additional court rooms, buildings, staff, etc., would also have to be made available. We are also aware of the fact that a large number of vacancies as of today from amongst the sanctioned strength remain to be filled. We, therefore, first direct that the existing vacancies in the subordinate courts at all levels should be filled, if possible, latest by 31st March, 2003, in all the states. The increase in the judge strength to 50 judges per 10 lakh people should be effected and implemented with the filling up of the posts in a phased manner to be determined and directed by the Union Ministry of Law, but this process should be completed and the increased vacancies and posts filled within a period of five years from today. Perhaps increasing the judge strength by 10 per 10 lakh people every year could be one of the methods which may be adopted thereby completing the first stage within five years before embarking on further increase if necessary."

If local courts are appointed at the rate of one per 25,000 in rural areas, and one per 50,000 in urban areas, we will have about 40,000 new mobile magistrates accessible to people at the local level, providing justice at the door-step, following simple, easy and citizen-friendly procedures, and ensuring all these at a very low cost, which can be recovered in multiples by imposition of even a small court fee. The presence of lawyers, effective mechanisms for monitoring and accountability, and provision for appeal, guarantee fairness in the process and real justice to the poor. The whole Local Courts system will be an integral part of the independent judiciary, and fully controlled by the judiciary. This ensures strict separation of

powers as envisaged in the Constitution, and effective supervision and control by the judiciary.

18. A free society cannot exist without accessible systems of justice. Indian judiciary and legal profession have set high standards of excellence. But the bulk of the people are beyond the pale of our justice system. We need to restore public confidence in our legal system, and ensure peace, order and harmony in society. Many reforms are required to provide speedy, accessible and efficient justice. One simple, low-cost, effective, painless solution is the institution of local courts presided by honorary magistrates following summary procedures. It is not sufficient to address the monumental crisis facing our judiciary, but is a necessary first step in that direction.

Dr. Jayaprakash Narayan

* * *