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Reforming Police and Judiciary

PART I - POLICE

22.1 Reforming police department

- A person in the hands of police is like a bird in the cage. He is terrified that he may be held guilty and booked for a crime committed by someone else or a crime not having been committed at all. The crooked use of insurmountable powers and authority bestowed on the police make him think so. Unfortunately most of our police staff over the years has become heartless and immune to human sufferings.

The basic purpose of police is to provide law and order, besides safety and security to the people. They must lend a humble face to hear our problems and provide us comfort. We have seen this attitude in the police of US. UK police is even nick-named as “bobby” for their honesty. They are very strict yet polite and helpful. One can depend on them and confide in them.

Now our police supports the criminals, and are themselves involved in many perverse and criminal activities. The police-criminal nexus is long-known. Many of the crimes are committed at their behest or where they are themselves involved, directly or indirectly. In the name of “encounter with criminals,” they may kill anyone they like. In the name of crime, they can apprehend anyone they may want and take revenge or torture him to any extent, even kill him (custodial death). There are hair-raising stories of their crimes committed in connivance with criminals. Some of these are reported by media, some are shown on TV, yet many more go un-noticed. They are capable of closing down the pending cases to favour someone or open up new ones to harass someone. They can apprehend anyone and do what they want. Most of them have indeed become brutal by their deeds and have shed all human feelings and considerations for the common man, who is even afraid of approaching them for any help or protection. At first sight he may be harassed. To do menial routine jobs they may extract large sums of money. Over the

years it has largely become an agency to support and protect criminals and harass the common man.

- We have tried to analyse this highly derogatory and negative attitude of our police force and criminalisation of this service department. We find that they too are an organ of the same system and have imbibed in them the same habits as they have seen in the system. The attitude and behaviour of this department too is a reflection of our insensitive political system and its stone-faced bureaucracy. We are of strong conviction that once our system is set to order, the Police will automatically become a gentle force with caring and helping attitude towards the common man. **We would like to emphatically say that all human beings are noble and conscientious to their duties and obligations. Circumstances and conditions of working may make them indifferent (in the context of police personnel).**

Kicking, licking, bashing and abusing are parts of their illiteracy and training. The lower cadre police personnel are usually less educated. They are not taught humility, human behaviour and human affections. Lack of education and training reflects in their behaviour and attitude. Their immunity from being questioned or punished for any wrong doings also make them fearless and arrogant. They are also allured to adopting to easy ways of earnings and deceitful attitude towards public. The beat constables with the might of their whip treat the roadside vendors, kiosk or *rehri* vendors, rickshaw pullers and beggars like the king soldiers to the serfs, in spite of collecting "daily" or "weekly" booties from them as their authoritative right.

- By a closer study we understand that before independence the requirement of police was different from now. The functions of police force then were largely to abate the movement of struggle for freedom. They thus had to cope with conflicting nature of their duties (apprehending freedom fighters rather than criminals). The freedom fighters would raise voice against the British rule and the police would abate it using indiscriminate force. Their behaviour with the public then had a different purpose than now. While their obligations and requirements have changed, their attitudes and behaviour towards the general public have not. **Their training has lacked purpose and aiding sense of duties. There is a line of demarcation that exists even today between the police and the public. There is a general lack of trust and amity for each other.**

For this to transform, education is first and foremost and then a training in humanity, human behaviour and understanding. They must be taught not to wield whip rather display a countenance of politeness and dignity to build confidence and trust amongst the people. Let's not forget a child is as much loved and cared for by his mother as much he is scared of her for his wrong doings. Such an instinct we must inculcate in our police force also.

- To cultivate better humane traits in them it is essential that we discard the old British style of lodging them in barracks or tents away from their families. This is inhuman. They should also lead a normal family life like others. Otherwise this is a criminal discrimination. Let them also enjoy regular office timings or shifts, except during urgencies and emergencies. The case of defence personnel who are at the borders or in the battlefield is different, who perforce have to stay away from their families. But not the police personnel. Where we can, we must provide decent living conditions to our police personnel also.

Our philosophy will be to make them counsellors rather than police. The police is required to curb the crime and apprehend the culprit not an innocent for his silly mistakes. Ignorance is no excuse but an ignorant can also be taught rather than be punished for his unintentional (even intentional) silly errors sometimes (cases of cine-stars Sanjay Dutt and Salman Khan are in sight). We would still like to counsel one with politeness and care, depending upon the kind of violation he may have committed. Police must be a terror for the criminals and law breakers who must be afraid of them while general public must feel protected. We can play strict once our message is disseminated to all. After all we are made for each other and an attitude of "your welfare is ours" should not remain a mere slogan. People will also change and mend their ways quickly. If they don't then, there must be something wrong in our attitudes or handling. We shall give yet another chance to everyone to mend his ways. Remember we must "conquer a bad man by good deeds." We are sure it will work. Short cut methods, arrogance in attitude or indifference in behaviour will take us nowhere. We shall like to make such attitudes and behaviour a culture of the past. It shall enable us to emerge as a much more decent, understanding and nation-loving race, willing to do whatever is good and in the interest of all. One day our unglorified post-independence era will sink into oblivion and a new sun will rise whose kindly light will lead us out of the present gloom and show us the right path.

PART II - JUDICIARY

Our judiciary is blindfolded for a victim and a seat of immunity for a culprit from where he goes scot-free and commits more crimes.

‘Judiciary must remove the blindfold to see the truth and deliver justice.’

22.2 Reforming judicial system

- The judicial system of a country is the supreme authority to provide relief to the aggrieved and punish the guilty. Quicker the relief, judicious the justice. How this philosophy can be honestly practised is a matter of discipline that the judicial system alone must determine before conducting justice. **It must project itself as an institution of confidence, relief to the aggrieved and fear to the guilty.**

Today most people feel that they have no protectors in their political system, bureaucracy, police and even judiciary. The police does not protect the public and neither does the judiciary. There are innumerable dates and delays that itself undermines the judicial prudence. There is no surety that someone is not influencing the police, the lawyers or the judicial authorities. Documents may be changed or tampered with, important ones may be lost, evidences may be destroyed, witnesses may be bought and alibis created to influence the verdict. The might may become right and the weak may be denied justice. Where can one go in a society thus created, is a matter of serious concern? **More than any- one else, the judicial system itself must do an introspection to redress its shortcomings and regain its dignity and honour.**

- A person is not necessarily dishonest or criminal by nature (Section 7.5), he may become so under certain living and working conditions and the treatment meted out to him by the society. Under such circumstances punishment alone is no solution to addressing the evils in a person. We must address evils that give rise to such tendencies. The law must have the wisdom and insight to see these causes and address them, rather than limiting itself to punishing the guilty [demolition and sealing operations in Delhi {(Section 22.3 III(I-VI))}. This will be constructive justice and shall build up a strong society. While the aggrieved must get relief, the guilty must be punished with a humanitarian approach. **Once we are able to build a strong nation with means of respectable living for all, the criminal**

tendencies shall recede on their own and the number of cases will get reduced to a trickle.

22.3 Baffling judicial verdicts

Too much harassment and too little justice (6%).

(I) LACK OF EVIDENCES

- Looking at several court verdicts against our worthy leaders and bureaucrats or their near and dear ones involved in scams or corruption cases, we find that most get acquitted on one ground or the other. Public can see it but judiciary does not, while the wealth of the country is being plundered with both hands by the polity and the bureaucracy. Everybody is watching, print media is reporting, radio and TV is broadcasting, yet in the eyes of law no one is corrupt, and even if he is, the evidences are lacking. This is no justice! Justice by itself cannot be present at the place of crime to become an evidence. If it is so, this requirement of law will seldom be fulfilled, the crimes will be committed but the culprits will hardly be booked. Many influential culprits and their accomplices are acquitted, while a common man is usually harassed. This kind of judicial system is meaningless. **This has belittled the sanctity and purpose of our judicial system. The conviction rate of merely 6% tells its tale. And majority of this 6% may also be those who have no political support or financial back-up to defend themselves.** Some of them may be innocent and booked to fudge up the records.
- **It is incumbent for judiciary to find out the real culprits, otherwise justice shall remain incomplete and evasive. Crimes will be committed and the culprits will not be punished. It has been encouraging crimes in our society, which is a very serious matter and must be prevented at all costs.** Our judiciary has slackened to discharge this basic obligation, that is incumbent on it as part of a natural course of justice. What is conspicuous must prevail and judiciary must see it with an open mind. The half-cocked and incomplete judgements put to question the propriety of the police and the CBI and undermine the judicial verdict itself. Summing up ;
 - Our police is cruel and judiciary is blind.
 - It lacks the will to identify the culprit and sometimes deliberately.
 - It is so much dependent on foolproof evidences that even knowing the culprits it is forced to let them go free in absence of such proofs.

This requirement also instigates the police and the CBI to deliberately leave out some lacunae to favour a culprit escape justice.

Take the Mattoo¹ murder case, Jain Hawala case and Jessica Lal² murder case. All culprits were acquitted on one ground or the other (while cine-star Sanjay Dutt and Salman Khan must be punished because they are common men irrespective of their status or affluence). This way no one shall ever be convicted and the judicial system will become a mockery and an official agency to acquit the high-ups in the system and their near and dear ones. Why can't our judiciary go by logic and circumstantial evidences or even apply modern techniques to compel the culprits tell the truth, besides using lie detector, checking their bank accounts, living standards and many such methods. Now even such drugs are available that can render a culprit tell the truth like narco analysis test, polygraphic tests and brain mapping etc.

Let's not forget that most crimes are committed in a clandestine manner and would lack evidence. If the judiciary keeps on harping for evidences, it would be masking the truth. Neither the evidences that would satisfy the judiciary would be produced nor the culprits would ever be booked. **Such a judicial acquittal is an abuse to justice and is also harmful for the society because it sends out wrong signals and encourages criminal attitudes and perverse activities. Such a judicial verdict is unbecoming and pollutes the civilized societies. Whatever prudence such a verdict may convey, this itself is bad in law. It sends out a wilful message "commit a crime and leave no evidence or get it destroyed."** Encouraged by this culprits in the system and in private lives now boastfully proclaim that merely framing charges or accusing them of a crime does not make them criminals unless it is proved in the court of law. And in judiciary **"they have full faith."**

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1. The case was reopened on a public outcry and the accused is now convicted with a death penalty by the High Court on 30th Oct. 2006.
 2. Similarly Jessica Lal murder accused Manu Sharma is also convicted with a life term on 20th Dec. 2006

Incongruous justice with Salman Khan (April 2006)

Most poachers and smugglers of wild life who have been poaching lions and other rare species of wild life over the years remain out of reach of the police and the judiciary. Seemingly because of their nexus with the forest staff and people in the system. But Salman having no such nexus is thrashed with 5 years rigorous imprisonment to set an example for others.

Those who can destroy evidences, buy alibis and tell lies on oath of *Gita* are acquitted from all indictments however heinous the crime may be, rape, murder or extortion. Some of such let free may even practise law in the same courts of law and do a roaring practice protecting their criminal clients (Mattoo's rape and murder accused Santosh Kumar Singh³ son of J.P. Singh, senior Delhi Police Officer, is now a practising lawyer).

But those without criminal mind and with novice character incapable to act in this manner must be punished rigorously. Salman is, therefore, a criminal and must be punished because he was incapable of destroying the evidences or manipulating the eyewitnesses.

This is a very unfortunate verdict of our country reflecting at the insensitive and callous mindset of our judicial system that refuses to distinguish between a criminal and a novice.

Collecting evidences through Sting Operations (2005)

Video cameras recorded MPs accepting bribes for asking questions in parliament on behalf of private parties and individuals. Similarly fixing commissions on MPs Area Development Funds. Now there is a debate whether collecting evidences in this manner is legal?

When most crimes are committed in clandestine manner, their evidences too can be collected only in a clandestine manner. It seems to be the only logical way to satisfy the demands of law and book the culprit. To apprehend a culprit in this manner should be no violation of privacy law. The operation is not for personal harassment neither an indulgence in his private affairs. **Surely a crime cannot be a private affair.** Private detective agencies operating in thousands in the country also collect evidences for their clients in this manner which is not possible in the normal course.

3. Since convicted with a death penalty.

Similarly there should be no resentment in tapping of phones if it is to collect some evidence against a crime. Or let the judiciary define how to collect evidences for crimes committed in clandestine to satisfy this requirement of law. The purpose is to punish the culprit than letting him go scot-free in the absence of such evidences. VIPs and other higher-ups who indulge in crimes must be brought to book and punished in full view of the public rather than letting them go free to distribute sweets at home and celebrate with fire works. It is outrageous that crimes committed in full view of a large audience also go unpunished - Jessica Lall murder case is in immediate sight (Feb., 2006). **That shows what we consider a seat of justice in fact, is a seat of supporting crimes and we may not get an honourable justice there. It is unfortunate for a country to have established such a heinous facet of law.**

- **Recorded eyewitnesses turn hostile at the end denying to having seen the crime because the law accepts their lies on the oath of *Gita*. Similarly police submits frivolous and fraudulent reports because judiciary accepts that also. This means our judiciary is weak, helpless and incapable of delivering a prudent justice. Sometimes even deliberately disregarding the natural justice. In Jessica Lall murder case, Delhi additional and session judge S.L. Bhayana has even audaciously gone to the extent of giving his verdict as if no one was watching, that the main accused Manu Sharma S/o Haryana Minister Vinod Sharma, and Vikas Yadav S/o Rajya Sabha MP D.P. Yadav had been wrongfully framed by the police. The conspicuous judgment even jeers at the crime acquittals shown in Indian cinema.**

Why not the judiciary punishes there and then all those who indulge in telling lies, turn hostile, deny their earlier statements, even police, CBI or anybody who presents half-cocked or concocted reports. But what can one do when the saviour himself is the brute in the guise of law.

- In case of Mattoo murder case, even the judge confessed that he knew the culprit but for want of evidence he could not deliver justice. We perhaps remember the stabbing case a few years ago, of a senior judge during a trial before a nine member Supreme Court bench. But once again for want of evidence or some such reason the case became a mockery of justice and was widely

publicised. It is an absurdity of our judicial system, so much so that even if the murder weapon is not found, murder is not proved.

- **Similarly in the Jain Hawala case, where everything was so obvious, yet everybody was acquitted and most of them distributed sweets and exploded crackers at home, which the media reported and TV showed. Well, irrespective of the findings of judiciary, innocence of our system or the people involved in it, dilapidated condition of the nation and highly miserable condition of its 68% masses speak louder than witness the tales of swindling of nation's wealth in the last 60 years. Should not this be enough circumstantial evidence against our guardians for a prudent judicial verdict?**

Our judicial system is ill-equipped and weak. If they want they can always take police, CBI or other investigating agencies to task for hiding the facts or producing incomplete or concocted reports. But in our system there is no practice to question or pull up a non-performer. What is the incumbency of police, CBI or such agencies in proving their findings before the law? If they are incapable to do so, or if their findings are not complete, why produce a case to be closed and thus undermine their own working and competence? Under these circumstances their existence is redundant and judiciary should take cognisance of it. After all, public money is spent on them. Judiciary can also avail of the services of private detectives and investigative agencies to arrange for the evidences. But it should not allow a case to be closed for lack of evidences otherwise it will not be justice, rather an insult to it. They must continue investigations with conviction until the case is fully settled and culprits are brought to book. That alone is true justice, anything short of this is an eye wash and fooling the people.

(II) SUPREME COURT DIRECTING THE GOVERNMENTS

- The Supreme Court directed the state and the central governments to resign and go (August 30, 2000), if they were unable to run the country and maintain law and order (in connection with Veerappan, the notorious sandalwood smuggler). The Supreme Court directing the governments to act or quit has happened for the first time, endorsing the incompetence and redundancy of our governing system illustrated in this book. Veerappan was ultimately killed in an encounter in 2004.

(III) JUDICIAL INSENSITIVITY TOWARDS HUMAN SUFFERINGS

(i) Removing of diesel buses

The Supreme Court's concern about the city pollution was indeed praiseworthy. Their authority in the recent past has come as a pleasant surprise. Their instructing and passing strictures against our mighty governments and bureaucracies has rarely happened in the past. But then to our dismay we soon realised that it was merely a display of judicial powers vs. legislature and executive. Once again, in their pursuit to display their might, the judiciary acted in a haste unmindful of the harm it was causing to the common man who was already voiceless and meek. Earlier, they closed down industries in Delhi without having made alternative arrangement for their rehabilitation, then they removed the old buses from the roads to be replaced by CNG (Compressed Natural Gas) buses - while the new buses were nowhere in sight, on the plea that the Delhi government had failed to discharge its obligations for two years. **If Delhi government had failed, punish them why the poor commuters or the bus owners!**

We can therefore say that the level of high-handedness, power and authority that our polity, bureaucracy and seeing them the police and the judiciary have acquired, has made them callous, irrational and immune to human sufferings.

(ii) CNG filling

The decision which should have been taken by the government was taken by the judiciary. An act of proving as to who is mightier than the other. While the controversy on the choice of gas continued the CNG auto-rickshaws, taxis and buses lined up up to several kilometres on roads outside the filling stations for 8 to 24 hours a day to get fuel, blocking the roads and causing traffic hazards. The filling stations were far too less in numbers than the vehicles (2002). The families of the drivers got disturbed, their earnings dwindled, many times the drivers won't reach home or leave early as they began queuing up from early hours of the morning (2-3 am). The whole scenario was that of chaos. What will one call such a governance and judiciary? None of them capable of taking a prudent decision, resulting in each blaming the other besides inconvenience to many and loss of earning to some. Judiciary's acting in this manner is a reflection of the unlimited power of bureaucracy and its over-whelming influence on other services.

Commuters went without buses and a few buses that were left on roads clamoured for CNG. Then we heard there were explosions and

fires in these buses because the conversion of fuel injection system was done locally without checking its safety. There are reports of fires at petrol pumps also, many of them located in busy markets or adjoining residential colonies. Some such fires can be catastrophic.

(iii) Closing polluting industries in Delhi (2000)

- Uprooting a running industry or closing it down in a huff in the name of pollution is not only ill conceived, it is criminal. It tantamounts to human rights violation (in this case right to livelihood). It is a different matter that our judiciary too has now become equally callous and insensitive to human sufferings. They are now the directing authority to the government to make such sordid episodes happen officially and then watch them like mute spectators.

What is the difference between this act of high-handedness of judiciary, governance and the police against the helpless and weak small factory owners and the *goondaism* we watch in Indian cinema – where the musclemen of an underworld rape women and kill men of a colony before torching the whole colony to acquire forcible possession of the land? And now we watch it happen in reality committed by our own system before our own eyes. Such barbaric acts by the government staff apropos of the judicial orders in a democratic society must be unique of its kind in the whole world. And ours is the largest democracy on earth! It is no exaggeration if we call them vultures hungry of human blood. It puts to shame the brutality of Nadir Shah or Timur Lane inflicted on our unarmed and helpless people. This act of polity, bureaucracy and the judiciary has killed our already feeble industries. The haste with which the pollution in Delhi is controlled is beyond comprehension.

Many industries were ruined, many who tried to shift to other places and had constraints of time and money failed. Those few who could survive went sick because by then they had lost their base and found it difficult to re-establish at a new place. But once again in connivance with the local authorities (police and corporation) many continued where they were. The government seals stayed intact, entrepreneurs having made another entrance. These units have somehow survived. The government is trying to develop a new industrial area for these industries at Bawana (Delhi) that may be ready in the next few years but surely not for these entrepreneurs who by then would have long closed down or shifted elsewhere. And surely so due to delays and

lack of infrastructure and basic facilities hardly a few have shifted there to be closed down sooner than later (Delhi Newsline, Jan. 2004). In destroying industries our so called guardians are no less than some alien invaders. But when it comes to constructive working they play nincompoops.

- In the first place, one organ (police and corporation) of the same government allows wrong things to happen for a consideration and then it continues for years and becomes a practice. Even a law-abiding citizen bathes in the same stream and then one fine morning the judiciary wakes up to a PIL (Public Interest Litigation) and plays Nadir Shah, while the police and the MCD bulldozers do the rest. The police and the same MCD officials who had been collecting the protection money from the industries until the other day, now demolish the same industries with zest and vengeance. Everybody is happy and admires the stringent judgement against such polluting units, contaminating the environment for years and praises the authority and might of the judiciary, polity and the bureaucracy, while the callous and corrupt government officials and police, who allowed them to operate earlier and made a fortune in the process go home scot free and enjoy with their families. Question arises what is the incumbency of the government, MCD, police and the vigilance departments ! **What were they doing earlier? For the laxity on the part of government or its machinery, the judiciary must punish them rather than the helpless entrepreneurs and their employees!**
- Why could not this noble act be carried out in a dignified manner? Are the industrialists sheep and goats that one can herd them like animals? Hitler did something similar and the whole world curses him even today. Even cruelty against animals is a stigma and a disgrace for a sensitive society, ask Menakaji. But our system has no feeling or sensitivity for its subjects. **Can an insulted, disgruntled and oppressed society progress under such conditions? Look closely and you will see only contempt and disgrace for the educated and the elite class that our polity, bureaucracy and now judiciary carry for them. Because they are in gross minority and do not affect the vote bank they are of little significance for the entire government machinery.** And then, the jubilation such acts induce amongst the weaker sections of the society – the illiterates, and the poor against the elite and the rich. In fact this helps the polity and the bureaucracy to create a divide between the two, strengthen their own position and grow more powerful. If the country goes to dumps so it be.

- If the unauthorised industries could run as authorised with the connivance of the government officials for so many years, they could run for a little more while until at least arrangements for their rehabilitation were complete. Why such haste and this barbarity? **Heavens had not fallen by delaying it for a while. Therefore we emphatically say that our system is callous and barbaric in attitude and parasitic in character and immune to human sufferings. They are good only in destruction and in keeping a check and control over us. They are incapable of doing any constructive work. Our system is a disease, the quicker we demolish it, the faster we can regain our health and construct a healthy nation for ourselves.** Let those in power beware of the oppressed. One day they will wake up and break all shackles of self-inflicted timidity and cowardice for their true liberation.
- Media talked of the workers who were thrown jobless but they did not talk of the entrepreneurs, the small industry owners as if they were non-entities and immune from all hardships. Imagine they are always considered irrelevant and insignificant by our society even by our media who at least should be above such bondage and partisan feelings. All this is culmination of a partisan, and “divide and rule” policy that has set deep into our national fabric.

It is shame to be a slave citizen of the largest democracy on earth.

(iv) Demolition of unauthorised constructions

- This is a regular feature of our metropolises and overgrown cities. We have been witnessing this for decades. We make a road and petty vendors will quickly occupy its sides and corners. Initially when they start encroaching the pavements or roadsides there is no check on them, even though there is police patrolling. Same is the situation with the bus and truck operators. They also make use of wide roads for parking. When they begin, surely for some consideration, it is a trickle and no one objects. And then gradually the place turns into a full-fledged parking lot, so much so that even roadside *dhabas* also mushroom for their rest, entertainment and food. And so also mushroom *jhuggi-jhoparpatti* clusters and other unauthorised constructions at every nook and corner and available open space. Taking advantage, the landlords, businesshouses and industries also add up some illegal constructions to their existing buildings in connivance with local authorities. Some such constructions are

legalised also by the staff with manipulation in the corporation records. And then one fine morning High Court on a PIL orders demolition of all encroachments and unauthorised constructions waking up the concerned politicians and the bureaucrats from their long siesta and start city cleansing with cruelty and vengeance. In Delhi it happens very often like invasions of barbaric invaders during the medieval period. When they come to action they are no less than Nadir Shah or Timur Lane. Remember the emergency of 1977, demolishing houses and shops in the name of unauthorised constructions, and uprooting of industries in 2000 in the name of pollution. But do they have a solution to stop it from happening in the first place. **Killing is no solution to over- population while control of birth is. But is there someone in the system to understand this?**

Judiciary doing the job of the government.

(v) Demolition of jhuggi-jhoparpatti clusters

Mushrooming of such clusters and encroachment of vacant spaces is a routine feature in cities because of heavy infiltration of people from nearby villages and a regularly rising floating population. Initially this is allowed for a consideration by the local police, the civic authorities and also the local politicians (who like to turn such clusters into a vote bank). One day the same clusters become a nuisance and local civic authorities demolish the same. Whenever such a drive starts, there is serious resentment and anger amongst those dislodged. It is a different matter that most uprooted soon find an alternative place and quite likely in the shape of a regular colony allotted by the government as a gift of appeasement. One can witness such colonies in thousands in any city at short distances from all regular colonies, shopping centres, railway tracks, construction sites and industrial areas. Despite such cleansing operations over the years the number of such colonies is rising and general condition of the cities is getting more crammed, filthier and foul, and the poor quality of life never improves.

The question is, where is the local administration and what is its role? Why are such things allowed to spring up in the first place? What do they do when such illegal constructions or encroachments begin to take shape? **Now you decide who to**

be punished – the *jhuggi* dwellers, poor vendors and the truck operators or those who allow them to commit a crime in the first place and enrich themselves in the process, or the government who turn a blind eye to all this and prove incapable of monitoring and controlling their own incompetent and corrupt staff.

A legal verdict that ignores the ground realities and is insensitive to people's sufferings is biased and lacks prudence. It is cruelty rather than justice.

In any case, it is painful to bulldoze a habitation or demolish a construction. It should be discouraged right at the start rather than be allowed to spring up into full-fledged colonies to be demolished one day. The evil should be nipped right in the bud. The judiciary must punish first the local administration, the police and the civic authorities who fail in their duties. The system must then set their house in order to avoid such bizarre and painful episodes to occur in future. **When we shout for cruelty against animals and express so much concern for a monkey, bear or a snake, then what should we call this inhuman act of our high-headed authorities against human beings? Menakaji, do you have a feel for the human sufferings also?**

- I remember when I had a factory at Noida, lot of such encroachments would spring up around my factory. I would discourage them through my staff. But one individual cannot stop it. It is the duty of the local administration to patrol the area on a regular basis and be vigilant to such encroachments, unauthorised constructions, or parking of vehicles on road sides. I went to Noida authorities and met some officers there. The curt reply was "You got a factory, but where will these poor people go." Good to know their concern for the poor! But if that was so why didn't the authorities officially sell that open land also and earmark that for the poor section of the society. And Lo! the same authority, one day bulldozes and demolishes the same unauthorised colonies and constructions to the pains of the very same people! Under these conditions and circumstances, the disease remains and gets more acute while the demolition (which is more a curse than a solution) may treat the symptom temporarily, to the grief of many and advantage of some. We will like to tell the readers for their curiosity that hundreds of *jhuggis* have since sprung up in and around that authorised industrial area and thousands of rural migrants dwell there making it impossible for the poor authorised industries to operate. Many industries are closed and many are compelled to shift from these authorised

industrial areas, the *jhuggi* clusters presumably having long been authorised.

When shall the judicial system punish the parasites in the system and its own?

(vi) Demolition of Delhi (Dec. 2005-06)

Yet again Delhi High Court order put MCD bulldozers to action on 17.12.05 to demolish in the shivering cold all that was unauthorised even constructed on the behest and connivance of the corporation men themselves rendering the helpless residents and children homeless. But who shall punish those in the system and responsible for the unauthorised construction at the first place? For that matter even for the collapse of total civic system — drainage, water, power, sanitation, filth and stink of the city which is their basic responsibility and purpose of their existence. The people are woe betide to bear all the brunt of callousness and wrong-doings of the mighty system and its henchmen. While the sadistic system sits snug and immune from all encumbrances or blemishes, the helpless residents and their children rendered homeless shiver in the cold. In the eyes of law, common man alone is wrong and must be harassed and punished for his as well as the system's wrong-doings! **How shall one define this democratic freedom to the feudal slavery?**

Delhi falls under a seismic zone. Partial demolition of houses and buildings shall weaken the structure and render them incapable to withstand an earthquake even of a moderate magnitude and cause momentous catastrophe. Delhi being a highly congested city the casualties are bound to be severe. Under these circumstances it is catastrophic to venture out such a dreadful decision that may consume thousands of lives and destroy massive properties in the event of a probable earthquake. Not only this it may turn a habitation to ruins to give a look of a war-torn city.

In October 2006, the unauthorized shops and premises were sealed apropos of the Supreme Court order turning down the mercy petition of the aggrieved traders. An attempt to move the court by Delhi Government and some opposition parties to support the traders also proved futile.

Conclusion

The above has not happened for the first time. Earlier also we witnessed large-scale demolitions at Turkman Gate, Karol Bagh and many other

areas in 1975-77 killing many while some committed suicide. Then it was at the behest of late Sanjay Gandhi and Jagmohan the then Vice-Chairman, DDA. People may want to know if there was any follow-up action by the government or the judiciary after such traumatic operations to prevent their painful recurrences? Their recurrences tantamount to a blatant failure of the system. It is incumbent on the part of the government and its different organs to maintain law and order and civic by-laws to thwart away any unauthorized activity in the city in the beginning itself. For an incapable and callous system not able to discharge these basic obligations with sincerity, the people cannot be harassed or punished? To punish only the common man and the traders in this fashion is barbaric and evasive of justice. Repeated happenings of this kind are blatant evidences of poor governance and their highly incapable and grossly corrupt staff. It also induces partisan thoughts and a divide between the system and the people.

As every demolition is a compliance of judicial orders, even judiciary cannot absolve itself from its responsibilities. Prudent justice would mean directives to perform to all in the system and punishment to those not capable to do so. Their verdicts in this respect are short of prudence as they ignore the circumstances of the incidence and let free those responsible for city planning, development and maintaining law and order and civic by-laws. Also the judgments ignore human sufferings.

Corollary

Look at the ever-rising footpath's daily and weekly bazaars in many colonies of a city — a menace to traffic and disturbance to residents. Who shall control this menace or will judiciary alone intervene on a PIL?

(vii) MCD's volte-face

MCD demolished habitations (2005-06) most of them constructed with their connivance and rendered families homeless in chilling winter because it was an act of sadism for the system and easy to execute. Unauthorised construction is surely not desirable but their destruction in this manner is equally barbaric particularly when many occupants even produced official approval for such constructions. **In any case construction and then destruction and recurrences of such events every few years is a nation's loss and a matter of ridicule for the world.** The same MCD admitted to the Supreme Court on 21.12.05 that they were incapable to clean Yamuna, a job assigned to them many years ago, while polluting Yamuna itself is a blatant failure of MCD only.

*What good a heartless, insensitive and incapable system can do to the people?
They are our woes!*

Judicial supremacy

One can notice the changing trend — judiciary directing the governments and local bodies under government control, what they should do. One can witness the gradual redundancy of our governing system. If it is more effective to run the country in this manner it may be a good idea to bestow the total authority unto judiciary to administer the country and let the present governing system simply abide by the instructions delivered to them by the judiciary. Judiciary can then pull up the government for non-performance either on their own or on a PIL.

22.4 Delayed justice

- In 1995, 30% of the prisoners were undertrials (18 lac in 2001), some waiting for a trial for more than 5-10 years. There were 2.5 lac of them in jails (*India Today* August 27, 2001) and no charges were framed against them. Many of them may be innocents and apprehended by the police to close a file or prove their (police) bravery. There is no check or control on such victimisations. The high-handedness of the police is long known, but the law is also blind. Their lives and families are ruined. They are meek and poor and are ignored like stray cattle. They have no means to fight a legal battle. Many of them die custodial deaths. Seeing their plight one may shed tears on our (jailed) freedom. No wonder their dependents turn hostile and resort to criminal activities to earn a living or take a revenge.
- Look at the catastrophe the delay in justice can cause. Remember Maulana Masood Azhar, who was lodged in J&K jail in 1994 and, before he could be convicted, was released along with his accomplices under a package deal in exchange of our crew and passengers on Indian Airlines flight IC 814 that was hijacked to Kandhar on December 31, 1999. He was the brain behind the attack on parliament on December 13, 2001, killing about 30 security and other persons. If they had succeeded in their mission it could have been a big catastrophe. Now we are asking Pakistan to hand over the same very culprit again to us (he was in their custody in those days). But are we sure we shall be able to convict him!

Table 22.1
Cases pending in various courts (2001–2004)

	Subordinate Courts	High Courts	Supreme Courts
2001	2.35 cr ^a	34 lac ^b	21,000 ^b
2004	>2.53 cr ^c	32.24 lac ^c	29,315 ^c

- a. Of these >70% are rural litigations [of this about 40% are related to government only as one party]. The pending cases keep rising as more than 10 lac cases add every year.
- b. Based on : *India Today*, January 29, 2001
- c. Based on : *Tribune*, November 13, 2005

IMPEDIMENTS :

A. Recording of evidences is the biggest bottleneck

- i) Lower Courts take about 3-5 years.
- ii) High Courts take about 5-15 years just to record evidences.
- iii) Supreme Court takes much less.

B. **To settle a simple litigation case takes about 20 years. Real estate and land dispute cases may take longer.**

C. The conviction rate is only 6%.

The above is a blot on our judicial system and a major cause of generating more cases. Most litigation cases are generated because of delayed justice only, as the guilty knows for sure, that for his wrong doing, even if the aggrieved party takes a legal recourse, the judicial system shall be sluggish and long- drawn to deliver any justice to him and until then he can continue his abuses. It is also possible that during this period he (the guilty) could manipulate the verdict in his favour or the aggrieved may not be living until then.

- Delayed justice and corrupt practices in our judicial system seem to have generated criminal attitudes amongst the common man. The delays induce perverse tendencies in a person. This is a highly unbecoming facet of our judicial system. Hence we say "justice delayed is justice denied."
- So long as the people are deprived of timely justice the judicial system of any place cannot be called a seat of justice. The conditions in our country are such that justice is normally denied. The reason as we see, is a lack of will and urgency to expedite the work judiciously. **To say buildings are inadequate, court rooms are few or the judges are less or their staff is short or whatever, are flimsy excuses to**

cover up the incompetence of the judicial system. When simple litigation cases which can be adjudicated in one or two hearings are prolonged over years, any number of judges or any number of court rooms shall fall short and will not mitigate the situation. Cure it where it is ailing, treating the symptoms shall never help. With the speed slower than a snail's, our judicial system too is polluted with corruption and manipulations. Judgements can be influenced for a consideration. The lawyer-judge or a plaintiff/defendant – judge nexus is in common knowledge.

It is typical of our polity and bureaucracy who have never defined the duties, responsibilities and obligations of their own system. They lack the principles of discipline and work culture and overlook their own work performance. Under such circumstances the judiciary couldn't stay immune!

Judicial woes

Our Ministry of Law and Justice was once headed by the most learned and highly respected person of law, Mr Arun Jaitley, intermittently between (1999-2004). But ironically, judiciary has shown no sign of improvement despite being headed by a person of his stature and calibre. Our system is such a haggard that a few good, knowledgeable and scrupulous persons also play dwarfs before a system that refuses to perform.

22.5 Premises of justice

Lawyers can be seen sitting on rickety tables and chairs in ramshackled sheds outside the court rooms. Many even work in the open stalls as the courts have provided no roof for them. The clients also cluster around awkwardly. This is the condition of most courts in India. What to talk of other courts in other parts of the country, visit *Tis Hazari* (Delhi) to get a feel. I still remember one of my very close relations, a very renowned advocate of Delhi having a palatial house used to sit in the open and sometimes in absence of a chair on his own trunk of files. This was many years ago and I used to wonder how a person used to such a luxury could operate his office in such shambles. Things have changed a lot since then but not the conditions. A lot of tiny and clumsy barracks like rows of hutments in a resettlement colony, have now sprung up for the lawyers but many more still sit and operate in the same awkward style as before. Anything done with a lack of imagination and application of mind will result in this. Such sights are very common in our country and particularly when it relates to our system of

governance and its various organs. But this does not surprise us. What surprises us, is that we are still able to work, irrespective of the fact that it takes a person 5 to 7 minutes during peak hours to reach the court room on the second or third floor from the ground floor through staircase (as there are only a few lifts). The crowds in corridors, compounds and staircases easily out-beat the unruly crowds at the busiest shopping centres.

22.6 Bringing reforms

- We must identify the causes that provide means to a culprit or accused or his lawyer to adopt delay-tactics.
- Let some time-frame be prescribed for recording evidences (arguments and counter arguments). The practice of asking for dates and the same being liberally granted by the court has to be stopped. Let this become a part of discipline and a prudent justice procedure. Discipline and honesty to work are the key words to deliver good justice. For example “adjournment” on grounds of health is mostly a concocted reason. Such lame deterrents in the way of justice must be done away with. Let the case be decided on merits even if the defendant is not present, at least his lawyer is, who knows the case. **The latitude on health ground to grant “leave of absence” has given a phenomenal rise to false medical certificates and is an abuse to the law itself because it accepts lies.** In fact, such latitudes even make the medical profession corrupt and unscrupulous. It is also possible that sometimes this may be done under duress.
- Let justice be provided in just one or two hearings in simple cases! Both parties can be called and cross examined in the first hearing itself and case be decided there and then. **The judicial system itself is to blame for having framed long- drawn procedures.**
- Procedural laws (CPC (Civil Procedure Code), CrPC (Criminal Procedure Code)) need a review. CPC for example calls for a 4 stage procedure — pre-trial, trial, appellate and execution.
- There are innumerable, extraneous and redundant/irrelevant and dysfunctional statutes and laws. These can also be pruned. Today there are about 35,000 state-level statutes and 2500-3000 centre-level statutes which many of the judges and lawyers themselves may not be aware of.

- Redundant laws and unnecessary provisions can also be done away with, like right to appeals may be reviewed to make the process faster and less complicated.
- The backlog is so huge that it evokes little interest in the judges to expedite tricky cases. They know for sure, that whatever they do, such cases will not conclude during their tenure and have to be handled by other judges after them. It compels them to pile up such cases. It also means tackling of the easier cases first, tricky ones getting pushed into oblivion. This is one more reason besides lethargy of the judges to granting liberal dates on flimsy and concocted grounds. It can be made obligatory on the part of all judges to settle a few tricky and old cases during their tenure on day-to-day basis.
- We may lay more thrust on conciliation, mediation and arbitration through *lok adalats*, family courts and consumer courts etc. to expedite simpler and routine cases quickly to clear the backlog.
- Computerisation to cut down files, innumerable redundant papers, manual notings and recordings and more importantly avoid missing files and important papers.
- Most crimes are committed in a clandestine manner. To have an eyewitness in most cases is very difficult, even impossible. Even if one is found, he can turn hostile and deny at the last moment in the court because the court accepts his lies. Those who turn hostile can be tried for telling lies. **The cases may be decided on circumstantial evidences. Let the accused prove his innocence.** Otherwise no justice shall ever be delivered without an eyewitness. It is also possible that the eyewitnesses may be threatened or bought-over and may never be available. Judiciary cannot bury the cases simply on grounds of lack of evidences.
- To clear the present backlog, we can adopt the following ways, instead of adding more courts or more judges as that may not be the right solution. We don't need more buckets below the leaking roofs, rather we should be plugging the leaks. A simple way to tackle the present backlog can be to:

-Increase the number of public hours/day by two (to handle more cases)-[considering present annual useful working days as 200 with 8 hours/day working days] = saving of 2 hours/day

$$\text{No. of working days saved/year} = \frac{2 \times 200}{8} = 50 \text{ days (a)}$$

-Cut the summer vacations by (in the interest of the nation) = 30 days (b)

-Make every Saturday half or 2 Saturdays working every month.

$$\text{No. of working days saved/year} = 26 \text{ days (c)}$$

$$\text{Total working days saved/year (a+b+c)} = 106 \text{ days say } 100$$

Improving efficiency and discipline by the lawyers and their clients = by 20%

$$\therefore \text{Extra cases disposed/year} = \frac{200+100}{200} \times 1.2 = 1.8 \text{ times}$$

- When senior executives in a private firm can work over time, reach home late and forego holidays, our judiciary too can do this, to clear the backlog. It is in the nation's interest.
- We may also adopt a fast track approach to take up simple litigation cases which form the bulk of our backlog through the open courts, *lok adalats* and family courts etc. It would be possible to settle most of such backlog in just 2-3 years time, as in such cases help can also be sought from learned citizens in disposing of such cases on each court sitting. Even my colleagues and I have headed such courts and disposed of a few cases to the satisfaction of both parties. It is easy and people will be happy to accept it. It would be recommended if the lawyers themselves hold such courts and clear the backlog. That will be quicker and more prudent.
- After having the present backlog cleared we can define the likely time period and number of hearings that a case will demand for its disposal, barring intricate and criminal cases or cases demanding substantial investigations etc.

If we don't do this, we shall not be able to deliver justice as the cases will keep on piling (number of cases generating every day are far more than the number disposed of). **The problem cannot be tackled by additional courts or more judges alone.**

- Grooming and training : There are already judicial training and research institutes established in all states. These may be better-equipped to impart extensive training to the judicial staff to adopt scientific methods and use of electronic/computer systems to monitor and adjudicate the cases promptly and also to remain abreast with the judgements and activities of other courts.

If we do all this, the cost of getting justice will get reduced substantially and a common man can easily afford the same. For still weaker sections, open courts, family courts and *lok adalats* can do a lot to help and make justice easy and affordable. A prudent, conscientious, quick and complete judicial system shall restore the lost confidence and infuse a feeling of love and regard amongst the people of the land for their judicial system. It will also bring down the crime rate radically and so also reduce the generation of fresh cases.