Law, Lawyers & Courts

How ready are we?

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DISCLAIMER

- You may find what you hear provocative
  - intention is to provoke thought
  - but, no intention to be contemptuous
  - and, it is high time we introspected
- Views and expressions are only mine
- Not of JSA, a law firm where I am partner

So, let’s set the tone for introspection
PICTURE THIS

- An arm of State meant to provide public goods
- The delivery is creaky and dilapidated
  - compare with a State hospital delivering medicine a generation after patient’s die
- India ranks second from the bottom worldwide
- India to pay damages for a delay of a decade in even starting to administer medicine
- Imagine a PIL against this arm of the State

This institution indeed exists: justice delivery
STATE OF PLAY

- Justice is a public good
  - enforcement of the rule of law
  - against both: the State; and private rivals

- Delivery system is precariously perched

- Asymmetrical processes nationwide
  - High Court rules differ from State to State
  - practices vary from bench to bench even within a HC and in the SC
STATE OF PLAY

- India ranks second from the bottom in the *Ease of Doing Business* survey
- India has faced an award for damages
  - *investment protection treaty with Australia*
  - *one HC did not hear a challenge of an award against Coal India for nine years*
  - *another HC did not enforce the award since the proceedings were stayed*
  - *SC could not resolve for four and half years*
STATE OF PLAY

- Response is to renegotiate treaties
- Evidence from retired CJIs make news
  - patriots: those who say all is well
  - traitors: those who say system is broken
- Examples of justice pattern
  - Union Carbide directors convicted in 2010
    - Gas leakage occurred in 1984
  - Tamil Nadu CM convicted in 2014
    - Initial probe started in 1997
Focus has shifted from justice to disposal
- *justice delayed is justice denied*; BUT
- *justice hurried is justice buried*

Justice isn’t an ill-affordable fine luxury
- somewhat like the United States
  - sheer cost of justice leads to “settlements”
  - can also lead to lawlessness
  - guilds and khap panchayats get preferred
Recent SC study showed:

- 30 million cases pending
- strength of just about 19,000 judges
- with population of 1.2 billion
- 16 judges for every million Indians

Vacancies in judicial posts abound

- 4,500 vacancies in HCs and below
- SC has three vacancies
SOME SYMPTOMS

- In 2011, two crore cases disposed of
  - average of 1200 cases annually per judge
  - 100 cases per month
  - 3 cases per day
- Extra-ordinary effort from many judges
- But, impact of zeal in work is marginal
  - pendency down from 3.20 cr. to 3.136 cr.
  - bad jurisprudence spoils life for others too
HURDLES

- Inertia of being used to the system
  - hard timelines and brutal enforcement
- Intense management of transition
  - “best” is the enemy of the “good”
  - non-disruptive innovation and nudges
- Government as the source of problems
  - decision deficit promotes litigation
    - State agencies are the biggest litigators
  - long rope due to judicial sympathy
HURDLES

- ADR mechanisms are as slow
  - *ad hoc arbitrations by retired judges*
  - *shortage of institutional arbitration avenues*
- Opposition to hike in judicial strength
  - *judiciary not truly independent of the fisc*
  - *2008 bid to add 1,500 HC judges shelved*
- Lack of admin experience among judges
  - *managing an organisation needs diff skills*
REFORM MEASURES

- Commercial Division Bill
  - stuck for long
  - “rich man’s justice” apprehensions
  - now with the Law Commission
- Arbitration Act amendments
  - Ordinance route shelved;
  - expected in the Budget Session
- What is needed is surgical intervention
  - Example: body corporate to manage admin
Q&A

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