

# *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

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- 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

# SOME TRUTHS

- 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

# SOME SYMPTOMS

- 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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