Judicial Reforms–A Burning Necessity

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It is encouraging to note that despite adverse effect on Indian economy, like most other economies – particularly developing economies, India has been attracting sizeable foreign investments, both Foreign Direct Investments (FDIs) and Foreign Portfolio Investments (FPIs). The recent interest being shown by foreign investors in the 'new commerce' IPOs shows further acceleration in this interest.

To sustain such interest, it is obvious that the Government will have to continue with reformist approach on policy front to make business environment in India more friendly, consistent, ensuring level playing field and thus predictable – traits which are critical for foreign investors.

However, one other aspect which is equally important or perhaps even more important for investors - particularly foreign investors, is the assurance that the judiciary in India will decide the disputes/grievances that an organization may and shall inevitably have against private parties as well as state :
(a) In a fair, transparent and impartial manner; and
(b) In a short frame of time to avoid lingering uncertainties for the business.

While on the first account, Indian judiciary has generally scored well, a major problem exists on timely disposal of cases that come to our Courts – particularly to High Courts and Supreme Court.

This article intends to highlight this serious shortcoming in our judicial system and suggest some decisive and urgent steps required to address this issue.

Let us first examine the magnitude of pendency of cases before our Courts and the resources deployed to deal with them.

As per the official websites and/or statements made by the Law Minister before parliament, the facts are as under:

Sr No.	Court	As on	No. of cases pending	No. of Judges	
				Sanctioned Strength	Vacant
1	All Courts	April, 2021	4.4 Crores	22,677	Not known
2	High Courts	Feb-21	56.70 Lakh *	1079	449
3	Supreme Court	2nd July, 2021	69,212	34	NIL

*Out of 56.70 Lakh cases pending at 25 High Courts, 12.58 Lakh were pending for over a decade.

The above data clearly shows the enormity of problem at every level of Indian judiciary.

For sharper focus, let us deal with situation at Supreme Court of India. Against approx. 70k existing pending cases at Supreme Court, approx. 7-8k new cases are added every year. To bring down the pendency to a desired level of average one year at the apex court, Supreme Court will have to dispose over 5000 cases each month. With a total strength of 34 judges, this task looks impossible based on current status of disposals. Accordingly, various measures need to be taken immediately. These can be categorized in three broad categories :

One, that the strength of the Supreme Court judges be increased manifold with a lot more benches;
Two, that the number of new cases admitted to the Supreme Court are severely restricted; and
Three, that cases are swiftly disposed off.

On the first one, not only is the availability of so many additional judges worthy of being judges of the Supreme Court a big question mark, it still would not provide a lasting solution as there still could be higher number of new cases coming upto the Supreme Court going forward as scale and complexity of economic activity in India rapidly rise.

Thus, a lasting and sustainable solution lies mainly in implementing the other two measures.

A few specific suggestions in this regard are given below:

1. As suggested by a sitting Judge of Supreme Court recently, if on a particular matter all High Courts have decided the matter in same manner, the appeal should not be admitted by the Supreme Court, unless some very compelling extraordinary reason is shown.

2. Much stricter scrutiny needs to be applied while admitting a petition as to whether the matter involved is in the realm of facts or interpretation/matter of law. Only petitions where latter is true should be admitted to the Supreme Court. In any case, it was always intended that the Supreme Court would only hear matters involving a point of law and not facts. However, with time the boundary between facts and law points has become blurred and today we see so many cases coming up before the Supreme Court which would involve more of facts than point of law – particularly cases involving high profile personalities/issues.

3. Once a petition on a particular matter is admitted at the Supreme Court, all pending litigations on that point at any lower authority must automatically be shifted to the Supreme Court and must be clubbed with the first petition. More the matters being brought to the Supreme Court on one point, higher should be the priority for disposal by the Supreme Court so as to ensure that the issue involving/affecting large number of litigants be settled quickly once and for all. This one step would lead to rapid reduction in overall litigation, particularly on large matters.

   For this, Artificial Intelligence (AI) and other automated tools need to be deployed across judiciary to collate such cases and to create awareness of matters admitted before the Supreme Court so that lower courts themselves can transfer them to the Supreme Court.

4. Onus would also lie with Honourable Supreme Court judges for quick disposal of cases heard by them. Currently, the practice of 'reserving' judgements after conclusion of hearings for long periods of time is quite a norm. This matter has been recently highlighted by the bench of Honourable Justices – Justice Sanjay Kishal Kaul, Justice Dinesh Maheshwari and Justice Hrishikesh Roy in case of Facebook where in the post-script the Honourable Judges have suggested ways of quick disposal of cases before Supreme Court. Their suggestions which include need for discipline on part of the Counsels with respect to the length of their submissions as well as arguments on one hand and also the "*equal responsibility of this side of the bench – it is the need of the hour to write clear and short judgements which the litigant can understand. The Wren & Martin principles of precis writing must be adopted*", are extremely relevant for early disposal of cases. As stated by the Honourable Judges, the purpose of their post-script is "*only to start a discussion among the legal fraternity by bringing to notice the importance of succinctly framed written synopsis in advance, and the same being adhered to in course of oral arguments to be addressed over a limited time period and more crisp, clear and precise judgements so that the common man can understand what is the law being laid down. After all, it is for 'the common man' that the judicial system exists*".

   These landmark observations must form the basis for initiation of much needed major judicial reforms in India.

5. Most important, though on a different point, it is imperative that the State i.e. central government, state governments, ministries, government departments, PSUs and all other government controlled wings and agencies resolve to curb unnecessary litigation. In doing so, they must adopt the unwritten rule that state must always be seen to be 'benevolent' and not 'mercenary'. This principle, if applied in earnest would ensure that the state does not initiate litigation or oppose appeals where hardship is caused to public due to technicalities involved in drafting of agreements or laws, where on principle of natural justice and fairness public would have been entitled to the benefit/relief sought. The other principle to be adopted by state should be to be generally selective in initiating litigation by restricting it to important and significant issues or matters involving serious interpretation of laws or constitutional aspects and amount of revenue to exchequer.

6. It has now become imperative that the judges get support from Artificial Intelligence while considering the submissions made by Counsels. All Counsels must be made to only submit their arguments electronically which can then be factually analyzed by AI tools and gist be placed before the bench. This step will also enable talent to be rewarded at Counsel level instead of overdependence on a few top lawyers – particularly at Supreme Court and High Courts.

   One thing is crystal clear – for India to be perceived as a nation where justice and law prevails (which includes quick deliverance of justice), we need to reduce litigation on one hand and dispose off admitted cases quickly.

This would need a concerted effort led by Honourable Supreme Court and senior High Court judges, lawyers, industry associations and Government to lay down clear guidelines aimed to on one hand to curb the tendency on part of private sector to do 'forum shopping' with multiple appeals in multiple jurisdictions and on the other hand give freedom to authorities and officers of the state to abstain from 'frivolous litigation'. For the latter, fear of action against them by regulatory or vigilance bodies/agencies of government of perceived 'loss of revenue to exchequer' for ulterior motives needs to be removed.

I have no doubt that for these reforms to be successful, they must start from the highest authority i.e. Supreme Court. Once the principle of avoiding frivolous litigation and mechanism for quick disposal of cases are established by the Honorable Supreme Court, it is inevitable that this DNA shall percolate down to the High Courts and the Lower Courts where as stated above almost four crore cases are pending disposal.

Undoubtedly, the effort involved in this national cause will be humongous – commensurate with the size of the problem.