A VISION OF INDIAN JUDICIARY – 2025

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A Noble Initiative :

This Workshop of Judges organized by the Maharashtra Judicial Academy to take a collective vision of what is in store for the Indian judiciary, say in 2025, is indeed a very special and unusual event for many reasons. Firstly, it is an idea generally left to Chief Justices or other constitutional authorities and not to the "subordinate judiciary" whose representatives are the select participants here. Secondly, judges from all three levels of subordinate judiciary are sitting together as equals and deliberating on the theme ignoring for the present their respective status in the judicial hierarchy. Thirdly, it is not organized to seek any individual or collective benefits for judges themselves, but to reflect on their role in justicing and nation building and to build their capacity for taking on the tasks ahead. Let me congratulate all of you for this grand initiative taken in public interest and thank the authorities of MJA for associating me in your deliberations.

Vision of Future can help Direct Changes :

We are living in times of unprecedented changes almost on a daily basis and it is difficult even for a futurologist to predict what is in store for tomorrow. Furthermore, the role of institutions of governance including the judiciary is well articulated by the Constitution itself and the judiciary is bound by it. So what can be attempted in workshops like the present one is to plan and direct developments to the needs and demands as perceived for the next five or ten years in the constitutional journey towards JUSTICE, Social, Economic and Political. We can also speculate on the changes likely to happen on the work environment and popular expectations from the judiciary and how conscientious judges could prepare themselves for the challenges in administration of justice and beyond. Let me therefore make few submissions for your consideration firstly, on the possible changes in the structure and status of the judiciary through 2025 as I perceive it, secondly, try to identify the possible strengths and weakness it may imbibe in the next ten years or so and finally, suggest what individual judges who have the courage and conviction to do what is considered right can possibly achieve for themselves and to the system. I make these statements in all humility as an outsider closely observing the functioning of the judiciary and conscious of the fact that my observations and assumptions may

be far removed from reality as perceived in judicial circles. However, let me say that I am one who is proud of the record of the Indian judiciary and its contribution to good governance and sustainable development. With that caveat, let me make my submissions under four or five specific heads.

1. Independence of Judiciary and Challenges from Within and Outside :

Independence of judiciary is a basic feature of the Indian Constitution and the Constitution itself contains several provisions to insulate the institution from external interference in its functioning. However, there is a difference between institutional independence which is constitutionally guaranteed and impartiality and independence of individual judges. Though the Constitution does provide for every judge to function without fear or favour, no one can guarantee personal integrity and impartiality in the sense of freedom from improper influences including conflict of interest of individual judges. A corrupt judge can compromise individual as well as institutional independence with relative impunity and bring the system into disrepute. In the past, it was unthinkable that judges, particularly of the higher judiciary could indulge in corruption and nepotism. Few instances in the recent past have shaken the confidence of the people in the capacity of the system to correct itself. The consequence of such perception was two legislative interventions, one on appointment of judges through an independent National Judicial Appointment Commission and another to ensure judicial standards and accountability through the proposed Judicial Standards and Accountability Bill, 2013.

What is important for the present purpose is to take note of the damage done by few corrupt elements and the uncertainties involved thereby in the future working of the system. In a democracy governed by rule of law, no institution can be totally free from public scrutiny and accountability. If it is not ensured by systems from within the institution, it will necessarily invite external interventions which may not always be a healthy arrangement. The message therefore is each and every member of the judiciary should not only be of impeccable integrity and free from biases commonly found in society but also appear to be so in his or her public and private life. Hence the need for a self-imposed code of ethics and a concerted effort by everyone concerned to keep the purity of administration of justice at all costs.

2. Professional Competence and Capacity to be Fair and Firm :

Competence and professionalism are distinct concepts though are related and inter-dependent. Competence is about knowledge and skills required for the job; whereas

professionalism is about how one does the job and with what consequence. The capacity to be fair and firm can only arise when judges have the competence as well as the qualities required to be professional. Increasingly in coming years, judiciary will be tested on both these counts by the demanding litigants on the one hand and peers overseeing the functioning of courts on the other. With legal system getting complex and globalized, judges will find it difficult to cope up without continuing education and training offered in a scientific and systematic manner. Specialization will become essential and adjudicative processes will get less adversarial and time consuming. Technology will take over many of the functions which judges perform today giving more time to think of creative strategies for more efficient methods for administration of justice.

Whether the present generation of judges like it or not, in the next 10 years, the judicial system will become technology-driven both in justice delivery and in judicial administration. Courts of tomorrow will have information infrastructure of such a nature that enables them to deliver timely justice if the judges are so disposed. These include a National Data Base of all courts in the country with inter-connection to police stations, prisons and other relevant support systems, digitalized and Integrated Case and Docket Management Systems, ICT-enabled court rooms with E-filing, E-services, E-library and E-administration arrangements and litigant-friendly court complexes. Paper work will become a rarity and long-drawn court proceedings will disappear with judges able to get more time to concentrate on proper judicial functions. Again, the transition is going to be challenging and success depends upon how individual judges get prepared to cope up with it. Along with that the systems and policies now obtaining in judicial administration have got to change for which progressive High Courts have to take the lead.

3. **Fact Finding will become more Objective and Contextual :**

What changes are likely to take place in the fact finding function of trial courts in future? With science and technology dominating the field, scientific evidence will naturally govern investigation and proof of facts. Probative value of different pieces of scientific evidence will get statutorily settled enabling judges to draw inferences on objective criteria. This will enhance credibility of the fact-finding process itself, reduce the problem of hostile witnesses, save time of courts and avoid too many appeals on questions of fact.

Simultaneously, judges will be called upon to be more contextual, socially and culturally, in drawing inferences on issues of facts and circumstances surrounding disputes, particularly

involving less educated and minority groups in society. Social context adjudication is a constitutional mandate in a pluralist democracy guaranteeing equality before law and equal protection of the laws to all. Social justice in an unequal pluralist society can only emerge when institutions of State, including the courts, appreciate the context in which parties are situated and are prepared to extend affirmative action in favour of the weaker party. This is the philosophy of Articles 15,16,38,39 and 39-A of the Constitution. In short, equality jurisprudence becomes critical in the functioning of subordinate courts as it is already with higher judiciary. Discrimination continues to be the bane of Indian Society and overcoming its adverse consequences is not only the function of constitutional courts but of every adjudicating agency in the country. Or else, equality will remain a myth and social justice, a casualty.

The adversarial system is unfair to parties unequally placed. The outcome is shaped by the delays and opportunity costs of extended litigation rather than just result. The technicality and uncertainty of its processes sometimes even deter the assertion of meritorious legal claims. It accentuates inequality between parties and compromises on equal justice guarantee. In this situation, people abandon just claims and defenses and open the field for manipulative lawyering by powerful litigants gaining an unfair advantage over their less fortunate opponents.

If there is some truth in the above reading of adversarial adjudication, the Constitution expects those involved in law enforcement and adjudication to look into the socio-cultural context of the dispute while appreciating evidence and awarding reliefs to make the equality guarantee meaningful to all citizens. This is what social context judging demands. In fact, this is what public interest litigation attempted to do in constitutional courts. This is what special laws like Family Court Act, Industrial Disputes Act, Juvenile Justice Act, Atrocities Act, Domestic Violence Act, Rape Law Amending Acts etc. have asked the respective Courts to do. Multi-cultural societies, caste-ridden societies, societies with wide economic disparities, or, in short, societies with diversities pose difficult problems to judges if they have to administer equal justice. Learning the skill of understanding context and of dealing with diversity and discrimination in a fair and realistic manner is the function of social context judging.

I would argue this is part of constitutionalisation of lower judiciary which has not yet imbibed adequately the social justice mandate of the Constitution and has not invoked the tools and techniques for discharging its judicial functions under the Constitution. In future, all courts and tribunals will be required to promote "equal justice – social justice" in adjudicative processes.

Justice Barak of the Israeli Supreme Court speaking about the role of the judge in a democracy (2006) says that *"a good judge is a judge who, within the bounds of the legitimate possibilities at his disposal, makes the law that best bridges the gap between law and society and best protects the Constitution and its values. A good judge is aware of his role and makes use of the means at his disposal in order to achieve it. In the absence of means, he examines whether it is possible to create new means to help realize the judicial role ..... The good judge is always limited by the text according to which he adjudicates the dispute. The judge may not give the text a meaning that its language cannot bear. However, the text is not the end-all. Every text operates in a context, which must be understood in order to understand the text. The good judge recognizes the text and sees it as a starting point, but not an ending point. Good judges lift their eyes and sees the legal system in all its nuances, values, and foundations. The good judge locates the meaning of the text within this general context. Indeed, the good judge does not make do with knowing the law. He should know society, its problems, and its aspirations"* (Aharon Barak, The Judge in a Democracy, Princeton University Press, 2006 p. 525-'27).

4. **Majority of Disputes will be settled without Trial in future :**

The entire Common Law world has realized that adversarial litigation is unnecessarily time consuming and unbearably costly and cannot remain the sole method of dispute settlement. While it may be reserved for complex civil and criminal cases, the bulk of ordinary disputes can be settled fairly and quickly if methods like negotiated settlement, mediation, conciliation and arbitration are employed. In many countries in the West only a fourth or even less of the cases filed in courts ever go for adversarial trial proceeding. The bulk of cases are negotiated and settled with or without the help of intermediaries according to rules evolved for the purpose. It is in recognition of this development, Parliament early in this century amended Civil and Criminal Procedure Codes enabling courts and litigants to adopt one of several methods to settle the matter at the first hearing itself. If Section 89 C.P.C. and Chapter XXI-A of Cr.P.C. have not picked up the pace expected, the judges and the court processes have to share the blame with lawyers and litigants. If lawyers and judges still do not change their ways, Parliament may again amend the law bringing in an element of compulsion on the parties which may not be good for the system.

Similarly, an important piece of legislation designed to reach justice to the unreached without much of cost and delay is awaiting the attention of High Courts and State Governments. The Gram Nyayalaya Act is now a decade old. If imaginatively implemented, it could have

addressed the problems of the poor in rural and tribal areas of the country. In coming years the judiciary will be closely watched how it reacts to the Directive Principle under Article 39-A of the Constitution.

It appears that the duty to administer legal aid under the Legal Services Act is too much of an additional burden in an already overworked judiciary. In coming years there is a distinct possibility of broad basing legal aid administration with involvement of all stakeholders and making the system accountable and responsive.

5. **Greater Integration of Judiciary Nationally and Internationally :**

Coming decades are crucial for all national and international institutions of governance because of the unstoppable progress towards globalization in every sector of human affairs. Business and trade will push the progress of unification and integration of law and legal institutions. Trade in legal services will become a reality in the current decade itself and it is going to have an impact in the way justice is administered in commercial transactions. International law is going to have greater influence in the way domestic law is shaped, interpreted and administered. An All India Judicial Service will become inevitable and the judiciary will get expanded based on specialization on subject matter and regulatory expertise.

Judicial Academies will be called upon to play a more active and diversified role in support of the judiciary and the systems in place. Apart from education and training of judges, Academies have to become centres for research and development in the entire range of issues on justice delivery and law reform. Judicial planning and judicial performance assessment, judicial impact assessment and judicial governance reform including rule making for judicial institutions will increasingly become part of the capacity development agenda of the Academies under judicial control.

Finally, the greatest challenge in judicial governance in coming years will be around the resistance from the Bar to the reform steps proposed in justice delivery. Militancy and unprofessional conduct including strikes and court boycotts by a large section of the Bar will alienate the public and warrant intervention from outside. It is difficult to predict how such eventualities will be met and what impact it will have in the justice system of the country.

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