

## वंदे वाणी विनायकौ

- My esteemed brother Justice Surya Kant, Judge, Supreme Court.
- Respected Shri Justice Ranjan Gogoi, Former Chief Justice of India, Member of Parliament and the President of the Committee.
- Hon'ble Shri Justice A.P. Misra, former Judge of the Supreme Court.
- Hon'ble Minister for Law and Justice, Shri Arjun Ram Meghwal.
- My brother Shri Justice Arun Bhansali, Chief Justice, Allahabad High Court.
- My friend at the Bar, Shri Manan Kumar Mishra, Chairman, Bar Council of India.
- My brother and sister judges of the Allahabad High Court.
- Office bearers of the Committee- Justice Tarun Agarwala, Former Chief Justice, Shri Rajvanshi, Senior Advocate and Shri Santosh Tripathi, Secretary
- Senior Advocates
- Other lawyers
- Ladies and Gentlemen

It is with profound responsibility and honour I stand to address this august gathering on an issue that cuts to the heart of our democracy: “**The Need For Judicial Reforms In India**”. I am thankful to the committee, especially my brother Justice Shri Tarun Agarwala for giving me this opportunity to stand before you all on such a solemn occasion held in the memory of great luminary of Indian judiciary *Pt. Kanhaiya Lal Misra*, a doyen of the Bar, who dominated the corridors of all the courts for decades.

Justice is the bedrock upon which civilizations stand and judiciary is its steadfast guardian. In a nation, as vast and diverse as India, the judiciary is not merely a mechanism for resolving disputes and doing justice; it is the conscience of our Constitution and the custodian of its promises.

When Dr. B.R. Ambedkar presented the Constitution to the people of India, he called it a document that "seeks to translate the ideals of justice, liberty, equality, and fraternity into a living reality for every citizen." The judiciary was

entrusted with the monumental task of breathing life into these ideals by ensuring that every citizen—regardless of status or station—could find refuge in the promise of justice.

Justice, much like democracy, is not static; but a living process. It grows, evolves, and adapts to meet the aspirations of the people it serves. Judicial reforms, therefore, are not a critique of our system but a testament to our enduring commitment to strengthen and perfect it. They are a promise that justice will remain accessible, impartial, and effective, no matter whatever the challenges of our times.

The judiciary, like any other system, operates through a complex network of interconnected components i.e. courts, judges, laws, procedures and administrative machinery. As with all systems, it faces its own set of challenges that require careful attention and reforms. These challenges become particularly pressing as society evolves, technology advances and public expectations change. The judicial system must adapt to meet these changing needs while maintaining its

fundamental role as the guardian of justice. Dealing with challenges within any system is crucial but the stakes in the judicial system are uniquely high, as it directly impacts upon citizens' rights, liberties and access to justice. Looking at India's judicial system, which ranks among the world's strongest, we find a structure that serves as both, the guardian of our Constitution and the protector of fundamental rights. Yet, despite its strengths, it grapples with significant challenges that demand urgent attention from case backlogs-to resource constraints-to questions of transparency and accessibility.

The structure of our judicial system as we all know is a four-tier system. At its apex stands the Supreme Court, the highest judicial authority in our country, wielding the power of judicial review, serving as the final arbiter in matters of law & constitutionality and exercising power to do complete justice. Then there are High Courts, serving as appellate courts, overseeing and supervising the proper application of law within their jurisdictions and then exercising extraordinary writ

jurisdiction to stop miscarriage of justice. The system then extends to intermediate courts, the district judiciary, specialized courts handling specific matters, and finally to the lower courts that serve as the first point of contact for most citizens seeking justice and further down, now the *gram nyayalayas*.

The Indian judiciary has long been a cornerstone of our democracy, upholding the rule of law and safeguarding the rights of citizens. Since the inception of the Republic, it has served as a beacon of hope, a protector of freedom, and a guardian of constitutional values. Our judiciary is not just an institution; it is a symbol of the trust reposed in it by millions of citizens, who turn to it in their quest for justice and equality.

A pivotal moment in our judicial history came with the **Kesavananda Bharati v. State of Kerala** case, where the Supreme Court established the basic structure doctrine. In another seminal case, **Maneka Gandhi v. Union of India**, the scope of Article 21 of the Constitution, which guarantees the

right to life and personal liberty, was further expanded. Cases like **Bandhua Mukti Morcha v. Union of India**, which dealt with the rights of bonded laborers, underscore how the judiciary has sought to balance the scales of justice in a society marked by inequality. Another landmark case titled **Olga Tellis v. Bombay Municipal Corporation**, emphasized the right of livelihood and housing of those living in slums.

Thus, considering the role of the judiciary, the sacred duty of dispensing justice is not without challenges. One of the most pressing issues is the **backlog of cases**, which is approx. **5.15 crores cases** across various courts as per National Judicial Data Grid. The adage “justice delayed is justice denied” is not merely a cliché; it is a stark reality for countless individuals whose lives and livelihoods are put on hold due to procedural inefficiencies. Unless justice is delivered in time, it would always be not justice, but, injustice.

The challenges faced by the present-day Indian judiciary thus include that of staggering backlog; delay in delivery of

justice; shortage of judges; lack of infrastructure especially at the level of district judiciary and below; filling up of the vacant posts of judicial officers and judges of the higher courts; lack of accessibility; procedural complexity; gender sensitization; use of technology; and simplification of existing laws etc.

Different people at different level suggest numerous reforms for **uplifting the judicial system in the country**, including investing in Digital Case Management System; improving the E-Filing System; organizing training programmes to promote legal education; improving video conferencing facilities; strengthening the judiciary at the district level and below; developing multi-lingual software; improving work-life balance of the officers and the staff.

It is well said that “a rusty sword is only good for the museum, but only a sharp new sword can win battles.” Therefore, it is most necessary to keep reforming the judicial system rather than to allow it to rust.

In my personal view, the India judiciary simply requires a minor reform which in my humble opinion may turn out to be a major reform in transforming our judicial system. That minor reform is proper selection and appointment of the High Court judges.

In *Dharmkosh* there is a very apt *shloka* which describes the characteristics of a good judge:

“राजा तु धार्मिकान् सभ्यान् नियुञ्ज्यात् सुपरोक्षितान्  
व्यवहार धुरं वोढं ये शक्ताः सद्भवा इव  
धर्मशास्त्रार्थ कुशलाः कुलीनाः सत्यवादिनः  
समाः शत्रो च मित्रे च नृपते स्युः सभासदः”

~ नारद. 36-4-5 (धर्मकोष-43)

It means as under:

*“Let the king appoint, as members of the courts of Justice, honourable men of proved integrity, who are able to bear the burden to administration of Justice and who are well versed in the sacred laws, rules of prudence, who are noble and impartial towards friends or foes.”*

In other words, the members of the judiciary have to maintain the highest traditions of judicial retribute,

independence and impartiality coupled with inherent civility and should be capable of carrying out the divine responsibility for the protection of the rights, the liberty and the security of the people and making a lasting contribution to good governance of the country by providing and promoting justice which is the pivot of the arrangement of the world.

If High Courts get judges who are competent, capable, well versed in law and who are persons of integrity and dignity, the higher judiciary would automatically get strengthened which then will be followed by the district judiciary. This will lead to a robust judiciary at the top with a solid foundation at the bottom.

We have had good and competent judges in the High Court even earlier to the introduction of the **Collegium System**. The Collegium system was a welcome step adopted to streamline and to improve the selection of candidates for appointment as High Court judges. The said system may or may not have yielded desired results on which I do not intend

to comment but it is pertinent to keep in mind that the Constitution of India nowhere postulates for a Collegium System for the appointment of the judges of the higher judiciary. It is my personal experience that whenever extra-constitutional authorities are created and established, may be for some good reason, such authorities boomerang after some time. As I said earlier, the only reform which judiciary requires is proper and correct appointment of the High Court judges which compels us to improve upon the working and the fruitfulness of the Collegium System.

Maybe we may go for an expanded collegium which may consist of 5 members instead of 3 at the High Court level. In addition to the Chief Justice and the 2 senior-most judges, it may include the Advocate General who may be an ex-officio representative of the Government in the State as also that of the Bar, and one member holding the constitutional post to be nominated by His Excellency, the Governor of the State which may be either the Election Commissioner or the Chairman of

the State Public Service Commission whose routine work is to supervise selection of public servants. Similarly, there may be an expanded collegium at the higher level which may include the Attorney General and a person holding a constitutional post to be nominated by the President of India.

Leaving aside the judicial officers and the judges of the Constitutional courts, sufficient attention must also be paid to the **upliftment of the young lawyers** especially at the grassroot level. The condition of the lawyers at the district level is pitiable. They lack basic infrastructure facilities and are not even able to earn one meal a day for the family or for themselves. On the other hand, there are senior lawyers who are earning more than an industrialist and their standard of living, otherwise, is too high compared to other lawyers. There is, thus, a great disparity between a common lawyer and a senior lawyer. This disparity in earnings keep widening and senior lawyers continue to mint money as every litigant wants to engage them for their name and fame whereas the other

lawyers get completely ignored and eliminated in the end. This disparity has to be removed.

**The system of designation of senior advocates** in itself is discriminatory for the reason that only lawyers practicing in High Courts and Supreme Court get the privilege of being designated as senior lawyers and not those practicing in tribunals, labour and industrial courts or even in the courts at the district level.

The other problem faced by the judiciary is that with the advent of the **Public Interest Litigation**. The Constitutional courts are flooded with PILs and they are busy monitoring the administrative work expected to be performed by the executive rather than involving in the process of adjudication or laying down effective remedies for the common people.

Justice Bhagwati, a stalwart of judicial activism, once remarked, “The judiciary has a sacred duty to ensure that the gates of justice are not closed to the poor.” This statement captures the essence of what the judiciary represents—a

commitment to inclusivity and fairness. Through pioneering Public Interest Litigations (PILs), the judiciary has brought justice to the doorsteps of the marginalized and voiceless. Therefore, undoubtedly, PIL is a very powerful instrument in the hands of the courts to do social justice and to balance the equities between the public at large and the government, nonetheless, **“PIL cannot be a PILL for every ILL”**. Therefore, my suggestion is to focus more on legal aspects, adjudication of disputes rather than to indulge in PIL excessively so as to reduce the courts to a stature of an executive. The real legal disputes have to occupy the front benches and the PIL has to be put in the second row.

The plight of the judiciary up to the level of the district courts requires immense improvement, both qualitatively and infra-wise. Since the judiciary at the level of the district courts is the foundation of the Indian judiciary on which stands the higher/Constitutional courts, it is the need of the hour to have a solid foundation so that the courts at the higher level may

look better equipped and function in a more proper manner. Much attention has to be paid to improve the infrastructure of the lower judiciary and the competence and the efficiency of the officers as well the staff. ***“The stronger is the foundation, the safer is the higher judiciary”***.

There is lot of hue and cry that cases remain pending for long time in courts at every level but without realizing that pendency of cases by itself is not a problem. If the litigants or the lawyers do not turn up on hearing dates, the courts alone cannot be blamed for the pendency. If parties are not interested in hearing of the old cases, then the courts should evolve a different methodology to avoid pendency. The reverse process has to be adopted. Instead of going behind the old cases, the courts should fix time limit for deciding new cases so that pendency of new cases beyond a particular time period be avoided or restricted. Say, for example, a time limit of one year should be fixed for deciding all writ petitions and only if they are not so decided then they will be counted as arrears. The

court should be impressed upon not to grant adjournment(s) in new cases just for the sake of asking and try to resolve them within the time frame fixed/stipulated. In the same manner, time period for deciding first appeals, second appeals and other cases be also notified. This would avoid filing of miscellaneous applications which would eliminate the possibility of delay. Once we stop adding to the arrears by deciding the new cases instituted within a fixed period of time, we can think of taking up even old matters. I do not mean to say that old matters should not be given priority. In cases where the litigant wants that an old matter be heard, due diligence should be shown for taking up those matters on priority.

In the end, I would only like to say that: **“law is like an ancient tree, its roots deeply entrenched in history, yet its branches spread with every new generation to shield them from changing winds.”** So, we have to keep reforming our judicial system to face the onslaught of changing times.

I hope and trust that these little suggestions of mine may rekindle the thoughts of all those who are concerned and may benefit them to evolve policy for reforming the judicial system accordingly.

It is an old saying: “**books will teach you what law is, but it is the people who will teach you what the law means.**” Therefore, I feel that the practical experience is the bedrock for bringing about systematic changes/reforms in any system including the judiciary and it comes from experience (अनुभव कोष). A system tested for long need not be dismantled unless a better system or a better edifice gets erected.

Thank you.

Jai Hind.

*\*Allahabad is the judicial capital of the country.*