



Ensuring access to justice

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The Supreme Court must set up more Benches, and disciplinary jurisdiction over lawyers must go back to the judiciary

- The justice system in any democracy is set up, under the Constitution to serve the public without “fear or favour, affection or ill-will” as far as judges are concerned.
- Yet the protagonists, as far as India is concerned, in operating the system have stopped that very access — judges through lack of prescience, and many lawyers through their dishonesty in many forms.

Revisiting judges’ advice

- At an informal meeting, all of the then sitting judges of the Supreme Court advised the then Chief Justice of India to decide against the request of the then Central government to sit in other places in the country under Article 130 of the Constitution.
- The reason judges decided against it was because we felt that the authority of the Supreme Court would get diluted.
- The reasoning, in retrospect, was fallacious.
- The number of Benches depends on the size of the State, the idea being to facilitate easier access to justice.
- The direct consequence of the wrong decision has been three-fold.
- First, the Supreme Court sitting only in Delhi has resulted in excellent lawyers from other High Courts not appearing before the Supreme Court, possibly because it casts too large a monetary burden on their clients, many of whom are impoverished.
- Second, all lawyers, whatever their calibre or competence, who happen to be in Delhi now appear in the Supreme Court establishing monopoly.
- The third fallout of the failure to act under Article 130 is that the Supreme Court in Delhi has been flooded with work and been reduced to a District Court instead of a Court of Final Appeal and Constitutional Court as envisaged under the Constitution.

Unethical lawyers

- But the fault in actually denying access to justice to citizens is the fault of unethical lawyers alone.
- This is a somewhat unfair condemnation of those lawyers who are persons of high principles.
- Some of the lawyers specialising in victim compensation cases do not charge any fees for their services and render services free of cost.
- Victims who open bank accounts for the purpose of victim compensation are being duped by some of the lawyers who link their or their assistant's mobile number to the account so that they can have access to all the information of the transactions in the bank account.
- Some of the lawyers specialising in victim compensation cases thus take huge money as a percentage of compensation amount awarded towards victim compensation.
- In some cases, as soon as an award of victim compensation is made by any Legal Services Authority (LSA), a statutory body to render free legal services to the impoverished all over India, the lawyer gets in touch with the victim and somehow convinces him/her to file a writ petition before the High Court to show that without such writ petition the compensation will not be disbursed by the State LSA (SLSA).
- Incidentally, according to a study carried out by a research organisation, Vidhi, in the Delhi High Court, more than 70% of the delays in the disposal of cases are attributable to lawyers, a major reason being sometimes unjust pleas for adjournments.
- The litigating public and lawyers (including women and students) — either because they do not trust the judicial system or they distrust lawyers in particular, or for whatever reason — write hundreds of letters to the Chief Justice of India and the Chief Justices and Justices of each High Court for relief.
- Some issues raised in these letters are administrative or statutory in nature.
- Apart from these letters, hundreds of letters are written to Chief Justices for relief on the judicial side.
- Given the huge workload before all judges, it is not possible to deal with all letter-appeals simultaneously on the statutory, administrative or judicial side, unless they are drawn specifically to the Justices' attention.
- Unfortunately the disciplinary powers available to Bar Councils both in Delhi and in States are more often than not ineffective.
- The solution to the present situation is to give the disciplinary

jurisdiction back to the courts and to repeal the Advocates Act, 1961.

The way forward

- Therefore, to hound out the corrupt lawyers from the system at all levels so that justice may be truly rendered to the public these are a few suggestions.
- First, the Supreme Court should reconsider setting up Benches in different States in keeping with the recommendations of the Law Commissions (125th Report and 229th Report).
- Second, the Bar Council of India should exercise its powers under the Advocates Act, 1961 more effectively.
- If not, the disciplinary jurisdiction must be returned to the judiciary as was the position prior to the Advocates Act, 1961 by repealing the 1961 Act.
- Third, lawyers should be made irrelevant by referring more cases to trained mediators, as the Supreme Court has done in the Ayodhya dispute.

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