

# Judicial Review

## Process, Powers, and Problems

*Essays in honour of Upendra Baxi*

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# Beating the Backlog

## *Reforms in Administration of Justice in India*

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### Introduction

As the highest law of a country, the constitution is at the centre of the political and social life of the country and defines the relationship between state and society. The task of the judiciary in the Indian democratic set-up is to interpret the constitution as a living, pulsating, and evolutionary organic document and not merely state what the textual law is in a sterile or pedantic manner. The judicial system, however, needs another, equally important, ecosystem to operate—it cannot work in a vacuum. This system is the administration of justice—its structure, its tools, logistics, manpower, procedures, technology, and so on—which is the spine and backbone of the constitutional court system itself, and hence an indispensable part of the larger judicial and social process.

Looking at the system of administration of justice in India—jammed, overcrowded, inefficient, and delayed—one could easily agree with Benjamin Franklin as to ‘how for want of just a horseshoe nail, a battle could not be fought and a kingdom was lost’. It is tragic that for the last seventy years, a plan for the entire judiciary as a holistic and integrated entity has not been formulated with a minimum perspective of five years, subsuming shorter plans for shorter periods, and implemented ceaselessly and relentlessly. Successive chief justices of India—as captains of the judiciary—have attempted to make ‘speedy justice’ a reality, but it continues to remain in the realm of imagination, hope, anticipation, rhetoric (and despair)! Commenting on the huge vacancies of judicial officers, the current chief justice of India, Justice Ranjan Gogoi, said that the agonizingly slow recruitment process can be speeded up if ‘you have the right persons at right places’. He probably wondered if Puducherry had the right man to complete the recruitment of trial judges in 99 days, when Delhi took 762 days and Jammu and Kashmir took 700 days.

Slow and tardy appointment of judges is not the only factor that has acted as a barrier and retarded the system of justice delivery. There is a barrage of simple and complex issues inhibiting the rate of disposal of cases and leading to frictional functioning of courts in India. To ensure a speedy and efficient justice delivery to Indian citizens, it becomes imperative to figure out the major problems that are currently being faced by the judiciary in the administration of justice and find out practical and concrete solutions to it.

## Basic Factors Jamming the System of Administration of Justice

Every system has two integral parts—the structure and the function. On the structure of the judiciary, Michel Foucault commented: ‘The court is the bureaucracy of the law. If you bureaucratise popular justice, then you give it the form of a court.’<sup>1</sup> I continue to be awestruck by the enormous inefficiencies and tardiness of the Indian legal system which, ironically, is matched only by the remarkable simplicity of the solutions available to eliminate the problem. India’s tragedy is that the latter is not applied to the former, to achieve solutions which are so near and so easy and yet so far. Thomas Jefferson, on the function of the judicial system, rightly remarked: ‘The execution of the law is more important than the making of them.’<sup>2</sup> The usual ‘nails’ that un hinge speedy dispensation of justice are well known—chronic vacancies in the judiciary, lack of infrastructure, massive and largely unchecked infusion of fresh litigation into the system every year, to name only a few. In the last two decades, many ideas and steps have been discussed in repeated committees, colloquia, seminars, annual conferences of chief justices of the High Courts and chief ministers, and so on, to get these loopholes fixed. Somehow, many remain unfixed, with huge jagged edges, causing much obstruction and pain to all stakeholders but especially the litigant.

The *first* of the more general factors for the delay is the inexplicable anomaly that the administration of justice is still not a taught subject in the overwhelming majority of our three- and five-year course curricula. Sensitizing and educating young minds on the real causes of the problem and the relatively easy solutions available would be a simple but significant step in the right direction. *Second*, the scourge of backlog can be met only by less talk and more action; by fewer lectures and more implementation; by less legislation and more ground achievement. Neither the problem nor the solutions are new: what is required is the consistency of application, the focus of will and determination, diversity of panaceas, and uninterrupted bombardment of the problem with nitty-gritty solutions.

*Third*, the mammoth numbers of arrears thrown at us should be neither a deterrent nor a depressant: seen closely, they are but meaningless figures which

can reduce and fall dramatically and exponentially like a pack of cards if attacked at the core. *Fourth*, an old saying, 'if we take care of the small things, the big things will take care of themselves', applies directly to the arrears problem. Grand mega plans must give way to common sense, nitty-gritty, simple solutions.

*Fifth*, the approach has to be holistic, not piecemeal, multi-pronged not partial, curative as also preventive. *Sixth*, it has to be surgical, somewhat bold, unconventional, and even shocking, to electrify us, to jolt us out of our somnolence, because while the present system helps no one, it chugs along due to the inherent inertia of the system itself and because everyone either takes it for granted or considers the problem too overwhelming to address. It is thus time to be blunt, not diplomatic. In all this, *seventh*, we cannot and should never underestimate the importance of attitudinal change. This may be the most nebulous, the most unquantifiable, the most non-specific factor but it is nevertheless the most vital. The trick is to embed the ethics of legal reform and alternative dispute resolution (ADR) in the psyche and bloodstream of the principal dramatis personae of this system. During the early 1990s, even the Supreme Court had a tangible and not insubstantial arrears problem: the degree of indiscipline was larger, the registry was much more disorganized, and adjournments were a matter of course. During my involvement with the 1993 Justice Ahmadi case management and ADR project,<sup>3</sup> I found that simple procedural changes slowly brought about a sea change in attitude amongst all the actors at the Supreme Court—judges, lawyers, registry officials, litigants, and so on. By 1997, all had developed a vested interest in ensuring that the system functioned efficiently. That attitudinal change happily persists to this day but, clearly, a tectonic attitudinal shift had then taken place in comparison to the early 1990s and earlier. As is rightly said, attitude, not aptitude, determines altitude, that is, how high you soar.

Finally, the importance of teamwork cannot be neglected. In the war on arrears, the entire judiciary, indeed the entire legal system, has to function as a seamless web, an indivisible whole. The role of judges and the judiciary as a whole, but most particularly of the apex court, is vital—as a catalyst, as an organizer, as a facilitator, as a monitor, as an umpire, as a participant, as an observer, and, at the apex level, as a role model. They have to lead by example. They are mentors. They have to enthuse by spirit, reinvent by conduct.

## Problems in Administration of Justice and Their Solutions

Leaving the above basic and general but vital points and turning to substantive issues, the first substantive issue illustrates how laughably obvious the problem is and how elementary its solution. It is the problem of simultaneously talking of over 3 crore (30 million) case arrears, being aware of the enormous judicial

vacancies and yet being unable to do anything about it. As on 1 February 2018, the approved judicial strength of all the twenty-four High Courts put together was 1,079. Of these, only 676 posts stood filled and 403 vacancies amounted to 37.34 per cent of India's High Court posts having no judge.<sup>4</sup> How can we or any country keep creating hospitals without doctors or ICU beds without specialists and yet complain about dying patients? Probing these figures a little more would yield comic results were they not tragic for the country. Seventy posts of judges amounting to 43.75 per cent of the total strength out of the 160 posts in India's largest High Court, Allahabad, are vacant for many months.<sup>5</sup> Remember, Uttar Pradesh's population is much higher than that of many European countries put together! Twenty-four out of ninety-four posts in India's premier High Court, Bombay, are vacant<sup>6</sup> and twenty-two out of sixty in India's capital are similarly vacant.<sup>7</sup> Just around 34 per cent (eighteen out of fifty-three) are vacant in one of India's geographically largest states, Madhya Pradesh, and more than 40 per cent (twenty-one out of fifty) in my home state of Rajasthan.<sup>8</sup> Karnataka displays its splendour with thirty-one out of sixty-two posts vacant.<sup>9</sup> The percentage of vacant posts in Calcutta High Court was the highest: thirty-seven vacancies of judges—more than 50 per cent—against a sanctioned strength of seventy-two judges.<sup>10</sup> Thirty-five out of eighty-five High Court posts in Punjab and Haryana High Court, serving two states and one union territory, are vacant.

In one sense, small states with a small designated strength are worse off since they cannot afford even a single vacancy. Himachal Pradesh has eight out of thirteen posts vacant and Chhattisgarh has fourteen out of twenty-two vacant, whereas Jammu and Kashmir has nine out of seventeen vacant.<sup>11</sup> Where the sanctioned number of judges is already low, emaciated numbers can bring the High Court to a standstill. It would be almost Orwellian and comical, if it were not tragic, that some years ago we increased the sanctioned strength of almost all our High Courts significantly, but till date, even the original un-increased (that is, original sanctioned) strength invariably goes unfilled for months!

The position is no better at the district and lower court levels. In December 2018, with over 2.72 crore cases pending as arrears, about 5,135 vacancies against a sanctioned strength of 22,677 in the lower judiciary languished in vacancy. Out of the total number of vacant posts, only ten states in India account for 78 per cent of the vacancies—which amounts to over 4,000 vacant posts. These states include Uttar Pradesh, Bihar, Madhya Pradesh, Gujarat, Delhi, Tamil Nadu, Karnataka, and Rajasthan.<sup>12</sup> To this, we must add the larger perspective that a country of more than 1.3 billion people, of which at least 20 per cent can be counted as litigants or potential litigants, India has one of the world's lowest and most woefully inadequate judges-per-million-of-population ratio. In 1987, we had 10.5 judges per million of the population. In 1987 itself, the Law Commission strongly recommended an

increase to 50 judges per million of the population by 2000. This was repeated by the Supreme Court in the All India Judges Association Case in 2002. Presently, the judge-per-million-of-population ratio in India is 19.<sup>13</sup>

The fault must lie largely with the judicial organ and partially with the executive. The judiciary cannot have it both ways. Having appropriated to itself the appointment power, admittedly without textual sanction in the Constitution, and having reiterated that appropriation of power in the *National Judicial Appointments Commission* judgment<sup>14</sup>—which struck down the National Judicial Appointments Commission (NJAC) Bill by which parliament had amended the Constitution to make the judicial appointments process collegiate and broader based to include the executive in the decision-making process and not exclusive to five senior-most members of the apex judiciary (the latter system continues)—it becomes the bounden duty of the judicial family as a whole, especially at the apex court and High Court levels, to ensure that what has been made the exclusive preserve of the judiciary brooks absolutely no delay in filling vacancies. It is astonishing that till date a simple flow chart/time chart is not mandatorily laid down as a binding protocol for High Courts and the Supreme Court by the apex court itself, to ensure that movement of files at each level of the judicial appointments process is monitored by a judge in each court and does not exceed the stipulated time period for each rung of the ladder. A judicial vacancy is known from inception, since every judge's retirement date is predetermined. This flow chart must be made in a manner so as to have the notification for the new appointee issued at least one month prior to the retirement of the incumbent. The flow chart timelines must apply equally to the executive and a prompt reiteration by the collegium will, I have no doubt, result in the immediate and compulsory notification by the executive. Laments and blame games between the executive and judiciary in this regard are irrelevant and inexcusable, and no excuses would suffice since the power of appointment is now overwhelmingly, if not solely, with the judiciary. The delay in filling up sanctioned strength vacancies is usually attributable to the selection process, to internal ego problems, to procedural delays, and to file movements—none of which is insuperable. A core group for the High Court and for the subordinate courts to monitor the movement on such issues must also be constituted and can achieve dramatic results. The sad truth in India is that most of us, whether part of the legal system or complete strangers/outside, if tasked with the obligation of finding the best five or ten advocates suitable for the judgeship in each of our High Courts, would be able to do so in one month of concentrated search and analysis. Unfortunately, having found such suitable names, we then start a dangerous cocktail of local Bar politics, judicial politics, personal rivalry, petty egos, and the like, resulting either in inordinate delay, ensuring the withdrawal of the candidate's name after ruining his practice, or sabotaging his appointment as also his fair name and reputation.

Though not strictly within the scope of the theme of this chapter, a word about a simple change in the collegium's evaluation process would be in order. Much of the personal subjectivity, ego, and petty politics that are a sad and undeniable truth of the collegium process would be eliminated, or at least considerably reduced, if a uniform marking/evaluation sheet system is followed at both High Court and apex court levels. For example, all collegium members should be required to mark all potential appointees/promotees on four uniform criteria, which, purely illustratively, could be quality of judgments, integrity, success at the Bar, demeanour/accuracy/reliability, and so on. A modified list could be applied to Bar appointees, since, obviously, they would have no judgments to show. The headings and nature of each criterion can be tweaked by the judges of the collegium. So can each individual weight given to an individual criterion. That is not the point. The point is simply that non-availability of uniform criteria allows subjectivity, personal animosity, and anecdotal aberrations to flourish. It also precludes uniformity and comparisons, both intergenerationally and temporally, and, most seriously, undermines consistency completely. If we apply such simple techniques to selections of *chaprasis*, to students, to employees, and to other top positions, why should collegium appointments be exempt from this logical, consistent, and transparent process? Indeed, such evaluation marking sheets should be preserved for future scrutiny and judicial review, howsoever limited or restricted internally or circumscribed the apex court wants to make it. At least a record would make things much more transparent, consistent, logical, analytical, and sensible. One can only ascribe status quoism and fear of the unknown or, worse, an attempt to preserve incestuous, closed decision-making if such obvious and simple changes are not affected even during the current ongoing reform process.

A recent example illustrates the lack of foresight and planning in regard to the pressing need for prompt, regular, and periodic judicial appointments as per full sanctioned strength. Both the judiciary and the executive should have planned well in advance about the predictable delay ensuing from the constitutional skirmish over the NJAC. One may be for or against the NJAC—that is irrelevant. It was the bounden duty of all stakeholders to ensure that this skirmish did not result in a most unaffordable standstill on judicial appointments while intellectual arguments regarding the NJAC were raging for months in the Supreme Court. A pragmatic solution ought to have been found out in advance. The only logical solution would necessarily have to be a continuance of the old judicial collegium system until the final decision of the apex court. There is no excuse for the judicial collegium not being made to meet in this transitional period. Combining the period from the start of the NJAC challenge to the post-verdict invitation of suggestions by the apex court constitution bench, India, would easily have lost over nine months, possibly a whole year, with virtually no appointments in twenty-four High Courts!

Can India afford this? And amidst all our wise intellectual flights, who will share blame for lack of this elementary planning?

## Inefficiency to Utilize the Funds Allocated to the Judiciary

Turning to the next issue, we have to stop this strange and sorry spectacle that, on the one hand, we keep on lamenting about of lack infrastructure, lack of funding, lack of allocation, and so on, and on the other hand, over 80 per cent of funds allocated for specific/special judicial purposes remain unutilized. There is no doubt that the planned allocation for judicial infrastructure is abysmally low, being 0.071 per cent of the Ninth Plan (1997–2002)<sup>15</sup> and 0.078 per cent of the Tenth Plan (2002–2007).<sup>16</sup> Yet the following table (Table 3.1) published in March 2015 is telling and tragic. It shows that out of the specific fund allocation of 5,000 crore rupees by the 13th Finance Commission for diverse judicial objectives like morning and evening courts, ADR centres, Lok Adalats, Legal Aid, Judicial Academy, and so on, the highest utilization out of the allocations was well below 50 per cent, and in most cases, 60, 70, and even 80 per cent of the funds allocated remained unutilized in the period 2010–2015. The relevant figures are given in Table 3.1.

This is inexcusable and explodes the myth of an underfunded judiciary. It is disheartening that Budget 2018–2019 has decreased allocation for the judiciary significantly, from 1,174.13 crore rupees in the previous budget to 1,110 crore.<sup>17</sup> ‘Budget allocation for the judiciary is a serious concern. In so far as the Supreme Court is concerned, the government is not providing sufficient budget and, time and again, the chief justice has to intervene to seek sufficient allocation of Budget,’ said P. Sathasivam, former chief justice of India, in his farewell speech in 2014. No doubt the repeated lament of former chief justices must be met with necessary increases<sup>18</sup> but utilization of allocated funds must improve dramatically.

Table 3.1 | Fund Allocation by the 13th Finance Commission for 2010–2015 (Crore)

<i>Category</i>	<i>Allocation</i>	<i>Utilization</i>
Morning–evening courts	2,500	234
ADR centres	750	258
Local Adalat and Legal Aid	300	65
Training of judges	400	157
Heritage courts	450	102
Judicial academics	300	117
Court managers	300	37
Total	5,000	970

*Source:* <https://data.gov.in/resources/state-wise-and-activity-wise-release-and-utilization-funds-under-thirteenth-finance> (accessed 12 February 2019).

## Appointment of Ad Hoc Judges: A Forgotten Constitutional Power

We have also hardly used the constitutional power to have a large additional number of ad hoc judges under article 224A of the Constitution to work for five years or more until the backlog, especially of any identified classes of cases, is cleared. The provision for ad hoc judges—to be appointed by the chief justice with the consent of the central government, provided he has been a judge of that High Court or any other High Court—has one great advantage over other forms of recruitment. It provides a ready-made pool of known judicial talent, tried and tested, which can be relied upon to be competent, clean, and efficient. Indeed, article 224A permits even retired judges from other High Courts to be appointed to another High Court. This appears to have become a forgotten constitutional power, rarely used in the apex court and almost never at the High Court level, whereas it can be an effective weapon to deal with and dispose of old, forgotten, pending cases. This is particularly germane in the context of inordinately delayed fresh judicial appointments discussed in the preceding paragraphs. England, for centuries, has effectively used the system of Recorders at the lowest judicial rung. They are largely Queen's Counsels (QCs, that is, Senior Advocates) who join the Bench at the lowest level for a limited period of two years and dispose of thousands of petty criminal and civil cases and then return to their practice.

## Pending Cases in Lower Courts: The Biggest Challenge in Administration

We have to tailor and fine-tune roster allocation according to the movement of pending arrears. For example, as on 12 February 2019, the total pending cases in all courts across India below the High Court level was 2.97 crore, of which criminal cases were just under three times the aggregate of civil cases.<sup>19</sup> Besides the massive number of backlogs in the lower courts, the backlog in the High Courts was over 49 lakh (4.9 million), which include over 24 lakh civil cases as well as over 13 lakh criminal cases, the rest being writ petitions.<sup>20</sup> While the Allahabad High Court, which has 726,000 pending cases, is right at the top of the list, the Rajasthan High Court comes second with 449,000 pending cases.<sup>21</sup> A pilot project by a Bangalore-based organization, Daksh, shows that a very small percentage of cases pending were older than ten years and a small, manageable number was five to ten years old while the bulk, expectedly, were pending for less than two years. It also revealed a case pending in Jharkhand High Court for fifty-seven years. In my Chagla Memorial Lecture at Mumbai University in January 2007, I had referred to a 1950 pendency in Madhya Pradesh High Court, a 1951 pendency in Patna

High Court, a 1955 pendency in Calcutta High Court, and a 1956 pendency in Rajasthan. Hopefully, most of these do not continue to exist.

What conclusion does this statistical analysis yield? *First*, courts below the High Court must always have approximately three times the judges dealing with criminal case rosters as opposed to those dealing with civil cases. *Second*, this general principle must be further calibrated, modified, and tailored as per individual districts and localities. *Third*, the reverse is required to be done in many High Courts where civil case arrears are exactly three times higher in number than criminal ones. *Fourth*, at all the courts up to the High Court level, there must be multiple tracks with one judge dealing with over ten-year-old cases, another with only two-to-five-year-old cases and the majority of judges with below two-year-old cases. *Fifth*, a broad classification is useful, with one track dealing with over two-year-old cases and the other with current filings. This is the only way to keep ahead of the Battle of the Bulge and prevent regression of even the currently healthy High Courts and district courts into the abyss of arrears. *Last*, given the relatively small proportion of over two-year-old cases, especially the very small number of those over ten years old, there is no reason why each High Court cannot wipe off the ignominy of stray pendencies of the 1950s/1960s by simply putting a special judicial track to wipe off such bad publicity in a few years through a concerted and sustained effort.

## Micromanagement and Analysis of Pending Cases

Such micro-monitoring, statistical analyses, weekly, monthly, quarterly, bi-annual, and yearly charts containing statistical and detailed analyses must be done in every High Court, district court, and lower court by specially designated technical and managerial experts (as far as possible non-lawyers and non-judges). Information is the biggest weapon and for decades we have woefully and inexcusably underutilized it. Moreover, this is something which should never be left to lawyers and judges but has to be entrusted to trained experts in specially created cells in every court complex and ultimately threaded together into one uniform national judicial grid. Just as the mechanics of war is sometimes too complex to be left to generals, law reform based on technical data and sophisticated computerized evaluation techniques is too serious to be left to lawyers and judges. In any event, the breath of fresh air brought in by young dynamic information technology and managerial experts who are outsiders to the system is far better than the incestuous vested interests of lawyers and judges which operate in all courts at every level and are inevitable.

## The Absence of Standardization and Uniformity

I know that much of the aforementioned ideas are underway, and the National Judicial Data Grid, the Supreme Court website, and several departments of judiciary websites

have progressed in the suggested direction. But there are significant deficiencies, chiefly the absence of standardization and uniformity, which is a serious drawback. *Second*, different High Courts revel, for reasons of legacy, history, and heritage, in employing a bewildering array of nomenclatures and acronyms to describe the same thing. For example, a writ petition is described differently in at least ten High Courts, as also would be different kinds of miscellaneous applications. Standardization and uniformity in this regard, jettisoning individual or historical egos, is vital and urgently required. Interstate, intercountry, temporal, and intergenerational comparative analysis is not possible without uniformity. Use of technology to analyse raw data is also predicated on the same assumption of uniformity.

## Uniform Adoption of Salutory Good Practices by Courts

It goes without saying that best practices of different High Courts as indeed of the lower levels, eclectically gathered together and made into a uniform all-India protocol, must be followed by every High Court, the lower courts, and, where applicable, even the apex court. The Law Ministry has frequently tried to compile a list of good practices<sup>22</sup> followed by certain courts but institutional insularity has often prevented the uniform adoption of several salutory good practices. These include simple and obvious panaceas like designating a special day in the week for disposal of older cases; daily, weekly, monthly, and quarterly disposal charts; monitoring case adjournments and reasons for them, thereafter circulating such analysis to each judge; and following up by way of some minimal but necessary admonishment being conveyed to the judge concerned regarding low disposal, based upon charts in intra-court meetings. Pre-trial conferences with the trial judge to ensure the ripeness of the case; followed by day-to-day monitoring; designated Saturday meetings between the advocates of both sides and the judge to freeze issues for focussed disposal; setting weekly, monthly, and quarterly targets for speedy disposal and reviewing failure to achieve intended targets; holding Lok Adalats on all working days for one hour before or after court hours and for the whole day on non-working days (for example, Calcutta);<sup>23</sup> adopting a sophisticated computerized case law management system monitored by managerial professionals under judicial supervision (for example, Delhi),<sup>24</sup> and so on, are other obvious good practices but still found missing collectively and synergistically in most Indian courts.

## The ABCD of Judicial Reform

The overall approach has to be to keep moving aggressively towards the A, B, C, D of judicial reform. The A, B, C, D of judicial reforms are all interlinked since A stands for access, B for backlog, C for cost, and D for delay. Cause and effect

are inextricably intertwined in this paradigm: one feeds the other and constitutes both cause and effect. India's unprecedented achievement in being the world's most dynamic judicial system, having the world's most activist judiciary, having invented remarkably revolutionary legal concepts like public interest litigation and the basic structure of the constitution theory, having a vibrant and truly independent judiciary in the world's largest democracy, having the world's second largest legal fraternity (comprising the best and brightest of the world), are all unfortunately nullified when we are forced to confront the scourge and spectre of mountainous arrears of over 3.2 crore. No one likes to indict one's own country but the following words are not mine. They are those of one of India's most illustrious sons. About delay in litigation, Nani Palkhivala had this to say:

May I turn to the situation in India which has the second largest number of lawyers in the world? While it is true that justice should be blind, in our country it is also lame. It barely manages to hobble along. The law may or may not be an ass but in India, it is a snail: it moves at a pace which would be regarded as unduly slow in a community of snails. A lawsuit, once started in India is the nearest thing to eternal life ever seen on this earth. Some have said that litigation in India is a form of fairly harmless entertainment. But, if so, it seems to be a very expensive way of keeping the citizenry amused. If litigation were to be included in the next Olympics, India would be quite certain of winning at least one gold medal.<sup>25</sup>

## Consequential Penal Action for Errant Stakeholders

When we read this, we are reminded of the 1950, 1951, and 1955 pendencies that I mentioned earlier. But what is the anatomy and analysis of such pendencies, if we scratch and dig beneath the surface? A news report<sup>26</sup> describes the pitiable case of a Delhi Transport Corporation (DTC) bus conductor who, in 1973, was alleged to be charging a woman passenger 10 paise instead of 15 paise. The department recommended dismissal in 1976, the Labour Court took fourteen years to reverse and recommended reinstatement with full back wages in 1990. In no civilized system would DTC or its counterpart have gone further, but in India, the DTC predictably challenged the Labour Court order in the Delhi High Court, which took another eighteen years to throw out the DTC challenge in 2008. Undeterred and unrepentant, DTC filed a review petition in the Delhi High Court and refused, in the meanwhile, to either reinstate the bus conductor or pay him back wages or give him post-retirement benefits (since he would have retired many years ago). Sadly, instead of refusing to interfere, the Delhi High Court partly allowed the DTC review petition ordering the seventy-year-old Ranbir Singh to pay DTC 1.42 rupees in loss of revenue! The amount of 1.42 rupees is based on compounded interest on 5 paise that the defendant, in 1973, in his capacity as a conductor for

DTC, undercharged a female customer. At the interest rate of 8.5 per cent per annum, 5 paise would amount to 1.42 rupees today! Such verdicts encourage future aberrant behaviour of public corporations who should never have appealed in the first place.

The facts and context of this case themselves suggest the solution. Has anyone punished the relevant DTC official(s) who keep taking decisions on the file to keep challenging each judicial adverse decision? Indeed, action deserved to be taken even against lawyers, law officers, and other advisors for callously advising never-ending challenges, making a youthful Ranbir Singh, the bus conductor, when the cases started into an over seventy-five years old wrecked victim today. Has anybody, DTC or the Labour Court presiding judge or the High Court chief justice, examined the file to track why it took first fourteen and then eighteen years at the Labour Court and High Court levels? What is the purpose of handing Ranbir Singh a victory which was certainly deserved but entirely pyrrhic? What is it about India's judicial system that makes a victim out of a victor? Why is there no closure within any reasonable time for most Indian legal proceedings? In fact, if the analysis was to dig deeper, it would find post-verdict trauma to be as bad if not worse than the multiple electric shocks suffered by a litigant during his passage through the multi-tiered Indian legal system.

The case of Salman Khan,<sup>27</sup> the actor, is a good example of continuing post-verdict trauma. The actor was directed by the Bombay High Court in 2002 to pay 19 lakh rupees as compensation to certain deceased and injured in a drunken driving accident. The money was paid promptly by the actor. It was later discovered, after thirteen years, by the Bombay Division Bench that the money had not been paid/dispensed to any of the victims or their families! Obviously, this happens because there is no individual monitoring/case tracking. I can wager a bet that there is hardly any consequential penal action that will be taken against errant officials culpable in such bizarre examples.

## Conclusion

May I say, in conclusion, that our entire perspective has to change. We have to see ourselves as a service industry and revisualize and reimagine the whole process from the point of view of the litigant. To use an old phrase, the customer has to be King. We cannot indefinitely continue to see the legal system from the point of view of the convenience and earning of the lawyer or the stature and pomposity of the judge. The litigant more often than not wails: *Dopahar tak bik gaya bazaar ka har ek jhooth, aur main ek sach ko le kar shaam tak baitha raha* (Every lie in the market was sold by noon, and I kept sitting till the evening with my truth). The legal family—judges, lawyers, academics, registry officials, litigants, parties—all

have a contributory and historic role to play. They should all heed Iqbal's warning before it is too late and effect real and meaningful, not cosmetic, reform. Iqbal's memorable words were: *Ek khwab aisa dekha tha, ta umr neend aayi; lambon ne khata ki thi, sadiyon ne sazaa payi* (I saw such a dream that I couldn't sleep throughout my life; indeed, centuries were punished for the mistake of a couple of moments). It is our bounden duty to collectively ensure that that does not happen. We owe it to India, to our children, and to ourselves.

## Notes

1. Foucault Michel, *Power/Knowledge* (New York: Pantheon, 1980).
2. See <https://www.coursehero.com/file/p76dg8v/Gives-the-judicial-system-a-legitimacy-in-eyes-of-ppl-it-would-not-otherwise/> (accessed 12 January 2019).
3. See Hiram E. Chodosh, Stephen A. Mayo, A.M. Ahmadi, and Abhishek M. Singhvi, 'Indian Civil Justice System Reform,' *New York University Journal of International Law and Politics* 30 (1997–1998): 1.
4. See <https://www.hindustantimes.com/india-news/nearly-400-vacancies-for-judges-in-high-courts-75-await-govt-nod/story-iEm5YRELJRQgOazcu1RMZP.html> (accessed 21 January 2019).
5. See <https://barandbench.com/six-additional-judges-allahabad-hc-two-jharkhand-hc-made-permanent/> (accessed 21 January 2019).
6. See <https://barandbench.com/collegium-recommends-bombay-high-court-additional-judges-permanent/> (accessed 21 January 2019).
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