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ESSENTIAL ELEMENTS OF JUDICIAL REFORMS IN INDIA

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Abstract

The contemporary problems demand contemporary solutions also. That is the significance of judicial reforms. The nomads had their own problems and solutions too. The industrialized generation does have their own different set of problems, apart from that of the nomads. The solutions and systems that were designed for the nomads could work for them, could have been successful also, but need not give the same result if applied across the time frame. The time never stays static, and so too, do the problems and solutions. If the system is unable to constantly upgrade itself to the needs of the time, society will discard the system, being redundant and futile. That is relevant concerning judicial reforms as well. Apart from cosmetic changes, we need to have structural changes to address the present stagnation of the system. The problem is not skin deep and for that reason, the solutions shall not remain to be cosmetic. If the vast majority of the people still want to retain faith in the judicial system, justice shall be available to them in near geographical proximity, at an affordable cost, in a reasonable and proximate time frame. If all these factors are indefinitely stretched, the institutional trust will be eroded and the organ is bound to meet its natural fate. If the profession of advocacy shall survive, they need to instill confidence in the minds of the common people for the delivery of justice, at lower cost, relatively in a proximate time and surely in their neighborhood. '*Interestorepublicout sit finislitium*'[3] an age-old maxim that needs to be implemented in letter and spirit in India also. The following article ponders upon various structural changes in this regard.

KEYWORDS: Indian Constitution**,** Judicial Reforms, Delivery of Justice, Nomads, Contemporary problems, Apex Court, Supreme Court, High Court, Tribunals

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Introduction

The recently concluded meeting of the Chief Ministers and the High Court Chief Justices again ignited a call for judicial reforms, which is a matter of discussion for many decades now. The judiciary we inherit is the Common Law system from the British Colonial relic. It has its strengths and weaknesses. There is no reason to reject the system altogether and install a prehistoric relic. On the contrary, it is not taboo to discuss and find solutions for the problems and shortcomings the existing system is facing in terms of the dispensation of justice. Neither it can be stagnant norcan stoic, nor it be thrown away. What we need is to go ahead with necessary corrections and adjustments to meet contemporary challenges. The system needs to be vibrant and dynamic; ever reforming itself to meet the challenges it is facing in day-to-day functioning, instead of playing with the age-oldformulae, which was good enough to resolve the problems of those times. But what we need to understand is that the solutions which the old system gave us were for those day's problems and the new age problems cannot be resolved with the solutions of those vintage problems. The contemporary problems demand contemporary solutions also. That is the significance of judicial reforms. The nomads had their problems and solutions too. The industrialized generation does have their own different set of problems, apart from that of the nomads. The solutions and systems that were designed for the nomads could work for them, could have been successful also, but need not give the same result if applied across the time frame. The time never stays static, and so too, do the problems and solutions. If the system is unable to constantly upgrade itself to the needs of the time, society will discard the system, being redundant and futile.

The judiciary is not an exception to the same and the judicial reforms are not a thing to be carried out at a point in time, but to be an ever-dynamic process of constant revision and upgradation. The law is subject to that type of constant up-gradation and revision through ever dynamic democratic process and vibrant legislatures. There are some suggestionsdiscussed for the Judicial Reforms which are given below:

Reduce The Strength Of The Supreme Court Of India

So much of cases are pending in the judiciary and the bulk of pending cases in the Supreme Court is constantly increasing. In this context, it may be unpalpable to make such a demand which will complicate the problem. But still, there are various reasons to make such demand. Apart from cosmetic changes, we need to have structural changes to address the present stagnation of the system. The problem is not skin deep and for that reason, the solutions shall not remain to be cosmetic.

It is time to look into the number of cases handled by the Indian Supreme Court, so also the Orders and Judgments passed by it, in comparison to the Supreme Court of the USA or the British Supreme Court. There is a huge difference. The Indian Supreme Court is handling appeals under Article 136 against all types of Orders, even those which are passed by the Lower Courts. It is utilised at times by the advocates to create undue litigation and revenue out of the ignorance and vulnerability of litigants, who are at the mercy of the advice. A huge volume of the cases which are being handled by the Supreme Court of India could be settled at the lower courts itself if appellate proceedings are regularized and the writ proceedings are limited only to the issues warranting national attention. The issue of allowing the lower courts to issue writ orders is discussed below.

Dragging the Supreme Court into deciding event trivial cases and making to sit the Apex Court upon unwanted appeals makes the litigation costly and allows the advocate to make more instant profit. But in the long run, it can be counterproductive, as the litigants will lose faith in the system which has no time to hear their cases and decide on merits. If the vast majority of the people still want to retain faith in the judicial system, justice shall be available to them in near geographical proximity, at an affordable cost, in a reasonable and proximate time frame. If all these factors are indefinitely stretched, the institutional trust will be eroded and the organ is bound to meet its natural fate. The biggest sufferers will be the advocate community and they are yet to realize this reality. If the profession of advocacy shall survive, they need to instil confidence in the minds of the common people to the delivery of justice, at lower cost, relatively in a proximate time and surely in theirneighbourhood.

Hence in a hierarchical structure, the base needs to be so vast, so that the upper crust is sufficiently supported. Rather stability is attained only if the structure is pyramidicaled. If the lower base shrinks systematically and the upper crust expands periodically the pyramid itself may be reversed and the stability may be at stake. Hence for a better judicial system, which is stable and fruitful, the flab in the upper crust needs to be reduced. This can be achieved only by reducing the strength of the Supreme Court of India. There may be some counterargument that, as the population of the

nation increases, is not required to increase the number of judges in the Supreme Court of India also proportionately. Let us understand that, we do not increase the number of Prime Ministers or that of the President, proportionately with the increase in population. What we need to do is to increase the number of Judges at the lower level so that the citizens can avail justice in their neighbourhood. That is what is demanded by the democratic process and that alone is the answer to address the problem of addressing the population explosion. In an alternative way, if the population is increasing and we call all of them to the Supreme Court of India for seeking justice by increasing the number of judges, how far the system will survive? Then the other pertinent question arises, how the Supreme Court of India can handle the ever-increasing number of cases. Even the present numbers of judges are not able to handle the cases effectively by investing adequate time, even after they struggle by burning their midnight oil. The individual burden upon the judges is huge and they are forced to work mechanically without sufficient time to ponder upon each issue and also to apply their minds in a peaceful and cosmic atmosphere. The everlasting rush to clear the docket makes the human trespass the barriers of justice. Thenwhat to do to reduce the burden upon the judges?

Reduce The Jurisdiction Of The Supreme Court Of India

In this context, the Apex Court shall only be burdened to decide upon the complex matters which may be the Inter-State issues or Constitutional issues, that too with proper deliberations and elaborate hearing. Only very limited subjective jurisdiction shall be bestowed upon the Supreme Court so that it gets sufficient time to deliberate and ponder upon the issues so also to guide the nation in a positive direction. In that case, the Supreme Court shall retain its sanctity of the Constitutional Court, with its all majesty and elegance. The common people for their daily needs of justice shall not be forced to reach out to Supreme Court, which will be taxing them financially and also spoiling their valuable time and resources, which could have been otherwise used purposively for nation-building. So, for ordinary citizens, the finality of justice shall be available within the geographical proximity, which can maximum be extended to the limits of the State. That means the High Courts shall be the final appellate forum which decides the case between the parties and the litigation shall find a finality there itself. *'Interestorepublicout sit finislitium'*[4]an age-old maxim that needs to be implemented in letter and spirit in India also.

In all those litigation between individuals or even in corporate litigations, the High Court shall be

[4]S.S.Peloubet, A Collection of Legal Maxims in Law and Equity, George S. Diossy, New York, 1880, Page 124, Line No.1005.

vested with final appellate authority. This is necessary to retain the federal character of the constitution. The District Court Jurisdiction also shall be increased substantially to accommodate the appellate requirement. In no instance, the appeal shall lie to the Supreme Court of India directly. And the Supreme Court's burden shall be reduced to answer only those issues in which different High Courts have expressed conflicting views. Apart from some limited original jurisdiction, the Supreme Court of India shall be vested with only those appellate jurisdictions in which there are conflicting views expressed by different High Court.

Article 32 also bestows limited Original jurisdiction upon the Supreme Court of India for infringement of any fundamental rights. It has created a jurisdiction for those who could afford costly advocates who charge a premium fee. The ordinary men and women who don't have that capacity to afford a senior advocate at premium fees cannot avail of such a right, remedy or forum. Unwittingly the framers of the Constitution have conferred such jurisdiction upon the Supreme Court of India, the consequences they could not even think of. Over the years, it has time and again proved that the said jurisdiction is not accessible to the vast majority of the population. And if it is made available to them, it is not practical for the Apex Court to sit in hearing the grievances of crores of people.

Thus, the practical solution is to limit the jurisdiction of the apex court and increase the jurisdiction of the lower courts, which may also be allowed to entertain litigation challenging fundamental right violations. Thus, the burden of the Supreme Court of India can be reduced, the lower court can be strengthened, and justice shall be made available to one and all irrespective of their financial impediment or geographical diversity.

Cases Need To Find Finality In High Court Itself

In almost every case the High Court shall be the final Appellate Court, apart from those in which the States are on loggerheads. As mentioned earlier, the common people, as the population increases and awareness spreads, need justice in a proximate context. This can happen only if the cases find their finality within the geographical jurisdiction of the state itself. Hence both the Constitutional and Statutory appeal structure shall be confined to the geographical limits of the State. This creates another problem, where the same law is interpreted in different ways in different States and different results are derived. The uniformity of law will suffer in that case.

Supreme Court Of India May Adjudicate Only Those Questions Of Law In Which High Courts Have Expressed Divergent Views

In such cases, where various high court benches have expressed their divergent views, the matter needs to be settled by the Supreme Court and the jurisdiction of the Special Leave Petition under Article 136 shall be limited only to such instances. Hence the Supreme Court gets more time to ponder upon it and the views of High Courts also will matter substantially in those issues. If it is under reference by the High Court, the Supreme Court can express its views only on the issues where there is a difference of opinion and all other peripheral and ancillary matters can be decided by the High Court itself while disposing of the case. This has a twin advantage. The valuable judicial time of the Supreme Court can be saved for better utilization or investment in more important issues. Apart from it, the cost to the litigant also can be substantially reduced, in terms of court fees and also of advocate fees. Beyond that, the advocates at the lower level also will get significance in deciding the larger issues of question of law. Their status and also their stature and knowledge will find competence.

LOWER COURTS SHALL HAVE THE JURISDICTION TO DECLARE THE LAW AS VIOLATIVE OF FUNDAMENTAL RIGHTS

At present, the violation of fundamental rights by the State is routinely challenged before the Higher Courts, namely either the Supreme Court under Article 32 or under Article 226 before the High Court. Those who can afford the service of Senior Advocates and those who enjoy face value before the bench may be able to avail some relief. Otherwise, the ordinary class of litigants or the mass classes of advocates do have no significance before the Apex Court. Those petitions will be dismissed in a matter of seconds, with one line Order maybe for not exhausting alternative procedures and forums. Then the ordinary people may wonder how they can seek justice being party aggrieved if their fundamental rights are infringed. The answer lies in empowering the lower court to declare the law or the executive action as violative of the fundamental right of the person. The person aggrieved shall be able to seek remedy in a nearby court, without resorting to the higher echelons of the judiciary and spending much precious time and resources. The question arises, how the local courts can declare the law and violative of the rights which will have pan Indian implications. The concept of *resjudicata* is fundamental to the same. The non-application of the given fundamental principle of law is the foundation of many crises the judicial system is facing today. The Common law is our law under Article 372 of the Constitution. It is founded on two simple principles, *'res judicata'* and *'stare decisis'*, namely, precedent. *Res judicata* means a decision in a case between A and B will bind and them, but not C and D who were not parties to it,

in other words, it will not bind *'res inter alios'*[5], namely, third parties. The doctrine of *'stare decisis'* or 'precedent' means that the reason for the decision, namely, '*ratio decidendi'* enunciated by a superior Court in a previous case between A and B will be applicable in a subsequent case between C and D, namely, third parties. Hence, in the case of any declaration of nullity of any law by a lower court, it shall operate only between the parties to the said litigation and not anybody else. If the higher court determines the same question, the '*stare decises'* or the '*precedent*' comes into play. This is the only way to allow the common man to avail justice without emptying his exchequer.Article 141 shall also be amended to reflect the original legislative intent, akin to Article 212 of the Government of India Act, 1935.

Power Of Lower Courts Shall Be Increased

If the lower courts shall declare the law and the executive orders as violative of fundamental rights, their powers and authority also shall be increased. Then only those courts will be able to declare the action or the law of the land as violative of fundamental rights. The present situation is that, if the rights of an ordinary man are violated, he has no judicial remedy until he is ready to forgo his whole resources for litigation. Otherwise, he has to suffer in silence. Some people may be able to resort to alternative methods of using muscle powers by hiring or garnering political clout, which is also an illegitimate methodology. Instead, if the lower courts are empowered to seek remedies against the executive omissions and commissions at the lower levels, the common man shall be able to seek remedy at a lower cost and the same will improve the quality of administration substantially.

Lower Courts Shall Also Be Allowed To Interpret The Law In Spirit At Least The Sessions Court And District Courts

The present myth is that only the High Courts and the Supreme Courts are capable of interpreting the law in spirit and all other courts are not capable to do so. It is not because the lower courts are not capable, but they are not allowed to interpret the law in spirit. The very Constitutional terminology in this regard, describing the other courts as subordinate or lower courts shall need to be amended. They are the courts of plenary jurisdiction and enjoy unlimited independence within their jurisdiction. The independence of the judiciary is not endemic to the Supreme Court alone but is part and parcel of the judicial system. The interpretation of the law is not the sole domain of

[5]'*Res inter alios acta alterinocere non debet'*, 'things done between strangers ought not to injure those who are not parties to it' ,S.S.Peloubet, A Collection of Legal Maxims in Law and Equity, George S. Diossy, New York, 1880, Page 265, Line No.2203

Higher Courts, but every organ, let it be Parliament or the executive interprets the law in their day-to-day functioning. Without entering into the interpretation of the law, the rule of law finds no place in executive action. Hence the executive in its domain continuously interprets the law while administering this nation. Only when the said interpretation finds a dispute between the parties, the issue reaches the jurisdiction of the court. The dispute thus may be between the executive and the citizen. Hence, even the citizen is empowered to interpret the law. Then only the dispute arises between the executive interpretation of the law and the citizen's interpretation of the law. If the citizen is not empowered to interpret the law, the executive interpretation is final and binding. The conflict arises, only because the citizen is also empowered to do so. Then the dispute of conflicting interpretations is settled by judicial interpretation. So also, when the citizen participates in the election process, he is participating in policymaking and legislation which are the direct outcome of the statutory interpretations. Hence the independence and authority of the lower courts shall be restored in this regard.

Judicial Service Shall Be Established

The quality of judicial interpretation, especially when the lower courts are given authority to interpret the law in spirit, is a matter of concern. Hence the constitutional mandate of establishing the National Judicial Services comes to the rescue in this regard. The well trained and dedicated cadre will come a long way to ensure that the judicial quality and sanctity are restored and the people at large are served with justice in a reasoned time frame.

Establishment Of Regional Appellate Courts

It can only increase the problems. Then there shall be one establishment above and over the different regional courts to settle the law uniformly. Instead of simplifying the problem, we will have complex problems and the appellate levels go indefinitely long. Even within the present levels of appeals, the litigation takes decades to find finality. If one more appellate level is instilled, without fortifying the foundations, the complexity and duration of litigation will increase or decrease is a question to be answered first. Neither the establishment of regional benches can solve the issues

Retirement Of Supreme Court Of India Judges

There is a growing tendency for post-retirement appointments. There are a plethora of offices which are reserved for retired Supreme Court and High Court judges, apart from other opportunities carved out by the political bosses to whom each one connects well. In the words of former law minister, Shri Arun Jaitely, as he spoke in Parliament, 'the aspirations of post-retirement appointment impact the pre-retirement judgments'. This is a serious threat to the independence of the judiciary. Apart from causing additional financial burdens, the justice delivery system is also losing its credibility by following a system of post-retirement appointments. Hence, especially for the apex court, the judges shall be allowed to serve the nation, as long as the person's health permits. This is the practice followed in the USA. There is an urgent requirement for India too to adopt such a practice.

The Appointment Shall Be After Three Years Cooling Period As High Court Judges

If that comes into practice the appointment to the Supreme Court of India can be made from the retired judges of the High Court's after a cooling period of three or four years. This will give space for the High Court judges and their judgments to be evaluated, and subjected to public scrutiny and will allow the system a cooling period also. The judges will hesitate to give biased judgements seeking post-retirement elevation to the Supreme Court of India, as the system will be different after three or four years. Hence the best independent talent and mind can be filtered and reserved for elevation to the apex court, which will serve for their life.

No Regular And Statutory Judicial Appointments Shall Be Reserved For Retired Persons

There are around 50 legislations which reserve the appointments only for the retired judges whereas the judges are drawn from the Bar. If the Bar can be trusted for delivering judges even up to the Supreme Court of India, it is not understood, why the same Bar cannot be trusted for providing Judicial officers for all these Statutory offices. The rush for post-retirement appointments through their pre-retirementjudgment is a serious temptation, cutting at the very root of judicial independence. Hence this practise of reserving the appointment for the retired judges shall be done away with more to do.

Tribunalization Shall Be Done Away With

The Constitution makers had the vision to integrate the judicial system into a Common law system and hence discarded all other types of the system through the Constitutional mechanism. The Constitution establishes only one system of Civil Courts, which enjoys plenary jurisdiction. But with the insertion of Articles 323-A & 323-B [6] the Tribunalization of the justice system made a comeback into the Indian judiciary. It is unfortunate that, instead of simplifying the cumbersome procedures of the CivilCourts, the tribunals are created to circumvent those complex procedures. What is the need of the hour is to simplify the civil procedures and integrate the entire civil jurisdiction into one system of courts. There can be subjective jurisdiction for different courts. But establishing the infinite number of tribunals, making the procedures and appeals complex is certainly not an answer.

All Post-Retirement Appointments Shall Be Done Only After A Mandatory Five Years Of The Cooling Period

If at all the government wants to appoint someone considering his independence or calibre for the better utilization of nation-building, it may be done only after a cooling period of 5 years. Already the Constitution provides for a total ban on reappointment in the case of the members of the Public Service Commission[7] and Comptroller and Auditor General[8]. Such a ban or at least a cooling period shall be provided in the case of the judges also so that the judicial independence is maintained and protected from the post-retirement aspirations.

Academic Fraternity Shall Also Be In The Zone Of Consideration For The Appointment Of Supreme Court Of India's Judges

The law is not the sole province of practising advocates and hence the persons from other fields also shall be within the consideration zone of appointment as judges. There are very eminent and independent law faculties across the nation that builds the future Bar and Bench. Hence, they are also so eminent in the field of law and shall be in the zone of consideration. There are eminent writers, who have contributed enormously to the development of law. We do not have the practice to accommodate them into the judicial setup and effectively utilize their efficiency, talent and

[6] Inserted by the Constitution (forty-second Amendment) Act, 1976, S.46(w.e.f. 03-01-1977)
[7] Indian Constitution Article 319
[8] Indian Constitution Article 148 Clause(4)

independence, though the Constitution makes such a provision[9].

Video Recording Of Court Proceedings

Video recording of the court proceedings and making it as part of the case file is essential in modern times, where the records can be made straight. It is apart from a live telecast of the court proceedings, which has shown a positive trend due to the Covid-19 pandemic. Apart from that, the court proceedings shall be recorded and made part of the court records for future references, at least until the litigation reaches its finality.

Execution Proceedings By Supreme Court Of India

Supreme Court of India shall restrain itself from execution proceedings, apart from the litigation in which the Supreme Court of India hasan Originaljurisdiction. The Code of Civil Procedure, 1908 is clear in these terms and the said procedure of execution proceedings shall be followed strictly in this regard. There are various occasions the Supreme Court of India entered into the execution of the orders passed in the appellate jurisdiction, where the court needs to exercise self-restraint, overcoming the temporary temptations.

Procedures Shall Be Simplified civil And Criminal

The present procedures, both in civil and criminal practice are cumbersome and beyond the comprehension of the ordinary man. The procedures are only the handmaid of justice and justice cannot be done away with for the sake of procedures. There need to have a fine-tuned balance. The modern technology shall also be adopted into the procedural law so that the procedures find transparency, dynamism, accountability and speed.

LAW OF EVIDENCE SHALL BE MODIFIED TO ACCOMMODATE MODERN TECHNIQUES

The law of evidence is based upon Century-old concepts which need to be overhauled for incorporating modern scientific advancement. Instead of coercive and torture methods, the criminal investigation shall grow into depending upon the scientific shreds of evidence and methodologies to prove a case beyond a reasonable doubt.

[9]Indian Constitution Article 124 Clause(3), Sub Clause (c)

Designation Of Senior Advocates

The designation of SeniorAdvocates,maintenance of their role and disciplinary authority shall be retained with Bass Council, not with the Bench. The fruits of the independence of the judiciary can be enjoyed by the public at large, only if we have an independent Bar. The independence of the Bar is achieved through its self-regulatory mechanism, coupled with its autonomy. When the designation of senior advocates is the prerogative of the Bench, the Bat loses its independence and the advocates become subordinates of the Bench. Their role is maintained under the authority of the Bench, so also the disciplinary authority is retained by it. This is a serious impediment to the independence of the Bar, which in turn will strike at the very root of the independence of the judiciary in delivering justice. Hence the system shall be restored in terms of the Advocates Act, 1961 to retain the autonomy of the Bar. Beyond this, this will allow those meritorious advocates practising in lower courts also to be designated as Senior Advocates. The mastery of advocacy in dealing with procedures lies with those advocates and that amounts to practical advocacy. Theadvocates practicing in Civil and Criminal court shall also be considered for designation as Senior Advocates.

System Of Advocate On Record

The Advocate onRecord exam is conducted by the Supreme Court of India directly, which denies any judicial remedy to the participants or persons aggrieved, in case of violation of any of his legal rights. In the era of modern communication systems and fast-moving technology, the very concept of the Advocate on Record system in the Supreme Court of India itself becomes redundant. If at all it is required, the roll and disciplinary authority shall be retained with the Bar Council, which alone has the right to regulate the legal practice in India. There is a need to put into practice the legislative intention of the Advocates Act in letter and spirit.

Better Infrastructure Shall Be Provided For The Courts

Most of the lower courts, and also the High Courts are still dependent upon Pre-independence Colonial infrastructure, which reflects the Colonialmindsets of dealing with Colonial subjects. The litigants are seldom provided with basic amenities and in most cases even the necessary space for conducting themselves. Apart from that, the population has increased almost three times from the population at the time of independence. The economic activity and penetration of education have also multiplied many times, causing an increase in dockets in courts. The number of legislations also has added to it. All these renewed situations demand further additions to the court's complex

infrastructure in terms of the modern requirements. The present infrastructure treats the litigants and their counsels merely as inferior subjects making them queue up outside their windows as the continuation of Colonial relic even after 75 years of independence. This needs to be change. Apart from this, the e-filing of the case shall also be made a regular practice to save time, resources and efforts.

Issues Shall Be Framed In Writ Jurisdiction

To date, the number of disputes is determined under the Writ jurisdiction of the Supreme Court of India and various High Courts. But in none of those deliberations, the issues are framed, to make a reasoned conclusion. There are numerous instances, the case is closed without determining the issues at hand and leaving the parties aggrieved with no further remedies. This is a serious challenge to the dispensation of justice. It is not the case that the Writ jurisdiction is invoked only in rare or isolated instances. Once the Writ jurisdiction has gained prominence over and above the civil litigation for various reasons, which is an unimagined consequence, there is a need to place procedural safeguard in this regard too. Apart from this, the Public Interest Litigation also shall be regularized with proper procedural safeguards through appropriate legislative measures.

Conclusion

The judiciary in India is considered to be the most powerful one in the world. It has its own inherent powers and weaknesses also. The system we inherit has the Anglo-Roman relic with contemporary Anglo-Saxon modification. Both common law countries and civil law countries do have many things in common and are based on the principle of 'salus populi, suprema lex', nay, the welfare of the people is the supreme legislation. Hence the system shall be contemporarily modified for the needs of the current generations. The society and polity are dynamic and the supporting judiciary alone cannot be static and stoic. It needs to re-invent itself constantly to meet the needs of 'we the people' who are the ultimate consumers of justice. The judiciary cannot be outdated to such an extent, where the consumers of justice themselves reject its end products. In that case the institution itself will become irrelevant and may end up in oblivion. To save the Judicial system from such oblivion, there is an urgent need to address the most pressing demand of judicial reforms.

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