

People Power

Rule of Law and Current Discontents

The failure of prosecution in a spate of cases in recent times once again focused public attention on our justice system. Distinguished jurists as well as political leaders and commentators are lamenting the near-collapse of rule of law, resulting from failure of justice system – civil and criminal.

As the economy is growing at a comfortable 8% per annum, the limiting factors clearly are infrastructure, productivity of labour and failure of rule of law. All these three are integrally linked to governance. Nothing demonstrates the failure of governance as the incapacity to bring the guilty to book, resolve disputes, and enhance legitimacy of the state.

State's failure to resolve disputes and enforce contracts swiftly and peacefully has inhibited investment and risk-taking. Worse still, it spawned a whole new industry of providing rough and ready justice, often through violent means. A combination of abject poverty, injustice and poor services are undermining the legitimacy of the state, fueling Maoist violence and anarchy in large pockets of the country. This corridor of Maoist insurrection, backed by arms trafficking condoned by a corrupt and inefficient administration, poses a serious challenge to stability and economic growth.

The large pendency of cases in our courts (30 million) is a well-known symptom of failure of rule of law. Typically, in most civilized countries civil disputes vastly outnumber criminal cases. But in India, despite the relatively low crime rate, the pending criminal cases are twice the number of civil cases. This aberration is symptomatic of two dangerous trends. First, most civil disputes no longer go to courts, and people are either resorting to extra-legal means for justice, or are swallowing injustice and suffering silently. These "missing cases" are a manifestation of low level of public confidence in formal institutions of justice.

Second, in the absence of rule of law, increasingly might has become right. People are taking recourse to violence and crime readily. The failure of civil justice and the perception of weak law enforcement are together accelerating criminalization of our society. As political office gives ample opportunities to subvert crime investigation, many criminals are increasingly taking shelter under politics. This has further undermined criminal justice system, and weakened the state's authority significantly.

It is time we recognized the centrality of institutions of rule of law in creating a climate conducive to fair competition and rapid economic growth. Our investment on judiciary, for instance, is abysmally low, at less than 0.2% of GDP, according to the First National Judicial Pay Commission. In contrast, Singapore (1.2% GDP), US (1.4%) and UK (4.3%) recognize the economic importance of

efficient judiciary. Not surprisingly, we have only about 12 judges per million population, whereas the OECD countries have ten times that number!

But the problem is more complex than mere budgetary allocation and number of judges. The quality of judges is less than satisfactory, and bright lawyers are not generally inclined to accept judicial appointments. Legal education itself is of indifferent quality in most universities, with law course often regarded as the easy means of prolonging college education. Procedures are archaic, and are easily prone to manipulation and endless delays. Even the hallowed judiciary is besmirched by the taint of corruption. Perjury is very common in our society, and even otherwise truthful and upright people do not regard lying under oath as morally reprehensible. Police functioning is often crude and unprofessional. Crime investigation is increasingly influenced by political pressures and corrupt motives. The litany of woes is endless.

Happily, there is increasing recognition among all sections that rule of law needs to be strengthened in order to build a strong economy and just society. Politicians are worried about the public pressure and the declining legitimacy of the state. Judiciary is concerned about diminishing public confidence in our justice delivery system. Entrepreneurs realize that wealth creation cannot be pursued without peace, harmony, effective enforcement of contracts, and speedy and efficient dispute resolution. Middle classes and media are angry that might has become right, and the system is becoming dysfunctional. We need to channelize these concerns constructively and creatively to improve the climate of rule of law.

We do not have to go far to seek solutions. Several committees and experts have identified practical and effective measures to improve our justice delivery. First, a system of low-cost, citizen-friendly local courts needs to be created to try small cases – civil and criminal. They can adopt simple procedures similar to small claims procedures in UK, and guarantee time-bound justice and restore a culture of rule of law in the community.

Second, procedural laws are due for significant revision to suit modern conditions, and to ensure speedy trial. Many archaic provisions of civil and criminal procedures and evidence law have been identified by experts. Third, a career in judiciary must be made attractive and rewarding for bright young lawyers. The Constitution provides for creation of an all-India service similar to IAS and IPS for judiciary to attract the finest talent and reward it with sufficient stature and career prospects. Fourth, a National Judicial Commission should be created to oversee both appointments and removals in higher judiciary. While the quality of higher judiciary is not guaranteed by current methods, impeachment process has clearly failed to enforce accountability.

Fifth, police functioning needs to be completely modernized, and adequate resources, mobility and technology should be guaranteed. Sixth, crime

investigation should be separated from other police functions, and it must be made independent and accountable. Investigation and prosecution must work in close coordination. Finally, strong, sustained, credible and effective measures should be initiated to curb the growing menace of corruption in police and judiciary. The examples set by High Courts in Maharashtra, West Bengal and UP are worth emulating.

Much needs to be, and can be, done to restore the primacy of rule of law. The current climate of public discontent provides an ideal opportunity to act decisively.

Jayaprakash Narayan

The author is the Coordinator of Lok Satta movement, and VOTEINDIA – a national campaign for political reforms; Email: loksatta@satyam.net.in; info@voteindia.org; Url: www.loksatta.org; Url: www.voteindia.org