Part III

Access to Justice – Watching the Supreme Court

Article 141 of the Constitution says that the law declared by the Supreme Court is binding on all courts and authorities in the territory of India. Unwillingly Article 141 has now become the thief of Judicial Time. The Laws' proverbial delays are not because there are too many laws, but because there are just too many reported judgments and orders concerning them. Cashing in on Article 141 every single case—in the Supreme Court and even in the High Courts—is dutifully printed and reported by a variety of competing reporting agencies who want their law reports to sell as widely as possible. The 'judgement-factory' has become over-commercialised, and quite a large number of the 30 million cases now pending in various Courts in India can be attributed—at least in part—to this peculiar Indian malady: 'case-law diarrhoea'.

—Fali Nariman

Access to Justice – Watching the Supreme Court

This part of the report focuses on judicial accountability with specific reference to the Supreme Court and its responsiveness towards the issues of social development. This report is divided into two parts. The first part is a qualitative analysis of the important judicial pronouncements (especially those having bearing on social development) of the Supreme Court in the past one year. This analysis explains the perspective that has evolved through the year, the response of the judiciary to specific social situations, the trends vis-à-vis public interest litigation, human rights and other social issues facing the country. The second part is the quantitative analysis which takes into account the actual administrative functioning of the Courts including details of the budget allocation, status of pending cases, number of cases adjudicated, the functioning of the administrative wing of the judiciary and recommendations which could lead to an improvement in the performance of the judicial system or which could influence its performance.

Part 1: Qualitative Review

Constitutional and Administrative Law

The judgments of the Supreme Court of India in the year 2002 seem to have been invigorated by views which reflect an attitudinal change, rather than any new serious theoretical approach, which may generally reflect the changed general judicial viewpoint. The rather dominant social viewpoint of the times is reflected in several judgments of the Court.

Throughout 2002, the Court wrestled with demands of developing institutional autonomy and building popular legitimacy among the public. The Supreme Court Justices indicated their sincere preferences over policy outcomes and have, at times, written judgments and expressed opinions that achieve these outcomes despite the awareness that they fell strictly within the domain of the Parliament or the Executive, and that the Parliament is likely to reverse them through legislation or amendment.

This qualitative review of the judgments of the Supreme Court has to be viewed from the standpoint of the 'doctrine of precedents' where the judgments delivered by the Supreme Court become the law of the land and are binding on all courts in the country. Needless to say, at times there may not be any strict demarcation possible between social and other general issues, since the ramifications of a judgment in one particular field affect other areas as well. The following paragraphs provide a review of some of the important judgments of the Supreme Court of India the previous year.

a. Holding the government accountable

One of the most important functions of the judiciary is to hold the other branches of the government accountable for their actions. The year 2002 saw the Judiciary making further inroads into the domain of the Executive by exercising its powers of judicial review and rule-making powers.

In a landmark case, the Supreme Court held that candidates to an election had to disclose their criminal antecedents which voters had right to know this, and that this is in consonance with the principle that 'democracy is a basic feature of the Constitution of India'.[1]

The Supreme Court dealt a blow to the high-and-mighty political classes of the country when it directed former Prime Minister Mr. Chandrashekhar to return land that he had taken incorrectly through a gift from a local panchayat administration in

1. *Union of India Vs. Association for Democratic Reforms (2002) 5 SCC 294.*

Haryana. It was proved that he had used the land for personal purposes rather than for public purpose as was intended. The Court observed that the state government had taken a rather lax view of the matter perhaps in view of the 'towering political personality' of the person involved.[2]

The Court castigated the approach of State Financial Corporations and Public Banks being lenient to chronic defaulters and said that in such cases, 'fairness cannot be a one way street.' According to the Court, 'indulgence shown to chronic defaulters would amount to flogging a dead horse without any conceivable result being expected.' It said that State Financial Corporations are public institutions that function on public money and have to work in a manner that is public oriented.[3] In a case relating to provision of State largesse in so far as supply of free electricity, the Court categorically held that while the State Government can direct the Regulatory Commission to fix tariff rates at a subsidised level for consumers of a certain class, the State Government will have to directly bear the burden of the subsidy which the supplier company cannot be saddled with.[4]

The requirement of governmental authorities filing 'Action-taken Reports' or 'Compliance Reports' in respect of their adherence to orders passed by the Court reflected the approach of the Judiciary in following up on the progress of implementation of its judgements and orders. This trend was seen in the Tamil Nadu Mental Asylum case,[5] the CNG matters[6] and in the various environmental matters heard by it. This demonstrated the Court's anxiety to ensure that it has credible evidence of compliance with its orders.

b. Giving voice to the poor

Providing all citizens, particularly the poor, access to justice is one of the most essential aspects of legal and judicial development. The Supreme Court took note of its own position as 'a sentinel of the Constitutional rights and values of the people.' It said that to discharge these obligations, it may, in an appropriate Public Interest Litigation (PIL case), issue notice to the concerned parties and enter into issues that are wider than those that have been raised before it. This is an important extension of the power of the Supreme Court to do justice in matters of public interest.[7] In a radical decision with far-reaching social consequences, the Court decided that there is no justification for the custom that only Brahmins are allowed to perform *puja* in the Hindu temples. The court said this is not an essential feature of the Hindu religion and is, in fact, a violation of all the rights and specific guarantees in the Constitution of India.[8] The Court granted rights to a non-Brahmin to officiate as a temple priest. The Court had earlier recognised the right of a citizen to sue the government for breach of his Constitutional rights. This was reiterated but the Court cautioned that not every minor infarction would be the subject matter of claiming compensation from the state. It would have to be proved that there was some violation and that the citizen concerned was a 'hapless victim of this sort of arbitrary and capricious action.'[9]

Along the same lines, the Court took a dim view of dispossession of a person from property in his occupation by use of force, especially when the matter was pending adjudication in the courts. The Court said that there could be no legality given to these types of actions by any person no matter how rich or powerful he may be. If this were to continue, 'no one would be able to defend their properties and the fundamental rights guaranteed under the Constitution of India would stand negated.'[10]

Another case that highlighted the horrific treatment of the helpless persons in the country was

2. *B L Wadhera Vs. Union of India (2002) 9 SCC 108.*
3. *Haryana Financial Corporation Vs. Jagdamba Oil Mills (2002) 3 SCC 496.*
4. *West Bengal Electricity Regulatory Commission Vs. CESC Ltd (2002) 8 SCC 715.*
5. *Death of 25 Chained Inmates in Asylum Fire in Tamil Nadu Vs. Union of India (2002) 3 SCC 31.*
6. *M C Mehta Vs. Union of India (2002) 4 SCC 356 (CNG).*
7. *Padma Vs. Hiralal Motilal Desadra (2002) 7 SCC 773.*
8. *N Adithyan Vs. Travancore Devaswom Board (2002) 8 SCC 106.*
9. *Rabindranath Goel Vs. University of Calcutta (2002) 7 SCC 478.*
10. *S R Ejaz Vs. T N Handloom Weavers Association (2002) 3 SCC 137.*

the one regarding the death of inmates of mental asylums in Tamil Nadu. The Supreme Court took suo moto cognisance of the conditions prevailing in mental asylums due to a newspaper report of a fire in one asylum in Tamil Nadu where inmates had been kept chained and 25 of them died. The Court vigorously took the government to task, issuing a sweeping set of directions to ameliorate the conditions of these inmates. The Court also asked the government to submit a compliance report within 3 months so as to ensure effective implementation.[11]

c. Substance over procedure

On an important point regarding the powers of the High Courts under Articles 226 and 227, the Court said that the object of these provisions is to enable the advancement of justice. The Court held that if the lower courts find that 'justice has become a by-product of an erroneous interpretation of law, then they should not overturn this justice in the name of correcting that error of law.'[12] The Court thereby gave credence to substantive justice to procedural formalities.

d. Safeguarding the independence of institutions

A case that caught the national interest was with regard to the Gujarat elections, more for its political significance rather than the issues involved. This case primarily involved the question whether there was a prescribed time limit in-built in the Constitution for the purpose of holding elections to a dissolved House. The Supreme Court pointed out that no such limit had been prescribed. However, in the interests of democracy, it read a limit of six months from the date of dissolution of the House as the period within which such elections for reconstitution of the House have to be held. Further, the Court also held that the Election Commission is independently, the supreme authority charged with the conduct of elections and government cannot interfere in its manner of holding of elections.[13]

e. Non interference on issues relating to economic policy

One of the significant judicial developments influencing a plethora cases came at the end of the year 2001 with the decision of the Supreme Court in the Balco case,[14] where the Court shrunk its own jurisdiction, stating that it could decide only on Constitutional and statutory issues. The Court held that economic policy lay in the realm of the government in power, and that the Judiciary has no role in shaping the policies or testing their validity.

It has to be remembered that the disinvestment policy of the government drew a lot of criticism and attention in the year 2002. The Supreme Court indicated its reluctance to step into matters of economic policy unless it was shown to be violative of fundamental rights or patently mala fide. It came down heavily on the filing of public interest litigations and indicated that 'not every issue was a subject matter or public interest litigations.' The court also reminded that public interest litigation was devised to dispense justice only to the social and economically backward who are incapable of approaching the Courts to enforce their own rights. The possibility of misuse of public interest litigations was indicated and warned against. The Court also said that 'economic decisions taken by the government cannot be challenged in public interest litigation unless there is violation of Art 21 and adversely affected people are unable to approach the Court.' The Court reiterated that judicial review of administrative action was limited to finding out whether proper procedure in arriving at the decision had been followed and the Court will not interfere with the facts unless they were patently unacceptable.[15]

The Supreme Court reiterated its position that unless a policy decision is demonstrably capricious or arbitrary and not informed by reason or discriminating or infringing on any statute or the Constitution, it is not subject to judicial interference.[16]

11. *Death of 25 Chained Inmates in Asylum Fire in Tamil Nadu Vs. Union of India (2002) 3 SCC 31.*
12. *Roshan Deen Vs. Preeti Lal (2002) 1 SCC 100.*
13. *In re Special Reference No. 1 of 2002 (2002) 8 SCC 237.*
14. *BALCO Employees Union Vs. Union of India (2002) 2 SCC 333.*
15. Ibid.
16. *State of Himachal Pradesh Vs. Padam Dev (2002) 4 SCC 510.*

Judiciary

a. Contempt and freedom of speech

Perhaps the case that captured public attention most and triggered innumerable rounds of debate was the contempt of court case against Arundhati Roy. The Court held her guilty of contempt following her actions in protest of the Narmada dam decision. The Court said that 'freedom of speech and expression' and the 'freedom of the press' are one and the same thing and are subject to the same restrictions. 'Fair criticism of the court and judges may be allowed if made in good faith. But every citizen cannot be allowed to do so in the name of fair criticism as that would lead to the destruction of the very faith in the court.' The Court felt that any person who lost a case would be the first to impute motives to the court and the judges. Hence there cannot be any separate guarantee for the press as opposed to freedom of speech and expression. So saying, the Court took a very strict stand as regards its contempt.[17]

Contrast this with a case where contempt was committed of a tribunal. The Supreme Court said that even where the order was not obeyed, the Court should show judicial restraint and magnanimity. One more chance should be given to the person concerned before any other orders were passed. Only if then the person did not obey, should any other action be considered.[18]

The court had no hesitation, though, in punishing an advocate in a shocking case where he assaulted a lower court judge. The Supreme Court said that while judges should normally exercise restraint in dealing with contempt cases, they were not expected to keep an angelic silence 'when such things occurred.'[19]

In another decision, the Supreme Court said the Contempt Act is a powerful weapon in the hands of the court and ought to be exercised with great restraint and circumspection. It should only be used in the larger public interest once the Court is convinced about the guilt of the accused.[20]

The Supreme Court also made important observations as regards the freedom of speech and expression in the case of an elected local body officer who had organised a protest of local citizens against the imposition an excessive house tax. He was charged with misconduct. The Supreme Court absolved him, saying that while normally a responsible elected officer should not be indulging in anti-government activities, there would be some cases where there is arbitrary action and so in such times these actions that are against the public interest may be spoken against and it would not amount to misconduct. Rather, it would be a valid exercise of the freedom of speech and expression and should not be curtailed. He 'holds office in trust for the public and is expected to exercise his duties in that manner.' In the opinion of the Court, this was a case where the freedom of speech and expression was correctly exercised.[21]

b. Subordinate judiciary

On the role of the subordinate judiciary, the Supreme Court said that 'it is the foundation of our judicial system' and should be treated as such. The Fifth Pay Commission increased the pay scale of judicial officers. The state governments said that they were not going to bear the extra cost. The Supreme Court said that it was their obligation and that they should take care to see that the funds as required are mobilised. Without a sufficient number of judges, justice would not be available to the people and the basic feature of an independent and efficient judiciary would be undermined. Infrastructure should be built and the vacancies should be filled up. Directions were issued to the state governments in this regard, and the ratio of judges to the population was also considered and directed to be increased.[22]

The Supreme Court also took note of the need to

17. *In re Arundhati Roy (2002) 3 SCC 343.*
18. *Suresh Chandra Poddar Vs. Dhani Ram (2002) 1 SCC 766.*
19. *Ram Surana Vs. Additional Judicial Magistrate (2002) 6 SCC 722.*
20. *Anil Ratan Sarkar Vs. Hirak Ghosh (2002) 4 SCC 21.*
21. *Baldev Singh Gandhi Vs. State of Punjab (2002) 3 SCC 667.*
22. *All India Judges Association Vs. UOI (2002) 4 SCC 247.*

establish fast track courts to deal with the huge backlog of pending cases in the country. Directions were issued to the state governments to ensure that judges were appointed to the subordinate judiciary as soon as possible and as to the appointment of judges for these fast track courts as well.[23]

c. Reforming the court procedure

The Supreme Court upheld the Constitutional validity of the Legal Services Authorities (Amendment) Act, 2002 in a landmark judgement[24] and dismissed petitions contending that they were anti-litigant by holding that the Act ensures that justice would be available to the litigant speedily and impartially. The Court also gave its imprimatur to the practice of taking evidence by Commissions. It held that in appropriate cases, to avoid delay, expert witnesses like doctors may be cross-examined by putting written questions to be replied by experts on affidavits. Further, even video or telephonic conference can be arranged for cross-examination, the cost of which has to be initially borne by the party claiming such facility.[25]

The Supreme Court also increased the scope of review of its own decisions. It held that even after a review petition had been disposed of, it was open to the parties to file a curative petition. The Court said that 'the function of the judiciary is not limited to merely to interpreting the law. It may mould and lay down formulating principles and guidelines to adapt and adjust to the changing social structure, with the objective of dispensing justice.'[26]

The Supreme Court recognised the jurisdiction of Motor Vehicles Claims Tribunal not only in cases where the vehicle was driven not by owner or injury was caused not by driver of the vehicle but even where death or injury was caused by negligence of joint tort feasor. The Supreme Court expressly said that 'any other interpretation would cause undue hardship to claimants.'[27]

Labour and Service Laws

In a number of cases the Court chose not to give full relief to the concerned workers on a rather strict interpretation of legal principles. For example, in a number of cases where the lower courts have ordered full reinstatement and back wages, the Supreme Court held that the burden is upon the worker to show that he was not gainfully employed elsewhere in order to be eligible for the benefit of back wages.[28] In another case, the Court held that persons hired for the duration of a particular project would not be entitled to permanent employment upon the completion of the project.[29] At the same time the Court has said that there should not be any arbitrary hire and fire. If the project is still going on, the employer should not fire a worker and take anyone else, except of course, in cases of grave misconduct.[30] An important decision that will benefit the working classes was that when a person opts for a VRS scheme, he would not be precluded from backing out of it before his termination is actually effected, if there is nothing to prohibit it in the scheme.[31]

On the right of equality, the court held that only on the grounds of disadvantage to certain individuals

23. *Brij Mohan Lal Vs. UOI (2002) 5 SCC 1. The Fast Track Court Scheme was launched on the basis of the recommendations made by the Eleventh Finance Commission which were accepted by the Union Government on the 26 July, 2000. The Fast Track Courts were constituted with the aim of expediting the disposal of long pending sessions cases and cases involving under-trials who have been in jails for a long time. As on 30th November, 2002, 1,05,255 cases were pending in these courts. As on 30th November, 2002, 968 Fast Track Courts were functional out of the 1234 courts notified by the States. Unstarred question No. 2611 in the Rajya Sabha asked by Motilal Vora answered on 16.12.2002.*
24. *S N Pandey Vs. Union of India, Judgment dated October 28, 2002.*
25. *Dr. J J Merchant Vs. Shrinath Chaturvedi (2002) 6 SCC 635.*
26. *Rupa Ashok Hurra Vs. Ashok Hurra (2002) 4 SCC 427.*
27. *Union of India Vs. Bhagwati Prasad (2002) 3 SCC 661.*
28. Ibid.
29. Ibid.
30. *Union of India Vs. Mohan Pal (2002) 4 SCC 873, State of West Bengal Vs. Jiban Krishna Das (2002) 4 SCC 721.*
31. *Shambhu Murari Sharma Vs. PDI Ltd. (2002) 3 SCC 437.*

or a small section of the people a public action cannot be struck down.[32] A pro-labour decision was rendered as regards the interpretation of the Industrial Employment (Standing Orders) Act. The Court said that this was a welfare legislation and should be given wide interpretation in order to benefit workers. Hence, the Court allowed a higher rate of subsistence allowance than is provided for in the act to a person who had been suspended pending inquiry.[33]

The Supreme Court also said that the courts have the power to interfere in appointments that have been made by educational institutions, although they would be reluctant to do so. However, where there are any irregularities, it is open to the courts to exercise the power of judicial review and set right the anomaly. There cannot, said the Court, 'be any islands of insubordination to the courts.' The rule of law must prevail, especially in the case of educational institutions of high repute. To keep that reputation that they enjoy, there should not be any sort of arbitrary actions.[34]

The Court carved out exceptions to the rule of audi alterem partem in certain service law matters. The court said that when it is seen that there is any irregular appointment of persons, or that the selection process is so badly flawed that the entire process is vitiated, the Court has the power to cancel the whole of the selection and do so without issuing notice to the selected candidates. The Court recognised that it is not possible to give individual notice and that even a validly appointed person can be terminated as a result thereof.[35]

On the importance of merit as a selection criteria, the court held that where merit has been made the criteria, no other consideration should apply. Even seniority should not be made the basis.[36]

Education

a. Constitutionality of a revised curriculum

A major controversy was raised as regards the insertion of a new curriculum for schools by the Central Government. This was challenged in a PIL before the Supreme Court as being bad in law and destructive of secularism. In a controversial judgement, the Court upheld the curriculum on some technical grounds, holding that there was nothing wrong in the new NCERT syllabus that had been introduced. It said that the study of any particular religion was not violative of anything in the Constitution of India. The court said 'in all religions, the philosophy of co existence is taught and that this cannot be objected to. All religions infuse a moral value and character into society. No modern society can in fact survive without these values. The word 'religion' should not be misunderstood. It does not mean that if this word is inserted into the national education policy that the fabric of secularism is at stake. There is nothing violative of the Constitution of India here. What is prohibited by the Constitution of India is the promotion of any religion by the State and that is not what is happening here.' Hence the court upheld the Constitutional validity of the actions of the central government.[37]

b. Private schools

The Supreme Court rendered a decision that would give major relief to the thousands of parents and children held to ransom by schools charging heavy capitation fees or donations. The Court upheld the right of the state government to make a law preventing the misuse of school administration to make profits. It said that regardless of whether it was a minority or a majority educational institution that did it or not, it is a reprehensible practice that should not be permitted in the guise of education.

32. *State of Karnataka Vs. Mangalore University Non Teaching Employees Association (2002) 3 SCC 302.*
33. *B D Shetty Vs. CEAT Ltd. (2002) 1 SCC 193.*
34. *K Shekhar Vs. Indiramma (2002) 3 SCC 586.*
35. *UOI Vs. O Chandrashekhar (2002) 3 SCC 146.*
36. *B Mohanty Vs.UOI (2002) 4 SCC 16.*
37. *Aruna Roy Vs. UOI (2002) 7 SCC 308.*

No minority educational institution can claim Constitutional protection for this. Even unaided minority schools would be covered herein.[38]

c. Reservation in education

Another decision of the Supreme Court in the sphere of reservations reflected the change in judicial mindset with regard to reservations. In the instant case, the All India Institute of Medical Sciences had introduced reservations for the super specialisation courses and this was made the subject matter of challenge. The Supreme Court struck down this reservation as un-constitutional. It said that 'reservations are permissible in educational institutions at the lowest levels. However, at the higher levels, it should be withdrawn in the interest of achieving the goal of excellence in education. Reservations should be reasonable, and one criterion to be considered is whether it would help in achieving the goal of excellence. Merit should not be rendered non-existent, especially in important educational institutions of national importance.'[39]

Also, the practice of adding bonus marks to selection candidates on the basis of place of residence was frowned upon. The Court said that this did not satisfy the tests of Article 14. The Court said that 'affirmative action is meant to provide better employment opportunities, provided it seeks to achieve the goal of overall equality and is supported by scientific study and considerations germane to the notion of equality.'[40]

Environmental Law

a. Judicial 'policy making'

The Supreme Court in 2002 continued to maintain a strong and sustained pro-environment stand. The Court passed a series of orders seeking to address the various aspects of environmental pollution. Social concern over deteriorating environment quality found vent in the Court of Chief Justice where both Governments and corporations were pulled up for their failure to act responsibly in relation to the environment. To improve the air quality in Delhi, the Court directed that priority in supply of gas should be given to the transport sector in Delhi at the cost of private industries outside Delhi. There was a considerable hardening of judicial attitude towards what the Court perceived as the lack of political will in implementing its orders regarding the adoption of CNG as the fuel for the transport sector in Delhi. The authorities were directed to ensure that all public transport in Delhi was shifted to CNG as fuel and no extensions in deadlines were granted. Heavy penalties were imposed on errant operators and the Court also warned the authorities against non-compliance with its orders.[41]

b. Protecting our inheritance

In a case involving the diversion of the natural course of the Beas river, by a holiday resort belonging to a politician, the Court further indicated its resolve. The Court imposed exemplary damages of Rs one million while still leaving the computation of damages payable under the polluter pays principle open.[42]

In another landmark case, the Supreme Court, took suo moto cognisance of a newspaper report about commercial advertisements painted on rocks in the Himalayan region of Himachal Pradesh damaging the fragile ecology there. It directed its ire against two soft drink companies and ordered these two companies to deposit Rs two hundred thousand towards costs of conducting the study of the damage done. Seven other companies were ordered to deposit Rs one hundred thousand towards the costs. The Supreme Court also set up a special empowered committee asking it to look into the matter and ordered a video recording of the scene to estimate the extent of damage, quantity of work required for restoration and fix responsibility on erring parties. The restoration

38. *Father Thomas Shingare Vs. State of Maharashtra (2002) 1 SCC 758.*
39. *AIIMS Students Union Vs. AIIMS (2002) 3 SCC 428.*
40. *Kailash Chand Sharma Vs. State of Rajasthan (2002) 6 SCC 562.*
41. *M C Mehta Vs. Union of India (2002) 4 SCC 356 (CNG).*
42. *M C Mehta Vs. Kamal Nath (2002) 3 SCC 653.*

work was directed to be completed before the onset of winter and a fine of Rs 50 million was levied to restore the damage. The Court castigated the State of Himachal Pradesh for not safeguarding the environment and not living up to the doctrine of public trust, and ordered the State to deposit Rs 10 million towards costs. The Court further ordered that these sums were in addition to the punitive damages that may be imposed and criminal prosecution that may be launched. The Principal Conservator of Forests was also directed to find out if such vandalism was prevalent in other States as well.[43]

In a related judgment the conservation needs for protected monuments and religious shrines was given recognition with the Court directing the shifting of shops away to a safe distance from the Dargah in Ajmer. It clarified that this move would not be a violation of neither the religious rights of pilgrims nor rights of businessmen.[44]

Redefining Criminal Law Jurisprudence

a. Pro-prosecution stand

The Supreme Court has, in a radical shift, diluted the application of the 'proof beyond reasonable doubt' doctrine. The earlier requirement that the prosecution had to prove a case beyond reasonable doubt to ensure that the accused was convicted of the offence charged was substantially diluted in its application. Moreover, the Court also eased the burden on the prosecution by stating that it was not required to do impossible things like meet every hypothesis of the accused or prove impossible things. An easing of the burden would not only counter this belief but also show that the judiciary is sensitive to the needs of society and will do its utmost to ensure that the guilty are punished.

The judgement of the Supreme Court confirming the death sentence on several Maoist Communist Centre members for murdering 35 people from another caste in Bihar, was an important judgment in view of the radical departure made by the court from application of the 'rarest of the rare' principle enunciated by the Court earlier. The Court, by majority, confirmed the death penalty and seriously questioned the 'proof beyond reasonable doubt' doctrine saying that it was leading to too many acquittals and that 'if no innocent should be punished, no guilty should also be allowed to go scot-free.' The Court held that 'proof beyond reasonable doubt' was only in the nature of a guideline. The Supreme Court made it very flexible for the prosecution by laying down that it was not required to meet every hypothesis put forward by the accused. The Supreme Court said that while it was clear that if two interpretations were possible on given evidence, the one favourable to the accused should be adopted. But the 'acquittal of the guilty would be as serious a miscarriage of justice as conviction of the innocent' and should be avoided as far as possible.[45]

In another case, the Supreme Court again pointed out the pitfalls in sticking too much to the rule of 'benefit of doubt to the accused.' The Court held that 'exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence.' It pointed out that justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent.[46] The Court also continued its pro prosecution stand by stating that initial presumption of innocence of an accused disappears on his conviction after trial subject to the orders to be passed in further appeals.[47]

The Supreme Court expressed its anguish over election-related violence and political crimes. It held that 'in a case linked with politically battles, stringent punishment is desirable without exception.'[48] The

43. *T N Godavarman Vs. Union of India (2002) 6 SCALE 354; (2002) 7 SCALE 417;(2002) 7 SCALE 419.*
44. *Wasim Ahmed Vs. Union of India (2002) 9 SCC 472.*
45. *Bhagwan Din Vs. State of Madhya Pradesh (2002) 4 SCC 85.*
46. *Gangadhar Behera Vs. State of Orissa (2002) 8 SCC 381.*
47. *Shamsher Singh Vs. State of Haryana (2002) 7 SCC 536.*
48. *Ruli Ram Vs. State of Haryana (2002) 7 SCC 691.*

Court in the instant case was dealing with a matter where violence during Panchayat elections in a village in Haryana led to a loss of lives.

b. Confessions

The Supreme Court in a series of judgments reiterated that 'if prosecution evidence on the whole rings true and inspires confidence', conviction is possible despite minor discrepancy in the evidence as the maxim of falsus in uno falsus in omnibus has been discarded long ago.[49] The Court cautioned resort to harsh laws like TADA, saying that even though the activities of a criminal and terrorist would overlap to a great extent, 'provisions of TADA cannot be resorted to unless the nature of the activities of the accused cannot be checked and controlled under ordinary law.'[50]

Another very progressive trend adopted towards the case was its encouraging attitude towards mechanical devices to record evidence. The Court said that as under Section 15(1) of TADA, confessions can be recorded on mechanical devices, and confessions recorded on computers were admissible. The Court also said that even though the certificate recording the confession was to be given 'under hand', a typed certificate would not affect trial in the absence of any prejudice to the accused since it was only a procedural lapse.[51]

The Court held that in the presence of convincing evidence of eyewitnesses and attending circumstances, absence of expert opinion alone would not affect trial if the other evidence was still credit worthy.[52] The Supreme Court also cautioned that an impossible burden to prove things cannot be put on the prosecution, e.g., why the accused wanted to make a confession, as it was a matter solely within the exclusive knowledge of the accused.[53]

c. Right to speedy trials

In a number of decisions, the right to speedy trial under the right to life was reiterated. The Supreme Court reconsidered its earlier view on laying down a timeframe for completion of trial in various offenses. While it reiterated that right to speedy trial is part of Article 21 of the Constitution, it said that no specific timeframe can be set for completion of a criminal trial as there is a possibility of delay due to various factors and all parties may be at fault. The Supreme Court also overruled certain earlier decisions to the contrary which laid down a specific timeframe for completion of a trial. It specifically pointed out that laying down of such time periods exceeded the domain of the Judiciary as it amounted to impermissible judicial legislation.[54]

d. Witnesses

The Court said that it was not in favour of the number of witnesses; it was the quality of their evidence which mattered. It also stated that some discrepancy in bound to exist in the prosecution case and it should not be discarded so long as it does not materially affect the case. The Court also said that the doctrine of 'falsus in uno falsus in omnibus' is not a rule of law in India, merely a rule of caution. If grain can be separated from the chaff, falsity of a particular material witness or a material particular will not ruin it from beginning to end. The testimony may be disregarded, not that it must be disregarded.'[55]

The Court cautioned on placing too much reliance on the evidence of a child witness, saying that wisdom requires that it be corroborated thoroughly before relying upon it as 'children are easy prey to tutoring and may be swayed by what others say.' However, the Supreme Court emphasised that it was necessary for the Courts to have a 'very sensitive approach in cases involving child rape.'[56]

49. *Dharmendrasinh Vs. State of Gujarat (2002) 4 SCC 679.*
50. *Ravindra Shantaram Sawant Vs. State of Maharashtra (2002) 5 SCC 604.*
51. Supra note 33.
52. *State of Punjab Vs. Jugraj Singh (2002) 3 SCC 234.*
53. *Devender Pal Singh Vs. State of the NCT of Delhi (2002) 5 SCC 234.*
54. *P Ramachandra Rao Vs. State of Karnataka (2002) 4 SCC 578.*
55. *Krishna Mochi Vs. State of Bihar (2002) 6 SCC 81.*
56. *State of Rajasthan Vs. Om Prakash (2002) 5 SCC 745.*

Change in Judicial Stances

The year 2002 witnessed radical changes in the judicial stances, as is evident in the review of the various judgements relating to the criminal law, rent control law, commercial laws, minority rights, environmental law and public interest litigation. In the 'disinvestment cases', the same Supreme Court which had in earlier cases grabbed jurisdiction, instead gave up jurisdiction to adopt a attitude that was consistent with the changing needs of a liberalised economy. The Court, while balancing itself between competing interests, seemed to lean towards the pro-reformers in the disinvestment debate, towards landlords in rent control matters, towards banks and financial institutions in case relating to loan recoveries and against genuine infringes in intellectual property matters.[57]

The change could not be more palpable or evident as reflected in the Rent Control matters. Earlier, the rent control law as interpreted by the Supreme Court was distinctively pro-tenant given the social welfare character of rent control legislations. The Supreme Court in several cases made it clear that 'inspite of the overall balance tilting in favour of the tenants, the Court should not hesitate in leaning in favour of the landlords while interpreting those provisions which take care of their interests.'[58] The Court extended bona fide use to cover those situations where the need is of a person dependent on the landlord or a person whom the landlord is bound to support considering socio-economic milieu or other obligations.[59] In another case, the Court held that the doctrine of public interest cannot be invoked to stop eviction where the premises required reconstruction and population pressure in the area was growing.[60] Further, the Court justified its pro-landlord stand contending that otherwise, people would not be encouraged to build houses and that the national wealth of the country would not be augmented.[61]

The changing societal notions on institutions like marriage and family, and the growing acceptance accorded to divorce found reflection in judicial pronouncements. The Court held that causing repeated embarrassments in social gatherings would cause frustration, leading to mental cruelty. It also said that apart from merits of the case, 'on grounds of remarriage also the divorce decree should not be disturbed.'[62]

Dominant Judicial Attitudes

The lack of any theoretical framework behind judges making a paradigm shift in interpreting law differently from the past has created difficulties in our analysis of judicial decision making. Needless to state, a number of factors which have influenced the Supreme Court's decision making process in the past year and will continue to do so in the future. These include the role of media in highlighting social issues, the nature and quality of appointment of judges in the court, the Chief Justice and his leadership role, the changing economic environment, the divergent nature of judges constituting a bench, the agreement and disagreement among the judges on the Bench and finally and most important, the value orientation of respective judges, coloured as they may be by their individual experiences and reasoning.

While this section dealt with how the Qualitative aspect reflects in detail on the changing trends of judicial decisions, the same would not reflect the performance of the Judiciary in terms of its actual administrative performance. This analysis only provides an understanding of the trend of

57. *Laxmikant V Patel Vs. Chetanbhai Shah (2002) 3 SCC 65.*
58. *Joginder Pal Vs. Naval Kishore Behal (2002) 5 SCC 397.*
59. *G C Kapoor Vs. Nand Kumar Bhasin (2002) 1 SCC 610.*
60. *Harrington House School Vs. S M Isaphani (2002) 5 SCC 229.*
61. *R V E Venkatachala Gounder Vs. Venkatesha Gupta (2002) 4 SCC 437.*
62. *Parveen Mehta Vs. Inderjit Mehta (2002) 5 SCC 706.*

judgements delivered by the decision-makers in the apex court. The significance of the judgements is more or less restricted to the immediate parties and not to the large number of groups and sections of the Indian society and others.

The second part of this paper presents what has essentially been an attempt to consider the quantitative aspect of judicial activity and in particular judicial productivity and judicial benchmarking.

Part 2: Quantitative Review

Traditionally, the quality of a judicial system has been analysed by the quality of judgements delivered by the judges vis-à-vis commonly accepted benchmarks. However, any qualitative review would be meaningless, where the practical reality entails that Courts take decades to render a judgement or when over a million people are languishing in jails waiting for the trials to commence. This fact has necessitated the review of the judicial system not from the perceived quality of judgements or from the qualitative aspects of judicial behaviour but from the obligation of the Judiciary to the community.

The saying that, 'Justice is defined by the society which it serves' could not be more axiomatic when seen in context of the functioning of the Indian judicial system and the general breakdown of the administrative machinery in the country.

For large sections of the society, 'justice delayed is justice denied.' The rate of disposal of cases is as crucial as the quality of decisions rendered. The endemic delays in the judicial system has resulted in huge backlog of pending cases and the reduced number of cases actually being adjudicated, thus affecting the quality of the judicial process. The huge backlog of cases, which are clogging the justice administration system, is probably the biggest issue confronting the judiciary.

Pendency of Cases in Various Courts

The growing inability of the courts to resolve disputes expeditiously threatens to erode the remaining legitimacy of the judicial system. Urgent steps are required to address the issue squarely.

As per the figures made available by the Supreme Court Registry, there were a total of 37,780 cases filed for admission in the Supreme Court during the year 2002, approximately 85 per cent of which got dismissed or disposed of during the year. On the whole, the Supreme Court has reduced its pendency from l,04,936 as on 31.12.91 to 23,012 as on 31.5.2002 primarily through better use of Information Technology, bunching of similar cases, etc.[63]

The performance of the Supreme Court is only one part of the complex reality. As on 28 November, 2002, a total of 36,40,870 cases were pending in various High Courts in the country.[64] It is estimated that there are over 20 million cases pending in the subordinate courts. Unfortunately, neither the Government nor the Supreme Court has shown any genuine concern in addressing the issue, even though both share the administrative jurisdiction over these lower courts.

A broad and inclusive perspective is extremely important to bear in mind, so that judicial development is not been seen in an artificially narrow way, focusing on one part of the interlinked structure and ignoring others.

63. Reply to unstarred question No. 1303 answered on 2.12.02 by law minister in Rajya Sabha.
64. Ibid.