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A DECADE OF REFORMS - UNFINISHED AGENDA WITH
SPECIAL REFERENCE TO INDIA

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INTRODUCTION

Before, I look at the decade and its unfinished agenda from a legal perspective, let me quote what some of the great jurists have said about law. Justice Holmes had said that "Laws are felt necessities of time". Justice Cardozo had said that "Life of law has not been a logic, it has been experience." These two jurists tell us that laws depend on time and experience. As time changes, society changes, law should also change. If, however, there is a gap between society and the law, it is bad for both.

The global, Asian as well as Indian national economic reforms in this decade have been the hallmark of this decade. The main direction of these reforms is of-course towards what Gorbachev said - glasnost and Parastrioka i.e. openness and freedom. The world has come to accept the theory of capitalism and market driven competition.

These economic reforms certainly had an impact on the legal reforms. At international level, the increase in world trade has resulted in increase in number of international treaties either bilateral i.e. between two countries or multi lateral i.e. between more than two countries. The General Agreement on Trade and Tariff (GATT), the Urugave round and Dunkel Draft came to be discussed and many countries like India accepted it. Consequently, many countries like India and recently even Chiana accepted the World Trade Organisation regime. All these rounds, drafts and ultimate treaties which are signed between the countries are nothing but job of those connected with law with of-course the aid of economists. The treaties of these nature are signed on approval of the legislatures of different countries and these treaties results in imposing rights and duties on nation states.

The legal process does not stop at signing of treaties. Signing of a treaty requires its implementation and its implementation therefore requires number of internal changes in the laws of a particular country. For example, since we accepted the Dunkel Draft, we had to amend our Indian Patent's Act.

Let me now turn to the Indian National scenario. The economic liberalization which set in since 1991, in this country laid to legal reforms. Legal reforms can come through three sources - i) Legislature, (ii) Executive & (iii) Judiciary . These are the three wings of our constitution. Let us take each one of it separately.

1) **Legislature**

As far as the legislative reforms are concerned, they have come many a times with a slower pace than required. For example, many of the amendments to the Acts like the Patents Act, the Companies Act, The Abolition of Foreign Exchange Regulation Act (FERA) and its replacement by FEMA, the Information Technology Act, 2000 etc. have come after a long time of its need. This has therefore, many a times resulted in a gap between economic reforms and laws. These days, we see that, most of the times, the Central as well as State legislatures do not continue their sessions and debate on the bills. Some or the other political issues is forcing the speaker to adjourn the sessions.

2) **Executive**

As far as the execution of the laws are concerned, the pace is still slower. The bureaucracy, the Babudom and the Red Tape see to it that even if the laws are passed, they are not implemented in practice. For example, the Consumer Protection Act, 1986 has been passed a decade back, yet many of the Fora in the country do not have judges, many Fora do not have their own places, their own staff, stationery, other infrastructure and facilities. One, therefore, can not expect efficient administration of justice without there being required supportive infrastructure and facilities. Another example which can be given is that of Information Technology Act, 2000. Though the Act is passed in the year, 2000, we still do not have appointments of certifying authorities for digital signatures, comptrollers required for implementation of the Act. We, therefore, see that many a times public spirited

organizations or affected citizens move the Court for getting directions against the executive for implementing the Acts.

The latest and the best example is that of amendments in the Civil Procedure Code, 1908. It is through these amendments that the period of civil litigation is tried to be reduced. A fixed time table is tried to be introduced. There are limits on filing of suits and written statements, limits on adjournments, replacement of examination in chief by affidavit, assigning of work of the Courts to some extent to Court Commissioners, reduction in time of oral arguments by giving written arguments etc. But here again, the required rules and infrastructure for implementation of these amendments have not yet come in force.

The Indian judiciary since the colonial period has been understaffed. After Independence, the situation has been allowed to continue. In 1987 India had only 10.5 Judges per million population while Australia had 41.6, Canada - 70.2, England - 50.9 & USA 107 Judges per million.

3) **Judiciary**

Last, but not the least is the Judiciary. I am reminded of a famous book by Alexander Bickel titled, "The least dangerous branch". Bickel starts with his book by telling us that between legislature, executive and judiciary, judiciary is the least dangerous branch as the legislature has the will of the people behind it, the executive has the purse and the sword while the judiciary has nothing. However, if one sees, the actual experience of the functioning of the judiciary in democracies, one finds that the judiciaries have not restricted themselves to only dispute resolution which is the role classically assigned to them.

Firstly, judges with their power of interpretation, can some times give a completely new meaning to a legislation with changes in time, so as to suit the changes in the society. For example, the Indian Contract Act, 1872 which was passed in the year 1872, is applied by judges even to Cyber Contracts in E-Commerce. This is possible as the judges have interpreted the word, "Offer, Acceptance and Consideration" in the Contract Act in the changed scenario. The judges have said that the Web site is an offer, when you click it, you accept it and when you pay through your Credit Card, you pay the consideration. There is, therefore a valid

contract. We all know that in the year 1872, the legislature could not have imagined such an application. Apart from this, in fact, if we see what Apex Court i.e. Supreme Court of India has done in last 20 years, we will find that judiciary has in fact become the most dangerous branch. Judges have become very active and the same is called judicial activism.

One of the most popular modes of these judicial activism is Public Interest Litigation or Social Action Litigation. It was judges like Chief Justice P.N. Bhagavati, Justice V.R. Krishna Iyer who realized that the legislature and the executive are not doing what they are supposed to do and hence they started encouraging public spirited citizens and organizations to come up with causes affecting the public. In other words, the judiciary in fact started taking over to some extent the work of other two branches by innovative and creative interpretation of certain legal provisions.

It is of-course debatable as to whether judiciary should do this. Some jurists think that judiciary has its own problems and if it continues this type of taking over of the additional burden, it will lead to breakdown of the whole system and according to them, therefore, the answer to this problem is not judiciary, but an effective political process. We are, however, seeing that the judiciary through Public Interest Litigation has touched the lives of the common man in India which include bounded labour, children, women, under trial prisoners etc. Judiciary has touched very important issues like environment and human rights.

These reforms, however, are certainly unfinished. From what I have stated above, it will be clear that our legislature has to start acting more responsibly in the interest of the nation and debate more and more on bills and should not become a place for what is called as every time they pass a law it's a joke and every time they pass a joke it's a law ! The red tape must give way to speedy and transparent administration. The judiciary though is trying to address the problem of delay in various ways, it still needs to concentrate on the same and reduce the delays at any cost.

On a final note, may I say that we all have role to play in this unfinished agenda. We all in our own ways can contribute to building up of the nation. I believe that any progress must first start with an individual and will automatically lead to that of the nation.

