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Questions of judicial access

V.R. Krishna Iyer

Is it the Supreme Court of India, or the Supreme Court for Indians?

- *The law must be equally open to the humblest, simplest and little member of the community*
- *A decentralised system of judicature is a paramount property for democracy to have élan*

A Supreme Court of India, and a Supreme Court for all Indians: these two versions can be radically different in terms of principle and content. The Preamble to the Constitution has pledged the people of India to justice social, economic, cultural and political India with a geopolitical concept. Indians represent a humanist-socio-economic idea, a collective value.

A billion and more of Indians have a unique cultural legacy. Their noble thoughts can transcend mere space, terrain and land, and they are politically united by a notion of nationalism. One is dynamic and dialectical, the other is bare ground and air that provide them their habitat. Indians are proud to be a united people. But earth and ocean have no life unless human beings enliven them. Institutions are meant to serve life and its development.

If democracy is for the people, the Supreme Court should function where the litigants need it most, not where the British for their imperial reasons chose to locate it. It was for historical and geographic-strategic grounds that Delhi was chosen as the national capital. Delhi has no other claim to be the capital seat of the judiciary as well. For military and administrative purposes, a united India found Delhi to be the most suitable. But after Partition, Delhi itself remains vulnerable as a target before Pakistan. Delhi has no special advantage in cultural, geographic, political or social terms to be the centre of the countrys judicial administration.

For the People is a democratic and logical desideratum. Then the courts should be where the litigants are in large numbers, where their access is best facilitated. In this large country, Delhi is but a corner, while the people live mostly to the south, east and west.

The different factors may be studied by a Commission such as the Law Commission, which has come to the reasoned conclusion that there must be four benches of the Supreme Court. The south feels dominated by the north owing to the location of the Supreme Court. Is justice being alienated by distance, culture and language from the north? When the Supreme Court has

authority over the rule of the whole nation, this insular judicial imperialism will be a divisive force. This should be avoided at all costs. Decentralisation based on geography, history and social factors is an imperative need.

The glory of India in its undivided status and stature is not dependent on a single court but on its pragmatic diversity. So these are profound considerations behind the demand for Benches of the Supreme Court outside Delhi. Why did Pakistan as a nation become powerful only on religious criteria? Why did East Bengal separate from Pakistan and become a separate sovereign state? Language and culture are good lessons for the people to keep Bharat as one entity. Let us have Benches on federal considerations, promoting unity in diversity.

In a vast country of diversity, demographic immensity, logistic difficulty and large-scale indigence, democracy makes decentralisation an imperative of administration. Access to justice also implies early finality coming within the reach of the rich and the poor. These considerations persuaded Uttar Pradesh, the State that has one of the direst situations in terms of poverty and has one of the largest chunks of population among the States, to attempt some moderate reform in the field of revision to the High Court in litigation involving financial stakes below a certain level.

Up until now, judicial reform has been a tinkering exercise, not an engineering project. But even that little tinkering is fiercely challenged as litigative anathema by the legal profession. This is unfortunate. Decentralisation has a paramount desideratum if access for the people to judicial institutions has to become a reality. This fact compelled various States in India, even native princedoms, to adopt the strategy of having benches. It has worked well to enable the aggrieved poor to reach the courts and seek remedies. The same reasoning justifies the need for benches of the Supreme Court if that magnificent institution is to fulfil its fundamental mission of being a court for the people and of the people. It was this principle that persuaded the Law Commission to recommend four benches for this large country.

The Law Commission has pointed out how huge sums of money are wasted by a single court situated in one corner of the country, which is final and infallible. The litigant sells all he has to reach Delhi and pay fabulous fees to hire lawyers, only to find that by afternoon the case stands postponed. The expense already incurred goes down the drain. Air travel is expensive, hotel costs are horrendous, lawyers charge high fees, and arguments with leisurely judges take too many days. On the whole, going to the law is like going to Banaras or Mecca: a will and testament has to be written out because litigation often lasts beyond your life-time. Astrologers alone can hope to anticipate its fate.

The Law Commission recommended that four Cassation Benches be set up in the Northern region/zone in Delhi, the Southern region/zone in Chennai/Hyderabad, the Eastern region/zone in Kolkata and the Western region/zone in Mumbai, to deal with all appellate work arising out of the orders/judgments of the High Courts of the particular region. It also suggested that if it is found that Article 130 of the Constitution cannot be stretched to make it possible to implement this recommendation, Parliament should enact a suitable legislation or constitutional amendment for the purpose.

The rule of law must govern the rule of life, and if life is to be humanist, compassionate and accessible to the lowliest, the law must be equally open to the humblest, simplest and little member of the community.

Judicial justice is precious to a people. The adversarial system of justice to be successful has to have the Bar as an integral part of the system of judicial administration. The Bench and the Bar together operate to dispense competent and sound justice. Justice is the salt of the earth and if the salt loses its savour, wherewith shall they be salted?

The excellence of justice, the refined process of justice and justicing, make humanity happy, harmonious and a haven for peaceful and progressive habitation. Access is negated where the system is expensive; the social philosophy of the judges and the lawyers are with the proprietariat, and the poor are priced out of an archaic system whose doors open only to the opulent, not to the indigent. Dialectical materialism is the reality in the temporal world, and where purchase of able argument from the Bar is beyond the purse of the litigant, he or she is *de facto* denied justice.

Economic democracy in the administration of justice commands a system where courts and tribunals are easy to reach, inexpensive to tap and facilitate finality of verdict. These fundamental features compel a democratic system of justice to be successful by means of decentralisation. Without this, the people cease to be the beneficiaries of democracy or have a voice in the state process. This applies all the more in the case of justice because justice is based on law and law in a complex society in a modern democracy is too complicated for the laity.

The Indian legal system is altogether beyond the common people. It is so esoteric that it remains alien and unintelligible to a society that is largely illiterate without the aid of the Bar, which has a professional monopoly over jurisprudence. If the court has too many tiers and the highest court is too distant from the regions where the proletariat live and struggle for its existence, the right to justice which is the quintessence of democracy loses its spiritual value and cipherses the other fundamental rights.

The inevitable conclusion is that a decentralised system of judicature is a paramount property for democracy to have élan. A vibrant democracy must have a circuit system of administration of justice. Alternatively, Benches in different parts of the country will make the court accessible to all. Justice must be available so that social justice may become a reality.

The Bench and the Bar must be easy of access if economic democracy is not to be a travesty. If political justice is so costly that it is available only to the rich, the laws will grind the poor and the rich will rule the law.