The Need for Legal Reform

Bibek Debroy

FORUM
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INTRODUCTION

Before touching on the main topic of the lecture, Mr. Bibek Debroy gave an eloquent background of the current Indian economic and social scenario. He outlined many positive policy measures ushered in since liberalization in 1991, and more particularly after 2014. The impact of these reforms/ changes is not fully reflected yet, and hence there is some sense of disappointment. However, one cannot unscramble an egg; and there are myriad legacy issues that have to be dealt with.

The policies adopted by the NDA Government since May 2014 are slowly working into the system, but to overcome the tardy approach of the lower bureaucracy will necessarily take some more time. The political logjam in the Rajya Sabha is another major factor. Here, the statesmanship of a high order is imperative to combat the political hurdles. Unfortunately, this is the major missing link and bottleneck is at the "top of the bottle and it must be broken" is an old saying. This calls for truly astute diplomacy and persuasion, combined with give and take at the highest level.

The legal ramifications and hurdles impending faster growth were vividly articulated by the speaker and have been dealt with by the Editor.

We are certainly inspired by all the great ideas, which our PM has been assiduously pursuing, for transforming India into a high investment and growth-oriented modern nation. He has a strong demeanor, but is found to be rather hesitant in overcoming obstructionists in his party as well as in opposition

parties, including some of the big and powerful vested interests in society. Thus, he has not been able to push through the reforms agenda aggressively and improve the system of governance. While big scams have certainly subsided, there are still formidable challenges of mitigating petty corruption that prevails practically at every level of administration, where it impacts the common man. At lower levels there is virtually no fear of laws. Besides dispensation of justice is delayed endlessly oblivious of the fact that 'Justice delayed is Justice denied'.

We welcome various initiatives of the Government to incentivize local manufacture – the Make in India mission. Tragically India as a country is grossly under marketed. We Indians, at least those who have adequate purchasing power still prefer imported goods not because they are superior in all cases, but perceptions still prevail that Indian goods are inferior in quality, durability, appearance and packaging.

The brand 'Made in India' is yet to make a visible impact in most overseas markets. Though many of our consumer products and some durables are of international quality, 'Made in India' in most cases does not ring a bell. This was the case with S. Korea products some twenty years ago. Today even their cars are comparable to the Japanese. In fact, Korean exports to India are higher than Japan's, despite the latter's head-start! Hence, the emphasis now should be on intensive marketing, creating brand awareness, attractive packaging and displaying prominently our products overseas.

Let me state my own experience with Raymond Ltd. Their fabrics are as good as imported ones and are exported to developed countries. They wanted to tie up with Zegna, a world class Italian manufacturer of very superior quality fabrics. A blind test was held in Mumbai, placing Zegna's best suit length alongside Raymonds. Mr. Zegna was requested to feel and spot, which was superior of the two. He chose Raymond and was totally surprised. When politely asked, he said it was a matter 'of perception'. This may be a solitary example, but there are several cases when Indian products can prevail over foreign ones, if we market and project as superior. It calls for a very determined foray in target market overseas from both private and government agencies.

Repeated crises have demonstrated that when government controls private enterprises, in some way or the other, abuse becomes inevitable. State control inevitably involves political and bureaucratic interference and patronization. India is now mature enough to control crony capital and patronization. Experiences of banking and airlines have amply demonstrated that privatization is the only solution, but not tardy or halfway approval of shedding only partial state control.

Mr. Debroy's exposition on Legal Reforms was very well received, as it was so authentic, fluent and intelligible. It was, indeed, a treat to sit through and listen to his address carefully.

Minoo R. Shroff
President
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EDITOR'S INTRODUCTION

It is almost a quarter century of economic liberalisation in India. During this momentous phase, the country has witnessed many transformational changes in different spheres of its economic activities – from industry to trade; from agriculture to the rural economy; from fiscal to financial systems; from physical to social infrastructure sectors; from regulatory to insitutional organisms; et al. But the legal and judicial system has for long been awaiting such transformational reforms. It is commonly recognised that legal reforms are vital for the ease of doing business, promoting investment, accelerating growth, expanding employment, ensuring inclusive development as well as for breaking the vicious cycle of poverty. But what then is holding back India's drive towards legal reforms? What are the implications of lack of legal reforms or their inadequcy? How does it impact India's economic performance? What needs to be done to give impetus to legal reforms? All such issues have certainly been engaging the minds of our planners, policy makers, legal and judicial experts over the years. Several expert committees and commissions have intensely deliberated on the complexities of challenges on this score. But the outcome in terms of progressing with actual legal reforms has been far from commensurate.

We know that for a fairly long time Mr. Bibek Debroy has been articulating his position and thoughts on these questions through his seminal research work, wrtings and speeches – and with enormous consistency and conviction. He has been widely acknowledged for his

voluminous efforts on legal reforms as the Director of a Ministry of Finance/UNDP project (1993-98) and even thereafter in a variety of his professional assignments. He is perhaps the rarest of the rare economists in the country who is not just familiar with a host of Central and State level satutes, but has made commendable initiatives to enumerate them. More importantly, he has reflected on rationale and relevance of many of those statutes by applying the rigors of a typical analytical approach that is associated with an ardent economist. Indeed, the A. D. Shroff Memorial Trust and the Forum of Free Enterprise have been very fortunate to have him to deliver this lecture on legal reforms. We believe its timing has also been most appropriate given the fact that the NDA government is desperately struggling to overcome the current political logjam and progress with the long overdue reforms process.

There are essentially three key dimensions of legal reforms; first, the statutory law reforms; second, the administrative law reforms; and third, the judicial reforms. While dealing with these aspects, Mr. Bibek Debroy, right in the beginning, sets out a very useful perspective with some insightful examples and anecdotes of how many of the statutes, and their legal provisions and rules, have become ridiculously irrlevant or obsolete. Many of these have been used and abused to the detriment of their original objectives or intents. He further elaborates on various key facets of the basic legal framework of India comprising Union and State Governments stautues. Apart from the complexities of various laws, what is stupendous are their voluminous dimensions. Thus, according to the author, there is a listing of 2781 Union level statutes,

and he believes the number of State level statutes would be around 18,000 [his earlier estimate of State level statutes was around 25,000].

Surely, it is such huge legal super-structure which is administered through various wings of the governments. But at the same time, this super-structure often unfolds over a period of time many gaps; many cracks; many leakages; many fault lines; many overlaps in its effcient administration. Consequently, there are a plethora of administrative disagreements, judicial disputes and cases. Mr. Bibek Debroy eloquently refers to the speed of dispute resolution and points out: "Excluding quasi-judicial forums, there are more than 30 million cases stuck in Indian courts. Around 65,000 cases are pending in Supreme Court, 4.5 million in High Courts and 26 million in Lower Courts. Two-thirds of the backlog in High Courts is of civil cases and two-thirds of the backlog in Lower Courts is of criminal cases. 26% of cases, more than 8.5 million, are more than 5 years' old". Further, to put the economic cost of inadequacies, distortions and distractions caused by the India's prevailing legal and judicial system, the author quotes an illustrative "a back-of-the-envelope kind of number" suggested by the World Bank about a decade ago and observes that "if India can fix the legal system, there will be 1 per cent increment to GDP growth".

Mr. Bibek Debroy has covered a whole gamut of issues in fixing the legal system including challenges involved in [a] repeal of statutes and scrapping of associated rules; [b] revamping of old laws; [c] harmonising and unifying key definitions in various legislations;

[d] minimising excessive government interventions and their micro management; [e] dispute resolution; and [f] police reforms, including issues of corruption and bribery; etc. He also makes a fundamental point that "Before passing any legislation, one should ask the following questions. Why is this statute needed? What are the costs if it is not enacted? What are the benefits and costs from enacting it? This is ostensibly meant to be addressed in "Statement of Objects and Reasons" that accompany any piece of legislation, but this is undertaken very perfunctorily. If done properly, as some other countries have, we will have fewer laws and better laws, especially when we combine this with desuetude principles."

The author concludes his excellent discourse on legal reforms with very powerful message: "Even without 1991 and post-1991 reforms, India's legal system should have been changed. However, liberalization provides an additional impetus. The government has spoken about minimum government and maximum governance. This requires fewer and better laws, with focus shifting from licensing, control and government intervention to regulation". We hope all those at the helm of affairs – so also, those who are outside, but honest public opinion makers – at least now respond to this clarion call!

Sunil S. Bhandare
Editor

The Need for Legal Reform

Bibek Debroy*

I am honoured and humbled at being invited to deliver a talk in the memory of A. D. Shroff. Though there are several things we remember A. D. Shroff for, I tend to associate him most with the Forum of Free Enterprise. Enterprise is born free, but is everywhere in chains.

Who and what shackles enterprise? Whichever way we look at it, the answer lies in a broad spectrum of laws. Therefore, I have chosen to speak about the need for legal reform. In fostering enterprise and entrepreneurship, governments have both a malign and a benign role to play. The malign role is in the form of excessive intervention, with a confusion between regulation and control. The benign role is in the form of provision of public goods and services, collective goods like physical and social infrastructure, essential prerequisites for private sector growth. Unfortunately, the malign role often tends to overshadow the benign. The present government's emphasis on minimum government and maximum governance needs to be viewed in that context. We do not want a mainframe government. Instead, government

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* *The text is based on the A. D. Shroff Memorial Lecture delivered on 3rd February 2016 under the joint acupices of THe A.D. Shroff Memorial Trust & Forum of Free Enterprise in Mumbai. The author is an Economist and Member, NITI Aayog, Government of India.*

should be like small and dispersed tablets. Governments possess limited fiscal and administrative capacity. Therefore, there is a need to prioritize. If we take a vote around this room about what governments should do, each one of us will have his/her own set of priorities. But right at the top of the list will be law and order and security, outcomes of the legal regime. That is the reason why citizens around the world have elected governments in the first place. Hence, the choice of the topic – the need for legal reform.

Let me use some examples as triggers for this talk.

There is a genuine prize that is awarded in Harvard every year. This is known as the Ig Nobel Prize, awarded to people who have done strange things. In 2003, the Ig Nobel Prize for Peace was awarded to a gentleman named Lal Bihari.[2] Lal Bihari was a government school teacher, employed in Uttar Pradesh. He possessed an ancestral plot of land. Covetous of this ancestral plot of land, his maternal uncle bribed the tehsildar to declare Lal Bihari dead. Lal Bihari fought a long battle to prove that he was alive. He stood in the elections against the then Prime Minister. He went and threw stones at the police so that they would arrest him. He made his wife apply for a widow's pension. Having failed in all these attempts, Lal Bihari did some "research" and discovered that there were another 25,000 such "dead" people wandering around in UP. He became the founder President of the Dead Men's Association (Mritak Sangh) and changed his name to Lal Bihari Mritak so that their collective attempts could be synergized. Though Lal Bihari wasn't able to accept the prize in Harvard in person, eventually he was

[2] *http://www.improbable.com/ig/winners/#ig2000*

declared alive. But the other dead people, not just in UP, but also in Punjab, are still walking around India.

Surjit Singh Barnala was the Chief Minister of Punjab between September 1985 and June 1987. In 1996, he authored a book titled "Story of an Escape".[3] This is about what he did in 1994. Tired of all the security by virtue of being an ex-CM and Akali Dal politician, he didn't tell the guards and disappeared incognito. Having studied law in UP, he went off there. Not surprisingly, he was picked up by the police, who were suspicious of his antecedents. We generally have an impression that we cannot be arrested without a warrant. That's not quite true. The police have powers to arrest without a warrant under Section 41 of the Criminal Procedure Code, though this discretion was tightened up through an amendment in 2010. This Section, and other Sections (109 and 110) of CrPC, are routinely used by police to harass poor people, those suspected of being "habitual offenders". The origins of such legislation go back to English poor laws, where it was believed that able-bodied poor were necessarily indolent. In such situations, one has to produce two independent and trustworthy witnesses who can testify on one's behalf. Bereft of any papers as proof of identity, Surjit Singh Barnala could only think of Mulayam Singh Yadav's name, whereupon the police started to beat him up. Barnala then switched from Hindi to English and invoked his legal training, thus rescuing himself.

Lord Linlithgow was the Viceroy of India from 1936 to 1943. Earlier, he was the Chairman of a Royal Commission on Agriculture (1926-28). In 1973, Tamil Nadu set up an Administrative Reforms Commission. This also examined existing government jobs in the State.

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[3] *Story of an Escape, Surjit Singh Barnala, Penguin, 1996.*

It was thus discovered that there were positions known as LBAs and LBKs, though no one precisely knew what these job descriptions meant, since vacancies hadn't been filled up and earlier incumbents were now drawing pension. Asking the pensioners revealed the story. The Royal Commission had felt that Indian cows weren't good enough and cattle strains needed improvement by importing sturdier bulls and using them to impregnate Indian cows. As is common, this recommendation wasn't implemented, until in 1936 when it was announced that Linlithgow would become Viceroy. Someone in what was then Madras Presidency then woke up, realizing the incoming Viceroy would be sure to ask about a key recommendation made by a Commission of which he had been Chairman. Creating government jobs is never easy, it is just as hard as abolishing old ones. Hence, the Viceroy's name was invoked in the job title itself, to facilitate creation. LBA stood for Linlithgow's Bull Assistant and LBK stood for Linlithgow's Bull Keeper. LBKs imported foreign bulls and maintained them. LBAs ensured impregnation occurred on time and supervised that LBKs didn't commit fraud on the exchequer. After all, there was a public subsidy involved. These posts were abolished in the mid-1970s. This beats the story about a British civil service position finally abolished in 1945. It was created in 1803 so that a man could stand on the cliffs of Dover, with a spyglass in his hand, to watch out for Napoleon and ring a bell if he saw signs of an invasion.

There is a similar anecdote, also about Tamil Nadu.[4] It is best to leave this within quotation marks. "In the early

[4] *http://acorn.nationalinterest.in/2008/03/16/sunday-levity-the-trichinopoly-cigar/*

1960s the Madras government set up a pay committee to review the pay structure and the service conditions of its officers and staff. One day a 'top secret' double-sealed cover landed on the desk of the chairman. It was from 'CCA, office of the chief secretary, Fort St George, Madras'. He opened the cover to find a very humble and polite representation for upgrading the post of CCA to that of office superintendent in the chief secretary's office because of the petitioner's unblemished service record of 20 years. But there was still no clue as to what CCA stood for. The chairman sent for the petitioner and asked him what these three letters meant and what exactly did he do in the chief secretary's office. With gravity and dignity behoving a member of the chief secretary's staff, the latter stated that in view of the 30-year embargo regarding disclosure of secret matters, he could only speak after 1975. The chairman said that in that case he should withdraw his representation and place it before the next pay committee after 1975. Appreciating that he was caught in a trap of his own making, he clarified that CCA stood for Churchill's cigar assistant and thereby the secret unfolded… Winston Churchill as Britain's and the Empire's prime minister during the second world war period, had two small weaknesses – one for French liquor and the other for Havana cheroot. In the early 1940s Hitler's Wolf packs wrought havoc on the trade routes across the Atlantic. Not more than 20 to 30 per cent of ships in a convoy could reach England from the American east coast. There were critical shortages of everything in England including Churchill's favourite Havana hand-rolled cigars. Housekeeping officers of 10, Downing Street were concerned about the depleting stock of Havana. One of them whispered to his counterpart in the

India Office about securing a possible alternative supply of Trichy cigars from Madras. Ciphers were exchanged between London and New Delhi and between New Delhi and Fort St George in Madras. Ultimately, the governor of Madras agreed to take personal responsibility for the project. He selected two reputed and loyal cigar manufacturers of Trichinapoly (now Tiruchirapalli). They were sworn to utmost secrecy to produce the best quality Trichy cigars for a 'burra' sahib in England. To handle the affair, the governor required an intelligent English-speaking person as an assistant. He needed to have knowledge about cigar-making and their quality; in fact, he had to be a cigar taster. The normal process of post creation would not suffice. Nothing could be disclosed about the project. Hence by exercising his special powers under the Defence of India Rules, the governor created a post of an assistant, naming it CCA. It was located in the chief secretary's secret cell. No one but the governor, the chief secretary and the incumbent knew the real meaning of CCA, and an aura of mystique came to surround the post. Many thought it stood for chief confidential assistant who dealt with ultra-secret matters. The flow of Trichy cigars from Fort St George to Whitehall began under the cover of secrecy and continued throughout the war. ..In 1945 Churchill lost the election and became leader of opposition. The same housekeeping officer brought to the notice of the new prime minister, Clement Attlee, the issue of 'top secret' supply of Trichy cigars to the former PM. Clement Attlee suggested that the supply should continue to the leader of opposition who was also the shadow prime minister and added that the number might be slightly increased so that His Majesty's 'real' prime minister might occasionally enjoy a couple of puffs. The

war ended. India became independent. Supply of Trichy cigars to Whitehall stopped and everybody forgot about the CCA of Fort St George. “

As the last example, let me mention G. Hanumantha Reddy, a retired IAS officer from Hyderabad and the Guinness Book of World Records. It is impossible to figure out the longest legal dispute that has ever occurred. It is easier to figure out the longest legal dispute for cases that have ended, in the sense of having come to a successful conclusion. Data on ongoing cases aren’t very good. Until the entry was excised, the Guinness Book of World Records claimed that the longest such legal dispute was in India, lasting from 1205 to 1966. This concerned a dispute among the Thorat family members in a village (Hingangaon) near Pune. The family had split up and the dispute was about which branch of the family would have the rights to worship in the ancestral shrine. Which branch of the family would have the right to preside over religious and public functions? 761 years is a long time for any dispute to last, especially since legal regimes had changed. Mr Reddy probed this and discovered that the entry was wrong. In the course of the obiter dicta, Judge Sanjana had remarked that the roots of the dispute go back to a mahajar or sanad issue in 1205. However, the actual legal case only lasted for a little over 2 years, from 1964 to early in 1966. With Mr Reddy’s persistence, Guinness Book of World Records removed the offending entry. What was Mr Reddy’s interest in the whole affair? He fought a supercession battle with the government of India for 44 years, 9 months and 81 days, from April 1945 to January 1990. Thus, he holds the record for the longest case. Though Guinness Book of World Records

refused to have any more entries on long-standing cases, Mr Reddy does figure in the Limca Book of Records.

I am sure more instances are not necessary to illustrate that we have problems with our legal regime.

There is a quote from Publius Tacitus (Gaius Cornelius Tactitus), author of several texts, including "Annals". As commonly cited in English, the quote goes, "The more corrupt a State, the more numerous the laws". That's not quite correct. Tactitus wrote, *"Corruptissima re publica plurimae leges"*.[5] We indeed have a clause about a corrupt State and another clause about plurality of laws. But there was no obvious causation in Tacitus. One could equally well translate this as, "The more numerous the laws, the more corrupt a State". However, the correlation is not in doubt.

All those examples I mentioned illustrate a problem with what can be called "rule of law". "Rule of law" isn't an easy expression to define, quantify and measure, though attempts have been made. Across various organizations that have sought to measure it, indicators like speediness of the judicial process, intellectual property right protection, fairness of the judicial process, protection of private property, judicial independence, police efficiency, incidence of crime, enforcement of court orders, conviction rates, contract enforcement and trafficking have been used. These also tend to figure in assorted cross-country indicators of governance. The World Bank's Doing Business indicators seeks to measure some aspects of the legal regime, such as dealing with construction permits, registering property, enforcing contracts, resolving insolvency and labour

[5] *Annals, Book III.27.*

market regulation.[6] In 2006, the United Nations set up a Commission on Legal Empowerment for the Poor (CLEP) and this submitted a report in 2008, with a focus on access to justice, property rights, labour rights and business rights.[7] Describing "rule of law" in general terms is easy. Quantifying it is much more difficult, especially since data on something that is difficult to measure are not easy to obtain. Some data can only be perception-based, drawn from subjective responses to questionnaires. They are not hard data. A word of caution is also required about cross-country comparisons across different types of legal regimes. After all, all the indicators involve some value judgements. For instance, is it better to have swift dispute resolution, regardless of whether principles of natural justice have been followed? That is inherently a value judgement.

Governments are elected to pass laws and all laws involve curbs on individual freedom. As a collective body, aggregated from individuals, those curbs are accepted by society because they result in the greater "common good", however defined. Behaviour, so to speak, is modified and incentivized to conform to a certain standard. How many "laws" are there in India? For several reasons, that is not a very easy question to answer. First, law is not always statutory in nature. Traditionally, legal regimes are divided into common and civil law jurisdictions. In the former, and India belongs to this category, law is not always codified. Though difference between the two

[6] *http://www.doingbusiness.org/~/media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB16-Chapters/DB16-About-Doing-Business.pdf*

[7] *http://www.unrol.org/files/Making_the_Law_Work_for_Everyone.pdf*

kinds of jurisdictions is getting blurred, with codification in common law countries, there are common law strands in India and case law sometimes determines "law". Second, there is the category of administrative law, executive in nature. This is not statutory law, though it often obtains its sanction from some statutory law. Rules and orders belong to this category.[8] Third, both Union government and State governments can legislate. Within Union government, courtesy India Code, we now know exactly how many Union government statutes there are. But one still has to figure out whether one is going to count principal acts alone, or whether one is going to count amending acts too. There have been several attempts to count (and suggest repeal) of old laws. One such recent attempt was the Ramanujam Committee, set up by PMO in September 2014 to identify Union-government statutes that could be repealed.[9] (There were four Law Commission Reports too.)[10] The Ramanujam Committee told us that 380 statutes, enacted between 1834 and 1949, still remained on statute books. There were another 2,401 statutes, enacted after 1950. That's

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[8] *The 2nd Administrative Reforms Commission was set up in 2005 and several of its recommendations concern administrative law. There were 15 Reports, spanning G2C, G2B and G2G transactions. Most discussions of administrative law tend to focus only on G2B transactions. Between 1966 and the mid-1970s, the 1st Administrative Reforms Commission submitted 20 Reports. The Reports of the 2nd Administrative Reforms Commission and the status of implementation are available at http://darpg.nic.in/ArticleContent.aspx?category=311*

[9] *http://cdnpmindia.nic.in/wp-content/uploads/2015/01/Extracts-of-the-Committee-of-the-Report-Vol.I-.pdf*

[10] *Reports 248 to 251 of 2004, http://www.lawcommissionofindia.nic.in/main.htm#a7*

a listing of 2,781 Union-level statutes. Note that following common law traditions, India doesn't have a system of desuetude. Therefore, statutes are open-ended. They continue to remain on statute books, unless they are specifically identified for repeal. Fourth, you will find a figure that 25,000 State-level statutes exist. I will soon tell you where that figure comes from. It is plain wrong. No one has a precise figure about State-level statutes. We don't yet have the counterpart of India Code there.

All too often, the importance of the legal system as a constraint on economic growth and development isn't recognized and appreciated. Despite law and economics initiatives and emphasis on institutional economics, including Nobel Prizes to some practitioners, economists rarely talk about legal form. Since 1991, there have been isolated instances, such as when legal changes were necessary because of WTO or plurilateral/bilateral agreements, or when infrastructure and financial sectors were being liberalized. But those apart, as a test case, go through all the Economic Surveys. In how many of these does legal reform feature? Everyone acknowledges that India went through a heavy dose of government intervention between mid-1960s and mid-1970s. In how many economic treatises that discuss this period, is there a specific reference to legal changes? The tightening up of Foreign Exchange Regulation Act (FERA) in 1973, Monopolies and Restrictive Trade Practices Act of 1970, Urban Land Ceiling and Regulation Act of 1976, tightening of Industrial Disputes Act in 1977/78 and change in the Preamble to the Constitution in 1976 are instances. Sure, we know about these individually. But is the importance of law, as part of infrastructure or sub-structure for economic policy, appreciated as part of

the big picture? There is a back-of-the-envelope kind of number, suggested about 10 years ago by the World Bank. If India can fix the legal system, there will be 1 per cent increment to GDP growth. This is no more than a back-of-the-envelope figure and has no great sanctity. However, it is illustrative.

What does fixing the legal system mean? There are several dimensions. First, there is the simple matter of old laws. Other countries also have old laws. We can laugh at old laws. Surely, they do no harm. Not quite, they can be used to harass people. Did you know the 1949 East Punjab Agricultural Pests, Diseases and Noxious Weeds Act applies to Delhi? According to this, if Delhi is invaded by locusts, the District Magistrage will announce the invasion by beating of drums and every able-bodied person has to cooperate in fighting locusts. If you think this is harmless, how about the Aircraft Act of 1934? Stated simply, given definition of “aircraft”, you need a government license to fly kites (of the literal kind). The Sarais Act of 1867 enjoins sarai-keepers to give free drinks of waters to passers-by and can be made applicable to hotels. About 200 statutes from 19th century still exist on statute books, often with colonial overtones. It is surprising these weren’t examined and junked in 1950, when the Constitution came into effect. (There was a perfunctory attempt in 1960/61 and a more serious attempt in 2001/2002.) The Ramanujam Committee identified 1,741 such old statutes for repeal. This includes Bengal Districts Act of 1836. Do you know what this does? It empowers Bengal to create as many districts as it wants. Do you need a law for this? Did you know that ordinances from 1949 still remained on the books? More and more reports - what action has been

taken? That's a legitimate question to ask. In May 2015, several such old Union-level statutes were repealed through two Acts and a third Bill is pending. (You will find the details on the Legislative Department's website.[11])

Between 1993 and 1998, I was involved in a project on law reform, known as LARGE (Legal Adjustments and Reforms for Globalizing the Economy.) I have already mentioned the problem with obtaining access to a complete listing (and texts) of State-level statutes. For Odisha, we had a rough figure of 1,015. We multiplied that by number of States and got a rough figure of 25,000. This was no more than a guess and kept getting quoted, despite it being a guess. More recently, I have been associated with a law reform project in Rajasthan. For Rajasthan, we managed to get access to all the statutes and it numbered no more than 650. Therefore, I now think the number of State-level statutes will be around 18,000, not 25,000. Most of these concern land. For the record, around 65 of these have been repealed in Rajasthan.[12] To state the obvious, when a statute is repealed, associated rules are also scrapped.

Second, revamping old laws isn't always that simple. Rare is the case when one can repeal a statute in its entirety. If that is the case, as in the instances I mentioned above, a simple repealing Bill will do. More often, there is an old section in the statute. That needs to be scrapped or amended, while retaining the main statute. This requires a scrutiny of the statute, section by section and is much more time-consuming. Consider Section 69(1)(a) of the Transfer of Property Act of 1882.

[11] *http://lawmin.nic.in/ld/Repeal.htm*

[12] *http://rajassembly.nic.in/BillsPdf/Bill33-2015.pdf*

“A mortgagee, or any person acting on his behalf, shall, subject to the provisions of this section have power to sell or concur in selling the mortgaged property or any part thereof, in default of payment of the mortgage-money, without the intervention of the court, in the following cases and in no others, namely,- (a) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Mohammedan or Buddhist or a member of any other race, sect, tribe or class from time to time specified in this behalf by the State Government, in the Official Gazette.” In similar vein, I can cite several sections from Indian Penal Code of 1860. Moving on to the administrative law domain, I might want to retain Essential Commodities Act of 1955, but scrap several orders issued under it, at the level of the Union government and at the level of the States.

Third, and this is related a bit to the second issue, in the same area, statutes may not have been enacted at the same point in time. Therefore, definitions may not be uniform. A good example is labour laws. Depending on how you count, there are around 50 Union-level statutes that directly deal with labour, more if you count indirect ones. These don’t agree on definitions like “wages”, “child”, “workman” etc. Since the case law has also evolved separately, that too varies, causing further confusion. These statutes need to be harmonized and unified. For labour laws, the eventual intention is to unify them under four heads of wage-related, social-security related, safety-related and industrial relations-related statutes. In passing, laws haven’t always been drafted well. There are problems with language. Bad drafting leads to disputes and interpretation by courts. In other parts of the world, there has been a plain English

movement, so that laws are written in simple language. This has still left India relatively untouched. As an example, consider the various orders issued under the Criminal Procedure Code. Can't these be made simpler and more intelligible?

Fourth, India has been described as a country that is over-legislated and under-governed, reminiscent of Tacitus. Both in Parliament and Legislative Assemblies, there is an attempt to solve every problem under the sun through legislation, even though that legislation can't be enforced. Hence, there is excessive government intervention through statutes. Why should the Delhi Shop and Establishments Act of 1954 specify which part of the city will be subjected to shop closures on which day? The Shops and Establishments Act is a State subject, so other States have mirror images of this. Is that really government's job? Is the objective to ensure children of working mothers have access to creches, or is the intention to have a crèche within factory premises, as rules under Factories Act of 1948 mandate? This is sometimes perceived as taking ideological positions on degree of government intervention, but there is a better way of looking at the issue. Before passing any legislation, one should ask the following questions. Why is this statute needed? What are the costs if it is not enacted? What are the benefits and costs from enacting it? This is ostensibly meant to be addressed in "Statement of Objects and Reasons" that accompany any piece of legislation, but this is undertaken very perfunctorily. If done properly, as some other countries have, we will have fewer laws and better laws, especially when we combine this with desuetude principles.

Fifth, since this is about reform of the legal system too, one should mention speed of dispute resolution. Excluding quasi-judicial forums, there are more than 30 million cases stuck in Indian courts. Around 65,000 cases are pending in Supreme Court, 4.5 million in High Courts and 26 million in Lower Courts. Two-thirds of the backlog in High Courts is of civil cases and two-thirds of the backlog in Lower Courts is of criminal cases. 26% of cases, more than 8.5 million, are more than 5 years' old. Gypsies are believed to have originated in India and there is a gypsy curse — may you have a lawsuit in which you are in the right. Pedantic differences can be drawn between words like pendency, backlog, arrears and delay, but let's treat them synonymously. I am puzzled. Supreme Court has a publication called Court News. Earlier, through this, you could get reasonably up-to-date information on backlogs. There were time lags, more for lower courts and less for Supreme Court. Subject to that, you got data. With all this emphasis on reducing backlog, you would expect data to improve. It hasn't. Consequently, Court News seems to have been suspended and there are no data. You obtain subsequent data only when Chief Justice, or some other judge of Supreme Court, delivers a speech. There are generic issues and general solutions connected with reducing backlog, both on the supply-side and the demand-side. That difference should be illustrated with an example. More courts, or better usage of existing courts, is a supply-side measure. Using alternative methods of dispute resolution more is a demand-side measure. But, in addition, some specific focus is also needed. For instance, government litigation policy for civil cases crowds out citizens from using the court system, though Section 80 of Code of Civil

Procedure allows out-of-court settlements. There are estimates that the government is a litigant in 60% of civil cases. Other than Negotiable Instruments Act, focus on Motor Accidents Claims Tribunal (MACT) cases, petty cases, old cases and cases related to excise. Many 'crimes' under Special and Local Laws (SLL) should no longer be 'crimes' in a climate of liberalisation. If one fixes Allahabad (another Bench), Madras, Bombay, Calcutta and Punjab and Haryana, one will solve 60% of the backlog problem in High Courts. Similarly, 70% of the backlog problem in Lower Courts can be resolved by focusing on Uttar Pradesh, Maharashtra, Gujarat, West Bengal, Bihar, Karnataka and Rajasthan. I have a problem with generic solutions, not because they are unimportant, but because they are often expensive. Increasing the number of courts to 35,000 is by no means cheap. There are both fixed and running costs. Focused and incremental improvements are cheaper, though they have been snidely referred to as load-shedding. Lok Adalats, fast-track courts, Family Courts, mobile courts, Nyaya Panchayats, Gram Nyayalayas, People's Courts and Women's Courts are examples of focus and fast-track courts were also originally meant to have focus. This is not the place to say more on reducing the backlog. Suffice to say that one also needs changes in Indian Evidence Act of 1872 and 1973 Criminal Procedure Code, Civil Procedure Code of 1908 having been amended in 2002. These determine, along with other things, procedures followed by courts.

There is also the matter of police reform, which bears some mention. You may come across a conviction rate of 6% for criminal cases in India. That's true, but only if one counts from the registering of a FIR. Form the time

of filing of the charge-sheet, the conviction rate is often as high as 40%. That process, from FIR to charge-sheet, is largely the domain of the police. The Centre for Media Studies recently undertook a corruption perception survey for Delhi.[13] The public service that scored heavily in terms of being prone to corruption was police and this is a fairly normal occurrence across similar other surveys. For example, a specific study was done on corruption in police in India by Transparency International (TI) in 2005. According to that, 87 per cent of those who interacted with the police believed it to be corrupt and 12 per cent of all households said they had to bribe (in the previous year) the police to obtain a service. Why do policemen demand bribes? Among various reasons, TI said: "Payment of bribes for postings and promotions is a well-known phenomenon in the police department. As a result, the policemen who have paid their way through try to recover the amount as soon as possible and corruption becomes a tool for getting better return on "investment"." Naturally, the argument becomes stronger if one has to pay for entry into service. Though nomenclature varied from one part of India to another, there was a system of village policing, before the British integrated it into a modern police force. There is a fascinating monograph, "History of Police Organisation in India and Indian Village Police", published by the University of Calcutta in 1913. It is based on excerpts from the 1902-03 report of the Indian Police Commission. The first sentence goes, "Of all the branches of the public service in India, the police, by its history and traditions, is the most backward in its character." If this report is any indication, the British were ambivalent about village police. They liked the idea, because village

[13] *http://www.cmsindia.org/sites/default/files/ICS_Report-2015.pdf*

police were networked with citizens, something we ought to remember today, when we talk about police reforms and community policing. Simultaneously, because of financial constraints, despite integration, the pre-British village police weren't originally funded by the exchequer. They were linked with revenue functions and funded themselves through levies on citizens. The British continued with this system, though they didn't like it. "His (kotwal) appointment, however, was considered a lucrative one, as the pay of his establishment was very low, and both he and his subordinates supplemented their salaries by unauthorised exactions from the inhabitants." Thus, both in pre-British and early British days, there are antecedents of police financing themselves through extortion and bribes. It is ingrained in the police force's DNA. And this wasn't rural alone. At a later period special regulations were made for the police of cities, the cost being levied from the inhabitants by an assessment on each house and shop.

Under the Constitution as well as the Police Act of 1861, police is a state subject. However, as should be obvious, police reforms aren't only about the IPS or gazetted officers under state police services. That's around 1 per cent of the total police strength. About 88 per cent is constabulary and another 11 per cent is what is called upper subordinates (inspectors, SIs, ASIs). While there are some state-level variations, constables are generally recruited through boards, and SIs/ ASIs through the SPSCs. These are the equivalents of the village police in early British days. Colonial police commission reports (such as of 1902-03) weren't that concerned with recruitment to these, since these posts (that is, their equivalents) were hereditary. They were more concerned

with what we would today call gazetted appointments. Plenty has been written about police reforms in India, especially after the Prakash Singh case of 1996. Rather oddly, this discourse and Central (model act) and state-level legislation (proposed and actual) have little on appointments to upper subordinates and constabulary. There is stuff on senior-level appointments and transfers/ postings at all levels. There are recommendations on providing incentives and training for upper subordinates and constabulary. Whether it is the recruitment of upper subordinates (SPSCs) or constabulary (boards), the principles are similar. Minimum educational and physical qualifications are prescribed; these vary between states, especially for the educational part. For specific categories, deviations are permitted from the minimum. Physical examinations are followed by written tests and interviews. Stated thus, it is no different from any entry-level requirement anywhere. There are ways to reduce corruption in each of the three stages - physical, written, interview. There is scope to place information in the public domain and allow external scrutiny, and to reduce the powers of SPSCs and recruitment boards. The 2006 Model Police Act didn't probe this enough, because that was supposed to be done through government rules. All it said was, "The direct recruitments to non-gazetted ranks in the Police Service shall be made through a state-level Police Recruitment Board by a transparent process, adopting well-codified and scientific systems and procedures which shall be notified through appropriate rules framed by the State Government." We do need a Police Recruitment Board. But through rules, we also need its powers to be curbed. That's the transparency part.

Even without 1991 and post-1991 reforms, India's legal system should have been changed. However, liberalization provides an additional impetus. The government has spoken about minimum government and maximum governance. This requires fewer and better laws, with focus shifting from licensing, control and government intervention to regulation. There have been initiatives by Union government and some State governments. However, a more systematic exercise needs to be undertaken by Law Commission and its counterparts in States. The citizen has to believe in rule of law. That is the need for legal reform. I hope I have been able to give you a flavour of what the various dimensions of legal reform are.

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