

Kayem Justice A K Patnaik's advice on Justice Delivery



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Justice A K Patnaik recently retired as Judge Supreme Court of India

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The criminal cases against Members of Parliament and Members of state Legislatures should be expedited to ensure a credible representative democracy.

Prime Minister Narendra Modi is keen that the criminal cases against Members of Parliament and Members of state Legislatures should be expedited to ensure a credible representative democracy, but the Supreme Court has taken the view, as reported recently by newspapers, that the criminal justice system cannot be fast tracked only for legislators, particularly when a large number of persons in our country including women and senior citizens are waiting for justice from our criminal courts. The Supreme Court has instead asked the Central government to come up with suggestions on how to speed up trials after consulting state governments so that the criminal justice system as a whole can be fast tracked. Fast tracking of the criminal justice system as a whole in our country is possible if the Central government agrees to share with state governments the financial burden of a speedy criminal justice system in our country.

During my four-year tenure as the Chief Justice of the Madhya Pradesh High Court between 2005 and 2009, I found that the only way to expedite criminal trials was to increase the working strength of the judges of the subordinate judiciary in the state along with the supporting staff and to add court rooms to accommodate them and to appoint adequate numbers of public prosecutors. The Madhya Pradesh government provided the required funds for increasing the number of judges and also appointed enough public prosecutors to speed up the criminal justice system. The result was that criminal trials in most of the subordinate courts in the state would get over between six months and one year from the date of filing charge-sheets and only a few cases in which the accused were absconding had to wait till the accused were apprehended and produced in court. Contrary to popular notions, the procedure of trial laid down in the

Criminal Procedure Code for the completion of trial and prayers for adjournments made by advocates did not hold up the trials of criminal cases.

The Eleventh Finance Commission appreciated this need for providing additional courts for reducing the number of pending criminal cases and allocated sufficient funds for fast track courts. The previous NDA government formulated a scheme of fast-track courts initially for a period of five years and provided the required funds to the states for the scheme. Under the scheme, either retired judicial officers were appointed, or judicial officers were promoted to fast-track courts for the trial of pending sessions cases. The fast-track courts resulted in a substantial reduction in the number of pending criminal cases. Hence the Central government extended the scheme of fast-track courts from time to time on the requests of the high courts, state governments and the Supreme Court, but finally discontinued the scheme with effect from 31 March 2011 despite a resolution adopted at the Conference of Chief Justices and Chief Ministers in 2009 that the scheme should be continued.

The reason why the Central government discontinued the scheme was that the Thirteenth Finance Commission had recommended a grant of Rs 5,000 crore to the states for improving the justice delivery system. Out of this amount, Rs 2,500 crore was to be allotted for morning/evening/shift courts, which would reduce the arrears of criminal cases. Several states, however, did not find morning/evening/shift courts convenient considering their local conditions. Therefore, in *Brij Mohan Lal vs Union of India* (2012) 6 SCC 502, the Supreme Court took the view that we should have more regular courts instead. It issued directions that the Central government should, in consultation with the state governments and the high courts, allocate some amount out of the grant of Rs 5,000 crore for meeting the initial expenses of increasing the cadre strength of regular additional sessions judges. Pursuant to the directions in the aforesaid case, the strength of the regular cadre of sessions judges in the states has been increased by 10%. This has, to some extent, fast tracked the criminal justice system.

Ad hoc grants recommended by the Finance Commission and made by the Central government to the states, however, are not permanent solutions for speeding up the criminal justice system as a whole in the country. Under our criminal justice system governed by the Rule of Law, an act or omission is first declared as an offence by law. Any person who is alleged to have committed the offence is tried in court and punished only if he is found guilty. The United States has a federal Constitution, and there the Congress makes the federal laws declaring federal offences, and the state legislatures make state laws declaring state offences. While the state courts enforce only their state laws and not federal laws, there are separate federal courts which enforce federal laws. We also have a federal Constitution under which both Parliament and state legislatures make laws declaring offences, but the states have been burdened with the responsibility of providing funds to the subordinate courts to enforce the laws not only made by the state legislatures but also by Parliament. There are no separate courts funded by the Centre

to enforce the Central laws. The Central government in our country must therefore bear 50% of all expenses of infrastructure, salary and allowances of judicial officers, staff of the subordinate courts and public prosecutors who enforce laws made by Parliament and the state legislatures. Presently, the Central government funds a percentage of infrastructure of the subordinate courts of the states, but not the salary and allowance of persons employed in the subordinate courts. If 50% of all expenses of subordinate courts in the states are borne by the Centre on a regular basis on the condition that there will be an adequate number of criminal courts to fast track the criminal justice system as a whole, trials of criminal cases are bound to be expedited.

Rule of Law demands that a person guilty of an offence is tried and punished as early as possible. Article 21 of our Constitution guarantees to every person that he shall not be deprived of his life and liberty except in accordance with the procedure established by law. The Supreme Court has repeatedly held that a speedy trial is part of this fundamental right under Article 21. The State, which includes the Central government and the state government, is under constitutional obligation to provide a fair and a speedy criminal justice system, which will ensure that a person accused of an offence is tried, and if found guilty punished at the earliest, and if found innocent acquitted at the earliest. This Constitutional obligation of the State must be discharged by providing a sufficient number of courts and public prosecutors for fast tracking the criminal justice system as a whole. The State cannot plead that it does not have adequate resources to discharge its Constitutional obligation to its people.

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