

The challenge of change started with the move from a pre-colonial framework to a post-colonial one. The shift from one framework to another legitimately raised expectations that there would be a qualitative change in the people's lives and in the kind of environment they lived in.

Chapter 2

Neglecting Law Reforms: Social and Economic Costs and Consequences

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Costs and Consequences of Neglecting Judicial Reform

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This symposium on Challenges in Implementing Access to Justice Reforms provides an opportunity for participants from different countries to share their experiences about changes in their societies. It is the challenge of change—in each country represented here and in law enforcement and judicial institutions—that we must face with renewed vigor.

Legal, judicial and academic leaders no longer have a one-dimensional view of development, justice, democracy, or the market economy. Instead, they recognize the links between these different aspects of society in order to better analyze the challenges to the realization of society's legitimate expectations for these institutions.

The challenge of confronting and undergoing change began with each country's transition from a colonial framework to a post-colonial one. The post-colonial era raised expectations that there would be a qualitative change in the people's lives and in the kind of environment they lived in: that the security of human lives and property would be increased; there would be equal access to opportunities for employment, and self advancement; and everyone would enjoy a better life.

Post-Colonial Market Economy

Post-colonial regimes in most of the South and East Asian countries have brought about economic liberalization, which has transitioned the economies from controlled, planned, and bureaucratically-man-

aged to free market economies. Reform programs continue to be driven by aspirations to move toward democracy and market economy. Alan Greenspan has noted the connection between democratic government and free market economy, stating that a “bill of rights enforced by an impartial judiciary is...what substitutes for the central planning function as the guiding mechanism of a free market economy.”¹

What does it mean to have a market economy? A market economy is a competitive environment within which goods and services are distributed so that they are available for purchase at a price the consumer is willing to pay. A market economy does not promise to provide the highest profit at any cost but, rather, that consumers’ needs will be met by the best competitor on the market. In order to function effectively and efficiently, participants in market economies must be subject to the rule of law.

Accountability and Transparency

The market must be founded on fair rules in order to level the playing field. Power, whether governmental or private, must not intervene to bend the rules of the market to give certain participants unjustified benefits. The transition to post-colonial democracy promises us a new framework of government that moves away from the arbitrary exercise of power to one where power is subject to accountability. Post-colonial democratic governments are accountable to their citizens, responsible to those who they represent, and subject to the rule of law. Accountability and transparency in public sector governance as well as private sector corporate governance are necessary for a properly functioning market economy.

At the core of the principle of accountability lies the impartial and effective implementation of the laws. A democratic constitution sets forth the framework for what the public may legitimately expect of their government and the limits of that government’s powers. A government that is accountable to its citizenry will ultimately be required by that citizenry to guarantee the constitu-

“Access to justice must be thought of not merely as a benefit for the poor and disadvantaged, but as an entitlement of all citizens, whether rich or poor. All persons must be empowered to invoke the protection of their rights by way of the judicial system.”



Larry Ramos

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tional rights to equal protection and access to justice. Power is no longer an end in itself, but can only be exercised in terms of goals which are defined through constitutionally and legislatively determined processes. Leaders of democratic governments do not espouse a Louis XIV-style attitude that “I am the state,” rather, democratic constitutional governments are of the people.

Governments must be transparent in order for the public to hold them accountable. It is now about 60 years since the process of decolonization began, but people are still struggling for freedom of information to overcome the blanket of secrecy that continues to hide the abuses of government power. Laws in many countries can still be bent in favor of privileged and powerful groups and individuals simply because information relating to those actions is not publicly available. As Justice Louis Brandeis of the United States Supreme Court famously said, “sunlight is the best disinfectant,” which in this context can be understood to mean that transparency in government proceedings will root out abuses of power. Freedom of Information Acts provide for such “sunlight” in many countries. However, legislation mandating transparency in the books does not guarantee transparency in reality. In India, for example, a Freedom

¹ Alan Greenspan, *Remarks at the Woodrow Wilson Award dinner of the Woodrow Wilson International Center for Scholars* (June 10, 1997) (transcript available at: www.federalreserve.gov/boarddocs/speeches/1997/19970610.htm).

In order to remain independent and politically neutral, judicial systems must receive adequate financial and human resources, so that they can enjoy sufficient salaries, equipment, and reasonable working conditions.

of Information Act was passed in December 2002, but was not implemented.²

Political Neutrality

Effective law enforcement and judicial systems deliver justice by treating each case neutrally with respect to the individual parties and with respect to political considerations. Court judgments are reasoned decisions that are subject to appeal within the court system and scrutiny by society at large. A judicial system only enjoys the confidence of its citizenry if it can show impartial fairness in adjudicating cases that is shared by the community as a whole. The community does not want a court that bends with the winds of political change in favor of one powerful group or another. If the judiciary becomes a part of the executive branch, it is bound to be subject to political pressure: then impartial application of justice is impossible. In order to remain independent and politically neutral, judicial systems must receive adequate financial and human resources, so that they can enjoy sufficient salaries, equipment, and reasonable working conditions.

The police force must also be immune from political influence if law enforcement is to be impartial. The police protect the citizens' rights. However, the community must provide the police force with the necessary resources the same way that it must provide for the needs of the judicial system. The police needs the confidence of the community and must not be subjected to political interference, so that it perceives itself to be acting on behalf of the community and not for its own personal gain or as a servant of the privileged and powerful.

Without impartial application of the laws, there will be no rule of law. Without the rule of law, there will be no guarantee of security for persons or property. Increasing the accountability, transparency and neutrality of governments, and especially

of judiciaries and police forces, will contribute towards ensuring the impartiality of justice within our democracies.

Equality Under the Law

During the colonial order, there was no equality among citizens or equal protection under the law. There was discrimination by the privileged against the disadvantaged. Constitutional democracies, however, guarantee equality under the law and access to justice. Access to justice must be thought of not merely as a benefit for the poor and disadvantaged, but as an entitlement of all citizens, whether rich or poor. All persons must be empowered to invoke the protection of their rights by way of the judicial system. Every citizen must know that she is entitled to equal protection of the law, and that she may assert her rights and have those rights recognized and vindicated, regardless of gender, economic status, caste, religion, or political affiliation. Our reform efforts must develop an enabling environment for access to justice and, to that end, promote transparency, accountability, ultimately the rule of law.

Conclusion

Access to justice is understood as a necessary precondition for fulfilling the potential of democratic governments and market economies to be accountable, transparent and politically neutral. When democratic institutions work and public power is accountable to the citizens, economic and social development is encouraged, and cannot be obstructed, impeded, or prevented by the powerful and privileged.

The rule of law, which fosters economic growth in this way, is founded on the principle that everyone, including political and social leaders, is subject to impartial and neutral application of the law. If we can achieve such impartiality and access to justice for all, the market economies we are engaged in building will contribute towards sustainable social and economic development.

Anamul Haque Anam



Sixty years after the process of decolonization began, judges in Bangladesh confront issues relating to its courts head-on.

² Two years later, in December 2004, a new Right of Information Bill was enacted.

The Need for Judicial Reforms: A Look at India

ARNAB KUMAR HAZRA

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A good judicial system produces many economic, political, and social benefits. An effective judicial system is necessary to check abuses of government power, enforce property rights, and enable exchanges between private parties. A fair, efficient, affordable, and accessible justice delivery system aids in market development; supports investment, including foreign direct investment; and stimulates economic growth.

Of the three branches of government, the judiciary is “in a unique position to support sustainable development by holding the other two branches accountable for their decisions and underpinning the credibility of the overall business and political environment.”¹ The political environment of a country depends on its rule of law.² Both the procedural and institutional characteristics of a country’s legal system are central to the rule of law. The rule of law requires at minimum that the government acts accord-

ing to the law produced by the legislature and respects the civil rights of its citizens, and citizens can resort to a judicial body that treats each case neutrally and fairly.³ While there are no fixed criteria that a legal system must possess in order to establish that the jurisdiction governed by that system is under the rule of law, it is useful to know that the following are common indicators used to measure rule of law: an independent and impartial judiciary; laws that are publicly accessible and apply to citizens and government alike; and the absence of retroactive laws.⁴

The Costs of Neglecting Judicial Reform

Neglecting judicial reforms has related social costs. Justice forms the basis of lasting social order. In a just social order, citizens feel empowered to invoke that rule of law for their own benefit. Legal empowerment reduces poverty, builds civil society, encourages development, and promotes human rights. Access to legal services and complementary non-legal services should empower citizens to use the law to improve their lives.

Neglecting judicial reforms also has an economic cost. The overall level of confidence in government institutions, including the judicial system, correlates positively with the level of investment and other measures of economic performance. Efficient and transparent legal systems reduce transaction costs for economic actors and thus encourage investment, especially foreign investment.

An inefficient legal system—one that is characterized by a huge backlog of cases—undermines the effectiveness of legal reforms. Inefficiency in the judicial system leads to an increase in litigation, as people who are aware of the slow pace of justice within the court system begin to file cases primarily to harass the other party. Such cases crowd out genuine litigants who are forced to seek solutions elsewhere.

Judicial reforms are aimed, in part, at lowering the transaction costs of litigation. In civil cases, parties go to court in order to resolve a dispute, which they have not been able to resolve privately. In other words, the cost of settling the dispute privately between the parties is very high.⁵ All things being equal, cases are litigated only when the legal cost is lower than the bargaining

20 million

The number of cases pending in the lower courts of India.

20 years

The length of time a contested termination dispute can take in court.

2.7

The average number of judges per 100,000 inhabitants in India.

6.38

The average number of judges per 100,000 inhabitants in 30 selected countries.

¹ WORLD BANK, WORLD DEVELOPMENT REPORT: THE STATE IN A CHANGING WORLD (1997) 100.

² In *The Rule of Law Revival*, 77 Foreign Af., Mar.–Apr. 1998, at 95, Thomas Carothers defines “rule of law” as

...[A] system in which the laws are of public knowledge, are clear in meaning, and apply equally to everyone. They enshrine and uphold the political and civil liberties that have gained status as universal human rights over the last half-century. In particular, anyone accused of a crime has the right to a fair, prompt hearing and is presumed innocent until proved guilty. The central institutions of the legal system, including courts, prosecutors, and police, are reasonably fair, competent, and efficient. Judges are impartial and independent, not subject to political influence or manipulation. Perhaps most importantly, the government is embedded in a comprehensive legal framework, its officials accept that the law will be applied to their own conduct, and the government seeks to be law-abiding.

³ Richard Bilder and Brian Z. Tamanaha, *Law and Development*, 89 AM. J. INT’L. L. 470, 484 (1995).

⁴ Ronald J. Daniels, Michael Trebilcock and Joshua Rosensweig, *The Political Economy of Rule of Law Reform in Developing Countries* (2004) at www.wdi.bus.umich.edu/global_conf/papers/revise/Trebilcock_Michael.pdf

⁵ This cost is called the “bargaining cost” while the cost of taking a dispute to court is the “legal cost” of dispute settlement.

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cost.⁶ If the legal cost were higher than the bargaining cost, then the parties would not go to courts.

In India, resolving disputes through the courts is generally not the cheaper option. The poorest members of society and firms unaffiliated with large business groups are most likely to be adversely affected by inaccessible, corrupt, or inefficient courts. The poor who find themselves defendants in criminal cases often do not have the resources to obtain bail. Moreover, when the defendant is the family breadwinner and cannot pay bail, his or her family loses its source of income.

The Link Between Justice Reform and Economic Growth

A number of cross-country econometric studies provide compelling evidence that the establishment of rule of law facilitates economic growth. In particular, protecting private property rights have been found to facilitate and enforce long-term contracts, which are essential for raising investment levels. The World Bank study, *Governance Matters*,⁷ found that measures of good institutions have a strong correlation with indicators of economic development. Other studies using fewer measures of institutional quality and focusing exclusively on measures of economic development support these results.⁸ There is also strong evidence of a negative correlation between residents' perceptions of judicial unpredictability and growth and investment.⁹ Some studies also show that the overall level of confidence in the judiciary and other government institutions correlates positively with the level of investment and measures of economic performance and the lack of legislative and institutional reform is a significant barrier to retaining such investment, which gives rise to economic growth.¹⁰ All these support the conclusion that there is a causal relationship between the rule of law and economic development.

Law Reform and Poverty

Invariably, the poor are at the receiving end of inefficiencies in court procedures and management. Such inefficiencies provide opportunities for rent seeking by attorneys, judges, and judicial support personnel.¹¹ In most developing countries, where land titles are poorly recorded, the poor find it almost

impossible to establish their claims and struggle through the judicial processes because of their limited resources.

The poor are particularly worse off when dealing with criminal cases. India has a large jail population of prisoners under trial ("undertrials"). In Tihar Jail in Delhi, more than 85 percent of the prisoners have been reported to be undertrials.¹² Many undertrials are detained because they have no money to make bail or hire a lawyer to assist them.¹³ Undertrials are detained in order to ensure their appearance in court during the trial. Thousands of them, arrested on suspicion of committing petty crimes, languish in jails. Due to court congestion, many remain in jail for a much longer period than the maximum punishment under the law for the crime committed.

Court Congestion in India

Large backlogs of cases and delays may affect both the fairness and the efficiency of the judicial system. In India, the workload of the courts is huge. There are about 20

⁶ It follows that resorting to the law is unnecessary and undesirable when bargaining succeeds, and resorting to the law is necessary and desirable when bargaining fails. The special circumstances that define the limits of law are specified in a remarkable proposition called the Coase Theorem, formulated by economist Ronald Coase. See Ronald H. Coase, *The Problem of Social Cost*, 3 J. of Law and Econ. 1-44 (1960).

⁷ DANIEL KAUFMANN, AART KRAAY AND PABLO ZOIDO-LOBATON, WORLD BANK, *GOVERNANCE MATTERS* (1999), available at www.worldbank.org/wbi/governance/pubs/govmatters.pdf. The aggregate governance indicators for 1996-2002 which supersede the previously posted indicators, was made available in May 2005 at www.worldbank.org/wbi/governance/pdf/govmatters%20IV20main.pdf. Other World Bank papers on Governance Indicators include *AGGREGATING GOVERNANCE INDICATORS* (1999) at www.worldbank.org/wbi/governance/pubs/aggindicators.html; *GROWTH WITHOUT GOVERNANCE* (2002) at www.worldbank.org/wbi/governance/pubs/growthgov.html and *Governance Matters III* (2003) at www.worldbank.org/wbi/governance/pubs/govmatters3.html

⁸ Daniels and Trebilcock, *supra* note 4.
⁹ Aymo Brunetti et al., *Credibility of Rules and Economic Growth: Evidence from a Worldwide Survey of the Private Sector*, 12 (3) World Bank Econ. Rev. 353 (1998).

¹⁰ John Hewko, *Foreign Direct Investment: Does the Rule of Law Matter?* (2002) (unpublished manuscript, on file with the Rule of Law Series).

¹¹ Rick Messick, *Judicial Reform and Economic Development: A Survey of the Issues*, 14(1) The World Bank Res. Observer, 117, 120 (1999).

¹² Government of India, (1997), Report of the Committee on Rationalization of Classification of Prisoners in Tihar Jail, New Delhi.

¹³ Table 1: Indicators on Crime for the Year 2000 and 2002.

Heads / Categories		2000	2002
Persons as	Under IPC Crimes	10,532,307	10,726,760
	Under SLL Crimes	4,724,623	4,893,407
Undertrials	Total no. of undertrials	15,256,930	15,620,167

Source: *Crime in India (2000)*, and *Crime in India (2002)*, National Crime Records Bureau (Ministry of Home Affairs), Government of India.

million cases pending in lower courts and another 3.2 million cases in high courts. A termination dispute that is contested all the way can take up to 20 years.¹⁴ In the Principal Labor Court in Bangalore, 90 percent of termination disputes are not disposed of within a year. Writ petitions in high courts take about 8 to 10 years and in some courts nearly 20 years. The dockets of civil cases are overcrowded and it may take years to get a trial on the merits.¹⁵

Protracted case processing times and overburdened administrative staff may lead to resource-privileged individuals dominating the court's time to the detriment of those who have fewer resources with which to exert influence. Those with limited access to justice may resort to extralegal or illegal means of resolving conflict such as coercion or physical violence.

A lack of judges has generally been cited as the main reason for court congestion and delays.¹⁶ Indeed, the number of judges in India per capita has been low compared to other countries. For instance, data on 30 selected countries from the World Bank *Justice Sector at a Glance* database¹⁷ indicate that in 2000, the average number of judges per 100,000 inhabitants was 6.38.¹⁸ The corresponding number for India is about 2.7 judges.

Court productivity, as measured by docket clearance rates, has a significant and negative effect on both caseloads and congestion rates and seems to be crucial for the

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effectiveness of congestion-reduction programs. Judiciaries with lower litigation rates display a relatively better performance with respect to current caseloads, but are not efficient in addressing the "real" backlogs of cases pending for more than a year.

However, a study by Micevska and Hazra¹⁹ reveals that simple supply side solutions such as increasing the number of judges might not entirely solve the problem. Improving efficiency of the judiciary is also important in decreasing court congestion. A major function of the judiciary and the courts is to assist in the efficient and timely resolution of disputes.²⁰ Once a court has been established, its efficiency is defined in terms of the speed, cost, and fairness with which judicial decisions are made and the access that aggrieved citizens have to the court.

Police and Prison Reforms in India

If there is to be any attempt for a meaningful revamp of the criminal justice system, the issue of police and prison reforms should be part of judicial reform.²¹ The National Police Commission has pointed out that 60 percent of all arrests in India are either unnecessary or unjustified. This has resulted in overcrowding of jails and accounts for more than 40 percent of the expenditure of jails. Police restraint is of utmost importance, especially since a majority of the people arrested are poor and languish in jail simply because of their inability

¹⁴ V. Nagaraj, *Labor Laws*, in M. MENON, N.R. AND B. DEBROY (EDS.) LEGAL DIMENSIONS OF ECONOMIC REFORMS (1991) 31–80.

¹⁵ For a detailed analysis on the problem of court congestion, see Arnab Kumar Hazra and Maja B. Micevska, *The Problem of Court Congestion: Evidence From Indian Lower Courts* (2004), available at www.swan.ac.uk/economics/res2004/program/papers/HazraMicevska.pdf.

¹⁶ The number of judges per 100,000 inhabitants ranged from 0.13 in Canada to 23.21 in the Slovak Republic, not showing significant correlation with GDP per capita. It should be noted, however, that for some of the countries the statistics covered only the federal court system (excluding the state or provincial court systems).

¹⁷ Available at: www4.worldbank.org/legal/database/Justice

¹⁸ The actual number of judges is even lower since the calculation is based on the sanctioned judge strength, not accounting for vacancies.

¹⁹ Arnab Kumar Hazra and Maja B. Micevska, *The Problem of Court Congestion: Evidence From Indian Lower Courts* (2004), available at www.swan.ac.uk/economics/res2004/program/papers/HazraMicevska.pdf.

²⁰ Maria Dakolias, *Court Performance Around the World: A Comparative Perspective* (1999) available at: www-wds.worldbank.org/servlet/WDS_IBank_Servlet?pcont=details&eid=000094946_99090805303789.

²¹ Arnab Kumar Hazra, (2004), *Institutional Reforms in the Enforcement of Criminal Justice in India*, in BIBEK DEBROY (EDS.), AGENDA FOR IMPROVING GOVERNANCE (2004).

The Philippines recognizes and agrees with the reform concerns and initiatives outlined by Mr. Hazra. Indeed, our courts, especially the Sandiganbayan, suffer many of the same problems as the courts in India.

to procure bail. Many of the persons who are in prison are not dangerous or violent. However, if these people stay in prison for long periods of time, they may be subjected to substantial psychological harm and become more prone to commit crimes. This is a serious problem, considering the large number of undertrials lodged in various Indian jails.

Conclusion

Developing countries need judicial reforms. Neglecting judicial reforms leads to lack of property rights enforcement and abuse of government powers. These may ultimately force people to operate outside the legal system, and impair the rule of law. This could affect a nation's credibility to do business and result in lower investments and economic growth. In the long run, this could impair the reduction of poverty and creating long lasting social order.

India's experience has shown that the poor are usually the ones who suffer most under a non-functioning criminal justice system. An inefficient judiciary encourages rent-seeking activities and makes access to justice by the poor particularly difficult. Thus, while efficiency-enhancing efforts are small steps in the right direction, more substantive judicial reforms—including police and prison reforms—should lie at the core of any effort by policymakers.

COMMENT: The Role of Judicial Reform in Good Governance and the Fight Against Corruption

SIMEON V. MARCELO

Ombudsman of the Republic of the Philippines

It cannot be doubted, as Mr. Arnab Kumar Hazra has suggested, that “besides promoting law and order, a balanced, swift, affordable and accessible, and fair justice delivery system (a) aids in market development; (b) generates investment, including foreign direct investment; and (c) stimulates economic growth and therefore helps in alleviating poverty.” Unfortunately, however, while the delivery of justice should be a singular concern of the government, the truth is, the government itself is composed of different branches that do not necessarily take a unified approach to delivery of justice. Different offices within the government may even compete, if not for public approval, then for the limited resources available to the government as a whole.

In the Philippines, governance, access to justice, and the provision of basic services are the concern of the legislature, the executive, the judiciary, and the constitutional bodies, both cooperatively and independently. Overlapping of functions and duties is common in the Philippine bureaucracy. Thus, while cooperation may have been the intention behind such overlap of jurisdiction, the exact opposite may occur as different agencies lobby for different agenda in what is perceived to be a contest of competing interests.

We agree with Mr. Hazra that there are debates on “whether law reform should facilitate market transactions or the emphasis should be on promoting good governance and alleviating poverty.” While there is broad consensus that judicial efficiency and reforms support economic growth, as

The Philippine Supreme Court in session.



Courtesy of the Philippine Supreme Court

Mr. Hazra correctly pointed out, there are debates on perceived competing interests with respect to the ways in which legal and judicial reform should be pursued.

There is a similar debate in the Philippines surrounding the problem of poverty and corruption. Corruption is one of the most pressing problems of the Philippines today. It is considered as one of the most difficult stumbling blocks to economic development and the eradication of poverty. In fact, The World Development Report for 2004¹ published by the World Bank reported that corruption is the top investment constraint in the Philippines.² This is further supported by the 2004 Corporate Performance Survey conducted by the Wallace Business Forum, which reported that corruption is the most serious disadvantage to investing in the Philippines.³

For good reason, however, budget officials and bureaucratic fund managers invariably channel available resources to poverty alleviation projects, instead of allocating more resources for anti-corruption programs. We all understand that our government is caught in a dilemma, considering the Philippines' very limited resources, difficult fiscal position, and the gravity of the problems the government has to address.

Anti-Corruption: A Unifying Reform for the Poor

The Office of the Ombudsman in the Philippines, however, advances the view that, in reality, choosing to fight either poverty or corruption is not a dilemma at all. Recent studies have shown that corruption has a direct and positive correlation with poverty. A working paper of the International Monetary Fund, entitled "Does Corruption Affect Income Inequality and Poverty?",⁴ con-

cluded that there is statistical evidence to "establish the existence of a statistically significant *positive association* between corruption and poverty."⁵ Thus, it is our position that by investing substantial funds in the anti-corruption campaign, the government is, in effect, effectively helping in alleviating poverty.

For example, corruption in infrastructure projects can result in substandard roads leading from farms to markets—making them perhaps impassable sooner than expected and causing an altogether negative impact on the livelihood and productivity of the people. Further, if corruption is substantially eradicated at the revenue-generating agencies, tax collection could increase drastically, thereby providing additional badly needed funds for anti-poverty programs.

In its 2004 Common Country Assessment, the United Nations Development Programme reported that about P100 Billion, or 13 percent of the P781 Billion Philippine national budget, was at risk of being lost to corruption.⁶ However, it was estimated that the greatest loss (in terms of uncollected revenue) happens at the revenue generation agencies: the Bureau of Internal Revenue and the Bureau of Customs.

Senator Joker Arroyo explains that only 12 percent of the entire budget is used for capital expenditures and, is, therefore, susceptible to graft and corruption. According to this theory, only about 3.6 percent of the budget is vulnerable to graft. He concluded that the greatest loss due to corruption can be attributed to uncollected revenues. He posits that, assuming that what is due the government in revenues is P700 billion, the failure to collect just 15 percent of that amount already translates into a P105 billion "loss" to government in uncollected revenues.⁷

Senator Arroyo's conclusion was confirmed by a study on smuggling by the Philippine Center for Investigative Journalism. According to that study, "the total revenue loss for the government could reach as much as P200 billion."⁸

Thus, if an adequately funded anti-corruption initiative is able to substantially reduce such budgetary leaks and help increase revenue collection, the immediate effect will be the accrual of "savings" and

It is our position that by investing substantial funds in the anti-corruption campaign, the government is, in effect, effectively helping in alleviating poverty.



¹ WORLD BANK, WORLD DEVELOPMENT REPORT 2004: MAKING SERVICES WORK FOR POOR PEOPLE (2004), available at http://wdsbeta.worldbank.org/external/default/WDSContentServer/1W3P/IB/2003/10/07/000090341_20031007150121/Rendered/PDF/268950PAPER0WDR02004.pdf

² BUSINESS WORLD, Sept. 29, 2004.

³ *Id.*, at 21.

⁴ Sanjeev Gupta et al., "Does Corruption Affect Income Inequality and Poverty," (May 1998), available at <http://www.imf.org/external/pubs/ft/wp/wp9876.pdf>

⁵ *Id.* at 21.

⁶ See Cai Ordinario, *P100B Lost to Corruption*, THE MANILA TIMES, July 31, 2004, at 1.

⁷ See Belinda Olivares-Cunanan, *Mercy Missions Can Be Done Here*, PHILIPPINE DAILY INQUIRER, Aug. 9, 2004, at A15.

⁸ See Tess Bacalla, *Smuggled Goods, Flood Walls, Markets*, THE PHILIPPINE STAR, Oct. 25, 2004, at 10.



Simeon V. Marcelo
Ombudsman of the
Philippines

“If we intend to make significant progress in our fight against graft and corruption despite our many limitations, the speedy disposition of high-profile cases involving higher government officials and bigger amounts of money should be made a priority in the trial schedule of our courts.”

Ombudsman Simeon V. Marcelo was appointed as Solicitor General of the Republic of the Philippines in February 2001. As Solicitor General, he successfully handled the recovery of former Philippine President Marcos’ ill-gotten wealth worth US\$680 Million lodged in Swiss bank accounts. In October 2002, he was appointed as the Ombudsman, the youngest person ever appointed to the position. As Ombudsman, he heads the panel of government lawyers prosecuting major graft cases before the Sandiganbayan, the Philippines’ Anti-Graft Court. His office is now focusing on investigating alleged widespread corruption activities in the Philippine military and revenue-generating government agencies.

income for the government, which can, in turn, be used for poverty-alleviation projects. Moreover, reduced graft and corruption increases investor confidence, which translates to more investments and employment for the people.

Therefore, the Office of the Ombudsman posits the view that a massively funded anti-corruption campaign should be seen as an investment with extraordinary high returns and not as an expense, where the primary beneficiaries are the poor and the marginalized sectors of society, and where the direct and immediate effect is the alleviation of poverty in our country.

Judicial Reform and the Sandiganbayan

It should be emphasized that in order for an effective campaign against corruption to be implemented, reforms at the courts handling corruption cases are indispensable.

The Philippines recognizes and agrees with the reform concerns and initiatives outlined by Mr. Hazra. Indeed, our courts, especially the Sandiganbayan, suffer many of the same problems as the courts in India. The Philippine Supreme Court, under the watch of Chief Justice Hilario G. Davide, Jr., advocates governance reforms. According to the Chief Justice:

Any effort...to promote development in a country is deeply rooted in governance. This is like...a

fruit-bearing tree with governance as the roots and development as the fruit. To harvest bountiful fruits of good quality, the tree must be cared for from the roots, giving it ample water, fertilizer, etc. Otherwise, no plentiful harvest, much more [sic] high quality harvest, can be expected. Remember the old wise saying, “one reaps what one sows.” Poor governance means underdevelopment or no development at all. Good governance means flourishing development, progress, prosperity, stability and peace.⁹

Despite apparent competing interests in other areas, our national leaders and the stakeholders have come together in a unified front for good governance. In December 2004, the heads of offices of various government agencies and branches launched the Good Governance Festival. There were ten thematic areas of governance reforms chosen to highlight the critical domains that need to be addressed by the government in cooperation with the private sector and civil society:

1. electoral and political reforms;
2. justice reforms;
3. anti-corruption;
4. local governance reforms;
5. human rights and gender;
6. media reforms;
7. public administration reforms;
8. environmental governance;
9. anti-poverty; and
10. peace and development.¹⁰

For its part, the judiciary, under the direction of Chief Justice Davide, adopted the Action Program for Judicial Reform (APJR)¹¹—a comprehensive reform package for the judiciary. Its components seek to fulfill our vision of a judiciary that is independent, effective, efficient, and worthy of the people’s trust and confidence. It also seeks to ensure that the legal profession pro-

⁹ According to Chief Justice Davide, “Good governance consists, at the minimum, of institutions that are democratic and accountable and that protect the Rule of Law at all times; and rules that are transparent, participatory, responsive and effective, and which are geared towards the full development of the human person and the building of a just and humane society.” Chief Justice Hilario G. Davide, Jr., Keynote Address delivered on the Human Rights Week Commemoration, 10 to 10 Dekada ng Reporma Milestone Event (Dec. 8, 2004).

¹⁰ *Id.*

¹¹ A summary of the APJR is provided by the Philippine Supreme Court Program Management Office Director, Evelyn T. Dum Dum, on page 62.

vides quality, ethical, accessible, and cost-effective legal service to the people and is willing and able to answer the call to public service.

One of the components of the APJR is access to justice by the poor. A specific goal of this component is to reform each of the five pillars of the criminal justice system to develop a system that is responsive and accessible to the poor and disadvantaged. Various activities were conducted to underscore the urgent need to join forces in ensuring access to justice, culminating in the National Forum on Access to Justice through the Five Pillars of the Criminal Justice System, held late last year.

While good governance, access to justice, and rule of law, must be addressed by multi-institutional cooperation, in order to fully understand the parallels between our experience and that of India, it is necessary to highlight the role of one institution in the Philippine judiciary—the Sandiganbayan. The Sandiganbayan is the Anti-Graft Court of the Philippines established to hear, try, and decide cases against high-ranking public officials, i.e., those belonging to Salary Grade “27” and above. The Sandiganbayan has 15 justices in five divisions of three justices each. For 2004, it had an operational budget (personnel services, maintenance and other operating expenses) of almost P115 million.

Studies recently conducted by the Office of the Ombudsman involving Sandiganbayan cases resolved in 2003 revealed that it took an average of six years and ten months for one case to be fully resolved. In fact, there are some cases involving high-ranking government officials that have been pending in the Sandiganbayan for more than ten years now.

In mid-2004, due to the heavy volume of cases being heard by the divisions of the Sandiganbayan, in many instances only two hearings for every case were conducted every two months. Another study conducted by the Office of the Ombudsman, on the thirty high-profile cases presently pending with the Sandiganbayan, revealed that towards the end of last year, there was an alarming interval of an average of four

months between scheduled hearings in every case.

The high-profile “Tax Credit Scam” illustrates the above-mentioned situation. In that case, the accused was supposed to be arraigned on 30 September 2004. The scheduled arraignment was postponed and rescheduled to 01 March 2005, an interval of almost five months. Other high-profile cases were not scheduled for follow-up hearings until four and five months later after the initial hearings.

The Sandiganbayan justices cannot be blamed for this problem. In fact, they should be commended for their diligence and perseverance. They are doing their best to complete the proceedings and resolve their cases at the earliest possible time, but the sheer volume of cases makes it impossible to promptly dispose of every case.

At the beginning of 2004, the Sandiganbayan had 2,304 cases pending.¹² As of 31 October 2004, the Sandiganbayan had a total of 1,792 **active** cases (with three cases yet to be raffled), divided as follows:

ACTIVE CASES IN THE SANDIGANBAYAN	
1 st Division	185
2 nd Division	470
3 rd Division	356
4 th Division	387
5 th Division	388
Special Division	3
TOTAL	1,792

However, the total number of cases (actual caseload) pending in the Sandiganbayan within a given year, which includes both active and non-active cases, is far larger than the above-stated numbers. A study jointly sponsored by the Supreme Court and the World Bank entitled “Philippines: Formulation of Case Decongestion and Delay Reduction Strategy Project-Phase I (Final Report December 2003)”¹³ stated:

The average workload of 441 cases per justice is heavy. Since Sandiganbayan justices work in divisions, each division effectively handles more than 1,000 cases per year. A reasonable amount of workload per justice should be established . . .

The delay in the disposition of cases in the Sandiganbayan is a natural conse-

Remember the old wise saying, “one reaps what one sows.” Poor governance means under-development or no development at all. Good governance means flourishing development, progress, prosperity, stability and peace.

—CHIEF JUSTICE HILARIO G. DAVIDE, JR.

¹² Sandiganbayan Statistics on Cases Filed, Pending and Disposed of as of Nov. 30, 2004.
¹³ Available at www.apjr-sc-phil.org/article/articleview/8/1/2

The delay in the disposition of cases in the Sandiganbayan is a natural consequence of a heavily congested docket—a problem that plagues all Philippine courts today.

quence of a heavily congested docket—a problem that plagues all Philippine courts today. However, due to the unique and usually complex character of graft and corruption cases, and the extremely heavy caseload distributed among a small number of courts (five divisions), the problem of delay is extremely grave at the Sandiganbayan.

It must be emphasized that the Sandiganbayan plays a critical role in fighting graft and corruption committed by high-ranking public officials. A survey on caseload funded by the World Bank showed that the median time for the processing of cases (from filing to closure) is 6.6 years; the minimum duration was 1.6 years and maximum 11 years. The trial phase of each case took the longest time, with a median trial duration of 2.4 years. The second longest phase was that of the decision making itself, with a median duration of eight months.¹⁴

We have showcased the Sandiganbayan primarily due to its importance to the campaign against graft and corruption and the great positive impact the swift administration of justice has on deterring corruption. Corrupt public officials can be expected to respond only to reasonably certain swift or immediate punishment, whether it is administrative or criminal. The heavily clogged dockets and the limited number of justices and judges cause the trial of allegedly corrupt public officials to drag on for years. During this time, the trials and cases fall out of the sphere of public interest, concern, and knowledge and end as old news relegated to history, which seems irrelevant and inconsequential to the everyday lives of our people. The corruption courts no longer have a deterrent effect when cases take years to resolve. The search for a solution to this critical problem of congested dockets requires recourse to drastic but creative and economical measures.

Alternative Reform Measures

The ideal and most logical solution to this predicament is to at least qua-

druple the number of justices and/or divisions in the Sandiganbayan. However, such a solution will require an additional budget of at least P400 million, which likely exceeds the resources available to the national government at this time.

RATIONALIZATION OF JURISDICTION

Based on another study conducted last year by the Office of the Ombudsman, of the more than 2,000 cases pending before the Sandiganbayan, around 793 cases involve municipal mayors and other officials with salary grades of 27 or 28 and the alleged amount of injury or bribes received was P1 million or less.¹⁵ These cases comprise approximately 40 percent of all pending cases in the Sandiganbayan. If the more important cases with larger amounts at stake could be prioritized, the over-burdened calendar of the Sandiganbayan could be lightened, allowing the justices more time to focus on cases that will produce a greater impact in the war against graft and corruption. This can be done by transferring the lower priority cases to the regular courts, allowing the Sandiganbayan to concentrate on the very cases it was originally intended to try—those involving the senior officials of the country and those involving large amounts of money.

The Office of the Ombudsman had sent to the Senate, through Senator Mar Roxas III, its proposed legislation to modify the jurisdiction of the Sandiganbayan to allow more expeditious resolution of cases involving high-ranking officials and those involving large amounts of money. It is proposed that cases involving local and national officials with salary grade 27 and 28 should be transferred to regional trial courts if one of the following two conditions is met: (a) the case does not involve damages or bribes or such damages remain unquantified or are unquantifiable; or (b) said damages or bribes are no more than P1 million.¹⁶ As ear-

Courtesy of the Philippine Supreme Court



Thousands of case files awaiting disposition by the courts.

¹⁴ OMB Medium-Term Anti-Corruption Plan and Public Investment Program, at 2-30.

¹⁵ Among the cases involving municipal mayors, 254 involve an amount of P 25,000 or less; 50 involve an amount P 50,000 or less; and 68 involve P 100,000 or less.

¹⁶ There are 952 Regional Trial Court branches throughout the Philippines, 761 of which were filled as of 30 November 2004. The transfer of these 793 cases from the Sandiganbayan may not be too burdensome considering the fact that, with a few exceptions, only 1 case need be assigned to each of these Regional Trial Courts.

lier stated, there are about 793 cases that fall under these classifications. It was further proposed that the remaining cases, which involve damages or bribes that are less than P5 Million, should be tried and resolved by individual justices, leaving the more complicated ones for the division of three justices.¹⁷

A better response to this problem is to drastically increase the number of justices in the Sandiganbayan. Adding five more divisions to the Sandiganbayan, together with the above-discussed modification of the Sandiganbayan's jurisdiction, will substantially remedy the problem of delay. This, of course, will require an additional operating budget of about P115 million and the enactment of further legislation. The additional funding of P115 million should not, however, seem that much in terms of the enhanced capacity that this funding will create for the Sandiganbayan to deter further acts of graft and corruption, which could potentially save our country billions of pesos.

PRIORITIZATION OF CASES

It should be emphasized that increasing the number of justices and divisions in the Sandiganbayan and modifying its jurisdiction will take some time proceeding through the legislature before the same can be implemented. While the legislature is deliberating on these measures, the Supreme Court could adopt a radical temporary solution to address the problem of case delay in the Sandiganbayan. The Supreme Court could order a suspension of the proceedings in all cases in the Sandiganbayan, except for the forty most important high-profile cases, as determined by the Supreme Court, on the recommendation of the Sandiganbayan and the Office of the Special Prosecutor. Further, those cases should then be tried immediately and continuously on a weekly basis.

At present, each division of the Sandiganbayan conducts hearings for three-and-a-half hours every day, Mondays through Thursdays. Friday is designated as "motion day." Under this proposal, each division of

the Sandiganbayan will ideally have only eight cases on its docket at a given time. Therefore, from Monday to Thursday, the Sandiganbayan will be able to hear two cases daily, so that each case will be heard every week. The respective divisions will be able to maintain a continuous trial for each case devoting one hearing day per week, from Monday to Thursday, with each trial day lasting for at least an hour and a half per case.

This practical proposal optimally utilizes the court's meager resources. We recognize that the extremely slow pace in the disposition of cases undermines the integrity of our justice system, particularly in graft and corruption cases. However, considering the administrative and human limitations of our courts, it is highly impractical to require continuous trial on all cases pending in the Sandiganbayan. Thus, if we intend to make significant progress in our fight against graft and corruption despite our many limitations, the speedy disposition of high-profile cases involving higher government officials and bigger amounts of money should be made a priority in the trial schedule of our courts. Hopefully, the speedy disposition of these cases involving higher-ranking officials will restore the people's faith in our courts and likewise discourage lower-ranking officials from committing acts of corruption.

While we concede that justice does not discriminate between big and small cases, the exigency of the times, coupled with the severe lack of human resources in the Sandiganbayan, should compel the courts to employ a more radical and strategic approach to fight graft and corruption by prioritizing the disposition of the forty most important high-profile cases. **It is better to find a way to address the problem, even if only a part of it, rather than simply distribute the misfortune of delay equally.**

As previously stated, our study of thirty high-profile cases presently pending at the Sandiganbayan showed that towards the end of last year, there was an alarming average interval of over four months between scheduled hearings. A continuous trial of the 40 most important high profile cases is, therefore, a practical and reasonable interim proposal.¹⁸

There are other advantages to proceeding with continuous trials for the forty most

6.6 years

The median time for the processing of cases (from filing to closure) in the Sandiganbayan (Philippines).

2.4 years

The median trial duration time in the Sandiganbayan.

441

The number of cases handled by each justice.

2,304

The number of cases pending as of 31 October 2004.

1.792

The number of active cases as of 31 October 2004.

¹⁷ Of the 14 incumbent justices, 10 were former regional trial court judges who already have vast experience in trying and resolving cases involving amounts higher than P5 Million. The other 4 justices were veteran lawyers before their appointment.

¹⁸ Cases involving detention prisoners should be included in the list of the 40 most important high-profile cases.

As we develop and implement reform programs for the police and the judiciary, we must keep women's issues with respect to these aspects of law enforcement in mind. Police and judicial reforms must support justice for women in order to support justice for society as a whole.

important high-profile cases. The previously-mentioned World Bank study entitled "Philippines: Formulation of Case Decongestion and Delay Reduction Strategy Project-Phase I (Final Report December 2003)" stated that continuous trials "would require greater preparation by prosecutors and defense counsel at the outset . . . but would reduce the amount of time taken for the trial, and also reduce the possibility of fading memories on the part of witnesses, and the opportunity for interference with evidence."

Prosecutors observed that the delay in the disposition of cases compounds other problems, such as the difficulty in preserving the evidence of the prosecution. Witness' memories also become less accurate over time. It also becomes more difficult to locate witnesses if the case drags on for a very long time, perhaps because of loss of interest on the part of the witnesses. Given these circumstances, it is extremely difficult for the prosecution to secure convictions even in meritorious cases if there is excessive delay in the proceedings. Instituting continuous trials should alleviate, if not completely remedy, these problems.

Moreover, the proposal vindicates defendant's constitutional right to speedy trial by guaranteeing continuous trials for those facing the gravest charges.

Conclusion

In sum, the cooperative and synchronized efforts among all offices of the government and stakeholders in crafting and realizing the reforms needed for good governance is indispensable. While preliminary reform efforts have been undertaken, much remains to be desired and done in terms of success in this endeavor. To quote Chief Justice Davide:

This candid admission is the first necessary step for our country to be on its way to vigorously advance in governance and to realize its development goals. There is nothing embarrassing or even shameful in this admission or confession. A confession purifies the spirit, expresses the nobility of the heart, and demonstrates courage. In connection with good governance, it is a mark of patriotism and a commitment to serve others with selfless love.¹⁹

¹⁹ Davide, *supra*.

Toward a Gender-Just Rule of Law

JASODHARA BAGCHI

Chairperson,
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There is much inequality in the world. Discrimination against members of several social categories has upheld the hierarchical world order and supports entrenched unequal treatment. These categories include class, caste, ethnicity, race, and religion, but the overarching, oldest category is gender. Internationally, nationally, and locally, gender cuts across all the other social categories upon which discrimination is based.

This symposium focuses on two elements of government that has been traditionally associated with the male gender—the police and the judiciary. It is significant that the year we choose to deliberate these issues also marks 10th anniversary of the World Conference on Women held in Beijing. In India this is also the year during which both the government and non-government organizations (NGOs) are preparing the second report for the CEDAW Committee in the United Nations. CEDAW stands for the International Convention on the Elimination of All Forms of Discrimination Against Women, which was adopted by the UN General Assembly in 1979. This Convention defines women's rights as human rights.

History of Women's Rights and Law Reform

The history of women's rights can be traced through women's status, privileges, and protections under the law over time. Women's rights have not always been considered part of human rights generally. The French Revolution's Declaration of the Rights of Man and Citizens, one of the seminal early rule of law documents, did not concede that women were citizens. The Frenchmen had few qualms about guillotining their female comrades-in-arms for advocating women's rights. Olympe de Gouges was killed for supporting the Declaration of the Rights of Women, which was considered transgres-

sive as women were thought to be unfit to be brought within the folds of citizenry.

The complete history of women's struggles for recognition as citizens remains unmapped, and women's role in law and governance has escaped the attention it deserves. Whatever the scholarly explanations for this may be, feminist common sense simply observes that gender divisions within social spheres has deprived women of equal access to the justice system. Laws and legal institutions often reflect larger societal discrimination against women. In many countries, the legal machinery and the law enforcement agencies are meant to belong to the "public" sphere, while women are identified as belonging to the "private" sphere. The Indian colonial legacy has even further complicated the public-private distinction, rendering it even more intensively gendered. For example, within the public legal sphere, there are "personal laws." Personal laws govern the specifics of communities, including women's lives and legal issues.

In India many of the large gains of the women's movement have been achieved through legal reforms. In 1829, the colonial government passed the anti-*suttee daho* legislation, which outlawed the killing of widows on their husband's pyres and in which Ram Mohan Rai, the great Indian social reformer, played a significant role. In 1856, Iswar Chandra Vidyasagar, the Bengali writer and social reformer, lobbied for colonial legislation that would allow widows to remarry and the Widow Remarriage Act XV was passed. Law reform has, therefore, been an important tool in furthering the women's movement, strengthening women's rights, and improving women's quality of life in India for nearly 200 years.

The Need for Gender-Just Rule of Law

Just as law reform has played an important role in furthering women's rights in the past, it will continue to do so in the future. As we develop and implement reform programs for the police and the judiciary, we must keep women's issues with respect to these aspects of law enforcement in mind. Police and judicial reforms must support justice for women in order to support justice for society as a whole. My experience in India has impressed upon me the fact that gender issues must be navigated very delicately in the context of law and governance. This

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does not detract, however, from the importance of considering the perspectives of women and men in legal reforms.

I serve on the Women's Commission in West Bengal, which was established by a statutory act in 1992, at approximately the same time as the National Commission for Women was established in Delhi. We are, however, independent from the Delhi Commission and operate within the purview of our state. Our work to this point has been addressing the ways in which law enforcement and the police are not serving women's needs. Primarily, we have dealt with the police.

Despite concerted attempts at making the police more gender-sensitive, the police in our society still suffer from the hangover of colonial authoritarianism. From time to time, the police in India have not only failed to protect women from harm, but have inflicted harm on women themselves, either by rape or other abuse. Historically, high-profile police rape cases led to reforms in criminal laws governing the offense. The laws were amended, for example, to include custodial rape as one of the worst offenses. There were two cases that prompted these reforms, the Rameeza Bee and Mathura cases. In the Rameeza Bee case in 1978, a woman was raped by several policemen, and her husband was murdered because he had protested. In response to massive protests, the President of the Republic of India set up a commission of enquiry. This commis-

63%

Increase in the crime of importation of girls from 1999 to 2000, India.

24.5%

Increase in the crime of sexual harassment from 1999 to 2000.

6.6%

Increase in rapes from 1999 to 2000.

6.1%

Decrease in offenses under the Dowry Prohibition Act from 1999 to 2000.

Source: 2003 Report by the Committee on Reforms of Criminal Justice, Government of India.

sion found that the policemen were guilty. They were nonetheless acquitted in court. In the Mathura case, two years later in 1980, an under-aged *dalit*¹ girl was raped by two policemen within the vicinity of the police station. The lower court held that since she had eloped and was married at the time of the incident, she must have been habituated to sex and could not have been raped. The high court rejected the lower court's holding and convicted the policemen. Ultimately, the Supreme Court reversed, stating that since Mathura had not raised any alarm and since there were no visible marks of injury on her body, the act must have happened with her consent. The rape laws that were passed or amended in the wake of these cases and the public outrage they induced did much to protect women from such brutal acts.

Our Commission has, however, found that women who are compelled to go to the police stations are still perceived by policemen there to be "available," and that women in police custody are frequently seen as the property of law enforcement authorities. These attitudes are part of a greater social trend of the exploitation of women, exemplified, for example, by the sex trade documented in the recent book, *Guilty Without Trial: Women in the Sex Trade in Calcutta*,² which explored the harassment, economic insecurity, health hazards, and stigmatization that sex workers face in India.

Our Commission has also been concerned with declining ratio of women to men in India. As documented by Professor Amartya Sen, there are millions of "missing women" in India.³ According to the 2001 census, the ratio of surviving female children to male children among children aged 0–6 years has declined at an alarming rate. Prosperous states, including Punjab, Haryana, parts of Himachal Pradesh, and the prosperous districts of Calcutta, have evidenced the declining ratio, supporting the theory that the trend can be attributed, not to infant mortality, but to sex-selective abortions conducted using ultra-sonogram and other medical equipment. Therefore, we successfully lobbied for legislation forbidding this practice, and the Pre-Natal Diagnostic Technique Act (PNDT Act) was passed in 1994. The PNDT Act provides for the regulation of the use of pre-natal diagnostic techniques and forbids use of such techniques for the

purpose of pre-natal sex determination leading to abortion of female fetuses. We are now in need of public interest litigation to promote women's rights under the PNDT Act. We must promote judicial activism in enforcing the new law in order for it to fulfill its preventative goals.

Women's rights are also prejudiced by workings of the judicial system itself. One of India's great judges, Justice Krishna Iyer, who also made important recommendations on prison reform, noted that the systemic case delays in the Indian courts tend to affect women more adversely than men. His recommendation in this regard was to establish specialized courts to dispense justice separately and speedily to women. Such a mechanism was already available to women, under the Family Court Act of 1984. However, Justice Iyer's recommendations addressed additional provisions to regulate the presence of lawyers and witnesses in the family court and would expand the court's jurisdiction to include all cases pertaining to women, whether as plaintiffs, respondents, or victims. It is my hope that the family courts will be able to provide women with quick resolution of their legal matters, and that the rest of the judicial system will follow the pattern of speedy delivery of justice. I do not favor widespread use of alternative dispute resolution (ADR), because I believe one of the most important factors in providing justice for women is speedy resolution of cases and because I am skeptical of the ability of ADR to resolve cases quickly.

Conclusion

Many of the positive developments in the women's movement in India have been, and continue to be, closely related to law and legal institution reform. Further legislation to protect women's rights and security is currently in development. For example, the *Vishaka*⁴ guidelines on the resolution and

¹ In South Asia's caste system, a *dalit*—formerly known as untouchable—is a person outside and subordinate to the four castes.

² CAROLYN SLEIGHTHOLME AND INDRANI SINHA, *WOMEN IN THE SEX TRADE IN CALCUTTA* (1996).

³ Amartya Sen, *More than 100 Million are Missing*, New York Review of Books, Vol. 37, No. 20, December 20, 1990.

⁴ On August 13, 1997, the Supreme Court of India issued a judgment against sexual harassment at the workplace, which has come to be known as the Vishaka judgment. It laid down the definition of sexual harassment, preventive measures and redress mechanisms. It stipulated a mandatory complaint committee on sexual harassment at all workplaces.

prevention of sexual harassment, first issued by the Supreme Court, have become the template for the current bill on Sexual Harassment in the Workplace. The government is working with various women's groups on a Domestic Violence Bill that is intended to be a comprehensive law addressing every aspect of women's experience of violence in the home.

Women are able to gain access to justice throughout India by way of free legal aid services. West Bengal has a particularly proactive Legal Services Authority that extends to the sub-divisional level in each state district.

The impact of patriliney on women's lives must not be underestimated. After a woman is displaced from her parent's home, her rights become fraught with insecurity, and she is subject to incipient violence. Once she is outside the safe boundaries of a family, a woman's grasp on her life is so uncertain that she may not have the resources

with which to conduct the long drawn-out battle for justice when she becomes victim to violence or injustice. If she succumbs, culture-specific terminology, such as dowry death, is used to describe her demise. We must realize, as activist lawyer Flavia Agnes once put it, that women succumb because they have nowhere to go. Help lines, shelters, and government- or NGO-run homes are merely short-term remedies that are part of the web surrounding women's lives in our patriarchal societies. In considering the issues of police and judiciary reform, we must remain cognizant of the underlying gender issues and work to improve the protection of women's rights within our legal system.

It is not enough to think about justice in terms of the law and law enforcement. We must remember the social complication of gender roles. Rule of law must ultimately include gender justice if it is going to provide any justice at all.

Help lines, shelters, and government- or NGO-run homes are merely short-term remedies that are part of the web surrounding women's lives in our patriarchal societies.



ADB File Photo

Law reform has been an important tool in furthering the women's movement, strengthening women's rights, and improving women's quality of life in India for nearly 200 years.

- In 1829, the colonial government passed the anti-*suttee daho* legislation, which outlawed the killing of widows on their husband's pyres and in which Ram Mohan Rai, the great Indian social reformer, played a significant role.
- In 1856, Iswar Chandra Vidyasagar, the Bengali writer and social reformer, lobbied for colonial legislation that would allow widows to remarry and the Widow Remarriage Act XV was passed.

AT THE SYMPOSIUM



“Law and policy reform provides the fulcrum to achieve sustainable economic development. Investments in economic development or social progress are unlikely to be as effective or efficient or even enduring in the absence of an optimal mix of legal, institutional, and policy structures. Indeed, law and policy reform is now an integral part of ADB’s poverty reduction approaches.”

**—from *Law & Policy Reform in Asia and the Pacific: Ensuring Voice, Opportunity & Justice*
Asian Development Bank, 2005**