

Pro-Active Court: Longing requisite

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The final arbiter, the Court was constituted in India to ensure justice and equality among men and women while serving as a guardian and to decipher the Constitution. It is the most influential public entity and thus, since then, the society has had high expectations that the Court will put an end to tyranny and provide wide-ranging accountability for crimes¹. Nevertheless, the pattern so far has been for plaintiffs to feel more victimized by court proceedings and for the guilty to conclude that they will profit from the overly skewed legislation process that protects them. It's indeed absolutely crucial that the legislation now changes that. On the other hand, it is efficient as well as timely and responsive to victims, their interests, problems and concerns, and resolves them in order to build trust, because the law is supposed to act both as a credible threat and as an executioner.

Indications of failure of the vulnerable criminal justice system have become visible with unlawful killings in Uttar Pradesh and Telangana, lynching in many regions and intimidation and murders of victims of abuse. For instance, the Hon'ble Chief Judicial Magistrate of the Muzaffarpur District Court Shri Surya Kant Tiwari issued an order on the grounds of the lawsuit brought by the litigant alleging that 'open letters written to the honourable PM not only distorted and tainted the reputation of our country in the international arena but also corrupted and compromised the accomplishments of the PM. The order instructed the police to lodge an FIR against 49 individuals who were esteemed members of the society for sending a letter to the Hon'ble Prime Minister to meddle with the continual lynching. To our utter shock what we saw

¹ Saba, Judicial activism, Need of the hour, SCC ONLINE BLOG (March 5, 2018), <https://www.sconline.com/blog/post/2018/03/05/judicial-activism-need-hour>

in the massacre of Gulbarg society and Naroda Patiya of the notorious Gujarat riots, the Hon'ble Supreme Court as well as the Hon'ble High Court of Gujarat granted the bail to the accused and convicts. All these when not properly investigated by the police and not kept on the table of the courts only add to the severe woes. Certainly, the judiciary needs to conduct comprehensive consciousness-raising activities to deal with these issues. All the more, some of such acquittal orders granting bail to the accused or convicts by the different courts were passed by the Hon'ble High Court of Jharkhand in the Ramgarh case and the reverent High Court of Bombay in Dhule lynching case, are to name a few amongst the recent cases that pose grave concerns about the judicial attitude of the courts in India. The judicial system seems to be very vital when it comes to principles such as secular values and religious tolerance. Considering the recent Delhi violence, the lodging of FIRs against people who made hateful speech was postponed contributing to the uproar. On the other side, civilians who were critical of the Citizenship Amendment Act (CAA) were viewed as traitors and lawsuits were immediately filed against them. When an urgent hearing on the CAA was sought, the Supreme Court stated that it would be considered only after the review of the Sabarimala petition. Recently, the massive migration of the 'shramiks' due to the Covid-19 pandemic and the plight of those traveling several kilometres and those corralled in poorly-equipped dwellings failed to attract the attention of the judicial system¹. Hence, these serious national concerns will lead to controversies if they are not approached with a sense of urgency. In such instances, proactive action by the judicial system is expected, as it is the defender of the Constitution and can regain the confidence of the ordinary people, along with minority groups. However, in the case of **Nipun Saxena v. UOI**², the apex court laid out provisions on the treatment of confidential content that will be part of the database of rape cases and of felonies against children recorded under the Protection of Children from Sexual Offences Act (POCSO). It is a significant step made forth into recognizing the interests and experiences of victims. Instances like these recently shifted the focus on survivor privileges that is a much required and welcome change.³

Now, as we may call it, the sole responsibility of the judiciary and the police is to retrospect as well as introspect what they really need and want in the most obvious form. Whether to serve the justice system or to quash it. In order to provide the defendant with timely justice, it is

² Nipun Saxena v. UOI (2019) 2 SCC 703

³ Kapil Sibal, Court must look within address asymmetries of justice that are causing disquiet in stakeholders, The Indian Express, Tuesday, July 28, 2020.

necessary to remember that there is a need for a judicial system where responsiveness is required from the police and the judiciary while interacting with victims. Rapid disposal of ongoing investigations and criminal trials; reasonable assurance to sufferers and their family members that their privileges will not be further infringed and that justice will be done and seen to be done are all aspects of trust that our judicial systems must promote in process to facilitate proper justice. This would go a big step towards promoting the recording of crimes and ensuring justice. In order for victims to rebuild the trust and seek justice, it is absolutely essential that now the process for administering justice is made effective, rapid, empathetic and efficient.

