

Questions for consideration

1. What is the future for judicial reform?
2. Does judicial reform work, and if so, how do we know?
3. What fundamental flaws are evident in current reform initiatives, and how can they be addressed?
4. How can the donor community better respond to members' reform needs?
5. How can we (ie the Forum members) take a more active role in leading reforms?
6. How can we better involve and serve our communities through reform?

What we are expected to focus on:

Qn 3. What is the future for judicial reform?

Point 1:

Social, political and economic development inevitably results in increase in use of courts

- judicial reform is inevitable and absolutely necessary!
- issue is "how", not "whether to"

State	Population/ Literacy rate	#of New Cases per annum	#of New Cases per 1000 pop
Jharkhand	26.9 m (Lit: 54% -2001)	124,717	4.6
Kerala	31.9m (Lit: 91%-2001) Per capita income: Rs.28,000	1,000,000	29

EAST ZONE PMTJ	Literacy (2001 census)	Population	Filing (2007)	Cases Per 1000 population
Kerala	90.86	31,900,000	948,171	29
W. Bengal	69.12	80,221,171	8,36,098	10
Chattisgarh	65.18	20,795,956	238,329	11
Assam	64.28	26,638,407	202,134	7
Orissa	63.61	36,706,920	266,271	7
Jharkhand	54.13	26,909,428	124,717	4
Patna	47.13	82,878,796	282,154	3
Sikkim	69.68	540493	1244	2

Country	Population/ Literacy rate	#of New Cases per annum	#of New Cases per 1000 pop
India 1978	600m Literacy: 43%	200,000	3.8
India 2008	1,100,000 m Literacy: 65%	1,700,000	15

State/ Country	Population/ Literacy rate	#of New Cases per annum	#of New Cases per 1000 pop
Delhi	16 m (Lit: 89%-2001) Per capita income: Rs.49,000 (\$1225)	400,000	25
Singapore	4.8m (Lit: 95%) Per capita PPP:\$49,000	400,000	83

State/ Country	Population/ Literacy rate	#of New Cases per annum	#of New Cases per 1000 pop
Singapore	4.8m (Lit: 95%) Per capita PPP:\$49,000	400,000	83
US	303m (Lit: 99%) Per capita PPP:\$45,000	300,000,000	333

What we are expected to focus on:

Does judicial reform work, and if so, how do we know?

Point 2: We have a reasonable sense of what a *bad* judicial system is –

***but* there is no consensus on what a *good* judicial system is (overall)
...depends on the benchmark**

There are many sources of dissatisfaction with the justice system. In the United States, for example, the public thinks that justice is too slow, that it costs too much, that people cannot afford attorneys, that there is favoritism in the courts, that African-American citizens in the courts are treated less fairly than European-Americans, that English-speaking Americans are treated better than non-English-speaking Americans, and that judicial decisions are sometimes influenced by political considerations, or campaign funding in our judicial election processes.

Roger K. Warren, President, The National Center for State Courts

In Britain, Rape Cases Seldom Result in a Conviction

By Mary Jordan

Washington Post Foreign Service

Thursday, May 29, 2008; A01

In Britain, a nation whose justice system has been used as a model around the globe, government officials and women's rights activists agree that rape goes largely unpunished. Solicitor General Vera Baird, who oversees criminal prosecutions in England, estimated that 10 to 20 percent of rapes are brought to authorities' attention. According to government figures, 14,000 cases a year are reported and 19 out of 20 defendants walk free.

...Assessing judicial reform in Latin America a recent independent study concludes that, "...the results of the decade long judicial reform process in Latin America are neither obvious nor easily measured."

This, for the region with the world's longest experience with donor-assisted judicial reform and involving, in just the last decade, over USD1 billion of donor investment in this sector.

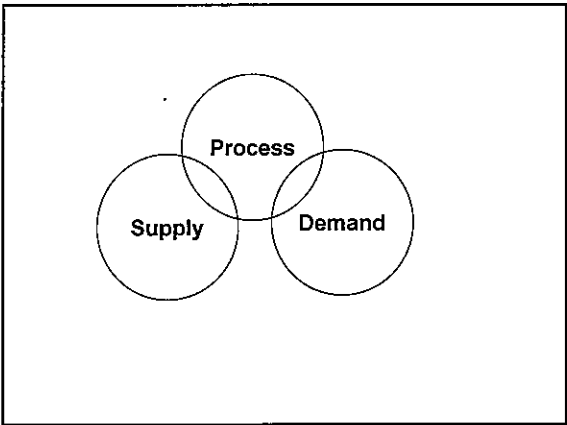
DeShazo, P, and Vargas, JE, 'Judicial Reform in Latin America: An Assessment' (2006) Center for Strategic and International Studies, Washington DC, 2.

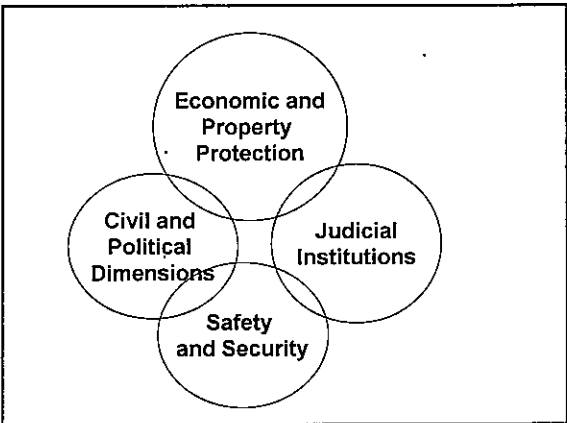
... "...we do not have an adequate understanding of how to build a healthy judicial system in Latin America because of the general dearth of studies on the subject, the lack of widely accepted and consistently employed indicators to measure the effects of judicial reforms, and the 'inadequate, insufficient, and... counterproductive' set of assumptions with which judicial reformers (national and international) tend to work."

Prillama, WC, 'The Judiciary and Democratic Decay in Latin America: Declining Confidence in the Rule of Law' (2000) Praeger, Westport, CT, page.

Point 3: There is no consensus on what a good judicial reform programme is ...

- Depends on goals/objectives
- Some areas of success, some failures in each of four main areas of judicial reform





Singapore is a success story, measured against its own goals and objectives

- Industrial countries have made decisive progress in the 70s/80s/90s
- Developing country experience is more mixed
- Most systems are on the forward move – in *some* direction

But no consensus on **overall impact** of judicial reforms on the judicial system – no analytical framework to analyze the success of judicial reform

Needed : goals, objectives, measurable benchmarks

What we are expected to focus on:
What fundamental flaws are evident in current reform initiatives, and how can they be addressed?

**Point 4: Key fundamental flaws –
A new approach is required**

Four Fundamental Flaws:
(1) Lack of conceptual clarity
(2) Weak research
(3) Incomplete Design
(4) One-model-fits-all approach

Conceptual Clarity

- Goal of judicial reform?
 - "Touchy" area
 - Resultant focus on efficiency
 - What are the social consequences?
 - Need to focus on justice
 - "Regressive judicial reform" (justice-neutral) vs. "Progressive Judicial Reform" (justice driven)

Conceptual Clarity

- Poor diagnosis of problems
 - Indian experience
- Local factors/impediments not taken into account

Local Variation

- Indian example: One size does not fit all

Traditional analysis

- inadequate judge strength and delay in filling vacancies;
- inadequate court infrastructure;
- inadequate capacity and ineffective performance of ministerial staff of courts.
- weak support from the Bar and pressure tactics used by the Bar such as filing of anonymous and baseless complaints against judges;
- delaying tactics on the part of bar and litigants;
- inadequate capacity of prosecution;

Traditional analysis

- poor quality investigation;
- inadequate capacity for timely service of process;
- excessive requests for adjournments;
- interruptions in court proceedings arising from stay orders/reviews/appeals;
- failure of accused/witnesses to be produced/appear on a timely basis; and
- professional concerns of judges -- mainly (a) weaknesses in the performance assessment system ("unit system") that does not adequately reward, for example, clearance of complex/contested/old cases; and (b) concerns regarding redress of grievances of judges.

Traditional solutions

- create more judicial positions and fill vacancies;
- upgrade court infrastructure;
- upgrade quality and strength of court ministerial staff;
- upgrade quality of bar; restore disciplinary control over the Bar to judges; vest contempt powers in subordinate courts;
- strengthen investigation, prosecution and process service functions;

Traditional Solutions

- more strict approach to entertainment of interim orders by higher courts against proceedings in lower courts;
- ensure accused and witnesses are produced on a timely basis;
- proactive judicial approach towards imposing costs to discourage delaying tactics; adjournments and interim orders;
- greater use of IT in court processes;
- address legitimate career grievances of subordinate court judges.

India -- Unrecognized Challenges

- Declining Filing
- Productivity challenges
- Social Role of Courts
- Docket Exclusion
- Emerging Need for Massive Expansion

- Failure to develop a targeted strategy for disposal of complex/contested cases
- Focus on managing performance of judges, not performance of courts; lack of "performance standards" for Courts
- Lack of planning for Court development
- Lack of an agreed basis to estimate productivity/efficiency of courts/ the number of courts/judges needed

**Point 4: Judicial Reform
must be justice-oriented
and led by Justice Reform**

- Justice Reform vs. Judicial Reform
 - Operational definition of justice, the goal of the judicial system
 - Reform of concept of justice is essential
 - Indian example

S.P. GUPTA VS. UNION OF INDIA
P.N.BHAGWATI J
AIR1982SC149

The judiciary cannot remain a mere bystander or spectator but it must become an active participant in the judicial process ready to use law in the service of social justice through a pro-active goal oriented approach.

But this cannot be achieved unless we have judicial cadres who share the fighting faith of the Constitution and who are imbued with the constitutional values.

S.P. GUPTA VS. UNION OF INDIA
P.N.BHAGWATI J
AIR1982SC149

The judiciary has a socio-economic destination and a creative function. It has ...to become an arm of the socio-economic revolution and perform an active role calculated to bring social justice within the reach of the common man.

It cannot remain content to act merely as an umpire but it must be functionally involved in the goal of socio-economic justice.

**Justice is a standard
of human conduct**

**Justice for a Court is
human conduct
consistent with
stipulated Values**

**Internationally accepted
Values/Rights=
FEDEF**

**As an aspiration,
Justice is the desired standard of
human conduct**

**Justice realized is actual human
conduct consistent with
required norms**

Remaining Fundamental Flaws:

- (2) Weak research
- (3) Incomplete Design
- (4) One-model-fits-all approach

The 6 Critical Variables that Determine the Quality of a System of Justice

- ROKMMA

R	Role	
O	Organizational Effectiveness	
K	Knowledge	
M	Method of Decision Making	
M	Access	
A	Management	

R	Role (4)	Role of Courts– judges, Bar, litigants Protect/Enforce/Safeguard Rights; Duties; Accountabilities; Legality (RDAL)(4)
O	Organizational Effectiveness (6)	
K	Knowledge (4)	
M	Method of Decision Making (6)	
M	Access (4)	
A	Management (7)	

R	Role (4)	
O	Organizational Effectiveness (6)	Judge Strength/quality; Infrastructure; Advocates strength/ quality; Technology; Executive Support; Administrative staff (JIATEM)(6)
K	Knowledge (4)	
M	Method of Decision Making (6)	
M	Access (4)	
A	Management (7)	

R	Role (4)	
O	Organizational Effectiveness (6)	
K	Knowledge (4)	Of Judges, Advocates, Citizens, Officials (JACO)(4)
M	Method of Decision Making (6)	
M	Access (4)	
A	Management (7)	

R	Role (4)	
O	Organizational Effectiveness (6)	
K	Knowledge (4)	
M	Method of Decision Making (6)	Reasoned; rational; norm-centric; scientific; consistent; predictable; (RRNSCP) (6)
M	Access (4)	
A	Management (7)	

R	Role (4)	
O	Organizational Effectiveness (6)	
K	Knowledge (4)	
M	Method of Decision Making (6)	
M	Access (4)	Awareness; Access; Aid; Facilities (AAAF) (4)
A	Management (7)	

R	Role (4)	
O	Organizational Effectiveness (6)	
K	Knowledge (4)	
M	Method of Decision Making (6)	
M	Access (4)	
A	Management (7)	Standards; Court Plans; Analysis; Prioritization; Scheduling; Monitoring; Information Management (SCAPSM) (7) (PMTJ)

R	Role (4)	Role of Courts-- judges, Bar, litigants Protect/Enforce/Safeguard Rights; Duties; Accountabilities; Legality (RDAL)(4)
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M	Method of Decision Making (6)	Reasoned; rational; non-centric; scientific; consistent; predictable; (RRNSCP) (6)
M	Access (4)	Awareness; Access; Aid; Facilities (AAAF) (4)
A	Management (7)	Standards; Court Plans; Analysis; Prioritization; Scheduling; Monitoring; Information Management (SCAPSM) (7) (PMTJ)

•Point 4: New Approach Required
- Justice-Driven
- Research Based
-Holistic
-Measure quality
-Measure Outcomes
-Measure Impact

• Overall message
- We must support "progressive" judicial reform
- "progressive" is oriented towards justice
• Justice as the standard of human conduct set in constituent documents – national and international

• 4. How can the donor community better respond to members' reform needs?
• 5. How can we (ie the Forum members) take a more active role in leading reforms?
• 6. How can we better involve and serve our communities through reform?

• What is needed at the international level is an inter-disciplinary research and policy development agenda to develop

– Conceptual clarity, promoting “justice-oriented” judicial reform; identifying “regressive” judicial reform; “judicial reform” based on “justice reform”

– Improved design of “comprehensive” judicial reform programmes, tailored to local conditions, meeting local needs

**PAPER ON JUDICIAL REFORM IN THE RUSSIAN
FEDERATION**

Deputy Chief Justice Petr Serkov

**Deputy Chief Justice of the Supreme Court of the Russian
Federation**

Dear Chairman!

Dear Participants to the Conference!

First let me express my gratitude for the invitation to participate in the forum on the judicial reform.

My report will deal with the judicial reform in the Russian Federation.

The Soviet Union had only courts of general jurisdiction. Business disputes were resolved by the State Arbitration under the Council of Ministers of the USSR, which was not a court per se. The key area of operations of courts was crime control, and protection of public interests was the priority in the area.

Thus, for example, courts were required to return a case to a prosecutor for further investigation at their own initiative, if materials of the case suggested that a person committed a more serious offense. Embezzlement of state property entailed greater criminal responsibility than theft of private property.

Civil proceedings limited eligibility of heirs of a deceased person only to close relatives, and in their absence property of a deceased person became state property. Such precedence of public over private was present in all areas of law. Any lawsuits against government agencies were absolutely impossible.

After the collapse of the Soviet Union, political and economic conditions in Russia changed drastically.

After declaration of independence and sovereignty in 1991, the Russian Federation set a course for turning the country into a state governed by the rule of law, providing for organization and operations of state authorities on the basis of the principle of distribution of powers with supremacy of law, recognition and establishment of firm guarantees for protection of rights of a person and a citizen.

As a consequence, pivotal update of all laws and revision of the role of courts in public life became a very important task. A major achievement of the judicial reform is the fact that courts of the Russian Federation were established as independent judicial authority. This is directly stipulated in Article 10 of the

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Constitution of the RF. It is also no chance that of 137 articles of the Constitution of the RF about 20 articles refer to courts in one way or another.

The Law on «Status of Judges in the Russian Federation» was passed, providing for independence of judicial power from legislative and executive branches.

At present, judicial power in the Russian Federation is represented by the Constitutional Court, the system of courts of general jurisdiction and the system of arbitration courts. The classification of courts makes areas of court competence quite clear, and I will not go into further detail on the issue, but will draw your attention to courts of general jurisdiction.

I will start with organizational part of the reform. Previously, material support and procurement services to courts were provided by the Ministry of Justice. The above Ministry also had some supervisory functions over courts. This was the reason for the Supreme Court of the RF to initiate establishment of a special federal agency, independent from the executive power, for resolution of all personnel, finance, procurement and other issues, to support complete and independent delivery of justice by courts of general jurisdiction. The Law «On Justice Department of the Supreme Court of the Russian Federation» was passed for these purposes. General Director of the Department is appointed to the position and discharged from the position by Chairman of the Supreme Court of the Russian Federation with approval from the Judicial Council of the Russian Federation. General Director reports annually to the Chairman of the Supreme Court of the RF and the Judicial Council of the RF. He also submits to the Government of the Russian Federation proposals on financing of federal courts and justice operators, excluding the Supreme Court of the RF, as approved by Chairman of the Supreme Court of the RF and the Judicial Council of the Russian Federation.

I have mentioned the Judicial Council twice. Considering lower importance of courts in the Soviet Union, the Law «On Judicial Community Bodies » was adopted to improve the judicial system and proceedings, also to protect

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interest of judges. The Judicial Council of the Russian Federation and judicial councils of the constituents of the Russian Federation were created in accordance with the Law.

The supreme body of the judicial community is the All-Russian Congress of Judges, which discusses the most vital issues of court operations. Last December there was the 7-th All-Russian Congress of Judges, which in its Resolution, among other issues, proposed ways to improve quality of justice, to further ensure reasonable periods of consideration of cases in courts and execution of judicial acts by redistributing competencies between court operators and district courts, implementation of conciliatory and pre-trial procedures. Significance of the All-Russian Congress of Judges is confirmed by the following: in accordance with the Federal Law «On financing of courts in the Russian Federation», a change in the amount of budget funds, allocated for financing of courts of the Russian Federation in the current financial year or of funds to be allocated for the next financial year, by over 5 percent can only be effected with approval of the All-Russian Congress of Judges of the Russian Federation. Besides, other judicial community bodies were established – the Supreme Qualifications Panel of Judges of the RF and qualifications panels of judges of the constituent entities of the Russian Federation, providing opinions for appointment of candidates to judge, court chairman and deputy chairman. In the Russian Federation only qualifications panels can impose disciplinary penalties on judges, either warnings or early termination of authority of judge, court chairman and deputy chairman. Qualifications panels also award qualification grades to judges.

Past years have many a time proven, that establishment of the abovementioned bodies of judicial community is another guarantee for independence of judicial power in the Russian Federation.

To raise professional levels of judges, the Supreme Court of the RF initiated establishment of the Russian Academy of Justice and became its founder. The Academy and its ten branches in several regions of the country provide a system for raising qualifications of judges and court officials. The Academy also trains

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judicial specialists on higher and secondary professional legal education programs, conducts fundamental and applied research in the area of judicial system organization, provides research support to law-enforcement and law-making operations of courts.

The judicial reform was related to the issue of court transparency. At the initiative of the Supreme Court of the RF the Law «On providing access to information and operations of courts in the Russian Federation» was adopted. The Law is a direct application act, containing minimal number of references, which makes other specific legal acts unnecessary. According to its provisions, the basic principles for court procedures, supporting improvement of organization and operations of the whole judicial system, are openness, extensive communications of courts with mass media representatives. Such an approach enables higher accessibility of the judicial system by accurate reporting to the public, stronger ties of courts with the public and higher level of public trust in judicial power.

Free access of citizens to information on operations of federal courts of general jurisdiction is provided by options of Internet use. State Automated System of the Russian Federation «Justice» with a corresponding Internet-portal was developed. The portal has official web-sites of two thousand four hundred and ninety federal courts of general jurisdiction and divisions of the Judicial Department.

Now let us pass on to issues of material and procedural legislation. Over the past years there were new laws passed in almost all areas of Russian public life, including justice.

I will name only the basic ones – these are Civil, Criminal Codes and the Codes of Criminal Procedure and Administrative Offences. Resulting from such a reform the legal landscape of the Russian Federation has changed drastically. Of course, our time limits will make it impossible to speak of all novelties. I will focus only on those of conceptual nature.

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Criminal cases, involving the capital punishment, are heard by a jury at a petition from criminal defendant. Besides, the Law «On Court Operators», who conduct court proceedings on minor criminal offences and civil cases, was adopted.

Protection of rights and freedoms of people, and of private property became the priority for legal regulations and court operations. All work is carried out in compliance with international laws. For example, provisions of the Civil Code of the Russian Federation and other civil law acts of the Russian Federation actually incorporated provisions of international treaties, reflecting modern practices of property relations in market economy.

Chapter 30 of the Civil Code of the Russian Federation and Air Code of the Russian Federation «Buy and Sell» use regulations of UN convention on contracts of the International Sale of Goods of 1980.

Merchant Marine Code of the Russian Federation and Air Code of the Russian Federation account for recommendations of transportation conventions on maritime and air laws for shipping conditions and responsibility of shipper and shipowner.

All of this over the latest years resulted in major changes of structure of cases reviewed in the Russian Federation. Globalization of world economy in the modern high-tech world brought to the foreground and made more acute the issue of legal protection of intellectual property. The issue became vital for the Russian Federation as well. A set of measures was taken to strengthen the rule of law, including higher levels of law enforcement measures.

Thus, if in 2003 about 200 people were convicted for violation of copyright and associated rights, then in 2006 there were 1975 convicts. The number of convicts for such offences, actually, doubles up with every year.

There were significant changes in civil proceedings.

Along with traditional categories of cases on protection of labor, housing, pension rights, citizens and organizations are actively addressing courts of general

jurisdictions with petitions on disputing legal regulations, completely or partially, and disputing resolutions and decisions (nonfeasance) of government agencies, municipalities, officials, public and municipal personnel. Over a half of such petitions are satisfied.

Courts conduct a lot of hearings on cases for protection of voting rights or rights of citizens of the Russian Federation to participate in referendums.

The data supports the fact that there is a trend in the Russian Federation towards transformation of the nature of relations of government and municipal authorities on one hand, and private persons on the other. Opinions of courts, described in court decisions, lead to the necessity for government and municipal authorities to change their priorities and improve their administrative operations.

One of the main principles of court operations is enforcement of the right for just consideration, which includes consideration of all cases by courts in reasonable time.

The meaning of the criterion «reasonable time» lies in protection of parties from long delays in court proceedings, undermining efficiency of justice and trust. Evaluation of «reasonable time» criterion in practices of Russian courts takes into consideration such conditions as complexity of a case, number of participants in proceedings, volume and nature of materials. Conduct of parties is also taken into account.

Importance attached to the issue of elimination of red tape in the Russian Federation is reinforced by the fact that on December 27, 2007 Plenary Meeting of the Supreme Court of the RF passed the Resolution «On time periods for consideration by courts of the Russian Federation of criminal, civil and administrative violation cases», focusing on improvement of court operations during pre-trial preparations, use for these purposes of all tools of procedural laws.

According to court statistics, in the Russian Federation courts of general jurisdiction annually try over 1 million of criminal cases, about 6 million administrative violation cases and over 10 million of civil cases. As a rule, time

periods for consideration of cases, established by laws, are about one to two months. The majority of the abovementioned cases is tried within those periods. This became possible primarily due to systemic organization of court operations, as I have mentioned above.

Secondly, all regional courts and similar courts are equipped with video conferencing facilities, providing for personal participation of citizens in court hearings during appeals and supervisory proceedings on criminal cases, when penitentiary facilities of prisoners are sometimes hundreds and thousands of kilometers away. Implementation and use of video conferencing facilities enables courts to:

- Significantly accelerate consideration of prisoner cases and reduce time for consideration of appeals;
- Increase security level and reduce risks of violation of prisoner transportation regulations;
- Reduce costs for convict convoys.

The issue of implementing video conferencing facilities in civil proceedings is being discussed at the moment.

There is no doubt, that time periods for consideration of cases were affected by changes in the conditions for reviewing court acts, which came into force. Not every violation of regulations of material and procedural laws is recognized as such a condition, but only conditions of significant and fundamental nature. We think that the principle of legal certainty provides for absence of a right to reconsider an effective court resolution for rehearing and a new court resolution. A different point of view of a supervisory court on outcomes of a case cannot be the reason for cancellation or change of a court resolution of a lower level court.

Last September the Supreme Court of the RF submitted to the State Duma a draft law «On reimbursement by the state for damages, caused by violation of the right for court trial in reasonable time and of the right for execution of court

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decision, which came into force». This move is designed to achieve a greater degree of discipline in courts.

In conclusion I would like to wish all participants to the conference to be productive in their work.

. Thank you for your attention.