FOR A COURT THAT STANDS FIRM


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THE Supreme Court is the custodian of India's 'living' Constitution and the final arbiter of the laws of the land. Though one of the three equal pillars of the State, it holds an exalted position not only by constitutional design, but also in the public conscience, earned through its untiring efforts in upholding the Constitution and steadfast protection of citizens' rights. All citizens, including these authors, repose high expectations on the SC as it discharges its dharma of justice.

It is the final authority in ensuring closure to disputes. Though it may not necessarily always be right (due to human frailties), it is always final—and the institution has lived up to this expectation umpteen times. However, certain recent developments suggest that this finality is no longer assured. Judgements are being revisited, stayed, recalled, or altered—creating a perception that a matter is not truly settled even after the SC has pronounced its verdict.

This blurring of finality raises important questions on the certainty of law, the authority of judicial outcomes, and the stability of legal systems. Consider a few recent examples that happened in quick succession. The resolution plan of Bhushan Power and Steel was rejected in May while disposing of an appeal filed five years ago. At end July, a bench headed by the Chief Justice of India recalled the judgement for review, as it had not correctly considered the legal position laid down by a catena of judgements.

Another order in early August, while castigating a high court judge for lack of knowledge in criminal laws, de-rostered him from hearing criminal cases. On a request from the Chief Justice of India, the same bench deleted some of the directions from the judgement.

A third instance is the mid-August stay of the order given few days earlier on the stray dog problem in the national capital. The review order issued by a different three-judge bench modified and mollified some of the directions in the order impugned. All these reversals, stays or reviews followed massive public and expert outcries on the original orders.

Even arbitral awards, which by design are final and not generally appealable, are not immune to uncertainty. In *DMRC vs Delhi Airport Metro Express*, the award traversed the SC through a special leave petition, a review petition, and a curative petition, with the court eventually overturning its own earlier decision.

The need for revisiting orders by the Supreme Court, especially within a short span of time, is a very serious matter irrespective of whether public sentiment or its own conscience is the reason. It undermines the very foundation of finality and precedents provided under Articles 141 and 137 of the Constitution. To stand by things decided—*stare decisis*—is an age-old principle followed by all established judicial systems. A weakening of this principle, that too in the face of several other constraints, accentuates the limitations of the judiciary in dealing with the mounting pendency and the trauma of the affected parties waiting for justice.


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The Supreme Court has been revisiting too many of its own orders, affecting the principle of finality. The rising number of revision, review, and curative petitions is evidence of a malady that affects certainty and adds to pendency. Structural reforms from within the judiciary are called for

Let's make it abundantly clear that we are not on the merit of any of these judicial pronouncements, only on about the processes that make certainty a casualty. Even in major commercial matters where uncertainty can have larger economy-wide or international ramifications, incurring huge opportunity costs.

The SC handles an astounding number and variety of cases, ranging from fundamental constitutional questions, human rights, diverse PILs, to matters of daily life—health, pregnancy, property, agency inaction/hyper-action, municipal failures like on street animals, socio-cultural disputes, and even individual instances of cheating, pre-arrest bails, etc. After all, India is a litigants' paradise. Managing such a vast and complex docket inevitably takes an enormous toll on the learned judges and the system.

The high pendency of cases at every stage of the judicial hierarchy is well known. Delays are often attributed to lingering vacancies, inadequate number of judges, support staff, infrastructural constraints, and even the executive-judiciary tussle on overreach. These issues have existed for long, aggravating the cold reality of justice being denied through delays. But 'delayed-then-hurried' orders are also hurting finality, aggravating the problem of pendency. The rising number of revision, review, and curative petitions is clear evidence of the malady affecting certainty like a double-edged weapon.

Given these issues, the SC should *suo motu* take up the mandate of structural reforms from within. It should address issues like limiting the number of appeals, revision, and review, and reimagining the role of high courts as constitutional courts. It can also ensure a high degree of professionalism in minimising adjournments, weeding out frivolous petitions, writing matter-of-fact orders, and revisiting the selection and confirmation criteria for judges.

The higher judiciary can implement many of the internal reforms under Articles 145 and 225. Reforms needing support from the other two pillars of the State should be in response to an agenda set by the judiciary. Proactive judicial reforms by the executive or legislature may be seen as interference. Therefore, in parallel to demanding executive action on funding, appointments, and other administrative steps, the SC must lead a structural and procedural transformation from within. That should guarantee fast finality to disputes and in ensuring 'complete justice' to the people.

(Views are personal)