**Efficient and effective justice system**

Swarna Bharat Party’s justice policy

*These policies should be seen in the context of the broader reform agenda outlined in* [*SBP’s manifesto*](http://swarnabharat.in/)*. Free markets require strong and effective governance. Without governance reforms detailed in the manifesto, that will build capacity and honesty in the government machine, the policies detailed below will not deliver the expected results.*

All freedom must necessarily be bound by accountability. We are free to do what we please, so long as we do not harm others. The justice system ensures accountability. If we harm anyone, justice must be quick and proportionate so everyone involved can get on with their life. But today there are about 3.80 crore pendencies/arrears/backlogs and cases drag on for years altogether, depriving many citizens of justice and violating their fundamental rights to life and liberty.

In its 117th Report (1986), the Law Commission observed: “The Indian Judicial System is admittedly colonial in origin and imported in structure. Without even a semblance of change in the last four decades since independence, in its mode, method of work, designations, language, approach, method of resolving disputes, it has all the trappings of the system established by the foreign rulers.”

We will commission a first-principles review of the justice system, to report in two years. In the meanwhile, we will implement a suite of reforms, some of which are outlined below.

## An impeccably honest and high quality judiciary

Our judiciary must be above board and above suspicion. It is crucial that the judiciary be perceived to be absolutely honest, unbiased, and accountable. Unfortunately, influential people are able to manipulate the ‘justice’ system to avoid jail. Petitions of rich and influential people are heard within days (even hours), while matters related to the poor languish for years, often never being completed in an entire lifetime. Chief Justice P. Sathasivam of the Supreme Court has acknowledged in July 2013 that the judiciary is not untouched by corruption.[[1]](#footnote-1) A strong stench of corruption is arising from the courts. Bribery and perjury have destroyed the roots of the justice system, making it less a justice system than a system of ‘match-fixing’.

We will create systems to ensure an honest and unbiased judiciary.

### Crime punishable with death to bribe a judge or for a judge to take a bribe

Bribing judges (and judges accepting bribes) is perhaps the worst of *all* crimes – since it can lead to the innocent being punished and the guilty going scot-free. There is no more heinous offender of liberty than a judge that is not impartial.

We will make it a crime punishable by death to bribe any Sessions Judge, High Court Judge or Supreme Court, or for a judge to accept a bribe. Other – lower – judges too, shall be sternly punished, likewise.

The government itself is a litigant in many cases and should be punished if it bribes the judiciary. A judge should receive only his salary and associated entitlements; no more. It will become a crime punishable by death of the relevant Chief Minister or Prime Minister for any government to give any additional pecuniary benefits to any judge – such as the allocation of government land at a subsidised cost – over and above the contractual amount.

### Non-discretionary enforcement of perjury laws

The lackadaisical attitude of many judges towards perjury is a systemic abuse that is destroying the very foundations of the justice system. People submit false affidavits with impunity today, as judges do not seem to care. False statements and evidence are often recorded under the very nose of trial judges. ‘Witnesses’, who are bought, appear in multiple cases before the same judge, with impunity. As a result, only the honest now fear the judiciary. There is a deep sense of despair at the breakdown of the rule of law.

We will legislate to require judges to mandatorily impose stiff penalties for perjury, with a minimum six month prison sentence. It will also become a criminal offence for judges to not penalise perjury. Repeat offenders – who are proven to have accepted false statements as true – will be cautioned through the senior courts and further failures will invite formal complaints and FIRs. Judges need to be held to account for the truth of any evidence they rely upon for a judgement.

#### Transparency in the appointment and transfer of judges

The existing system of appointments to the superior judiciary, through a collegium of senior judges in High Courts and the Supreme Court suffers from perceived deficiencies in quality, being an in-house process.

We will seek to discuss with the Supreme Court Chief Justice to identify and action any opportunities for improving the system of appointment of judges, including (if necessary) through reforms such as the Judicial Appointments Commission Bill and the Judicial Standards and Accountability Bill. A key to judicial appointments should be the deep held commitment of judges to liberty, including freedom of speech.

##### No one to become a judge without significant experience as a lawyer

Currently there is no minimum practice requirement for becoming a judge in the district courts. People can directly appear after their law degree for an exam to become a judge. We will seek advice from the Supreme Court regarding imposing a requirement of significant case practice as a necessary pre-condition to appear in the exam in order to become a judge.

#### Independent Commission for Remuneration of Judges

We believe that most judges are poorly paid today relative to their private practice capability, creating incentives for corruption. But any corruption in the judiciary is fatal to the purpose of a justice system. We will establish an independent commission for remuneration of judges to advice on a market-comparable compensation framework. The framework should include incentives for quality, accuracy and speed of judgements. Given the extreme significance of this matter, we intend to accept without any delay the recommendations of such a commission. The people of India cannot be penny-wise and pound-foolish in relation to such a critical requirement as justice.

#### Freedom (Justice) Minister to be paid based on quality and speed of justice

The Justice Minister, like all Ministers, will be paid partly according to results. KPIs for the Minister would include targets for resolving the case backlog, as well as indicators of speed and quality.

#### Training to improve the quality and efficiency of justice

Without a commensurate strengthening of training and orientation among judicial officers / judges and lawyers, a rapid increase in the number of judges can put a strain on the quality of judgements. We will significantly upgrade the existing training systems of judges with a focus not merely on any changes to the law, but on best practice court procedures, such as that:

* arguments should be heard soon after the close of evidence, as they take much less time than arguments advanced after a long interval (recommendation of the 77th Law Commission);
* trial courts judgments should be brief and not a show of learning, and yet deal with inconvenient contentions and crucial arguments by appraising the evidence, relevant statutory provisions and such authorities that have direct bearing;
* Order 17, Rule 1, CPC (which does not allow more than three adjournments) should be followed and dilatory tactics including frequent adjournments, delays in filing documents, delays in serving or evading service be firmly curbed;
* judgments should be pronounced within 30 days (Order 20, Rule 1, CPC) and decrees within 15 days; and
* a time limit should be enforced on unnecessary details, such as over-proving allegations or unduly prolix examinations and cross examinations of witnesses.

#### Internal Review System: Accountability for timely justice

We will discuss with the Supreme Court options to introduce an internal review system to deal with complaints against judges and any unnecessary delays by judges.

## Timely, efficient and effective delivery of justice

### Rapid disposal of cases of under-trial prisoners

It is a shame that thousands of under-trials are in jail for over ten years without their guilt having been established. We will cause a review of all cases of under-trial prisoners. Except for alleged crimes against person, they will either be freed on bail or permanently released if the time they have served is more than half the maximum statutory sentence.

### Significant increase in the number of judges

India currently has a ratio of around 13.5 judges for every one million persons. In developed countries, there are 130-135 judges for every one million persons. A judge needs to go into the details of the evidence and the law before deciding a case. Quality justice takes time. Without dramatically increasing the number of judges, we cannot deliver timely and quality justice to the people of India. The Supreme Court has directed an increase in the strength of judges to 50 per million in the subordinate judiciary. We believe this is an essential governance reform. We are committed to increasing the strength of judges to at least 50 judges per million within three years. Funds for this will be raised from recovery of efficient costs of the justice system through appropriate fees, and from rationalisation of the tax system.

#### Tripling the expenditure on justice in three years

Korea spends more than 0.2%, Singapore 1.2%, and the U.S. 1.4% of its GDP on justice. India, however, spent only 0.01% of the GDP on justice in 2000. What can be more absurd than this, that a core function of the government has been given such short shrift by successive governments in India? By cutting out unnecessary functions, we will redirect savings into core functions, one of the most important of these being justice. A quantum increase in expenditure on the justice system will be considered, at least tripling the current spending within three years, and much more in the future.

### Fast-track options

#### Fast-track courts to deal with corruption/ criminal charges against MPs

This policy has been detailed earlier, and is a critical part of our commitment to ensure that only good people are able to become elected representatives.

#### Fast-track courts for crimes committed against person

We will create a fast-track system for crimes against person, with a maximum judgement time of 12 months from the date of reporting such crime, including a maximum of six months for investigation. Exceptions to this timeline will be investigated by a Judicial Commission and any necessary extensions given only in exceptional cases. Officials responsible for unnecessary delays will be punished.

Terrorists and those who potentially pose a grave threat to the nation would be tried even more quickly through special courts.

#### Other cases requiring to be fast-tracked

We will request the Supreme Court to strengthen its normal prioritisation mechanism. Cases requiring urgent attention/priority should be fast-tracked. This could include cases involving the death sentence; habeas corpus petitions; where orders have been passed staying other proceedings, or against orders of remand; cases involving senior citizens (whose timeline for justice is necessarily shorter); cases affecting custody of children; and motor vehicle accidents.

### Measures to reduce procedural delays and the time and cost of justice

We will undertake a range of reforms to reduce justice system delays and costs. Illustratively, these include:

#### Pre-litigation measures

Section 89 of the Civil Procedure Code (CPC) provides for alternate dispute redressal mechanisms (ADRs). After issues are framed, cases can be referred to appropriate ADRs. Streamlining this process can reduce the time and other costs of justice.

We will enhance the process to refer parties for counselling prior to commencing litigation, especially when there is scope for settlement. In general, all cases between two or more government agencies/departments should be settled outside courts – or through the inter-governmental machinery.

We will create a regulatory regime that supports any private online dispute resolution initiatives for minor issues. In a competitive market, such systems are likely to be cheaper and quicker than comparable government systems.

#### Plea bargaining

Chapter 21 A of The Code of Criminal Procedure (CrPC) provides for pre-emption of trial for petty offences punishable with imprisonment up to 7 years, through a mutually satisfactory disposition where the court directs the accused to pay an agreed compensation to the victim, and may either release the accused on probation or sentence the accused to up to half the minimum punishment prescribed for the offence in question.

Unfortunately, plea-bargaining is rarely used in local courts. We will review the use of plea-bargaining and streamline it, excluding certain offences such as those committed against a woman or a child below the age of fourteen. This will significantly increase its use.

#### Stern punishment for frivolous litigation and appeals

The government itself is a huge contributor to justice system delays. In matters where it is a party, it is common for the government to evade notices, reply to notices without application of mind, and unnecessarily appeal even when the laws are clearly in favour of the other party. Parties with deep pockets also waste a lot of judicial time, with vicious and frivolous cases and appeals, each of which is ultimately lost with strictures.

The 192nd Report by the Law Commission (2005) outlined the concept of a vexatious litigant and proposed a draft bill, The Vexatious Litigation Prevention Bill. We will enact strong legislation to impose costs on parties engaging in frivolous litigation. In particular, we will make laws to stringently punish the senior-most government functionaries found responsible for vexatious litigation.

Such penalties will also apply to police officers whose parking or other tickets are dismissed by courts.

#### Stopping endless appeals

Due to slack judicial action, cases in India are often disposed without deciding the real issue. This results in endless appeals. Lawyers are also paid on a per-court appearance basis, and hence have little incentive to resolve cases. Procedural laws allow lawyers of clients who oppose the resolution of a case to submit endless interlocutory appeals. We will review and streamline civil and criminal procedures, to avoid such obfuscation of justice. We will regulate legal fees to require a cap on costs to be declared for each case by litigating lawyers to prevent their incentive to lengthen proceedings.

## Structural reforms of the judicial system

### Making the Supreme Court more accessible

Given the heavy caseload and backlogs, as well as the time and costs imposed on litigants to travel to Delhi from distant states, there is much merit in decentralising the Supreme Court. The 2009 Law Commission recommended that the Supreme Court be split into a Constitution Bench in New Delhi and Cassation Benches in the four regions to deal with all the appellate work arising out of high court decisions. Though the Supreme Court has expressed reservations about any such radical re-structuring, we believe that one additional branch of the Supreme Court, initially in Bangalore, should be piloted in the first instance. Any concerns of the Supreme Court about capacity to govern the Cassation Benches can be addressed through close-circuit video conferencing, so regular private meetings can be held with the Chief Justice.

### Independent prosecuting agency

We will create an independent prosecuting body to ensure that police and investigative agencies have collated sufficient evidence and have reasonable prospects of securing conviction, before filing a charge sheet. This will also apply to cases filed by the government in civil matters and help minimise unnecessary government-created litigation. Internal review of processes and of any complaints received, and external audit of its performance would support other governance processes in place to ensure integrity and competence of this organisation.

### Commercial courts

Given the costly and time-critical nature of large commercial and contractual cases (such as IPR, mergers and acquisitions), we will set up Special Commercial Courts to fast-track such litigation, with a significantly higher fee. We will also appoint experienced and qualified judges on contract for technically complex cases. Such contractual judges could be hired from anywhere in the world.

These actions will also empower our judicial system to increasingly take on the role of a global hub for arbitration and legal process outsourcing.

### Mobile courts, Lok Adalats, Family Courts

For relatively minor civil matters, we will set up mobile courts and encourage people to use the services of private arbitrators. We will increase Lok Adalats to one per 50 villages, and increase the number of Family Courts.

### Panchayats to judge simple civil and criminal matters

Today, even petty cases tend to go before judges. We will pilot the use of panchayats for some minor civil and criminal issues, and minor land disputes. If successful, this would be rolled out, while always ensuring that panchayats abide by the norms of liberty and justice.

### Piloting the jury system in criminal trials

After first speeding up criminal trials, we will consider ways to improve the quality of judgements, including by adopting a jury system in certain trials. There are some risks to a jury system, with many prevalent citizen prejudices that could distort justice. However, a jury system respects citizens’ judgement and can, in the longer run, result in fairer judgements as citizens’ education and the ability to assess evidence improves. We will pilot this system in relatively minor criminal matters and evaluate it before considering a broader rollout.

### Private courts for certain civil matters

We will enact laws to enable private (including online) arbitration and courts. Citizens will be able to choose in advance the use of such private courts as part of contracts such as for the construction of a house. Upon activating a dispute, the losing party will be required to pay penalties, including reasonable legal costs. This will create competition for justice (thus also keeping government courts on their toes) and lead to innovative, quicker justice. This will also, by reducing government court caseloads, ease justice system backlogs and save taxpayers significant amounts of money.

## Making the justice system more humane

### Free high quality legal aid

The poor (those eligible for an NIT-type payment) will also be eligible for free high quality legal aid, the costs of which will be partially met through penalties imposed on the losing parties. No aid will be provided where it is determined by the legal aid system that the party is guilty.

### Easier access to bail

We will make the option of bail for most charges (excluding crimes against person) mandatory and easier, to minimise unnecessary harassment of potentially innocent people.

### Prison reforms including rehabilitation and reduced recidivism

Prison should be a place for a prisoner to repent the crime and to reform, to facilitate re-integration with society upon their release. We will introduce privatized prisons (with appropriate regulatory oversight) to be partly paid on reduced recidivism rates

Imprisonment, being a restriction on freedom of movement, is itself a major punishment. There is no need for further cruel and degrading treatment of prisoners. We will also take measures to look after prisoners’ families, particularly of their children, to ensure that any ill-effects on their upbringing and self-confidence due to their parents’ imprisonment are minimized.

### Review of private costs of reporting crime and reducing these costs

The effects of reporting certain violent crime, such as rape, on the mind, career, marriage prospects and social status of the complainant are often enormous. The victim thus gets further victimised. These reporting and social obstacles create incentives for significant under-reporting, thus emboldening criminals.

We will review the private costs of reporting violent crime and introduce a range of laws and supports that make it easier to report and reduce the distress and costs (including social costs, such as through appropriate confidentiality) involved.

#### Looking after the victims of serious crimes

We will strengthen systems (largely through civil society institutions) to support and rehabilitate victims (and victim families), to ensure that they are reintegrated back into society at the earliest.

## Modernisation of laws

We will modernise laws, particularly the penal laws. Some of the key modernisation issues are outlined below. Some others are mentioned elsewhere in this document, such as in relation to freedom of speech and property rights.

### Government to be liable for harm caused

We will legislate a duty of care that all government employees must ensure in their interactions with their clients. This will allow the government to be sued for damages where government servants, through their acts of commission or omission, harm citizens.

### Review of contempt of court provisions

Judges need powers to enforce decorum and demand discipline as part of the judicial process. However, there is a countervailing requirement to require constitutionally consistent restrictions on the exercise of these provisions, to limit any wilful misuse. Contempt of court provisions will therefore be reviewed and appropriate rules created to ensure these powers are deployed only in extremely limited cases.

### Capital punishment for heinous crimes

For heinous crimes (including serious cases of corruption, child abuse and rape), judges would be required to specifically justify any exception to capital punishment, once proof beyond reasonable doubt has been adduced. Capital punishment in such cases would create a deterrent effect.

### Minimum standards, not a Uniform Civil Code

Article 44 of the Constitution contains a directive principle that the state shall endeavour to secure for citizens a uniform civil code throughout the territory of India.

[We believe that a Constitution should not include policy mandates. Policy must remain the prerogative of elected governments. We respectfully do not agree with the policy outlined in this Article and will commend a more refined approach to the country, consistent with liberty.]

In relation to the substantive content of Article 44, it is to be noted that most religions specify some level of details regarding marriage and divorce. These are personal matters involving the most intimate unit of human existence: the family. Religious obligations on families are outside the scope of a government’s jurisdiction. Even in non-religious personal arrangements about marriage, there is fundamentally no role for government. Families should be able to structure themselves without violating the life or liberty of family members or others. A marriage contract or sacrament is a matter of personal taste on which the state can have nothing substantial to say.

The only role a state can have in this regard relates to establishing norm-setting minimum standards, such as a minimum age of marriage, minimum maintenance requirements upon divorce and minimum inheritance requirements in absence of a will. All that would be required would be for citizens to abide by the legislated minimum standards while complying with the mandates of their individual faiths.

More broadly, since there is no role for the state in religion, we will review all religious (e.g. Hindu/ Muslim) legislation on the statue books and replace it with generic rules of accountability applicable to all citizens.

### Stronger accountability: Prisoners to pay for their upkeep

We will introduce innovative methods and technologies to ensure that society doesn’t pay unduly for the upkeep of prisoners. In general, prisoners will be billed all costsof their upkeep. Where they have known resources and assets, payment will be required before they are released. For prisoners without any identifiable resources, the amount will be converted into a loan and recovered through the tax system.

Wherever appropriate, prisoners will be required to serve the family or community they have harmed.

### Mandatory imprisonment for gang crimes and violent sexual crimes

We will enact mandatory minimum prison sentencing for gang crimes, violent or sexual offences against children, rape, robbery, murder, and all assaults involving serious injury to law enforcement officers. We will create a national registry for convicted child abusers so they can be readily tracked. Parole will be minimized for dangerous or repeat felons.

### Strong laws against torture

Despite signing the Convention against Torture in 1997, India is yet to enact a law to ratify the treaty. We will introduce such a Bill at the earliest.

### Review of victimless crimes

Under various victimless crime laws, people are punished even when they have not directly harmed anyone. Typically, this relates to dealing with, or consuming illegal drugs. In general, victimless crimes should not prompt punishment (even assuming that analysis demonstrates the value of such punishment) comparable with punishment for violent crime. We will review laws regarding victimless crimes for necessity, and where considered necessary, for appropriateness of punishment.

### Sexual orientation not a crime

We object to Section 377 of the IPC, which criminalises homosexuality. This is proven to have a significant hereditary/ biological origin, and therefore is not only a matter of personal choice. We will abolish this ‘crime’, particularly also as it is victimless. Non-consensual gay sex will be captured by the normal provision regarding rape.

We agree that gay couples that wish to live together in a marriage-like relationship, can legally and contractually do so. We also note that the state has a very limited role in determining the nature and form of marriage. To the extent customary, at present, this relationship will not be called marriage, to distinguish it from heterosexual marriage. The right to bring up adopted children will, however, not be available to this form of cohabitation, given the need to assess this issue further in the best interests of children. Such an evidence-based assessment, including extensive consultation with the community, will be commissioned in the second term of our government.

### Adultery not a criminal offence

Section 497 of the IPC, a provision drafted in the Victorian era, treats adultery as a crime, which can be complained against only by the husband and never by the wife. We will move adultery from a criminal into a civil offence. Adultery is a form of breach of trust and should remain a ground for divorce, but is not a criminal matter. All sexual acts between consenting adults will be removed from the IPC.

### Reform of child protection, domestic violence and dowry laws

Most marriage-related complaints in India are considered to be criminal in nature. This is inappropriate. Except for matters involving physical violence and abduction, all other marriage issues will be moved into civil law.

While many women face an oppressive environment at home and domestic violence needs to be punished, enough evidence has now accumulated that s.498a of the IPC, which addresses domestic violence and dowry deaths, is often misused due to the absence of checks and balances and its inbuilt stereotypical assumptions about gender roles. But no assumption of guilt should be inbuilt into the law. We will make offences under s. 498a bailable and compoundable, and require that any party that files a false case be mandatorily imprisoned for a minimum of three months, with all legal costs borne by the party that filed the false case.

Since India is not a signatory of Hague convention on Private International Law, any marriage-related dispute between a foreign and Indian citizen is dealt as per Indian law. Further, current laws are unclear about the rights of the other marriage partner when one spouse takes away the children without consent. We will legally endorse the international convention to ensure international standards for child protection.

### Strong animal protection laws

We will review and strengthen existing laws for animal protection. Animals consumed as food should be killed in as painless a manner as the state of knowledge permits. International best practice currently requires stunning before killing large animals. We will make humane killing mandatory in all abattoirs, with transitional provisions for local butchers that currently use customary (often brutal) techniques. Punishment for repeated inhumane killing of animals can extend to jail. The laws will also apply to temples and other religious places, bringing an end to animal sacrifice that is not assisted by modern technology.

### Making laws accessible and clear, thus supporting transparency

#### Language of the people to be used

We will require the language of the people to be used in courts as far as ordinary civil and criminal matters are concerned.

#### Definitions Act

All legal definitions will be rationalised, stripped from existing legislation, and brought under a single Act. This will ensure consistency in the use of specific words in all legislation. A**ll** such terms will then be hyperlinked in electronic versions of the laws, so ordinary citizens can quickly identify their meaning.

#### Indexation of fines, fees and penalties

We will index fines, fees and penalties to the CPI. All such imposts will be converted into units, with the current unit values reflecting the changing value of the rupee.

As part of this process, fines, fees and penalties that are set at outdated levels will be increased to reflect the current value environment, based also on cost recovery principles (with costs set at an efficient level).

#### Computerization of laws and jurisprudence

Ready access to past judgements can help improve the quality of justice. In addition to computerization and publication of all relevant laws, all relevant jurisprudence will be digitised and published on the internet (making it fully searchable), to help improve the quality and speed of judgements. This would facilitate much shorter arguments and enable judgments to be expedited. More broadly, all modern technology will be actively used to support the justice system.

#### Telecasting court proceedings on Constitutional matters

Except where matters of state security are involved, the Supreme Court will be required to telecast court proceedings on any Constitutional matter free of cost on social media and any private TV channel that wishes to broadcast these proceedings, so the people of India can better understand the framework and structure of our Constitution.

### Repeal of redundant legislation

A vast amount of irrelevant legislation remains on the Indian statute book. All laws, particularly pre-1947 laws will be reviewed for relevance and where found unnecessary, will be repealed within three years.

## Consumer protection

It is bad business to be deceitful. ‘A habit of deceit is a mark of bad character, and bad character has a way of revealing itself no matter how cunning the individual. Deceit is both bad karma and bad business. Commerce [therefore] elevates manners and probity’. Information about a business’s character spreads across the society through gossip, newspapers and electronic media, legal case law, or even information that consumers may pay, for such as Consumer Reports in the USA. Strong business competition is a driver of good behaviour.

However, there are cases where businesses cause a loss to buyers and either deny these losses, or ignore them, or themselves disappear. Such cases require specific action by the government. Where such losses are relatively minor, judicial remedy can be costly to everyone. We are committed to establishing a government led consumer protection agency that will deal with minor cases of misdemeanour by businesses and use persuasion and public shaming in cases of obvious damage. Where necessary, we will prosecute such businesses in the court of law on behalf of consumers.

We will also regulate the minimal contractual requirements for various services so companies do not use the ‘fine print’ to exclude themselves from liability where they must take responsibility.

1. http://www.thehindu.com/opinion/interview/judiciary-not-untouched-by-corruption/article4866406.ece [↑](#footnote-ref-1)