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Judicial Reform in India: Need of the Hour

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ABSTRACT

The Judiciary is one of three organs of government, besides the Executive and Legislature. The evolution of society necessitates the continuous reform and adaptation of these organs to meet evolving needs. Judicial reform is a dynamic process that adapt to societal evolution, ensuring the Judiciary remains effective in promoting equality and justice for all. The Current research paper evaluates the current issues in the Indian Judicial System, the impact of these issues on the overall Justice delivery system, need for judicial reform, factors that hinder judicial reforms and measures that can be taken to reform the judiciary.

Keywords: *Judicial Reform, Independence of Judiciary, NJAC, Indian Judicial System, Gram Nyayalaya*

I. INTRODUCTION

The Indian judiciary is a single integrated system of courts, with the Supreme Court at the apex. It interprets and gives meaning to the law, defending the constitution and democracy. The system operates in a pyramid structure, with lower courts appealable to the High Court and Supreme Court. The judiciary's independence is crucial for efficient federal governance, ensuring power distribution and preventing actions that violate constitutional limitations.

The Indian judiciary's independence is ensured through various mechanisms, including proportionate involvement of the executive and judiciary in the appointment of judges, the protection of judges' tenure, and the security of salaries and service conditions. Judges can only be removed by the President for proven misbehaviour or incapacity, and their salaries cannot be reduced except during financial emergencies. They have the freedom to announce decisions and decrees without fear of public criticism. The Supreme Court can punish for contempt of court and has full control over its work and establishment procedures. There is no discussion in parliament on the conduct of judges or their duties, except when a motion for their removal is filed. Judges are paid handsome pensions but are not allowed to practice after retirement to avoid influencing their former colleagues. The Indian judicial system needs drastic changes to ensure speedy trials and timely justice for citizens.

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II. INDEPENDENCE OF JUDICIARY

India's constitutional governance is based on the rule of law, with the judiciary acting as an impartial umpire to resolve disputes within the boundaries of the Constitution of India, 1950. An independent judiciary is expected by every citizen and is recognized as a fundamental right by international conventions. The Constitution enshrines three wings of government, each working independently. The judiciary is responsible for dispensing justice between individuals and states, as well as in controversies between individuals and states. The Indian Constitution recognizes the importance of the judiciary in protecting citizens' rights and ensuring the government operates according to the law. An independent judiciary is crucial for maintaining the rule of law and fair judicial administration.

The independence of the judiciary encompasses functional, personal, collective, and internal independence. It ensures judges are not influenced by government, have institutional administrative and financial independence, and are independent from judicial superiors and colleagues. The Indian Constitution grants judicial review power to the Supreme Court and State High Courts, emphasizing the importance of judicial independence for the rule of law. The quality of justice depends on the judiciary's independence, and the founding fathers of the Constitution urged the state to keep the judiciary out of politics. This ensures judges are accountable and transparent, adhering to the Constitution's parameters.

The Indian Constitution ensures the independence of the judiciary through various provisions. These include judicial appointments, qualifications, salaries and allowances, removal of judges, transfer of judges, power to punish for contempt, prohibition on practice after retirement, and conditions of service.

Judicial appointments are crucial for a democratic government, with the President or Central Government appointing judges to the Supreme Court and High Courts after consultation with the Chief Justice of India, Governor of the State, and Chief Justice of the High Court. Judges of the Supreme Court and High Courts have tenure, remaining in office until retirement age. Qualifications determine the competence of those who work in the courts, with Article 124(3) prescribing qualifications for Supreme Court judges.

Salaries and allowances are fixed and not subject to a vote of the legislature, charged on the Consolidated Fund of India for Supreme Court Judges and the Consolidated Fund of State for High Court Judges. The budget must contain provisions for payment of salaries and allowances and pensions to Judges of the Supreme Court and High Court.

Removals of judges are made by the President after consultation with the Chief Justice of India,

with the President's order being addressed to both Houses of Parliament in the same session, supported by a majority of the total membership and two-thirds of the members present and voting.

Conditions of service are also important for the independence of the judiciary, addressing day-to-day functioning and security in its diverse dimensions after retirement. The Supreme Court Judges (Conditions of Service) Act, 1958 and the High Court Judges (Conditions of Service) Act, 1954 lay down conditions of service regarding leave, pension, housing facility, conveyance and sumptuary allowance, gratuity and family pension, and after retirement medical facility. The independence of the judiciary in India is based on the establishment of a court, with the Chief Justice empowering appointments and protecting salaries and allowances for administrative staff.

III. JUDICIAL PRONOUNCEMENTS ON INDEPENDENCE OF JUDICIARY

- **First Judge's Case²:** The Supreme Court held that consultation is a mere suggestion not concurrence and is not binding on the President as the Chief Justice of India is also a man with the flaws and failings of a common man, hence making his view bindings on the President and the executives may be dangerous idea.
- **Second Judge's case³:** The judgement in S.P. Gupta's Case is now reversed that the court has held that the opinion of the Chief Justice shall be binding on the President as he is more competent than other constitutional machineries to accrue the merit of a candidate.
- **Third Judge's case⁴:** The Second Judge case in India raised uncertainty about the collective opinion of the Chief Justice and his senior colleagues. During Chief Justice Punchhi's tenure, controversial appointments led to the Central Government referring to the Supreme Court for advice. The Court ruled that the Chief Justice must consult with four senior most Supreme Court judges and that a recommendation without consultation norms would not be binding.
- **The National Judicial Appointments Commission Bill, 2014:** The National Judicial Appointments Commission Bill, 2014, introduced by the then Law Minister Ravi Shankar Prasad in the Lok Sabha, establishes the National Judicial Appointments Commission (NJAC) for recommending Chief Justices of India and Supreme Court judges.

² S.P. Gupta v. Union of India (1982)

³ Supreme Court Advocates on record v. Union of India (1993)

⁴ Presidential Reference to Supreme Court in 1998

- **Fourth Judge's case⁵:** When the 121st Constitution Amendment which created the National Judicial Appointment Commission (NJAC) was passed by both the houses of the Parliament with 2/3rd (special) majority, it was subsequently sent to the states for ratification after 16 states approved the amendment, it was finally sent to the President for his assent. But before the amendment could become fully effective, it was declared to be unconstitutional by the SC as it violated the independence of judiciary as a basic structure in the 4th Judge's Case.

IV. CURRENT ISSUES IN THE INDIAN JUDICIAL SYSTEM AND THEIR IMPACT

Pendency of Cases

India currently has over 4.70 crore cases pending, with over 38.15 million cases in District Courts. The country ranks 168 out of 190 countries on 'contract compliance', and settling disagreements takes 1445 days. To address this issue, a bottom-up approach is needed, focusing on district courts where lakhs of litigants come into contact with the justice delivery system. Special and fast track courts (FTSCs) should be established to ensure swift justice dispensation and speedy trials. The Central Government approved the continuation of over 1000 FTSCs as a Centrally Sponsored Scheme (CSS) for two years in 2019, including 389 exclusive POCSO (Protection of Children from Sexual Offences) Courts. However, the performance of these fast-track courts has been below par, with 60% of proposed FTSCs yet to be set up. Issues faced by these courts include lack of infrastructure, delay in judgments, overburdened judges, and absence of a clear mandate for cases.

To improve the effectiveness of fast-track courts, a two-pronged approach is needed: more competencies with dedicated judges and competent staff, and capacity building. Process engineering should be done to make the system more efficient, with realistic time-taking assessments and a proper time table. A clear mandate should be established, allowing for timely hearings and automatic transfer of cases related to gender-based violence, similar to countries like Spain and Liberia.

The Gram Nyayalays Act 2008 is a parliamentary legislation in India that aims to institutionalize village courts or gram nyayalayas across the country for faster and more accessible judicial services. These mobile courts provide affordable justice to villagers and are constituted by three Hindi words: Gram, meaning 'a village', Nyay, meaning 'justice', and Aalya, meaning 'house' or 'centre'. The Law Commission of India proposed a transition from a democratic Nyaya Panchayat setup to a participatory justice system. The Act aims to protect

⁵ Supreme Court Advocates on record v. Union of India (2015)

the impoverished and vulnerable sections of society by providing free legal aid. The territorial jurisdiction of gram nyayalayas is determined by state governments, but can function as mobile courts after public awareness. The Supreme Court has directed states to set up rural mobile courts within a month and urged high courts to expedite consultation with state governments. Establishing gram nyayalayas is crucial for judicial reforms and reducing the burden on the lower judiciary.

The Indian Act aimed to establish 5,000 village courts or nyayalayas across the country, but current statistics show only 208 functional gram nyayalayas. Out of 28 states, only 11 have taken steps to notify about gram nyayalayas. The shortcomings of gram nyayalayas include low case resolutions, lack of regular cadres for the post of a Nyayadhikari, ambiguities regarding jurisdiction, and some gram nyayalayas located in urban city centers. Rural litigants are not aware of gram nyayalayas and lack sufficient awareness drives. The foundation of gram nyayalayas is a positive step towards reinforcing structural reforms in the Indian judiciary, but further reforms are needed to make it more accessible to the citizenry. Additional tribunals, such as the Central Administrative Tribunal, Railway Claims Tribunal, Debt Recovery Tribunal, Customs, Excise and Service Tax Appeal Tribunal, and Income Tax Appellate Tribunal, have pending cases and should be challenged before the division bench of the High Court.

Appointment of Judges

The collegium system in India is a system where judges are appointed and transferred at both the Supreme and High Court levels. The system aims to ensure that the Chief Justice's opinion is formed collectively by a body of judges of highest integrity. However, the current system has issues such as lack of a written manual, selection criteria, arbitrary reversals, and selective publication of records. This ambiguity raises concerns about propriety, nepotism, and self-selection, and often overlooks talented judges and advocates.

The lack of consensus among collegium members for candidate selection also exposes fault lines within the judiciary. The National Judicial Appointments Commission (NJAC) was established in 2014 to ensure the independence of the judiciary while maintaining balance in powers. However, it was struck down by the Supreme Court in 2015 due to potential threats to its independence.

The underwhelming representation of women in the judiciary is another issue. In high courts, only 11.5% of women judges are female, and only 4 out of 33 Supreme Court judges are female. To ensure adequate and equal representation, there is a need to correct the patriarchal mindset while approving names and introduce reservations if necessary.

Poor Condition of Infrastructure

The Indian judiciary's infrastructure is inadequate, with 26% of court complexes lacking separate toilets, 16% lacking gents' toilets, and only 5% having medical facilities. The pandemic has led to a hybrid system, but only 27% have computers and video conferencing facilities. The Centrally Sponsored Scheme (CSS) for court infrastructure development was sanctioned in 2019-20, but only 84.9 crore was utilized by five states, leaving 91.36% unused. Chief Justice N.V. Ramana proposed a National Judicial Infrastructure Authority.

Digitization of Courts

Digitization of courts is crucial to reduce paper and space waste and improve efficiency. Courts should store large amounts of documents online, group cases for quick disposal, and update high court and Supreme Court websites regularly. E-filing should be available to litigants, and court libraries should have access to online research portals. The Supreme Court's E-committee has prepared a three-phase action plan for implementing information and communication technology in the Indian judiciary. The plan includes network planning and feasibility study, site preparation, dedicated computer rooms, broadband internet connectivity, ICT hardware and system software, and infrastructure creation for the e-committee. The e-committee will oversee the implementation of ICT-based applications in the judicial system and develop an in-house supervisory application with a core group of technicians.

Corruption

Corruption in India's judiciary is a major issue, with over 1600 complaints received by the Public Grievance and Monitoring System. Factors contributing to corruption include delayed case disposal, shortage of judges, and complex procedures. Whistleblowers fear contempt of court. The Supreme Court adopted resolutions in 1997, establishing judicial standards and principles, and implementing in-house procedures. Professional development is necessary for legal practitioners and officers, and the judiciary should be under the RTI's jurisdiction.

The judicial system's issues negatively impact justice delivery, leading to delays in administration, poor justice quality, financial burdens for litigants, negative economic effects on businesses, and loss of faith in the legal system. A large backlog of cases can take years or decades to resolve, and judges may not have the time or resources to fully consider each case's merits.

V. REFORMS UNDERTAKEN IN THE INDIAN JUDICIAL SYSTEM

Judicial pendency requires multiple levels of coordination and cooperation between the

government, Judiciary, Bar, and public stakeholders. While the government has initiated decriminalization for ease of doing business and court dockets, capacity building and a changed compliance mindset are also needed. The Indian Judicial System has undergone significant reforms, including the National Mission for Justice Delivery and Legal Reforms (2011), which aims to increase access and reduce delays. Infrastructure improvements have been made, with 46 judges appointed to the Supreme Court and 769 to the High Courts. Alternative Dispute Resolution (ADR) methods have been introduced, and the Commercial Courts Act 2015 mandates pre-institution mediation and settlement of commercial disputes. Fast track courts have been established to expedite justice delivery, and Legal Services Authorities are working to ensure equal access to justice. The virtual court system, e-Sewa Kendras, National Judicial Data Grid, National Service and Tracking of Electronic Processes, Secure, Scalable & Sugamya Website as a Service (S3WAAS) Website, and Virtual Justice Clock are also being implemented.

VI. SUGGESTION AND RECOMMENDATIONS

The Standing Committee on Personnel, Public Grievances, and Law and Justice (Chair: Mr. Sushil Kumar Modi) submitted its report on "Judicial Process and their Reforms" on August 07, 2023. Key observations and recommendations include the establishment of regional benches of the Supreme Court, addressing the social diversity deficit in the appointment of judges, increasing the retirement age for judges, mandating the declaration of assets, eliminating vacations in the Supreme Court and High Courts, and addressing the publication of annual reports of High Courts. The committee also recommended increasing the retirement age for judges and amending the Constitution to accommodate advances in medical sciences and increased longevity. It also recommended a law mandating higher judiciary judges to file annual returns of their assets and liabilities. The committee also recommended eliminating vacations in courts to address pendency of cases and the inconvenience faced by litigants. The Department of Justice was advised to approach the Supreme Court to issue directions to all High Courts to prepare and publish their annual reports.

Justice Ashok Kumar Ganguly suggests reforms for High Courts and the Supreme Court to tackle pending cases. These include full utilization of working court hours, strict adherence to Civil Procedure Code provisions, prioritizing cases with technology, and reducing arrears. Judges must deliver judgments within reasonable time, reducing prolix arguments and using written notes. Oral arguments should not exceed one hour and thirty minutes, unless complicated. Judgments should be clear, decisive, and avoid ambiguity. Lawyers should not

resort to strikes and follow the Constitution Bench's decision in **Harish Uppal (Ex-Capt.) Vs. Union of India**⁶

The Law Commission of India (LCI) 2009 recommended a combination of executive and judiciary to find suitable candidates for appointments. To reduce pendency, the Supreme Court's strength should be increased, and the court divided into four regions for timely justice delivery. The retirement age of High Court and Supreme Court Judges should be increased, and vacations in the higher judiciary should be curtailed. Former Chief Justice of India N V Ramanna, in his remarks, said a National Judicial Infrastructure Authority should be created for the standardization and improvement of judicial infrastructure.

In addition to the above, to reform the judiciary in India, several measures can be taken, including making judicial impact assessments compulsory, increasing the use of ADR mechanisms and plea bargaining, establishing All India Judicial Services (AIJS), establishing a Judicial Management Cadre, simplifying procedural laws, improving the functioning of Fast Track Courts, setting up an independent mechanism for legal services, providing timely justice to undertrials, increasing representation of women in the judiciary, improving legal education, establishing a Research and Training Centre for legislative drafting, and improving the functioning of investigating and prosecuting agencies. These measures aim to improve the justice delivery system and ensure proper and timely investigation and prosecution.

⁶ (2003) 2 SCC 45

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