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Judicial Reforms in India: An Analysis

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ABSTRACT

The judiciary is the branch of government in charge of giving the law interpretation and context. It is the protector of democracy and the defender of the constitution. The Supreme Court sits at the head of an integrated system of courts serving both the Union and the states, as per the Indian constitution. The Supreme Court is at the summit of the pyramid, followed by the High courts, district courts, and lesser tribunals. This one integrated system can be visualized as a pyramid. The Supreme Court is in charge of the entire system and has authority over how other courts are run in addition to supervising them. There is only one civil and criminal system in place throughout the nation, and no distinct laws exist. Any case from the subordinate courts may be appealed to the High Court and, eventually, the Supreme Court.

Keywords: Government, Constitution, High court, Supreme Court, Reforms.

I. INTRODUCTION

The judiciary is the branch of government in charge of giving the law interpretation and context. It is the protector of democracy and the defender of the constitution. The Supreme Court sits at the head of an integrated system of courts serving both the Union and the states, as per the Indian constitution. The Supreme Court is at the summit of the pyramid, followed by the High courts, district courts, and lesser tribunals. This one integrated system can be visualized as a pyramid. The Supreme Court is in charge of the entire system and has authority over how other courts are run in addition to supervising them. There is only one civil and criminal system in place throughout the nation, and no distinct laws exist. Any case from the subordinate courts may be appealed to the High Court and, eventually, the Supreme Court.

II. INDEPENDENCE OF JUDICIARY

Effective federal governance requires the judiciary to maintain its independence. The Supreme Court stops any activity that goes against the constraints set by the constitution in addition to defending the division of powers between the Legislature, the Executive, and the Judiciary. The administration of justice bears particular importance in a representative democracy because it

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safeguards individual rights from intervention by the government or legislature. As a result, upholding democracy and guaranteeing human rights require an impartial and independent court. The following mechanisms guarantee the judiciary's independence: -

1. **Appointing judges:** The judiciary and the executive branch ought to participate in the selection of judges in proportionate measure. The article goes into further detail on the current system and the necessary changes.
2. **Removal of Judges:** The President may dismiss a judge only in cases when their misconduct and incompetence have been established. Only a joint statement from both Houses of Parliament and the endorsement of a two-thirds majority of those in attendance and casting ballots are required to prove this accusation. The term "proved" is crucial. It implies that a speech can only be made following a comprehensive investigation of an accusation by an unbiased body.
3. **Security of Tenure:** A judge may hold office until he or she is 65 years old. The President may remove him based on "proved misbehavior or incapacity."
4. **Security of Salary and Service Conditions:** Throughout their tenure, judges' pay, benefits, and other benefits cannot be altered to their detriment. Judges' salaries are fixed, with the exception of dire financial situations. Since their pay and benefits are deducted from the Consolidated Fund of India, a vote by Parliament is not required.
5. **Freedom to Announce Decisions and Decrees:** The judges are free to make announcements about their rulings in the courtroom without fear of damage to their reputation, personal belongings, or reputation. The press or general public cannot criticize their judgments. The State has an obligation to protect individuals' personal safety at all costs.
6. **Complete Control over Work Procedure and Establishment:** The Supreme Court retains complete control over its work procedures, establishment, and employee labor agreements. As a result, no external agency has any influence over it.
7. **No Discussion in the Legislature on the Conduct of Judges:** No discussion can take place in the parliament regarding the conduct of any judge or about the discharge of his duties except when there is a motion for his removal.
8. **Prohibition of Practice after Retirement:** The judges are paid handsome pensions but they are not allowed to practice after their retirement. This has been done so that the Judges are not obliged, during their tenure as Judges, to any prospective employer.

III. PENDENCY OF CASES

In India, the term "pendency of court cases" refers to the length of time that lower courts in India take to decide cases (lawsuits) in order to give justice to the harmed individual or group. There are three tiers to the Indian judiciary system: district courts, state or high courts, and federal or supreme courts.³ The district courts, which are a point of interaction for thousands of litigants with the legal system, are the main source of the issue. Other ad hoc improvements and interim adjustments at the Supreme Court and higher courts won't affect the system unless the issues with these courts are resolved, and ordinary litigants will still be subject to "the slings and arrows of outrageous fortune." To relieve the district courts of some of their responsibilities, special and expedited courts ought to be established and kept up to date. FTSCs are special courts meant to provide prompt justice administration. They hold trials quickly and have a higher clearing rate than conventional courts. First, the Eleventh Finance Commission of India suggested the fast-track courts. One of the highest numbers of court cases that are still outstanding worldwide is in India.⁴ According to numerous judges and government representatives, the largest issue facing the Indian judiciary is the backlog of cases. A 2018 Niti Aayog strategy report stated that it would take more than 324 years to clear the backlog at the then-current rate of court case disposition.⁵

(A) Low strength of judicial staff and judges:

The authorized number of judges in India in 2022 was 21.03 judges per million people. There were 24,631 judges in district courts, 1108 in high courts, and 34 in the Supreme Court at any given time. The Law Commission of India and the Justice V. S. Malimath Committee had previously suggested increasing the number of judges to 50 per million, or 20,000 people per judge. A statute passed by the Parliament can increase the number of judges on the Supreme Court of India's approved roster. A High Court's sanctioned strength of judges may be expanded upon recommendation by the court and approval by the governor, the union government, the Chief Justice of India, and the relevant state government.⁶

(B) Vacant position of judges:

Even with the authorized number of judges, judicial vacancies have frequently prevented Indian

³ "Department of Justice | India". Accessed on 07.07.2024

⁴ "India has world's largest backlog of court cases: PM". NDTV.com. Retrieved 2022-11-06.

⁵ "44 million pending court cases: How did we get here?". Moneycontrol. 5 December 2021. Retrieved 2022-11-06.

⁶ Bench, Bar & (9 June 2021). "Central government approves increase in sanctioned Bench strength of Telangana High Court by 75 percent after intervention by CJI NV Ramana". *Bar and Bench - Indian Legal news*. Retrieved 2022-11-13.

courts from operating at full capacity. The number of judges in India in 2022 was 14.4 per million of the population. There has been a slight alteration from 13.2 in 2016. By contrast, there are 150 judges per million in the US and 210 judges per million in Europe. There are still open non-judicial staff positions; in some states, there were up to 25% of vacancies in 2018–19.⁷ Court vacancies continue to occur on a regular basis as a result of judges' retirement, resignation, passing, or promotion. The procedure of appointing judges is protracted. The Chief Justice of India and the four remaining senior-most Supreme Court judges make up the Supreme Court collegium, which recommends candidates for appointment to the court. Before the President appoints the names, the union government must ratify them. The High Court collegium, which is composed of the Chief Justice and the two senior most remaining judges, makes recommendations on the appointment of high court judges. Before the President may designate the names, the union government, the governor, the state government, and the Chief Justice of India must all approve them.⁸ When it comes to the appointment of judges, the union government and state governments are required to follow the recommendations made by the Chief Justice of India, the Chief Justice of the High Court, and their collegium. The union government would either postpone the appointment or return the names for appointment because the rule is rarely enforced on time. If the collegium confirms the candidates, the union government is required by law to ratify the appointments within three to four weeks.⁹ One important factor contributing to the higher judiciary's vacancy is a lack of cooperation and coordination. Due to names that are awaiting approval from the union government, the appointment of judges has occasionally been postponed for four years. A state's governor, the State Public Service Commission, and the relevant high court appoint judges to district or lesser courts.¹⁰ Exams are administered in order to designate district judges and civil judges. In ten states alone, the State Public Service Commission administers the examination for the appointment of civil judges; in all other states, the High Court administers the examination for the appointment of judges. The appointment and examination processes are inefficient. The Supreme Court observed in 2018 that there was an imbalance between the number of open positions in the subordinate courts and the hiring that was taking place. The Bihar Public Service Commission required thirty months to finish the exam in 2022. The union government has

⁷ "India Justice Report 2020"

⁸ "Memorandum of procedure of appointment of High Court Judges | Department of Justice | India". Retrieved 2022-11-14.

⁹ "SC Collegium Sent 106 Names for Judges, 9 for CJs, but Centre Cleared Only 8 Names: CJI". *The Wire*. Retrieved 2022-11-14.

¹⁰ Poddar, Umang (6 August 2022). "India's lower courts are sitting on 4 crore cases. Filling judicial vacancies must be a priority". *Scroll.in*. Retrieved 2022-12-20.

suggested creating the All India Judicial Service (AIJS) in order to centralize the hiring procedure and fill open positions in the lower judiciary. Lack of professional advancement and difficulty in luring and keeping bright judges are further problems facing the lower judiciary. Due to the higher compensation offered by private practice and prestigious legal firms, many judges are leaving the judiciary to pursue these opportunities. The compensation given to judges in lower courts has drawn criticism from numerous states. States do not follow the Judicial Pay Commission's recommendations or the Supreme Court's decisions to raise judges' salaries. Sixty-six percent of the seats in the Delhi judiciary test 2019 remained unfilled since candidates could not get even the minimum passing grade. Not a single candidate passed the district judge exam for the fourth time in a row in the Jammu and Kashmir judiciary exam 2019. Out of the approximately 3,500 lawyers who appeared for the district judge examination in the Tamil Nadu judicial exam 2019, none of them passed.

(C) Lack of funding:

Except the Supreme Court which is funded by the central government, all the expenses of the High Court and the District Courts in a state are funded by the respective state government. As of 2018, 92% of all expenditure on the judiciary was borne by the states.¹¹ With the exception of Delhi, which received 1.9% of the yearly budget, all states and union territories spent less than 1% on the judiciary. There are no guidelines for governmental spending on the judiciary to guarantee increased court efficiency. By contrast, the United States dedicates 2% of its yearly budget to the court.

(D) Lack of infrastructure:

Lower courts, or district courts, frequently lack necessary infrastructure. Compared to the authorized strength of 24,631 lower court judges, there were only 20,143 court halls and 17,800 residential units for judicial officers available for usage in 2022.¹² Just 40% of the lower court buildings have fully operational restrooms, and some do not have regular cleaning features. The absence of video conferencing facilities, digital infrastructure, and video connectivity to police stations and jails affects lower courts as well. State governments are in charge of building the judiciary's infrastructure. The National Judicial Infrastructure Authority of India (NJIAI) was planned to be established in 2021 by Chief Justice N V Ramana to handle judicial administration tasks, such as infrastructure development. Comparatively, comparable judiciary bodies exist in

¹¹ Suresh, Nileena (2022-02-22). "Explained: How The Union Budget Funds India's Justice System". *www.indiaspend.com*. Retrieved 2022-11-06.

¹² Sahoo, Niranjan (2022-07-20). "Indian judiciary is crying for basic infrastructure. Here's what Centre & states need to do". *ThePrint*. Retrieved 2022-11-06.

other nations, such as the US Administrative Office of the United States Courts.

(E) Abuse of legal system:

The Code of Criminal Procedure (CrPC) and the Code of Civil Procedure (CPC) contain the rules by which court cases are conducted. It has been said that CrPC and CPC are outdated. Notwithstanding the fact that the CPC was amended in 1999 and 2002, allowing for a maximum of three adjournments and a 30-90 day time restriction for certain regulations. Nonetheless, the Indian Supreme Court invalidated these modifications in 2005, noting their innate authority. Rules violations and adjournments have been employed as strategies to drag out the process. In order to squander time and stall the procedures, attorneys freely debate inane points during oral arguments and file lengthy, unhelpful written pleadings.¹³ On the other hand, the Supreme Court of India wrapped up a case hearing in October 2022 in just 8 days after establishing time constraints for arguments and prohibiting repeats. While voicing worry, the Supreme Court of India once more suggested in 2023 that the CPC's time constraints be followed in order to prevent proceedings from being delayed. According to a regulation in the CrPC, criminal cases cannot continue if an accused person or a witness is not present in court. According to NJDG in November 2022, this rule alone is responsible for the delay in more than 60% of all ongoing criminal cases. Official indifference and corruption contribute to the misuse of the judicial system.¹⁴ In the 1990s, civil proceedings in Singapore, which took its cue from English law, just like in India, may take up to ten years to be resolved. The opposing parties' misuse of civil procedure was a major cause of these delays. But following the judicial changes, the delays were minimal, and Singapore's criminal and civil justice systems are today among the best in the world. Parliament of India has passed three new laws in 2024, Three new laws were passed by the Indian Parliament in 2024: the Bharatiya Nagarik Suraksha Sanhita, the Bharatiya Sakshya Act, 2023, and the Bharatiya Nyaya Sanhita, which superseded the Indian Penal Code, the Indian Evidence Act, and the CrPC, respectively. According to the union administration, the new laws would bring criminal cases to justice in three years.¹⁵

(F) Ineffective legislative and executive:

The executive government fails to fairly and satisfactorily address the grieving party's concerns and conflicts when they arise. Legislatively passed laws may be flawed and include gaps. The

¹³ "Buried in Words: Supreme Court Struggles with Long Submissions". *Supreme Court Observer*. Retrieved 2022-11-07.

¹⁴ "Official apathy delays the case that may put an end to the pendency of criminal appeals in India – The Leaflet". *Theleaflet.in*. 2022-05-24. Retrieved 2022-11-09.

¹⁵ "New laws replacing IPC, CrPC to come into effect on July 1". *The Times of India*. 2024-02-25. ISSN 0971-8257. Retrieved 2024-04-07.

number of cases on the court docket has increased due to the inefficiency of the legislative and executive branches of government. Judges have criticized the legislature and the administration for not operating to their maximum capacity, which results in poor governance and increases the load on the courts.¹⁶

IV. NATIONAL MISSION AND JUDICIAL REFORMS

The State Government bears primary responsibility for the creation of infrastructure facilities for the subordinate judiciary. In order to supplement the State Governments' resources in this area, the Department of Justice has been executing a Centrally Sponsored Scheme (CSS) for Development of Infrastructure Facilities for the Judiciary from 1993–1994. In order to enable better justice delivery, the Scheme seeks to improve both the housing needs of judicial officers nationwide and the physical infrastructure requirements of the courts. The plan has occasionally been extended. With a financial outlay of Rs. 9000 Cr (including a central share of Rs. 5307 Cr), the government has extended the above CSS for a period of five years, from 2021–2026. In addition to building court rooms and residential units, the CSS now includes new features like the availability of lawyer's halls, restroom complexes, and digital computer rooms. Ever since the establishment of the CSS for Infrastructure Facilities, the Central Government has contributed in an additional capacity to support the resources allotted by the corresponding State Governments for this objective. As a result, the State Governments are free to choose how much funding to allocate at their own discretion to satisfy the demands of building judicial infrastructure in their individual States. It is not, however, required by the State's fund allocation for the Central Government to issue a matching share. Actually, according to the Scheme, it is the opposite. In accordance with the amount of Central assistance granted, the State Government must release the corresponding portion.

(A) Steps taken by ministry of law and justice for judicial reforms:

A Commercial Bench has been established in the Delhi and Bombay High Courts. Under the Delhi High Court's authority, Commercial Courts have also been designated in the District Courts.

The Dedicated Commercial Courts' pecuniary jurisdiction has been reduced from Rs. 1 crore to Rs. 3 lakhs. Reducing the pecuniary jurisdiction has made sure that business disputes are resolved quickly and affordably in Dedicated Courts.

Through the Case Information System (CIS 3.2), matters pertaining to commercial disputes will

¹⁶ "Govts biggest litigants, docket explosion due to exec, legislature: CJI"

now be randomly and automatically assigned to the Dedicated Commercial Courts in Delhi, Mumbai, Kolkata, and Bengaluru. This process eliminates the need for personal intervention.

Judges and attorneys using electronic case management tools (ECMTs): Judges and attorneys can now access ECMTs, which provide information on case status, orders, judgments, briefs, and other case materials, in order to improve judicial and court productivity. The eCourt Services mobile application and web site provide access to these ECMTs. The approximately 800-law ECMTs have been completely integrated into the India Code. A major accomplishment is the integration of ECMTs into a single digital platform. Judicial officers have access to and are using the JustIS app, which integrates eight ECMTs and is available in Android and iOS versions.

Compliance with Maximum Three Adjournment Rules: The High Courts of Delhi, Bombay, Calcutta, and Karnataka have issued advisory opinions to all Dedicated Commercial Courts, urging them to scrupulously abide by the maximum three adjournment rule and time standards in at least fifty percent of commercial matters. Trial, debate, and decision-making times have been decreased as a result of the maximum three adjournment rule's active enforcement. The CIS 3.2 program now incorporates the Maximum 3 Adjournment Rule, complete with a checkbox and color-band notifications that show the total number of adjournments.

Currently, the Commercial Courts within the jurisdiction of 13 High Courts have court-annexed mediation and arbitration centers linked to them. The ADR/mediation centers handle the ADR procedure in different High Courts. In India, the Legal Services Authority operates 574 mediation centers and 463 alternative dispute resolution centers in district court complexes.

The Dedicated Commercial Courts in Delhi and Mumbai are now offering e-filing. Recently, E Filing 3.0 was released. All Central Government Ministries and Departments engaged in commercial litigation are required to file electronically, and the states of Karnataka and Delhi have also enforced this requirement for all government commercial litigation. With e-filing, filing cases is now more convenient and environmentally sustainable, and attorneys can file from anywhere, even at home, around the clock, without having to appear in person at the court.

A software patch that retrieves a database of businesses registered with the Ministry of Corporate Affairs has been developed to enable the issuing of e-summons via emails or SMS alerts. In addition to eliminating the laborious process and practical difficulties associated with serving notice, e-Summons will save money and time, enhancing the general efficiency of these Courts. Effectively tested and operationalized in the commercial courts of Delhi and Mumbai. The corresponding High Courts in Bengaluru and Kolkata are likewise working to

operationalize e-summons in those respective Commercial Courts.

V. CONCLUSION

Judiciary pendency is a multifaceted issue that requires multifaceted approaches rather than a single strategy of focusing only on appointments. Government, the judiciary, the bar, and the general public must all work together and coordinate. Each is accountable for making sure the system functions and is a stakeholder. While the government has already started the process of decriminalizing in order to facilitate business dealings and clear the backlog in court cases, capacity building should go on concurrently with a shift in perspective toward compliance. Recently the Government of India (Ministry of Home Affairs) made a criminal law reforms. In that old colonial law was abolished and importance given to the New important aspects and Technological aspects. On the other hand Alternative dispute resolution is evolving in recent days for the speedy justice and cost effectively. All the court process are now-a-days are virtualized. The Judicial reforms role in needed for the present day situation.
