

JUDICIAL REFORMS- INDIAN SCENARIO

-Pooja Ratanani, Praveen Mishra And Aviral Jain*

Abstract

Judicial reform is the paramount need of the time because judiciary is the wing which is most vulnerable in present scenario. It is deemed to be vulnerable because it is prone to exploitation by the people for their own benefits. A strong and independent judiciary is cornerstone for the growth of India. A speedy and efficient system is very important for the weal of society but Indian judiciary by its nature has become very slow and inefficient. Besides, our laws and their interpretation has led to many enormous misery for the litigants and forced people to look for the other alternatives and judiciary today is more deserving of public confidence than ever before. The judiciary has a special role to play in the task of achieving socio-economic goals enshrined in the Constitution while maintain their aloofness and independence. Along with higher judiciary there is a strong requisite to have revamp in the lower judiciary as well as the staff of judiciary i.e. the bailiff or court officer. Although we have the concept of separation of power but it is not at all possible because judiciary can do nothing without the support of executive and legislature so it will be wrong to suggest judicial reform without the reforms in executive and legislature.

I JUDICIARY

Constitution of India got enforced on 26th January, 1950 and became the source of law in India and also the supreme law of India. ***The Indian Judiciary is a remnant of the legal system established by the British Raj and based on the English common law. It consists of customs, precedents, and legislature.*** Judicial system of India consists of Supreme Court, High Courts, District Courts or Subordinate Courts. ***Members of the Judiciary are independent of the legislature and the executive branch of government.***¹

* Pooja Ratanani, Praveen Mishra And Aviral Jain are students at Government New Law College, Indore.

1. Article 50, "Constitution of India".

- **Supreme Court of India**

Under the Constitution of India, the Supreme Court is the final court of appeal. Presently it has the Chief Justice of India, including 33 judges and other judges for advisory jurisdiction. Unsolved or still in dispute cases are leveled up to Supreme Court to retain justice. If the Supreme Court declares a law, it is binding on all other courts of all States and Union territories.² Supreme Court building has 17 courtrooms. The eligibility to become Supreme Court judge³:

1. He shall be citizen of India.
2. The judge in one High court or more, for at least 5 years or advocate in high court for at least 10 years.
3. A distinguished judge in opinion of President of India.

- **High Courts**

Under the Constitution of India, every state should regard to one high court. There are 25 High Courts in India. The number of total judges sanctioned in these High Courts are 1079 of which 771 are permanent and remaining 308 sanctioned for additional. As of 27 November 2019, 408 of the seats (39%) are vacant.⁴ Mumbai High Court is the oldest high court and Andhra Pradesh is the newest. Allahabad high court has the largest number of judges i.e. 160 while Sikkim high court has the smallest i.e. 3. The eligibility to become High Court judge⁵:

1. He shall be a citizen of India.
2. He shall have been held a judicial office in the territory of the India for ten years or
3. He shall have been an advocate of a High Court or High courts in succession for ten years.

- **District Courts**

Under the Constitution of India, District Courts or Subordinate Courts are subordinate to the High Court. District courts are established according to the population distribution of the District and State. It looks after the Civil and Criminal matters of the district. A law declared by the District Court is applicable

2. Article 141, "Constitution of India".

3. Article 124, "Constitution of India".

4. <https://doj.gov.in/appointment-of-judges/vacancy-positions>

5. Article 217, "Constitution of India".

to all Subordinate Courts since District Court is at higher hierarchical level. There are 16,119 judges in Subordinate Courts in 2016.⁶ Eligibility for judge in District Court is:

1. He shall be a citizen of India
2. An advocate shall have at least practice for 7 years.

- **Judge & Advocate**

Judge is the person who hears and settle the legal dispute in a final and public manner, and thus affirms the rule of law. With the time, this rule of law becomes consistent with due process of law. Judge must be able to research and process extensive length of documents and other case material, understand complex cases and possess a thorough understanding of the law and legal procedure, which requires excellent skills in logical reasoning, analysis and decision-making. Judges are required to have good moral character. According to data of Union Law Ministry, there are 19 judges per lakh people on an average.⁷ Overall there are 16,924 judges for 125 Crores i.e. 73,859 population per 1 judge.

Advocate has the everyday meaning of speaking out to help someone else. With the time, advocates became the integral part of judiciary. The working of judiciary is possible with the correlative act of judges and advocates. *A lawyer becomes advocate when he represent his client in a court room.* According to the data of Bar Council of India revealed in RTI, there are 1.3 million registered lawyers in India.⁸

II JUSTICE – SOCIO, ECONOMIC AND POLITICAL

The term 'Justice' in the Preamble embraces three distinct forms—social, economic and political, secured through various provisions of Fundamental rights and Directive Principles.⁹

Justice is an essential condition for the all-round development of the personality of an individual. As per our research, “justice is someone’s due” can be the definition of justice. Provisions have been made

6. <https://www.livemint.com/Politics/3B97SMGhseobYhZ6qpAYoN/How-many-judges-does-India-really-need.html>

7. <https://www.thehindubusinessline.com/news/india-has-19-judges-per-10-lakh-people-data/article25030009.ece>

8. <https://www.legallyindia.com/the-bench-and-the-bar/rti-reveals-number-of-lawyers-india-20130218-3448>

9. Lakshmikant M., “Indian Polity”, McGraw Hill Education Pvt. Ltd., Chennai, fifth edition, P. no. 105.

for the attainment of social, political and economic justice for Indian people after the political independence of the country in 1947.

‘Justice’ has and must continue to remain the first principle of social and political institutions. The notion of justice focuses on a sense of fairness and protection of rights guaranteed under various laws of the land. However, the speed and alacrity with which justice is done is important. Human rights of all law abiding citizens must be protected with timely dispensation of justice.¹⁰ The idea of Justice - social, political and economic has been taken from Russian Revolution (1917).¹¹

‘Social Justice’ denotes the equal treatment of all citizens without any social distinction based on caste, colour, race, religion, sex and so on.¹² Social justice dictates how well members should compare with one another within the basic structure of the society.¹³ It can be inferred that social justice means providing equal opportunities to everyone without any social inequality.

The concept of social justice emerged from an evolution of social norms, order, law and morality across the globe. Social justice is achieved when liberty, equality and fraternity become features of society. *According to Rousseau, men are equal by nature but the institution of private property has made them unequal and perpetuated inequalities.* Dr. Bhim Rao Ambedkar had expressed serious concerns about the implementation of the Constitutional provisions for social justice since Indian politics was dominated by socially powerful and economically dominant sections of society.¹⁴

In order to put an end to social inequalities following provisions have been made in Fundamental Rights and Directive Principle of State Policy. They are: Equality before law and equal protection of law¹⁵, Prohibition of Discrimination¹⁶, Equality of Opportunity in Public appointments¹⁷, Abolition of Titles¹⁸, Prohibition of Exploitation¹⁹, Promotion of the interests of Backward and Weaker Section of

10. <https://pib.gov.in/newsite/PrintRelease.aspx?relid=174232>

11. *ibid.*

12. *opcit.*

13. <https://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199669530.001.0001/acprof-9780199669530-chapter-2>

14. <https://www.forwardpress.in/2019/09/no-point-talking-ambedkar-if-social-justice-isnt-on-your-agenda/>

15. Article 14, “Constitution of India”.

16. Article 15, “Constitution of India”.

17. Article 16, “Constitution of India”.

18. Article 17, “Constitution of India”.

19. Article 23 and 24, “Constitution of India”.

Society²⁰, Protection of the interests of Minorities²¹, Special facilities for weaker sections of society and so on.

The Supreme Court of India, ruling in *D.S. Nakara v. Union of India*,²² (1983) held that the principal aim of a socialist state is to eliminate inequality in income, status and standard of life. Social justice has become the test for the validity of State actions.

‘Economic Justice’ denotes the non-discrimination between people on the basis of economic factors. It involves the elimination of glaring inequalities in wealth, income and property.²³ To attain economic justice in a state, there shall be the provisions of equal and appropriate opportunities for the earning of the livelihood and unequal distribution of wealth shall be abolished.

Under the general guidance of Planning Commission, Parliament and the State Legislatures have passed various acts purporting to implement the ideals of economic justice.²⁴ For the attainment of economic justice, following provisions have been made: Right to Property is made legal right²⁵, adequate means of livelihood²⁶, to check the concentration of wealth and means of production²⁷, equal pay for equal work²⁸, protection against economic exploitation²⁹, social security³⁰, participation of workers in the management of industries³¹ and so on.

*A combination of social justice and economic justice denotes what is known as “distributive justice”.*³²

‘Political Justice’ implies that all citizens should have equal political rights, equal access to all political offices and equal voice in the government.³³ In other words, political justice may mean the use of

20. Article 24, “Constitution of India”.

21. Article 29, “Constitution of India”.

22. 1983 AIR 130

23. Lakshmikanth M., “Indian Polity”, P.no. 105

24. <https://www.jstor.org/stable/43949915?seq=1>

25. Article 300A (44th Constitutional Amendment, 1978), “Constitution of India”.

26. Article 39 (a) and Article 41, “Constitution of India”.

27. Article 39 (b) & (c), “Constitution of India”.

28. Article 39 (d), “Constitution of India”.

29. Article 23 and 39 (e), “Constitution of India”.

30. Article 41, “Constitution of India”.

31. Article 43A (42nd Constitutional Amendment, 1976), “Constitution of India”.

32. Lakshmikanth M., “Indian Polity”, P.no. 106.

33. *ibid*.

political power in the State by the citizens equally. Subsequently it enables them to associate themselves with the administration and enjoy political freedom.

According to the Article 326 of Indian Constitution, every Indian citizen who is above the age of 18 years can exercise its right to vote to elect his representative without any kind of discrimination or limitations. In addition to this, following provisions have been made for the attainment of political justice through the operation of Fundamental Rights and Directive Principles of State Policy. These are: Right to hold Public office³⁴, Right to criticize the Government, Right to form Political Organizations, Right to Protest,³⁵ protection of rights³⁶ and so on.

III WHY INDIA NEED REFORMS?

Indians know from experience how badly the legal system is broken. Delays in resolving cases are legendary and have reached point where they prevent citizens from even exploring a legal solution to a problem. The judicial system fares badly when compared to access to other public institution and also when compare to judicial system of other Countries. According to World Bank's Ease of Doing Business Report, India ranks 168 out of 190 countries on "enforcement of contracts".³⁷ Using data from Mumbai it finds that it takes 1,445 days to resolve a dispute from the date of filing.

For criminal cases, if a case ever makes it to Court, the delays are much longer. This endless trial process is a significant deterrent to report crimes. Many victims are discouraged by the idea of putting their life on hold for 5 to 10 years at the minimum trying to get justice. Witnesses often change their testimony because it is difficult for the Indian state to keep witnesses safe over long periods as the perpetrators undergo trials. ***This is particularly true for violent crimes against women, children and minorities, who are explicitly and implicitly discouraged from reporting crimes.***

The problem is most severe at the end of the lowest courts. ***There are about 20 million pending cases in the Trial Courts, to be disposed by about 15,000 to 16,000 Trial Court judges. About***

34. Article 16, "Constitution of India".

35. Article 19, "Constitution of India".

36. Article 32, "Constitution of India".

37. World Bank's Ease of Doing Business Report, 2017.

30% of the cases take between 2 to 5 years and another 30% of the cases take over 5 years³⁸.

Additionally, there is a backlog that only has grown year on year. Justice delayed is justice denied and the most urgent and important reform area is to target judicial efficiency and eliminate judicial delay.

India has one of the world's largest number of under-trial prisoners. ***A little over 2\3^d of India's roughly 4.2 lakh prisoners await trials.*** They languish in jail not because they found guilty and sentenced to jail terms but because they are being prosecuted on charges *that are too severe to warrant bail, or simply because they are too poor and disempowered to obtain bail.* In several cases, young men were picked up on terror charges, put in jail and acquitted after a decade long stint in prison had stolen the best years of their lives from them, broken their health and broken their bonds with society. As happen in the case of ***Nambi Narayan***³⁹ who is a well-known scientist, leading India's effort to build a cryogenic rocket engine at ISRO, Thiruvananthapuram. He was falsely accused in 1994 for leaking technical details of the project, along with some others. He spent 50 days in jail, and said that he was tortured. ACBI⁴⁰ investigation cleared him in 1998. But his career was destroyed, his life was in shambles. The NHRC ordered the government of Kerala to pay him compensation of Rs. 1 Crore that did not happen.

IV CONTEMPORARY REFORMS

National Mission for Justice Delivery and Legal Reforms was set up with the twin objectives of increasing access by reducing delays and arrears in the system and enhancing accountability through structural changes and by setting performance standards and capacities. The Mission has been pursuing a coordinated approach for phased liquidation of arrears and pendency in judicial administration which, inter-alia, involves better infrastructure for courts including computerization, increase in manpower strength of judiciary, suggesting policy and legislative measures in the areas prone to excessive litigation, recommending re-engineering of court procedure for quick disposal of cases and emphasis on human resource development. On account of concerted efforts made by the stakeholders, the increasing trend of pendency of cases in the Supreme Court, High Courts and District & Subordinate Courts has been checked.

38. <https://economictimes.indiatimes.com/blogs/cursor/why-there-is-an-urgent-need-to-reform-indias-judicial-system/>

39. ***S. Nambi Narayan v. Siby Mathews & others.*** (CIVIL APPEAL NOS. 6637-6638 of 2018)

40. Association of Clinical Biochemist of India. (Estd. 1975)

The Budget Estimates for various Plan Schemes of Department of Justice viz. Infrastructure Facilities for Judiciary, e-Courts Mission Mode Project, and Strengthening of Access to Justice etc. for the current financial year (2015-16) are Rs. 806.65 crores.

The National Judicial Academy (NJA) has made changes in delivery of training programmes in the Academic Year 2015-16 to inculcate better use of technology among Judges in a stress free environment. A session on library reading and computer skills has been introduced for one hour each every day after technical sessions are over. Further, management and psychology disciplines to resolve disputes, conflicts, differences with peers and other stakeholders in the justice system have been introduced.

This information was given by Union Minister of Ministry of Law & Justice, Shri D. V. Sadananda Gowda in a written reply in Lok Sabha today.⁴¹

V COMPREHENSIVE REFORMS

With the reforms needed in Judiciary such as *speedy trial of cases, systematic running of courts, practical and effective reforms in consonance with basic features of the Constitution, faith in judicial system and change in appointment procedure of judges in higher judiciary*. To attain these ends certain common means need to be addressed:-

1. **Investigation Procedure** – For achieving the aim of speedy trial of cases, the police reforms are must i.e. in this case adequate police force to deal with cases. For any case to be disposed at perfect time, it is necessary that investigation procedure need to be completed with proper time frame and with complete ethical compliance. *The work of judiciary is to pronounce verdict but to reach that verdict police need to complete the investigation first with proper ethics*, then only judgment can be pronounced and this will help in ending the phrase “justice delayed justice denied.”⁴²

41. <https://pib.gov.in/newsite/printrelease.aspx?relid=133443>

42. An interview was being conducted of Mr. Rajeev Bhatjiwale (Retd. ADJ) who is presently Senior Advocate of M.P. High Court bench at Indore, 29/11/2019, 01.30 PM.

2. **Strictness in Adjournment** – There must be full utilization of court working hours. the judges must be punctual and lawyers must not be asking unnecessary adjournment i.e. strictness in proceeding. ⁴³
3. **Proper Implementation and lack of knowledge** – The laws of land are properly framed and they are sufficient enough to deal with any situation but proper implementation of any law is need of hour. Actually laws are there to protect the rights but the persons who are framing the charges are incompatible, not versed and trained with the laws. So the person is not able to get the advantage of the very law which is made to protect them.
4. **Proper training for advocates** – There should be a proper training sessions for the advocates who are willing to join the Bar. BCI⁴⁴ should make the arrangements to allot a senior advocate to a willing lawyer for the proper and practical training. After completion of training minimum for a year, that advocate will provide a certificate and report of training. Subsequently, there should be a practical exam for that lawyer related to filing and presenting of case. Later they are eligible to practice advocacy. During the interval of training, BCI should provide the adequate incentives as encouragement for these budding lawyers.
5. **No direct entry in higher Courts for Advocates** – There should be a procedure for appearing in the higher courts. No advocates shall be allowed to appear before higher courts unless they practiced in lower courts for at least 5 years. ⁴⁵
6. **Increase in Strength with quality** – Strength of Judges should be increased. The present limit of judges are not sufficient to impart justice because *“justice delayed is injustice”* said by William Penn. The strength of judges in present ***“Indian judiciary is 16,924 and the pending cases strength to approx. 44 lakhs in higher courts among which 8 lakhs are 10 years old. At present 37% of sanctioned judge-strength are vacant.”*** This statement is given by Law Minister Ravi Shankar Prasad in written reply in Rajya Sabha. ⁴⁶ This clearly indicates the need to increase the strength but the quality of judges should not be compromised for appointing the judges.

43. An interview was being conducted of Mr. K.N. Puntambekar who is Senior Advocate of M.P. High Court bench at Indore, 29/11/2019, 12.30 PM.

44. Bar Council of India. (Estd. 1961; Section 4 of Advocates Act, 1961)

45. An interview was being conducted of Mr. K.N. Puntambekar who is Senior Advocate of M.P. High Court bench at Indore, 29/11/2019, 12.30 PM.

46. <https://m.economictimes.com/news/politics-and-nation/out-of-43-lakh-cases-pending-in-high-courts-over-8-lakh-a-decade-old/articleshow/6974916.cms>

Further the guidelines have been given by Apex Court under the case of *Anil Rai v. State of Bihar*⁴⁷ regarding delivery of judgment within a reasonable time and same is suggested by Law Commission in its 220th Report.

7. **Psychological training and support** – Practical training no doubt is the inalienable part of journey to be judge. But presently there is strong need to provide psychological support and training for the judges. It is same as we provide physical training for the labors because they have to work physically. Similarly judges have to work more mentally than physically so such type of training shall be introduced. There should be proper and timely assessment of judges and if they fails in this assessment then they need to be send for psychological training.⁴⁸
8. **Staff Corruption** – Staff corruption is the hidden evil in judiciary because we considers the courts as judiciary but we forget about the court officials who plays an important role in providing justice. Judges should keep the strong check on court officials and policy of promotion should include the point of no corruption report from the colleagues.
9. **Moral Lecture** – Besides the external change in judiciary there is a need to have internal changes i.e. change in mentality, morals and ethics, of the subjects who are, and who are going to be, the part of judicial system.

VI CONCLUSION

The formation and functioning of the Courts in India need drastic changes so that the people of the Country may have fair and speedy justice along with the faith in the system. If we talk about delayed in justice then it is wrong to say that judiciary is solely responsible for the delay because there is dichotomy in judgment and justice. Judgment delivery is independent part of judiciary but justice is delivered with the cooperation of other organs. Judges have to be aware of the social changes in the task of achieving socio-economic justice for the people. For achieving the types of justice enshrined in preamble i.e. social, economic and political, local governance and self-rule is the simple solution because it will ensure the active participation by all the citizens and responsibility towards your instant neighbour should be

47. (2001) 7 SCC 318.

48. An interview was being conducted of Mr. Gagan Bajad who is Advocate of M.P. High Court bench at Indore, 29/11/2019, 3.30 PM.

prior duty of every person. This judicial reform is always witnessed as theoretical but it is the time to ensure it practically.