

## **MAJOR CHALLENGES TO THE INDIAN JUDICIARY: A CRITICAL ANALYSIS**

- T.N. Khachitri\*

### **ABSTRACT**

The Indian Constitution safeguards various rights to the people of India. Due to rising development and modernization, the crime rate and violation of rights has occurred on a large scale with large inflow of cases and heavy arrears. As a result, there has been a large backlog of cases especially in the subordinate Judiciary. It is notable that even the Judge-Docket ratio in India was 987 per Judge in 1999 which is very low in comparison with other developed nations. In addition to this, lack of judging quality and less number of judges are also responsible for backlog of cases. Other aspects are such as the appointments of judges in higher Judiciary through Supreme Court Collegium method which should be changed by including all the Judges of the Apex Court of the nation so that appointment process could be bettered. The cumbersome litigation process, corruption, lack of transparency in many issues and several other factors led to the rising need of judicial accountability which is alarming in the current era. Even, the problem of lack of infrastructure of the Indian Courts and lack of Information Technology should be considered so that people could achieve better facilities from the Court of Justice in which they have their fullest faith. Therefore, it is expedient to remedy the challenges of the Indian Judiciary so that the ultimate guardian of the Constitution could be healthy organ of the State.

### **I. INTRODUCTION**

The Constitution of India is a unique document made after considering various matters of national importance expressing the resolve of the nation to secure to every citizen the basic birthright of justice—social, economic and political – in the setting of our Sovereign, Secular, and Socialist Democracy. The Constitution of India safeguards various rights under part III as ‘Fundamental Rights’ and also has set out the guidelines for the welfare state in part IV as ‘Directive Principles of State Policy’.

Accordingly, the Rule of Law has to be followed as government has also to be based on the principles of law applicable to all equally. But, after the independence of the nation the government has been to secure the goals of a welfare state for which the administrative and executive authorities are been given wide ambit of powers of good governance. But, eventually this has resulted to arbitrariness in the functioning of the state for which the judicial organ comes to the rescue of the citizen of the nation by interpreting the constitution as the ultimate guardian of the fundamental and other rights of the citizens.

Therefore, in the current scenario it has become inevitable that the Indian Judiciary can meet the challenges of the time only if it is capable of entering the spirit of the Secular Socialist Republic interpreting the *corpus juris* of the country in the new light of radical humanist jurisprudence and innovating a new judicial technology of affirmative action and activist court methodology. For this, it is vital that the challenges of the judiciary itself have to be considered so that it can achieve the goals enshrined in the Constitution of India.

## **II. MAJOR CHALLENGES TO THE INDIAN JUDICIARY**

The major areas of consideration and challenges to the Indian judiciary has been such as of accountability and independence of judiciary, maintenance of rule of law, speedy justice and backlog of cases, judicial activism, infrastructure and information technology, etc. which if considered upon then could foster the betterment of the Indian judiciary as a healthy and active organ of the state. The various challenges are as follows:

### **Judicial Accountability and Independence**

In the post constitution era, judiciary has been exercising an active role but the method of judicial appointments and lack of judicial control has led to widespread defense to the judiciary from any disciplinary measure. The Indian higher judiciary is being also the most powerful judiciary of the

world with high social perception and the Constitution of India provides for independence of the judiciary<sup>1</sup> by balancing it with proper accountability measures.

Former Chief Justice of India Justice Y.K.Sabharwal in one of his speeches on Judicial Ethics has opined as: “The duties of a judge render him a person in public service. He is thus a public property. There cannot be therefore be anything about his life, which should remain hidden from public glare. His life must be an open book. It flows from this that the assets and liabilities of the Judge are known to one and all. His financial or property transactions should have no nexus with his official dealings. He must declare the same scrupulously and at no cost should engage himself with anyone connected with his official duty.”<sup>2</sup>

Therefore, no person, however high, is above the law. Accountability raises questions of quality of judgments, the accumulated arrears and consequent delay in judicial proceedings, inequalities and inequities in accessing justice, balance of power and good governance, uncertain in law arising out of conflicting opinions and the ineffectiveness of mechanisms to deal with judicial corruption.<sup>3</sup> The mechanism provided in our Constitution for removal of Supreme Court<sup>4</sup> and High Court<sup>5</sup> judges is the process of impeachment which requires proven misbehavior or proved incapacity. The process is such that the two thirds of the members of each House of Parliament may vote for the removal of the judge. Due to this, even it is very hard to prove the guilt of the judge in the Houses of Parliament as there are many chances for skipping off clean handedly from the impeachment procedure.

The Indian Constitutional provisions under Article 124(4) and 217(1)(b) are in consonance with same provisions of other democracies such as USA where even the judges are removed by the process of impeachment. Whereas in England, the judges are removable by the Crown on a joint address by both the Houses of Parliament.

---

\* T.N. Khachitri is a student at ABBS school of Law, Bangalore.

<sup>1</sup> H.M.Seervai, Constitutional Law of India, Universal Law Publishing Co. Pvt. Ltd., New Delhi, 4<sup>th</sup> Edition, 1991, p.147.

<sup>2</sup> Justice Y.K.Sabharwal, “Canons of Judicial Ethics”, M.C.Setalwad Memorial Lecture Series

<sup>3</sup> N.R. Madhava Menon, Rev. of Judges and and Judicial Accountability, The Hindu, 20<sup>th</sup> April, 2004.

<sup>4</sup> Article 124(4), Constitution of India: “A judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each house of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehavior or incapacity.”

<sup>5</sup> Article 217(1)(b), Constitution of India: “A judge may be removed from his office by the President in the manner provided in clause (4) of Article 124 for the removal of a Judge of a Supreme Court.”

---

On its Golden Jubilee in January, 2000; the then President of India K.R. Narayanan said: “It is not an exaggeration to say that the degree of respect and public confidence enjoyed by the Supreme Court is not matched by many other institutions in the Country.” On the same occasion, the then Chief Justice of India responded: “It is a matter of pride and satisfaction that the judiciary today enjoys credibility far greater than that enjoyed by the other two wings of the State.”

Hence, it could be established that for the maintenance of the independence of judiciary, the accountability shall also be maintained so that the Indian justice system could be successful by the judicial organ for a just and accountable society.

### **Appointment System of Judges**

There have been instances in the history of India where executive has many times tried to interfere with appointments of judges in higher judiciary effecting directly the independence of judiciary.

In *S.P.Gupta v. Union of India*<sup>6</sup>, popularly known as first judge case, on the appointment of judges opined that the Central Government has the powers to override the opinion given by the constitutional functionaries until it isn't mala fide. Justice Bhagwati opined that the appointment of judges shall be left to Executive which is responsible to the Legislature which is in turn accountable to the people who are consumers of justice. Thus, the word ‘consultation’ in Article 124(2)<sup>7</sup> and Article 217(1)<sup>8</sup> wasn't interpreted as ‘concurrence’.

---

<sup>6</sup> AIR (1982) SC 149.

<sup>7</sup> Article 124(2) of Constitution of India: “Every judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of judges of the Supreme Court and of the High Courts in the states as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years.” Provided in case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted.

<sup>8</sup> Article 217(1) of Constitution of India: “Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after the consultation with the Chief Justice of India, Governor of the State, and in case of appointment of a judge other than the Chief Justice, the Chief Justice of the High Court.”

---

The Supreme Court in *Supreme Court Advocates on Record Association v. Union of India*<sup>9</sup>, constituted a larger bench of 9 judges to check the correctness of the first judge case. The Court held by majority overruling the first judge case by expressing that the Chief Justice of India was best equipped to know the assess the worth of a candidate judge with no political influence. This made the presidential consultation only formal and the opinion of the Chief Justice of India was binding on the president. The opinion of CJI was to be taken after taking the views of two senior colleagues who are required to be consulted by the CJI.

Renowned legal scholar Mr. Fali S. Nariman appeared in the above case and won but he contended: “I don’t see what is so special about the first five judges of the Supreme Court. They are only the first five in seniority of appointment – not necessarily in superiority of wisdom or competence. I see no reason why all the judges in the highest court should not be consulted when a proposal is made for appointment of a high court judge (or an eminent advocate) to be a judge of the Supreme Court. I would suggest that the closed-circuit network of five judges should be disbanded.”

In the third judge case, the area of consultation of senior judges of the Supreme Court was still left upto some extent. So, the Government made a reference under Article 143(1) seeking the opinion of the Supreme Court and nine questions of law were formulated. The Supreme Court finally decided that Chief Justice must make a recommendation to appoint the Judge of the Supreme Court in consultation with the four senior most puisne judges of the Supreme Court and for the appointment to the High Court, recommendation must be in consultation with two senior most puisne judges of the Supreme Court. Hence, the consensus of the Collegium is required for the higher court appointments.

The 80<sup>th</sup> Report of Law Commission of India and 121<sup>st</sup> Report of Law Commission of India has also made recommendations that a ‘national Judicial Commission’ shall be made consisting of high judicial members and other non judicial members which could recommend for the appointments of judges of High Court and Supreme Court. Though, the Bill lapsed in the Parliament in 1990 due to which the Law Commission report could not be executed.

---

<sup>9</sup> AIR (1994) SC 268.

**Backlog of Cases**

As society develops, with trade and commerce subsequently the complexity of governance rise which in turn increases legal complexities leading to citizens knocking the doors of justice. The political, economic and social forces at national level require new dimensions for novel rights and agreements. Therefore, insufficient resources and traditional methods and various other factors lead to backlog of cases steadily.

The total pendency in Supreme Court as on 1<sup>st</sup> November, 2008 was forty nine thousand and sixty three cases (49,263 cases).<sup>10</sup> As regards to the pendency of High Courts, the total backlog of cases on civil side as on 30<sup>th</sup> September 2008 was thirty lakh eighty one thousand and fifty three. (30, 81,053) and on criminal side was seven lakh fifty four thousand six hundred and fifty four. (7, 54,654). Thus, the total comes to thirty eight lakh thirty five thousand seven hundred and seven cases. (38, 35,707). With regard to the subordinate courts of India, as on 30<sup>th</sup> September 2008 seventy four lakh, ninety two thousand five hundred and sixty one (74, 92,561) on civil side whereas on the criminal side was one crore eighty eight lakh ninety seven thousand two hundred and sixty nine (1, 88, 97,269) criminal cases were pending.<sup>11</sup>

Studies by bodies such as Law Commission of India in 120<sup>th</sup> Report on 'Manpower planning in the judiciary' shows that the size of our judicial system has not kept with massive rise in population. Also in *All India Judges Association v. Union of India*<sup>12</sup>, the Apex Court has given the suggestion for a five-fold expansion required in the Indian Judicial System.

Other measures such as establishment of fast track courts<sup>13</sup>, Special Courts for particular matters, clubbing of cases on similar points, setting up of Evening Courts and Mobile Courts, promotion of Alternation Dispute Resolution methods, setting of legal clinics and legal services authorities, promotion of plea bargaining for speedy disposals, setting up of time limits for case disposal, active participation of the Bar to assist Judiciary, etc can be useful to deal strongly with backlogs of cases.

---

<sup>10</sup> Law Day function organized by the Supreme Court Bar Association (SCBA) New Delhi (November 26, 2008) Address by Justice KG Balakrishnan, Chief Justice of India.

<sup>11</sup> Research Report on 'Blueprint for reducing the backlog of cases in subordinate courts of the state of Gujarat.' Prepared by Mr. Bimal N Patel (Director, Gujarat national law University Gandhinagar) and Ravindra Kumar Singh (Assistant Professor of Law, Gujarat National Law University, Gandhinagar)

<sup>12</sup> (2002) 4 SCC 247.

<sup>13</sup> The Law Commission of India recommendation in Report No: 230 for setting up of Fast Track Courts for speedy and fair trial.

## **Infrastructure**

The infrastructure of the Indian courts is alarming and need to be updated and developed with the changing scenario as considering the court buildings, library and allied amenities, court rooms, case management system, and use of information technology. The Infrastructure forms the vital place so it should be such that fosters the dignity of both the process and the people who are in the courts.

Information Technology shall become an effective tool for case management, court administration, research work, etc. It can be such that could be accessed by the public to check their case position saving the time of litigants, advocates and court officials at large. Even Electronic courts could also be established with digital techniques for trial proceeding for people in far flung areas through video-conferencing. In addition to this, computerization of court records and court proceedings could make the judicial system speedier.

## **Judicial Activism**

Judicial Activism connotes a situation where judiciary departs from its role of a conventional adjudicator and acts in an innovative manner by entering upon policy issues of public importance. It has become arm of social revolution.

But, in the meanwhile it is necessary to check that the separation of power<sup>14</sup> which forms the basic structure of the constitution of India is maintained in this process. It is also important to check that the superior courts are not lodged with unanticipated increase of workload with various petitions on policy decisions and possible criticism of public. This may also lead to friction and confrontation of power with fellow organs of the Government. Therefore, it is necessary that the Supreme Court and the High Court must exercise its jurisdiction sparingly for vital matters only by not interfering with trivial and unimportant matters so that the judicial activism may not lead to judicial supremacy.

---

<sup>14</sup> Article 50 of Constitution of India: "The state shall take steps to separate judiciary from the executive in the public services of the state."

### **III. CONCLUSION**

The Indian Judicial system forms the backbone of the social revolution of India and therefore, it is expedient that it shall cherish the Constitution of India with flexible strategy.

The challenges are immense for judiciary such as of accountability, activism, backlog of cases, infrastructure, appointments of judges, etc but there is a salubrious solution of various ways to combat it through novel dimensions of 21<sup>st</sup> Century which could be fruitful in various areas. This could directly achieve the goals enshrined in the preamble of the Constitution and necessary amendments could be inserted for light change in the system so that the People of India could achieve peace and prosperity in true sense of true democracy.