

REFORM IN INDIAN JUDICIAL SYSTEM

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INTRODUCTION

‘JUSTICE DELAYED IS JUSTICE DENIED’

William Ewart Gladstone

It is one of the most quoted lines in the context of Indian Judicial System.

The Judiciary of India is an independent body. The judiciary system of India is stratified into various levels. It takes care of maintenance of law and order in the country along with solving problems related to civil and criminal offences. But day by day, due its delayed process losing faith of people to whom it is obliged to provide justice. With increase in rate of pending cases and declination of pronouncement of justice, society considers Justice delayed is Justice denied. This phrase implies that if justice is not carried out really justice because there was a period of time when there was a lack of justice.

OBJECTIVES

To study about the Indian Judiciary

To know the problems faced by the Indian judicial system

To suggest reformation of Indian Judicial system

RESEARCH METHODOLOGY

This research is descriptive and analytical in nature. Secondary and electronic resources have been largely used to gather information and data about the topic. Books, Case laws, Websites and

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Articles have also been referred. Footnotes have been provided wherever necessary to acknowledge the same.

INDIAN JUDICIARY

Indian Judiciary is last hope for citizens of India. Unfortunately the system of judiciary in India is based on the Evidences and facts, not conscience and morals. The preamble to the Indian Constitution¹ interalia, declares that “We the people of India.....” in that the founding fathers of our constitution placed “Justice” at the highest pedestal than other features. But six decades after independence, we have endless laws but not enough justice. In between seeking Justice and deliverance of Justice, it takes many years². For example, in 2014, the Delhi High Court granted divorce to an 85 year old man after a legal battle spanning 32 years that ruined all hopes of resuming married life. It is mainly because of long delays, reluctance of all judges to give the judgement and inevitable adjournments. For at least 20 years, successive governments have promised to reform and modernise Courts so that they dispense justice more effectively. So far, none of the attempts at reform has succeeded. Still now the Courts are slow, bureaucratic and hugely frustrating.

PROBLEMS IN JUDICIAL SYSTEM

Firstly, there are too many lacunas and gaps in Indian laws and acts resulting in filing of several frivolous cases, thus, increasing the number of litigations. Secondly, the legal proceedings are themselves, so complicated and ill-defined that the rate of clearing of cases is abysmally slow. In a case of 50 hearings, on an average, there would be 10-15 adjournments on inconsequential grounds. Then, the judge would be absent for another 10 of those hearings. Thus, the number of effective hearings in a case is quite low. Also, the gap between the dates of hearing extends to several months increasing the pendency of cases. People who have attended a criminal court, either as a witness or a defendant spend hours waiting, only for cases to be adjourned. Reform of the court system is an urgent priority³. The Government needs to take steps to modernise it so as to diminish delay and increase efficiency. But if this reform is to be successful, it has to include much more than just changing the rules of civil procedure.

¹ Sharma. S. P. (1991), “Indian Legal System”, Mittal Publications, New Delhi, First Edition

² Verma. S. P. (2004), “Indian Judicial System – Need and Directions of Reforms”, Kanishka Publishers Distributors

³ Arnab Kumar, Bibek Debroy, “Judicial Reforms in India : Issues and Aspects”

Some of the problems of judicial system explained below with statistics.

DELAY IN JUSTICE

The problem of delay and the accumulation of huge arrears of cases in lower Courts, High Courts and Supreme Court have assumed serious dimensions and invited a lot of criticism of the entire legal system. The causes of this delay are many⁴. There are clever lawyers take undue advantage and seek adjournments on personal grounds, for the benefit of their clients. Because of these adjournments, the justice was delayed to those who seek justice. This many flaws in the legal system give rise to unlimited frivolous suits, the purpose being not to seek redress but to cause harassment to the opponent. This is one of the most important causes of the accumulation of arrears.

BACKLOGS OF PENDING CASES

By all accounts, the judicial system is painfully slow. One of the primary issues with the Indian Judicial system is pendency of cases. The data of backlogs of pending cases are released by the Law Ministry that at the end of 2016⁵, the number of pending cases in apex court is 59468. Of these pending matters, about four-fifths are civil in nature and the rest are criminal. Among that only 84 criminal and 1132 civil cases are pending before the apex court for more than 10 years. The number of pending cases in High Courts at the end of 2015 is 4005704⁶ and the number of cases pending in the District and Subordinate Courts has been around 2.7 crore⁷ for the past two years. The reason for such enormous number of pending litigations are increasing number of appeals, frequent adjournments, indiscriminate use of writ jurisdiction etc.

VACANCIES

Presently, for dealing with the pending cases there must be required number of judges present to entertain the matter laid before them. But in judicial system there is number of vacancies existing which ultimately affects the efficiency of rendering justice. According to apex court's own

⁴ Upendra Baxi, "The crisis of the Indian Legal System", Vikas Publication

⁵ Report by Press Information Bureau, Government of India, Ministry of Law and Justice

⁶ <http://thecompanion.in/tli-pendency-in-indian-courts/>

⁷ Statistics released by The Hindu Express, New Delhi, 2017

publication, as of 2016, there were 2 vacancies in the Supreme Court and 432 vacancies in the High Courts.

LACK OF TRANSPARENCY

Another problem facing the Indian Judicial system is the Lack of transparency⁸. It is seen that the Right to Information Act is totally out of the ambit of the legal system. Thus, in the functioning of the judiciary, the substantial issues like the quality of justice and accountability are not known properly.

HARDSHIPS OF UNDERTRAILS

In Indian jails, most of the prisoners are undertrails, who are confined to the jails till their case comes to a definite conclusion. In most of the cases, they end up spending more time in the jail than the actual term that might have been awarded to them⁹. Plus, the expenses and pain and agony of themselves in courts was worse than serving the actual sentence.

NO INTERACTION

It is very essential that the judiciary of any country should be an integral part of the society and its interactions with society must be regular and relevant. However in Indian judicial system has no connection with the society.

LACK OF EXPERTISE

Judiciary lacks expertise in dealing with new age problems like Corp Tax, Cyber Laws, International Treaties, Climate change and its conservative attitude is exploited and corrupt go scot free¹⁰.

OTHER PROBLEMS

The other problems are Lack of modern infrastructure, Lack of technological penetration in judiciary, corruption and many vacations for the Courts.

⁸ Vikas Gandhi. H. (2010), "Judicial Approach in Criminal Justice System: An experience of India", Readsworthy publidher

⁹ Fali Nariman. S. (2017), India's Legal System: Can it be saved

¹⁰ <http://www.insightsonindia.com/2015/06/17/3-critically-analyse-the-problems-of-indias-judiciary-and-measures-taken-to-address-them-by-the-government-and-the-supreme-court/>

REMEDIES

As a profession, the first thing we need to do is recognize that we must change. If we do not, the civil justice system will continue to erode--probably at an increasing rate. It is up to us to build a justice system that truly offers a just, speed, and inexpensive resolution for every case. The second step is to identify solutions¹¹. One part of the solution is rules change and the rest lies in implementation and culture change. The judge population ratio has been used for providing quantity of judges required to deal the cases. In the view of the Government, the raising strength of judges must be set on the basis of the pendency cases and average rate of disposal, not simply on basis of population, which is absurd and without any principle of foresightedness. Law needs to be civil and collegial profession first and foremost. Lawyers have an independent duty to work within the system in a way that protects procedural fairness and justice. Lawyers need to develop deep understandings of their cases. The courts need to be accessible, relevant, available to serve, and responsible for providing procedural fairness in every case.

CONCLUSION

In view of the aforesaid reformation, fast truck courts must be established, Lok Adalats should work well with the objective to dispose the matters outside the courts, special tribunals should be established and to set up Industry wise tribunals to hear appeals against orders passed by the regulators. Many committees and boards set up by the Governments from time to time and had come up with the approach of reformations and solutions of the rendering justice effectively. However, the implementation of these recommendations have not been considered and yet to be in practice. Supreme Court by its decision confirmed that the speedy trial is deemed as fundamental right included in Article 21 of the constitution of India. In spite of this, the condition is static and unchanged. Now the time has arrived which demands to establish autonomous bodies at Centre and State level that not concern only to indicate the shortcoming but it also have the potential to rectify the same with time remaining. This also requires the combined efforts made by legislature, executive and judiciary and considers it as a unit problem, not to judiciary alone.

¹¹ Christine Gray. D. (1990),” Judicial Remedies in International Law”, Clarendon Press