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Evolution Problem and Challenges in the Indian Judiciary

Pratibha Murti^a

^aFaculty of Law, Delhi University, Delhi, India

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Indian Judiciary attracts the attention of the whole country every year for various reasons including but not limited to the appointment of Judges, collegiums system, backlog and pendency of cases, etc. Till recently, the appointment of Chief Justice of India D.Y. Chandrachud created a lot of controversies. The root cause of these controversies is the problems and shortcomings engrained in Indian Judiciary right from its evolution till the present time. Problems of the Indian Judiciary are hollowing out this institution and need proper attention. It is high time to address these problems to continue to uphold the faith of people in the Justice delivery system. In the past, there have been many attempts to suggest and resolve these problems lingering in the Indian Judiciary. However, little has been achieved in this aspect. In my research paper, I have attempted to address these problems right from their roots and analyzed them from different angles. I have also attempted to suggest a solution wherever possible.

Keywords: *judiciary, evolution, controversies, institution, justice delivery system.*

INTRODUCTION

Indian Judicial system is the 'epitome of Justice'. It is a place where 'troubled and tormented people, come to seek justice against the wrong done to them or against society as a whole. Indian Judicial system is among the oldest and most venerated system of our country. The provisions

regarding Judiciary are mentioned in Constitution in part V, chapter IV,¹ titled 'The Union Judiciary Indian' and part VI, chapter VI² titled 'Subordinate court'. Indian constitution provided for an Independent and Integrated Judicial system and provided all sorts of power important for an impartial and fair justice delivery system. It is important to note that the Indian judiciary is highly influenced by the British judicial system due to historical factors yet it has retained its independent identity among the most powerful Judicial Systems of the world.

EVOLUTION

Ancient Period

It is generally believed that the Indian Judicial system came into existence after the coming of the British raj in India, it may be true but not a complete fact. The proper Indian Judicial system traces its origin to ancient times around 5000 years from now. There was an implied social contract between the King and the people that if King fails to protect his society, will be sanctioned with punishment. Since ancient times during the reign of various kingdoms like Ashoka, Chandra Gupta Maurya, and Kanishka, etc, there existed an established rule of civil, criminal, and revenue jurisdiction.³

Not even that, if we take the example of the Mauryan empire, Kautilya, the prime minister of the Mauryan empire has stated that the whole kingdom was divided into territorial units under the territorial jurisdiction of various courts just like we have at present tehsil, District court, High court and Supreme Court(King's court). Brihaspati Smriti also mentions the family court which was considered the lowest court in the hierarchy of courts, King's court was considered the highest court of appeal, there was also mention of circuit courts. Discovery of truth, the impartiality of Judges, and integrity were some of the basic features of the ancient Judicial System⁴.

¹ Constitution of India 1950, part V, chapter IV

² Constitution of India 1950, part VI, chapter VI

³ Justice SS Dhavan, 'Indian Judicial System - A Historical Survey' (*High Court Allahabad*)

<https://www.allahabadhighcourt.in/event/TheIndianJudicialSystem_SSDhavan.pdf> accessed 02 October 2022

⁴ *Ibid*

Medieval Period

If we glance at the medieval period, the Judicial System though remained intact, Judicial Administration became weak. The reason may be because of the instability of Mughal rulers. Religious verses of the Quran and Sharia law became the rule book for the dispensation of Justice. Though the Judicial system did not flourish much in the Medieval Period, we see the development of important commentaries on Hindu Family Law like Mitakshara and Sukarneeti sar.⁵

Modern Period

The deplorable condition of the Indian Judicial system of the Medieval Period uplifted after the advent of British rule in India. Though the real motive behind the restructuring and uplifting of the Indian Judicial system was the British's hardcore idea to benefit their commercial interest, to rule over Indians, and to keep them subservient under British laws, unintentionally they had introduced such changes in the Judicial system which ultimately impacted India in both good and bad ways.

Let us glance at some of the important changes introduced in the Judicial System of British India. After winning the battle of Plassey and obtaining the Diwani of Bengal, Bihar, and Orissa from Mughal emperor Shah Alam II, the East India Company became defacto ruler of territories they obtained, as now they have both civil and physical authority. To improve the perverted state of the Judicial System, Warren Hasting introduced two schemes – one was the introduction of a subordinate court (both civil and criminal nature) at the district level for each province and kept them under the court of appeal, another was sanctioning of the use of Hindu and Mohammedan law for their respective subjects.⁶

The Charter Act of 1774 had been passed to establish Supreme Court having Jurisdiction on all subjects whether Indian or English. But the main problem was all the Judges were imported from England and were completely aloof from native people and culture, this alarmed

⁵ *Ibid*

⁶ B Lindsay, 'British Justice in India' (1936) 1(2) University of Toronto Press

inhabitants. To create a buffer zone between the district court and the Supreme Court, high courts were also created at the provincial level after 1861.⁷

If we analyze the positive impact of British rule on the Indian Judicial system, we find that the British introduced Universal principles of Justice, equity, and good conscience, a common law system, rule of law. Codified law of Indian Penal code 1860, Criminal Procedure code 1861, and Civil Procedure Code 1859 by Macaulay Law commission replaced biased religious and personal laws. On the negative side, we have inherited such flaws from the British restructuring of the Indian Judicial System such that these flaws persist in our Judicial System even after 75 years of India's Independence. Some I count here rest I will be discussing as we proceed further. Judicial System became more complicated for the common people to understand, Justice became more expensive for common people as they could not afford to reach the Highest Court of appeal, it can be manipulated by those having power and influence, corruption in Judiciary, dragged litigation procedure which resulted in overburdened courts. No participation of society in the dispensation of Justice.

PROBLEMS AND CHALLENGES IN THE INDIAN JUDICIAL SYSTEM

I have already discussed the inherited problems, under this heading I will be discussing the problems which are added to the Indian Judicial System during 75 years of India's Independence and the challenges in tackling these problems.

PROBLEM OF SEPARATION OF POWER

Separation of power between the executive and Judiciary is not a new contentious issue, this issue was widespread during the British era also when the Indian national congress for the first time demanded separation of judiciary from the executive⁸. But the point of lamentation here is that even after 75 years of independence we have not been able to successfully implement this provision, though the constitution of India under article 50 specifically provides for this

⁷ *Ibid*

⁸ B.L. Garg, 'Problems of separation of Judiciary in India' (1964) 25(3/4) Indian Political Science Association

provision. Executive interference in Judiciary might not be explicitly seen at the central level but the condition is miserable at the state level.⁹

At the central level, we find indirect interference in Judiciary for example when legislatures try to override the decision of the Supreme court through constitutional amendments. In *I.C. Golaknath and Ors. v State of Punjab and Anr.*,¹⁰ the Supreme Court ruled that parliament cannot amend fundamental rights, parliament reacted by enacting the 24th and 25th constitutional amendment acts (1971) giving itself the authority to amend any of fundamental rights.

At the state level interference in Judiciary has been attempted by changing the service conditions of high court judges, and favouritism in the promotion of judges. There have been many instances when the executive directed subordinate judicial officers to close the case against influential accused. We also find trends among different states concerning the separation of power for example in Madras there is a proper separation of power between the Executive and judiciary as Judicial officers were kept under complete control of the High court while in UP Judicial officers were not under complete control of high court rather it is executive who exercises influence over them.¹¹

CORRUPTION IN JUDICIARY

Corruption in Judiciary can take many forms and all forms include the exchange of money to achieve targeted ends. Money is exchanged under the table to buy Judgements in favour or delay or accelerate the judicial process or admit or deny pieces of evidence and appeals. This practice is common especially in lower courts at the district level. It is not only Judges who are all alone guilty of corrupt practices, it includes almost the whole staff from peons to the highest Judicial Officer in the court. Now the question arises as to whom are we held guilty for these

⁹ *Ibid*

¹⁰ *IC Golaknath & Ors v State of Punjab & Anr* [1967] SCR (2) 762

¹¹ BL Garg (n 8)

corrupt practices? The greed to become richer is a common human desire and Judges are also human but does that mean Justice is compromised?

This vicious circle cannot be addressed by Judiciary alone this needs the attention of legislatures. Increasing the salaries and service conditions of Judicial Staff may be one solution but this alone will not address the problem as a whole. Just as we have a vigilance cell in every department of government similarly there should be a vigilance cell for the Judicial Department also, in this case, it must also be ensured that the vigilance cell does not become a sword in the hand executive against the Judicial Officers. To resolve this problem members of the vigilance cell must contain both Judicial and executive members. Appointing authority must also ensure that Judicial Officers do not deviate from their oath to abide by the constitution and to discharge their duty faithfully. There must be regular training of Judicial Officers on ethical codes of conduct. Digitalising Judiciary is also another solution that I will be discussing as we proceed further.

INFRASTRUCTURE AND STAFF CRUNCH

The issue of infrastructure and staff crunch especially in lower courts has been pointed out several times by different chief Justices of the Supreme Court and High Courts. This is a serious problem that needs attention for the efficient delivery of Justice. The issue of the infrastructure crunch includes not only the creation of new courts and tribunals but also the renovation of the existing ones. But the question is who will take this responsibility? It is not a good idea to give this responsibility to states because their records are not satisfactory in this regard. According to a report, Rs. 981.98 Crore were sanctioned to States and Union Territories for court infrastructure development, it was only Rs. 84.9 Crore utilized by States for this purpose.¹²

Recently, Justice N.V Ramana proposed the creation of the National Judicial Infrastructure Authority of India (NJIAI), to take this responsibility, now it is high time to implement such a

¹² Soibam Rocky Singh, 'Judicial Infrastructure a neglected case' (*The Hindu*, 6 December 2022) <<https://www.thehindu.com/news/cities/Delhi/judicial-infrastructure-a-neglected-case/article37859686.ece>> accessed 13 November 2022

proposal¹³. The issue of staff crunch must also be addressed by looking at the increasing pool of litigation. Supreme Court in *All India Judges' Association Vs Union of India and others*, AIR1993, directed to increase the number of Judges in a phased manner.

According to a report, as of November 2021, Supreme Court had one post vacant out of sanctioned 34 posts, High Courts have 406 vacancies out of sanctioned 1,098 posts, and subordinate courts had 5,146 vacant posts out of sanctioned 24,018 posts.¹⁴ Filling these vacant posts would be like 'killing two birds with one stone, Firstly, it will address the issues of pending and backlog cases.¹⁵ Secondly, it will reduce the workload per Judge, hence, Judgement would be delivered more efficiently than ever.¹⁶

OFFICE OF PUBLIC PROSECUTOR

Discussion on problems in Judiciary would be incomplete without a specific address to problems of the office of the Public Prosecutor. The power of the Public Prosecutor to withdraw from prosecution under Section 321 of CrPC¹⁷, from time to time becomes a heated topic of discussion. In *Sheo Nandan Paswan v State of Bihar and Ors.*,¹⁸ Supreme Court held that to apply Section 321, two conditions must be satisfied firstly, the Public Prosecutor in charge of the case should apply for withdrawal of prosecution only after the application of his mind not under any political pressure. Secondly, the application of withdrawal must be made only after the consent of the court in the interest of public Justice and public peace. The problem arises when in high-profile cases, public prosecutors are forced by political parties to withdraw from Prosecution in violation of rules of section 321 CrPC.

¹³ *Ibid*

¹⁴ Omir Kumar Shubham Dutt, 'Understanding Vacancies in Indian Judiciary' (*PRS Legislative Research*, 18 November 2021) <<https://prsindia.org/theprsblog/understanding-vacancies-in-the-indian-judiciary>> accessed 13 November 2022

¹⁵ *Ibid*

¹⁶ *Ibid*

¹⁷ Criminal Procedure Code 1861

¹⁸ *Sheo Nandan Paswan v State of Bihar & Ors* [1986] SCR (1)702

In *Shri Abdul Karim v The State of Karnataka and Ors.*¹⁹ the public prosecutor was directed by the government of Karnataka and Tamil Nadu to withdraw from prosecution against the accused criminal gang. This practice raises the question of the independent working of the office of the public prosecutor with any fear or favour. This problem needs to be addressed and the office of the public prosecutor must be secured from arbitrary interference.

PROBLEM OF COLLEGIUM SYSTEM

The issue with the Collegium system is not that it is the sole body appointing the judges of higher Judiciary but the problem is there is a lack of representation of people which makes it an undemocratic, unconstitutional, and completely 'elite body' of 'like-minded' people only, who remains aloof of the desire or even say of such a huge population. Counterparts may argue that it is so to protect the independence of the judiciary but the question is when constitutional bodies of government are accountable to people why can't Judicial Bodies? Who knows what even members of the Judiciary like lawyers and advocates want? Their voices may be hushed up because there is no one to listen to them, collegiums members were free to exercise nepotism and favouritism. It is a historical fact that a lack of democracy invites tyranny. We must promote Judicial Democracy instead of Judicial Tyranny. Therefore, the collegium system must also be made democratic. There is a need to devise an impartial, fair, and democratic method of appointing judges of higher Judiciary.

BACKLOG AND PENDENCY OF CASES

The issue of backlog cases in the Indian Judiciary negatively affects individuals, the economy, and society as a whole. A total of 4.7 Crore cases are pending in all Indian courts as of May 2022. Of 4.7 Crore cases, 87.4% of cases are pending alone in subordinate courts hence lower courts account for the highest share of pending cases.²⁰ The National Judicial Data grid shows a 27% increase in pending cases in three years. Spike in pending cases resulted in a spike in under-trial

¹⁹ *Shri Abdul Karim v State of Karnataka & Ors* [2000] SC

²⁰ *Ibid*

prisoners²¹. According to the National Crime Record Bureau (NCRB), of a total of 1,300 prisoners logged in jail, 76% are under-trial prisoners. These data do not depict a good picture of the Indian Judicial System. These issues must be resolved by taking appropriate measures like addressing issues of infrastructure crunch, staff crunch, vacancy of Judges and establishing fast track courts, etc.²²

SAFETY AND SECURITY OF JUDICIAL OFFICERS AND LAWYERS

The safety and security of Judges are as important as the independence of the Judiciary. If Judges won't feel secure and remains in constant fear of hurt, it is unlikely to expect fair judgments from them. There are many instances in the past which speak of dangers to Judicial Officers. The murder of the Additional District Judge of Jharkhand, stone pelting at the house of the District Judge in Ramanathapuram, and murder of the Judicial Officer's wife and his by his security guard, raises concern and it is a threat to Justice Delivery System itself. State executives must ensure the tight security of Judicial Officers not only in courtrooms but also at their place of residence and visits.

DIGITAL INDIA AND ARCHAIC JUDICIARY

Though digitizing Judiciary is an integral part of Digital India but the pace of Digital transformation in the Judiciary is much slacking than the Executive Branch of Government. This is not to say that the Judicial Branch is reluctant to digitization but the point is not much attention had been given to this aspect in the past decades. While every town and village got connected through the internet with facilities like digital Aadhar, digital transaction, digital locker, e-education, e-health, e-shopping, etc., the such pace of advancement is hardly seen in the Judicial branch.

Only some digital transformations were seen in the Judicial branch which includes the launch of AI portals SUPACE' and 'SUVAS', e-courts, 'The National Judicial Data Grid' (NJDG), and the

²¹ Sumeda, 'Explained | The clogged state of Indian Judiciary' (*The Hindu*, 13 May 2022) <<https://www.thehindu.com/news/national/indian-judiciary-pendency-data-courts-statistics-explain-judges-ramana-chief-justiceundertrials/article65378182.ece>> accessed 13 November 2022

²² *Ibid*

formation of the Supreme court AI community recently in 2019. But a lot of work needs to be done as there is a huge potential in digitizing the Judicial Branch. We must also keep in mind that digital courts cannot completely replace actual courts and also there is a constant fear of hacking and data privacy. Though not all types of disputes can be resolved in virtual court yet at least those cases must be brought in the ambit of Digital court which can be resolved in virtual hearings for example cases related to domestic violence, matrimonial issues, 138 Negotiable Instruments, and motor accident cases, etc.

CONCLUSION

Just we as a human can improve by correcting our mistakes similarly, any Nation or as matter of fact any institution can perform better by addressing their problems and shortcomings. Judicial institutions are living entities that need to continue to adapt themselves to changing needs of society, it is only then they will be able to retain the belief of their population on whom they have to rule and administer Justice. Independence of the Judiciary is unconditional for the fair administration of Justice but it does not mean that it becomes a shackle holding the Judicial System from changing the needs of society.