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FUNCTION OF INDIAN JUDICIARY- AN OVERVIEW*

ABSTRACT

Independence and impartiality of judiciary is sine qua non in a democratic country. It is said that the excellence of a country's judiciary to a measure of excellence of its Government. In a biased judiciary the ray of justice will disappear and the Government will function in a tyrannical manner. It is very much essential that justice should not be perceived to have been done but it should have been done. The court must give its ruling is based on law. In a welfare state though judiciary is an integral part of good governance is not free from moral degradation. There is continuing delayed Justice due to various reasons. The pending position of cases is in an alarming condition. The ratio between people and judges, adjournment of proceedings, insufficient staff, non-availability of auxiliary staff, frequent amendment of law availing a large number of holidays by the judiciary staff and judge etc. contributes a lot for accumulation of cases day by day. So unless and until remedial steps are not taken, Indian judiciary will be at stake. Justice will be far away and the dream of welfare state can not be realized. Govt. with due consultation with the retired judges, Advocates General law professors, Supreme Court, High Courts of the State and the law Commission must take for its change by adopting different remedial measures.

Key words

Independent judiciary, Delayed Justice, Justice according to law, Accumulation of cases.

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INTRODUCTION

The judiciary is entrusted with the responsibility of interpreting and enforcing the law of a State. To quote Prof. Laski, “The Judiciary of State may be defined as that body of officials whose work consists in the resolution of complaint, whether between subject and subjected, or between state and subject, the state have been a matter of fairly common agreement among thinkers that the Judicial power should be regarded in its nature and even more in the persons who administer it as separate from other aspects of political authority.”¹

Apart from the legislature and the executive, the judiciary is the most important organ of the government. It is one of the essential organ of the Government. In a democratic country like India the importance of the judiciary cannot be denied.²

Lord Bryce has aptly remarked ‘there is no better test of the excellence’ of the Government than the efficiency of Judicial system.³ Bryce again says, “if the law be dishonesty, administered, the salt has lost its flavour’ if the lamp of justice goes out in darkness, how great is its darkness.⁴ The above statements about the judiciary gives a clear picture about the importance, significance, and necessity of the judiciary in a democratic government. That is why it has been frequently said that the excellence of a country’s judiciary is a measure of excellence of its government. The judiciary has to perform a very important task in the government set up, it must function and it must be allowed to function in an independent way. If the judiciary is biased or not independent, the ray of justice will disappear and the life of the people will be jeopardized and the government will function in a tyrannical manner.

Now the traditional conception of Administration of justice has undergone a radical change. It includes a positive contend. Social justice is becoming an integral part of Administration of Justice.⁵

“The concept of social justice is a yardstick to the Justice Administration system or the legal justice and Rosco pound pointed out the greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law courts to apply the law depending upon the situation since the law is made for society and whoever is beneficial for the society, the endeavor of the law court would be administration justice having due regard in that direction”.⁶

It has rightly been said that the law may be sound and just but unless they are applied in a right and impartial manner, it loses its significance and justice will be a far cry for the citizens of the country. In order to avoid the torture of law, while interpreting the law, the judges must be impartial and independent. While administering justice, the judges should exercise unfettered discretion in the matter of interpretation of laws and in the matter of administration of justice, they should be completely immune from any influence in the discharge of their duties. It is highly essential and utmost important that justice should not be perceived to have been done, it should be done. It is not the duty of the court to cater to sentiments and emotions, but to analyse and give a ruling based on the law. In every society where Rule of Law is honoured, the independence and impartiality of the judiciary is a *sine qua non*.

Again, in modern times, with the emergence of the concept of 'welfare state' the idea of independent judiciary has acquired a new dimension and importance. It is one of the basic structures of the constitution. The basic structure being inarticulate they have to be interpreted with reference to the constitutional mandate. Independence of Judiciary or Judges does not relieve the court of enforcing the policies of the constitution. Integrity and character of Judges being the back bone of the Judiciary Judges must be independent, impartial and fearless in dispensation of Justice. Independence of judges means they should be free from political, social and economic influences. Fearlessness implies that they should not be afraid of consequence of their judicial decisions and they should not be susceptible to any temptation or intimidation. Such tendency may be prevented through Judicial restraint. Above all, the monster of corruption which has already polluted the Indian democracy should not be allowed to enter judiciary, else people's confidence on the independence of judiciary is bound to be shattered. Judiciary must continuously strive to sustain its independence notwithstanding pressure from public or political circles⁷. Unless there is an organ on which the people can trust and rely, it is really very difficult to achieve the fruits of the concept. Again, in a governmental system, it is quite likely that the disputes will give rise either between the citizens and citizens, or between the citizens and government, or in a federal set up, between the government and government. In all these cases, the judiciary has to come to picture to resolve the crisis.

While resolving these crisis, the judiciary has to function in an independent and impartial manner or else the total system will face the possibility of collapse. In a federal set

up the judiciary has to play a very crucial role. Since in a federation, the powers are divided between the two sets of Government and necessity may give rise regarding the interpretation of the constitution, the judiciary plays a key role in such a situation. The task of constitutional interpretation is very much important because of the fact that a proper and correct interpretation keeps the machinery of the government in a proper functioning track. But it is quite evident from a judgment and 30.09.2010 rendered by Lucknow Bench of the Allahabad High Court on Ram Janma Bhumi and Babri Mosque case that the court has applied its passion and sentiments. It was expected to give a judgment based on the law. This has not happened and the confusion is evident in the several contradictions that are visible at first glance in the operative portions of the three rulings. The judiciary has thus hidden behind the confusion of legal words and might have ensured some level of peace for now but this does not seem to have strengthened the concept of justice. It would have not been too difficult for the learned judges to determine through the process of law whether the site was a mosque or a temple as surely it could not have been both.⁷ In this case no one is talking of the Constitution of India that was violated 18 years ago; sadly not even the judges. There is peace today, because the verdict was a compromise. To add, a question and is this way of moving ahead? No, as a brushing issue of justice under the carpet does not work. This only adds to the anger and frustration and at best delays the inevitable. Maturity is reflected in the independent and efficient working of institutions. A clear cut decision based on law and evidence, with a peaceful acceptance would have been the real hallmark of a mature India.

Judiciary in India though considered as the important limbs of the government and an integral part of good governance is correctly facing moral degradation, an ethical retreat, a spiritual decline. In this context, it is worthwhile to cite the expressions made by Justice V.V.Rao, High Court of Andhra Pradesh about glimpses of Delayed Justice. The present position of pending cases before different courts through out the country is very much alarming and its number comes about 32 million. It will take around 320 years to be disposed off if the current trend of resolving of the disputes continues in this manner. During this period most probably the accumulation of new cases must have multiplied. According to present statistics there are 621 Judges in Indian High Courts and approximately 17,088 judges are now working in the judiciary. According to Ministry of Law, judges to population ratio stands at 47:33 which means the 47 judges per 10 lakh people⁸. The Supreme Court has taken the matter seriously and has given suggestions that for this ratio 50 nos. of judges are required.

According to the calculation each judge has to shoulder the responsibility of disposing off 2,155 cases approximately.

Mounting cases and shortage of judges are well documented challenges facing Indian Judiciary. Now, for the first time a study has quantitatively analysed the work pressure on judges and the result are shocking. A judge in High Court spends less than five minutes, on average for hearing a case; it says

“The most high court judges in the country have 15-16 minutes to hear a case, while the busiest have just about 2.5 minutes to hear a case, and on average they have approximately five or six minutes to decide a case.” According to study conducted by Dakshi a Bangalore-based non-government organization that studies and analyse judicial performance.

A very high volume of cases listed before them. Judges in HC of Calcutta, Patna, Hyderabad, Jharakhand and Rajsthan get two-three minutes on each case per day while in Allahabad, Gujurat, Karnataka, MP and Odisha they spend 4 to 6 minutes.⁹

Justice Warren E.Burger, Former Chief Justice of the America Supreme Court had once observed that “the entire legal profession (lawyers, judges, law school teachers) has become so mesmerized with the stimulation of the court room contest that we had to forget that we ought to be healers of conflicts.¹⁰

So far as society is concerned human conflicts are inevitable. These disputes should not continue any longer, it must be resolved at minimum cost both in terms of money and time, so that more time resource can be spared for constructive pursuits. An orderly society depends upon a sound and efficient functioning of its justice delivery system. Too much delay in disposal of cases not only creates disappointment amongst the litigants but also undermines the very capability of the system to impart justice in an efficient and effective manner.

The reasons behind the accumulation of cases are many. The most important among them is want of good number of judges. In America 60 or 70 judges are required for one million of people. In England 40 or 50 Judges are necessary for the same ratio.

Scarcity of judge is not the only reason for the arrear of cases. There are so many reasons, which pave the way for the accumulation of cases every year. Sometimes the decision rendered by the judges are not supported with strong and forceful argument. For rendering

justice the judges should have possessed high degree of caliber, profound knowledge and high standard of efficiency. The judges are direct product of law colleges. The colleges are functioning as a factory to distribute the law degree certificate. It is also experienced that consultation with the learned advocates reduces unnecessary litigation and saves time.

Another reason behind the accumulating cases is frequent adjournment sought by the advocates. The main intention behind adjournment is to extract more money from the parties. Sometimes the proceedings are too much delayed with unnecessary and uncalled for arguments, which are not at all desirable. In Govt. cases, regular adjournments are sought for presentation of affidavit. It has also come to light that due to insufficient staff employed in the office of Advocate General, Solicitor General, Attorney General, the arrear of cases increases year by year and thereby cause delay in delivery of justice. Many ancillary facilities are not provided to the judiciary. But seeking of regular adjournment is mainly responsible for such voluminous pendency position and has made the justice delivery system cancerous. Further law is changing very fast in the Indian society. In India voluminous amendments of law has taken place and it has led to decrease the trend of hearing as it is difficult to understand and make them understandable to others most of the time. The burning example is the Income Tax Act, 1961 which has been amended approximately about 4000 times¹¹.

The finalization of criminal and civil proceedings instituted in different courts in India is very slow in progress due to availing of large number of holidays by judiciary staff and judges, which is equally responsible for such arrear of cases. Introduction of e-Governance may to some extent be able to eradicate it but for complete solution, the following steps may be quite necessary to completely eradicate it and giving timely justice to the people.

Increasing productivity through improved infrastructure, employment of alternative methods of settlement and adoption of better strategies of management and training have been the key experiment of the drive against delay and pendency during the last few years.¹²

For any organization, efficiency and productivity are directly linked to the infrastructure it commands. Infrastructure in terms of judiciary includes both human and physical infrastructure. On both fronts, the situation of the subordinate courts which handle 90 percent of litigation continues to be far from satisfactory. This is the responsibility of the state governments even when the subordinate courts do devote considerable time in adjudicating

cases under central laws as well. A committee appointed by the Government of India to study the impact of new legislation on the workload of the courts has recommended that the Union Government has constitutional obligation under entry 11A of the concurrent list read with article 247 to provide adequate financial provision for implementation of central laws through state courts. The state governments under the same principle are likewise obliged to meet expenditure of courts for implementing laws on subjects in the state and concurrent list. Hopefully, the above recommendations will receive favourable consideration of the central and state governments and the infrastructural needs of subordinate courts will be met in the near future. Meanwhile, the continuation of the fast track courts which have reduced pendency of nearly 20 lakhs criminal cases will accelerate the process to the advantage of litigant public.

In several states at the instance of the respective high courts, evening courts have been established to clear the pending cases requiring priority attention. In Tamil Nadu, Andhra Pradesh and Gujarat, such courts have proved to be quite effective in disposal of cases involving minor offences, which are clogging our criminal justice system. Delhi has recently started evening courts initially for cases under section 138 of the Negotiable Instruments Act, 1881 involving small amounts. Other states are soon expected to follow suitably establishing evening or morning courts to deal with case involving petty offences. If these efforts of the judiciary are supported by governments by providing better infrastructural facilities, productivity can be further improved to bring down pendency and delay in the near future.

Judges, like any other professionals, need continuing education and training to improve professional competence to deal with new challenges thrown up by changes in society, economy, polity and technology. Taking this into account, the Supreme Court has set up the National Judicial Academy that is now offering regular courses of training designed to cater to the needs of superior court judges. Simultaneously, each high court has set up judicial academies to train judges newly inducted in the subordinate courts and to provide continuing education to judges in service. The National Judicial Academy has devised year long training plans in consultation with state academies to ensure that every judge throughout the country has opportunity once in every year to learn and improve court and case management capabilities with support of technology and professionalism.

An e-Committee directly under the Supreme Court was set up to devise and implement a national policy on computerization of judicial administration in order to expedite delivery of justice in civil and criminal cases.

Litigation is time consuming and relatively expensive. In a country with a vast population of poor people, Justice has to be necessarily cheap and expeditious. For this, alternatives to litigation must be produced by the justice system. Parliament has provided the statutory basis for it by the recent amendments to the Civil Procedure Code, 1908 and the Criminal Procedure Code, 1973. Taking advantage of these, the judiciary has prepared a national plan for mediated settlement of disputes which included training of mediators development of mediation manuals, setting up of mediation centres in court complexes and spreading awareness about it among litigants through the legal aid services. Other modes of settlement are also being encouraged and judicial officers are instructed to promote ADR as a movement especially at the first level of courts where the bulk of poor litigants seek justice.

On the issue of arrears what needs emphasis is that we are on the right track with a multi-dimensional, well-planned national programme, which has started giving rich dividends. With support from the central and state governments and co-operation from the bar and litigant public, in the next couple of year substantial reduction in the number of cases pending in courts and the time for disposal of cases are expected to take a downward spiral even if fresh filings are going to increase continuously.



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