



Judiciary of India: Protracted Process of Justice and Reforms

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Abstract

Perhaps, In India the judicial system has its own importance. If we explore the Indian judicial system, we find that the number of pending cases in the courts is increasing due to many reasons like shortage of judges, flaws in the judicial system and poor infrastructure, on the other hand the workload on the judges and judicial staff is increasing. Delay in justice is called injustice, but this irony is rapidly surrounding the judicial system of the country. The number of cases pending in the courts of the country has reached about 3.5 crores. A direct example of this is the Nirbhaya case. The trial of the heinous crime with Nirbhaya in the year 2012 took more than seven years, which exposes the poor functioning of the judicial system.

Keywords : Problems & Challenges of Judicial System, Corruption in Judiciary, Lack of Transparency, Contemporary drift in Indian Judiciary, Judicial Reforms.

Introduction

Although, the court is seen as the arbitrator of disputes between various individuals or private entities. But the judiciary also performs some important political functions. However, the judiciary is an important part of the government. The Supreme Court of India is indeed one of the most powerful courts in the world. Since 1950, the judiciary has played an important role in interpreting and protecting the Constitution. We have already read in the chapter on Fundamental Rights that the judiciary is very important for the protection of rights. The democratic government of India has three independent branches the executive, the legislature and the judiciary. The Indian judicial system was created by the British during the colonial rule. It is known as common law system in which judges develop the law by their decisions, orders and judgments. Various levels of courts make up the judiciary in the country. The top court of India is the Supreme Court in New Delhi and below it is the High Courts in various states. Below the High Court are the district courts and subordinate courts called the lower courts.

Apart from this, Tribunals, Fast Track Courts, Lok Adalats etc., work as a part of the judiciary. The judiciary has played a very important role in maintaining laws. It not only does justice but also protects the interests of citizens. The judiciary acts as the protector of the constitution by interpreting laws and enactments. Courts, tribunals and regulators, all this together form a unified system in the interest of the country.

Supreme Court of India

Although, the Supreme Court of India came into existence on 28 January 1950. With his arrival the Privy Council of the Judicial Committee and the Federal Court of the Supreme Judicial System of the Supreme Judicial System during the colonial rule in India came to an end. The Supreme Court consists of a Chief Justice and 30 other judges appointed by the President and these judges retire at the age of 65. The apex court works extensively for the fundamental rights of the Indian citizens. It is also a Supreme Officer because of the dispute between the different governments of the country.¹ It also has the power to review any earlier judgment or order passed by it, as well as transfer cases from one High Court to another or from one District Court to another.²

High Courts in the States

The highest judicial power at the state level is with the High Courts in the country. However, there are 24 High Courts in the country, which have jurisdiction over a state, union territory or a group of states. Being established in the year 1862, the Calcutta High Court is the oldest court in the country.³ The High Court, being the appellate authority of a State or a group of States, has the same powers and powers as the Apex Court. Civil and criminal trial courts and tribunals function under the High Court. Perhaps, All High Courts come under the Supreme Court of India.⁴

¹ [Supreme Court of India - Wikipedia](#)

² *ibid*

³ [High courts of India - Wikipedia](#)

⁴ *ibid*

District and Subordinate Courts

Perhaps, District and subordinate courts come under the High Court. The area of administration of these courts is at the district level in India. Though, District courts are above all subordinate courts but below the High Court. The jurisdiction of the district rests with the District and Sessions Judge.⁵ While conducting civil cases, he is called District Judge and while conducting justice in criminal cases he is called Sessions Judge. He is addressed as Metropolitan Sessions Judge when he presides over the District Court of a city or area recognized as Metropolitan by the State Government. The District Judge remains the highest judicial authority after the Judge of the High Court. District courts also have authority over subordinate courts. In order to deal with civil cases in the lower courts, there are Junior Civil Judge Courts, Principal Junior Civil Judge Courts, Senior Civil Judge Courts in ascending order. The lower courts are the Court of Judicial Magistrates of the Second Class, Judicial Magistrate Court of the First Class and the Court of Chief Judicial Magistrates in ascending order to deal with civil cases.⁶

Tribunal

Commonly a tribunal is said to be a person or institution, which has the power to do judicial work, even if it is not called a tribunal in the title. For example, when appearing in a court of one judge, the lawyer will call that judge a tribunal.⁷

Fast Track Courts

Fast Track Courts (FTC) in India aims to remove the backlog of cases in the District and Sessions Courts. The functioning of these courts is also similar to that of the Sessions and Trial Courts. Initially fast track courts were created to look into long pending cases but later they were directed to look into specific cases which were mainly related to women and children.⁸

Lok Adalat

Lok Adalat has been conceptualized as an alternative dispute resolution. It is based on Gandhian principles of Gram Panchayat and Panch Parmeshwar. 'Lok' means people and 'Adalat' means court. Lok Adalats deal well with various matters, such as motor accident compensation cases, matrimonial and family disputes, land acquisition disputes and partition claims, etc.⁹

Problems of Judicial System :- The Indian judicial system is one of the oldest judicial systems in the world. The supreme law of the country i.e., the Indian Constitution outlines the legal and judicial system of today's era. The Indian judicial system follows regulatory law and statutory law along with the 'common law system'.¹⁰ An important feature of our judicial system is that it is based on adversarial system, i.e., in which two sides of the story are presented in front of a neutral judge who decides on the basis of logic and evidence of the case.¹¹

Challenges of Judicial System :- There are some inherent problems in our judicial system which show the flaws and weaknesses of this system and these need immediate reforms and accountability.¹²

1. Corruption in Judiciary:- Indian judicial system is equally corrupt like any other institution of government. Various recent scams like CWG scam, 2G scam, Adarsh society scam and other atrocities taking place in the society including rape have put emphasis on the conduct of politicians and dignitaries and general public all and also deficiencies are shown in the working of Indian judiciary.¹³ There is no system of accountability here. The media also does not provide a clear picture for fear of contempt. There is no provision for registering an FIR against a judge taking bribe without the permission of the Chief Justice.¹⁴

2. Backlog of Pending Cases:- Indian legal system has the highest pending cases backlog in the world which is around 30 million cases. Of these, approx. 4 million are in the High Court and near about 65000 are in the Supreme Court. These figures are increasing continuously and this shows the incompetence of the law system.¹⁵ There is always talk of increasing the number of judges, creating more courts, but there is always a delay or lack in its implementation. Its victims are only poor and common people because rich people can afford expensive lawyers and make laws in their favour. This makes international and big investors hesitant to do business in India. Due to this backlog, the prisoners in Indian jails also remain waiting for the production. It has also been

⁵ [Jurisdiction/District Court in India | Official Website of District Court of India \(ecourts.gov.in\)](https://ecourts.gov.in/)

⁶ [317EL15.pdf \(nios.ac.in\)](https://nios.ac.in/)

⁷ [Tribunals | State Library of NSW](https://www.library.nsw.gov.au/)

⁸ [Fast Track Courts | Department of Justice | Ministry of Law & Justice | GoI \(doj.gov.in\)](https://www.doj.gov.in/)

⁹ [Lok Adalat - National Legal Services Authority! \(nalsa.gov.in\)](https://nalsa.gov.in/)

¹⁰ [Special Problems of the Judicial System in Developing Countries | SpringerLink](https://www.springerlink.com/)

¹¹ *ibid*

¹² [Issues With The Indian Judicial System - iPleaders](https://www.iPleaders.com/)

¹³ [Corruption in judiciary : The Tribune India](https://www.tribuneindia.com/)

¹⁴ [Microsoft Word - C-uppsats, klar.doc \(diva-portal.org\)](https://www.diva-portal.org/)

¹⁵ [Backlog of pending cases : a milestone to achieve - iPleaders](https://www.iPleaders.com/)

pointed out that the courts in India's economic hub Mumbai are burdened with years-old land matters, which also hinders the industrial development of the city.¹⁶

3. Lack of Transparency:- Another problem of the Indian judicial system is the lack of transparency in it. It has been observed that the Right to Information has been completely kept out of the legal system. Hence the important issues in the functioning of the judiciary, such as justice and quality, are not properly known.

4. Difficulties of Undertrials:- Most of the prisoners in Indian prisons are undertrials who remain in jail till their cases are decided. In some cases, these prisoners spend more time in jail just waiting for trial than for the cases filed against them. Moreover, the cost and pain of defending oneself in court is more than the actual punishment. On the other hand, rich people turn the police on their side so that the police can harass or silence the poor person during the case pending in the court.¹⁷

5. No Interaction with Society:- The judiciary of any country is an integral part of the society. He has regular and relevant interaction with the society. In some countries, ordinary citizens also have a role in judicial decisions. The judicial system in India has no relation to the society which it has inherited from the British judicial set-up.¹⁸ But something must have changed in 70 years.¹⁹ Even today law officers do not come close to meet people. We see that with so much progress in information and communication, there has been a big change in the lives of the people of the country, but even after this, the Indian legal system still seems to be British influence, domineering and insidious, which is for the rich people and the country and the common man. The truth is that the present justice system is not in tune with the democratic process, norms and times and works only to please a section of the society and for their vested interests. Therefore, it needs immediate restructuring.²⁰

Contemporary drift in the Indian Judicial System After independence

Though, the Supreme Court has been striving tirelessly to reshape Indian laws to the needs of the changing society through judicial pronouncements, some of which have gained historical importance over the years.²¹ With a view to mentioning the judgment given in the case of Kesavananda Bharati which is called the case of Fundamental Rights, Transfer of Judges, Maneka Gandhi, Hussainara Khatoon, Shah Bano Case, Asiad Case, Dr. Dastan Case, Bangalore Water Supply Vs. Rajapparu National Textile Mazdoor Union Vs P.R. The judgments of Ramakrishnan MC Mehta v. Union of India are some examples of the constructive role of the Supreme Court of India. Shortly before the new trend of Public Interest Litigation, which Prof. Upendra Bakshi likes to call the case of social action, new areas of judicial activism and taking justice closer to the common man have opened up.²²

The Supreme Court and some High Courts have shown keen interest in PILs aimed at mitigating the hardships and woes of poor prosecutors who were unable to withstand the traditional malpractices of litigation and benefitted and relieved only affluent prosecutor's poor and needy. Apart from providing relief to the prosecutors, PILs have been effectively curbed by holding them accountable for their own actions, mistakes and willfulness, to check the government's disregard for the law and the negligence and reckless tendencies of the government officials. This is a very happy event in the legal history of India, which has made the judicial system of India an instrument of social justice for the welfare of the people of the whole of India. The creation of Lok Adalats to solve the cases of accidents at the same time is another remarkable feature of the modern judicial system of India.²³

In fact, a powerful weapon of the legal aid movement in India in the late 1970s grew into a full-fledged weapon of public interest litigation over the next two decades. Commenting on the achievements and aspects of the PIL, the Supreme Court of India, in its judgment P. Nalathampi Thera v. Federal Government, referred to Henry Peter Brougham as saying that it was the pride of Augustus that he found a Rome made of bricks and that he gave it to marble.²⁴ Made it and left it.

But how true is the pride of the citizens of free India when they have to say that they got an expensive law, made it cheap, found it as a closed book and left it alive, got it as the benediction of the rich and inherited it from the poor. Left in form, found it as a double-edged sword of freedom of craft and expression and left as a shield of honesty and innocence. Public interest litigation is very helpful in getting justice and this led to judicial activism again, serious about human rights and fundamental freedoms guaranteed by the Constitution.²⁵

Taking a stand, the Supreme Court, in Nilabati Behera v State of Orissa, while rejecting the government's claim of sovereign safety, ruled that the rule of sovereign safety is not connected with the principle of guarantee of fundamental rights and such defense as a statutory remedy has no question. The Court further observed that the remedies used by the poor in public law should be provided more quickly who do not have the means to enjoy their rights

¹⁶ *ibid*

¹⁷ [Judicial Transparency in India - Problems, Concerns and Way Forward | UPSC - IAS EXPRESS](#)

¹⁸ [In the Eye of the Beholder: The Relationship Between the Public and the Courts on JSTOR](#)

¹⁹ [Biggest challenge faced by Indian judiciary - iPleaders](#)

²⁰ <https://rm.coe.int/16807481a1>

²¹ [Independence of judiciary in the modern administrative state of India - a myth - iPleaders](#)

²² [338 Introduction To Law Hindi L13.pdf \(nios.ac.in\)](#)

²³ *ibid*

²⁴ [Judicial System, Modern | Encyclopedia.com](#)

²⁵ [docs.manupatra.in/newslines/articles/Upload/5F79FD56-36E8-490F-A9D6-7DC60A0AD828.Paper.pdf](#)

enshrined in private law.²⁶ However, its action shall, where appropriate, be affected by judicial stay to avoid the fraud of private legal remedies. In this case, the court ordered the prosecutor to pay compensation of one lakh rupees for the custodial death of his son Sumar Behera.²⁷

The modern Indian judicial system is not a product of a single person or a day. It is the result of continuous efforts and experiences of many capable administrators who worked with great patience for generations. It is also necessary to emphasize that the subject of legal history is not only of theoretical importance but it is also invaluable in practice. The judiciary delivered judgments on cases of great legal importance which greatly helped in shaping the judicial institutions in India. In particular, the contribution of the Privy Council in this area is noteworthy as most of its decisions are used as precedents which are still valuable in terms of building trust.²⁸

Judicial Reforms

The need for reforms has been felt in the Indian judiciary since decades because cheap and speedy justice has been a total delusion. In spite of measures to expedite the disposal of pending cases in the courts, 2 crore 50 lakh cases are pending. Experts have expressed apprehension that public confidence in the justice system is declining and there is a growing tendency to resort to anarchy and violent crime to settle disputes. They feel that to stop this negative trend and reverse its trend, people's trust in the justice system must be restored immediately.²⁹ Over the past 7 decades, various legally established government authorities such as the Law Commission of India, Parliamentary Standing Committees and other government appointed committees, several benches of the Supreme Court, eminent lawyers and judges, various legal union organizations and NGOs have identified problems in the judicial system, and called for their early removal.³⁰

Recognizing that delay in justice is denial of justice, the Constitutional Bench of the Supreme Court in *P. Ramachandra Rao v. Karnataka* (2002) reiterated the view of Hussainara that, to provide speedy justice, even more so in criminal cases More quickly, the state has a constitutional obligation, and the lack of funds or resources to deny the right to justice enshrined in the Preamble of the Constitution and Articles 21, 19, and 14 and even the Directive Principles of the State is no excuse.³¹ It is the need of the hour that the Indian Union and various states understand their constitutional obligations and do some concrete work towards strengthening the justice delivery system. The report of the 120th Law Commission pointed out that India has one of the countries with the lowest ratio of population to judges in the world. In February 2007, the Central Government initiated computerization of all District and Subordinate Courts of the country and to upgrade the Information and Communication Technology infrastructure of the Supreme Court and High Courts for application of Information and Communication Technology in the justice delivery system for better management.³² The plan was approved for This plan of Rs 442 crore was to be completed in two years. Under this project, 13,365 laptops have been provided to judicial officers, laser printers have been provided to about 12,600 judicial officers and 11,000 judicial officers and 44,000 court personnel have been trained in the use of information and communication technology equipment. Broadband connectivity has been provided in the premises of 489 District Courts and 896 Taluka Courts. Under this project, computer rooms are to be set up in all court complexes in the country. The government also has to keep in mind the overall judicial process which allows endless cross-examination appeals and the role of lawyers delaying the disposal of cases.³³

Why the need for improvement?

- *Due to delay in appointment in higher and lower courts also, there has been a shortage of judicial officers, which is very worrying. For this reason, the pendency of cases is increasing and it has engulfed the entire Indian judicial system.*
- *Due to the short tenure and heavy work pressures, the judges of the Supreme Court do not get the opportunity to excel in law and acquire the required maturity.*
- *Justice is still out of reach of majority of the citizens of the country, as they cannot afford the huge expenses of lawyers and have to go through procedural complexity of the system.*
- *No criteria have been fixed for nominating judges, nor can the names proposed for appointment be evaluated systematically on any criteria. It is often said that the trend of nepotism has increased in the judicial system, due to which it is passing through inefficiencies.*³⁴

²⁶ [The Legal System in India: An Analysis \(legalserviceindia.com\)](http://legalserviceindia.com)

²⁷ *ibid*

²⁸ *ibid*

²⁹ [Judicial reform - Wikipedia](https://en.wikipedia.org/wiki/Judicial_reform)

³⁰ [Judicial Reform | NCSC](http://ncsc.gov.in)

³¹ [Judicial Reforms | Foundation for Democratic Reforms \(fdriindia.org\)](http://fdriindia.org)

³² [Judicial Reform on JSTOR](https://www.jstor.org/stable/2344444)

³³ *ibid*

³⁴ [Need for reforms in the Indian judiciary - iPleaders](https://www.ipleaders.com)

Possible Improvement Measures

- *At present there are only 18 judges for 10 lakh people. In such a situation, it cannot be fair to expect any judiciary to deliver justice on time. According to the recommendation of the Law Commission, the number of these posts should be increased.*
- *Time limit should be fixed for disposal of special category of cases and Lok Adalats and Gram Nyayalayas should be established. This will not only bring down the number of pending cases proportionately but will also save valuable time of the judiciary.³⁵*
- *An All-India Judicial Service may be formed to attract the best available talent at the level of subordinate courts. It will improve the qualification and quality of judges.*
- *A judicial database can be created by efficient use of information and communication technology. Through this, individual performance of judges can be assessed and the overall performance of the court as an institution can also be assessed.³⁶*
- *The compliance of the Code of Conduct for Advocates should be made effective by making necessary amendments in the Advocates Act, 1961 so that cases are not willfully delayed.*
- *A ban should also be imposed on unnecessary strikes by the Bar Council.*
- *The government is a party to most of the court cases. The court can encourage the government to compromise so that the number of pending cases can be reduced.*

Conclusion

In view of all the above, it is clear that there is a need for reforms at various levels in the Indian judicial system. These reforms should take place not only from outside the judiciary but also within the judiciary. So that the autonomy of the judiciary is not obstructed in implementing any kind of innovation. Delay in delivering justice in the judicial system is contrary to the principle of justice, so justice should not only be done but should also be seen.

³⁵ *ibid*

³⁶ [Drishiti IAS Coaching in Delhi, Online IAS Test Series & Study Material](#)