

Rethinking of the Concept of Justice in India Issues and Challenges: Practical Aspects

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ARTICLE DETAILS

Article History

Published Online: 25 May 2019

Keywords

Justice, Class Differentiation, Mercy Petition, Transparency.

ABSTRACT

The word Justice has been derived from the Latin word "Jungreis" which means to bind and tie together. Concept of Justice is as old as our civilization and development of societies in which human beings live. The growth of law developed the concept of justice and they walked parallel and expanded its influence in every sphere of human life. The essence of justice lies in ensuring uniformity of application of law without any class differentiation. The modern democracies are unthinkable without judiciary. They are considered to be protectors of fundamental and human rights of the citizens. The functioning of any country can be judged on the basis of how efficient is its judicial system. As on date our judicial system cannot be termed as one of the best in the world because it is plagued with inherent lacunas. The major problems being faced by common citizen is that the justice takes so much of time that at times the person outlives his life and the case still remain pending, the major issues which we need to tackle is the pendency of cases which more than 3 crore, corruption in judiciary, lack of transparency, poor knowledge of law, getting justice is a very costly affair, lot of undertrials are languishing in jail for want of trails, revision of outdated laws, vacations of courts add on to the burden and delay in hearing on one pretext or other are some of the examples of issues which are effecting our judicial system. Thus, there is an urgent requirement to rectify the defects so that a new India emerges. Some of the challenges which we need to overcome includes time bound solution of cases, no mercy petition be excepted in heinous crimes and crimes against the states, postponement of hearing in a case of flimsy grounds needs to be eradicated so that justice is delivered in time requirement of creating more number of courts and appointment of judges, changing the old traditional documentation procedures which a common man hardly understands, dedicated staff for the courts and improvement in infra structure so that people coming for hearing have some place to sit, courts should be kept open throughout the year without any vacations. Thus, we need lot of changes in our justice delivery system.

1. Introduction

The saying "Justice delayed is Justice denied" fits in appropriately in our context as in India there is no Justice for common man. People with money power and muscle power do get Justice. The word Justice has been derived from the Latin word "Jungreis" which means to bind and tie together. Concept of Justice is as old as our civilization and development of societies in which human beings live. The growth of law developed the concept of Justice and they walked parallel and expanded its influence in every sphere of human life. The essence of Justice lies in ensuring uniformity of application of law without any class differentiation. The modern democracies are unthinkable without efficient Judiciary. They are considered to be the protectors of citizens fundamental and human rights. The functioning of any country can be judged on the basis of how efficient and fast is its judicial system in delivering Justice. As on date our judicial system cannot be termed as one of the best in the world because it is plagued with inherent lacunas. In our country we have a large divide between rich, poor influential and common man. Justice is so expensive that it is beyond the reach of a common man and thus a change is needed so that Justice is accessible to every citizen. Also, we need a change in approach where influences and acquaintances do not play role in delivery of Justice thereby eliminating the human angle.

2. Issues Effecting Our System

The major problems being faced by a common citizen is that the Justice takes so much of time that a person almost loses hope to get Justice during his lifetime. The judicial system is plagued with the traditional procedures that even an educated person does not understand the judicial language. Most of our judicial language contains the terms derived from Latin and we feel proud and expect common people to understand the same.

Some of the major issues which are affecting our system are:

- (a) Huge pendency of cases almost to the tune of three crore cases in various courts. This number is continuously increasing and this itself shows the inadequacy of our legal system. Some people do not get Justice during their lifetime which is airy to the fact that we are the largest democracy in the world.
- (b) There is a rampant corruption in Judiciary. The recent scams like the CWG scam, 2G scam, Adarsh Society scam, including rapes and other atrocities in the society etc. have shown the poor conduct of politicians and public dignitaries, including the common man, and is also of the drawbacks in the functioning of Indian Judiciary. There is no system of accountability. There is no provision for registering a FIR against a judge taking bribes without taking the permission of the Chief Justice of India. No politician in this country has been punished

which clearly reflects how unfair is the judicial system in our country.

- (c) Another problem faced by the Indian Judicial System is the lack of transparency. It is seen that the Right to Information (RTI) 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.
- (d) The lawyers charge exorbitant fees; payment of court fees and other expenses have made Justice a very costly affair for a common citizen. In addition, even after charging the fees some lawyers do not present themselves in the court at the appointed time which seriously jeopardize the client's case.
- (e) Number of under trials keeps languishing in jail for want of trials on one pretext or other. There is no proper mechanism to keep a check on abuse of system.
- (f) The Judiciary has no interaction with the society which should be an integral part of the society. In some countries there is involvement of common citizens in judicial decision-making, however in India, the judicial system has no connection with the society, something which it had inherited from the British judicial set-up. In spite of advancement in communication and technologies the India legal system still looks like a domineering and pretentious British vestige appearing to belong to an elite class away from the people and the country. As a matter of fact, the present system of Justice is totally out of place and out of time and tune with democratic procedures and norms, that please only a certain section of the society with vested interests.
- (g) Also, we are still following the laws made at the time of independence and with passage of time there is a requirement of updating the laws.
- (h) Despite huge backlog of cases we still follow the vacation of courts. No other profession except teaching have this privilege. It is beyond comprehension that when we have such a backlog of cases rather than working overtime, we are following traditional vacation system.
- (i) The delay in hearings on one pretext or other by parties, deferment by courts is the cause of harassment to a common man who has to plan to attend court and take time off from the job are the serious issues affecting our judicial system.
- (j) The delay in cases for years make the case weak as at times the witnesses forget the details which is normal for any human being and at times the witnesses expire during the proceeding making the case weak.
- (k) The common man not only is denied the Justice but he gets drained out on all fronts of social, legal and economic front during the long proceedings he undergoes.
- (l) The country has seen massive financial crimes where public money has been swindled away by scammers in connivance with politicians and no one has ever been caught or punished. On the other hand, a thief who would have stolen Rs500/- would be languishing in jails and government would spend more than that on him. It is an irony of the nation.

(m) We need to give rethinking on concept of the bail, being granted to accused as it has become a routine that whatever a person does, he gets bail, and he keeps moving freely, enjoying privileges pending litigations. He does not realize that he has committed any offence. The whole system seems to be with the accused and not with the complainant/innocent person.

(n) It is seen that everyone whether legislature, executive, administration can be held accountable for the delays and deficiencies in services or for any mistake committed by them but only Judiciary is the only institution who cannot be held accountable for their deeds, whatever decision they give. The human angle in Judiciary is always there and influences cannot be ruled out.

For example, if we take the case of Ayodhya which finally got resolved after 40 years shows the state of Justice in India and the outdated procedures which are plagued by the inconsistencies. Again, in Nirbhaya case we saw the delayed tactics being employed by the accused and we feel hampered by the procedures. Now if we take the rape case of Gudiya which happened in 2013 and verdict of that case came in 2020 by the lower court. After this the accused has right to approach High Court and then to Supreme Court. This may again take years for the family of Gudiya to get Justice. If this is called Justice than god only saves our country. The thought must provoke in everyone mind that 'Can We call it Justice' as these were the cases which got hyped and media coverage in the country and everyone was shaken. Despite being setting up of special courts the story remains same. Thus, there is a requirement to overhaul the complete judicial system so that people do not take the Justice for ride and law prevails for common people.

3. Challenges To Overcome

The above issues highlight the problems encountered by people in their quest for Justice. Thus, there is an urgent need to rectify the defects and anomalies so that a new India emerges. Some of the challenges which we need to overcome includes:

- (a) There is urgent requirement to laid down Time Bound solution of cases. We need to do away with the reasoning that for fair Justice no time can be fixed.
- (b) No mercy petition should be allowed in heinous crimes and crimes against the states which delays the Justice delivery system. In fact, people should not be allowed to exploit the system in the name of Justice. If it is so than the decision of supreme court itself is questionable.
- (c) Postponement of hearing in cases on flimsy grounds needs to be eradicated so that Justice is delivered in time. If required needs to be put in writing so that people are not allowed to exploit the lacunas.
- (d) There is requirement of creating a greater number of courts and appointment of more judges in order to clear the backlog and also such situation does not arise in future also.
- (e) Bringing reforms in the documentation procedures which a common man can easily understand.
- (f) To have dedicated staff for the courts and improvement in infrastructure so that people coming for hearing have

some place to sit and eat and are treated as human beings.

- (g) Courts should be kept open throughout the year without any vacations. Especially when we have so many cases pending. In fact, we should evolve to have concept of night courts.
- (h) Keep organizing awareness campaigns so that knowledge of law and procedures are disseminated to common man.
- (j) Have some guidelines for the fee structure to be charged by the lawyers to have some uniformity as it is very difficult for common man to approach Supreme Court.
- (k) Frivolous cases should be treated as a serious offence.
- (l) We need to update the outdated laws which we inherited from Britishers.
- (m) The police should also be taken to task if the investigations are shoddy and the concerned investigating officer should be given the harshest punishment and not just the warning.

Therefore, there is an immediate need to restructure the entire judicial system to make it answerable to the needs of a democratic, progressive society. The recent law passed by the

Andhra Pradesh State is a ray of shine in the present day where they passed that rape cases to be decided within 21 days. We need such acts where the Justice is provided to the victim. Otherwise the saying 'Justice delayed is Justice denied' will find the right place in the India.

4. Conclusion

The delivery of Justice in our country is far from satisfactory and lot of efforts are required to bring it up to an acceptable level. In fact, we have to do out of the box thinking for bringing in revolutionary reforms. Thus, we need lot of changes in our Justice delivery system. By having few landmark judgments by the courts, we should not feel proud about the Judiciary because this is not even one percent of the total cases and the common man still waits to get the Justice. At present to get the Justice you need to hire the renowned lawyers at a huge cost otherwise Justice remains elusive. Thus, above forth mentioned recommendations should be considered and changes brought forth to improve the administration of Criminal Justice System and Strive to Achieve the Concept of Justice.

References

- 1) Myneni, S.R, (2004). Jurisprudence (Legal Theory). Asia Law House. Hyderabad.
- 2) Govt Of India, Report of the Committee on reforms of Criminal Justice system, 2003
- 3) Wayne Morrison, Jurisprudence: From the Greeks to Post- Modernism, Cavendish Publishing Ltd. Reprinted 2000.
- 4) SP Sathe, Judicial Activism in India, Oxford University Press, 2008