

Delay In Judicial System

Dr. Lalita

*Asstt. Prof., Deptt. of Political Science
Govt. Degree College, B.B. Nagar, Bulandshahr
Email: drlalitasaroha@gmail.com.*

Abstract

If there is one arm of the Indian democracy that is totally a law unto itself, it is the judiciary. The executive is accountable to the legislature, the judiciary can vet executive and legislative decisions, and the elected legislature is accountable to the people, but the judiciary is accountable to no one. The judiciary selects its own judges and barring an improbable case of impeachment, there is no process by which the judiciary can be held accountable for its actions and follies. CJI Thakur said: "Today there are 450 vacancies in the high courts across the country. 450 is a large number which is almost 50 percent of working strength of the high courts. So when the Chief Justice of India, TS Thakur, is quoted by The Times of India on 28 February of complaining about a two-month delay in clearing the process for the appointment of high court judges, he should ask himself: how much is this delay the result of the Supreme Court's own self-serving decision to strike down the National Judicial Appointments Commission (NJAC), a constitutional amendment backed nearly unanimously by parliament and by 20 state legislatures?"

Key Words: Democracy, Legislature, Executive, Judiciary, Impeachment, Constitutional amendment, Justice, Federal government, Infrastructure.

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Introduction

Lack Of Judges For Last 30 Years

One of the foremost duties of the state is to provide justice to its citizens and that justice, that is not timely is not a justice. 3 Decades ago, the law commission had recommended that India should have 50 Judges for every 10 Lakh people. Today, the ratio is barely a third of that, this is unacceptable.

The rule of law is corner stone of any modern democracy and the rule of law cannot prevail where cases languish for years, sometimes decade Chief Justice of India T.S. Thakur blamed the center and State governments for the 3.8 crore pending cases in courts across the country. They failed to increase the no. of judges despite several recommendation and orders in past 30 years he said. The no. of pending cases would keep on mounting unless the Judges - population ratio increased to 50 Judges per 10 lakh people from the present level of less than 15, CJI Thakur said the judges were under great stress due to shortage of man power and mounting work load and as such there was no scope for increasing their productivity by cutting down on holidays or by having evening courts.

The only solution he added was to augment the strength of judges and judicial infrastructure and engage retire judges with proven integrity and climber for 2-3 years. While the center said the states were responsible for increasing the no. of lower judiciary judges, the states mentioned they were helpless as the funds had to come from the federal government.

Please Increase the no. of Judges:- CJI Thakur

In joint meet of chief minister and Chief justice of high court, Chief justice of Supreme court got emotional, he said in presence of prime minister that only judiciary is not responsible for pending cases. Prime minister not only promised to remove the deficiency of judges but also said that if there is no constitutional limitations then senior minister and judges of supreme court should talk and find out the solution of the problem. From past the deficiency of judges at every level remained a problem. In 1987, law commission said that minimum 50 judges should be available for 10 lack population while at the present time 12-15 judges are present. No step has been taken by the government to solve the problem. In these conditions the increase in no. of pending cases is natural. According to an assumption approximate 3 crore Cases in lower court and approximate 40 lakhs cases in upper court are pending, it means that a large population in country is waiting for justice.

“As a result of a tug-of-war between the Centre and the states, the judges’ strength has remained stagnant” at about 18,000 in the past 30 years, Justice Thakur said in a choked voice. He was seen wiping his tears. He later told reporters that he became emotional as he was also a human being. Nothing much had changed in the past 40 years of his association with the judiciary and legal profession due to the

inaction on part of the executive, he said.

Addressing the gathering later, Modi said the government was ready to work with the judiciary by appointing a joint panel of judges and executives to go into the issues and find solutions.

Comparing the Indian judiciary with the systems in other countries, Justice Thakur said each Supreme Court judge in the US handled a mere nine cases every year on an average. Against this, every judge in India — be it in the SC, HC or trial court — disposed of 2,600 cases every year. As many as two crore cases were being disposed of every year by the Indian judiciary which no one was talking about, he said.

Justice Thakur also took the Centre to task for setting unrealistic deadlines for the disposal of cases pending for five years or more. The timelines could be met only if the existing vacancies of judges were filled and the judge-population ratio was raised to 50 judges per million people, he said Chief Justice of India TS Thakur turned emotional today as he blamed the Centre and state governments for the 3.8 crore pending cases in courts across the country. They (Centre and state governments) failed to increase the number of judges despite several recommendations and orders in the past 30 years, he said.

The number of pending cases would keep on mounting unless the judge-population ratio was increased to 50 judges per 10 lakh people from the present level of less than 15, CJI Thakur said while addressing a joint conference of chief ministers and high court chief justices. Prime Minister Narendra Modi was present on the dais.

The judges were under “great stress” due to shortage of manpower and mounting workload and as such there was no scope for increasing their productivity by cutting down on holidays or by having evening courts, he said.

The only solution, he added, was to augment the strength of judges and judicial infrastructure and engage retired judges with proven integrity and caliber for two-three years. While the Centre said the states were responsible for increasing the number of lower judiciary judges, the states maintained they were helpless as the funds had to come from the federal government.

Centre rejected the claims of CJI Thakur

The center virtually rejected chief justice of India TS Thakur’s claim that 40,000 more judges were needed to obliterate over 3 crore pending cases by saying that his estimates were not backed by any scientific research or data.

Referring to 1987 law commission report, suggesting increase in judges strength. The CJI had said that the judiciary needed an additional 40000 judges to erase mounting tendency. Lok Minister V. Sadananda Gowda, however said the commission’s report was based just on the opinion of expert.

In the first official rebuttal to CJI Thakur's stand linking shortage of judges to backlog the center reportedly relied on the example of Delhi which has the highest judges-to-population ratio in India. According to the govt. The capital has 47 Judges per million persons and yet suffers from a huge backlog.

Law Minister Sadananda Gowda's reply quoted a 2014 report prepared by former Delhi high court chief justice A.P. Shah when he headed law commission of India, to counter the perception that due to shortage of judges, the cases are not being disposed off in time. The report is titled "ARREARS AND BACKLOGS... creating additional Judicial(wo) manpower."

SC will strike down NCA as unconstitutional: Centre Argues Constitution Mandates SC To Be Final Court Of Appeal

The Centre on Thursday told a bench headed by CJI T S Thakur not to push for creation of National Courts of Appeal (NCA) as the last forum for criminal and civil cases because it would be struck down as 'unconstitutional' by the Supreme Court when challenged.

The CJI-headed bench has been pushing for creation of NCA as the last court of appeal to relieve the SC of growing pendency, which at present is around 55,000 cases.

Justice Thakur said increasing the number of judges in the SC, whose sanctioned strength is 31 including the CJI, was no solution. "What will happen 20 years hence? Given the prosperity

The CJI-headed bench has been pushing for creation of NCA as the last court of appeal to relieve the SC of growing pendency, which at present is around 55,000 cases and awareness about rights, there could be a situation where five lakh cases would be filed every year in the SC as against the present 80,000 cases. Should we increase the judges' strength to 150? That is no solution. More the number of judges, more dissent and divergence of views. So, why not examine the benefit of NCA," the CJI said.

Attorney general Mukul Rohatgi said the Constitution mandates the SC to be the final court of appeal. "The Centre's view is that NCA is neither desirable nor feasible. Litigants' right to approach the SC is a basic right. To curtail that right and say in 80% of the cases, NCA would be the final court of appeal and only 20% of the cases involving constitutional questions would be eligible for hearing in the SC would be unconstitutional," he said.

Rohatgi said over the years, the SC had become a regular court of appeal, which was not envisaged by the Constitution. "Self-restraint by judges is the only answer, coupled with use of modern tools and docket management," the AG said.

The CJI replied, "Who has made the Supreme Court a regular court of appeal. The blame should go mostly to governments which file all sorts of appeals. It

is easy to say judges should resist temptation to correct errors committed by the HCs. It is not possible. The way the judges are trained, we have a tendency to do complete justice by correcting even small mistakes.”The AG said, “If there was a court above the SC, that court too would have had the tendency to correct the mistakes committed by the apex court. Judges are human beings and human ability and intellect is not infallible. So, the desire to correct must stop somewhere.”

New Delhi: Property disputes and family conflicts clog our judicial system and in a majority of cases, police detain the accused unnecessarily: these are the findings of Daksh, an NGO that analyses the performance of the judiciary. Around 66% of all cases studied are property-related litigations, and 10%, the second largest chunk, are family matters.

The other issues leading to litigation were recovery of money (8.1%), and permanent injunction, whereby a court orders a person or entity to take certain action or refrain from certain activities (3.4%).

The survey, involving more than 9,000 civil and criminal matters over 300 subordinate courts across the country, boosts the government’s call for a “no detention policy” in the near future where arrest is an exception and not the rule if an accused is available for interrogation and has honored court summons.

In 64% of the cases, accused were found to have been granted bail within a month of his or her arrest, probably since the courts did not find enough merit in keeping them behind bars. Another 14% were granted bail between one and six months.

The apex court had in the past, while supporting ‘bail is the rule and jail is exception’ theory, observed that police should refrain from arresting an accused if he or she is ready to cooperate in investigation and there is no fear that the accused would run away from clutches of the law.

During the study, spread over three months, Daksh interviewed 9,329 litigants in both civil and criminal matters from 305 lower courts in 170 districts in 24 states. The wide range of data portrays the need to correct the entire justice delivery system corroded over a period of time, which at present seems to be favoring the rich and the influential. The survey by the Bengaluru NGO was released on Saturday in the capital in presence of Justice Madan B Lokur, senior Supreme Court judge overseeing the implementation of judicial reforms in the country.

The survey also substantiates what the National Law University (NLU) — which partnered Daksh in the current survey — had found in an independent study last year. The NLU’s interviews with 373 death row convicts had found that 75% of those given death penalty belonged to economically weaker sections, backward classes and religious minorities.

Many of them were sentenced to death probably because they couldn't defend their case because of their failure to find a competent lawyer to contest their conviction. The current Daksh study too, points to a similar picture: around 31% of those who couldn't avail of bail was due to their inability to furnish a bail bond. In 2.8% of cases, the accused couldn't find a guarantor who could stand as surety. Surprisingly, there is no rule that prohibits the courts from releasing an undertrial where it feels detention is avoidable. The amended Section 436A of the Code of Criminal Procedure provides for release of undertrials under personal bond where he is not able to furnish the bond money or surety.

CJI Thakur is quoted as saying the government "can't be "sitting over the proposal (on judges' appointment) for more than two months". He also said: "...It is actually (for) the protection of the rights of the people for whom the laws were made that you (must) act. It is not for any personal glorification that the court act(s), it is for the enforcement of these laws. I don't know, but I think time has come when you do audit of the performance of the government, when we need to do audit of the government by some processes."

It is surprising that the CJI, who would surely have read the constitution in law school, should think government processes are beyond audit. There are several constitutional processes, including CAG audits, scrutiny by parliamentary committees and the opposition, testing of government decisions by the judiciary, some level of advisory interventions by the President, and final approval or disapproval by the humble citizen in elections.

So to pin the blame for delays in appointing judges on the government strains credulity, especially when the Supreme Court itself took seven months to examine the NJAC and then rejected it when it would have been more appropriate to just read it down - by prescribing checks that could insulate the judiciary from political pressures.

Consider all the ways in which the judiciary itself lacks effective scrutiny and accountability.

First, it scuttled a clear constitutional provision that said higher judiciary judges will be appointed by the government after consulting the chief justice. The Supreme Court decided it would itself select judges. This was what the NJAC was meant to correct, but the court struck it down, thus voting for itself when it was an interested party in the litigation.

Second, in sector after sector, the court has encroached into executive and law-making terrain, the latest being the decision to ban diesel SUVs from being registered in the capital. Is it the court's job to decide what cars can be sold in Delhi?

Third, the apex court has no internal mechanism to monitor or check corruption or malfeasance in the judiciary. Fourth, the long delays in courts have less to do with

government and more to do with the long vacations courts give themselves and the corruption in the lower judiciary which helps moneyed litigants prolong cases indefinitely.

Fifth, the two-month delay in appointing judges is largely because the Supreme Court itself asked the government to work out procedures for the appointment of judges. If the court can take seven months to deliver a judgment on NJAC, surely it can wait three months for government to evolve a procedure for short-listing candidates after consulting interested parties?

CJI Thakur said: "Today there are 450 vacancies in the high courts across the country. 450 is a large number which is almost 50 percent of working strength of the high courts... You also know there is a delay in filling those vacancies, which has been halted due to the bringing of National Judicial Commission."

This is an unfair statement. If the bringing in of NJAC that can be blamed for delays, surely the court's decision to scuttle it also shares the guilt for it? What stopped the Supreme Court from accepting the NJAC as valid temporarily while the case was being decided? This would have allowed judges to be appointed while the case was being heard.

CJI Thakur should introspect. The judiciary is largely unaccountable and has become a law unto itself. This can't continue indefinitely. It continues only because the polity is deeply divided right now and the judiciary is using this opportunity to enter areas that are not in its domain. It is effectively negating the people's mandate by disempowering the executive.

Majors Taken by U.P. Government

- 500 courts to be set up in U.P. :- C.M. released the statement from Lucknow that from District court and sessional court level to Civil judge (Junior Division) level 500 courts are to be set up in current financial year. Rs.400 Crores are allotted for building of court, Rs. 100 Crores for land acquisition for court and Rs. 23 crores are allotted for maintenance of court building.

- Who will do the work when officers will stay in court:- C.M. Said that he has full faith in judiciary but if senior administrative officers will be present in court in every matter, when will they do their daily duties? How would be they able to solve the problems of people? C.M. Also said that language of court should be the language of general people.

In Joint meet of Chief Ministers and judges of high courts on 24th April 2016 of Delhi, Chief Secretary of justice Abdulshahid read the statement of Akhilesh Yadav and said the Samajwadi Government is giving efforts towards the facilities of lawyers.

By giving the example of under construction Naveen Bhawan for Lucknow bench C.M. Said that judiciary and executive are complementary to each other.

They should be cooperative to each other. For the effective implementation of programs in judiciary C.M. Expected for the financial support from the center government.

C.M. Wrote a letter to P.M. To make him know about insufficient finance aid that is provided to state to empower judicial system. C.M. Also said that due to increase in no. Of cases the expenditure has increased that resulted in asking of financial support from the center government.

Suggestions:

- “Disposal of pending cases for 5 years or more could be only if the existing vacancies of judges were filled and the Judge-population ratio was raised to 50 judges per million people.
- The simple cases like family disputes and Property disputes should be heard by a judge and the decision should be given in one day hearing without the boundation of time.
- The judge should not be given the prior information about the case, judge should be informed on the spot about the case and the cell phones of the Judges and parties should be deposited outside the chamber of judge where the case is being heard.

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