

## **Judiciary of Independent India : Expectations Ahead**

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### **Abstract**

*The judicial or legal system of a country is part of its social system and reflects the social, political, economic and cultural characteristics of the society. It is therefore, difficult to understand the legal system outside the socio-cultural milieu in which it operates. In the case of India the legal system is still alien to the majority of the Indian's whose legal culture is more indigenous and whose contact with the formal legal system is marginal if not altogether non-existent. The language, technicality and procedure of the inherited legal system are indeed factors, which limit access to justify for the illiterate, impoverished masses of our country. Nevertheless, the rights and benefits conferred by the laws and constitution offer opportunity for those very people to enjoy the fruits of a welfare democracy which the people of India have given into themselves on the 26<sup>th</sup> January, 1950. Perhaps it is the consequent understanding of law and its relation to society that prompted the founding fathers to devote the energy required to form a Constitution of unprecedented magnitude, in both scope and length. The judiciary in India, even under the British, was noted for its integrity and independence but after independence it was made doubly secure so that it can become in reality the most impartial arbiter of the conflicts and controversies which fall within its jurisdiction.*

**Keywords : British Judicial System, Independent India, Judicial System, Judicial Activism, Social Justice.**

### **Judiciary and Socio-Political Framework**

India adopted the path of Parliamentary democracy. The British Parliamentary system left a big impression on Indian Constitution. The freedom of judiciary was taken from the United States of America. In USA, there is considerable power given to judiciary rather than Parliament and there is a clear and distinct line that separates the three major organs, the executive, legislative and the judiciary. To make the

constitution supreme in the country, India made the biggest written constitution in the world (*Nariman, 2007*). In the Preamble of Indian Constitution the importance is given to justice at the highest level. The people go to the judiciary in the quest of justice. The constitution lays down the structure and defines the limits and demarcates the role and functions of Parliament and judiciary and establishes the norms for checks and balances. Independence of the judiciary is essential for upholding the rule of law (*Balkrishnan, 2007*). Thus, the Constitution of India is the guiding light in all matters of executive legislative and judiciary. It is extensive and aims to be sensitive. The constitution turned the direction of system originally introduced for perpetuation of colonial and imperial interests in India, firmly in the direction of social welfare. The Constitution explicitly and through judicial interpretation seeks to empower the weakest members of the society.

In the context the world famous constitutional expert Granville Austin says, 'Indian Constitution is first and foremost a social document. Its founding fathers and mothers established in the Constitution both the nation's ideals and the institutions and processes for achieving them. The ideals were national unity and integrity and a democratic and equitable society (*Granville, 2007:IX*). The new society was to be achieved through a socio-economic revolution pursued with a democratic spirit using constitutional, democratic institution. This observation aptly describes the Indian State, as contemplated by the framers of the Constitution, which is based on the objective resolution of Jawaharlal Nehru (*Rao, 2006:3-4*) asserts that 'We the people of India' through this Constitution, aim at establishing a Sovereign, Socialist, Secular, Democratic, Republic of India and to secure to all its citizens, justice, social, economic and political.

The Constitution of India which came into being on 26 January 1950 adopted a federal system but it has not provided the country a double system of courts as in the United States. Under our constitution there is a single integrated system of Courts for the union as well as the states which administer both Union and State laws, and at the head of the entire system stands the Supreme Court of India. Below the Supreme Court stand the High Court's of the different States and under each High Court there is a hierarchy of other courts which are referred to in the constitution as 'subordinate courts' (*Basu, 1983:253*). The organisation of subordinate judiciary varies slightly from State to State. Below the High Courts are a hierarchy of subordinate courts such

as the civil courts, family courts, criminal courts and various other district courts. The District Courts of India are established by the State governments in India for every district or for one or more districts together taking into account the number of cases, population distribution in the district. They administer justice in India at a district level. These courts are under administrative control of the High Court of the State to which the district concerned belongs. The decisions of District Court are subject to the appellate jurisdiction of the concerned High Court.

Recently under the Gram Nyayalayas Act 2008, Gram Nyayalayas having the power of Judicial Magistrate of the first class are being established at Panchayat levels. There is also a provision of village courts, called Lok Adalat (People's Court) or Nyaya Panchayat (justice of the villages) that compose a system of alternative dispute resolution. The present system of justice at the village level was known even in colonial India and first it was recognised through the 1888 Madras Village Act and developed, especially after 1935 in various provinces which India followed after independence. The model from the Gujarat, with a judge and two assessors was used from the 1970s onwards. In 1984 the Law Commission recommended to create Nyaya Panchayats in rural areas. The 2008 Gram Nyayalayas Act have foreseen 5,000 mobile courts in the country for judging petty civil (property cases) and criminal up to 2 years of prison cases. However, the Act has not been enforced properly and till May 2012 only 151 functional Gram Nyayalayas have been established against the target of 5000 such courts (*Mahapatra, 2012*). The major reasons behind the non-enforcement includes financial constraints, reluctance of lawyers, police and other government officials.

### **Structure of Judiciary in India**

On 26 January 1950, the day India's constitution came into being, the Supreme Court of India was formed in Delhi. The inauguration of the apex court took place two days later on 28 January in Princess Chamber in the Parliament building complex where the Federal Court of India had sat for 12 years between 1937 and 1950. It got its own building in 1958 (*Supreme Court of India, 2012*) and in 1979 two new wings- East wing and West wing were added to the complex. The original constitution of 1950 envisaged a Supreme Court with a Chief Justice and 7 puisne judges- leaving it to Parliament to increase this number. In addition, Parliament has the power to make laws regulating the constitution, organisation, jurisdiction and powers of the Supreme

Court. In the early years, all the judges of the Supreme Court sat together to hear the cases presented before them. But as the work of the court increased and arrears of cases began to accumulate, Parliament increased the number of judges from 8 in 1950 to 11 in 1956, 14 in 1960, 18 in 1978 and 26 in 1986. Presently the Supreme Court of India comprises the Chief Justice and 30 other judges. As the number of the judges has increased they sit in smaller Benches of two and three, coming together in larger Benches of five and more only when required to do so or to settle a difference of opinion or controversy.

The Supreme Court of India is the highest court of law as established by Part V, Chapter IV of the Constitution of India. According to the Constitution of India, the role of the Supreme Court is that of a federal court, guardian of the constitution and the highest court of appeal. Articles 124 to 147 of the Constitution of India lay down the composition and jurisdiction of the Supreme Court of India. Primarily, it is an appellate court which takes up appeals against judgements of the High Court of the States and territories. However, it also takes writ petition filed under Article 32 which is the right to constitutional remedies or if a case involves a serious issue that needs immediate resolution.

In line there are 24 High Courts at the State level. Article 141 of the Constitution of India mandates that they are bound by the judgements and orders of the Supreme Court of India by precedence. These courts have jurisdiction over a state, a union territory or a group of states and union territories. High Courts are instituted as constitutional courts under Part VI Chapter V and Article 214 of the Indian Constitution. The High Courts are the principal civil courts of original jurisdiction in the state along with District Courts which are subordinate to the High Courts. However, High Courts exercise their original civil and criminal jurisdiction only if the courts subordinate to the high court in the state are not competent or not authorised by law to try such matters for lack of pecuniary, territorial jurisdiction. The primary work of most of High Courts consists of Appeals from lower courts and writ petitions in terms of Article 226 of the Constitution of India. Writ jurisdiction is also original jurisdiction of High Court.

Established by the State governments, the District Courts of India are presided over by one District Judge appointed by the State Government. In addition to the district judge there may be number of Additional District Judges and Assistant District

Judges depending on the workload. The Additional District Judge and the court presided have equivalent jurisdiction as the District Judge and his district court (*District Courts of India, 2012*). The district judge is also called "Metropolitan Session Judge" when he is presiding over a district court in a city which is designated "Metropolitan area" by the state government (*The Code of Criminal Procedure, 1973*). The district court has appellate jurisdiction overall subordinate courts situated in the district on both civil and criminal matters. Subordinate courts, on the civil side are, Junior Civil Judge Court, Principal Junior Civil Judge Court. Senior Civil Judge Court also called sub-court. Subordinate courts, on the criminal side are Second Class Judicial Magistrate Court, First Class Judicial Magistrate Court and Chief Judicial Magistrate Court. Thus, the Indian Judiciary is organised in a hierarchical form. At the bottom there are numerous Nyaya Panchayats and at the apex there is the Supreme Court.

In the context, it is rightly said that modern democracies are inconceivable without judiciary. This organ is not only guardian of the constitution but also protector of fundamental rights of the citizens. As Lord Bryce observed, 'There is no better test of the excellence of a government than the efficiency of judicial system, for nothing more nearly touches the welfare and security of the average citizen than his knowledge that he can rely on the certain and prompt administration of justice' (*Misra, 2013:2*). Similarly Garner put it, 'A society without legislative organ is conceivable and indeed, fully developed legislative organ did not make their appearance in the life of the State until modern times, but a civilized state without judicial organ is hardly conceivable. The importance of judiciary is more for the citizens than for the States. And in Indian political system, the judiciary has carved out a very significant space for itself. In fact, the transition from a feudal to a democratic order and from colonial bondage to a free society needed an institution to protect individual's life, liberty and property.

### **Prospects**

The framers of the Indian Constitution at the time of framing of our constitution were concerned about the kind of judiciary our country should have. In course of the discussion on Indian judiciary Dr. B.R.Ambedkar responded properly in the Constituent Assembly and asserted, 'There can be no difference of opinion in the House that our judiciary must be both independent of the executive and must also be

competent in itself. And the question is how these two objects can be secured'. The answer to this question lies in the very basic understanding that so as to secure the stability and prosperity of the society, the framers at that time understood that such a society could be created only by guaranteeing the fundamental rights and the independence of the judiciary to guard and enforce those fundamental rights. Also in a country like India, the independence of the judiciary is of utmost importance in upholding the pillars of the democratic system hence ensuring a free society ( *Das, at bamcef.org*). On the enforcement of the constitution in January 1950, this system was expected to adapt itself to facilitate the transformation of Indian society into a nation and to become an effective instrument for carrying out the mandate of Article 38. Judiciary being an important instrumentality for exercise of state judicial power, it had to shoulder the burden along with other wings to set up a welfare state in which justice - social, economic and political-shall inform all the institutions of national life. It must also shoulder the primary responsibility of eliminating inequalities in status, facilities and opportunities not only amongst group of people residing in different areas engaged in different vocations (*Pillai, at www.nja.nic.in*). After independence all the organs of the government, including judiciary, attempted to bring harmony and justice.

## REFERENCES

- BALKRISHNAN, K.G. (2007) Executive to blame for delayed justice. *The Tribune*, 10<sup>th</sup> April.
- BASU, DURGA DAS (1983) *Introduction to the Constitution of India..* New Delhi. Prentice-Hall of India, p. 253.
- DAS, ATIN KUMAR, Independence of judiciary in India : a critical analysis. Available from [www.bamcef.org](http://www.bamcef.org).
- DISTRICT COURTS OF INDIA (2012) *Official Website*, 16<sup>th</sup> March.
- GRANVILLE, AUSTIN (2007) *Indian constitution - the cornerstone of the nation*. New Delhi: Oxford University Press, p. ix.
- MAHAPATRA, DHANANJAY (2012) Fund crunch, lukewarm response mar gram nyayalayas. *The Times of India*, 22<sup>nd</sup> May.
- MISRA, DR. SURYA NARAYAN (2013) Constitutional democracy, judiciary and social justice in India. *Odisha Review*, January, p.2.
- NARIMAN, FALI S. (2007) Constitution under threat. *The Tribune*, 5<sup>th</sup> August.
- PILLAI, CHANDRASEKHARAN K.N., The mission and vision of Indian judiciary . Available from [www.nja.nic.in](http://www.nja.nic.in)
- RAO, SHIVA B. (2006) The framing of the India's constitution. Select Document 2, Delhi : Universal Law Publishing, pp.3-4.
- SUPREME COURT OF INDIA (2012) *Official Website*, 15<sup>th</sup> July.
- THE CODE OF CRIMINAL PROCEDURE (1973) *Central Government Act*. Available from <http://indiakanoon.org>.

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