

JUDICIAL SYSTEM – WHAT'S WAY FORWARD?



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FROM THE DESK OF CHAIRMAN

India is on road map to extra ordinary growth trajectory and wishing to cross 5 trillion dollar economy in near future. India is undoubtedly on fast development mode. However, India's judicial system and justice delivery system is marred by very high pendency of cases, very time consuming and lethargic process of justice delivery and various other issues, ultimately making its citizens, businesses, investments suffer and practically justice is so much delayed many times which is as good as denied. The woes are further escalated with conflict between Government and the Supreme Court Judges on the appointment of judges which at present is done as per "collegium system". With no new judges being appointed, the problem is only aggravated.

We may be aware that the Supreme Court Collegium is a five-member body, which is headed by the incumbent CJI and comprises the four other senior-most judges of the court at that time. A High Court collegium is led by the incumbent Chief Justice and two other senior-most judges of that court. By its very nature, the composition of the collegium keeps changing. Judges of the higher judiciary are appointed only through the collegium system, and the government has a role only after names have been decided by the collegium. Names recommended for appointment by a High Court collegium reach the government only after approval by the CJI and the Supreme Court collegium. The role of the government in this entire process is limited to getting an inquiry conducted by the Intelligence Bureau (IB) if a lawyer is to be elevated as a judge in a High Court or the Supreme Court. The government can also raise objections and seek clarifications regarding the collegium's choices, but if the collegium reiterates the same names, the government is bound to appoint them. The collegium system evolved out of a series of judgments of the Supreme Court that are called the "Judges Cases". The collegium came into being through the interpretations of the relevant provisions of the Constitution that the Supreme Court made in these Judges Cases. Critics have pointed out that the system is non-transparent, since it does not involve any official mechanism or secretariat. It is seen as a closed-door affair with no prescribed norms regarding eligibility criteria, or even the selection procedure. There is no public knowledge of how and when a collegium meets, and how it takes its decisions. There are no official minutes of collegium proceedings.

Until 1973, there existed a consensus between the Government of the day and the Chief Justice of India. A convention was formed where the senior-most judge of the Supreme Court was to be appointed as the Chief Justice of India. But this practice was suddenly broken by the government when Justice A.N. Roy was made Chief Justice of India after superseding three senior judges of the Supreme Court i.e. Justice Shelat, Justice Hegde, and Justice Grover. After this decision of the government, there went huge debate across the whole of India that is there executive interference prevailing in the matter of appointment of a judge of the Supreme Court? This resulted in a clash between the Executive and the Judiciary.

In 2014, the government tried to replace the collegium system with the National Judicial Appointments Commission (NJAC) through the 99th constitutional Amendment Act. The commission was to consist of the CJI, two Supreme Court judges next in seniority to the CJI, Union Law Minister and two eminent jurists. However, in 2015, the Supreme Court has declared both the 99th Constitutional Amendment as well as the NJAC Act as unconstitutional and void. Consequently, the earlier collegium system became operative again. This verdict was delivered by the Supreme Court in the case Supreme Court Advocates-on-Record Association and another Vs. Union of India (2015). The court opined that the new system (i.e., NJAC) would affect the independence of the judiciary.

It can be seen that there are definitely some flaws in the Collegium System as criticised. But it cannot be very difficult to bring the things on track, by both Judiciary and Executives sit down and work on each others' concerns and address the same with rightful approach. The concern that present system is opaque is right, at the same time delaying appointments of judges has its own negative impact and people are the sufferers. There are 7 times more judges per 1,00,000 persons in USA than India. It is believed that it will take another 30 years to deal with present pending criminal cases, and most civil cases will remain unresolved at current rate of disposal. This is very precarious situation. On the other hand, Central Government is facing contempt case for sitting on appointments and this is definitely not desirable.

Another issue with present judicial system is that very low number of working days, coupled with very low daily working hours. Long vacations enjoyed by judges over and above other holidays is not good for nation, and definitely not desirable with huge pendency of cases which are presently more than 4.31 crores in different courts in India, not to mention lakhs and crores of cases in various lower forums such as Tribunals etc. Also, administration of courts is not people friendly.

A reform in the judicial system is required to urgently address the present flaws and the judiciary shall work it out with the Government as to how the whole justice delivery system can be improved to make it faster, more transparent, free of nepotism, people friendly, reform of lower courts and with accountability on part of lawyers and judges and supported by strong investigative agencies.

If India has to thrive, stronger judicial system is a must.

Thank you all..... Always in Gratitude

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