



Judicial Reform From The Advocate's Perspectives

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ABSTRACT

Judicial reform refers to the process of improving the efficiency, transparency, and fairness of a country's judicial system. The objective of judicial reform is to ensure that the judicial system functions efficiently and effectively, to provide justice for all individuals in a timely manner, and to strengthen the rule of law. The Supreme Court of India is the apex court in the Indian judicial system, and Advocate is an important stakeholder in it. The role of an advocate is pivotal in access to justice and justice delivery. However, the paper pointed out that litigating advocates at the Supreme Court of India currently facing several kinds of difficulties including but not limited to registry problems, time limit for an argument, management of cases, language barrier, accessibility and adaptability to the technology, poor drafting, etc. Also, it has been observed by the advocates that the present judicial system is overburdened, justice become a costly affair, Indianisation of the justice system, delay, pendency, infrastructure issue, lack of transparency, corruption, issue of judicial appointment, judicial vacancy, decentralization of SC, judicial attitude, etc. In this context, the author by doing the empirical study i.e., after interviewing litigating advocates at the Supreme Court of India critically analyses the various problems and suggests solutions to them from the advocate's perspectives. It is a well-known fact that bar and bench relations directly affect the justice rate. And, to prevent injustices it is quintessential to understand and address their problems. So judicial reform from the advocate's perspective leads to maximizing the justice rate. Then, fair, accessible, and effective judicial system is no more an illusion.

Keywords: Judicial Reform, Judicial System, Advocates, Supreme Court, Justice.

Objective: The objective of the research paper is to identify and critically analyze the problems in the Indian judiciary, especially in the Supreme Court of India from the advocate's perspective and suggest solutions to them.

Hypothesis: Judicial reform from the advocate's perspective helps to maximize the justice rate.

Research Methodology: Doctrinal and non-doctrinal methodology has been used in collecting and analyzing the data.

Research Method: Probability Sample Method: Simple random sampling is used in which the author has randomly identified advocates litigating at the apex court.

Introduction

Judicial reform is an ongoing process aimed at improving the effectiveness, efficiency, and fairness of the justice system. The Indian judiciary is widely regarded as one of the largest and most complex in the world. Despite the system's size and complexity, it remains an essential component of Indian democracy, ensuring the protection of the rights of citizens and promoting the rule of law. However, the Indian judicial system is not without its problems, and many of these issues have been the focus of ongoing reform efforts. This paper will examine the Indian judiciary, mainly the Supreme Court of India from the perspective of advocates and explore the key areas where reform is needed.

The most significant issue advocates litigating at the Supreme Court of India facing is with respect to the functioning of the registry. Many times, advocates witnessed the rude behavior of the registry. Plus, complex

procedures and deliberate delays in the listing of cases. Another issue is with respect to allowing a proper time limit to argue the case. Moreover, poor management leads to delays in the disposal of cases. During the covid-19 pandemic and even after that also many advocates were unacquainted with technological tools. As there are no concrete guidelines regarding drafting, poor drafting makes the judge's task difficult in analyzing and interpreting the documents. The lack of existing space in the Supreme Court creates an infrastructure issue. Most importantly, advocates experience that judge's mental, physical, and social backgrounds/ judicial attitude, or sometimes non-patient hearing by judges leads to a travesty of justice.

The litigating advocates at the Supreme Court of India observed that there is a special privilege to the elite class at the apex court. That elite class (in terms of social, and economic) intellectual opinion is considered while delivering the judgment by SC judges. There is a judicial comity, often for the same kind of case conflicting decisions deliver by judicial benches. The Supreme Court of India is overburdened with 69,000 pending cases as confirmed on 2021, whereas, the Indian judiciary is having 3.68 crore pending cases. Out of the many pending cases irrelevant, and politically motivated PILs take the precious judicial time. Also, the apex court is established mainly to deal with constitutional matters but is swamped with Special Leave Petitions. The cost incurred for the litigation indicates that justice has become a costly affair now, despite of the fact that several Supreme Court judgments ensure "justice to all". Judicial corruption can be seen in the higher judiciary by several instances and remarks of retired and serving honorable judges, which questioned the transparency and accountability of the judiciary. The interference made by the legislature and media in the working of the judiciary depicts the image of the judiciary to the common people in a different/ polluted manner than the actual one. The allegations on judicial appointment especially in the current collegium system create the questions such as nepotism/ favoritism representation of the backward class, etc. In this context, the paper is dealing with these issues in detail.

Locating the Judicial Gaps from Advocates Perspectives

There are several problems advocates are facing while practicing at the Supreme Court of India few of them are:

I Supreme Court Registry

The SC registry is considered to be a back-end office that receives and possesses all the case documents. Usually, the registry refers to the permanent administrative secretariat of the court. The registry consists of six registrars and is headed by a secretary-general. In addition, every CJI has its own preference for the post of secretary-general. There are the instances like CJI Thakur in 2006 had replaced Maithani with V.S.R. Avadhani, Andhra Pradesh based officer. However, CJI Khehar brought Maithani back again. Mr. Maithani has served seven successive CJIs except CJI Thakur (Vishwanath, 2018). There are instances with respect to the SC registry such as in 2020 a Judge from Maharashtra filed a petition against the SC registry against their biased and unprofessional conduct with regard to the listing of cases, unfortunately, the SC dismissed the petition (Roy, 2020). Mr. Reepak Kansal who is an Advocate by profession filed a plea in the year 2020 to the SCI with regard to the bias functioning of the SC registry, who alleges partiality and favoritism in listing matters prevail in the apex court registry.¹ (Mahajan, 2020). Advocate stated that there is a delay in listing cases before registry. After filing a case before the registry of the SC, the case is not easily numbered, even if it gets numbered, it will not get listed. Suggesting a solution to this advocate opined that though the automatic listing system should be upgraded. Few advocates pointed out that some of the staff members from the registry are not considerate towards the advocate's problems in the case listing and defect curing. Suggesting solution to this advocates opined that Sensitization Program for the registry should be organized to create awareness about the advocate's problems with the registry.

II Special privilege to the elite class in the SCI

The elite class of society is considered a special class of people having superior status in terms of intellectual, social, and economic. There is an argument and ongoing debate that a particular elite intellectual group usually formed an opinion on various subjects/ issues in the SCI. The elite intellectual institutionalism is the approach that creates a unique institutional and intellectual atmosphere in the court. This approach shapes institutional perspectives and policy worldviews that run the selective assertiveness and activism in the SCI. It is seen that in many Constitutional and Political matters justice worldviews are shaped by the opinions of that 'elite- meta regimes' professional and intellectual. The Supreme Court judges while pronouncing judgment have taken the reference of elite opinions, or elite intellectual impact on judge's mind can be seen in judgment, judicial

¹ Reepak Kansal v. Secretary General of Supreme Court of India, Petition (Civil) No. 541 of 2020.

Supreme Court dismissed a plea and imposed a fine of Rs.100/- on Advocate Kansal. Then as a mark of protest Adv. Kansal started collecting 50 paise coins from several lawyers to pay Rs.100/-. It is considered as a one of the noteworthy symbolic protests against Supreme Court registry.

remarks. This elite intellectual opinion is a threat to the independent intellectual thinking approach of Supreme Court judges and, ultimately to the independence of the Indian judiciary (Mate, 2015).

III Time limit for an argument

The word 'time limit' signifies that a particular thing is to be done in a specified time. Giving counsels unlimited time to argue their case. There should be a time limit fixed for the counsels to argue their matters. The author observed that the SCI does not specify a time limit for advocates to argue on a particular matter before the bench. While on the other hand, US legal system, Rule 28 of the Supreme Court Rules stated 'each side is allowed to argue for one and half hours unless the court is otherwise direct'. (Sharan, 2021). The author stated that SC has taken the first step towards allocating strict time schedules for advocates for an argument just like the UK and US legal system does, with a warning that violation would result in adjournment of the case. Justice Kaul asserted that he doesn't think even in the UK and US Supreme Court any system prevails which allows advocates to argue hours together. US Supreme Court only allowed to cite the judgment and not to read it. But in India counsel for each proposition cite several judgments, rather they should cite a single best judgment for each proposition. Moreover, whenever advocates request for 10 seconds by the clock in putting for a submission, more often it would stretch around 10 minutes (Mahapatra, 2021). Suggesting solution to this advocate opined that the SC gives unlimited time to counsel to argue his case which creates a backlog for other matters. The SC should fix a timeline in which every counsel should conclude his arguments.

IV Management of Cases

Management is core in any public or private institution. Judicial management is archetypal and indirectly affects the system. Mismanagement or non-management of the judicial system results in judicial delay and pendency of cases. There are many factors responsible for inordinate delay in disposing of cases such as court management including judges, court administrators, etc. The various techniques and methods prove useful for minimizing judicial delay and saving the precious time of courts. There is a need of having the FI-FO method which means first in-first out, cases should be heard on a priority basis like case turnaround time. To meet all these challenges facing the Indian judiciary, the CJI in consultation with the Union Minister of Law and Justice establish National Court Management System (NCMS). NCMS will primarily deal with policy implementation issues (Vattikoti, Jan. 2015). Advocate opined that on average 60 cases are listed before every bench of the SC. The court starts at 10.30 am daily. Suppose take an example of an advocate who is there for item no. 14. No one can actually tell at what time his matter will be taken up whether within 5 minutes of the start of the court, or after 2 hours, or at 4 pm, or will not be taken up at all. The major problem of the apex court is waiting time for a hearing. In the apex court, we are unable to make a request to the Judges to take our hearing at a specific time, so sometimes we need to spend the whole day for the hearing. Suggesting solution to this advocate opined to give a specific time for hearing matters, so that management of the disposal of cases becomes easier.

V Accessibility and Adaptability to the Technology

Technology has revolutionized the legal system, not only during the Covid-19 pandemic but thereafter. It has a constructive and deep impact on the judicial system, due to the emergence of virtual courts, and e-courts system. However, a certain question arises as to avail the facility of hearing through video conferencing that the advocate must have a mobile or laptop or infrastructure facility provided by the court. The E-Committee of the SCI noted that the majority of the advocate faced inconvenience in e-filing, attending virtual courts, video conferencing due to the non-availability of requisite infrastructure/ technology. On several occasions, it seems that advocates and judges are not techno-savvy originally. A recent instance is though the e-filing process adopted by a court one of the High Court judge dedicated email id got overloaded due to a single litigant filing. Another real instance is many vociferous advocates stand speechless during the virtual proceeding. These instances reflected the legal luminaries' resistance towards technology due to a lack of understanding of it. Undoubtedly, it will adversely affect the justice delivery system (Padmaja Kaul, 2020).

VI Conflicting decisions on the same position/ Judicial Comity

The Article 141 of the Indian Constitution states that the law declared by Supreme Court shall be binding on all the courts within the territory of India. Irrespective of their view on matters judges across the country of every court are bound to follow decisions given by the apex court. The SC played the role of legal mentor to ensure certainty and uniformity in judicial decisions. In a similar way, the subordinate court is bound to follow HC decisions that have persuasive value. There is no written rule in the Constitution but doctrine based on conventions such as binding precedents, stare decisis or known as judicial comity. In *Jawed Ahmed v. the State of Maharashtra*,² it has been observed by the two judges of the final court that the apex court sits in a division

² *Jawed Ahmed v. the State of Maharashtra*, AIR 1985 SC 2312.

bench of two or three as per convenience, therefore it is inappropriate for a three-judge division bench to purport the decision of two-judge bench. However, in *M/s Ujagar Prints v. Union of India*,³ in this particular case two-judge division bench held that the decisions should be followed given by the three-judge bench and should not disregard it. In addition, if the two-judge division bench is not agreed with the decisions of the three-judge bench then the matter should be referred to the larger bench of the apex court. The central issue is when there are conflicting judgments by co-equal benches, and the apex court has not authoritatively decided which decision is binding. Every High court in the country take down different views in the same regard. And, yet there is no authoritative pronouncement on this by the Supreme Court of India (Goyal, 2019).

VII Poor Drafting

There are instances where poor drafting made judges worried. In 2019, the former CJI Ranjan Gogoi berated Advocate Manohar Lal Sharma for poor drafting. The petition was related to the revocation of Article 370 in Jammu and Kashmir. The CJI expressed his anger with a note what kind of petition is this? what are your pleadings, prayer? He also stated that I read your petition for half an hour but couldn't understand. Another instance was the SC bench comprising Justice MB Lokur and Deepak Gupta in 2017⁴ sent back a convoluted judgment to the High Court of Himachal Pradesh, with a remark that it was really unintelligible to understand (ANI, 2019).

VIII Overburdened on SCI

The word 'overburdened' signifies the workload on someone than they actually deal with. Here, the issue of how the judges/ SC are overburdened with pending cases discussed. The overburdened on the Indian judiciary is a crisis that needs to be sorted out. The Indian judiciary is considered as the world's largest backlog of pending court cases. The then CJI Thakur observed that the average Indian judge handles 2600 cases per year while on other hand average US judge handle only 81 (Panda, 2016). Advocate stated that courts are overcrowded with cases from all over the country spread over time. Advocate stated that it is well known that the Indian Courts are burdened with thousands of pending cases, as per the recent data the report of Judicial data grid July 2021, there are approx. 69,000 cases are pending in Supreme Court of India. The rate of disposal of cases by SC is very slow (Panda, 2016). The total pending cases in the Indian judiciary is 3.68 crore as confirmed on March 25, 2021, which has been increased to 4.4 crores in the first week of April. There is a total of 67, 898 matters pending in the SCI, as confirmed on 1st May 2021, admission matters are 49,015 and regular hearing matters 18,883. In the HCs of India, the situation is not different, the Allahabad HC has the highest pending cases 746677, followed by the HC of Punjab and Haryana 607069, Madras HC 570282, Rajasthan HC 507749, Madhya Pradesh HC 375630. In the 25 HC of India 4475000 cases were pending in November 2019 while in February 2020 it has risen to 4581619 and in September 2020 it has marked to 5157378. The situation of district and subordinate courts are disastrous than HCs and SC. There are 81.86 lakhs (8186410) cases pending in lower courts of Uttar Pradesh, followed by Maharashtra 4221418, Bihar 3094186, West Bengal 2339108, and Rajasthan 1738488. The above stated statistics of pending cases in SC, HC, and District and Subordinate Courts point out the serious problems in judiciary i.e., judicial pendency, and asserted the urgent need for judicial reform to avoid judicial delay and save judicial time (Panda, 2016).

IX Accessibility of Justice is costly affairs

The cost is the biggest hurdle in improving "access to justice for all" (Kovind, 2020). The cost indicates here the expenses incurred for litigation which includes court filing fees, advocates fees, etc. The issue of unequal access to justice, which reflects in several SC judgments but the hardly serious attempt made to ensure "justice to all". He has cited several instances such as in the Ishrat Jahan fake encounter case, Justice BS Chauhan and Justice SA Bobde while dismissing anticipatory bail plea of accused IPS PP Pandey observed that "We can say on oath that only 5% time is being used for common citizens, whose appeals are waiting for at least two to three decades. In another case, former CM of Haryana Om Prakash Chautala who was accused of corruption case had sought an extension for his interim bail, Justice HL Dattu and Mukhopadhaya observed that "System only works for known persons and the unknown persons (common man) gets ignored" (Tripathi, 2016). The author observed that justice is not free, the court of law is a place where justice has a cost. He substantiates this with an example of former coal secretary HC Gupta's case, in which Gupta due to incapacity to bear the economical burden of litigation, had surrendered his bail and wanted to face trial from inside the jail. The question arises "Does justice become so expensive in India that it becomes evasive even for a senior ranking bureaucrat?" This

³ *M/s Ujagar Prints v. Union of India*, AIR 1987 SC 874.

⁴ The case involves a land dispute, and the landlord in that case sued to evict his tenant for failing to pay rent. The HC "holding that the rent amount was received by the landlord" annulled the eviction decision issued by a lower court.

has shown Gupta's complete sense of dejection, who has worked with due diligence in the government, still targeted for his honesty (Tripathi, 2016).

X Language barrier in understanding the functions of Supreme Court of India

The Indian Judiciary comprises of SC and 21 HCs. Hindi is the principal official language while English is the secondary official language of India. As per Article 343 (1), Hindi shall be the official language of the Union. Article 348 (1) of the Indian Constitution provides that the English language shall be used in the SC and in every HC for all the proceedings until Parliament by law otherwise provides. The former CJI Balakrishnan rejected the proposal on the use of another language than English, saying "The Supreme Court and High Court should continue proceedings in the English language until in due course Hindi become rich and ripe enough to take its place". He further added use of regional language in orders, decrees, and other proceedings will make the judge's work complicated if he is unaware of regional language. The translation of language is a costly affair, and may not be necessarily always correct and reflect true meanings of judgments (Mathur, 2017).

XI Delay, Pendency and lack of infrastructure facility

The central reason for the delay and pendency of cases at the SCI is poor judicial infrastructure and judicial vacancy in the number of judges/ judges ratio (Deka, 2021). The former CJI N.V. Ramana opined that there is a need to have a comprehensive proposal for the establishment of the National Judicial Appointment Corporation (NJAC). He further stated, "judicial infrastructure is the key for improving access to justice". The maintenance and improvement in judicial infrastructure are still continuing in an unplanned and ad-hoc manner. As per the international research, 2018 it costs around 9% GDP annually if we compare it to the failure to deliver timely justice. Delays in India's judiciary system are not restricted to the courts, pendency is also an endemic problem in India's specialized tribunals (Bhaumik, 2021).

SC infrastructure

The existing space of SC infrastructure is very less as per the growing workload on SC. Though SC Annexure Building is added. It has created space for registry work. The existing court rooms have been expanded to some extent. Some new courtrooms have created within pre-existed infrastructure. With growing number of workload, number of judges and number of advocates there is disproportionate infrastructure development with respect to SC building and court rooms. Whenever there is any important case hearing is going on, it is difficult to reach for advocates whose matters are listed towards bench inside court room due to over crowdedness. Even court corridors are usually overcrowded. Suggesting solution to few advocates opined that there is a need for SC infrastructure development. Adequate and appropriate facilities in terms of infrastructure should be set up in the SC to ensure that female advocates and judges have an equal opportunity to practise and progress in the Judiciary.

XII Lack of Transparency & Corruption in SCI

Transparency can be considered as when you see through others' glass and you have nothing to hide. You made your image honest and credible in the eyes of another person. The author opined that the office of the CJI included under the purview of the Right to Information Act is the historic one. With this judgment i.e., Central Public Information Officer, SCI v. Subhash Chandra Agarwal⁵ the office of CJI is a public authority under RTI and transparency, accountability, and independence are ensured concomitantly (Chandramouli, 2019). Lack of transparency or corruption might not be that evident but can exist in the judiciary. Chances and incidents of corruption are also big problems before Supreme Court. A former judge of the SCI Justice Markandey Katju claim that there is a total 50% corruption prevailing in the higher judiciary particularly in SC and HC. He was addressing the lawyers of Punjab and Haryana High Court. A former Law Minister Shanti Bhushan in 2010 alleged that eight out of sixteen CJI were corrupt. There were many instances of corruption in the higher judiciary, for example, Justice C. S. Karnan, a judge from Calcutta High Court had sent a letter to the CJI alleging corruption against 20 High Court judges. He further put a point that after demonetization there was illegal money recovered from high court judges. Another example is then CJI A.S. Anand was accused to influence the lower judiciary to order in favor of his wife and mother-in-law in a Tangled Plot case. During the tenure of CJI A.M. Ahmadi, it was observed that special treatment was given to her daughter who is a lawyer practicing in the same court by various judges. The result is the bar has passed resolution restraining lawyer relatives of judges from staying in the same house (Singh, 2017).

⁵ Central Public Information Officer, Supreme Court of India vs. Subhash Chandra Agarwal, Civil Appeal No. 10045 of 2010 and Civil Appeal No. 2683 of 2010.

XIII Decentralization of SCI/ Judicial Capacity

The word 'decentralization' refers to the distribution or dispersion of functions and power. The author explain the reason for decentralization with the words of Justice Krishna Iyer that there is the sole basis for selecting Delhi as a prime location for establishing the SC. He argued that the current system reflects the oppression of the south by the north. He suggested decentralization of the SC into several benches, in a manner similar to multiple High Courts. However, his efforts for decentralization were not fruitful (Murthy, 2019). Justice Krishna Iyer and several other proponents of decentralization of the SC believe that mainly two important issues can be solved through establishing regional benches. The first issue is a concern with access to justice. K.K. Venugopal noted that there are the 10% of cases filed in SC are from Delhi, 6.2 % are from Punjab and Haryana, and 1.1% and 2.4% come from Southern states like Tamil Nadu and Karnataka. Therefore, these numbers sufficiently prove that distance affects the likelihood of case filing before the apex court, rather they are indicative of a trend. The 'Law Commission of India' to address this issue suggested setting up four regional benches in a different region to hear cases of each region. Justice Bhagawati noted that the 'Supreme Court meant to be constitutional court and not merely court of appeal'.⁶ Few advocates opined that the litigants are situated in all corners of the country. Many would not have traveled out of their states in their whole life. This unfamiliarity is crucial in considering taking their grievance to the SCI.

XIV Interference of legislature and media in the working of the judiciary

The word 'interference' signifies the action or process of interfering/ intervention. The legislative/ political influence can be seen in the judicial appointment as SC judges either elevated from HC or appointed from SC. The appointment can be done with the recommendation of a collegium with the consultation of the President of India. Therefore, it is seen that the power of judicial appointment is controlled by the President, provided he should consult with CJI but there is no requirement of concurrence with respect to the final appointment. The landmark instance where legislative interference can be clearly visible to the people, noted when in 1973 President V.V. Giri appointed A.N. Ray as a CJI, breaking the traditional rule of seniority. The former union minister of state for minority affairs Mukhtar Abbas Naqvi asserted that the judiciary should not promote the culture of interference, plus it is expected that the judiciary must work within its own limit. He further added judicial interference in the legislature is really frustrating. More often the laws made parliament judiciary struck down, it seems that judiciary is doing Parliament's work. While on the other hand, former CJI T.S. Thakur opined that the judiciary is not interested in interfering in the legislature's work but the fact that 85% of the people knock on the door of courts only when they were disappointed by governments (ANI, 2016).

XV Long pendency of cases

There are 4.5 crore cases pending before the Indian judiciary in all courts across the country. The huge pendency of cases is courtesy of a huge number of judicial vacancies in the courts. The data collected and analyzed shows that the pendency of cases increasing by 2.8% annually. It is stated that out of 45 lakhs cases pending before Subordinate Courts and High Courts for over 10 years, it implies suppose no cases being filed then it would take 1.3 years by SC, and 3 years by HC and Subordinate Courts to dispose of their cases. The judicial vacancy is the reason for the huge backlogs of cases. As of September 2021, out of 1098 sanction posts, 465 judge's posts were vacant in the High Court. It is around 42%. States such as Delhi, Bihar, Rajasthan, Odisha, and Telangana have more than 50% judicial vacancies. A former CJI N.V. Ramana remarked that there are numerous factors contributing to the judicial delay, he blamed the phenomenon of luxurious litigation where parties attempt to frustrate the judicial process and delay it by filing several proceedings across the judicial system (Sood, 2021).

XVI Judicial Appointment at the SCI

John Brittas (Member off Parliament) opined that India is the only country where judges appoint judges, it is unheard of judges to appoint judges. He asserted that there is a quintessential need for the 'National Judicial Appointment Commission (NJAC)' which represents judiciary, executive, legislature, public with transparency and accountability. He added that the people of the country should know about their judges, competence, ability, and integrity. There should not be a system shrouded with mystery, secrecy, and darkness. He asserted that while expansion of cabinet we include a sizable number of OBC, SC, and ST, but for the judiciary, we never claim about such a diverse representation. Brittas highlighted that out of 47 Chief Justice of India till date 14 have been Brahmins, and there was no judge from OBC at the SCI till 1980. It shows that there is no diversity in the judiciary. Furthermore, Brittas said that we are moving towards oligarchy, patronage country (Brittas, 2021).

⁶ Bihar Legal Support Society v. The Chief Justice of India, (1986)4 SCC 767.

Judicial appointment process lacks transparency and accountability

Judicial appointment in the SC and HC done with the collegium system, an attempt has been made by the government to replace it with NJAC (99th CAA, 2014) for transparency and accountability in the judiciary but it failed. SC declared NJAC Bill, 2014 unconstitutional. The collegium system nowhere mentioned in the Constitution of India or any successive constitutional amendment. It has developed through the three Judges' cases. In the case of *S.P. Gupta v. U.O.I.*⁷ (Judges Transfer Case I) primacy of CJI in matters of appointment and transfer is questioned. It was held that the executive would appoint the judges in 'consultation' with the chief justice than in 'concurrence'. Thus, president has a right to take a contrary view. In the case of *Supreme Court Advocates on Record Association v. U.O.I.*⁸ (Judges Transfer Case II) overruled *S.P. Gupta* case and held that CJI has primacy in the appointment of SC and HC judges. Also, the opinion of judges does not mean his individual opinion, it means opinion form collectively after consulting two senior-most judges of SC. In the case of *re Special Reference*⁹ (Judges Transfer Case III) court held that recommendation by CJI without consulting fellow judges is not binding on the government. The CJI should consult a collegium of four senior-most judges of the SC. All the decisions in the collegium to be taken by consensus. If two judges give an adverse opinion then the CJI will not send the recommendation to the President. There is an allegation against the collegium system that while judicial appointment promotes family members, relatives, colleagues, support nepotism, and corrupt practices which put the question over the neutral status of the judiciary. For transparency and accountability in the appointment of judges and to avoid clashes between executive and judiciary NJAC bill, 2014¹⁰ has been passed and 99th Constitution amendment made. However, SC declared NJAC unconstitutional as it violates the separation of power and rule of law.

XVII Judicial Vacancy

The current strength of the SC is 34, and 33 vacancies have filled up. It was the first time, during the tenure of former CJI NV Ramana, nine judges out of three were women judges took the oath of allegiance to the Constitution at a single stroke. It is referred to as one of the historic moments in the history of the Indian judiciary, especially at the SC (Rajagopal, 2021). The Hon'ble Mr. Justice Ranjan Gogoi in his speech he said there are 900 seats available in different HCs of the country, out of 250 are vacant. In Tamil Nadu, 162 courts are running unmanned. There is a total of 2.68 crores of cases pending in district and subordinate courts in the country. The numbers of SC judges are less as compared to the population of the nation. Justice Gogoi while addressing the problem of judges ratio opined that the Law Commission recommended 107 judges to a million population in the year 2000. Now, per million population is 15.4 judges strength sanctioned. This is grievously short if compared to the target set by the law commission.¹¹

XVIII Lack of Uniformity in the functioning of SC/ Judicial Trust

The lack of uniformity at the SC can be observed with the incidence of entertaining PIL with respect to repatriation of Kohinoor to India, when CJI was TS Thakur, he entertained the PIL and asked the Centre what steps they have taken to bring back Kohinoor to India, thereafter when JS Khehar become CJI he dismissed the PIL on the ground of frivolity. Does the question arise who was right Justice TS Thakur or Justice JS Khehar? This creates the judicial trust issue in the minds of litigants pertaining to the process of judicial scrutiny. Another instance was a bench headed by CJI JS Khehar held that Aadhar is not compulsory for social welfare scheme. However, another bench asked the Centre to make Aadhar compulsory for Pan Card as it is required for filing income tax returns. In addition, when one politician filed a PIL before SC against Lalu Prasad Yadav regarding disproportionate assets, the apex court dismissed the PIL with a remark that this court is not an arena for settling political battles. While when another PIL was filed at the SC against Mulayam Singh Yadav leveling similar charges, the apex court ordered the CBI to start the probe of the case (Mahapatra, 2017). In the case of *Swami Shradhananda*¹², the SC had itself lamented of not following cardinal principle regarding the

⁷ *S.P. Gupta v. U.O.I.*, AIR 1982 SC 149.

⁸ *Supreme Court Advocates- on Record Association v. U.O.I.*, AIR 1993.

⁹ *Re Special Reference*, AIR 1998.

¹⁰ The NJAC consist of six members CJI + 2 Senior SC Judge + Union Minister of Law & Justice + 2 Eminent Persons (1 from SC/ST/OBC/Minority or Women)¹⁰. The function is to appoint and transfer the judges of SC and HC¹⁰.

¹¹ Comparing it to the world scenario as Australia has 58 judges per million, Canada has 75 judges per million, the UK has 100 judges per million and the USA has 130 judges per million population, the Indian judiciary facing a troublesome issue.

¹² *Swami Shraddhananda Murali v. State of Karnataka*, [2007] (12) SCC 288.

death penalty laid down at Bachan Singh case¹³ and Machhi Singh case¹⁴. It is unfortunate to note that there is a complete lack of uniformity in the functioning of the SCI.

XIX Representation of backward classes in the judiciary

Out of 47 Chief Justice of India there were only 14 judges who were from the Brahmin community till date. Till 1980 there was no judge at the SCI from backward class or scheduled caste community. K.G. Balakrishnan was the first CJI from the schedule caste community. However, the application of this one seat from the schedule caste is highly irregular. The first judge appointed from other backward class was Justice SR Pandian, and the second is KN Saikia. Justice KS Hegde and AN Alagiriswami were members of the caste which was later considered as other backward class. The author Saxena opined that traditionally weaker sections of society/downtrodden class are still institutionally marginalized. He asserted that there cannot be a denial of known but hidden factors, for example, political connections, legal and judicial dynasties, etc (Saxena, 2021).

XX Judges Attitude

The judge's attitude and role orientations are two important variables in predicting a judge's behavior. There is no research has become successful till date in establishing a comprehensive model for predicting a judge's behavior incorporating attitude, role orientations, and decision making (Gibson, 2014).

Mental, physical, and social background of judges affects judicial decisions

Jurimetrics is the science of law. It has been observed that in many judicial pronouncements judges philosophy is reflected clearly. Although justice is delivered based on a set of principles and settled law still some other factors affect the interpretation of laws and ultimately change the judicial decisions. In recent years, efforts were made to predict judicial behavior in an artificial way that way resulted in the invention of the term 'jurimetrics'. The author proposes the theory of the logical plenitude of law according to which law is not a mere collection of rules but a rational system to exercise authority for human beings. Jurimetrics is not a substitution to the judge's reasoning but an aid. Jurimetrics study signifies how a judge's mental, physical, and social background impacts him while delivering any particular judgment (Khan). For example, Hon'ble court in 1987 in the case of Maruti Shripati Dubal v. State of Maharashtra¹⁵ declared the right to life includes the right to die, contrary after nine years in 1996 in the case of Gian Kaur v. the State of Punjab¹⁶ declared the right to life does not include right to die.

Addressing Judicial Gaps from the Advocates Perspectives

I Suggestions given by Advocate to address the Governance Gaps that exist in the SCI

The advocate suggested the following solutions such as a. Multi-classed division: Efforts should be made by all to reduce the litigation cost, so that the common man can raise his cause at the highest court of this country b. The struggle of matter to reach to Court: A litigant-friendly environment should be created by lawyers. Advocate should stop charging exorbitant fees from clients. Every normal Advocate practicing at the Supreme Court should try to do Pro bono work. Senior having good income shall charge bare minimum fees at least one case per month. c. Sky-high Fees of Some Advocates: There is a need for regularization of advocate fees as per his experience skill and expertise. d. Legal research facilities to Advocates: Updated legal research facilities shall be provided to advocates. e. No minimum Standard of Drafting of Case: Strict ethical standards shall be abided by Advocate-on-records while filing cases. f. Delay in listing cases before Registry: Though the automatic listing system is upgraded, the Corona pandemic has affected the functioning of the Supreme Court. Many cases did not get listed for many years. There is an urgent need for a planned solution for the listing of cases. g. Rude behaviour of Registry to Advocates and Clerks: Sensitization Programme for Registry be organized to create awareness about the advocate's problems with the registry. h. Unethical practices by some lawyers: Courts should be vigilant towards the unethical practices of some advocates. i. Politically motivated cases and PIL's: Wide attention by media towards politically motivated PILs should be discouraged. Judges should dismiss such PILs with a heavy cost. j. Non-Patient hearing by Judges: Judges should at least hear patiently all relatable and due submissions of arguing Counsel and should not dismiss the case in haste. k. Adamant Judges: Judges should try to be neutral while hearing cases, their opinions about a particular issue shall not be imposed on a case in hand. l. Face value system: Face value system shall be discouraged by all. m. Advocates with legal background vs. Advocate without any legal background: Equal treatment to all is key to this problem. n. Female Advocates v. Male Advocates: Gender sensation programmes shall be organised frequently. o. Panel Advocates v. Non-Panel Advocates: All panel advocates shall be selected from every strata

¹³ Bachan Singh v. State of Punjab, (1982) 3 SCC 24.

¹⁴ Machhi Singh and Others v. State of Punjab, AIR 1983 SC 957.

¹⁵ Maruti Shripati Dubal v. State of Maharashtra, 1987 (1) BomCR 499.

¹⁶ Smt. Gian Kaur vs The State of Punjab, AIR 1996, SC 946.

of society based on their merits. p. Overcrowded Supreme Court: There is a need for Supreme Court infrastructure development. q. Insufficient Chamber Space for Lawyers: Chamber for lawyers shall be built and allotted in proportionate with the number of advocates who are regularly practicing before the Supreme Court. s. Advocates Struggle to have proximity with judges with their ulterior motives: The unethical practices by advocates shall be stopped and discouraged.

II Modification in registry rules

The advocate litigating at the apex court suggested that the registry rules could be modified to suit the changing times and specifically made easier to understand for the layman. Recently, a bill has lapsed qua different benches of apex court which should be re-initiated and passed.

III Eradication of Patriarchy, Setting up an inclusive infrastructure, Reservation

The advocate suggested three important suggestive measures eradication of patriarchy, setting up an inclusive infrastructure, and reservation.

a. Eradication of Patriarchy: The Indian society being patriarchal in nature, it can be said to be a root cause for the gender disparity and lack of representation of women in the Hon'ble Supreme Court. Thus, to simply put forth, such a mindset must be done away with and women should be encouraged to study law and also practice law as a profession. Additionally, primary and secondary education should be imparted in a manner which ensures that individuals inculcate a gender-neutral mindset and a rational balanced outlook.

b. Setting up an inclusive infrastructure: Adequate and appropriate facilities in terms of infrastructure should be set up right from the lower courts to the Supreme Court to ensure that female advocates and judges have an equal opportunity to practise and progress in the Judiciary.

c. Reservation: There must be a certain percentage of reservation for women to be appointed as Supreme Court Judges. This will not only ensure adequate representation for women in the Apex Court but will also pave the way for progress of women in the legal profession at the lower levels of the judiciary and ensure that women also have equal opportunity to be in position of authority and leadership. This will also positively influence the process of appointment of Judges at High Courts, the process of elevation of advocates as judges which is presently more tilted towards male advocates and will overall highly improve the quality of justice and gender sensitivity in matters concerning women and the society.

IV Removal of Gender Disparity, Decentralization of SC, Diversification in judicial appointment

The advocate opined that first and the foremost thing should be implanted in apex court is the complete removal of gender disparity and the appointment of women as judges also as Chief Justice of India and Attorney General of India. The percentage of female judges should increase. The former CJI N. V. Ramana said that "The legal profession still has to welcome women into its fold since a majority of women advocates struggled within the profession also he said that he would prefer at least 50% representation of women in the judiciary at all levels". Decentralization of power of judiciary, the regional branches of SC should be established in various part of India in order to get convenient access to judiciary by everyone along with unprivileged sector of the society. Diversification in judicial appointment, apex court should ensure the socio-economic diversity while appointing its judges. Including judges from various backgrounds such as LGBTQ community would build the progressive image of judiciary. Broadening the scope of e-courts is also the need of an hour. The pandemic has completely changed the scenario for traditional court hearings and it has affected the judiciary a lot. The advancement of e-courts in terms of introducing the block chain and artificial intelligence will help to lower the burden on judiciary. However, the SC has introduced the 'SUPACE Portal' but still it's not sufficient. The prohibition of the intervention of legislature into the judiciary is the need of an hour. Important steps to be taken to minimize the filing of unnecessary and irrelevant PILs in the Supreme Court. The SC should start providing its important judgments and order in all prescribed scheduled languages listed in the 8th Schedule of the Indian Constitution, as India is the land of diversified languages and Hindi and English only is not preferable for the whole country. Working hours of the apex court should be increased in order to pace up hearing and disposal of pending cases.

V Reduce non-working days

The advocate suggested that the government needs to double the number of judges both at lower and higher judiciary and increase the vacancies for the judicial service exams. It is essential to reduce the number of non-working days/ holidays.

VI Reject frivolous and politically motivated petitions at first instance

The advocate opined that most of the problems pointed are so deep-rooted and widespread that they cannot be countenanced without the joint and concerted efforts from the judiciary and the executive. However, there are a few suggestions with respect to certain administrative issues, which could probably ease out the functioning of the Supreme Court. The SC registry needs to be more accountable and transparent in its functioning. The listing of cases must take place strictly in accordance with the relevant office orders/ circulars issued by the registry and for extremely urgent matters, the system of mentioning must be continued. The Supreme Court

Rules, 2013 need to be amended to ensure that the court is able to devote more time to after notice matters, and effective classifications are done to ensure that a matter has a shorter timeline. The SC needs to establish more benches to make it more inclusive and ensure that the overall objective of access to justice is not compromised. The frivolous and politically motivated petitions consume a lot of time of the court. The said petitions are required to be curtailed with an iron hand and wherever necessary, exemplary costs are required to be imposed on such petitioners. The collegium system needs a definite and radical overhaul. But unfortunately, successive Chief Justices of India and the central government have shown complete apathy toward the reformation of the Collegium System.

VII Provide short written argument, Amendment in the Contempt of Court Act 1971

The advocate suggested that there must be a mandatory requirement to provide a short/ medium written argument note on the case by the parties to the case, this will reduce the burden of the Judges to a great extent. More appointment of judges from several HC's/ Bar in the Supreme Court to adjudicate plethora of cases by introducing an amendment in the appropriate statute regarding the increasing of the number of judges in Supreme Court and to provide them with adequate facilities and staff including an increase in the number of law clerks for the Judges. Introduction of more elaborative rules to keep the online system of filing of the case as an option along with the physical filing of the cases. A need to bring the statute/ rules in the official gazette for keeping the hybrid mode of hearings of the cases. This will provide a path for the advocates to access and appear before the Supreme Court and to improve their arguing skills. Also, establishment of separate benches for hearing cases arising from special statutes like IBC, Tax, Environment laws, etc. This will to a great extent decrease the backlog of cases in the apex court. An amendment in the Contempt of Courts Act to increase the amount of fine to at least Rs. 10 lakhs/- and criminal punishment of 5 years.

VIII Permanent constitution benches, Priority to cases involving question of law

The advocate litigating at SC suggested that the SC should constitute at least two permanent constitution benches to dispose of the Constitution bench matters or matters involving an important question of laws having pan India ramifications. The Tuesday, Wednesday, Thursday or non-miscellaneous days and on these days Supreme Court can constitute two Constitution benches for this purpose. In the year 2020 when the whole world was hit by the COVID-19 pandemic, the Supreme Court decided 11 Constitution bench most of them through virtual hearings. When in a year hit by the pandemic the Supreme Court can decide 11 Constitution bench cases then in the normal times the Supreme Court can dispose of at least four times this number in a year. As a consequence, it would be easier for the high courts and other subordinate courts in India to decide the matters more efficiently on the questions of law settled by the Supreme Court in such constitutional bench decisions. The Supreme Court should give priority to cases involving questions of law and cases challenging various statutes and dispose of them off as soon as possible because when the matter is pending before the apex court, subordinate courts do not want to enter into such questions and the backlog in the quotes below keeps on increasing.

IX No privilege to political matter, Infrastructure, Transparent collegium system

The advocate asserts that no privileged should be given to any politically influenced matter of whatsoever reason. The Judges recruitment is a lengthy procedure not only at the lower courts but also for, the higher levels too. Good advocates often don't choose to be a Judge because of the minimum number of years criteria in judicial recruitments. The Supreme Court is overburdened, but there is a fixed number of judges in the court; the number must be increased so that the speedy disposal can be seen at the apex level. The infrastructure of courts is often seen as old and much of the court premises is seen as offices for the advocates. The infrastructure can be increased so that the number of sitting judges can be increased, which can promote speedy disposal in the judicial system. The national appellate court is an excellent concept. Still, it looks like a political motive, and instead of such courts, the Supreme Court can increase the number of judges in the same building, which will solve the purpose of the national appellate court. The SC collegium is a unique and vital body, but it should be transparent and written, which will clear the procedure and conditions to transfer and appoint the judges. The Suo moto action of the SC is unnecessary because in such cases nation tries to label the SC with political parties.

X Number of judges at SC & HC, Circuit benches, Imposition of cost to frivolous petitions

The advocate opined that the threshold of entertaining discretionary petitions such as SLPs must be higher. The number of judges of the SC must be necessarily increased to counter the plethora of cases pending before it. The circuit benches in north-eastern and southern part of the country to make justice more accessible. Increase in court fees for litigants having certain income level to deter filing frivolous Petitions. Imposition of costs and passing of structures for litigants filing frivolous or baseless Petitions. Increase in the quality and quantity of High Court judges so as to reduce the chances of SLPs or Appeals being admitted against High Courts' Order. Priority hearing of matters where there is Stay Order. Increase in ADR efforts to reduce the bulk of litigation. Mandatory filing of Written Arguments before final hearing to reduce time of actual hearing.

XI Punish media and political parties for interference with judicial minds

The advocate litigating at SC suggested to appoint more SC judges and establish SC at the appropriate location for making the justice delivery system more flexible and accessible to all. The legal aid awareness program must be advertised at ground level. Training program for advocates as to the use of online platforms for access to justice. There should be special rules for media and political parties that will punish them if they tried to interfere with judicial minds. Special Supervisory committee to be appointed for monitoring the corruption incidents in the judiciary. The SC rules must be amended and the provision of allowing the cases must be regulated through statutory rules.

XII Judicial appointment through backward class increase efficiency

The advocate believe that the judicial appointment from backward class may increase efficiency and justice delivery system irrespective of any caste and category. There should be compensation system to jail inmates who get acquitted. The justice should be served to the parties by not looking at high-paid lawyers but to the merits of the case.

XIII Benches of Hon'ble SC, SC keep watch on lower courts

Advocates opined that if Parliament and Hon'ble SC decides to make Benches of Hon'ble SC at minimum 4 to 5 Places; automatically work will be distributed within respected Benches and the "overburdened judiciary" tag will be removed permanently. It is obvious that due to those Benches, the fee structure will automatically reduce and employment will increase. Therefore, Supreme Court can keep watch on the Lower Courts. It is very important that Supreme Court should keep watch on the Trial Courts.

XIV Implementation of the uniform procedure, System to monitor status of listing of petition

Advocate opined that there must be a uniform procedure (which exists) that shall be implemented without exceptions as nobody is above the law and everyone is equal in the eyes of law. There has to be a transparent system that allows you to monitor the status of listing of the Petition and an equally sufficient complaint redressal mechanism so as to make sure that all issues qua listing are resolved at the earliest.

XV Simplified filing process

Advocate suggested simplified filing process. More benches around the Country can be made. Number of miscellaneous days can be extended from 2 to 4 to adjudicate the fresh cases quicker. Specialised subject matter specific benches can be made.

XVI Establish co-ordinate benches of SC

Advocates opined need to establish co-ordinate benches of the Supreme Court in different parts of the country (like how it done for High Courts of Madras, Bombay etc.). Special benches to be formed to dispose the cases (Appeals & SLPs) which have been pending for more than 3 years. Whenever co-equal bench is not in agreement with the finding of the co-equal bench, it has to refer the same to a larger bench. (A20) May be open circuit benches and admit lawyers of all categories not just the AORs.

XVII Uniform system in matter getting listed, Financial cap on fees of lawyers

The advocate think a uniform system should be developed for everyone who has to get their matters listed. No one should be prioritised because of their background. Certain aspects i.e., matter of life & death should be the one of the criteria where one should be prioritized over other individual. A time constrained mechanism could be introduced for specific cases which can be dealt on a faster note. Cases of Substantial importance might not be delayed for too long and faster mechanism can be used. A financial cap on fees of Lawyers and sincere efforts to curb parts of red tapism might reduce time and inconvenience caused.

XVIII Sufficient opportunity to junior to make out their case

Advocates suggested that draft of each and every matter should be in precise format and to avoid unnecessary repetition. If the draft is not good then on the basis of impugned order and merit in the matter, the Ld. Bench should have to refer the same to the advocate for redraft with specific remarks. Finally, all junior advocates should be granted sufficient opportunity to make out their case.

XIX Equal opportunity and equal platform to approach SC

Advocates stated that justice delayed is justice denied. All people should get equal opportunity and equal platform to approach the Hon'ble Supreme Court. If the elite class can get the matter admitted within a day and decided by the Hon'ble Supreme Court next day, then the same opportunity shall be given to the common people of this country. Matters in the Hon'ble Supreme Court shall not be prioritised on the basis of popularity of the party in the matter. Rather priority shall be given to the person who really needs justice within a reasonable time.

XX Allot specific time for hearing to ready/ unready matters

Advocates suggested that there must be proper timing assigned against every item not listed before the court. So that advocates must not have to wait for the whole day for the matter in the courtroom. To give specific time for hearing like ready/ unready matters or for example, If Hon'ble Supreme Court has 300 hearings in a whole day, they can distribute time for each slot like case number 1 to 100 will hear on 10am to 12 pm, case number 101 to 200 will be hear on 12 pm to 2 pm, case number 201 to 300 will be hear on 3 pm to 5 pm, and the case which unable to hear between allotted time will be hear after 5pm. To solve the pendency of cases, the Supreme Court should established benches in Mumbai, Kolkata, Hyderabad/ Chennai and Delhi.

Conclusion

It is important to note that locating and addressing judicial gaps is not always a straightforward process. Legal issues can be complex and multifaceted, and there may be multiple interpretations of the law. In some cases, resolving a judicial gap may require legislative action or changes to the legal system as a whole. However, the role of SC advocates in identifying and addressing judicial gaps is a critical part of ensuring that the judicial system is fair and just for all. In conclusion, locating and addressing judicial gaps is an essential aspect of the legal profession, and SC advocates play a crucial role in this process. By litigating experience and conducting legal research, advocating for changes to the law, advocates can help ensure that the judicial system operates effectively and fairly for all. And, thus judicial reform from the advocate's perspective helps in preventing injustices and makes justice availability to all.

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