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The Independence of Indian Judiciary

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ABSTRACT

India is a democratic country with three wings as executive, legislative and judiciary. The Constitution of India entrusted with checks and balances that each wings have their own supremacy. Indian Judiciary has three tier structure as Supreme Court on the Centre, High court on the states and subordinate courts on the districts. The powers of the court distinctively bestowed on Constitution and the Civil procedure code 1908 and Criminal procedure code 1973. No court bypass the power of the courts. The Supreme Court and the High courts have parallel jurisdiction except for appellate and Special leave jurisdiction. The establishment of Courts, tribunals, committee is to reduce the backload of cases to extend peace and prosperity in the country. The setting up of regional benches of Supreme Court in the west, east and south will bring chaos among the country and the burdening of cases in the highest judiciary will be more. In this research paper, we would like to present certain methods to be followed to reduce the burden of judiciary rather than establishment of regional benches in the Country.

Keywords: *India, hierarchy, cases, backload, constitution.*

I. INTRODUCTION

The head of the drafting committee Dr. Ambedkar said that "**The Indian federation, though a dual polity, has no dual judiciary at all**. The remedies are provided by all the courts entrusted in the Constitution such as Subordinate courts, High court and the Supreme court. It means India has a single Judiciary with supreme Court at the top followed by High Courts at the state level. Article 14, 19(1)(a) and 21 of our constitution ensure the implementation of speedy trial. The right to speedy trail is a part and parcel of Fundamental right to life and liberty[1]. The judicial power of a country in delivering the justice is an important key for the regulation of the democracy. Establishing of regional benches will be unconstitutional as it disturbs the basic structure of the Constitution of India.

Before Independence era the Supreme has its own regional benches and it was abolished and till now there is only one highest judiciary for the purpose of being a sole interpreter of the constitution. There are some reliable measures can be taken by the judiciary rather than

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establishing and dividing the power of the highest judicial authority.

II. EVOLUTION OF SUPREME COURT

1. India at the pre independence time it was unable to have a centralized administration of justice. The federal supreme court in the New Delhi collectively the chief justice and 25 other judges, there were three presidential courts for the development of judicial system in that particular point of time.
2. Under government of India Act 1935 has its own provincial subject as administration of justice and organization of courts. Enactment of courts such as Supreme court and High court are under the mandatory provisions of the Constitution. There are few provisions which give an edge and assign a superior place in the hierarchy, to the Supreme Court over High courts.[7]
3. It is material to the present case; the enactment of Supreme court regional benches will bring back all the colonial systems as it was earlier and the development of a state is always depending on the checks and balances of the state.

In the case of **Rameshwar Prasad VI vs Union of India**[3] the Supreme court as a protector of the fundamental rights enshrined in the constitution under Article 32. Article 32 is considered as heart and soul of the constitution. It is policy based on rule of law, democracy and natural justice.

In the landmark 13 bench Constitution case **Keshavananda Bharathi vs State of Kerala**[4] The basic structure cannot be altered in any situation Sikri CJ states that explained the basic structure of the Constitution

- Supremacy of the constitution
- Republican and democratic form of government
- Secular character of the Constitution
- Federal character of the constitution

Jaganmohan J Stated that elements of the basic features were to be found in the Preamble of the Constitution and the provisions into which they translated such as

- Sovereign democratic republic

[3] 24 January, 2006
[4] (1973) 4 SCC 225; AIR 1973 SC 1461

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- Parliamentary democracy
- Three organs of the state (Legislative, executive, judiciary)

This was a landmark case in explaining the concept of the basic structure doctrine. The Supreme Court held that even the Parliaments amending power cannot able to alter the fundamental rights, the basic structure cannot be abrogated. This landmark judgement suggested that the parliament can only amend the constitution and not rewrite it.

III. CHECKS AND BALANCES

The three organs of the state entrusted in the Constitution as such are Legislative, Executive, Judiciary. The legislation will enact a statute, rules, regulations. The executive of the state will execute such laws and finally judiciary is the place where the law will be interpreted. If the legislature spends some quality amount of work and time in the law-making process, then the piling up of cases in the Supreme court will be reduced. The litigants approach the highest judicial court of a country to interpret any such provision of a statute where this can be avoided at an earlier stage while making the law.

The judiciary under the Indian Constitution has to depend on the executive for its infrastructure and resources, both human and material. Unless this is provided on a need-based analysis and planned endeavor, the ailments cannot be cured.

This checks and balances of a state cannot be altered even by the parliaments as it is the basic structure of the Constitution. The Supreme Court held that the amending Justice Chandrachud observed in the case of **Indira Nehru Gandhi vs Shri Raj Narain & Anr[5]The** constitution cannot survive without a strict adherence to the fine checks and balance. Parliament should also respect the judiciary, and court ought not to enter the political dilemma, This is the concept of self-preservation to ensure that every wing of the democracy has its own independence.

IV. EFFECTIVE JUDICIARY

There are certain dynamics where the judiciary can be effective to solve the dispute of backlogging of cases such as

(A) Lack Of Judges

The judiciary is also responsible for delay as it delays appointments of judges in vacancies. The availability of judges should be increased up to 50 judges/ per million in 5 years. The ratio between judges and population is 10.5 judges per million.

[5] 1975 AIR 865, 1975 SCR (3) 333

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The judges and population ratio are relatively low in India. The supreme court judges were 25 and the cases for institution was 28,007 in 2008. The ratio works out to 1:112. If the pending arrears of 46,374 are taken into account, the ratio will be 1: 1855. It is better to increase the bench strength of the supreme court to reduce the backlog of pending cases and it will reduce delays in the justice delivery system as it always as Justice delayed is Justice denied. As Speedy trail is entrusted in the constitution will be more efficient and the ultimate aim of the judiciary is to ensure justice.

(B) Vacation Of Courts:

The days of Working of Courts in our country also contributes to the large pendency of cases. In most developed countries, the number of judges per million is far better than our country. But these countries judges can take leave according to their convenience without affecting the smooth functioning of the courts.

In India, the High court and the supreme court has their own vacation but the subordinate court in our country works the whole year. High Court requires to work for 210 days a year. The Supreme Court of India is required to work by the 185 days a year. The days of vacation leads to backlogging of cases and it cannot be solved unless there is less vacation for the courts.

V. STRATEGIES FOR BETTER JUDICIARY

Certain strategies are adopted in various countries to solve the backlogging of cases.

(A) Case Flow Management

The case flow management is the efforts to identify and eliminate unnecessary delay in the courts of our country. By reducing the time and cost of settling disputes will benefits courts, litigants and the entire judiciary system.

Case flow management is defined as “A comprehensive system of management of time and events in a lawsuit as it proceeds through the justice system, from initiation to resolution.”

The committee recommendations which was headed by Justice M. Jagannadha Rao, urged the High court to adopt the Model case flow management rules for High courts and subordinate court to ensure inexpensive, fair and speedy justice.

Even to reduce the backlogging of cases where the Supreme court should pass judgment to the cases of utmost important, the case flow management should be entrusted in the Supreme court also.

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VI. ESTABLISHMENT OF JUDICIAL COMMITEE

Decreasing number of cases is an option that has come to be identified with ADR or Alternative dispute resolution mechanisms. For example, making the contractual agreements for compulsory arbitration will reduce the burden of courts. In China, foreign companies are required by the government to resolve disputes outside the public court system. The recommendations of the Law Commission over a period of time, it not only proposes to solve the backlog of cases in the country, but also provides room for the Supreme Court, to act as the guardian of the Constitution and fulfil the requirements of a Constitutional court. The 229th Law Commission Report[6] provides for a stable ground for the establishment of the same.

It is material to the fact that every citizen of Indica is entrusted to justice, even court or outside of the court. The judicial system should introduce the compulsory arbitration in certain cases to reduce the burden of the courts. The reduction of pendency of cases in the courts will be achieved through establishing judicial committee in each and every government department. The Reserve Bank of Indica has decided to constitute a committee to look into banking services rendered to retail and small customers, including pensioners and also to look into the system of grievance redressal mechanism prevalent in banks, its structure and efficacy and suggest measures for expeditious resolution of complaints. The ombudsman system helps the court to resolve issue outside of the court and reduce the burden of it. The concept of establishing a judicial committee is to resolve issues before litigating before the court.

VII. VIRTUAL COURTS – A PANACEA

According to the 'Virtual Courts,' the meaning connotes virtual courtroom to be a judicial forum where litigants and lawyers are not required to be present physically. In contrast, Judicial services are rendered electronically by using the technology. By this definition, the virtual courts can be considered 'Courts' within the meaning of Section 3 of the Indica Evidence Act. Under the Indian Penal Code as Virtual Courtrooms consists of Judges who are empowered to act judicially but in a virtual setup. The Rajya Sabha Committee presented its 103rd Report on the ‘Functioning of Virtual Courts’ highlighting the meaning of virtual courts to be a place of justice delivery where in the plaint and other documents are filed electronically, evidence and court fees are submitted digitally, arguments of lawyers are heard over video-calling, witnesses give their testimony remotely over videoconferencing and Judge decide the dispute virtually by presiding from the Courtroom or any other place.

[6] Need for division of the Supreme court into a constitution bench at Delhi and Cassation Benches in four regions at Delhi, Hyderabad, Kolkata, Mumbai August 2009, 229th Law Commission Report

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Justice Chandrachud who is also the chairperson of the E- committee of the supreme court stated on the use of technology in courts, that technology was an inseparable adjunct to rule of law and will have to be employed as a critical element in court design also that the digitization of courts including e-filing must be standardized across the country. It expanded the scope under these sections and highlighted the technological trend and need to include video conferencing in the judiciary. The courts have time and again allowed the witnesses, especially victims of sexual crimes, to appear through video conferencing. The virtual courts can be a generality rather than being in an exceptional case. It benefits both court and the litigants.

The Parliamentary panel strongly stated that implementation of Virtual courts ensures digital justice which is cheaper and faster besides addressing locational and economic handicaps; ensures safety of vulnerable witnesses providing testimony; expedites processes and procedures and are an improvement over traditional Courts as they are most affordable, citizen friendly and offers greater access to justice. The criminal justice system can never be put to a halt as it will end up hampering one of the most fundamental and human rights of the citizens in a very profound way. The provisions like bail, parole and sentencing of convicts form the core of the criminal justice system and not taking speedy considerations of these hampers rights to life and liberty of the citizens. Judgments must be clear and decisive and free from ambiguity, and should not generate further litigation

VIII. CASE SPECFIC TIME APPROACH

In the case of **Ramrameshwari Devi v. Nirmala Devi**[7] , the Supreme Court has conjointly recently advocated the employment of case-specific time tables for the timely disposal of cases. As a staple a part of systematic case management ways, such timetables give clear time frames for dispute resolution, outline party expectations of timeliness, and therefore impact the party expertise of delay. They enable the choose flexibility to require under consideration the precise aspects of a personal case in framing a time schedule for that case. once in the course of general timeframe tips, the chance of abuse of the ability by setting while frames may be avoided. In the case of **S.P Sampath Kumar vs Union of India**[8] that relied upon within the call of the Minerva mills it absolutely was ascertained that it might be inside the ability of the parliament to amend the constitution thus on substitute in situ of the state supreme court, another different institutional mechanism or arrangement for review, provided it's no less efficacious than the state supreme court. The bench of the supreme court consists of thirty-two justices to pronounce

[7] 4 July, 2011
[8] 1987 SCR (3) 233 1987 SCC Supl.

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judgments for the problems waving through the complete country that approach the very best judiciary for its resolve its dispute through attractiveness.

It has relevancy to the very fact that the case specific agenda approach may be regulated within the judicatory to create a constructive structure for timeline of a case. Every case ought to would like a unique span of attention and time, however the principles can build the judiciary to lose the case in an exceedingly demanding manner.

IX. LEGISLATIVE MEASURES

(A) Res Judicata – End For A Litigation:

The rule of Res judicata is intended not only to avoid new decision but also the harassment for the person who is the decree in favor. So that the person cannot be put through the same trouble as the first time.

The rule of res judicata is based on public policy, i.e., it is to the interest of the State that there should be an end to litigation and belongs to the province of the procedure. In the case of the **Ram Gobinda v. Bhaktabala**[9], The identification of title in two litigations is the test and not subject matter involved in the case. The same cause title of the case has nothing to do with the subject matter.

(B) Bypassing Of High Court Jurisdiction:

Bypassing the high court jurisdiction from contesting a dispute involving the constitutional validity of any act or law would be directly hitting the basic structure. It would amount to denying a constructional remedy to the aggrieved party[22] There will be no supremacy and independence of judiciary when there are regional benches of the Supreme court. The power of Writ jurisdiction has been enabled in the high courts of each state to avoid litigants to approach Supreme Court. if there is a greater number of regional benches of supreme court, there will no purpose of Article 226 of the Constitution of Indica. The highest court in Indica, the Supreme Court is considered as the guardian of the Constitution.

The conflicts or quarrels of jurisdiction between the central government and the state governments or between the legislature and the executive are decided by the court. The Supreme Court is the highest judicial court in Indica. It upholds the rule of law and also ensures and protect the fundamental rights and duties entrusted in the Constitution of India. This is proposed to be a court between the high court and Supreme Court. This will only increase the longevity of the case– even as many cases have been known to go on for 30-40 years before

[9] 1971 AIR 664, 1971 SCR (3) 340

they are resolved. A state would be interested in seeing that the case comes to an end, and not go to additional constitutional authorities. The Supreme court is the most powerful court in the country. Dr. B.R. Ambedkar, the father of the constitution, considered Article 32 as the heart and soul of the Constitution. Without this article, the Constitution would be reduced to nullity.

In the case of **All India Judges' Association vs Union of India**[10] , it was observed that without any further delay it was necessary to increase the number of judges in the Supreme Court.

In the case of **P. Ramchandra Rao v. State of Karnataka**[11], the poor judge population ratio was held as the root cause for delay of justice in the nation. The constitutions provisions for indeterminable appeals from court to court would only serve to profit lawyers. The issues raised that if there is justice based on truthfulness of facts then it must be had in the preliminary court or in subsequent appellate courts.

(C) Supreme Court – A Sole Intreprter:

The prime purpose or goal of the Supreme Court is to deal with cases involving substantial question of law or the interpretation of the constitution. But over a period of time, Because of the admissibility of the types of cases, it has reduced itself to a court of appeal. In the words of former Chief Justice of Indica T.S Thakur, 98% of the estimated working time of the Supreme Court judges is supposedly wasted in dismissing such cases of appeal. In **K. Gopalan vs State of Madras**[12] the court upheld that it is the constitution that is supreme and a statute law to be valid, must in all cases be in conformity with the constitutional requirements.

(D) Adjournments – Pendency In Courts

Order XVII Rule 1 of the Civil Procedure code states that (1) The court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit for reasons to be recorded in writing: Provided that no such adjournment shall be granted more than three time to a party during hearing of the suit. Section 309 of the Criminal procedure Code states that the procedure for Adjournment to dispose of cases expeditiously.

This entire provision is based on the speedy and efficient manner of disposing of cases. Un-necessary and avoidable adjournments must be denied by the Courts. The order XVII rule 1 can be relaxed only in suitable and justifiable cause that the cause which is not only sufficient cause as contemplated in Rule 1 but one which makes request further adjournment unavoidable and

[10] 28 SC 2002
[11] 16 SC 2002
[12] AIR 1950 SC 27; 1950 SCR 88

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a sort of compelling necessity.

The proceedings in the second appeal before the High court in this case epitomizes the corrosive effect that adjournments can have on a litigation. Getting an adjournment is neither an art nor a science. It is the duty of the counsel as the officer of the court to assist the court in a properly prepared manner and not to seek unnecessary adjournments. The learned counsel states that the document needs to be translated and the case has been adjourned for 35 years. Supreme court of Indica held that there will be no absolute justification to receive 61 adjournments for a case which is actually prolonged the dispute for three decades.

In the case of **Salem Advocate Bar association vs Union of India**[13] the court was faced with an issue in regards to a provision that restricts the number of adjournments post the 1999 CPC amendment. The court expressed their view of not holding this provision unconstitutional or unfair, as they clarified that in extreme cases, if need be, adjournments may be granted even if all three adjournments were previously granted.One of the reasons of long delays in adjudication of cases in courts is the "culture of seeking adjournments as a norm" and judiciary is making efforts to curb the practice. "Indica's judiciary is respected across the world as an upholder of justice for the defenseless. It is also true that our judges are burdened excessively by the volume of cases. As a consequence, the Indica legal system is marked by long delays says the Ex- president Ramnath Govind in an inaugural speech organized by Supreme courts on Advocates record association. Justice Deepak Misra released a E- journal of Supreme Court on Advocates on record Associations and said “it was the time that young lawyers, who are technically sound, should be allowed to argue in courts and old ones should leave the room for them”.

It is material to the fact is that this provision should be stringent provision in Civil and criminal proceedings to meet out the justice and dispose of the cases soon, as the advocates seeks adjournments for simple reason which creates a chaos in the field of judiciary.In the case of **Anil Rai v. State of Bihar**[14], stated that Judges must deliver judgments within a reasonable time and in that matter, the guidelines given by the apex court in the case of must be observed, both in civil and criminal cases.

X. EFFECTIVE ALTERNATE DISPUTE MECHANISM

Section 89 of CPC, Order 26 Rule 9, The establishment of arbitration proceeding is to lessen the burden of the courts and to dispose of cases with settlement which is agreed by both the

[13] 2 August, 2005
[14] 6 August, 2001

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parties. 1.38 crores cases were taken up out of which 1.10 crores cases were pre- litigation cases and 28.34 lacs cases were pending cases. Over 40 lakhs cases disposed in the first national Lok Adalat of March 2022.

In Lok Adalat such as criminal compoundable cases, revenue cases, bank recovery cases, motor accident claims, matrimonial disputes, cheque bounce cases under negotiable instrument act, labor disputes and other civil cases were taken up. A large number of recovery matters related to financial institutions, banks, government bodies and private service providers were also instituted as pre-litigation cases the matters are negotiated and settled without institution before any court of law institution before any court of law.

XI. CONCLUSION

As India moves into its technological era, each and every department has to move along with this. The concept of E-court facilities can be established and the lawyers of young generation has to cope up with the facilities available to them. The establishment of regional benches of the Supreme court will absolutely increase the burden of the cases rather than reducing it. The supremacy of the highest Indian Judiciary will be in question if the benches have been established. Bypassing of High court jurisdiction will be violation of the Constitution of India and the entire system will be in chaos. Many experts suggested methods to reduce the burden of the court and the establishment of regional benches is never in the picture.

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