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# The Judicial System and Illusionary Justice

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## ABSTRACT

*Over the past few years, the role of the Judiciary has been quite significant in the development of society and in shaping how the members of society are treated. Judiciary has always aimed at doing the best possible justice to whosoever knocked on its door. Till today, the judiciary has delivered judgments in huge numbers. Society has always celebrated some of the great decisions pronounced by the hon'ble courts. Nevertheless, there always exist some implicit factors which decrease the competency of the judicial system. This article analyses the loopholes in the judicial process. This piece of work throws light on the judicial process that creates an illusion in the minds of the billions that justice is served when in reality, there are thousands of stories of injustice hidden behind the few stories of the triumph of justice.*

## I. INTRODUCTION

Human beings are bound to be partial and imperfect by virtue of their nature. Undoubtedly, laws made by humans themselves are bound to be imperfect. If the laws were made by a few humans and enforced on the rest bound to follow them without anyone to keep a check on it, injustice would prevail in society. Even if any law is passed by the legislature and there is no one to watch out on its implementation, there are crimes, unfair damages, and hence, injustice. This is where the absolute need for the judicial system comes into play. Judiciary is empowered to provide justice to those who suffer because of another human being. Judiciary has a powerful tool of judicial activism to keep a check on the government made laws. Judiciary helps to maintain law and order in society. However, various factors indirectly affect the justice delivery system. The reality is far away from what it seems to the general public. The so-called “justice” is merely an illusion wearing the masks of comparatively very few success stories of the judiciary. The article analyses the following factors affecting the justice delivery system and creating an illusionary justice.

## II. UNAFFORDABLE JUSTICE & HIGH LITIGATION COSTS

To approach the judiciary every person needs a lawyer. The judicial process is quite complex

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for a common man to under. Although every person is supposed to know the law, the court requires special skills and qualifications for the presentation of the case before the judges. Such deep knowledge and skills by qualified lawyers who charge high fees for taking the cases. Some lawyers even charge in lakhs for a single hearing. Such high costs are not affordable for most of the litigants. Data released by a civil society organization revealed that 90% of the litigants have an annual income of Rs. 3 lakhs or below.<sup>2</sup> Such is not the case with India solely but around the world. The judicial procedure in countries like the UK and the US too is a luxury that can be afforded by very few whereas the low-income groups struggle for justice.<sup>3</sup> Not only the lawyers' fees are too high but other litigation expenses combined such as the court fees, stamp fees, etc, the costs go too high.

The Directive Principle of State Policy, Article 39-A of the Constitution of India reads that every citizen has a right to free legal aid. But, owing to different factors improper implementation, lack of awareness, lack of interest of the lawyers, etc, free legal aid proves to be of no help.<sup>4</sup> Further, in the case of **Khatri vs. State of Bihar**,<sup>5</sup> the court held that right to free legal aid is implicit under article 21 of the Indian constitution. However, there is a lack of implementation of such law and it exists merely on papers. People having no access to legal aid remains in a vicious circle where they don't have free legal aid and cannot move to the court for such violation of fundamental to due to access to such legal aid. Even if free legal aid is provided by the judiciary, the lawyers are mostly highly unqualified and unskilled and the case becomes weak owing to the lawyer's incapability. Due to this, most people accept their fate and suffer. Injustice grabs them. Seeking justice by knocking on the court's door remains to be the last thought on numerous minds due to high litigation costs and failure of the provision of free legal aid.

### III. VEIL OF "JUSTICE" & LACK OF SPEEDY TRIALS

Looking from the Indian perspective, the judicial machinery fails to provide speedy trials to all those accused of a crime. This factor can be viewed from two points of view, one from the victim's point of view and the other from that of the accused. In certain instances, the case goes on for years that the one seeking justice even dies. According to society, justice is

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<sup>2</sup>Litigation Expenses: The Long Quest and High Cost of Justice - India Legal, <https://www.indialegalive.com/special-story/litigation-expenses-the-long-quest-and-high-cost-of-justice-40245> (last visited May 29, 2020).

<sup>3</sup> *The Cost Of Litigation - Reflections On The Evershed Report*, 17 *The Modern Law Review* , 1 (1954)

<sup>4</sup> Right to Free Legal aid and Legal Aid Functionaries under the Legal Services Authority Act, 1987. Nja.nic.in, [http://www.nja.nic.in/Interns\\_Report\\_2015-16/Research%20Report%20Mitali%20Vani%2027-11-15.pdf](http://www.nja.nic.in/Interns_Report_2015-16/Research%20Report%20Mitali%20Vani%2027-11-15.pdf) (last visited May 29, 2020).

<sup>5</sup> 1981 SCR (2) 408.

served as such but what is the point of such justice when the one who suffered is not there to witness the same. One such instance is the Nibhaya Rape case i.e **Mukesh & Anr vs State For Nct Of Delhi & Ors**<sup>6</sup> where the rape victim died and the hon'ble court delivered its judgment many years after the victim died. This judicial process took so long that the memory of this case faded from the minds of many. Some also gave up the hope of justice due to such delayed procedures. This can be a pure example of “*justice delayed is justice denied*”. From the other perspective i.e. from the point of view of the accused, such delayed judgments serve an injustice to the accused. The accused remains under judicial custody for half of their lives. They suffer emotionally and socially for prolonged periods. Having proved innocent by the judiciary after spending a major part of their lives in jail, the innocent suffers due to delayed trials.

In the case of **Husainara Khatoon vs. State of Bihar**,<sup>7</sup> it was held that the right to speedy trials is implicit in article 21 of the Constitution of India. However, evidence shows that no such rue was followed even in the years to come after this judgment. One such instance can be found in the 2008 Noida double murder case i.e. **Nupur Talwar Vs Central Bureau of Investigation & Anr**.<sup>8</sup> In this case, the accused suffered in jail for years until the court finally declared them to be innocent. On papers the judiciary says “*innocent until proven guilty*” but can we deny the reality that the accused is “*guilty until proved innocent*”? No doubt there is a two-way illusionary justice owing to this factor. Such injustice remains unnoticed under the veil of “justice”.

#### IV. THE INFLUENCE OF TACTICS

Whenever one thinks of approaching the judiciary, the thought comes with a package of certain other questions that are crucial and basic to the staircase of justice. This set of questions include who is the most reputed lawyer in the concerned area of practice, his contacts, his victorious cases, etc. Ultimately, all combined in one, the question is whether the lawyer will be able to influence the case in his favor. This reflects the huge influence lawyers have on the judiciary. Why is it that some lawyers charge too much to handle a case? The answer to this question lies in the power of influence by the lawyer presenting the case. The case rests on the skills of the lawyers to present his case in the most convincing manner possible. The better the lawyer, the higher the scope of winning the case. Some lawyers even pay “contributions” to the judges and there are pieces of evidence of favorable judgments

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<sup>6</sup> (2017) 3 SCC 719.

<sup>7</sup> 1979 SCR (3) 532.

<sup>8</sup> 2012- 2-L.W.(CrI.) 862.

post contribution made by the lawyers in the USA.<sup>9</sup>

In the Indian scenario, one such instance can be seen in the famous case of *K.M. Nanavati vs. the State of Maharashtra*.<sup>10</sup> In this case, a naval commander was accused of murder. His case was presented by a public prosecutor, however, it was Mr. Ram Jethmalani who prepared the case and provided backing to the public prosecutor. Mr. Jethmalani, who is known to be one of the best Indian criminal lawyers, influenced the case so skillfully that the accused was acquitted by the jury in the trials court even when the case was an open and shut case. No doubt, that the high court reversed the decision of the trial court on appeal, but this case is a live example of the influence of a skilled lawyer on the judgments of the court. The matter of concern at this point is that not all the parties to the case can afford an influential lawyer. This factor transforms the judicial process into a race where the one with a better lawyer wins and the one with the truth. The poor and the weaker suffer due to such a game of tactics.

## V. DOCUMENTARY JUSTICE

Over time, the hon'ble judiciary has delivered numerous great judgments. These judgments sought to bring about victorious changes in society for the good. Nevertheless, these judgments proved time and again to be merely justice on papers. There has been a lack of implementation of such hon'ble judgments. The judgment delivered in the case of *Laxmi vs. Union of India*<sup>11</sup> can be relied upon as an evidence to the present point. In this case, the Hon'ble Supreme Court of India banned the unauthorized sale of acid. The court further imposed restrictions on the counter sale of acid without Government-authorized identity proof of the buyer. However, even today, acid is sold freely throughout the country. An article published by the renowned newspaper "The Hindu" presented that unauthorized sale of acid is common even after the ban imposed by the hon'ble court in the aforementioned case.<sup>12</sup> Further reality checks by the team of news agency "India Today" revealed that acid is sold freely in complete violation of the court's judgment even after 6 years of the ban imposed by the court on such counter sale.<sup>13</sup> Such lack of implementation mechanism leaves justice to be served merely on papers. The decisions pronounced by the court for the

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<sup>9</sup> Margaret S. Williams & Corey A. Ditslear, *Bidding for Justice: The Influence of Attorneys' Contributions on State Supreme Courts*, 28 *The Justice System Journal*, 135-156 (2007), <https://www.jstor.org/stable/27977336?seq=1> (last visited May 29, 2020).

<sup>10</sup> AIR 1962 SC 605.

<sup>11</sup> 2014 4 SCC 427.

<sup>12</sup> Acid sales continue unchecked in city The Hindu, <https://www.thehindu.com/news/cities/chennai/acid-sales-continue-unchecked-in-city/article5062327.ece> (last visited May 29, 2020).

<sup>13</sup> Illegal acid sale spikes attacks on city women India Today, <https://www.indiatoday.in/mail-today/story/illegal-acid-sale-spikes-attacks-on-city-women-1555492-2019-06-25> (last visited May 29, 2020).

protection of the society from evil fails and injustice persists. Justice looks good on judicial documents but it is far away from practicality.

## VI. CONCLUSION

It is often believed that everything creates an illusion when looked upon from the outside. As reality unveils, things turn out to be different from what it seems. So is the case with justice. When society celebrates victorious judgments, all other stories of injustice remain neglected. Justice to few is counted as justice to all. When dug more, the depth reveals the true stories of illusions and injustice in society. No doubt that the judiciary aims at serving the society with utmost good faith, but one should not forget the fact that justice to one is not justice to all. The blanket of illusionary justice created by few celebrated judgments somewhere hides the shreds of injustice suffered by millions.

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