

SHORTCOMINGS OF THE INDIAN JUDICIARY

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Abstract: The following paper aims to investigate the underlying problems that plague the Indian judicial system and to determine the root causes of these problems. Corruption, a lack of transparency, underutilization of technology, constant lawyer strikes, a lack of legal literacy, a dwindling supply of judges, a lack of interaction between the judiciary and the general public, a backlog of pending cases, undertrials of the accused, and underpaid judges are all identified and discussed in greater depth to provide a more nuanced explanation for the underlying inefficiencies. The report further elaborates the impact of a failing judiciary on two metrics - social and economic - and provides adequate instances to support the arguments in context of both the metrics. The study goes on to propose policy recommendations that can be applied to bring about an affirmative change in the Indian judicial system in order to overcome the previously mentioned impediments and address the resulting social and economic consequences of these changes. At the conclusion of the research, a comparative case study is conducted between the Indian legal system and the British legal system, whose laws the Indian legal system has been modelled on.

Introduction: Since it was designated as the protector and custodian of the Indian Constitution, India's judiciary has played a critical role in the country's political and economic development. The Indian judiciary serves as a watchdog against violations of fundamental rights guaranteed by the Constitution, protecting all people, Indians and non-Indians alike, from discrimination, abuse of state power and inequality.

The Indian judiciary supervises a common law system, in which the law of the land is defined by conventions, norms, and legislation, under the supervision of the Chief Justice of India. At the end of the day, the legal system is vital in the promotion of good public governance. If a dispute emerges, it must be handled in a court of law, despite the fact that there may be various regulations, rules, and procedures in place in the first place.

The Indian judiciary has taken a proactive stance, ensuring that fundamental human rights are protected in accordance with basic human rights. In recent years, however, a number of inefficiencies have impeded the judiciary's ability to operate. According to a survey conducted by us for the research, around 73% of individuals believe that the performance of the judiciary has not been satisfactory in the past couple of years. The factors that contributed to this observation have been discussed in greater detail below.

"Where the Root of the Problem Is"

1. **Corruption:** For the Indian courts, corruption is a major impediment to its ability to perform optimally on a wide range of levels. To initiate a FIR against a judge who is accused of accepting bribes, the Chief Justice of India must give his or her approval. The public is exposed to numerous cases of bribery and corruption in the Indian judiciary on a daily basis, which leads to the formation of a bad narrative about the Indian judiciary in the eyes of the general public, thus undermining the public's confidence in the judiciary. Take, for example, the CBI (Central Bureau of Investigation) filed formal allegations of corruption against Honorable Justice Narain

Shukla, a serving judge of the Allahabad High Court's Lucknow bench. Shukla is a member of the Allahabad High Court's Lucknow bench. The media, the fourth pillar of democracy, on the other hand, is more concerned with uncovering corruption in other areas, which is why incidents of corruption in the judiciary frequently go unreported, unlike the case in many other countries. Corrupt practises within the Indian judiciary are known to begin at the lowest levels and develop upwards to the higher courts. When it comes to the Indian legal system, bribes are regularly given to court officials in exchange for favourable and prompt decisions, as delays are a common occurrence at all levels of the system. In part due to the fact that higher court judges are recruited from among the ranks of lower court judges and lawyers, the likelihood of corrupt judges being elevated to the higher courts increases considerably due to the possibility of political involvement and influence in decision-making. Appellate and higher court judges can use their "contempt of court" authority to suppress claims of corruption in the lower courts. These loopholes, which exist at all times, serve as a barrier to the elimination of corruption from the Indian judiciary.

2. Underdevelopment and underutilization of technology: The use of technology in the judiciary is low, which is one of the primary reasons for the Indian judiciary's lag when compared to the judiciaries of the developed world. Many courts still perform a significant amount of work by hand and require manual labour for tasks that might easily be delegated to AIs and completed with significantly greater efficiency and utility. As a result, there is a great deal of paperwork, and human capital is required to oversee the generation and maintenance of the documentation. Due to the fact that case proceedings are mostly manually written by court officials and that no recordings are retained, revisiting a case is entirely dependent on how an individual court scribe recorded the events. This not only increases the burden on the judiciary, but it also raises the question of whether or not justice is being disseminated in a fair manner.
3. Lack of Transparency: There is a lack of openness and transparency in the operation of the justice system in India, at all levels. The Right to Information Act of 2005, which is a critical tool in the battle against mismanagement and corruption, was placed beyond the scope of the judiciary in the first place. However, in 2019, the Supreme Court determined that the Right to Information Act (RTI) will be applied to the office of the Chief Justice of India, essentially dissolving the judicial organ's former immunity. In spite of this, there is no defined process for monitoring and holding judges accountable for the quality of justice delivered. Improving the collegium system, which is chaired by the Chief Justice and four of the Supreme Court's most senior judges, is necessary for increased transparency and accountability on the front lines of the court.
4. Lack of Legal literacy: Citizens' lack of legal knowledge is a major problem. Legal literacy is defined as having a basic understanding of the law at a fundamental level. One of the most prominent reasons for rights deprivation among individuals and for a lack of affirmative action to strengthen the Indian court system is a lack of legal awareness on the part of the individual. As long as a person is aware of his, her or their own rights and the norms that govern their country, they can effectively use it as a tool to promote socioeconomic advancement and battle socio-political injustices in

their home country. Among the crimes that are exacerbated by a lack of knowledge of basic legal and civil liberties, human rights, constitutional directions, and other standards and principles that preserve people's dignity and liberty in a country are child labour, human trafficking, murders and thefts, as well as sexual harassment and sexual assault.

5. Demand-Supply Misalignment: One of the primary reasons for the delay in the dispersion of justice is a misalignment between the demand and supply of judges. At the moment, the number of judges in the country is insufficient to adequately administer the judicial system and its associated burden. Despite having a sanctioned strength of 1080 judges, the high courts are now working with 661 judges, leaving 419 slots completely empty. It is estimated that there is a 39 percent vacancy in this position. The appointment of judges is governed by Article 217 of the constitution, and the mechanism specified in the Memorandum of Procedure is time-consuming, thus complicating the process of prompt and expeditious recruitment of judges. There are only a few openings from 2015 according to the Standing Committee's records, and the department has not received any recommendations against the job.
6. Lawyers' organised strikes: Lawyers' organised strikes are cited as one of the primary reasons for the backlog of pending cases. In the case of Ex-Captain Harish Uppal v. Union of India, the court emphasised that attorneys do not have the ability to strike or call for a boycott on their clients' behalf. Lawyers, on the other hand, have continued to disobey the court's decision. Every Saturday for the past 35 years, lawyers from three districts in the state of Uttarakhand have gone on a hunger strike. Between 2012 and 2016, Dehradun lawyers went on strike an average of 91 days per year, or an average of 91 days every month. Lawyers in the Chhattisgarh state's Durg district went on strike because they were dissatisfied with the location of a new family court there. In Odisha, a walkout was called in October 2019 to express dissatisfaction with the decisions of the Supreme Court collegium. At the end of November this year, lawyers in Delhi launched a demonstration against the police. In the meantime, as lawyers around the country go on strike and shut down the courts, it is citizens seeking justice who bear the brunt of the consequences, thus contributing to the judicial system's inefficiency.
7. Disengagement between the judiciary and the general public: It is vital for the general public to participate in court proceedings and to be educated about legal processes. Citizens must participate actively in the judicial decision-making process if India is to establish a successful legal system, which is something that is sadly lacking in the Indian judicial structure. Respondents are frequently left at the mercy of the judge, which has resulted in an increase in the number of bribes offered to judges or court workers in exchange for a favourable verdict.
8. Undertrials of the accused: It is not fair or just for the innocent to be incarcerated while their trials are being conducted. They end up spending more time in jail awaiting their trial as a result of the backlog of outstanding cases than they would have received as a result of the actual sentence they would have received had the case been resolved in their favour. This runs counter to the fundamental principle

upon which the judiciary operates. As a result of prolonged court battles, the poor and the underprivileged are excessively harassed or silenced, because the rich can always use their resources to win a favourable verdict, and because they are in a better financial position to pay for expensive legal counsel for an extended period of time.

9. **Underpaid Judges:** Judges in India are underpaid by a significant margin when compared to their counterparts in the developed countries. A Supreme Court judge and a chief justice of a high court are each paid approximately Rs 90,000 per month. The Chief Justice of India (CJI) earns a salary of Rs 1 lakh per month in addition to other benefits. Every month, a high court judge gets approximately Rs 80,000. Compared to the average lawyer's wage in India, this is a considerable reduction in pay scale. One study found that supreme court lawyers charge between one lakh and 3 crore rupees for a single hearing, while the Chief Justice of the same court charges one lakh rupees for a month of service. In India, the pay of judges has only increased by three times in the last 65 years. Adjusting for inflation, judges today earn much less than they did 65 years ago, according to the National Judicial Compensation Survey. This is one of the primary reasons why the majority of very accomplished lawyers do not want to work in the Indian judiciary. This discourages those with talent and intellect from choosing a career in the judiciary. Moreover, as per the survey conducted by us, around 89% of the individuals are of the view that an increment in the salaries of judges might lead to a decline in corrupt practices.
10. **Pending cases:** A study from 2015 stated that there were over 400 openings for High Court justices across the country. There are over 60,000 cases pending before the Supreme Court. When the number of pending cases continues to grow, the core aim of the legal system is thwarted. A consequence of this is a reduction in the quality of persons who study to become members of the Indian court. The service environment should be updated and increased in order to attract those who have real potential. A large number of detainees are awaiting trial as a result of a backlog of cases that are now pending. The inadequacy of the court system is demonstrated by the large number of cases that are now pending

The Impact of the inefficiencies of Indian Judiciary:

1. **Impact on the social fabric:** In India, the judiciary has worked with a certain amount of arbitrariness. It is common practise to use a lack of procedure to execute outcomes that are in direct conflict with social justice programmes and fundamental principles of a fair judiciary. During one of the first judicial rulings in Indian history, the Madras High Court overturned a programme of caste-based reservations in the province of Madras, which was known for its social advancement. Apparently, this decision was made when a Brahmin lady named Chamapakam Dorairajan claimed that she had been denied access to a medical seat because of quota restrictions. In 1999, there were just two Adivasi or Dalit Supreme Court judges out of a total of 136, making them a minority in the court. The judiciary is losing credibility and accountability as a result of the ineffective criminal justice delivery system and the numerous miscarriages of justice that have occurred. Following the Supreme Court's decision in

the Mathura rape case, four Delhi University professors sent letters to the court, raising concerns about the legal basis for the acquittal of two police officers accused of raping a tribal woman inside a police station. Due to the fact that the woman did not scream or resist, the jury found them not guilty of the charges. This type of judiciary operation contributes to the exacerbation of social ills and the establishment of a harmful precedent in the society.

2. **Economic Consequences:** A weak judiciary has a negative impact on a country's ability to advance economically. In the current condition of affairs, effective courts are required in order to build a flourishing economy. Because a significant amount of trade is reliant on the existence of laws to act as a safeguard in the event of fraudulent activities, a robust and effective judiciary is essential to encouraging successful economic transactions between firms and individual consumers. When cracks arise in the very judiciary that is intended to protect the growth of commercial trade, the ramifications for the economy are catastrophic.

Businesses operating in India lose confidence when concerns such as pervasive corruption, unresolved cases, and the miseries of undertrials become far too evident to the world's economic sectors, as they have in recent years. As a result, India's position in the World Bank's Ease of Doing Business Index is constantly shifting. According to a survey, taking a typical sales agreement to a district court takes around 4 years and costs an individual approximately 31 percent of the claim's total value, reducing the usefulness of such a claim for the petitioner and decreasing its utility for the court. Organizations are discouraged from establishing their businesses in India due to the lengthy delays in executing laws and the significant costs associated with doing so.

The amount of relationship-specific investment in India has fallen dramatically as a result of obstacles in contract enforcement. A direct outcome of this is that the cost of commodities and services in the economy has risen. In the case of a landowner who is concerned about a company establishing an industrial unit on their property and then failing to pay the rent, they will initially raise the rent in order to safeguard safety and attract genuine clients, as their confidence in the judiciary is poor. Businesses are forced to reassess their intentions to invest in a country because of a lack of confidence in the court, which raises the cost of doing business and increases the risk of doing business in that country. Because of this, it goes without saying that a weak judiciary is bad news for a country's economy.

Policy Recommendations:

1. **Introduction of a case management system:** The Punjab and Haryana high court has introduced a case management system to make it easier to follow each case from the time it is submitted until it is finally resolved. The writ petitions are also categorised into categories based on how urgent they are, with the most urgent being demarcated for prior dealing. In order to facilitate the resolution of old cases, judicial officers must function in accordance with annual goals and plans. An additional measure is the implementation of a quarterly performance evaluation to ensure that the cases are not processed too hastily.

2. **Bottom-Up Approach:** The bottom-up approach is a policy technique that could be utilised to improve the operation of India's judiciary by starting with the people who are most affected. A priority must be given to the challenges of lower courts because they are confronted by lakhs of litigants who come into contact with the justice delivery system at the district level. Ad hoc reforms and alterations at the highest levels of government (the Supreme Court and other high courts) will be ineffective, and the average litigant will have to deal with the stress of filing a lawsuit for the foreseeable future.
3. **Improvements in Court Infrastructure :** The Indian judiciary must modernise its court infrastructure, which has remained mostly untouched for the previous four decades, to keep pace with the changing times. This transformation can be achieved by increasing the total number of courts available. It is also necessary to increase the amount of space available for lawyers, judges, registrars, and the general public who come to the courts. There is a pressing need to improve the overall quality of the existing amenities and provisions in the courts, which goes hand in hand with an increase in the number of courts.
4. **Decriminalisation of minor offences:** As of June 2020, there has been discussion on decriminalising minor offences as a method to promote business sentiment and expedite court proceedings in order to speed up court proceedings. Since 2019, the administration has been debating whether or not to decriminalise minor infractions, but no decision has been reached yet. The decriminalisation of minor offences would be advantageous to the economy, especially in light of the current economic crisis due to the COVID-19 pandemic and might come off as a welfarist scheme in the wake of the tragedy. Cases of cheque bounce involving the banking industry would be included in the proposed decriminalisation, resulting in the change of the nature of these offences from criminal to civil in character. The consequence will be the replacement of criminal duties with monetary fines, which will make it easier for investors to resolve their financial obligations. In addition, an increase in the number of compoundable offences under the 1973 Code of Criminal Procedure may be advantageous.
5. **Introduction of the Deferred Prosecution Agreements:** Establishing effective tools to promote mediation and case settlement will be a game-changing move in overcoming the challenges of late verdicts and case pendingness that have plagued the country. A variety of settlement and mediation mechanisms, such as deferred prosecution agreements, should be incorporated into various statutes. It is an agreement between the government and a defendant in which the government promises not to file charges against the defendant in exchange for the defendant agreeing to conform to certain predetermined criteria.
6. **Avoid Delays in the Announcement of Verdicts:** The backlog of litigation is the most important problem facing the Indian judiciary. New courtrooms are being constructed in order to increase the number of courtrooms available per 1000 people, allowing for a speedier case trail. The appointment of more magistrates in districts would allow for faster and more efficient case trials, as well as the elimination of any delays in the

distribution of justice. The load on a single judge will be reduced as a result of the appointment of more judges, which will result in faster case verdicts.

7. A clear distinction should be made between judicial and administrative functions: The majority of administrative functions should be transferred to an independent agency or employed civil servants so that judges can devote more of their time to what they are best at: judicial functions. At the same time, the courts should have the ability to hold the agency accountable for its performance, most likely through a board oversight and continuous evaluation.
8. Qualitative appointment of Judges: According to a survey conducted by us for the research, 57% individuals voted in favour of amendment of the current appointment practices of the judiciary. Around 73% of individuals voted against the involvement of the executive in the appointment of the judiciary. Judges should be appointed based on their skills, experience, and knowledge, rather than on religion or caste factors, to ensure high-quality appointments. Rather than judges who may be biased in their approach to delivering justice to a particular group or caste, or who may have political connections and interests, this would ensure the appointment of judges who are qualified for the roles. This would protect the fundamental principle of a fair court from being jeopardised.
9. Establishment of Investigation and Mediation Departments: When people are falsely accused of crimes they did not commit in the first place, justice is frequently denied. The development of investigation agencies can help to remedy this situation. Investigative departments must be established, specialised detectives must be hired, and these organisations must be adequately funded in order to prevent this from happening. Mediation and settlement arrangements should be encouraged where possible. This will be a revolutionary step in resolving the challenges of late verdicts and cases that have been pending for too long.
10. Provide a mechanism for judicial administration reforms to be implemented in sync with the rest of the government: Any reforms to restructure the judicial administration will need collaboration between the judiciary and governments at the federal and state levels. Governments will have to devote significant financial resources in the early stages of the project, and they may also be asked to assist the administrative agency with facility and technology system procurement, personnel recruitment, and other administrative activities. This will ensure successful establishment of a mechanism to unburden the already overburdened judiciary.

Moreover, measures like establishing of an oversight committee constituting individuals from the legal fraternity, more transparency in the system of appointments and transfers, opening up of more vacancies for judgeships, setting of more tribunals, democratisation of appointment of judges, use of AI in case allocation, live streaming of cases, creation of an association of retired judges, increasing the number of Supreme Court benches can also be implemented to eradicate the inefficiencies of the Indian judiciary.

A Comparative Analysis of the Judiciary in the United Kingdom:

In both India and the United Kingdom, the judiciary has a big and powerful role to play in society. Both countries have a judiciary that is independent, neutral, fair, and capable of carrying out its duties. There is strict adherence to the separation of powers principle in these countries, and the court is free of interference from the other two branches of government. However, there is no formal separation of powers clause in the United Kingdom's constitution. The judicial arm of government is composed of the monarchy, as well as legally qualified judges and magistrates (non-legally-qualified members of the public).

The United Kingdom (UK) has three legal systems: one for England and Wales, one for Scotland, and one for Northern Ireland. Each of these legal systems has its own set of rules. The court is divided into three divisions: the Queen's Bench, the Chancery Level, and the Family Division. The Queen's Bench is the highest division of the judicial system. The Court of Appeal is a single-chamber appellate court with a limited jurisdiction. It is the Civil Division that deals with appeals from the High Court and the County Court; the Criminal Division is concerned with appeals from the Crown Court, which is where they originate.

The monarch is a member of each of the three pillars of government, but their primary function is largely ceremonial. For the most part, the Government is in charge of exercising the monarch's legal powers on their behalf. Given that a legislation that has passed through Parliament must first gain Royal Assent before it can be enacted into law, the monarch is a participant in the legislative process. The monarch is also the head of the judiciary, which they oversee.

Ultimately, it is the judiciary's responsibility to prevent abuse of power by the state or by the "executive." The following checks and balances have developed as a result of the common law. When it comes to the judiciary, the concept of residual independence is followed closely. When it comes to doing or saying anything one wishes, a citizen is free to do so as long as it is not expressly forbidden by legislation (which is usually articulated through Acts of Parliament). It also ensures that state actions, particularly those carried out by public agencies (such as the police), are legal and constitutional. In order for legal conflicts to be resolved by the courts, the judiciary must be in place. When it comes to legal topics, the authority of a monarchy cannot be exercised by arbitrary judgments.

Both India and the United Kingdom's judicial systems are overburdened with cases, which has resulted in the criminal justice systems in both countries becoming paralysed. They are putting in a great deal of effort to deal with underfunding, and they are in danger of losing the confidence of the public. The length of time it takes to resolve a case varies substantially depending on the type of the issue being investigated. When it comes to formulating decisions, judges are erratic in their approach. There is still a wide rift in Indian society when it comes to the death penalty.

Digitalization of the United Kingdom's legal system has progressed at a breakneck pace. In order to speed up the justice system and reduce backlogs, the Indian courts have also received a significant amount of support in this direction as well. Unlike the Supreme Court of India, the UK's highest court cannot overturn legislation, but it can judicially review whether actions of substantial public and constitutional importance that have converging aspects are allowed under the British law in order to ensure natural justice in the country.

When it comes to the administration of both state and central legislation, India has a single integrated judicial system in which the Supreme Court supervises the administration of both. Unlike India which has multiple court systems, the United Kingdom has only one court system that is integrated. It is important to note that the Jury system in the United Kingdom is a distinguishing feature of the judicial system. In India, the judiciary now has the authority to conduct judicial review of decisions. The judiciary of the United Kingdom, on the other hand, does not have the authority of judicial review.

The rule of law principle has been observed in the United Kingdom; there is no specific charter of fundamental rights, and people's rights are protected by the common law. In India, the constitution serves as the supreme law of the land, and the judiciary is responsible for interpreting and protecting it. The legal system in the United Kingdom, on the other hand, has developed slowly and gradually over time, and it is not based on a written gospel source like a constitution.

Conclusion: The Indian Judiciary is the backbone of the Indian democratic framework. However, the major challenge faced by the judiciary is that although there are plethora of laws, there is not enough dissemination of justice. Although the laws are upheld to disseminate justice to the individuals, their outcomes might not necessarily be just in nature. It is by virtue of successful policy measures and affirmative action that laws are ensured to be proactively used as a tool to enforce justice in a sustainable and equitable manner. India requires an approach that focuses on the immediate obstacles in front of its judiciary and their root causes. Although the lack of procedure, structural inefficiencies and arbitrariness of the judicial system might bring negative social, economic and impacts to the country, effective policy solutions in form of establishing a case management system, following a bottom-up approach, improving the court infrastructure, decriminalization of minor offences, introduction of deferred prosecution agreements, making qualitative appointments of judges and promotion of mediation and settlement arrangements can prove to be substantial in rooting out all the aforementioned obstacles, and alongside establish a much stronger, reliable and efficient judiciary - which is undeniably the spine of the country.

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