

Indian Judiciary at Crossroads

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The founding fathers of the Indian constitution accorded *justice* the highest pedestal. Honouring the principle of separation of powers, all the three pillars of Indian democracy i.e, executive, legislature and judiciary are expected to work separately (as well in tandem with each other) to safeguard citizens' constitutional rights. Post- independence period nonetheless observed a significant trend, indicating tussle for power between these three pillars, in general and the shifting role of the judiciary, in particular.

In a newly independent India, the judiciary grappled with the task of striking a balance between establishing rule of law while ensuring socio-economic reformation. With the changing times and newer challenges, people also had higher expectations from the judicial system. To quote G. Austin, Supreme Court gradually became the "guardian of social revolution" proving that vitality of law was equally dependent upon judge's ability to infuse life into it. Shift from *locus standi* to public interest litigation (PIL) along with landmark decisions in cases like the *Golaknath case (1967)*, *Keshavnand Bharti case (1973)* and *Minerva Mill case (1980)*, fortified the changing position of the Supreme Court.

Adjudication with the aim of safeguarding basic structures of the constitution (against legislative amendments) combined with prevention of state encroachments sent profound signals across governments and citizens. In the next phase of 1990s, India witnessed multi-fold structural adjustments. Socio- economic, political complexities under the influence of liberalization, privatization and globalization demanded development of legal education as well as services. Despite its tremendous efforts, the Indian judiciary met with several controversies. Whether it is the recurrent deadlocks with the legislature/executive, debates on judicial backlogs or fear of political influence, judiciary was under scrutiny from all fronts. Concurrently, attempts to hinder powers of the courts including indirect methods of disciplining the judiciary such as supersession of judges and transfer of inconvenient judges also came to light, raising serious concerns over its scope and autonomy.

The Paradigm in the Judicial System:-

Since the independence of India, the honorable supreme court, the guardian of our fundamental rights, has been the locus of scrutiny and debate for the political thinker. Issues like the enormous logjam of cases before it and the independent nature of the supreme court have never escaped the political consciousness. Ironically, the organ of the court accountable for all its administrative affairs, the Supreme Court Registry, has successfully managed to elude any scrutiny or resolution despite the CJI's attempt to do so.

The Shadow of the Colonial Empire

The judicial convention of India, evolving from a lineage of religious prescriptions to constitutional charters traversing common law, is notably considered as one of the hallmarks of independent India's democratic foundation. Vestiges of its colonial legacy, however, continue to restrain India's judiciary from realising its independent dictums in line with the cultural ethos of the nation. Despite their anachronistic and foreign origins, colonial criminal codes in the form of sodomy and sedition laws coupled with procedural footprints of linguistic elitism remain persistent throughout the execution of modern jurisprudence.

The judicial models of Denmark, Norway and Finland rank the highest. Furthermore, the Scandinavian judiciary has undergone reforms over the years and is deemed to be progressive. Meanwhile, Canada, a former British colony uses the proportionality test to determine the validity of colonial laws. Through analysing these judiciary systems, the Indian judiciary is still highly influenced by its colonial legacy.

The judiciary is an important aspect of a constitutional democracy as it ensures that all citizens are treated equally and that their voices are heard and counted. Yet, even after 74 years of independence, the Indian judiciary offers a grim picture when it comes to equal representation on the bench. According to a report released by Bar and Bench in 2021, 50% of Supreme Court judges are upper caste Hindu men. Only 8 female judges have served in the Supreme Court

so far, and according to a Ministry of Law and Justice report, the Other Backward Classes (OBCs) constitute 12% of the lower judiciary, SCs constitute less than 14% and STs constitute roughly 12% of the subordinate judiciary. The subject of "fair justice" being accessible to every citizen comes as a result of this systemic lack of representation. How does a judge's predisposition influence their decision? Why aren't judges adopting a fair process of appointment that is equally representative of all segments of society? This research examines these intriguing questions. It aims to analyse why the judiciary is exclusive as an institution, investigates judicial nepotism, and explains why legal education in the country is still restricted to a specific demographic, denying access to a significant portion of the Indian populace.

Evolution of Personal Liberty regarding Women and the Queer Community in India

Oftentimes, we tend to see the world through rose-colored glasses where everything is disguised in a cloak of normality. Several contemporary events marked by sufferings and injustices compel one to believe that we are slowly inching closer towards a dystopian reality where the idea of personal liberty is immensely at stake.

The idea of liberty has been rightly inculcated in Indian hearts after decades of striving under British colonial rule and social hierarchies. The architects of our Constitution judiciously incorporated this valued idea in the Indian Constitution. This idea ingrained in the articles of our Constitution is rather a dynamic and evolving concept. The Indian judiciary has played a vital role in ascribing wider connotation and meaning to the same, extending it beyond the imagination of the Constitution makers. However, even today personal liberty is an unrealized dream for certain people, especially for women and sexual-gender minorities (LGBTQIA+) who have suffered indiscriminately since time immemorial. Though our constitution-makers have attempted to safeguard the rights of all the citizens and make India an inclusive republic, the question lingers around the fact whether enough steps have been taken by the Judiciary to safeguard the personal liberty of the LGBTQIA+ community and women. By the same token, it is essential to delve deeper into this under-explored topic and analyze how the concept of personal liberty has evolved and been interpreted by the Indian Judiciary regarding women and the queer community.

Pre-retirement Judgements and Post-retirement Appointments: A threat to Judicial Independence

The issue of judicial independence in light of the executive's ever increasing encroachment in the judicial sphere through the lure of post retirement appointments is of prime concern in India.

Vidhi Centre for legal Policy (an independent think tank) in its study has shown that as many as 70 of over 100 retired Supreme court judges have taken up post retirement appointments. Another finding- Jobs for Justice: Corruption in the Supreme Court of India, suggests that the possibility of getting a post-retirement job increases by 15-20% with each pro-government judgement.

WOMEN PARTICIPATION IN THE INDIAN JUDICIARY:-

India, the second-most populated country (Census 2011), facing a severe dry spell of female judges at all levels since independence, has the participation of women at lower courts and at high courts at just 30% and 11% respectively (Judicial

Report 2021). B.R. Ambedkar, the first law minister of India, once said, "I measure the progress of a community by the degree of progress which women have achieved." However, the poor ratio of gender diversity at the judicial panel has become one of the indicators of India's weak position in gender equality.

Conclusion:-

In India, the inefficient administration of the government provided free legal representation, this is a significant impediment to accessing justice for socioeconomically disadvantaged populations. This said overburdening leads to a massive legal catastrophe as lakhs of cases sit pending in the aisles of the Indian Judiciary. This not only creates a sense of despair and distrust amongst the people but is also a violation of our fundamental right, "Right to justice.

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