

BAR AND BENCH: AN IMPEDIMENT TO JUSTICE THAT THEY ARE PROTECTORS OF?

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“Justice denied anywhere diminishes justice everywhere.”

- Marthin Luther King, Jr.

ABSTRACT

The Constitution of India is the law of the land as it governs the duties and powers of the government authorities and lays down the fundamental rights and duties of the citizens. The Preamble of our Constitution guarantees ‘social, economic and political justice’ to all its Citizens. The Judicial system is therefore entrusted for providing justice to all without any bias and prejudice. The two pillars of the Judiciary, the Bar and Bench aims at taking such steps which ensures justice to the people of India. Thus, access to justice is one fundamental right which should be freely available to all, but unfortunately in India, this is a pervasive problem. The Judiciary has failed to respond to the various injustices done to the people. Though our Constitution aims at providing free legal aid to the poor and marginalised section by way of Article 39A yet, it is unsuccessful in doing so. This has led to the loss of faith of our citizens in the Indian judicial system. Thus, it is the need of the hour that necessary steps should be taken by the Bar and Bench in order to make justice accessible to all. In the paper, the authors will be dealing with the extent of efficiency of the Bar and Bench in providing justice to the people of India.

INTRODUCTION

The Indian Judiciary is based on the English Common Law and the legal system adopted by the British Raj. It comprises of the Constitution, precedents, customs, usages and legislature. Further, it also includes set of rules, regulations and bye-laws. The judicial decisions of the highest court of the country i.e. the Supreme Court and the High Courts are also other headsprings of law. The local customs and the conventions which are not against the principles of morality or are not contravening with the Constitution are aptly taken into consideration by the courts while administrating justice to the aggrieved. The Supreme Court of India is the highest court in the land; the hierarchy is followed by the High Courts in the states and District level courts. The Judiciary is independent of the executive and the legislative branch of government. The primary function of the Judiciary is to provide justice to the aggrieved people. It ensures that the punishment is awarded to the perpetrators and redressal is given to the grievances of the victims. The Judiciary also acts as the guardian of the Constitution. It is the duty of the Judiciary to interpret and protect the Constitution. Any act which is against the Constitution of India must be declared ultra vires by the Judiciary. Further, the Judiciary is responsible to protect the rights of the people. A citizen can approach a court if his rights are violated and can seek remedy for the same.

The Bar and Bench are the two pillars of this machinery and their harmonious co-ordination is essential for proper administration of justice.¹ The Bar can be considered as the foundation of the independent judiciary and is also sometimes termed as the mother of the Bench.

TWO PILLARS OF JUDICIARY

The two basic bedrocks of the judiciary are the bar and the bench which gives recognition to the judiciary because if there will be no lawyers to argue the case and if there will be no judges to decide the matter then the third and one of the important wing of the government will cease to exist or we can say it will lapse. So now the question is that what comprises of bar and what is meant by bench?

¹ <https://legalpoint-india.blogspot.in/2016/02/bench-bar-relations.html>

Bench comprises of the judges who listen and decides the matter. Judges are very important part of the judiciary as our judiciary is facing the scarcity of judges. These judges are appointed by the President of India on the recommendation of collegium which further consists of Chief Justice of India along with four senior most judges and one senior most judge of the High Court. *Bar* can be defined as the association of advocates. As the members of the bar are basically lawyers, these people argue on behalf of their client. There are some set of rules in these association which also includes the moral code of conduct of the lawyers.

The bar and the bench are considered as two pillars of judiciary. Further, they are connected with each other in such a way that if one of them fails to perform its function properly, the judiciary and the complainant will suffer the consequences. There are cases when the lawyers have gone on strike which has further delayed the judicial process. And in case of bench, there are situations when few judges do not perform their duty properly. This results in the increasing backlog of pending cases in the country. So for prompt and efficient working of this wing it is necessary that they both co-ordinate with each other as they both go hand in hand and for the same they have certain duties towards each other.

The following are the duties of the Bar-

1. An advocate should not show the over reaction against the presiding judge.
2. An advocate should not try to mislead the court.
3. An advocate should subsume full co-operation to the Bench.
4. An advocate should avoid anything which decreases the confidence in the administration of justice.

These are certain duties which an advocate has towards the Bench. The advocates are the members of the Bar so one can say that these duties are of Bar towards the Bench. These duties are to be practised and followed by the advocates registered with the Bar Council of India.

Further, the Bench also has some duties towards the Bar. They are as follows-

1. The Bench should encourage and ensure the independence of Bar.
2. It should allow arguments by the advocates unceasingly.

3. Judges should extend their helping and appreciative hands towards the beginners at the Bar.²
4. Judges should pay equal attention to the lawyers irrespective of their position.

ACCESS TO JUSTICE

Justice and law are of immense importance in a democracy. Whatever may be the level of economic development of a country, if there is no social, economic and political justice, there will be oppression, disappointment and anarchy. Our Constitution guarantees us right to life and personal liberty³ and also provides various measures against deprivation of the same by anyone including state. This fundamental right can only be achieved successfully when everyone has equal access to justice. The Supreme Court of India has held in the case of *Anita Kushwaha v. Pushap Sudan*⁴ that access to justice is a fundamental right. This right is guaranteed to the citizens by way of Article 14⁵ and Article 21⁶ of the Indian Constitution. The Constitutional bench of the apex Court further made an observation that the term 'life' includes a bundle of rights which makes life of a person worth living. Thus, the right to access to justice forms an essential part of a dignified life guaranteed under Article 21 of the Indian Constitution.

In a country like India, there is a wide disparity between the rich and poor. There have been so many cases in which justice is denied to the victims because of their social, economic and political background. It is believed that justice delayed is justice denied. In India, judicial process takes a long time. There are various cases which are not settled even after decades.

There are various reasons for such a delayed justice system in our country. The proportion of judges is extremely less as compared to the required numbers. This results in piling of cases for an indefinite number of time. Further, the judges also take their own time in deciding each

² Hamiter, J. B 1960. Forum Juridicum: The Ideal Relationship between the Bench and the Bar. Louisiana Law review. Louisiana University., 20 (4): p 706-713

³ The Constitution of India, Art 21

⁴ (2016) 8 SCC 509

⁵ Article 14- Equality before law: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

⁶ Article 21- Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law

dispute since there is no time pressure on them. Thereafter, corruption, lack of concrete evidences, etc. are certain other reasons that results in delayed justice.

Getting justice is an expensive thing as it involves a lot of time. The charges of the advocate, court fee and visits to the courts involve huge costs. The advocates themselves make the cases go on for years in order to ensure continuous payments by the clients. This leads to exploitation in the judicial system. In our country where a large section of the population is below extreme poverty, justice for everyone is still a dream. The low literacy rate of the country results in exploitation of the litigants as they are unaware of their rights.

However, there have been several efforts made to bring law and justice within the reach and access of poor people. The Legal Services Authorities Act, 1987 aims at establishing a nationwide network for providing free and competent legal aid to the poor and weaker sections as per the provisions of Article 39A⁷ of the Constitution. In order to ensure proper implementation and monitoring of the legal aid programmes, the National Legal Services Authority (NLSA) has been established. Further, there are also Supreme Court Legal Services Committee and the High Court Legal Services Committees in each High Court. The function of these committees is to provide free legal aid to the eligible persons. There are certain other measures taken by the government like spreading legal awareness amongst people, establishing legal aid committees in colleges, setting up of legal aid camps and other related programmes, etc. Thereafter, the Family Courts Act, 1984 also aims at the speedy settlement of disputes relating to family affairs. These Courts are set up in areas with a population over 10 lakhs and at other areas where the State Government deems fit.

The Parliamentary Committee on Empowerment of Women has suggested the setting up of one Family Court in each district of the country. India is a country inhabited by people of different faiths and religious governed by different sets of personal laws in matters relating to marriage, succession, divorce, maintenance, adoption, etc. There are separate laws on each of these issues whereby people get redressal of their grievances. There are several law enforcement agencies

⁷ Article 39A. Equal justice and free legal aid.—The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

like the Police, Indo-Tibetan Border Police, Central Bureau of Investigation, Border Security Force, Rapid Action Force, Central Reserve Police Force, etc. These agencies play an important role in maintaining the law and order in our country, checking infiltration and cross border crimes, investigating and reducing crimes and establishing peace, harmony and security.

In the case of Bhopal Gas Tragedy⁸, so many people died and suffered injuries after the leak of Methyl Isocyanate gas. The case went on for so many years and still justice is not awarded to all. There are so many victims who have still not been given any compensation even after all these years. Further, in the 1984 Anti-Sikh Riot case, most of the accused are still not punished. The victims await justice and this shows that our judiciary has failed in providing justice.

The relationship between the Bar and Bench is extremely important in the proper administration of justice. The behaviour of the Judge with the advocates makes the atmosphere of the court cordial. The Judge should be free from any kind of bias and observe the Principles of Natural Justice. This is because the life, reputation, property, etc of a person is at stake when a case is brought to the court. All of these are influenced by the decision of the Judge as he plays an important role in the administration of Justice. Further, it is necessary to note that the judge and the advocate share a very delicate relationship.

The Supreme Court has given its comments with respect to Bar-Bench relations in the case of *P.D. Gupta v. Ram Murti and others*:

“A lawyer owes a duty to be fair not only to his client but also to the court as well as to the opposite party in the conduct of the case. Administration of justice is a stream which has to be kept pure and clean. It has to be kept unpolluted. Administration of justice is not something which concerns the Bench only. It concerns the Bar as well. The Bar is the principal ground for recruiting judges. Nobody should be able to raise a finger about the conduct of a lawyer. Actually judges and lawyers are complementary to each other. The primary duty of the lawyer is to inform the court as to the law and facts of the case and to aid the court to do justice by arriving at the correct conclusions. Good and strong advocacy by the counsel is necessary for the good administration of justice. Consequently, the counsel must have freedom to present his

⁸ Union Carbide Corporation v Union of India, 1990 AIR 273

case fully and properly and should not be interrupted by the judges unless the interruption is necessary⁹"

In order to ensure due administration of justice to everyone it is essential that the Bar and bench share a smooth relationship and function in the interest of the society.

SUGGESTIONS & CONCLUSION

One of the most rudimentary needs for providing the citizens' access to justice is to set-up an adjudicatory mechanism. It may be described as a Court, Tribunal, Commission or Authority or called by any other name, where a citizen can crusade his atrocity and seek adjudication of what he may assess as violation of his right by other citizen or by the State or any of its agencies. In order to ensure, that the right of the citizen to access justice is guarded, the mechanism should not only be effective but should also be just, fair and impartial in its approach. Similarly, the procedure of court, Tribunal or Authority for the adjudication of disputes should be just and fair within themselves and they should also keep in mind the well-recognized Principles of Natural Justice¹⁰. The provided method/mechanism provided must keep in mind the hierarchy of courts and tribunals. It should also be easily accessible in terms of distance in order to access justice as it largely depends on the aptness of the aggrieved party to tell the court about his/her atrocities in a much effective way before the court, tribunal, or any other appropriate authority to grant relief.

For any new mechanism or method the main task is to work efficiently, which means the method should be efficient enough to meet the needs or the requirements of the people promptly and efficiently. Therefore the process of adjudication should also be prompt and efficient enough to provide the remedies to the claimant in a short span of time with quick and unbiased

⁹ P.D. Gupta v. Ram Murti and others, AIR 1998 SC 283

¹⁰ Natural Justice is firmly grounded to Article 14 and 21 of Indian Constitution. Since violation of natural justice leads to arbitrariness, so violation of justice is violation of equality. The natural justice mainly focuses on the following:

1. *Nemo judex in causa sua* – one cannot be made a judge in his own cause or the rule against bias.
2. *Audi alteram partem* – a judge should always listen to the other party or a fair hearing must should be done before any order.

The Principles of Natural Justice in India are as follows-

1. The social and economic justice can be seen in the Preamble of Constitution are based on natural justice.
2. Article 311 has many features of natural justice without explicit mention of it.

results. But if the process of adjudication will be full of long procedures and will require laborious formalities then the people or the complainant will hesitate in going to that forum for future. One can say that they will choose this process least over other options available to them as it will not only be delay of justice but justice denied itself. In the case of *Sheela Barse & Anr. v. Union of India & Ors.*¹¹, the court recognized speedy trial as the feature of right to life because if the trial of a person goes never-ending or delayed, then it will be violation of the fundamental right of Art.21 of the Indian Constitution. If one talks jurisprudentially, then there is no qualitative difference in matter denial of speedy trial in criminal cases on one hand and the civil suits on the other hand. One ought to know that sometimes the civil suits have no less impact on an individual than that of criminal trial. The access to justice may have a significant constitutional value but it's of no use if it is not properly implemented, without proper implementation it can only be considered as hollow hope which is of no benefit for the citizens. Moreover, the courts and the cases have only increased in past seven decades or we can say that there are more cases in the court now as compared with the British era. Also the increase in the illiteracy has further hindered the promptness of the process of the adjudication. This has in turn resulted in the overburdening of the judicial staff and the need of setting up new courts with proper infrastructure and human resources to deal with rapidly increase of case being filed and the massive backlog of 2.81 crore pending cases in the district and other subordinate courts. The access to justice will be an imaginary thing if the adjudicatory mechanism which is provided is not cost effective or economical and dissuades the complainant for approaching it. The Constitution of India by way of Art. 39-A promotes the objective of providing free legal aid to the needy people and also directs the state to make the justice affordable for the weaker or the unprivileged sections of the society.¹² The Bar and Bench have to stand together in order to make justice accessible to all.

¹¹ 1986 SCR (3) 443

¹² Williams, H. M 1979. The role of law in society. The Legal Aid Society Servant of Justice Award Dinner New York. 2 pp