

EXPLORING THE CONCEPTS OF JUSTICE IN INDIA

Written by *Ojaswini Gupta*

1st Year BA LLB Student, Dharmashastra National Law University, Jabalpur, India

ABSTRACT

Justice is the profound principle of morality and philosophy. The word 'Justice' is derived from the Latin term '*justitia*'ⁱ, meaning righteousness and equity. Justice in its truest form treats *equals equally and unequals unequally*ⁱⁱ, as quoted by Aristotle.

The Constitution of India guarantees its citizen '*social, economic and political*' justiceⁱⁱⁱ. The principles enshrined in the constitution ensures that all the systems in the polity work in consonance with each other and the justice system plays an important role in safeguarding these principles. It is the sovereign duty of right-minded people of society to educate others and prevent the defenestration of justice by injustice.

To explore the justice system of a country, it is very important to comprehend the code of ethics and core essence of its foundation. If the citizens of the country are loyal and convinced with the fundamentals of the judiciary, then it is quite evident that the society is functioning fruitfully.

In this study, the author shall try to elaborate the nexus between the importance of justice and the development of society, how both the concepts corroborate each other's effectiveness and how in a country like India, it is ever more important to strengthen the presence of judiciary in these dynamic times.

JUSTICE: MEANING AND TYPES^{iv}

Justice is a subjective concept which is open to interpretation. What justice means to a set of people might be the opposite for the others. It is dynamic in nature. To understand justice, we need to first comprehend the message it conveys to the public at large. While taking a bird's eye view, we can categorize 'justice' into these subsets:

1. *Formalistic Justice System:*

This school of thought treats society impartially and without any stratification. The concept of 'Rule of Law' is one such example, under which "*no one is above the law and law stands supreme among all*". Although it epitomizes equality, but fails to justify the criteria.

There is a lot of ambiguity in this aspect of law and it is widely open to different understandings and interpretations.

2. *Substantive Justice System:*

In opposition to formalistic justice system, substantive justice system focuses on the outcome of the law. This approach towards justice focuses primarily on the end result. It looks for the practicality in law rather than forming the law ideally. In these dynamic times, justice system should not be ambiguous, rather self-explanatory to serve its purpose towards society and that is the reason why substantive justice is the basis of social justice.

3. *Natural Justice System:*

This school of thought derives its legitimacy from nature itself. According to 'Natural Law', every individual has been bestowed with *rights* derived from nature and reason. This system of justice strives for 'universalism' and ignores the omnipresent dynamism in the world.

According to natural law theorists, the world is black and white, divided in equal distinction and should be treated in pure spirits of law.

JUSTICE SYSTEM IN INDIA

India is a liberal democracy which emphasizes over its citizens' rights. The constitution of India provides for free legal aid and fundamental right to constitutional remedies in the articles 39A and 32 respectively^v. Although the constitution of India strives for equal protection of law and aims for speedy delivery of justice, it fails to ensure its implementation in the broader sense.

India lacks the ability to uphold the virtue of righteousness when it comes to delivering unbiased and speedy delivery of justice without any discrepancies. The courts are often burdened up. They have more cases at hand than they could solve even after working at their full capacity. This brings us to a significant problem discussed below:

Justice Delayed is Justice Denied.^{vi}

India has a vast and diverse population. With such a big population comes the gargantuan task of managing the legal affairs of everyone efficiently. There are only 672 district courts and 25 high courts in the country to manage the population of 1.3 billion people. The average pendency in the courts is 1,513.996 cases per day. The number of pending cases in Indian courts is 10,656,788. The average time taken for disposal of a case is 782.853 days.^{vii}

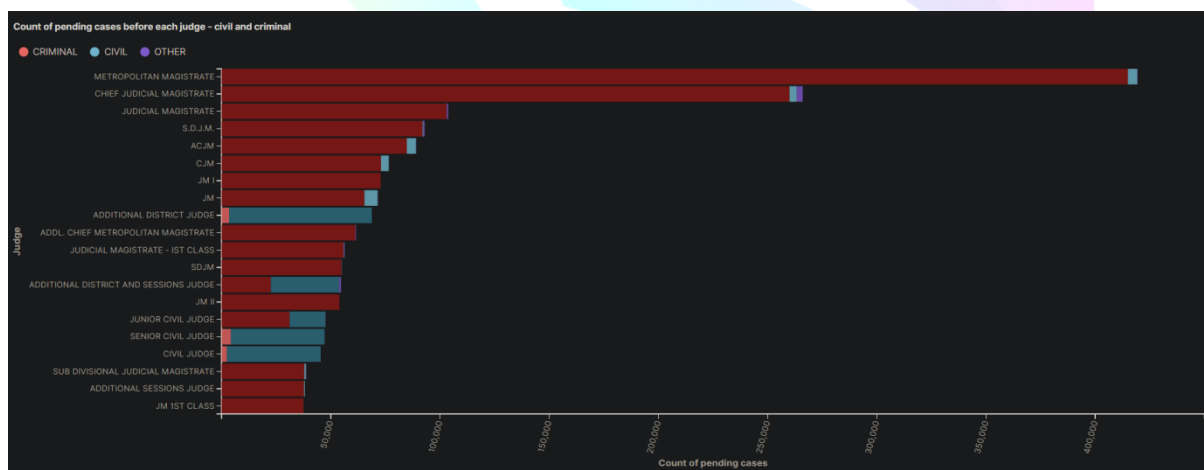


Fig. 1: count of pending cases before each judge – civil and criminal^{viii}

The above figure demonstrates the number of pending cases loaded up on judges at each level. Even after working overtime, the courts are still unable to bridge this inconsistency and the

victims of this delayed justice serve the punishment without even deserving it. This not only denies them justice but also punishes them for something they did not do.

In a country like India, where crime is ever more rising, it becomes necessary that justice be done at a pace faster than the commission of crime. To achieve that, judiciary needs serious reforms and solid workforce which doesn't let the pile of files get higher and cases get elongated.

POLICE ENCOUNTERS: INSTANT DELIVERY OF JUSTICE OR GROSS VIOLATION OF HUMAN RIGHTS

When we talk about the concept of justice, the subjectivity of this topic directly takes us to the matter of instant justice which compels the application of impulse over reasonableness. Does "*a life for a life*" uphold the virtue of justice? As rightly quoted by Mahatma Gandhi, "*an eye for an eye will leave the whole world blind*"^{ix}, explains the essence of the core issue that this article is going to discuss further.

Encounters refer to the extrajudicial killings of the alleged criminals by the police or the armed forces. The basic notion ascribed to this practice is the instant delivery of justice but its antagonists staunchly oppose the premise of this system and term it as a violation of human rights and natural justice.

In the recent times India saw a lot of police encounters which were celebrated as well as condemned by the masses. To understand this issue, we must dig into an example:

Hyderabad Police Encounter^x

Huge protests were laid out throughout the country after the Hyderabad rape case in November 2019. Four men were alleged for killing and raping a young vet. There was a huge outcry for speedy delivery of justice. This led to a huge movement of seeking relief for the victim and demanding death penalty for the accused.

A few weeks later, the four suspects were killed in apparent police encounter with little or no police injuries. This sparked a huge debate over the reasonableness of this act. The basic question was "whether it was tenable under the eyes of law or merely an act of

vigilantism?”. People celebrated this act because according to them justice was served. The chief argument presented in the favor of the act was that if justice is delayed, it is equal to the justice denied. The supporters claimed that such move might engross fears in the minds of the perpetrators.

On the other hand, the dissenters were of the view that the act was completely against the principles of natural justice. Every accused has a right to get a fair trial before a competent court. In this case, the four accused were proven guilty without even being heard. Questions were raised over the competency of courts and reasonableness of the police to handle a criminal case so impulsively.

An action can have different interpretations, connotations and repercussions. It is only a matter of reasoning and subjectivity that brings out the essence of the justice. Justice must be served by the due process of law and must not be charged by public sentiment, otherwise it would push the country towards majoritarianism^{xi} instead of the current form of democracy^{xii}.

The core of this issue was public sentiment but there is no parameter which decides the soundness of those sentiments. If we give such a power to the armed forces or the police administration, it can't be denied that they would have an authority of power. This authority would further demolish the basic tenets of democracy.

India being the largest democracy of the world could not allow such violations of human rights and constitutionalism. Encounters are justified only as a matter of self-defense. It must never be allowed to be influenced by public outcry, political manifestation, personal vendetta, etc.

Similarly, The Vikas Dubey Encounter in Mumbai, was applauded by the people on the basis of curbing the local crime. But if we handle the authority of administering justice to the police then what is the point of having an independent judiciary in India.

Police is also known as the “law enforcement agency”. In the *Lady of Justice* statue, police have the symbolism of the sword. It is the duty of the police to judiciously follow the chain of custody and help in the administration of justice by the judiciary. If the police want the justice to be served, it is their solemn duty to improve their investigation tactics and they should not hinder the course of justice.

CHALLENGES LYING AHEAD IN FRONT OF INDIAN JUDICIARY^{xiii}

India is the largest democracy with the longest constitution of the world. The constitution of India gives the framework of the judiciary and prescribes its duties. Constitution is the *fundamental law of the land*. Judiciary has the task of interpreting it in such a way that it benefits the society.

The Constitution of India is an exhaustive document, and it is open to interpretation. It is upon the judiciary as to how they bring out its essence. The makers of the constitution were very far sighted and designed the constitution in such a way that it would be equally applicable in the future also.

They gave the responsibility of keeping the ethos of the constitution intact to the judiciary. The major challenge lying in front of judiciary is to fulfil that responsibility. The Supreme Court of India had given many landmark judgements which gave new meaning to the constitutional values. For instance, *Keshavananda Bharti vs Union of India*^{xiv}, propounded the basic structure doctrine of the constitution. It postulated that the basic ethos of the constitution could not be amended by the legislature.

But lately, the judiciary is mired between a number of issues catching the nation's attention. Some directly infringing the constitution while some demanding new elucidations. The recent judgements of *Shayara Bano vs The Union of India* and *Navtej Singh Johar vs The Union of India* upheld the respect of judiciary while the issues related to Citizenship Amendment Act, 2019 and Abrogation of Article 370, still lurks on the Supreme Court's door.

On the other hand, the Sabarimala issue, despite upholding the rights of women to enter the temple, still lacks on the implementation. This shows that judiciary has varying respect in different dimensions of society. Judiciary needs to establish uniformity throughout the nation to strengthen its presence and increase its effectiveness.

Another major issue of the Indian judiciary is the lack of accountability and transparency. People have less faith in our justice system because it has failed to ensure that trust in people's conscience. Many cases go unnoticed because of its rigorously long and stringent process. People could not afford the expenses of lodging a case and fighting it. This issue has given rise to more crimes and an unsafe society.

Judiciary need to address these issues before it's too late. A smooth functioning judiciary is needed for the smooth functioning of the society. These challenges are not limited, there is still

a myriad of hurdles lying in front of the Indian legal system, but these have to be solved gradually yet effectively for a better administration of justice.

SUGGESTIONS AND SOLUTIONS

Indian Judiciary is the adhesive which keeps the nation from falling into chaos. Despite its many problems and hardships, it comes back stronger after resolving them. India is a diverse country and there is *no single pill for all the diseases*.

Earlier in the study, we discussed about various predicaments of the Indian legal system. Each problem could be handled differently according to the time and place. In the current scenario, there could be a few solutions for the improvement of the judicial system.

A major problem discussed earlier was the issue of pending cases in front of various courts all over the country. To resolve this issue, more judges must be appointed and the administration staff should also be expanded. Doing this might not be the only solution. Apart from that, there must be a screening process of the cases which needs sudden action. More disciplinary bodies should be set up for this screening process.

These disciplinary bodies must be provided with some authority to resolve the trivial issues. This would not only increase the effectiveness of the legal system; it would also increase the employment in the country.

Additional Dispute Redressal Mechanisms must be promoted in the private matters and property issues. This would surely keep the load off the courts and courts could focus on the significant issues.

Other than that, this study also talked about the accountability and transparency of the judiciary. To ensure that, judiciary must make its process simpler and understandable for the masses. This can be achieved only through targeted reforms launched by the Government of India. Legal aid facilities must be expanded with setting up a legal aid cell in every village and city (one or more than one depending on the size). It is the right of the citizens and duty of the government to provide access to justice to everyone.

Also, access to justice is very costly in India. This hinders a lot of people to even think about getting justice. This could be resolved by subsidizing the expenses for those who need it.

Every reform could be successful only if the implementation is done constructively. The legislature and the executive must work in consonance to strengthen the justice system of India and judiciary must ensure that there are no violations of those laws.

CONCLUSIONS

In this study, the author tried to understand different aspects of justices, their repercussions on society and possible changes in the legal system. After all the research and interpretation, the author could conclude that, justice is a subjective and dynamic matter. Justice for all is the manifestation of an ideal society and every society aspires to achieve that.

Indian judiciary is the principal body to keep the law and order in check and ensures that laws made in the country are fair, reasonable, and just. India is a developing country with a lot of challenges at hand. For the sound development of the country, it is extremely important that the judiciary work at smooth pace and keep evolving with time.

Judiciary also plays a major role in keeping the majoritarianism away from the democracy. There is a very fine line between ruler and a tyrant and that line is the authority of power. Judiciary is the instrument which prevents the fading of that line.

Judiciary is the conscience of a state. A just conscience keeps the humans from turning into an animal, in a similar way, judiciary keeps a democratic nation from turning into a dictatorship. Indian judiciary has strong roots in providing the justice, albeit that justice might be delayed but we all must applaud the efforts of our judicial administration in providing that.

Justice is justice not for the sake of punishing the criminals but for reforming the society.

Reformation of the society must be the object of Indian legal system and punishments should be just a tool of achieving that.

REFERENCES

1. Ahmad, S. Waseem, and M. Ashraf Ali. "ASPECTS OF JUSTICE." *The Indian Journal of Political Science*, vol. 72, no. 1, 2011, pp. 309–315. JSTOR, www.jstor.org/stable/42761831. Accessed 18 Dec. 2020.
2. Arunav Kaul, Ahmed Pathan, Harish Narasappa, Deconstructing Delay: Analyses of Data from High Courts and Subordinate Courts, https://dakshindia.org/Daksh_Justice_in_India/19_chapter_01.xhtml#_idTextAnchor087
3. Figure 1, Count of pending cases before each judge – civil and criminal <https://kp.dakshindia.org/portal>
4. T K Arun, View: What the Hyderabad Encounter tells us about the state of India's Democracy (Dec 7, 2019), <https://economictimes.indiatimes.com/news/politics-and-nation/viewwhat-the-hyderabad-encounter-tells-us-about-state-of-indias-democracy/articleshow/72418960.cms?from=mdr>
5. Shraddha Patidar, Biggest challenge faced by India Judiciary (November 22, 2018) <https://blog.ipleaders.in/biggest-challenge-faced-indian-judiciary/>
6. <https://dictionary.cambridge.org/dictionary/english/justice>
7. <https://plato.stanford.edu/entries/justice-virtue/>
8. <https://legislative.gov.in/sites/default/files/COI.pdf>
9. <https://www.bbc.co.uk/worldservice/learningenglish/movingwords/shortlist/gandhi.shtml>
10. <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100127772>
11. Ranjan Ray, The necessity for delinking democracy from majoritarianism, 25/02/2020, <https://thewire.in/rights/democracy-majoritarianism-india>
12. Kesavananda Bharti v. UOI, (1973) 4 SCC 225; AIR 1973 SC 1461

ENDNOTES

- ⁱ Available at <https://dictionary.cambridge.org/dictionary/english/justice>
- ⁱⁱ Available at <https://plato.stanford.edu/entries/justice-virtue/>
- ⁱⁱⁱ Available at <https://legislative.gov.in/sites/default/files/COI.pdf>
- ^{iv} Ahmad, S. Waseem, and M. Ashraf Ali. "ASPECTS OF JUSTICE." *The Indian Journal of Political Science*, vol. 72, no. 1, 2011, pp. 309–315. JSTOR, www.jstor.org/stable/42761831. Accessed 18 Dec. 2020.
- ^v Available at <https://legislative.gov.in/sites/default/files/COI.pdf>
- ^{vi} Arunav Kaul, Ahmed Pathan, Harish Narasappa, Deconstructing Delay: Analyses of Data from High Courts and Subordinate Courts
https://dakshindia.org/Daksh_Justice_in_India/19_chapter_01.xhtml#_idTextAnchor087
- ^{vii} Available at <https://kp.dakshindia.org/portal>
- ^{viii} Available at <https://kp.dakshindia.org/portal>
- ^{ix} Available at <https://www.bbc.co.uk/worldservice/learningenglish/movingwords/shortlist/gandhi.shtml>
- ^x T K Arun, View: What the Hyderabad Encounter tells us about the state of India's Democracy (Dec 7, 2019)
<https://economictimes.indiatimes.com/news/politics-and-nation/viewwhat-the-hyderabad-encounter-tells-us-about-state-of-indias-democracy/articleshow/72418960.cms?from=mdr>
- ^{xi} Available at <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100127772>
- ^{xii} Ranjan Ray, The necessity for delinking democracy from majoritarianism, 25/02/2020,
<https://thewire.in/rights/democracy-majoritarianism-india>
- ^{xiii} Shraddha Patidar, Biggest challenge faced by India Judiciary (November 22, 2018)
<https://blog.ipleaders.in/biggest-challenge-faced-indian-judiciary/>
- ^{xiv} Kesavananda Bharti v. UOI, (1973) 4 SCC 225; AIR 1973 SC 1461