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Role of judiciary in Indian economy & economic cost of delay in justice

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ABSTRACT

At present India is said to be third largest economy in the world in terms of PPP (Purchasing Power Parity). Our service sector is growing rapidly and contributes around 56 % of the national income. To maintain a high growth rate of national income, our law & order, particularly judiciary needs to improve then only FDI, FII, trade and industry will get legal protection to develop. Delay in court cases creates fear in the minds of trade and commerce. The common public is scared to approach police and judiciary. There is huge cost to the economy, around 1.5 to 2 % of GDP, due to delay in court cases. Due to inefficiency of police and judiciary, people are taking law in their hand and cost to handle such lawless situation is extremely high to our country. This paper tries to identify such cost and remedies to improve Indian judiciary.

Keywords: PPP-Purchasing Power Parity, GDP-Gross Domestic Product (National Income), PCI – Per Capita Income, FDI-Foreign Direct Investment, FII-Foreign Institutional Investment, UJPSC-Union Judicial Public Service Commission, SJPS- State Judicial Public Service Commission.

INDIA AS AN EMERGING GLOBAL POWER

India is the sixth largest economy in the world, with a GDP of \$2.66 trillion in 2020. Because of its large population, India has the lowest per-capita GDP^[i]. The Centre for Economics and Business Research (CEBR) has predicted that India will regain sixth position from France next year and become the third-largest economy in 2031^[ii]. As India's economy picks up, even the World Economic League (WEL) estimates that India will overtake all European powers to become the third-largest economy in 2031. As per the rankings released by WEL, the world's GDP is set to hit \$100 trillion in 2022^[iii]. The long-term growth perspective of the Indian economy remains positive due to its young population and corresponding low dependency ratio, healthy savings, and investment rates, increasing globalization in India and integration into the global economy. 70% of India's GDP is driven by domestic private consumption. The country remains the world's sixth-largest consumer market. Apart from private consumption, India's GDP is also fueled by government spending, investment, and exports. In 2020, pandemic has affected trade and India was the world's 14th largest importer and the 21st largest exporter. It ranks 63rd on the Ease of Doing Business Index and 68th on the Global Competitiveness Report. With 500 million workers, the Indian labour force was the world's second-largest as of 2019. India has one of the world's highest numbers of billionaires. India is the world's sixth-largest manufacturer, representing 3% of global manufacturing output, and employs over 57 million people^[iv]. India is the world's largest manufacturer of generic drugs, and its pharmaceutical sector fulfills over 50% of the global demand for vaccines^[v]. The Indian IT industry is a major exporter of IT services with \$191 billion in revenue and employs over four million people^[vi]. India ranks second globally in food and agricultural production, while agricultural exports were \$35.09 billion^[vii]. India's telecommunication industry is the world's second largest by the number of mobile phones, smart phones, and internet users. The Indian automobile industry is the world's fifth-largest by production^[viii]. India has the world's fourth-largest natural resources, with the mining sector contributing 11% of the country's industrial GDP and 2.5% of total GDP^[ix]. It is also the world's second-largest coal producer, the second-largest cement producer, the second-largest steel producer, and the third-largest electricity producer^[x]. Indian economy can be divided by sector wise Agriculture contribute 17.4% of GDP and 49% of employment; Industry contributes 25.8% of GDP and 20% of employment; and Services sector contributes 56.9% of GDP and 31% of employment. According to several studies, India's growth rate should stabilize at 8% during the next decades, ranking the country as the world's fastest-growing economy. Its GDP could overtake that

of the US before 2050, turning India into the strongest economy worldwide. However, to maintain this high growth rate of national income and development we need to urgently improve Indian judiciary.

ECONOMIC COST OF CASE PENDENCY IN INDIA

Cost of pendency of cases could be as high as 1.5% of GDP according to Harish Narasappa^[xi]. It has been estimated that if court decisions were quick and delays reduced, economic growth could receive a boost to the tune of 1-2% of gross domestic product. Speeding up the process will also help the poor^[xii]. In financial year 2022, the Gross National Income at current prices in *India* was estimated to amount over 230 trillion *Indian* rupees^[xiii]. Even if we consider cost of pendency of cases as low as 1 % of GDP then also 2.3 trillion Indian rupees will be huge cost to our nation. Just imagine the number of hours wasted by the plaintiff and respondent in visiting courts for pending cases, direct monetary and indirect non-monetary costs like mental torture, loss of health will be huge. The poor feel let down by the judicial system, they are attracted towards extremist ideologies and taking the law in their hands. The result is that the cost of policing and enforcing law and order has gone up in recent years. Late Pranab Mukherjee^[xiv] said that in 2009-10, the Union ministry of home affairs, has increased the allocation for policing and enforcing law and order task by 25% in the budget. The second side of this story is that poor contract enforcement is ensuring that investment decisions now have risk premia that factor in judicial delays. As a result, the cost of borrowing capital goes up: Many investments that would have been viable become unviable due to these delays. The bank cheque bouncing cases are huge in numbers and pending years and years. This problem was also highlighted by Mukherjee. If one joins these two dots, the conclusion is obvious: Judicial delays are not only alienating poor citizens, but are also ensuring that economic growth, vital to lifting them out of poverty, comes to a grinding halt.

ROLE OF JUDICIARY IN INDIAN ECONOMY

The so called great English politician and the former Prime Minister William Edwart Gladstone (1809-1898) quoted "Justice delayed is justice denied". This phrase implies that if justice is not carried out right away in a timely way, then even if it is carried out later it is not really justice because there was a period when there was a lack of justice^[xv]. As Chief Justice Burger has noted: "A sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free people and three things could destroy that confidence and do incalculable damage to society: that people come to believe that inefficiency and delay will drain even a just judgment of its value; that people who have long been exploited in the smaller transactions of daily life come to believe that courts cannot vindicate their legal rights from fraud and over-reaching; that people come to believe the law in the larger sense cannot fulfill its primary function to protect them and their families in their homes, at their work, and on the public streets"^[xvi].

With 30 million cases pending in various courts and an average time span of 15 years to get the dispute resolved through court system, the judicial system it can hardly be described as satisfactory in India^[xvii]. The Supreme Court of India on 23rd August, 2007 & 24th Sept 2007 has disposed of cases which were 50 years & 60 years old, respectively. In 1993 Mumbai Bomb Blast cases verdict came after 13 Years. Shivani Bhatnagar's murder case verdict comes after 13 years. There are about 73,000 cases pending before the Supreme Court and about 44 million in all the courts of India as of January 2021^[xviii]. According to a 2018 Niti Aayog strategy paper, at the then-prevailing rate of disposal of cases in our courts, it would take more than 324 years to clear the backlog. And the tendency at that time was 29 million cases. Cases that had been in the courts for more than 30 years were numbered to 65,695 in December 2018. By January 2019, it had risen more than 60% to 1,05,560. The huge backlog in the courts has been the subject of several reports, debates in parliament and state legislatures, in judicial conferences and the Media. Chief Justice Anand^[xix] Observed: "The consumers of justice want unpolluted, expeditious and inexpensive justice. In its absence, instead of taking recourse to law, he may be tempted to take law in his own hands. This is what the judicial system must guard against so that people do not take recourse to extra judicial methods to settle their own scores and seek redress of their grievances. Supreme Court has expressed its deep concern at excessive delay in disposal of cases in the country. In All India Judges Association's Case, the Supreme Court has expressed its desire that the number of Judges be increased in a phased manner in 5 years to raise the Judge-Population ratio to 50 per million in India. The law commissions in its 120th report and apex court through its judgment has examined the **problem of under staffing of judiciary** and recommended 50 judges per million of population instead of existing 10.5 per million population. The Judge-Population ratio in India is the lowest in the world. Far worse is the fact that out of the existing sanctioned strength of judges, 25-30% of the posts are normally lying vacant at any point in time. Further, a Judge has 30 Plus cases on the list every day against the maximum of 10-15 cases which a Judge can handle, resulting in liberal grant of adjournments on the mere asking, which again leads to delay. Hence the Judges' strength must be increased with immediate effect. In other country number of judges per million population are Australia -41, Canada -75, England- 51, USA- 107 and in India just 10.5 judges per million population. Other reasons are **poor infrastructure in the courts** and absence of computerized records. **No fixed period for disposal**: there is no time limit fixed either by any Act or Code within which the cases must be decided. Therefore, the judges, lawyers and even the litigants take it for granted that there is no urgency to finish the case. The cases drag on for years together. Lawyers are known to take **adjournments on frivolous grounds**. The reasons range from death of the distant relative to family celebrations. With every adjournment the process becomes costly for the court and for the litigants; but the Lawyers get paid for their time and appearance. Often, lawyers are busy in another court. Lawyers have **taken up more cases than they can handle**, hence, adjournments are frequently sought. So much time is wasted on the arguments of jurisdiction, cause of action, sufficiency of notice, **amendments of plaint** and other procedural matters. Procedural **laws need to be simplified** because howsoever good the substantive law may be, it can be effective only if procedural rules are simple, effective, and expeditious. There are many provisions in these Acts, providing ample opportunities for delaying the disposal of cases. Even after initial judgment, the opportunity of **filling appeals further causes delay**, where the final judgment is secured, execution is more than likely to be returned unsatisfied. All this contributes to delays. Judgments are wrong due to the **lack of evidence and corrupt practices**. The economic implications are hard to miss. A growing pool of empirical studies suggests that slow court systems discourage the growth of new businesses. The corrupt judicial system may be one of the reasons for the delay of justice. The **corrupt judges** may deliberately not announce their judgment or grant unfair adjournments to the party they favor. There may be personal bias or belief to sustain the judgment^[xx].

POSSIBLE SOLUTIONS TO BRING EFFICIENCY IN INDIAN JUDICIARY

1. Appointment of sufficient judges on merit: Whatever the law commission and other expert law body decides that number of judges need to be appointed. If expert thinks that 50 judges per million populations needed in India then that number needs to be satisfied by the government. The appointment of judges needs to be made on merit basis only and not on caste reservation, even at lower judiciary. Like Union Public Service Commission, Union Judicial Public Service Commission (UJPSC) should be set up at national level and state level State Judicial Public Service Commission (SJPSC), both should be autonomous body free from government interference. District and lower-level judges should be appointed only on merit basis (no caste reservation) by SJPSC. To promote backward caste lawyers for such services, SJPSC can provide free training to prepare for examination conducted by them. High court and Supreme Court judges should come from examinations conducted by UJPSC only on purely merit basis and no caste reservation. Promoting existing high court and Supreme Court lawyers as judges to High Court and Supreme Court leads to biasness and corrupt practices (I should not mention here types of corrupt practices without proof) and it will be injustice to lower court judges at district level. Meritorious district level judges should get chance to move high court and Supreme Court through UJPSC exam. Despite merit these district judges not moving to high court and Supreme Court is injustice to them and loss to the nation also. Backward caste lawyers should be given free training for preparing UJPSC examinations. I know there will be strong opposition from the high court and Supreme Court judiciary for UJPSC examination, but for nation building and justice to nation this needs to be done urgently. Government should attract the best national talent for the judiciary by offering high salaries and non-salary incentives.

2. Limit the maximum cases per year per lawyer: Lawyers should not be allowed to take many cases which they are unable to serve. Judicial experts, UJPSC and Supreme Court should decide what maximum number of cases one lawyer can take per year and this should be strictly followed. This will help to reduce adjournment and delay tactic played by lawyers.

3. Limit the Amendment asked: Lawyers are miss using amendment clause and frequently to delay the matter for wrong reasons they ask for amendment. The Supreme Court should lay down how many amendments and what time intervals it can be done. Concern court should discourage such amendment when they very well know the frivolous purpose of the lawyer who is filing such amendment.

4. Annual Compulsory Trainings to the lawyers and judges: The judicial training institutions, law universities should conduct such annual trainings for the lawyers and judges free and compulsory. This will upgrade the skill and knowledge of lawyers and judges. They should be trained in handling computers, e-filing, e-court, online appearance of parties etc. Computerization will reduce paper documentation, huge paper costs etc.

5. Attractive incentives for Judges and lawyers to finish cases earliest: Due to no incentives, monetary and non-monetary, frequent adjournment has been done by judges and by lawyers also. SJPSC, UJPSC and Supreme Court can decide what kind of incentives to be given for finishing case early and disincentives to be given for case delay.

6. Prohibitive fines for filing false and frivolous cases: At present, due to incredibly low fines and nominal punishment, it is giving extremely high scope to file such false and frivolous cases and this is wasting the time of court. Judiciary, Supreme Court should make such rules like e-filing of case should be mandatory with necessary documentary proofs and evidences without that case filing should be rejected on the spot. Despite such strict rules if any lawyer files such false and frivolous case with false documentary evidences then he should be fined with prohibitive amount and prohibiting him practicing for next five years in any court. The Judges should be extremely strict at the first stage itself. They should distinguish between frivolous and genuine litigation and should discourage frivolous litigation. This will reduce the number of false cases and burden on the court.

7. Working in two shifts in court premises: If the existing court could be made to function in two shifts with the same infrastructure, utilizing the services of retired judges and judicial officers reputed for their integrity and ability, which are physically and mentally fit, it would ease the situation considerably and provide immense relief to the litigants. Most of the court data should be scanned and stored on the central computer server. Paper filing of case should be discouraged. Just like Zoom meeting on computer, zoom online court case handling should be encouraged. Such case proceedings can easily be recorded and stored on a central computer server. This will reduce time, cost, and case delays.

8. Promote alternative Dispute Resolution forums: Judiciary, Law Commission and Supreme Court should think about making compulsory for some petty disputes should be first resolved by Arbitration, Mediation, and Conciliation before coming to the court. The importance of referring the matter to Alternate Dispute Resolution Mechanism i.e., Arbitration, Mediation, Conciliation, should not be under estimated.

9. Promote licensed Private Out of Court Settlement Bodies (POCSB): Supreme Court should make rules and regulations regarding setting up such POCSB. A license can be given to a retired district judge with a clean image in his entire career. They should be allowed to take regulated fees decided by Supreme Court from the litigants. Such bodies should follow court procedures of case e-filing, e-documentations, e-notice, e-hearings etc. This will reduce court case burdens and delays in court cases. POCSB also will create healthy competition for the official courts but they need to be regulated strictly.

10. Separate Court for Petty cases: That special morning and evening Courts be set up for dealing with Traffic / Police Challan cases which constituted 38.7% of institutions and 37.4% of all pending cases in the last three years, before the Subordinate Judicial Services^[xxi]. Complete trainee judges can handle such petty cases. Expert and experienced judges can handle complicated cases. Prohibitive fines can easily reduce such petty cases.

Conclusion: Common saying among the Indian citizen is that talented person will never approaches to the police and court. Because they know very well that justice will be delayed and hence denied. In my personal matter, in case of my late father who avoided to approach to police in Bidar city in Karnataka state despite frequent physical and verbal assault on him, because he had experienced those police will demand money to register genuine FIR, and then court matter will continue with false counter case on him for years and years. To avoid such monetary and more mental harassment, the common public never wants to approach police and will tolerate injustice done to them. There are lakhs of the people like my father if they are honest then suffer from such law-and-order torture. If they are fearful then they will be given preference for out of court settlement at prohibitive cost and they will tolerate injustice. If they are angry then they will not hesitate to take law in their hand and injustice done to them leads to crime as Pranab Mukerjee has rightly said as mentioned above. It is very urgent that we need judicial reforms unless there will be huge monetary

losses, social and political unrest soon in our country. Forget about becoming the third largest economy in the world, we may end up without judicial reform to one of the backward economies in the world. Who will be responsible for such a mess -----?

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